

**CHILD SUGGESTIBILITY IN THE NAMIBIAN
LEGAL JUSTICE SYSTEM**

A DISSERTATION SUBMITTED IN FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF

**DOCTOR OF PHILOSOPHY IN CLINICAL
PSYCHOLOGY**

of

THE UNIVERSITY OF NAMIBIA

by

JOAB T. MUDZANAPABWE

March, 2013

Main Supervisor: PROF. H. THIRION-NAUDÉ

Co-supervisor: PROF. C. TREDoux

Co-supervisor: PROF. O.C. RUPPEL

ACKNOWLEDGEMENTS

My sincere gratitude goes to the following individuals without whose contributions and assistance this study would not have been realized:

- Prof. H. Thirion-Naudé, my main supervisor for your expert and diligent supervision. You mentored and coached me tirelessly throughout the study. Your inspiration and motivation and unwavering support transformed me to another level - a higher academic level, which has opened my intellectual floodgates to the world of critical thinking.
- Prof. C. Tredoux and Prof. S. Kreston for helping me during the formative stages of the research. You managed to steer the research into the right direction at a time that I did not have a resident supervisor.
- The research participants, namely the lawyers in private practice, prosecutors, magistrates, police officers and social workers for taking your time to participate in the research.
- Mr. J. Shuuvani, Chief Magistrate of Katutura Magistrates' courts for assisting with the case reviews. Your assistance and dedication made this study to become a reality.
- Mr. A. Weerasinghe, Mr. A. Ngeama and Mr. A. Mudzanapabwe (Jnr) for assisting with the statistical computations and graphics design.
- My wife, Tsitsi and my children Kelina, Adiel, Tanaka and Pamela for supporting me throughout the study and for your belief in me that I could succeed.
- Mrs. M. Kandoni-Kenaruzo (prosecutor) for assisting me with some legal advice and data collection at the police stations and from the research participants.
- Lastly, all the people who wished me well and assisted in one way or another. You indicated directly and indirectly that I am capable of this transition to a higher academic level. Your beliefs and moral support motivated me during tough times - you are appreciated.

DEDICATION

This dissertation is dedicated to my late father for his inspiration and wish before his departure that I could advance to this level - the level that he felt was the final academic goal post. I took heed of your call.

DECLARATIONS

I Joab T. Mudzanapabwe, declare that this study is a true reflection of my own research and that this work, or part thereof has not been submitted for a degree at any other institution of higher education.

No part of this dissertation may be produced, stored in any retrieval system, or transmitted in any form or by any other means (e.g. electronic, mechanical, photocopying, recording or otherwise) without the prior permission of the author, or the University of Namibia in that behalf.

I Joab T. Mudzanapabwe, grant the University of Namibia the right to reproduce this dissertation in whole or in part, any manner or format, which the University of Namibia may deem fit, for any person or institution requiring it for study and research; providing that the University of Namibia shall waive this right if the whole dissertation has been or is being published in a manner satisfactory to the university.

.....
Student's signature

.....
Date

SUMMARY

This study explored whether Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations were cognizant of child suggestibility and whether the concept child suggestibility was duly weighted during investigations and court proceedings. The legal practitioners were defined as prosecutors, magistrates and private defense lawyers. It was hypothesized that the Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations were significantly uninformed about child suggestibility and that the concept child suggestibility was not duly weighted during investigations and court proceedings. The study followed a mixed method approach of both quantitative and qualitative research. The quantitative approach was done through constructing a semi-structured questionnaire, which assessed the legal and allied criminal justice professionals' knowledge/sensitivity levels of suggestibility. The qualitative part of the study reviewed five forensic interviews (cases), and the assessment of six police dockets with two different scoring checklists. The semi-structured questionnaire was administered to fifty eight ($N=58$) legal and allied criminal justice professionals composed of three social workers, ten police officers, 16 prosecutors, 10 magistrates and 19 defence lawyers. The questionnaire was comprised of 36 items with sub-themes assessing suggestibility, such as source monitoring, theory of mind, and leading questions. The questionnaire was mainly scored as either "sensitive", "non sensitive", or "uncertain" to suggestibility. The checklist for assessing suggestibility in dockets was comprised of 81 items with a response format of "sensitive", "non sensitive" and "unclear". The checklist for assessing suggestibility in case reviews comprised of items that the researcher endorsed whenever a given suggestive questioning style occurred and when the child "yielded" and "shifted" to suggestive questioning. It transpired that on average the legal and allied criminal justice practitioners had limited knowledge or sensitivity to suggestibility. On a number of themes such as theory of mind, conative effect, and source monitoring, the participants showed less than 50% level of sensitivity. Significant inter-group differences pertaining to sensitivity to child suggestibility were also found. The

checklist for assessing the dockets showed well below 50% sensitivity to suggestibility. The checklist for assessing suggestibility for case reviews showed that the forensic interviews were filled with suggestive questions and in more than three court cases the children “yielded” and “shifted” more than once. The study hence supported the hypothesis that legal and allied criminal justice practitioners were significantly uninformed about child suggestibility and that the concept child suggestibility was not duly weighted during investigations and court proceedings.

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION, AWARENESS OF THE PROBLEM, ACTUALITY AND ANALYSIS OF THE RESEARCH PROBLEM, LITERATURE REVIEW, DEFINITION OF KEY CONCEPTS, PROBLEM STATEMENT, PURPOSE OF THE STUDY, THEORETICAL FRAMEWORK AND PARADIGMATIC PERSPECTIVE, RESEARCH DESIGN AND METHODOLOGY, ETHICAL CONSIDERATIONS AND CHAPTER OUTLINE

1.1	INTRODUCTION	1
1.2	AWARENESS OF THE PROBLEM	2
1.3	ACTUALITY AND ANALYSIS OF THE RESEARCH PROBLEM	2
1.4	LITERATURE REVIEW	6
1.4.1	Defining the concept ‘suggestibility’	7
1.4.2	Historical antecedents of contemporary conceptualizations of suggestibility	8
1.5	DEFINITION OF KEY CONCEPTS	10
1.5.1	Cognizance	10
1.5.2	Child	10
1.5.3	Suggestibility	11
1.5.4	Child suggestibility	11
1.5.5	The Namibian legal justice system	12
1.6	PROBLEM STATEMENT	13
1.6.1	Sub questions	14

1.6.2	Research hypothesis	14
1.7	PURPOSE OF THE STUDY	14
1.8	THEORETICAL FRAMEWORK AND PARADIGMATIC PERSPECTIVE	15
1.9	RESEARCH DESIGN AND METHODOLOGY	16
1.9.1	Methods and materials	17
1.9.2	Populations	18
1.9.3	Research populations	18
1.9.4	Sampling	19
1.9.5	Sampling criteria	21
1.9.6	The role of the researcher	22
1.9.7	Procedures	22
1.9.8	Data analysis and interpretation	26
1.10	ETHICAL CONSIDERATIONS	26
1.11	SIGNIFICANCE OF THE STUDY	29
1.12	LIMITATIONS OF THE STUDY	29
1.13	CHAPTER PLANNING	30
1.14	SYNOPSIS	31

CHAPTER 2

AN IN-DEPTH ANALYSIS OF RELEVANT READINGS ON CHILD DEVELOPMENT, CORTICAL MATURATION, AND FACTORS RELATED TO SUGGESTIBILITY

2.1	INTRODUCTION	32
2.2	DEFINITIONS	33
2.3	THE HISTORY OF SUGGESTIBILITY WRITINGS	35

2.4	THEORETICAL FOUNDATIONS OF SUGGESTIBILITY	38
2.5	COGNITIVE DEVELOPMENT – JEAN PIAGET	39
2.5.1	The sensori-motor period	40
2.5.2	The preoperational stage	40
2.5.3	The concrete operational stage	42
2.6	MORAL DEVELOPMENT OF CHILDREN – KOHLBERG AND PIAGET	42
2.7	PSYCHOSOCIAL DEVELOPMENT- ERIK ERIKSON	46
2.7.1	Stage one - Trust versus mistrust (birth to 1 st year of life, oral sensory)	46
2.7.2	Stage two - Autonomy versus shame and doubt (2 nd to 3 rd years of life; muscular, anal)	46
2.7.3	Stage three - Initiative versus guilt (4 th – 5 th years of life; locomotion, genital)	47
2.7.4	Stage four - Industry versus inferiority (6 th to 11 th years of life, though to puberty, latency)	47
2.8	SUGGESTIBILITY AND NEURO-COGNITIVE THEORIES	48
2.8.1	Episodic Memory	48
2.8.2	Executive Functioning (Cognitive Inhibition)	49
2.8.3	Theory of Mind (ToM)	51
2.8.4	Source monitoring	52
2.9	SUGGESTIBILITY AND SOCIAL LEARNING THEORY	55
2.9.1	Reinforcement	56
2.9.2	Social factors	57
2.9.3	Mother’s attachment style	58

2.10	SUGGESTIBILITY AND AGE	59
2.11	CONDITIONS CONDUCTIVE FOR INCREASED CHILD SUGGESTIBILITY	66
2.12	FORENSIC INTERVIEWS	67
2.12.1	Misleading questions	67
2.12.2	Suggestive interviews	68
2.12.2.1	<i>Interviewer bias</i>	68
2.13	SOME MEDIATING FACTORS TO SUGGESTIBILITY	73
2.14	SUGGESTIBILITY AND INTELLIGENCE	75
2.15	SUGGESTIBILITY AND PSYCHOPATHOLOGY	79
2.16	STRESS, TRAUMA MEMORY AND SUGGESTIBILITY	80
2.16.1	Dissociation and memory suggestibility	82
2.16.2	Posttraumatic Stress Disorder (PTSD) and memory suggestibility	83
2.16.3	Anxiety and memory suggestibility	84
2.16.4	Past abuse, trauma and memory suggestibility	87
2.17	SYNOPSIS	90

CHAPTER 3

AN IN-DEPTH ANALYSIS OF RELEVANT READINGS ON THE LEGAL ASPECTS RELATED TO SUGGESTIBILITY

3.1	INTRODUCTION	92
3.2	INTERNATIONAL INSTRUMENTS	93
3.2.1	Beijing rules	93

3.2.2	Convention on the Rights of the Child (CRC)	94
3.3	CONTINENTAL INSTRUMENTS	97
3.3.1	The African Charter on the rights and welfare of the child	97
3.4	THE SUB REGIONAL LEVEL	98
3.4.1	The SADC Treaty	99
3.5	NATIONAL LEVEL	100
3.5.1	The Namibian legal scenario	100
3.5.2	The court may be held <i>in camera</i>	103
3.5.3	The use of intermediaries	104
3.5.4	Demonstrations, gestures and non-verbal expressions	105
3.5.5	Combating of Rape Act 8 of 2000	107
3.6	CHILD WITNESSES IN AN ADVERSARIAL LEGAL SYSTEM	113
3.7	THE PSYCHOLOGIST AS EXPERT WITNESS	117
3.7.1	Beyond reasonable doubt	123
3.8	THE VARIOUS ROLES OF THE PSYCHOLOGIST IN COURT	125
3.8.1	Competence to stand trial	125
3.8.2	The insanity plea	125
3.8.3	Competence to manage one's own affairs	125
3.8.4	Involuntary commitment	126
3.8.5	Dangerousness and treatment potential	126
3.8.6	Personal injury and wrongful death	126
3.8.7	Child custody issues	127

3.8.8	Eyewitness testimony	127
3.8.9	Other roles	129
3.9	CRITERIA TO BE TAKEN INTO ACCOUNT DURING PSYCHOLOGICALASSESSMENT OF AN ALLEGED VICTIM	129
3.10	CRITERIA FOR FOLLOW UP CONSULTATIONS AND ASSESSMENTS	130
3.11	SYNOPSIS	132

CHAPTER 4

RESEARCH APPROACH, DESIGN AND METHODOLOGY

4.1	INTRODUCTION	133
4.2	DATA GATHERING METHODS	133
4.2.1	The social survey method	134
4.2.2	Principles underlying questionnaires and scaling	135
4.3	INSTRUMENT FOR ASSESSMENT AT KNOWLEDGE/SENSITIVITY AND PRACTICE LEVELS	138
4.3.1	Instrument format	139
4.3.2	Biographic information	139
4.3.3	Prior consent / permission	140
4.3.4	Piloting of the instrument	140
4.3.4.1	<i>Features and breakdown of the pilot study</i>	140
4.3.4.2	<i>Discussion of instrument endorsement and patterns of endorsement</i>	141
4.3.4.3	<i>Analysis of pilot instrument and pilot test items</i>	143

4.3.4.4	<i>Findings and conclusion derived from instrument piloting</i>	143
4.4	SAMPLING FOR LEGAL AND ALLIED CRIMINAL JUSTICE PRACTITIONERS	151
4.4.1	Research population	152
4.4.2	Sampling	152
4.4.3	Distribution of questionnaires	153
4.4.3.1	<i>Distribution among legal practitioners</i>	154
4.4.3.2	<i>Distribution among allied criminal justice practitioners</i>	155
4.5	CASE REVIEWS	155
4.5.1	Sampling time frame	155
4.5.2	Sampling criteria	156
4.6	CHECKLIST	159
4.6.1	Verification of case reviews	163
4.7	ANALYSIS OF DOCKETS	163
4.7.1	Verification of the dockets	169
4.8	COURT OBSERVATIONS	170
4.9	DATA ANALYSES AND STATISTICAL COMPUTATION	171
4.9.1	Distinctive Features of the SPSS 19	171
4.9.2	Evaluation of the SPSS	172
4.10	SYNOPSIS	172

CHAPTER 5

REPORTING OF THE EMPIRICAL DATA ANALYSES

5.1	INTRODUCTION	173
5.2	ANALYSIS OF THE SEMI-STRUCTURED QUESTIONNAIRE	173
5.2.1	Demography and qualifications	174
5.2.2	Item by item analysis	175
5.2.2.1	<i>Understanding of the concept suggestibility</i>	175
5.2.2.2	<i>Difference between child and adult memory</i>	177
5.2.2.3	<i>Language proficiency and memory</i>	178
5.2.2.4	<i>Interview style and children's response style</i>	179
5.2.2.5	<i>Theory of mind in child suggestibility</i>	180
5.2.2.6	<i>Open-ended questions supporting memory retrieval</i>	181
5.2.2.7	<i>Interview hypothesis effect</i>	182
5.2.2.8	<i>Source memory accessibility (eyewitness testimony)</i>	184
5.2.2.9	<i>Effect of false information on children's recall accuracy</i>	185
5.2.2.10	<i>Concept of child suggestibility in legal justice system</i>	186
5.2.2.11	<i>Leading questions and accuracy of memory recall</i>	188
5.2.2.12	<i>Age group and suggestibility</i>	189
5.2.2.13	<i>Use of anatomically correct dolls</i>	191
5.2.2.14	<i>Rewarding children during interviewing</i>	192
5.2.2.15	<i>Forensic interviewing by authoritative persons</i>	193
5.2.2.16	<i>Undoing implanted false information</i>	195
5.2.2.17	<i>Interviewer with clear pre-conceived beliefs</i>	196
5.2.2.18	<i>Suggestibility in children with intellectual abilities</i>	197
5.2.2.19	<i>Forensic interviews conducted by professionals</i>	198
5.2.2.20	<i>Level of participation in event and memory recall</i>	199
5.2.2.21	<i>Time interval between event and recall</i>	201

5.2.2.22	<i>Police wearing uniforms (uniform authority effect)</i>	202
5.2.2.23	<i>Existence of a framework for conducting forensic interviews</i>	203
5.2.2.24	<i>Interview guidelines in the Namibian legal justice system</i>	204
5.2.2.25	<i>Title of guidelines</i>	206
5.2.2.26	<i>Fitness to stand trial and suggestibility</i>	207
5.2.2.27	<i>Conative effect and suggestibility</i>	209
5.2.2.28	<i>Age of abstract thought development</i>	210
5.2.2.29	<i>Use of victim friendly courts</i>	212
5.2.2.30	<i>Use of psychological experts</i>	213
5.2.2.31	<i>Repeating questions and suggestibility</i>	215
5.2.2.32	<i>Dismissal of interview when child is emotional</i>	216
5.2.2.33	<i>Allow children to testify unassisted</i>	217
5.2.2.34	<i>Allow preschool to be asked closed questions</i>	218
5.2.2.35	<i>Allow preschool children to be asked leading questions</i>	220
5.2.2.36	<i>Indicate disagreement with children when necessary</i>	121
5.3	ANALYSIS OF EXTRA-JUDICIAL STATEMENT (DOCKETS)	222
5.3.1	Sensitivity of docket contents to suggestibility	223
5.3.2	Analysis of specific sections	225
5.3.3	Analysis of selected items (criteria)	226
5.3.3.1	<i>Criterion #1: Statement taken down in victim's mother tongue</i>	227
5.3.3.2	<i>Criterion #2: Use of an interpreter</i>	227
5.3.3.3	<i>Criterion #13: Indication of person to whom the alleged victim first reported the offence</i>	228
5.3.3.4	<i>Criterion #14: Investigating officer's clinical notes about observations</i>	229
5.3.3.5	<i>Criterion #15: Investigating officer's initial impressions of victim</i>	229
5.3.3.6	<i>Criterion #16: Investigating officers noting down hard signs</i>	230
5.3.3.7	<i>Criterion #17: Investigating officers' objective observations</i>	231

5.3.3.8	<i>Criterion #18: Investigating officers' record keeping</i>	231
5.3.3.9	<i>Criterion #72: Attained level of decision-making capacity of alleged victim</i>	233
5.3.3.10	<i>Criterion #73: Evidence of alleged victim's intellectual level</i>	233
5.3.3.11	<i>Criterion #74: Evidence of the alleged victim's maturity level</i>	234
5.3.3.12	<i>Criterion #75: Effects of maturity and intellectual functioning</i>	235
5.3.3.13	<i>Criterion #77: Capacity to understand consequences of decisions</i>	236
5.3.3.14	<i>Criterion #79: Scrutiny and recording of victim's suggestibility</i>	237
5.3.3.15	<i>Criterion #80: Use of aides to elicit a statement</i>	238
5.4	ANALYSIS OF CASE REVIEW CHECKLISTS	239
5.4.1	Case Review (R/C 146/2001)	239
5.4.2	Case Review (R/C 72/2001)	241
5.4.3	Case Review (R/C 65/2004)	242
5.4.4	Case Review (R/C 194/2001-A)	244
5.4.5	Case Review (R/C 194/2001-B)	245
5.5	SYNOPSIS	246

CHAPTER 6

INTERPRETATION OF EMPIRICAL DATA AND GUIDING PRINCIPLES FOR INTERVENTION

6.1	INTRODUCTION	247
6.2	INTERPRETATION OF THE EMPIRICAL DATA	247
6.2.1	Cognizance of suggestibility among professionals involved in cases of child sexual abuse	248

6.2.2	The nexus between educational level and cognizance of suggestibility	249
6.2.3	Specific deficits related to cognizance of suggestibility	250
6.2.4	Specific strengths related to cognizance of suggestibility	266
6.2.5	Protection of the vulnerable child witness from interrogative suggestibility	269
6.2.6	Extra-judicial ('founding') statements (dockets)	269
6.2.6.1	<i>Specific deficits emerging from founding statements of child witnesses</i>	270
6.2.7	Interpretation of case reviews	280
6.2.7.1	<i>Theme 1: Court officials' questioning style</i>	280
6.2.7.2	<i>Theme 2: Using re-enforcement (incentive) or disincentive tactics during questioning of the child witness</i>	284
6.2.7.3	<i>Theme 3: Suggesting that information was already confirmed by other witnesses</i>	287
6.2.7.4	<i>Theme 4: Introduction of new information to the child witness during questioning</i>	290
6.2.7.5	<i>Theme 5: Inviting speculation from the child witness</i>	291
6.2.7.6	<i>Theme 6: Use of aides to assist the child witness during questioning</i>	293
6.2.7.7	<i>Theme 7: Observation of yielding and shifting in the child witness</i>	294
6.3	FINDINGS AND CONCLUSIONS	299
6.4	GUIDING PRINCIPLES FOR INTERVENTION	299
6.4.1	Basic and continuous professional development (CPD)	299
6.4.2	Curricula reform and/or expansion of training programs	300
6.4.3	Workplace learning and applicable clinical experience	301

6.4.4	Basic training of investigating officers	302
6.4.5	Best practice guidelines	306
6.5	APPLICATION OF NEW KNOWLEDGE	307
6.5.1	Suggestibility assessment tools	307
6.5.2	Resource material for use in the reformed curricula	308
6.6	SYNOPSIS	308

CHAPTER 7

SUMMARY OF FINDINGS, DEDUCTIONS, CONCLUSIONS AND RECOMMENDATIONS

7.1	INTRODUCTION	309
7.2	OVERVIEW	309
7.3	SUMMARY OF FINDINGS	310
7.3.1	Summation of findings from chapter two	310
7.3.2	Summation of findings from chapter three	314
7.3.2.1	<i>International level</i>	314
7.3.2.2	<i>Continental level</i>	315
7.3.2.3	<i>Sub-regional level</i>	316
7.3.2.4	<i>National level</i>	316
7.3.2.5	<i>Child witnesses in an adversarial legal system</i>	317
7.3.2.6	<i>The psychologist as an expert witness</i>	318
7.3.2.7	<i>The various roles of the psychologist in court</i>	319
7.3.2.8	<i>Criteria to be taken into account during psychological assessment of an alleged victim</i>	320

7.3.2.9	<i>Criteria for follow up consultations and assessments</i>	320
7.3.3	Summation of findings from the empirical research	322
7.3.3.1	<i>Findings from the semi-structured questionnaire</i>	322
7.3.3.2	<i>Specific strengths related to cognizance of suggestibility</i>	325
7.3.3.3	<i>Specific deficits emerging from founding statements of child witnesses</i>	326
7.3.3.4	<i>Findings emanating from case reviews</i>	327
7.4	DEDUCTIONS	330
7.5	CONCLUSIONS	330
7.6	IMPLICATIONS OF THIS STUDY	331
7.7	VERIFICATION OF RESEARCH HYPOTHESIS	332
7.8	RECOMMENDATIONS	333
7.8.1	Recommendations towards best practice within the Namibian legal justice system in general	333
7.8.2	Recommendations for training and education (program)	333
7.8.3	Recommendations for further research	334
7.9	VALIDATION OF THE STUDY	334
7.9.1	Shortcomings	334
7.9.2	Contributions	335
7.10	CLOSING STATEMENT	336

LIST OF FIGURES

Figure 5.1	Graphic representation of research participants' understanding of suggestibility	176
Figure 5.2	Graphic representation of research participants' understanding of theory of mind in child suggestibility	181
Figure 5.3	Graphic representation of research participants' understanding of hypothesis effect	183
Figure 5.4	Graphic representation of research participants' understanding of source memory accessibility (eyewitness testimony) and child suggestibility	185
Figure 5.5	Graphic representation of research participants' cognizance of the concept child suggestibility in the legal justice system	187
Figure 5.6	Graphic representation of research participants' cognizance of the link between leading questions and accurate memory recall	189
Figure 5.7	Graphic representation of research participants' cognizance of the link between age and suggestibility	190
Figure 5.8	Graphic representation of research participants' cognizance of the link between rewarding and susceptibility for suggestion	193
Figure 5.9	Graphic representation of research participants' cognizance of the link between authority symbols and increased susceptibility for suggestion	194
Figure 5.10	Graphic representation of research participants' cognizance of the effect of the interviewer's clear pre-conceived beliefs	197
Figure 5.11	Graphic representation of research participants' cognizance of the link between level of participation in event and memory recall	200
Figure 5.12	Graphic representation of research participants' cognizance of the existence of a framework for conducting forensic interviews with children	204
Figure 5.13	Graphic representation of research participants' cognizance of interview guidelines in the Namibian legal justice system	205
Figure 5.14	Graphic representation of research participants' cognizance of	

	the title of interview guidelines that exist in the Namibian legal justice system	207
Figure 5.15	Graphic representation of research participants' cognizance of fitness to stand trial and suggestibility	208
Figure 5.16	Graphic representation of research participants' cognizance of the link between conative abilities and suggestibility	210
Figure 5.17	Graphic representation of research participants' cognizance of the age of abstract thought development in children	211
Figure 5.18	Graphic representation of research participants' cognizance of the use of victim friendly courts	213
Figure 5.19a	Graphic representation of research participants' prior experience and collaboration with psychological experts for purposes of assessment	214
Figure 5.19b	Graphic representation of research participants' cognizance of the effect of repetitive questioning on suggestibility	216
Figure 5.20	Graphic representation of research participants' willingness to allow preschool children to be asked closed questions	219
Figure 5.21	Graphic representation of case R/C 146/2001	240
Figure 5.22	Graphic representation of case R/C 72/2001	242
Figure 5.23	Graphic representation of case R/C 65/2004	243
Figure 5.24	Graphic representation of case R/C 194/2001-A	245
Figure 5.25	Graphic representation of case R/C 194/2001-B	246

LIST OF TABLES

Table 1.1	Different modes of enquiry and research design	17
Table 4.1	Pilot instrument endorsement and endorsement patterns	141
Table 4.2	Distribution of audio recorded case analyses	159
Table 4.3	Checklists for suggestive questioning	160
Table 4.4	Suggestive response checklist (children)	162
Table 4.5	Extra Judicial Checklist for Analyses of Narratives (statements)	164
Table 5.1	Highest educational qualification	175
Table 5.2	Frequency table of research participants' understanding of the concept suggestibility	176
Table 5.3	Frequency table of research participants' understanding of the difference between child and adult memory	177
Table 5.4	Frequency table of research participants' understanding of language proficiency and memory in child suggestibility	178
Table 5.5	Frequency table of research participants' understanding of link between interview style and children's response style	179
Table 5.6	Frequency table of research participants' understanding of theory of mind in child suggestibility	180
Table 5.7	Frequency table of research participants' understanding of open-ended questions as support for memory retrieval	182
Table 5.8	Frequency table of research participants' understanding of hypothesis effect	183
Table 5.9	Frequency table of research participants' understanding of source memory accessibility (eyewitness testimony) and child suggestibility	184
Table 5.10	Frequency table of research participants' understanding of effect of false information on children's recall accuracy	186
Table 5.11	Frequency table of research participants' cognizance of the concept child suggestibility in the legal justice system	187

Table 5.12	Frequency table of research participants' cognizance of the link between leading questions and accurate memory recall	188
Table 5.13	Frequency table of research participants' cognizance of the link between age and suggestibility	190
Table 5.14	Frequency table of research participants' knowledge on the use of anatomically correct dolls	191
Table 5.15	Frequency table of research participants' cognizance of the link between rewarding and susceptibility for suggestion	192
Table 5.16	Frequency table of research participants' cognizance of the link between authority symbols and increased susceptibility for suggestion	194
Table 5.17	Frequency table of research participants' cognizance of difficulty to undo implanted false information	195
Table 5.18	Frequency table of research participants' cognizance of the effect of the interviewer's clear pre-conceived beliefs	196
Table 5.19	Frequency table of research participants' cognizance of the link between suggestibility and intellectual abilities of children	198
Table 5.20	Frequency table of research participants' cognizance of the link between suggestibility and intellectual abilities of children	199
Table 5.21	Frequency table of research participants' cognizance of the link between level of participation in event and memory recall	200
Table 5.22	Frequency table of research participants' cognizance of the importance of time interval between event and recall	201
Table 5.23	Frequency table of research participants' cognizance of the effect of police uniforms on susceptibility for suggestion	202
Table 5.24	Frequency table of research participants' cognizance of the existence of a framework for conducting forensic interviews with children	203
Table 5.25	Frequency table of research participants' cognizance of interview guidelines in the Namibian legal justice system	205
Table 5.26	Frequency table of research participants' cognizance of the title of interview guidelines that exist in the Namibian legal justice system	206

Table 5.27	Frequency table of research participants' cognizance of fitness to stand trial and suggestibility	208
Table 5.28	Frequency table of research participants' cognizance of the link between conative abilities and suggestibility	209
Table 5.29	Frequency table of research participants' cognizance of the age of abstract thought development in children	211
Table 5.30	Frequency table of research participants' cognizance of the use of victim friendly courts	212
Table 5.31	Frequency table of research participants' prior experience and collaboration with psychological experts for purposes of assessment	214
Table 5.32	Frequency table of research participants' cognizance of the effect of repetitive questioning on suggestibility	215
Table 5.33	Frequency table of research participants' cognizance of the requirement to dismiss interviewing when interviewee becomes emotional	217
Table 5.34	Frequency table of research participants' willingness to allow children to testify unassisted	218
Table 5.35	Frequency table of research participants' willingness to allow preschool children to be asked closed questions	219
Table 5.36	Frequency table of research participants' willingness to allow preschool children to be asked leading questions	220
Table 5.37	Frequency table of research participants' willingness to indicate disagreement with children when necessary	221
Table 5.38	Sensitivity to suggestibility	223
Table 5.39	Sensitivity to criterion #1	227
Table 5.40	Sensitivity to criterion #2	228
Table 5.41	Sensitivity to criterion #13	228
Table 5.42	Sensitivity to criterion #14	229
Table 5.43	Sensitivity to criterion #15	230
Table 5.44	Sensitivity to criterion #16	230
Table 5.45	Sensitivity to criterion #17	231

Table 5.46	Sensitivity to criterion #18	232
Table 5.47	Sensitivity to criterion #72	233
Table 5.48	Sensitivity to criterion #73	234
Table 5.49	Sensitivity to criterion #74	235
Table 5.50	Sensitivity to criterion #75	236
Table 5.51	Sensitivity to criterion #77	237
Table 5.52	Sensitivity to criterion #79	238
Table 5.53	Sensitivity to criterion #80	239
Table 6.1	Composite questioning styles used by court officials	282
Table 6.2	Composite incentive and disincentive tactics used by court officials	286
Table 6.3	Composite suggestive tactics used by court officials	288
Table 6.4	Composite yielding and/or shifting in child witnesses	294
Table 6.5	Composite matrix of suggestive interaction with child witness during trial proceedings	295
LIST OF REFERENCES		337
LIST OF ACTS		348
LIST OF COURT CASES		348
NEWSPAPERS		348
ANNEXURES		349

CHAPTER 1

INTRODUCTION, AWARENESS OF THE PROBLEM, ACTUALITY AND ANALYSIS OF THE RESEARCH PROBLEM, LITERATURE REVIEW, DEFINITION OF KEY CONCEPTS, PROBLEM STATEMENT, PURPOSE OF THE STUDY, THEORETICAL FRAMEWORK AND PARADIGMATIC PERSPECTIVE, RESEARCH DESIGN AND METHODOLOGY, ETHICAL CONSIDERATIONS AND CHAPTER OUTLINE

1.1 INTRODUCTION

By means of this research study, the cognizance of child suggestibility within the Namibian legal justice system will be explored. The law is a social science created by people for people. One of its aims is to provide certainty for members of society regarding their behaviour and interaction with other members within that society. Specifically within the cadre of the child-witness, some factors do hamper the achievement of this aim, such as language non-proficiency, diverse interpretations ascribed to verbal and non-verbal communications, the child-witness' cognitive, emotional and social developmental level, in close association with suggestibility, the discretion given to judicial officers in the application of the law and the challenge of total objective adjudication of the law. Hence, forensic procedures, including scrutiny of child-witness testimonies aim to ensure that another ideal of the law, that of justice, is achieved through the acknowledgement of fundamental rights guaranteed in the Bill of Rights as proclaimed in the Constitution (the Constitution of Namibia, 1998).

This research study therefore employs a child development lens to investigate whether the concept 'child suggestibility' is considered during such proceedings, and how cognizance of child suggestibility translates in objective adjudication of the law within the Namibian legal system.

1.2 AWARENESS OF THE PROBLEM

Cognizance of child suggestibility refers to three associated concepts, namely *knowledge*, *scope of knowledge*, and *the Court's right to deal with a particular matter*. These three concepts serve as the underlying premise that directs the course of this research study, whereas 'knowledge' refers to the knowledge or awareness of the existence of something, while 'scope of knowledge' refers to legal and allied criminal justice professionals' scope of understanding of 'child suggestibility' and putting this knowledge into practice, and finally the right of a court of law to deal with or consider this particular matter.

1.3 ACTUALITY AND ANALYSIS OF THE RESEARCH PROBLEM

According to the United Nations Educational Scientific and Cultural Organization (UNESCO) (2001), there has been a surge in reported cases of child sexual abuse in Namibia in recent times and that *ipso facto* increases the number of children who are either called to testify in court or go through some form forensic interviewing. In its document entitled "Towards Victim – friendly sexual offences court in Namibia 2001", it is estimated that at least one act of rape (adult and child rape) takes place every hour of the day in Namibia. In similar vein, Ambunda and Mugadza (2009) in a chapter entitled "The protection of children's rights in Namibia: Law and policy" in Ruppel (edit) (2009) noted that 66 children were reported to have been raped since the beginning of year 2009 up to the 2nd of October 2009. These statistics are for the rape cases which were reported to the police and one would assume that such children will one way or another go through some form of forensic interview. The (2001) UNESCO document highlighted the importance of the interviewer's understanding of the child-witness' level of cognitive development. Research done so far has shown that young children, especially pre-scholers, are more vulnerable to cognitive and social suggestibility than adults when incorrect information is suggested to them (Chiroro & Muller, 1996).

Goodman, Bottoms, Rudy, Davis and Schwartz-Kennedy (2001) reported that child abuse is a significant societal problem. Goodman et al, posit that internationally, the best estimates indicate that at least one in five girls and one in ten or more boys will experience a sexual assault before their 18th birthday. It has to be noted that sexual abuse is a crime that by its nature often does not involve an eyewitness other than the perpetrator and the victim. Hence the accuracy of children's reporting of these incidents is of considerable legal importance and concern. This fact has prompted psychological research on children's memory and suggestibility as applied to forensic settings (Goodman et al., 2001, 2006). The World Health Organization (WHO) (2006) reported that the highest incidence of child sexual abuse was found in Namibia, based on a study of nine Sub-Saharan African countries.

The Namibian government enacted the Combating of Rape Act in 2000 (Act 8, of 2000). The Act made special provisions for the reduction of traumatization of "vulnerable witnesses" such as children. Examples of such provisions include that a witness under the age of thirteen may only be cross examined through the presiding officer or an intermediary and that information offered by children under the age of fourteen prior to the trial, e.g., statements to the social workers or police officers, may be considered during the trial, subject to certain safeguards (Combating of Rape Act, 2000, sec, 6 & Criminal Procedure Amendment Act No.24, 2003, amendment of sec, 166, ActNo.51, 1977). These long-awaited provisions were well received and saluted; however, no provisions were made in terms of prescribed parameters and protocols for conducting forensic interviews with "vulnerable witnesses". Similarly, the Child Care and Protection Bill in its current format remain mute on child forensic interviewing protocols (Child Care and Protection Bill 2009). This Bill is currently subject to revision.

In moving forward to deal with perpetrators of child sexual abuse, caution must be exercised to prevent having to deal with potential false allegations emanating from child suggestibility and from suggestible questioning of such children (Bruck & Ceci, 1999). Ceci and Bruck (1993) noted that children can be led to make false or inaccurate reports about very crucial, personally experienced events and that contrary

to the claims of some, children sometimes tell untruths when the motivational structure is tilted towards lying.

The preceding findings would cause panic, should the legal justice system does not have protective systems for the detection of critical variables such as suggestibility. The consequence of poorly-conducted interviews and questioning during the trial might be instrumental in offenders walking free, which is surely hard to accept (Gulota & Resoning, 2004). However, it is just as harmful to instill suggestions of an abuse in children's minds, based on suspicion, in order to obtain their testimonies and proceed against an unjustly-accused adult (Gulotta et al., 2004). In order to promote objective adjudication of the law, some countries such as the United Kingdom (UK) implemented a Memorandum of Good Practice, which provides guidelines for interviewing children to intercept potential contamination of testimonies, such as child suggestibility (Chiroro et al., 2005).

The legal justice system in Namibia, like all other systems, relies heavily on child testimonies, although the capability of children to recall events might be profoundly influenced by their stage of cognitive development. Suggestibility has been found to be correlated to some cognitive factors such as theory of mind, source monitoring, episodic memory, inhibitory control and executive functioning (Melinder, Endestad & Magnussen, 2006). By illustration, developmentally marked improvements in terms of inhibitory control occur between the ages of 4 and 7 years (Roberts & Powel, 2005). This improvement is believed to be dependent on frontal lobe maturation, the area of the brain that is implicated in inhibitory control. It is after this period of maturation that children become less susceptible to suggestibility (Ceci & Bruck, 1994), even though children, who had been subjected to enduring stress and abuse, might demonstrate impaired inhibitory control. The prefrontal cortex, together with the hippocampus and amygdala, mediate short-term memory and explicit-declarative long-term memory (Newport & Nemeroff, 2000; Bremner, 2001). "Stress induces impairment of prefrontal functioning, accompanied by impairment of anterior cingulate gyrus, orbito-frontal cortex functioning, hippocampal atrophy and activation of the amygdala (emotionally significant

memories)” (Bremner, 2001, p165). “The anterior cingulate gyrus is functionally less active with trauma and stress, resulting in impaired error detection” (Restak, 2000, p70). Despite adequate understanding and sufficient social knowledge, abused children might demonstrate impaired capability to evaluate social situations, apply information to other situations in a socially acceptable way, detect and restore mistakes, and regulate emotional behaviour (Newport & Nemeroff, 2000). “In addition, functional impairment of the orbito-frontal cortex allows explanation of social rules and knowledge, but accompanied by an inability to regulate behaviour and application of information to relevant social situations” (Carlson, 1994, p344). Furthermore, stress induces functional impairment (atrophy) of the hippocampus, which mediates explicit-declarative memory (Pretorius & Naudé, 2002). Changes in hippocampal activity produce poor regulation of behaviour and stored information cannot be activated sufficiently. The interpretation is that child abuse activates amygdala functioning, therefore abused children are sensitised to accumulate pleasant and unpleasant information within the social context, to be stored as part of the episodic memory. In contrast to amygdala activation, the hippocampal and prefrontal functioning is inhibited by traumatic stress, resulting in poor memory retrieval, as well as an inability to regulate own behaviour, to make choices, to detect and restore mistakes, and to regulate emotional behaviour (Restak, 2000). “Due to inhibited anterior cingulate gyrus and orbito-frontal cortex functioning, attention and problem solving are also impaired” (Newport & Nemeroff, 2000, p216).

According to Zilmer and Spiers (2001) “... basic executive functions develop early in life and follow a protracted multi-step trajectory to maturity in adulthood” (p238). Zilmer further explains that the maturation cycle for the fronto-temporal regions occurs between the ages of 17 to 21 years, with a peak at 18½ years of age. A significant number of researchers are in agreement that children of ten years and below are more suggestible than adults and within this age group, children between the ages three and six years (i.e., pre-scholars) are even more suggestible than their slightly older peers (Pretorius & Naudé, 2002; Bremner, 2001; Restak, 2000; Bruck et al., 1999; Ceci et al., 1997; Coxon & Valentine, 1997). Some researchers reported no significant differences between preschool children and children aged seven to

eight years (Bruck & Ceci, 2004), while others postulated that suggestion is highly common in middle childhood, and under certain conditions there are small or no developmental differences among children (Ceci, Kulkofky, Klemfuss, Sweeny & Bruck, 2007). However, Coxon and co-workers reported significant differences in terms of suggestibility levels between children and young adults, while suggestibility levels in elderly did not significantly differ from that of children. The latter might be ascribed to cognitive decline ascribed to normal aging. These findings imply notable differences in terms of suggestibility between age groups (children and adults), with insignificant within group (children) differences. Children to a great extent appear to be more suggestible than adults, although under certain circumstances, adults are equally suggestible.

Despite these neuro-cognitive limitations children are interviewed by people who do not have a proper understanding of the concept suggestibility and how it may influence children's testimonies. This researcher carried out a "snap survey" with a Namibian high court judge, a legal drafter, two government attorneys, and a prosecutor, and they all indicated a dearth of knowledge about suggestibility. This preliminary observation suggests an unawareness of the concept 'suggestibility' among Namibian legal justice practitioners, as well as how suggestibility may affect children's testimonies when they are confronted with 'suggestible' information. While conducting this "snap survey", the researcher also established that there are no protocols that regulate proper forensic interviewing with children in Namibia. Hence, this study aims at investigating the extent to which measures exist within the Namibian legal justice system to detect/intercept suggestibility in children who are allegedly sexually abused and participating in subsequent judicial proceedings. In other words, this study aims at carrying out a systems audit of suggestibility in the legal justice system of Namibia.

1.4 LITERATURE REVIEW

The literature review serves to unpack definitions of suggestibility, the theoretical foundations of suggestibility, the historical antecedents of contemporary

suggestibility, the nature and manifestation of suggestibility and the areas of research interest where information gaps have been identified. These concepts will be further explored in chapter two as well.

1.4.1 Defining the concept ‘suggestibility’

Gauld (1992) defined suggestibility as the intrusion into the mind of an idea, met with more or less opposition by the person, yet accepted uncritically at last. In similar vein Ceci and Bruck (1993) characterized suggestibility as the extent to which certain cognitive, social and developmental factors influence an individual’s ability to encode, store, retrieve and report an event. Reed (1996) defined suggestibility as the degree to which one’s memory or recounting of an event is influenced by suggested information or misinformation.

The concept ‘suggestibility’ emanates from different theoretical perspectives, especially the neuro-psychological /cognitive theories. It has been recognized that factors such as attentional skills, linguistic proficiency and schema use can significantly affect the nature, quality and amount of information a child can encode at a crime scene (Chiroro & Muller, 2005). It has been established that the prefrontal cortex is heavily involved in cognitive tasks that entail goal directed thinking and behavior (Zilimmer, Spiers & Culbertson, 2001). The frontal region of the brain only fully matures during young adulthood. Until then children often experience attentional difficulties that could affect not only their ability to accurately encode event information, but also their ability to understand questions put to them during investigations (Chiroro et al., 2005). In addition, several explanations of suggestibility have their origins in social learning theories. Children usually trust other people, coupled with a natural inclination towards pleasing others, particularly adults and figures of authority. Young children tend to consider adults as always credible and competent on any matter and presume that their affirmations are more reliable than those of their peers (Ceci & Bruck, 1993). Children learn through observation, identification and introjections (modeling), resulting in respect for adults and the acquiescence with what they say (Sarason & Sarason, 1996). Hence,

this learned behaviour opens the door for suggestibility within forensic settings. The subsequent paragraphs offer a brief look at the history of writings on suggestibility in order to promote the readership's understanding of the current presentation of suggestibility.

1.4.2 Historical antecedents of contemporary conceptualizations of suggestibility

The historical antecedents of contemporary conceptualizations of suggestibility date back to the end of the 19th century when several European psychologists became interested in child testimony within forensic settings. Alfred Binet in 1900 observed that children's wrong answers were due to memory gaps, which they tried to fill-in by attempting to please the experimenter (Gulotta & Ercolin, 2004). At the beginning of the 20th century, Stern (1910) also maintained that interviewers, by merely having the power to ask questions are often responsible for false child testimony (Gulotta et al., 2004). A Belgian psychologist Varendonck (1911) carried out a suggestibility experiment and concluded that children are not accurate observers and that their suggestibility is boundless (Gulotta et al., 2004). Lastly, German psychologist Lipmann (1911) concluded that children do not have less memory than adults, but they remember things differently because they pay more attention to certain details in a situation and overlook others (Gulotta et al., 2004).

A body of witness suggestibility research highlighted some mediating factors to suggestibility, such as **witness age** (Cohen & Harnick, 1980; Coxon & Valentine, 1997), **event centrality** (Heath & Erickson, 1998; Wright & Stroud, 1998), **level of witness participation** (Rudy & Goodman, 1991; Tobey & Goodman, 1992), **warning** (Saywitz & Moan-Hardie, 1994; Warren, Hulse-Trotter, & Tubbs, 1991), **source prestige** (Ceci, Ross & Togliani, 1987; Dodd & Bradshaw, 1980; Lampinen & Ellsworth, 1987), and **retention interval length** (Saywitz, Goodman, Nicholaas & Moan 1991).

German psychologists have been evaluating individual statements of crime witnesses for legal courts over the past 40 years in estimated tens of thousands of cases (Endres, 1997). Traditionally courts have been relying on results of medical examinations as corroborative evidence that child sexual abuse had indeed taken place. According to Kreston (2007) there are a significant number of child sexual abuse cases where medical examination findings were not definitive for abuse, but abuse had in fact occurred. She cited a case in which a 12 year old girl who was found to be normal on genital examination but tested positive for pregnancy. Kreston reported some studies where 28% to 49% of cases were found to be negative and yet sexual abuse had actually occurred. This researcher postulated that definitive corroborative medical findings might be present in only a minority of child abuse cases; hence, the child's statement or history should play a pivotal role in determining whether or not abuse has taken place. In practice this would place the burden of proof on quality interviewing and on other non-medical sources of information, considering that the quality of the interview might be influenced by a number of factors, such as the use of age appropriate language, non-suggestive questions, and the interviewer's capability to intercept and manage suggestibility during forensic interviews.

Muller (2003) expressed disappointment at the absence of technical knowledge of child psychology in the courtrooms. In this sense technical knowledge refers to the in depth understanding of the cognitive development of children and the mental wellbeing of children after having gone through traumatic or stressful life situations. She noted that serious misunderstanding of children in the courtroom might jeopardize objective adjudication of the law. In her writings, Muller (2003) asserted that judicial officers have very little knowledge about child sexual abuse, accompanied by no formal training regarding appropriate direct and cross examination at trial. In addition, Goodman (2006) indicated a need for research to be conducted on *best practices* at child forensic interview centers (in Namibia, Women and Child protection Units), since it is not known whether these centers are indeed serving the intended purpose, nor is it known whether interviewers employed at these

centers are successful at intercepting suggestibility. Hence, this study is focusing on an area of research that has seemingly not been addressed yet.

In the sections below follows clarification of the most important terminology and concepts pertaining to the research topic.

1.5 DEFINITION OF KEY CONCEPTS

1.5.1 Cognizance

According to the Concise Oxford English dictionary (2002), cognizance means knowledge and awareness. It further states that, within the context of the law, cognizance encompasses the action of taking legal notice or taking account of. For purposes of this study cognizance refers to having the knowledge of, being aware of, and taking note of a given variable. Also refer to paragraph 1.2 herein.

1.5.2 Child

The Namibian Constitution has no definition of a child; however, article 15, specifically sub-articles 15.2 and 15.3 refers to children up to the age of 14 or 16 (The Constitution of Namibia, 1998). The draft Child Care and Protection Bill (2009) defines a child as a person who has not attained the age of 18 years. These writings suggest that the conceptualization of “child” is closely linked to specific rights and privileges protected by such writings, i.e., purposive and flexible. By illustration, “child” is defined differently within the context of compulsory school attendance, compared to definitions within the context of statutory rape, child labor, and capacity to consent to some medical procedures.

Considering the premises underlying this study, i.e., child development and accompanying cortical maturation that might impact immature and vulnerable children’s *viva voce* testimonies, the demarcation of “child” should be linked to developmental and cortical maturational stages. Hence, for purposes of this study

the concept “child” is defined as any immature person aged ten years and below, to capture the link between cortical maturation, social and developmental factors and proneness to suggestibility.

1.5.3 Suggestibility

Suggestibility has been defined traditionally as the extent to which certain individuals come to accept and subsequently incorporate post event information into their memories (Holleley & Muller, 2000). Similarly Ceci and Bruck (1993) characterized suggestibility as the extent to which certain cognitive, social and developmental factors influence an individual’s ability to encode, store, retrieve and report an event. For the purpose of this study suggestibility shall be viewed as the processes (internal and external), which cause children to accept the presented information as if it was their original idea, i.e., they assume ‘ownership’ of information presented to them.

1.5.4 Child suggestibility

Several studies have shown that some children below the age of ten years demonstrate a proclivity to accept external post event information presented to them in certain ways and eventually accept such information as if originating from themselves (e.g., Ceci et al., 1993, 1994; Garven, Wood, Malpass & Shaw, 1998; Reed 1996; Muller et al., 2000; Goodman, 2006; Gudjonsson, 2007; Memon, Vrij & Bull, 2003).

For purposes of this study the concept ‘child suggestibility’ is defined as the potential for children below the age of ten years to change or distort their memories of past events after being exposed to misinformation or suggestive interviewing. This possibility is attributed to various deficits in children within the neuro-cognitive and learning theories realm.

1.5.5 The Namibian legal justice system

The Namibian legal justice system emanates from the Roman-Dutch law, inherited through South Africa (Bogdan, 2000). The Namibian Constitution in Chapter 9 makes provision for the administration of justice with the establishment of the judiciary and the courts (The Constitution of Namibia, 1998). In practice the Namibian legal justice system follows the adversarial/accusatory approach. The adversarial/accusatory approach allows legal practitioners to debate matters in court, with the judge /magistrate being much like a referee. Being a judicial officer, the judge or magistrate never participates in these debates and never becomes part of any of the litigating parties. The judicial officer only decides on the factual matters at issue without entering the arena (Schmidt, 1989, p 173). “It is quite clear that a judicial officer or juror should decide a case according to the evidence laid before him and not act upon information he has obtained independently of the proceedings in Court ...” (*R v Steenkamp* 1947 1 SA 714 (SWA) 718).

In order to do justice for both the prosecution and the accused, witnesses are called for questioning or cross examination. The aim is “to see that an innocent person is not punished and that a guilty man does not escape punishment” (*R v Majosi* 1956 1 SA 167 (N) 172G). Judge Eksteen declared it to be an elementary principle of justice that any witness being able to present relevant information, such witness be called for questioning and cross questioning (*S v Tembani* 1970 4 SA 395 (OK)). During questioning and cross questioning these witnesses are interviewed with such maximum force that is allowed under the rules of evidence and criminal procedure. Since the judge enters the arena of litigation mainly on overruling or sustaining an objection, some vulnerable witnesses such as the mentally ill and children, are often unprotected (Manovel, 2001).

The inquisitorial legal justice system is in some ways the opposite of the adversarial system where a judge is more involved in getting information and does some enquiries in order to come to a decision. Although this is not stated as a rule, Judge De Waal declared that (47) “... I know of no case where counsel for the accused

deliberately refrains from calling a witness, in which it has been held that it then becomes obligatory for the court itself to call such witness” (*R v Jonathan* 1932 TPD 44). Despite the fact that the Namibian system is adversarial in nature, there are some “victim friendly” amendments. The Combating of Rape Act, 35 (2000) provides that children under the age of ten years may not take an oath of affirmation prior to having given evidence, while witnesses under the age of 14 years may be cross examined only through the presiding officer or intermediary. The Criminal Procedure Amendment Act No. 24 (2003), sec 158A deals with special arrangements for vulnerable witnesses such as the re-arrangements of the courts, the use of circuit television and conducting court in camera. In similar vein the draft Child Care and Protection Act (2009) provides for the establishment of children`s courts with the aim of reducing traumatisation/re-traumatisation of children during legal proceedings.

Having consideration for the preceding discussion on the actuality and analysis of the research problem, literature review, and the definition of key concepts, subsequent paragraphs will now outline the problem statement, purpose of the study, theoretical framework and paradigmatic perspective, as well as the research design and methodology.

1.6 PROBLEM STATEMENT

The legal justice system in Namibia relies heavily on child testimonies. The capability of children to recall events may be heavily influenced by their stage of cognitive development. Some children are prone to suggestion due to the fact that their frontal lobes which are responsible for executive functions will not be fully developed until the age of 18 years. Despite these neuro-cognitive limitations children are interviewed by people who do not have proper understanding of the concept suggestibility and how it influences their testimonies.

Based upon the preceding conceptualization of the research topic, the research problem is formulated as follows:

What is the extent of cognizance about child suggestibility among Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations and is this concept duly weighted and managed during investigations and court proceedings?

1.6.1 Sub questions

In order to answer to the main research problem, the following sub questions are supportive in nature:

- How cognizant are professionals centrally involved in cases of child sexual abuse, e.g., investigating officers, social workers and prosecutors, of the concept child suggestibility?
- Are vulnerable children adequately protected against interrogative suggestibility?
- What is the nature of child interviewing during child sexual abuse investigations and court proceedings?

1.6.2 Research hypothesis

The research hypothesis can be formulated as follows:

Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations are (a) significantly uninformed about child suggestibility and (b) the concept of child suggestibility is not duly weighted during investigations and court proceedings.

1.7 PURPOSE OF THE STUDY

The purpose of this study is to explore whether Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations are cognizant of

child suggestibility and whether the concept child suggestibility is duly weighted during investigations and court proceedings.

1.8 THEORETICAL FRAMEWORK AND PARADIGMATIC PERSPECTIVE

In keeping with Radnor's statement (2002) that people assign personal meanings through the ideas, beliefs, thoughts and experiences they obtain from their social and cultural environment, O'Donoghue and Punch (2003,) maintain, "... meaning is never a fixed entity; meaning is always undergoing a process of adjustment or change through the input of fresh information derived from a social context" (p99).

These views support interpretivism as the preferred epistemology, as the aim of this research project is to understand and interpret the meanings that research participants denote to the communications of children as they are interviewed on alleged incidents of sexual abuse. By applying interpretivism as the preferred epistemology, the researcher attempts to understand the meanings, intentions and subjective world of the research participants' interviewing of children with the aim to screen for suggestibility (Cohen, Manion & Morrison, 2000). This meaning making process reflects interpretivism; hence, meaning will be constructed by using observations of court proceedings, qualitative analyses of verbatim (*viva voce*) testimonies of children, and analyses of type of questioning during interviewing and witness examination prior and during trials.

This research design is also firmly embedded in a positivist paradigm. "Positivism proposes that an objective truth exists and is based upon the utilization of research methods and practices derived from the natural sciences and application of these to the social sciences" (Human-Vogel, 2004, p17). Hence, a non-standardized questionnaire will be administered with legal and allied criminal justice professionals in self-reporting format. The data obtained will be based on objective, observable facts and will be interpreted in terms of quantifiable units. Hence, this data is viewed to be linear and objective in nature, value free and theory independent, as well as

relatively free from researcher contamination or bias (Jansen, 2004:380; Donald et al., 2002).

In addition, this project is firmly rooted in the theoretical framework of cognitive neuroscience to explain children's cognitive development that underpins their suggestibility. Cognitive neuroscience attempts to investigate the neural underpinnings of human cognitive, affective and volitional capacities (Bennett & Hacker, 2003). Cognitive neuroscience thus incorporates both neurophysiology and psychology and revolves around higher mental functions such as perception, attention, language, memory, thinking, and spatial awareness (Zigmond, Bloom, Roberts, Landis & Squire, 1999; Collins & Rourke, 2003). Imbedded in the psychological component of explaining suggestibility are the social learning theories. Children usually trust other people and they especially want to please adults because of the protective and punishing role they play in children's lives (Muller & Hollely, 2000). Children also tend to acquiesce to the various behavior modifications techniques like reinforcement (negative, positive) punishment etcetera, especially if these come from adults (Garven, Wood, Malpass, & Shaw, 1998). They tend to consider adults as always credible and competent on any matter and presume that their affirmations are more reliable than those of their peers (Ceci & Bruck, 1993).

1.9 RESEARCH DESIGN AND METHODOLOGY

Although interpretivism provides the lens through which sense could be made of the research findings, a **mixed method design** was thought to be more applicable, allowing for both quantitative and qualitative data gathering methods to be used (De Vos, 1998). This might complicate the design; yet, the advantages of both the qualitative and quantitative paradigms contribute to complementary hypotheses as propagated by positive psychologists (Lopez & Snyder, 2003). "Case studies and analyses of the recordings of court proceedings are usually qualitative in nature, and might provide in-depth descriptions of children's suggestibility, whereas the use of a non-standardized questionnaire will supply quantitative data" (Mouton, 2001, p149). In addition, the intrinsic nature of the questionnaire follows the complementary

hypotheses line of thought, as this instrument is bipolar in nature, reflecting on both strengths and weaknesses in terms of interviewing of children. The questionnaire reflects on critical issues inherent to child suggestibility, as well as experiences, values, biases, and assumptions. In addition, a mixed methodology also allows for triangulation, which strengthens this study as “... the use of different research approaches, methods and techniques in the same study is known as triangulation and such triangulation can overcome the potential bias and sterility of single method approaches” (Mangan, Lalwani & Gardner, 2004,p 566). Richer and fuller insights might be facilitated by studying child suggestibility from multiple viewpoints, i.e., from both quantitative and qualitative data (Cohen, Manion & Morrison, 2000). The different modes of inquiry and research design are presented in table 1.1.

Table 1.1 *Different modes of inquiry and research design*

		QUANTITATIVE		QUALITATIVE	
Modes of Inquiry	Experimental	Non-experimental	Interactive	Non-interactive	
	Research design	True experimental	Descriptive	Ethnographic	Concept analysis
Quasi-experimental		Comparative	Phenomenological	Historical analysis	
Single-subject		Correlational	Case study		
		Survey	Grounded theory		
		<i>Ex post facto</i>	Critical studies		

Adapted from: McMillan & Schumacher, 2001, p31

From table 1.1 it becomes clear that this study is non-experimental in nature, following both a quantitative and qualitative mode of enquiry (mixed method).

1.9.1 Methods and materials

Since this research project follows a mixed method design, data gathering will take place at hand of a non-standardized questionnaire survey, observations of *viva voce*

testimonies (case studies) using an observation schedule, and analyses of transcripts or recordings of previous court proceedings and police dockets. These are discussed in subsequent paragraphs.

1.9.2 Populations

The population encompasses the collection of *legal and allied criminal justice practitioners* who are responsible for dealing with child sexual abuse cases in Namibia. The legal practitioners were estimated by the law society of Namibia, 2009 to be **460** and the allied criminal justice practitioners were estimated by the ministry of Gender equality and Child Welfare to be **40**, putting the estimated total population to **500 individuals**. For the sake of this study, the legal practitioners are operationally defined to represent the following professionals: magistrates, judges, prosecutors and defense lawyers, while social workers and investigating officers are defined as allied criminal justice professionals. Children will not be interviewed for purposes of data gathering due to the ethical constraints inherent in research issues involving child abuse victims. Instead, direct observation of *viva voce* testimonies will be observed, as children under the age of ten respond to questioning during court proceedings. Hence, this population is restricted to the number of children under the age of ten that will be testifying in court (pending the number of cases to be heard).

1.9.3 Research populations

The research population is demarcated to include the magistrates/judges, prosecutors and defense lawyers based in Windhoek and the investigating police officers and social workers based at the Women and Child Protection Unit (WCPU) in Windhoek. There are 12 investigating officers (police) and three social workers based at the WCPU, giving a total of 15 allied criminal justice practitioners. There are about 134 private legal practitioners, 16 prosecutors and 18 magistrates based in Windhoek, giving a total of 168 legal practitioners. The participation of these professionals shall mainly be based on their willingness to take the questionnaire. Convenient sampling

such as snow balling will be done to identify and contact these legal and allied criminal justice practitioners. Snow balling is whereby the interviewees are asked to identify potential additional participants for inclusion in the study. Special focus shall be on the officers (legal and allied criminal justice) who appear in the regional courts or deal with child sexual abuse in one way or another.

1.9.4 Sampling

One third (56 participants) of the research populations shall be sampled. Convenient sampling will be carried out to recruit the 56 legal and allied criminal justice professionals. Legal professionals who are lawyers usually receive the same tertiary training although subsequent training will vary extensively by individual. With this almost homogeneous basic training, they work in the same court environment where rules of criminal procedure are followed, in theory, uniformly. This makes the within group knowledge variations minimal. The more the sample size, the higher the probability of saturation and redundancy of interviewee responses. It is hence recommended that a sample size between 30, the minimum recommended for sampling and 50 will be sufficient to allow for generalized findings based on this population. If the participants will however be available, a third of the population will still be taken, making a sample of 56 legal practitioners. Due the fact that the allied criminal justice professionals are less than 30 a number which as refereed to before is usually the minimum for sampling from a population, a census shall be done for the allied criminal justice research population. It implies that the researcher shall interview all the 15 staff members at Windhoek Women and Child Protection Unit, i.e. those who will be willing. The legal professionals represent the trial group, consisting of lawyers, prosecutors, magistrates and judges from Windhoek, while the allied criminal justice professionals represent the pre-trial group, consisting of social workers and police officers working or attached to the Women and Child Protection Unit and the Victim friendly Court(s) in Windhoek. This group is called the pre-trial group because they are the ones who interview children before the trial.

Purposive sampling will be carried out for court observations using the court rosters. This will allow the researcher to select cases involving children below the age of ten years. Cases involving children between the ages of three to six years will be selected first, because the literature review suggested highest vulnerability to suggestibility within this age range (Ceci et al., 1997; Bruck et al., 1999; Coxon et al., 1997). The Namibian Police Crime bulletin reported that on average seven (7) rape cases involving children were reported per month in Namibia in 2009, although reporting does not mean that all of these cases will be heard in a court of law. These reported cases include minors up to the age of 18 years; hence, not all of these cases are suitable for inclusion during sample taking. A minimum of three cases will be selected from the court roster for purposes of observation. Because trials could potentially extend over a period of several months or even years, observations will be restricted to the *viva voce* testimonies of the children involved. The three cases are akin to three case studies which will be able to provide rich information. It is expected that the three case observations will allow sufficient forensic interview dynamics to unfold.

As for the case reviews, fifteen percent shall be sampled from cases in year 2000 giving approximately four cases and twenty percent of the cases shall be reviewed for cases in year 2005 giving approximately two cases. All together six cases shall be reviewed. Each case constitutes the pre-court forensic interview and the court trial. The total number of forensic interviews shall hence be six plus the six court trials. It is important to note that while random sampling ensures generalizability to the population, convenient/purposive sampling was selected due to the following reasons:

- The human characteristic that is known to contribute to the greatest variability in suggestibility level is the age the children. In this study only children below the age of ten years will be the subjects hence limiting the variability of this factor.
- Since legal procedures are often highly standardized as prescribed by legal instruments such as the Criminal Procedures Act, little variations are

expected in how the courts handle their business. If anything variations are expected to be more in terms of the questioning styles by the defense lawyers, prosecutors and judicial officers.

- The cases to be reviewed are information-rich cases akin to case studies. This information enriches the research, thereby justifying the limited number of cases. This is the rationale for reviewing a limited number of cases, i.e. focusing on information richness rather than the quantity of cases *per se*.
- Larger samples are needed when the population is heterogeneous. In this case the population is relatively homogeneous in nature, e.g., most of the research participants are trained as lawyers, police officers and social workers and investigating procedures are regulated by strict procedural court rules. Although the research participants' level of forensic/legal knowledge might differ, a certain degree of homogeneity exists pertaining to the research population and the procedural court rules.
- Lastly economic and time considerations also played a critical role in choosing the convenient sampling method because this is a non-sponsored PhD research study.

1.9.5 Sampling criteria

Children of both gender, aged ten years and below, and who demonstrate such language proficiency that they are likely capable of testifying in court will be included in the sample of cases to be observed. The inclusion criterion is that these children must testify on sexual abuse. The children will enter the study through the Woman and Child Protection Unit and Victim Friendly Courts. In Namibia child sexual abuse cases can be handled by other institutions such as community courts for civil purposes, e.g., compensation (Community Courts Act, 2003). It is accepted that children testifying in these settings might also be subjected to suggestible interviewing and questioning, but this research project does not include these settings for purposes of sampling taking.

1.9.6 The role of the researcher

The researcher will conduct a pilot study, recruiting ten legal practitioners as research participants. The purpose is to pilot the non-standardized questionnaire. Audio and video recordings will be conducted for subsequent reviewing. The victim friendly courts are equipped with closed circuit television (CCTV), which equipment will be utilized to obtain recordings of previous hearings (case studies). An observation schedule will be developed at hand of which to analyze court proceedings for suggestibility.

1.9.7 Procedures

a Observation of court proceedings

The working assumption is that a poorly conducted forensic interview may trigger suggestibility. A checklist shall be constructed based on the SIRR model developed by Garven, Wood, Malpass and Shaw (1998) for detecting suggestive questioning. Garven and coworkers' model is based on the McMartin preschool case (USA), where several teachers were accused of having abused children. Drawing on analyses of these children's interviews, the authors identified that social incentive techniques produced more suggestibility in a short period of time compared to simple suggestive questioning. The SIRR checklist is an acronym for:

- **Suggestive questions**, e.g., introducing new information into the interview;
- **Social influence**, e.g., telling the child that other people confirmed what happened –compliance;
- **Reinforcement**, e.g., positive and negative reinforcement;
- **Removal from direct experience**, e.g., inviting speculation causing source misattribution.

The checklist will provide for inclusion of other sources of suggestibility not covered by the four categories represented in the SIRR model. Each time an interviewer uses a technique from anyone of the aforementioned categories, such technique will be scored.

The observations of *viva voce* testimonies will take place over a period of six months and will be guided by the number of court cases. This period may be less depending on the number of cases heard in the courts, since in Namibia rape cases are usually heard in the regional courts, which courts are assigned the powers to administer maximum sentences as prescribed by the Combating of Rape Act 2000. If the rape case culminates in murder, the case is heard by the High Court. Children, however, do not usually testify in the High Court. Hence, observations of *viva voce* testimonies will be limited to regional court proceedings. Children's testimonies are normally heard *in camera* or in the Victim Friendly Courts.

The observation schedule (checklist) will have tick boxes, representing the categories of suggestive questioning. Whenever a suggestive question/style surfaces during questioning of the child, or a suggestive response is offered to the child, this will be entered onto the observation schedule. Non-structured qualitative observations will also be entered.

All interviewing data will be transcribed and annotated, and final interpretations will be submitted to an external critical reader employed as a Clinical Psychologist at Namibia Prisons Services to verify uniformity and congruence of the ratings.

b Case review

The researcher will review the court transcripts of past child sexual abuse cases. The interviewees will include social workers and police officers, prosecutors, or defense lawyers. This process is expected to identify suggestible statements offered during the pre-trial phase and during court proceedings. The checklist intended for use during observations of *viva voce* testimonies of children will also be used for

screening suggestive statements during the case reviews. The case review shall date back to the year 2000, i.e., the year the Combating of Rape Act was promulgated in Namibia. This will allow the researcher to assess the effectiveness of the Act in handling and managing suggestibility.

The pre-court forensic interviews which are called dockets are basically a narrative by the investigating officer when interviewing the complainant. The questions of the interviewer are not recorded in the child's statement, it is just like a continuous narrative. This will not allow the researcher to see if the investigating person's forensic interview was suggestive. Separate scoring criteria for the narrative will hence be constructed to assess the degree to which the children were responding to the "unknown" questions.

c Prior consent / permission

- The researcher shall obtain permission from the Judge or Chief Magistrate of the High court or Regional courts to conduct observations from the gallery, whichever apply.
- The review of the finalized cases does not legally require any authorization because they are public documents. Hence, the researcher shall inform the relevant people in charge of the keeping of such documents about his study and show them a letter from the university. This will be done to ease the access process.
- The legal practitioners shall sign an informed consent document which they will return with the questionnaire. Anonymity shall however be maintained.

d Sampling time frame

Cases dating from year 2000 and year 2005 will be sampled. The manifestation of suggestibility for the current period 2010/2011 shall be assessed through direct court observations. The reviews shall be done for the year 2000, followed by a review of

the middle part of the ten year period under review, i.e. year 2005, and lastly followed by the court observations, i.e. 2010/2011. The sampling frame for the case reviews shall be the cases that went through the courts and were finalized for children ten years and below for years 2000 and 2005. Since the total number of cases for the years under review is below 30 for each year, i.e. the minimum number one can do random sampling; therefore convenient sampling for these cases shall be done.

e Assessment of child suggestibility

Suggestibility is a phenomenon whereby children out of their own volition testify to information that is not necessarily true, and that has been suggested to them. It is difficult if not impossible to know that a child is suggestible during a forensic interview or court session. It may be difficult because the “truth” will still be unknown and the verification of the child’s testimony will be an ongoing process. The decision on whether a child was influenced by any given suggestive statement will be made based on proxy via Gudjonsson’s concepts of “yield”, which refers to the tendency to give in to leading questions, and “shift”, referring to the tendency to shift responses under conditions of interpersonal or interrogative pressure (Gudjonsson, 2003). This shall be assessed by the frequency in which children change (yield and shift) their initial responses as the suggestive interview unfolds. It is hypothesized that highly suggestive interviews shall elicit more shifts and yields from children’s statements during forensic interviews. Again scoring criteria for yield and shift shall be developed to allow for consistency during the various interviews.

f Survey of research participants’ cognizance of suggestibility

Research participants’ knowledge levels about the concept of suggestibility, identification and its management will be surveyed at hand of a semi-structured and non-standardized questionnaire.

1.9.8 Data analysis and Interpretation

The type of data that will be yielded from this study shall be in the form of written words, statements, phrases, and symbols representing people's actions and events.

- The information from the questionnaire shall be scored in terms of endorsements to the responses. High endorsements to a certain response category shall be indicative of degree of the knowledge levels of suggestibility for that particular variable and vice versa. Descriptive statistics and statistical tests of difference such as ANOVA, T-Tests for the various professional groups shall be done.
- Scores from the checklists on court observations, and case reviews shall be subjected to descriptive statistics to see the frequencies and distribution of suggestive techniques in forensic interviews. Statistical tests of difference in the magnitude of suggestive questions shall also be carried out.
- Tendencies for shifting and yielding to suggestive interviews in children shall be quantified on a cumulative basis per interview. Correlational computations e.g., Pearson r shall then be performed between suggestive interview scores and the shift and yield scores to establish the relationship between the two. Comparisons to the degree of suggestibility shall also be done through tests of difference for the age ranges that would have been observed.
- Statistical packages such as the SPSS 19 shall be used for the computations.

1.10 ETHICAL CONSIDERATIONS

Planning a research project involves much more than selecting the appropriate design – it also includes ethical considerations. It is of utmost importance that informed consent is obtained prior to commencement of the research project. “Informed consent involves a research participant's formal agreement to cooperate in a study following full disclosure of the nature of the research and the participant's role in it”

(Simon in Hales, Yudofsky & Talbott 1999, pp1493-1534). “The basic components of informed consent are competence, voluntarism, full information, and comprehension on the part of the research participant” (Imber, et al., 1996, pp137-146). In other words, research participants must be capable of consenting to participation in the research, they must volunteer or not be coerced into participating, they must have all the information they need to make the decision, and they must understand what their participation will involve.

Considering the preceding principles, certain general protections will be implemented to ensure that these concerns are properly addressed. First, approval of the research project by the Postgraduate Studies Committee of the University of Namibia was sought before commencement of the study. The purpose of seeking approval was to ensure that the research procedures provide for the adequate protection of the research participants’ rights, welfare and dignity, in keeping with the Ethical Principles of Psychologists (APA, 1992). To safeguard those who participate in psychological research and to clarify the responsibilities of researchers, these ethical principles include general guidelines for conducting research, which will be adhered to. This means that participants will be protected from both physical and psychological harm. These principles also emphasize the researcher’s responsibility for the research participants’ welfare, because the researcher ultimately must ensure that the welfare of the research participants is given priority over any other consideration, including research design.

In addition to the principles of informed consent, protection against potential harm and the right to confidentiality, the Society for Research in Child Development (1990) has endorsed ethical guidelines for research that address some of the issues unique to research with children. Not only do these guidelines call for confidentiality, protection from harm, and debriefing, but they also require informed consent from children’s caregivers and from the children themselves if they are age seven and older. These guidelines specify that the research must be explained to children in language they can understand so they can decide whether they wish to participate. However, since all court proceedings are public domain, it is not

required to obtain informed consent / assent from the individual children and/or their caregivers. Since the High Court is the upper guardian of all minor children, the informed consent obtained from the Chief Justice will suffice.

Many other ethical issues extend beyond protection of the participants, including the proper way to give credit to other researchers and co-workers. These concerns will be adhered to, as depicted in the ethical principles published by the Health Professions Councils of Namibia. Ethical considerations will transpire through the following:

- Informed consent: Informed consent shall be sought from the Chief Justice, since the High Court is the upper guardian of all minor children in Namibia.
- Due to the fact that most child sexual abuse cases are held *in camera*, the researcher will obtain permission from the Chief/Presiding Magistrate / Judge responsible for the decorum of the Court. Litigating parties will be unaware of the presence of the researcher in order to caution against the Hawthorne effect. The **Hawthorne effect** is a form of reactivity whereby subjects improve or modify an aspect of their behaviour being experimentally measured simply in response to the fact that they are being studied, not in response to any particular experimental manipulation.
- There will be no immediate benefit for the children who are to be observed during the study. However, findings derived from this study may benefit future cases, after recommendations were made to the responsible authorities;
- Despite the fact that the identification of cases and subjects will be anonymous, some participants, e.g. legal officers may be able to infer that they were refereed when they recognized the case narratives included in the study. However, their identity will not be disclosed.

1.11 SIGNIFICANCE OF THE STUDY

There has **not** been a study on child **suggestibility** *per se* in Namibia and yet this is an important variable which influences the quality of forensic interviews and the outcome of child sexual abuse cases as they go through the legal justice system.

Findings emanating from this study will be submitted for consideration to the relevant stakeholder(s), e.g. the Ministry of Justice. Favorable consideration of the findings might lead to improved detection and management of suggestibility within the legal justice system. It is important to note that the Office of the Prime Minister (Namibia) is currently embarking on the implementation of a management tool called “Performance Management System (PMS)”. The aim of PMS is to instill a culture of best practice within the public service. This study is expected to contribute to the attainment of this noble notion of utilizing best practice during forensic interviews of sexually abused children.

The study envisions to reduce false accusations by children (reduce false positives) involved in child sexual abuse hearings, i.e. type I errors. Conversely, the study might also reduce incidents where child witnesses eventually agree to external information due to suggestibility, although sexual abuse would have happened, i.e. type II errors.

1.12 LIMITATIONS OF THE STUDY

Since Psychology will be interfacing with the Law, some degree of resistance by a minority of legal practitioners is envisioned, based on the view that this study represents an intrusion into their area of expertise. The second limitation is that the sampling will be proportionate quota sampling and then convenient sampling for practitioners from Windhoek city only. This might potentially affect extrapolation of the findings at a national level. The third limitation is that the financial constraints inherent to this non-funded study do not allow recruitment and employment of

additional research assistance such as independent raters and statisticians. Hence, collaboration with an independent external critical reader will suffice.

1.13 CHAPTER PLANNING

Chapter one consists of the introduction and actualization of the research problem, the problem statement, the research hypothesis, as well as the research methodology and research design. Ethical considerations are also included.

Chapter two offers an in-depth analysis of relevant readings on embedded matters such as child development, cortical maturation, and factors related to suggestibility. These are mainly psychological theories related to suggestibility.

Chapter three provides a detailed analysis of the psycho-legal issues related to suggestibility. It is an extension of the literature review but the focus is mainly on evaluating legal instruments and how they relate to suggestibility.

Chapter four describes the research plan in greater detail.

Chapter five describes the empirical research data.

Chapter six presents the interpretation of the empirical data and the findings of the research. Based upon the findings, the research hypothesis will be accepted or rejected.

Chapter seven gives a summary of the research findings, as well as deductions and conclusions derived at. Relevant recommendations pertaining to best practice will be made, and shortcomings inherent to the design will be pointed out.

1.15 SYNOPSIS

This chapter provides a snapshot of the entire research project. It introduces the research topic and gives the awareness and magnitude of the problem. This provides the rationale of carrying out the research through analyzing the current state of the Namibian legal justice system and its interface with child suggestibility. The chapter also reflects on the relevant literature, particularly the definitions of suggestibility and the genesis of the writings of suggestibility to date. The chapter also introduces the readership to important terms and concepts related to the research topic, provides a problem statement, hypothesis, theoretical framework and research methodology. Finally, the chapter concludes with an overview of the ethical considerations governing the research project, the significance of the study and its limitations.

CHAPTER 2

AN IN-DEPTH ANALYSIS OF RELEVANT READINGS ON CHILD DEVELOPMENT, CORTICAL MATURATION, AND FACTORS RELATED TO SUGGESTIBILITY

2.1 INTRODUCTION

Psychologists have studied the concept of suggestibility from different angles and different orientations. Some have looked at it as hypnotic suggestibility (Kirsch & Brafman, 2001; Gheorghiu & Molz, 2008), others have used a neuro-cognitive lens, (Bruck & Melnyk, 2004; Ceci & Bruck, 1997; 2004; Melinder, Endestad & Magnussen, 2006), while a number of scholars demystified suggestibility as a developmental concept (Cassel & Bjorklund, 1995; Polczyk, Wesolowska, Gabarczyk, Minakowska, Supska, & Bomba, 2004). Some researchers have looked at suggestibility as a factor of age (Bruck & Ceci, 1999; 2004; Ceci & Bruck, 1993; Maggie & Ceci, 2004; Ceci, Papierno & Kulkofsky, 2007).

Hence, this chapter is dedicated to a review of these various definitions on suggestibility, the history of suggestibility, related theoretical orientations and the many variables that have a bearing on the manifestations of suggestibility. The literature specifically focuses on suggestibility of children as they proceed through the legal justice system. The aim of this review is to trace the cradle of suggestibility, analyse the findings and controversies surrounding suggestibility and to identify potential gaps within the existing body of knowledge on suggestibility. A review of relevant legal instruments will explore the interplay between provisions of these acts vis-à-vis suggestibility and this will be done in chapter 3.

2.2 DEFINITIONS

Gauld (1992) defined suggestibility as the intrusion into the mind of an idea met with more or less opposition by the person, accepted uncritically at last, and realised unreflectively almost automatically. In similar vein Ceci and Bruck (1993) characterised suggestibility as the extent to which certain cognitive, social and developmental factors influence an individual's ability to encode, store, retrieve and report an event. Reed (1996) defined suggestibility as the degree to which information, or misinformation, influences one's memory and recounting of an event. Hence, suggestibility can manifest actual changes or distortions in one's memory that are the product of the suggested information/misinformation about the event (Reed 1996). The common thread running through these definitions is that the idea is generated from outside the person, i.e., externally. Such an idea eventually finds itself internalised into the person's mind-set as if it originated from the person's own mind. Despite the cornucopia of the definitions, suggestibility remains both an indisputable variable and a factor most difficult to measure or control.

Prideax (1919) proposed that suggestibility is an individual trait that people were supposed to possess to different degrees, a trait exaggerated in children and evident irrespective of the nature of the suggestion or the suggestor (Baxter, 1990). At about the same time, Aveling and Hargreaves (1921) claimed to have found the evidence of suggestibility as a trait. They administered several tests of suggestibility to a number of elementary school children aged approximately 12 years. The main result was that some subjects accepted suggestions on all or nearly all of the tests, while others were impervious to suggestions (Baxter, 1995). This, they deduced, points to a general factor of suggestibility strongly marked in some subjects. Later on however they acknowledged that general suggestibility is modifiable by situation specific variables.

Endres (1997) provided a different orientation to the trait approach. He cited the work of William Stern (1926), concluding that suggestibility depends both on the characteristics of the witness and of the interview situation. He thought that younger

children and girls were more suggestible, and related suggestibility to character, as well as to the type of questions asked. American experimental psychologists have focussed on the situational determinants of suggestibility, while Continental European researchers have been concerned with suggestibility as an individual trait (Endres, 1997), explaining the presence of numerous individual tests of suggestibility in Continental Europe such as Germany. While Baxter (1990) claimed that the trait hypothesis neglects situational determinants and that the large situational effects caused individual variation to look as if irrelevant, Endres (1997) rejected these claims as a misunderstanding of the trait concept. In defence of the trait concept, Endres (1997) explained that if a particular person is experiencing high levels of anxiety, it does not mean that such person will be fearful of everything all the time. It merely indicates that such a person experiences higher levels of anxiety within a greater variety of situations, compared to most individuals.

Correlational studies have also shown that there are stable individual differences in suggestibility. Gudjonsson (1992) found positive correlations between the subject's scores on a test of interrogative suggestibility and several personality variables, among them anxiety, intelligence, field dependence and self-esteem. Endres (1997) concluded that habitually anxious and inhibited individuals with weak cognitive abilities tend to be especially vulnerable to suggestive interviewing.

As early as 1948, Krech and Crutchfield, after having reviewed more than a dozen papers, concluded that individual acceptance of suggestion is determined by the individual's total psychological field - if suggestibility is a trait at all. Krech and Crutchfield further argued that suggestibility is then a trait emanating from the situation, rather from the individual. Baxter (1997) concluded that if it is true that individuals accept misleading suggestions about what they have seen because of their suggestibility, it also seems to be true that this kind of suggestibility is highly modifiable by situational factors.

Considering the different schools of thought about suggestibility being a trait, the unified conclusion is that suggestibility is an individual trait, modified by situational

factors such as the interview style, nature of questions, the authority of the interviewer, etcetera. These situational factors are explored in detail in subsequent sections of this chapter. Suggestibility is mainly dealt with in forensic settings. Suggestibility mainly comes into play when young children are involved in some legal processes, e.g., eyewitness testimonies, questioning by Police Officers, and interviews by Social Workers. The manifestation and applicability of suggestibility hence rest in forensic psychology; therefore, the history of suggestibility within the context of forensic psychology is now considered.

2.5 THE HISTORY OF SUGGESTIBILITY WRITINGS

The historical antecedents of the contemporary conceptualizations of suggestibility date back to the end of the 19th century when several European psychologists became interested in child testimony in forensic settings. According to Gudjonsson (2003), the early forensic psychologists were students of Wilhelm Wundt, who founded the first laboratory in Leipzig, Germany in 1879. The unreliability of human testimony was the major focus, as demonstrated by the great experimental work of Cattell (1895) and Binet (1900) on memory and suggestibility. Gudjonsson (2003) further noted that it took some time before psychological testimony was accepted as expert evidence in courts of law, due to a myriad of factors, which include the following:

- Prosecutors, judges and members of the public who constitute the juror could not accept the fact that a person may make false confessions to serious crimes unless they were suffering from a learning disorder or a serious mental illness;
- The judiciary overly relied on the police and there was no proper understanding why a person would falsely confess in the absence of physical coercion;
- In the early 1980s, psychologists were not viewed as credible witnesses who could add value to anything beyond common sense;

- Lastly, prosecutors and judges were seemingly hostile towards psychologists acting as expert witnesses and subjected these psychologists to harsh cross-examination.

In 1900, Alfred Binet concluded that children's "wrong" answers are due to memory gaps, which memory gaps the children often filled in through confabulation, in an attempt to please the experimenter (Gulotta & Ercolin, 2004). He attributed child suggestibility to social factors, rather than to memory. At the beginning of the 20th century, Stern (1910) also maintained that interviewers, by merely having the power to ask questions, are often responsible for false child testimony (Gulotta, et al., 2004). These researchers believed that children of both sexes are easily led by suggestive questions, because they perceive adult interviewers as authoritative and imperative. During the same year a Belgian psychologist, Varendonck (1911) carried out a suggestibility experiment and concluded that children are not accurate observers and that their level of suggestibility is boundless (Gulotta, et al., 2004). Lastly, German psychologist Lipmann (1911) concluded that children do not have less capacity for memory compared to adults, but that children remember things differently, because they pay more attention to certain situational details while overlooking others.

The genesis of contemporary suggestibility dates back to the 1970s where issues of children's eyewitness memory were the main points of discussion in law and forensic psychology. The 1970s was awash with cases of Catholic priests who were sexually abusing children. In 1974, the USA child protection services recorded 60 000 reports of child maltreatment nationwide, with only a small portion of these cases being child sexual abuse cases (Goodman, 2006). Prior to the 1970s children below the age range of 9 to 14, depending on the country, were considered incompetent to testify in a court of law (Goodman, 2006). A wave of change, however, set off in the 1970s, when children, with support from physical evidence and other eyewitnesses, were allowed to testify in court (Lyon, 2000). This period only produced a handful of research papers within the area of children's eyewitness memory.

In the 1980s, a number of cases emerged where child sexual abuse had been going on, but concealed by the perpetrators. For example, in the USA a teacher and a principal were sexually abusing boys at a private school. It was common knowledge to the boys that sexual abuse was happening but their fear of punishment served to deter them from complaining. Only when one of the boys reached adulthood, he decided to report the abuse. Substantiating reports then also surfaced and the principal committed suicide during the investigation (Goodman, 2006). Despite the prevalence of child sexual abuse, the focus of research in the 1980s was *not* on suggestibility. Following the review of a wave of sensational cases of child abuse, and after research findings had demonstrated that other individuals could influence the accurate retrieval of children's memories during the various stages of investigations, several researchers started to open laboratories to carry out experiments related to suggestibility (Ceci & Bruck, 1993). Most of the reviewed cases during this time dealt with children who had later withdrawn allegations, stating that the alleged sexual abuse never happened. This led to some researchers such as Goodman to conclude that the children were just lying, due to other motivational factors, not due to being suggestible (Goodman, 2006).

The 1990s saw significant changes in the field suggestibility and the law. During this period, many of the sensational cases that led to convictions were reversed following appeal - often due to inappropriate interviewing skills. A new legal trend for child witness then emerged, i.e., the "tainted hearing" after the Kelly Michaels' case (Goodman 2006). In 1995, Kelly Michaels was working as a day care teacher at the "Wee Care" nursery school in the USA. On the 30th of April of that same year, one of the children from the centre visited the doctor. While his temperature was being taken rectally, he said, "that's what my teacher does to me at naptime at school". Investigators repeatedly interviewed three and four year olds, suggesting through their graphic and disturbing questions that the children had been sexually molested. The suggestions finally worked: children who initially denied incidents of sexual abuse in any way, finally testified that they had been abused. One of the children testified that Michaels "made us eat boiled babies"; another testified, "... she put a sword in my rectum"; a third testified that she "played piano naked." These

testimonies resulted in Michaels' conviction on 115 counts of sexual abuse, and a sentence of 47 years imprisonment. Michaels spent seven years in prison before the conviction was overturned.

The acquittal only followed after a committee of concerned social scientists presented an Amicus brief to the *State of New Jersey v. Michaels*. In recognition of the suggestible nature of the forensic interviews and questions posed to the children involved in Michaels' case, their statements were found unreliable and tainted (Bruck & Ceci, 1995). In recognition of tainted hearings, a judge could decide that children have been so suggestively interviewed that their memories are forever tainted, i.e., their autobiographical memories are so distorted or erased that they cannot get back to the truth of what had happened. In such cases, a judge can rule that such children's testimonies are inadmissible.

The new millennium saw a number of attempts to validate, disprove or bring more information to the notion of suggestibility, by analysing the manifestation of suggestibility, and by identifying the variables influencing suggestibility, such as age, intelligence, mental status, development of protocols for child forensic interviews, etcetera. Research findings presented by the dawn of the millennium led Goodman to conclude that defence attorneys acknowledge that 90% of their clients are obviously guilty, but in child sexual abuse cases one cannot always believe the alleged victim. She concluded, "... the dilemma of when to believe children still haunts us in the 2000s" (Goodman, 2006, p828).

2.6 THEORETICAL FOUNDATIONS OF SUGGESTIBILITY

The theory underpinning the concept of suggestibility builds on various factors - some with strong and others with loose connections. Some traditional theories eloquently explain the different psychosocial competences of children, compared to adults. A review of these theories serves as aid to our understanding of the cognitive and social development of children as they pass through various stages of their lives. This review will also lay the foundation for understanding cognitive, social and

moral development specifically related to suggestibility. Some foundational theories such as Piaget's theory of cognitive development, Piaget and Kohlberg's theories on moral development and Erik Erikson's theory of psychosocial development shall initially be discussed as they form the broad foundations of child development which in turn feeds the theories which are closely connected to child suggestibility. The theories which will be discussed subsequent to these broad ones are the Neuro-Cognitive theories and the Social Learning theories.

2.5 COGNITIVE DEVELOPMENT – JEAN PIAGET

The interest in cognition as a factor in determining behaviour grew rapidly during the 1950s - even before the beginning of social learning theory. One of the people who popularised the study of cognitive development is Jean Piaget, a Swiss biologist who turned psychologist, starting his research in the 1930s. Piaget was interested in what knowledge is and how people acquire knowledge. In general, Piaget argued that the development of intelligence is the highest form of adaptation of an individual to his or her environment (Eyesenck, 1988). Adaptation, according to Piaget involves an interaction between the individual's knowledge and the external environment. Piaget identified two processes as being important for adaptation to occur, namely, assimilation and accommodation. Assimilation occurs when there is some kind of cognitive structuring by an external object or event in accordance with the individual's pre-existing cognitive organisation. Accommodation occurs when the individual's cognitive structure is modified according to the need to deal with the external environment (Eyesenck, 1998). Hence, adaptation involves both the assimilation of the external environment to cognitive structure and the accommodation of cognitive structure to the external environment.

Piaget postulated that proper adaptation requires a balance or equilibrium between assimilation and accommodation. There are however, situations where one component takes precedents over the other. By illustration, imitation represents a dominance of accommodation over assimilation. Piaget postulated that cognitive differences in children, compared to adults, are qualitative rather than quantitative.

Said differently, Piaget established that adolescents' mode of thinking differs radically than that of young children (Eyesenck, 1998). Following this insight, Piaget developed a cognitive development theory, consisting of four stages. The first three stages specifically apply to this study; hence, only these three stages are discussed, due to the special focus on children aged ten years and below.

2.5.1 The sensori-motor period

This stage divides into six separate developmental stages, and runs from birth to two years. The most important accomplishment during this stage is the attainment of object permanency (object constancy). Object permanency or constancy allows children to be aware of the existence of an object even when it is not in their view. Children begin to use mental images to represent absent objects. Prior to attainment of object permanency or constancy, children will search for objects that they can see, but once it is covered, they will stop searching. Games like "peek-a-boo" mark this stage, which equates "out of sight out of mind". Children below the age of eight (8) months will not search for a covered object even if they have been playing with it before. Emergent imitation of an object that is no longer there marks the end of the sensori-motor stage. Imitation represents the child's ability to form internal mental images of objects and persons that are not visible, and then draw on those representations at a later stage (Muller & Holly, 2000). This is the beginning of symbolic thoughts, marking the transition to the second stage. This internal representation closely links to subjective perception, which might pave the way for suggestibility.

2.5.2 The preoperational stage

This stage lasts from two to seven years. Children at this stage of development have the capability to use a symbol, object, or word to stand for something else. Preoperational thinking allows children to think about past and present and be able to employ language (Muller, et al., 2000). In the absence of preoperational thinking, it

would be difficult to acquire language. This development is also a prerequisite for imagery, fantasy, play and drawing (Muller, et al., 2000).

Preoperational thinking poses a number of limitations as far as child witnessing is concerned. Children at this stage of development are egocentric; they cannot separate their own perspective from that of others. For example, a three year old who is hiding behind a couch not seeing you may assume she is not visible despite the legs and other body parts being exposed. Children having preoperational thought processes tend to answer questions about other people from an egocentric perspective. By illustration, if a five-year-old is asked whether her sister has a sister, the five-year-old will answer 'no' if they are only two girls in the family. The five-year-old is unable to view sisterhood from her sister's perspective (Muller, et al., 2000). According to Muller, et al., (2000), preoperational thinking impacts greatly on how children answer questions relating to how people felt, e.g., "... was he angry?"; "... why do you think he asked you to do that?"(p195).

The second limitation originating from preoperational thinking relates to the child's inability to solve problems logically, which is caused by the tendency of children to focus on only one aspect of the problem, the inability of children to mentally reverse actions and the tendency to treat two or more connected events as unconnected. Piaget used experiments to illustrate this tendency. If liquid is poured from broad-based beaker (A) into a narrow-based beaker (B), the child will believe that beaker B has more water. This is because the child is able to focus on one thing, height of the beaker to the exclusion of other information. The child does not have the ability to reverse the action, so that he/she will be able to see that the water is the same in quantity, and lastly the child is not able to see the connection between the sizes of the two beakers. They treat each beaker as a separate entity and hence the failure to follow the sequence of the events. These children have difficulty understanding the concept of cause and effect (Muller, et al., 2000).

2.5.3 The concrete operational stage

The concrete operational stage lasts from seven to eleven years. At this stage, thought is logical when stimuli are presented physically. Children are able to solve problems innate to the preoperational stage, and they are able to use mental images to solve real problems, e.g., reversibility. They are less egocentric, allowing them to understand the perceptions and beliefs of others, i.e., they start to develop theory of mind. They will be able to answer questions about the feelings of others and follow sequence of events. These children however, still have difficulties answering abstract and hypothetical questions and these questions are common in court (Muller, et al., 2000). The ability to deal with abstract questions is only achieved during the next stage, which is the formal operation stage. This stage will not be discussed, because it exceeds the sampling criteria of this study.

Piaget's theory has however, been criticised for making conclusions about a child's inadequacies without considering the method of assessing the competences. The assumption that children are illogical and incoherent, compared to adults, is now recognised to be conditionally or only partially true (Eysenck, 1988). Equally true, Eysenck noted that some adults think in an illogical manner. Some researchers have also demonstrated that it is not conflict, as propounded by Piaget, leading to cognitive development, but agreement between interpretations or strategies. Other researchers have asserted that both conflict and agreement can produce cognitive advances at different times and under different circumstances (Eysenck, 1988). While these criticisms have been levelled on Piaget's theory, they do not however nullify the sound theoretical base of Piaget's theory of cognitive development in children.

2.6 MORAL DEVELOPMENT OF CHILDREN – KOHLBERG AND PIAGET

The concept of moral development is important for legal purposes, because it relates to the understanding of children of the duty to tell the truth. The most prominent

cognitive developmental theorists on moral development in children are Piaget and Kohlberg. They both believed that children pass through different stages of moral development, similar to cognitive development. Firstly, Piaget studied moral development through games and moral dilemmas. He focussed on children's understanding of rules of games, and concluded that these rules do not guide young children's behaviours. Young children are hedonistic and engage in behaviours for the pleasure they derive there from, or because behaviours became habitual. Pre-school children may be aware of the rules of games, but they do not incorporate these rules in their play (Muller, et al., 2000). By the age of six years, children see rules as sacred or inviolable, they respect the rules unquestionably. According to Piaget, young children think of adults' authority as the source of all rules. Children reach the final stage at around age ten years, when they start to understand that rules result from an agreement among participants and hence, should not be followed blindly, but can be modified by the participants' consensus.

As discussed in the previous section, Piaget studied children's moral reasoning via the use of moral dilemmas. He concluded that children below the age of ten years are in a stage of *moral realism* in which they base their moral judgements on the consequences of the act. They base the rightfulness or wrongfulness of an act on visible consequences - not the intention of the individual involved. During this stage, they view rules as unbreakable and any such act would result in punishment, which punishment is unrelated to the magnitude of crime - as long as the punishment is severe. Children see adults as authorities on moral standards (Muller, et al., 2000).

The second stage is characterised by moral relativism. Here children start to take into consideration the intention of the wrongdoer, and they start to know that punishment should relate to the transgression. The less egocentric children are, the more they are able to appreciate the point of view of others.

Piaget heavily influenced Lawrence Kohlberg. Kohlberg believed that moral development passes through three different levels, namely pre-conventional, conventional, and post-conventional levels. Kohlberg also used moral dilemmas to

assess moral reasoning, as exemplified by the famous dilemma of a man called Heinz. The dilemma goes as follows: Heinz's wife was terminally ill from cancer. A certain druggist had developed a drug that could cure his wife, but the druggist held propriety rights to it, and set an unaffordable high price to the drug. Heinz raised half the amount of money and went to the druggist, asking whether he could get the drug and pay later, so that he could save his wife. The druggist refused and Heinz broke into the pharmacy that night and stole the drug. The question to the children was whether Heinz should have broken into the pharmacy (Schickendanz, Schickendanz, Hansen & Forsyth, 1993).

Based on the responses of children to situations like this, Heinz identified the three stages/levels of moral reasoning. He noted that children at the pre-conventional level made decisions based on self-interest to avoid punishment or gain rewards. Stage one of this level focuses on avoiding breaking the rules, backed punishment obedience for its sake and avoiding physical damage to persons and property. Such children are egocentric and do not consider the interests of other people. Kohlberg named this the heterogeneous morality stage (Schickendanz, et al., 1993).

Kohlberg named stage two the stage of individualism, instrumental purpose and exchange. Children at this stage follow the rules for their immediate interests, while recognising that the world consists of other people with their own interests (Schickendanz, et al., 1993). Kohlberg also proposed a follow-up stage, i.e., the stage of conventional moral reasoning. It is marked by the beginning of stage three, where one lives up to the expectations of those close to you, such as parents, siblings, relatives and friends. Being good is very important and keeping virtues such as loyalty, respect, and gratitude are a priority at this stage. There is the need to be good to oneself and to others. Kohlberg named this the stage of mutual interpersonal expectations, relationships, and interpersonal conformity (Schickendanz, et al., 1993).

Next is the stage of social system and conscience, which is marked by the duty to fulfil what has been agreed upon. Laws are supposed to be upheld, except in extreme

cases. The aim is to keep the institution going as a whole, marking the post-conventional or principled stage of moral development. This starts with stage five, i.e., social contract or utility and individual rights. This stage of moral reasoning acknowledges that individuals hold a variety of values and opinions and that values and rules are relative to one's group. There is a sense of obligation to law due to one's social contract to make and abide by the laws for the welfare of all and the protection of people's rights (Schickendanz, et al., 1993). Lastly, stage six marks moral reasoning in terms of universal ethical principles. What is right at this stage is to follow self-chosen ethical principles. Individuals define their values in terms of principles, whether philosophical, religious or personal, usually directed at the greater good of society.

As is usual about stage theories, Kohlberg was criticised for his stage theory. Some critics offered research findings demonstrating that children below the age of 10 years might be capable of reasoning at Kohlberg's highest level, although this is not the rule. Children between the ages of 10 and 12 years may reason at stages two, three or four, but they rarely demonstrate moral reasoning characteristic of stage five (Schickendanz, et al., 1993). The highest stage of moral reasoning should be achieved during adolescence; this however does not mean that all adolescents or even adults will reach this stage. Attainment of moral reasoning at stage six, i.e., the highest level of moral reasoning, depends on exposure to factors such as advanced level moral reasoning, and on interaction with supportive family members, peers and significant others (Schickendanz, et al., 1993).

Kohlberg and Piaget differ in their approach to moral development. Piaget places emphasis on adult authority, while Kohlberg emphasises the role of punishment and reward. Kohlberg assumes that attainment of autonomous moral reasoning occurs towards the end of adolescence, which is much later than Piaget has envisioned (Muller, et al., 2000). Adult authority, reward, and punishment are variables implicated in the manifestation of suggestibility in children (Garven, Wood, Malpass & Shaw, 1998; Owen-Kostelnik, Reppuci & Meyer, 2006). Piaget and Kohlberg both identified authority, reward and punishment as contributory variables to the

cognitive and psychosocial development of children, thereby implicitly also to suggestibility risk.

2.7 PSYCHOSOCIAL DEVELOPMENT- ERIK ERIKSON

Erikson regarded human development as a process of psychosocial development spanning eight stages. He viewed these stages as processes that follow a genetic or biological plan (the epigenetic principle) over a life span towards the acquisition of ego-identity (Bergh & Theron, 2009). Ego-identity is achieved through resolving all of the eight consecutive stages. Erikson`s theory is made up of eight stages, but for the purposes of this study the first four stages are discussed. The latter four stages fall outside the age criteria set for sampling.

2.7.1 Stage one - Trust versus mistrust (birth to 1st year of life, oral sensory)

During infancy, a sense of inner security is derived from satisfactory care, e.g., maternal care. In the presence of adequate maternal care, the infant develops trusting relations as a social achievement, even if the primary caregiver (mother) is occasionally absent. In the absence of adequate primary care, the infant develops mistrust, manifested as a sense of rejection, coupled with scepticism towards others. This stage is similar to the concept attachment security, as described by Bowlby, Ainsworth and Freud (Bergh, et al., 2009). In the absence of trust formation and attachment security, reactive attachment disorder and withdrawal may develop as core pathologies.

2.7.2 Stage two - Autonomy versus shame and doubt (2nd to 3rd years of life; muscular, anal)

As the child matures physically, he/she develops a sense of self-control and adequacy, which fosters a positive sense of self-esteem, pride and independence or autonomy. Children imitate adults as a way of resolving psychosocial crises. When the child does not attain a sense of independence and autonomy, feelings of

inadequacy, and a lack of assertiveness may arise during subsequent stages. Feelings of shame and doubt are closely associated with anxiety, which may manifest as repetitive behaviours. Hence, obsessive-compulsive behaviours may develop as core pathologies due to failure to resolve the crisis of this stage (Bergh, et al., 2009).

2.7.3 Stage three - Initiative versus guilt (4th – 5th years of life; locomotion, genital)

The young child showing initiative, shares responsibilities such as taking care of the young ones, exploring the environment through play, and showing courage via interaction with the unfamiliar. The child identifies with the primary caregivers, and internalises their modelled values. If caregivers consistently criticize the child, he/she will lack initiative, and may grow into an inhibited individual. Lack of initiative may give way to psychosomatic problems as defence mechanism to avoid responsibility, or to telling lies and boastful behaviours to compensate for a lack of initiative (Bergh, et al., 2009). This child is often plagued by unrealistic feelings of guilt.

2.7.4 Stage four - Industry versus inferiority (6th to 11th years of life, though to puberty, latency)

This stage marks commencement of formal schooling, where children start to acquire skills such as perseverance and task completion, a sense of learning, accomplishment and competency. Children are now introduced to the concept of division of labour, and knowing how to use basic tools. Education is central to resolving possible psychosocial crises, i.e., children derive pride from their accomplishments, and they learn to appreciate rewards for their efforts. Rewards may be internal, such as positive regard of self, or external, such as tangible rewards for achievements, which mark a sense of industry. Failing to resolve the needs of this stage may cause inertia, instil the fear of success, or result in learned helplessness (Bergh, et al., 2009). If the child does not attain a positive sense of industry, he/she may experience feelings of inferiority life-long.

The preceding four theories have demonstrated that children differ from adults, morally and psychosocially. There are even in-group differences in terms of reasoning and psychosocial functioning - depending on age as an important variable. The very fact that even young children may make statements and testify during hearings, should caution stakeholders to verify these statements and testimonies for possible suggestibility. Decision makers should consider these developmental barriers when dealing with children. Hence, this calls for special competencies in those people who deal with young children within legal settings. The construct of suggestibility is a concept that requires specific knowledge of a child's cognitive, moral and psychosocial development, as firmly embedded within the subsequent theories, explaining the manifestation of suggestibility in children from neuro-cognitive and social learning perspectives.

2.8 SUGGESTIBILITY AND NEURO-COGNITIVE THEORIES

2.8.1 Episodic Memory

Episodic memory refers to the explicit memory of an event that took place at a specific time and place, and embedded in the individual's own personal history (Melinder, Endestad & Magnussen, 2006). Some researchers believe that episodic memory is absent prior to about four years of age, while others state that episodic memory is present, but less accessible for testing in earlier life (Melinder, et al., 2006). According to Tulving (2002), episodic memory includes an "autonoetic" kind of consciousness that allows the individual to be aware of the subjective time when an event took place. This autonoetic component of episodic memory relates to the individual's sense of self, which refers to memory of "self" and is termed "the cognitive self". This "cognitive self" emerges around the age of two, and makes possible the early organisation of information and experiences to form the episodic memory. Although episodic memory allows the individual to remember past experiences consciously, it does not always succeed in accurately tracking memories back to the situation, context or source in which the event took place.

The quality and quantity of episodic memory performances are age dependent. Young children report fewer memories, compared to older children and adults in free recall and cued recall (Ceci & Bruck, 2004). Their memories are hence susceptible to suggestive post-event information such as misinformation, repeated questioning and the use of props (Ceci & Buck, 1995). Researchers attributed the fragile nature of episodic memory and the greater suggestibility of young children to immature source monitoring skills (Melinder, et al., 2006). Hence, Melinder and co-workers define source memory as the ability to identify the origin of a memory element, which is one of the defining characteristics of episodic memory. This ability improves between the age of four and six years, i.e. pre-school years. Giles and co-workers in 2002 investigated the association between source monitoring and suggestibility in 32 children aged two to five years. They found a positive correlation between source monitoring and the ability to resist suggestion (Melinder, et al., 2006).

2.8.2 Executive Functioning (Cognitive Inhibition)

Executive functions refer to a broad category of skills that underlie goal-directed behaviour (Bruck & Melnyk, 2004). Research on the correlates of suggestibility and executive functioning focussed on the constructs of inhibitory control, attention flexibility, working memory and meta-cognitive skills - all of which overlap to some degree.

Cognitive inhibition refers to mental processes that relate to control and inhibition of action sequences, usually tested in Stroop-like card sorting tasks (Melinder, et al., 2006). The ability to accurately report target information requires inhibition of irrelevant information, allowing focus of attention on target information. The inhibition of irrelevant information can be done through preventing this information from entering working memory by suppressing non-target information that has already entered working memory or through familiarity based reasoning that typically result in inaccurate responses (Roberts & Powell, 2005).

“... The ability to ignore task-irrelevant information, processes, and automatic or prepotent responses is considered to be part of inhibition control” (Roberts, et al., 2005, p1006).

Simply put, this function helps to ignore certain irrelevant stimuli. Because cognitive inhibition facilitates memory retrieval by suppressing immediate responses long enough to search memory and provide well-thought answers, it is argued that stronger resistance to suggestion should be observed among children with more developed cognitive inhibition capacities (Melinder, et al., 2006). A series of empirical studies support this prediction. Alexander et al (2002) found that the level of cognitive inhibition as indexed by Stroop-like tasks, could accurately predict memory errors and suggestibility in three to seven year old children. According to Roberts et al (2005), developmentally marked improvements in inhibitory control usually occur between ages four and seven years, due to associated frontal lobe maturation during this period. These researchers further stated that during this period, children show improvements in their ability to attend to stimuli in the face of salient alternatives, to delay an immediate reward to get a larger one later, and to suppress an otherwise automatic response. Following this period, children become less susceptible to suggestibility (Ceci & Bruck, 1997). Cognitive inhibition relates well to avoidance of false positives and to accurate source monitoring – the better cognitive inhibition, the less false positive reporting and the more accurate source monitoring. Melinder et al (2006) concluded that children’s resistance to suggestion relate to cognitive inhibition, because source monitoring strongly depends on self-reflective processes, supported by stronger inhibitory activity. Hence, strong cognitive inhibition relates to improved source memory.

A number of studies partially rejected the notion that executive functioning strongly relates to suggestibility. Bruck et al (2004) found significant associations between executive functioning and suggestibility in nine out of 18 studies. However, significant correlations did not cluster on one type of the test or skill. Significant predictors rather included Stroop tasks, working memory, comprehension

monitoring, source monitoring (independent of the suggestibility paradigm), retroactive inhibition, tapping conflict and Wisconsin Card sorting tasks. Other studies did not establish significant relationships between suggestibility and these same tasks, even when carried out in the same laboratory (Bruck, et al., 2004). These researchers concluded that despite executive functioning studies based on a number of theoretically sound principles, the results provided little illumination on the cognitive mechanisms of children's suggestibility.

2.8.3 Theory of Mind (ToM)

Theory of mind refers to one's ability to know that others may have different intentions, beliefs and feelings than self (Bruck, et al., 2004). Theory of mind includes the ability to "walk the mile in another's shoes", i.e. to understand that others' intentions, feelings, and beliefs may differ from one's own mind set. A body of research findings suggests that 'theory of mind' develops rapidly in pre-school children, and by the age of five, most children understand that two people can hold conflicting beliefs about the world and have different realities (Bruck, et al., 2004). The basic premise is that once children come to appreciate that another person can hold a belief different from one's own, then one can easily reject such belief as misinformation (suggestion). Bruck et al (2004) carried out an analysis of 11 studies assessing theory of the mind among children in the age range three to six years of age. Four of the studies found no relationship between suggestibility and theory of mind, while five studies established a decrease in suggestibility as theory of mind increased. Two of the studies found that increases in suggestibility were associated with increases in theory of mind. In general, a significant increase in suggestibility was likely to occur when theory of mind correlated with misinformation; a few significant correlations occurred with interrogative suggestibility.

The literature often refers to theory of the mind as "the four year shift", because at this age children normally reach a level of competence allowing them to detect false beliefs, in keeping with the development of theory of mind. Stable 'theory of mind' links well with parallel performance on executive tasks (Melinder, et al., 2006).

There are two competing explanations for the relationship between inhibition and ‘theory of mind’. According to the **expression view**, children’s failure to solve a false belief task is due to the executive demands that such task poses, not because of the children’s understanding of false beliefs. Hence, executive functioning assists latent ‘theory of mind’ functions on solving false belief tasks (Melinder, et al., 2006).

According to the **emergence view**, executive functioning is required for the emergence of ‘theory of mind’ abilities, because general executive functioning enables children to take advantage of specific experiential everyday occurrences, such as the number of siblings, and mental states. The ability to understand that an interviewer entertains a false belief links to suggestibility. Hence, in age-controlled subjects, a mature ‘theory of mind’ relates to stronger resistance to suggestibility (Bruck, et al., 2004). Melinder et al. (2006) summarized this, saying:

“... The fact that an advanced ‘theory of mind’ is associated with resistance to suggestive influences ... that executive functions emerge in parallel with ‘theory of mind’ scores, that increased inhibition and decreased suggestibility are correlated, and that source monitoring is related to suggestibility, indicate that executive functions and ‘theory of mind’ form a set of cognitive processes that are essential to report correctly information regarding a target event and its source” (Melinder, et al., 2006, p487).

In conclusion, children with stronger cognitive inhibition and stronger developed ‘theory of mind’ are least vulnerable to suggestive influences. ‘Theory of mind’ might be almost absent in some individuals, such as in mentally retarded individuals and those diagnosed with Autistic Spectrum Disorder (APA, 2000).

2.8.4 Source monitoring

For some time, there has been a debate about the credibility of children as eyewitnesses, argued from different angles, disciplines and orientations. Children can provide accurate and sometimes detailed reports of their experiences. Children

may however be exposed to sources of information that may contaminate memories of their experiences. Contamination may occur when children listen to a story about a similar event, watch a similar event on television, hear inaccurate descriptions about similar events, are suggestively interviewed about an event, dream about an event, and experience other similar events (Roberts & Powel, 2005). Constructionist theorists suggests that non-target information replaces or blends with the target information and makes it obscure, while trace theorists posit that non-target information is more accessible than target information, because of recent or multiple presentations (Roberts, et al., 2005). Suggestibility hence happens when false non-target information presented by stronger memory trace becomes easier to retrieve than the original memory. Irrespective of firm findings on the relation between memory and children's suggestibility, several studies confirmed that children are able to report both target and non-target events - showing that both sources of information were encoded and retrieved. Researchers suggested that children's errors reflect source confusions, i.e. children mistakenly attributing the source of non-target information to the target event (Roberts, et al., 2005).

Source monitoring refers to "an attribution process through which one makes decisions about how memories, knowledge, and beliefs were acquired. Source monitoring attributions are made on the basis of qualitative characteristics of activated memories such as the amount or type of perceptual detail" (Thierry, Spence & Memon, 2001, p2). For example, when one tries to make a distinction of whether one heard about an object in an event or whether one saw the object in an event, one may decide that the object was in fact seen in the event because of perceptual information, such as remembering the colour associated with the object (Thierry, et al., 2001). According to Roberts et al (2005), the ability for accurate monitoring of memory sources undergoes significant developments from age three through to eight years - the age at which children are usually most suggestible. In similar vein, Thierry et al.(2001) after having reviewed several studies (e.g. Ackil & Zaragoza, 1995; Lindsay, Gonzales & Eso, 1995; Newcomb & Siegal, 1996; Poole & Lindsay, 1995), asserted that young children's suggestibility is due in part to their inability to accurately monitor memory sources.

Thierry et al. (2005) set up an experiment to examine if children are less suggestible if they appropriately monitor the source of reported information. The events came from two sources, live and videotaped science experiments. The sample comprised of 75 children who participated in the experiment, 39 children were aged three or four years, while 36 were aged five or six years. The children were mainly Caucasians from middle to high socioeconomic status, randomly assigned to the source-monitoring group and the control group. The events consisted of “Mrs Science” carrying out three experiments live and on a video. A source-monitoring test administered with the source-monitoring group, required reporting on the source of the science events. The control group received ‘recognition-type’ questions without source cues. Afterwards, all children freely recalled the events, followed by misleading questions about the events. The results showed less accuracy in free recall and in response to misleading information among three and four year old children, compared to all other groups, while the source-monitoring group of three and four year olds` performance was similar to both groups of the five and six year olds.

A puzzle to this investigation unfolded from the fact that five to six year olds source-monitoring group did not perform better than their control counterparts. They performed at almost the same levels. Thierry et al.(2005) attributed this variation to the ability of older children to use strategies in the absence of explicit cues to do so. The researchers further suggested that five to six year old controls employed source-monitoring skills when answering misleading questions. Said differently, free recall served as source monitoring for the control five to six year olds.

Giles, Gopnik and Heyman (2002) carried out a study to clarify the nature of the relationship between source monitoring and suggestibility in pre-school children. The researchers simultaneously presented a brief story in two different modalities to 32 three to five year olds, one as a silent video vignette and the second as a spoken narrative. The story was about a boy feeding his dog. Following the presentation of the story, the researchers asked the children a series of questions, which included source-monitoring tasks, dual source monitoring tasks and suggestion tasks. The

results showed a high correlation between source monitoring and suggestibility. Hence, the ability to monitor sources highly correlated with the ability to resist suggestion from leading questions. In addition, these researchers found that the presentation of a source-monitoring tasks reduced children's susceptibility to subsequent leading questions. They explained that source monitoring reduces suggestibility, because it places children's memory into context. They further asserted that contextual cues provide effective means of strengthening and re-activating memory traces. In addition, source-monitoring tasks reduced suggestibility by solidifying memory traces so that the discrepancy between 'truth' and misleading information becomes easier to detect. The researchers suggested that source monitoring emphasizes the representational nature of the mind, which provides an understanding thereof that the mind represents and constructs reality and that this representation does not always mirror reality. They concluded as follows, "... pre-school children's suggestibility is reduced when they are attuned to the epistemic origins of mental representation" (Giles, et al., 2002, p291).

2.9 SUGGESTIBILITY AND SOCIAL LEARNING THEORY

The concept of suggestibility originates from both cognitive theories and social learning theories, i.e. the external environment. Children learn from observation, particularly how others conform and comply with the relevant social norms, shaped (reinforced) by the society to behave in a certain manner. While suggestibility is an internal process, taking place in a child's mind, events within the environment largely influence these internal processes. Developmental psychologists such as Vygotsky, stress the importance of environmental support for children to reach their maximum levels of cognitive performance (Davids & Bottoms, 2002). Davids et al. (2002) further state that perceived social support enhances children's psychological wellbeing and their perceived ability to cope with stress, academic performance and short-term recall.

2.9.1 Reinforcement

This discussion of reinforcement highlights the link between social learning and suggestibility. Garven, Wood, Malpass and Shaw (1998) reviewed the interviewing techniques used during the McMartin Preschool Case. They found that one of the techniques used during the forensic interview, was negative and positive reinforcement. The interviewing technique employing positive consequences (reinforcement) consists of giving, promising, or implying praise, approval, agreement, or other rewards to a child or indicating that the child will demonstrate desirable qualities (Garven, et al., 1998). On the opposite side of positive consequences, the technique employing negative consequences (reinforcement) consists of criticism or disagreement of the child's statement or otherwise indicating that the statement is incomplete, inadequate, or disappointing. The McMartin interviews were fraught with negative and positive reinforcement (consequences). By illustration of positive reinforcement from the McMartin interview, the interviewer responded to the child saying, "... can I pat you on the head ... look at what a good help you can be ... you are going to help all these little children just because you are smart ..." (Garven, et al., 1998, p349). Similarly, Garven and co-workers identified extensive use of negative reinforcement from the McMartin interviews. Scheiber, Bellah, Martinez, McLaurin, Strok, Garven and Wood (2006) analysed the McMartin and Kelly Michaels forensic interviews and found reinforcement being an important variable influencing child suggestibility during forensic interviews. These researchers concluded that the forensic interviewers employed during the McMartin and Kelly Michaels cases used negative and positive reinforcement techniques to induce suggestibility in children.

According to the learning theory, a positive reinforcement increases and punishment decreases the probability that behaviour will be repeated (Scheiber, et al., 2006). Scheiber and co-workers defined 'social reinforcement' or 'social punishment' as reinforcement or punishment coming from another person. Recent research identified reinforcement as a powerful and swift-acting social influencing technique when used with children (Schreiber, et al., 2006).

In a study by Garven, Wood and Malpas (2000), comprising of 120 children aged between five and seven, a man called Paco Perez visited their kindergarten or elementary school. Paco Perez visited during story time, wearing an enormous coloured hat, some funny glasses, a plastic nose and a moustache. He took off his hat, saying that it was stupid for him to wear it. He then placed some stickers on the back of each child's hand and then handed them some treats. After 20 minutes, he left the class. The researchers recorded the visit on video tape. One week later, the researchers questioned all of the children about Paco Perez's visit, posing mundane leading questions to them, such as "... did Paco break a toy while he was visiting?", and fantastic leading questions, such as "... did Paco take you somewhere in a helicopter?" Half of the children received reinforcement with praise for answers that were accusatory towards Paco, and a mild negative feedback for non-accusatory answers. The interviews lasted only three to four minutes. Reinforced children were induced to make 35% false accusations against Paco, compared to 12% for non-reinforced children. For fantastic questions, the false accusation rate was 52% for reinforced children versus 5% for non-reinforced children. When re-interviewed a week later without reinforcement, children reinforced during the previous interview continued to make false allegations at the same rate like before.

This study illustrates that reinforcement - positive or negative – exerts a strong influence on child suggestibility. The reinforcement may not present in a straightforward manner, but in concealed ways, such as prompts or non-verbal cues, e.g., nodding, etcetera.

2.9.2 Social factors

Self-concept or self-efficacy is largely a product of the interaction between the individual and the environment. In a review of studies related to suggestibility and self-efficacy/self-concept, Bruck and Melnyk (2004) established positive correlations in six out of nine reviewed studies. Davis and Bottoms (2002) found that children,

more confident telling adults that they were wrong, gave in to few misleading questions, provided they were older than six years and interviewed by a supportive interviewer. Put differently, supportive interviewers enhanced the self-efficacy of children, thereby lowered their suggestibility.

2.9.3 Mother's attachment style

A number of studies have looked at the relationship between maternal romantic attachment styles and their children's suggestibility concerning a stressful event and came up with two independent dimensions namely anxiety and avoidance. According to Bruck et al. (2004), anxiety equates to fear of abandonment in close relationships, while avoidance is discomfort with close relationships. Individuals low on these dimensions, are secure. The assumption is that anxious mothers might transmit fear to their children and avoidant mothers might be less comforting or willing to discuss stressful events with their children. This in turn affects children's encoding and accurate recall of witnessed events (Bruck, et al., 2004). Mothers demonstrating supportive attachment styles might promote processing styles that are conducive to accurate recall. Six studies examined the relationship between maternal attachment styles with children's suggestibility. In five out of these six studies, insecure and/or avoidant mothers had the most suggestible children (Bruck, et al., 2004).

Lastly, some scattered studies have shown that fathers' positive behaviour towards their children was a good predictor of child suggestibility, while some researchers associated authoritativeness with suggestibility in pre-scholars (Bruck, et al., 2004).

In similar vein, co-dependence and a symbiotic mother/child relationship might also encourage suggestibility. In co-dependence, the mother derives secondary gain from keeping the child in a dependent, vulnerable position, similar to the wife who phones her alcoholic husband's employer to inform him that her husband is sick in bed. In case of a symbiotic mother/child relationship, individuation did not take place, and the one internalizes and simulates the other's symptoms.

The preceding theoretical foundations do not represent all of the theories. The select discussion aimed at guiding the readership to the link between child development and suggestibility.

2.10 SUGGESTIBILITY AND AGE

The study of suggestibility in children emerged not by accident, but by the call of unfolding events in the society. In the United States of America (USA), the 1970s were awash with cases of child sexual abuse by Catholic priests. According to Goodman (2006), approximately 3-6% of Catholic priests in the USA were sexually abusing children, mostly boys, but including girls. When the abuse became known to the church, the victims were silenced with threats, gifts, promises, etcetera, and the priests were discretely moved to other dioceses. The arrest of priest by the name Plesetz, after his confession about the abuse, opened a Pandora's box for the society to confront the once "repressed" societal ill of child sexual abuse in the church and beyond (Goodman, 2006).

The prevalence of child sexual abuse during the 1970 was obscure. In 1974, however, 60 000 cases of child maltreatment were reported to the child protection services (CPS) with only a small fraction being child sexual abuse cases in the USA. This caused many states to allow children to testify in courts, because before then, younger children than 9 to 14 years were presumed incompetent to testify in court - unless the prosecution could convince the court that such a child was competent to do so. The child is allowed to testify as long as they are able to tell the difference between telling the truth and telling a lie. The laws however changed to allow children to testify in court, unless somebody could prove that they were not capable; hence, the genesis of scrutiny of child witnesses and the role of suggestibility (Goodman, 2006).

Some sensational child abuse cases also influenced research into child suggestibility, particularly cases adjudicated in the USA. In Bakersford, California, several boys accused a recently divorced man, John Stoll, of child abuse, and the accusers

included his own son. Video tapes of the forensic interviews never existed, and concerns rose about the quality of the interviews of those video tapes that did become known (Goodman, 2006). Twenty years following these allegations, several boys claimed that they knowingly made false reports about the abuse. The son however, maintained his position.

In 1983, seven teachers at the McMartin Preschool, Los Angeles, USA, were accused of kidnapping children and flying them to an isolated farm where they saw animals being tortured and were forced to engage in-group sex activities. Five teachers were acquitted, but the remaining two defendants, Peggy McMartin Buckey and her son, Raymond Buckey, were tried in one of the longest and most expensive criminal cases in the history of California (Scheiber, et al., 2006). All the charges were eventually dropped in 1990, because the court found that the forensic interviews were highly leading in nature (Scheiber, et al., 2006).

Visiting the case of Kelly Michaels once more, in 1988 a 26-year-old day care worker from Maplewood, New Jersey, was convicted of 115 counts of abuse and sentenced to 47 years imprisonment for having sexually abused 20 preschool children over a period of seven months (Scheiber, et al., 2006). The case came to light on April 26, 1985 after the mother of a four-year-old child from Kelly's class noticed, while waking her child from a nap, that he was covered with spots. She took the child to the paediatrician and when the nurse was taking his temperature rectally, the child commented that this was what the teacher did to him during naptime at school. The boy alleged that Kelly used to do the same thing on him at school. When they returned home, the mother asked the child some more questions and while rubbing his genitals, the boy said that Kelly used white jean stuff on him. The mother reported these statements to the authorities. Authorities interviewed other children from Kelly's class, and they reported additional incidents of abuse by Kelly. They reported that Kelly had raped them with spoons, forks, and forced them to swallow her urine and faeces and forced them to lie naked in the shape of satanic pentagram (Scheiber, et al., 2006).

Upon conviction, Kelly Michael's case attracted the attention of the media, carrying articles by sceptical journalists, such as "In The Village Voice", published by *Harper's magazine* (Scheiber, et al., 2006). An appellate lawyer took up her case in 1993 and the court reversed the conviction, ruling that the interviews were suggestive to such extent that the statements were unreliable. Following the collapse of the McMartin prosecution and the reversal of Michaels' conviction, similar day care cases of abuse came under scrutiny, making prosecutions of such cases rare during that time (Scheiber, et al., 2006).

The preceding two cases caused researchers to focus on the credibility of children's testimonies as eye witnesses. Experimental psychologists, clinical psychologists, and lawyers moved in to study the reliability of child witnesses in view of the fact their memories are malleable and prone to external influences. The concept 'suggestibility' appears to relate strongly to children, especially preschool children, due to the research focus on these age groups, following prominent cases of abuse. The readership needs to note, however, that suggestibility is a phenomenon that can manifest across different age groups – probably in different intensity. Some erudite scholars examined the notion that suggestibility is mainly a problem associated with pre-scholars - with interesting convergent and conflicting results. According to Bruck and Ceci (2004), literature paid a lip service to the notion that suggestibility exists at all ages, including adults. The primary view is that preschool children are disproportionately suggestible, and that there is no need to pay attention to the tainted effects of suggestive interviews with older children. In keeping with preceding discussions, most of the studies focussed on cases involving preschool children and characterized by suggestive interviews. Some researchers used the same suggestive techniques on older children, finding that they did not fall prey to such interviews (Bruck, et al., 2004).

Another body of literature, however, shows that suggestive interviews also produced some tainted reports or false memories in adults (Bruck, et al., 2004). Some early studies by Cassel and Bjorklund (1995) and by Coxon and Valentine (1997) identified age as the single most important demographic variable exerting influence

on eyewitness reliability. Young children and the elderly are less reliable witnesses, compared to adults (Ceci & Bruck, 1993). The majority of studies, however, found that children perform less accurately compared to adults, when asked specific questions or given free recall tests about an event. When tested at hand of recognition tasks, rather than memory tasks, there is a reduction or even complete elimination of these differences (Coxon, et al., 1997).

In 1980, Cohen and Harnick conducted a study, illustrating the age effects on suggestibility. The research participants were grade three children (approximately nine years old), grade six children (approximately 12 years) and college students. They watched a 12-minute black and white film, called “the purse”, which involved petty crime activities. The research participants had to respond to 22 stimulus questions regarding the film. The stimulus questions were bipolar in nature, i.e., could be asked in either a suggestive manner or non-suggestive manner, allocated equally to both poles, and mixed in a series of suggestive and non-suggestive questions. Subjects were allowed to provide alternatives if they did not agree with the stimulus questions. Two versions of the question series were constructed, the first version containing a series of suggestive and non-suggestive questions, while the second version was an inverse format of version one. Half of the research participants responded to the first version, while the other half responded to the second version. After one week, the research participants repeated the stimulus questions, this time coupled with four possible answers of which some were misleading.

The results showed that grade three children were more susceptible to suggestion than the other two groups. The level of suggestibility did not differ significantly between grade six and college students. The researchers concluded that grade three research participants had poor memory performance during suggestive questioning, compared to the older students. They also found that grade three research participants demonstrated a greater tendency to accept false suggestions, compared to other groups - although all the three groups demonstrated a tendency towards

suggestibility. However, the grade six and college students were equivalent in their response to suggestive questions.

Cassel and Bjorklund (1995) also carried out research on the developmental patterns of eyewitness memory and suggestibility. The research participants were children aged six, eight, and a group comprising of adults. The researchers allocated the research participants to three treatment conditions, comprising of the control group (i.e., those who received no intervention for a period of one week), a group receiving positive leading questions, and a group receiving negative leading questions. The leading questions suggested either correct or incorrect facts. The research participants then watched a video of a boy and a girl arguing about the use of a bicycle. During the subsequent month, the research participants were subject to repeated questioning - two to three times. The researchers assessed accuracy of free recall with all of the research participants immediately after having watched the video, and one month later. The research participants were also subject to a one-week interview, responding to positive and leading stimulus questions. After one month, the researchers repeated free recall assessment with all of the research participants.

The research findings showed reliable free recall for all age groups during the initial interview, with more reliable free recall in response to unbiased-cued questions. Similarly, the researchers noted significant levels of incorrect recall in response to unbiased cued-recall for all age groups during the initial interview. The research findings indicated age differences for suggestibility, with six-year-olds being more suggestible to the negative-leading questions than participants are from the other two groups. Adults recalled more peripheral items than children did. Six year olds changed more answers than other groups.

In similar vein, Coxon et al. (1997) carried out a study with the aim of comparing the reliability of children, young adults and the elderly as eyewitnesses in terms of accuracy in misleading, non-misleading and circumstantial information. The stimulus material consisted of a video on the kidnapping of a new-born baby from a

hospital ward. The researchers selected this event, because children easily identify with the theme of parent-child separation. The researchers hypothesised that if the effect of misleading information would arise due to difficulties in monitoring the source of misleading information and the memory trace strength, there would be a correlation between the initial accuracy of event recall and suggestibility across all age groups. The sample ($N = 147$), consisted of 52 children with a mean age of 8 years, 53 adults with mean age of 17 years and 42 elderly people with a mean age of 70. All research participants came from the same geographical area. At commencement of this experiment, the subjects watched a short video, and then answered 17 questions about the video. Four of these questions were misleading, and the number of correct and incorrect answers rendered an accuracy score. Following a 15-minute break, subjects answered 20 questions, of which four gave a score towards the acceptance of misleading information (suggestibility).

The results showed no significant difference in performance across all age groups. Children and elderly research participants gave significantly more incorrect responses, compared to young adults (48, 1% and 40, 3% vs. 63%).

As for suggestibility, the misinformed research participants gave significantly more misinformed answers than control subjects (46, 8% vs. 18, 7%). From the children and young adult groups, the misinformed research participants gave significantly more misinformed responses than did control research participants. Children gave significantly more misinformed responses than both young adult and elderly research participants did. There was, however, no significant difference between the young adults and elderly in the percentage of misinformed responses given. The study concluded that, although children were more likely than young and elderly adults to accept misleading post-event information, children did not more readily accept misleading post-event suggestions, compared to adults (Coxon, et al., 1997).

The majority of studies on child suggestibility involved children past their preschool years. The few studies involving older children, focused on neutral events with little personal relevance; hence, it was unclear whether they would respond in similar

fashion, were they asked about highly personal events (Bruck & Ceci, 1999). Researchers were concerned whether experimental or research conditions did mimic real life situations and interrogative forensic interviews. Ceci, Kulkofky, Klemfuss, Sweeney and Bruck (1997) criticized previous research findings suggesting that suggestibility is minimal among higher-grade children and young adults. They pointed out another body of literature, indicating that suggestive techniques used in child studies, also produced tainted reports and memories in adults. They further concluded that susceptibility to suggestion is highly common in middle childhood, and under certain conditions, there are minimal to no developmental differences. Maggie and Ceci (2004) cited the study of Garven et al. (2000), where a person called Paco visited a class with four to five-year-olds and seven to eight-year-olds respectively. One week later, the experimental group participated in a low-pressure interview containing misleading questions on abuse, e.g., "... he took your clothes off, didn't he?" The control group participated in a high-pressure interview, receiving information that the other children had already answered in the affirmative. The interviewers praised them for agreeing with suggestive statements, and when they did not show compliance with suggestion, they repeated the statements. The findings did not identify any age differences between the experimental and control groups in respect with the percentage of misleading questions answered affirmatively, although a significant number (68%) assented to the high-pressure conditions. These researchers concluded that under certain conditions, older children are more suggestible than younger children are.

In similar fashion, Ceci, Papierno and Kulkofsky (2007) also conducted a study during which the researchers read a short story that focussed on a series of objects. They then subsequently provided the children with false information about the objects in the story. Some days later, they asked the children to recall the objects that were part of the story. The premise was that the children's semantic representations of the similarity between actual and suggested objects would predict age differences respecting suggestibility. Compared to younger children, older children more likely erroneously reported that they heard about an egg sandwich,

when in fact, the story mentioned a cheese sandwich. They ascribed this to older children's ability to grasp similarities better, e.g., they find eggs and cheese to be more similar than young children do. Similarly, compared to older children, younger ones were more likely to report the false suggestion, i.e., soda, while the story dealt with milk. They ascribed this to younger children's perception that milk and soda are similar, while older children and adults are able to make a clear distinction between these two liquids. Ceci et al. (2007) concluded that the relationship between age and suggestibility needs to be viewed in a broad manner, e.g., to include skills that develop throughout childhood, together with children's appreciation of ramifications for false statements and their understanding of the interviewers' intentions. It remains debatable whether age plays a significant role in suggestibility, and arguments seem to reflect "within group variation", rather than a "between group" debate. Researchers identified some variables implicated in the aetiology of child suggestibility, compared to adults, as referenced in preceding paragraphs dealing with child development. The next section deals with conditions that tend to generate increased suggestibility among children during forensic interviews.

2.12 CONDITIONS CONDUCTIVE FOR INCREASED CHILD SUGGESTIBILITY

As noted earlier, most of the studies on child suggestibility evolved from the large number of child sexual abuse cases that surfaced in the early eighties and nineties. Most of these events took place at pre-schools; hence, these studies mainly focused on children, the nature and quality of interviews; and how these variables contribute to suggestibility. These studies also closely examined some internal variables that tend to moderate the effects of suggestive interviews on children, such as event centrality, witness participation, source prestige, and etcetera. This section examines conditions conducive for increased child suggestibility during forensic interviews, as well as some of the moderating factors.

2.12 FORENSIC INTERVIEWS

2.12.1 Misleading questions

Some researchers designed studies to assess children's response to misleading questions about bodily touch and other events suggestive of sexual abuse. Bruck and Ceci (1999) reported a study where the researchers paired four-year-olds and seven-year-olds in a trailer with a stranger. The stranger, dressed as a clown, engaged in a game with one of the children by lifting the child and having a photo taken (the participant), while the other child merely observed the game (the observer). Ten days following this event, they first asked the children open-ended questions about the event, followed by 58 questions that were either direct or misleading. The findings suggested a few differences between "participants" and "observers" in terms of accuracy. The seven-year-olds were more accurate than the four-year-olds for all types of questions, except on misleading questions that implied sexual abuse. Among the four-year-olds, the researchers found only one false report of abuse. The researchers concluded that age may be an important denominator in suggestibility for non-central features of an event, but age plays no role when children have to answer to misleading questions about central salient events. These children were apparently more accurate when asked about such details (Bruck, et al., 1999).

Although these studies contributed to our understanding of child suggestibility, there is a lack of contextual validity. Said differently, it is difficult to extrapolate findings to real life events. Researchers, being neutral interviewers, ask single misleading questions in disconnected manner. In real life events and during investigative interviews, untrained forensic interviewers repeatedly ask the same type of questions revolving the same theme, especially when the child denies sexual abuse. The forensic interviewer usually holds the assumption that the abuse did happen. In some cases, the use of anatomically detailed dolls, puppets, or role-playing may result in false positive statements of abuse (Bruck, et al., 1999), suggesting that the interviewing style may enhance suggestibility. This happens especially if the dolls are improperly used.

2.12.2 Suggestive Interviews

2.12.2.1 *Interviewer bias*

“Interviewer bias characterises an interviewer who holds a priori beliefs about the occurrence of certain events and, as a result, mould the interview to elicit from the interviewee statements that are consistent with the interviewer’s prior beliefs” (Bruck, et al., 1999, p423). The hallmark of interviewer bias is a one-directional-minded attempt to collect only confirmatory evidence to the priori belief and ignore any avenue that disconfirms the hypothesis. Bruck et al. (1999) provided the following examples of biased questioning: “... Did your mommy tell you to say this, or did you see it with your own eyes?” or “... who else besides your teacher touched your private parts? ... Did your brother also touch them?”(p424). Here the biased interviewer asks information that is consistent with his/her hypothesis that someone has indeed touched the child’s private parts.

Biased interviewers usually refrain from asking children open-ended questions, e.g., “... what happened”. They normally resort to asking closed questions. In keeping with this view, Ceci and Bruck (1995) reported that children who have to answer to open-ended questions are more likely to report accurate memories of events, compared to children interviewed with closed-questions. Peterson and Bell (1996) reported similar findings, based on interviews with children admitted for an emergency room visit following traumatic injury. They first asked the children open-ended questions, e.g., “... Tell me what happened?” or more specific questions such as “... Where did you hurt yourself?” These researchers found that children were more accurate in free recall (91% accuracy) and the errors increased when asked specific questions (45% accuracy) (Bruck & Ceci, 1997; Bruck & Ceci, 1999). They also found that forced choice-type questions compromised the reliability of children’s reports, such as, “... Was it black or white?” They ascribed this to children’s natural inclination not to provide “... I do not know” responses - even

when the question is nonsensical (Bruck, et al., 1997, 1999). They attributed this tendency, i.e., children's willingness to provide specific answers, to the fact that they are usually cooperative and they perceive adult interviewers as truthful and not deceptive. Hence, children attempt to comply with what they think the adult interviewer wants to hear.

Biased interviewers also use repeated specific questions, thereby decreasing accuracy. Gulota and Ercolin (2004) carried out an experiment where they interviewed 53 children aged six, seven, and eight year olds. A confederate entered the children's class and introduced himself as a journalist. He told them that he wanted to write a story about elementary schools and he wanted to interview them. He asked them general questions, like the number of siblings, whether they have pets and if they do sports during their free time. He then selected from the class an outgoing child to play with. He played a series of games with the selected child, e.g., a "clown", "Simon says" and "thumb fight". The child was dressed in a costume during the clown game. When done, he asked the child to remove the costume and he then put it into his bag. He thanked them and promised to send them the article after having written it. The researchers recorded the entire interaction as a six-minute video. Seven days later, an adult woman conducted individual interviews with the children, telling them that she was a colleague of the journalist and she came by because the colleague had lost the video recording done at their school previously. She requested the children to assist her in reconstructing the previous event. She then asked each child six open-ended questions in non-suggestive style. Eighty five percent of these children answered the questions about the event truthfully and accurately. Although they omitted some events, they did not introduce any false statements into their accounts. However, according to Gulota and co-workers (2004) the children provided false information with forced-choice or yes/no questions, such as "... Is it true the journalist played a game where he slapped your classmate's hands?" During data analysis, they classified responses in two groups, i.e., "mislead" and "not mislead". They categorized children who answered "yes" to the suggested information as being misled, compared to those who said "no", "perhaps" or "I do not remember" as not misled (Gulota, et al., 2004). The findings suggested

77% of false positives among the six-year-olds, brought about by suggestive action questions. The mean scores of 10 and 8.2 for seven-year-olds and eight-year-olds respectively, confirm suggestibility among these age groups as well. Hence, the researchers deduced that forced choice-type questions increased the probability of false positives, with greater likelihood of false positives among younger children (Gulota, et al., 2004).

Numerous studies demonstrated that biased interviewers tend to repeat questions, thereby persuading the children to change their testimonies. Repeat of questions usually take place during multiple same-day interviewing, or interviewing spread over different occasions. Repeat questions tend to be leading in nature, and used with children for several reasons. Firstly, interviewers repeat questions because they feel that children are reluctant to open up about the abuse. Secondly, they use repetition to obtain additional information. Thirdly, repeat questions could clarify ambiguous statements (Lyon, 2002). These reasons may appear noble, but biased interviewers repeat questions because the child's responses are not supporting their preconceived hypotheses, well knowing that some children tend to shift their statements with repeat questions. Shift that occurs with repeat questions is due to the following:

- With repeat questions, children assume that their first answers were incorrect;
- Children assume that the adult interviewer is “unhappy” about their first answers; hence, they change in order to please the adult;

Leitchmnan and Ceci (1995) carried out an experiment called the *Sam Stone* study to demonstrate that repeated questions cause children to be suggestible and change their statements. The researchers told the children that a fictitious character called Sam Stone really existed, that he was very clumsy, and always broke his belongings. Sam Stone then visited the children's school, and during this visit, he did not break anything and was not even clumsy. On the next day, researchers showed the children a torn book and a soiled teddy bear, and only a few children blamed these damages on Sam. Over the course of the next ten weeks, the researchers repeatedly asked the

children leading questions, suggesting that Sam had damaged the articles. They conducted two-minute interviews with the children once every two weeks. At the end of the ten weeks, a new interviewer claiming to be absent on the day of Sam's class visit, interviewed the children. Seventy two percent (72%) of the three and four-year-olds then claimed that Sam had ruined at least one of their items, while 45% of the three and four-year-olds actually claimed to have also witnessed the events. Despite this deception and repetitive interviews, only 11% of the five and six-year-olds claimed to have actually observed Sam Stone's damage to the items (Goodman, 2006). The researchers concluded that repeating deceptive information results in false positive reporting, making children report wrong information as repeating deceptive information increases suggestibility.

Biased interviewers may also use subtle verbal and non-verbal cues to communicate bias, called emotional atmospherics, which can change the tone of the interview to convey implicit or explicit threats and bribes for the desired answer (Ceci, et al., 1999). The literature refers to this phenomenon as negative and positive consequences or the reinforcement schedules. Interviewers easily manipulate children through giving, promising or implying praise, approval, agreement or other rewards e.g. "... you are so smart", or mere agreement with statements, e.g. "... yes" (Garven, Wood, Malpass & Show 1998; Scheiber, Bellah, Martinez, McLaurin, Strok, Garven & Wood, 2006). Interviewers sometimes also use negative consequences as a technique to invite the "desired" response, e.g. criticism of the child's statement, or non-verbal directions indicating that the child's statement is incomplete, inadequate or disappointing. By illustration, during the McMartin interviews (Garven, et al., 1998, p 349) the interviewer responded to a child denying any wrongdoing on the teachers' side, "... are you going to be stupid, or are you going to be smart and help us here?" This remark is in keeping with the social learning theory, stating that positive reinforcement increases desired behaviour, while punishment decreases the probability of certain behaviour to repeat. Another method of suggestive interviewing cited in the Kelly Michaels' case was the "*asked and answered*" technique. This technique involves asking the child a question that he/she has already unambiguously answered during the immediately preceding portion of the

interview. This technique differs from simple repetition of a question when the interviewer attempts to reflect on the child's statement (Schreiber, et al., 2006, p28), as illustrated below:

Interviewer: *Can you remember the naked pictures?*

Child: (Shakes head "no")

Interviewer: *Can't remember that part?*

Child: (Shakes head "no")

Interviewer: *Why don't you think about that for a while, okay? Your memory might come back to you.*

As illustrated above, this technique also mimics negative consequences associated with suggestive interviews. Another technique called "*other people*" often marks suggestive interviewing. This happens when the interviewer tells the child that he has already received information from another person regarding the same topic (Schreiber, et al., 2006) as illustrated below:

Interviewer: *You see all the kids in this picture. Every single kid in this picture has come here and talked to us. Isn't it amazing? ... These kids came to visit us and we found out they know a lot of yucky old secrets from that school. And they all came and told us the secrets. And they are helping us figure out this whole puzzle of what used to go on in that place ... (p28).*

An invitation to speculate on past events can also elicit suggestibility in children, especially when asked to "figure out" or "pretend". Interviewers involved in the McMartin interviews often used this technique when all other techniques had failed. They urged the children to speculate using statements such as "... let's figure out what happened" or "... what do you think happened" or "... let's pretend and see what might have happened" (Garven, et al., 1998). This technique is bound to encourage children to speculate on what they have heard from other sources, rather than what they personally observed.

The last suggestive technique important to this discussion, is “introducing new information”, where the interviewer introduces new information into the interview, while not previously mentioned to the child. This technique allows for the addition of significant information to the child’s previous testimony, and causes discontinuity (Schreiber, et al., 2006), as demonstrated below:

Interviewer: *How about naked movie Star? You guys remember that game?*

Child: *No*

Interviewer: *Everybody remembered that game. Let’s see if we can figure it out* (p29).

Once the interviewer starts to introduce new information, the child is likely to deviate in favour of the new information, thereby forming false memories about the new information, also known as confabulation. Individuals experiencing memory gaps often use confabulation to fill these memory gaps.

2.13 SOME MEDIATING FACTORS TO SUGGESTIBILITY

The length of *time lapse* between the event and the interview often influences vulnerability to suggestion. The amount of correctly retrieved information from memory rapidly declines as time lapses between the actual event and the interview increases (Westcott, Davies & Bull, 2002). Researchers ascribed this decline to inaccessibility of content details, i.e. forgetting the details about the actual event, and forgetting temporal details, i.e. forgetting the sequence of events (Westcott, et al., 2002). This phenomenon represents an important variable in the timing of conducting forensic interviews. Interviews must take place as soon as possible following an event. An interview with a child who was victim of a number of abusive events, renders the child incapable to retrieve detailed memories about the various events, and diminishes the child’s ability to identify event-specific features (Westcott, et al., 2002).

Another factor known to mediate suggestibility in children is *event centrality*. Child suggestibility increases when the event is peripheral, rather than central (Muller, et al., 2000). This happens, because the more one pays attention to central details, the less one concentrates on the peripherals events. It is common knowledge that children below the age of five years concentrate on central events with more action, than peripheral details, causing increased suggestibility when asked about peripheral events (Muller, et al., 2000).

The *authority* of the interviewer heightens child suggestibility. Researchers established that investigative interviews involving the presence of unknown authority figures who ask leading questions, elicit unreliable reports from children. Researchers compared two interview settings involving two kinds of interviewers, i.e., a neutral interviewer, and a police officer. In the authority police setting, children gave fewer accurate statements and more inaccurate statements, compared to those interviewed by a neutral person in a non-authority setting (Owen-Kostelnik, Reppuci & Meyer, 2006). The nexus between authority and heightened suggestibility links to the high regard one has for adults as from birth. Adults are providers of good things, and are punishing agents as well. The concept of punishment and reward as shaping agents in Kohlberg's theory of moral development, increases children's want to comply with adults, especially authority figures. Within forensic and court settings, there are numerous tokens of authority, e.g., the decorum of the setting, the police uniform, lawyers and judges dressed in gowns, which by nature of authority, can place children at higher suggestible risk during forensic interviews. Children also are more suggestible if they perceive the interviewer to be more knowledgeable about the subject area (Reed, 1996).

When children receive a *warning* about an upcoming interview on an event, they are more likely to resist suggestion, compared to those who did not receive a warning. Bain, Baxter and Fellowes (2004) found that issuing a warning about the presence of misleading questions lowered suggestibility on the Gudjonsson suggestibility scales (GSS), Yield 1. This supported the findings of Boon and Baxter (2000), who demonstrated that giving a warning reduced suggestibility for all four suggestibility

scores on the GSS2 (Bain, et al., 2004). In most cases involving forensic interviews, individuals involved do not warn children that they might expect misleading questions, nor do children receive a warning about potential future interviews while the event is taking place.

Lastly, children tend to resist suggestive statements if they were *centrally* involved in the event, compared to onlookers and observers. When children are peripherally involved, their memories are weaker. Hence, the child as onlooker or observer is more vulnerable to suggestion (Reed, 1996).

2.14 SUGGESTIBILITY AND INTELLIGENCE

Courts rely on witness testimony as well as other evidence (such as medical or forensic), to come to a just decision, for making fair judgements. Such witnesses may include vulnerable children with intellectual impairments. Inaccurate, incomplete or dishonest testimonies may result in unjust convictions, while false confessions may result in injustice. The credibility of witnesses comprises two main components, namely ability and motivation (Gudjonsson & Henry, 2003). Motivation represents one's willingness to give honest and complete accounts of events, while assuming that witnesses are more "honest" than defendants are. Even when individuals are motivated to be truthful, their ability to submit reliable accounts of the events under investigation is subject to psychological vulnerabilities and limitations (Gudjonsson, et al., 2003). According to Gudjonsson and Henry (2003,p 242), this vulnerability relates to the witness' memory of the event, cognitive functioning (intelligence, memory capacity, tendency to confabulate), personality (suggestibility), compliance, acquiescence, and mental state (anxiety, depression, feelings of guilt, state of shock, post-traumatic stress disorder, and substance abuse withdrawal symptoms).

Gudjonsson and Henry (2003) postulated that although children and adults with learning disabilities share a significant impairment in intelligence and social learning, they are a homogeneous group of individuals, yet showing individual differences in

other psychological vulnerabilities, including increased suggestibility. They attributed this to the fact that people with learning disability have impaired memory capacity, which renders them vulnerable to suggestion, coupled with lesser ability to deal with the uncertainty of suggestive questioning. Suggestibility highly correlates with memory capacity, i.e. the poorer the memory capacity, the more vulnerable they are to suggestion (Ceci, et al., 1995; Melinder, et al., 2006). Considering this relationship between memory and intellectual impairment, the question arises as to what extent intelligence relates to suggestibility.

Gudjonsson et al. (2003) carried out a study to compare the memory and suggestibility of children and adults with mild and moderate learning disability. The cohort of child participants comprised 110 children aged between 11 and 12 years old. Of this cohort, 44 attended mainstream classes, while 66 attended special classes for children with mild and moderate learning disability respectively, i.e., a mainstream group, a mild learning disability group, and a moderate learning disability group. The cohort of adult participants comprised 221 males and females, randomly selected according to their full IQ scores to match the three groups of children respectively. The mean age was 30.6 years. The researchers individually administered the *Gudjonsson Suggestibility Scale* with all research participants, i.e., adults and children. Adults underwent assessment for purposes of forensic evaluation, which was not the case for the children.

The research findings indicated high achievement scores on the shift and total suggestibility scales for children with mild and moderate learning disability respectively. Children within the normal IQ range scored higher on immediate memory recall, compared to those with learning disability. The research findings indicated a high positive correlation between intelligence and suggestibility for the adult population.

Henry and Gudjonsson (2007) also investigated individual and developmental differences in eyewitness recall and suggestibility in children with intellectual disabilities. The aim of the study was to assess the developmental effects of

suggestibility on children with intellectual disability (ID), compared to the typically developing children (TD), i.e. children without intellectual disability. The sample comprised of 34 children with intellectual disability, divided into two groups, i.e., 8/9-year-old children with ID ($n = 18$); 12-year-old children with ID ($n = 16$). The control group comprised of 40 typically developing children, divided into two control groups, i.e., 8/9-year-old typically developing children ($n = 20$) and 12-year-old typically developing children ($n = 20$). The researchers administered the *British Ability Scales* (BAS) at the children's respective schools, and introduced the assessment activities as an opportunity to do "things" with the experimenter (researcher) to eliminate performance anxiety. The purpose of assessment was to obtain verbal and non-verbal scores of intelligence, plus mental age scores. Upon completion of the BAS, the children watched a three-minute video of children going to the petrol station, filling up the tank and leaving without paying for the petrol. However, they left a note promising that they would return to pay the money. The researchers did not warn the children (research participants) that they would have to answer anything about the video. After the video, the children completed a sub test to the BAS II, called *Speed of Information Processing*. The researchers then conducted an unexpected interview about the petrol scene (video). For free recall, they requested the children to name all the facts they could remember about the video, followed by two general questions, 20 specific questions, and 20 yes/no questions. Finally, the researchers administered the *Gudjonsson Suggestibility Scale II* with the aim to measure interrogative suggestibility.

The researchers reported findings suggesting that in general, children with ID performed less well, compared to typically developing children. ID children's recall of events was generally poor on unbiased recall, for example, free recall, general questions, and non-leading specific questions, compared to typically developing children. Children with ID demonstrated significantly higher suggestibility on biased questions, i.e., misleading, specific and misleading yes/no questions, compared to typically developing children. Children with ID obtained higher scores than the TD children on correctly leading questions, i.e. they were more likely to agree with the suggestions offered. Children with ID offered incorrect information about items

during open-ended questions. Developmental improvements in eyewitness memory occurred in both ID and TD children. The improvement was significantly higher for TD children, compared to children with ID between the ages 8/9 and 12-year-olds. Differences of performance between those with and without ID were more significant than age differences. The study also concluded that IQ is a good predictor of suggestibility among children with ID. It also concluded that an assessment of mental age could be a better predictor of eyewitness recall and suggestibility in children with ID, than either verbal or non-verbal IQ.

Gignac and Powel (2006) investigated the nonlinear association between intelligence and suggestibility. A sample of 158 children participated in the study. The researchers obtained scores for suggestibility through administration of the *Suggestibility Scale (Form 2)* and intelligence through administration of two subtests, namely the *Matrix Reasoning* and *Vocabulary* sub tests of the *Wechsler Abbreviated Scale of Intelligence*. The research findings indicated that intelligence was negatively and linearly associated with Yield scores up to an IQ score of about 105. Above the IQ level of 105, this association was absent, indicating a non-linear progression (Gignac, et al., 2006). Previous studies also confirmed this linear association between suggestibility and intelligence. Consequently, Gignac and co-workers postulated that any analysis based on continuous intelligence scores are more powerful and informative, compared to analysis based on artificial dichotomies of groups of people. The findings of this study confirmed the relationship between suggestibility and intelligence, the effects depending on how the construct of intelligence is categorised.

Bruck and Melnyk (2004) in their study entitled “Individual differences in suggestibility: A review and synthesis”, analysed different studies on suggestibility, including the relationship between suggestibility and intelligence. The studies mainly examined mentally retarded children (MR) and typically developing children (TD children), using 22 studies from the existing body of literature. The majority of children were nine years and older, and matched according to chronological age. Analyses of these studies indicated that, across all studies, children with MR made

more errors on closed misleading questions, compared to their age matched peers. There were no differences in errors on open-ended misleading questions. In addition, analyses indicated few correlations between IQ and suggestibility involving TD children only. To the contrary, analyses indicated significant correlations between suggestibility and IQ in 6 out of 15 studies, indicating a high positive correlation between higher IQ and lower levels of suggestibility. Analyses indicated age as the most important variable having discriminate value for the correlation between intelligence and suggestibility. These researchers concluded, "... although IQ is an important factor accounting for suggestibility difference in samples that include children with normal and low IQs, it is not a reliable predictor of suggestibility for children with normal IQs" (Bruck, et al., 2004, p961).

There is consensus that the relationship between suggestibility and IQ should not be dealt with in isolation, particularly when used for purposes of prediction. While higher intelligence seems to let children resist suggestibility, especially interrogative suggestibility, there are some other intervening variables, e.g. age. The correlation is also dependent on the nature of suggestion used, e.g. closed questions, new information, reinforcement, etcetera. Hence, the relationship should not be generalised without considering the level of intelligence and the associated manifestations of suggestibility.

2.15 SUGGESTIBILITY AND PSYCHOPATHOLOGY

The review of related literature for this study shall be incomplete without exploring the effects of psychopathology on suggestibility, particularly suggestibility among the sexually abused children. The literature is awash with evidence that some threatening events, e.g. threats of death or serious injury, threats to physical integrity of self or others, might result in psychopathology, such as Acute Stress Disorder and Posttraumatic Stress Disorder, as reflected by the DSM-IV-TR (2000) and the ICD-10 codes (APA, 2000; Sarason & Sarason, 1996). Sexual abuse equates to interpersonal sexual violence, i.e. a traumatic experience as a threatening event. Hence, emanating from this trauma, sexually abused children are more vulnerable to

develop a range of psychopathologies. The subsequent section contains a review of representative studies conducted to establish the relationship between psychopathology and suggestibility.

2.16 STRESS, TRAUMA MEMORY AND SUGGESTIBILITY

Studies into the relationship between stress and psychopathology are inconclusive in general. Some researchers asserted that stressful events clearly imprint on children's minds, resulting in very accurate memories of events, while others postulate that stress and trauma result in poor memory of the details of the events.

One line of thought is that stressful information causes narrowing of attention at the time of trauma. Christianson (1992) proposed that the more focussed the attention on the central details of the trauma, the more elaborate the processing of the information, explaining why children tend to resist false memories about central events, compared to peripheral events (Goodman, et al., 1991). The intensity of the stressor also increases focus on the central event. Once stressful events become traumatic (threatening), the focus shifts to the central object, which may cause harm. By illustration, when a traumatic event involves a weapon, the victim shifts attention to the weapon, called "weapon focus" (Eisen & Goodman, 1998). Peripheral information becomes less important and memory recall of this information at a later stage becomes blurred. Eisen and Goodman (1998) further suggest that with increased intensity of trauma, the individual becomes completely overwhelmed and cannot process any information in a narrative form. This phenomenon, i.e., the association between increased levels of stress (trauma) and decreased recall, became known as the inverted U-effect. Several experimental studies supported the notion of the U-effect between stress and memory (Christianson, 1992; Goodman, et al., 1991; 2001; Eisen, 1998). Contrasting this notion, other researchers using real life cases, noted improved memory with high levels of stress (Kapardis, 2010). Kapardis cited the research findings of Yuille and Cutshell (1986), indicating that witnesses to a homicide who reported high levels of stress had a mean accuracy of 93% when

interviewed by police two days after the event, and 88% when interviewed by researchers four to five months later. They offered the following explanation:

- Laboratory studies do not adequately simulate real life traumatic events;
- Subjects in laboratory experiments are not emotionally involved;
- There are qualitative differences of memory in some laboratory studies;
- Traumatized witnesses' memory is highly accurate and stands the test of time.

Criticism of these real life studies referenced the researchers' failure to control some variables, and the range of trauma, i.e., based on a single stressful event. Criticism also included Yuille and Cutshel's (1986) negation of errors of omission when calculating the performance scores. Critics also mentioned that witnesses capable of accurate memory recall volunteered to participate in the study. Emanating from criticism of the single event study of Yuille and Cutshel (1986), a review of several real life studies of bank robberies followed, involving participants at different levels (Christianson & Hubinette, 1993). These researchers postulated that robberies are common, usually traumatic events, involving numerous eyewitnesses. Christianson and Hubinette (1993) established that bank teller victims were more emotionally aroused, compared to bystanders – yet, they were able to retain event memory for a very long period. Hence, Christianson (1992) concluded that there are no real grounds for a simple relationship between intense emotion and memory decline. The arousal-memory relationship is thus best understood in terms of complex interactions between event type, time of memory test and the conditions in which memory retrieval is done.

Eisen and co-workers (2007) offered a psychobiological explanation of how stress and trauma causes poor memory and suggestibility. They proposed that the hypothalamic-pituitary-adrenal involvement in stress and trauma links well with memory impairment, due to increased cortisol release as an indicator of physiological distress. They further proposed that the neurotoxic effects of elevated cortisol in the hippocampus shortly after a stressful event, negatively correlates with

accurate memory recall. In addition, an increased heart rate indicates distress as a defence response that might block encoding of information. Blocked encoding of information causes memory errors and suggestibility.

2.16.1 Dissociation and memory suggestibility

Eisen and co-workers (1998) noted that when a person faces extreme stressors that graduate to trauma, he/she shuts down and ceases to process information as a protective mechanism, known as dissociation. This section discusses the nature of dissociation, and its effect on memory and suggestibility. The American Psychiatric Association (2000) defines dissociation as the disruption in the usually integrated functions of the consciousness, memory, identity, or perception of the environment. Trauma leads to compartmentalised memory, not fully integrated into existing schemas. Researchers propose that dissociation accompanies any traumatic event, during which the individual encodes and retrieves information as sensory fragments with no linguistic components thereto. This implies that traumatic events are not encoded as declarative memory (Eisen, et al., 1998). Retrieval of this memory involves the weaving of sensory memories together with memory fragments in order to reconstruct the traumatic memory. This represents the core of poor memory recall and vulnerability to suggestibility.

Repression is often associated with dissociation. Repression is responsible for keeping already encoded information away from the conscious mind, due to the discomfort the memories may cause to the person. These repressed memories exert some influence on the behaviour of the person, suggesting that memory takes two forms, each with different characteristics. Johnson and Multhrup (1992) explained this dual effect, called the “multiple-entry modular memory system” (MEM). MEM proposes that a primitive perceptual subsystem of the brain handles perceptual information, while the recently developed reflective subsystem handles verbal information. The amygdale handles traumatic information, which traumatic information needs to be integrated into the normal organised memory of the event in order to achieve “completion integration” (Eisen, 1998). Completion integration

ensures integration of memory into existing memory schemas, resulting in little memory bias or distortion. A number of factors may interfere with this process, causing poor memory recall of the traumatic event. Inadequate cognitive development associated with childhood, and lack of social support may impair the process of memory integration into existing schemas, thereby affecting the subsequent recall of the traumatic memories. Theoretically, the assimilation of traumatic information into existing schemas can result in considerable distortion of information organisation and recall in children (Eisen, et al., 1998).

2.16.2 Posttraumatic Stress Disorder (PTSD) and memory suggestibility

Posttraumatic Stress Disorder (PTSD) highly correlates with impaired memory and heightened suggestibility in adults and children. The DSM-IV-TR (APA, 2000) offers the following diagnostic criteria for PTSD:

- **Re-experiencing of symptoms:** Flashbacks - reliving the trauma repeatedly, including physical symptoms, such as a racing heart, sweating, nightmares, and frightening thoughts;
- **Avoidance symptoms:** Staying away from places, events, or objects that are reminders of the experience, feeling emotionally numb, feeling strong guilt, depression, or worry, losing interest in activities that were enjoyable in the past, and having trouble remembering details about the traumatic event;
- **Hyper arousal symptoms:** Being easily startled, feeling tense or “on edge”, having difficulty sleeping, and/or having angry outbursts;

Trauma-related memories tend to interfere with memory recall, due to the intrusive nature of thoughts about the event. The overwhelming nature of the trauma-related information can result in proactive interference, which prohibits the individual from processing newly acquired information. Hence, the individual complains about impaired ability to concentrate and retain new information. Generally, people diagnosed with PTSD experience difficulty regarding attention, distractibility,

stimulus discrimination, and etcetera. This distractibility reduces children's ability to attend to environmental events and cues effectively. Children diagnosed with PTSD therefore avoid situations that mimic the traumatic event. This may cause failure to rehearse information, which is necessary for encoding episodic memory. Poorly encoded episodic memory causes poor retention and recording of the events, leading to poor memory recall (Eisen, 1998). Lastly, PTSD causes hyper arousal for any danger that may re-occur. Hyper vigilance causes superficial and rapid visual scanning of the environment for potential cues, but correlates negatively with memory recall, temporal sequencing of events, and reflective high order thinking. PTSD may enhance memory recall of emotionally significant information, due to increased amygdale involvement, but decreases episodic recall, due to decreased hypothalamic functioning and relay to the frontal cortex. Children tend to fill in memory gaps, and these confabulations often link to emotionally distinctive information well retained due to increased amygdale involvement, coupled with lesser ability for error detection and restoration associated with frontal lobe functioning. Furthermore, sensory overload may contribute to serious distortions in memory recall. This stage varies from child to child and accompanying variables such as social support, coping skills, hardiness, and vulnerability to succumb to anxiety. Theoretically, when a child reaches this watershed point, he/she will resort to dissociation (Eisen, 1998).

2.16.3 Anxiety and memory suggestibility

Any terrifying or stressful event induces fear, one way, or the other. Current research aims at examining sexually abused children's suggestibility as they proceed through the legal justice system. Sexual abuse represents a traumatic event; going through the legal process is stressful and can cause significant anxiety, especially in children lacking adequate coping mechanisms. If anxiety is a manifest variable, then it is imperative to explore the potential effects of anxiety on suggestibility.

Several studies explored the effects of anxiety on memory and suggestibility. Some findings suggest that state anxiety, i.e. anxiety generated by the presenting event,

positively correlates with heightened suggestibility, while other studies suggested the contrary. In light of these contradictions, the subsequent section explains relevant research findings.

Ridley, Clifford, and Keogh (2002) investigated the effects of state anxiety on suggestibility and child witness accuracy. The sample comprised 83 children with a mean age of 9.9 years. Participants were predominantly Caucasians, and were fluent in English. The researchers randomly selected participants to the control group, matching the sample group in terms of age. The control group did not receive misinformation, while the sample group received misinformation. Both the sample and control groups watched a video clip of a car, and then answered questions about the video clip. The sample group then received an additional sub-set of misleading information, without immediate assessment of memory. This additional phase aimed at assessment of memory accuracy, following induction of misleading information. After this phase, all the participants completed standardised state-anxiety and depression questionnaires. Finally, the researchers assessed the children for suggestibility, using the *Spielberger's State-Trait Inventory for Children* and the *Depression Self-Rating Scale for Children*.

The researchers established that state-anxiety had no effect on memory accuracy for misleading questions. The children generally performed moderately well with an overall 57% accuracy. As to the issue of suggestibility and anxiety, the researchers established that highly anxious children were significantly less suggestible, compared to low anxiety groups. The significant negative correlation between anxiety and suggestibility supported this notion, particularly analyses of the group results of the misinformed group. The possible explanation is that high anxiety manifest as heightened awareness and subliminal recognition of misleading information as threatening and different from stored memory of the event. This relates well to hyper vigilance associated with PTSD, allowing children to process misleading information with high acuity, which allows for resistance to suggestion (Riedly, et al., 2002). On the other hand, those with low anxiety may view the

information as non-threatening. Hence, they process information effortlessly and without suspicion, and in turn, they become vulnerable to suggestion.

If stress is used as proxy for anxiety, then Riedly and co-workers' (2002) present study supports the findings of Goodman et al (1991), suggesting that stress reduces suggestibility. The latter study also established a significant negative correlation between depression and suggestibility. In some individuals, suspicion marks depression and anxiety, rendering these individuals sensitive for misleading information, as well as increased capacity for error detection and restoration. Hence, suggestibility manifests differently in PTSD and depression with features of anxiety. PTSD individuals demonstrate active avoidance behaviour, while depressed patients demonstrates a lack of motivation and reduced activity, but these manifest differences apparently do no directly link to suggestibility, one way, or the other. The manifest different processing of anxiety associated with PTSD and depression respectively, seem to link to suggestibility.

Riedly and Clifford (2004), using first-year psychology students as research participants, reported almost similar findings on the effects of anxiety on suggestibility. They reported significantly reduced number of misled responses among highly anxious students, explaining that state-anxiety reduces suggestibility, because anxious individuals tend to forget misleading post event information (MPI) more readily. This happens due to limited information processing caused by the depressed mood. Hence, depressed individuals do not properly encode misleading information. Furthermore, these researchers ascribed reduced suggestibility among depressed individuals to strategic avoidance (repression) of ambiguous misleading post event information (Riedly, et al., 2004). Misleading post event information may cause individuals to perceive such information as ambiguous, thereby reducing suggestibility. Filtering for ambiguous information may result in cognitive bias and affect information processing.

The *Processing Efficiency Theory* of Eyesenck and Calvo (1992) also explains this phenomenon. This theory suggests that highly anxious individuals put in greater

effort towards the task, compared to low anxiety individuals, thereby avoiding the negative consequences of failure. Whenever the processing capacity of highly anxious individuals is not yet exhausted, they will perform better in memory tasks, compared to individuals with low anxiety. The only criticism is that this study comprised of adults only, while information processing may differ in children, since age remains an important variable.

In retrospect, and having consideration for the preceding findings, it seems important for the legal fraternity to consider state-anxiety as an important variable in manifest suggestibility, particularly when highly anxious children take the witness stand. A number of related variables may affect suggestibility, such as superficial visual scanning associated with reduced error detection and restoration during identification of perpetrators, increased suspicion and error detection in children diagnosed with depression and co-morbid anxiety, and confabulation due to reduced memory storage and retrieval during enduring stress.

2.16.4 Past abuse, trauma and memory suggestibility

Goodman, Bottoms, Rudy, Davis and Swartz-Kennedy (2001) investigated the effects of past abuse on children's eyewitness memory. They hypothesised that abused children would perform more poorly on memory and suggestibility tests when test items focus on the non-abusive aspects of the social interaction. The sample comprised of 70 children (42 girls and 28 boys), aged between 3 and 10 years. Of this cohort, 35 of the children were alleged victims of sexual abuse, referred by the district attorneys. The remainder were non-abused children, recruited normally through advertisements. The study extended over two sessions, the first session called the social interaction session to which the children turned up with their parents, i.e. in pairs. The researchers did not disclose the purpose of the experiment, but explained that they aimed at studying social interaction. The children transferred to a room with a male research assistant and a confederate who played with the children. Activities included dressing up in costumes, colouring books, reading stories, thumb wrestling, etc. Having finished play activities, the children transferred

to another room where they completed the *Stanford-Binet* intelligence tests. The researchers thanked them, and the children left.

Two weeks after the first session, the child-parent pairs returned. This time, the researchers informed them that the aim was to assess memory. The interviews comprised free recall activities, detailed questions, specific questions, misleading questions, abuse related questions, affect questions and photo identification.

The research findings suggested a non-significant mean difference in memory performance between the two groups. Abused children correctly answered fewer specific questions, compared to the non-abused children. The abused children also did not make more mistakes in response to misleading questions, compared to non-abused children. However, abused children made more mistakes in identifying the confederate, compared to the non-abused children. These researchers provided a myriad of reasons why abused children tend to perform poorly on memory tests and suggestibility. Firstly, they pointed out that most abused children have low intellectual capabilities. It is not clear whether the abuse or the intellectual disability caused poor performance. Secondly, they ascribed poor performance to limited verbal skills. Research findings suggest that children with low verbal skills experience difficulty comprehending verbally based memory interviews. Thirdly, they ascribed poor performance of the abused children on memory tests to behavioural disturbance. The researchers explained that abused children could have been nervous of the male stranger in room. This fear could have caused some anxiety, which blocked optimal encoding and consolidation of the event into memory. Lastly, the researchers suggested that the interviews reminded the participants about the previous forensic interviews, which caused a shut down during free recall and compliance with leading information. Despite these differences, Goodman and co-workers in 2001 reported no significant differences in performance between abuse and non-abused children.

Eisen et al. in 2007 also investigated the effect of trauma on memory suggestibility. The sample comprised of 328 children, assessed at Mt Sinai Hospital in Chicago.

The researchers categorised the children into five groups namely, sexual abuse (CSA), physical abuse (CPA), sexual abuse and physical abuse (SPA), neglect (NEG) and non-abused controls (CTRL). The researchers assessed the participants on cognitive functioning, general psychological functioning, dissociation measures, trauma related measures and event memory measures. A physician also conducted physical examinations, which included screening of the eyes, ears, mouth, complete genital and anal examinations. The physician also obtained blood samples through venepuncture. Before, during and after examinations, a researcher recorded the children's distress levels, using observation, physiological measures, and self-reports. Five days after these examinations, a research assistant not present during the initial physical examinations, administered the anogenital exam/venepuncture memory questionnaire.

The research findings suggested that children with histories of neglect performed poorly on the memory tests, compared to those with no history of abuse. The researchers also established that sexually and physically children were more accurate on memory related to the physical examination, compared to the neglected children. The sexually and physically abused children were less suggestible when confronted with misleading information about the physical examination, compared to neglected children. The researchers ascribed the memory advantage of the abused children, compared to neglected children, to trauma relevance of the anogenital examination. These findings are consistent with studies demonstrating elevated memory for trauma related material in traumatised adults (Eisen, et al., 2007).

Bruck and Melnyk (2004) reviewed 15 studies to establish the effects of stress, emotional arousal, and state anxiety on suggestibility. In 12 of the studies, children underwent a variety of stressful medical procedures. The remainder underwent some form of stressor, e.g. watching an emotionally arousing film. These researchers reported significant associations between stress/emotional arousal and suggestibility in eight of the 15 studies, indicating that high stress arousal correlates highly with low suggestibility levels. They concluded, "... the findings are inconsistent in that half of the studies failed to show any significant relationship and the nature of the

relationship changed across the significant studies” (Bruck, et al., 2004: 980). They attributed this variation to the fact that events varied across children in the same study (e.g. medical studies) and in some studies the event did not produce enough emotion to influence suggestibility. This finding links well with previous findings, suggesting that traumatized children have increased ability to recall emotionally relevant information, due to increased amygdale functioning associated with acute and enduring stress. However, episodic memory may decline, resulting in higher risk for suggestibility.

2.17 SYNOPSIS

This chapter aimed to prime the reader by providing a comprehensive review of selected topics related to suggestibility in children. The chapter commenced with a definition of suggestibility, thereby providing a common understanding of the concept. It then provided an operational definition, which guided the direction of this study, followed by a history of writings on suggestibility. The next section offered the theoretical foundations of suggestibility. Here, the review commenced with a broad perspective on the theoretical underpinnings of suggestibility, via a review of the cognitive theory of Jean Piaget, the psychosocial theory of Erick Erickson, and Kohlberg’s theory of moral development. From this broad perspective, the review was cascaded to focus on the neuro-cognitive theories, e.g. theory of mind, episodic memory, and source monitoring. The review proceeded to a discussion of social learning theories and suggestibility. Here, suggestibility was linked to factors such as reinforcement and attachment styles. Age was identified as a major variable involved in manifest suggestibility. Hence, this chapter provided a comprehensive review of age *vis a viz* suggestibility. The chapter then examined conditions conducive for suggestibility, including factors that mediate suggestibility, such as interviewer bias, the role of repeated questions, authority of the interviewer, event centrality, and the degree of participation. The link between intellectual functioning and suggestibility was also reviewed. Lastly, the chapter reviewed the role of psychopathology in manifest suggestibility, having cognizance of the fact that traumatised children are likely to develop some psychopathology, e.g. Acute Stress

Disorder, PTSD, Mood Disorder (depression) with and without anxiety. We identified a significant link between anxiety, past abuse, and heightened suggestibility. The study is of psycho-legal nature. Hence, a review of legal elements related to suggestibility follows in the next chapter.

CHAPTER 3

AN IN-DEPTH ANALYSIS OF RELEVANT READINGS ON THE LEGAL ASPECTS RELATED TO SUGGESTIBILITY

3.1 INTRODUCTION

Chapter two looked at the psychological aspects of suggestibility, while this chapter deals with the legal aspects of suggestibility as a separate construct. Taking cognizance of the fact that suggestibility is being analyzed in this study as it manifests itself within the legal justice system, it is important to dedicate a portion of the literature review to the relevant legal aspects of suggestibility. Because legal aspects interface with psychology, chapter three operationally references this aspect as the psycho-legal aspects of suggestibility. Hence, this chapter aims to review some relevant international charters, legal instruments, and policies related to suggestibility. This chapter commences with a review of international conventions and charters of the United Nations (UN), which are relevant to child suggestibility. In subsequent sections, the review narrows down to the African Continent, i.e. the African Union (AU) charters, followed by the Southern African Development Community (SADC) treaty, and finally the legal instruments and policies of Namibia.

The Republic of Namibia (hereinafter, Namibia) is a member of the UN, AU, and SADC. Article 144 of the Namibian Constitution explicitly incorporates international law and makes it part of the law of this country (Ruppel, 2009). Hence, public international law is part of the law of Namibia. It does not require any transformation or legislative act to become so. The international law however, has to conform to the Constitution, which takes the position of the supreme law of Namibia (Ruppel). Where international law is in conflict with the Constitution, the

Constitution takes precedence. A treaty will be binding upon the Republic if such treaty meets the relevant international and Constitutional requirements.

3.2 INTERNATIONAL INSTRUMENTS

The focus on the protection of the rights of children under international treaty law can be traced back to the declaration of the Rights of the Child by the League of Nations in 1924 (Ruppel). The document contained only five principles, which Member States used as a guide to child welfare. The General Assembly revised this document in 1948, and then in 1959 the General Assembly revised it as the UN Declaration on the rights of the child. In 1978, Poland proposed a review of the declaration. With minor adjustments, this declaration became the basis for the 1989 Convention on the Rights of the Child (CRC) (Ruppel, 2009).

3.2.1 Beijing rules

Prior to the CRC, the UN developed the Minimum Standards for the Administration of Juvenile Justice, the so-called Beijing Rules. The General Assembly adopted these rules through Resolution 40/33 of 29 November 1985. The subsequent section provides a review of some of the relevant rules, prior to discussion of the CRC.

Rule 4 regulates the age of criminal responsibility, stating that the age of criminal responsibility should not be fixed at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity. Hence, decision makers should consider whether a child could live up to the moral and psychological components of criminal responsibility.

Rule 12 regulates that police officers dealing with juveniles, should have special training. Police officers are usually the first point of contact with juveniles; hence, special training is required to enable them to ask the relevant age specific questions and understand juvenile behavior.

Rule 14 states that a competent authority should adjudicate juvenile offenders. Such an authority can be the court, tribunal, board, council, etc. The proceedings shall be in the best interests of the juvenile. The environment shall allow the juvenile to understand and participate freely during the proceedings. Hence, the competent authority should make use of personnel having a good understanding of child development, especially cognitive development, because cognition affects juvenile capacity for reasoning and understanding of abstract legal concepts.

Lastly, **Rule 22** sets forth the need for professionalism and training of personnel dealing juveniles. This rule recommends the use of professional education, in-service training, refresher courses, and other appropriate modes of instruction to establish and maintain the necessary professional competence of all personnel dealing with juveniles. At minimum, personnel should have training in law, sociology, criminology, or any other of the behavioral sciences. Such professional backgrounds would allow personnel dealing with juveniles to be sensitive to some psycho-legal issues, including suggestibility.

3.2.2 Convention on the Rights of the Child (CRC)

The CRC was adopted by Resolution 44/252 of 20 November 1989 at the Forty Fourth Session of the UN General Assembly. It came into force on 2 September 1990, in accordance with Article 49(1) of the CRC (Ruppel). The CRC consists of 54 articles, covering the full range of human rights, including civil, cultural, economic, political, and social rights. The CRC provides for children to be brought up in spirit of peace, dignity, tolerance, freedom, equality, and solidarity. According to Ruppel, the Convention is founded on the following four principles:

- **The right to equality:** No child may be discriminated against on basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

- **The best interest of the child has to prevail:** The best interest of the child is paramount in all decisions that might have an impact on the child. This applies to family and State.
- **The right to life and development:** Every MemberState must ensure proper survival and development of the child through provision of health care, education, and protection of the child against economic and social exploitation.
- **Respect for children's own views:** Children should be taken seriously, and they should be involved in decision-making processes appropriate to their age and maturity.

The principle of the best interest of the child and respect for the child's own views, takes a central position to the issue of child suggestibility within the law. The best interest of the child implies that decision-makers must consider physical, emotional, and psychological aspects of the child's well-being in every decision that affects such a child. Respect for the child's own views enables the child to express his/her own views without any hindrances. Some psychologically immature children may require special conditions and assistance (support), in order to promote unrestricted freedom of expression, while eradicating distortion of their thoughts and ideas. In this regard, the legal systems of Member States have the obligation to provide conditions conducive for children to express themselves, considering their psychological immaturity and vulnerabilities.

Articles 12 and 13 of the CRC need special attention because of their relevancy to this study. Article 12 of the CRC regulates that all Member States shall ensure that a child who is capable of forming his/her own views, should be allowed to express those views freely. Such views must be afforded due weight in accordance with the age and maturity of the child (CRC, 1989). In application to this study, judicial or administrative proceedings are subject to the child's right of expression, directly or indirectly, through a representative or an appropriate body in such a manner that is

consistent with the procedural rules of national law. Article 12 recognizes the limitations that children may have with regard to their ability to express themselves; hence, the need for a representative to assist, deals with these limitations. While recognizing these limitations, Article 12 does not rule out the importance of children being allowed to express their views freely, with special emphasis on consideration of their age and maturity. Age and maturity are critical variables in child suggestibility, as discussed in the previous chapter. If these variables are centrally considered, then suggestibility will be, to some extent, taken care of within legal settings of Member States.

Article 13 of the CRC, states that children shall have the right to freedom of expression, which includes to seek, receive and impart ideas of all kind, regardless of frontiers either orally, in writing or in print form of art or any other media of the child's choice (CRC, 1989). This article emphasizes the importance of allowing children to express themselves in alternative, easier ways. This article acknowledges the importance of providing different means of communication for children, considering their limitations. For example, children may express their inner feelings better through drawings, compared to verbal communication. This is because language may not have developed to that optimum level to allow for full expression of their inner feelings and thoughts.

“It is essential that every child who is the subject of ... court proceedings feels (if he or she is intellectually able to) that he or she is the main participant in the proceedings. Research ... indicates clearly that this is not likely to occur where the child is forced to communicate via an interpreter. In this situation ... children tend to view the proceedings as strange and meaningless. Mr KGT Kutshwa ... noted that the use of an interpreter tends to render the proceedings artificial, and distances the child” (Robinson, 1998, p 112).

An inability to understand the child in his or her own language may mean that personnel miss subtle nuances of the evidence given by the child. The Beijing Rules and the CRC set the tone of a committed international body to the fair treatment of

children inside and outside the criminal justice system. Member States, including Namibia, assumed some criteria to guide them when dealing with children within the legal system.

While the Beijing Rules and the CRC make effort to alert Member States on the need to treat children as a special population, it does not specifically point out the areas that may require special attention when dealing with children within the legal justice system, such as suggestibility. The purpose for this broad approach could have been to accommodate every Member State. The Member States and regional bodies may need to constitute their own unique interpretation of these documents according to their specific needs. Hence, the next section offers a review of some relevant regional agreements on children.

3.3 CONTINENTAL INSTRUMENTS

The Republic of Namibia forms part of a larger community of nations within the Continent of Africa. The majority of Member States embraced the protection of children's rights and welfare as the cornerstone to just social and economic development; hence, the African Charter on the Rights and Welfare of the Child (ACRWC) became known.

3.3.1 The African Charter on the rights and welfare of the child

The African Charter on the rights and welfare of the child spells out the rights of children in Africa, as evidenced in OAU Doc. The CAB/LEG/24.9/49 (1990) came into force on 29 November 1999. The African Charter incorporated some principles from the CRC. Article 4 of the African Charter regulates the best interests of the child, stating that all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, shall provide an opportunity for the child to be heard, either directly or through an impartial representative. This echoes one of the fundamental principles of the CRC, namely children's rights should be

considered within the context of the “best interest” principle, thereby guiding judicial institutions in their dealings with juveniles.

Article 7 refers to the child’s freedom of expression, ensuring that every child who is capable of communicating his or her own views on matters of concern has the right to express these views and opinions freely, and to disseminate such opinions. However, this right only realizes within contexts and conditions conducive for freedom of expression, and Member States have the obligation to provide and promote such contexts and conditions. Ensuing from this right extends the right to be interviewed in a language that is easy for the child to understand and fully express the self. Hence, suggestive questioning poses a barrier to freedom of expression.

Article 9 guarantees freedom of thought, conscience, and religion. Every child shall have the right to freedom of thought, conscience, and religion. Hence, Member States must provide opportunities for children to express their thoughts without hindrance.

The preceding articles have specific relevancy to child suggestibility within the legal justice systems of Member States. In order to be in full compliance with these articles, personnel involved in forensic proceedings must avoid exploitation of children’s vulnerability to suggestion.

3.4 THE SUB REGIONAL LEVEL

The Southern African Development Community (SADC) was established in Windhoek in 1992 as a successor to the Southern African Development Coordination Conference (SADCC), founded in 1980. The SADC Treaty reflects the common ground of rights, principles, mores, and privileges enjoyed by citizens of Member States, as discussed below.

3.4.1 The SADC Treaty

The Republic of Namibia is one of the 15 Member States of SADC. The objectives of SADC are as follows:

- The achievement of development and economic growth;
- The alleviation of poverty;
- The enhancement of the standard and quality of life;
- Support of the socially disadvantaged through regional integration;
- The evolution of common political values, systems and institutions;
- The promotion and defense of peace and security; and
- Achievement of sustainable utilization of natural resources and effective protection of the environment;

This list of objectives leaves the impression that SADC does not prioritize the rights and welfare of the children. However, the promotion of socio-economic cooperation among Member States also includes improvement of children's rights and welfare. Although the SADC vision does not explicitly refer to children's rights, the basic premise of the SADC Treaty also provides for children (Ruppel, 2009). The SADC protocol on Gender and Development refers mainly to the issues of gender mainstreaming. Article 25 alludes, among others, to affirmative action and access to equitable justice. However, it does not explicitly provide for protocols on conducting forensic interviews involving children, nor does it provide general guidelines for the administration of juvenile justice. SADC established a tribunal based in Windhoek to hear cases between Member States, natural and legal persons. To date, the tribunal has not adjudicated on any case involving a child.

Ruppel (1999) concluded that the Republic of Namibia committed itself to a number of international legal instruments related to children's rights. Despite this commitment, Ruppel noted that there is still room for improvement when it comes to the implementation, due to procedural limitations. At international level, the issue of

children's rights is clear, although it does not provide bold parameters for conducting child forensic interviews prior to courtroom hearings. The same applies at the SADC regional level. Various provisions exist for courtroom hearings involving minor children, but the proceedings for conducting forensic interviews prior to criminal court hearings are not well formulated.

3.5 NATIONAL LEVEL

3.5.1 The Namibian legal scenario

Chapter one referred to the significant increase of child sexual abuse cases in Namibia. To emphasize this point, a daily newspaper called the *Namibian* on the 5th of October 2009, reported that at least 200 children - from newborns to teenagers of 16 years - have been murdered, raped or assaulted in Namibia for that year, or had died under suspicious circumstances. The report continued as follows:

“These reports are generally regarded as being only a tip of the iceberg, as many crimes are left unreported or aren't reflected in the official statistics. Against this backdrop, the country this week celebrated its 10th day of the Namibian child. The theme suited the gloomy predicament Namibia's children increasingly find themselves in ... According to Police records, at least 66 children have been raped so far this year. The youngest was three. At least 11 were murdered, the youngest, a little boy of three months. At least 28 children drowned, the youngest a baby of nine months from the Omusati region. At least five children took their own lives, the youngest only ten.”

The news article further proceeded:

“The highest teenage pregnancy rate of between 12 and 18 per cent was recorded at Keetmanshoop, followed by Karasburg with between eight and nine percent, while Luderitz recorded the lowest rate of eight percent”.

These statistics show that with these crimes committed against children, many who survive may live to tell their stories under differing circumstances, including forensic interviews. It means that the Namibian legal justice system should be prepared to interview such children in a manner appropriate to their cognitive, conative, and emotional development, in order to minimize suggestibility and maximize reliable forensic information.

The Child Care Act 74 of 1983, section 42 reads as follows:

- (1) Every dentist, medical practitioner, nurse or social worker who examines, attends or deals with any child in circumstances giving rise to suspicion that that child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease, shall immediately notify the Director-General or any officer designated by him for the purposes of this section of those circumstances;

By definition, 'medical practitioner' refers to all individuals required to register under the Medical, Dental and Supplementary Health Services Professions, Act 56 of 1974, section 1, including psychologists. A contravention of this subsection constitutes a punishable offence (Child Care Act 74 of 1983, S 42(5)). A health professional who, in good faith, reports suspected ill-treatment of children, cannot incur legal liability for the same (Child Care Act 74 or 1983, S 42(6)). Bedil and Lind in Robinson (1998) take the view that good faith alone is not sufficient and that the suspicion must be reasonable, thus adding a requirement for exemption from criminal liability, which the legislator deemed fit to omit. Although the wording 'probably might have been deliberate' is imprecise, the legislation clearly aims at ensuring the reporting of a wide range of abuse and neglect cases. The omission of any reference to emotional or psychological abuse may be problematic, although such cases probably fall under the category of ill-treatment (Robinson, 1998). Van Dokkum in Robinson (1998) raised the question as to whether Section 42 of this Act places a burden on health professionals to breach the duty of confidentiality. He

concluded that the duty of care should be favoured over confidentiality. Hence, procedural ill-treatment during questioning of the child victim of a sexual offense might be included in the preceding excerpt, thereby requiring health professionals to bring suggestible questioning to the attention of the relevant officials.

The Namibian Constitution is the supreme law of the country, and provides a framework for other legal instruments. The subsequent paragraphs present a review of the relevant sections of the Namibian Constitution, as applicable to the research theme. The Namibian Constitution (1998: 1) has one of its preambles as:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice, and peace;”

The inherent dignity is not only applicable to adults, but also to children and that includes dignity in terms of rights justice. Article 10 of the Namibian Constitution guarantees the following:

- All persons are equal before the law;
- No person shall be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Several specific rights, which may roughly be depicted as personal and (second generation) economic and social rights, are afforded by the Namibian Constitution to individuals of minor age. For the sake of convenience, those rights are classified under the rubric of:

- Typical personal rights of the child;
- Social rights of the child;
- Economic rights of the child; and
- Rights of the child in the context of the administration of justice;

The focus of this research, i.e., suggestibility of the child, mainly deals with the rights of the child in the context of the administration of justice. A child, like everyone else, is entitled to the due process provisions in the Namibian Constitution, i.e., “all persons are equal before the law”.

In order to fully appreciate the constitutionally protected right of the child to due processes within the context of the administration of justice, the Criminal Procedure Act 51 of 1977 , provides statutory protection for child witnesses appearing before the criminal courts.

3.5.5 The court may be held *in camera*

Section 153(5) of the Criminal Procedure Act 51 of 1977, which provides for the court to be held *in camera*, reads as follows:

Where a witness at criminal proceedings before any court is under the age of 18 years, the court may direct that no person, other than such witness and his guardian or a person *in loco parentis*, shall be present at such proceedings, unless such person’s presence is necessary in connection with such proceedings or is authorized by the court.

This provision supports the protection of children who may feel afraid of or embarrassed by testifying in an open court, in keeping with the due process provisions in the Namibian Constitution. The provision is not automatic, but the court can apply the provision *mero motu* and no special evidence needs be led to establish a need for the case to be held *in camera* (Robinson, 1998). However, the parent, guardian, or person *in loco parentis* cannot be removed from the court in terms of this section, and it is sometimes the case that such persons are the cause of the fear or embarrassment. It is possible, however, to provide the child with adequate protection in such circumstances through application of section 170A of the Criminal Procedure Act 51 of 1977.

Section 154(3) of the Criminal Procedure Act 51 of 1977 provides further general protection for child witnesses in terms of a privacy requirement. The section states that no person shall publish information, which reveals or may reveal the identity of a witness at criminal proceedings who is under the age of 18 years. However, a proviso to the protection is that the presiding officer may authorize publication of any information if he or she is of the opinion that this would be just and equitable and in the interest of any particular person.

3.5.6 The use of intermediaries

Section 170A was inserted into the Criminal Procedure Act 51 of 1977, following the South African Law Commission report on the protection of child witnesses (Section 3 of the Criminal Law Amendment Act 135 of 1991). Robinson (1998: 179) states as follows:

“This legislation marks a dramatic departure from the past and provides meaningful protection for children who find it difficult to cope with direct cross-examination or to confront the alleged offender by being in the same room as him or her.”

In terms of section 170A (1) and (2) the court may, when it appears that testifying would expose a witness under the age of 18 years to ‘undue mental stress or suffering’ appoint an intermediary through whom all examination, cross-examination, and re-examination shall take place. The intermediary may paraphrase questions and put them to the child in a language that is appropriate to the child, as long as he or she ‘convey(s) the general purport of the question’.

The Minister of Justice has published in the Government Gazette (Government Gazette 15024; Regulation Gazette 5127, volume 337 of 30 July 1993), a list of persons who may be appointed as intermediaries. These include, registered medical practitioners specialized in pediatrics or psychiatry, family counselors from a welfare or educational background, child care workers who have four years’ experience and a

qualification in child care, registered social workers with two years' experience, and registered psychologists.

In terms of section 170(A) (3) the child no longer has to be in the courtroom to testify. The section reads as follows:

“If a 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 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 the medium of any electronic or other devices, that intermediary as well as that witness during his testimony.”

This means that the witness and the intermediary can sit in a different room, and can be seen by persons in the courtroom by means of a closed-circuit television. Another method is to have the witness or intermediary seated in a room adjacent to the courtroom, visible through a one-way glass, with an audio system to relay questions and answers. A problem with the implementation of section 170A is that not all magistrates' courts are properly equipped to carry out the procedures. However, most urban centers do have the appropriate facilities and it is possible to transfer cases to courts that do have the equipment.

3.5.7 Demonstrations, gestures and non-verbal expressions

The general rule in terms of section 161(1) of the Criminal Procedure Act 51 of 1977 that evidence should be given *viva voce* is qualified in section 161(2), stating that in the case of a witness under the age of 18 years the expression *viva voce* shall be deemed to include demonstrations, gestures, or any other form of non-verbal

expression. According to the South African Law Commission report on protecting child witnesses, the aim of this amendment was to provide for the fact that children often make gestures, nod, or shake their heads in response to questions. The wording of the Act allows children who have insufficient vocabulary or who are too embarrassed, to use words indicating parts of the body or sexual acts. It is also useful for children who have speech related disabilities (Robinson, 1998). Although not expressly stated in the legislation, the wording is wide enough to permit children to point to parts of their own bodies, imitate actions, and/or use anatomically correct dolls. Songca in Robinson (1998) raised doubts about the use of anatomically correct dolls as a tool for diagnosis of child abuse, but concluded that the dolls are useful to assist children who cannot verbalize their traumatic experiences.

The preceding legislation aims at creating an environment conducive for the fair, just, and equal treatment of all individuals within the justice system, including children, while having consideration for the age of the child. Article 15 (5) of the Namibian Constitution prohibits detainment of children under the age of 16, because detention may cause traumatization to children. Chapter two of this thesis already established the link between exposure to trauma and increased child suggestibility with impaired memory recall (Goodman, et al., 2001; Eisen, et al., 2007). Article 18 of the Namibian Constitution specifically references the concept of ‘administrative justice’, thereby stating that administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation. This provision compels judicial institutions and officials to administer the law fairly. Hence, fair administration requires consideration of the special needs of children as they go through the legal justice system.

While the Namibian Constitution may appear to be non-explicit on the rights of the children within the legal justice system, it pronounces itself through article 144, which incorporates international law into Namibian Law, e.g., the incorporation of the Criminal Procedure Act 51 of 1977, with amendments thereto. This provision implies that international law, together with UN, AU, and SADC charters and

conventions, referenced in preceding paragraphs, are applicable to the Republic of Namibia.

In addition, the children's courts are often underrated and under-resourced. The need for more resources is based in the Namibian Constitution, which enjoins that a child's best interest is of paramount importance in every matter concerning the child. If this applies to all children, then surely special care of the neglected, and abused children who appear before the courts are priority. Personnel are likely to continue to fall short of the 'best interest' standard in a substantial proportion of cases involving children, unless they fully implement the reforms contended for in applicable legislation.

The subsequent paragraphs now review some relevant legal instruments that may affect child suggestibility within the legal justice system of the Republic of Namibia, starting off with a discussion of the Combating of Rape Act 8 of 2000.

3.5.5 Combating of Rape Act 8 of 2000

The Combating of Rape Act 8 of 2000 introduced changes to previous legislation through re-definition and broadening of the concept 'rape'. This Act provides for rape of boys and married women, and introduces sentences that are more rigorous for those convicted of sexual crimes. By illustration, section 2 (1) (d) of this Act provides for conviction on charges of rape if an individual commits a sexual act with a person who is under the age of 14 years, and if the perpetrator is three years older than the complainant is. The provisions of this section aim at the protection of persons who may fall victim to rape due to other people taking advantage of the immature intellectual abilities of the victim. Section 4 of the Act makes it possible for a boy under the age of 14 to be capable of committing rape. Such cases are treated like any other criminal case where children below the age of seven are considered incapable to commit crimes because they cannot sufficiently understand what is right and wrong. Children between ages 7 to 14 can be convicted, if the

prosecutor is able to demonstrate that children in this age category knew that what they were doing was wrong.

The very fact that it is possible to convict a boy below the age of 14 of rape means that a number of children in this age category could potentially testify in court either as the perpetrator, or as the complainant. Hence, police officers and social workers should be in a position to conduct effective forensic interviews with children in this age category. Another section worth noting is Section 8 of the Act. This section allows for evidence on the psychological effects of rape to be admissible in court. The evidence will be admissible for showing that:

- The act of rape could have been committed;
- The act could have been committed under coercive circumstances;

Such admissible evidence also assists the court in terms of imposing a sentence, with consideration of the extent of mental harm the complainant has suffered. Consideration of the psychological effects of rape as admissible evidence is a welcome development, but it remains one directional, as the purpose of the evidence is mainly to substantiate allegations of rape, together with evidence about the victim's subsequent psychological functioning. The purpose is also to assist the court to impose an applicable sentence, having consideration for the degree of mental harm incurred by the rape. While it may be covert, the role of the psychologist as expert should have also been to assess the credibility of the testimonies of some complainants, such as children. This is important because children may have some limited cognitive abilities due to age. This may allow problems such as suggestibility to slip through the fingers of the law and cause children to fail in providing reliable testimonies.

The **Combating of Domestic Violence Act 4 of 2003** also makes provision for psychological evidence to be admissible in court to show the gravity of domestic violence, particularly cases involving children. This is a welcome development – yet, the assignment of psychologists should extend to, at minimum, also allow for the

assessment of related, yet important psychological aspects such as memory recall and suggestibility.

The **Combating of Immoral Practices Amendment Act 7 of 2000** prohibits sexual acts with children below the age of 16, or sex with a person who is three years older than any particular child is. It however does not provide for forensic interviewing procedures with such children, having consideration for potential cognitive limitations and suggestive interviews. The Namibian newspaper of 03/12/2010 reported the acquittal of a former Supreme Court judge, charged with child molestation under the Combating of Immoral Practices Act. One of the main reasons why the judge who was presiding over the case acquitted the Supreme Court judge was the inconsistencies contained in the testimonies of the ten and nine year-old girls. The nine year-old disagreed with most of the allegations made by the 10-year-old girl. There were also inconsistencies between the police statements of these two girls, and their *viva voce* statements offered during the hearing in court. The presiding judge noted serious attempts to tamper with evidence. This was the second time that the same presiding judge acquitted the accused on the same case (S v Teek SA 44/2008, NASC2009).

This case illustrates that 'age' could present problems of credibility to the judiciary, as it applies to credible forensic interviewing. Credibility of statements is subject to the ways and means of obtaining 'suggestion free' statements during forensic interviewing. In the referenced case, an expert most probably did not assess the complainants' proneness to interrogative suggestibility, since no argumentation regarding this arose during the hearing. While it is important to have very good legal instruments to combat certain crimes, it is important to support legal instrumentation with provision of good protocols for conducting forensic interviews with children. The Combating of Rape Act amended the Criminal Procedures Act of 1977 in an attempt to provide a conducive environment during any trial, particularly involving vulnerable witnesses, such as children. A review of the relevant sections of the Criminal Procedures Act of 1977 follows in the next section.

Section 158 of the Criminal Procedures Act was amended to provide special arrangements for vulnerable witnesses. This Act defines a vulnerable witness as a person:

- (a) who is under the age of 18 years;
- (b) against whom an offense of sexual or indecent has been committed;
- (c) against whom any offense involving violence has been committed by a close family member or spouse;
- (d) who may suffer undue stress due to mental or physical disability.

The provision of special arrangements involves amongst others:

- (a) The relocation of the trial to another location while the evidence from the vulnerable witness is being heard;
- (b) Re-arranging furniture in court to suit the needs of the vulnerable witness;
- (c) Providing a suitable person (e.g. Social Worker) to be with the witness while giving evidence;
- (d) Granting permission to the witness to give evidence behind a screen or in another room connected to the court through a closed circuit television or one-way mirror or any other device that meets the needs of the above.

The support person shall assist the witness with the answering of the questions, and may inform the court about the witness' stress levels and whether he/she can continue with the testimony. Section 166 of the Criminal Procedures Act protects children under the age of 13 to be cross-examined directly. It provides for the cross-examination to be conducted through the presiding judge or judicial officer who shall either restate the questions, simplify or rephrase such questions to the witness. The court can also allow such cross-examination to occur through any other person who has relevant qualifications as determined by the minister, provided the person is immediately available for such proceedings.

Section 216 of the Criminal Procedures Act 1977 was also amended to allow for children younger than 14 years having their previously recorded statements admissible in court. Such evidence can be admitted through playing of a video or audio tape of the statement to the court, or through a written record of the statement or through oral evidence.

As evidenced by the review of the preceding sections of the Criminal Procedures Act of 1977, the legislation provided significantly for the protections of vulnerable witnesses, such as children, during adjudication of cases. These protections include cross-examination of vulnerable witnesses through the presiding officer or another person, the provision of a support person, the provision of special arrangements and the admissibility of evidence from children under the age of 14 through other forms such as video recordings. These protections significantly alleviate the stress experienced during trial proceedings, and although these protections are well applied at a broad level, they do not address the quality of the forensic interviews. There seems to be a general lack of specific provisions on how children should be interviewed, in order to allow them to recall accurate memories of the events without undue influence from the interviewers.

The Ministry of Gender Equality and Child Welfare is working on repealing the outdated Children's Act 33 of 1960 by introducing the Child Care and Protection Bill. In 2009, the ministry circulated the draft bill for public commentary. This culminated in a 2010 report on public commentary on the proposed bill. The target date for submission of this bill to parliament was 2011, for reviewing of relevant areas, dealing mainly with child forensic interviews. These areas are also relevant to this study.

The proposed bill provides for the appointment of a Children's Ombudsman. The main functions of such a person will be to investigate complaints arising under the Child Care and Protection Act and to monitor the implementation of the UN Convention on the Rights of the Child and other instruments relating to child

welfare, which are binding on Namibia. This provision at least ensures adherence to the important international instruments provided for.

The most important development under this bill is the provision for children's courts. Under these provisions, every magistrate's court is a children's court and every Magistrate is a Commissioner of Child Welfare. The bill provides for Commissioners to receive appropriate training before assuming their duties. The bill also provides for assessors. These assessors could be psychologists, doctors, or educators, and they will assist the Commissioner in determining the facts of the case. The Commissioner remains responsible for legal issues arising from such cases. The bill also provides for the creation of a comfortable environment for court proceedings. Such environment must be informal and furnished in a manner that would put children at ease. The proceedings are private, except for relevant people such as the child, legal representatives, social workers and any other person that the court may recommend to attend. The bill protects the right of child participation appropriate to the child's age and maturity, rather than setting a specific age to determine child participation. The Commissioner has the right to intervene in the questioning of the child and children shall be questioned through an intermediary such as a social worker. The court may also order that the case be heard in the absence of a child where such presence may not be in the best interests of the child. The bill also provides for certain professionals such as medical practitioners, psychologists, or developmental practitioners to provide reports to the court about certain cases.

The national consultative process on the revisions of the Draft Child Care and Protection bill recommended that all provisions of the Criminal Procedures Act of 1977 section 158 A be retained as they are in the bill. These proposed changes in this bill moved some steps further in recognizing the importance of understanding and assessing the child's psychological development as they go through the court proceedings. The use of intermediaries, the involvement of assessors and the writing of reports will at least assist in placing the hands of professionals having knowledge of child development into the fray of legal proceedings where children are involved.

The greatest hope is that the assessors, intermediaries, and report writers shall have the capacity to detect important issues such as suggestibility and memory recall. The success of this process closely links to the role of experts, such as psychologists, in court and to the legal justice system. The next section considers the child witness in and adversarial legal system.

3.6 CHILD WITNESSES IN AN ADVERSARIAL LEGAL SYSTEM

In chapter one, the Namibian legal justice system was described as adversarial or accusatory. This means that legal practitioners, that is, the prosecution and the defense, argue to prove in criminal cases beyond reasonable doubt that the accused is either guilty or not guilty. The basic feature in the adversarial system is what has been called the primacy of oral evidence. This means that common law developed by judges over years, attaches great importance to evidence given in court by word of mouth from the witnesses who actually directly observed the incident in question happening. This implies that there is a traditional tendency for trusting those who saw more than those who heard. Namibian law does not have a jury system. The common law is Roman-Dutch. The criminal procedure was inherited from the English adversarial system. The United Nations Convention on the rights of the Child, article 3(1), provides that the best interests of the child shall be a primary consideration in all activities concerning children. The protection of the child witness from trauma and fear is equally important, compared to the establishment of the truth. Children must not be subjected to secondary trauma and stress and the concern is whether the adversarial system protects children from re-traumatization. Muller (2001) identified two problems when a child is a witness in an adversarial system, including:

- Procedures in the adversarial system may result in trauma for children;
- It may affect the accuracy of a child's evidence.

Two features embedded in the adversarial system that could cause great difficulties for children are confrontation with the accused, and cross-examination. The accused

has a right to hear the accusations face-to-face. This implies that children have to testify in the presence of the alleged perpetrator. In addition, children have to narrate their experiences in a formal and unfamiliar courtroom. The Criminal Procedure Act of 1977, however, made some provisions that a trial involving a child witness may be held *in camera*, and the presiding officer has the discretion of re-arranging the court to suit the child's needs, or having the trial done elsewhere where conditions are conducive for the child to be at ease. However, these provisions do not capture all of the problems associated with child witnesses, since the presiding officer has the discretion of effecting the changes provided for in section 158. If the officer deems it unnecessary to effect such changes, the child must confront the perpetrator.

One area of controversy in an adversarial system involving child witnesses is cross-examination. There is always tension between the need to provide the child witness with proper protection and the need to ensure a fair trial that will lead to a just result. In criminal cases, the child should inevitably be cross-examined by the defense lawyer. The first aim of cross-examination is to discredit the witness and secondly to put the accused person's version to the child to see if the child (accuser) will retract or modify what he/she has said before. The second aim is to get further information from the child (accuser) that can be useful to the defense of the accused. The questions may be of such nature to discredit the child (accuser) and diminish the strength of the allegations against the accused. Cross-examination of the child witness is always to the advantage of the defense because of the following:

- The event may have occurred long ago and the child's memory of the incident may have faded;
- The child will naturally be nervous and stressed due to the unfamiliar court environment, which stressors may affect memory recall, making the child vulnerable to suggestion;
- The defense is allowed to skillfully confront the child with questions that may be leading or suggestive of the answers the defense wants;

The main concern is whether there could be a reduction of trauma for the child witness during cross-examination, yet simultaneously accord the defense the opportunity to test thoroughly the evidence of the child. It appears rather impossible to satisfy both sides without compromising the fundamental rights of the other side to equal justice during trials. A proposal to deal with the aforementioned problem may be to introduce an inquisitorial approach in cases involving child witnesses. In a paper entitled *Child Witnesses in Scotland Today*, Iain MacPhail and Sheriff Principal (2003) suggested that a neutral examiner who might be a judge or magistrate must interview the children, thereby taking care of the needs of the prosecution and defense. When a child testifies, the president of the court should examine the child witness - not the opposing parties. MacPhail gave examples of civil law countries upholding this approach, such as France, Germany, and the Netherlands.

Muller (2001) however rejects such a proposal, saying that legal practitioners do not have adequate training in the field of child development, and/or in communication with children within specialized settings. She also questioned the need for training legal practitioners in child development, because this forms but a small portion of legal practitioner's duties. She proposed examination of the child witness by a skilled interviewer in a separate room, but connected to the court via video link. Applying his/her knowledge of children's cognitive and language development, the interviewer will examine the child under the watchful eye of the court. Parties to the trial, i.e. the defense and prosecution, may then raise questions to the examiner via earphones, enabling the interviewer to clarify those issues with the child witness. This way the cross-examination also satisfies the need for clarification.

Muller further proposed the creation of a specialist position, having knowledge of psychology and law to conduct examinations of this nature. Such a specialist position requires thorough knowledge of child development and communication, child memory and suggestibility, child sexuality, and the psychology of victimization, together with training in court procedures. Muller proposed the terms "child expert" as the job title of the person holding the specialist position, since the

specialist position requires functioning at much higher level, compared to an interpreter. The specialist position of child expert must be based in the ministry of justice, on a fulltime capacity, to ensure constant availability.

The observations and recommendations of the Muller (2001) and MacPhail (2003) highlight treatment of child witnesses as special populations with special requirements. The recommended adjustments to some extent address the traumatic effects of the court proceedings on the child witness. The assumption is that such an environment should then allow children to freely express themselves and recall effectively the incidents. However, even with these changes in place, there is still no guarantee that children will not have their memories influenced by different modes and styles of interviewing.

The use of intermediaries, video-linked courts, re-arrangements of courts, and adjustments to cross-examination may structurally change the environment of the child witness, but not the quality of the interview. The memory of children below the age of ten years, as noted earlier, is vulnerable to suggestion during forensic interviewing. In order to attain the goal of best memory recall from child witnesses, changes in the quality of forensic interviewing should accompany the structural changes to the court system. The development of a tailored toolkit for conducting forensic interviews with child witnesses may best satisfy this goal. Both the defense and the prosecution must be fully knowledgeable about such a toolkit, while the courts must enforce the use thereof.

The engagement of a child expert, as suggested by Muller, may assist towards reaching this goal, provided such an expert has adequate knowledge on suggestibility, and court procedures allow for the rejection of suggestive questions by the defense and prosecution. The rejection of suggestive questions should be based on facts and theory – confirming why the child expert must demonstrate expertise within the fields of child psychology and child development. Such a child expert will then also be able to testify as expert witness when the need arises. Having

referred to the ‘expert witness’, the next section examines the role of the psychologist as an expert witness.

3.7 THE PSYCHOLOGIST AS AN EXPERT WITNESS

Justice A. Ebrahim of the supreme court of Zimbabwe made the following remark in review of an 11 year child sexual abuse case (*SvS* 1995 (1) SACR 50 (ZS), pp. 51):

“To reach an intelligent conclusion in such an analysis, it is necessary to apply a certain amount of psychology and to be aware of the recent advances in that discipline. This would undoubtedly mean an increase in the workload of judicial officers and the machinery of justice generally, but ways had to be sought of accommodating this as it was the price to be paid for administering justice professionally in an increasing complex society.”

This quotation demonstrates the growing need for psychological knowledge within the legal justice system, echoed beyond 15 years ago. Hence, it is important to review how psychologists are utilized within the legal justice system.

Psychologists often find themselves in court to provide expert information on cases that they handled during treatment, or present cases to the court on request of the court or a legal practitioner. When the court lacks specialized knowledge or skill to draw sufficient conclusions, psychologists often present expert opinion for consideration by that court. According to Ewing (2003), a person is qualified to testify as an expert if he/she has special knowledge, skill, experience, training, or education sufficient to qualify that person to testify as an expert on the specific subject area. Ewing (2003) further qualified the need for expert testimony as follows:

[Where] “scientific, technical, or other specialized knowledge will assist the court to understand the evidence or to determine fact in issue, a witness

qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise” (p58).

The opinion of the expert should hence be to assist the court to interpret or draw inferences from the facts of a case by making readily intelligible and capable analysis of information that would be difficult to appreciate by those not skilled in the field (Allan, 2005). A court of law will admit the psychologist’s opinion only if it is of assistance to the court, and will exclude such opinion if it is not useful to the court. Certain general rules govern the admissibility of expert testimony. Before looking at these general rules for admissibility, a brief review of the history of forensic psychology follows in subsequent sections.

Ewing (2003) noted that the history of forensic psychology dates back to 1846 when Professor Hugo Munsterberg published some early writings on forensic psychology. In his book of 1908, Munsterberg decried the absence of psychological testimony in the courts and attacked law for practicing without cognizance of the most important theory of psychology. Munsterberg further stated:

“... [The] relationship among thoughts and other mental processes ... has become indeed, a magnifying-glass for the most subtle mental mechanisms, and by it the secrets of the criminal mind may be unveiled” (Ewing, 2003, p55).

His attack on law practice for the non-recognition of psychology triggered a ferocious attack from the law fraternity. For example, a law professor, John Henry Wigmore, criticized Munsterberg’s writings because of the lack of references and evidence-based information. Critics also alleged that he was grandiose about the contribution of psychology to the courtroom.

While Munsterberg may have provided a text with limited evidence, his second edition of 1923 had its foreword written by Attorney Charles S. Whitman, former governor of New York, a man of unquestionable stature in the American legal

community (Ewing, 2003). This opened the gradual movement of psychology into the courtroom. For example, Robinson, a psychologist having a seat on psychology and law faculties, authored a book in 1935 entitled *Law and the Lawyers* (Ewing, 2003). This book marked the beginning of therapeutic jurisprudence, stating that, "... the law is concerned with the regulation, mitigation, and composition of human disputes. The fundamental stuff with which it deals is therefore psychological" (Ewing, p 57).

Following this introduction of therapeutic jurisprudence, several legal cases were adjudicated whereby the courts acknowledged the role of psychologists in the legal justice system, especially in the United States of America (USA). By illustration, in 1955 two psychiatrists named Guttmacher and Weihofen, asserted that clinical psychologists are rather tired of doing mere testing, while clamoring for larger roles (Ewing, 2003). In the watershed case of *Jenkins versus United States*, decided by the D.C. Circuit Court of Appeals in 1962, the issue was whether Clinical Psychologists could give expert testimony after three highly qualified psychologists had testified in court. The American Psychiatric Association and the American Psychological Association both issued amicable statements on the matter. The American Psychiatric Association disqualified psychologists from testifying in court because they were not medical doctors. The American Psychological Association argued that psychologists are equally trained to deal with psychopathologies. Presiding judge Bazeldon ruled in favor of psychologists, citing the extensive training of PhD clinical psychologists (Ewing, 2003). Ever since, several countries including Namibia provide for expert testimony by psychologists, pending psychologists' level of competence, such as Clinical and Educational psychologists.

Having briefly reviewed the history of expert witnessing, the next section offers a discussion on the rules of admissibility. The rules of admissibility hinges on admissibility of the testimony of an expert witness - not that of an ordinary witness. The most important consideration related to admissibility, is whether the expert has specialist knowledge on the subject under discussion. The court has the responsibility of deciding whether a particular person does indeed have the necessary

knowledge applicable to the case on trial, amongst other, registration with the relevant professional body as prerequisite. In Namibia, the Social Work and Psychology Act 6 of 2004 prescribes that a psychologist must register as a Clinical Psychologist or as an Educational Psychologist to qualify as an expert witness. The minimum requirement for registration is a masters` degree. If a psychologist is in possession of a PhD, the Namibian Health Professions Board recognizes such a person as a Specialist. It is the prerogative of the court to examine the competences of the expert. The presentation of the competences allows the defense to also question the qualifications and competences of the expert involved in the case. The expert usually has to answer to the following questions (Ewing, 2003, pp. 62-63):

- What is your profession?
- What is your current employment?
- What positions have you held previously?
- Did you specialize in any particular areas of psychology?
- What has been your experience in these areas of professional practice?
- Describe your education.
- Are you licensed?
- When were you licensed first?
- What does it mean to be a licensed psychologist?
- Are you board certified?
- When did you become board certified?
- What does board certification mean?
- By what process did you become board certified?
- Are you a member or fellow of any professional organization(s)?
- Have you published any books, papers, or articles?
- Do you hold any editorial positions?
- Have you conducted any independent research in the field of psychology?
- Have you received any grants to support your research?
- Have you received any awards or honours in the field of psychology?
- Have you previously qualified as an expert witness?

- In what courts?
- On what subject matter?

Experts must also possess theoretical and practical knowledge. These competences may be acquired formally or informally through continuous professional development, or formal pathways such as PhD studies. Workshops, seminars, and attendance of short courses are some of the informal methods of acquiring professional knowledge and skills. There should be evidence of having completed supervised clinical (practical) training. Exposure to specific areas of psychopathology, e.g. drug rehabilitation may be helpful if the case is related to drug dependence.

Next, the field of expertise must be a scientifically recognised field or specialty. Knowledge is usually conceptualised as a continuum, commencing at the generalist level, advancing to the level of the professional community, with the highest level where only a certain group of specialists will understand it. Opinions based on speculation are inadmissible in court, since scientific theory does not substantiate speculation. In South Africa the courts have never explicitly distinguished between speculation and opinion embedded in a scientific field (Allan, 2005). In the USA, admissibility is based on some rules notably the *Frye rule* (Blau, 1998). The rule states that an expert opinion should be based on information, data and conclusions that are generally accepted by the majority of the experts in the field (Blau, 1998). The courts however departed from the Frye rule in the case of *Daubert versus Merrel Dow Pharmaceuticals*. According to Blau (1998), four factors emerged as the litmus test for admissibility in the Daubert's case, namely:

- The theory must be precise and specific enough to allow for verification or corroboration;
- The theory has been subjected to peer review and publication;
- The error rate associated with the applications of the theory must be known and be taken into account;

- Experts in the field must generally accept the theory being offered by the relevant expert.

Allain (2005) asserts that most English speaking countries, including South Africa and Namibia, use the general acceptance rule for admissibility, which incorporates the Frye and Daubert rules. In Namibia psychologists are usually called to court to shed light on certain issues, which means that expert psychological knowledge is admitted in Namibian courts.

Another criterion for admissibility is that expert testimony must go beyond common experience or knowledge. English courts have refused to admit expert testimony if the knowledge does not go beyond the knowledge and experiences of the judge or jury, e.g. in *R versus Turnbull 1976*; *R versus Turner 1975* (Allan, 2005). In certain cases this requirement may restrict the admissibility of psychologists' testimonies, e.g. where the court is convinced that it is capable by itself to detect mental illness. In the USA this requirement has been dealt with through the Federal Rules of Evidence. Rule 702 of 1975 states that evidence is admissible if it assists the trier of fact to understand the evidence, or to determine the fact of issue (Blau, 1998). In South Africa and most likely in Namibia it appears the courts follow the helpfulness test rather than the common knowledge test (Allain, 2005).

Lastly, experts must reveal the basis or foundation for their opinions. Acknowledgment of information coming from the psychologists' clients, accumulated professional knowledge, reports by colleagues, information from scientific journals and other researches usually satisfy this requirement. After having met all the requirements for admissibility, a single key issue is that the psychologist must know that they should not offer opinions on the ultimate issues of the case. Psychologists must usually leave the finder of fact to decide. This is sometimes problematic, because the courts may request expert opinion on the ultimate issue of the case. While this may be tempting, it is always best to remain a provider of expert information to the court for consideration and informed decision making during the trial. Having looked at issues of admissibility, it is important to have a general

understanding of the role of the expert witness in influencing weight of evidence beyond reasonable doubt.

3.7.1 Beyond reasonable doubt

Conduct associated with child sexual abuse most often happens in private and the witness is often left with no corroborative evidence. In many cases, courts rely on corroborative evidence to arrive at a guilty verdict. The expert testimony of a psychologist may help the prosecution to prove beyond reasonable doubt that the accused committed the alleged offence, due to the resultant trauma and other related symptoms that the affected child presents with. Hence, it is important to briefly review the concept of ‘beyond reasonable doubt’ and its link with expert witness.

In criminal trials the prosecution has the burden of proof and it must prove all the essential elements of the offence beyond reasonable doubt (Horowitz & Kirkpatrick, 1996). The main challenge is defining what ‘beyond reasonable doubt’ means, especially in legal systems that use juries. There is a need for presiding officers to refrain from presenting reasonable doubt in a way that allows conviction on lesser grounds than those required by due process.

The quality of proof required from the state in criminal proceedings such as sexual abuse is higher than those required of any parties in a civil lawsuit. The emphasis does not lie on the degree of probability, but on the degree of doubt (Naude & Pretorius, 2003). Blau (1998) explained this concept as follows:

“The more serious the consequence to the defendant whether in criminal or civil cases, the more stringent are the rules for weighing the quality of the evidence. The benefit of the doubt almost always falls to the defendant, especially in criminal cases, to ensure the fairness of the proceedings for the accused” (p 27).

Harowitz et al (1996) proposed three standards of proof namely, preponderance of evidence, clear evidence, and reasonable doubt. A preponderance of evidence is the lowest level of evidence. “ Although concepts of weight are not defined with mathematical precision, most jurists seem to accept the probability concept of slightly better than chance or about half 55% as the defining parameter of preponderance of evidence” (Blau, 1998, p 27). Clear evidence carries more weight. In such a situation statutes require that judges or jury decide that evidence is clear cut in the direction of their decision. Some jurists are informally willing to define clear evidence as 75-80% although numbers are rarely used in defining this weight of evidence (Blau, 1998). The concept ‘beyond reasonable doubt’ represents the highest grade of quality of evidence. “Some jurists are willing to say ‘beyond reasonable doubt’ means that the facts supported by evidence are 90-95% sure (Blau, 1898, p 27).

According to Naudé, du Preez and Pretorius (2003), in civil cases it must be shown that one proposition is more probable than the other, while in criminal cases another element is introduced, which is the exclusion of reasonable alternative hypotheses. Naudé further explained that in criminal cases of sexual behaviour, the court hence hears expert evidence from the psychologist against the background of the elimination of any reasonable alternative hypotheses. The onus hence falls on the adversary to rebut the evidence. “When it is determined that one or the other document, for example a psychological report, is a prima facie (or evidence) of a fact, then it means likewise that the document requires an answer and that it provides conclusive proof if no answer in the form of refutable evidence comes forth” (Naudé, et al., 2003, p 13).

In conclusion for example, a defence plea of not guilty by reason of insanity places the burden on the state to prove beyond reasonable doubt that the defendant was sane at the time of committing the crime and this is where professionals like psychologists need to act as expert witnesses to the court.

3.8 THE VARIOUS ROLES OF THE PSYCHOLOGIST IN COURT

The various roles of the psychologist in court are multi-faceted and needs clarification. Subsequent paragraphs offer a brief overview of these roles.

3.8.1 Competence to stand trial

Most laws provide for a person undergoing trial or witnessing that he/she must be able to understand the nature of the charges or to follow the court proceedings. Psychologists have been called by the courts to assess persons for their competences to stand trial. They basically offer their opinions and the judge or presiding officer will make the final decision (Blau, 1998).

3.8.2 The insanity plea

Psychologists have also been called to ascertain if an accused can be excused from the criminal responsibility on the basis of mental illness. In such cases the psychologist should be able to demonstrate that at the time the crime was committed, the accused was suffering from a mental condition that rendered him or her not responsible for the wrongful actions (Blau, 1998).

3.8.3 Competence to manage one's own affairs

Some people fail to manage their own affairs due to innate deficiencies, illness, injury, or deterioration due to age. When this happens, relatives and friends or concerned citizens may file a civil petition to the court for a guardian (curator ad litem) to be appointed to manage the affairs of such a person. Before such an appointment is approved, a psychological assessment should be done to confirm such a deficiency (Blau, 1998).

3.8.4 Involuntary commitment

Sometimes a person becomes so emotionally disturbed that they become a danger to themselves and others. They may lack the insight to realize this and hence may require the assistance of other people to be admitted at a place of treatment under some legal powers. Relatives or other concerned citizens may apply to the court for such a person to be involuntarily admitted to treatment. Psychologists may be called to testify that such a person is indeed a danger to himself and others due to some mental defect. In Namibia such a provision is under section 9 of the Mental Health Act 18 of 1973. The provision allows the police to force such a person to be involuntarily admitted to a mental health institution for treatment when it is necessary.

3.8.5 Dangerousness and treatment potential

Psychologists have frequently served as experts in determining how convicted persons should be classified in terms of placement in minimum, medium and maximum security facilities, as well as their potential for rehabilitation (Blau, 1998). Sometimes psychologists with a team of other experts are called to render expert opinion to assist the triers of fact to determine the likelihood of rehabilitation when considering whether to invoke the death penalty or any other applicable penalty (Blau, 1998).

3.8.6 Personal injury and wrongful death

Psychologists are sometimes called to testify for the plaintiff or defendant in cases of negligence, which have resulted in injury or death. By illustration, psychological testimony on issues that may have contributed to the accident may assist in decision-making. In addition, psychological testimony on the psychological effects of the accident, using instruments such as neuropsychological tests, is often helpful to determine loss that incurred as a result of the accident (Blau, 1998). In Namibia, the

Motor Vehicle Accident Fund requests motor vehicle accident victims to be evaluated by psychologists for appropriate treatment and minimal compensation.

3.8.7 Child custody issues

Psychologists and other mental health professional are usually asked to provide expert opinions during child custody disputes. According to Brandt, Swartz and Dawes (2005), mental health professional are usually involved in custody issues in the following three areas:

- Where the parents have been married and are in the process of divorcing or separating, but failing to agree of the custody of the children;
- Where there is disagreement among child caregivers about where the child should be placed;
- Where there is concern from outsiders about the wellbeing of a child, e.g. in cases of child abuse expert opinion assist with decision-making about placement of the child.

In the event of disputed placement of the child, the psychologist administers psychological theory and/or psychometric tests to assess 'best placement options'. Theories on child developmental, early learning, moral development, and cognitive and psychosocial learning usually render adequate information to assist with determination of 'best placement options', considering that the 'best interest of the child' is paramount in all decisions involving children (Brandt, et al., 2005).

3.8.8 Eyewitness testimony

Eyewitness testimony represents an area in which expert opinion of the psychologist is very useful, since eyewitness testimony of children in particular is often controversial in nature. The psychologist needs to assess the credibility of the child's already submitted statements, or assess the credibility of the child's witness before

he/she testifies (Baker-Ward & Ornstern, 2002; Tredox & Chiroro, 2005; Muller & Hollely, 2000). The weight that has been traditionally given to the testimonies of individuals, who say they saw or heard something, is unparalleled in the field of legal evidence (Blau, 1998). Traditionally courts have relied heavily on eyewitness testimony or evidence and yet there are many psychological factors that may interfere with the processes of eye witnessing, causing grave errors, false identity or tainted memories. This is where the issue of suggestibility comes into play, depending on how these eye witnesses are or were interviewed. Justice Ebrahim (1995) argued five reasons cited in the literature, explaining why the court often views children's testimony as unreliable, namely:

- (a) Children's memories are unreliable;
- (b) Children are egocentric;
- (c) Children are suggestible;
- (d) Children have difficulties differentiating fact from fantasy;
- (e) Children do not understand the duty to tell the truth.

In his analysis of the reasons for the appeal, the judge found that no one had used suggestive techniques during the interview and court proceedings of the case. The judge also denied the attack by the appellant's lawyers that the child did not report the matter on that particular day of the event, but only after some days (*hue & cry*). The judge contextually rejected this on the count of the children's age that might have played a role in delayed reporting, due to the absence of certain physiological presentations. In this case the child wanted to report the event to the mother because of vaginal bleeding. When she arrived home, the bleeding had stopped and then she saw no reason to worry the mother (*SvS 1995 (1) SACR 50*). Psychologists as experts in this area, through cognitive research in real life and in laboratories, are hence usually called to testify on such cases.

3.8.9 Other roles

Psychologists have also been called to provide expert testimony in labour relations, workers` compensation and equal opportunity issues, patent and trademark infringements, product liability, jury composition challenges, repressed memories, addiction and malingering. There are other areas where psychologists offer expert opinion, which have not been mentioned here. The basic principle is that psychologists are usually requested to offer expert advice to the court where the question falls within the domain of psychology.

3.9 CRITERIA TO BE TAKEN INTO ACCOUNT DURING PSYCHOLOGICAL ASSESSMENT OF AN ALLEGED VICTIM

Having looked at the different roles in which psychologists are called to offer expert testimony, it is now important to look at some of the salient factors that should be considered when assessing an alleged victim of sexual abuse. In the event of a first *“hue and cry”* which is a Germanic word requiring a rape victim to *“... forthwith and while the act is still fresh to report with hue and cry to the neighbouring villa and there display to honest men the injury done to her”*, the psychologist must consider alternative hypotheses that could have resulted in delayed ‘hue and cry’ (Naudé, du Preez, & Pretorius, 2004, p 7). Naudé et al proposed the following criteria that the psychologist should follow during the initial consultation just after the alleged sexual abuse incident had taken place:

- The psychologist should make accurate observations during the initial intake and keep thorough records of all the information given by the victim.
- A short summary of the alleged offence and preceding events should be done. A good clinical history should also be taken at this point.
- An estimation of the complainant’s age should be done if the person is pre-adolescent or under the age of 16 years. Verification of such information should be done through the parents or guardians.

- The psychological status of the victim (intelligence, mental, emotional) should be determined to ensure whether the victim was able to make an informed decision and give consent.
- The complainant must be assessed for capability to testify in court. If the victim is mentally retarded, the victim must be assessed during subsequent sessions.
- The psychologist should take note of post-rape symptoms such as initial shock, emotional and intellectual numbness, disorientation, anguish, tension and so on.

3.10 CRITERIA FOR FOLLOW UP CONSULTATIONS AND ASSESSMENTS

Naudé et al (2004) provided the following criteria for assessment of victims of sexual abuse:

- If the victim was referred by a prosecutor or attorney, the psychologist should be provided with all the available facts on the matter as much as possible.
- The psychologist should look at all background information and judgemental information with caution. Differences in the history should be noted.
- The initial impressions of the victim should be verified with the behaviour during the subsequent sessions to see if the symptoms are genuine, simulated or residual. The follow up session should take place within 24 hours.
- The methods used to assess the victim should ultimately not manipulate, force, or extract an unwilling statement.
- If there is considerable lapse of time between the event and the assessment, the *nexus (links)* between the assessment results cannot be referred to with all confidence.
- The moral developmental level of the victim must be assessed.

- The scholastic, occupation, and social adjustment of the victim must be thoroughly assessed. In this regard teachers may provide valuable information on the child's adjustment.
- The psychological status of the child must be determined, especially data on the child's neuro-psychological and intellectual functioning. Assessment of school/occupational functioning, social functioning, and personality functioning should be done.
- The full background history of the victim must be taken, for example, family upbringing, education, social history and so on.
- A thorough assessment to eliminate false positives should be done. When the so-called SAID syndrome (Sexual Abuse In Divorce syndrome) is suspected, when there is a high degree of conformity with one parent's wishes, when parental alienation syndrome is present, or when parental discord and hostility is present, the psychologist must be cautious not to make rushed decisions.
- About two to eight percent of complaints regarding criminal behaviour have been proven to be false positives. The psychologist should hence be aware of factors such as the presence of a psychotic parent and subsequent *folie a deux* between parent and child. Deep childhood fantasies, together with strong oedipal tendencies, may cause projection of sexual impulses upon the alleged abusive parent.
- In cases of true accusations, the child shows different defence mechanisms, with childhood vocabulary for sexual terminology. The child displays depressive mood as well as fear of the perpetrator.
- Where false positive is suspected, the child uses adult sexual terminology with minor defence mechanisms. The child seems not to be shy or depressed. The child will confront the father if he is the alleged perpetrator. The mother will portray histrionic or paranoid personality constellation in SAID-syndrome. There are usually no signs of Post Traumatic Stress Disorder, particularly an absence of avoidance behaviour towards the alleged perpetrator.

3.11 SYNOPSIS

This chapter provides an overview of the legal and to some extent policy issues related to suggestibility among children within legal justice systems internationally, continentally and nationally. At the international level the chapter reviews the Beijing rules, setting minimum standards for the administration of juvenile justice. The chapter also reviews the UN convention on the rights of the child. The convention provides for children to be brought up in a spirit of peace, dignity, tolerance, freedom, equality and solidarity. The chapter also reviews the African charter on the rights and welfare of the child at continental level. The SADC protocols and related policies are reviewed at sub-regional level. Nationally, the chapter reviews relevant sections of legal instruments like the Namibian Constitution, the Combating of Rape Act, the Combating of Immoral Practices Act 21 of 1980, the Combating of Domestic Violence Act 4 of 2003, the Criminal Procedure Act 51 of 1977, the Criminal Procedure Amendment Act 24 of 2003, the Social Work and Psychology Act 6 of 2004, the Mental Health Act 18 of 1973, the Children's Act 33 of 1960 and the Draft Child Care and Protection Bill, 2009, amongst others. The chapter then reviews the effects of the adversarial legal system on child witnesses. On this note, there is a special focus on the effects of an open court system - especially cross-examination and children's memories. Lastly, the chapter looks at the role of the psychologist as an expert witness. In this regard, the chapter offers a review of the various roles of psychologists in court, such as competence to stand trial, the insanity plea, involuntary commitment, dangerousness, child custody issues, and eyewitness testimony. Chapter four now offers a discussion of the research plan.

CHAPTER 4

RESEARCH APPROACH, DESIGN AND METHODOLOGY

4.1 INTRODUCTION

This chapter provides a detailed outline of the research methodology used for data collection. As stated in Chapter 1, the researcher envisioned a mixed method design, thereby making use of qualitative and quantitative methodology for purposes of data gathering, analyses and interpretation. While it may appear cumbersome to employ a mixed method design, this design allows for rich data harvesting, using different lenses and different angles to clear perspectives on the phenomenon under investigation, i.e., cognizance of suggestibility within the Namibian legal justice system. The use of different lenses allows for what has been referred to in Chapter 1 as triangulation, an important component of research to ensure validity and reliability. The key to this design is the ability to manage the data effectively, since data derived from different angles could become overwhelming and confusing at times. This chapter starts with an explanation of issues related to the assessment of legal and allied criminal justice practitioners' cognizance of suggestibility, particularly referring to the development and administration of the semi-structured questionnaires. This is followed by an outline of the assessment of manifest suggestibility through case reviews and court observations.

4.2 DATA GATHERING METHODS

It was already noted that a mixed method design was employed. The subsequent paragraphs give an overview of the methods and instrumentation used in this research.

4.2.2 The social survey method

The social survey method refers to a method of social research with three defining characteristics – its type of content, its form of the data and the method of analysis employed (Marsh, 1982). Its content is social, the form of data is systematic, structured and based around variables and the method of analysis relies on comparisons across groups.

The content of a social survey is social – it deals with human behavior, knowledge, attributes, beliefs, and attitudes. Surveys produce a structured data set in the form of a variable-by-case grid. The grid consists of rows, representing cases, columns representing variables and cells that contain information about a case's attribute on the specific variable. There are two broad types of social surveys – descriptive and explanatory. The descriptive survey seeks to describe the distribution of phenomena in a sample and population. The explanatory survey seeks to explain relationships between variables – to explain why things are as they are. Many surveys fulfill both functions. Survey analysis is based on systematically comparing cases and examining variation and correlation between variables. Explanations are sought by examining variation in the dependent variable (presumed effect) and selecting an independent variable (presumed cause) that might be responsible for this variation (Jupp, 2006).

Analysis involves observing whether variation in the dependent variable (for example, level of expertise of social workers, police officers, magistrates, or lawyers) is systematically linked to variation in the independent variable (suggestibility). While any such co-variation does not demonstrate causal relationships, such co-variation is a prerequisite for causal relationships. More complex multivariate data analysis methods seek to untangle the complex relationships between the many factors that affect social behavior and to control for the effects of extraneous variables that experiments achieve via random allocation to groups.

While survey research is often equated with questionnaire-based studies there is no necessary relationship between the survey method and the particular techniques by which data are collected. A critical and distinguishing characteristic of a survey is that it yields a structured data set that produces a variable-by-case data grid. The particular techniques by which the data are collected for this grid can vary widely (Jupp, 2006).

Social surveys can provide a relatively efficient method for collecting information from a large number of cases. The data grid that is produced in a survey is well suited to statistical analysis and thus is amenable to the potential power of statistical methods. Where a survey collects data from large probability samples the extent to which patterns in the sample are likely to hold in the population at large can be estimated as such survey research results can be generalized to a wider population with a known degree of confidence. There is general agreement that surveys provide an effective way of describing the more objective characteristics of a population (Marsh, 1982).

4.2.3 Principles underlying questionnaires and scaling

A questionnaire refers to a set of carefully designed questions given in exactly the same form to a group of people in order to collect data about some topic(s) in which the researcher is interested. There is often a great deal of confusion in the use and the meaning of the word 'questionnaire'. For instance, some researchers reserve this term exclusively for self-administered or postal questionnaires, while others would include interview schedules (personally administered face-to-face) under the general rubric of 'questionnaire'. Administered, or postal questionnaires, have many advantages, particularly in terms of time spent to conduct interviews, and reduction of traveling costs. Collected data can be inputted into a computer either automatically by the use of a scanning device or manually by using computer programs such as SPSS. This saves the researcher a great deal of time and, with the advent of new technology, allows the researcher to establish correlations between different

variables. In addition, as the researcher has no direct contact with the participant, the issue of interviewer bias tends not to arise (McLean, 2006).

In order to understand a topic, and therefore be able to create a good questionnaire, the researcher needs to understand the subject matter. Therefore, before designing a questionnaire, the researcher must be fully aware of all of the various debates that surround it. Questionnaires provide an excellent means of collecting large-scale quantitative data. The closed-question nature of this technique, however, demonstrates that a researcher may need to employ further methods, such as a semi-structured interview, to gain a full understanding of a given issue (McLean, 2006)

Scaling is a method used by researchers to quantify human psychological responses to stimuli. Many scaling methods have been developed to capture feelings, judgment, opinions and perceptions of stimuli. From such procedures, one can assess many human attributes, including attitudes and perceptions. They can also be used to capture human judgment, such as in the evaluation of individuals' cognizance of suggestibility within the legal justice system of Namibia.

Every scaling procedure consists of two components – stimuli and a response method. The stimuli typically are written words or phrases that describe the stimuli or situation. Responses can be spoken or written using a structured procedure. Part of that procedure is the way in which the responses are quantified. Responses are made on a specified dimension, such as evaluation or liking. For example, the researcher might wish to assess the knowledge level of participants on a specific topic related to suggestibility. A scaling method could provide a score for each participant that reflects knowledge level. Scaling methods were developed to assess human responses at ordinal or ratio levels of measurement (Jupp, 2006).

Direct magnitude estimation is a method in which participants are asked to provide a score on a dimension for each stimulus. This was done using a line to represent different dimensions. The extremes of the dimension are indicated, for example, 'Dislike very much' and 'Like very much'. The participant is asked to make a mark

representing his or her position on the dimension in question. A separate line can be used for each stimulus or one line can be used for all stimuli (Jupp, 2006).

Rating scales ask people to select one response choice from several that are ordered along a dimension. The choices are defined by an anchor, or statement that describes its position on the dimension. For example, the anchors might be, 'Dislike very much', 'Dislike slightly', 'Like slightly' and 'Like very much'. Participants give a rating for each candidate. Each stimulus is termed an item. This method is the most widely used, perhaps because of its ease in quantifying responses. The response choices are numbered consecutively from lowest to highest and overall stimulus values are computed as the mean of all participant scores. It is also used to provide individual participant scores for each stimulus as opposed to overall stimulus scores across all people. The dimension underlying the rating scale can be almost anything, but most use one of a very small number of possible options. Perhaps the most popular is agreement. Participants indicate how much they agree or disagree with each item, (for example, 'Disagree very much', 'Disagree slightly', 'Agree slightly', 'Agree very much'). Other popular dimensions are evaluation (for example, 'Poor', 'Fair', 'Good', 'Excellent'), and frequency (for example, 'Never', 'Seldom', 'Frequently', 'Often') (Jupp, 2006).

Most include multiple items to assess each construct of interest, and yield individual scores for each participant. Such scales are called summated rating scales when they use the rating scale format for responses. The scaling procedures mentioned so far have involved single dimensions on which stimuli are scaled. Stimuli are ordered along the single continuum from least to most or uncertain. It is possible, however, to use more complex scaling methods in which multiple dimensions are dealt with simultaneously. Multidimensional scaling procedures allow one to identify two or more dimensions on which stimuli can differ. Graphical representations of the stimulus positions in multidimensional space can help interpret the ways in which individual stimuli differ from one another. These procedures are quite complex, requiring considerable statistical sophistication to use (Spector, 2006).

4.3 INSTRUMENT FOR ASSESSMENT OF KNOWLEDGE/ SENSITIVITY AND PRACTICE LEVELS

Sensitivity to how suggestibility affects children's testimonies is assumed to be invariably a product of a practitioner's knowledge level of the subject area. The researcher hence decided to construct a semi-structured questionnaire to assess the knowledge levels and sensitivity of legal and allied criminal justice practitioners in relation to suggestibility.

The main themes extracted through literature analyses of the psycho-legal foundations to suggestibility were captured and the test items of the questionnaire were subsequently developed to cover those themes. The semi-structured questionnaire covered the following main themes:

- Memory;
- Language;
- Source monitoring;
- Age;
- Anatomically detailed dolls;
- False information;
- Intelligence;
- Child Cognitive development;
- Conative function of the mind;
- Degree of participation;
- Time interval between event and recall;
- Adult presentation of child interviewers;
- Protocols for conducting forensic interviews;
- Victim friendly courts;
- Nature and quality of forensic questions;

4.3.4 Instrument format

The test items to the instrument (questionnaire) were designed to uncover legal and allied criminal justice practitioners' knowledge of suggestibility, as well as their related practices that could either reduce or augment suggestibility of their clientele, using the preceding main themes. Hence, the test items of the questionnaire covered two levels, i.e., knowledge and practice, and were constructed in question format, or in statement format. By illustration, a knowledge level test item put in statement format is, "... children's memory is essentially the same as adults". Three response options accompanied each test item, i.e., "agree", "disagree" or "uncertain". By further illustration, a practice level test item put in statement format is, "... I have attended/conducted a trial in a Victim Friendly Court in Namibia", followed by the three response options.

Initially, before piloting, the questionnaire had 35 test items. Three test items (items 1, 25 and 27) were open ended, while another one (item 12) was in multiple choice response format. The remainder of the test items had three response options, i.e., "agree", "disagree" and "uncertain. The three response options denoted knowledge or sensitivity to the specific theme in question.

4.3.5 Biographic information

The instrument (questionnaire) also provided for gathering of background data of the participants (legal and allied criminal justice practitioners). This background data covered areas such as the participant's job title, highest educational qualification, sex, age and years of occupational experience. Such information enabled the researcher to compare participants' levels of cognizance (knowledge/sensitivity and practices), using different categories of participants to make in-group comparisons in terms of gender, age, experience, or occupation, for example.

4.3.3 Prior consent / permission

Reviewing of resolute (determined) cases does not legally require any authorization, because determined cases are deemed public documents. Hence, the researcher informed the relevant staff in charge of document safe-keeping about the research project, and requested that determined cases be made available for purposes of sampling and subsequent reviewing of sample cases. Collaboration with these staff members eased access to the documents in safe-keeping.

After having disclosed the scope of the research project, together with the type of data in question, the researcher requested the legal practitioners to sign a document towards informed consent, which they would return to the researcher together with the completed questionnaire. Informed consent covered all principles to giving informed consent, amongst others, that anonymity would be guaranteed.

4.3.4 Piloting of the instrument

The researcher first piloted the questionnaire to ensure that this instrument was applicable to the study and comprehensible by the participants. Subsequent paragraphs offer a narrative of this pilot study.

4.3.4.1 *Features and breakdown of the pilot study*

Eleven legal practitioners participated during the piloting of the questionnaire. The initial plan was to recruit ten practitioners for participation in piloting of the instrument, but one more legal practitioner volunteered participation, resulting in eleven ($N = 11$) piloting participants. Five of these piloting participants were males, and six were females. All piloting participants were qualified legal practitioners, holding at minimum a B-Jurist degree and at highest a Bachelor of Laws degree (LL.B.-degree). Three were public prosecutors, one was a magistrate, and the remainder of piloting participants were lawyers employed within the private or

public sector. The ages ranged from 23 to 51 years. The years of work experience within a legal setting ranged from six months to 25 years.

4.3.4.2 Discussion of instrument endorsement and patterns of endorsement

Table 4.1 below reflects the main themes that were selected for pilot scoring, e.g. memory, age, source monitoring, theory of mind, and so on. The pilot instrument (questionnaire) captured all of these themes. It needs to be noted that those piloting participants who decided not to endorse any pilot test item, would be assumed to be in most cases uncertain or not knowledgeable about the research topic. Pilot test items not responded to (left unanswered), were therefore entered in the “uncertain” category. Table 4.1 shows the number of legal practitioners (piloting participants) who endorsed the pilot instrument (questionnaire), together with their endorsement patterns.

Table 4.1 Pilot instrument endorsement and endorsement patterns

Themes covered by pilot test items	Positive endorsement	Negative endorsement	Pilot test items not responded to (“uncertain”)
Definition of suggestibility	5	5	1
Child’s memory same as adult	8	1	1
Language proficiency	2	6	3
Open ended questions	8	1	2
Leading questions	6	1	4
Source monitoring	1	2	8
Use of authority figures	6	3	2
Age group most suggestible	3	6	2

Use of anatomical dolls	4	2	5
Reinforcement during interviews	3	7	1
Intellectual disability and suggestibility	9	1	1
Age of abstract thinking	0	9	2
Event time and interview time	8	-	3
Degree of participation	6	4	1
Repeating questions (action)	3	5	3
Children below 6 years testifying in court unassisted	11	-	-
Availability in Namibia of good framework for conducting interviews with children	7	3	1
Presence of interview guidelines	3	-	8
Confirmed knowledge of interview guidelines	1	9	1
Attendance at trial at victim friendly courts	4 (positive attendance)	5 (negative non-attendance)	2
Use of experts on child suggestibility	1	8	2
Moral reasoning of children compared to adults	10	-	1

4.3.4.3 *Analysis of pilot instrument and pilot test items*

As reflected in the literature review, the study field of child suggestibility is beleaguered with highly debatable issues and constructs in question. Hence, it is almost impossible to arrive at absolute “right” and absolute “wrong” answers to questions about child suggestibility. However, it is commonly accepted that knowledge, awareness, and understanding of the concept ‘suggestibility’ is likely to correlate with higher sensitivity when having to deal with child suggestibility in practice. A solid understanding and awareness of suggestibility is expected to appropriately guide individuals during their interactions with sexually abused children within forensic settings. Hence, the responses of the piloting participants were coded as “positive endorsement”, showing understanding and “negative endorsement”, showing lack of understanding or lack of knowledge of child suggestibility. Pilot test items not responded to (left unanswered), were entered in the “uncertain” category.

By further illustration, pilot test item 28 was put at practice level, formulated as a statement, “... I have attended/conducted a trial in a Victim Friendly Court in Namibia”, followed by the three response options. Any positive endorsement of this statement indicated that the piloting participant did attend or conduct a trial in a Victim Friendly Court in Namibia, while any negative endorsement of this statement indicated no attendance or participation in proceedings of this nature. The inference is that any positive endorsement, i.e. attendance or participation in Victim Friendly Court proceedings, suggests higher sensitivity, awareness and knowledge, or that such piloting participant might, as a consequence of attendance and/or participation, be more sensitized to child suggestibility.

4.3.4.4 *Findings and conclusion derived from instrument piloting*

As reflected in Table 4.1, a breakdown of responses to the pilot test items indicated endorsement or non-endorsement of the instrument. Responses to each of these pilot test items are now discussed.

a Definition of suggestibility

Pilot test item #1 confirmed that five (5) of the piloting participants knew the definition of suggestibility, five did not know, while one (1) piloting participant indicated uncertainty, suggesting a possible lack of specific knowledge in this field. Endorsement is 45.5%, hence this test item is estimated to be sufficiently discriminative in nature ($P = 0.72559$), and it is therefore retained as a knowledge level test item.

b Child's memory same as that of adult

Pilot test item #2 confirmed that eight (8) of the piloting participants supported the view that children's memory is different from that of adults, suggesting high sensitivity/knowledge of factors that might impact on child suggestibility. Endorsement is 72.7%, hence this test item is estimated to have high discriminative value ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

c Language proficiency

Pilot test item #3 confirmed that only two (2) piloting participants acknowledged the importance of language proficiency in suggestibility. Inverse interpretation of this pilot test item suggests that nine (9) of the piloting participants were unaware of, or uncertain about the significant link between language non-proficiency and high manifest suggestibility. Inverse endorsement (i.e. negative endorsement) is 81.8%, hence this test item is estimated to have very high discriminative value ($P = 0.03271$), and it is therefore retained as a knowledge level test item.

d Open ended questions

Pilot test item #4 confirmed that eight (8) of the piloting participants supported the view that the use of open ended questions might reduce suggestibility. Endorsement

is 72.7%, hence this test item is estimated to have high discriminative value ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

e Leading questions

Pilot test item #5 confirmed that six (6) piloting participants acknowledged the importance of leading questions in suggestibility, while one (1) piloting participant indicated negative endorsement, together with four (4) uncertain responses. Positive endorsement is 54.5%, hence this test item is estimated to be sufficiently discriminative in nature ($P = 0.50000$), and it is therefore retained as a knowledge level test item.

f Source monitoring

Pilot test item #6 confirmed that only one (1) of the piloting participants acknowledged the importance of source monitoring in suggestibility, while two (2) piloting participants indicated negative endorsement, together with eight (8) uncertain responses. Inverse endorsement (i.e. negative and uncertain endorsement) is 90.9%, hence this test item is estimated to have very high discriminative value ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

g Use of authority figures

Pilot test item #7 confirmed that six (6) of the piloting participants acknowledged the impact of authority figures on suggestibility, while three piloting participants indicated negative endorsement, together with two (2) uncertain responses. Positive endorsement is 54.5%, hence this test item is estimated to be sufficiently discriminative in nature ($P = 0.50000$), and it is therefore retained as a knowledge level test item.

h Age group most suggestible

Pilot test item #8 confirmed that only three (3) of the piloting participants acknowledged the link between age and suggestibility, while six (6) piloting participants indicated negative endorsement, together with two (2) uncertain responses. Inverse endorsement (i.e. negative and uncertain endorsement) is 72.7%, indicating that the majority of piloting participants lacked this specific knowledge. This might be indicative of a barrier towards achieving best practice, hence this test item is estimated to be highly discriminative in nature ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

i Use of anatomical dolls

Pilot test item #9 confirmed that only four (4) of the piloting participants were knowledgeable about the correct use of anatomical dolls during interviewing, while two (2) piloting participants indicated negative endorsement, together with five (5) uncertain responses. Inverse endorsement (i.e. negative and uncertain endorsement) is 63.6%, hence this test item is estimated to have high average discriminative value ($P = 0.27441$), and it is therefore retained as a knowledge level test item.

j Reinforcement during interviews

Pilot test item #10 confirmed that only three (3) of the piloting participants were knowledgeable about the effect of reinforcement during interviewing, while seven (7) piloting participants indicated negative endorsement, together with one (1) uncertain response. Inverse endorsement is 72.7%, hence this test item is estimated to have high discriminative value ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

k Intellectual disability and suggestibility

Pilot test item #11 confirmed that nine (9) of the piloting participants were knowledgeable about the link between intellectual disability and suggestibility, while one (1) piloting participant indicated negative endorsement, together with one (1) uncertain response. Positive endorsement is 81.8%, hence this test item is estimated to have very high discriminative value ($P = 0.03271$), and it is therefore retained as a knowledge level test item.

l Age of abstract thinking

Pilot test item #12 confirmed that none of the piloting participants were knowledgeable about the age of abstract thinking, while nine (9) piloting participants indicated negative endorsement, together with two (2) uncertain responses. When linking this with pilot test item #3 (language proficiency), it seems that these two test items might significantly denote cognizance of suggestibility among legal practitioners in general, suggestive of incomplete knowledge about child development. Inverse endorsement (i.e. negative and uncertain endorsement) is 100%, hence this test item is estimated to have very high discriminative value ($P = 0.00049^1$), and it is therefore retained as a knowledge level test item.

m Event time and interview time

Pilot test item #13 confirmed that eight (8) of the piloting participants were knowledgeable about the link between suggestibility and event/interview time lapse, while none of the piloting participants indicated negative endorsement of this test item, together with three (3) uncertain responses. Positive endorsement is 72.7%, hence this test item is estimated to have high discriminative value ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

¹ Statistically significant at 5% level of reliability

n Degree of participation

Pilot test item #14 confirmed that six (6) of the piloting participants were knowledgeable about the link between suggestibility and the degree of participation, while four (4) piloting participants indicated negative endorsement, together with one(1) uncertain response. Positive endorsement is 54.5%, hence this test item is estimated to be sufficiently discriminative in nature ($P = 0.50000$), and it is therefore retained as a knowledge level test item.

o Repeating questions (action)

Pilot test item #15 confirmed that only three (3) of the piloting participants were knowledgeable about the effect of repeated questions on suggestibility, while five (5) piloting participants indicated negative endorsement, together with three(3) uncertain responses. Inverse endorsement (i.e. negative and uncertain endorsement) is 72.7%, hence this test item is estimated to have high discriminative value ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

p Children below 6 years testifying in court unassisted

Pilot test item #16 confirmed that all of the piloting participants (100%) were knowledgeable about the age of unassisted child witnesses in court. Positive endorsement is 100%, hence this test item is estimated to have very high discriminative value ($P = 0.00049^2$), and it is therefore retained as a knowledge level test item.

² Statistically significant at 5% level of reliability

- q Availability in Namibia of a good framework for conducting interviews with children

Pilot test item #17 confirmed that seven (7) of the piloting participants acknowledged the desirability of a good framework for conducting interviews with children, while three (3) piloting participants indicated negative endorsement, together with one (1) uncertain response. Positive endorsement is 63.6%, hence this test item is estimated to have high average discriminative value ($P = 0.27441$), and it is therefore retained as a knowledge level test item.

- r Presence of interview guidelines

Pilot test item #18 confirmed that only three (3) of the piloting participants knew about such guidelines (see test item #17), while none of the piloting participants indicated negative endorsement, together with eight (8) uncertain responses. This suggests that piloting participants recognized the need for guidelines, but they could not positively identify such guidelines in Namibia. Inverse endorsement is 72.7%, hence this test item is estimated to have very high discriminative value ($P = 0.11328$), and it is therefore retained as a knowledge level test item.

- s Confirmed knowledge of interview guidelines

Pilot test item #19 confirmed that only one (1) of the piloting participants positively endorsed confirmed knowledge of interview guidelines, while nine (9) piloting participants indicated negative endorsement, together with one (1) uncertain response. Inverse endorsement is 90.9%, hence this test item is estimated to have very high discriminative value ($P = 0.00586^3$), and it is therefore retained as a knowledge level test item.

³ Statistically significant at 5% level of reliability

t Attendance of trial at victim friendly courts

Pilot test item #20 confirmed that only four (4) of the piloting participants attended or participated in victim friendly court proceedings, while five (5) piloting participants indicated negative endorsement, together with two (2) uncertain responses. This suggests that apart from lacking knowledge about suggestibility, only a small number of piloting participants had some level of practice experience. Inverse endorsement is 63.6%, hence this test item is estimated to have high average discriminative value ($P = 0.27441$), and it is therefore retained as a practice level test item.

u Use of experts on child suggestibility

Pilot test item #21 confirmed that only one (1) of the piloting participants had employed the services of an expert on child suggestibility before, while eight (8) piloting participants indicated negative endorsement, together with two (2) uncertain responses. This suggests that apart from lacking knowledge about suggestibility, only a negligible number of piloting participants had some level of practice experience. Inverse endorsement is 90.9%, hence this test item is estimated to have very high discriminative value ($P = 0.00586^4$), and it is therefore retained as a practice level test item.

v Moral reasoning of children compared to adults

Pilot test item #22 confirmed that all of the piloting participants (100%) knew that children's moral reasoning differs from that of adults. Positive endorsement is 100%, hence this test item was estimated to have no discriminative value, and it was therefore not retained in the final version of the questionnaire. It is assumed that this forms the body of common knowledge that all piloting participants have.

⁴ Statistically significant at 5% level of reliability

Based on the preceding results, the piloting participants demonstrated low knowledge levels in areas such as source monitoring, age at which children are most suggestible, and the effects of reinforcement on suggestibility. Pilot test items assessing practice level knowledge and skill indicated that the majority of piloting participants had never employed the services of an expert (psychologist/psychiatrist) during trials involving children as victims of sexual abuse. They were generally not aware of the interviewing guidelines for the sexually abused children, and the majority never attended or participated in child friendly court proceedings.

The patterns of endorsement showed that the instrument (questionnaire) sufficiently differentiated between those who had knowledge and were aware of the concept of suggestibility, compared to those with inadequate knowledge. Some response patterns resulted in removal or adjustment of some test items. As indicated, pilot test item #22 was removed due to low discriminative value, while another test item was added to assess whether the cognitive ability is the only pre-requisite for accountability, irrespective of the ability to control and direct behavior (conative function of the mind). Hence, the total number of items for the final questionnaire is 36 in total. Some of the items were modified to be less ambiguous, for example pilot test item #21 was modified to also contain the words “psychological or psychiatric expert”, in order to specify an expert as a mental health expert. The pilot instrument (questionnaire) and final instrument (questionnaire) are attached as Annexure 1 and 2 respectively.

4.4 SAMPLING FOR LEGAL AND ALLIED CRIMINAL JUSTICE PROFESSIONALS

The study population (universe population) was defined as all of the legal and allied criminal justice practitioners who were responsible for dealing with child sexual abuse cases in Namibia. The Law Society of Namibia in 2009 estimated this population at **460**, while the Ministry of Gender Equality and Child Welfare provided estimates of allied criminal justice practitioners at **40**, placing the estimated total population to **500** individuals for the entire country.

For purposes of this study, legal practitioners were operationally defined to represent professionals such as magistrates, judges, prosecutors and defence lawyers, while allied criminal justice practitioners were operationally defined as investigating officers and social workers. These professional categories were targeted, because of their involvement in child forensic interviewing. Children were not interviewed for purposes of data gathering, due to ethical constraints inherent in working on child sexual abuse research. Only decided cases were included in the sample.

Direct observation of *viva voce* testimony was also not carried out, because of non-availability of suitable cases. However, the audio recordings of children's *viva voce* testimonies, together with questioning and cross-questioning of these child witnesses, were conducted. The main purpose of this assessment of the audio recordings was to identify incidents of suggestion and child suggestibility as it manifested in practice during court proceedings.

4.4.1 Research population

The research population was demarcated to include the magistrates/judges, prosecutors and defence lawyers who were based in Windhoek, and the investigating police officers and social workers who were based at the Women and Child Protection Unit (WCPU) in Windhoek during this period of study. There were 12 investigating officers (police) and three social workers based at the WCPU, resulting in a total of 15 allied criminal justice practitioners. There were about 134 private legal practitioners, 16 prosecutors and 18 magistrates based in Windhoek, resulting in a total of 168 legal practitioners. The participation of these professionals was mainly based on their willingness to take the questionnaire.

4.4.2 Sampling

Legal professionals usually receive almost similar tertiary training, although the levels of knowledge transfer and training may differ among various Institutions of

Higher Learning. In addition to an almost homogeneous training program originating from a very exact science, legal practitioners also work in similar environments - mostly in courtrooms where the rules and procedures are uniform and are in theory followed to the letter. Hence, within-group knowledge variations are insignificant, resulting in a homogenous sample of legal practitioners. Considering this homogeneity in terms of training and work exposure, the researcher acknowledged that the bigger the sample, the greater the probability of saturated and redundant interviewee responses. Hence, it was decided to limit the sample size to between 30 (minimum recommended for sampling) and 50 research participants. This size was deemed sufficient to allow for generalising of the findings to the study population (universe population). Depending on the availability of potential participants, one third of this research population would have been ideal, resulting in a sample of 56 legal practitioners.

Due the fact that the allied criminal justice professionals were less than 30 in total, which number is usually taken as the minimum for purposes of sampling from a population, a census towards voluntary participation of allied criminal justices was conducted. This implied that the researcher had to interview all of the 15 staff members employed at Windhoek Women and Child Protection Unit - provided that they all volunteered. The legal professionals represented the trial group, consisting of lawyers, prosecutors, magistrates and judges from Windhoek, while the allied criminal justice professionals represented the pre-trial group, consisting of social workers and police officers who were working or attached to the Women and Child Protection Unit in Windhoek.

4.4.3 Distribution of questionnaires

The researcher followed purposive strategies of questionnaire distribution in order to maximise participation in the research project. The different strategies are discussed in subsequent paragraphs.

4.4.3.1 *Distribution among legal practitioners*

The researcher mainly employed the snow-ball technique for the distribution of the questionnaires among legal practitioners. The main supervisor issued an explanatory letter, requesting participants to assist with this study by taking the questionnaire. While the informed consent document required full identification of the research participants in order to meet the stipulations for informed consent, the consent document was not attached to the questionnaire for analysis to ensure confidentiality of results. Hence, informed consent was obtained separate from data collection. The researcher established contacts with key staff employed in the Ministry of Justice (prosecutors and magistrates) and with lawyers in private practice. These contacts assisted in distributing the questionnaires among volunteering colleagues and associates. The researcher urged the participants to complete the questionnaire and return the completed questionnaire to the contact person as soon as practicable. The researcher engaged in continued follow-up and collected the completed questionnaires from the contacts.

As for the private legal practitioners, the researcher received the names and addresses of all of the lawyers in private practice in Windhoek. The researcher then visited some of the law firms, explained the purpose of the study, and recruited participants towards completion of the questionnaire. The snow-ball technique was again employed, therefore the researcher left copies of the questionnaire equivalent in number to the legal practitioners employed by that specific law firm, plus a few extra copies – in the event of a mistake an additional copy would conveniently be available, or should the snow-ball technique generate additional participation from associates employed at other law firms. The legal practitioners were then requested to leave the completed questionnaires with their receptionists, or to contact the researcher telephonically for collection. The researcher intermittently followed up on a weekly basis to ensure progress towards completion of the questionnaires.

The researcher collected the completed questionnaires at the various collection points, while encouraging those who had not completed the questionnaires, to still do

so. The rate of return among private practitioners was very slow, compared to those employed within the government sector, magistrates and prosecutors. A total number of 10 magistrates, 16 prosecutors, and 19 lawyers in private practice completed the questionnaire. This resulted in a total of 45 legal practitioners who completed the questionnaire.

4.4.3.2 *Distribution among allied criminal justice practitioners*

The allied criminal justice practitioners comprised of the investigating officers (police) and social workers based at the Windhoek Women and Child Protection Unit. These are the officers who are primarily involved in the initial forensic interviewing of children. There were 12 investigating officers and three social workers. The researcher liaised with the Officer in Charge of the Windhoek Women and Child Protection Unit, who agreed to distribute the questionnaires among the staff members. The questionnaires were left with the Officer in Charge, who then distributed to her staff members. Ten police officers and three social workers completed the questionnaires. A total of thirteen out of fifteen allied criminal justice practitioners thus completed the questionnaire and handed them back to the researcher.

4.5 CASE REVIEWS

The researcher selected applicable cases with a specific time frame in mind. After having selected cases meeting the time frame, the cases were inspected to determine suitability in terms of sampling criteria, as discussed below.

4.5.1 Sampling time frame

Finalized (decided) cases dating from year 2000 to 2010 were targeted. During the year 2000, the Combating of Rape Act 8 of 2000 was implemented. The subsequent manifestation of child sexual abuse cases since year 2000 would generally indicate the efficacy of the Act in combating rape. The sampling criteria for selecting

applicable review cases were set as follows: all cases involving children below the age of ten years, which cases were adjudicated and decided in the period dating from year 2000 to 2010. It then transpired that less than 30 cases were tried annually during the referenced period, i.e. less than the minimum number required for random sampling; therefore convenient sampling was done.

4.5.2 Sampling criteria

The researcher visited the Windhoek Woman and Child Protection Unit and obtained permission to inspect the case records dating from year 2000 to 2010, for purposes of convenient sampling. The researcher then selected year 2000, year 2001 and year 2005 to identify child sexual abuse cases involving complainants below the age of ten years. From this cohort, the researcher identified 24 finalized cases of child sexual abuse for the year 2000, followed by seven such cases for year 2001, and eight such cases for the year 2005. The researcher then selected year 2000 and year 2005 as the potential pool for purposes of sampling. The rationale was that the review period reached from year 2000 to year 2010. Year 2000 was assumed to represent the baseline (entry point), with year 2005 as the middle point, and year 2010/2011 as the end point. The researcher envisioned to cover end-point cases by means of court observations. Hence, only entry point and mid-point decided cases were sampled for case reviewing, in order to cover the continuum 2000 to 2010/2011.

The researcher then selected 15% of decided cases from the year 2000 pool, resulting in a sample size of approximately four cases. Another 20% of decided cases were selected from the year 2005 pool, resulting in a sample size of approximately two cases. All together six (6) decided cases were selected for review. Each case constituted the pre-court interviews and the direct and cross examinations, bringing the total number of forensic interviews to twelve comprehensive interviews.

Hence, convenient sampling was chosen as the best method for selecting the cases. It is important to note that while random sampling ensures generalizing to the

population, convenient/purposive sampling was selected due to the following reasons:

- The human characteristic that is known to contribute to the greatest variability in suggestibility level, is the age the children. In this study only children below the age of ten years were included in the target group; hence, limiting the variability of this factor.
- Since legal procedures are often highly standardized as prescribed by legal instruments such as the Criminal Procedures Act, little variation was expected in how the courts handle their business. If anything, variations were expected to be more in terms of the interviewing styles by the police and social workers and the questioning styles of the lawyers, than the procedures.
- The cases to be reviewed were information-rich cases akin to case studies. This information enriches the research, thereby justifying the limited number of cases. This was the rationale for reviewing a limited number of cases, i.e. focusing on information richness rather than the quantity of cases *per se*.
- Larger samples are needed when the population is heterogeneous. In this case the population was relatively homogeneous in nature, e.g., the majority of research participants were trained as lawyers, police officers and social workers and investigating procedures are regulated by strict procedural court rules. Although the research participants' level of forensic/legal knowledge might differ, a certain degree of homogeneity exists pertaining to the research population and the procedural court rules.
- Lastly economic and time considerations also played a critical role in choosing the convenient sampling method, because this was a non-sponsored PhD research study.

After having obtained the information from the Women and Child protection Unit, the researcher visited the Katutura Magistrate's Courts, which houses the regional court. The regional court is where most child sexual abuse cases are tried. The Chief Magistrate granted the researcher permission to access the targeted case files.

When the researcher submitted the case file numbers obtained from the Women and Child Protection Unit to the regional courts archive, the staff experienced difficulty locating the files, because of a difference between the filing systems in use – the regional court uses (RC) case file numbers, which differ from the case file numbers used by the Women and Child Protection Unit.

Because of inaccessibility brought about by the different filing systems, the Chief Magistrate tendered to randomly identify suitable cases, having consideration for the sampling time frame and the age range below ten years. Still, staff members experienced great difficulty to identify four suitable cases for year 2000 and two for 2005 as initially planned.

The researcher then requested the regional court to identify any six cases, meeting the sampling criteria in terms of age (i.e. below ten years) and timeframe (i.e. year 2000 to 2010). The six cases were identified in two phases. The researcher initially wished to use the typed court transcripts, but some of the case records were not transcribed and typed. However, the electronic court recordings were available on audio cassettes. The cassettes were digitally recorded on the court recording system and could not play on any other system. The researcher then received authorization to listen to the court proceedings electronically from the audio cassette player of the courtroom. This gave the researcher an added advantage of being able to listen to the important potentially suggestive elements, such as voice modulation, silence, etcetera, which one may not get from the typed transcript.

When any one courtroom was not occupied (usually the labour court), the researcher used that vacant facility to listen to the audio cassettes, while endorsing the scoring criteria for suggestive questioning or suggestive responses from the children. The first session commenced on 31/05/2011, with cases for years 2001, 2002, 2004. In one of the cases the child (complainant) did not testify, because the accused pleaded guilty and the magistrate thought it unnecessary to have the child testify. A replacement case was then identified, because the suggestibility scoring was centred on the time the child had testified. In another case the child did not testify due to

young age. The second session was conducted on 06/06/2011, with cases for year 2001. Again, in one of the cases the child (complainant) did not testify, because the accused pled guilty prior to hearing of this witness. A substitute case could not be identified, bringing the total number of cases to four. One of the cases however had two children aged 10 who testified. These were treated as two separate testimonies hence the total number of analysed cases were five. The distribution of cases analysed in this manner is reflected in Table 4.2 below.

Table 4.2 *Distribution of audio recorded case analyses*

R/C number	C/R number	Age of child	Sex of child
146/2001	372/08/2000	9	Female
65/2004	107/04/2003	4	Female
72/2001	35/01/2001	9	Female
194/2001	60/12/2000	2 x 10	Female

4.6 CHECKLIST

A checklist (semi-structured) was constructed based on the SIRR model, developed by Garven, Wood, Malpass and Shaw (1998) for detecting suggestive questioning. The SIRR checklist is an acronym for:

- **Suggestive questions**, e.g., introducing new information into the interview;
- **Social influence**, e.g., telling the child that other people confirmed what happened –compliance;
- **Reinforcement**, e.g., positive and negative reinforcement;
- **Removal from direct experience**, e.g., inviting speculation causing source misattribution.

The other components of the checklist contained information that was adopted from the Gudjonsson suggestibility scales, which give a measure of suggestibility when

children “*yield or shift*” from their initial positions after having been exposed to some form of suggestive interviewing. Hence, the assessment of suggestibility in children was based on the *proxy* of *yield* and *shift* as representative of suggestibility. The SIRR and the “*yield* and *shift*” constituted the *content* component of the checklist. Another component included in the checklist, was the *non-verbal vocal*, which assessed voice intonation/pitch, reinforcing, and interrupting vocal gestures. The last component of the checklist was the *non-verbal body*, aimed at assessing components such as affirmative and rejecting non-verbal gestures. The case reviews assessed the content and non-verbal vocal components of the checklist, with the non-verbal vocal presented as rejecting voice sounding, pitch, intonation, etcetera. The non-verbal-body was supposed to be assessed through the court observations, but this did not happen due to the absence of relevant cases during the study period.

Whenever a suggestibility component surfaced during reviewing of a case, the researcher entered such component in the relevant category. For example, when a prosecutor posed a leading question, the researcher entered the said leading question in the column “prosecutor” and row “leading questions”. Similarly, when the child “yielded” to suggestive questioning, it was also entered in the relevant column and row. The checklist for suggestive questioning is reflected in Table 4.3, and the suggestive response checklist (children) is reflected in Table 4.4 below.

Table 4.3 CHECKLISTS FOR SUGGESTIVE QUESTIONING

CASE
NUMBER.....

DATE.....

NAME OF
ASSESSOR.....

INSTRUCTIONS: Please put the code of the practitioner who would have made a suggestive statement or behaviour just before the score denoted with an x

SCORING CHECKLIST (INTERVIEWER)

Suggestive questioning	Defence lawyer	Prosecutor	Magistrate Judge	Police officer	Social worker	Any other professional
CONTENT Yes/No questions						
Choice questions asking to choose from some questions						
Focussed or specific questions						
Reinforcement questions , promising good things or withdrawal of good things						
Telling child that others have said something about the same thing						
Introducing new information into the interview						
Asking or inviting the child to speculate about what happened						
Using anatomically detailed dolls before child opens up to suggestion						
Leading questions						
	Defence lawyer	Prosecutor	Magistrate Judge	Police officer	Social worker	Any other professional
NON-VERBAL VOCAL 1. Intonation/ tone/ volume 2. Reinforcing vocal gestures						

3. Interrupting vocal gestures						
NON-VERBAL BODY						
1. Affirmative non-verbal gestures						
2. Rejection non-verbal gestures						

Table 4.4 SUGGESTIVE RESPONSE CHECKLIST (CHILDREN)

AGE.....
 SEX.....
 HIGHEST GRADE.....

INSTRUCTIONS: Put an x in the corresponding box whenever a child portrays the described response or behaviour.

SUGGESTIVE RESPONSE	ENDORSE	ENDORSE	ENDORSE	ENDORSE	ENDORSE	ENDORSE
"Yielding" giving in to suggestive interviewing style e.g. leading questions, reinforcement, choice questions						
"Shifting" Changing initial position due the negative feedback						
Any other compliance which can be non-verbal e.g. nodding heard to agree with a suggestive interviewer						

4.6.1 Verification of case reviews

Considering that the researcher was the only person conducting case reviews, it was deemed necessary to have an external reviewer with expertise on the subject matter to review a sample of the cases to ensure validity and reliability. The main supervisor, having the required knowledge and skill, was the best available option to do this type of quality assurance. Hence, on a separate occasion, the supervisor listened to two of the audio recordings and provided independent scores on suggestibility. Correspondence between the external reviewer's scores and that of the researcher was found to be very high; suggesting that researcher notation (scoring) was done in an objective, valid and reliable fashion.

4.7 ANALYSIS OF DOCKETS

The pre-court interviews conducted mainly by police officers and sometimes by social workers, were in narrative format. It should be noted that these police officers and social workers did not have available the interviewer's questions at the time that these narratives were recorded. Analyses of these narratives, using the checklists (refer to tables 4.3 and 4.4), would not have revealed overt manifestations of suggestibility. The researcher hence decided to adopt and modify a screening checklist for extra judicial conditions that might promote the manifestation of suggestibility in statements (narratives) obtained by investigating officers. The work of Naudé et al (2004) founded this screening checklist.

The checklist comprised of 81 test items, designed in such a manner to allow high scores denoted to a good interview, which was assumed to discourage the manifestation of suggestibility. The response format was designed to provide response options, i.e. "*Yes*", "*No*" and "*Unclear*". The endorsement of a *yes* indicated a good practice or questioning style, while a *no* or *unclear* indicated a practice or questioning style that could promote the manifestation of suggestibility during the interview. The *yes* response was keyed positive, while the *no* and *unclear* were keyed negative.

After having obtained the case numbers (CR) for the police from the regional court files, the researcher visited the respective police stations, where access to the relevant files was granted. Once again, the police stations were unable to identify the exact cases, due to filing problems. One police station, Katutura Police Station, was able to provide the researcher with six cases that met the criteria in terms of sampling timeframe (i.e. 2000 to 2010) and age of the children (complainants) (i.e. ten years and below). The researcher then analysed these statements (narratives) using the tailored checklist for extra judicial conditions that may promote suggestibility, as depicted in Table 4.5 below.

Table 4.5 Extra Judicial Checklist for Analyses of Narratives (statements)

Screening checklist for extra judicial conditions that might promote the manifestation of suggestibility in statements (narratives) obtained by investigating officers

Characteristics of the statement

- | | |
|--|-----------------------|
| 1. Is the statement taken down in the alleged victim's mother tongue? | Yes No Unclear |
| 2. Was an interpreter used to take down the statement? | Yes No Unclear |
| 3. Was the interpreter in any way bonded with the alleged victim, e.g., a mother, aunt, etc., that might bias the interpretation? | Yes No Unclear |
| 4. Does the statement reflect a high level of English language proficiency? | Yes No Unclear |
| 5. Is the investigating officer taking down the statement of the same gender and cultural background as the alleged victim? | Yes No Unclear |
| 6. Is the interpreter of the same gender as the alleged victim? | Yes No Unclear |
| 7. Does the statement convey facts about the alleged sexual offence clearly and objectively? | Yes No Unclear |
| 8. Does the statement refrain from expressing an opinion regarding the guilt, innocence, or liability of the alleged victim? | Yes No Unclear |
| 9. Was the statement submitted to the investigating officer following <i>crisis intervention</i> (usually very shortly after the alleged offence, typically of "hue and cry")? | Yes No Unclear |
| 10. Was the statement submitted to the investigating officer with another reporting problem as a smokescreen, known as <i>incidental reporting</i> ? | No Yes Unclear |

11. Was the statement submitted to the investigating officer following *special investigation*, e.g., a statement ensuing where the alleged victim, in course of time and in the light of the investigation, submitted substantiating evidence to 'strengthen' the complaint? **No Yes Unclear**
12. Was the statement done after psychological or other kind of intervention or treatment? **No Yes Unclear**
13. Does the statement indicate to whom the alleged victim first (initially) reported the alleged offence, e.g., a young girl may first complain towards her mother? **Yes No Unclear**

Observations of the officer (clinical notes)⁵

14. Did the investigating officer make additional clinical notes about observations of the alleged victim which could later assist the investigating officer to refresh his/her mind if called to testify in court? **Yes No Uncertain**
15. Were the investigating officer's initial impressions during the first consultation with the alleged victim (also in the case of crisis intervention) noted down? **Yes No Uncertain**
16. Did the investigating officer note down ostensibly 'hard signs' of the alleged offence (usually noticeable, including physical injuries and post-rape symptoms) as part of the initial impressions? **Yes No Uncertain**
17. Did the investigating officer note down his/her objective observations during the initial consultation when the statement was submitted? **Yes No Uncertain**
18. Did the investigating officer keep a thorough record of all information to be used during the trial? (this record is in addition to the alleged victim's own statement) **Yes No Uncertain**

Content of the statement

19. Does the statement give an indication of the mental (psychological) status of the alleged victim immediately after the incident? **Yes No Uncertain**
20. Does the statement give an indication of the alleged victim's mental (psychological) status during submission of the statement (other than the standard phrase stating that the person is capable of submitting a statement)? **Yes No Uncertain**
21. Did the investigating officer use any criteria to make a decision about the alleged victim's mental status (fitness to make a submission) at the time of submission of the statement? **Yes No Uncertain**
22. Does the statement give information on the way in which initial 'complaining' was done? **Yes No Uncertain**
23. Does the statement contain the precise words used during initial complaining, i.e., when the initial complaint comes under discussion, the initial complaint should have similarities with the original '*hue and cry*'⁶ (Schmidt 1990: 378)? **Yes No Uncertain**

⁵ Clinical notes are behavioural observations which would help the investigating officer when testifying in court .e.g., child crying, trembling, and speech problems.

A voluntary complaint

24. Was the statement about the alleged offence made voluntarily? **Yes No Uncertain**
25. Was a relative or friend instrumental in convincing the alleged victim to make the statement? **Yes No Uncertain**
26. If persuasion was required to make the statement, were the verbatim phrases used to persuade the alleged victim to make a statement accurately (verbatim) recorded? **Yes No Uncertain**
27. Were these verbatim phrases and words used to persuade the alleged victim to make a statement interrogative in nature? **No Yes Unclear**
28. Were these verbatim phrases and words used to persuade the alleged victim to make a statement manipulative in nature? **No Yes Unclear**
29. Were these verbatim phrases and words used to persuade the alleged victim to make a statement threatening in nature? **No Yes Unclear**
30. Were these verbatim phrases and words used to persuade the alleged victim to make a statement suggestive or leading in nature? **No Yes Unclear**
31. Was the alleged victim forced by circumstances to speak out, for instance when there is a pregnancy, injuries, vaginal infections or a venereal disease? **No Yes Unclear**
32. Were the questions used by the investigating officer during submission of the statement noted down verbatim? **Yes No Uncertain**
33. Are these questions and techniques used during submission of the statement suggestive, leading or intimidating in nature, e.g., the quality and prosody of the wording? **No Yes Uncertain**
34. Do these questions and techniques used during submission of the statement reflect a certain amount of “psychological and emotional” force exercised to elicit a statement? **No Yes Uncertain**
35. Could methods and strategies used to elicit information from the alleged victim have resulted in manipulation, force, or an unwilling statement? **No Yes Uncertain**

A complaint at the first reasonable opportunity

36. Does the statement follow a complaint at the first reasonable opportunity? **Yes No Uncertain**
37. Does the statement of the alleged victim portray immediacy and spontaneity of the victim’s response to the event? **Yes No Uncertain**
38. Is the statement a delayed complaint? **Yes No Uncertain**
39. Does the statement include the reason for postponement of the complaint? **Yes No Uncertain**
40. Does the statement portray the alleged victim’s level of understanding of the immorality of the act during the alleged offence (level of moral development) that could have deterred the victim to complain directly after the incident? **Yes No Uncertain**

⁶ The Germanic origin of *hue and cry* lies in the old requirement that the victim of rape “*forthwith and while the act is fresh ... ought to report with hue and cry to the neighbouring villa and there display to honest men the injury done to her...*” (Schmidt, 1990, p378).

41. Does the statement include reference to the presence or absence of an (emotional) available person to whom one could reasonably expect the alleged victim to complain? **Yes No Uncertain**
42. Does the statement refer to certain factors that could have prevented the alleged victim to complain? **Yes No Uncertain**
43. Does the statement make mention of the presence or absence of a so-called *psychological parent*⁷ to whom the alleged victim could have turned to complain, following the alleged offence? **Yes No Uncertain**
44. Does the statement contain presumable existence of the so-called Lolita syndrome?⁸ **Yes No Uncertain**
45. Does the statement contain presumable presence of *pseudologia fantastica*?⁹ (erotomania)⁹ **Yes No Uncertain**
46. Does the statement contain presumable existence of a motive for retaliation or other form of secondary gain? **Yes No Uncertain**

The victim must testify in person

47. Was a so-called “facilitator” used as go-between to take down the statement? **Yes No Uncertain**
48. During submission of the statement to the investigating officer, is there evidence that external parties, e.g., family members filling in memory gaps, or interpreter portraying a “filtered” story, have lead evidence included in the statement? **No Yes Uncertain**
49. During submission of the statement to the investigating officer, has the alleged victim been hesitating, showing prejudice, or did the alleged victim contradict him- or herself? **No Yes Uncertain**
50. Did the investigating officer taking down the statement ask for clarification, and were these clarifying questions included verbatim in the statement? **Yes No Uncertain**
51. Does the statement include hearsay? **No Yes Uncertain**
52. Did the investigating officer scrutinize, using questioning, the possibility of conscious or unconscious fabrication? **Yes No Uncertain**
53. Were these scrutinizing questions recorded verbatim? **Yes No Uncertain**
54. Does the statement contain wording that could point towards emotional reactions like feelings of guilt or vindictiveness and were these clarified through questioning by the investigating officer? **Yes No Uncertain**
55. Were clarifying questions recorded verbatim? **Yes No Uncertain**

⁷ Psychological parent means the parent (or substitute caregiver) to whom the child turns in times of distress for the necessary psychological and other care, to be cherished and protected and who probably satisfies the minor child's needs most in this regard (Naudé & Maree, 2001, p35).

⁸ Lolita syndrome entails the phenomenon where an adolescent strongly identifies with a parental figure of the opposite sex, resulting in projection of sexual impulses upon such parental figure or caregiver.

⁹ Pseudologia fantastica refers to the tendency of an individual to tell grandiose fabrications about him/her (Plug, Meyer, Louw & Gouws, 1997, p290).

56. Does the statement contain wording that could point towards suggestibility of the alleged victim?
Yes No Uncertain
57. Were so-called suggestible or “laden” vocabulary clarified and duly recorded by the investigating officer?
Yes No Uncertain
58. Does the statement contain wording that could point towards misrepresentation or misinterpretation of the true facts?
Yes No Uncertain
59. Were so-called misrepresentations or misinterpretations clarified and duly recorded by the investigating officer?
Yes No Uncertain
60. Does the statement contain wording that could point towards personal grievances towards the accused?
Yes No Uncertain
61. Were indications of personal grievances clarified and duly recorded by the investigating officer?
Yes No Uncertain
62. Does the statement contain age-appropriate sexual terminology and vocabulary, recorded verbatim?
Yes No Uncertain
63. Were unusual terminologies and vocabularies clarified and duly recorded by the investigating officer?
Yes No Uncertain
64. Does the statement reflect a distinct discrepancy between the nature of the accusation and the level of emotional tranquillity of the alleged victim, and were these duly recorded?
Yes No Uncertain
65. Does the alleged victim’s choice of wording (vocabulary) and affection show signs of contamination by another third party, i.e., the alleged victim is using the precise wording of the mother?
Yes No Uncertain
66. Were signs of contamination clarified and duly recorded by the investigating officer?
Yes No Uncertain
67. Are source information duly recorded by the investigating officer, i.e., specific facts relating to the alleged offence?
Yes No Uncertain
68. Does the statement contain examples of assumptions, and were these assumptions duly clarified and recorded by the investigating officer?
Yes No Uncertain
69. Does the statement contain examples of speculation or conjecture, and were these duly clarified and recorded by the investigating officer?
Yes No Uncertain
70. Does the statement portray a clear connection between sets of facts, and were disconnections clarified and duly recorded?
Yes No Uncertain
71. Does the statement contain circumstantiality, and were these clarified and duly recorded?
Yes No Uncertain

Decision-making capacity of the alleged victim

72. Does the statement reflect the attained level of decision-making capacity of the alleged victim?
Yes No Uncertain
73. Does the statement show evidence of the alleged victim’s level of intellectual functioning?
Yes No Uncertain

74. Does the statement show evidence of the alleged victim's attained level of maturity and capacity to consult with the investigating officer and others involved in the case? **Yes No Uncertain**
75. Does the statement show the extent to which the alleged victim's intellectual functioning and attained level of maturity bear an influence on his/her capacity to testify in person to further his/her own cause? **Yes No Uncertain**
76. Does the statement reflect the alleged victim's level of self-insight and his/her capacity to reach a rational decision? **Yes No Uncertain**
77. Does the statement reflect the alleged victim's capacity to understand the consequences of decisions he/she has taken? **Yes No Uncertain**
78. Was the decision-making capacity of the alleged victim during submission of the statement scrutinized at hand of criteria 72 to 77, and were these duly recorded by the investigating officer? **Yes No Uncertain**
79. Was the suggestibility of the alleged victim scrutinized during submission of the statement, and were these duly recorded by the investigating officer? **Yes No Uncertain**
80. Were aides (e.g., anatomically correct dolls, drawings, etc.) used to elicit a statement? **Yes No Uncertain**
81. Was the use of aides duly recorded and included as attachments to the statement, e.g., drawings made by the alleged victim? **Yes No Uncertain**

4.7.1 Verification of the docket

The researcher endorsed the items on the checklist of the extra-judicial statements (narratives) from the dockets. The researcher studied the entire file (docket) and then endorsed on the relevant responses according to the contents of the statement (narrative). Due to the fact that this part of the research was qualitative in nature, a moderator for the researcher's scoring was deemed necessary. Hence, the services of an external moderator were obtained in the person of a Clinical Psychologist, holding a master's degree. The external moderator had seven years work experience as a Clinical Psychologist at the Forensic Psychiatric Unit of the Windhoek Central Hospital, and three years lecturing experience for the module Behavioural Sciences at the University of Zimbabwe, Medical School. The external moderator independently scored the dockets (narratives), using the same extra judicial checklist (see Table 4.5). The inter-scorer concordance rate was calculated to be at least 94%. This implied that the error variance due to human factors was around 6 %, which would not have affected validity and reliability of the results.

4.8 COURT OBSERVATIONS

Cases of children below the age of ten years, and who were able to testify were identified for observation. These children were allegedly sexually abused. The Namibian Police Crime bulletin reported that on average seven rape cases involving children were reported per month in Namibia in 2009, although reporting does not necessarily mean that all of these cases will be heard in a court of law. These reported cases included minors up to the age of 18 years; hence, not all of these cases were suitable for inclusion into the study. A minimum of three cases were planned to be selected from the court roster for purposes of observation. Because trials could potentially extend over a period of several months or even years, observations were restricted to the *viva voce* testimonies of the children involved. The three cases would be akin to three case studies, which would be able to provide rich information. It was expected that the three case observations would allow sufficient forensic interview dynamics to unfold.

In Namibia rape cases are usually heard in the regional courts, which are assigned the powers to administer maximum sentences as prescribed by the Combating of Rape Act 2000. If a rape case culminates in murder or if it is on appeal, the case is heard by the High Court. Children, however, do not usually testify in the High Court. Hence, observations of *viva voce* testimonies were limited to regional court proceedings.

The researcher requested the Chief Magistrate at the Katutura Magistrate Courts to be informed when cases of child sexual abuse were being heard. The Chief Magistrate in turn informed the prosecutors to let him know when such cases were up coming. The Chief Magistrate agreed to have the researcher just sit in as an ordinary person or journalist in the gallery. He felt that if he had to inform the court officials, they would not behave as usual due to experimenter effect. This was a suggestion which the researcher had wanted to request and fortunately it was provided as package. The researcher waited for the opportunity to observe said target cases, yet suitable cases did not present as anticipated.

The court observations were expected to only provide additional information in the category of “*non-verbal body*”. The court observations were hence seen as providing corroborative information to the case reviews. It was assumed that at least ninety percent of the assessment of suggestibility was covered through the audio case reviews; hence the failure to observe cases had a minimal effect on the study objectives.

4.11 DATA ANALYSES AND STATISTICAL COMPUTATION

One of the major computer packages for analyzing quantitative data, the SPSS 19, was used for data analyses and statistical computation.

4.11.1 Distinctive Features of the SPSS 19

SPSS stands for Statistical Package for the Social Sciences, indicating its initial purpose. Since its first appearance it has undergone considerable development and new versions appear regularly, providing additional facilities. SPSS comes as a series of modules; the Base module is the minimum needed, and Statistics, Advanced Statistics and other modules are required for anything other than simple analytic procedures. To use SPSS, the researcher needs access to a computer that has the package installed and then has to create a data file containing the figures to be analyzed. This can be created in a spreadsheet and imported into SPSS. The data file consists of a table in which the data for one case or participant are entered in one row, with each column containing the data for one variable. The analyses to be performed are selected from screen displays and the relevant commands can then be pasted into a syntax or command file. Alternatively, the syntax file can be prepared on a word processor, but this requires considerable familiarity with the SPSS command language. It is not necessary to create a command file, but there are huge benefits in doing so. When the commands are run, the package generates an output file containing the results of running those commands on the data in the data file. The contents can be transferred to a word processor for further editing. The analyses

available depend on the modules that have been installed, but include the common statistical tests of significance as well as more complex procedures such as factor analysis and multiple regressions (Jupp, 2006; Blair & Taylor, 2008).

4.11.2 Evaluation of the SPSS

The printout from SPSS often includes a lot of material that is not needed, cannot be suppressed and has to be ignored. This means the user needs to know how to read the output to find the particular parts which are of interest. The SPSS manuals were exemplars of computer manuals that required readers to be experts before they could understand them. SPSS is used worldwide and provides enormous data processing power. The dangers are that users can access complex procedures while having little understanding of what they are doing. Hence, it is important that the researcher should know what analyses are wanted before using the package (Jupp, 2006; Blair & Taylor, 2008).

4.12 SYNOPSIS

This chapter provided an overview of the research plan, with specific reference to methods and strategies employed towards data gathering. Instrumentation, the pilot study, and sample taking were discussed in-depth. The researcher took the readership on a guided tour and disclosed steps taken to ensure high levels of ethical compliance, validity, reliability, and credibility via external moderation of data. The researcher also disclosed barriers that slowed down data collection at times. It transpired that a study of this nature can only be made possible with the thoughtful and generous collaboration of staff employed within the Namibian legal justice system. The next chapter offers the data analyses and interpretations.

CHAPTER 5

ANALYSIS OF RESULTS

5.1 INTRODUCTION

The analysis of the results was done in three stages, namely the analysis of the semi-structured questionnaire through descriptive statistics and analysis of variance between the different groups, analysis of the checklist for the extra-judicial statements, and lastly the analysis of the suggestibility checklist. Analyses of the semi-structured questionnaire and the dockets checklist were mainly quantitative, while the suggestibility checklist was qualitative. The sequence of the analysis was arranged in such a manner that it flowed from the assumption with the assumption that legal and allied criminal justice professionals with adequate knowledge of suggestibility are likely to conduct good forensic interviews before the court proceedings and will conduct direct cross examination in a manner that does not heighten the possibility of suggestibility.

5.2 ANALYSIS OF THE SEMI-STRUCTURED QUESTIONNAIRE

The response structure of the questionnaire was discrete to prevent disclosure of the positive answers to the participants through provision of response options such as “agree”, “disagree”, and “uncertain”. “Agree” responses did not necessarily denote positives, and depending on the question structure, “disagree” responses in some instances denoted positives instead. Once the participants have completed the questionnaires, the researcher re-coded the response options in bipolar (negative/positive) fashion to ease data capturing. By illustration, good knowledge/practice of suggestibility was re-coded as “sensitive” for suggestibility, while those that did not portray such knowledge or practice were re-coded as “non-sensitive” for suggestibility, e.g. question 28. Some response items already adhered

to this format, and were left unchanged, e.g. questions 24 and 29, which related to best practices. Open-ended questions remained unchanged and the researcher performed a content analysis for recording purposes. The researcher retained the meaning of “uncertain” responses to indicate that the participants indicated uncertainty. The analysis of the questionnaire was done using SPSS 19. The responses were coded “1” for sensitive, “2” for non-sensitive, and “3” for uncertain. Data computation and analysis produced descriptive statistics, using the SPSS 19 computer program, e.g., frequencies were calculated for the endorsements on different questions (test items). The researcher then conducted a comparative analysis of selected items to differentiate between different groups of participants with the aim of determining inter-group differences, e.g. whether the legal practitioners performed significantly different from others. This comparative analysis enabled the researcher to identify statistically significant inter-group differences in terms of suggestibility sensitivity.

5.2.1 Demography and qualifications

A total number of 58 participants responded to the questionnaire (N=58). The sample breakdown is as follows: three (3) social workers, ten (10) police officers, sixteen (16) prosecutors, ten (10) magistrates, and nineteen (19) defence lawyers. The gender breakdown is as follows: Forty (40) of the participants are male (69%) and 18 are females (31%). The age of the participants ranged between 23 and 63 years, with a mean age of 39.2 years. In the analysis and reporting of the results, ‘lawyers’ refer to defence lawyers, while ‘participants’ refer to the legal and allied criminal justice research participants.

As reflected in table 5.1, the highest educational qualification obtained was a master’s degree, with 10.3% of the sample holding this qualification. The lowest qualification obtained, was a secondary education qualification, with 19% of the participants holding this qualification. From the cohort of legal practitioners, 50% graduated with a LLB qualification.

Table 5.1 *Highest educational qualification*

		Frequency	Percent	Value Percent	Cumulative Percent
Value	Bachelor's degree	12	20.7	20.7	20.7
	LLB	29	50.0	50.0	70.7
	Master's	6	10.3	10.3	81.0
	Secondary education	11	19.0	19.0	100.0
	Total (N)	58	100.0	100.0	

5.2.2 Item by item analysis

Cross tabulation of each item reflects the percentage distributions for all participants and scores for the individual groups. Those items in which participants achieved below average sensitivity levels are presented graphically (figures), in addition to the frequency tables. The figures represent the total scores for all the participants on that item. The following tables reveal the tabulations item by item.

5.2.2.1 *Understanding of the concept suggestibility*

Below follows a presentation of the results on research participants' understanding of the concept suggestibility, broken down according to occupation. As shown in table 5.2 and figure 5.1 below, 43.1 % of the participants were sensitive to the meaning of the term suggestibility, while 37.9% were non-sensitive, and 19% were uncertain. Of this cohort, 56% were non-sensitive or had inadequate understanding of the meaning of suggestibility. The inference is based on the working assumption that if one is uncertain about the meaning of a concept, then sensitivity is also likely to be lower. Inter-group comparisons reveal highest sensitivity to the meaning of suggestibility among magistrates (80%), followed by lawyers (47%), prosecutors (43.8%), police officers (10%) and social workers (0%) in descending frequency respectively. Inter-

group frequency difference is statistically significant, using the Anova (F) test, with $p = .000$, hence, $p < 0.05$.

Table 5.2 *Frequency table of research participants' understanding of the concept suggestibility*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	0 0.0	1 33.3	2 66.7	3 100
Police officer ($n = 10$)	F $F\%$ row	1 10.0	2 20.0	7 70.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	7 43.8	9 56.3	0 0.0	16 100
Magistrate ($n = 10$)	F $F\%$ row	8 80	2 20.0	0 0.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	9 47.4	8 42.1	2 10.5	19 100
Total ($N = 58$)	F $F\%$ row	25 43.1	22 37.9	11 19.0	58 100

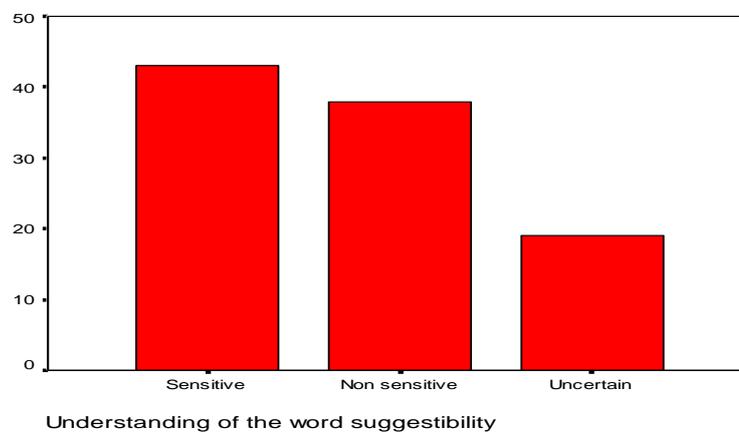


Figure 5.1 *Graphic representation of research participants' understanding of suggestibility*

5.2.2.2 *Difference between child and adult memory*

Below follows a presentation of the results on research participants' understanding of the difference between child and adult memory, broken down according to occupation. Compared to the results on the meaning of suggestibility, more practitioners were sensitive to the fact that children's memory is different from that of adults, with (89.7%) showing such sensitivity, while 10.3% were non-sensitive to the difference between child and adult memory. The highest sensitivity to memory differences between children and adults was found among police officers (100%), followed by lawyers (94.7%), magistrates (90%), prosecutors (81%) and social workers (66.7%) in descending frequency respectively. Table 5.3 reveals this distribution. Inter-group frequency difference is statistically significant, using the Anova (F) test, with $p = 0.601$, hence, $p > 0.05$.

Table 5.3 *Frequency table of research participants' understanding of the difference between child and adult memory*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	2 66.7	1 33.3	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	10 100	0 0.0	0 0.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	13 81.3	2 12.5	1 6.3	16 100
Magistrate ($n = 10$)	F $F\%$ row	9 90.0	1 10.0	0 0.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	18 94.7	0 0.0	1 5.3	19 100
Total ($N = 58$)	F $F\%$ row	25 89.7	22 6.9	11 3.4	58 100

5.2.2.3 *Language proficiency and memory*

Below follows a presentation of the results on research participants' understanding of the link between language proficiency and memory, and child suggestibility, broken down according to occupation. Table 5.4 reveals that 62.1% of the legal practitioners were sensitive to the fact that language proficiency links closely with proficient memory consolidation and retrieval, thereby lowering the risk of suggestibility. However, 37.9 % of legal practitioners were non-sensitive to this fact. Police officers (80%) demonstrate highest sensitivity to the link between language proficiency and suggestibility, followed by social workers (66.7%), prosecutors (62.5%), lawyers (57.9%) and magistrates (50%) in descending frequency respectively. Inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.601$, hence, $p > 0.05$.

Table 5.4 *Frequency table of research participants' understanding of language proficiency and memory in child suggestibility*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	2 66.7	1 33.3	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	8 80.0	1 10.0	1 10.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	10 62.5	4 25.0	2 12.5	16 100
Magistrate ($n = 10$)	F $F\%$ row	5 50.0	3 30.0	2 20.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	11 57.9	5 26.3	3 15.8	19 100
Total ($N = 58$)	F $F\%$ row	36 62.1	14 24.1	8 13.8	58 100

5.2.2.4 Interview style and children's response style

Below follows a presentation of the results on research participants' understanding of the link between interview style and children's response style, broken down according to occupation. Table 5.5 reveals that 93.1% of the legal practitioners were sensitive to the fact that forensic interviewing style links closely with children's response style, suggesting cognizance thereof that suggestibility may increase with suggestive interviewing. All of the social workers, prosecutors and magistrates (100%) were sensitive to the link between interviewing style and child suggestibility, followed by lawyers (94.7%) and police officers (70%) in descending frequency respectively. Inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.120$, hence, $p > 0.05$.

Table 5.5 *Frequency table of research participants' understanding of link between interview style and children's response style*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	3 100	0 0.0	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	7 70	2 20.0	1 10.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	16 100	0 0.0	0 0.0	16 100
Magistrate ($n = 10$)	F $F\%$ row	10 100	0 0.0	0 0.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	18 94.7	0 0.0	1 5.3	19 100
Total ($N = 58$)	F $F\%$ row	54 93.1	2 3.4	2 3.4	58 100

5.2.2.5 *Theory of mind in child suggestibility*

Below follows a presentation of the results on research participants' understanding of theory of mind, and its link with child suggestibility, broken down according to occupation. Table 5.6 and figure 5.2 reveal that less than half (43.1%) of the participants were sensitive to the concept of theory of mind and its link with child suggestibility, while 56.9% were non-sensitive to this concept. Magistrates and police officers demonstrated the highest sensitivity (60%), with prosecutors having demonstrated least sensitivity (31%). Inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.54$, hence, $p > 0.05$.

Table 5.6 *Frequency table of research participants' understanding of theory of mind in child suggestibility*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	1 33.3	2 66.7	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	6 60.0	2 20.0	2 20.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	5 31.3	9 56.3	2 12.5	16 100
Magistrate ($n = 10$)	F $F\%$ row	6 60.0	2 20.0	2 20.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	7 36.8	4 21.1	8 42.1	19 100
Total ($N = 58$)	F $F\%$ row	25 43.1	19 32.8	14 24.1	58 100

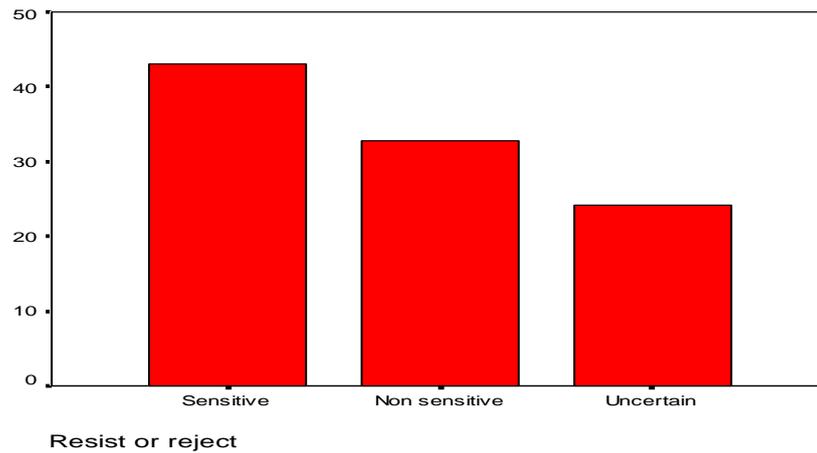


Figure 5.2 Graphic representation of research participants' understanding of theory of mind in child suggestibility

5.2.2.6 *Open-ended questions supporting memory retrieval*

Below follows a presentation of the results on research participants' understanding thereof that open-ended questions may support memory retrieval, thereby decreasing suggestibility. Results are broken down according to occupation.

Table 5.7 reveals that 63.8% of the research participants were sensitive thereof that open-ended questions support children's memory retrieval, while 36.2% were non-sensitive to this. Prosecutors and magistrates demonstrated the highest levels of sensitivity (81.3% and 80% respectively). Interestingly, the defence lawyers demonstrated least sensitivity (36.8%) to the link between open-ended questions and children's memory retrieval, suggesting that defence lawyers may tend to use closed questions more often, thereby creating higher risk for child suggestibility. However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.54$, hence, $p > 0.05$.

Table 5.7 *Frequency table of research participants' understanding of open-ended questions as support for memory retrieval*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	2 66.7	1 33.3	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	7 70.0	0 0.0	3 30.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	13 81.3	2 12.5	1 6.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	8 80.0	1 10.0	1 10.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	7 36.8	7 36.8	5 26.3	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	37 63.8	11 19.0	10 17.2	58 100

5.2.2.7 Interview hypothesis effect

Below follows a presentation of the results on research participants' understanding of the hypothesis effect on child suggestibility, broken down according to occupation.

Table 5.8 and figure 5.3 reveal that less than half (44.8%) of the participants were cognizant about the negative effect of having a hypothesis before interviewing children, while 55.2% were non-sensitive to such an effect. Social workers demonstrated the highest sensitivity (66%), followed by defence lawyers (52%), prosecutors (50%), and police officers (20%) in descending frequency respectively. However, inter-group frequency difference is not statistically significant, using the Anova (*F*) test, with $p = 0.111$, hence, $p > 0.05$. Police officers perform most of the initial forensic interviews with children; hence, the greater percentages (80%) of police officers are likely to conduct forensic interviews with children, having a pre-constructed hypothesis in mind about the incident.

Table 5.8 *Frequency table of research participants' understanding of hypothesis effect*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	2 66.7	1 33.3	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	2 20.0	4 40.0	4 40.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	8 50.0	7 43.8	1 6.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	4 40.0	6 60.0	0 0.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	10 52.6	5 26.3	4 21.1	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	26 44.8	23 39.7	9 15.5	58 100

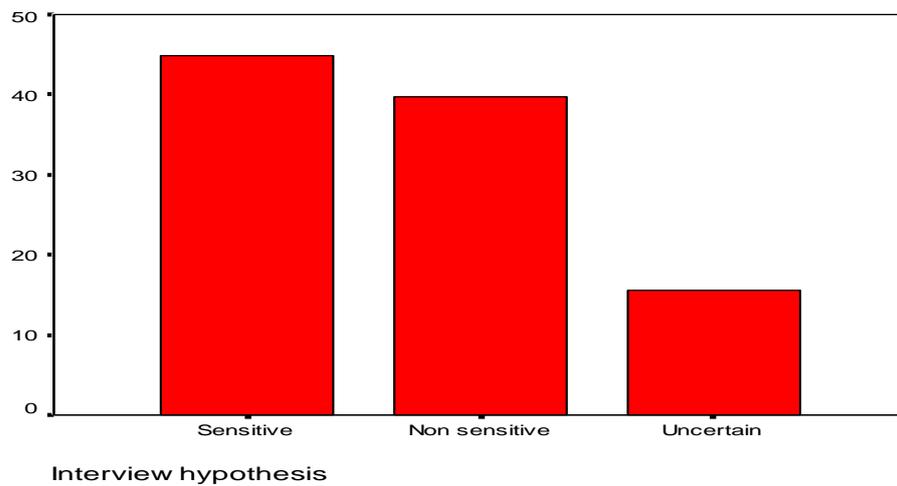


Figure 5.3 *Graphic representation of research participants' understanding of hypothesis effect*

5.2.2.8 Source memory accessibility (eyewitness testimony)

Below follows a presentation of the results on research participants' understanding of the link between accessibility of source memory and child suggestibility, broken down according to occupation. Table 5.9 and figure 5.4 reveal that a small percentage (24.1%) of participants was sensitive to the fact that the ability of children to trace memory sources has some influence on suggestibility. Of the cohort, 75.9% were non-sensitive to the effect of source memory accessibility on suggestibility. Prosecutors demonstrated highest sensitivity to the effect of source memory accessibility (37.5%), followed by magistrates (30%), police officers (20%), lawyers (15.8%), and social workers (0%) in descending frequency respectively. However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.471$, hence, $p > 0.05$.

Table 5.9 Frequency table of research participants' understanding of source memory accessibility (eyewitness testimony) and child suggestibility

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	0 0.0	3 100	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	2 20.0	3 30.0	5 50.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	6 37.5	5 31.3	5 31.3	16 100
Magistrate ($n = 10$)	F $F\%$ row	3 30.0	3 30.0	4 40.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	3 15.8	5 26.3	11 57.9	19 100
Total ($N = 58$)	F $F\%$ row	14 24.1	19 32.8	25 43.1	58 100

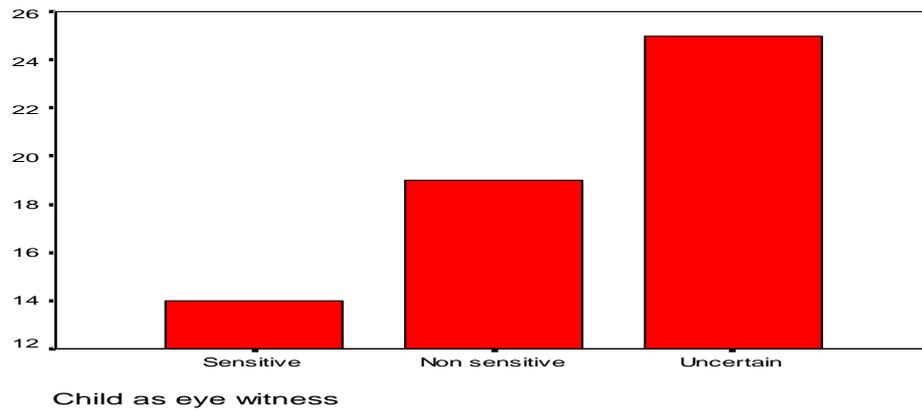


Figure 5.4 Graphic representation of research participants' understanding of source memory accessibility (eyewitness testimony) and child suggestibility

5.2.2.9 Effect of false information on children's recall accuracy

Below follows a presentation of the results on research participants' understanding of the effect of false information on children's recall accuracy, broken down according to occupation.

Table 5.10 reveals that the greater percentage (74.1%) of the research participants was aware of the fact that provision of false information to children might cause them to accept such information as the truth, thereby increasing the risk of child suggestibility. Of the cohort, 25.8% were non-sensitive to the link between false information, recall accuracy and child suggestibility. All of the magistrates (100%) were quite sensitive to this effect, followed by police officers (80%), prosecutors (68.8%), lawyers (68.4%), and social workers (33.3%) in descending frequency respectively. However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.342$, hence, $p > 0.05$.

Table 5.10 *Frequency table of research participants' understanding of effect of false information on children's recall accuracy*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (n = 3)	<i>F</i> <i>F</i> % row	1 33.3	2 66.7	0 0.0	3 100
Police officer (n = 10)	<i>F</i> <i>F</i> % row	8 80.0	1 10.0	1 10.0	10 100
Prosecutor (n = 16)	<i>F</i> <i>F</i> % row	11 68.8	4 25.0	1 6.3	16 100
Magistrate (n = 10)	<i>F</i> <i>F</i> % row	10 100	0 0.0	0 0.0	10 100
Lawyer (n = 19)	<i>F</i> <i>F</i> % row	13 68.4	3 15.8	3 15.8	19 100
Total (N = 58)	<i>F</i> <i>F</i> % row	43 74.1	10 17.2	5 8.6	58 100

5.2.2.10 *Concept of child suggestibility in legal justice system*

Below follows a presentation of the results on research participants' cognizance of the concept child suggestibility in the legal justice system, broken down according to occupation.

According to table 5.11 and figure 5.5, only a small percentage of participants (31%) were well informed on the concept of child suggestibility within the Namibian legal justice system, while the greater percentage (67%) were uncertain or disagreed with the statement that child suggestibility is a well-known concept in the legal justice system of Namibia. Within the well-informed research participants, magistrates were most sensitive to child suggestibility (50%), followed by lawyers (36.8%), social workers (33.3%), prosecutors (25%), and police officers (10%) in descending frequency respectively. However, inter-group frequency difference is not statistically significant, using the Anova (*F*) test, with $p = 0.14$, hence, $p > 0.05$.

Table 5.11 *Frequency table of research participants' cognizance of the concept child suggestibility in the legal justice system*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (n = 3)	<i>F</i> <i>F% row</i>	1 33.3	0 0.0	2 66.7	3 100
Police officer (n = 10)	<i>F</i> <i>F% row</i>	1 10.0	3 30.0	6 60.0	10 100
Prosecutor (n = 16)	<i>F</i> <i>F% row</i>	4 25.0	4 25.0	8 50.0	16 100
Magistrate (n = 10)	<i>F</i> <i>F% row</i>	5 50.0	2 20.0	3 30.0	10 100
Lawyer (n = 19)	<i>F</i> <i>F% row</i>	7 36.8	9 47.4	3 15.8	19 100
Total (N = 58)	<i>F</i> <i>F% row</i>	18 31.0	18 31.0	22 37.9	58 100

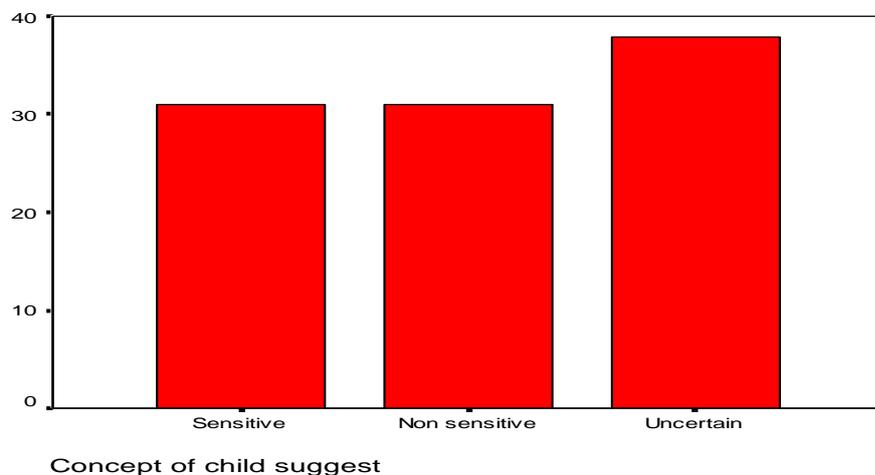


Figure 5.5 *Graphic representation of research participants' cognizance of the concept child suggestibility in the legal justice system*

5.2.2.11 Leading questions and accuracy of memory recall

Below follows a presentation of the results on research participants' cognizance thereof that leading questions have negative effect on accuracy of memory recall among children, broken down according to occupation.

According to table 5.12 and figure 5.6, less than half (39.7 %) of the participants were sensitive to the fact that leading questions cause children to provide unreliable information. The remainder of the research participants were non-sensitive to this effect. Social workers demonstrated highest sensitivity (66.7%), followed by prosecutors and lawyers in equal sensitivity frequency (47%), and lastly magistrates and police officers in equal sensitivity frequency (10%). However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.26$, hence, $p > 0.05$.

Table 5.12 *Frequency table of research participants' cognizance of the link between leading questions and accurate memory recall*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	2 66.7	1 33.3	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	2 20.0	4 40.0	4 40.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	8 50.0	6 37.5	2 12.5	16 100
Magistrate ($n = 10$)	F $F\%$ row	2 20.0	6 60.0	2 20.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	9 47.4	5 26.3	5 26.3	19 100
Total ($N = 58$)	F $F\%$ row	23 39.7	22 37.9	13 22.4	58 100

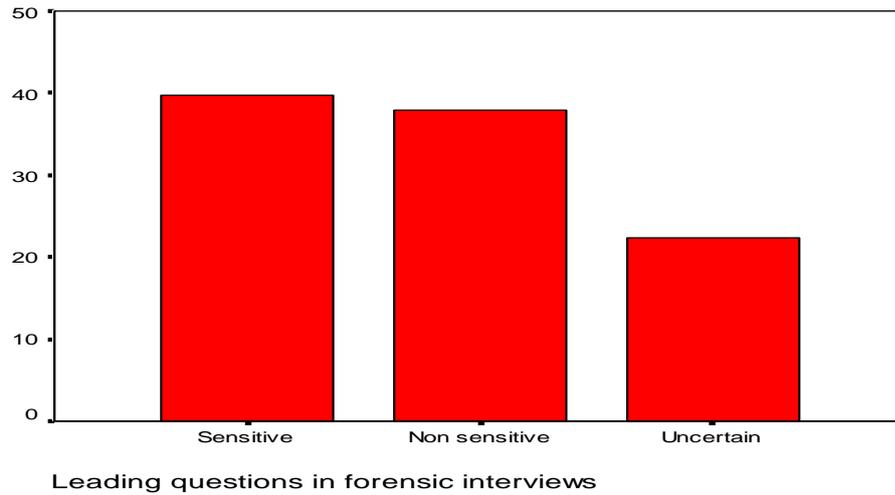


Figure 5.6 Graphic representation of research participants' cognizance of the link between leading questions and accurate memory recall

1.2.2.12 Age group and suggestibility

Below follows a presentation of the results on research participants' cognizance thereof that certain age groups are more suggestible, broken down according to occupation.

According to table 5.13 and figure 5.7, 36.2% of research participants were able to identify correctly the age group at greatest risk for suggestibility, namely the 3 to 6 year olds, whereas 24.1% of research participants were uncertain as to which age group is most suggestible. Of the cohort, 15.5% research respondents identified the 6 to 8 year olds as most suggestible, followed by 13.8% research respondents indicated the 1 to 3 year old age group, and 10.3% of research respondents identified the 9 to 10 year olds as most suggestible. However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.83$, hence, $p > 0.05$.

Table 5.13 *Frequency table of research participants' cognizance of the link between age and suggestibility*

Job Title	Frequency count	Age group in years					Total
		1 – 3	3 - 6	6 - 8	9 - 10	No age group sensitivity	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	1 33.3	0 0.0	0 0.0	1 33.3	1 33.3	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	1 10.0	3 30.0	1 10.0	2 20.0	3 30.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	4 25.0	5 31.3	3 18.8	0 0.0	4 25.0	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	1 10.0	4 40.0	0 0.0	3 30.0	2 20.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	1 5.3	9 47.4	5 26.3	0 0.0	4 21.1	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	8 13.8	21 36.2	9 15.5	6 10.3	14 24.1	58 100

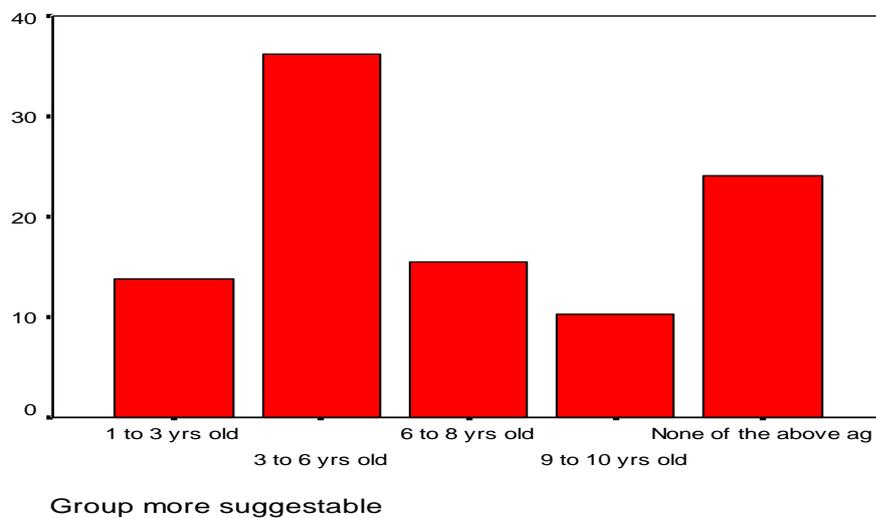


Figure 5.7 *Graphic representation of research participants' cognizance of the link between age and suggestibility*

5.2.2.13 *Use of anatomically detailed dolls*

Below follows a presentation of the results on research participants' knowledge about the use of anatomically detailed dolls, broken down according to occupation.

Table 5.14 reveals that 67.2 % of the research participants were aware of the negative effect of using anatomically detailed dolls before the child witness discloses sexual abuse. The highest sensitivity was found in social workers (100%), followed by magistrates (90%), prosecutors (68.8%), lawyers (57.9%) and police officers (50%) in descending frequency respectively. However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.3$, hence, $p > 0.05$.

Table 5.14 *Frequency table of research participants' knowledge on the use of anatomically correct dolls*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	3 100	0 0.0	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	5 50.0	3 30.0	2 20.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	11 68.8	3 18.8	2 12.5	16 100
Magistrate ($n = 10$)	F $F\%$ row	9 90.0	0 0.0	1 10.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	11 57.9	2 10.5	6 31.6	19 100
Total ($N = 58$)	F $F\%$ row	39 67.2	8 13.8	11 19.0	58 100

5.2.2.14 Rewarding children during interviewing

Below follows a presentation of the results on research participants' cognizance thereof that rewarding children may increase susceptibility for suggestion, broken down according to occupation.

Table 5.15 and figure 5.8 reveal that 44.8% of the participants were sensitive to the fact that interviewers should not reward children during interviewing, because positive reinforcement correlates high with increased susceptibility for suggestion. Of the cohort, 56% were non-sensitive to the negative effects of giving rewards to children during forensic interviews. Prosecutors demonstrated the highest sensitivity of all groups (62.5%), followed by magistrates (60%), with lawyers revealing least sensitivity (36.8%). However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.13$, hence, $p > 0.05$

Table 5.15 *Frequency table of research participants' cognizance of the link between rewarding and susceptibility for suggestion*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	0 0.0	3 100	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	3 30.0	4 40.0	3 30.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	10 62.5	5 31.3	1 6.3	16 100
Magistrate ($n = 10$)	F $F\%$ row	6 60.0	4 40.0	0 0.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	7 36.8	10 52.6	2 10.5	19 100
Total ($N = 58$)	F $F\%$ row	26 44.8	26 44.8	6 10.3	58 100

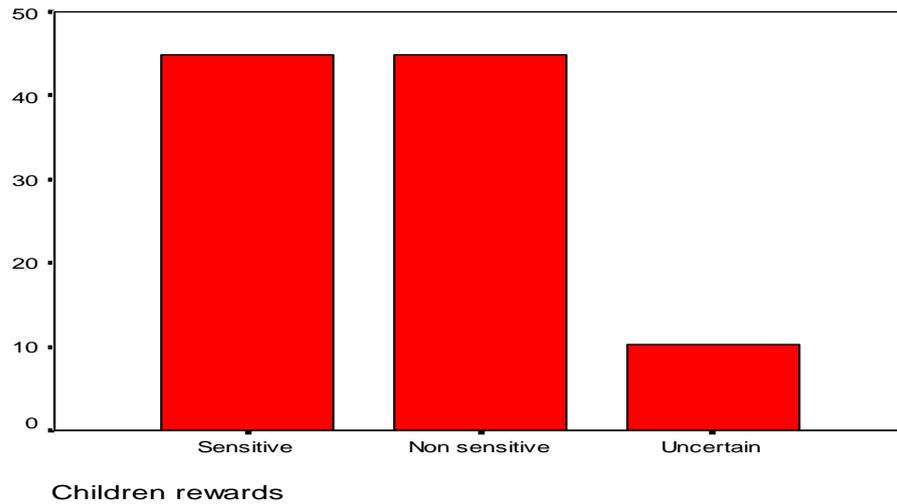


Figure 5.8 Graphic representation of research participants' cognizance of the link between rewarding and susceptibility for suggestion

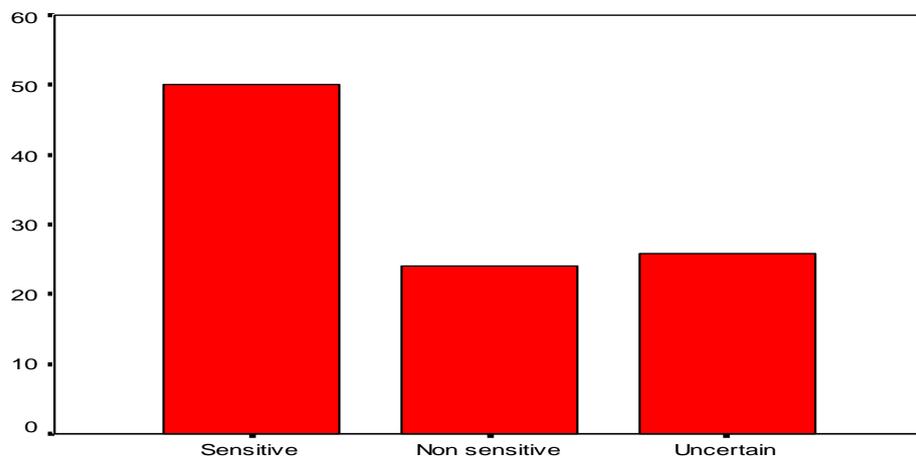
5.2.2.15 *Forensic interviewing by authoritative persons*

Below follows a presentation of the results on research participants' cognizance thereof that symbols of authority, e.g., a police officer wearing a uniform, may increase susceptibility for suggestion in children, broken down according to occupation.

Table 5.16 and figure 5.9 reveal that half of the participants (50%) were sensitive to the fact that authoritative individuals should not conduct interviews with children, and that the interview room must contain as few as possible symbols of authority, while half of the research participants (50%) demonstrated non-sensitivity to this fact. Magistrates demonstrated highest sensitivity to the effect of symbols of authority (60%), followed by lawyers (57.9%), prosecutors (56.3%), social workers (33.3%), and police officers (20%) in descending frequency respectively. However, inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.26$, hence, $p > 0.05$.

Table 5.16 *Frequency table of research participants' cognizance of the link between authority symbols and increased susceptibility for suggestion*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	1 33.3	2 66.7	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	2 20.0	3 30.0	5 50.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	9 56.3	2 12.5	5 31.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	6 60.0	2 20.0	2 20.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	11 57.9	5 26.3	3 15.8	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	29 50.0	14 24.1	15 25.9	58 100



Interviews by authoritative person

Figure 5.9 *Graphic representation of research participants' cognizance of the link between authority symbols and increased susceptibility for suggestion*

5.2.2.16 Undoing implanted false information

Below follows a presentation of the results on research participants' cognizance thereof that it is extremely difficult to undo implanted false information, and that implanted false information may contribute to increased susceptibility for suggestion in children, broken down according to occupation.

Table 5.17 *Frequency table of research participants' cognizance of difficulty to undo implanted false information*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	3 100	0 0.0	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	1 10.0	4 40.0	5 50.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	10 62.5	5 31.3	1 6.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	6 60.0	1 10.0	3 30.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	10 52.6	1 5.3	8 42.1	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	30 51.7	11 19.0	17 29.3	58 100

Table 5.17 reveals that 51.7 % of the participants knew that its difficult to undo false memories and implanted false information in children, once they have been entrenched on their memories, while 48.3% were non-sensitive to the effect of false memories. Social workers demonstrated highest sensitivity in this regard (100%), while police officers demonstrated least sensitivity in this regard (10%). The inter-group frequency difference is statistically significant, using the Anova (*F*) test, with $p = 0.03$, hence, $p < 0.05$.

5.2.2.17 Interviewer with clear pre-conceived beliefs

Below follows a presentation of the results on research participants' cognizance thereof that an interviewer's clear (firm) pre-conceived beliefs may sway the interview to suit those very beliefs, thereby increasing the possibility of suggestive interviewing. Results are broken down according to occupation.

Table 5.18 *Frequency table of research participants' cognizance of the effect of the interviewer's clear pre-conceived beliefs*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	1 33.3	2 66.7	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	3 30.0	3 30.0	4 40.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	6 37.5	9 56.3	1 6.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	4 40.0	4 40.0	2 20.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	7 36.8	9 47.4	3 15.8	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	21 36.2	27 46.6	10 17.2	58 100

Table 5.18 and figure 5.10 reveal that less than half (36.2%) of the research participants were sensitive (i.e., they disagreed with the inverse statement) to the effect of the interviewer's firm pre-conceived beliefs on child interviewing. The remainder of the cohort (63.8%) was of the opinion that the interviewer's firm pre-conceived beliefs would improve the quality of the interview. Magistrates (40%) demonstrated highest sensitivity to the negative effects of clear, pre-conceived beliefs on child interviewing, followed by prosecutors (37.5%), lawyers (36.8%),

social workers (33.3%), and police officers (30%) in descending frequency respectively. The inter-group frequency difference is not statistically significant, using the Anova (F) test, with $p = 0.7$, hence, $p > 0.05$.

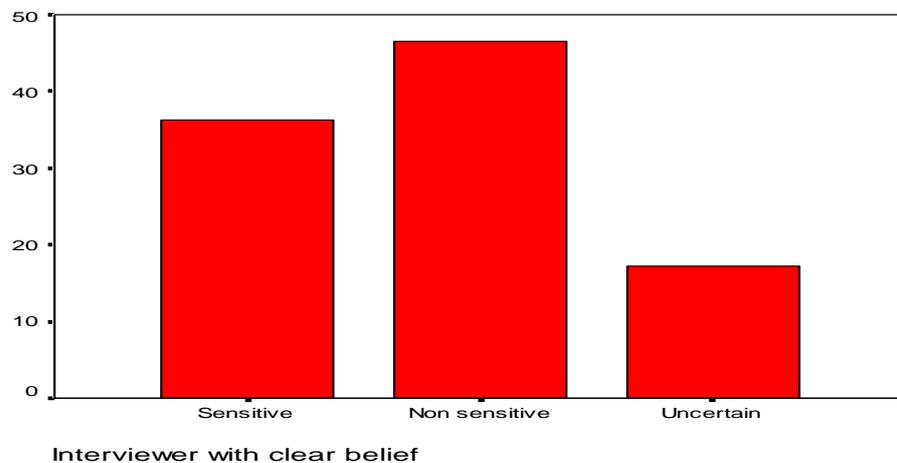


Figure 5.10 Graphic representation of research participants' cognizance of the effect of the interviewer's clear pre-conceived beliefs

5.2.2.18 Suggestibility in children with intellectual disabilities

Below follows a presentation of the results on research participants' cognizance of the link between suggestibility and intellectual abilities of children, with increased suggestibility among children with intellectual disabilities. Results are broken down according to occupation.

Table 5.19 reveals that a larger percentage (67.2%) of the participants was sensitive to the fact that children with intellectual disabilities are more suggestible those without intellectual disabilities, while 32.7% of the research participants were non-sensitive to this fact. Social workers were most sensitive to this fact (100%), followed by magistrates (90%), while police officers were least sensitive to this fact (20%). The inter-group frequency difference is statistically significant, using the Anova (F) test, with $p = 0.0002$, hence, $p < 0.05$.

Table 5.19 *Frequency table of research participants' cognizance of the link between suggestibility and intellectual abilities of children*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	3 100	0 0.0	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	2 20.0	3 30.0	5 50.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	10 62.5	5 31.3	1 6.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	9 90.0	0 0.0	1 10.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	15 78.9	2 10.5	2 10.5	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	39 67.2	10 17.2	9 15.5	58 100

5.2.2.19 *Forensic interviews conducted by professionals*

Below follows a presentation of the results on research participants' cognizance of the benefits involved in having professionals conduct forensic interviews. Results are broken down according to occupation.

According to table 5.20, a large percentage (87.9%) of research participants agreed thereto that professionals should rather conduct forensic interviews with children. Social workers demonstrated the highest sensitivity (100%), followed by prosecutors (93%), magistrates (90%), police officers (90%), and lawyers (78.9%) in descending frequency respectively. The inter-group frequency difference is statistically not significant, using the Anova (*F*) test, with $p = 0.51$, hence, $p > 0.05$.

Table 5.20 *Frequency table of research participants' cognizance of the link between suggestibility and intellectual abilities of children*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	3 100	0 0.0	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	9 90.0	0 0.0	1 10.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	15 93.8	1 6.3	0 0.0	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	9 90.0	0 0.0	1 10.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	15 78.9	0 0.0	4 21.1	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	51 87.9	1 1.7	6 10.3	58 100

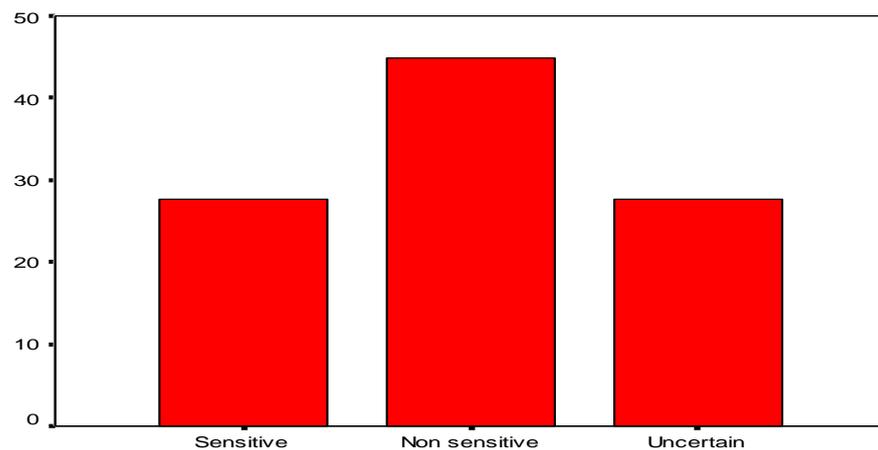
5.2.2.20 *Level of participation in event and memory recall*

Below follows a presentation of the results on research participants' cognizance of the link between level of participation in the event and memory recall. Results are broken down according to occupation.

According to table 5.21 and figure 5.11, a small percentage (27.6%) of the participants knew that central participation in the event helps children readily recall that event, while the remainder of the cohort (72.4%) demonstrated either non-sensitivity or uncertainty about such a relationship. Lawyers demonstrated highest sensitivity (47.4%), and social workers were very unaware of this relationship (0%). The inter-group frequency difference is statistically not significant, using the Anova (*F*) test, with $p = 0.52$, hence, $p > 0.05$.

Table 5.21 *Frequency table of research participants' cognizance of the link between level of participation in event and memory recall*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	0 0.0	2 66.7	1 33.3	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	1 10.0	5 50.0	4 40.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	4 25.0	11 68.8	1 6.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	2 20.0	6 60.0	2 20.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	9 47.4	2 10.5	8 42.1	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	16 27.6	26 44.8	16 27.6	58 100



Participation in nevent does not influence children ability

Figure 5.11 *Graphic representation of research participants' cognizance of the link between level of participation in event and memory recall*

5.2.2.21 Time interval between event and recall

Below follows a presentation of the results on research participants' cognizance of the link between level of participation in the event and memory recall. Results are broken down according to occupation.

Table 5.22 *Frequency table of research participants' cognizance of the importance of time interval between event and recall*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (n = 3)	<i>F</i> <i>F% row</i>	0 0.0	3 100	0 0.0	3 100
Police officer (n = 10)	<i>F</i> <i>F% row</i>	4 40.0	4 40.0	2 20.0	10 100
Prosecutor (n = 16)	<i>F</i> <i>F% row</i>	10 62.5	3 18.8	3 18.8	16 100
Magistrate (n = 10)	<i>F</i> <i>F% row</i>	6 60.0	4 40.0	0 0.0	10 100
Lawyer (n = 19)	<i>F</i> <i>F% row</i>	13 68.4	1 5.3	5 26.3	19 100
Total (N = 58)	<i>F</i> <i>F% row</i>	33 56.9	15 25.9	10 17.2	58 100

Table 5.22 reveals that more than half (56.9%) of the research participants were sensitive to the fact that generally the longer the time lapse between the event and recall, the poorer the quality of memory recall. Of the cohort, 43.1% were non-sensitive to this effect. The lawyers demonstrated highest sensitivity (68.4%), followed by prosecutors (62.5%), magistrates (60%), police officers (40%), and lastly social workers (0%), in descending frequency respectively. The inter-group frequency difference is statistically not significant, using the Anova (*F*) test, with $p = 0.71$, hence, $p > 0.05$.

5.2.2.22 Police wearing uniforms (uniform authority effect)

Below follows a presentation of the results on research participants' cognizance of the effect of police uniforms as tokens of authority and their link to susceptibility for suggestion. Results are broken down according to occupation.

Table 5.23 *Frequency table of research participants' cognizance of the effect of police uniforms on susceptibility for suggestion*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	3 100	0 0.0	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	8 80.0	1 10.0	1 10.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	13 81.3	2 12.5	1 6.3	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	10 100	0 0.0	0 0.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	16 84.2	0 0.0	3 15.8	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	50 86.2	3 5.2	5 8.6	58 100

Table 5.23 reveals that a large percentage (86.2%) of research participants knew that police should not wear uniforms when interviewing children, compared to 13.8 % of research participants who were unaware of this fact. Social workers and magistrates demonstrated highest sensitivity (100%), followed by lawyers (84.2%), prosecutors (81.3%), and police officers (80%) in descending frequency respectively. The inter-group frequency difference is statistically not significant, using the Anova (*F*) test, with $p = 0.66$, hence, $p > 0.05$.

5.2.2.23 Existence of a framework for conducting forensic interviews

Below follows a presentation of the results on research participants' cognizance of the existence of a framework for conducting forensic interviews within the Namibian legal justice system. Results are broken down according to occupation. Table 5.24 and figure 5.12 reveal that only 25.9% of the research participants were knowledgeable about a framework for conducting forensic interviews with individuals involved in the Namibian legal/justice system. Of the cohort, 55.2% were unaware of the existence of such framework, while 19% of the research participants indicated uncertainty. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.38$, hence, $p > 0.05$.

Table 5.24 *Frequency table of research participants' cognizance of the existence of a framework for conducting forensic interviews with children*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	1 33.3	2 66.7	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	4 40.0	4 40.0	2 20.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	5 31.3	10 62.5	1 6.3	16 100
Magistrate ($n = 10$)	F $F\%$ row	3 30.0	4 40.0	3 30.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	2 10.5	12 63.2	5 26.3	19 100
Total ($N = 58$)	F $F\%$ row	15 25.9	32 55.2	11 19.0	58 100

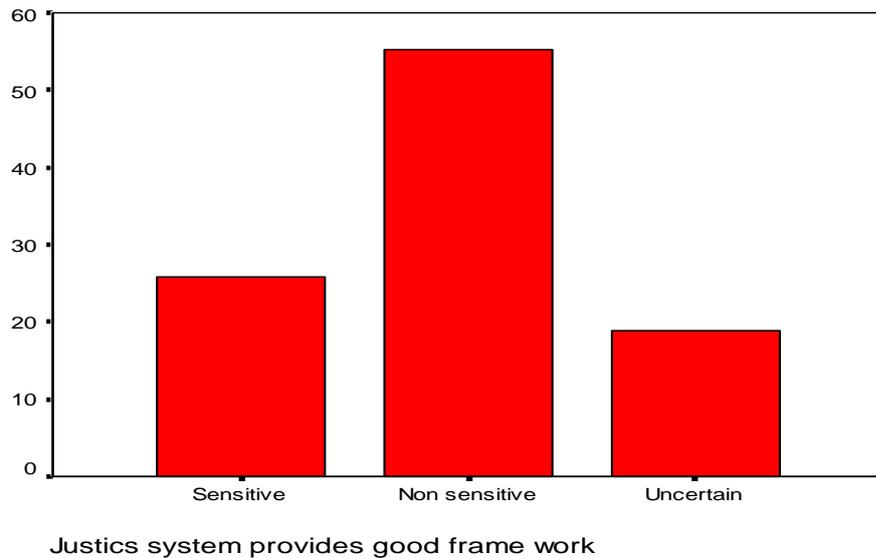


Figure 5.12 Graphic representation of research participants' cognizance of the existence of a framework for conducting forensic interviews with children

1.2.2.24 Interview guidelines in the Namibian legal justice system

Below follows, a presentation of the results on research participants' cognizance of interview guidelines in the Namibian legal justice system. Results are broken down according to occupation.

Table 5.25 and figure 5.13 reveal that only 20.7% of the research participants agreed thereto that guidelines for interviewing children in the Namibian legal justice system do exist, while 31% of the research participants disagreed, and 48.3% indicated uncertainty as to whether such guidelines do exist. Police officers were most knowledgeable about the existence of such interviewing guidelines (40%), followed by social workers (33.3%), prosecutors (18.8%), lawyers (15.8%), and magistrates (10%), in descending frequency respectively. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.47$, hence, $p > 0.05$.

Table 5.25 *Frequency table of research participants' cognizance of interview guidelines in the Namibian legal justice system*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	1 33.3	0 0.0	2 66.7	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	4 40.0	1 10.0	5 50.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	3 18.8	9 56.3	4 25.0	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	1 10.0	2 20.0	7 70.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	3 15.8	6 31.6	10 52.6	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	12 20.7	18 31.0	28 48.3	58 100

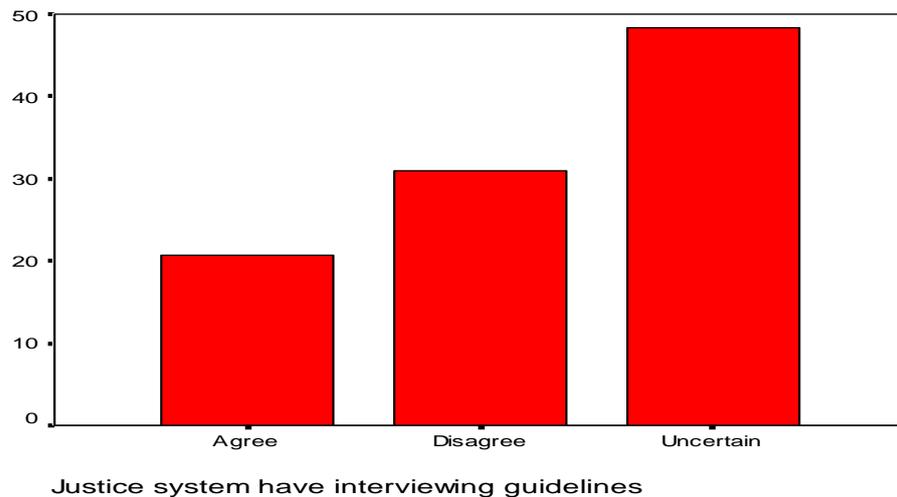


Figure 5.13 *Graphic representation of research participants' cognizance of interview guidelines in the Namibian legal justice system*

5.2.2.25 Title of guidelines

Below follows, a presentation of the results on research participants' cognizance of the title of interview guidelines that exist within the Namibian legal justice system. Results are broken down according to occupation.

Table 5.26 and figure 5.14 reveal that, despite 20% agreement that there are forensic interview guidelines for children, only one (1) 1.7% research participant was able to name the title of the guidelines which was however general and unknown. Five research participants (8.6%) were able to give a description of the guidelines, while the remainder of research participants did not answer the question, or indicated that they did not know. The probability exist that 10% of the research participants merely assumed that guidelines are present. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.94$, hence, $p > 0.05$.

Table 5.26 *Frequency table of research participants' cognizance of the title of interview guidelines that exist in the Namibian legal justice system*

Job Title	Frequency count	Response option			Total
		Exact	Description	Empty, unclear	
Social worker ($n = 3$)	F $F\%$ row	0 0.0	0 0.0	3 100	3 100
Police officer ($n = 10$)	F $F\%$ row	0 0.0	2 20.0	8 80.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	0 0.0	2 12.5	14 87.5	16 100
Magistrate ($n = 10$)	F $F\%$ row	0 0.0	1 10.0	9 90.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	1 5.3	0 0.0	18 94.7	19 100
Total ($N = 58$)	F $F\%$ row	1 1.7	5 8.6	52 89.7	58 100

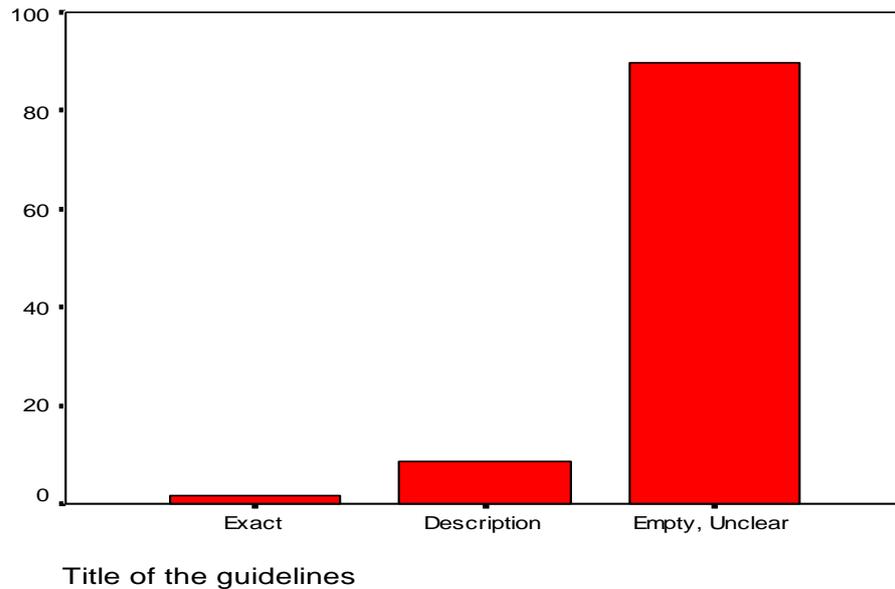


Figure 5.14 Graphic representation of research participants' cognizance of the title of interview guidelines that exist in the Namibian legal justice system

5.2.2.26 *Fitness/competence to stand trial and suggestibility*

Below follows, a presentation of the results on research participants' sensitivity to the link between fitness to stand trial and suggestibility. Results are broken down according to occupation.

Table 5.27 and figure 5.15 reveal that only 34.5% of the research participants were sensitive to the fact that the child's level of suggestibility bears an influence on the child's competence to testify at legal proceedings. Of the cohort, 65.5% were non-sensitive to this relationship. Lawyers demonstrated highest sensitivity (47.4%), while magistrates demonstrated least sensitivity to the relationship between competency to stand trial and a child's level of suggestibility. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.12$, hence, $p > 0.05$.

Table 5.27 *Frequency table of research participants' cognizance of fitness/competence to stand trial and suggestibility*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	1 33.3	2 66.7	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	3 30.0	0 0.0	7 70.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	5 31.3	8 50.0	3 18.8	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	2 20.0	2 20.0	6 60.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	9 47.4	6 31.6	4 21.1	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	20 34.5	18 31.0	20 34.5	58 100

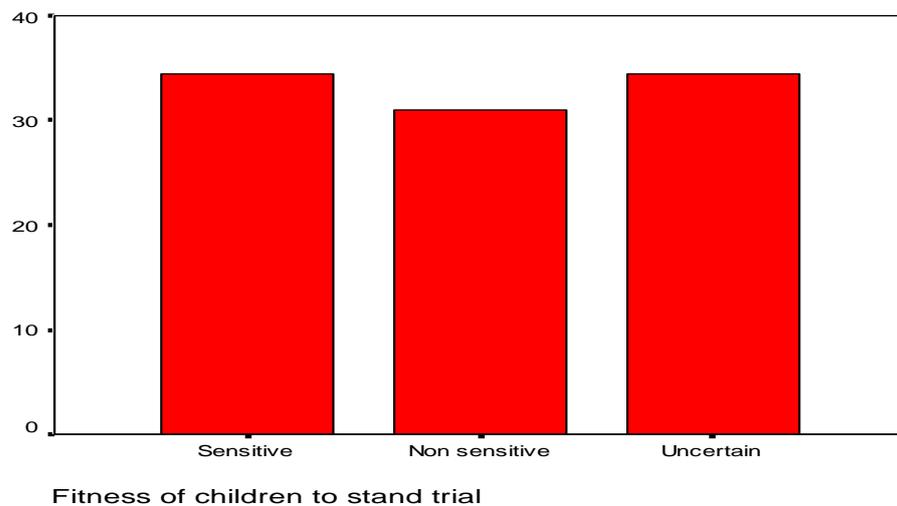


Figure 5.15 *Graphic representation of research participants' cognizance of competency to stand trial and suggestibility*

5.2.2.27 Conative effect and suggestibility

Below follows, a presentation of the results on research participants' cognizance of the link between conative abilities and suggestibility of the child. Results are broken down according to occupation. Table 5.28 and figure 5.16 reveal that 17.2 % of the research participants believed that the ability to know what is right and wrong should be taken as the basis for accountability in children, regardless of their capability to control and direct the behavior in accordance with their insights (conative). A large percentage (87.8%) of research participants was non-sensitive to the conative effect, i.e. the ability to control one's behavior as one of the core requirements for accountability in children. Social workers demonstrated highest sensitivity (33.3%), while lawyers (10.5%) and magistrates (10%) demonstrated least sensitivity to the conative effect. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.98$, hence, $p > 0.05$.

Table 5.28 *Frequency table of research participants' cognizance of the link between conative abilities and suggestibility*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	1 33.3	1 33.3	1 33.3	3 100
Police officer ($n = 10$)	F $F\%$ row	3 30.0	3 30.0	4 40.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	3 18.8	8 50.0	5 31.3	16 100
Magistrate ($n = 10$)	F $F\%$ row	1 10.0	8 80.0	1 10.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	2 10.5	12 63.2	5 26.3	19 100
Total ($N = 58$)	F $F\%$ row	10 17.2	32 55.2	16 27.6	58 100

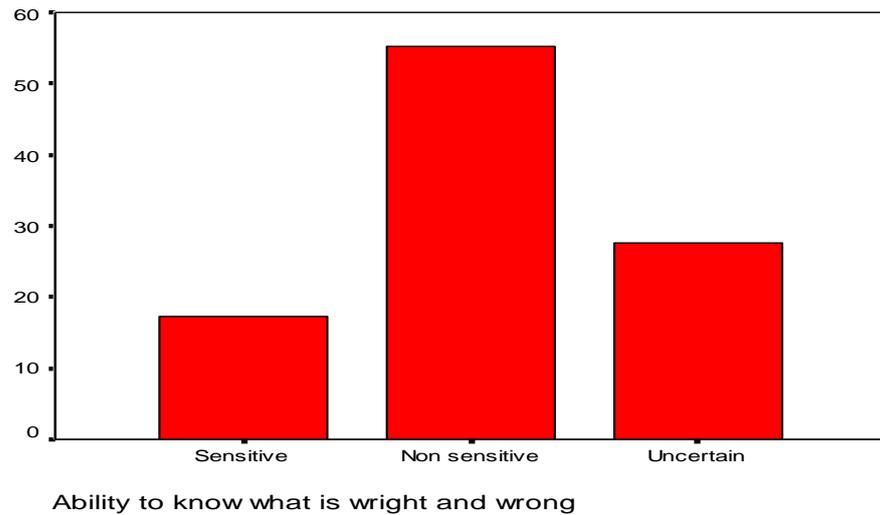


Figure 5.16 Graphic representation of research participants' cognizance of the link between conative abilities and suggestibility

5.2.2.28 Age of abstract thought development

Below follows, a presentation of the results on research participants' cognizance of the age of abstract thought development in children. Results are broken down according to occupation.

Table 5.29 and figure 5.17 reveal that 17.2 % of research participants were able to identify correctly the age of abstract thought development, i.e., 10 to 12 years, while 25.9% of research participants endorsed the category of 6to 9 years. Of the cohort, 44.8% endorsed the 13+ years-category, while 12.1% indicated uncertainty. Social workers (33.3%) and magistrates (20%) demonstrated best knowledge (highest sensitivity) in this regard. None of the police officers was able to identify correctly the age of abstract thought development in children. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.66$, hence, $p > 0.05$.

Table 5.29 *Frequency table of research participants' cognizance of the age of abstract thought development in children*

Job Title	Frequency count	Age group in years				Total
		10 – 12	6 - 9	13+	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F%</i> row	1 33.3	0 0.0	2 66.7	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F%</i> row	0 0.0	3 30.0	6 60.0	1 10.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F%</i> row	3 18.8.0	3 18.8	7 43.8	3 18.8	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F%</i> row	2 20.0	5 50.0	2 20.0	1 10.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F%</i> row	4 21.1	4 21.1	9 47.4	2 10.5	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F%</i> row	10 17.2	15 25.9	26 44.8	7 12.1	58 100

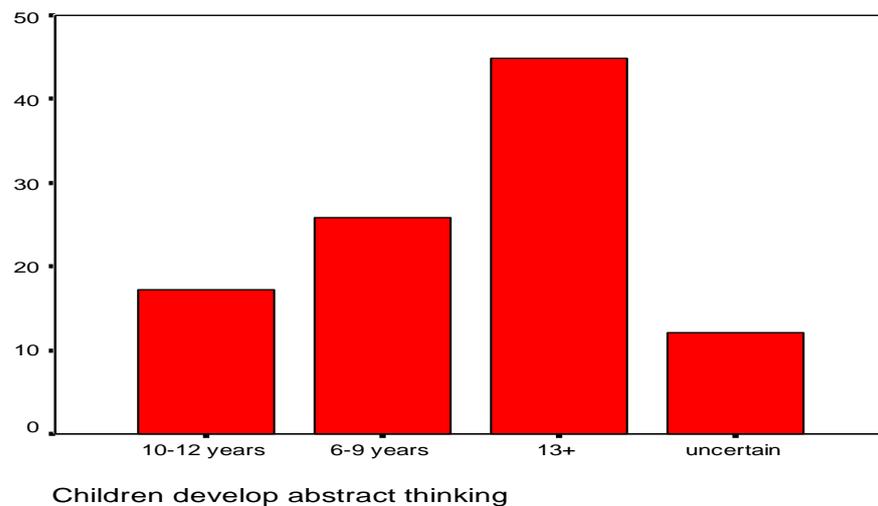


Figure 5.17 *Graphic representation of research participants' cognizance of the age of abstract thought development in children*

5.2.2.29 Use of victim friendly courts

Below follows, a presentation of the results on research participants' cognizance of the use of victim friendly courts. Results are broken down according to occupation.

Despite the presence of the Victim Friendly Court in Windhoek, table 5.30 and figure 5.18 reveal that only 39% of research participants confirmed that they have attended or conducted a trial at that court, while 51.7% of research participants have never attended and/or conducted a trial in a victim friendly court, and 8.6% of research participants indicated uncertainty. Of the cohort, 50% of the prosecutors and magistrates confirmed attendance and/or having conducted a trial at the victim friendly courts. Only 40% of the police officers confirmed attendance of trial at this court. Lawyers demonstrated least attendance, with only 26% of them having conducted trials at the victim friendly court. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.33$, hence, $p > 0.05$.

Table 5.30 *Frequency table of research participants' cognizance of the use of victim friendly courts*

Job Title	Frequency count	Response option			Total
		Agree	Disagree	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	1 33.3	2 66.7	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	4 40.0	3 30.0	3 30.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	8 50.0	8 50.0	0 0.0	16 100
Magistrate ($n = 10$)	F $F\%$ row	5 50.0	5 50.0	0 0.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	5 26.3	12 63.2	2 10.5	19 100
Total ($N = 58$)	F $F\%$ row	23 39.7	30 51.7	5 8.6	58 100

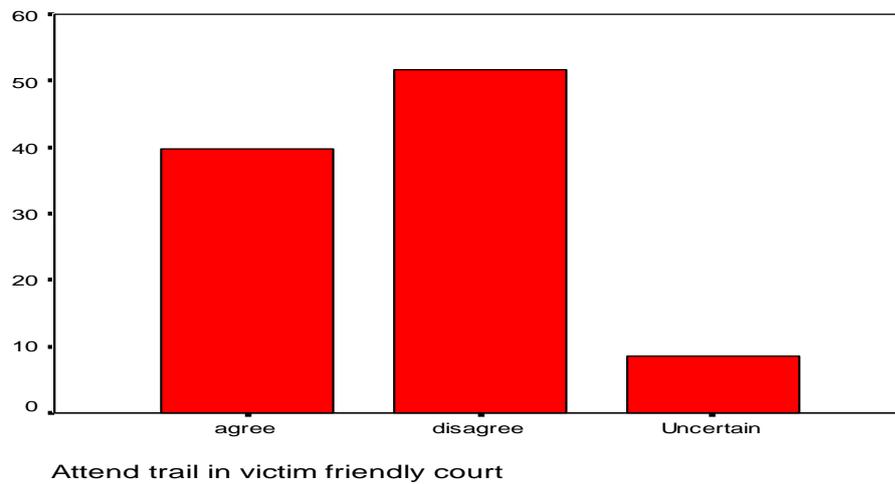


Figure 5.18 Graphic representation of research participants' cognizance of the use of victim friendly courts

5.2.2.30 Use of psychological experts

Below follows a presentation of research participants' prior experience and collaboration with psychological experts, i.e., whether they have previously employed such expertise services to assess the complainant. Results are broken down according to occupation.

Table 5.31 and figure 5.19 reveal that 37.9% of the participants had previously engaged a psychologist or psychiatric to assess children for suggestibility, while 51.7% had not and 10.3% were uncertain. Those who acknowledged engagement and collaboration with psychological experts towards assessment of a child were social workers (66.7%), magistrates (50%), and police officers (50%) respectively. Only 37% of lawyers acknowledged that they have engaged a psychological expert for purposes of assessment. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.44$, hence, $p > 0.05$.

Table 5.31 *Frequency table of research participants' prior experience and collaboration with psychological experts for purposes of assessment*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	2 66.7	1 33.3	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	5 50.0	2 20.0	3 30.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	5 31.3	11 68.8	0 0.0	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	5 50.0	5 50.0	0 0.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	5 26.3	11 57.9	3 15.8	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	22 37.9	30 51.7	6 10.3	58 100

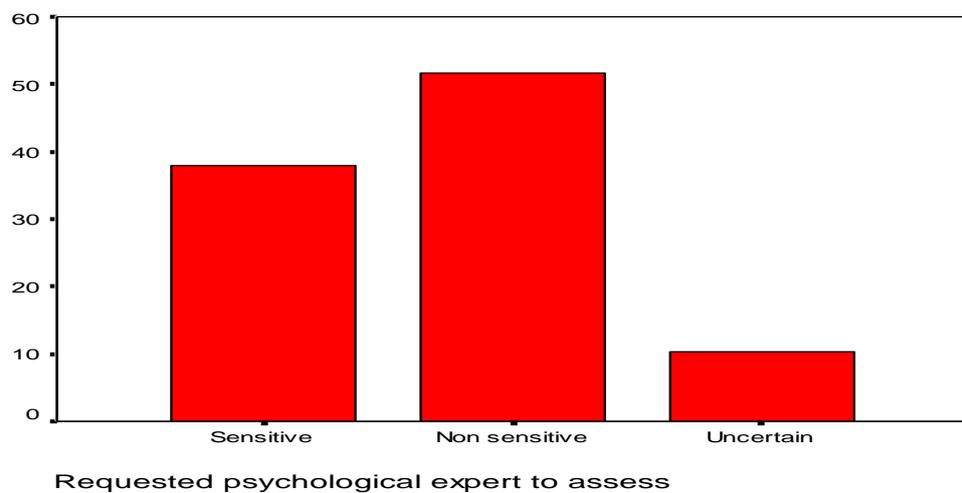


Figure 5.19 *Graphic representations of research participants' prior experience and collaboration with psychological experts for purposes of assessment*

5.2.2.31 Repeating questions and suggestibility

Below follows a presentation of research participants' cognizance of the negative effect of repetitive questioning on suggestibility. Results are broken down according to occupation.

According to table 5.32 and figure 5.19, a large percentage (74.2%) of research participants believe that they could repeat questions to children during forensic interviews regardless, while only 25.9% were sensitive the negative effect of repetitive questioning of children. The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.3$, hence, $p > 0.05$.

Table 5.32 *Frequency table of research participants' cognizance of the effect of repetitive questioning on suggestibility*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	0 0.0	3 100	0 0.0	3 100
Police officer ($n = 10$)	F $F\%$ row	1 10.0	5 50.0	4 40.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	6 37.5	9 56.3	1 6.3	16 100
Magistrate ($n = 10$)	F $F\%$ row	2 20.0	5 50.0	3 30.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	6 31.6	6 31.6	7 36.8	19 100
Total ($N = 58$)	F $F\%$ row	15 25.9	28 48.3	15 25.9	58 100

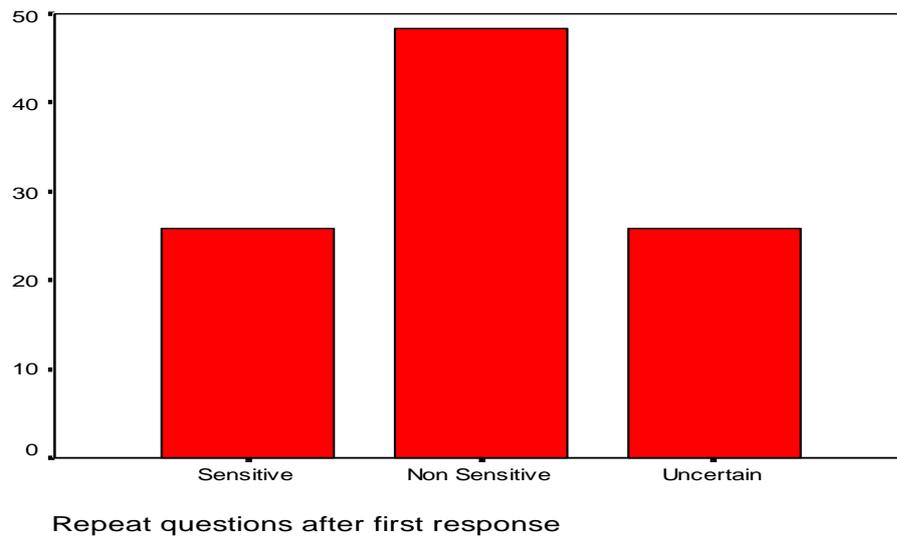


Figure 5.19 Graphic representation of research participants' cognizance of the effect of repetitive questioning on suggestibility

5.2.2.32 *Dismissal of interview when child is emotional*

Below follows a presentation of research participants' cognizance of the requirement to dismiss an interview when the interviewee (child) becomes emotional. Results are broken down according to occupation.

Table 5.33 reveals that more than half (67.2%) of the research participants would dismiss (stop) an interview if a child becomes emotional, while 13.8% would not and 19% were uncertain as to whether they would dismiss such interviewing. Social workers (100%) and magistrates (100%) were all sensitive in this regard, while lawyers demonstrated least sensitivity (36.8%). The inter-group frequency difference is statistically significant, using the Anova (F) test, with $p = 0.0000$, hence, $p < 0.05$.

Table 5.33 *Frequency table of research participants' cognizance of the requirement to dismiss interviewing when interviewee becomes emotional*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	3 100	0 0.0	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	5 50.0	0 0.0	5 50.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	14 87.5	2 12.5	0 0.0	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	10 100	0 0.0	0 0.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	7 36.8	6 31.6	6 31.6	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	39 67.2	8 13.8	11 19.0	58 100

5.2.2.33 *Allow children to testify unassisted*

Below follows a presentation of research participants' willingness to allow children to testify unassisted. Results are broken down according to occupation.

Table 5.34 reveals that 79.3% of research participants would not allow a child below the age of six years to testify in court unassisted, while 10.3% would allow them to participate in trial proceedings unassisted. Of the cohort, 10.3% reported uncertainty as to whether they would allow unassisted participation. Magistrates (90%) and prosecutors (87.5%) demonstrated highest sensitivity in this regard. The inter-group frequency difference is statistically not significant, using the Anova (*F*) test, with $p = 0.3$, hence, $p > 0.05$.

Table 5.34 *Frequency table of research participants' willingness to allow children to testify unassisted*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	2 66.7	0 0.0	1 33.3	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	6 60.0	2 20.0	2 20.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	14 87.5	2 12.5	0 0.0	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	9 90.0	1 10.0	0 0.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	15 78.9	1 5.3	3 15.8	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	46 79.3	6 10.3	6 10.3	58 100

5.2.2.34 *Allow preschool to be asked closed questions*

Below follows a presentation of research participants' willingness to allow preschool children to be asked closed questions. Results are broken down according to occupation.

Table 5.35 and figure 5.20 reveal that 43.1% of the research participants would not ask preschool children closed questions, while 27.6% would do so. Of the cohort, 29.3% reported uncertainty. Social workers (66.7%) demonstrated highest sensitivity, while police officers demonstrated least sensitivity (30%). The inter-group frequency difference is statistically not significant, using the Anova (*F*) test, with $p = 0.63$, hence, $p > 0.05$.

Table 5.35 *Frequency table of research participants' willingness to allow preschool children to be asked closed questions*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	2 66.7	1 33.3	0 0.0	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	3 30.0	4 40.0	3 30.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	8 50.0	5 31.3	3 18.8	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	4 40.0	3 30.0	3 30.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	8 42.1	3 15.8	8 42.1	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	25 43.1	16 27.6	17 29.3	58 100

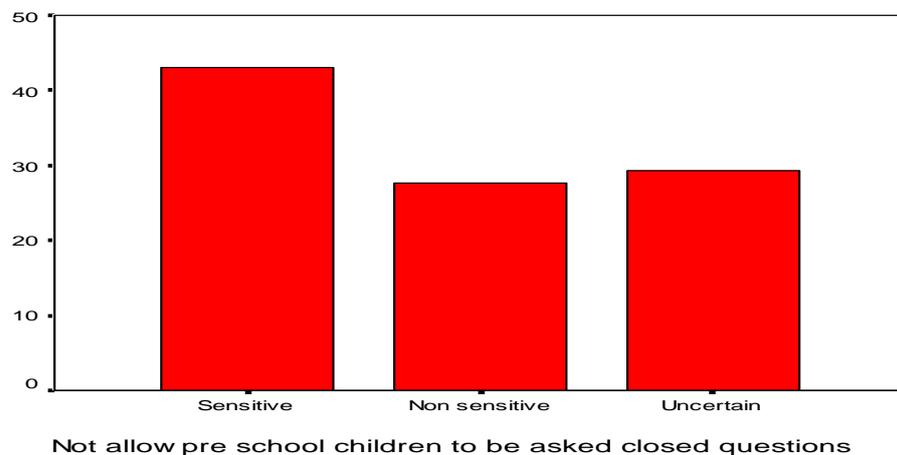


Figure 5.20 *Graphic representation of research participants' willingness to allow preschool children to be asked closed questions*

5.2.2.35 Allow preschool children to be asked leading questions

Below follows a presentation of research participants' willingness to allow preschool children to be asked leading questions. Results are broken down according to occupation. Table 5.36 reveals that 53.4% of the research participants would not allow preschool children to be asked leading questions during trial proceedings, while 29% would do so. Of the cohort, 17.2% reported uncertainty. Social workers demonstrated highest sensitivity (66.7%), followed by lawyers (57.9%), police officers (50%), prosecutors (50%), and magistrates (50%). The inter-group frequency difference is statistically not significant, using the Anova (F) test, with $p = 0.99$, hence, $p > 0.05$.

Table 5.36 *Frequency table of research participants' willingness to allow preschool children to be asked leading questions*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker ($n = 3$)	F $F\%$ row	2 66.7	0 0.0	1 33.3	3 100
Police officer ($n = 10$)	F $F\%$ row	5 50.0	3 30.0	2 20.0	10 100
Prosecutor ($n = 16$)	F $F\%$ row	8 50.0	7 43.8	1 6.3	16 100
Magistrate ($n = 10$)	F $F\%$ row	5 50.0	3 30.0	2 20.0	10 100
Lawyer ($n = 19$)	F $F\%$ row	11 57.9	4 21.1	4 21.1	19 100
Total ($N = 58$)	F $F\%$ row	31 53.4	17 29.3	10 17.2	58 100

5.2.2.36 *Indicate disagreement with children when necessary*

Below follows a presentation of research participants' willingness to indicate disagreement with children when necessary. Results are broken down according to occupation.

Table 5.37 *Frequency table of research participants' willingness to indicate disagreement with children when necessary*

Job Title	Frequency count	Response option			Total
		Sensitive	Non-sensitive	Uncertain	
Social worker (<i>n</i> = 3)	<i>F</i> <i>F</i> % row	2 66.7	0 0.0	1 33.3	3 100
Police officer (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	3 30.0	4 40.0	3 30.0	10 100
Prosecutor (<i>n</i> = 16)	<i>F</i> <i>F</i> % row	10 62.5	6 37.5	0 0.0	16 100
Magistrate (<i>n</i> = 10)	<i>F</i> <i>F</i> % row	5 50.0	5 50.0	0 0.0	10 100
Lawyer (<i>n</i> = 19)	<i>F</i> <i>F</i> % row	7 36.8	7 36.8	5 26.3	19 100
Total (<i>N</i> = 58)	<i>F</i> <i>F</i> % row	27 46.6	22 37.9	9 15.5	58 100

Table 5.37 reveals that 46.6% of the research participants would not indicate their disagreement with a child, even when necessary; 37.9% would disagree, while 15.5% reported uncertainty. Social workers demonstrated highest sensitivity (66.6%), and police officers demonstrated least sensitivity (30%) in this regard. The inter-group frequency difference is statistically not significant, using the Anova (*F*) test, with $p = 0.14$, hence, $p > 0.05$.

Among the research participants' performances on the 36 items, four of the items had a different scoring system. The research participants performed below average, i.e.

below 50% on 20 out of the remaining 32 items, indicating non-sensitivity to suggestibility. This implies that the participants' sensitivity to suggestibility was below average on 62% of the items. The research participants demonstrated 50% sensitivity on only 38% of the items.

5.3 ANALYSIS OF EXTRA-JUDICIAL STATEMENTS

Six extra-judicial statements (dockets) were analysed at hand of criteria contained in the Checklist for Screening Extra Judicial Conditions that might promote the manifestation of suggestibility in statements obtained by investigating officers. The analysis aimed at assessing the quality of the statements that were obtained from the police during their handling child sexual abuse cases. The checklist comprised of 81 items, divided into the following sub-sections:

- a. Characteristic of the statement
- b. Observations of the officer (clinical notes)
- c. Content of the statement
- d. A voluntary complaint
- e. A complaint at the first reasonable opportunity
- f. The victim must testify in person
- g. Decision-making capacity of the alleged victim

The analysis began with a general rating of the statements by the researcher, followed by analysis of targeted groups and items. The overall purpose of the checklist was to assess conditions that might promote the manifestation of suggestibility in dockets. The dockets had police identity numbers, called Case Record (CR) numbers. Because of the importance of confidentiality, the researcher did not use the CR numbers, but allocated numbers to the case files at random. Allocation of random numbers would prevent disclosure of any one specific case file or the contents thereto.

5.3.1 Sensitivity of docket contents to suggestibility

Below follows table 5.38, which presents the results on sensitivity to suggestibility, based on criteria from the Checklist for Screening Extra Judicial Conditions that might promote the manifestation of suggestibility in statements obtained by investigating officers.

Table 5.38 *Sensitivity to suggestibility*

Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	19	53	9	0.00002
	<i>F</i> % row	23.5	65.4	11.1	$p < 0.05$
2	<i>F</i>	23	45	13	0.00006
	<i>F</i> % row	28.4	55.6	16.0	$p < 0.05$
3	<i>F</i>	16	57	8	0.00000
	<i>F</i> % row	19.6	70.4	9.9	$p < 0.05$
4	<i>F</i>	11	57	13	0.00000
	<i>F</i> % row	13.6	70.4	16.0	$p < 0.05$
5	<i>F</i>	14	54	13	0.00000
	<i>F</i> % row	17.3	66.7	16.0	$p < 0.05$
6	<i>F</i>	10	55	16	0.00000
	<i>F</i> % row	12.3	67.9	19.6	$p < 0.05$
Total items per column ($N = 81 \times 6$)	<i>F</i>	93	321	72	486
	<i>F</i> % column	19.14	66.05	14.81	
	p value (column)	0.00000	0.00046	0.00000	
		$p < 0.05$	$p < 0.05$	$p < 0.05$	

Table 5.38 reveals very low sensitivity levels of the dockets to suggestibility. Put differently, the statements did not have mechanisms of discouraging the manifestation of child suggestibility during the forensic interviews. Lack of sensitivity to suggestibility was statistically significant for all six (6) dockets individually, with a statistically significant overall count for lack of sensitivity as well. Hence, in practice, officials having taken down these statements grossly

negated the application of criteria indicative of sensitivity for suggestibility, thereby creating a window of opportunity for suggestion during recording of these statements.

Analyses of the statements in **docket #1** revealed that only 19 (23.5%) of the checklist criteria (items) indicative of sensitivity to suggestibility were adhered to. From a cohort of 81 sensitivity criteria, 53 (65.4%) were not adhered to, indicative of non-sensitivity to suggestibility. From this cohort, 9 (11.1%) criteria could not match the recorded statement contents, and scored as unclear. These results demonstrate that the docket contents were highly non-sensitive to suggestibility (65.4%), with a possibility that the statements might have submitted (taken down) under conditions that promote increased suggestibility. Lack of sensitivity for suggestibility was statistically significant, i.e. $p < 0.05$.

Analyses of the statements in **docket #2** revealed that only 23 (28.4%) of the checklist criteria (items) indicative of sensitivity to suggestibility were adhered to. From a cohort of 81 sensitivity criteria, 45 (55.6%) were not adhered to, indicative of non-sensitivity to suggestibility. From this cohort, 13 (16%) criteria could not match the recorded statement contents, and scored as unclear. These results demonstrate that the docket contents were highly non-sensitive to suggestibility (55.6%), with a possibility that the statements might have submitted (taken down) under conditions that promote increased suggestibility. Lack of sensitivity for suggestibility was statistically significant, i.e. $p < 0.05$.

Analyses of the statements in **docket #3** revealed that only 16 (19.6%) of the checklist criteria (items) indicative of sensitivity to suggestibility were adhered to. From a cohort of 81 sensitivity criteria, 57 (70%) were not adhered to, indicative of non-sensitivity to suggestibility. Lack of sensitivity for suggestibility was statistically significant, i.e. $p < 0.05$.

Analyses of the statements in **docket #4** revealed that only 11 (13.6%) of the checklist criteria (items) indicative of sensitivity to suggestibility were adhered to.

From a cohort of 81 sensitivity criteria, 57 (70%) were not adhered to, indicative of non-sensitivity to suggestibility. Lack of sensitivity for suggestibility was statistically significant, i.e. $p < 0.05$.

Analyses of the statements in **docket #5** revealed that only 14 (17.3%) of the checklist criteria (items) indicative of sensitivity to suggestibility were adhered to. From a cohort of 81 sensitivity criteria, 54 (66.7%) were not adhered to, while 13 (16%) could not match the recorded statement contents and scored unclear. Lack of sensitivity for suggestibility was statistically significant, i.e. $p < 0.05$.

Analyses of the statements in **docket #6** revealed that only 10 (12.3%) of the checklist criteria (items) indicative of sensitivity to suggestibility were adhered to. From a cohort of 81 sensitivity criteria, 55 (67.9%) were not adhered to, while 16 (19.6%) could not match the recorded statement contents and scored unclear. Lack of sensitivity for suggestibility was statistically significant, i.e. $p < 0.05$.

5.3.2 Analysis of specific sections

The Checklist for Screening Extra Judicial Conditions comprised of 81 items (or criteria), divided into sub-sections, i.e. characteristics of the statement, observations of the officer (clinical notes), content of the statement, the voluntary nature of the complaint, complaining at the first reasonable opportunity, the victim's testimony in person, and the decision-making capacity of the alleged victim. In comparison of these sub-sections, the sensitivity of dockets was highest in terms of the first criterion, i.e. the characteristics of the statement. This section mainly analysed whether the investigating officer who had recorded the statement matched the child complainant in terms of certain characteristics, such as gender (sex) and language (mother tongue). This section also assessed the suitability of the translator in terms of gender (sex) and language (mother tongue), if a translator was employed during deposition of the statement. This section further assessed whether the statement was made within the context of "hue and cry", i.e. within a reasonable time.

The section dealing with a complaint at first reasonable opportunity scored second highest in terms of sensitivity. This section assessed reporting at the first reasonable opportunity, the presence or absence of emotional available person, i.e. a ‘psychological parent’, the Lolita syndrome and *pseudologica fantastica*.

Assessment of the content of the statements revealed a slight degree of sensitivity. Most of the statements contained in the dockets revealed some sensitivity in terms of the manner in which initial complaining was done, coupled with a recording of the actual words that were used during initial complaining, i.e. *viva voce* recording of actual words and phrases uttered during complaining.

Not one of the dockets contained the investigating officers’ observation notes or clinical notes written down during the interview with the complainant. Mostly, the dockets were unclear about the voluntary nature of the complaint. The overall level of sensitivity for suggestibility was very low, with no specific reference to criteria such as ‘victim testifying in person’ and ‘decision-making capacity of the alleged victim’. No clinical notes on the psychological status or capacity to testify were present in these extra-judicial statements, leaving room for speculation during subsequent proceedings on the victim’s status and capacity to testify, because investigating officers did not make applicable clinical notes during recording of initial statements.

5.3.3 Analysis of selected items (criteria)

This section presents an analysis of selected items (criteria) from the Checklist for Screening Extra Judicial Conditions that might promote the manifestation of suggestibility in statement obtained by investigating officers, due to their significance in contributing to the dynamics of child suggestibility.

5.3.3.1 Criterion #1

Statement taken down in victim's mother tongue

Table 5.39 below reveals that only half of the recorded statements were taken down in the complainant's mother tongue, while half of the statements were taken down using a language different from the complainant's mother tongue. This criterion is not statistically significant, although clinically meaningful.

Table 5.39 *Sensitivity to criterion #1*

Criterion #1: Was the statement taken down in the victim's mother tongue?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	1	0	0	
3	<i>F</i>	1	0	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	1	0	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column p value	3 50.00 0.53979	3 50.00 0.53979	0	<i>p</i> > 0.05

5.3.3.2 Criterion #2

Use of an interpreter

Table 5.40 reveals that the investigating officer employed an interpreter in all of the six cases (dockets), demonstrating high sensitivity to the language proficiency of victims. This criterion was statistically significant at 5% level of reliability.

Table 5.40 *Sensitivity to criterion #2*

Criterion #2: Was an interpreter used to take down the victim's statement?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	1	0	0	
2	<i>F</i>	1	0	0	
3	<i>F</i>	1	0	0	
4	<i>F</i>	1	0	0	
5	<i>F</i>	1	0	0	
6	<i>F</i>	1	0	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	6 100 0.00000	0	0	<i>p</i> < 0.05

5.3.3.3 Criterion #13*Indication of person to whom the alleged victim first reported the offence*

All of the statements indicated to whom the victim first (initially) reported the alleged offence. This criterion was statistically significant at 5% level of reliability.

Table 5.41 *Sensitivity to criterion #13*

Criterion #13: Does the statement indicate to whom the victim first reported the offence?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	1	0	0	
2	<i>F</i>	1	0	0	
3	<i>F</i>	1	0	0	
4	<i>F</i>	1	0	0	
5	<i>F</i>	1	0	0	
6	<i>F</i>	1	0	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	6 100 0.00000	0	0	<i>p</i> < 0.05

5.3.3.4 Criterion #14

Investigating officer's clinical notes about observations

Table 5.42 below demonstrates that none of the investigating officers made additional clinical notes about observations of the victim, which clinical notes could later assist the investigating officers to refresh their memories when called to testify in court. This criterion was statistically significant at 5% level of reliability.

Table 5.42 *Sensitivity to criterion #14*

Criterion #14: Did the investigating officer make additional clinical notes about observations of the victim?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.5 Criterion #15

Investigating officer's initial impressions of victim

None of the investigating officers' initial impressions of the victims during first consultation was noted down. This criterion is statistically significant at 5% level of reliability.

Table 5.43 *Sensitivity to criterion #15*

Criterion #15: Were investigating officer's initial impressions of victim noted down?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.6 Criterion #16*Investigating officers noting down hard signs*

Table 5.44 shows that none of the investigating officers noted down the hard signs of the alleged sexual abuse, including physical injuries and post-rape symptoms. The only item noted was the rape kit for laboratory analysis. This criterion is statistically significant at 5% level of reliability.

Table 5.44 *Sensitivity to criterion #16*

Criterion #16: Did investigating officers note down hard signs of the alleged offence?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.7 Criterion #17

Investigating officers' objective observations

Table 5.45 shows that none of the investigating officers noted down their objective observations of the victims during initial submission of statements. This criterion is statistically significant at 5% level of reliability.

Table 5.45 *Sensitivity to criterion #17*

Criterion #17: Did investigating officers note down their objective observations?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.8 Criterion #18

Investigating officers' record keeping

Table 5.46 shows that none of the dockets reflected thorough record keeping of all the information necessary for the trial. The dockets mainly contained the victim and accompanying relative or informant's statements, together with the results of the physical examination. This criterion is statistically significant at 5% level of reliability.

Table 5.46 Sensitivity to criterion #18

Criterion #18: Did investigating officers keep a thorough record of all information?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

In summary, tables 5.42 to 5.46 show that none of the six dockets contained any observation records (clinical notes) of investigating officers. No dockets were sensitive in this regard.

In the section dealing with the voluntary nature of complaints, it was not clear whether investigating officers obtained the statements through interrogation, manipulation, threats, or suggestion. Analyses of the statements revealed that investigating officers did not note down their own clarifying questions, suggesting that they did not ask questions towards clarification of victims' statements, or that they omitted these clarifying questions. Even if present, investigating officers did not clarify and duly record possible misrepresentations, misinterpretations, or indicators of personal grievances that victims might have nurtured. Investigating officers also did not clarify and duly record unusual sexual terminologies and vocabulary, considering the use of interpreters and intermediaries. Because of the absence of clinical notes, possible discrepancies between the nature of accusations (complaints) and the victims' emotional state could not be determined from the statements. Investigating officers did not demonstrate clarification of possible contamination by third parties, i.e., where the alleged victim used the precise

wording of someone else, such as the mother. Lastly, these statements did not portray a clear connection between sets of facts, with no clarification of disconnections and circumstantiality.

5.3.3.9 Criterion #72

Attained level of decision-making capacity of alleged victim

Table 5.47 shows that none of the statements from these dockets contained information on the decision-making capacity of the alleged victims. This criterion is statistical significant at 5% level of reliability.

Table 5.47 *Sensitivity to criterion #72*

Criterion #72: Does the statement reflect the attained level of decision-making capacity of the alleged victim?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.10 Criterion #73

Evidence of alleged victim's intellectual level

Criterion #73 deals with the alleged victim's level of intellectual functioning. Although investigating officers did not receive formal training to assess intellectual functioning, the reasonable expectation is that investigating officers must make an estimation of the alleged victim's level of intellectual functioning at the time of

submission of the statement. In practice, this estimation is based on the victim's language proficiency, capacity to make a statement unassisted, quality of vocabulary, understanding of the processes, and so forth. An estimation of the alleged victim's level of intellectual functioning is also important in determination of the complainant's understanding of the event, accountability, and particularly when intoxicated during or after the event. Specific cue wording and phrases might suggest a certain level of intellectual functioning, considering the involvement of interpreters and intermediaries during recording of the statements. Hence, table 5.48 shows that none of the statements from these six dockets contained information on the alleged victim's level of intellectual functioning. This criterion is statistically significant at 5% level of reliability.

Table 5.48 *Sensitivity to criterion #73*

Criterion #73: Does the statement contain information on the alleged victim's level of intellectual functioning?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.11 *Criterion #74*

Evidence of the alleged victim's maturity level

Criterion #74 deals with the alleged victim's attained level of maturity and capacity to consult with the investigating officer and others involved in the case. This criterion is of particular interest, since interpreters and intermediaries involved in

recording of the complainant's statement may substitute age-appropriate vocabulary with more mature vocabulary, suggesting false positive levels of maturity and capacity to consult. During subsequent trial proceedings, the alleged victim's precise wording and phrases used during submission of the statement may come under scrutiny of the defence lawyer, and if not appropriately recorded in the statement, the risk for suggestibility might increase. Hence, table 5.49 shows that none of the statements from these six dockets contained information on the alleged victim's level of maturity and capacity to consult with the investigating officer and others involved in the case. This criterion is statistically significant at 5% level of reliability.

Table 5.49 *Sensitivity to criterion #74*

Criterion #74: Does the statement contain information on the alleged victim's level of maturity and capacity to consult with investigating officer/interpreter?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.12 Criterion #75

Effects of maturity and intellectual functioning

Criterion #75 deals with the extent to which the alleged victim's intellectual functioning and attained level of maturity bear an influence on his/her capacity to testify in person to further his/her own cause. Table 5.50 shows that none of the dockets reflected information on the combined effect of maturity level and

intellectual functioning on the alleged victim's testamentary capacity; yet, this criterion bears a very important influence on subsequent trial processes. This criterion is statistically significant at 5% level of reliability.

Table 5.50 *Sensitivity to criterion #75*

Criterion #75: Does the statement contain information on the extent to which the alleged victim's intellect and level of maturity influence his/her capacity to testify in furtherance of own case?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.13 *Criterion #77*

Capacity to understand consequences of decisions

Criterion #77 deals with the alleged victim's capacity to understand the consequences of decisions he/she has taken. Table 5.51 shows that none of the statements to the six dockets that were analysed contained information on the alleged victims' capacity to understand the consequences of their decisions. This criterion is statistically significant at 5% level of reliability.

Table 5.51 *Sensitivity to criterion #77*

Criterion #77: Does the statement reflect the alleged victim's capacity to understand the consequences of decisions he/she has taken?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.3.3.14 *Criterion #79****Scrutiny and recording of victim's suggestibility***

Criterion #79 deals with the scrutiny and recording of the alleged victim's suggestibility during submission of the statement. During subsequent proceedings, the defence lawyers may place the alleged victim's level of suggestibility in question. In the absence of any remarks to this effect during initial recording of the alleged victim's statement, these omissions may frustrate the court in its ability to decide on contamination of evidence due to suggestibility or not.

It is also important that probing questions employed to scrutinize the alleged victim's suggestibility be recorded verbatim, to differentiate between the complainant's voluntary statements, and those elicited via probing questioning. Table 5.52 shows that none of the dockets indicated scrutiny and recording of alleged victims' suggestibility. This criterion is statistically significant at 5% level of reliability.

Table 5.52 Sensitivity to criterion #79

Criterion #79: Was the alleged victim's level of suggestibility scrutinized during submission of the statement, and did the investigating officer duly record probing questions?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	F	0	1	0	
2	F	0	1	0	
3	F	0	1	0	
4	F	0	1	0	
5	F	0	1	0	
6	F	0	1	0	
Column total N = 6	F F% column p value	0	6 100 0.00000	0	p < 0.05

5.3.3.15 Criterion #80***Use of aides to elicit a statement***

Criterion #80 deals with the use of aides (e.g., anatomically detailed dolls, drawings, etc.) to elicit a statement. When aides are not administered correctly, it may increase suggestibility and render false positive statements. However, when the alleged victim faces certain barriers, e.g. language proficiency barriers, the use of aides might be helpful, subject thereto that such aides are administered correctly. Hence, when the investigating officer uses aides such as anatomically correct dolls and drawings, it must be duly recorded.

Table 5.53 shows that aides were used to elicit statements from alleged victims. This criterion is statistically significant at 5% level of reliability.

Table 5.53 Sensitivity to criterion #80

Criterion #80: Were aides used to elicit a statement?					
Docket number	Frequency count	Response option			Significance
		Sensitive	Non-sensitive	Uncertain	
1	<i>F</i>	0	1	0	
2	<i>F</i>	0	1	0	
3	<i>F</i>	0	1	0	
4	<i>F</i>	0	1	0	
5	<i>F</i>	0	1	0	
6	<i>F</i>	0	1	0	
Column total <i>N</i> = 6	<i>F</i> <i>F</i> % column <i>p</i> value	0	6 100 0.00000	0	<i>p</i> < 0.05

5.4 ANALYSIS OF CASE REVIEW CHECKLISTS

As referred to in the previous chapter, the researcher conducted four (4) case analyses involving children aged 10 years and below, using the suggestibility checklist. These cases are coded R/C 146/2001, R/C 65/2004, R/C 72/2001 and R/C 194/2001. Case R/C 194/2001 involved two children, A and B respectively, bringing the total forensic interviews to five. The subsequent section presents a case-by-case analysis at hand of bar graphs.

5.5.1 Case Review (R/C 146/2001)

Figure 5.21 below offers a graphic representation of suggestive questioning and suggestive responses by the child victim involved in case review #1. The child was a four-year-old female pre-scholar.

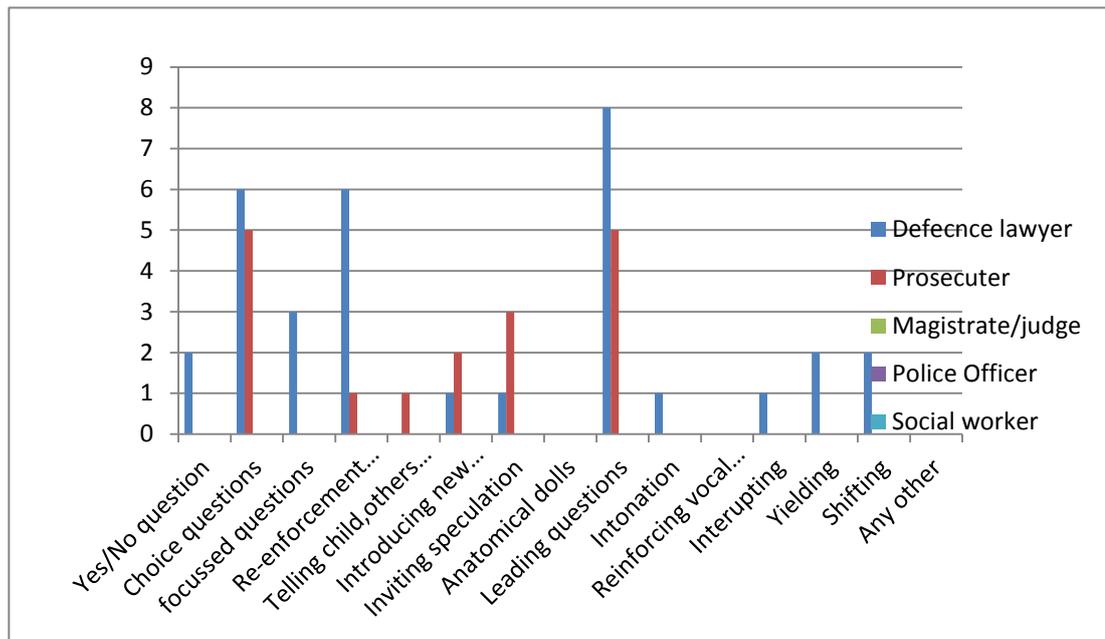


Figure 5.21 Graphic representation of case R/C 146/2001

In general, most of the suggestive questioning came from the defence lawyer. The defence lawyer used two (2) “yes/no” questions, and asked six (6) choice questions, while the prosecutor asked the child victim five (5) choice questions. The defence lawyer also asked three (3) focussed/specific questions to the child victim. The defence lawyer further asked six (6) reinforcement questions, while the prosecutor asked one such question. The prosecutor on one(1) occasion told the child victim that others had offered some information related to the matter, which the child victim needed to confirm. The defence lawyer and the prosecutor on one (1) occasion introduced new information to the child victim. Once (1), the defence lawyer invited the child victim to speculate, while the prosecutor on three (3) occasions invited the child to speculate about the event. Anatomically correct dolls were not introduced prior to hearing of the child’s testimony during this trial. The defence lawyer asked eight (8) leading questions, while the prosecutor asked five (5) leading questions. The defence lawyer raised his voice once (1) and used interrupting vocal gestures once (1). In 29 incidents, the defence lawyer asked suggestive questions, while the prosecutor used a total of 16 suggestive questions, and the magistrate only once (1).

The child victim gave in to the suggestive responses of the defence lawyer. She 'yielded', that is giving in to the defence lawyer's suggestive questions twice (2). She also 'shifted' twice (2) in favour of the defence lawyer. Shifting is changing the initial position due to the suggestive pressure.

The prosecutor asked a question, which may be ambiguous to children who have not yet reached the stage of abstract reasoning. One such question was:

"How long did you play?"

The child raised ten (10) fingers and the court could not understand whether it meant ten seconds, ten minutes or ten hours. The defence lawyer then used a number of 'why' questions, of which some were double-barrelled and exceptionally confusing. On two (2) occasions, the magistrate rephrased some of the questions. On one (1) occasion, the magistrate informed the prosecutor that he was suggesting answers to the child. The magistrate also guarded against unnecessary postponement of the case, because postponement would negatively affect the child.

5.4.2 Case Review (R/C 72/2001)

Figure 5.22 shows the distribution of the endorsements on the checklist for case review #2. The alleged victim was a nine-year-old female in grade 6.

In this case, the accused, aged 28 years, cross-examined the alleged victim, because he did not have a defence lawyer. In analysing the nature of questioning, the accused asked one (1) yes/no question, the prosecutor asked three (3) choice questions, while the magistrate asked two (2) choice questions. Analysis of focussed questions revealed that the prosecutor asked two (2) such questions, while the magistrate asked one (1) such question.

The prosecutor introduced new information twice (2), while the magistrate and accused each asked one (1) such question. On leading questions, the prosecutor asked two (2) leading questions. On the non-verbal vocal suggestion, the magistrate

raised the voice once (1) and gave reinforcing vocal gesture once (1). However, the child did not yield or shift to these suggestive leads. In total, the prosecutor asked nine (9) suggestive questions and the magistrate asked six (6) such questions. On two (2) occasions, the magistrate clarified some questions, since the child testified in English.

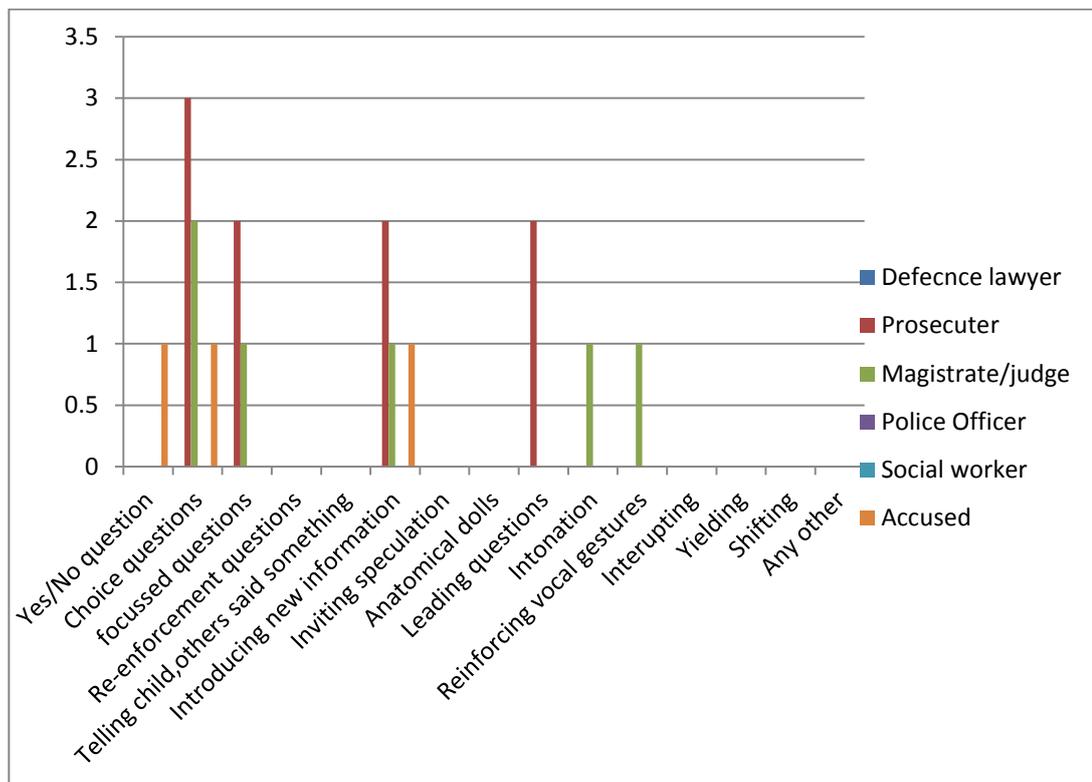


Figure 5.22 Graphic representation of case R/C 72/2001

5.4.3 Case Review (R/C 65/2004)

Figure 5.23 presents case review #3, and shows the frequency in which the legal practitioners used suggestive questions and how the child responded to suggestive questioning. The child victim was a nine-year-old female in grade 4.

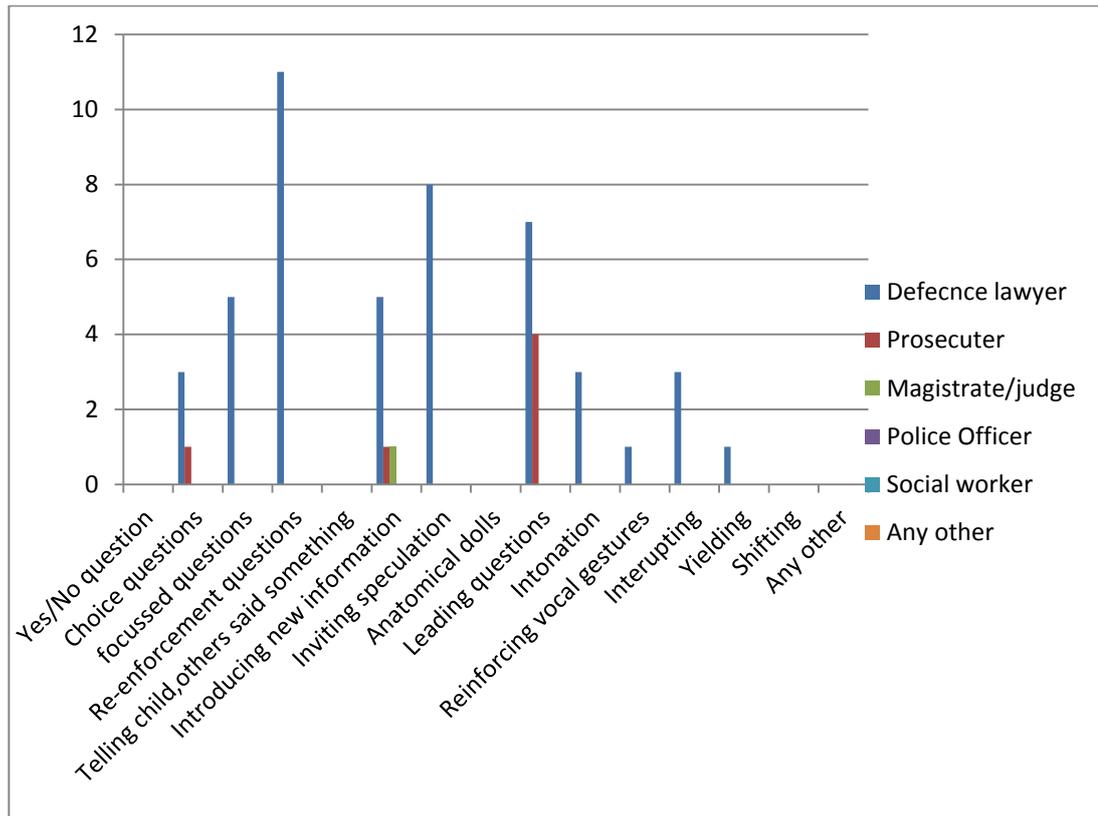


Figure 5.23 Graphic representation of case R/C 65/2004

In analysis of the nature of questioning, the defence lawyer asked three (3) choice questions, while the prosecutor asked one (1) such question and the defence lawyer asked five (5) focussed questions. In analysis of reinforcement used during questioning, the defence lawyer asked eleven (11) reinforcement questions. The defence lawyer introduced new information on five (5) occasions, while the prosecutor and magistrate each asked one (1) question dealing with new information. In analysis of speculation, the defence lawyer invited the child to speculate about what happened eight (8) times. On leading questions, the defence lawyer asked seven (7) leading questions, while the prosecutor asked four (4) such questions. In analysis of the use of non-vocal reinforcement, the defence lawyer raised the voice twice (2), used reinforcing vocal gesture once (1), and finally used interrupting vocal gestures three (3) times. The defence lawyer used forty five (45) suggestive questions in this case, while the prosecutor used six (6) suggestive questions, followed by the magistrate, who only used suggestive questioning once (1).

The child yielded once (1) to the suggestive questioning of the defence lawyer. An interpreter assisted the child victim, since the child used her home language, with no intermediary as support. The child had to demonstrate to the court how she was lying and to repeat to the court the exact nature of the rape, without the magistrate intervening. The defence lawyer repeated the same question in different formats. The defence lawyer also asked abstract questions, such as ‘why’ questions and made extensive use of silences as a form of reinforcement.

5.4.4 Case Review (R/C 194/2001-A)

Figure 5.24 shows the frequency of suggestive questioning for a 10-year-old female victim of alleged rape. Another 10-year-old female (B), who had witnessed the alleged rape, accompanied the victim (A). Both were in grade 4. For purposes of this analysis, these two witnesses are presented as separate cases, i.e. RC 194/2001-A and RC 194/2001-B. They all did not involve a defence lawyer.

In case R/C 194/2001-A, the prosecutor asked one (1) yes/no question, followed by two (2) choice questions, while the magistrate asked two (2) such questions. The prosecutor asked three (3) focussed questions and two (2) reinforcement questions. The prosecutor then invited the child to speculate on two (2) occasions, while the magistrate did the same once (1). In analysis of the use of non-verbal vocal reinforcement, the prosecutor raised the voice twice (2) and used reinforcement with the victim once (1). The overall analysis revealed that the prosecutor asked six (6) suggestive questions in total, while the magistrate also asked six (6) such questions.

In conclusion, the child victim did not yield or shift to the suggestive questioning styles. The magistrate was female and she intervened once during the prosecutor’s interviewing of the child victim. The accused cross-examined the child victim.

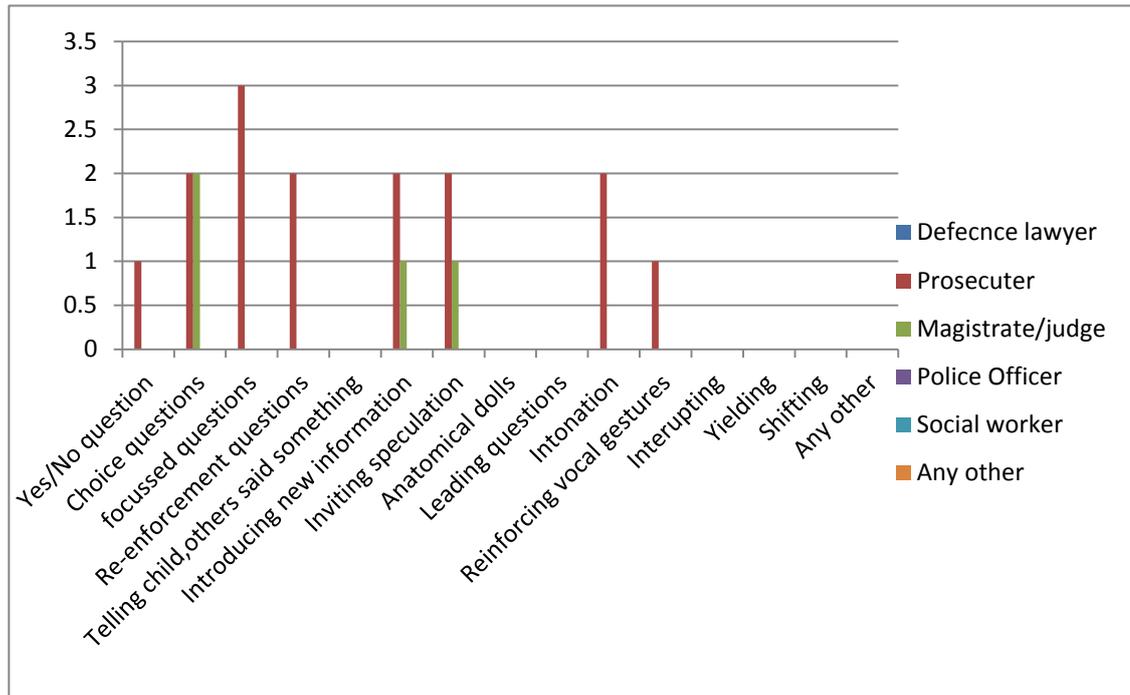


Figure 5.24 Graphic representation of case R/C 194/2001-A

5.4.5 Case Review (R/C 194/2001-B)

Figure 5.25 shows the frequency of suggestive questioning of the child who was accompanying the alleged victim in case R/C 194/2001-A as eyewitness. The eyewitness was a ten-years-old female in grade 4.

In case R/C 194/2001-B, the prosecutor asked one (1) choice question and one (1) focussed question, while the magistrate asked one (1) reinforcement question. The prosecutor introduced new information once (1) and asked three (3) leading questions. The prosecutor reinforced the eyewitness once (1). In total, the prosecutor asked seven (7) suggestive questions, while the magistrate asked one (1) suggestive question. Below follows a breakdown of case review R/C 194/2001-B, presented as figure 5.25.

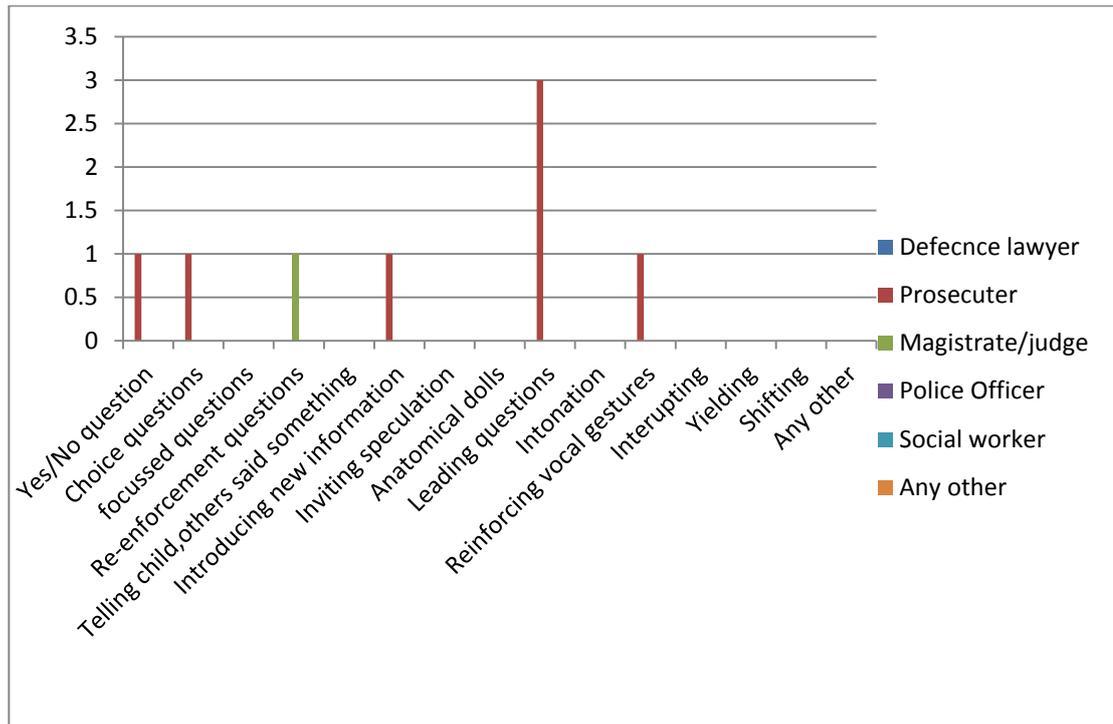


Figure 5.25 Graphic representation of case R/C 194/2001-B

5.6 SYNOPSIS

Chapter 5 presented the data collected during data gathering, using different methods, instruments and sources of data. Where applicable, the researcher presented frequency tables and statistical analyses of the data to determine significance. In the next chapter follows the interpretation of the data.

CHAPTER 6

INTERPRETATION OF EMPIRICAL DATA AND GUIDING PRINCIPLES FOR INTERVENTION

6.1 INTRODUCTION

The purpose of this study was to explore whether Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations are cognizant of child suggestibility and whether the concept child suggestibility is duly weighted during investigations and court proceedings. It was hypothesised that Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations are (a) significantly uninformed about child suggestibility and (b) the concept of child suggestibility is not duly weighted during investigations and court proceedings. This hypothesis was tested through the following means:

- Assessment of suggestibility knowledge /sensitivity levels of the legal and allied criminal justice professionals;
- Assessment of the quality of the extra-judicial statements (dockets); and
- Review of some court cases involving children below the age of ten years as witnesses;

The researcher also wished to directly observe the trial proceedings of a single case involving a child victim as witness, but this never materialized due to the unavailability of an applicable case. The significance of this omission shall be discussed in the section describing the limitations of the study in chapter 7.

6.3 INTERPRETATION OF THE EMPIRICAL DATA

The sub questions flowing naturally from the main research questions were:

- How cognizant are professionals centrally involved in cases of child sexual abuse, e.g., investigating officers, social workers and prosecutors, of the concept child suggestibility?
- Are vulnerable children adequately protected against interrogative suggestibility?
- What is the nature of child interviewing during child sexual abuse investigations and court proceedings?

The analyses and interpretation of results relevant to the first sub question, i.e. the cognizance of suggestibility among professionals centrally involved in cases of child sexual abuse, are now discussed.

6.2.1 Cognizance of suggestibility among professionals involved in cases of child sexual abuse

In answering the sub question on the cognizance of suggestibility among professionals centrally involved in cases of child sexual abuse, the results of the semi-structured questionnaire are analysed and interpreted below. The knowledge areas contained in the semi-structured questionnaire ranged from the foundational developmental theories such as those of Piaget's cognitive development theory, Erik Erikson's psychosocial developmental theory, and Kohlberg's moral development theory (Schickendanz, Schickendanz, Hansen & Forsyth, 1993; Eysenck, 1988; Bergh & Theron, 2009; Muller & Hulley, 2000). Closer to the concept of child suggestibility is the cornucopia of neuro-cognitive theories, including amongst others, episodic memory, theory of mind, source monitoring, executive functioning (cognitive inhibition), and social learning theories (Bruck & Melnyk, 2004; Davis & Bottoms, 2002; Garven, Wood & Malpas, 2000; Scheiber, Bellah, Martinez, Mclaurin, Strok, Garven & Wood, 2006; Giles, Gopnik & Heyman, 2002; Roberts & Powel, 2005; Ceci & Bruck, 1997; Roberts & Powell, 2005; Bruck & Melnyk, 2004; Ceci & Bruck, 2004; Melinder, Endestad & Magnussen, 2006). The interface of suggestibility and other factors such as age and intelligence also constituted broad

areas of knowledge, which were assessed by the semi-structured questionnaire. Hence, analyses and interpretation of the data follow in subsequent paragraphs, starting off with a discussion of the nexus between the educational level of judicial officers and their cognizance of suggestibility.

6.2.2 The nexus between educational level and cognizance of suggestibility

Referencing empirical data contained in tables 5.1 and 5.2, the results did not suggest a positive nexus between educational level and cognizance of suggestibility among professionals involved in cases of child sexual abuse. With the exception of magistrates' cognizance of suggestibility at 80%, the remainder of the participants demonstrated fairly restricted cognizance of suggestibility at 43.1% being sensitive to the concept of suggestibility. The inter-group frequency difference was statistically significant, mainly due to the magistrates' high performances on this criterion.

The knowledge of a concept marks the beginning of mastering issues surrounding such a concept; hence, high cognizance increases the probability of transforming such knowledge into practice. Research participants demonstrated low cognizance of suggestibility, implying that the detection and management of suggestibility within the legal justice system might also be below average. The interpretation is that the graduate training programs of law students and social workers, as well as the training programs of police officers might not adequately address matters amenable to child suggestibility, such as foundational developmental theories of Piaget's cognitive development theory, Erik Erikson's psychosocial developmental theory, and Kohlberg's moral development theory (Schickendanz, Schickendanz, Hansen & Forsyth, 1993; Eysenck, 1988; Bergh & Theron, 2009; Muller & Hulley, 2000), as well as certain aspects of neuro-cognitive theories, executive functioning (cognitive inhibition), and social learning theories (Bruck & Melnyk, 2004; Roberts & Powel, 2005; Bruck & Melnyk, 2004; Ceci & Bruck, 2004; Melinder, Endestad & Magnussen, 2006). The implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of

topics dealing with child development, i.e. emotional, cognitive, and psychosocial development, inclusive of learning theories (memory, memory retrieval, concrete and abstract reasoning, and executive functioning).

6.2.3 Specific deficits related to cognizance of suggestibility

Analyses of the results rendered 26 specific fields of deficient cognizance and experiential knowledge about suggestibility in child witnesses involved in alleged sexual abuse trial proceedings. These fields of deficient cognizance and experiential knowledge are discussed below.

a Theory of mind and suggestibility

Referencing the empirical data contained in table 5.6, the results revealed that less than half (43.1%) of the participants were sensitive to the concept ‘theory of mind’ and its link with child suggestibility, with a statistically non-significant inter-group frequency difference pertaining to this aspect of suggestibility, indicating that none of the participatory groups revealed particular good knowledge of the link between ‘theory of mind’ and suggestibility. Theory of mind refers to one’s ability to know that others may have different intentions, beliefs and feelings than self (Bruck & Melnyk, 2004). Such knowledge is very important when conducting forensic interviews with children. Children develop this ability around the age of five years (Bruck et al, 2004). When dealing with children below this age, officials should be sensitive thereof that lacking ‘theory of mind’ might increase suggestibility. Since ‘theory of mind’ is directly linked to the child’s capacity for decision-making, i.e., the conative branch of accountability (Schmidt, 1990), the interpretation is that training programs and curricula should also include aspects of child psychopathology to augment cognizance of child suggestibility emanating from underdeveloped ‘theory of mind’ as associated with certain categories of child pathologies. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with child psychopathology, including pervasive and other disorders usually first

diagnosed in infancy, childhood and adolescence as evidenced in the DSM-IV-TR (APA, 2000).

b Interview hypothesis effect and suggestibility

Referencing the empirical data contained in table 5.8, the results revealed that less than half (44.8%) of the participants were cognizant about the negative effect of having a preconceived hypothesis about the event before interviewing the child victim, with a statistically non-significant inter-group frequency difference pertaining to this aspect of suggestibility, indicating that none of the participatory groups revealed particular good knowledge thereof that questioning flowing from a preconceived hypothesis about the event might increase suggestible interviewing with the child victim. Having an interview hypothesis usually causes the interviewer to put forward such a hypothesis to the child witness, either overtly or covertly. Interview questions originating from this hypothesis may then be presented in a suggestive manner, thereby increasing child suggestibility (Bruch & Ceci, 1999). The interpretation is that is that training programs and curricula should also include skills training in terms of child and adolescent interviewing. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with child and adolescent interviewing.

c Source memory accessibility and suggestibility (eyewitness testimony)

Referencing the empirical data from table 5.9, the results revealed that only a small percentage(24.1%) of the participants demonstrated cognizance of the link between source memory accessibility and increased suggestibility among child victims, with a statistically non-significant inter-group frequency difference pertaining to this aspect of suggestibility, indicating that none of the participatory groups revealed particular good knowledge thereof that poor source memory accessibility might increase suggestible interviewing of child victims of alleged sexual abuse. Source monitoring refers to “an attribution process through which one makes decisions about how

memories, knowledge, and beliefs were acquired. Source monitoring attributions are made on the basis of qualitative characteristics of activated memories such as the amount or type of perceptual detail” (Thierry, Spence & Memon, 2001, p 2). Children may however be exposed to sources of information that may contaminate memories of their prior experiences. Contamination may occur when children listen to a story about a similar event, watch a similar event on television, hear inaccurate descriptions about similar events, are suggestively interviewed about an event, dream about an event, and experience other similar events (Roberts & Powel, 2005). Suggestibility increases when false non-target information presented by stronger memory trace becomes easier to retrieve than the original memory. The ability to monitor memory sources is minimal between the ages of 3 to 6 years. The research participants’ demonstrated low sensitivity on the concept of source memory implies that its management and the related suggestibility might be equally low. The interpretation is that training programs and curricula should also include skills training in terms of child and adolescent interviewing, with specific reference to memory access and retrieval in case of eyewitness testimony. Hence, the implication for intervention is interviewing skills training should also include topics dealing with child and adolescent memory access and retrieval, including eyewitness testimony.

d Practice knowledge of child suggestibility within the Namibian legal justice system

Referencing the empirical data from table 5.11, only a small percentage of participants (31%) had practice knowledge on the concept of child suggestibility within the Namibian legal justice system, with a statistically non-significant inter-group frequency difference between participatory groups, indicating that lack of practice knowledge on child suggestibility prevailed across all professions involved in cases of child sexual abuse.

Everton (1996), having conducted a survey of 244 judges, law enforcement officers, mental health workers and child protection service workers, concluded that judges and law enforcement officers were more sceptical towards children’s reports /

testimonies, compared to mental health workers. Mental health professionals had a fairly positive view of the children's reports, supporting current findings from this study, indicating that social workers demonstrated highest sensitivity to suggestibility on most of the items. Melinder, Goodman, Eilertsein and Magnussen (2004) found that police officers in their study rated verbal interviews as a reliable tool for conducting forensic interviews with children. In contradistinction, this current study demonstrated that only 10% of the police officers (as research participants) were knowledgeable about the negative effect of repeating questions to children, while only 30% of the police officers (as research participants) were cognizant about the negative effect of close-ended questioning on pre-schoolers. Similarly, only 20% of the police officers in the current study knew that leading questions result in unreliable information retrieval. Hence, the findings of this current study do not support the findings of Mellinder and co-workers' Norwegian study, which concluded that the Norwegian police are educated to rely on verbal interviews and that they were trained in the use of non-leading, open-ended questioning. The Norwegian study concluded that officials within their legal justice system maintained relatively balanced and up-to-date views of child witnesses. This current study produced different findings, compared to the Norwegian research. While this study may be looking at child suggestibility, it is however a strong variable that influences a significant part of child witnessing and credibility. The suggestibility sensitivity/knowledge (child witnessing) levels of the legal and allied criminal justice professionals was very low compared to the Norwegian professionals.

The interpretation is that training programs are lacking applicable clinical experience and workplace learning. The implication for intervention is that training programs should include compulsory supervised clinical placements specifically aimed at working with children and adolescents, and which could provide the much needed workplace and experiential learning within this specific field of practice.

e Leading and open-ended questions and accuracy of memory recall impacting on suggestibility

Referencing empirical data from table 5.12, the results revealed that less than half (39.7 %) of the participants demonstrated cognizance thereof that leading questions cause children to provide unreliable information, and that leading questions might increase suggestibility among child victims of alleged sexual abuse. The inter-group frequency difference was not statistically significant, indicating that all participatory groups were lacking in this knowledge, with magistrates and police officers performing at the lowest end. Interestingly, table 5.7 also revealed that the defence lawyers demonstrated least cognizance (36.8%) of the link between open-ended questions and children's memory retrieval, suggesting that defence lawyers may tend to use closed questions more often, thereby creating higher risk for child suggestibility, which tendency is confirmed by case reviews reported in subsequent section 6.2.3 herein. The interpretation is that training programs and curricula should include skills training in terms of child and adolescent interviewing. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with child and adolescent interviewing.

f The link between age and suggestibility in children

Referencing empirical data from table 5.13, the results revealed that only 36.2% of research participants were able to identify correctly the age group at greatest risk for suggestibility, namely the three to six year olds. The inter-group frequency difference was not statistically significant, indicating that all participatory groups were lacking knowledge about child cognitive development. The interpretation is that training programs and curricula should also include aspects of child development, with specific reference to the intellectual development of infants, children and adolescents. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include child and adolescent psychology and its interface with the legal justice system.

g The use of anatomically detailed dolls and suggestibility

Referencing empirical data from table 5.14, the results revealed that 67.2 % of the research participants were aware of the negative effect of using anatomically detailed dolls before the child witness discloses sexual abuse. Inter-group frequency difference among participatory groups was not statistically significant, but for police officers who demonstrated low cognizance of this criterion. This low performance justifies inclusion of this criterion as a deficit, since statements submitted to police officers usually form the entry point of investigations into child sexual abuse. The interpretation is that training programs and curricula should also include the use of aides during interviewing of children, i.e. drawings, anatomically detailed dolls, and construction materials such as play dough and plastic clay demonstrations to support the interview. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of aides during child and adolescent interviewing.

h The link between rewarding and suggestibility

Referencing empirical data from table 5.15, the results revealed that only 44.8% of the participants were cognizant about the link between positive reinforcement (rewarding children) and increased susceptibility for suggestion. Inter-group frequency difference among participatory groups was not statistically significant, showing that all professionals demonstrated low cognizance of this criterion. The interpretation is that training programs and curricula should also include applications of learning theories, specifically referencing punishment and reward. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to include applications of various learning theories.

i Forensic interviewing by authority figures and suggestibility

Referencing empirical data from table 5.16, the results revealed that only half of the participants (50%) were cognizant thereof that children more readily accept

information as accurate if presented by authority figures. Hence, if authority figures conduct forensic interviewing in a suggestible style, a child is at greater risk to accept any suggestion as nothing but the truth. This also holds true for so-called symbols of authority, which might increase suggestibility among child victims of alleged sexual abuse. Inter-group frequency difference among participatory groups was not statistically significant, showing that all professionals demonstrated low cognizance of this criterion. The interpretation is that training programs and curricula should also include knowledge and skills training in terms of moral development, particularly referencing acceptance of authority, compliance with figures of authority, and punishment avoidance. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include applications of Kohlberg's theory of moral development.

j Undoing implanted false information and suggestibility (false memories)

Referencing empirical data from table 5.17, the results revealed that only 51.7% of research participants were cognizant of the difficulty to undo implanted false information, and that implanted false information may contribute to increased susceptibility for suggestion in children. But for social workers' full cognizance of this criterion, the statistical non-significant inter-group frequency suggest that all remaining participatory groups demonstrated low cognizance, with police officers at lowest end of performance (10%) on this specific criterion. The interpretation is that training programs and curricula should also include knowledge and skills training in terms of false memory testimonies. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with false memories.

k Interviewer with clear pre-conceived beliefs and suggestibility

Referencing empirical data from table 5.18, the results revealed that less than half (36.2%) of the research participants were cognizant thereof that an interviewer's clear (firm) preconceived beliefs may sway the interview to match those very beliefs,

thereby increasing the possibility of suggestive interviewing. Inter-group frequency difference among participatory groups was not statistically significant, showing that all professionals demonstrated low cognizance of this criterion. The interpretation is that training programs and curricula should also include knowledge and skills training in terms of child interviewing. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with the persona of the interviewer, as well as counselling with children, i.e. consulting techniques, the role of consultation with child witnesses within the legal justice system, the consulting process, counselling children with special concerns such as abuse and neglect, counselling with children from different cultures (Thompson & Rudolph, 2000).

l Suggestibility in children with intellectual disabilities

Referencing empirical data from table 5.19, the results revealed that 67.2 % of the research participants were aware of the link between cognitive disabilities and an increased risk for suggestibility. Inter-group frequency difference among participatory groups was not statistically significant, but for police officers who demonstrated low cognizance of this criterion. This low performance justifies inclusion of this criterion as a deficit, since statements submitted to police officers usually form the entry point of investigations into child sexual abuse. The interpretation is that training programs and curricula should also include knowledge and skills training in terms of counselling exceptional children, i.e. learning disabled, intellectually impaired, and so on (Thompson & Rudolph, 2000). Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with exceptional children within the Namibian legal justice system.

m Level of participation in event and memory recall

Referencing empirical data from table 5.21, the results revealed that only a small percentage (27.6%) of the participants demonstrated cognizance thereof that central

participation in the event assists children to readily recall that event. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion. The aetiology of memory impairment is quite diverse, ranging from mental retardation, to pathologies such as ADHD, depression, anxiety, posttraumatic stress disorder, and dissociative amnesia (APA, 2000). “Dissociative amnesia most commonly presents as a retrospectively reported gap or series of gaps in recall for aspects of the individual’s life history. These memory gaps are usually related to traumatic or extremely stressful events” (APA, 2000, p 520). Several types of memory disturbances have been described in the literature, such as *localized memory disturbances*, where the individual fails to recall events that occurred during a circumscribed period of time, usually the first few hours following a profoundly stressful event, *selective memory disturbances*, where the individual can recall some, but not all, of the events during a circumscribed period of time, *continuous memory disturbances*, where the individual demonstrates inability to recall events subsequent to a specific time up to and including the present, and *systemized memory disturbances*, where the individual loses memory for certain categories of information, such as all memories relating to a particular person or event (APA, 2000). The interpretation is that training programs and curricula should also include knowledge and skills training in terms of counselling children with memory disturbances (Thompson & Rudolph, 2000). Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with memory disturbances and the nexus thereof with increased suggestibility.

n Time interval between event and recall, and suggestibility

Referencing empirical data from table 5.22, the results revealed that more than half (56.9%) of the research participants were cognizant thereof that the longer the time lapse between the event and recall, the poorer the quality of memory recall. Inter-group frequency difference among participatory groups was not statistically significant, but for police officers (40%) and social workers (0%) who demonstrated low cognizance of this criterion. These low performances justify inclusion of this

criterion as a deficit, since statements submitted to police officers and social workers usually form the entry point of investigations into child sexual abuse. Suggestibility due to time interval between event and recall has a close link with topics on memory disturbances and employment of aides to support memory retrieval. Hence, the interpretation is that training programs and curricula should also include knowledge and skills training in terms of counselling children with memory disturbances (Thompson & Rudolph, 2000), coupled with training on the use of memory aides, such as children's drawings, modelling clay, dolls, and other play materials. The implication for intervention is curricula reform and/or expansion of training programs and curricula to also include applications of aides towards memory access and retrieval.

o Existence of a framework for conducting forensic interviews

Referencing empirical data from table 5.24, the results revealed that only 25.9% of the research participants were cognizant about the existence of a framework for conducting forensic interviews with individuals involved in the Namibian legal/justice system. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion. These results suggest that the Namibian legal justice system may not have put into operation a framework for conducting forensic interviews with children. Officials within the legal justice system might be using own discretion on best practices for conducting such interviews. The Combating of Rape Act (2000), the Criminal Procedure Amendment Act, (1977) and the Child Care and Protection Bill (2009) made some efforts to assist vulnerable witnesses, such as children, during court proceedings. Specific provisions exist for the use of an intermediary, and the presiding officer to take a more active role towards protection of (vulnerable) child witnesses. However, the interpretation is that these provisions fall short of a prescribed framework, and a need transpired for specifications on how authentic forensic interviewing should be conducted. Hence, the implication is that a framework for conducting forensic interviews with children and adolescents should be developed and put into operation.

p Interview guidelines in the Namibian legal justice system

Referencing empirical data from table 5.25, the results revealed that only 20.7% of the research participants were cognizant about the existence of interview guidelines for children in the Namibian legal/justice system. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion. Having indicated that there might be no framework for conducting forensic interviews, very few practitioners (20.7%) indicated that there are guidelines for interviewing children in Namibia. Such guidelines are deemed of crucial importance, because clear guidelines would ensure uniformity in terms of interviewing, while protecting the child witness from being asked questions that could increase tainted memory retrieval and suggestibility. As it has been stated in chapter 1, some countries such as the United Kingdom (UK) implemented a Memorandum of Good Practice, which provides guidelines for interviewing children and to intercept potential contamination of testimonies through suggestive questioning (Chiroro et al., 2005). The implication is that a similar Memorandum of Good Practice should be developed and put into operation, thereby providing interviewing guidelines at all levels of contact with the child witness.

q Identification of title of interview guidelines

Referencing empirical data from table 5.26, the results revealed that only one research participant (1.7%) was able to name the exact title of the guidelines. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion. Not being able to identify the title of interview guidelines suggested non-existence of such guidelines, supporting the transpired need for interviewing guidelines, as reflected on in the preceding paragraph.

r Fitness/Competency to stand trial and suggestibility

Referencing empirical data from table 5.27, the results revealed that only 34.5% of the research participants were cognizant thereof that the child's level of suggestibility bears an influence on the child's competency to testify at a trial. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion, with magistrates showing least cognizance of the link between competency to stand trial and a child's level of suggestibility. The child witness' competency to stand trial is influenced by factors such as age and intellectual maturity. In developed countries, suggestibility is a factor that is given due weight during court proceedings, and in these countries children are assessed for suggestibility before they are considered fit to stand trial (Goodman, 2006; Gudjonsson, 2003). In the USA, the presence of tainted memories disqualifies children as witnesses, particularly due to the irreversible nature of tainted memories. The interpretation is that child witnesses within Namibia are not routinely assessed in terms of their competency to take part in legal proceedings, which competency is directly linked to suggestibility. The implication for intervention is that the child witness' competency to take part in legal proceedings should be determined prior to taking down of the statement in order to reduce false positive statements originating from child suggestibility. Hence, training programs and curricula should provide for knowledge and skills training in terms of competency assessment, having consideration for major variables that might have a bearing on competency to take part in legal proceedings.

s Conative aspect of accountability and suggestibility

Referencing empirical data from table 5.28, the results revealed that 87.8% of the research participants were not cognizant thereof that the ability to know what is right and wrong, together with capacity to control and direct behavior in accordance with these insights (conative aspect of the test for accountability) should be taken as the basis for deciding on children's accountability and suggestibility. The inter-group frequency difference is not statistically significant, suggesting that all professionals

demonstrated low cognizance of this criterion, with magistrates and lawyers showing least cognizance of the link between the conative aspect of accountability and suggestibility in children. The interpretation is that the majority of research participants did not weigh accountability in terms of conative development. In practice this suggests that child witnesses' ability towards behaviour control in accordance with their insights of right and wrong was not seen as the basis for accountability in children, as long as they know what is right or wrong, irrespective of behaviour control commensurate with such insights. According to Schmidt (1990), this ability to control and direct behaviour in accordance with insights of right and wrong represent the conative component of child development. Implication for intervention is that training programs should place greater emphasis on the nexus between child development, and the cognitive and conative underpinnings of accountability.

t Age of abstract thought development

Referencing empirical data from table 5.29, the results revealed that only 17.2 % of research participants were cognizant of the age of abstract thought development in children, i.e. 10 to 12 years of age. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion, with none of the police officers being able to identify correctly the age of abstract thought development in children. The interpretation is that training programs and curricula should also include knowledge and skills training in terms of the cognitive development of children. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with the cognitive development of children, including the nexus between different levels of cognition, i.e. concrete, semi-concrete and abstract levels, and suggestibility (Thompson & Rudolph, 2000).

u Attendance of victim friendly court proceedings

Referencing empirical data from table 5.30, the results revealed that despite the presence of the Victim Friendly Court in Windhoek, only 39% of research participants confirmed to have attended or conducted trial proceedings at that court. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance (experiential knowledge) of this criterion, with only 50% of the prosecutors and magistrates having confirmed attendance and/or having conducted trial proceedings at the Victim Friendly Court. In Windhoek, there is a Victim Friendly Court that allows for children to be interviewed in a non-threatening environment. The court is fully equipped to allow child witnesses to testify via video link, without seeing the accused. Despite the presence of such an excellent facility, only a small portion of research participants demonstrated experience of this court, either as observer or as participant to trial proceedings. The implication for intervention is that training programs and curricula should provide workplace learning opportunities via compulsory attendance (as observers) at Victim Friendly Court proceedings. This could take the form of Victim Friendly Court exposures with a minimum number of case observations.

v Use of psychological experts to conduct an assessment of suggestibility

Referencing empirical data from table 5.31, the results revealed that only 37.9% of the participants had previously engaged a psychologist or psychiatrist to conduct an assessment of suggestibility in child witnesses. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance (experiential knowledge) of this criterion, with only 37% of the lawyers having confirmed employment of a psychologist or psychiatrist towards assessment of suggestibility in child witnesses. Children form part of a special ('vulnerable') population, particularly because they are still developing. Hence, retrieval of accurate information from child witnesses is subject to good knowledge of child development, in particular the link between memory recall and age (cognitive maturation). The implication for intervention is that training programs and curricula

should include aspects of typical and atypical cognitive maturation in children, including aspects of mental retardation as evidenced in the DSM-IV-TR (APA, 2000). A further implication for intervention is the provision of workplace learning opportunities via compulsory workplace attachments at child psychiatry/psychology practice settings, with a minimum number of case observations.

w Repeated questioning and suggestibility

Referencing empirical data from table 5.32, the results revealed that 74.2% of research participants were not cognizant of the link between repeated questioning and increased suggestibility in children. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion. Repeating questions cause children to doubt their own performance; hence, because they assume that their first answers were ‘wrong’, they usually change their initial line of thinking, thereby increasing suggestibility. This is particularly true for children presenting with self-doubt, poor self-esteem, performance anxiety, and lower level intellectual functioning (Thompson & Rudolph, 2000). The implication for intervention is that training programs and curricula should include topics such as self-doubt, self-esteem, and performance anxiety in children, thereby curbing the practice of repeating questioning. This could be achieved via workplace attachments at child psychiatry/psychology practice settings. While this may be ideal, it may be difficult to implement because of the differences of law and psychology training.

x Dismissal of interview when child is emotional

Referencing empirical data from table 5.33, the results revealed that more than half (67.2%) of the research participants would dismiss (stop) an interview when the child witness becomes emotional. Inter-group frequency difference among participatory groups was not statistically significant, but for lawyers (36.8%) who demonstrated low cognizance of this criterion. This low performance justifies inclusion of this criterion as a deficit, since lawyers are centrally involved in trial proceedings dealing

with alleged child sexual abuse. The interpretation is that training programs and curricula should also include knowledge and skills training in terms of child interviewing. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with the persona of the interviewer, as well as counselling with children, i.e. consulting techniques, the role of consultation with child witnesses within the legal justice system, the consulting process, counselling children with special concerns such as abuse and neglect, counselling with children from different cultures (Thompson & Rudolph, 2000).

y Permitting a pre-schooler to be asked closed questions

Referencing table 5.35, the results revealed that only 43.1% of the research participants would not require pre-schoolers to answer to closed questions, i.e. questions with pre-determined response options, such as yes/no. The inter-group frequency difference is not statistically significant, suggesting that all professionals demonstrated low cognizance of this criterion. Asking children closed questions contributes to suggestibility, and it is usually evident when the interviewer pursues a specific pre-conceived hypothesis (Bruck & Ceci, 1997; Bruck & Ceci, 1999). The implication for intervention is knowledge and skills training pertaining to child interviewing and interviewing styles, as mentioned in preceding paragraphs.

z Indication of disagreement with child witness and suggestibility

Referencing table 5.37, the results revealed that only 46.6% of the research participants would not indicate their disagreement with a child witness. Inter-group frequency difference among participatory groups was not statistically significant, but police officers (30%) demonstrated least cognizance of this criterion. Openly differing with children may disconfirm their belief in what they will be saying making them to change their initial line of thinking. The interpretation is that training programs and curricula should also include knowledge and skills training in terms of child interviewing. Hence, the implication for intervention is curricula

reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with the persona of the interviewer, as well as counselling with children, i.e. consulting techniques, the role of consultation with child witnesses within the legal justice system, the consulting process, counselling children with special concerns such as abuse and neglect, counselling with children from different cultures (Thompson & Rudolph, 2000).

6.2.4 Specific strengths related to cognizance of suggestibility

Analyses of the results rendered nine specific fields of proficient cognizance and experiential knowledge (i.e. strengths) about suggestibility in child witnesses involved in alleged sexual abuse trial proceedings. These fields of proficient cognizance and experiential knowledge are discussed below.

a Difference between child and adult memory

Referencing empirical data from table 5.3, the results revealed that 89.7% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance of the difference between child and adult memory. Inter-group frequency difference is statistically significant, demonstrating that all participatory groups were proficiently cognizant about the manifest difference between memory recall in adult versus child witnesses.

b Language proficiency and memory

Referencing empirical data from table 5.4, the results revealed that 62.1% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance of the link between a child witness' language proficiency and proficient memory consolidation and retrieval, thereby lowering the risk of suggestibility. Inter-group frequency difference is statistically significant, demonstrating that all participatory groups were proficiently

cognizant about the importance of language proficiency, memory recall and suggestibility.

c Interview style and children's response style

Referencing empirical data from table 5.5, the results revealed that 93.1% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that forensic interviewing style links closely with the child witness' response style, suggesting proficient cognizance thereof that suggestibility may increase with suggestive interviewing. Inter-group frequency difference is statistically significant, demonstrating that all participatory groups were proficiently cognizant about the importance of interview style towards reduction of suggestibility among child witnesses.

d Open-ended questions best supporting memory retrieval

Referencing empirical data from table 5.7, the results revealed that, but for defence lawyers, 63.8% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that open-ended questions may support memory retrieval, thereby decreasing suggestibility among child witnesses.

e Effect of false information on children's recall accuracy

Referencing empirical data from table 5.10, the results revealed that, but for social workers, 74.1% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that provision of false information to child witnesses would mostly cause them to accept such information as the truth, thereby increasing the risk of child suggestibility.

f Forensic interviews conducted by professionals and suggestibility

Referencing empirical data from table 5.20, the results revealed that 87.9% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that professionals such as psychologists and psychiatrists may conduct forensic interviews with children, due to their particular expertise on the field of child development and suggestibility. This may however be costly, recording interviews should be done to allow these experts to review such interviews when necessary.

g Police wearing uniforms

Referencing empirical data from table 5.23, the results revealed that 86.2% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that police uniforms are tokens of authority, which tokens of authority link closely to increased susceptibility for suggestion.

h Permitting a child witness to testify unassisted

Referencing empirical data from table 5.34, the results revealed that 79.3% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that they should not allow a child below the age of six years to testify in court unassisted. These age groups may need a neutral person to support them when the questions or cross examination become unbearable.

i Permitting a preschool child witness to be asked leading questions

Referencing empirical data from table 5.36, the results revealed that 53.4% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that they should not

allow a preschool child witness to be asked leading questions during trial proceedings. This would require the amendment of the sections the rules of the court, evidence and criminal procedures which allow such children to asked leading questions during cross examination.

6.2.5 Protection of the vulnerable child witness from interrogative suggestibility

In answering the sub question on whether vulnerable children (child witnesses) are adequately protected from interrogative suggestibility, the results of child witnesses' founding statements (dockets) are analysed and interpreted below.

6.2.6 Extra-judicial ('founding') statements (dockets)

Dockets contain the founding (initial) statements of the complainant and the exculpatory statements of the accused, submitted to the investigating police officer. These founding statements have the character of a story or narrative written by the investigating officer about what transpired during the interview with the complainant. The docket also contains evidential material relevant to the case, if available. After having conducted an evaluation of the evidence, the Public Prosecutor makes an initial assessment on the probability of prosecution, pending the evidential value of the contents of the docket. Hence, if founding statements (narratives) are inaccurate and subject to suggestibility, it decreases the evidential value of such statements. Decreased evidential value of statements might render false positive charges brought against the accused, or the case might be dismissed prior to proper further investigation, even before commencement of trial proceedings, or the alleged sex offender might be acquitted due to insufficient proof. Hence, if investigating officers recording these founding statements of child witnesses are not proficiently cognizant of suggestibility, such statements might be inaccurate and not conducive towards a fair trial and successful prosecution. It was noted earlier that in some developed countries such as Germany, assessment for child suggestibility is done prior to commencement of trial proceedings (Goodman, 2006;

Gudjonsson, 2003). This is very important because if a child is vulnerable to suggestion, he/she will not be able to provide reliable information. Serious flaws transpired from reported case studies such as the Kelly Michaels case and a number of McMartin pre-school cases, which case studies demonstrated a high positive correlation between suggestibility, false positive accusations, and wrongful convictions (Bruck & Ceci, 1995; Scheiber, Bellah, Martinez, McLaurin, Stok, Garven & Wood, 2006; Garven, Wood, Malpass & Shaw, 1998). Experimental studies such as the Sam Stone study showed that a certain group of children, especially pre-schoolers, are more prone to suggestion; hence, the need for assessment of suggestibility prior to commencement of trial proceedings. If children are found to be suggestible, then they should either not be allowed to testify in court, or the judicial officer should particularly caution against suggestive questioning.

6.2.6.1 *Specific deficits emerging from initial statements of child witnesses*

Analyses of the founding statements (narratives) of child witnesses rendered seven (7) broadly defined categories of deficient protection from suggestibility. Referencing **section 5.3 of chapter five**, it transpired that infringement of specific best practice criteria during recording of the founding statements of child witnesses resulted in deficient protection from suggestible interviewing, considering that police officers, social workers, interpreters and even family members assist these child witnesses in formulating their founding statements.

These categories of deficient protection are discussed below, together with specific best practice criteria to each category. The categories are presented as characteristics of the statement, observations of the investigating police officer (clinical notes), content of the statement, voluntary nature of the statement (complaint), complaint at the first reasonable opportunity, testimony in person, decision-making capacity of the child witness.

a Characteristics of the statement

But for the best practice criterion safeguarding against suggestibility during deposition of a statement using the child witness' mother tongue, infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall. Referencing empirical data from table 5.39, it transpired that only half of the recorded statements were taken down in the child witness / complainant's mother tongue, while half of the statements were taken down using a language different from the child witness / complainant's mother tongue. Hence, referencing table 5.40, it transpired that the investigating officer employed an interpreter / translator in all of the six cases (dockets), demonstrating high sensitivity to the language proficiency of child witnesses. However, apart from adhering to the best practice criterion that specifically provides for safeguarding against suggestibility via use of mother tongue, assisted by an interpreter, the remainder of safeguarding best practice criteria were not adhered to.

Analyses of the dockets rendered the following interpretations: None of the dockets revealed information on whether the interpreter / translator was in any way bonded with the child witness, i.e., whether a mother, aunt, etcetera, assisted as interpreter / translator, which affective bond might have resulted in biased interpretations and translations (reference *R v Criag* 1904 NLR 153). In *S v T* 1973 3 SA 794 (A) the ruling maintained was that a mother of a 5-year-old girl could not act as both witness and translator, because she could not claim impartiality to perform both roles. Furthermore, considering that English is the official language used in Namibian courts of law, inaccurate translations into English, coupled with low English language proficiency, may contribute to increased suggestibility. During analyses of the statements, it transpired that none of the statements reflected a high level of English language proficiency, which creates a window of opportunity for ambiguity and double word derivations, which might transpire as questionable during subsequent trial proceedings.

Additional safeguarding best practice criteria were also not adhered to, e.g., the gender and cultural background of the investigating officer having recorded the child witness' statement was not indicated; the match in terms of gender and cultural background between the child witness and the interpreter / translator was not stated; the statements did not convey facts about the alleged sexual offence clearly and objectively, due to language barriers, and statements required further clarification; the statements did not in every case refrain from expressing an opinion regarding the guilt, innocence, or liability of the child witness; it was not declared whether statements submitted to the investigating officers were subsequent to *crisis intervention* (usually very shortly after the alleged offence, typically of “hue and cry”), which crisis intervention might have tainted the subsequent statements; neither was it declared whether statements submitted to investigating officers had another reporting problem as a smokescreen, known as *incidental reporting*, or whether the statements were submitted following a *special investigation*, e.g., a statement ensuing where the child witness in course of time and in the light of the investigation, submitted substantiating evidence to ‘strengthen’ the complaint; it was also not declared whether deposition of statements emerged from psychological or other kind of intervention or treatment.

Despite the preceding deficits, investigating police officers fully adhered to the safeguarding best practice criterion that the statement must indicate to whom the alleged victim first (initially) reported the alleged offence. Referencing table 5.41, it transpired that all of the statements indicated to whom the child victim first (initially) reported the alleged offence.

b Observations of the investigating police officer (clinical notes)

Referencing tables 5.42 to 5.46, it transpired that none of the investigating officers made additional clinical notes about observations of the victim, which clinical notes could later assist the investigating officers to refresh their memories when called to testify during trial proceedings. Infringements on safeguarding best practice criteria for this category was statistically significant at 5% level of reliability overall. Null

(zero) responses to criteria contained in the Checklist for Screening Extra Judicial Conditions were tabulated in chapter 5, and are herein discussed as deficiencies.

The interpretation is that infringements on best practice criteria increased the prospect of suggestible interviewing and deposition of tainted statements by child witnesses, and that child witnesses were not sufficiently protected via safeguarding best practice principles. By illustration, none of the investigating officers made additional clinical notes about observations of the child witness (alleged victim), which clinical notes could later have assisted investigating officers in refreshing their minds when called to testify during trial proceedings; none of the investigating officers' initial impressions during the first consultation with the child witness were noted down; no ostensibly 'hard signs' of the alleged offence (usually noticeable, including physical injuries and post-rape symptoms) were noted down as part of the investigating officers' initial impressions; none of the investigating officers kept thorough records of relevant information to be used during subsequent trial proceedings. In the absence of clinical notes and thorough record keeping, these investigating officers, when called as witnesses, have to rely on memory entirely, with no clinical notes to refresh their memories, with the prospect of increased suggestibility.

c Content of the statement

Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to. Null (zero) responses to criteria contained in the Checklist for Screening Extra Judicial Conditions were tabulated in chapter 5, and are herein discussed as deficiencies.

The interpretation is that infringements on best practice criteria increased the prospect of suggestible interviewing and deposition of tainted statements by child witnesses, and that child witnesses were not sufficiently protected via safeguarding best practice principles. By illustration, none of the dockets gave an indication of the

mental (psychological) status of the child witness (alleged victim) immediately after the alleged incident, or during the interview; none of the investigating officers referenced the child witness' mental status (fitness to make a submission) at the time of deposition of the statement; information on the way in which initial 'complaining' was done was either absent or diffuse, and no statement contained the precise words used during initial complaining, i.e., when the initial complaint comes under discussion, the initial complaint should have similarities with the original '*hue and cry*'¹⁰ (Schmidt 1990, p 378).

d Voluntary nature of the statement (complaint)

Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to. Null (zero) responses to criteria contained in the Checklist for Screening Extra Judicial Conditions were tabulated in chapter 5, and are herein discussed as deficiencies.

The interpretation is that infringements on best practice criteria increased the prospect of suggestible interviewing and deposition of tainted statements by child witnesses, and that child witnesses were not sufficiently protected via safeguarding best practice principles. By illustration, no information transpired from the dockets on the voluntary nature of the founding statements, or whether a relative or friend was instrumental in convincing the child witness (alleged victim) to make the statement; if persuasion was required to make the statement, the verbatim phrases used to persuade the child witness to make a statement were not accurately (verbatim) recorded, and no clinical notes reflected on whether these verbatim phrases and words used to persuade the child witness were interrogative, manipulative, threatening, suggestive or leading in nature; no information transpired from the dockets on the circumstances that might have forced or compelled the child

¹⁰ The Germanic origin of *hue and cry* lies in the old requirement that the victim of rape "*forthwith and while the act is fresh ... ought to report with hue and cry to the neighbouring villa and there display to honest men the injury done to her...*" (Schmidt 1990, p 378).

victim to speak out, such as the emergence of a pregnancy, injuries, vaginal infections or a venereal disease; the questions used by the investigating officer during deposition of the statement were not noted down verbatim; no clinical notes reflected on whether questions and techniques used to prompt information during deposition of the statement suggestive, were leading or intimidating in nature, e.g., the quality and prosody of the wording; the statements did not reveal whether prompting questions and techniques carried a certain amount of 'psychological and emotional force' to elicit a statement, neither did dockets reveal whether methods and strategies used to elicit information from the child witness had resulted in manipulation, force, or an unwilling statement.

e Complaint at the first reasonable opportunity

Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to. Null (zero) responses to criteria contained in the Checklist for Screening Extra Judicial Conditions were tabulated in chapter 5, and are herein discussed as deficiencies.

The interpretation is that infringements on best practice criteria increased the prospect of suggestible interviewing and deposition of tainted statements by child witnesses, and that child witnesses were not sufficiently protected via safeguarding best practice principles. By illustration, no information transpired from the dockets on whether the statement followed a complaint at the first reasonable opportunity, and whether the statement portrayed immediacy and spontaneity in response to the event; in cases of delayed complaints, none of the dockets included the reasons for postponement of the complaint; the dockets did not portray the child witness' level of understanding of the immorality of the alleged offence (level of moral development), neither whether non-comprehension of the nature of the alleged offence was instrumental in deterring the child witness to complain directly after the incident; none of the statements included reference to the presence or absence of an (emotional) available person to whom the child witness (victim) could have

reasonably expected to complain, neither did statements refer to factors that could have prevented the child witness (victim) to complain; the statements did not mention the presence or absence of a so-called *psychological parent*¹¹ to whom the child witness (alleged victim) could have turned to complain, following the alleged offence; no clinical notes or statements contained information on presumable existence of the so-called Lolita syndrome, or presumable presence of *pseudologia fantastica*¹² (erotomania), or presumable existence of a motive for retaliation or other form of secondary gain.

f Testimony in person

Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to. Null (zero) responses to criteria contained in the Checklist for Screening Extra Judicial Conditions were tabulated in chapter 5, and are herein discussed as deficiencies.

The interpretation is that infringements on best practice criteria increased the prospect of suggestible interviewing and deposition of tainted statements by child witnesses, and that child witnesses were not sufficiently protected via safeguarding best practice principles. By illustration, no information transpired from the dockets on whether a so-called ‘facilitator’ was used as intermediary during deposition of the statements, or whether external parties, e.g., family members assisted the child witness in filling in memory gaps, or whether a family member acting as an interpreter portrayed a ‘filtered’ story; no evidence transpired from the dockets on whether the child witness was hesitant, prejudiced, or contradicted him- or herself during deposition of the statement; no evidence transpired from the dockets that the investigating officer asked for clarification during deposition of the statement, and no

¹¹ Psychological parent means the parent (or substitute caregiver) to whom the child turns in times of distress for the necessary psychological and other care, to be cherished and protected and who probably satisfies the minor child's needs most in this regard (Naudé & Maree, 2001, p 35).

¹² Pseudologia fantastica refers to the tendency of an individual to tell grandiose fabrications about him/herself (Plug, Meyer, Louw & Gouws, 1997, p 290).

clarifying questions were included verbatim in the statements; no clinical notes were made about possible hearsay, and the investigating officer did not scrutinize, using questioning, the possibility of conscious or unconscious fabrication; scrutinizing questions were not recorded verbatim, observations were recorded as to wording that could point towards emotional reactions like feelings of guilt or vindictiveness; in case of emotionally laden vocabulary, these were not clarified through questioning by the investigating officer, and clarifying questions were not recorded verbatim; none of the dockets mentioned the possibility of child witness suggestibility, and loaded vocabulary was not clarified and duly recorded by the investigating officers; misrepresentations or misinterpretations were not identified and duly recorded, neither were misrepresentations and misinterpretations clarified; where statements contained wording that could point towards personal grievances towards the accused, these personal grievances were not clarified and duly recorded; where statements contained age-inappropriate sexual terminology and vocabulary, these unusual terminologies and vocabularies were not clarified and duly recorded; where statements reflected distinct discrepancies between the nature of the accusation and the level of apparent emotional tranquillity of the child witness, these were not duly recorded; where the child witness' choice of wording (vocabulary) and affection showed signs of contamination by third parties, e.g., using the precise wording of the mother, these signs of contamination were not clarified and duly recorded; additional source information were not duly recorded, e.g. specific facts relating to the alleged offence; where statements contained assumptions, these assumptions were not duly clarified and recorded; where speculation or conjecture transpired, these were not duly clarified and recorded; where statements did not portray a clear connection between sets of facts, these disconnections were not clarified and duly recorded; and where statements contained circumstantiality, these were not clarified and duly recorded.

g Decision-making capacity of the child witness

Referencing empirical data from tables 5.47 to 5.53, it transpired that none of the statements from these dockets contained information on the decision-making

capacity of the alleged victims. This criterion is statistically significant at 5% level of reliability. Infringements on safeguarding best practice criteria for this category was statistically significant at 5% level of reliability overall. Null (zero) responses to criteria contained in the Checklist for Screening Extra Judicial Conditions were tabulated in chapter 5, and are herein discussed as deficiencies.

The interpretation is that infringements on best practice criteria increased the prospect of suggestible interviewing and deposition of tainted statements by child witnesses, and that child witnesses were not sufficiently protected via safeguarding best practice principles. By illustration, none of the dockets reflected the attained level of decision-making capacity of the child witness, or information on the child witness' level of intellectual functioning. The dockets also did not contain any information on the child witness' attained level of maturity and capacity to consult with the investigating officer and others involved in the case. This information should have been recorded as part of the investigating officer's clinical notes. The statements did not reflect the extent to which child witnesses' intellectual functioning and attained level of maturity influenced their capacity to testify in person in furtherance of their own cases. Applicable literature indicated that children with low intellectual abilities are more prone to suggestion, yet no-one of the dockets contained information on the intellectual functioning of the child witnesses (Gudjonsson & Henry, 2003; Ceci, et al., 1995; Melinder, et al., 2006). Statements did not reflect the child witnesses' level of self-insight and their capacity to reach a rational decision, nor did statements reflect their capacity to understand the consequences of their decisions. None of the dockets contained information suggesting that the decision-making capacity of the child witnesses were scrutinized during submission of their statements. Considering the strong link between decision-making capacity and suggestibility, none of the dockets contained information on the possible risk for suggestibility. In this regard, moral maturity and conceptualization of 'right' and 'wrong' as postulated by Kohlberg, is of vital importance in the courtroom, particularly referencing children's conceptualization of punishment and reward (Muller & Hollely, 2000). Children who are morally immature may find it difficult to follow court proceedings and may be more vulnerable to suggestion.

Furthermore, none of the dockets contained information whether aides (e.g., anatomically correct dolls, drawings, etc.) were used to elicit statements. If aides were used, it was not duly recorded and included as attachments to the statement, e.g., drawings made by the child witness.

In summary, very low cognizance of suggestibility transpired from the statements contained in the dockets/statements under analyses. These founding statements lay the basis for subsequent proceedings, and the interpretation is that numerous shortcomings transpired from analyses of these dockets, and that these dockets generally did not adequately inform the public prosecutor and the court. The dockets contained only a story or narrative, written by the investigating officer about what transpired during the interview with the complainant. While the story seems to be continuous, it is lacking important information about the specific questions of the interviewer. This causes serious problems, because the narratives were constructed through probing and questioning, yet these probes and questions were not recorded, considering that the type and quality of questions bear an influence on the quality of memory recall (Bruck & Ceci, 1997; Bruck & Ceci, 1999; Garven, Wood, Malpass & Show 1998; Scheiber, Bellah, Martinez, McLaurin, Strok, Garven & Wood, 2006; Goodman, 2006).

Furthermore, the investigating officers made frequent use of translators. While this effort is seen as a step closer to breaking language barriers, the employment of translators poses specific risks. Information offered in one language may not necessarily be an accurate translation, considering the language proficiency of *ad hoc* interpreters available, and the idiomatic variation across different languages. Some information may be lost due to low language proficiency and variation in terms of idiomatic expression. There exists a risk of the interpreter offering a translation based on own subjective understanding of what they think is important, thereby distorting the initial meaning of the statement. Suggestibility may also occur when the interpreter attempts to clarify some probes and questions put to the complainant, and not merely a translation of the questions put to the complainant.

6.2.7 Interpretation of case reviews

Referencing empirical data from paragraph 5.4, the researcher conducted four case analyses involving children aged ten years and below, using the Checklist for Suggestibility. These cases were coded R/C 146/2001, R/C 65/2004, R/C 72/2001, R/C 194/2001A and R/C 194/2001B respectively, bringing the total forensic interviews to five. Researchers previously assessed child suggestibility at hand of the structured Gudjonsson Suggestibility Scale (Gudjonsson & Henry, 2003). In this study, assessment of suggestibility was done at hand of the Checklist for Suggestibility, thereby allowing analyses of the unfolding dynamics in the courtroom for suggestibility. In answering the sub question on whether vulnerable children (child witnesses) are adequately protected from interrogative suggestibility, the items to this Checklist for Suggestibility form the basis for the composite thematic interpretation presented in subsequent paragraphs. Seven main themes transpired from analyses of cases R/C 146/2001, R/C 65/2004, R/C 72/2001, R/C 194/2001 A and R/C 194/2001 B, as follows:

6.2.7.1 *Theme 1: Court officials' questioning style*

Referencing the empirical results presented in paragraph 5.4, together with the composite questioning styles used by court officials indicated in table 6.1 below suggest that defence lawyers' questioning style transpired as most suggestible during trial proceedings, followed by the questioning style of prosecutors. Referencing table 6.5 (theme #1), but for magistrates, the questioning style of court officials proved to be highly suggestible at 5% level of reliability. These court officials employed questioning tactics such as yes/no questioning, choice questioning, focussed questioning (as opposed to open ended questioning), re-enforcing questioning and leading questioning.

The interpretation is that children below the age of ten years are still egocentric in their thinking and reasoning, demonstrating limited capacity to assimilate others' perspectives into their own frame of reference. According to Piaget, egocentric

thinking hampers logic problem solving, causing the child witness to focus on only one aspect of the problem, coupled with an inability to mentally reverse actions and a tendency to treat two or more connected events as unconnected (Muller & Hollely, 2000). When the child witness is subject to suggestive questioning that requires logical thinking and finding connections among events, such a child witness finds it difficult to respond appropriately. Hence, suggestive questioning heightens the risk for child suggestibility during trial proceedings, in keeping with earlier research findings on the high suggestibility of children between the ages of three to six years of age, involved in the Kelly Michael's case and the McMartin School case respectively (Bruck et al, 1995; Scheiber et al, 2006; Garven et al, 1998). Bruck and Ceci (1999) noted that the hallmark of interviewer bias denotes a 'one-directional-minded' attempt to collect only confirmatory evidence to the priori belief, and to ignore any avenues that disconfirm the hypothesis. Bruck and Ceci (1999) further stated that an interviewer who is biased would usually ask closed questions not open ended questions. Literature also shows that when children are re-enforced in one way or the other, they will tend to agree with the interviewer. The following is an example of leading questioning by the defence lawyer involved in case R/C 146/2001:

Defence lawyer: "You testified that he took out his penis and showed it to you and ..., can you remember that?"

Child: "Yes"

Defence lawyer: "But it was already dark ... you could not see properly?"

Child: "Yes"

The interpretation is that the child was led to confirm that it was already dark; hence, she could not see properly. Yielding to the defence lawyer's suggestion would advantage the argument that the child witness might not be confident about whether penetration by the penis did occur, since she could not see properly due to the darkness. Below follows another leading question by the prosecutor involved in case R/C 146/2001 transpired, with intervention by the magistrate:

Prosecutor: "Where did he insert his fingers?"

Interpreter: "The witness is pointing to her vagina"

Prosecutor: "What else did the accused person insert?"

Court: "You are now suggesting an answer. I mean you are suggesting an answer because she just said that, I don't think it is a fair question".

Table 6.1 *Composite questioning styles used by court officials*

<i>Theme 1: Court officials' questioning style</i>	Yes/no questions	Choice questions	Focussed questions	Re- enforcing questions	Leading questions	TOTAL PER CASE
Defence lawyers						
R/C146/2001	2	6	3	6	8	25
R/C 65/2004	- *	-	-	-	-	0
R/C72/2001		3	5	11	7	26
R/C194/2001 A	- *	-	-	-	-	0
R/C194/2001 B	- *	-	-	-	-	0
Grand total suggestive questioning for cohort of defence lawyers ($n = 2$)						51
Mean count						25.5
F%						53.68
Accused						
R/C 65/2004	1	1				2
R/C194/2001 A						0
R/C194/2001 B						0
Grand total suggestive questioning for cohort of accused assuming role of defence lawyer ($n = 3$)						2
Mean count						1
F%						2.11
Prosecutors						
R/C146/2001	5			1	5	11
R/C 65/2004		3	2		2	7
R/C 72/2001		1			4	5

R/C194/2001 A	1	2	3	2		8
R/C194/2001 B		1	1		3	5
Grand total suggestive questioning for cohort of prosecutors ($n = 5$)						36
Mean count						7.2
<i>F</i> %						37.89
Magistrates						
R/C146/2001						0
R/C 65/2004		2	1			3
R/C 72/2001						0
R/C194/2001 A		2				2
R/C194/2001 B				1		1
Grand total suggestive questioning for cohort of magistrates ($n = 5$)						6
Mean count						1.2
<i>F</i> %						6.32
<i>F</i>	9	21	15	21	29	95
Column <i>F</i>%	9.47	22.11	15.79	22.11	30.53	100%

* No defence lawyers involved in these cases

The interpretation is that the prosecutor attempted to lead the child witness to confirm that the accused inserted something else than the fingers, likely attempting to prove penetration by the penis as well, which would have supported a conviction for rape. However, the court recognized this suggestible questioning and intervened, thereby confirming that magistrates in this study demonstrated higher levels of sensitivity to suggestible questioning.

The following is an example of combined choice and leading questioning by the defence lawyer involved in case R/C 72/2001:

Defence lawyer: "How long were you with the man in the room, was it a long time or short time, can you remember, if you can't remember you can just say that."

Child: "A short time."

The interpretation is that the child witness was led to confirm poor memory as to the duration of interaction with the accused by making use of combined choice and leading questioning. Not remembering the duration of the accused stay in the room would likely advantage the defence lawyer's case. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include knowledge and skills training pertaining to child cognitive development, in close association with age-appropriate child questioning and child interviewing.

6.2.7.2 *Theme 2: Using re-enforcement (incentive) or disincentive tactics during questioning of the child witness*

Referencing the empirical results presented in paragraph 5.4, together with the composite incentive and disincentive tactics used by court officials indicated in table 6.2 below, suggest that defence lawyers employed an array of re-enforcement (incentive) and disincentive tactics with child witnesses during trial proceedings. Referencing table 6.5 (theme #2) below, it transpired that the defence lawyers' employment of incentive and disincentive tactics was statistical significant at 5% level of reliability. Said tactics included vocal and non-vocal re-enforcement and discouragement gestures, alterations in pitch and tone of voice, and interruption of the child witness during cross-examination.

Defence lawyers have the duty to defend the accused, and discrediting the evidence of the child witness is but one strategy from the arsenal of defensive tactics employed during trial proceedings. Successful discrediting of the child witness' evidence is likely to cast doubt on the reliability and credibility of the child witness, thereby advancing the case of the accused. This inference seems to be in keeping with Melinder and co-workers' findings from their Norwegian study in 2004 into different professionals' views of child witness reliability. Their sample included judges, police detectives, psychologists, child psychiatrists, prosecutors and defence lawyers. These researchers determined that Norwegian defence lawyers, just like

USA defence lawyers, were most sceptical towards child witnesses, compared to other professionals.

“They were more sceptical than were most other professional groups towards abuse reports; they rated the age at which children are able to give competent, precise, and true testimony as older; they were less likely to believe that children tell the truth about abuse and that witnesses who appear credible are actually the historically true story, and they considered children’s statements as less reliable evidence in abuse cases” (Melinder et al, 2004, p 362).

Incentive and disincentive tactics employed by court officials seem to be instrumental in increasing child suggestibility. Garven and co-workers (1998) referred to this phenomenon as negative and positive consequences, or alternatively, the reinforcement schedules. According to these authors, interviewers easily manipulate children through giving, promising or implying praise, approval, agreement or other rewards, whether verbal or non-verbal. Interviewers sometimes use negative consequences as a technique to invite the “desired” response, e.g. criticism of the child witness’ statement, or non-verbal directions indicating that the child witness’ statement is incomplete, inadequate or disappointing (Scheiber et al, 2006).

The interpretation is that cognizance of child suggestibility during trial proceedings is low, and that child witnesses are not adequately safeguarded against suggestive incentive and disincentive tactics during trial proceedings. The further interpretation is that training programs and curricula should also include skills training in terms of child and adolescent interviewing. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with child and adolescent interviewing.

Table 6.2 *Composite incentive and disincentive tactics used by court officials*

<i>Theme 2: Using re-enforcement (incentive) or disincentive tactics during questioning of the child witness</i>	Incentive tactics (re-enforcement tactics, e.g. verbal / non-verbal approval or encouragement	Raised the voice during examination	Interruption of the child witness	TOTAL PER CASE
Defence lawyers				
R/C146/2001	1	1	1	3
R/C65/2004	- *	-	-	0
R/C72/2001	1	2	3	6
R/C194/2001 A	- *	-	-	0
R/C194/2001 B	- *	-	-	0
Grand total incentive / disincentive tactics used by cohort of defence lawyers ($n = 2$)				9
Mean count				4.5
<i>F%</i>				60.0
Accused				
R/C 65/2004				0
R/C194/2001 A				0
R/C194/2001 B				0
Grand total incentive / disincentive tactics used by cohort of accused assuming role of defence lawyer ($n = 3$)				0
Mean count				0
<i>F%</i>				0
Prosecutors				
R/C146/2001				0
R/C65/2004				0
R/C72/2001				0
R/C194/2001 A	1	2		3
R/C194/2001 B	1			1
Grand total incentive / disincentive tactics used by cohort of prosecutors ($n = 5$)				4
Mean count				0.8
<i>F%</i>				26.67
Magistrates				
R/C146/2001				0
R/C65/2004	1	1		2

R/C72/2001				0
R/C194/2001 A				0
R/C194/2001 B				0
Grand total incentive / disincentive tactics used by cohort of magistrates ($n = 5$)				2
Mean count				0.4
F%				13.33
F	5	6	4	15
Column F%	33.33	40.0	26.67	100%

* No defence lawyers involved in these cases

6.2.7.3 *Theme 3: Suggesting that information was already confirmed by other witnesses*

Referencing the empirical results presented in paragraph 5.4, together with the composite suggestive tactics indicated in table 6.3 below, it transpired that defence lawyers were the only court officials employing the tactic of ‘previously confirmed information’ during trial proceedings. Referencing table 6.5 (theme #3) below, it transpired that the defence lawyers’ employment of this suggestive tactic was statistically significant at 5% level of reliability.

Stating to the child witness certain information while alleging that such information was already confirmed by other witnesses, places the child witness at risk for suggestion due to limited theory of mind, and due to restricted source monitoring. According to Roberts et al (2005), the ability for accurate monitoring of memory sources undergoes significant developments from age three through to eight years - the age at which children are usually most suggestible. In similar vein, Thierry et al (2001) after having reviewed several studies (e.g. Ackil & Zaragoza, 1995; Lindsay, Gonzales & Eso, 1995; Newcomb & Siegal, 1996; Poole & Lindsay, 1995), asserted that young children’s suggestibility is due in part to their inability to accurately monitor memory sources, and they would therefore more readily yield to the opinion of the interviewer, i.e. that of defence lawyers.

The interpretation is that cognizance of child suggestibility during trial proceedings is low, and that child witnesses are not adequately safeguarded against suggestive tactics during trial proceedings, such as introduction of allegedly confirmed information, thereby exploiting the child witness' immature theory of mind and source monitoring skills. The further interpretation is that there is a need for interviewing guidelines aimed at safeguarding child witnesses against exploitive suggestive tactics during examination and cross-examination. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with theory of mind, source monitoring in children, and interviewing guidelines to be put into operation at all levels of the Namibian legal justice system.

Table 6.3 *Composite suggestive tactics used by court officials*

<i>Theme 3: Suggesting that information was already confirmed by other witnesses</i>	<i>Stating to child witness that informatio n was already confirmed by other witness</i>	<i>Theme 4: Introductio n of new information to the child witness during questioning</i>	<i>Introduced new information to child during questioning</i>	<i>Theme 5: Inviting speculation from the child witness</i>	<i>Invited speculation</i>	TOTAL PER CASE
Defence lawyers						
R/C146/2001	1		2		3	6
R/C 65/2004	- *		-		-	0
R/C 72/2001			5		8	13
R/C194/2001 A	- *		-		-	0
R/C194/2001 B	- *		-		-	0
Grand total suggestive tactics used by cohort of defence lawyers (<i>n</i> = 2)						19
Mean count						9.5
<i>F</i> %						55.88
Accused						
R/C 65/2004			1			1
R/C194/2001 A						0

R/C194/2001 B						0
Grand total suggestive tactics used by cohort of accused assuming role of defence lawyer (<i>n</i> = 3)						1
Mean count						0.33
<i>F</i> %						2.94
Prosecutors						
R/C146/2001			2		2	4
R/C 65/2004			2			2
R/C 72/2001			2			2
R/C194/2001 A					2	2
R/C194/2001 B			1			1
Grand total suggestive tactics used by cohort of prosecutors (<i>n</i> = 5)						11
Mean count						2.2
<i>F</i> %						32.35
Magistrates						
R/C146/2001						0
R/C 65/2004			1			1
R/C 72/2001			1			1
R/C194/2001 A					1	1
R/C194/2001 B						0
Grand total suggestive tactics used by cohort of magistrates (<i>n</i> = 5)						3
Mean count						0.6
<i>F</i> %						8.82
Theme #3		Theme #4		Theme #5		
<i>F</i>	1	<i>F</i>	17	<i>F</i>	16	34
Column <i>F</i>%	2.94	Column <i>F</i>%	50.0	Column <i>F</i>%	47.06	100%

* No defence lawyers involved in these cases

6.2.7.4 ***Theme 4: Introduction of new information to the child witness during questioning***

Referencing the empirical results presented in paragraph 5.4, together with the composite suggestive tactics indicated in the preceding table 6.3, it transpired that defence lawyers and prosecutors regularly introduced new information to the child witness during questioning. Referencing table 6.5 (theme #4) below, it transpired that the defence lawyers and prosecutors' employment of this suggestive tactic was statistically significant at 5% level of reliability. Below follows an example of how the prosecutor, while leading the child witness, also introduced new information to the child witness in case R/C 72/2001:

Prosecutor: "Now you mentioned that you ran out of this room and where did you go after that?"

Child: "I ran into the house."

Prosecutor: "And did you speak to anyone?"

Child: "I spoke to my father."

The topic of talking to anyone was not under discussion, but it was introduced to the child in a leading manner. Instead of the prosecutor asking, "... did you speak to anyone?" he could have just asked, "... and what happened when you entered the house?"

The literature attributed this suggestive tactic to interviewers who hold certain beliefs about what happened; hence, they are likely to ask questions that support their preconceived hypotheses. Studies such as the Kelly Michael's case, the McMartin school case, the Sam Stone study, and a host of others cases are all in support of findings demonstrating that interviewer bias generates suggestive questioning, which in turn may increase suggestibility (Bruck et al, 1995; Scheiber et al, 2006; Garven et al, 1998).

The interpretation is that there is a need for interviewing guidelines aimed at safeguarding child witnesses against exploitive suggestive tactics during examination and cross-examination. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with child interviewing, and interviewing guidelines to be put into operation at all levels of the Namibian legal justice system.

6.2.7.5 *Theme 5: Inviting speculation from the child witness*

Referencing the empirical results presented in paragraph 5.4, together with the composite suggestive tactics indicated in the preceding table 6.3, it transpired that defence lawyers and prosecutors regularly invited the child witness to speculate during questioning. Referencing table 6.5 (theme #5) below, it transpired that the defence lawyers' employment of this suggestive tactic was statistical significant at 5% level of reliability. Invitation to speculate is often interwoven with repeating of information and repeating questioning of the child witness in order to create doubt within the child witness. Below follows an example of how the defence lawyer, while repeating previous questions, also invited the child witness to speculate in R/C 194/2001A:

Defence lawyer: "So you didn't see that he did anything to anybody else except to you by inserting his finger and his penis in your vagina, you didn't see him do anything to anybody else?"

Child: "Yes"

Defence lawyer: "Yes what? Did you see him do anything to anybody else or did you not see him do anything?"

Child: "I did not see it".

Defence lawyer: "What ..."

Another extract from case R/C 72/2001 illustrates how the defence lawyer, while repeating questions, invited the child witness to speculate:

Defence lawyer: "Did you go alone with the man or did one of the other children go with you?"

Child: "I was playing with the children and then the man called me".

Defence lawyer: "Yes, did go alone with him or did anyone go with you when the man called you?"

Child: "I was in the company of somebody when I was going, when I went to the man."

Defence lawyer: "So were you and the man alone going to the room?"

Child: "Yes"

Defence lawyer: "Were you always alone with the man in the room, only the two of you?"(own underlining)

Child: "No"

Defence lawyer: "Who else was there?"

Child: "There was nobody"

Defence lawyer: "You and the man, were you the whole time alone in the room?"

Child: "Yes"

Both examples illustrate how this suggestive tactic ended up confusing the child witness. In the first excerpt, the "yes" of the child witness may imply that she saw or did not see the man doing something to somebody else. The second excerpt illustrates that this suggestive tactic caused the child witness to change from being accompanied by others to being alone with the man in the room. The literature confirmed that repeating information may increase suggestibility in children(Lyon, 2002). According to this author, interviewers firstly repeat questions because they feel that children are reluctant to open up about the abuse; secondly, they use repetition to obtain additional information; thirdly, repeat questions could clarify ambiguous statements. According to Lyon (2002), these reasons may appear to be noble, but pointed out that biased interviewers mostly repeat questions when the child witness' responses are not in support of their preconceived hypotheses, well knowing that children tend to shift their statements with repeat questions, as eloquently illustrated by the preceding excerpts.

Invitation to speculate sometimes takes the form of ambiguous and double-barrelled, complex and confusing questions, which usually cause confusion within the child witness. The following excerpt is taken from the same case:

Defence lawyer: "What did the man tell you, why did he, what was the reason why did he call?"

Child: "He said come and fetch money."

Analysis of the preceding dialogue demonstrates that it contains four (4) sub questions, namely, "... what did the man tell you?"; "... why did he?"; "... what was the reason?"; "... why did he call?" The child witness' response was only to the last question, i.e. "... why did he call?" Hence, the child witness might appear to the court as confused and incredible.

The interpretation is that there is a need for interviewing guidelines aimed at safeguarding child witnesses against exploitive suggestive tactics during examination and cross-examination. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include the broad spectrum of topics dealing with child interviewing, and interviewing guidelines to be put into operation at all levels of the Namibian legal justice system.

6.2.7.6 *Theme 6: Use of aides to assist the child witness during questioning*

No aides were used in any one of the cases under review, such as anatomically correct dolls, drawings, or photos. In fact, but for a translator, no additional aides were employed to support the child witnesses to open up, clarify unclear understanding, or to meet the child witness' cognitive level of communication and expression. Although some of the cases were held *in camera*, where dolls and play materials were available, such aides were not introduced as a method of information collection during trial proceedings. The interpretation is that the use of aides and forensic play materials is not optimized, which aides and forensic play materials could have supported the child witness to convey information more clearly during

trial proceedings. The use of aides could also have assisted the translator to retrieve a more accurate picture of what transpired during the alleged felony, considering the language barriers that existed in some cases. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include knowledge and skills training pertaining to the use of aides and other forensic play materials to improve child witness interviewing.

6.2.7.7 *Theme 7: Observation of yielding and shifting in the child witness*

Referencing the empirical results presented in paragraph 5.4, together with the data on yielding and shifting presented in table 6.4 below, a high positive correlation transpired between the frequency of defence lawyers' suggestive tactics, and the child witnesses' willingness to yield and shift in favour of the defence lawyers.

Table 6.4 *Composite yielding and/or shifting in child witnesses*

<i>Theme 7: Observation of yielding and shifting in the child witness</i>	Yielding	Shifting	TOTAL PER CASE
Defence lawyers			
R/C146/2001	2	2	4
R/C 65/2004	- *	-	0
R/C 72/2001	1	0	1
R/C 194/2001 A	- *	-	0
R/C 194/2001 B	- *	-	0
Grand total of yielding and/or shifting by child witness to defence lawyers ($n = 2$)			5
Mean count			2.5
F%			
Accused			
R/C 65/2004			0
R/C 194/2001 A			0
R/C 194/2001 B			0
Grand total of yielding and/or shifting by child witness to accused assuming role of defence lawyer ($n = 3$)			0
Mean count			

<i>F%</i>			0
			0
Prosecutors			
R/C146/2001			0
R/C 65/2004			0
R/C 72/2001			0
R/C 194/2001 A			0
R/C 194/2001 B			0
Grand total of yielding and/or shifting by child witness to prosecutors (<i>n</i> = 5)			0
Mean count			0
<i>F%</i>			0
Magistrates			
R/C146/2001			0
R/C 65/2004			0
R/C 72/2001			0
R/C 194/2001 A			0
R/C 194/2001 B			0
Grand total of yielding and/or shifting by child witness to magistrates (<i>n</i> = 5)			0
Mean count			0
<i>F%</i>			0
<i>F</i>	3	2	5
Column <i>F%</i>	60.0	40.0	100%

* No defence lawyers involved in these cases

Table 6.5 *Composite matrix of suggestive interaction with child witness during trial proceedings*

Cohort of court officials <i>N</i> = 15	Defence Lawyers (<i>n</i> = 2)	Accused questioning towards own defence (<i>n</i> = 3)	Prosecutors (<i>n</i> = 5)	Magistrates (<i>n</i> = 5)	TOTAL INCIDENTS PER THEME
Theme #1					
<i>Court officials' questioning style</i>					
<i>F</i>	51	2	36	6	95

Row F%	53.68*	2.11	37.89*	6.32	100
Column F%	60.71*	66.67*	70.59*	50.0	
Theme #2					
<i>Using re-enforcement (incentive) or disincentive tactics during questioning of the child witness</i>					
F	9	0	4	2	15
Row F%	60.0*	0.0	26.67	13.33	100
Column F%	10.71	0.0	7.84	16.67	
Theme #3					
<i>Suggesting that information was already confirmed by other witnesses</i>					
F	1	0	0	0	1
Row F%	100*	0.0	0.0	0.0	100
Column F%	1.19	0.0	0.0	0.0	
Theme #4					
<i>Introduction of new information to the child witness during questioning</i>					
F	7	1	7	2	17
Row F%	41.18*	5.88	41.18*	11.76	100
Column F%	8.33	33.33	13.73	16.67	
Theme #5					
<i>Inviting speculation from the child witness</i>					
F	11	0	4	1	16
Row F%	68.75*	0.0	25.0	6.25	100
Column F%	13.10	0.0	7.84	8.33	
Theme #6					
<i>Use of aides to assist the child witness during questioning</i>					
F	0	0	0	1 (translator)	1
Row F%	0.0	0.0	0.0	100	100
Column F%	0.0	0.0	0.0	8.33	
Theme #7					
<i>Observation of yielding and shifting in the child witness</i>					
F	5	0	0	0	5
Row F%	100*	0.0	0.0	0.0	100
Column F%	5.95	0.0	0.0	0.0	
TOTAL INCIDENTS OF SUGGESTIVE INTERACTION WITH CHILD WITNESSES					
F	84	3	51	12	150
Row F%	56.0*	2.0	34.0*	8.0	100
Column F%	100	100	100	100	100

* = statistically significant at 5% level of reliability, i.e. $p < 0.05$

Referencing table 6.5 (theme #7) above, it transpired that yielding and shifting to the defence lawyers was statistically significant at 5% level of reliability, confirming the tendency of child witnesses to succumb to the suggestive pressure exerted by defence lawyers during trial proceedings (Gudjonsson et al, 2003). Below follows an excerpt from case R/C 146/2001, demonstrating yielding in shifting by the child witness. The yielding and shifting of the child witness to the defence lawyer significantly correlated proportionally to the number of suggestive questions posed by the defence lawyer. A hallmark of this suggestive questioning is the number of “why” questions posed to the child witness as this may either call for speculation if it involves a third party.

Defence lawyer: “Why didn’t you tell the court when you testified, when the prosecutor asked you questions?”

Child witness: “In order for the man to go jail and in order for him not to rape children anymore.”

From this excerpt it transpired that the child witness had failed to understand the “why” question and merely attempted to justify her complaint. An interesting pattern emerged from analyses of these cases. In case R/C 65/2004, the accused cross-examined the child witness because the accused was representing himself. Cases where the accused are representing themselves should, the accused should always cross examine the child through the presiding officer to avoid possible traumatising. Cross-examination by the accused increases the possibility of re-traumatization of the alleged victim, considering that sexually abused children usually suffer from trauma, and that posttraumatic stress disorder often develops as sequela of this trauma. Some researchers found a positive correlation between trauma and suggestibility. From the study by Goodman, Bottoms, Rudy, Davis and Swartz-Kennedy (2001), it was established that abused children were more suggestible than non-abused children. These researchers ascribed higher risk for suggestibility in traumatized children to low intelligence, poor verbal skills, behavioural problems, fear and anxiety. Also, Eisen and co-workers in 2007 found that children with histories of neglect and abuse performed poorly on memory tests,

compared to those with no such histories. However, the child witness involved in case R/C 65/2004 did not yield or shift in favour of the cross-examination of the accused, suggesting that she did not become more suggestible due to “state anxiety”. This notion is supported by literature suggesting that high state anxiety causes the victim to remain focussed on central events, thereby registering memories accurately and becoming resistant to suggestibility. Ridley, Clifford, and Keogh (2002) established that highly anxious children were significantly less suggestible, compared to low anxiety groups. The possible explanation is that high anxiety manifest as heightened awareness and subliminal recognition of misleading information as threatening and different from stored memory of the event. This relates well to hyper vigilance associated with posttraumatic stress disorder, allowing children to process misleading information with high acuity, which allows for resistance to suggestion (Ridley et al., 2002). The child witnesses involved in the cases under review that did yield and shift in favour of suggestive tactics, were younger than nine (9) years of age, supporting the importance of the link between age and suggestibility, with suggestibility being most pronounced in pre-school children (Garven et al., 2000; Cassel & Bjorklund, 1995; Ceci et al., 1999; Coxon & Valentine, 1997).

The interpretation is that yielding and shifting of child witnesses significantly correlated proportionally to the number of suggestive questions posed during examination and cross-examination, with prevalence rates at highest among younger child witnesses. Hence, the implication for intervention is curricula reform and/or expansion of training programs and curricula to also include knowledge and skills training pertaining safeguarding of child witnesses against suggestive tactics employed during trial proceedings. It has to be noted that the defendant has got the right to cross examination while the child has got the rights to a fair trial by making sure that operate on the right frame of mind. The safeguard of making it mandatory for cross examination to be done through the presiding office will address the two parties` rights.

6.3 FINDINGS AND CONCLUSIONS

The purpose of this study was to explore whether the Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations were cognizant of child suggestibility and whether the concept of child suggestibility was duly weighted during investigations and court proceedings. The triangulated study showed that the legal and allied criminal justice professionals were significantly uninformed about the concept of child suggestibility and that the concept of child suggestibility was not duly weighted during investigations and court proceedings. This was confirmed by the poor performances of the legal and allied criminal justice professionals on the semi structured questionnaire and the review of the dockets and the court cases. The study also showed that cognizance of child suggestibility within the Namibian legal justice system is very low, as confirmed by empirical research data. A number of indicators towards improvement of best practice transpired from this study, which guiding principles for intervention are presented in the next section.

6.4 GUIDING PRINCIPLES FOR INTERVENTION

This section offers the original contribution flowing from this research project, towards improvement of best practice. The following guiding principles transpired from the interpretations of the empirical data offered in preceding sections:

6.4.6 Basic and continuous professional development (CPD)

The most important intervention strategy is curricula reform and/or expansion of training programs and curricula for legal and allied criminal justice professionals to enhance and promote cognizance of child suggestibility within the Namibian legal justice system. The Law Society of Namibia should consider inclusion of topics on child suggestibility via continuous professional development (CPD) activities offered online (via virtual training).

6.4.7 Curricula reform and/or expansion of training programs

Training programs for law students (optional course), social workers, and police officers should include the following topics:

- Foundational developmental theories of Piaget's cognitive development theory, Erik Erikson's psychosocial developmental theory, Kohlberg's moral development theory, as well as certain aspects of neuro-cognitive theories, executive functioning (cognitive inhibition), and social learning theories, with particular reference to child development, i.e. emotional, cognitive, and psychosocial development, inclusive of learning theories (memory, memory retrieval, concrete and abstract reasoning, and executive functioning);
- Basic aspects of child psychopathology to augment cognizance of child suggestibility emanating from underdeveloped 'theory of mind' as associated with certain categories of child psychopathologies, such as pervasive and other disorders usually first diagnosed in infancy, childhood and adolescence as evidenced in the DSM-IV-TR (APA, 2000) and how this interfaces with the legal justice system;
- Skills training in terms of child and adolescent interviewing, including the broad spectrum of topics dealing with the persona of the interviewer, as well as counselling with children, i.e. consulting techniques, the role of consultation with child witnesses within the legal justice system, the consulting process, counselling children with special concerns such as abuse and neglect, counselling with children from different cultures (Thompson & Rudolph, 2000);
- Child and adolescent interviewing skills training should include counselling exceptional children, e.g. learning disabled, intellectually impaired or hearing impaired (Thompson & Rudolph, 2000), and how to deal with exceptional children and adolescents as witnesses within the Namibian legal justice system.

- During interviewing skills training, specific focus should be placed on memory access and retrieval in case of eyewitness testimony;
- Training on the use of aides during interviewing of children, i.e. drawings, photos, anatomically correct dolls, and construction materials such as play dough and plastic clay demonstrations to assist in the interview where possible;
- Training programs and curricula should specifically focus on knowledge and skills training in terms of moral development, particularly referencing acceptance of authority, compliance with figures of authority, and punishment avoidance, and how these interface with examination and cross-examination of the child witness;
- Training programs and curricula should also include knowledge and skills training in terms of counselling children with memory disturbances (Thompson & Rudolph, 2000) and the nexus thereof with increased suggestibility and false memory testimonies; The association between memory disturbances and training on the use of memory aides, such as children's drawings, modelling clay, dolls, and other play materials should take priority to enhance the applications of aides towards memory access and retrieval, including the nexus between different levels of cognition, i.e. concrete, semi-concrete and abstract levels, and suggestibility (Thompson & Rudolph, 2000).

6.4.8 Workplace learning and applicable clinical experience

In order to enhance cognizance of child suggestibility within the Namibian legal justice system, specific provision should be made during training of legal and allied criminal justice professionals for applicable clinical experience and workplace learning. This implies that training programs should include compulsory supervised clinical placements specifically aimed at working with children and adolescents, and which could provide the much needed workplace and experiential learning within

this specific field of practice. Workplace learning opportunities and clinical practice should include the following placements:

- Compulsory attendance (as observers) of Victim Friendly Court proceedings. This could take the form of Victim Friendly Court attachments with a minimum number of case observations;
- Compulsory workplace attachments/observations at child psychiatry/psychology practice settings, with a minimum number of case observations;

6.4.9 Basic training of investigating officers

The basic training programs of investigating officers should specifically provide for training and skills development on the following topics, in order to safeguard against child suggestibility during deposition of a statement and to enhance clarity during subsequent trial proceedings:

a Characteristics of the statement

Investigating officers should be trained to note down whether an interpreter / translator was employed during deposition of the statement, whether such interpreter / translator was in any way bonded with the child witness, i.e., whether a mother, aunt, etcetera, assisted as interpreter / translator, which affective bond might have resulted in biased interpretations and translations; the gender and cultural background of the investigating officer having recorded the child witness' statement; the match in terms of gender and cultural background between the child witness and the interpreter / translator; whether language barriers necessitated further clarification; whether statements submitted to the investigating officers were subsequent to *crisis intervention* (usually very shortly after the alleged offence, typically of "hue and cry"), *incidental reporting*, following a *special investigation*, or whether deposition of statements emerged from psychological or other kind of intervention or treatment.

b Observations of the investigating police officer (clinical notes)

Investigating officers should be trained to make their own clinical notes on their observations of the witness during submission of the statement, which notes could later assist investigating officers to refresh their memories when called to testify during trial proceedings. Such notes should reflect the investigating officers' initial impressions during the first consultation with the child witness; noting down of ostensibly 'hard signs' of the alleged offence (usually noticeable, including physical injuries and post-rape symptoms), the mental (psychological) status of the child witness (alleged victim) immediately after the alleged incident, or during deposition of the statement; and the child witness' mental status (fitness to make a submission) at the time of deposition of the statement.

c Content of the statement

Investigating officers should be trained to pay particular attention to the content of the statements of child witnesses, i.e. the way and to whom the initial disclosure was done; and the precise words used during initial complaining, i.e., when the initial complaint came under discussion.

d Voluntary nature of the statement (complaint)

Investigating officers should be trained to pay particular attention to the voluntary nature of the statement (complaint), i.e. the possibility of tainted statements by child witnesses; whether a relative or friend was instrumental in convincing the child witness (alleged victim) to make the statement; if persuasion was required to make the statement, the verbatim phrases used to persuade the child witness to make a statement; whether these verbatim phrases and words used to persuade the child witness were interrogative, manipulative, threatening, suggestive or leading in nature; the circumstances that might have forced or compelled the child victim to speak out, e.g. the emergence of a pregnancy, injuries, vaginal infections or a

venereal disease, fear that another sibling might be abused the verbatim questions used by the investigating officer during deposition of the statement, and so on.

Information on the exact questions and techniques used to prompt information during deposition of the statement will allow a court to later determine whether such questions and techniques were suggestive, leading or intimidating in nature, e.g., the quality and prosody of the wording, and whether prompting questions and techniques carried a certain amount of ‘psychological and emotional force’ to elicit a statement. If aides, such as drawings or anatomical dolls were used to elicit a statement, these must be included in the docket.

e Complaint at the first reasonable opportunity

Investigating officers should be trained to pay particular attention to whether the statement followed a complaint at the first reasonable opportunity, and whether the statement portrayed immediacy and spontaneity in response to the event; in cases of delayed complaints, the investigating officer should note down the reasons for postponement of the complaint; the dockets should portray the child witness’ level of understanding of the immorality of the alleged offence (level of moral development), and whether non-comprehension of the nature of the alleged offence was instrumental in deterring the child witness to complain directly after the incident; the docket should make reference to the presence or absence of an (emotional) available person to whom the child witness (victim) could have reasonably expected to complain, and reflect on factors that could have prevented the child witness (victim) to complain.

f Testimony in person

Investigating officers should be trained to pay particular attention to the particulars of the interview, since involvement of translators and intermediaries may result in statements handed down from translators and intermediaries. In order to safeguard against such suggestive intervention, the docket should reference the involvement of

a ‘facilitator’ during interview, or whether external parties, e.g., family members assisted the child witness in filling in memory gaps, or whether a family member acting as an interpreter portrayed a ‘filtered’ story. Dockets must provide information on whether the child witness was hesitant, prejudiced, or whether the child witness contradicted him- or herself during deposition of the statement; the docket must also reflect whether the investigating officer needed to ask for clarification during deposition of the statement, and if so, these clarifying questions must be included verbatim into the statements; when detected, the investigating officer should not down hearsay and fabrication; the investigating officer’s scrutinizing questions must be recorded verbatim; in case of emotionally ‘loaded’ vocabulary, these should be clarified through questioning by the investigating officer, and clarifying questions must be recorded verbatim; where statements contained age-inappropriate sexual terminology and vocabulary, these unusual terminologies and vocabularies must be clarified and duly recorded; where statements reflected distinct discrepancies between the nature of the accusation and the level of apparent emotional tranquillity of the child witness, these discrepancies must be duly recorded; where the child witness’ choice of wording (vocabulary) and affection showed signs of contamination by third parties, e.g., using the precise wording of the mother, these signs of contamination must be clarified and duly recorded; additional source information must be duly recorded, e.g. specific facts relating to the alleged offence; where statements contained assumptions, these assumptions must be duly clarified and recorded; where speculation or conjecture transpired, these must be duly clarified and recorded; where statements did not portray a clear connection between sets of facts, these disconnections must be clarified and duly recorded; and where statements contained circumstantiality, these must be clarified and duly recorded.

g Decision-making capacity of the child witness

Investigating officers should be specifically trained to make an assessment of the decision-making capacity of the child witness at the time of deposition of the statement. The dockets should contain some information on the child witness’

attained level of maturity and capacity to consult with the investigating officer and others at the time of deposition of the statement. This information should be recorded as part of the investigating officer's clinical notes. Such clinical notes must reflect the extent to which child witnesses' intellectual functioning and attained level of maturity influenced their capacity to testify in person in furtherance of their own cases. If available, the docket should contain information of the child witnesses' level of self-insight and their capacity to reach a rational decision, and their capacity to understand the consequences of their decisions. Considering the strong link between decision-making capacity and suggestibility, the dockets should contain information on the possible risk for suggestibility. In this regard, moral maturity and conceptualization of 'right' and 'wrong' as postulated by Kohlberg, is of vital importance in the courtroom, particularly referencing children's conceptualization of punishment and reward (Muller & Hollely, 2000).

6.4.10 Best practice guidelines

In order to safeguard against child suggestibility during investigations and subsequent trial proceedings, the following guidelines should be developed and put into operation:

- A framework for conducting forensic interviews with children and adolescents;
- A *Memorandum of Good Practice* providing interviewing guidelines at all levels of contact with the child witness;
- Child witnesses within Namibia are not routinely assessed in terms of their psychological competency to take part in legal proceedings, which competency is directly linked to suggestibility. Revised guidelines for assessment of the child witness' competency to take part in legal proceedings prior to submission of a statement should be implemented in order to reduce false positive statements originating from child suggestibility; hence, training programs and curricula should provide for knowledge and skills training in

terms of competency assessment, having consideration for major variables that might have a bearing on competency to take part in legal proceedings.

- The majority of research participants did not weigh accountability in terms of conative development. In practice this suggests that child witnesses' ability towards behaviour control in accordance with their insights of right and wrong was not seen as the basis for accountability in children, as long as they know what is right or wrong, irrespective of behaviour control commensurate with such insights. According to Schmidt (1990), this ability to control and direct behaviour in accordance with insights of right and wrong represent the conative component of child development. Implication for intervention is that training programs should place greater emphasis on the nexus between child development, and the cognitive and conative underpinnings of accountability.

6.5 APPLICATION OF NEW KNOWLEDGE

The crucial finding of this study was that the detection and management of suggestibility in the legal justice system of Namibia was significantly low. That calls for the application of the findings through remedial action in the form of the preceding recommendations. In addition to the aforementioned, this study crafted tool kits for use as suggestibility assessment tools in legal justice systems and resource material for use in the reformed curricula.

6.5.1 Suggestibility assessment tools

This study developed a toolkit for the assessment of suggestible (Table 4.3) questioning styles by the legal and allied criminal justice professionals in forensic interviews below for children aged ten years and below. A child suggestibility assessment tool for similar age groups was also developed (table 4.4). These tools can be used when reviewing court questioning and cross examinations for suggestibility or during live court sessions.

6.5.2 Resource material for use in the reformed curricula

The review of the extra judicial statements taken mainly by the Police officers was done using an adopted tool entitled “*screening checklist for extra judicial conditions that might promote the manifestation of suggestibility in statements (narratives) obtained by investigating officers*”. The checklist managed to unravel a lot of gaps which may promote the manifestation of suggestibility in children during forensic interviews. These gaps are cited in section 6.4.9 of this study. The identified gaps are supplemented by an evidence based information package for the training of investigating officers. Finally chapters two and three can be used a teaching resource for the Legal, allied criminal justice professionals and social scientists involved in conducting forensic interviews with children.

6.6 SYNOPSIS

This chapter offered in-depth analyses and interpretation of the empirical data reported in chapter five. Based on these findings, this chapter also offered guiding principles towards intervention, in order to safeguard against child suggestibility, and to enhance cognizance of child suggestibility among legal and allied criminal justice professionals within the Namibian legal justice system. The next chapter offers the summary of the research project, together with recommendations for future research. Acceptance of the research hypothesis will be discussed, as well as limitations and contributions to this study.

CHAPTER 7

SUMMARY OF FINDINGS, DEDUCTIONS, CONCLUSIONS AND RECOMMENDATIONS

7.11 INTRODUCTION

This chapter offers the summary of the research project, together with recommendations for future research. Acceptance of the research hypothesis will be discussed, as well as limitations and contributions to this study.

7.12 OVERVIEW

By means of this research study, the cognizance of child suggestibility within the Namibian legal justice system was explored, using a child development lens to investigate. The research problem was formulated as follows:

What is the extent of cognizance about child suggestibility among Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations and is this concept duly weighted and managed during investigations and court proceedings?

In order to answer to the main research problem, the following sub questions were supportive in nature:

- How cognizant are professionals centrally involved in cases of child sexual abuse, e.g., investigating officers, social workers and prosecutors, of the concept child suggestibility?
- Are vulnerable children adequately protected against interrogative suggestibility?

- What is the nature of child interviewing during child sexual abuse investigations and testifying during court proceedings?

The research hypothesis was formulated as follows: Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations are (a) significantly uninformed about child suggestibility and (b) the concept child suggestibility is not duly weighted during investigations and court proceedings.

The purpose of this study was to explore whether Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations are cognizant of child suggestibility and whether the concept child suggestibility is duly weighted during investigations and court proceedings.

7.13 SUMMARY OF FINDINGS

The subsequent paragraphs reflect the main findings, commencing with a summation of the findings from the in-depth literature review.

7.13.1 Summation of findings from chapter two

From the literature review, it transpired that the historical antecedents of the contemporary conceptualizations of suggestibility date back to the end of the 19th century when several European psychologists became interested in child testimony in forensic settings. However, it took some time before psychology was accepted as expert evidence in courts of law, due to a myriad of factors, which include the following:

- Prosecutors, judges and members of the public who constitute the jury could not accept the fact that a person may make false confessions to serious crimes unless they were suffering from a learning disorder or a serious mental illness;

- The judiciary overly relied on the police and there was no proper understanding why a person would falsely confess in the absence of physical coercion;
- In the early 1980s, psychologists were not viewed as credible witnesses who could add value to anything beyond common sense;
- Lastly, prosecutors and judges were seemingly hostile towards psychologists acting as expert witnesses and subjected these psychologists to unduly harsh cross-examination.

The genesis of contemporary suggestibility dates back to the 1970s where issues of children's eyewitness memory were the main points of discussion in law and forensic psychology. The main theories underpinning child suggestibility within the cadre of contemporary forensic psychology are:

- The cognitive development theories of Jean Piaget, of which the first three stages transpired to be most applicable to the current study, namely the sensori-motor period, the pre-operational stage, and the concrete operational stage.
- Lawrence Kohlberg's theory on moral development, which became very important for legal purposes, because it relates to the understanding of children of the duty to tell the truth, as well as the cognitive and conative branches to accountability. This theory also sheds light on children's perceptions of authority – they view adults as authorities on moral standards (Muller, et al., 2000) – explaining the role of authority figures and symbols in child suggestibility. Adult authority, reward, and punishment are variables implicated in the manifestation of suggestibility in children (Garven, Wood, Malpass & Shaw, 1998;Owen-Kostelnik, Reppuci & Meyer, 2006). Piaget and Kholberg both identified authority, reward and punishment as contributory variables to the cognitive and psychosocial development of children, thereby implicitly also to suggestibility risk.

- Erik Erikson's psychosocial development theory, of which the first four stages are most applicable to the current study, namely trust versus mistrust (birth to 1st year of life, oral sensory), autonomy versus shame and doubt (2nd to 3rd years of life; muscular, anal), initiative versus guilt (4th – 5th years of life; locomotion, genital) and industry versus inferiority (6th to 11th years of life, though to puberty, latency).

The preceding theories demonstrated that children differ from adults, morally and psychosocially. There are even in-group differences in terms of reasoning and psychosocial functioning - depending on age as an important variable. The very fact that even young children may make statements and testify during hearings, should caution stakeholders to verify these statements and testimonies for reliability and suggestibility. Decision makers should consider these developmental barriers when dealing with children. The construct of suggestibility is a concept that requires specific knowledge of a child's cognitive, moral and psychosocial development.

Since child suggestibility is closely associated with cognitive, social and emotional maturation of the child, the following theories contributed to the understanding of the construct child suggestibility:

- From the neuro-cognitive theories, it transpired that the quality and quantity of episodic memory is age dependent; hence, a close positive correlation was found between source monitoring and the ability to resist suggestion (Melinder, et al., 2006);
- Also emanating from neuro-cognitive theories, it transpired that executive functioning (cognitive inhibition) highly correlated with child suggestibility (or the absence thereof), since cognitive inhibition facilitates memory retrieval by suppressing immediate responses long enough to search memory and provide well-thought answers. It was found that stronger resistance to

suggestion should be observed among children with more developed cognitive inhibition capacities (Melinder, et al., 2006). Cognitive inhibition relates well to avoidance of false positives and to accurate source monitoring – the better cognitive inhibition, the less false positive reporting and the more accurate source monitoring. Melinder et al (2006) concluded that children’s resistance to suggestion relate to cognitive inhibition, because source monitoring strongly depends on self-reflective processes, supported by stronger inhibitory activity. Hence, strong cognitive inhibition relates to improved source memory.

- Also emanating from neuro-cognitive theories, it transpired that increases in suggestibility were associated with decreases in theory of mind. In general, a significant increase in suggestibility was likely to occur when theory of mind correlated with misinformation; a few significant correlations occurred with interrogative suggestibility. Children with stronger cognitive inhibition and stronger developed ‘theory of mind’ are least vulnerable to suggestive influences. ‘Theory of mind’ might be almost absent in some individuals, such as in intellectually individuals and those diagnosed with Autistic Spectrum Disorder (APA, 2000).
- Also emanating from neuro-cognitive theories, a high correlation transpired between source monitoring and suggestibility. Hence, the ability to monitor sources highly correlated with the ability to resist suggestion from leading questions. In addition, capacity for source-monitoring reduced children’s susceptibility to subsequent leading questions, since source monitoring reduces suggestibility, because it places children’s memory into context. Contextual cues provide effective means of strengthening and re-activating memory traces.

The social learning theories also contributed to understanding of the construct child suggestibility. The following factors might increase or decrease child suggestibility:

- Reinforcement (punishment and reward / incentives and disincentives);
- The mother's attachment style;
- The age of the child;
- Misleading questioning;
- Suggestive interviewing;
- Interviewer bias;
- The time lapse between the event and the interview;
- Event centrality;
- Authority;
- Fore-warning;
- Central involvement in the event;
- Intelligence;
- Learning disabilities, specific vulnerabilities, and memory deficits;
- The presence of certain psychopathologies, i.e. depression, posttraumatic stress disorder, attention deficit disorder (ADHD), anxiety states and dissociative disorders due to trauma;
- Stress and trauma memory;
- Past abuse, neglect and trauma;

7.13.2 Summation of findings from chapter three

The following transpired from chapter three:

7.13.2.1 *International level*

The focus on the protection of the rights of children under international treaty law can be traced back to the declaration of the Rights of the Child by the League of Nations in 1924 (Ruppel, 2009). With minor adjustments, this declaration became the basis for the 1989 Convention on the Rights of the Child (CRC) (Ruppel, 2009). Provisions towards safeguarding of children were also found in:

- The Beijing rules;

The Convention on the Rights of the Child (CRC), specifically providing for:

The right to equality: No child may be discriminated against on basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

The best interest of the child has to prevail: The best interest of the child is paramount in all decisions that might have an impact on the child. This applies to family and State.

The right to life and development: Every Member State must ensure proper survival and development of the child through provision of health care, education, and protection of the child against economic and social exploitation.

Respect for children's own views: Children should be taken seriously, and they should be involved in decision-making processes appropriate to their age and maturity.

7.13.2.2 *Continental level*

The Republic of Namibia forms part of a larger community of nations on the Continent of Africa. The majority of Member States embraced the protection of children's rights and welfare as the cornerstone to just social and economic development; hence, the African Charter on the rights and Welfare of the Child came into being.

7.13.2.3 *Sub-regional level*

The Southern African Development Community (SADC) was established in Windhoek in 1992 as a successor to the Southern African Development Coordination Conference (SADCC), founded in 1980. The SADC Treaty reflects the common ground of rights, principles, mores, and privileges enjoyed by citizens of Member States.

7.13.2.4 *National level*

- The Child Care Act 74 of 1983, section 42 reads as follows:
 - (2) Every dentist, medical practitioner, nurse or social worker who examines, attends or deals with any child in circumstances giving rise to suspicion that that child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease, shall immediately notify the Director-General or any officer designated by him for the purposes of this section of those circumstances;
- a. The Criminal Procedure Act 51 of 1977 (RSA), provides statutory protection for child witnesses appearing before the criminal courts as follows:

The court may be held *in camera*;

The use of intermediaries;

Demonstrations, gestures and non-verbal expressions;

- The Combating of Rape Act 8 of 2000;
- The Combating of Domestic Violence Act 4 of 2003;
- The Combating of Immoral Practices Amendment Act 7 of 2000;

Section 158 of the Criminal Procedures Act was amended to provide special arrangements for vulnerable witnesses. This Act defines a vulnerable witness as a person:

- (e) who is under the age of 18 years;
- (f) against whom an offence of sexual or indecent has been committed;
- (g) against whom any offence involving violence has been committed by a close family member or spouse;
- (h) who may suffer undue stress due to mental or physical disability.

The provision of special arrangements involves amongst others:

- (e) The relocation of the trial to another location while the evidence from the vulnerable witness is being heard;
- (f) Re-arranging furniture in court to suit the needs of the vulnerable witness;
- (g) Providing a suitable person (e.g. Social Worker) to be with the witness while giving evidence;
- (h) Granting permission to the witness to give evidence behind a screen or in another room connected to the court through a closed circuit television or one-way mirror or any other device that meets the needs of the above.

7.13.2.5 *Child witnesses in an adversarial legal system*

Muller (2001) identified two problems when a child is a witness in an adversarial system, including:

- Procedures to the adversarial system may result in trauma for children;
- It may affect the accuracy of a child's evidence.

7.13.2.6 *The psychologist as an expert witness*

Justice A. Ebrahim of the Supreme Court of Zimbabwe made the following remark in review of an 11 year child sexual abuse case (*SvS* 1995 (1)SACR 50 (ZS), pp. 51):

“To reach an intelligent conclusion in such an analysis, it is necessary to apply a certain amount of psychology and to be aware of the recent advances in that discipline. This would undoubtedly mean an increase in the workload of judicial officers and the machinery of justice generally, but ways had to be sought of accommodating this as it was the price to be paid for administering justice professionally in an increasing complex society.”

Ewing (2003, p 58) further qualified the need for expert testimony as follows:

[Where] “scientific, technical, or other specialized knowledge will assist the court to understand the evidence or to determine fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.”

Experts must possess theoretical and practical knowledge. These competences may be acquired formally or informally through continuous professional development, or formal pathways such as PhD studies. Workshops, seminars, and attendance of short courses are some of the informal methods of acquiring professional knowledge and skills. There should be evidence of having completed supervised clinical (practical) training. The field of expertise must be a scientifically recognised field or specialty. According to Blau (1998), four factors emerged as the litmus test for admissibility in the Daubert’s case, namely:

- The theory must be precise and specific enough to allow for verification or corroboration;
- The theory has been subjected to peer review and publication;

- The error rate associated with the applications of the theory must be known and be taken into account;
- Experts in the field must generally accept the theory being offered by the relevant expert.

Allain (2005) asserts that most English speaking countries, including South Africa and Namibia, use the general acceptance rule for admissibility, which incorporates the Frye and Daubert rules. In Namibia psychologists are usually called to court to shed light on certain issues that are beyond the general knowledge of the average person, which means that expert psychological knowledge is admitted in Namibian courts.

7.13.2.7 *The various roles of the psychologist in court*

The various roles of the psychologist in court are multi-faceted. The psychologist may testify towards:

- Competence to stand trial;
- The insanity plea;
- Competence to manage one's own affairs;
- Involuntary commitment;
- Dangerousness and treatment potential;
- Personal injury and wrongful death;
- Child custody issues;
- Eyewitness testimony;
- Other roles;

7.13.2.8 *Criteria to be taken into account during psychological assessment of an alleged victim*

Naudé et al (2004) proposed the following criteria that the psychologist should follow during the initial consultation just after the alleged sexual abuse incident had taken place:

- The psychologist should make accurate observations during the initial intake and keep thorough records of all the information given by the victim.
- A short summary of the alleged offence and preceding events should be done. A good clinical history should also be taken at this point.
- An estimation of the complainant's age should be done if the person is pre-adolescent or under the age of 16 years. Verification of such information should be done through the parents or guardians.
- The psychological status of the victim (intelligence, mental, emotional) should be determined to ensure whether the victim was able to make an informed decision and give consent.
- The complainant must be assessed for capability to testify in court. If the victim is intellectually impaired, the victim must be assessed during subsequent sessions.
- The psychologist should take note of post-rape symptoms such as initial shock, emotional and intellectual numbness, disorientation, anguish, tension and so on.

7.13.2.9 *Criteria for follow up consultations and assessments*

Naudé et al. (2004) provided the following criteria for assessment of victims of sexual abuse:

- If the victim was referred by a prosecutor or attorney, the psychologist should be provided with all the available facts on the matter as much as possible.

- The psychologist should look at all background information and judgemental information with caution. Differences in the history should be noted.
- The initial impressions of the victim should be verified with the behaviour during the subsequent sessions to see if the symptoms are genuine, simulated or residual. The follow up session should take place within 24 hours.
- The methods used to assess the victim should ultimately not manipulate, force, or extract an unwilling statement.
- If there is considerable lapse of time between the event and the assessment, the *nexus (links)* between the assessment results cannot be referred to with all confidence.
- The moral developmental level of the victim must be assessed.
- The scholastic, occupation, and social adjustment of the victim must be thoroughly assessed. In this regard teachers may provide valuable information on the child's adjustment.
- The psychological status of the child must be determined, especially data on the child's neuro-psychological and intellectual functioning. Assessment of school/occupational functioning, social functioning, and personality functioning should be done.
- The full background history of the victim must be taken, for example, family upbringing, education, social history and so on.
- A thorough assessment to eliminate false positives should be done. When the so-called SAID syndrome (Sexual Abuse In Divorce syndrome) is suspected, when there is a high degree of conformity with one parent's wishes, when parental alienation syndrome is present, or when parental discord and hostility is present, the psychologist must be cautious not to make rushed decisions.
- About two to eight percent of complaints regarding criminal behaviour have been proven to be false positives. The psychologist should hence be aware of factors such as the presence of a psychotic parent and subsequent *folie a deux* between parent and child. Deep childhood fantasies, together with strong

oedipal tendencies, may cause projection of sexual impulses upon the alleged abusive parent.

- In cases of true accusations, the child shows different defence mechanisms, with childhood vocabulary for sexual terminology. The child displays depressive mood as well as fear of the perpetrator. It has to be noted that children may behave differently depending on the situation they are and the presence or absence support of a support system.
- Where false positive is suspected, the child uses adult sexual terminology with minor defence mechanisms. The child seems not to be shy or depressed. The child will confront the father if he is the alleged perpetrator. The mother will portray histrionic or paranoid personality constellation in SAID-syndrome. There are usually no signs of Post-Traumatic Stress Disorder, particularly an absence of avoidance behaviour towards the alleged perpetrator.

7.13.3 Summation of findings from the empirical research

The following findings transpired from the empirical research:

7.13.3.1 *Findings from the semi-structured questionnaire*

With the exception of magistrates' cognizance of suggestibility at 80%, the remainder of the participants demonstrated fairly restricted cognizance of suggestibility at 43.1% being sensitive to the concept of suggestibility. The following specific deficits related to cognizance of child suggestibility were found:

- Less than half (43.1%) of the participants were sensitive to the concept 'theory of mind' and its link with child suggestibility;

- Less than half (44.8%) of the participants were cognizant about the negative effect of having a preconceived hypothesis about the event before interviewing the child victim;
- Only a small percentage(24.1%) of the participants demonstrated cognizance of the link between source memory accessibility and increased suggestibility among child victims;
- Only a small percentage of participants (31%) had practice knowledge on the concept of child suggestibility within the Namibian legal justice system;
- Less than half (39.7 %) of the participants demonstrated cognizance thereof that leading questions cause children to provide unreliable information, and that leading questions might increase suggestibility among child victims of alleged sexual abuse;
- Only 36.2%of research participants were able to identify correctly the age group at greatest risk for suggestibility, namely the three to six year olds;
- Only 67.2 % of the research participants were aware of the negative effect of using anatomically correct dolls before the child witness opens up about sexual abuse;
- Only 44.8% of the participants were cognizant about the link between positive reinforcement (rewarding children) and increased susceptibility for suggestion;
- Only half of the participants (50%) were cognizant thereof that children more readily accept information as accurate if presented by authority figures;
- Only 51.7% of research participants were cognizant of the difficulty to undo implanted false information, and that implanted false information may contribute to increased susceptibility for suggestion in children;
- Less than half (36.2%) of the research participants were cognizant thereof that an interviewer's clear (firm) preconceived beliefs may sway the interview to match those very beliefs, thereby increasing the possibility of suggestive interviewing;
- Only 67.2 % of the research participants were aware of the link between cognitive disabilities and an increased risk for suggestibility;

- Only a small percentage (27.6%) of the participants demonstrated cognizance thereof that central participation in the event assists children to readily recall that event;
- Only 25.9% of the research participants were cognizant about the existence of a framework for conducting forensic interviews with individuals involved in the Namibian legal/justice system;
- Only 20.7% of the research participants were cognizant about the existence of interview guidelines for children in the Namibian legal/justice system;
- Only one research participant (1.7%) was able to name the exact title of the guidelines;
- Only 34.5% of the research participants were cognizant thereof that the child's level of suggestibility bears an influence on the child's fitness to partake in trial (legal) proceedings;
- From the cohort, 87.8% of the research participants were not cognizant thereof that the ability to know what is right and wrong, together with capacity to control and direct behavior in accordance with these insights (conative aspect of the test for accountability) should be taken as the basis for deciding on children's accountability and suggestibility;
- From the cohort, 17.2 % of research participants were cognizant of the age of abstract thought development in children, i.e. 10 to 12 years of age;
- Despite the presence of the Victim Friendly Court in Windhoek, only 39% of research participants confirmed to have attended or conducted trial proceedings at that court;
- Only 37.9% of the participants had previously engaged a psychologist or psychiatrist to conduct an assessment of suggestibility in child witnesses;
- Of the cohort, 74.2% of research participants were not cognizant of the link between repeated questioning and increased suggestibility in children;
- More than half (67.2%) of the research participants would dismiss (stop) an interview when the child witness becomes emotional;

- Only 43.1% of the research participants would not require pre-schoolers to answer to closed questions, i.e. questions with pre-determined response options, such as yes/no;
- Only 46.6% of the research participants would not indicate their disagreement with a child witness;

7.13.3.2 *Specific strengths related to cognizance of suggestibility*

Analyses of the results rendered nine specific fields of proficient cognizance and experiential knowledge (i.e. strengths) about suggestibility in child witnesses involved in alleged sexual abuse trial proceedings. These fields of proficient cognizance and experiential knowledge are:

- Of the cohort, 89.7% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance of the difference between child and adult memory, demonstrating that all participatory groups were proficiently cognizant about the manifest difference between memory recall in adult versus child witnesses;
- Of the cohort, 62.1% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance of the link between a child witness' language proficiency and proficient memory consolidation and retrieval, thereby lowering the risk of suggestibility;
- Of the cohort, 93.1% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that forensic interviewing style links closely with the child witness' response style, suggesting proficient cognizance thereof that suggestibility may increase with suggestive interviewing;
- But for defence lawyers, 63.8% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated

proficient cognizance thereof that open-ended questions may support memory retrieval, thereby decreasing suggestibility among child witnesses;

- But for social workers, 74.1% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that provision of false information to child witnesses would mostly cause them to accept such information as the truth, thereby increasing the risk of child suggestibility;
- Of the cohort, 87.9% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that professionals such as psychologists and psychiatrists should rather conduct forensic interviews with children, due to their particular expertise on the field of child development and suggestibility;
- Of the cohort, 86.2% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that police uniforms are tokens of authority, which tokens of authority link closely to increased susceptibility for suggestion;
- Of the cohort, 79.3% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that they should not allow a child below the age of six years to testify in court unassisted;
- Of the cohort, 53.4% of professionals involved in alleged child sexual abuse investigations and subsequent trial proceedings demonstrated proficient cognizance thereof that they should not allow a preschool child witness to be asked leading questions during trial proceedings.

In answering the sub question on whether vulnerable children (child witnesses) are adequately protected from interrogative suggestibility, the results of child witnesses' founding statements (dockets) were analysed and the findings are as follows:

7.13.3.3

Specific deficits emerging from founding statements of child witnesses

- Characteristics of the statement: But for the best practice criterion safeguarding against suggestibility during deposition of a statement using the child witness' mother tongue, infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall.
- Observations of the investigating police officer (clinical notes): It was found that none of the investigating officers made additional clinical notes about observations of the victim, which clinical notes could later assist the investigating officers to refresh their memories when called to testify during trial proceedings. In the absence of clinical notes and thorough record keeping, these investigating officers, when called as witnesses, have to rely on memory entirely, with no clinical notes to refresh their memories, with the prospect of increased suggestibility.
- Content of the statement: Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to.
- Voluntary nature of the statement (complaint): Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to.
- Complaint at the first reasonable opportunity: Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to.
- Testimony in person: Infringements of best practice criteria within this category were statistically significant at 5% level of reliability overall, since none of the safeguarding best practice criteria were adhered to.
- Decision-making capacity of the child witness: It transpired that none of the statements from these dockets contained information on the decision-making capacity of the alleged victims.

7.13.3.4

Findings emanating from case reviews

The researcher conducted four case analyses involving children aged ten years and below, using the Checklist for Suggestibility. These cases were coded R/C 146/2001, R/C 65/2004, R/C 72/2001, R/C 194/2001A and R/C 194/2001B respectively, bringing the total forensic interviews to five . The findings are as follows:

- ***Theme 1: Court officials' questioning style***

Defence lawyers' questioning style transpired as most suggestible during trial proceedings, followed by the questioning style of prosecutors. These court officials employed questioning tactics such as yes/no questioning, choice questioning, focussed questioning (as opposed to open ended questioning), re-enforcing questioning and leading questioning.

- ***Theme 2: Using re-enforcement (incentive) or disincentive tactics during questioning of the child witness***

Defence lawyers employed an array of re-enforcement (incentive) and disincentive tactics with child witnesses during trial proceedings. Said tactics included vocal and non-vocal re-enforcement and discouragement gestures, alterations in pitch and tone of voice, and interruption of the child witness during cross-examination.

- ***Theme 3: Suggesting that information was already confirmed by other witnesses***

It was found that defence lawyers were the only court officials employing the tactic of 'previously confirmed information' during trial proceedings. Stating to the child witness certain information while alleging that such information was already

confirmed by other witnesses, places the child witness at risk for suggestion due to limited theory of mind, and due to restricted source monitoring.

- ***Theme 4: Introduction of new information to the child witness during questioning***

It transpired that defence lawyers and prosecutors regularly introduced new information to the child witness during questioning. The literature attributed this suggestive tactic to interviewers who hold certain beliefs about what happened; hence, they are likely to ask questions that support their preconceived hypotheses.

- ***Theme 5: Inviting speculation from the child witness***

It was found that defence lawyers and prosecutors regularly invited the child witness to speculate during questioning. Invitation to speculate is often interwoven with repeating of information and repeating questioning of the child witness in order to create doubt within the child witness. The literature confirmed that repeating information may increase suggestibility in children (Lyon, 2002). Invitation to speculate sometimes took the form of ambiguous and double-barrelled questions, which usually caused confusion within the child witness.

- ***Theme 6: Use of aides to assist the child witness during questioning***

No aides were used in any one of the cases under review, such as anatomical dolls, drawings, or photos. In fact, but for a translator, no additional aides were employed to support the child witnesses to open up, clarify unclear understanding, or to meet the child witness' cognitive level of communication and expression. Although some of the cases were held *in camera*, where dolls and play materials were available, such aides were not introduced as a method of information collection during trial proceedings.

- ***Theme 7: Observation of yielding and shifting in the child witness***

A high positive correlation transpired between the frequency of defence lawyers' suggestive tactics, and the child witnesses' willingness to yield and shift in favour of the defence lawyers. Yielding and shifting of child witnesses significantly correlated proportionally to the number of suggestive questions posed during examination and cross-examination, with prevalence rates at highest among younger child witnesses.

7.14 DEDUCTIONS

The preceding findings resulted in the following deductions:

- Legal and allied criminal justice professionals centrally involved in cases of child sexual abuse, e.g., investigating officers, social workers and prosecutors, were found to be lacking cognizance of the concept child suggestibility;
- Vulnerable children were not adequately protected against interrogative suggestibility;
- Child interviewing (examination and cross-examination) during child sexual abuse investigations and testify during court proceedings was found not to safeguard child witnesses against suggestive tactics.

7.15 CONCLUSIONS

The purpose of this study was to explore whether the Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations were cognizant of child suggestibility and whether the concept of child suggestibility was duly weighted during investigations and court proceedings. The triangulated study showed that the legal and allied criminal justice professionals were significantly uninformed about the concept of child suggestibility and that the concept of child suggestibility was not duly weighted during investigations and court proceedings.

This was confirmed by the poor performances of the legal and allied criminal justice professionals on the semi structured questionnaire and the review of the dockets and the court cases. The study also showed that cognizance of child suggestibility within the Namibian legal justice system is very low, as confirmed by empirical research data.

7.16 IMPLICATIONS OF THIS STUDY

A number of indicators towards improvement of best practice transpired from this study, with guiding principles for intervention towards best practice. The most important intervention strategy is curricula reform and/or expansion of training programs and curricula for legal and allied criminal justice professionals to enhance and promote cognizance of child suggestibility within the Namibian legal justice system. The Law Society of Namibia should consider inclusion of topics on child suggestibility via continuous professional development (CPD) activities offered online (via virtual training) as well as in-person trainings.

In order to enhance cognizance of child suggestibility within the Namibian legal justice system, specific provision should be made during training of legal and allied criminal justice professionals for applicable clinical experience and workplace learning, e.g., compulsory attendance (as observers) of Victim Friendly Court proceedings, and compulsory workplace attachments/observations at child psychiatry/psychology practice settings, with a minimum number of case observations.

The basic training programs of investigating officers should specifically provide for training and skills development on a variety of related topics, in order to safeguard against child suggestibility during initial statement and to enhance clarity during subsequent trial proceedings.

In order to safeguard against child suggestibility during investigations and subsequent trial proceedings, the following guidelines should be developed and put into operation:

- A framework for conducting forensic interviews with children ;
- A *Memorandum of Good Practice* providing interviewing guidelines at all levels of contact with the child witness;

Child witnesses within Namibia are not routinely assessed in terms of their competency to take part in legal proceedings, which competency is directly linked to suggestibility. Revised guidelines for assessment of the child witness' competency to take part in legal proceedings prior to submission of a statement should be implemented in order to reduce false positive statements originating from child suggestibility; hence, training programs and curricula should provide for knowledge and skills training in terms of competency assessment, having consideration for major variables that might have a bearing on competency to take part in legal proceedings.

The majority of research participants did not weigh accountability in terms of conative development. In practice this suggests that child witnesses' ability towards behaviour control in accordance with their insights of right and wrong was not seen as the basis for accountability in children, as long as they know what is right or wrong, irrespective of behaviour control commensurate with such insights. According to Schmidt (1990), this ability to control and direct behaviour in accordance with insights of right and wrong represent the conative component of child development. Implication for intervention is that training programs should place greater emphasis on the nexus between child development, and the cognitive and conative underpinnings of accountability.

7.17 VERIFICATION OF RESEARCH HYPOTHESIS

The research problem was formulated as follows:

What is the extent of cognizance about child suggestibility among Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations and is this concept duly weighted and managed during investigations and court proceedings?

The research hypothesis can be formulated as follows:

Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations are (a) significantly uninformed about child suggestibility and (b) the concept child suggestibility is not duly weighted during investigations and court proceedings.

Based upon the findings derived from this triangulated study, it was found that Namibian legal and allied criminal justice professionals involved in child sexual abuse investigations were (a) significantly uninformed about child suggestibility and (b) the concept child suggestibility was not duly weighted during investigations and court proceedings. Hence, the research hypothesis is accepted.

7.18 RECOMMENDATIONS

7.18.1 Recommendations towards best practice within the Namibian legal justice system in general

- A widespread acceptance and acknowledgment of the concept ‘child suggestibility’ should be encouraged among legal and allied criminal justice professionals involved in child sexual abuse investigations in Namibia.
- The findings and conclusions of this research project once again accentuated the need for multi-professional collaboration.

7.18.2 Recommendations for training and education (program)

- Curricula reform and/or expansion of training programs and curricula for legal and allied criminal justice professionals should enhance and promote cognizance of child suggestibility within the Namibian legal justice system.
- The Law Society of Namibia should consider inclusion of topics on child suggestibility via continuous professional development (CPD) activities both in person and through online trainings (via virtual training). Chapter two and three will be useful resources in this regard.
- Workplace learning and workplace attachments during basic training of legal and allied criminal justice professionals are recommended in order to obtain practice knowledge of child suggestibility as it transpires during investigations and subsequent trial proceedings.
- Investigating officers should be specifically trained to safeguard against suggestive interviewing during deposition of initial statements, and to support subsequent investigations and proceedings.

7.18.3 Recommendations for further research

- The development of a framework for conducting forensic interviews with children and adolescents should be considered. Such a framework should also make provisions for interviewing children with mental retardation, learning difficulties, language barriers, and diverse cultural backgrounds.
- The development of a Memorandum of Good Practice should be considered, in order to provide specific interviewing guidelines at all levels of contact with the child witness.
- The development of a training manual for investigating officers to ensure best practice, and to safeguard against child suggestibility.

7.19 VALIDATION OF THE STUDY

7.19.1 Shortcomings

Initially some resistance was anticipated from legal practitioners, which proved to be unfounded. Most of the legal practitioners were quite keen to assist and to participate in the study. The rate of questionnaire return from the defence lawyers was however fairly low, due to time limitations. The research samples were all drawn from Windhoek, the capital city of Namibia. This might limit extrapolation of findings at national level although it is assumed that cognizance of suggestibility in rural areas outside the capital city might even be lower, compared to urban settings.

Furthermore, the researcher wished to observe at least one court session as part of the assessment of suggestibility during trial proceedings. This was not done due to the absence of any applicable court case adjudicated during the period of study. The aim of such observation was to assess non-verbal communication with child witnesses during trial proceedings. Assessment of non-verbal communication only forms a small part of the entire study on suggestibility, and omission of this observation did not render skewed findings. While inclusion of observation might have added some value to the study, its exclusion does not diminish the findings of the study in relation to its purpose.

Lastly, the study was not funded, which prevented recruitment and employment of additional research assistants and statisticians.

7.19.2 Contributions

A relatively large sample was drawn from settings within Windhoek; hence, findings might be safely extrapolated to legal and allied criminal justice professionals within this urban setting.

The guiding principles for intervention might contribute towards best practice. As it has been noted in section 6.8, this study managed to develop an assessment tool for assessing suggestible questioning by the legal and allied criminal justice professionals and a suggestibility assessment tool for children as go through forensic interviews. The beauty of these tools is that they can be used for reviewing forensic interviews and also for live court sessions. Intervention strategies towards curricula reform and/or expansion of training programs and curricula for legal and allied criminal justice professionals might enhance and promote cognizance of child suggestibility within the Namibian legal justice system. This study contributed towards the existing body of knowledge, and the researcher hopes that it would encourage further research within this field.

7.20 CLOSING STATEMENT

This research project has been an enriching experience, and the researcher could only hope that this knowledge may contribute to a better understanding of child suggestibility, and that future child witnesses' fears and worries might be significantly reduced via improved cognizance of child suggestibility, which fears are eloquently illustrated in the excerpt below:

"I am afraid to tell you who I am, because, if I tell you who I am, you may not like who I am, and it's all that I have" (John Powell).

REFERENCE LIST

- [APA] American Psychiatric Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47:1597-1611.
- [APA] American Psychiatric Association. (2000). *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition, text revision, (DSM IV-TR). Washington, DC.: American Psychiatric Association.
- Ambunda, L.N., & Mugadza, W.T. (2009). *The protection of children's rights in Namibia: Law and policy*. In Ruppel, O.C., *Children's Rights in Namibia*, pp. 5-51. Windhoek: Macmillan Education.
- Bain, S.A., Baxter, J.S., & Fellowes, V. (2004). Interacting influences on suggestibility. *Legal and criminological psychology*, 9: 239-252.
- Baker-Ward, L., & Ornstein, P.A. (2002). *Cognitive underpinnings of children's testimony*. In Westcott, H.L., Davis, G. M., & Bull, R.H.C. (Eds.). London: John Wiley & Sons.
- Baxter, J.S. (1990). The suggestibility of child witness: A review. *Applied cognitive psychology*, 4: 393-407.
- Bennett, M.R., & Hacker, P.M.S. (2003). *Philosophical Foundations of Neuroscience*. Oxford: Blackwell Publishing.
- Blair, R.C., & Taylor, R.A. (2008). *Biostatistics for the Health Sciences*. London: Blair & Taylor.
- Blau, T.H. (1998). *The psychologist as an expert witness*. New York: John Wiley & Sons.

- Bremner, J.D. (2001). A biological model for delayed recall of childhood abuse. *Journal of Aggression, Maltreatment and Trauma*, 4 (2):165-183.
- Bruck, M., & Ceci, S.J. (1997). *The suggestibility of young children*. Illinois: American Psychological Society.
- Bruck, M., & Ceci, S.J. (1999). The suggestibility of children's memory. *Annual Reviews Psychology*, 50: 419-39.
- Bruck, M., Ceci, S., & Shuman, D.W. (2005). Disclosure of child sexual abuse. What does research tell us about the ways that children tell? *Psychology Public Policy and Law*, 11(1): 194-226.
- Bruck, M., & Melnyk, L. (2004). Individual differences in children's suggestibility: A review and synthesis. *Applied cognitive psychology*, 18: 947-996.
- Bogdan, M. (2000). The first decade of Namibian law. *Nordic journal of international law*, 68: 275-291.
- Carlson, N.L. (1994). *Physiology of behaviour*, 5th edition. London: Allyn & Bacon.
- Cassel, W.S., & Bjorklund, D.F. (1995). Developmental patterns of eyewitness memory and suggestibility: An ecological based long term longitudinal study. *Law and behaviour*, 19: 9.
- Ceci, S., & Bruck, M. (1994). How reliable are children's statements? *Family Relations*, 43 (3): 255-257.
- Ceci, S.J., Crossman, A.M., Scullin, M.H., Gilstrap, L., & Huffman, M.L. (2002). *Children's suggestibility research: Implications for the courtroom and the forensic interview*. In Westcott, H.L., Davis, G.M., & Bull, R.H.C. (Eds.). A

handbook of psychological research and forensic practice. London: John Wiley & Sons.

Ceci, S., Kulkofky, S., Klemfuss, J.Z., Sweeney, C.D., & Bruck, M. (2007). Unwarranted assumptions about children's testimonial accuracy. *Annual review of clinical psychology*, 3:311-28.

Christianson, S.A. (1992). Emotional stress and eyewitness memory: A critical review. *Psychological bulletin*, 112: 284-309.

Cohen, L., Manion, L., & Morrison, K. (2000). *Research Methods in Education*, 5th edition. New York: RoutledgeFalmer.

Collins, D.W., & Rourke, B.P. (2003). Learning-disabled Brains: A Review of the Literature. *Journal of Clinical and Experimental Neuropsychology*, 25(7):1011-1034.

Coxon, P., & Valentine, T., (1997). The effects of age of eyewitness on the accuracy and suggestibility of their testimony. *Applied cognitive psychology*, 11: 415-430.

Chiroro, P., & Muller, K. (2005). *Child witness*. In Tredoux, C., Foster, D., Allan, A., Cohen, A., & Wassenaar, D. (Eds.). *Psychology and Law*, pp. 226-253. Cape Town: Juta Academic.

Davis, S.L., & Bottoms, B.L. (2002). Effects of social support on children's eyewitness reports: A test of the underlying mechanism. *Law and human behaviour*, 26: 2.

De Vos, A.S. (2000). *Research at Grass Roots: A primer for the caring professions*. Pretoria: Van Schaik.

- Donald, D., Lazarus, S. & Lolwana, P. (2002). *Educational Psychology in Social Context*. 2nd edition. Cape Town: Oxford University Press.
- Drake, K.E., Bull, R., & Boon, J.C.W. (2008). Interrogative suggestibility, self-esteem and the influence of negative life events. *Legal and Criminological Psychology*, 11: 299-307.
- Eisen, L.E, & Goodman, G. (1998). Trauma memory and suggestibility. *Developmental psychopathology*, 10: 717-738.
- Eisen, M.L., Goodman, C.J., Qin, J., & Davis, S. (2007). Maltreated children's memory: accuracy, suggestibility and psychopathology. *Developmental psychology*, 43(6): 1275-1294.
- Eloff, I., & Ebersöhn, L. (Eds.). (2004). *Keys to Educational Psychology*. Cape Town: UCT Press.
- Endres, J. (1997). The suggestibility of child witness: The role of individual differences and their assessment. *The journal of credibility assessment and witness psychology*, 11(2): 44-67.
- Ewing, C.P. (2003). *Expert Testimony: Law and practice*. In Goldstein, A.M., & Weiner, I.B. (Eds.). *Handbook of psychology*, volume II: Forensic psychology. New Jersey: John Wiley & Sons.
- Eysenck, M.W. (1998). *A handbook of cognitive psychology*. London: LEA publishers.
- Gauld, A. (1992). *A history of hypnotism*. New York: Cambridge University Press.

- Garven, S., Wood, J.M., Malpass, R.S., & Shaw, J.S. (1998). More than suggestion: The effect of interviewing techniques from the McMartin Preschool case. *Journal of applied psychology*, 83(3): 347-359.
- Garven, S., Wood, J.M., & Malpass, R.S. (2000). Allegations of wrong doing: The effects of reinforcement on children's mundane and fantastic claims. *Journal of applied psychology*, 85(1): 38-49.
- Gheorghiu, V.A., & Molz, G. (2008). Measurement of responses to suggestions for the relaxation by means of indirect and direct tests. *Contemporary Hypnosis*, 25: 78-93.
- Gignac, G.E., & Powel, M.B. (2006). A direct examination of the nonlinear (quadratic) association between intelligence and suggestibility in children. *Applied cognitive psychology*, 20: 617-623.
- Giles, J.W., Gopnik, A., & Heyman, G.D. (2002). Source monitoring reduces the suggestibility of pre-school children. *Association for psychological science*, 13(3): 288-291.
- Goodman, G.S. (2006). Children's eyewitness memory: A modern history and contemporary commentary. *Journal of Social Issues*, 62(4): 811-832.
- Goodman, G. S., Bottoms, B.L., Rudy, L., Davis, S. L., & Schwartz-Kennedy, B. (2001). Effects of past abuse experiences on children's eyewitness memory. *Law and Human Behaviour*, 25(3): 269-298.
- Goodman, G.S., & Reed, R.S. (1986). Age differences in eyewitness testimony. *Law and human behaviour*, 10(4): 317-332.
- Gudjonsson, G.H. (2003). Psychology brings justice: The science of forensic psychology. *Criminal behaviour and Mental Health*, 13: 159-167.

- Gulotta, G., & Resoling, D. (2004). Child suggestibility: An empirical study. *Psicologia Giusizia*, 5: 1.
- Hales, R.E., Yudofsky, S.C., & Talbott, J.A. (Eds.). (1999). *The American Psychiatric Press Textbook of Psychiatry*, 3rd edition. Washington, DC.: American Psychiatric Press.
- Henry, L.A., & Gudjonsson, G.H. (2007). Individual and developmental differences in eyewitness recall and suggestibility in children with intellectual disabilities. *Applied cognitive psychology*, 21: 361-381.
- Human-Vogel, S. (2004). Cognition and Learning. In Eloff, I., & Ebersöhn, L. (Eds.). *Keys to Educational Psychology*. Cape Town: UCT Press.
- Imber, S.D., Glanz, L.M., Elkin, I., Sotsky, S.M., Boyer, J.L., & Leber, W.R. (1996). Ethical issues in psychotherapy research: Problems in a collaborative clinical trial study. *American Psychologist*, 41:137-146.
- Jansen, J. (2004). An Introduction to Education Theory. In Eloff, I., & Ebersöhn, L. (Eds.). *Keys to Educational Psychology*. Cape Town: UCT Press.
- Jupp, V. (Ed.). (2006). *The Sage Dictionary of Social Research Methods*. London: Sage Publications.
- Kapardis, A. (2010). *Psychology and Law: A critical introduction*, 3rd edition. London: Cambridge press.
- Kirsch, I., & Brafman, W. (2001). Imaginative suggestibility and hypnotisability. *Current directions in psychological science*, 10(2): 57-61.

- Kreston, S.S. (2007). An inconvenient truth: On the absence of definitive corroborative medical evidence in child sexual abuse cases. *Child abuse research in South Africa*, 8(2): 81-96.
- LaFraniere, S. (2006). Scourge of child sexual abuse takes toll on girls in sub-Saharan Africa. *International Herald Tribune*.
- Legal Assistance Centre. (2006). *Rape in Namibia: An assessment of the operation of the Combating of Rape Act*. Gender and Advocacy Research Project. Windhoek: Printech.
- Lopez, S.J., & Snyder, C.R. (Eds.). (2003). *Positive Psychological Assessment: A Handbook of Models and Measures*. Washington, DC.: American Psychological Association.
- Mangan, J., Lalwani, C., & Gardner, B. (2004). Combining quantitative and qualitative methodologies in logistics research. *International Journal of Physical Distribution & Logistics Management*, 34(7): 565-578.
- Manovel, W. (2001). Mental illness is not a crime: the impact of the adversarial judicial system. *Australian Psychiatry*, 9: 3.
- Macphail, I. (2003). *Child witness in Scotland*. In: Respecting child witnesses and delivering justice. Report edited by Justice for children, Edinburgh.
- Marsh, C. (1982). *The Survey Method: The Contribution of Surveys to Sociological Explanation*. London: George Allen & Unwin.
- McLean, G. (2006). Evaluation of Questionnaires. In: Jupp, V. (Ed.). *The Sage Dictionary of Social Research Methods*, pp. 251 – 252. London: Sage Publications.

- McMillan, J.H., & Schumacher, S. (1997). *Research in Education*, 4th edition. New York: Longman.
- Melinder, A., Endestad, T., & Magnussen, S. (2006). Development and aging: Relations between episodic memory, suggestibility, theory of mind, and cognitive inhibition in preschool child. *Scandinavian journal of psychology*, 47: 485-495.
- Memon, A., Vrij, J., Bull, R. (2003). *Psychology and the Law: Truthfulness, accuracy and credibility*. London: John Willey & Sons.
- Ministry of Gender Equality and Child Welfare. (2009). *Draft Child Care and Protection Bill*. Windhoek: Government of the Republic of Namibia.
- Ministry of Gender Equality and Child Welfare. (2010). *Public participation in Law Reform, Revision of Namibia's Draft Child Care and Protection Bill*. Final Report. Windhoek: Government of the Republic of Namibia.
- Mouton, J. (2001). *How to succeed in your Master's and Doctoral studies. A South African guide and resource book*. Pretoria: Van Schaik.
- Muller, K. (2001). An inquisitorial approach to the evidence of children. *Crime research in South Africa*, 4: 4.
- Muller, K. (2003). The enigma of the child witness: A need for expert evidence. *CARSA*, 4(2): 2-9.
- Muller, K.D., & Hollely, K.A. (2000). *Introducing the child witness*. Port Elizabeth: Prinrite.

- Naudé, H., du Preez, C.S., & Pretorius, E. (2004). Executive Emotional System Disruption As Causal Agent In Frontal Lobishness Among Abused Children. *Early Child Development and Care*, 174(5): 437-460.
- Naudé, H., & Pretorius, E. (2003). Investigating the applicability of 'hue and cry' requirement within the framework of psychological testimony regarding criminal sexual behaviour. *Acta Criminologica*, 16(1): 45-62.
- Naudé, H., du Preez, C.S., & Pretorius, E. (2003). The impact of child abuse as traumatic environmental stressor on the plasticity of intelligence. *Child Abuse Research in South Africa*, 4(2): 10-26.
- Naudé, H., & Maree, J.G. (2001). The decision-making capacity (power) of a minor child in a divorce case: guidelines for psychological assessment. *Acta Criminologica South Journal of Criminology*, 14(3), 34-45
- Neuman, W. (2000). *Social research methods: Qualitative and quantitative approaches*. New York: Allan & Bacon.
- Newport, D.J., & Nemeroff, C.B. (2000). Neurobiology of posttraumatic stress disorder. *Current Opinion in Neurobiology*, 10(2):211-218.
- OAU. (1990). Entered into force Nov. 29, 1999. African charter on the rights and welfare of the child. Doc. CAB/LEG/24.9/49.
- Pearsal, J. (2002). *The Concise Oxford English Dictionary*. Oxford: Oxford Press.
- Perry, N.W., & Wrightsman, L.S. (1991). *The child Witness: Legal issues and dilemmas*. London: Sage Publications.
- Polczyk, R., Wesolowska, B., Gabarczyk, A., Minakowska, I., Supska, M., & Bomba, E. (2004). Age differences in interrogative suggestibility: A

comparison between young and older adults. *Applied cognitive psychology*, 18: 1097-1107.

Pretorius, E., & Naudé, H. (2002). The use of magnetic resonance imaging (MRI) in identifying post-traumatic stress disorder. *ACTA Criminologica*, 15(3):111-117.

Reed, D. L. (1996). Findings from Research on Children's Suggestibility and Implications for Conducting Child Interviews. *Child Maltreatment*, 1: 2.

Restak, R. (2000). *Mysteries of the Mind*. Washington, DC.: National Geographic Publishers.

Riedly, A.M., & Clifford, B.R. (2004). The effects of anxious mood induction on suggestibility to misleading post-event information. *Applied cognitive psychology*, 18: 233-244.

Riedly, A.M., & Clifford, B.R. (2006). Suggestibility and state anxiety: How the two concepts relate in source identification paradigm. *Memory*, 14(1): 37-45.

Riedly, A.M., Clifford, B.R., & Keogh, E. (2002). The effects of state anxiety on the suggestibility and accuracy of child eyewitnesses. *Applied cognitive psychology*, 16: 547-558.

Roberts, K.P., & Powell, M.B. (2005). The relations between inhibitory control and children's eyewitness memory. *Applied cognitive psychology*, 19: 1003-1018.

Robinson, J.A. (1998). *The Law of Children and Adolescents in South Africa*. Durban: Butterworths.

- Ruppel, O.C. (2009). *The protection of children's rights under international law from a Namibian perspective*. In Ruppel, O.C., *Children's rights in Namibia*. Windhoek: Macmillan publications.
- Sarason, I.G., & Sarason, B.R. (1996). *Abnormal psychology: The Problem of Maladaptive Behaviour*. New York: Prentice Hall.
- Schmidt, C.W.H. (1989). *Bewysreg*, 3^{de} uitgawe. Durban: Butterworths.
- Schreiber, N., Bellah, L.D., Martinez, Y., McLaurin, K.A., Strok, R., Garven, S., & Wood, S. (2006). Suggestive interviewing in the McMartin preschool and Kelly Michaels day-care abuse cases: A case study. *Social influence*, 1(1): 16-47.
- Simon, R.I. (1999). The law and psychiatry. In R.E. Hales, S.C. Yudofsky & J.A. Talbott, (Eds.). *The American Psychiatric Press Textbook of Psychiatry*, 3rd edition, pp. 1493-1534. Washington, DC.: American Psychiatric Press.
- Society for Research in Child Development, Committee for Ethical Conduct in Child Development Research. (1990). SRCD ethical standards for research with children. *SRCD Newsletter*. Chicago: SRCD.
- Spector, P.E. (2006). Evaluation of Scales. In Jupp, V. (Ed.), *The Sage Dictionary of Social Research Methods*, pp. 272 -273. London: Sage Publications.
- Thiery, K.L., & Spence, M.J. (2001). Before misinformation is encountered: Source monitoring decreases child witness suggestibility. *Journal of cognition and development*, 2(1): 1-26.
- Thompson, C.L., & Rudolph, L.B. (2000). *Counseling Children*, 3rd edition. Pacific Grove: Brooks/Cole Publishing.

UNESCO. (2001). *Towards victim friendly courts in Namibia*. Windhoek: Pollination Publishers.

United Nations General Assembly. (1989). Convention on the Rights of the Child. Document A/RES/44/25, 12 December.

United Nations Standard Minimum rules for the administration of juvenile justice (The Beijing Rules). (1985). General Assembly resolution 40/33, 29 Nov.

Westcott, H.L., Davis, G.M., & Bull, R.H.C. (2002). *Children's testimony: A handbook of psychological research and forensic practice*. London: John Wiley & Sons.

Zigmond, M.J., Bloom, F.E., Roberts, J.L., Landis, S.C. & Squire, L.R. (1999). *Fundamental Neuroscience*. London: Academic Press.

Zillmer, E.A., Spiers, M.V., & Culbertson, W.C. (2001). *Principles of neuropsychology*. New York: Wardsworth.

LIST OF ACTS

Child Care and Protection Bill, 2009

Children's Act, No. 33 of 1960

Combating of Domestic Violence Act, No.4 of 2003

Combating of Immoral Practices Act, No. 21 of 1980

Combating of Rape Act, No.8 of 2000

Community Courts Act, No.10 of 2003

Criminal Procedure Act, No. 51 of 1977

Mental Health Act, No.18 of 1973

Social Work and Psychology Act, No.6 of 2004

The Constitution of Namibia Act, No. 34 of 1998

LIST OF COURT CASES

R v Jonathan 1932 TPD 44

R v Steenkamp 1947 1 SA 714 (SWA) 718

R v Majosi 1956 1 SA 167 (N) 172G

SvS 1995 (1) SACR 50 (ZS)

S v Tembani 1970 4 SA 395 (OK)

R v Criag 1904 NLR 153

S v T 1973 3 SA 794 (A)

Newspaper

The Namibian 05/10/2009

The Namibian 03/12/2010

ANNEXURE 1

FORENSIC INTERVIEW QUESTIONS FOR LEGAL AND ALLIED CRIMINAL JUSTICE PRACTITIONERS

Job Title

Highest educational qualification

Sex Age

Years of experience in your current position.....

INSTRUCTIONS:

The questions below are aimed at finding out your experiences and understanding of how best forensic interviews for children should be conducted. The term ‘child’ in this questionnaire refers to children aged 10 years and below. Please circle the answer that BEST represent your opinion. Where spaces are provided for responses, please write down your answers in those spaces. Please answer ALL questions.

1. What is your understanding of the term ‘suggestibility’?

2. Children’s memory is essentially the same as adults’ memory.

Agree Disagree Uncertain

3. Language proficiency helps children to remember things more easily.

Agree Disagree Uncertain

4. The way the interviewer conducts the interview has a strong potential of influencing the responses of children.

Agree Disagree Uncertain

5. The ability to know that other people may have different feelings, intentions and beliefs other than one’s own, allows children to resist or reject misinformation.

Agree Disagree Uncertain

6. Children tend to recall their memories easier if they are asked open ended questions.

Agree Disagree Uncertain

7. When interviewing a child, one must have a hypothesis of what one thinks happened, for best results. *Agree Disagree Uncertain*
8. The ability of the child as an eyewitness to monitor sources of memory causes the child to easily accept external misinformation. *Agree Disagree Uncertain*
9. In most cases, telling false information to children causes them to accept it as the truth. *Agree Disagree Uncertain*
10. The concept of a child's suggestibility is well known within the Namibian legal justice system. *Agree Disagree Uncertain*
11. In most cases, children provide reliable information if they are asked leading questions during forensic interviews. *Agree Disagree Uncertain*
12. In your opinion, which age group is most suggestible, compared to all other groups?
Please circle your choice of age group.
- a. 1 to 3 year olds
 - b. 3 to 6 year olds
 - c. 6 to 8 year olds
 - d. 9 to 10 year olds
 - e. none of the above age groups are more suggestible than the other age groups
13. Anatomically detailed dolls are best used during forensic interviews, before the child opens up about sexual abuse. *Agree Disagree Uncertain*
14. Children should be given rewards (verbal/non-verbal/or otherwise) to encourage them to talk about what they saw or experienced. *Agree Disagree Uncertain*
15. For best results, children should be interviewed by an authoritative person. *Agree Disagree Uncertain*
16. It is very easy to undo implanted false information from children's memories. *Agree Disagree Uncertain*
17. An interviewer who has a clear belief about what happened stands a better chance of conducting a reliable forensic interview with children. *Agree Disagree Uncertain*
18. Children with intellectual disabilities may easily be influenced by the interviewer. *Agree Disagree Uncertain*
19. Forensic interviews with children must be conducted by professionals who are knowledgeable about children's cognitive development. *Agree Disagree Uncertain*
20. The degree of participation in the alleged event does not influence children's ability to recall such events, as long as they witnessed it. *Agree Disagree Uncertain*
21. Children can accurately recall events - irrespective of the time interval between the occurrence of the event and the recall period. *Agree Disagree Uncertain*
22. The Police should always wear uniforms when interviewing children. *Agree Disagree Uncertain*

- 23. In general, the Namibian legal/justice system provides a good framework for conducting forensic interviews with children. *Agree Disagree Uncertain*
- 24. Within the Namibian legal/justice system, there are interviewing guidelines which are used for conducting forensic interviews with children. *Agree Disagree Uncertain*
- 25. If interviewing guidelines (*referred to in item 24 above*) are indeed provided for within the Namibian legal/justice system, what are they called (*what is the title of these guidelines*)?
.....
- 26. Adult moral reasoning does **not** differ from a child's moral reasoning. *Agree Disagree Uncertain*
- 27. Around what age do children start to develop abstract thinking?
.....
- 28. I have attended/conducted a trial in a Victim Friendly Court in Namibia. *Agree Disagree Uncertain*
- 29. During my career as a legal/ allied criminal justice practitioner I have requested an expert to assess a child for suggestibility. *Agree Disagree Uncertain*
- 30. When interviewing children, I mostly repeat questions after their first response in order to make them fully understand what I will be trying to say. *Agree Disagree Uncertain*
- 31. I would stop a court proceeding once a child starts to be emotional. *Agree Disagree Uncertain*
- 32. I would allow a child below the age of six years to testify in court unassisted. *Agree Disagree Uncertain*
- 33. I would not allow preschool children to be asked closed questions during forensic interviews. *Agree Disagree Uncertain*
- 34. I would not allow preschool children to be asked leading questions during forensic interviews. *Agree Disagree Uncertain*
- 35. When applicable, I (as the interviewer) would show the child-witness that I disagree with his/her version by confronting the child-witness with contradictory statements. *Agree Disagree Uncertain*

ANNEXURE 2

FORENSIC INTERVIEW QUESTIONS FOR LEGAL AND ALLIED CRIMINAL JUSTICE PRACTITIONERS

Job Title

Highest educational qualification

Sex Age
.....

Years of experience in your current position.....

INSTRUCTIONS:

The questions below are aimed at finding out your experiences and understanding of how best forensic interviews for children should be conducted. The term ‘child’ in this questionnaire refers to children aged 10 years and below. Please circle the answer that BEST represent your opinion. Where spaces are provided for responses, please write down your answers in those spaces. Please answer ALL questions.

1. What is your understanding of the term ‘suggestibility’?

2. Children’s memory is essentially the same as adults’ memory.

Agree Disagree Uncertain

3. Language proficiency helps children to remember things more easily.

Agree Disagree Uncertain

4. The way the interviewer conducts the interview has a strong potential of influencing the responses of children.

Agree Disagree Uncertain

5. The ability to know that other people may have different feelings, intentions and beliefs other than one’s own, allows children to resist or reject misinformation.

Agree Disagree Uncertain

6. Children tend to recall their memories easier if they are asked open ended questions.

Agree Disagree Uncertain

7. When interviewing a child, one must have a hypothesis of what one thinks happened, for best results.

Agree Disagree Uncertain

8. The ability of the child as an eyewitness to monitor sources of memory causes the child to easily accept external misinformation. *Agree Disagree Uncertain*
9. In most cases, telling false information to children causes them to accept it as the truth. *Agree Disagree Uncertain*
10. The concept of a child's suggestibility is well known within the Namibian legal justice system. *Agree Disagree Uncertain*
11. In most cases, children provide reliable information if they are asked leading questions during forensic interviews. *Agree Disagree Uncertain*
12. In your opinion, which age group is most 'suggestible', compared to all other groups?
Please circle your choice of age group.
- a. 1 to 3 year olds
 - b. 3 to 6 year olds
 - c. 6 to 8 year olds
 - d. 9 to 10 year olds
 - e. none of the above age groups are more suggestible than the other age groups
13. Anatomically detailed dolls are best used during forensic interviews, before the child opens up about sexual abuse. *Agree Disagree Uncertain*
14. Children should be given rewards (verbal/non-verbal/or otherwise) to encourage them to talk about what they saw or experienced. *Agree Disagree Uncertain*
15. For best results, children should be interviewed by an authoritative person. *Agree Disagree Uncertain*
16. It is very easy to undo implanted false information from children's memories. *Agree Disagree Uncertain*
17. An interviewer who has a clear belief about what happened stands a better chance of conducting a reliable forensic interview with children. *Agree Disagree Uncertain*
18. Children with intellectual disabilities may easily be influenced by the interviewer. *Agree Disagree Uncertain*
19. Forensic interviews with children must be conducted by professionals who are knowledgeable about children's cognitive development. *Agree Disagree Uncertain*
20. The degree of participation in the alleged event does not influence children's ability to recall such events, as long as they witnessed it. *Agree Disagree Uncertain*
21. Children can accurately recall events - irrespective of the time interval between the occurrence of the event and the recall period. *Agree Disagree Uncertain*
22. The Police should always wear uniforms when interviewing children. *Agree Disagree Uncertain*
23. In general, the Namibian legal/justice system provides a good framework for conducting forensic interviews with children. *Agree Disagree Uncertain*
24. Within the Namibian legal/justice system, there are interviewing guidelines which are used for conducting forensic interviews with children. *Agree Disagree Uncertain*

25. If interviewing guidelines (*referred to in item 24 above*) are indeed provided for within the Namibian legal/justice system, what are they called (*what is the title of these guidelines*)?

26. The fitness of children to stand trial is influenced by their suggestibility levels.

Agree Disagree Uncertain

27. The ability to know what is right and wrong should be the basis for accountability in children irrespective of their capability to control and direct the behavior in accordance with their insights.

Agree Disagree Uncertain

28. Around what age do children start to develop abstract thinking?

29. I have attended/conducted a trial in a Victim Friendly Court in Namibia.

Agree Disagree Uncertain

30. During my career as a legal/ allied criminal justice practitioner I have requested a psychological or psychiatric expert to assess a child for suggestibility.

Agree Disagree Uncertain

31. When interviewing children, I mostly repeat questions after their first response in order to make them fully understand what I will be trying to say.

Agree Disagree Uncertain

32. I would stop a court proceeding once a child starts to be emotional.

Agree Disagree Uncertain

33. I would allow a child below the age of six years to testify in court unassisted.

Agree Disagree Uncertain

34. I would not allow preschool children to be asked closed questions during forensic interviews.

Agree Disagree Uncertain

35. I would not allow preschool children to be asked leading questions during forensic interviews.

Agree Disagree Uncertain

36. When applicable, I (as the interviewer) would show the child-witness that I disagree with his/her version by confronting the child-witness with contradictory statements.

Agree Disagree Uncertain