“INTERMEDIARY SERVICES FOR CHILD WITNESSES TESTIFYING IN SOUTH AFRICAN CRIMINAL COURTS”

GERT J JONKER, CHIEF EXECUTIVE OFFICER, THE BETHANY HOUSE TRUST

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Presentation outline

- **Introductory remarks**
  - Challenge to civil society
  - Bethany House
- **Overview Program**
  - Child Witnesses

Introduction

- **Former President and elder statesman Nelson Mandela in his 1st State of the Nation address in 1994 said that:**
  - "Our endeavours must be about the liberation of the women, the emancipation of the man and the liberty of the child..."
  - "And so we must, constrained by and yet regardless of the accumulated effect of our historical burdens, seize the time to define for ourselves what we want to make of our shared destiny"

Introduction (cont)

- Bethany House Trust
- Established 1998
- Children's Charity (Supreme Court)
- Non Profit Organisation (Dept. Social Development)
- Public Benefit Organisation (Revenue Service)
- Child Protection Agency (Children's Act)
- 135 000 plus beneficiaries p.a.

Project

- Unique Public-Private Partnership
- Bethany House, Dept. Social Dev & Dept. of Justice
- Commenced April 2003
- Primary goal: ensure sustained, professional intermediary services to child witnesses
- Case management database application developed for scheduling and tracking of cases
- Data derived utilised
  - In welfare / policing / judicial planning / budgeting
  - Victim Profile
  - Perpetrator Profile

Why Intermediary Services?

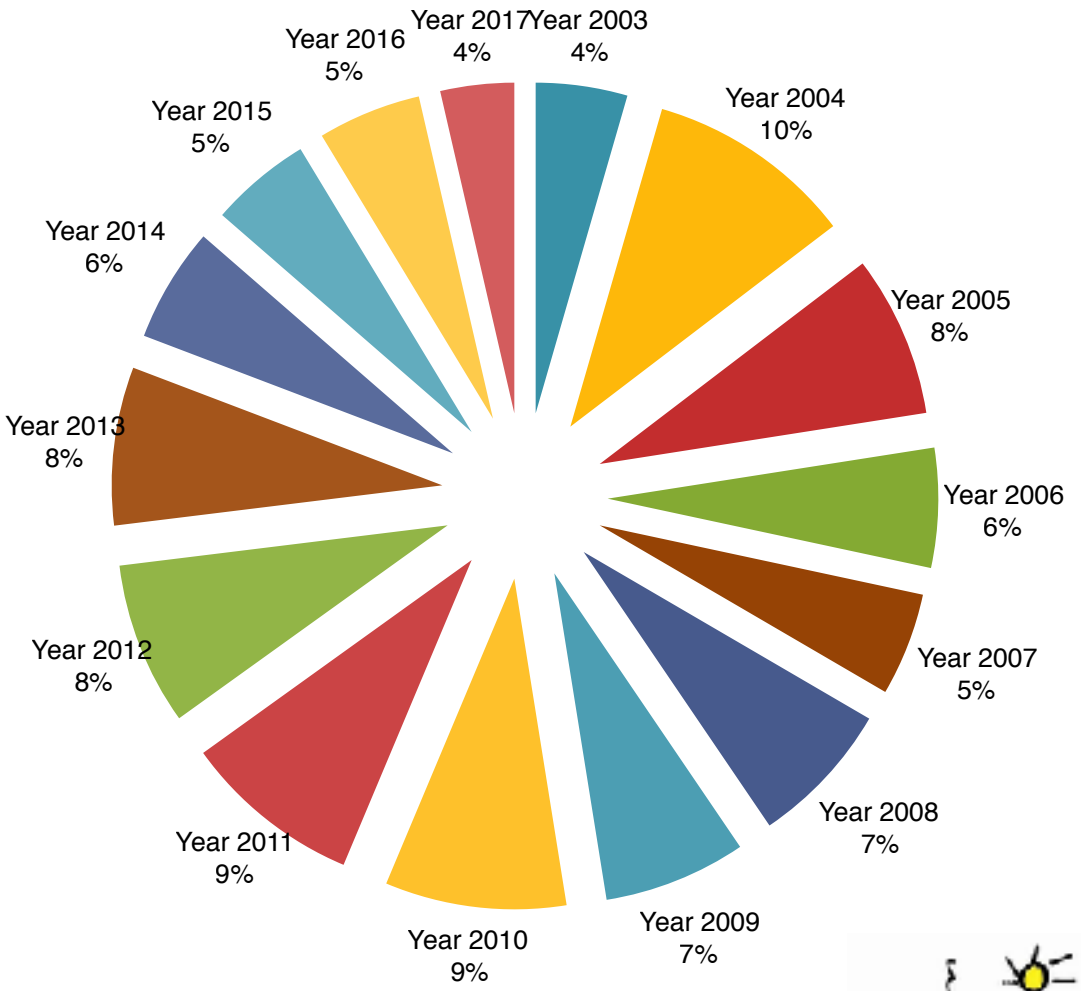
- Section 170A of Act 51 of 1977 as revised (Criminal Procedure Act)
  - Not Automatic Procedure
  - Children under age of 18
  - Pre-Trial Assessment to determine whether testimony in open court will expose child to undue mental stress
  - Intermediary testifies to this effect
  - Court may appoint competent person as intermediary
- Intention is to protect child witness from “undue mental stress”

Executive Summary

- 9 Magisterial Areas
- 5 496 Criminal Cases
- 5 745 Criminal Charges
- 7 199 Child Witnesses
- 6 066 Perpetrators

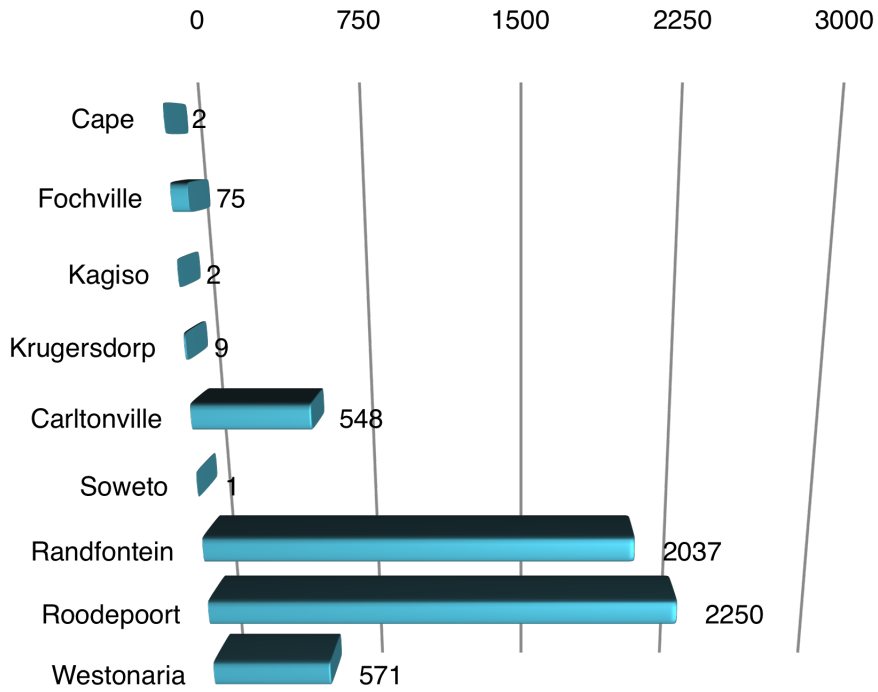
Cases per year

YEAR	No	%
Year 2003	246	4.48
Year 2004	**558**	**10.15**
Year 2005	434	7.90
Year 2006	321	5.84
Year 2007	277	5.04
Year 2008	390	7.10
Year 2009	383	6.97
Year 2010	487	8.86
Year 2011	481	8.75
Year 2012	438	7.97
Year 2013	425	7.73
Year 2014	308	5.60
Year 2015	272	4.95
Year 2016	278	5.06
Year 2017	198	3.60
	5496	



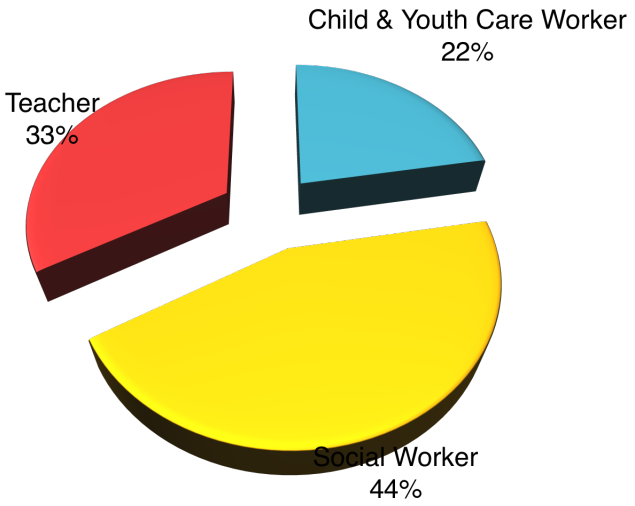
Cases per Magisterial District

Court Name	Magisterial District	No	%
Atlantis Regional	Cape	2	0.04
Fochville	Fochville	75	1.36
Kagiso	Kagiso	2	0.04
Krugersdorp	Krugersdorp	9	0.16
Oberholzer	Carltonville	548	9.97
Protea Glen	Soweto	1	0.02
Randfontein	Randfontein	2037	37.07
Roodepoort	**Roodepoort**	**2250**	**40.95**
Westonaria	Westonaria	571	10.39
		5496	



Team

Intermediary Qualifications	No	%
Child & Youth Care Worker	8	22.22
Social Worker	**16**	**44.44**
Teacher	12	33.33
	36	



Postponements

POSTPONED	No	%
0 postponements	**339**	**21.79**
1 postponement	386	24.81
2 postponements	250	16.07
3 postponements	184	11.83
4 postponements	119	7.65
5 postponements	78	5.01
6 postponements	56	3.60
7 postponements	39	2.51
8 postponements	33	2.12
9 postponements	17	1.09
10 postponements	12	0.77
11 postponements	11	0.71
12 postponements	9	0.58
13 postponements	5	0.32
14 postponements	5	0.32
15 postponements	5	0.32
16 postponements	4	0.26
17 postponements	1	0.06
23 postponements	1	0.06
25 postponements	1	0.06
69 postponements	1	0.06
	1556	

The case was heard from inception (2003) until 2011; 5 child witnesses involved; 3 Intermediaries acted as there were multiple languages; other reasons for postponements were: accused did not pay lawyer, lawyer not present in court, changes in legal representation, IO not fetching child witnesses for court (transport), accused ill, accused refused that presiding officer hears case and accused sent for mental health assessment

Charge Types

Charge Type	No	%
Armed Robbery	15	0.26
Arson	4	0.07
Assault	167	2.91
Attempted Murder	57	0.99
Attempted Rape	91	1.58
Child Abuse	10	0.17
Contravention - Protection Ord	4	0.07
Culpable Homicide	22	0.38
Family Violence	2	0.03
Grievous Bodily Harm	199	3.46
House Breaking	24	0.42
Indecent Assault	723	12.58
Indecent Exposure	2	0.03
Intimidation	2	0.03
Kidnapping	40	0.70
Murder	68	1.18
Neglect	10	0.17
Public Indecency	4	0.07
Rape	**4151**	**72.25**
Reckless & Negligent Driving	24	0.42
Robbery	98	1.71
Statutory Rape	8	0.14
Theft	16	0.28
Vandalism	4	0.07
	5745	

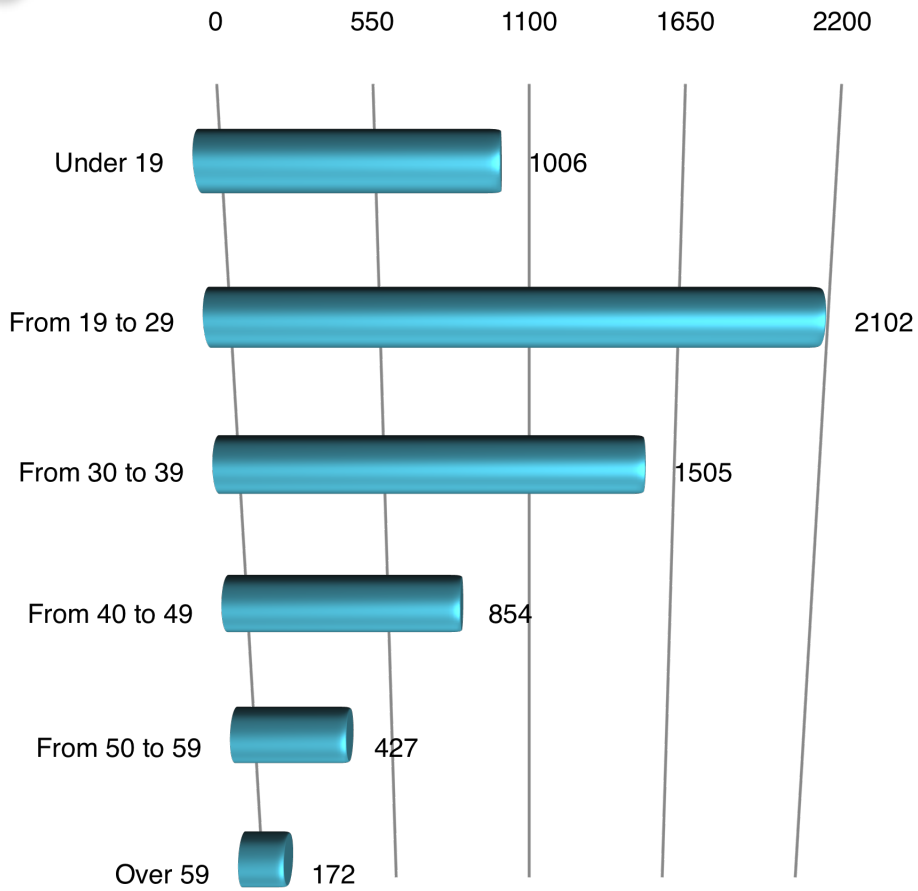
Child Age

Child Age	No	%
3 years old	112	1.56
4 years old	117	1.63
5 years old	316	4.39
6 years old	468	6.50
7 years old	390	5.42
8 years old	447	6.21
9 years old	454	6.31
10 years old	632	8.78
11 years old	632	8.78
12 years old	658	9.14
13 years old	**937**	**13.02**
14 years old	608	8.45
15 years old	599	8.32
16 years old	481	6.68
17 years old	262	3.64
18 years old	30	0.42
19 years old	10	0.14
20 years old	14	0.19
21 years old	8	0.11
25 years old	3	0.04
28 years old	3	0.04
29 years old	3	0.04
30 years old	1	0.01
31 years old	4	0.06
32 years old	2	0.03
33 years old	8	0.11
	7199	

Mentally challenged adults

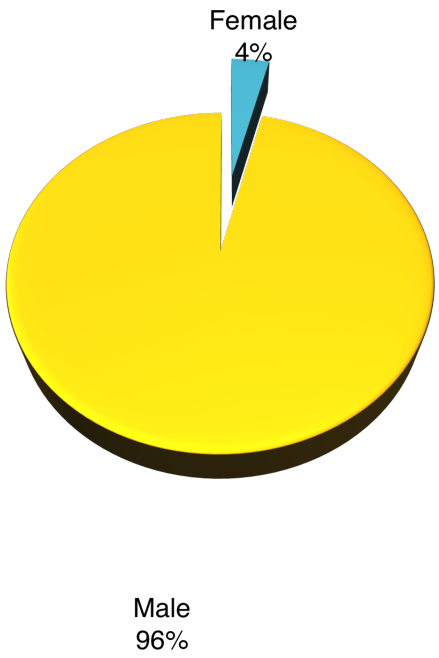
Accused Age

Accused Age	No	%
Under 19	1006	16.58
From 19 to 29	**2102**	**34.65**
From 30 to 39	1505	24.81
From 40 to 49	854	14.08
From 50 to 59	427	7.04
Over 59	172	2.84
	6066	



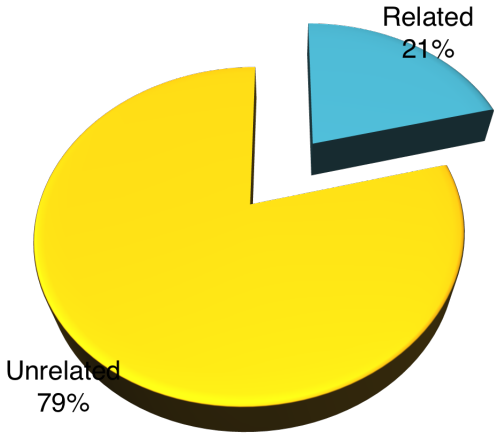
Accused Gender

Accused Gender	No	%
Female	225	3.71
Male	**5841**	**96.29**
	6066	



Child / Accused Relationship

Relationship to Child	No	%
Related	1669	21.31
Unrelated	**6162**	**78.68**
	7831	



Child / Accused Relationship (cont)

Relationship	No.	%
Boyfriend	44	0.56
Brother	41	0.52
Brother-in-law	12	0.15
Class Mate - Female	30	0.38
Class Mate - Male	136	1.74
Community Male	26	0.33
Father	369	4.71
Female Friend	12	0.15
Female Relative	9	0.11
Female Teacher	18	0.23
Foster Father	6	0.08
Foster Mother	7	0.09
Grandfather	208	2.66
Grandmother	8	0.10
Male Friend	159	2.03
Male Relative	589	7.52
Male Teacher	12	0.15
Mother	77	0.98
Mother's boyfriend	70	0.89
Neighbour - Female	11	0.14
Neighbour - Male	792	10.11
Sister	4	0.05
Step Brother	13	0.17
Step Father	316	4.04
Step Grandfather	5	0.06
Step Mother	5	0.06
Unknown Female	57	0.73
Unknown Male	**3651**	**46.62**
Unrelated Female	38	0.49
Unrelated Male	1106	14.12
	7831	

Case Outcome

Case Outcome	No.	%
Guilty	753	57.35
Not Guilty	41	3.12
Withdrawn	519	39.53
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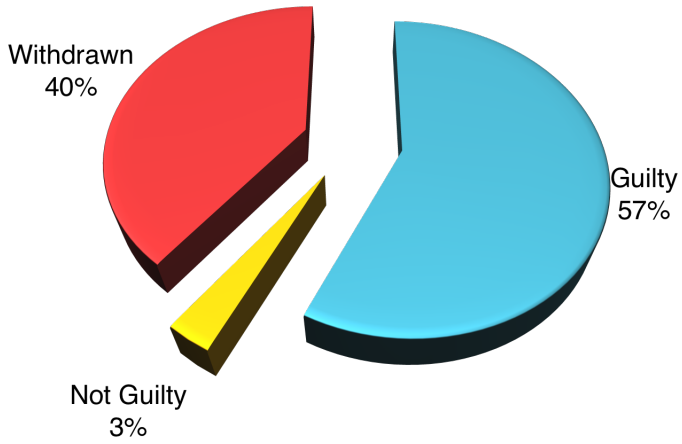

Challenges

- Court Proceedings
  - Discretion of Judge / Magistrate
    - Pretoria High Court ruling 2008
    - Constitutional Court
  - Language used in court
  - Low level of usage of intermediaries
  - Multiple Postponements
- Cases Withdrawn in Court
  - Poor investigation
  - Evidence lost
  - Intimidation of witnesses

Challenges (cont)

- Pre-trial intervention/s
  - Medico Legal
  - ARV's
  - Court Preparation
- Post Trial Intervention/s
  - Safety of witnesses
  - Therapy
    - Socio-Legal Centre

Contact: Gert J Jonker

Chief Executive Officer

Bethany House Trust

Email: gertjonker@childincrisis.org.za

Tel: 011 660 2763 / 082 900 7832

Websites of interest (published research)

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