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ARTICLE



Disclosure of Child Sexual Abuse: A Review of Factors that Impact Proceedings in the Courtroom

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ABSTRACT

The act of disclosure is a key moment in the process of bringing alleged child sexual abuse (CSA) to court and is, therefore, a frequent point of contention for lawyers. Yet no article has systematically addressed the current applied psychological literature regarding the act of disclosure by alleged CSA victims relating to the courtroom process. This is a survey-style literature review, which seeks to establish the factors necessary for academics, practitioners, jurors and policy makers alike to study in order to be fully informed about the domain of CSA disclosure both before and then inside the courtroom. Children often delay disclosing for a long period and this may be affected by specific case characteristics. Lawyers question children about their disclosures in very different ways with both the defence and prosecution utilizing developmentally inappropriate questioning methods to advance their respective arguments. Children also respond differently to the prosecution and defence, with variations in both content and detail provided within their answer. A challenge exists to be able to balance the securing of accurate testimony – especially given developmental differences – with the freedom of defendants to challenge such crucial evidence in the manner of their choice. This article highlights some of the implications of the current system which can effect any optimum assessment of the important process of victim disclosure, both outside and within the courtroom.

KEYWORDS

Child sexual abuse;
developmental psychology;
law; maltreatment; public
policy; disclosure

Introduction

Children's testimony is often the most significant evidence provided in cases of child sexual abuse (CSA), and therefore, has large implications for case outcomes (Myers, Redlich, Goodman, Prizmich, & Imwinkelried, 1999). Often in investigations of CSA, there is a lack of distinct and conclusive physical or medical evidence (Burrows & Powell, 2014; Cossins, Goodman-Delahunty, & O'Brien, 2009), and there are no unique psychological symptoms specific to CSA (Kendall-Tacket, Williams, & Finkelhor, 1993; Poole & Lindsay, 1998; Wood & Wright, 1995). As such, children's disclosure – the way in which children convey that they may have been sexually abused – is a topic frequently addressed by lawyers in the courtroom (Andrews & Lamb, 2016; Stolzenberg & Lyon, 2014).

However, to date, no research has systematically summarized the range of factors that influence children's disclosure of alleged abuse, both in terms of case characteristics and how it is treated by lawyers during criminal trials. Recent investigations concerning the ways in which lawyers question children in courts have examined their respective question types and complexity from a broad perspective, but have not focused on disclosure itself (Andrews & Lamb, 2016; Andrews, Lamb, & Lyon, 2015a; Evans, Lee, & Lyon, 2009). These studies have also been somewhat limited in their scope, in that they did not take into account the strategies and tactics prosecuting and defence lawyers use. Of the few studies that have considered the questioning strategies of lawyers, most have concentrated on the defence and broadly highlighted their attempts to challenge the credibility of the witness by implying the children are either dishonest (Davies, Henderson, & Seymour, 1997; Westcott & Page, 2002; Zajac, O'Neill, & Hayne, 2012) or that their memories are incomplete or inconsistent (Davies, Henderson, & Hanna, 2010; Zydervelt, Zajac, Kaladelfos, & Westera, 2016). Again, these studies only paint broad pictures of how children are questioned and do not focus specifically on the child's act of disclosure.

Despite large amounts of research on disclosure more generally within forensic interviews (Ahern & Lamb, 2016; London, Bruck, Ceci, & Shuman, 2005; Malloy, Brubacher, & Lamb, 2013), little previous research has investigated the way in which children report disclosure. Given its centrality to proceedings in cases of alleged CSA, the handling of such disclosure within the courtroom setting thus merits further attention.

This review represents a survey of the factors that impact how children discuss disclosure before and within the courtroom setting, how they are questioned in court by both the prosecution and defence lawyers, how they subsequently responded, and whether the child's age plays a role in these proceedings.

Method

Search terms

Table 1 presents search terms used. No restrictions were placed on the database search strategies regarding type or source of study, date range, language or publication status.

Database searches

The aforementioned search terms were subject to a TITLE-ABSTRACT-KEYWORD strategy employed within the following databases in January 2017: SCOPUS (all years-present); PsycINFO via Ovid (1806-present); EMBASE via Ovid (1974–2015); WoS (All years-present) and MEDLINE® via Ovid (1946–present).

Additional search strategies

The top four journals¹ identified from the final selection were hand-searched, and publication histories of four key researchers² were searched via their online academic profiles. Full citation searches were also conducted (no date restrictions).

Table 1. Database search terms.

	Child sexual abuse	Testimony	Psychology
	AND	AND	
	Child Sexual Abuse		Psychol*
OR	Child*	Legal	Development*
OR	Young person*	Policy	Age
OR	Abuse	Court*	Memor*
OR	Maltreatment	Disclosure	False memories
OR	Sexual Abuse	Question*	Developmental Limitation*
OR	Sex*	Tactics	Developmental Psychology
OR	Mistreatment	Prosecut*	
OR		Defence	
OR		Attorney*	
OR		Law*	
OR		Question Style	
OR		Cross-examin*	
OR		Jury	

Inclusion/exclusion criteria and structure

Owing to the fact that this article does not intend to be a comprehensive review of all factors affecting children’s courtroom testimony, studies were only included if they either made a specific reference to CSA or which displayed findings that could readily be extrapolated to abuse of a sexual nature that has allegedly occurred to children or young persons below 18 years of age.³ This review also specifically refers to the process of disclosure by children – the ways in which children tell other individuals about the alleged sexual abuse that has occurred, and how lawyers subsequently question them about it. Therefore, studies which did not put any particular emphasis on this particular element of children’s testimony were also omitted from this review. This review is structured in a manner that aims to create the greatest possible focus on, and clarity about, the various factors that are involved in the process of disclosure in cases of CSA.

Factors that impact the process of disclosure pre trial

In trials involving CSA the nature of a child’s disclosure is frequently raised, including to whom the disclosure is made (Shackel, 2009). However, the very nature of such disclosure can render prosecution of such cases problematic. In the frequent absence of other supporting evidence types (Myers, 1992), the perceived strength and reliability of a victim’s testimony can form the sole basis of a decision to prosecute (Smith et al., 2000). From such a prosecution standpoint, therefore, an immediate disclosure of alleged abuse, perhaps to a caregiver but followed up by the involvement of the authorities, is often perceived as an optimum reaction to apparent sexual mistreatment.

However, for a child to make such a disclosure, an event that may evoke a mixture of personal shame, fear and anticipation of negative consequences such as disbelief, stigmatization and blame, must be made public (Browne & Finkelhor, 1986). Many victims of CSA are concerned with the reprisals of suspects or they remain loyal to those abusing them (Moosy, 2009; Srikantiah, 2007). As such, many children are reluctant to disclose abuse, and this commonly results in delays of abuse disclosure and non-disclosure (Kogan, 2004; Skinner, Andrews, & Lamb, 2018; Smith et al., 2000; see Table 2).

Table 2. Patterns of disclosure in community samples – delay and non-disclosure of childhood sex abuse victims.

	Kogan (2004) (<i>n</i> = 263)	Smith et al. (2000) (<i>n</i> = 288)
<24 h	24%	18%
Told within 1 month	19%	9%
Told within 1 year	12%	11%
Delayed telling more than 1 year	19%	47%
Never told before surveys	26%	28%

Table 3. Patterns of disclosure in legal samples – delay and non-disclosure of childhood sex abuse victims.

	Goodman-Brown et al. (2003) (<i>n</i> = 200)	Skinner et al. (2018) (<i>n</i> = 63)
<48 h	42%	21%
>48 h–2 weeks	17%	5%
>2 weeks–1 month	5%	5%
1–6 months	14%	13%
>6 months	15%	54%
Unknown	8%	2%

It is important, as noted by McElvaney (2013), to consider the type of sample being considered when discussing disclosure delays which may lead to discrepancies. For instance, the disproportionately high ‘immediate disclosure’ rate found in Goodman-Brown, Edelstein, Goodman, Jones, and Gordon (2003) legal sample (see Table 3) compared to Kogan’s (2004; see Table 2) community sample raises the question of the representation of delayed disclosers in the legal system. Indeed, the knowledge base that exists within the legal sphere is limited if only a small percentage of the children who experience sexual abuse actually engage with it (McElvaney, 2013). Goodman-Brown et al.’s (2003) findings were in contrast to Skinner et al.’s (2018) legal sample findings – who found that most children took over 6 months to disclose. However, Skinner et al.’s (2018) sample was considerably smaller (*n* = 200 and *n* = 63, respectively), and all cases were referred to the High Court of Scotland, possibly reflecting their increased severity which can affect delays in disclosure, as discussed next.

The picture is further complicated when we find that these delays in children’s disclosure are also affected by specific factors relevant to the child such as their relationship to the perpetrator, their motivations for disclosing, and the type and severity of the abuse they endured (Alaggia, 2004; Alonzo-Proulx & Cyr, 2016). Studies have also found that disclosure delay is associated with age. Older children have been seen as the most ready to disclose their abuse (Keary & Fitzpatrick, 1994; see London et al., 2005 for a review). Younger children are unlikely to make prompt disclosures, especially when abuse is by a family member (Hershkowitz, Horowitz, & Lamb, 2005; London et al., 2005). However, in more recent studies investigating this association, older children were more likely to delay disclosure for a longer period of time (Hershkowitz, Lanes, & Lamb, 2007). This may be due to the increasing awareness of children as they grow older of the taboos and social norms that are breached during acts of sexual abuse, which leads to shame and/or embarrassment that they did not put an end to the abuse.

Relationship to the perpetrator

Children often cite relational barriers as being a source of delay to their disclosure. Children are prone to delay disclosure in the circumstances in which a family or senior figure is involved (Arata, 1998; Goodman-Brown, Goodman-Brown et al., 2003; Kogan, 2004; Sauzier, 1989). In cases of intra-familial abuse, for instance, alleged victims can be conflicted about disclosing potentially damaging facts about the actions of those close to them (Smith et al., 2000). Delays in the disclosure of abuse as a result of children's loyalty are also not uncommon in cases of CSA (Moosy, 2009; Srikantiah, 2007).

Further, younger individuals may still be dependent on the suspect and this dependency reduces the chances of a quick disclosure, or even disclosing at all (Moosy, 2009). Moreover, young victims can also feel that they cannot rely on their parents to support their disclosures, while also distrusting other adults and professionals, which again delays their disclosure (Schaeffer, Leventhal, & Asnes, 2011). One study by Hershkowitz and colleagues (2007) found that over half the children in their sample delayed disclosure for between 1 week and 2 years, and fewer than half initially disclosed abuse to their parents. Therefore, relationships between children and possible disclosure recipients can affect the length of time it takes a child to disclose, and may be an important matter to debate in the courtroom.

Motivations for disclosing and delaying disclosure

Children's motivations to either disclose or delay disclosure of their abuse may be influenced by how suspicions arose (Rush, Lyon, Ahern, & Quas, 2014). This is particularly relevant when considering the extent to which children's verbal reports of abuse, as opposed to information gained from other sources, initiated the legal inquiry (Hershkowitz, Lamb, & Katz, 2014). Previous research, within forensic interviews, has identified several motivations and the effects they have on disclosure of CSA. Hershkowitz and colleagues (2007) found that over 40% of children did not disclose spontaneously, only doing so after an external prompt. Furthermore, 50% of the children in this sample reported negative expectations arising from their disclosure, such as feeling afraid or ashamed of their parents' responses – with over a half of these children delaying disclosure for up to 2 years as a result of their stated motivations (Hershkowitz et al., 2007). Children may also be motivated not to disclose because they feel blamed for the onset of the abuse (Casey, 2015). They may also have negative feelings towards law enforcement and social services as a result of bad past experiences with them (Beckett et al., 2013; Smeaton, 2013).

These findings, however, should be viewed with some caution. The Hershkowitz et al. (2007) study for instance only had a sample of 30 Israeli children with a very limited age range 7–12 year olds ($M = 9.2$ years). None were believed to have been abused by family members and there is ample evidence that children, especially young children, are unlikely to make timely allegations when abused by family members (Hershkowitz et al., 2005; London et al., 2005). Thus, many of the findings reported here have the potential for variation should international or intra-family samples be analysed. In addition, the small sample size made it impossible to explore interactions among relevant factors.

Abuse type and severity

The abuse type and severity of CSA are also associated with having differences in the timings of disclosure (Arata, 1998; Goodman-Brown et al., 2003; Sauzier, 1989; Smith et al., 2000). However, research to date is not definitive on the specific types of abuse and their relationships to disclosure. For instance, Sauzier (1989) found penile-vaginal penetration to be associated with long delays, whereas Smith et al. (2000) found this type of abuse to only be associated with short delays). With reference to abuse severity, Smith et al.'s (2000) national survey study on disclosure delays, corroborated by Arata's (1998) community sample, found an association between the severity of abuse and delays in disclosure. Disclosure tended to be less common with more frequent levels of assault. For instance, Skinner et al. (2018), who measured frequency as a function of single versus multiple abuse within a legal sample, found that when abuse allegedly occurred once, children disclosed in less than 48 hours the majority of the time. Whereas, children who had allegedly been abused multiple times typically delayed disclosure for over 6 months (see Table 4). Arata (1998) also found that prompt disclosure was least common for the types of assaults that produced the greatest psychological distress.

Delays in disclosure are thus both complex and subject to multiple forces and factors (Schaeffer et al., 2011), with differing sample types having profound consequences. However, it seems likely that a child's disclosure process, specifically in terms of time taken to disclose, may depend upon the severity and frequency of abuse, the perpetrators' identities and the children's motivations for disclosing, and in particular their expectations of disclosure recipient reactions. It would, therefore, appear that short periods between the time of abuse and the child's disclosure will be a rarity (Priebea & Svedin, 2008). With this in mind, it is crucial that researchers and practitioners recognize that various situational and developmental factors – cognitive, emotional and social – can compromise the effective participation of young people in legal contexts (Bruck, Ceci, & Principe, 2006; Lamb & Sim, 2013). Regardless of such realities, lawyers will seek to present disclosure evidence to their best advantage in the courtroom.

Factors that affect child disclosure responses

Suggestibility

Children are considered to be susceptible to influence and implicit coercion (Bruck & Ceci, 1999; Goodman & Melinder, 2007). This is particularly relevant when discussing children's courtroom disclosure because sexually abused children typically come into contact with

Table 4. Length of Disclosure Delays and Abuse Frequency (Skinner et al., 2018).

	Single Abuse (<i>n</i> = 19)	Multiple Abuse (<i>n</i> = 44)
<48 h	52.6%	6.8%
>48 h – 6 months	21%	22.7%
>6 months	26.3%	65.9%

Note: *n* = 63.

several individuals from the time of their disclosure up to the moment of testimony. On average children undertake four formal interviews (e.g. with social workers) and two informal interviews (e.g. with a relative) prior to giving testimony in court (Malloy, Lyon, & Quas, 2007). These interactions all provide possible sources of contamination to the children's memory of the abuse (Ahern & Lamb, 2016; Stilling, 2008), and findings have shown that suggestibility only increases over time (Eisen, Goodman, Qin, Davis, & Crayton, 2007; Zaragoza & Lane, 1994). This is likely to be used by defence lawyers to argue that their testimony has been externally influenced.

Indeed research, as summarized succinctly by Stolzenberg and Lyon (2014), has shown how children, especially young children, can be induced to make wrong declarations by techniques including selective reinforcement of the desired response (Garven, Wood, & Malpass, 2000; Garven, Wood, Malpass, & Shaw, 1998), repeated suggestions from parents (Poole & Lindsay, 1995, 2001), negative stereotyping of the suspect (Leichtman & Ceci, 1995), guided visualization of the fictitious event (Ceci, Loftus, Leichtman, & Bruck, 1994) and by their susceptibility to explicit coaching to make false claims (Lyon, Malloy, Quas, & Talwar, 2008; Quas, Davis, Goodman, & Myers, 2007). Lawyers may well suggest these forms of manipulation occurred, and use them as a foundation to imply the child is either lying or being coached, in an attempt to undermine their testimony concerning disclosure.

Of particular pertinence is the role of caregivers due to their often close relationship with the child witness. Caregivers can be accused of giving implicit instructions to their charges if they suspect abuse, through suggestive questioning activities, often delivered inadvertently, and this may well also be a line of exploration by the defence. In particular, it is often argued, when the accused is an ex-partner of the caregiving adult, that this adult may be the point of origin for the allegations being made. It is also likely to be cited as a source for the children being coached in preparation for their discussion of disclosure of abuse in the courtroom (Bala, Mitnick, Trocmé, & Houston, 2007; Green, 1991; Jones & McGraw, 1987).

Question type

It has been demonstrated by previous research that the form and style of the questions that children receive can determine the accuracy of what is actually recalled at the time (e.g. Ceci & Bruck, 1995; Lamb, Sternberg, & Esplin, 1998; Quinn, White, & Santilli, 1989). Questioning tactics are, therefore, important because of their effects on the accuracy and completeness of the resulting descriptions.

Extensive research has also affirmed that more accurate information can be yielded by questioning young children through free recall, rather than recognition memory, and this has been demonstrated in both field studies and in the laboratory (e.g. Dale, Loftus, & Rathbun, 1978; Lamb & Fauchier, 2001; Ornstein, Gordon, & Larus, 1992). This is because most open-ended prompts are formulated as invitations (to 'tell everything that happened') or as directive 'wh-' questions, which concentrate on the disclosed events themselves and request additional elaboration (Andrews, Ahern, Stolzenberg, & Lyon, 2015). In contrast, closed-ended prompts are often structured as simple binary option-posing or contain suggestive

components which can bring in undisclosed information and stimulate affirmation, denial or the choice from the list of the given options only.

Such research also suggests that open question styles produce far fuller and more in-depth accounts from the alleged victims involved, both generally and specifically in relation to disclosure (American Professional Society on the Abuse of Children, 1997, 2012; Memorandum of Good Practice). Indeed, the method of questioning can actually affect the accuracy of the children's recall of events (Bruck & Ceci, 1999; Ceci & Bruck, 1995). It is therefore expected, from a prosecuting lawyer's perspective, that allowing children to answer questions in a fuller and richer manner will foster perceptions of credibility in a child's testimony. Supporting this view, Andrews et al. (2015a) found that prosecutors used significantly more invitational and directive questions, within the 48,716 question-response pairs they examined.

Although there is an understanding in the general public, and by extension jurors, that children are susceptible to suggestion (Quas, Thompson, & Clarke-Stewart, 2005), the subtlety, effects and nature of suggestive questioning techniques are probably not fully appreciated (Stolzenberg & Lyon, 2014). Such a lack of lay knowledge can form a productive basis for defence lawyers to start undermining the children's testimony on disclosure and in exploiting their current developmental limitations. Consequently, defence lawyers typically ask significantly more suggestive questions than prosecuting lawyers (Andrews et al., 2015a; Zajac, Gross, & Hayne, 2003). However, in addition to the widely reported finding that defence lawyers use a high frequency of closed-ended questions (Andrews et al., 2015a), it is important to note that, when questioned about disclosure, prosecuting lawyers also use significant numbers of closed-ended questions (Skinner et al., 2018). The use of closed-ended questions by both the prosecution (in terms of option-posing questions) and the defence (in terms of the use of suggestive questions) thus both contravene now well-established guidelines on how to elicit the most accurate recall during testimony in children (Home Office, 2011; Memorandum of Good Practice).

Age

The child's age at the time of the alleged abuse, and the time they undergo courtroom examination, may also have an important effect on all of the previously discussed factors. It is clear that young children remember fewer details about their experiences than older children and adults (Eisen, Qin, Goodman, & Davis, 2002; Flin, Boon, Knox, & Bull, 1992; Lamb et al., 2003). However, it is important to note that the information retained by young children is equally likely to be as accurate as the information recalled from older individuals (Flin et al., 1992; Goodman & Reed, 1986).

The ability and accuracy of information recalled is profoundly affected by the nature of questions used to elicit that information from memory – as discussed earlier (Bjorklund, Bjorklund, Brown, & Cassel, 1998; Ceci & Bruck, 1995; Waterman, Blades, & Spencer, 2001). Indeed, research suggests that susceptibility to suggestive questions reduces as age increases (Eisen et al., 2002; Jack & Zajac, 2014; Redlich & Goodman, 2003). There are also significant increases in the ability to engage in logical thinking and problem-solving between the ages of approximately 11 and 15 years (e.g. Neimark & Lewis, 1967; Saarni, 1973).

It, therefore, seems likely that due to varying children's linguistic and logical reasoning abilities at the time of questioning and that suggestibility is higher in younger children, that lawyers may ask children different types of questions at different ages (Andrews et al., 2015a). Yet studies found no such significant interactions. Zajac et al. (2003), Stolzenberg and Lyon (2014), and Andrews et al. (2015a) did not identify any significant interactions between the types of questions, used by prosecuting and defence lawyers, and age of the children. It seems in fact that defence lawyers use developmentally inappropriate levels of complexity within their questions at all ages (Skinner et al., 2018).

Question complexity

The complexity of questions is also important given developmental limitations of children and is often associated with certain question types. Suggestive questions have been found to be the most structurally complex question type overall (Andrews & Lamb, 2017). Increased structural complexity can lead to more unresponsiveness, less productivity, more expressions of uncertainty and more self-contradictions by children in their answers (Andrews & Lamb, 2018; Zajac, 2009; Zajac et al., 2003). Question complexity has also been associated with age in that it has been previously found that lawyers did not alter the complexity of their questions in respect of this factor (Andrews & Lamb, 2016). It is, therefore, important to understand how such complexity may impact the children's disclosure testimony, taking into consideration a child's development limitations (Henderson, 2015; Zajac et al., 2012).

Factors that influence lawyer tactics

The prosecution's perspective

For prosecutors, a key tactic can be to downplay delay in disclosure as jurors may well be led to conclude that this correlates with a greater chance of lying (Long, Wilkinson, & Kays, 2011). Further, while jurors may understand that such disclosure delays occur fairly frequently (Gray, 1993), their belief in the veracity of the children's evidence is increased by close proximity between disclosure and the time of abuse, and also the consistency of the story told (Yozwiak, Golding, & Marsil, 2004). It is, therefore, important for the prosecuting lawyer to build the credibility of a children's testimony in the eyes of the jurors.

In some cases, overt threats are made by abusers, telling the child not to disclose (Elliott, Browne, & Kilcoyne, 1995; Smallbone & Wortley, 2001), and in 27–33% of criminal cases, children recall these overt threats (Gray, 1993; Smith & Elstein, 1993). Such overt threats provide evidence in a form jurors are stereotypically likely to expect from CSA (Zydevelt et al., 2016), and therefore, may be convincing for them when explaining delays in disclosure during direct-examination.

The defence perspective

The casting of doubt in the minds of jurors, through techniques such as suggesting alternative versions of events, is a key component of cross-examination with the

resulting pressure on witnesses that this involves (Davies et al., 1997). The defence may put forward the argument that the report is false (Stolzenberg & Lyon, 2014) and may also examine how undue influence may have been placed on the children, thus creating the possibility in the minds of a jury that the child is either lying, or falsely believes that abuse occurred. Such accusations will also be facilitated through greater proportions of directive and suggestive questions (Stolzenberg & Lyon, 2014), utilizing the question type effects discussed before.

Such arguments aimed at the children's suggestibility may also lead them to investigate what disclosure recipients have said to the children. This would include probing their first disclosure, in addition to the multitude of disclosures and interactions that follow, and the preceding direct-examination. Defence lawyers may attempt to show that the children's testimony about abuse evolved or has changed over time. This is a line of inquiry which is likely to be effective when taking into account children's suggestibility characteristics. Such questioning tactics are in fact even advised within practice guides for defence lawyers representing CSA suspects (Stilling, 2008), and juries are often receptive to such claims of suggestibility (Myers, 1994).

A study that specifically considered cross-examination strategies was conducted by Westcott and Page (2002), who identified several major themes. Firstly, the children may be portrayed as 'un-childlike', with the lawyer stating their relationship history, sexual experience and knowledge. Secondly, via references to previous delinquent behaviour for example, they may be depicted as less than innocent. Thirdly, it may be suggested that the acts occur at the children's behest. Finally, children can easily be shown by a skilful adult to appear unreliable, inaccurate or deceitful. However, this has not been applied to matters relating to disclosure, a gap that this study seeks to address.

All of these factors are presented by the defence in a credibility-challenging (Szojka, Andrews, Lamb, Stolzenberg, & Lyon, 2017) and confrontational manner (Eastwood & Patton, 2002; Wade, 2002), and may be framed within questions of complexity often beyond the developmental capabilities of the children (Zajac et al., 2003).

Common factors

Questioning children in an overtly accusatory manner (i.e. through suggestions of lying) can put children at risk of re-traumatization (Rouhanian, 2017). Children often state that 'telling the truth but not being believed' is extremely stressful (Yamamoto, Solman, Parsons, & Davies, 1987) and may lead children to provide inaccurate responses or agree with suggestions that they are lying in order to simply end questioning (Schuman, Bala, & Lee, 1999). With this in mind, and the fact jurors commonly put emphasis on consistency when evaluating testimony (Bruer & Pozzulo, 2014; Myers et al., 1999; Semmler & Brewer, 2002), such self-contradictory responses, as a result of closed-ended questioning and accusations of lying, may diminish children's testimonial credibility with implications for case outcomes (Home Office, 2011, section 2.214).

Factors that affect children's responses in the courtroom

Children's responsiveness and productivity in court

The responsiveness and productivity of children's response shows us how willing children are to acknowledge and attempt to engage with the questions being posed, while also providing an indication of the amount children elaborated in response to a question (i.e. provided more information than was requested). These results may well form a source from which to form assumptions concerning how comfortable the children are in the courtroom and how effective the questions are of a particular lawyer type.

Both Andrews and colleagues (Andrews et al., 2015a) and Klemfuss and colleagues (Klemfuss, Quas, & Lyon, 2014) found that child witnesses were more responsive than unresponsive within the courtroom. In terms of how children responded to lawyer type, children were found to be more responsive to prosecuting lawyers than defence lawyers (Andrews et al., 2015a; Andrews, Lamb, & Lyon, 2015b; Klemfuss et al., 2014), with this increasing as a function of age.

Skinner and colleagues (Skinner et al., 2018) also found that as the children's age increased, the number of details they provided, within responses to the prosecuting lawyer, increased. However, no such increase in the children's answer productivity to defence lawyers' questions occurred with increasing child age, with all answers being comparatively less productive than when under direct-examination. This counters the view that older children are simply developmentally more capable in dealing with courtroom stresses as an explanation for varied response details (Paz-Alonso & Goodman, 2016). This further brings into question the negative outcomes engendered by the suggestive questioning used by defence lawyers in these cases.

Child contradictions

Child contradictions during courtroom examinations are common. Andrews et al. (2015a) found that 95% of the cases they studied contained a self-contradiction. Self-contradictions are seen within direct-examination, with 86% of cases containing at least one contradiction in Andrews et al.'s (2015a) sample. However, significantly more self-contradictions were elicited during cross-examination (594 compared to 379 within direct-examination).

Andrews et al. (2015a) also showed that suggestive questions elicited the most self-contradictions, regardless of age. This seems a likely explanation as to why it is that defence lawyers elicit more self-contradictions in children (Skinner et al., 2018). Several analogue laboratory studies also found children were most likely to alter their correct answers when cross-examined suggestively (Fogliati & Bussey, 2014; Jack & Zajac, 2014). This may be due to the direct approach defence lawyers took when overtly accusing children of being coached and lying, which can be particularly traumatizing for young persons and impact upon their testimony in the courtroom (Hayes & Bunting, 2013). The fact that children contradict themselves within therapy contexts very little when disclosing about CSA further highlight the challenges and pressures that are exerted on children within the court setting (O'Donohue et al., 2013).

Courtroom contradictions of children when testifying are a well-researched area (Fisher, Brewer, & Mitchell, 2009). This is due to the likelihood that contradictory answers diminish children's testimonial credibility (Home Office, 2011, section 2.214). However, research implies that children, regardless of age (Skinner et al., 2018), struggle to provide thoroughly consistent testimony regarding their disclosure within cross-examination. They often change details in their accounts and thus respond inconsistently, either by incorporating suggested information or acquiescing to perceived questioner coercion (London & Kulkofsky, 2010).

Implications

There are juror educational implications that result from this review. Children commonly state that they delayed disclosing abuse for over 6 months. Therefore, the belief, potentially held by jurors that genuine assault would be reported to authorities immediately, does not seem to fit the realities of children's disclosure processes of CSA (Wheatcroft & Walklate, 2014). As such, it is recommended that juries could in future be made aware that such delays and failures of disclosure are in fact common and to be expected of CSA cases (McElvaney, 2013).

This review has also highlighted, in addition to the widely reported finding that defence lawyers use a high frequency of closed-ended questions (Andrews et al., 2015a), that prosecutors also use significant numbers of closed-ended questions when questioning about disclosure. The use of closed-ended questions by both the prosecution (in terms of option-posing questions) and the defence (in terms of the use of suggestive questions) thus both contravene now well-established guidelines on how to elicit the most accurate recall during testimony in children and diminish their ability to provide evidence to the best of their ability (Home Office, 2011; Memorandum of Good Practise).

Moreover, questioning children in an overtly accusatory manner (i.e. through suggestions of lying) can put children at risk of re-traumatization (Rouhanian, 2017). Children often state that 'telling the truth but not being believed' is extremely stressful (Yamamoto et al., 1987) and may lead children to provide inaccurate responses or agree with suggestions that they are lying in order to simply end questioning (Schuman et al., 1999). With this in mind, and the fact jurors commonly put emphasis on report consistency when evaluating testimony (Bruer & Pozzulo, 2014; Myers et al., 1999; Semmler & Brewer, 2002), which may be diminished, for example, by self-contradictory responses prompted by closed-ended questioning, accusations of lying, or age-related developmental limitations lawyer exploit – it becomes clear that increasing juror understanding of the tactics employed by lawyers, and the how they affect report consistency, may better inform perceptions of testimonial credibility.

Furthermore, current policies regarding age-appropriate courtroom procedures (Crown Prosecution Service, 2006, pp. 16–17) specify that questions in court should be age matched, requiring that prosecuting and defence lawyers are to question children differently from adults. This recognizes that older children have greater understanding of both the structure of language and the intentions that lie between the use of speech (Szojka et al., 2017; Paz-Alonso & Goodman, 2015). Findings from the research outlined in this review have highlighted that the prosecuting lawyers are sensitive to the

children's age in some respects (i.e. the complexity of their questions). However, across most aspects of questioning, lawyers did not alter their behaviour in relation to the children's age. This represents another area in which best-practice testimony extraction guidelines are contravened. Therefore, it is suggested that both prosecutors and defence lawyer questioning strategies may need to be challenged, possibly by the judge at the time of sitting, if developmentally proven approaches to examination of children, as suggested within such guidelines (American Professional Society on the Abuse of Children, 2012; Home Office, 2011; section 3.44; Lamb, Malloy, Hershkowitz, & La Rooy, 2015; Spencer & Lamb, 2012), are to be effectively implemented within the courtroom.

However, this may be a difficult feat to accomplish. The qualitative results from Skinner and colleagues (Skinner et al., 2018) research suggest that the areas of testimony challenged are in similar categories – Plausibility, Credibility, Reliability, Consistency – and thus both lawyer types sought to use their techniques to achieve similar ends. This creates a potential interlocked web of arguments. The jury and judiciary are, therefore, subjected to different, but similarly developmentally inappropriate, lines of questioning of the alleged victim which poses serious questions for educational programmes and systematically regulated interventions from the judiciary while in session.

Perhaps then, the balance between the defendants right to a fair trial is not found by more rigidly enforcing questioning guidelines. Such guidelines are in place, but seemingly not used. Rather, it seems most prudent to invest in specialist intermediaries who inform jurors of subsequent behaviours and communicative nuisances in children following possible abuse. This helps reduce preconceived notions of how children would act if abuse occurred and crushes stereotypes typically associated with certain case characteristics.

As mentioned earlier, juror education is widely cited as an area that needs addressing. But updating every set of jurors across the spectrum of developmental limitations often seen in court may not be the most effective method, both financially and for achieving 'fair' case outcomes. The use of qualified intermediaries when considered most appropriate, perhaps by the judiciary, would seem to be most efficient solution. This would also not limit the practices of lawyers nor directly amend the freedom of child witnesses to express how they disclosed alleged CSA. Rather, it would create access to current, updateable, information on how children's developmental status may interact with lawyer tactics, and thus deliver the desired outcome: the most accurate possible interpretation of the evidence given.

Limitations

It is important to note the specific scope of this review. As stated at the outset, this did not intend to be an all-encompassing review of the factors affecting children's testimony. Rather it focused on the range of factors that influence children's disclosure of alleged sexual abuse, in terms of case characteristics, and how it is treated by lawyers during criminal trials.

There are, of course, further factors which may affect and underlie children's abilities within the courtroom. Some of this have been covered by the considerable literature concerning developmental factors that also affect child victims within legal and forensic

contexts (e.g. Lamb & Sim, 2013), and which includes memory, communicative skills, social orientation, cognitive development and peer influence in depth. The approach of this article thus has the capability to be taken forward through the analysis of the aforementioned additional factors. Further, this might entail its diversification into fields that involve adults with learning deficits, for instance. This population would merit special development attention in similar circumstances of disclosure and sexual abuse.

Conclusion

This article systematically addressed the current applied psychological literature surrounding CSA disclosure within the courtroom. It is now widely accepted that gathering evidence from young and vulnerable witnesses requires special consideration, and that subjecting them to the traditional adversarial form of examination and cross-examination does not result in optimum outcomes (Andrews & Lamb, 2018). Taken together, the factors outlined in this review continue to raise questions about the appropriateness of the ways in which children are typically questioned in court and highlights the various issues of children discussing their disclosure in cases of alleged CSA. Further research is thus warranted into how factors may impact actual cases of CSA, including broadening any studies to include other subgroups who may require special circumstances such as autistic individuals, and how the resulting implications can be best handled by all parties including lawyers, the judiciary and jurors.

Notes

1. Child Abuse and Neglect; Child Maltreatment; Legal and Criminological Psychology; Psychology, Crime & Law.
2. Michael E. Lamb (University of Cambridge, UK), Thomas D. Lyon (University of Southern California, USA), Yael Orbach (National Institute of Child Health and Human Development, USA), Irit Hershkowitz (University of Haifa, Israel).
3. For more broad overviews on these factors please see: Lamb, M. E., La Rooy, D., Katz, C., & Malloy, L. C. (2011). *Children's Testimony: A Handbook of Psychological Research and Forensic Practise*. Hoboken, United States John Wiley and Sons Ltd.

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