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October 2013

31. Stolzenberg, S., & Lyon, T.D. (in press). How attorneys question children about the dynamics of sexual abuse and disclosure in criminal trials. *Psychology, Public Policy, & Law*,

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How Attorneys Question Children about the Dynamics of Sexual Abuse and Disclosure in  
Criminal Trials

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Author's Note

This research was supported by NICHD Grant HD047290 to Thomas Lyon. We thank Kathy Pezdek, Tiffany Berry and Mark Costanzo for their input on this project. We also thank the individuals who helped with project management and data coding: Alexander Dumer, Vera Chelyapov, Pratusha Erraballi and Emma Stokes-Raab. Part of this data came from the doctoral dissertation of Stacia Stolzenberg in partial fulfillment of the degree of doctor of philosophy in psychology.

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### Abstract

Little is known about how the dynamics of sexual abuse and disclosure are discussed in criminal court. This study examined how attorneys asked child witnesses in sexual abuse cases ( $N = 72$ , 6 to 16 years of age) about their prior conversations, both with suspects and with disclosure recipients. Prosecutors' questions were more open-ended than defense attorneys, but most questions asked by either attorney were yes/no questions, and children tended to provide unelaborated responses. Prosecutors were more inclined to ask about children's prior conversations with suspects than defense attorneys, but focused on the immediate abuse rather than on grooming behavior or attempts to silence the victim. Prosecutors were also more inclined to ask about children's motives for disclosing or for failing to disclose than defense attorneys, but in most cases, failed to ask. Both types of attorney asked children about prior disclosures, although defense attorneys were more inclined to ask children to recall specific content in particular disclosures. On average, children were asked about 5 disclosure recipients, and denied disclosing some information in 93% of cases. Attorneys exhibited little sensitivity to the age of the child in selecting their questions. The implications of the results for improving the process by which abuse cases are tried in court are discussed.

*Keywords:* child sexual abuse, disclosure, and children's testimony

## How Attorneys Question Children about the Dynamics of Sexual Abuse and Disclosure in Criminal Trials

In child sexual abuse prosecutions, the child's testimony is typically the most important evidence (Myers, Redlich, Goodman, Prizmich, & Imwinkelried, 1999). From the prosecutorial perspective, the unique dynamics of sexual abuse, including abuse by an adult close to the child, grooming behavior, and inducements to secrecy, lead children to report abuse only reluctantly and often inconsistently (Long, Wilkinson, & Kays, 2011). From the defense perspective, children are vulnerable to suggestion, and the fact that they have typically been questioned about abuse several times before trial makes it difficult to elicit the truth because these pre-trial interviews and conversations may have altered the child's report (Stilling, 2008). Given these perspectives, it seems likely that both prosecutors and defense attorneys will seek to elicit evidence of suspect and third party influence on alleged victims by asking children to recount prior conversations with others.

Very little research has examined what actually occurs in child sexual abuse prosecutions. Most of the research examines the types of questions, typically concluding that defense attorneys' questions are linguistically more confusing and frequently more leading than prosecutors' (Cashmore & DeHaas, 1992; Zajac & Cannan, 2009; Zajac, Gross & Hayne, 2003; but see Evans, Lee, & Lyon, 2009). Only a few studies have examined attorneys' case strategies. Again, the focus has been on the defense, with researchers emphasizing defense attorney's attempts to imply that children are dishonest or that children's memories have been tainted (Brennan, 1995; Hanna, Davies, Crothers & Henderson, 2012; Mertz & Lonsway, 1997). However, this research is largely impressionistic, in that examples of different strategies are presented with little quantitative data and no systematic assessment of content.

This is the first study to systematically examine how attorneys discuss children's prior conversations about sexual abuse in court, as a means of determining the veracity of abuse allegations. To develop hypotheses about how prosecutors and defense attorneys are likely to differ in their strategies, we examined the research that seemed most relevant to arguments that sexual abuse has or has not occurred: the dynamics of sexual abuse and disclosure in criminal cases and children's tendencies to succumb to suggestion or influence.

### **The Prosecution Perspective**

Prosecutors will often attempt to explain how the suspect accomplished abuse without the use of force, because the jury may envision abuse as akin to violent rape (Lanning, 2010). It is also important to explain why the victim kept abuse a secret for a lengthy period of time, because the jury may perceive delayed disclosure as evidence that the allegation was fabricated (Long et al., 2011). Although jurors believe that delayed disclosure is commonplace (Gray, 1993), they are more likely to believe children when disclosure occurs soon after the alleged abuse, and when the child's disclosure does not change over time (Yozwiak, Golding & Marsil, 2004).

Because of their pre-existing relationship with the child and their grooming methods, perpetrators need not use force in order to accomplish abuse or to guarantee silence. In most sexual abuse cases, the suspect is familiar to the child, often a close relative (Goodman-Brown, Edelstein, Goodman, Jones, & Gordon, 2003; Smith & Elstein, 1993). The relationship gives the perpetrator access to the child and allows the perpetrator to capitalize on the child's trust. Research questioning perpetrators about their modus operandi reveal how they actively develop trust, compliance, and silence (Leclerc, Proulx, & Beauregard, 2009). For example, Kaufman and colleagues (1998) interviewed 228 perpetrators, who reported that over time they would increasingly talk about sex, encourage children to wear less clothing, and tell children that they

would “teach them something” before engaging in sexual acts. The progressive nature of the abuse enabled perpetrators to assess the risk of disclosure before the sexual behavior became overt, so that any disclosures could be explained as innocent or misinterpreted (Lang & Frenzel, 1988). Once overt sexual acts occurred, children would be deterred from disclosing because the earlier acts made them feel as if they had consented and led them to fear that they would be blamed for failing to complain (Kaufman et al., 1998).

Perpetrators sometimes overtly threaten children not to disclose the abuse. In 27-33% of criminal cases, children recall overt threats (Gray, 1993 [*M* age = 9-years-old]; Smith & Elstein, 1993 [*M* age = 9-years-old]). According to Smith and Elstein (1993),

[W]arnings ranged from pleas that the abuser would get into trouble if the child told (or that the abuser would be sent away and the child would never see them again—a powerful message to a young child whose abuser is also a ‘beloved’ parent), to threats that the child would be blamed for the abuse (especially troubling were children who were told that the defendant’s intimate—the child’s mother—would blame the child for ‘having sex’ with the defendant and would thus turn against him or her), to ominous warnings that the defendant would hurt or kill the child (or someone he or she loved) if they revealed the abuse. (p. 86)

Perpetrators themselves have described how they discourage children from disclosing (Elliott, Browne, & Kilcoyne, 1995; Smallbone & Wortley, 2001). They emphasize the way in which disclosure will lead the child to lose positive factors in the child’s life, such as love, affection, friendship, and family stability (Lang & Frenzel 1988; Smallbone & Wortley, 2001; Smith & Elstein, 1993). For example, in a criminal sample of convicted offenders of child sexual abuse, 33% of offenders specifically told their victims not to tell and an additional 20% of

offenders reported having threatened loss of love or said the child was to blame to maintain abuse and discourage disclosure (Elliott et al., 1995). This was also reported by Conte, Wolfe, and Smith (1989), who found that perpetrators encouraged silence by telling victims: “their friends wouldn’t like them anymore,” their mom might be mad, or just by generally advising the child to “be careful not to tell anyone.”

The efficacy of perpetrators’ methods is demonstrated by delays in disclosure. The closeness of the relationship between the perpetrator and the child increases the likelihood of delayed disclosure (Sas & Cunningham, 1995). Criminal samples reveal that children typically delay disclosure until multiple instances of abuse have occurred, with one-third of children waiting at least a year (Sas & Cunningham, 1995). In addition, children are capable of describing their reasons for failing to disclose. Sas and Cunningham (1995) interviewed 135 children (*M* age = 10-year-olds) after their case was prosecuted and found that the most common reasons for delaying disclosure were: (a) fear of harm to self or others, (b) fear of being rejected by a non-abusive caregiver, (c) concern for family and thinking that non- or delaying disclosure might protect family, (d) fear that their disclosure would not be believed, (e) concern that bad consequences will harm the perpetrator, (f) inability to trust anyone to disclose to, and (g) wanting to protect other children, including siblings, from abuse.

These research findings suggest that from the prosecutor’s perspective, much can be understood about the dynamics of abuse by inquiring into what the suspect has said to the child, both to reveal grooming and to uncover any admonishments against disclosure. Furthermore, it is likely that the child will have delayed disclosing the abuse, and it is worthwhile exploring the reasons why in order to help the jury understand. Indeed, prosecutors are advised to explore the

dynamics of abuse (Long et al., 2011), and the courts have been receptive to efforts to educate juries about the reasons for children's delays and inconsistencies (*People v. Housley*, 1992).

### **The Defense Perspective**

The defense will often argue that the alleged victim is making a false report, and will likely explore how others have exerted influence over the child, leading the child to either lie or believe falsely that abuse occurred. Caregivers (and others close to the child) may be motivated to coach the child, and both caregivers and investigators may have strong suspicions of abuse that they communicate through suggestive questioning. Commentators have stressed that when the suspect is an ex-spouse or ex-partner of a concerned adult, the adult may be the source of the child's report (Bala, Mitnick, Trocmé, & Houston, 2007; Green, 1991; Jones & McGraw, 1987). Although jurors understand that children, particularly young children, are susceptible to suggestion (Quas, Thompson, & Clarke-Stewart, 2005), they may not be adequately sensitive to the suggestiveness of different types of questioning.

One study found that sexually abused children had received on average four formal interviews (e.g., with law enforcement, social workers, medical or mental health professionals, or school personnel) and two informal interviews (e.g., with caregivers and relatives) prior to testifying (Malloy, Lyon, & Quas, 2007). These contacts provide a basis for the defense to claim that the child's report is the product of external influence.

The research on children's suggestibility is vast, and comprehensive reviews are available (Bruck & Ceci, 1999; Goodman & Melinder, 2007). Research has documented a number of ways in which children, particularly young children, can be led to make false reports: selective reinforcement of the desired response (Garven, Wood, Malpass, & Shaw, 1998; Garven, Wood, & Malpass, 2000); guided visualization of the fictitious event (Ceci, Loftus, Leichtman, &



Bruck, 1994); negative stereotyping of the suspect (Leichtman & Ceci, 1995); and repeated suggestions from parents (Poole & Lindsay, 1995, 2001). There is also a fair amount of research demonstrating children's susceptibility to explicit coaching to make false claims (Lyon, Malloy, Quas & Talwar, 2008; Quas, Davis, Goodman, & Myers, 2007).

The research on children's susceptibility to influence suggests that the defense should inquire into what disclosure recipients have said to the child. This may reveal biases of the recipients and sources of influence. Furthermore, the defense is likely to question the child about their different disclosures and failures to disclose, including the initial disclosure, typically to a caregiver or a teacher, as well as formal disclosures to law enforcement, social services, and the prosecuting attorney, in order to suggest that the child's abuse report evolved over time. Indeed, practice guides provide this advice to defense attorneys representing child sexual abuse suspects (Stilling, 2008), and the courts have been receptive to defense claims of child suggestibility (Myers, 1994).

### **Present Study**

The present study examined how attorneys asked child witnesses in sexual abuse cases about their prior conversations, both with suspects and with disclosure recipients, by examining trial transcripts of criminal cases alleging childhood sexual abuse. We systematically explored whether prosecuting and defense attorneys' strategies, as revealed by their questions, are consistent with what one expects from the empirical literature. For the present investigation, we examined: (a) attorney question type and children's response type; (b) suspect's conversations with children, specifically their commands during alleged abuse, seductive comments before alleged abuse, inducements to silence, threats to enforce secrecy, and children's resistance; (c) children's prior disclosure conversations, including questions about specific disclosure content,

specific disclosure conversations, and specific conversational partners, as well as overt attempts to coach the child's report and children's motives for telling about alleged abuse or delaying their disclosure. We then examined how attorney questioning might relate to the age of the child being interviewed and the outcome of the criminal case.

We hypothesized that: (a) prosecuting attorneys would ask more about perpetrator's statements, specifically seductive comments and attempts to induce silence; (b) defense attorneys would ask more about children's disclosure patterns and assert external influence; and (c) prosecutors would ask more about children's reasons for disclosing or failing to disclose. We examined case outcome to determine if topics discussed more often by prosecutors were related to convictions and topics discussed more often by defense attorneys were related to acquittals. To examine these hypotheses, trial transcripts were coded for the content and form of questions and answers when any prior conversation was referenced. In addition, case files were examined for case characteristics.

### **Method**

Pursuant to the California Public Records Act (California Government Code 6250, 2010), we obtained information on all felony sexual abuse charges under Sect. 288 of the California Penal code (sexual abuse of a child under 14 years of age) filed in Los Angeles County from January 2, 1997 to November 20, 2001 ( $N = 3622$ ). Sixty-three percent of these cases resulted in a plea bargain ( $n = 2275$ ), 23% were dismissed ( $n = 833$ ), and 9% went to trial ( $n = 309$ ). For the remaining 5% of cases, the ultimate disposition could not be determined because of missing data in the case tracking database. Among the 309 cases that went to trial, 82% led to a conviction ( $n = 253$ ), 17% an acquittal ( $n = 51$ ), and the remaining five cases were mistrials.

For all convictions that are appealed, court reporters prepare a trial transcript for the

appeals court. Because criminal trial transcripts are public records (*Estate of Hearst v. Leland Lubinski*, 1977), we received permission from the Second District of the California Court of Appeals to access transcripts of appealed convictions. We paid court reporters to obtain transcripts of acquittals and non-appealed convictions. Given funding limitations, we prioritized the acquisition of acquittals. We obtained transcripts for 235 of the 309 cases, which included nearly all of the acquittals and mistrials (95% or 53/56) and 71% (182/ 253) of convictions.

For the purposes of the present investigation, we examined 72 cases in which child witnesses testified while under the age of 18 to allegations of sexual abuse. All cases included charges of abusing a child under the age of 14, meaning that at the time of alleged abuse all children were less than 14 years of age. We randomly selected acquittals and matched each acquittal to a conviction based on the age of the child victim and the number of witnesses in the case. When there were multiple eligible convictions, we selected the conviction closest in trial date to the target acquittal. The child witnesses ranged in age from 6 to 16 years of age ( $M = 11.74$ ,  $SD = 2.22$ ), and the number of child witnesses ranged from 1 to 6 ( $M = 1.88$ ,  $SD = 1.29$ ). Seventy-two percent of suspects were charged with multiple instances of abuse and 10% were charged with force. The defendant was a stranger to the child 8% ( $n = 6$ ) of the time, a biological parent 10% ( $n = 7$ ) of the time, a stepparent 22% ( $n = 16$ ) of the time, or another person the child knew (e.g., relative, neighbor, or child care provider) 60% ( $n = 43$ ) of the time. On average, there was a delay of 8 months ( $SD = 4$  months) between the filing of charges and the child's testimony. In order to assess the efficacy of the matching, we compared the acquittals and convictions on a number of factors. There were no significant differences between the acquittals and convictions with respect to whether the suspect was charged with repeated abuse [ $\chi^2(1, N = 72) = 1.66, p = .20$ ], charged with force [ $\chi^2(1, N = 72) = 0.06, p = .81$ ], or related to the alleged

victim [ $\chi^2(1, N = 72) = 6.79, p = .08$ ]. Further, there were no differences between the acquittals and convictions with respect to: the age of the child victim,  $t(71) = .63, p = .53, SE = 0.53, CI [-.72, 1.38]$ , the number of witnesses,  $t(71) = .14, p = .89, SE = 0.30, CI [-.65, .56]$ , and the delay between filing of charges and the child's testimony,  $t(71) = .49, p = .63, SE = 27.63, CI [-41.64, 68.59]$ .

In order to identify references to conversations, all occasions in which the words “say,” “ask,” “tell” (or their derivatives) were spoken in the transcripts were flagged. All references to conversations between the child and the suspect and discussions of alleged abuse between the child and other persons were coded. Two research assistants coded all question-answer pairs. In order to assess reliability, they independently coded 20% of the transcripts, and all variables had a minimum reliability of  $\kappa = .80$ .

The coding scheme assessed who asked the question (prosecution, defense), and the testimony phase (direct-, cross-, or redirect-examination). We also coded for question type and answer type (Table 1). Last, we coded the content of the question-answer pair (Table 2).

## Results

As a preliminary step, we examined the overall question-answer characteristics to determine the number of eligible question-answer pairs, the percent of questions that referenced conversations with suspects and prior disclosure conversations, and attorney's question type and children's response type. We then turned to our specific hypotheses. First, we assessed how attorneys asked about prior conversations with suspects and whether prosecutors asked more often about suspect's statements, particularly seductive comments and secrecy inducements. Second, we examined how attorneys asked about children's prior disclosures and whether defense attorneys asked more often about children's disclosures and asserted external influence.

Third, we examined how attorneys asked about children's motives for disclosing or delaying disclosure and whether prosecuting attorneys discussed these topics more frequently. As a last set of analyses, we assessed how attorney questioning related to the age of the child witness and the outcome of the criminal trial.

### **Question-Answer Characteristics**

There were 3,416 eligible question-answer pairs (defense = 1,699, prosecution = 1,717). Only 29 question-answer pairs (< 1%) constituted spontaneous mentions of a conversation by the child, and they were not considered further. The remaining 3,387 question-answer pairs (defense = 1,680, prosecution = 1,707) were analyzed.

We first examined question-type and children's responses. Attorneys differed in question-type,  $\chi^2(7, N = 3387) = 344.65, p < .001$  (Table 1). Prosecutors asked more wh-questions, and defense attorneys asked more declarative questions and suggestive questions. Nevertheless, a majority of both prosecutors' and defense attorneys' questions could be answered simply "yes" or "no" (combining across yes-no, declarative questions, and suggestive questions). There were also attorney differences in children's responsiveness,  $\chi^2(6, N = 3387) = 129.09, p < .001$  (Table 1). Children were more likely to give elaborative responses (more than merely assenting, dissenting, or picking an option to a forced choice question) to prosecutors, and more likely to give unelaborated yes-no responses to the defense. However, 50% of children's responses to prosecutors were nevertheless unelaborated yes-no responses.

Of these question-answer pairs, 26% discussed children's prior conversations with suspects (Ex. "Q. What did he tell you about kissing him?" "A. That it was a secret") and 74% discussed children's prior disclosures of alleged abuse (Ex. "Q. Did you tell your mom what happened?" "A. Yes"). The definitions of topics are provided in Table 2. Table 3 presents the

proportion of cases in which attorneys asked about content topics. This enabled us to assess whether different topics were discussed. Table 4 presents the mean number of questions by topic. This enabled us to assess the relative proportion of questions asked about the different topics. For numbers in the text, rounded estimates are provided; exact figures are reported in the tables.

### **Conversations with Suspects**

Attorneys asked about suspect statements in virtually all of the cases. Consistent with our prediction, prosecutors were 1 ½ times as likely to ask questions about suspect statements than defense attorneys (Table 3), and this was reflected in the higher number of questions asked (Table 4). However, examining the relative proportion of questions asked (Table 4) reveals that the greatest emphasis was on commands, rather than seduction, in which the suspect would encourage the child sexually, or silence and threats, in which the suspect would caution the child about the negative effects of disclosure or overtly threaten the child not to tell. With respect to commands, prosecutors usually asked, were nearly twice as likely to ask, and asked more questions than defense attorneys. With respect to seduction, on the other hand, prosecutors usually failed to ask, and only differed from defense attorneys when considering the average number of questions. For suspect attempts to discourage disclosure (silence and threats), prosecutors exhibited some tendency to bring these topics up more often and to ask more questions about them, but in most cases, both attorneys ignored them. Prosecutors were also about twice as likely to ask about the child's statements and asked more questions about those statements. Virtually all of the statements regarded whether the child had protested or resisted the alleged abuse.

### **Disclosure: Extent**

During trial testimony, attorneys and children frequently discussed the extent of children's prior disclosures, which asked about what the child disclosed and to whom the child disclosed. In all cases, at least one question-answer pair referenced the extent of disclosure, and usually both the prosecution and the defense asked these questions. Contrary to our prediction, defense attorneys were not more inclined to ask about the extent of disclosure than prosecutors.

Most of the disclosure extent questions were general, insofar as the attorney referenced touching or alleged abuse without asking about specific sexual acts (see Table 2), and prosecutors and defense attorneys were similarly inclined to ask these questions. However, in most cases children were asked at least one question that referenced specific content, or a specific disclosure conversation, or both. In addition, consistent with our prediction, defense attorneys were more inclined to ask specific questions about disclosure than prosecutors. Defense attorneys were twice as likely as prosecutors to ask at least one question in which the child was asked to recall specific content during a specific disclosure conversation (e.g., "Did you tell [your father] when he came into your room at Thanksgiving, that the suspect dragged you out of your room?"). Furthermore, defense attorneys asked a larger number of questions about specific content, both with respect to disclosure generally and with respect to specific disclosure conversations.

We also analyzed the extent to which children were asked about specific disclosure recipients. Virtually all of the questions about the extent of disclosure (88%) were about specific disclosure recipients. Nearly 60% of these questions asked about either the child's disclosure to their mother or a police officer. The remaining disclosure recipients fell into the following categories: school professionals, other family members, and friends of the child. In the remaining 12% of question-answer pairs about prior disclosures, the attorney asked about

disclosure more generally (e.g., “Did you tell anyone about what happened?”). Consistent with our predictions, the defense (91% specific, 9% unspecified) were significantly more likely to ask about specific recipients than the prosecution (85% specific, 15% unspecified),  $\chi^2(1, n = 2517) = 22.16, p < .001$ .

On average, children were asked about 5 different disclosure recipients ( $SD = 1.88$ ), with some children asked about as many as 10 prior disclosure recipients. Consistent with our predictions, the defense ( $M = 4, SD = 3$ ) discussed more disclosure recipients than the prosecution ( $M = 3; SD = 2$ ),  $t(71) = 2.35, p = .02, SE = 0.31, CI [.11, 1.34]$ .

For the questions about children’s prior disclosures, we examined how frequently children denied disclosing information (e.g., “Q. Did you tell your mom that your dad dragged you into the bedroom? A. No.”). In 93% of cases, children denied disclosing some information; 90% of cases by the prosecutors, and 83% of cases by the defense. Here, defense attorneys were more likely to elicit denials of disclosure ( $M = 7, SD = 9$ ) than prosecutors ( $M = 4, SD = 4$ ),  $t(71) = 3.10, p = .003, SE = 1.00, 95\% CI [1.11, 5.09]$ . This was also true for the proportion of attorney questions about disclosure that were answered with a denial; defense attorneys were more likely to elicit denials of disclosure ( $M = .12, SD = .10$ ) than prosecutors ( $M = .08, SD = .08$ ),  $t(71) = 2.32, p = .023, SE = .02, 95\% CI [.01, .07]$ .

### **Disclosure: Questions about truthfulness and overt accusations of coaching.**

In most cases, children were never asked directly whether they had told the truth or lied, and prosecutors and defense attorneys were equally likely to ask (although defense attorneys asked a larger number of questions). Similarly, in most cases there were no overt references to coaching or influence, and prosecutors and defense attorneys did not differ. Very few of these questions were asked.



**Disclosure: Motives**

Prosecutors were about twice as likely as defense attorneys to ask children about their motives for disclosing or for their reasons for failing to disclose. However, in most cases neither attorney asked, and the number of questions asked was small, such that prosecutors and defense attorneys did not differ.

We examined children's responses in order to understand how they explained their decisions to disclose or not to disclose. The predominant reason children gave for disclosing was unspecified fear (40%; another 20% heard that others had disclosed, 18% were asked by someone if they had been abused, 12% were concerned for someone else, and 6% thought it was wrong). Unspecified fear was also the predominant reason children gave for failing to disclose (56%; another 22% were embarrassed to disclose, 11% didn't think it was wrong, 4% were concerned about being removed from their home, 4% didn't think they would be believed, and 3% gave other reasons).

**Developmental Sensitivity**

We examined whether attorneys varied their questions based on the age of the child. Attorneys who are sensitive to age differences would likely ask more difficult questions of older children. For these analyses, age was split into two categories: 6-12-year-olds ( $N = 41$ ) and 13-16-year-olds ( $N = 31$ ), to distinguish between pre-teen and teen-aged children.

**Question type**

To assess the relationship between child age and attorney question type, we conducted repeated measures general linear models with age entered as a between-subject factor and the percent of questions from prosecuting and defense attorneys for each category of questions within cases ("Wh," yes-no, do you remember/know, declarative, forced choice, and suggestive)

entered as a repeated measure (question type examples in Table 1). Only one main effect of age was observed for yes-no questions; attorneys were more likely to ask younger children yes-no questions ( $M = .49$ ,  $SD = .02$ ) than older children ( $M = .41$ ,  $SD = .03$ ),  $F(1, 72) = 5.42$ ,  $p = .023$ ,  $\eta^2 = .07$ . No age by attorney interactions were observed.

### **Question content**

To assess the relationship between attorney question content and child age, we conducted general linear models with age entered as a between-subjects factor and the presence or absence of each category of question by attorney entered as a repeated measure. Few effects were observed. Prosecutors were *less* likely to ask older children about disclosure (26% vs. 37%),  $F(1, 72) = 8.58$ ,  $p = .005$ ,  $\eta^2 = .11$ , non-disclosure (26% vs. 34%),  $F(1, 72) = 6.58$ ,  $p = .012$ ,  $\eta^2 = .09$ , or the truthfulness of their disclosures than younger children (0% vs. 20%),  $F(1, 72) = 4.51$ ,  $p = .04$ ,  $\eta^2 = .06$ . Defense attorneys, in contrast, were more likely to ask older children about disclosure (29% vs. 10%) or non-disclosure (26% vs. 2%) than younger children. Therefore, if anything, defense attorneys were more likely to adjust their questioning to ask older children more often about the dynamics of abuse and disclosure.

### **Outcome of Case**

To assess the relation of attorney questioning to case outcome we conducted univariate binary logistic regressions with case outcome entered as the dependent measure. As predictors, we examined the eight categories of questions in which significant differences in proportions between attorneys were observed. For these analyses, we entered a variable noting whether the attorney who discussed the topic more frequently, discussed the topic in each case (Table 3). For example, because prosecutors were more likely to ask about suspect statements, we tested whether cases in which only the prosecutor mentioned suspect statements led to more

convictions. Two variables showed non-significant trends: juries were more likely to convict when the prosecutor asked about motives for non-disclosure [ $\beta = 0.97$ ,  $Wald = 3.33$ , odds ratio = 2.63,  $p = .068$ ], and juries were more likely to acquit when the defense asked about specific content within specific conversations [ $\beta = -.90$ ,  $Wald = 3.23$ , odds ratio = 0.41,  $p = .070$ ].

### **Discussion**

The present study examined how attorneys asked child witnesses in sexual abuse cases about their prior conversations, both with suspects and with disclosure recipients. We systematically explored whether attorneys' strategies, as revealed by their questions, were consistent with what one would expect from the literature on sexual abuse and suggestibility.

#### **Question-Answer Characteristics**

Defense attorneys were more leading than prosecutors, consistent with prior research on child sexual abuse cases (Davies & Seymour, 1998) and adult sexual assault cases (Kebbell, Deprez, & Wagstaff, 2003). This is not surprising, since attorneys are allowed to be leading on cross (Mueller & Kirkpatrick, 2007), and defense attorneys are advised to keep control of the witness through leading questions (Myers, 1986).

What was striking was that both attorneys predominantly asked questions that simply asked for a "yes" or a "no" (two thirds of prosecution questions and over 80% of defense questions), and children typically provided unelaborated answers. The attorneys' emphasis on yes-no questions meant that they were responsible for generating details of the interactions. Furthermore, children virtually never spontaneously referred to conversations (less than 1% of the time), and thus were dependent upon the attorneys' questions to do so. The emphasis on yes-no questions probably decreased both the productivity and accuracy of responses, because recognition questions produce fewer details and less accurate details than recall questions (Lamb,

Hershkowitz, Orbach, & Esplin 2008). Although attorneys were less likely to ask older children yes-no questions, they nevertheless did so 41% of the time, and there were no age differences in the proportion of other questions asked, including wh- questions tapping recall memory.

### **Conversations with Suspects**

As predicted, prosecutors asked more about the suspects' statements than the defense. However, the emphasis was on commands during the sexual act; prosecutors were about twice as likely to ask children about suspects' instructions during abusive acts as they were to ask about seductive comments. Coupled with the fact that almost all of the questions about children's statements to perpetrators concerned children's attempts to prevent or stop the alleged abuse, this suggests that the attorneys emphasized the overtly coercive aspects of the alleged abuse.

The greater emphasis on coercion was surprising, given the emphasis on the seductive aspects of child molestation that is stressed in the literature, and on legal commentator's advice to prosecutors to emphasize the ways in which children accommodate abuse. There are several possible reasons for this finding. First, it is possible that the cases that came to trial did not contain the elements of grooming that are commonly discussed in the literature on sexual abuse dynamics. Cases with grooming may not get to the trial phase because they are weeded out at earlier points in the process. Prosecutors are more likely to reject or dismiss cases when the victims are less cooperative or will not make convincing witnesses. These are often cases in which the suspect is close to the child and the family is unsupportive (Gray, 1993). Although we could not measure rejection rates, 23% of the cases originally filed were dismissed before trial.

Despite what may have been extensive screening, several characteristics of the cases in the sample strongly suggest that they contained manipulative elements. In our sample, 92% of suspects knew their victims, 90% were not charged with the use of any force, and 70% allegedly

abused their victims on multiple occasions. These factors suggest perpetration through seduction rather than violence (Elliott et al., 1995; Kaufman et al., 1998).

This raises additional explanations for prosecutors' emphasis on coercion. Prosecutors may be unaware of the manipulative aspects of abuse. Protocols for interviewing children focus on eliciting details about abuse (Lamb et al., 2008), and do not provide recommendations regarding questions about the behavior of the suspect with the child before abuse was initiated.

A final possibility is that prosecutors deliberately avoid raising the issue. Although prosecutors are urged to elaborate on the unique dynamics of abuse (Lanning, 2010), the effects of such testimony on jurors needs further study. At least with children approaching adolescence, jurors may infer consent, despite the fact that consent is not a defense to sexual abuse. Isquith, Levine, and Scheiner (1993) found that male mock jurors inquired into possible consent in cases involving children as young as 11 years of age. Furthermore, jurors might view manipulation (and the fact that it led to child acquiescence) as less serious than overt coercion. A great deal of research has looked at expert testimony regarding the dynamics of sexual abuse and has shown that it reliably effects jurors' judgments (Goodman-Delahunty, Cossins, & O'Brien, 2010; Kovera, Gresham, Borgida, Gray, & Regan, 1997), but very little research has looked at whether introducing those elements directly through the child's testimony influences jurors.

**Disclosure: Extent**

Both attorneys asked a large number of questions about children's prior disclosures. On average, children were asked about five prior disclosure recipients, and in 93% of the cases, the child witness denied disclosing some information. Defense attorneys asked about more disclosure recipients, elicited more denials of disclosure, and asked twice as often about specifics of disclosures (when both the disclosure conversation and the content of what was disclosed

were specified). These findings are consistent with claims that defense attorneys attempt to impeach child witnesses by pointing to inconsistencies in reports (Brennan, 1994; Myers, 2010).

Nevertheless, the total number of questions asked about disclosure did not differ between attorneys, and prosecutors were quite specific in their questions about children's disclosures. Eighty-five percent of prosecutors' questions were about specific disclosure recipients, and they asked about an average of three recipients. When they asked about the extent of disclosures, 50% of their questions referenced a specific disclosure, specific content, or both.

The prosecutors' rationale for asking specific questions about prior disclosures is unclear. The child's disclosures to others may be admissible hearsay corroborating abuse (Myers, 2010), but by eliciting the information from the child (rather than the adult recipients), the prosecutor increases the risk that the child will be subject to difficult questions about specifics of each disclosure, inconsistencies across the disclosures, and implications of coaching and influence that the child witness may be ill-equipped to rebut.

The fact that child witnesses were asked a large number of specific questions about their prior disclosures calls into question children's abilities to remember what they previously discussed. Compounding the problem is that there are routinely substantial delays between children's disclosures and their trial testimony (Goodman et al., 1992; Gray, 1993); the average delay in the present sample was 8 months between charges being filed and the start of the trial.

There are several respects in which children's memory for conversations is likely to be limited. First, when children are asked about specific disclosure recipients, details, and disclosure conversations, they may exhibit some confusion regarding what was said to whom and when. Distinguishing among different conversations requires source monitoring, which exhibits large developmental changes (Lindsay, Johnson & Kwon, 1991). Because children have multiple

disclosure conversations, questions about individual conversations present difficulties analogous to those encountered by children attempting to recall a single instantiation of a repeated event (Roberts & Powell, 2001). Second, children may have difficulty in distinguishing between what they said and what their conversational partner said, another type of source monitoring. Research examining adult's ability to remember their conversations with children finds that it is difficult to recall how information was elicited, whether statements were spontaneous or prompted, and who uttered specific utterances (Bruck et al., 1999; Warren & Woodall, 1999). We are not aware of any research examining children's abilities to identify the speaker in prior conversations. Third, children may confuse what they thought about disclosing with what they actually disclosed, a type of reality monitoring (Foley, Johnson & Raye, 1983).

Because questions about specific conversations are likely to be difficult for younger children, it is especially concerning that neither the prosecution nor the defense demonstrated any recognition of the developmental difficulty of these questions: younger children were no less likely to be asked about specific prior conversations or specific details by either attorney.

### **Disclosure: Questions about Truthfulness and Overt Accusations of Coaching**

Whereas defense attorneys extensively questioned children about different disclosures, they asked children overtly about the truthfulness of their reports in about a fifth of cases. The defense asked children directly whether they were telling the truth in 15% of cases, and made an overt accusation of influence or coaching in 21% of the cases. It is likely that defense attorneys are taking the advice of practice guides, which suggest that the attorney should only imply that the child is lying or that the child's story is the product of influence (Myers, 1988), rather than make an overt accusation that the child can deny. The advice adopts the commonsensical belief that children are savvy enough to deny a direct challenge to the veracity of their testimony.

Indeed, this may explain why prosecutors never asked teenagers if they were telling the truth; a teenager's denial would likely carry little weight. Overt accusations of coaching and lying may be more common in other countries in which defense attorneys are expected to confront witnesses with their claims directly during examination (Hanna et al., 2012).

**Disclosure: Motives**

Prosecutors were over twice as likely as the defense to ask about motives for non-disclosure and almost twice as likely to ask about motives for disclosing. However, prosecutors only asked about motives for failing to disclose in about a third of cases (and motives for disclosing in about a third as well). Surprisingly, prosecutors were least likely to ask the older children about their motives for disclosure and non-disclosure. These findings were unexpected given the research finding that children can explain their motives for disclosure and non-disclosure (Elliott et al., 1995; Sas & Cunningham, 1995), and the long-standing legal acceptability of explaining delayed disclosure to jurors (*People v. Housley*, 1992).

**Limitations and Future Directions.**

An obvious limitation of the current study is that the veracity of allegations cannot be assumed – while the majority of cases resulted in a conviction, there is no way to determine the number of false allegations included in our sample. An additional limitation is that all of the cases were drawn from a single county, and that the cases were tried 10-15 years ago. However, Los Angeles County is the most populous county in the United States. In the five-year period covered by this study, 3,622 cases of felony child sexual abuse were charged. The county is also highly diverse, both socioeconomically and ethnically, and the courts are located in 11 different branches throughout the county. Los Angeles County was the jurisdiction in which the McMartin daycare molestation case was tried; one of the first and most highly publicized sexual



abuse cases in which the suggestiveness of interviewing was highlighted (Eberle & Eberle, 1993). Los Angeles County was also the source of Roland Summit's Child Sexual Abuse Accommodation Syndrome (Summit, 1983), which the California courts have long approved as proper rebuttal evidence, albeit without the "syndrome" label (*People v. Gray*, 1986). Hence, attorneys would be well aware of the current debates over the credibility of children in child sexual abuse cases. Nevertheless, it is of course possible that attorneys' strategies in other U.S. jurisdictions are quite different than those found in our sample, and recent research on the dynamics of sexual abuse and the suggestibility of children may have affected more recent trials.

It is also possible that the dynamics of abuse and the child's disclosure history will be different in sexual abuse trials in other countries, for a number of reasons. First, the process by which cases are selected for trial may vary across jurisdictions. As noted above, the vast majority of cases never went to trial, either because of guilty pleas obtained through plea bargaining (63%) or because the charges were dismissed (23%). At first glance, the United States is unique with respect to plea-bargaining, by which most cases are disposed of before trial with guilty pleas exchanged for a reduction in charge or sentence. However, other countries employ less formalized means of avoiding trials. Garoupa and Stephen (2008) note that "plea-bargaining is rarely used outside common law countries," but add that if one defines plea bargaining as "any form of negotiated sentence that avoids criminal trial, then we might account for half or more of the convictions in many civil law countries" (p. 324). Second, the number of interviews children received before trial is likely to vary. For example, guidelines for forensic interviewing in the U.K. note that procedures are in place to utilize a videotaped forensic interview jointly conducted by the police and social services at trial in lieu of the child's direct testimony (Ministry of Justice, 2011), which should reduce the number of pre-trial interviews.

However, the guidelines contemplate that exigencies may compel the police to conduct preliminary interviews before arranging a taped interview, and that medical personnel conducting physical examinations will also question children (Ministry of Justice, 2011). Of course, initial disclosures to school personnel, friends and family are not under legal control. Hence, even within jurisdictions with substantial legal reforms, the number of prior conversations children have had about abuse before trial will vary widely.

Future research is recommended to further examine how children's testimony regarding sexual abuse may affect assessments of their credibility. First, future studies should examine testimony in relation to other case evidence including opening/closing arguments, hearsay testimony, and case characteristics. This would allow for a more complete perspective of how attorneys' structure their cases, as well as an understanding of how case evidence and attorney questioning might relate to case outcome. In the present study we did not find any significant predictors of case outcome. However, because of the large number of factors involved, it may be difficult to predict case outcome without a larger sample allowing for multivariate analysis. Second, researchers have called the study of memory for conversations the "orphan child of witness memory research" (Davis & Friedman, 2007, p. 3). Future research should examine children's memory for conversations, as distinct from memory for events. This would enable us to understand what is realistic to expect of child witnesses questioned about prior conversations and how memory for prior conversations might impact credibility assessments.

This study provided a first step in systematically assessing the content of courtroom questioning about children's prior conversations regarding sexual abuse. The findings of this study suggest that prosecutors' examination of child witnesses in sexual abuse cases may reflect a missed opportunity to help jurors understand the dynamics of seduction and non-disclosure. In

addition, both prosecutor and defense attorneys' focus on multiple recipients and multiple disclosures is almost certainly limiting children's ability to give accurate information. Although defense attorneys' behavior may be deliberate, prosecutors' behavior suggests a need to better educate legal professionals about children's' developmental limitations.

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Table 1.

*Percentage of different types of questions and responses, by questioner*

	Coding Definition ( <i>Coding Example</i> )	% Prosecution ( <i>n</i> = 1,707)	% Defense ( <i>n</i> = 1,680)	% Overall ( <i>N</i> = 3,387)
<b>Question Type</b>				
“WH” or “How”	Asks “who,” “what,” “where,” “when,” “why,” “which,” or “how” ( <i>What did you tell the police?</i> )	32% ( <i>n</i> = 548)	16% ( <i>n</i> = 275)	24% ( <i>n</i> = 823)
Yes/No Question	Can be answered just a “yes” or “no” ( <i>Did you tell him you liked it?</i> )	52% ( <i>n</i> = 887)	44% ( <i>n</i> = 736)	48% ( <i>n</i> = 1,623)
Do you Remember/Know	Question starts with “do you remember” or “do you know” ( <i>Do you remember what you said?</i> )	2% ( <i>n</i> = 27)	1% ( <i>n</i> = 12)	1% ( <i>n</i> = 39)
Declarative	The question would be a proper sentence if one dropped the question mark ( <i>It was the first time you told?</i> )	8% ( <i>n</i> = 131)	19% ( <i>n</i> = 323)	13% ( <i>n</i> = 454)
Forced Choice	Contains multiple possible answers ( <i>Did you tell your mom or did you keep it a secret?</i> )	2% ( <i>n</i> = 31)	2% ( <i>n</i> = 27)	2% ( <i>n</i> = 58)
Suggestive Questions	A tag question ( <i>Now he told you not to tell anyone, isn't that right?</i> ) or negative term question ( <i>didn't he tell you to keep a secret?</i> )	5% ( <i>n</i> = 83)	18% ( <i>n</i> = 307)	12% ( <i>n</i> = 390)
<b>Response Type</b>				
Elaborative	Responsive to a “wh” question ( <i>Q. What did you tell your mom? A. I told her everything.</i> )	31% ( <i>n</i> = 537)	16% ( <i>n</i> = 268)	24% ( <i>n</i> = 805)
Yes/No with Elaboration	Includes an assent or dissent and then provides additional content ( <i>Q. Did you tell your mom? A. Yes, I told my mom everything because I couldn't keep it in any longer</i> )	11% ( <i>n</i> = 183)	15% ( <i>n</i> = 243)	13% ( <i>n</i> = 426)
Yes/No without Elaboration	Provides only an assent or dissent without providing any additional content ( <i>Q. Did you tell your mom? A. Yes</i> )	52% ( <i>n</i> = 885)	62% ( <i>n</i> = 1,046)	57% ( <i>n</i> = 1,931)
Forced Choice	Picks a response to a forced choice ( <i>Q. Did you tell your mom or did you keep it a secret? A. I told my mom.</i> )	2% ( <i>n</i> = 27)	1% ( <i>n</i> = 23)	1% ( <i>n</i> = 50)
I Don't Know/Uncertain	Expresses a lack of knowledge, or expresses uncertainty such as “I'm not sure,” or “I think so” ( <i>Q. What did you tell your mom? A. I don't know.</i> )	4% ( <i>n</i> = 75)	6% ( <i>n</i> = 100)	5% ( <i>n</i> = 175)

Table 2.

*Topics of questions about conversations*

	Coding Definition	Examples
<b>Conversations with Suspects</b>		
Suspect Statements		
<i>Commands</i>	Instruction made by the suspect during abuse.	<i>"Did he tell you to take your pants off?"</i>
<i>Seduction</i>	Statement encouraging the child to engage in sexual activity.	<i>"Did he ask you if you had ever had sex before? "He asked you if you want to touch his penis?"</i>
<i>Silence</i>	Attempt to keep the abuse a secret.	<i>"He asked you not to tell your mom?"</i>
<i>Threats</i>	Statement referencing negative consequences of disclosing or ending the abuse.	<i>"Did he say he would hurt you?" "Did he say your mom wouldn't love you anymore if she found out?"</i>
Child Statements		
<i>Protesting</i>	Attempt to prevent or stop the abuse.	<i>"Did you tell him to stop?"</i>
<b>Disclosure</b>		
Extent		
	Statement about disclosure regarding what was said about abuse or to whom (or both).	
<i>General</i>	Vague reference to what was said about abuse. Includes references to the suspect "touching," "abusing" or doing "something bad."	<i>"Did you tell your mom about what happened with your dad?" "What did you tell your mom?"</i>
<i>Specific Content</i>	Specific reference to what was said about abuse.	<i>"Did you tell your mom about the condom wrapper?" "Did you ever tell the Detective that he would sometimes get to the house and be waiting for you when you got home so this could happen?"</i>
<i>Specific Conversation</i>	Specific reference to a disclosure conversation.	<i>"You told your mom on May 30<sup>th</sup> about what happened?" "And that night, after the holiday party, is that when you first told your mom?"</i>
<i>Specific Conversation &amp; Content</i>	Specific reference to what was said about abuse in a disclosure conversation.	<i>"Did you tell her at that time when she came into your room at Thanksgiving that the suspect had dragged you out of your room?"</i>
Truth or Lie		
	Direct reference to whether child "told the truth," or had "lied."	<i>"When you told her that, were you telling the truth?"</i>
Overt Accusation of Coaching		
	Direct reference to whether child was told to say something.	<i>"Did your mom tell you what to say about your dad?" "What did she ask you to change about your story?"</i>
<b>Motives</b>		
	Any question referencing why a child might have told or not told	
<i>Telling</i>	Asked for the child's reasons for telling about what had happened.	<i>"Why did you tell your mom?"</i>
<i>Non-Telling</i>	Asked about the child's reasons for having delayed telling, or why they did not tell a specific person.	<i>"Why didn't you tell your mom?" "Why did you wait to tell?"</i>

Table 3.

*Percentage of cases in which questioner discussed conversation topics*

	prosecutor	defense	<i>p</i> -value	Odds Ratio	% Ever discussed by either attorney
<b>Conversations with Suspects</b>					
Suspect Statements Overall	89%	58%	<b>0.000</b>	<b>1.53</b>	93%
<i>Commands</i>	71%	36%	<b>0.000</b>	<b>1.97</b>	77%
<i>Seduction</i>	38%	24%	0.064	1.58	47%
<i>Silencing</i>	36%	17%	<b>0.003</b>	<b>2.12</b>	40%
<i>Threats</i>	15%	14%	1.000	1.07	21%
Child Statements Total	61%	33%	<b>0.002</b>	<b>1.85</b>	74%
<i>Protesting</i>	58%	29%	<b>0.001</b>	<b>2.00</b>	71%
<b>Disclosure</b>					
Extent Overall	94%	96%	1.000	0.98	100%
<i>General</i>	92%	82%	0.092	1.12	96%
<i>Specific Content</i>	57%	63%	0.557	0.90	78%
<i>Specific Conversation</i>	54%	64%	0.311	0.85	83%
<i>Specific Conversation &amp; Content</i>	30%	61%	<b>0.001</b>	<b>0.50</b>	74%
Truth or Lie	11%	15%	0.581	0.71	22%
Overt Accusation of Coaching	26%	21%	0.481	1.25	36%
<b>Motives</b>					
<i>Telling</i>	31%	18%	<b>0.021</b>	<b>1.73</b>	36%
<i>Not-Telling</i>	31%	13%	<b>0.011</b>	<b>2.38</b>	47%

Table 4.

*Number of questions asked about conversation topics, by questioner*

<i>t</i> - test Values Comparing Prosecution and Defense Means										
	<i>M</i> number of questions Prosecution ( <i>SD</i> )		<i>M</i> number of questions Defense ( <i>SD</i> )		<i>p</i> - value	<i>S<sub>E</sub></i>	95% <i>CI</i>		<i>M</i> number of questions overall ( <i>SD</i> )	
Conversations with Suspects										
Suspect Statements Overall	6.83	(8.06)	2.64	(3.63)	.001	0.98	-6.15	-2.24	9.47	(9.33)
<i>Commands</i>	3.99	(5.77)	1.47	(2.63)	.001	0.69	-3.88	-1.45	5.50	(6.81)
<i>Seduction</i>	1.40	(2.33)	0.67	(1.61)	.01	0.28	-1.29	-0.18	2.07	(3.24)
<i>Silencing</i>	0.97	(1.72)	0.26	(0.71)	.001	0.20	-1.10	-0.32	1.24	(2.03)
<i>Threats</i>	0.57	(1.50)	0.21	(0.58)	.03	0.16	-0.69	-0.03	0.78	(1.79)
Child Statements Total	2.29	(2.82)	0.85	(1.94)	.001	0.41	-2.27	-0.62	3.14	(3.35)
<i>Protesting</i>	1.92	(2.49)	0.75	(1.81)	.002	0.37	-1.89	-0.44	2.67	(3.06)
Disclosure										
Extent Overall	12.56	(10.89)	18.03	(26.57)	.07	2.85	-0.33	11.03	30.60	(32.62)
<i>General</i>	6.75	(7.14)	8.51	(15.42)	.25	1.17	-1.24	4.78	15.26	(20.34)
<i>Specific Content</i>	2.47	(5.24)	5.01	(9.73)	.04	1.24	0.08	5.01	7.46	(11.59)
<i>Specific Conversation</i>	2.24	(3.62)	2.50	(4.13)	.61	0.51	-0.75	1.28	4.67	(6.54)
<i>Specific Conversation &amp; Content</i>	1.07	(2.56)	2.21	(3.13)	.01	0.41	0.33	1.95	3.29	(4.58)
Truth or Lie	0.19	(0.82)	0.35	(0.77)	.15	0.10	-0.36	0.55	0.53	(1.32)
Overt Accusation of Coaching	0.92	(2.40)	0.78	(2.39)	.64	0.29	-0.73	0.45	1.69	(4.08)
Motives										
<i>Telling</i>	0.51	(0.92)	0.49	(1.38)	.85	0.14	-0.31	0.26	1.00	(2.01)
<i>Not-Telling</i>	0.42	(0.75)	0.50	(2.25)	.71	0.22	-0.36	0.53	0.92	(2.75)
Overall	23.69	(17.16)	23.31	(29.78)					47.00	(39.93)

Notes: All assessments of significance utilized t-tests; non-parametric Wilcoxin tests were consistent. Not all cells sum to 1.00 due to rounding.