When psychological science fails to be heard: the lack of evidence-based arguments in a ministerial report on child sexual abuse

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One of the most debated issues in relation to child sexual abuse (CSA) is whether there should be a limitation period for prosecutions. In 2017 a French ministerial report was released proposing extension of the limitation period in part because of the sometimes long delay between the alleged events and the disclosure of the abuse. For this, the report relied on dissociative amnesia. It also advocated for the development of child victim interview protocols by victim associations. We show that dissociative amnesia is not consensual within the scientific community. Instead, we recommend scientifically reliable cognitive principles to explain the lack of memory. Moreover, interviewing techniques for children have already been designed by memory researchers to enhance recall and report of CSA, from which any uncontrolled deviation might put the child's testimony at risk. We conclude by advocating for the use of evidence-based psychology, and for co-operation between practitioners, judges and researchers.

KEYWORDS: adolescent victims; child victims; cognitive interview; child sexual abuse; dissociative amnesia; evidence-based practice; interviewing technique; limitation period; National Institute of Child Health and Human Development protocol; traumatic memory.

Criminal cases are often complex, especially when they involve child victims and witnesses. Decades of research have shown that testimony can easily be infected by various factors leading to false memories (see Loftus, 2005; Wells, Steblay, & Dysart, 2012). In fact, it turns out that erroneous testimony by eyewitnesses is a major cause of wrongful convictions (Innocence Project, 2015). Legal practitioners—for instance, judges, investigators, attorneys or jurors—appear to have limited knowledge about how memory works (e.g. Benton, Ross, Bradshaw, Thomas, & Bradshaw, 2006; Chaplin & Shaw, 2016; Dodier & Payoux, 2017; Kask, 2011;

Magnussen et al., 2006; Magnussen & Melinder, 2012; Wise & Safer, 2004; Wise, Safer, & Maro, 2011). That is why legal and forensic psychology and psychiatry can be useful to public policies in order to promote legal reforms and reduce the potential for error by courts. One of the most debated reforms in Western justice systems is the limitation period applicable to child sexual abuse (CSA) cases. This issue is a strong matter of concern for justice. While CSA disclosed decades after the alleged assault is difficult, if not sometimes impossible, to prove because such cases generally rely on testimony that is seldom supported by physical and/or scientific evidence

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(Finkelhor, Turner, Ormrod, & Hamby, 2013), it may take several years for victims to disclose an abuse and to file a complaint (e.g. Goodman et al., 2003). Because of the latter issue, on 10 April 2017, the French Ministry for Families, Childhood and Women Rights published a report headed by Flament and Calmettes and aimed at building consensus on the limitation period applicable to CSA cases—which currently is 20 years, starting from 18 years old (i.e. until the alleged victim is 38 years old). The report suggests extension of this period to 30 years, starting from 18 years old (i.e. until the alleged victim is 48 years old). This extension would be aimed at reaching the limitation period applicable to, for instance, terrorism-related crimes, and would ‘allow the victims to have adequate time to disclose the abuses, would increase the number of complaints, and, eventually, the number of convictions’ (Flament & Calmettes, 2017, p. 14, our translation). As an introductory note, this question of lengthening the limitation period for CSA is mainly a legal issue and is not discussed in the present article. However, it is our view that this report includes controversial elements (e.g. dissociative amnesia is used to explain why alleged victims take many years to disclose a case of CSA, Flament & Calmettes, 2017, p. 8) and neglects what already exists in the scientific literature as well as in the field (i.e. child witness investigative interview protocols, Flament & Calmettes, 2017, pp. 21–22). In this article, we show how the scientific community sometimes fails to make its voice heard, making this issue not specific to France (see, for instance, the opposition between United States researchers and the judicial system on the adoption of evidence-based interrogation techniques, Kelly & Meissner, 2015; or the use of the polygraph-tests in several European countries despite the high scepticism of researchers working in the area of lie detection, Meijer & van Koppen, 2008).

First, we describe dissociative amnesia and briefly review the ‘recovered-memory debate’,

with the conclusion that dissociative amnesia is not sufficiently evidence based to be used as a rationale to release any legal reform. Secondly, we propose examples of scientifically supported alternatives to dissociative amnesia for both children and adolescents for memory impairment related to CSA cases. Thirdly, we provide several recommendations to help victims to disclose and recall alleged cases of CSA during investigative interviews. Fourth and finally, we conclude, identifying the importance of considering scientific evidence instead of psychological folklore in public policy when it relates to CSA.

Does dissociative amnesia exist?

The *Diagnostic and Statistical Manual of Mental Disorders—Fifth Edition* (DSM–5) describes dissociative amnesia as ‘an inability to recall important autobiographical information, usually of a traumatic or stressful nature, that is inconsistent with ordinary forgetting’ (American Psychiatric Association, 2013). This definition refers to the trauma model (TM), which considers trauma at early ages as a key causal factor in an outbreak and development of mental disorders such as dissociation (see Dalenberg et al., 2012, for a complete review). According to the TM, dissociated people easily forget painful and traumatic events as a coping strategy to bypass the negative impact of experiencing a trauma on general well-being (e.g. Gershuny & Thayer, 1999). However, they can later recover those repressed memories without significant loss in accuracy (Dalenberg et al., 2012). Several authors (e.g. Bremner, 2010; Dalenberg et al., 2012) argue that this view is supported by empirical studies conducted with (alleged) victims of CSA who claimed complete memory loss for the traumatic event before recovering the memory (e.g. Dalenberg, 1996; Williams, 1995) or by research associating post-traumatic stress disorder (PTSD) with self-reported amnesia (e.g. Bremner, et al., 1992). Dissociative amnesia

seems to be a meaningful explanation for the delay between alleged CSA and its disclosure as stated in the governmental report mentioned above (Flament & Calmettes, 2017). The main argument is that because it is likely that alleged victims forgot the event before recovering this painful memory many years later, the limitation period should be extended. However, this view has been strongly criticised by memory researchers (e.g. Giesbrecht, Lynn, Lilienfeld, & Merckelbach, 2008, 2010; Loftus, Joslyn, & Polage, 1998; Lynn et al., 2014; Lynn, Lilienfeld, Merckelbach, Giesbrecht, & van der Kloet, 2012; McNally, 2003), who rely on the literature stressing the lack of scientific and empirical support for the clinical assumption of avoidance processes resulting in amnesia for traumatic events (e.g. McNally, 2004; McNally & Geraerts, 2009; Piper, Pope, & Borowiecki, 2000; Pope, Oliva, & Hudson, 1999). According to these authors, the studies supporting the TM include methodological issues making it difficult to conclude the existence of dissociative amnesia. For instance, Lynn et al. (2014) concluded that many of the TM studies jump from correlational results to causal conclusions too easily and that other TM authors would interpret self-reported amnesia as evidence for dissociative amnesia. Similarly, Giesbrecht et al. (2010) pointed out the fact that self-reported amnesia does not of itself indicate that the amnesia is genuine. Arguably, dissociative amnesia theorists tend to neglect several indicators of reliability of scientific outcomes (e.g. the distinction between correlation and causation, the weakness of self-reported experiences as evidence that are not corroborated) in ways that confirm their assumptions regarding the likelihood of forgetting traumatic memories. On the contrary, it turns out that traumatic events are generally particularly well remembered (Goodman et al., 2003; Porter & Birt, 2001) and that there is a positive relationship between the seriousness of the abuse and the vividness of the related

memory (Alexander et al., 2005). Furthermore, people with a high susceptibility to dissociative states during traumatic events seem particularly prone to memory distortions (Giesbrecht et al., 2008; Porter, Birt, Yuille, & Lehman, 2000). In most cases of memory impairment consequent upon a traumatic experience, ordinary memory processes are satisfactory explanations (see below). Despite the quite provocative title of the current section, our purpose is not to claim that dissociative amnesia does not exist. Rather, it is to stress that dissociative amnesia does not have sufficient empirical and scientific support to conclude that it does exist.

To conclude this section, the underlying risk associated with spreading the idea of dissociative amnesia is that it may convince people suffering from mental disorders such as dissociation or PTSD that traumatic memories are buried in their mind and that they should rely on methods such as regression therapy, hypnosis, guided imagery or any other recovered memory therapy to bring them to the surface. Yet, these methods are highly suggestive and may result in false memories for rich and complex CSA events (e.g. Giesbrecht et al., 2008; McNally & Geraerts, 2009; Loftus et al., 1998; Lynn et al., 2014). For this reason and the others mentioned above, dissociative amnesia should not be considered as a proven memory phenomenon and be found within a governmental report as well as in, for example, expert witness testimony.

Evidence-based explanations for memory mechanisms related to CSA

In respect of CSA, the fact that dissociative amnesia is not sufficiently supported by scientific evidence does not mean that young victims cannot forget the abuse before remembering it sometimes years later, and that these memories are necessarily false. Several authors have concluded that some recovered memories are authentic. In CSA cases, it may be that the abuse was not experienced at the

time as a trauma (Clancy & McNally, 2005/2006). Despite that, CSA is morally blameworthy and punishable by law. One reason is that children are sometimes too young to perceive the sexual nature of the abuse (Joslyn, Carlin, & Loftus, 1997; Loftus, Joslyn, & Polage, 1998; McNally & Geraerts, 2009), this being influenced by the fact that young children generally know very little, or even nothing, about sex (Brilleslijper-Kater & Baartman, 2000). Therefore, the event may be experienced as 'weird, confusing, and uncomfortable' (McNally & Geraerts, 2009, p. 129) but not as traumatic. However, many years later, if a cue-reminder (e.g. hearing about the perpetrator) makes the memory of the CSA accessible to retrieval, the event will then be likely to be interpreted as a non-consensual sexual experience causative of psychological distress (McNally & Geraerts, 2009).

Although (very) young children can forget dramatic experiences such as sexual abuse because they don't understand the sexual nature of the conduct, this assumption is rather inappropriate with adolescent victims of CSA. Indeed, adolescents present developed knowledge about sex in general (Drennan, Hyde, & Howlett, 2009), and greater knowledge of their genital anatomy than young children, and also have better abilities in describing sexual abuse (Milam & Nugent, 2017). However, they are not immune to memory impairment following a CSA. The report (Flament & Calmettes, 2017) claims that 'the dissociative state may sometimes make the victim's statement unstructured, if not inconsistent, in ways that the victim may be not believed' (p. 9, our translation). We do agree that traumatic events experienced by older children may result in memory reports tainted with memory loss, inconsistencies, errors and confabulations. However, in view of the weakness of evidence regarding dissociative amnesia, we suggest dismissal of this explanation. Instead, and especially for juveniles with advanced cognitive abilities in attentional control (i.e. adolescents), we recommend exploration of the model

advocated by Deffenbacher and colleagues (Deffenbacher, 1994; Deffenbacher, Bornstein, Penrod, & McGorty, 2004). This model states that stressful events (e.g. witnessing or being victim of a crime) trigger an activation mode of attentional control, physically characterised by a somatic anxiety (i.e. increases in heart rate, blood pressure and muscle tone). Increases in stress response would be moderately beneficial for memory performance because they would lead to greater attention to details that promote understanding the event. However, further increases would lead to a major deterioration in memory performance because attention would then be focused on aspects of the event that are relevant to acute stress management strategies. This model was supported by a meta-analysis showing that acute stress has a negative impact on memory accuracy (Deffenbacher et al., 2004).

Of course, the fact remains that other factors unrelated to memory mechanisms may play a pivotal role in the delay between a CSA and its disclosure when the victim is an adolescent. For instance, recent research has shown that the likelihood of disclosure of CSA increases among children until the age of 11 before it drops continuously until the age of 16 (Leach, Powell, Sharman, & Anglim, 2017). Several reasons for this observation are advanced in the literature: (a) Adolescents would be more ashamed to disclose a CSA than younger children (London, Bruck, Ceci, & Shuman, 2007); (b) they would experience more fear of reprisals from the perpetrator(s) than young children (Goodman-Brown, Edelstein, Goodman, Jones, & Gordon, 2003; Malloy, Brubacher, & Lamb, 2011); and finally, (c) they would not consider some abuses as CSA (Bunting, 2008).

In sum, what may look like dissociative amnesia for sexual abuse that occurred at an early age might be 'simple' forgetting or a deliberate attempt to avoid traumatic memories, while unstructured, erroneous and inconsistent testimony at more advanced ages might be related to the relationship between acute

stress and memory, if not related to an intentional silence due to shame or fear.

Some recommendations on helping victims to remember and disclose an alleged case of CSA

The governmental report (Flament & Calmettes, 2017) provides interesting recommendations such as informing children and adults about CSA, and strengthening medical monitoring for CSA victims (pp. 21–22). However, some other recommendations illustrate the lack of communication between memory researchers and public authorities. The fifth and sixth recommendations underline ‘the necessity of promoting a proactive approach to gather and listen to the testimony of the child victim’ (Flament & Calmettes, 2017, p. 16, our translation). More precisely, the report recommends development of an ‘investigative interview protocol designed especially for children’ (Flament & Calmettes, 2017, p. 22, our translation). It mentions point 17 in the French inter-ministerial plan of mobilisation and fight against violence against children, which suggests that the development of an evidence-based interviewing method—on the basis of the National Institute of Child Health and Human Development (NICHD) interviewing method—could be achieved by a federation of associations dedicated to victims. These recommendations attract our attention at two levels.

First, standardised child victim interview protocols do already exist, and they have at least one common objective—that is, to encourage the disclosure. The NICHD interview method has been developed and tested for years by memory researchers to ensure best practice in CSA cases (Brown et al., 2013; Cyr & Lamb, 2009; Hershkowitz, Fisher, Lamb, & Horowitz, 2007). This protocol is based on a four-phase structure. The first step of this protocol is aimed at building a

rapprochement with the young witness by establishing a relationship of trust between him or her and the interviewer. Then, the interviewer gives the child a clear explanation of the social ground rules (e.g. promoting the ‘I don’t know’ response and avoiding guesswork) and the legal requirements and finally explains the importance of telling the truth. This phase also includes a narrative practice in order to (a) prepare the child for an open-question style, and (b) to assess his or her cognitive development. Next, the young witness is invited to recall freely what he or she experienced before the interviewer asks questions (i.e. open-ended and then specific prompts), only when the young person has finished his or her recall. Finally, the interviewer thanks him or her for all the information provided. Noteworthy, this protocol has been adapted in France (Cyr, 2014; Cyr & Lamb, 2009). We fail to understand why this protocol should be changed in any way, as it has been carefully calibrated to avoid any suggestive prompts and increase as much as possible reliable recalls from children. Moreover, we remain sceptical as to the expertise a federation of children victim associations may have concerning eyewitness memory and child and adolescent interview techniques. In cases where a child or an adolescent encounters difficulties in retrieving information from their memory, the cognitive interview (CI) may be used. This protocol is the most efficient investigative interview protocol as it is based on the same four structures as the NICHD protocol, but also because it includes retrieval strategies, whose purpose is to help victims and witnesses to retrieve information that is initially difficult to access. Originally developed for adult witnesses (Fisher & Geiselman, 1992), memory researchers designed retrieval strategies especially for children, which have proven to be very effective with children aged four to nine years of age (Verkampt & Ginet, 2010; Verkampt, Ginet, & Colomb, 2014). The NICHD protocol and the CI have been the subject of extensive research conducted by

memory specialists, and it is our view that investigators should rely on these instead of using a protocol developed by non-memory experts. Besides, it appears that both the NICHD protocol and the CI may be helpful to deal with issues developed in the section ‘Evidence-based explanations for memory mechanisms related to CSA’ of the present article, in ways that are designed to help children and adolescents to disclose alleged abuse and/or to retrieve difficult memories. Notably, since only the CI includes retrieval strategies, its use should be promoted for memory-sensitive cases.

Second, while we applaud the report’s recommendation on the development of investigators’ training in child victim interviews, we must indicate that it does already exist in France (Berthet & Monnot, 2007). Of course, not all investigators have completed a training course on how to interview child witnesses, and it is very likely that alleged child victims are sometimes interviewed by untrained investigators. However, the way this recommendation is formulated (i.e. ‘Developing “professional’s” training in how to interview child witnesses’, Flament & Calmettes, 2017, p. 21, our translation) may suggest that such training courses do not exist. One could interpret this as failing to take properly into account the efforts police forces have made and still make on this issue, and the existing partnerships between academics and trainers.

Discussion and conclusion

The report that is the subject of comment in this article is very important, since it purports to represent a consensus on a legal issue. However, as explained above, the psychological explanations used in the document are not the subject of any form of consensus in the scientific literature. The report advocates the use of dissociative amnesia, which has been questioned in this article, and the creation of

interviewing methods specific to CSA when such methods already exist. We recommend a critical approach.

One may think that resort to science is not necessary, since it is not the subject of the report. For example, the fact that the report relies on dissociative amnesia is only a means to an end (i.e. delaying the limitation period applicable to CSA). But does that mean that any explanation can be used to support a court’s decision? We believe that official reports such as the one by Flament and Calmettes (2017) should rely, as much as possible, on evidence-based practice (EBP), which asks practitioners to take decisions based on the best available evidence, but also on its findings and potential applications (Thyer & Pignotti, 2011). As mentioned previously, memory research has shown that dissociative amnesia is not the best diagnostic a practitioner can use. The report, in this case, lacks critical thinking and relies on the allegations of clinical practitioners interviewed during its construction.

There is constant scepticism emerging from the clinical field concerning EBP, as it is not always welcomed with open arms (Baker, McFall, & Shoham, 2008; Lilienfeld, Ritschel, Lynn, Cautin, & Latzman, 2013). There are a few reasons for this. For instance, clinical practitioners may have trouble moving on from established practice traditions to EBP methods (Chaffin & Friedrich, 2004). In addition, the EBP perspective is often regarded as cold and blunt (Gallo & Barlow, 2012; Nelson, Steele, & Mize, 2006). Another reason for the resistance to EBP can be found in the old-established but still very active idea that clinical psychology has to be individualised, and specialised to the patient, and cannot rely on group probabilities (Dawes, Faust, & Meehl, 1989; Meehl, 1954; Rozas & Grady, 2011; Webb, 2001). These considerations highlight a general misunderstanding of what constitutes EBP, but also mirror the ever growing ‘scientist–practitioner gap’ (Baker,

McFall, & Shoham, 2008; Fox, 1996; Luebbe, Radcliffe, Callands, Green, & Thorn, 2007).

This gap may lead to ‘evidence-informed’ or ‘evidence-suggested’ approaches to clinical matters, which are still different from EBP. These can be defined as ‘practice based on lower levels of evidence, such as quasi-experimental studies or case studies’ (Chaffin & Friedrich, 2004). In this particular case, the call for dissociative amnesia relies on evidence-suggested practices. For instance, some studies show correlations between a traumatic event and self-reported amnesia or forgetting. However, as noted earlier, there is no causality. A critical mind is thus to be adopted concerning dissociative amnesia if one does not wish to support dangerous suggestive or potentially harmful therapies (see Table 1 of Lilienfeld, 2007, p. 58, for a list of potentially harmful therapies, in which appear dissociative identity-disorder-oriented therapies and recovered-memories techniques). These practices, in conjunction with the resistance towards EBP, are potentially dangerous, as they give credit to pseudoscientific and unscientific practices (Lilienfeld, Lynn, & Lohr, 2014).

In our opinion, the report falls into the trap of popular beliefs about how memory for traumatic events works (e.g. Magnussen et al., 2006; Patihis, Ho, Tingen, Lilienfeld, & Loftus, 2014). This might have serious consequences, such as result in the contamination of genuine statements by inappropriate interview strategies intended to bring to the surface repressed memories or, in the worst case scenario, generate false memories for CSA events. By providing recommendations regarding tools and practices that already exist (i.e. child witness investigative interview protocols and their related professional training programmes), the report also fails to take properly into account the state of the art in forensic psychology research. If they rely on evidence-suggested data, such governmental reports may hamper the efforts of the scientific community to promote EBP (Herschell, McNeil, & McNeil, 2004; Siev, Huppert, & Chambless,

2009). Therefore, we strongly advocate for a partnership between judicial authorities, practitioners and researchers, as this would allow each field to provide its expertise, and thus enhance the quality of future reports.

Acknowledgements

The authors would like to thank Samuel Demarchi for his constructive comments on the manuscript.

Ethical standards

Declaration of conflicts of interest

Olivier Dodier has declared no conflicts of interest

Frédéric Tomas has declared no conflicts of interest

Ethical approval

This article does not contain any studies with human participants or animals performed by any of the authors.

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