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INTERMEDIARY SERVICES FOR CHILD WITNESSES TESTIFYING IN SOUTH AFRICAN CRIMINAL COURTS

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ABSTRACT: Efforts to reduce the trauma suffered by child witnesses in the South African adversarial criminal justice system are impaired by arguments that the prosecution of crimes cannot disregard the rights of the alleged perpetrator. Leading the testimony of a child witness is a highly specialised task, and the criminal prosecutor and defence council are not skilled in these methods. Intermediary services for the child witness in court is thus paramount to reduce undue mental stress experienced by the child witness before, during and after testifying. This paper highlights the fact that crime against children and the subsequent criminal proceedings where the child is required to testify as a witness occurs with sufficient frequently to warrant intermediary services to all child witnesses required to testify in South African criminal courts. Practical implications for practise are highlighted in order to improve the current intermediary process. The paper reflects on intermediary services rendered for 3,000 child witnesses in the Gauteng-West region and discusses experiences and challenges from the perspective of both the child witness and the intermediary. The paper also provides supportive literature and a statistical overview of the work done by the Bethany House Trust, a NGO, in this regard.

Key words: child witness, intermediary services, crimes against children

INTRODUCTION

According to Coughlan and Jarman (2002), the purpose of intermediary services to the child witness is to reduce the trauma experienced by the child. However, efforts to reduce the trauma in an adversarial court system are complicated by the arguments that the prosecution of sexual abuse cannot take place in disregard of the rights of the alleged perpetrator. South Africa made international legal and human rights history with the promulgation of Section 170A of Criminal Procedures Act 51 of 1977, which was introduced through the Criminal Law Amendment Act 135 of 1991. This provides for the appointment of an intermediary for children in cases of sexual abuse for reasons of youthfulness or emotional vulnerability (Coughlan and Jarman, 2002, p. 541).

Müller (2002, p. 152) says that in evaluating the competency of the child to act as a witness, there are two components to consider. The first requirement is eyewitness ability, i.e., the ability to report the details of an observed event accurately and completely. This relates to the child's cognitive development with consideration of

factors that influence the acquisition, retention, retrieval, and verbal communication of information. The second requirement is the witness's willingness to tell the truth, i.e., the motivational aspect. Although it is understood that grasping the difference between truth and lies is crucial in testifying, the competency of child witnesses in this regard was investigated by the South African Law Commission in 2001. After evaluating the South African position, the commission recommended that a witness should not be disqualified from testifying due to the fact that he or she is unable to define the difference between telling the truth and lies. It was submitted that all witnesses be regarded as competent to testify if they can understand the questions put to them and can in return give answers that the court can understand. The proposed test focuses on the cognitive ability of the child. There is little clarity, however, as to who will perform these evaluations or how they will be done (Müller, 2002, p. 160).

> Here is a practical description then of the intermediary process and its necessity: In South Africa, an intermediary system is attempting to reduce the trauma and secondary abuse often experienced by child witnesses in court cases involving [sexual] abuse. By separating the child from the formal courtroom and allowing an intermediary to relay questions and answers to the child via closed circuit television, it was hoped that the stress of the experience for these children would be reduced while retaining the rights of the accused to cross-examine witnesses and to a fair trial. Protecting the rights of children is an universally accepted principle that influences the development of policy and practice. Where these rights have been violated—such as in sexual abuse—it is imperative that the response from societal institutions (such as justice and welfare) not only seek to protect children from further abuse of their rights but also seek to actively redress some of the violations that have taken place. It is thus essential that when possible, children giving evidence in criminal cases of sexual abuse be protected from further harm. The intermediary system for child witnesses is one such effort (Coughlan and Jarman, 2002, p. 541).

Coughlan and Jarman (2002) also confirm that a significant body of literature has shown that the experience of giving evidence is emotionally traumatic and sometimes developmentally and cognitively impossible for children as they struggle to remember details over extended periods of time and cope with the abstract language, and as they are exposed to processes and standards that are often meaningless to them. Müller (2002, p. 170) states that cross-examination is not only traumatic for children, but also results in inaccurate evidence. The child is questioned in a hostile environment, often about very intimate and emotionally-laden events. The defence is obliged to attack the child's credibility in an attempt to highlight inconsistencies and discredit the child's evidence. In light of this, the questioning of a child witness is a very specialised task, and the prosecutors and defence counsel are not trained in these methods (Müller, 2002, p. 171).

This article has two parts. First, we will examine the intermediary services provided for child witnesses in three magisterial areas in the western suburbs of Jo-

hannesburg in the Gauteng Province, South Africa. Second, we offer a discussion from practical experiences and supportive literature. Through this article we want to emphasize that crimes against children and the subsequent criminal proceedings in which the child is required to testify as a witness occur frequently enough to warrant intermediary services to all child witnesses. We will then consider implications for practice in order to improve the current intermediary process: regionally, provincially, and nationally.

A DESCRIPTION OF THE INTERMEDIARY

The introduction of South Africa's Criminal Law Amendment Act 135 of 1991, which came into effect on 1 August 1993, brought the following about in criminal cases with child witnesses, as summarised in the following table by Viviers (1999):

Table 1. Intermediary Responsibilities

Relevant Section in the Criminal Procedure Act	Practical Implication
Section 161 (2) – 'viva voce' shall in case of a deaf and mute witness, be deemed to include gesture-language and in case of a witness under 18, be deemed to include demonstration, gestures or any other form of nonverbal expression.	Allows child to give testimony in a way appropriate to his/her age by using gestures, demonstrations, and other forms of nonverbal communications. It is the task and responsibility of the intermediary to understand gestures, demonstrations, and nonverbal communication and to verbalise it to the court.
Section 165 – Where the person concerned is to give evidence through an interpreter or an intermediary appointed under section 170A(1), the oath, affirmation, or admonition under section 162, 163 or 165 shall be administered by the presiding judge or judicial officer or the registrar of the court, as the case may be, through the interpreter or intermediary in the presence or under the eyes of the presiding judge or judicial officer, as the case may be.	The judge or judicial officer may call upon the intermediary for assistance in administration of the oath, affirmation, or admonition. The intermediary may have to present it in such a way that the child understands it, and that the court is satisfied that the child will be able to give testimony on the truth and know the difference between true and false evidence.
Section 170A(1) – Whenever criminal proceedings are pending before any court and it appears to such a court that it would expose any witness under the age of 18 to undue mental stress or suffering if he testifies at such proceedings, the court may subject to subsection (4), appoint a competent person as an intermediary in order to enable such a witness to give evidence through that intermediary.	The discretion to use an intermediary rests with the court and must be requested by the prosecutor with the judge ruling on its necessity. This calls strongly for social workers to advocate (not instruct) for the use of intermediaries in all cases where child witnesses have to give testimony. It should be noted that age is only one factor to be considered in deciding whether to appoint an intermediary. The mere fact that the witness is a child does not compel the court. Before making a decision it is necessary to afford the parties an opportunity to address it.

Table 1. Intermediary Responsibilities

Relevant Section in the Criminal Procedure Act	Practical Implication
Section 170A(2)(a) – No examination, cross-examination, or reexamination of any witness in respect of whom a court has appointed and intermediary under subsection (1), except examination by the court, shall take place in any manner other than through that intermediary.	All questions by the prosecutor, the defence, or any other person in the court must be addressed to the child through the intermediary. Only the Court, i.e., the magistrate has the prerogative to ask questions directly to the child witness. In such cases the magistrate has to request the intermediary to convey the question, as asked, to the child, or may address the child directly.
Section170A(2)(b) – The said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.	The intermediary is allowed to simplify the questions to the child in such a way that the child understands it, without changing the meaning. The magistrate is the only party who may request the intermediary to convey the question asked in the exact wording to the child. Then the intermediary may not simplify those specific questions. Intermediaries should take care not to interpret the question when it is conveyed to the child, or to analyse /alter the child's response.
Section 170A(3) – The court appoints an intermediary under subsection (1) the court may direct that the relevant witness shall give his evidence at any place – (a) which is informally arranged to set that witness at ease; (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and (c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through a medium of any electronic or other devices, that intermediary as well as witness during the testimony.	The child gives her testimony via the intermediary usually in a separate room which is linked to the court usually by close circuit television or by way of a one-way mirror. The child does not see or hear the proceedings but the court sees and hears the child and intermediary.

Table 1. Intermediary Responsibilities

Relevant Section in the Criminal Procedure Act	Practical Implication
Section 170A(4)(a) – The Minister may by notice in the Gazette determine the person or the category or class of persons who are competent to be appointed as intermediaries.	In accordance with Government Notice No. R.1374, 30 July 1993 issued by the Minister of Justice (Proclamation in Government Gazette No. 15024, as amended by Government No. 17822 of 28 February 1997, and amended by Government Gazette No. 22435 of 2 July 2001), the following persons are competent to be appointed as intermediaries: **Social Workers** registered in accordance with s17 of the Social Work Act 110, 1978 and who have a minimum of two years experience in social work. Persons who hold a master degree in social work with two years experience in social work. **Medical practitioners** who are registered with The SA Medical and Dental Council under Act 56 of 1974 and who are also registered as paediatricians or psychiatrists. **Family Counsellors** appointed under s3 of Act 24 the Mediation in terms of Certain Divorce Matter Act of 1987 and who are registered as social workers, or who are classified as teachers in the classification category C to G as issued by the Dept of Education, or who are registered as clinical, educational, or guidance psychologists. **Child Care Workers** who have completed the two year training of the National Association for Child Care Workers and with a minimum of four years experience. **Teachers** who have a minimum of four years experience and who have never been suspended or temporarily suspended from teaching. **Psychologists** who are registered as clinical, educational, or guidance under Act 56 of 1974.
Section 170A (4)(b) – An intermediary who is not in the full-time employment of the State shall be paid such travelling and subsistence and other allowances in respect of the services rendered by him as the Minister, with the concurrence of the Minister of Finance, may determine.	The use of the word 'shall' indicates that the Minister of Justice and the Department of Justice are obliged to pay the claims submitted by the intermediary in respect to services rendered.

Combrink and Durr-Fitchen (1994) assert that persons who are competent to be appointed as intermediaries in terms of categories determined by law will not necessarily be suitable intermediaries. Based on discussion sessions between members

of the legal, social work, and psychology professions held at the Wynberg Sexual Offences Court, and an analysis of intermediary functioning, it became clear that certain personal requirements have to be complied with. The most basic prerequisites for a suitable intermediary would inter alia include the following (Combrink and Durr-Fitchen, 1994):

- A proven ability to relate to children and an ability to develop rapport in a short time
- An awareness of transference with regard to the gender of the intermediary
- Communication skills–be fluent in the child's language and reflecting clear messages
- Interviewing techniques with good observation skills and the ability to convey warmth, empathy and support to the child, while still remaining impartial and objective
- A working knowledge of legal aspects, the dynamics of sexual abuse and developmental stages with related intellectual and verbal abilities
- A comfortable awareness of one's own sexuality
- The intermediary and therapist should be two different people to decrease the change that bias increases the risk on appeal

DESCRIPTION OF THE INTERMEDIARY PROCESS

Coughlan and Jarman (2002) explain that in most instances the intermediary is a social worker who prepares the child for the court appearance and sits with the child in the camera room. Her role is to translate questions posed by the magistrate, attorney, prosecutor, or alleged perpetrator, into language the child will understand, without changing the general purport of the question. The intermediary has the duty of buffering aggression and intimidation and informing the court when the witness tires or loses concentration in order for the presiding officer to adjourn the court. A closed-circuit television, a microphone, and the intermediary form the basis of the system. A television is in the main courtroom, and a camera room that is adjacent to the main courtroom accommodates the child witness and the intermediary. The intermediary is fitted with earphones. Only the intermediary hears the questions, but the persons present in the courtroom hear the answers and anything else that happens in the witness room. This system differs from the English situation in which closed circuit television is used but no intermediary is involved (Coughlan and Jarman, 2002, p. 542).

The Bethany House Trust was established in 1998 as a project of the Child in Crisis Foundation (SA). It is registered as a Children's Charity Trust by the High Court and is also registered as a Non-Profit and Public Benefit Organisation. The Trust offers Child and Youth Development, Professional Parenting, and Child Witness Services. In April 2003, Bethany House entered into a public private partnership with the South African Departments of Justice and Social Development to conduct a pilot project with regard to intermediary services. Although intermediary services

were available at that stage, the service was not co-ordinated, intermediaries were not properly equipped (trained), and court officials generally did not use the service. Bethany House trained a core team of intermediaries, launched an awareness and educational campaign in order that all court officials could become aware of and start to utilise the service. A 100% child focused service was developed to accommodate all child witnesses, regardless of gender and mother tongue. Challenges faced included the fact that in the geographic area where the pilot project was launched, 11 different languages were spoken by child witnesses, which necessitated that intermediaries should be conversant in all those languages.

The primary objective of the pilot project was to provide sustained, professional intermediary services to child witnesses. In order to accomplish this, Bethany House developed a unique case management database for the scheduling and tracking of cases. Data derived from this application can be used to inform policy and budget planning in services to children by welfare, police, and justice departments. The data used in this article was obtained from this database. Information to populate the database was obtained from the magistrates courts where these cases were heard. A secondary aim was to compile a tentative victim and perpetrator profile for a specific geographic area. However, the data presented in this article has not been compared to population trends. The frustration with regard to developing a database such as the one mentioned above is confirmed by the experience of Coughlan and Jarman (2002) who states that to date there is very little, if any, research on the intermediary system's use in South Africa. It is difficult to ascertain if the system has had any impact on conviction rates because the national moratorium on the release of crime statistics and information by, the police has made this kind of data gathering impossible. It can therefore be argued that Bethany House's attempt at providing information through the use of a database has been ground-breaking in determining the success and status of intermediary services.

Magisterial Districts served

Table 2 gives an overview of the geographic areas where intermediary services have been rendered to child witnesses from April 2003 to September 2006. The magisterial districts (courts) currently served by Bethany House are Randfontein, Roodepoort, and Westonaria. In a few cases Bethany House assisted other courts. The table also shows the different police areas within the magisterial districts and the number of reported cases in each.

Table 2. Cases Per Magisterial Districts and Police Areas

Magisterial District	No of cases	Police area	No of cases
Oberholzer Court	7	Carltonville Police Station	29
Krugersdorp Court	7	Krugersdorp Police Station	6
		Kagiso Police Station	1
Protea Glen Court	1	Soweto Police Station	1
Randfontein Court	716	Randfontein/Toekomsrus/Mohlakeng	692
Roodepoort Court	506	Roodepoort Police Station	285
		Dobsonville Police Station	160
		Florida Police Station	26
		Honeydew Police Station	35
Westonaria Court	259	Westonaria	262
Total	**1496**	**Total**	**1496**

In the magisterial districts which Bethany House serves, 1496 cases were handled in 3 ½ years. This clearly illustrates the frequency of court cases and serves as an indication that the service is necessary.

Figure 1 presents a graph of the number of child witnesses and perpetrators in each magisterial district. The higher number of incidents in Randfontein is noticeable, although this data should be balanced with influencing factors such as varying population density and the fact that prosecutors in some districts do not always request the service.

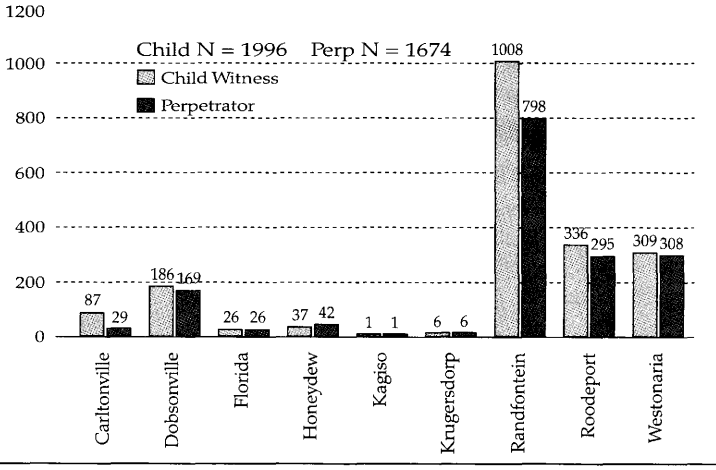

Figure 1. Child Witness and Perpetrator Rates per Magisterial District

Descriptors of child witnesses

Table 3 sets out the gender, ages, and mother tongue of the child witnesses who were the victims of crimes explained afterwards in Figure 2. Note that the child witness population is larger than the number of cases discussed in the previous section, since in some cases more than one child gave testimony (multiple victims) in the same case.

Table 3. Demographic details of child witnesses

Gender				**Boys**					**Girls**					**N**
				297 (15%)					1699 (85%)					1996
Age	**0-4yrs**		**5-8yrs**		**9-12yrs**		**13-16yrs**		**17-21yrs**		**Above 30**			
	117 (5.86%)		483 (24.19%)		702 (35.17%)		551 (27.6%)		56 (2.8%)		9 (0.45%)			1996
Mother Tongue	Afrikaans	English	Sepedi	Sesotho	Shangaan		Swazi	Tsonga	Tswana	Venda	Xhosa	Zulu		
	469	67	16	155	7		11	18	680	6	233	334		

Table 3 gives the following demographic detail regarding child witnesses that can be used to offer a profile of the typical child client in the Bethany House service area:

i. Eighty-five percent of the witnesses are girls.

ii. The biggest age cluster includes children between the ages of 9 and 12 years. It is significant to note that the highest number of children per age was 13 year olds—259 [13%] of the total children served.

iii. Significantly more Tswana (34%) and Afrikaans (23.5%) children received intermediary services. This corresponds with the cultural representation in the area.

iv. Children from a number of cultures (11) are in need of intermediary services. This implies that intermediaries also need to be representative of these cultures to truly assist the child through language and understanding of cultural context.

In the Gauteng Province there are 345,600 girls in the age group 10 to 14 years (Statistics South Africa, 2006, p. 9). If the profile information presented above is considered, the focus for preventative and treatment services should be geared towards the activities of this age group.

Types of crimes against the victims

The Family Violence, Child Protection, and Sexual Offences (FCS) units of the South African Police Services (SAPS) are responsible for investigating crimes against children such as assault with the intent to do grievous bodily harm, attempted murder, rape, incest, indecent assault, common assault, kidnapping, abduction, the sexual exploitation of children and adults in terms of the Sexual Offences Act 23 of 1957, relevant crimes in terms of the Prevention of Family Violence Act 133 of 1993,

the Domestic Violence Act 116 of 1998, and the Films and Publication Act 65 of 1996 (SAPS, 2006: 93). What is significant of this type of crime and case outcome (discussed later) is the number of reported cases vs. the conviction rates. This section gives an overview of the types of crimes the intermediaries in the Bethany House pilot project were involved in.

Figure 2 shows the charge type with regard to the cases the child witnesses were involved in. One can see that there was a significantly larger number of rape and indecent assault cases. With regard to profile identification, the data on the charge type shows that:

v. Children who were victims of rape (64.52% of total cases) and indecent assault (27.57%) were the biggest witness cluster.

vi. No intermediary services were given in child abandonment and neglect cases.

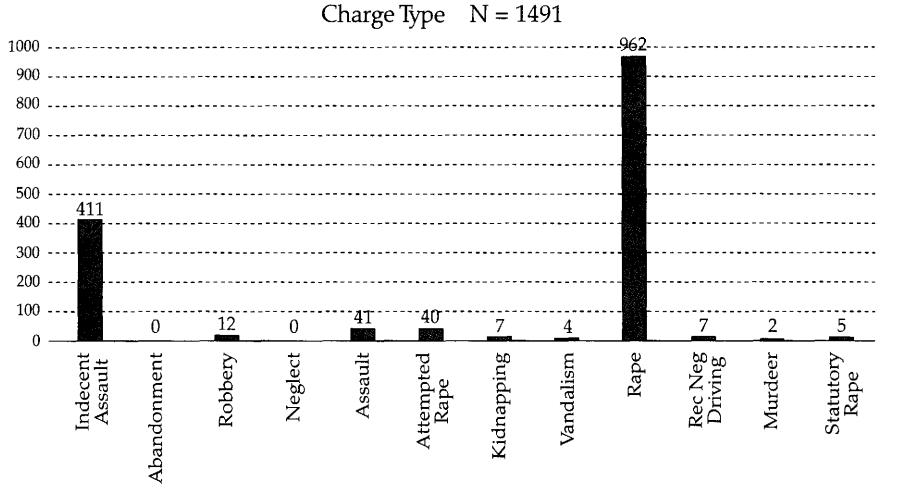

Figure 2. Types of Charges in Child Witnessing Cases

The experience of sexual abuse impacts negatively on the child's development, behaviour, and perception of his environment, and is referred to as trauma. The traumatic effects of sexual abuse are argued to be the most complex and pervasive in terms of the impact on the child's life. When the trauma is inflicted by a person known to the child, the suffering may be more intense and persistent. The sudden, horrifying, and unexpected nature of an event also defines trauma (Van der Merwe, 2002, p. 264).

The effect on the child may vary in seriousness and be lasting in nature. It includes a loss of childhood, loss of family if the child is removed, and loss of trust which will influence future relationships. The child may also experience complex posttraumatic symptoms such as low self-esteem, fear, misplaced anger and hostility, inappropriate sexual behaviour and attitude, depression, guilt or shame, self-

destructive behaviour, powerlessness, blurred role-boundaries and role confusion, pseudomaturity or developmental regression, and dissociation. A court does not have the expertise to conclude on the consequences of indecent assault and rape on child victims. Factual allegations relating to trauma can be proved by the State, or the court can inform itself by calling witnesses in terms of section 274 (1) of the Criminal Procedure Act. A possibility would be to call the mother or teacher to testify about symptoms of trauma such as sleeping, eating and socialising patterns, standard of homework, ability to concentrate, attitude towards discipline, and a nervous or fearful state of mind. If this evidence is not challenged, it may be accepted without psychiatric evidence on the effects of rape (Van der Merwe, 2002, p. 265).

Perpetrator relation to child

An interesting reason why most cases do not go to court is 'undetected' cases, which refers to cases where the police have not identified the suspect. Some cases are unsolved because the police have inadequate or no leads to follow up on through no fault of their own. In other cases incomplete or poor police investigation is the cause of cases being undetected (Van Zyl Smit, 2000, p. 11).

Figure 3 illustrates the relationship between the perpetrator and the child. In the majority of cases (1755 or 95%) males were the perpetrators. In 62% (1145) of the cases the male was known to the child and in only 33% (610) of the cases was the male a stranger to the child.

The graph offers the following information about the relationship to the child for purposes of compiling a victim profile:

vii. In the majority of the cases the perpetrator is a male known to the child: a neighbour (402 or 22%), a biological family member (401 or 22%), step family member (103 or 5.6%), and a male that the child stood in relationship with outside of the family (220 or 12%).

viii. In descending order the child in need of intermediary services is most at risk in their immediate home and family environment as well as in their social relationships and school.

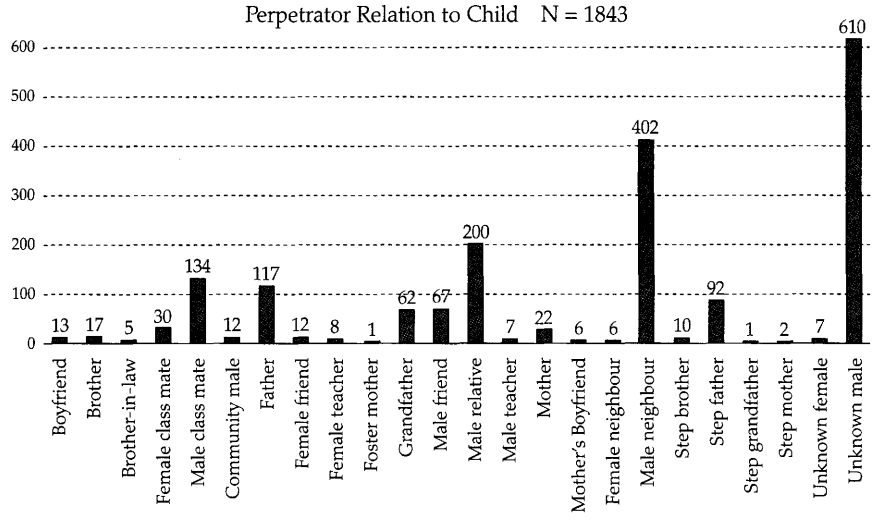

Figure 3. The perpetrator's relation to the child

With cognisance of the fact that the majority of children experienced rape and indecent assault and that a large number of perpetrators were known to the child, it can be assumed that the child witnesses have experienced high levels of trauma. It is the responsibility of the Departments of Welfare and Justice to be sensitive towards this fact and to explore which symptoms of the child will need posttrial treatment.

Describing the perpetrator that was involved with the crime against the child will also contribute to the understanding of the intermediary process in the West Rand.

Descriptors of the perpetrator

Table 4 gives information on the gender, age, and culture of the perpetrator involved in the cases in the magisterial districts mentioned in Table 1. Cause for concern exists as there is a large percentage of perpetrators who are younger than 19 years.

Useful information from the table below includes:

ix. The overwhelming majority of perpetrators are male (95%) and most are between 19 and 40 years old.

x. Again a larger number of perpetrators come from the Afrikaans and Tswana cultures. A comparative analysis of the population representation in the West Rand area may shed more light on why perpetrators from the Afrikaans and Tswana community constitute the biggest cluster of perpetrators. (Note that Afrikaans is the mother tongue of white and coloured persons in the represented communities.)

Table 4. Demographics of Perpetrators

Gender					**Male**				**Female**				**N**
					1589 (95%)				85 (5%)				1674
Age	**Under 19**			**19 -29yrs**		**30-39yrs**		**40-49yrs**	**50-59yrs**		**Over 59**		
	394 (23.54%)			478 (28.55%)		433 (25.87%)		241 (14.4%)	75 (4.48%)		53 (3.17%)		1674
Mother Tongue	Afrikaans	English	Ndebele	Sepedi	Sesotho	Shangaan	Swazi	Tsonga	Tswana	Venda	Xhosa	Zulu	
	413	30	11	19	134	45	8	32	493	14	199	274	

Case outcome

Case outcome is a significant part of the process for the child witness. The very reason for testifying against the perpetrator is to prove his or her guilt. Sentencing implies punishment for wrongdoing, and the punishment should fit the crime. Since the interest of intermediary services lies in protecting the child during a criminal process, where it is hoped that a fair trial is conducted, it is of interest to reflect on the outcomes of the cases in Bethany House's database.

Figure 4 shows the outcome of 384 criminal cases. This is only a small number of the 1,496 cases described in Table 2. In the next section the effectiveness of the process will be discussed, and some light will be shed on why so little of the case outcome is known.

What is encouraging about the information gained from the data on the case outcome is that there were no mistrials. The high number of cases withdrawn in the court (143) is of concern. Interrogation of the legal process which leads to cases being withdrawn after a perpetrator was charged and brought before court is necessary. When withdrawn, no decision regarding the guilt or innocence of the perpetrator is made. In the cases handled by Bethany House, no further contact with the child exists after the verdict. It should be asked what effect this has on the child witness.

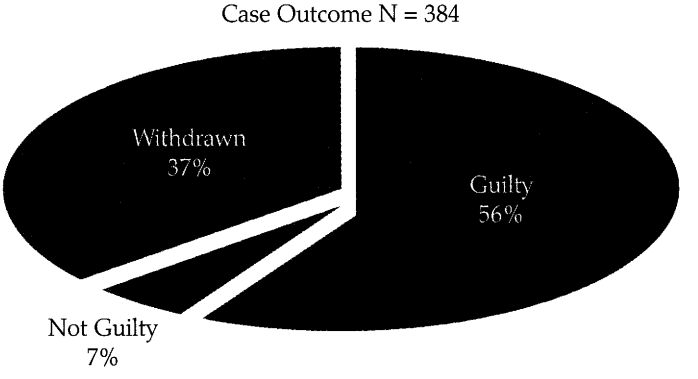

Figure 4. The Case Outcome of Intermediary Cases

For the purpose of profile building the information on verdicts gives the following insight:

xi. The majority of the cases (56%) brought before court have led to a guilty verdict.

In comparing the statistical trends of the Bethany House pilot project with national police statistics before 2000, one can see that 58% of the reported rape cases involving victims under 18 years did not go to court. Furthermore, 18% were withdrawn in court, and only 9% were found guilty. Considering the underreporting rate in cases of child abuse—especially those involving family members—the conviction rate compared to actual crimes is poor. Acquittals constitute 9% of the cases before court. It is important to note that the prosecution authority tends to try only those cases with a reasonable prospect of obtaining a conviction. Prosecution resources focus on the most promising cases. Rape is often more difficult to prove than other crimes. Still, child rape cases that went to trial were twice as likely as adult rape charges to result in conviction (Van Zyl Smith, 2000, p. 18, 19).

Clause 47 of the draft Sentencing Framework Bill 2000 proposes the presentation of victim impact statements to courts about harm suffered by the victim in order to learn what impact the crime had in practice. Unlike the trial itself, with sentencing, impressions become more important than facts, and considerations which were irrelevant on the merits acquire importance, placing the expectation on the court to make a complex value judgement. The issues at stake in exercising the sentencing discretion are the interest of justice. A bad choice of punishment is against the interests of justice, and the discretion to impose an appropriate sentence can only be exercised on the basis of all the facts relevant to the matter. Aggravating circumstances also influence the sentence. These are the process of grooming that shows premeditated planning, abuse of an authority position, knowledge of HIV-positive status, and the defencelessness of the victim. Mitigating factors in sentencing can be the youthfulness of the accused, no previous convictions, no weapon, and perception of willingness of victim older than 16 (Van der Merwe, 2002, p. 261-262, 267-268, 272).

The Criminal Law Amendment Act 105 of 1997 came into operation in May 1998, and section 51 makes provision for a system of minimum sentencing where more serious crimes are concerned. The purpose of introducing minimum sentences was the need to deal a decisive blow to serious crime through the use of dramatically increased sentences. The minimum sentences in relation to serious crimes against children are as follows (Van der Merwe, 2002, p. 269-270):

- Life imprisonment shall be imposed in a case of rape under the following conditions:
  - The victim was raped more than once or by more than one person under common purpose.
  - The accused has been convicted of two or more offences of rape without being sentenced yet.

- The accused knew that he was HIV infected.
- The victim is a girl under the age of 16 years.
- Grievous bodily harm was inflicted.

- Imprisonment for a period of 10, 15, and 20 years, respectively for first, second, and third offenders shall be imposed in the following instances:
  - Rape other than in the abovementioned situations (e.g., where the accused had a firearm intended for use, or where the victim is over 16 years of age).
  - Indecent assault on a child younger than 16 involving the infliction of bodily harm (i.e., every kind of physical injury however trivial it might appear).
  - Assault to do grievous bodily harm on a child younger than 16 years.

With cognisance of the proposed framework for sentencing, of the 2,599 family violence and sexual offence cases against children brought before court in 2005/2006, 14,116 years of imprisonment, 146 life sentences, and fines to the value of R474,560 were handed down in judgements (SAPS, 2006, p. 94).

DISCUSSION

The information gained from the statistical data on the Bethany House database from April 2003 to September 2006 provides information that can be used for welfare, judicial, and police planning in the West Rand service area. The experiences gained from the pilot project are also significant to inform practice. These are discussed next. Together with the discussion of Bethany House's experience with intermediary service delivery an article of the experiences of other social workers in South Africa, where they pose the question whether the intermediary system is worth saving, is discussed. Cognisance will also be taken of the work done by Karen Müller (LL.B, PH.D) on conceptualising the relationship between the judicial officer and the child witness.

According to Goughlan (2002), the intermediary system is only in use in main city centers of South Africa, such as East London, Cape Town, Port Elizabeth, Johannesburg, Pretoria, Durban, and Pietermaritzburg. There are no such facilities in rural courts. In addition, in cities like East London, the service was not provided because social workers at the time refused to continue to offer the service. Experiences of a small number of these intermediaries shed light on the fact that they were inadequately trained and had to deal with anxieties and emotions regarding the court process and the child's trauma. For these experiences they received no debriefing.

First, we will summarise the experiences of intermediaries as reflected by Cougan in 2002, and then we will focus on our own experiences with the intermediary system in our direct service delivery area.

Difficulties experienced by intermediaries

Many of the difficulties experienced related to the environment and process of the court itself and these are summarized below (Coughlan and Jarman, 2002, p. 544-545):

- The impact of long delays on the children, as enormous stress was created with the trial looming in the abstract future, and that once commenced, the trial could easily be postponed on a number of occasions.
- The unpredictability of when the intermediary would be needed reduced their ability to fulfil their central function of preparing children. Many reported being called to court with no notice and of meeting the child witness for the first time at court. Because the intermediaries were handling other full-time jobs, there were instances where the intermediaries could not be present or did not know that they were expected in court.
- An inherent conflict exists between technical adherences to conducting a trial that preserves the rights of the accused while still seeking to avoid further abuse of children. The court process by its very nature works against this with frequent delays, long examination sessions, and long periods of waiting.
- Intermediaries spoke about their social work knowledge regarding the developmental process of childhood and their sensitivity to the issues surrounding children's abilities to adhere to adult-defined concepts of truth. Yet, the court allows no latitude for children unable to deal abstractly with concepts. Although there is now a body of evidence that suggests "truth" can be obtained from children if they are appropriately questioned, the system of cross-examination, which is designed to show lack of truth, plays directly into developmental processes over which children have no control.
- Witnessing is further exacerbated by the failure of the system to seek ways to address the cultural needs of children. For instance, to find ways of dealing with the reality that many African children lack essential knowledge of sexual activities because open discussions on sexual matters are inhibited. Thus, what may be a genuine lack of knowing is treated as obfuscation by the courts.
- In South Africa, court proceedings are often conducted in English or Afrikaans, and witnesses and alleged perpetrators often speak an African language (for instance, Xhosa) as their first language, resulting in the need to use interpreters. When an intermediary able to speak Xhosa has to work with a Xhosa-speaking child or perpetrator, he or she is required to translate both questions and answers so that the presiding officers and officials, the victim, the alleged perpetrator, and all counsel can understand what is being said. If he or she is not able to speak Xhosa, these questions and answers are interpreted by a court interpreter (when available). It is thus

conceivable that a defence counsel asks a question in English, which is interpreted into Xhosa so that the alleged perpetrator can understand, then repeated to a second interpreter in the camera room who interprets the question to the intermediary. He or she then rephrases it for the child, and then the interpreter asks the child. The answer is interpreted to the intermediary and so forth. The potential for serious errors is real, as is the fact that this is a painful and time-consuming process. It would be easier if only appropriate language speaking intermediaries were used, but this would not negate the need for interpretation for others in court such as the presiding officer. There is, and always has been, a shortage of available Xhosa-speaking personnel willing to do this work.

- Even if the questions the child answers are restructured by the intermediary, the defence and prosecution can request that a question be asked in more than one way and thus cross-examination is no less rigorous or traumatizing. All intermediaries interviewed referred to the impact on children: the repetition of the details of the abuse is often required when giving evidence. Unfortunately, this process was highly traumatic for the children involved.
- The intermediaries initially offered their services because the system seemed to hold promise for something better for the children. However, ambivalence characterised their feelings once they started the program, with some asking basic questions, including whether or not a successful prosecution was worth the trauma experienced by the child.
- Feelings of powerlessness and frustration exist when pressures for the child to talk about the event were in conflict with social workers knowing that reluctance to talk was a right of the child and could be an adaptive coping strategy in the face of the cross-examination onslaught.
- Most said that children would be less stressed by the camera room than by an open court, that with the intermediary system children would not have to face the perpetrator (of whom many were very afraid), and that the environment was less traumatic. However, all were still very clear that although the system is potentially better, it is not working in the interests of children. They state that even when the intermediary system is available as a resource, inadequate training and limited supervision of the intermediaries significantly undermines the quality of service rendered.
- Even when intermediaries were available, a delay of up to 2 years for a case to be heard is common because of general judicial backlogs. The intermediaries argue that offences concerning children should be given priority to minimize backlogs and delays and to ensure that the children are handled in a timely manner. Extraordinarily low success rates of conviction bear them out. While having an intermediary may feel better than not hav-

ing one, there is no point in either if the delay is long and the conviction is sacrificed as a result. Delays were exacerbated by failure on the part of court officials to notify intermediaries or the families of children about delays and postponements, which resulted in increased periods of unnecessary tension.

Müller (2001) adds that the intermediary was introduced to assist the child witness by removing all hostility and aggression from a question and by changing a question, where necessary, so that it would be more understandable to the child. However, in practice, the use of an intermediary has given rise to a number of problems. The power of the intermediary is very limited, since the intermediary is perceived to be nothing more than an interpreter (and not an expert witness), and the court can at any time insist that the intermediary repeat the question exactly as it was phrased. A further disadvantage of the present system is that the intermediary does not have the authority to comment on a question and give an opinion as to whether a child understands a question or not. The intermediary is powerless to intervene and argue that questions should not be asked in a particular sequence or not phrased in a certain manner.

Effectiveness of the current process

From Bethany House's involvement in the intermediary process, the following aspects are clear:

- The process is not "user-friendly" with regard to language and process.
- The time duration between the case being reported to the police and brought before court for the first time and the child giving testimony in the court case can be as long as 2 years. The following table shows a break down of the number of postponements in cases handled by Bethany House. Apart from increased costs to represent the child victim, the child witness has to attend every hearing. In practice this means that the child is prepared for court (once), then has to be prepared for testimony, attend the hearing, and be ready to testify on every occasion. The child victim is thus subjected to undue mental stress even before testifying.

Table 5. Number of Postponements in Cases Handled by Bethany House

No. of Cases	No. of Postponements	% of Total
147	0	29.76
122	1	24.70
69	2	13.97
55	3	11.13
36	4	7.29
23	5	4.66
16	6	3.24
7	7	1.42
9	8	1.82
3	9	0.60

Table 5. Number of Postponements in Cases Handled by Bethany House

	No. of Cases	No. of Postponements	% of Total
	1	10	0.20
	1	11	0.20
	1	12	0.20
	3	13	0.61
	1	16	0.20
Total	**494**	**107**	**100.00**

- Posttestimony services such as therapy can only commence after the child has testified so that the child's testimony is not contaminated. In reality there is little intervention afterwards.
- Practical preparation for the court case is in some cases the only help available to the child.
- If the child was infected by the perpetrator with the HIV/AIDS virus when the crime was committed, the child may be too ill to testify or may have died before testimony could be given against the perpetrator.
- Significant under reporting of crimes occur. Of the reported cases only a small percentage is brought before court.
- A high percentage of cases are withdrawn in court.
- A small percentage of these cases result in convictions.
- The court process holds little gain for the child.
- The reasons for criminal prosecution are not necessarily in the best interest of the child.
- Equipment used to effectively conduct intermediary services is sometimes missing or defective (e.g., ear phones), resulting in delays or postponements. In some instances the court proceedings are moved to another court.
- There seems to be no correlation between the child's best interest and the expectations of the prosecuting authority.

It is obvious that there are a number of common findings among the experiences in East London and a suburb of Gauteng Province. This should warrant further exploration into the conditions of the intermediary system, taking cognisance of the need to make use of data to plan effective interventions for child witnesses.

Implications for practice and recommendations

We agree with Coughlan's and Jarman's (2002) position:

- The profession and government's welfare officers need to put ongoing training and adequate supervision and opportunities for debriefing in place for intermediaries. For this to happen, the intermediary role has to achieve a higher level of visibility and acceptance than is currently the case. Intermediary work is not recognized as a key function and is thus not provided for in the normal professional and collegial mechanisms set up to support and account for professional practice. This must be challenged—not only in the interests of the social workers, but also for the children. Given the ad hoc nature of intermediary work, there is no system for support, for accountability, and for a developmental perspective on the pursuit of expertise. Given the extensive restructuring of government social services taking place nationally in South Africa, this is possible only if sufficient senior people make it a priority.

- While social workers can ensure that the matter remains on the agenda, they need the legal fraternity and those responsible for setting priorities and procedures in the courts. Child abuse cases should not have to wait more than a couple of months to go to trial. Postponements should be vigorously avoided. Adequate notice should be given so that children can be prepared and so that the social workers are certain to be available. Recognition of the intermediary service should be given by those in authority for without the cooperation of social workers, the whole system will fail nationally, exposing those involved to charges that the constitutionally protected rights of children are being violated.

Van der Merwe and Müller (2002, p. 283-296) offered some guidelines with regard to judicial management in order to protect the child during the court process:

- Ground rules for attorneys are asking developmentally appropriate questions, asking for brief postponements, only using a neutral tone of voice and stand in a neutral location, offer regular and frequent breaks.

- The judicial officer should welcome the child to the court setup and dispel myths and misconceptions. Initial rapport can be built by chatting about inconsequentials. A simple description of all those present can be given and telling the child that she should say when she does not understand or cannot remember.

- The judicial officer should explain the process of questioning to the child and what will happen next, as well as reinforce the need for him/her to tell the truth. The officer should give the child witness an idea of what is expected of him/her.

- Interventions from the bench may be necessary in instances where the child cannot understand the weight attached to a police statement.

- Simple, one-topic questions, phrased in the active-voice should be used.
- Recess should be called when the child shows signs of fatigue, loss of attention, shut down responses (such as "I don't know" or "I don't remember"), or unmanageable stress.
- A support person should be present, which has proved to help the child respond better to questioning. This person is instructed not to coach or prompt the child.
- Allowing the child to keep a comfort item.
- The child has the right to have procedures dealt with expeditiously in time frames appropriate to the victim and the offence. Noncompliance with the proposed case-flow management strategy should be met with sanction.
- When an intermediary is used, identification can pose a problem. It is suggested that cross-examination be completed before the child is given the opportunity to go into the court room and identify the accused. Any further questions relating to the identification may then be dealt with.
- The child is thanked afterwards for his contribution and recognition of time spent in court is given.

The authors add, the following suggestions:

- A database is necessary and useful to track the services delivered to children and to offer information that can help with planning. All the role players need to participate in this database, and it should be applied provincially and nationally.
- The definition and responsibilities of the intermediary should be formalised, and it should be established and governed as a speciality area in social work.
- To address the concern of the credibility of evidence presented by child witnesses, De Young's (1986 in Müller, 2002, p. 214-222) conceptual model for judging truthfulness and "Statement Validity Analysis" (SVA), must be adopted as a crucial assessment tool of the validity of statements through out the witnessing process. Naturally this must then form part of the training of an intermediary to contribute to the process by verifying the credibility of statements to the court.
- To truly empathise with the difficulties inherent to the court procedures and disclosure of personal and emotionally-laden information, knowledge of "Child Abuse Accommodation Syndrome" (Hollely, 2002, p. 126) must form part of the preparation of the social worker to act as an intermediary.
- Proper understanding of the cautionary rule of practice where the factual adjudicator must warn himself to be cautious in evaluating evidence which practice has shown to require circumspection. Cautionary rules that ap-

ply in evaluating evidence are single witnesses, collaboration, traps, young children, identity, sexual deviancy, private detectives, prostitutes, and detained witnesses (South African Justice College Notes, 1994).

- The information gained from the cases Bethany House managed (marked with roman numerals throughout this document) should be considered, together with further research, for profile identification that can assist with planning of prevention and treatment of child abuse.
- Involve more impact statements of teachers, family, and other adults that can testify to the consequences of the abuse on the child, to allow for appropriate sentencing of the perpetrator.
- Establishing a socio-legal clinic where the legal and social work professions can combine their services to most effectively serve the child-client.

CONCLUSION

This article presents a number of interesting realities with regard to the intermediary system. It is asked whether a more focused and standardised approach to the system (with the release of more information for planning purposes) would strengthen the cases of children, hopefully leading to more convictions and in the end contribute to safer environments for children. Prominence needs to be given to problems presented by a number of authors. It has been more than 10 years since the Criminal Procedure Act was amended to allow for the use of intermediaries. Now is the time to follow through on the steps taken by South Africa to act in the best interest of their children.

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