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# Prosecutors' Perceptions on Questioning Children About Repeated Abuse

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**Prosecutors' perceptions on questioning children about repeated abuse**

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### **Abstract**

The purpose of the present study was 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. These techniques were derived either from empirical research, best practice interview guidelines, or both. 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.

**Keywords:** investigative interviewing; child witness; child sexual assault; evidence.

### **Prosecutors' perceptions on questioning children about repeated abuse**

Child sexual abuse (CSA) affects millions of children worldwide (World Health Organisation, 1999). Estimates of the prevalence of CSA in developed countries range from 10-36% (Australian Institute of Family Studies, 2013). National prevalence data suggest that at least half of all reported CSA cases involve multiple incidents (e.g., Trocmé et al., 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, that the defendant has the opportunity to adequately defend him- or herself against the charges and that 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 inadequate particularisation of sex offences (Victorian Law Reform Commission, 2004).

In some cases it has been ruled that a combination of factors (e.g., very young age, high frequency of alleged acts, and 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 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, in such cases children must still provide episodic accounts of several (often three) instances of abuse so that the abuse can be determined 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 (see for further discussion Wandrey et al., 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 child's interview becomes of critical importance. Prior literature has revealed substantial confusion among interviewers about the nature of particularisation, and how it can be achieved. Guadagno et al. (2006) compared police and legal professionals' perceptions of the requirements for particularisation. Guadagno et al. found that police officers tend to perceive that highly specific details (such as the location, date, and time of the offence) are essential for particularisation to occur, and that maximising the number of separate offences and specific details about each offence increases the chance 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' concern with questioning around particulars has 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 Burrows and Powell's research, 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) provide some insight 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 was the focus of the current research.

Prosecutors are a key group to include in the development and refinement of interviewer training programs 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), 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, we briefly describe the empirical background devoted to understanding children's memory development for repeated experiences.

### ***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 (e.g., Connolly & Lindsay, 2001; McNichol et al., 1999; Pearse et al., 2003; Powell et al., 1999; Powell & Thomson, 1996; Roberts & Powell, 2005). Overall, 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 (see for review Farrar & Goodman, 1992; Hudson et al., 1992; Powell et al., 1999). Such scripts enable children to organise and retrieve information that is common across 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 (see Johnson et al., 1993, for an overview of the source-monitoring framework).

### ***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 were designed to modify interviewing techniques to assist children in reporting specific details from individual episodes (Brubacher et al., 2011a; 2011b; Brubacher et al., 2012; Connolly & Gordon, 2014; see for review Brubacher et al., 2014). Techniques that have been shown to be successful in assisting children to distinguish among occurrences include having children practice episodic recall of an occurrence of an unrelated repeated event (e.g., the last time at swimming lessons and another time, Brubacher et al., 2011b), and permitting 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 et al., 2013), procuring a practice narrative prior to the child's substantive account (Price et al., 2013), and asking episodically-focused questions when episodic details are desired (Schneider et al., 2011). It is important to note that while this body of literature has almost exclusively focused on children under 10 years old, and there is a dearth of research characterising the memories of older children and adults for repeated events, it has been demonstrated that adults too struggle to separate memories for experiences that have occurred repeatedly (Connolly & Price, 2013; Means & Loftus, 1991). Difficulties are exacerbated when trauma has been experienced (McNally et al., 1994).

A recent exhaustive review of repeated-event literature provided several recommendations for practitioners to assist children in reporting as much information (and accurate information) as possible about individual occurrences (Brubacher et al., 2014). Among the core recommendations were that a) interviewers elicit a narrative account through open-ended questioning in order to avoid the pitfall of asking specific questions about time and frequency of offences; b) children should be permitted to provide a complete generic account of their abusive experiences, if they are so inclined, before being asked about individual occurrences; c) interviewers should use *children's* words to create 'labels'

distinguishing occurrences from one another; and d) interviewers can differentially elicit generic and episodic information from children 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 nontrivial, especially because the research that supported these techniques was largely theoretically based and 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, and that interviews are sufficient to prove the elements of CSA offences beyond reasonable doubt (Burrows & Powell, 2014). Burrows and Powell, in eliciting prosecutors' broad concerns with the evidential quality of child witness interviews, highlighted the need for 'deep collaboration and cross-pollination of ideas' (p. 204) between interviewing experts and prosecutors in order to improve interviewing protocols. The authors concluded that unless prosecutors' needs are addressed through formalised interview processes, improvement in justice outcomes is unlikely to eventuate.

The purpose of the present study was to elicit guidance from prosecutors about 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. (2014).

## Method

### *Participants*

The total number of Crown prosecutors who engaged across the two focus groups was 13. The prosecutors (who each gave their 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, in that they specialised in child sexual assault and had 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, three 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 - 20 years), and 208 child sex assault cases (range = 50 - 300). Five prosecutors indicated that their role involved consulting or advising on child interviewing. More specific information regarding the profile of these professionals has not been 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 or social workers) conduct and video-record an interview with the child witness (typically defined in legislation as a witness under the age of 18 years old). 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 et al., 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 was consistent with those used in previous investigations with criminal justice personnel (e.g., Darwinkel et al., 2014; Morgan et al., 1998; Riley, 2002). Both focus groups were led by the first two authors. 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 broadly 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 their attention to specific topics. Anytime conversation appeared exhausted, the prosecutors were simply asked if there was anything else anyone wanted to say. Discussion was lively, with all prosecutors contributing to the conversation. 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 to the second focus group, there had been no substantive changes to law as it related 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 to the first, 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, last, or distinct time 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 and exemplar transcripts were provided to illustrate the practical application of the techniques. For example, one decision tree related 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 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, we permitted a conversational style of interview to allow flexibility to pursue issues raised by prosecutors, whatever their nature. Finally, we played a passive role during the interviews, using open questions (e.g., "anything else?" and "tell us more about that") only 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 dataset. 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 to develop a coding scheme. The value of multiple coding is not to do with the degree of concordance between the researchers, but rather in the content of the interpretive discussions (Barbour, 2001). Such discussions aided in refining the coding scheme to ensure that it adequately captured 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 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 supported 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 (see 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 one to 13.

## Results

Three overriding themes around questioning children about repeated abuse arose in both focus groups. The themes were a) eliciting an initial generic account of abuse, or the 'gist of offending' from the child; b) using children's words to create labels for incidences of offending; and c) probing episodes of abuse chronologically. Each of the topics will be explored in turn in this section. 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), which included the viewpoints of police, prosecutors, and defence attorneys who had disagreements on several issues (e.g., 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 was the prosecutors' preference for narrative-based interviewing and open-ended questions. The prosecutors consistently raised the concern that interviewers tended to resort to specific questioning in attempts to particularise offences, and in doing so limited the evidential usefulness of the interview, and disrupted the clarity and coherence of the child's account.

### *Elicit the gist of offending*

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

### *Encouraging a narrative*

The prosecutors believed that allowing children to initially describe events without restriction to specific episodes facilitated the disclosure of more offences by encouraging the child to talk (rather than interrupting them with questions), and by prompting more elaborate memory recall (remembering the script leading to retrieval of some 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*

Prosecutors perceived that retrieval of generic details first could enhance 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 essence of criminality, which could help 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 could 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 [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 to be 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 them, 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.

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?' Prosecutors perceived that the location of the incident could often constitute a label where unique, and – where not unique – a narrative could be elicited from the child about other times at that location and how they differed from one-another. Brubacher et al. (2013) addressed some of these topics in a recent study involving field transcripts of 5- to 13-year-old children 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 is memorable or different about a time, whether the situation ever transpired differently) were asked infrequently and rarely yielded new information. Brubacher et al. (2014) suggested that questions about differences could be asked as there was no evidence that they are detrimental to children's accounts, but advised that there was neither strong evidence to indicate that they would be 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 did typically create their own labels at trial based on the type of offence and the location. Having labels ascertained in the interview, however, was considered advantageous at trial because it improved 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, then last time offending occurred, and then any other times the child could recall. This suggestion caused some concern among prosecutors. The prosecutors 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, offences to be missed, and may undermine 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 [particular offence] happen one time or more than one time?' then 'when was the first time X happened?', then proceeding through each occurrence to the most recent time the child can remember (i.e. ask about first time, any other times/next time they can remember, and finally, the last time). We suggest that instead of 'when was the first time...' interviewers simply ask the child to '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 children should be invited to do so as the resulting evidence would be more

coherent and persuasive to a jury than the disjointed account that may result from probing about 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 established the whole story of offending whilst limiting the risk of error associated with asking the child how many times they were offended against. The relative frequency could also inform sentencing, and help explain victim behaviour and 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, 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 will come to light for the first time at trial and cause the child to appear inconsistent. When probing children about the order of episodes, the possibility for the child to have forgotten the order, or to have become confused about incidents of abuse (e.g. bleeding of details from different incidents) was not considered particularly problematic for prosecutors as such confusion merely highlighted to the jury the frequency of abuse. It was believed to be persuasive to a jury that the abuse happened so regularly that the child became confused.

Where there are many incidents alleged by the child, it may be appropriate, particularly where 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 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**

The current study sought to elicit guidance from prosecutors around questioning children about repeated events and to compare their perspectives to recommendations made in recent research. Analysis of the focus group discussion 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. 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***

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 were 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 happens fits with 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 4-8 years old 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. 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 provided gist first were 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 (National Institute of Child Health and Human Development [NICHD] interviewing protocol, Lamb et al., 2011) does not actively discourage a 'gist-first' account (because the child could provide a full generic account of abuse in response to the first substantive invitation), but neither does it encourage it (see Lamb et al., 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 (we 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 children's words to create labels***

The prosecutors preferred that event labels arise from the words of the child's narrative account, rather than be imposed by the interviewer. There was concern amongst prosecutors that labels created by interviewers may be inaccurate, not unique and may

confuse the child. This perception is consistent with the child development and mnemonic research. Unlike the child, the interviewer does not have access to all the offence information, so labels created by the child are more likely to be unique, and less likely to cause confusion (see for review 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 et al., 2011a; Hudson, 1988).

The prosecutors' suggestions for eliciting unique information where the child fails to provide any labels or tags are also consistent with 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 (e.g., Davidson & Hoe, 1993; Hudson, 1988). Other strategies for eliciting event-specific information suggested in the research 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 (e.g., Powell et al., 2003). The prosecutors in the present study, however, expressed some concern about asking about the first and last times, as will be discussed in the following sub-section.

Overall, it appears that prosecutors and child development researchers alike are in agreement that labels for particular episodes must arise through 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 children be probed about repeated events in the order in which the events occurred, inasmuch as the children were 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 raised them). We suggest that the most appropriate and beneficial order of probing may depend on the nature of abuse, the occurrences, and the details that were salient to individual children (see for review Powell et al., 2013).

Children are generally capable of accurately recalling which of two unrelated events came first/last by age 6 (Friedman & Lyon, 2005; Pathman et al., 2013) but whether this ability generalises to events that are greater in number and related, and for samples of 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). Likely because there is little guidance from the literature, interviewing protocols do not typically suggest an order in which children should be questioned about incidents of repeated abuse. For example, the NICHD protocol recommends that interviewers explore specific incidents by asking about the first time/last time/or some other time 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 prosecutors who perceived that doing so may cause the essence of criminality and the escalation in offending to be lost, offences to be missed, and may 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, next, others, and finally last occurrences should be directly tested in a lab-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 et al., 2011; Wandrey et al., 2012). Children are, however, sensitive to frequency; their estimates increase with the number of experiences (e.g., Connolly et al., 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 (see Lamb et al., 2007), and to this extent, protocols appear to have prosecution support. This support is tempered, however, by the prosecutors' perception that asking about event frequency too early in the interview was detrimental because it directed the child to a specific type of offence too quickly, risked losing other types of offending, and produced 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 experience by seeking the perspectives of the end users of children's investigative interviewers – prosecutors who must use them as evidence. Nevertheless, there are some important caveats to consider when interpreting these data. Prosecutors were sampled from all over the country, but the overall sample size was 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 were included in the present research, they largely agreed 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.

### *Conclusions*

The unique contribution of the present study was 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 practiced. The recommendations that have arisen in the prior developmental literature, and reviewed by 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 by Brubacher et al. (2014) 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.

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