Prosecutors' Perceptions on Questioning Children about Repeated Abuse

Martine B. Powell^a, Kimberlee S. Burrows^a, Sonja P. Brubacher^a and Kim P. Roberts^b

^aCentre for Investigative Interviewing, Deakin University, Geelong, Victoria, Australia; ^bDepartment of Psychology, Wilfred Laurier University, Waterloo, ON, Canada

The purpose of this study is to elicit guidance from prosecutors across Australia on questioning children about repeated events. Two focus groups were conducted. The first sought broad feedback concerning questioning children about repeated events. The second focused more specifically on eliciting feedback about techniques for aiding children in describing specific instances of repeated events. The techniques used are derived from a combination of empirical research and best practice interview guidelines. Data from both focus groups were compiled because themes were highly similar. Thematic analysis of the focus group discussions revealed three broad themes in prosecutors' perceptions about questioning children about repeated abuse: a) permitting children to provide a full generic account before describing individual episodes of abuse, b) using the information obtained during the generic account to create episode labels, and c) probing incidences of abuse chronologically. These themes are discussed within the context of the child development and mnemonic literature, and implications for interviewing protocols are drawn.

Key words: investigative interviewing; child witness; child sexual assault; evidence.

Introduction

Child sexual abuse (CSA) affects millions of children worldwide (World Health Organization, 1999). Estimates of the prevalence of CSA in developed countries range from 10% to 36% (Australian Institute of Family Studies, 2013). National prevalence data suggest that at least half of all reported CSA cases involve multiple incidents (Public Health Agency of Canada, 2010). In such cases, many international jurisdictions require the prosecution to provide particulars; that is, to identify each charged offence with reference to time, place, or some other contextual detail, distinguishing offences from one another such that it is clear which act forms the basis of each charge (*Podirsky v. R.*, 1990; *R. v. B. [G.]*, 1990; *S. v. R.*, 1989). This

requirement is necessary to ensure the fairness of proceedings – specifically, so that the defendant has the opportunity to provide an adequate defence against the charges and the court can reach a just verdict and appropriate sentence. A primary problem in the prosecution of CSA cases with repeated instances of abuse relates to the inadequate particularisation of sex offences (Victorian Law Reform Commission, 2004).

In some cases it has been concluded that a combination of factors (e.g. very young age, high frequency of alleged acts, suspect living in the home with continual access to the child; *People v. Jones*, 1990) makes it unrealistic for a child to provide particulars. Similarly, in some jurisdictions, crimes of *continuous sexual abuse* have been created

Correspondence: Martine Powell, Centre for Investigative Interviewing, Deakin University, 221 Burwood Hwy, Burwood, 3125, Victoria, Australia. Phone: 61-3-9251 7231. Email: martine.powell@deakin.edu.au.

under the law so that it only need be established that abuse was ongoing to form a charge (National District Attorney's Association, 2013; Queensland Law Reform Commission, 2000). Notwithstanding this development, in such cases children must still provide episodic accounts of several (often three) instances of abuse so that the abuse can be determined to have been continuous. Thus, while the particularisation requirement is sometimes relaxed, it is still more often than not the case that children must provide some episodic information about individual instances (for further discussion, see Wandrey, Lyon, Quas, & Friedman, 2012).

Particularising sex offences has tended to present a challenge for child witness interviewers. Given that there is rarely any physical or medical evidence in CSA cases (Office of Director of Public Prosecutions [ACT] & Australian Federal Police, 2005; Powell & Wright, 2009; Success Works, 2011), the interview with the child becomes of critical importance. Prior literature has revealed substantial confusion among interviewers about the nature of particularisation and how it can be achieved. Guadagno, Powell, & Wright (2006) compared police and legal professionals' perceptions of the requirements for particularisation, finding that police officers tend to perceive that highly specific details (such as the location, date, and time of the offence) are essential in order for particularisation to be achieved, and that maximising the number of separate offences and specific details about each offence increases the prospects of successful prosecution. In contrast, the legal professionals perceived that the primary goal of the police officers should be to elicit a free narrative account of one or more offences.

Prosecutors' concerns about questioning around particulars have been reported elsewhere, albeit briefly. Burrows and Powell (2014) conducted 36 in-depth interviews with 19 trial prosecutors shortly before and after trials, eliciting feedback about the evidential quality of the child witness interview

conducted in each case. Although cases in which allegations of repeated abuse had been made were not the primary focus of the research, the prosecutors did comment that interviews often included overzealous questioning about particulars. Taken together, the work of Guadagno et al. (2006) and Burrows and Powell (2014) suggests that the interviewing practices of police may not reflect what is desired from a prosecutorial standpoint in cases of alleged repeated abuse, highlighting the need for greater clarity around the appropriate process for achieving particulars, which is the focus of the current research.

Prosecutors are a key group to include in the development and refinement of interviewer training programmes because they understand how the child's forensic interview will be used in court (Burrows & Powell, 2014). However, the opinions of prosecutors surrounding legal requirements for prosecution have rarely been sought, despite a large body of research that endeavours to improve best-practice interviewing. Prosecutors have been asked about rape complainants (Westera et al., 2011; 2013), the presentation of relationship evidence (Darwinkel et al., 2013), and children's credibility as witnesses partly as a function of displayed emotionality (Castelli & Goodman, 2014). Before presenting the perceptions of prosecutors on particularisation needs and techniques, the empirical background devoted to understanding children's memory development for repeated experiences is briefly presented.

Research Concerning Children's Ability to Particularise: The Past

Nearly two decades of (primarily laboratory-based) research has examined children's ability to remember and report details of individual episodes of repeated events (; McNichol, Shute, & Tucker, 1999; Pearse, Powell, & Thomson, 2003; Powell, Roberts, Ceci, & Hembrooke, 1999; Powell & Thomson, 1996; Roberts & Powell, 2005). Overall, the

findings indicate that following repeated experience, children have strong memories for what generally or typically occurred and relatively weaker memories for details that vary and the temporal source of those details (i.e. during which occurrence they were present).

Enhanced memory for consistent details has been attributed to children's creation of 'scripts' for what normally happens during an event (for reviews, see Farrar & Goodman, 1992; Hudson, Fivush, & Kuebli, 1992; Powell et al., 1999). Such scripts enable children to organise and retrieve information that is common to repeated occurrences (i.e. 'generic' information). Less consistent details are not part of the overall event script and decisions about their temporal source must be made at retrieval (for an overview of the source-monitoring framework, see Johnson, Hashtroudi, & Lindsay, 1993).

Interviewing Aimed at Improving Particularisation: The Present

In the decade since the interviews with legal professionals were conducted by Guadagno et al. (2006), a new line of research has emerged directly aimed at improving questioning procedures when interviewing children about repeated events. Laboratory studies have been designed to modify interviewing techniques in order to assist children in reporting specific details from individual episodes (Brubacher, Glisic, Roberts, & Powell, 2011; Brubacher, Roberts, & Powell, 2011, 2012; Connolly & Gordon, 2014; for a review, see Brubacher, Powell, & Roberts, 2014). Techniques that have been shown to be successful in assisting children with distinguishing between occurrences include those which require children to practise the episodic recall of an occurrence of an unrelated repeated event (e.g. the most recent swimming lesson and a previous one; Brubacher, Roberts, & Powell, 2011) and those which permit children to provide an initial generic account of their experiences (Brubacher et al., 2012; Connolly & Gordon, 2014). Research involving field interviews has also

elucidated techniques which might aid the recall of repeated events, such as using the child's label for an event (e.g. 'the time in the shed'; Brubacher, Malloy, Lamb, & Roberts, 2013), procuring a practice narrative prior to the child's substantive account (Price, Roberts, & Collins, 2013), and asking episodically-focused questions when episodic details are desired (Schneider, Price, Roberts, & Hedrick, 2011). It is important to note that while this body of literature has almost exclusively focused on children under 10 years of age – and while there is a dearth of research characterising the memories of older children and adults for repeated events – it has been demonstrated that adults also struggle to separate memories for experiences that have occurred repeatedly (Connolly & Price, 2013; Means & Loftus, 1991). These difficulties are exacerbated when trauma has been experienced (McNally, Litz, Prassas, Shin, & Weathers, 1994).

A recent exhaustive review of repeated-event literature has provided several recommendations for practitioners in order to assist children in reporting as much (accurate) information as possible about individual occurrences (Brubacher et al., 2014). The core recommendations are as follows: a) interviewers should elicit a narrative account through open-ended questioning in order to avoid the pitfall of asking specific questions about the time and frequency of offences; b) the child should be permitted to provide a complete generic account of his or her abusive experiences, if so inclined, before being asked about individual occurrences; c) interviewers should use the *child's* words to create 'labels' which distinguish occurrences from one another; and d) interviewers can differentially elicit generic and episodic information from the child by manipulating the level of language specificity used in their prompts.

Little is known, however, about the utility from a legal perspective of techniques for questioning children about repeated abuse. This omission is important, especially because the research that supports these techniques is largely based in theory and was

conducted in university laboratories rather than in the field. In many jurisdictions, children's interviews are visually recorded and used as evidence-in-chief at trial, so it is imperative that interviewing techniques are consistent with the rules of evidence and the needs of prosecutors, as well as being sufficient to prove the elements of CSA offences beyond reasonable doubt (Burrows & Powell, 2014). Burrows and Powell (2014), in eliciting prosecutors' broad concerns with the evidential quality of child witness interviews, highlighted the need for 'deep collaboration and [a] cross-pollination of ideas' (p. 204) between interviewing experts and prosecutors in order to improve interviewing protocols. They conclude that unless prosecutors' needs are addressed through formalised interview processes, improvement in justice outcomes is unlikely to eventuate.

The purpose of the present study is to elicit guidance from prosecutors on questioning children about *repeated events*. The present study extends the findings generated by Guadagno et al. (2006) and Burrows and Powell (2014) and, where possible, frames the discussions held by prosecutors in terms of the recommendations made by Brubacher et al. (2014) about questioning children about repeated events. Two focus groups were conducted. The first sought feedback from crown prosecutors from across Australia about particularisation considerations in interviews with children. The second focus group elicited more specific information concerning various techniques for questioning children about repeated events. Data from both groups were compiled, as the themes that arose were similar and most related strongly to the recommendations proposed by Brubacher et al.

Method

Participants

A total of 13 crown prosecutors were engaged across the two focus groups. The prosecutors (who each gave informed consent to

participate) specialised in child sexual assault and as a group represented every Australian state and territory (with the exception of one small state). They were recruited with the assistance of managerial staff in their workplaces who directed the researchers to those professionals who would be in the best position to participate due to specialising in child sexual assault and having authority and substantial experience within their respective fields. The first focus group, held in July 2012, involved 9 crown prosecutors, and the second focus group, held in March 2014, involved 7 crown prosecutors, 3 of whom had participated in 2012 (the remaining 6 prosecutors who had participated in 2012 were unavailable to participate in 2014). The participants included 11 female and 2 male prosecutors, with a group mean of 13.9 years of prosecution experience (range = 5.0–20.0), and 208 child sex assault cases (range = 50–300). A total of 5 prosecutors indicated that their role involved consulting or advising on child interviewing. More specific information regarding the profile of these professionals is not provided to ensure anonymity. Each focus group was also attended by an experienced police investigator whose role was to observe the discussion and to answer questions if information about police investigative procedure was required. The investigator did not have a direct relationship with any of the participants and did not participate in the focus groups; his attendance was therefore considered unlikely to bias participants' responses.

It is important to note that while there are minor differences in legislation across Australian jurisdictions, the process of conducting and using recorded interviews is consistent. Soon after a disclosure or report of abuse is made, prescribed persons (police, psychologists, and/or social workers) conduct and make a video recording of an interview with the child witness (typically defined in the legislation as a witness under the age of 18 years). Narrative-based protocols (whereby open-ended questions are used to elicit a detailed free narrative account) are

prescribed, although in reality interviews tend to adhere to the format typically reported in prior research, which consists mainly of specific cued-recall and closed questions rather than open-ended questions (Powell, Fisher, & Wright, 2005; Powell & Hughes-Scholes, 2009). Where the case proceeds to trial, the trial prosecutor may choose to admit one or more recorded interviews as the child's evidence-in-chief, and may lead additional evidence from the child.

Procedure

The methodology used in this project is consistent with that used in previous investigations with criminal justice personnel (e.g. Darwinkel, Powell, & Tidmarsh, 2014; Morgan, Krueger, & King, 1998; Riley, 2002). Both focus groups were led by Powell and Burrows. A non-directive, focus group methodology was deemed most appropriate for this study, given the exploratory nature of the research and because there were no strong preconceptions about what issues or themes would emerge from the interviews. The first focus group sought to elicit an overview of the issues, from a legal perspective, in questioning children about repeated events – that is, prosecutors were simply asked to reflect on their experiences with investigative interviews conducted in cases of alleged repeated abuse. The authors did not attempt to direct the group members' attention to specific topics. Any time discussion appeared to be exhausted, the prosecutors were simply asked if there was anything else anyone wanted to say. The discussion was lively, with all prosecutors contributing to the proceedings. The number of utterances (discrete conversational turns) each prosecutor contributed to the discussion ranged from 60 to 135 ($M = 90.25$, $SD = 28.34$).

Having reflected on the issues raised in the first focus group, the authors conducted a second focus group 18 months later. From the time of the first focus group to the second, there were no substantive changes to law as it

relates to the particularisation of child sex offences. It was deemed necessary to conduct a follow-up session in order to explore in detail the broad topics that had arisen. The second focus group was conducted identically, with very minimal prompting from the authors, except that prosecutors were given more direction with respect to content. They were asked to give their opinions on the following interviewing techniques: episodic memory training, probing multiple incidents of abuse, questioning about the frequency of offending, prompting the child to describe specific occurrences (by asking about the first time, the last time, or a distinct time that the child can remember), and using the child's words to create labels for occurrences of repeated abuse.

In order to facilitate discussion and ensure that all prosecutors shared the same understanding of the techniques listed, an overview of each technique was provided in a written decision tree which provided suggestions about the circumstances under which an interviewer should ask certain questions and what questions they should ask. Exemplar transcripts were provided to illustrate the practical application of the techniques. For example, one decision tree relates to probing about multiple incidents of abuse:

Does the child mention a specific number of incidents in his/her first substantive response? [e.g. 'and he did it three times']. Branch 1: If yes, prompt child to describe first, last, or distinct time. If no, does the child explicitly indicate that abuse happened multiple times? [e.g. 'he used to do it every weekend when I stayed']. Branch 2: If yes, prompt child to describe first, last, or distinct time. If no, has the child used script language? [e.g. 'he comes in the night by my bed and touches me']. Branch 3: If yes, ask the child if it happened one time or more than one time [if more than one time, start at the beginning of the tree]. If no, continue to prompt the child episodically until the narrative is exhausted, then ask if it happened one time or more than one time [if more than one time, start at the beginning of the tree].

Several techniques were used to ensure that prosecutors could freely discuss their experiences and reasons for any concerns. Firstly, the topics in the interview schedule were broad (e.g. 'discuss the use of episodic memory training'). Secondly, a conversational style of interview was permitted in order to allow the flexibility to pursue any issues raised by prosecutors, whatever their nature. Finally, a passive role was played by the authors during the interviews, and only open questions (e.g. 'is there anything else?' or 'what more can you tell us about that?') were used when necessary to gain more elaborate detail about the issues raised. All prosecutors spoke openly and passionately. Participants' contributions ranged from 62 to 136 utterances ($M = 102.83$ utterances, $SD = 31.22$).

Analysis

The focus group discussions (190 minutes in 2012 and 180 minutes in 2014) were audio-taped and transcribed, and double-checked for accuracy. The analytical process of identifying themes, categories and interrelationships within the data set was informed by principles of grounded theory (Browne & Sullivan, 1999). That is, the themes were inductively derived and grounded within the data set. Additional insights gleaned from the empirical literature helped to shape the analysis and situate the current findings within the context of the broader research literature (Layder, 1993).

The coding process commenced with the first two authors reading a subset of transcripts to discuss and debate emerging themes and develop a coding scheme. The value of multiple coding is not to do with the degree of concordance between the researchers, but rather lies in the content of the interpretive discussions (Barbour, 2001). Such discussions aid in refining the coding scheme to ensure that it adequately captures the content of the interviews. Initially, each transcript was subjected to open coding (Strauss &

Corbin, 1990), which involved a line-by-line analysis of the transcripts (i.e. reduction) and the identification of concepts within statements that can be described in terms of their possible meaning. Statements with similar concepts were thus grouped together. The transcripts were then re-examined for statements that support the identified categories. Identified concepts and categories (and sub-categories) were then grouped according to core themes. Thus, the core themes identified helped to reduce the large volume of data into meaningful and parsimonious units of analysis (Miles & Huberman, 1984). Quotations provided to illustrate the results of this study have undergone grammatical correction where necessary, and any potentially identifying details have been removed. To ensure anonymity, prosecutors were represented on the transcripts by a number from 1 to 13.

Results

Three overriding themes around questioning children about repeated abuse arose in both focus groups. The themes are: a) eliciting an initial generic account of abuse, or the 'gist of offending' from the child; b) using the child's own words to create labels for incidences of offending; and c) probing episodes of abuse chronologically. Each of these topics is explored in turn below. Instances where prosecutors disagreed on issues related to key themes are reported; otherwise, the prosecutors' views were in accordance with the sample quotes. Unlike Guadagno et al. (2006), who include the viewpoints of police, prosecutors, and defence attorneys, who had disagreements on several issues (e.g. the police believed *specific* questions would be needed to elicit episodic information, while legal professionals did not), discordance was rare here. Underpinning all of the themes is the prosecutors' preference for narrative-based interviewing and open-ended questions. The prosecutors consistently raised the concern that interviewers tend to resort to specific questioning in attempts to

particularise offences, and in doing so limit the evidential usefulness of the interview while also disrupting the clarity and coherence of the child's account.

Elicit the Gist of Offending

The prosecutors believed that it is useful to elicit the 'gist of offending' before particularising any one event. That is, allowing the child to speak generally in an initial free narrative about what 'usually' happened when the accused committed an offence against him or her, rather than immediately redirecting the child to speak about a particular incident. There are four perceived benefits of permitting a 'gist-first' account:

Encouraging a Narrative

The prosecutors believed that initially allowing the child to describe events without restriction to specific episodes facilitates the disclosure of more offences by encouraging him or her to talk (rather than interrupting the child with questions), and by prompting more elaborate memory recall (i.e. remembering the script which leads to the retrieval of several specific episodes):

Prosecutor 3 (2014): I think it's better just to let them talk generally and then you have a bit of a roadmap of where you want to go in the interview.

Prosecutor 7 (2012): Once you start speaking, speech generates speech. It's a momentum thing. If you start to box the child in to specific occasions then their mental energy is focused on those particular occasions and they're providing those details at the cost of all the other things that may have happened. Letting them speak allows them to get everything out in scanty detail and then you can go back and fill in the detail.

Enhancing Credibility

The prosecutors perceived that the retrieval of generic details first enhances the child's credibility by demonstrating that information is

being volunteered rather than prompted with questions, and by providing a consistent 'story narrative' that can be referred back to throughout the interview:

Prosecutor 12 (2012): In a credibility sense for the child, if they can spit out all these different things that happened and then they can come back to provide detail later, it shows such a consistency about what they're talking about. It's hard to make up such a broad lie and to come back to such detail on small things.

Providing the Essence of Criminality

Generic details about offending could highlight the offending relationship and the essence of criminality, which could help to explain victim behaviour or mnemonic limitations (e.g. 'it happened so often, no wonder she got confused about the incidents'). A background of frequent offending can also affect sentencing:

Prosecutor 6 (2012): If the abuse does happen so regularly that the child is going to have some difficulty remembering specific details, understanding the frequency of offending can help explain that to the jury. The regularity with which it happened is going to explain the fact that the child might acquiesce, delay in complaining, all of those issues. The frequency helps the jury understand why the complainant did what she did.

Prosecutor 1 (2014): If the child mixes up some details across occurrences, I don't think that necessarily detracts from their credit. It goes to the nature of the offending relationship, and we can explain why the child is so confused, we can say to the jury 'is it any wonder that she is inconsistent about the acts?'. The damage is done where the child is asked about peripheral details, like the colour of the doona [blanket] or something and they get confused about that. Those details are easily refuted and create inconsistency.

Extracting Labels

From a prosecution perspective, the gist could guide the interviewer's questioning by

providing labels for specific incidents (e.g. 'he'd always come into my bed, but one time he did it on the couch') that can later be followed up:

Prosecutor 5 (2012): When you get that spiel about what usually happened, you're getting out a whole list of tags, or unique signifiers, that you can then use to separate occurrences.

The alternative to permitting a child to speak generally is to ask, following a disclosure, a specific question such as 'did x [the disclosed abuse] happen one time or more than one time?', a practice commonly observed by the prosecutors. This approach was perceived to be detrimental when used too early because it directs the child to a specific type of offence too quickly, risks losing other types of offending, and produces an interview which may not capture everything that happened to the child. From a prosecution perspective, it was not considered desirable to probe specific offences at either the very outset or the conclusion of the interview. Rather, the child should be encouraged to elaborate on the gist of offending.

Prosecutor 6 (2014): My main concern about that line 'did x happen one time or more than one time' right at the beginning is just that if you pounce in there it doesn't necessarily capture everything that has happened to the child. It might capture the first thing that they've said, which is unlikely to be the most serious offence because they're embarrassed, and then you ask that question and the child probably thinks 'oh well, that's what they're interested in, they just want to talk to me about x'.

Prosecutor 4 (2014): I've seen interviews where they try to capture other offences at the end. They say 'Did anything else happen?'. That's a bit late though. You need to know about the offences at the beginning, otherwise to the jury it looks like the child didn't disclose those offences at the outset and it looks like an afterthought, it looks like an inconsistency in the interview. I think you need to establish the types of

offending first, and then you can go back and ask about whether each offence happened one time or more than one time.

Using Children's Words to Create Labels

In an attempt to particularise, interviewers often create 'labels' to identify incidents of repeated abuse. This practice was perceived by prosecutors as being fraught with danger. The label applied to an incident by an interviewer may be inaccurate, may not be unique, and may confuse the child where it is unclear which incident is being referred to. Rather than the interviewer providing a label, the prosecutors preferred that the label arise from the context of the child's narrative, wherein the child is likely to provide a label that is meaningful to him or her, such as a particular specific detail that was different on one occasion. Because of the unique nature of this detail, it is unlikely to be uncovered with specific questioning.

The prosecutors suggested that if no clear label is evident in the free narrative account elicited via open prompts, then a direct question may be useful, such as 'what makes you remember that time?' or 'did it happen any other times at this location?'. The prosecutors perceived that the location of the incident can often constitute a label where unique, and – where not unique – a narrative can be elicited from the child about the other times at that location and how they differed from one another. Brubacher et al. (2013) addresses some of these topics in a recent study involving field transcripts of 5- to 13-year-olds alleging repeated sexual abuse. They found that children and interviewers did occasionally generate location-based labels for specific episodes (e.g. 'the time in the tent'). Questions about differences (i.e. what was memorable or different about a time, or whether the situation ever transpired differently) were asked infrequently and rarely yielded new information. Brubacher et al. (2014) suggest that questions about differences can be asked as there is no evidence that

they are detrimental to children's accounts, but advise that there is equally no strong evidence to indicate that they are productive:

Prosecutor 2 (2014): To get a tag, it can be good to know why it is that the child remembers that time, because that's what makes it unique for them.

Prosecutor 5 (2012): Where it happened can be a good tag. Like you could say 'you said that these things happened in the shed, do you remember *a* time in the shed? Tell me about that' and then they provide detail. Even if they don't provide a unique signifier, you're able to say 'is that the only time that you can specifically remember in the shed?' and then refer to that as the shed incident. If that's their only clear memory of an incident occurring in the shed, even though it happened more than once, what's wrong with calling this the shed incident?

Prosecutors tempered their suggestions about achieving labels by explaining that interviewers are not required to achieve labels in child witness interviews. The trial prosecutor can achieve or clarify labels later in court if necessary. The prosecutors reported that they typically create their own labels at trial based on the type of offence and the location. Having labels ascertained in the interview, however, is considered advantageous at trial because it improves the clarity of the account for the jury:

Prosecutor 10 (2012): To a certain extent you can impose structure after an interview. As a prosecutor, you open and close the case and you can add labels to clarify for the jury. I mean, that's what our job is, to present it clearly and give it a structure and clarity.

Probe Episodes of Abuse Chronologically

One decision tree that was discussed suggested that interviewers probe repeated abuse by asking about the first time that offending occurred, then the last time, and then any other times that the child could recall. This suggestion caused some concern among prosecutors, who perceived that focusing on the first and last occasions of abuse may cause

the essence of criminality and the escalation in offending to be lost, as well as causing offences to be missed and potentially undermining the ability of the child's account to explain the offending relationship and therefore victim behaviour. They believed that as much as possible, interviewers should focus on eliciting the child's story of abuse and probing offences in the order in which they occurred. The prosecutors suggested probing each specific type of offence, asking the child after the disclosure of a new offence, 'did [this particular offence] happen one time or more than one time?' and then 'when was the first time *x* happened?' before proceeding through each occurrence to the most recent time that the child can remember (i.e. ask about the first time, any other times/the next time the child can remember, and finally, the last time). It is suggested that instead of asking '*when* was the first time...?' interviewers simply say to the child 'tell me about the first time *x* happened', given children's limitations in temporally dating events (Friedman, 2014). Whilst the prosecutors acknowledged that children might not recall incidents chronologically, they perceived that they should be invited to do so, as the resulting evidence is more coherent and persuasive to a jury than the disjointed account that may result from probing about the first and then last episodes.

Prosecutor 1 (2014): The danger in asking about the first time and asking straight away about the last time is that you miss all that escalation. You want to get the general gist first, then you can start asking about specific offences. For each type of offence that's been disclosed you want to ask 'did that happen once or more than once?'. You want to know about the first time, because we want to know when the offending started. Then you want to ask 'what's the next thing you remember happening?'. Then ask about the last time after you've got all that narrative of what happened in the middle. It makes more sense as to how the account is presented to the jury because it's a chronology then as well.

It was not considered necessary (or desirable) for the interviewer to determine precisely how many times abuse occurred. Rather, a relative frequency was preferred because it establishes the whole story of offending whilst limiting the risk of error associated with asking the child how many times he or she was offended against. The relative frequency can also inform sentencing and help explain victim behaviour along with any source-monitoring problems in recall. The prosecutors disagreed with placing any limit on the amount of occurrences interviewers should seek to particularise. They believed that some attempt should be made to particularise as many offences as the child is capable of particularising, although the prosecutors noted that doing so does not necessarily require extensive specific questioning. Exploring in the interview all offences limits the possibility that a new incident may come to light for the first time at trial, which can cause the child to appear inconsistent. When probing children about the order of episodes, the possibility that the child has forgotten the order, or has become confused about incidents of abuse (e.g. the blending together of details from different incidents) was not considered particularly problematic for prosecutors, as such confusion merely highlights to the jury the frequency of abuse. It was believed to be persuasive to a jury that the abuse happens so regularly that the child becomes confused as a result.

Where there are many incidents alleged by the child, it may be appropriate – particularly when the child is fatigued and desires a break – to conduct multiple interviews to particularise offences. The prosecutors highlighted that in order to limit defence claims of coaching or failure to disclose a given opportunity, the break between interviews should be minimised to a few days at most. A short break between interviews should also ensure a continuous ‘flow’ in the interview, and minimise inconsistencies between one interview and the next.

Discussion

This study sought to elicit guidance from prosecutors regarding the questioning of children about repeated events and to then compare their perspectives to the recommendations made in recent research. The analysis of the focus group discussion revealed three broad themes in the prosecutors' perceptions of questioning children about repeated abuse: a) permitting children to provide a full generic account before describing individual episodes of abuse; b) using the information obtained during the generic account to create episode labels; and c) probing incidences of abuse chronologically. The remainder of this section explores these themes within the context of the empirical literature on children's memory for repeated events.

Eliciting the Gist of Offending

The prosecutors perceived numerous benefits of permitting children to commence their narrative account by providing their abuse script (i.e. the ‘gist of offending’) if they are inclined to do so. Eliciting the ‘gist’ was perceived to encourage narrative accounts and promote disclosure, enhance credibility, provide an ‘essence of criminality’ and facilitate the creation of labels or ‘tags’ for individual occurrences of abuse. Permitting children to report what typically happened fits with the underlying cognitive principles of investigative interviewing that information should be elicited from interviewees in as unrestricted a manner as possible (e.g. Powell & Snow, 2007) and that they should be encouraged to ‘report everything’ (e.g. Memon & Higham, 1999).

Analogue research on children's memories for repeated events provides further support for eliciting an initial generic account of what ‘usually’ happened in cases of repeated abuse. Reporting the gist of offending appears to assist children's narrative recall and can lead to the provision of event tags that help

distinguish one incident from another (Brubacher et al., 2012). In a study by Brubacher et al. (2012), children aged 4 to 8 years participated in a repeated interactive event. One week later, half the children were asked about what usually happened during the events, and then were asked about a specific occurrence, while the other half were asked in the reverse order – first about a specific occurrence, and then about what usually happened. The children who were encouraged to speak about what usually happened provided more event-related information and offered more differences across occurrences than children who were asked first about a specific occurrence (see also Connolly & Gordon, 2014). A related study found that children who provide the gist first are more accurate when later describing a specific occurrence than children questioned in the reverse order (Brubacher, 2011).

One of the most widely-used interviewing protocols – that of the National Institute of Child Health and Human Development (NICHD; see Lamb, La Rooy, Malloy, & Katz, 2011) – does not actively discourage a ‘gist-first’ account (because the child can provide a full generic account of abuse in response to the first substantive invitation), but neither does it encourage it (see Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007). It should also be noted that circumstances might arise wherein prompting the child for gist information at the outset does not fit the case characteristics. Specifically, if it is known that the interview is taking place very shortly after the last alleged occurrence it may make sense to first question the child about the recent episode (the authors thank an anonymous reviewer for this suggestion). It will be left to future research to determine the pros and cons of eliciting a gist-first account at varying interview delays.

Using the Child’s Own Words to Create Labels

The prosecutors preferred that event labels arise from the words of the child’s narrative

account rather than being imposed by the interviewer. There was concern amongst prosecutors that labels created by interviewers may be inaccurate, non-unique and confusing to the child. This perception is consistent with child development and mnemonic research. Unlike the child, the interviewer does not have access to all the offence information, so the labels created by the child are more likely to be unique and less likely to cause confusion (for a review, see Brubacher et al., 2014). Children are capable of selecting unique labels and reporting details that are unique to specific times (even if they do not explicitly label an episode, such as ‘the time when’; Brubacher, Glisic, et al., 2011; Hudson, 1988).

The prosecutors’ suggestions for eliciting unique information where the child fails to provide any labels or tags are also consistent with the recommendations made in Brubacher et al. (2014) that interviewers ask if anything different ever took place (e.g. ‘was there [ever] a time when something different happened?’). While there is presently no published data on the utility of this question, research on children’s memory for script-atypical details suggests it may be useful in eliciting episode-specific information (Davidson & Hoe, 1993; Hudson, 1988). Other strategies for eliciting event-specific information suggested in the literature and existing interview protocols include asking the child about the first and last time. Due to primacy and recency effects, memories for these occasions are likely to be stronger (Powell, Thomson, & Ceci, 2003). The prosecutors in the present study, however, expressed some concern about asking about the first and last times, as discussed in the next subsection.

Overall, it appears that prosecutors and child development researchers alike are in agreement that labels for particular episodes must arise from the child’s narrative account rather than being imposed by the interviewer. Particular techniques for ensuring that labels emerge in the child’s narrative (techniques such as asking about whether anything

different ever occurred) would be a useful focus of future research.

Probing Episodes of Abuse Chronologically

The prosecutors preferred that the child is probed about repeated events in the order in which they occurred, inasmuch as the child is capable of doing so. There is currently a paucity of guidance in the child development and mnemonic literature on the order in which children ought to be questioned about episodes of abuse (e.g. last then first, chronological order, or the order in which the child raises them). It is suggested that the most appropriate and beneficial order of probing may depend on the nature of the abuse, the occurrences, and the details that are salient to each individual child (for a review, see Powell, Garry, & Brewer, 2013).

Children are generally capable of accurately recalling which of two unrelated events came first or last by 6 years of age (Friedman & Lyon, 2005; Pathman, Larkina, Burch, & Bauer, 2013) but whether or not this ability generalises to events that are greater in number and related – and generalises to maltreated children – is unknown. The serial position effect supports the notion that children should recall the first and last incidences of repeated abuse more clearly than those in the middle (Murdock, 1962; see also Farrar & Goodman, 1992; Powell et al., 2003). Interviewing protocols do not typically suggest the order in which the child should be questioned about incidents of repeated abuse, probably because there is little guidance given in the literature. For example, the NICHD protocol recommends that interviewers explore specific incidents by asking about the first time/last time/or some other time that the child has mentioned but without reference to the order (Lamb et al., 2007). Focusing questioning around the first and last incidents was concerning to the prosecutors, who perceived that doing so may cause the essence of the criminality and escalation in offending to be lost, cause offences to be

missed, and potentially undermine the ability of the child's account to explain the offending relationship and therefore victim behaviour. Given that the order of probing occurrences is, to date, without empirical direction from a mnemonic perspective, the prosecutors' suggestions of probing the first occurrence, then the next, others, and finally the last should be directly tested in a laboratory-based paradigm and compared to alternative possibilities.

In terms of asking children about the frequency of offending, the prosecutors supported the technique of asking children if the offending happened one time or more than one time; that is, asking about the relative frequency of offending rather than how many times the abuse occurred. The developmental literature indicates that children are poor at providing specific estimates of the frequency of a repeated experience (Sharman, Powell, & Roberts, 2011; Wandrey et al., 2012). Children are, however, sensitive to frequency; their estimates increase with the number of experiences (Connolly, Hockley, & Pratt, 1996). For these reasons, interviewing protocols such as NICHD suggest asking children about the relative frequency of offending, rather than asking children how many times the abuse occurred (Lamb et al., 2007), and to this extent protocols appear to have the prosecutors' support. This support is tempered, however, by their perception that asking about event frequency too early in the interview is detrimental because it directs the child to a specific type of offence too quickly, thus risking the loss of other types of offending and producing an interview which may not capture everything that happened to the child.

Caveats and Limitations

The current study adds to the growing body of literature aimed at providing empirically-based guidelines for front-line interviewers who must question children about repeated experiences by seeking the perspectives of

the end users of children's investigative interviewers – the prosecutors who must use them as evidence. Nevertheless, there are some important caveats to consider when interpreting these data. The prosecutors were sampled from all over Australia, but the overall sample size is small and may not generalise outside of Australia. Anecdotal evidence from prosecutors in other English-speaking countries suggests that it will generalise, but published evidence is not available. Because only prosecutors are included in the present research, they largely agree with each other on every topic. It may be fruitful in future work to ask groups with potentially different opinions (e.g. defence attorneys) for their perceptions of techniques aimed at improving particularisation. More specifically, this group may provide insight into whether or how these techniques could be attacked in court.

Conclusion

The unique contribution of the present study is in eliciting prosecutors' perceptions of questioning children about repeated abuse. Unless prosecutors' needs are incorporated into interview guidelines, successful prosecution of guilty defendants may be hampered (Burrows & Powell, 2014). Overall, the views of the prosecutors were very similar, regardless of the jurisdiction in which they practised. The recommendations that have arisen in the prior developmental literature – and which are reviewed in Brubacher et al. (2014) – are, for the most part, consistent with the needs of trial prosecutors and therefore appropriate for incorporation into interviewing protocol (i.e. recommendations to elicit an initial gist of offending and use children's words to create labels). Some of the recommendations made in Brubacher et al. were not the focus of the prosecutors' discussion (i.e. recommendations to use the appropriate level of language specificity) and other concepts were raised by prosecutors but not discussed in Brubacher et al. or explored in the broader literature (i.e. the appropriate order

for probing occurrences). Further work is required to determine the utility (from a developmental and legal perspective) of these techniques before they are incorporated into interview protocol.

Acknowledgements

The authors acknowledge the support of the managers and professionals who volunteered to participate in this project.

Disclosure Statement

No potential conflict of interest was reported by the authors.

Funding

This work was supported by the Australian Research Council [grant number LP120200095].

References

- Australian Institute of Family Studies. (2013). *The prevalence of child abuse and neglect*. Retrieved July 31, 2014 from <http://www.aifs.gov.au/cfca/pubs/factsheets/a144254/index.html>
- Barbour, R. S. (2001). Checklists for improving rigour in qualitative research: a case of the tail wagging the dog? *British Medical Journal*, 322, 1115–1117.
- Browne, J., & Sullivan, G. (1999). Analysing in-depth interview data using grounded theory. In V. Minichiello, G. Sullivan, K. M. Greenwood, & R. Axford (Eds.), *Handbook for research methods in health sciences* (pp. 576–611). Reading, MA: Addison-Wesley.
- Brubacher, S. P. (2011). *Understanding children's representation and recall of individual occurrences of repeated events*. Doctoral dissertation. Wilfrid Laurier University.
- Brubacher, S. P., Glisic, U., Roberts, K. P., & Powell, M. B. (2011). Children's ability to recall unique aspects of one occurrence of a repeated event. *Applied Cognitive Psychology*, 25, 351–358.
- Brubacher, S. P., Malloy, L. C., Lamb, M. E., & Roberts, K. P. (2013). How do interviewers and children discuss individual occurrences of alleged repeated abuse in forensic interviews? *Applied Cognitive Psychology*, 27, 443–450.
- Brubacher, S. P., Powell, M. B., & Roberts, K. P. (2014). Recommendations for interviewing

- children about repeated experiences. *Psychology, Public Policy, and Law*, 20, 325–335.
- Brubacher, S. P., Roberts, K. P., & Powell, M. (2011). Effects of practicing episodic versus scripted recall on children's subsequent narratives of a repeated event. *Psychology, Public Policy, and Law*, 17, 286–314.
- Brubacher, S. P., Roberts, K. P., & Powell, M. B. (2012). Retrieval of episodic versus generic information: does the order of recall affect the amount and accuracy of details reported by children about repeated events? *Developmental Psychology*, 48, 111–122.
- Burrows, K., & Powell, M. (2014). Prosecutors' recommendations for improving child witness statements about sexual abuse. *Policing and Society*, 24, 189–207.
- Castelli, P., & Goodman, G. S. (2014). Children's perceived emotional behaviour at disclosure and prosecutors' evaluations. *Child Abuse & Neglect*, 28, 151–1532.
- Connolly, D. A., & Gordon, H. M. (2014). Can order of generic and specific memory prompts help children to recall an instance of a repeated event that was different from the others? *Psychology, Crime and Law*, 20, 852–864.
- Connolly, D. A., Hockley, W. E., & Pratt, M. W. (1996). A developmental evaluation of frequency memory for actions presented in lists, scripts, and stories. *Memory*, 4, 243–264.
- Connolly, D. A., & Lindsay, D. S. (2001). The influence of suggestions on children's reports of a unique experience versus an instance of a repeated experience. *Applied Cognitive Psychology*, 15, 205–223.
- Connolly, D. A., & Price, H. L. (2013). Repeated interviews about repeated trauma from the distant past: a study of report consistency. In B. S. Cooper, D. Griesel, & Ternes, M (Eds.), *Applied issues in investigative interviewing, eyewitness memory, and credibility assessment* (pp. 191–217). New York, USA: Springer.
- Darwinkel, E., Powell, M. B., & Tidmarsh, P. (2013). Improving police officers' perceptions of sexual offending through intensive training. *Criminal Justice & Behavior*, 40, 895–908.
- Darwinkel, E., Powell, M., & Tidmarsh, P. (2014). Prosecutors' perceptions of the utility of 'relationship' evidence in sexual abuse trials. *Australian & New Zealand Journal of Criminology*, 47, 44–58.
- Davidson, D., & Hoe, S. (1993). Children's recall and recognition memory for typical and atypical actions in script-based stories. *Journal of Experimental Child Psychology*, 55, 104–126.
- Farrar, M. J., & Goodman, G. S. (1992). Developmental changes in event memory. *Child Development*, 63, 173–187.
- Friedman, W. J. (2014). The development of memory for the times of past events. In P. J. Bauer & R. Fivush (Eds.), *The Wiley handbook on the development of children's memory* (pp. 394–407). Chichester, UK: Wiley.
- Friedman, W. J., & Lyon, T. D. (2005). Development of temporal-reconstructive abilities. *Child Development*, 76, 1202–1216.
- Guadagno, B. L., Powell, M. B., & Wright, R. (2006). Police officers' and legal professionals' perceptions regarding how children are, and should be, questioned about repeated abuse. *Psychiatry, Psychology and Law*, 13, 251–260.
- Hudson, J. A. (1988). Children's memory for atypical actions in script based stories: evidence for a disruption effect. *Journal of Experimental Child Psychology*, 46, 159–173.
- Hudson, J. A., Fivush, R., & Kuebli, J. (1992). Scripts and episodes: The development of event memory. *Applied Cognitive Psychology*, 6, 483–505.
- Johnson, M. K., Hashtroudi, S., & Lindsay, D. S. (1993). Source monitoring. *Psychological Bulletin*, 114, 3–28.
- Lamb, M. E., La Rooy, D. J., Malloy, L. C., & Katz, C. (Eds.). (2011). *Children's testimony: A handbook of psychological research and forensic practice* (2nd ed.). Chichester, UK: Wiley.
- Lamb, M. E., Orbach, Y., Hershkowitz, I., Esplin, P. W., & Horowitz, D. (2007). Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD investigative interview protocol. *Child Abuse and Neglect*, 31, 1201–1231.
- Layder, D. (1993). *New strategies in social research: An introduction and guide*. Cambridge, UK: Polity Press.
- McNally, R. J., Litz, B. T., Prassas, A., Shin, L. M., & Weathers, F. W. (1994). Emotional priming of autobiographical memory in post-traumatic stress disorder. *Cognition and Emotion*, 8, 351–367.
- McNichol, S., Shute, R., & Tucker, A. (1999). Children's eyewitness memory for a repeated event. *Child Abuse and Neglect*, 23, 1127–1139.
- Means, B., & Loftus, E. F. (1991). When personal memory repeats itself: decomposing memories for recurring events. *Applied Cognitive Psychology*, 5, 297–318.
- Memon, A., & Higham, P. A. (1999). A review of the cognitive interview. *Psychology, Crime and Law*, 5, 177–196.

- Miles, M. B., & Huberman, A. M. (1984). *Qualitative data analysis: A sourcebook of new methods*. Thousand Oaks, CA: SAGE Publications Inc.
- Morgan, D.L., Krueger, R.A., & King, J.A. (1998). *The focus group kit vol. 1-6*. Thousand Oaks, CA: SAGE Publications Inc.
- Murdock, B. B. (1962). The serial position effect of free recall. *Journal of Experimental Psychology*, 64, 482–488.
- National District Attorney's Association. (2013). *Sexual offenses against children compilation*. Washington DC: Author. Retrieved from <http://www.ndaa.org/pdf/Sexual%20Offenses%20Against%20Children%202013.pdf>
- Office of Director of Public Prosecutions (ACT), & Australian Federal Police. (2005). *Responding to sexual assault: the challenge of change*. Canberra: Office of Director of Public Prosecutions.
- Pathman, T., Larkina, M., Burch, M. M., & Bauer, P. J. (2013). Young children's memory for the times of personal past events. *Journal of Cognition and Development*, 14, 120–140.
- Pearse, S. L., Powell, M. B., & Thomson, D. M. (2003). The effect of contextual cues on children's ability to remember an occurrence of a repeated event. *Legal and Criminological Psychology*, 8, 39–50.
- People v. Jones*. (1990). 51 Cal. 3d 294, 299.
- Podirsky v. The Queen*. (1990). 3 WAR 128.
- Powell, M. B., Fisher, R. P., & Wright, R. (2005). Investigative interviewing. In N. Brewer & K. Williams (Eds.), *Psychology and law: an empirical perspective* (pp. 11–42). New York, NY: Guilford.
- Powell, M.B., Garry, M. & Brewer, N. (2013). Eyewitness testimony. In I. Freckelton & H. Selby (Eds.), *Expert evidence* (pp. 65.1–65.104). Pyrmont, NSW: Thomson Reuters.
- Powell, M. B., & Hughes-Scholes, C. H. (2009). Evaluation of the questions used to elicit evidence about abuse from child witnesses: Australian study. *Psychiatry, psychology and Law*, 16, 369–378.
- Powell, M. B., Roberts, K. P., Ceci, S. J., & Hembrooke, H. (1999). The effects of repeated experience on children's suggestibility. *Developmental Psychology*, 35, 1462–1477.
- Powell, M. B., & Snow, P. C. (2007). Guide to questioning children during the free narrative phase of an investigative interview. *Australian Psychologist*, 42, 57–65.
- Powell, M. B., & Thomson, D. M. (1996). Children's recall of an occurrence of a repeated event: effects of age, retention interval, and question type. *Child Development*, 67, 1988–2004.
- Powell, M. B., Thomson, D. M., & Ceci, S. J. (2003). Children's memory of recurring events: is the first event always the best remembered? *Applied Cognitive Psychology*, 17, 127–146.
- Powell, M. B., & Wright, R. (2009). Professionals' perceptions of electronically recorded interviews with vulnerable witnesses. *Current Issues in Criminal Justice*, 21, 205–218.
- Price, H. L., Roberts, K. P., & Collins, A. (2013). The quality of children's allegations of abuse in investigative interviews containing practice narratives. *Journal of Applied Research in Memory and Cognition*, 2, 1–6.
- Public Health Agency of Canada. (2010). *Canadian incidence study of reported child abuse and neglect – 2008*. Ottawa: Public Health Agency of Canada.
- Queensland Law Reform Commission. (2000). *The receipt of evidence by Queensland courts: The evidence of children*. Brisbane, AU: Author.
- Riley, J. (2002). Minority recruitment in criminal justice: targeting Alaska Natives. *Criminal Justice: International Journal of Policy and Practice*, 2, 257–276.
- Roberts, K. P., & Powell, M. B. (2005). Evidence of metacognitive awareness in young children who have experienced a repeated event. *Applied Cognitive Psychology*, 19, 1019–1031.
- R. v. B. [G.]*. (1990). 2 SCR 30.
- Schneider, L., Price, H. L., Roberts, K. P., & Hedrick, A. M. (2011). Children's episodic and generic reports of alleged abuse. *Applied Cognitive Psychology*, 25, 862–870.
- Sharman, S. J., Powell, M. B., & Roberts, K. P. (2011). Children's ability to estimate the frequency of single and repeated events. *International Journal of Police Science and Management*, 13, 234–242.
- Strauss, A., & Corbin, J. (1990). *Basics of qualitative research: Grounded theory procedures and techniques*. Newbury Park, CA: SAGE Publications.
- Success Works. (2011). *Sexual assault reform strategy: Final evaluation report*. Melbourne, VIC: Department of Justice (VIC).
- S. v. The Queen*. (1989). 168 CLR 266.
- Victorian Law Reform Commission. (2004). *Sexual offences: Final report*. Melbourne, VIC: Victorian Law Reform Commission.
- Wandrey, L., Lyon, T. D., Quas, J. A., & Friedman, W. J. (2012). Maltreated children's ability to estimate temporal location and numerosity of placement changes and court visits. *Psychology, Public Policy, and Law*, 18, 79–104.

- Westera, N. J., Kebbell, M. R., & Milne, R. (2011). Interviewing rape complainants: Police officers' perceptions of interview format and quality of evidence. *Applied Cognitive Psychology*, 25, 917–926.
- Westera, N. J., Kebbell, M. R., & Milne, B. (2013). It is better, but does it look better? Prosecutor perceptions of using rape complainant investigative interviews as evidence, *Psychology, Crime & Law*, 19, 595–610.
- World Health Organization. (1999). *WHO recognises child abuse as a major public health problem*. Retrieved December 10, 2011 from <http://www.who.int/inf-pr-1999/en/pr99-20.html>