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Published version deposited in CURVE June 2015

Original citation & hyperlink:

Kyriakidou, M. , Zalaf, A. and Blades, M. (2014) Prosecution reliance on the quantity rather than the quality of evidence for children's testimonies. *The Cyprus Journal of Sciences*, volume 12 : 3-16.

<http://www.ac.ac.cy/easyconsole.cfm/id/344>

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PROSECUTION RELIANCE ON THE QUANTITY RATHER THAN THE QUALITY OF EVIDENCE FOR CHILDREN'S TESTIMONIES

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ABSTRACT

What characterizes testimonies by children that proceed to prosecution as compared with those that do not? Data for 46 cases that included a child's testimony were collected from the police force databases and transcriptions of children's videotaped testimonies in Cyprus. Prosecution rates were highly correlated with the evidence provided but with no other factors investigated. Study outcomes suggest a link between evidence provided and prosecution rates raising puzzling indications that the decision regarding whether a case gets prosecuted or not relies heavily on the number of evidence gained and not on the quality of questions used during the criminal investigations.

Keywords: Prosecution; evidence quantity; evidence quality; children's testimonies.

1. INTRODUCTION

Policing children's testimonies involves procedures emphasizing the elicitation of accurate and informative responses from interviewees (e.g. the use of appropriate question types) and carefully arranging procedures (e.g. suitable training courses) that can contribute further to gaining useful evidence for prosecution. Children's testimonies are vital for criminal investigations. Such testimonies may often be the only source of evidence for a police force in the investigation of an alleged crime as unambiguous evidence (like medical evidence) or third testimonies do not usually exist in cases of alleged sexual abuse against children (Dhami and Ayton, 2001; Jong, 1996; O'Keefe, 2004). Judges and juries rely heavily on testimonials in deciding the outcome of a trial (Porter and Brinke, 2009) especially in cases with children (Spencer and Flin, 1993). In the literature so far, research questions cover a variety of topics such as the impact of question types on the quality of potential evidence provided by children (DeVoe and Faller, 2002), the effects of police officers' training on the quality of question types (Lamb, Sternberg, Orbach, Esplin and Mitchell, 2002), and the prosecution rates in relation with the quality of a child's testimony (Wood and Garven, 2000). The present study aspires to link the most important factors in children's forensic investigations (such as evidence provided, question types,

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interviewers' experience) and explore their relationships by emphasising the prosecution rates. Each of these factors is discussed below and this literature review is followed by a description of the procedures surrounding the policing of children's testimonies in Cyprus.

1.1. Factors investigated

The decision regarding whether a case is prosecuted or not in the Republic of Cyprus is a joint decision between the Police Force and the Attorney General. When the police complete a criminal investigation of an alleged crime, the police submit a file with all the evidence gathered from the investigation to the Law Office of the Attorney General. A prosecutor of the Law Office would study the case and decide whether the case can proceed to prosecution on the basis that there is enough evidence that could substantiate the charges (Kyprianou, 2010). A question explored was how the amount of evidence provided influenced the prosecution rates, as well as what the effect of inappropriate and appropriate question types was on the prosecution rates. Various studies propose that a minor percentage of between 1 to 16 % of all police cases involving children get prosecuted (Sedlak, et al., 2006; Stroud, Martens and Barker, 2000; Wood and Garven, 2000). For example, Gallagher and Pease (2000) found that only one-fifth of cases in England and Wales (in 1997) proceeded to prosecution. The authors suggested that a main reason as to why police forces do not always proceed with prosecution is due to unsatisfactory children's testimonies. Studies with adults showed that they are more likely to characterize a child's testimony less convincing when inappropriate questions have been used (Lindsay & Lamb, 2010; Tubb, Wood and Hosch, 1999). Further studies have shown that a number of cases that proceeded to prosecution contained unsatisfactory and sometimes misleading evidence (Ashworth, 1998; Baldwin and Bedward, 1991). As a consequence of the insufficient cases suggested by the police for prosecution, problematic issues and weaknesses often arise during or following a trial (Leng, 1993).

Eliciting children's evidence during police questioning is a challenge for policing children's testimonies. Incidents of abuse are complex events that typically require integration of multiple types of forensic details (e.g. time, place, description of genitals). Each detail is used to construct the source or origin of the abusive incident. The ability of children to combine these forensic details into a cohesive testimony is critical for forensic investigations. Researchers provided indications that children fail to successfully describe abuse experiences (Leander, Christianson and Granhag, 2007; Pipe, Lamb, Orback and Cederborg, 2007). The experiences children will share during police questioning seem to be highly relevant to the way the interviewer approaches them.

Different question types can influence the accuracy and fullness of children's recall. There is a general agreement that open-ended questions (as defined by the Memorandum of Good Practice, 1992) access recall memory which is likely to extract accurate information as opposed to focused questions (as defined by Memorandum of Good Practice, 2007) that access recognition memory that could produce less accurate details (Davies, Westcott and Horan, 2014; Leichtman and Ceci, 1995). There is, however, a general inconsistency among researchers as to how to define and analyse different question types. As discussed by Oxburg, Myklebust and Grant (2010) in their review study, there is variation in the literature about how different question types are approached in different research methodologies among researchers in the field of police questioning. Oxburg, et al. (2010) categorized all definitions of question types used from 19 different studies into two main schemes: (i) the productive or appropriate and (ii) unproductive, risky or inappropriate. The productive or appropriate category included open-ended questions, probing and facilitators. The unproductive, risky or inappropriate category included closed, echo, leading, suggestive, multiple, forced choice, opinion/statements and hypothetical questions. The present paper discusses question types based on Oxburg's, et al. (2010) categorization of appropriate and inappropriate question types.

Inappropriate questions as defined by Oxburg et al. (2010) such as focused questions as defined by Home Office (2007) may be more developmentally appropriate for children and result in important information that children might not recall otherwise (Lyon, 1995; Yuille, Hunter, Joffe and Zaparnuik 1993). For example, after open-ended questions children only mentioned a small percentage of all the body touches they had experienced during a doctor's visit (e.g., 10% in the Saywitz study, and 25% in the Steward study) (Saywitz, et al., 1991; Steward, et al., 1996). Other studies indicated that children did not discuss abuse after the first few open-ended questions but more precise focused questions could be effective in eliciting more information (DeVoe and Faller, 2002; Mordock 1996). In DeVoe and Faller (2002), an average of 92 questions was required before children started disclosing information relating to sexual abuse. Some studies have shown that open-ended questions may not provide more details compared to focused questions and that children do not always elaborate their answers (Patterson and Pipe, 2009). Another example, by Davies et al. (2014), provided clues that children of 11 years old and even younger ones provided more information following inappropriate specific questions. These studies suggest that inappropriate questions were essential to help children disclose abusive incidents (Mordock 1996).

However, question types that fall within the inappropriate category should be used with caution as they could be challenged in the courtroom by defense lawyers by arguing that police interviewers misled children and distorted their accounts (Warren and McGough, 1996). For example, choice and yes/no questions that are within the inappropriate category, are characterized as two of the worst types of questions to rely

on during questioning. This could be because children assume that they have to answer police officers' (or lawyers') questions even if they do not know the answer (Poole and Lamb, 1998) or if the question makes no sense (Hughes and Grieve, 1980). It is therefore highly recommended in police guidelines and suggestions (American Professional Society on the Abuse of Children, 2002; Bull, 1995; Cyprus Police Guidelines, 2005; 2007; The Swedish Code of Judicial Procedures, 1942) for police officers to offer opportunities to children (via appropriate questions types such as open-ended questions) to give free descriptions of alleged events. Children's answers could be up to five times more detailed if open-ended questions were used appropriately (e.g. at the beginning of the interview) (Sternberg et al., 2001; Lamb et al. 2003). Multiple studies have provided evidence on the truthfulness of accounts following open-ended questions (Bull, 2010; Goodman and Aman 1990; Myklebust and Bjørklund 2006, 2009). When children do not know an answer in response to an open-ended question they are likely to answer 'don't know' rather than provide a false detail compared with inappropriate question types (Ceci and Burck, 1995; Davies, Westcott and Horan, 2000).

The experience of the interviewers was another factor investigated in relation to the evidence provided, questions types and prosecution rates. Myklebust and Bjørklund (2006) examined how interviewers' experience and long-term training affects the use of open and closed questions by police officers in field investigative interviews of children. A total of 100 interview questions were analysed and compared between those who had considerable experience and training compared with interviewers who did not. The study did not show any statistically significant differences between the interviewers who had experience and attended long-term training courses and the interviewers who were less experienced and attended less training courses. Beyond this study and to our knowledge there is no other research related to the effects of interviewers' experience on the quality of question types, evidence provided and how this influences the prosecution rates. Prior to the presentation of this study's methodology a description of the situation surrounding children's forensic testimonies in Cyprus is provided.

1.2. Policing children's testimonies in the Republic of Cyprus

The police unit within the criminal investigation department (CID) entitled the Domestic Violence and Child Abuse (DV/CA) Office is responsible for applying and extending the use of videotaped testimonies in the Republic of Cyprus. Videotaping children's testimonies is allowed due to the Violence in the Family (Prevention and Protection of Victims) Law 2004 and secondly through the Protection of Witnesses Law, 95(I)/ 2001. One of the most significant changes concerning the statutes about children's evidence is law 14(I)/2009. According to this law, a child's testimony can convict a suspect without the need for corroborative evidence, irrespective of whether

the child is under oath or not. This is a very significant change because it emphasises the importance of the child's testimony in the courtroom, something that did not exist in the past. The system of videotaping children's testimonies was firstly applied in the Republic of Cyprus in 2004.

Police officers who want to obtain videotaped testimonies from children have to be trained to carry out such interviews. However, there are no any retraining programs and so every interviewer has attended only one training course during his/her career. The DV/CA Office organizes a training programme once a year for all officers who intend to interview children. This training program lasts about a week and officers have the opportunity to learn about the theoretical aspects of children's testimonies and practice their knowledge by taking a mock testimony. At the end of training program each trainee interviewer receives feedback from the DV/CA Office on his/her performance during the course.

1.3. Present study

The present study addressed three research questions. First, how the prosecution rates were influenced by: a) The amount of evidence provided, b) The number of inappropriate and appropriate questions used during the police questioning and c) The interviewers' years of experience. It was expected that the more evidence a testimony gained the more likely it was to proceed to prosecution. It was hypothesized that when police officers detected high proportions of inappropriate questions within a child's forensic testimony, that would lead to withholding the case for prosecution. It was also expected that an increased number of appropriate questions within a testimony would result in higher rates of prosecution as police forces would have been aware of the beneficial outcomes of such question types. The interviewers' experience in association with the evidence provided and use of different question types was on an exploratory basis. Second, how children's potential evidence provided during police questioning were correlated with: a) The number of inappropriate and appropriate questions used during police questioning and b) The interviewers' years of experience. It was expected that the amount of evidence provided would have been positively correlated with the amount of inappropriate and appropriate questions used. Third, research question was on whether appropriate questions used related with: a) The number of inappropriate questions used during the police questioning and b) the interviewers' years of experience. It was expected that the experience of interviewers would not have affected the amount of inappropriate and appropriate question types used in the police interviews.

2. METHODOLOGY

2.1. Ethical issues

Permission was given by the Chief of Police to gain access to children's transcribed testimonies to one of the researchers. The study was in agreement with the Processing of Personal Data (Protection of the Individual) Law of 2001 and its amendment (Law No. 37(I)/2003) in the Republic of Cyprus. Any information revealing the identity of the alleged victims, suspects as well as the police interviewers and investigators were replaced with codes. This ensured respect to all people involved and their personal details during the data collection, coding, analysis and distribution of the findings. All testimony transcripts were analysed in the Domestic Violence and Child Abuse (DV/CA) Office. No transcripts were removed from the DV/CA Office. Access to police electronic databases was not directly permitted to the researchers but police officers could access the databases to answer the researchers' questions.

2.2. Procedure and coding

For the first element, "*Prosecution*", the police databases were accessed to detect the outcome of each case where a child's videotaped testimony was elicited. Cases which were prosecuted were valued as 1 and cases which were not prosecuted were valued as 2.

For the second element, "*Evidence*", data were collected from the transcriptions of children's videotaped testimonies. Each time a child conveyed a potential forensic detail (e.g. description of sexual incidents, references to individuals) this was calculated as evidence. The children's evidence was counted only the first time it was given in an interview. Information that the children repeated was not counted again.

For the third element, "*Appropriate Question Types*", and fourth element, "*Inappropriate Question Types*", the transcriptions of children's videotaped testimonies were used to categorise each of the questions asked by the interviewers. All question types were classified using the ABE manual (Home Office, 2007; Ministry of Justice, 2011). The appropriate question types combined open-ended questions and facilitators. The inappropriate question types included yes/no questions, specific questions and questions where a choice is given. However, a specific question could be coded as an open-ended question if it asked children to provide a free recall. For example, "what happened next?" was defined as an open-ended question and not as a specific question.

For the fifth element, "*The experience of the interviewer*", data were collected from the police electronic databases. This was the result of the year the testimony was

gained minus the year the interviewer attended his first training course on children's testimonies.

Because of the difficulty of eliciting permission for a second rater for the transcriptions of children's testimonies, and due to the fact that the police databases could be accessed only by police officers who provided the information to the researchers, there was no possibility to conduct inter-rater reliability tests.

2.3. Analysis

The normality test Shapiro-Wilk showed that all variables were non-normally distributed variables at $p < .001$. Non-parametric tests such as Mann-Whitney and Spearman's Correlation Coefficient tests were chosen to explore whether there were any differences or relationships between the seven elements. The Mann-Whitney test is considered as one of the most powerful non-parametric tests and can be conducted with highly unequal samples (Landers, 1981).

2.4. Sample

The average age of children interviewees was 10.11 ($SD=3.35$) with the youngest child being 3 years old and the oldest 16 years old. There were 27 cases that proceeded to prosecution, 6 cases that did not proceed and 13 cases were still under investigation or were unknown as to whether they proceeded to prosecution or not. There were 22 interviewers that, at the time of the interview, had 3 years or less experience in interviewing children. There were 24 interviewers that had 4 to 6 years of experience in interviewing children.

3. RESULTS

Spearman's analysis showed a significant positive correlation between the evidence provided and the number of inappropriate questions ($rs(44) = .30, p < .05$) and appropriate questions ($rs(44) = .38, p < .01$). There was no significant correlation between the evidence provided and the experience of the interviewer ($rs(44) = .10, p > .05$ rho). Spearman's analysis also showed a significant positive correlation between appropriate questions and inappropriate questions used ($rs(44) = .53, p < .001$). There was no significant correlation between the appropriate questions and the interviewers' experience ($rs(44) = .10, p > .05$).

The Mann-Whitney analysis showed a significant difference in the number of evidence gained between cases that proceeded to prosecution ($Mdn = 43$) and cases that did not proceed to prosecution ($Mdn = 16$) ($U = 34, p = .028, r = .38$). This test did not show a significant difference between cases that have been prosecuted and cases that have not concerning the number of inappropriate questions ($U = 71.5, p = .657$,

$r = .07$), appropriate questions ($U = 71$, $p = .639$, $r = .08$) and the experience of interviewers ($U = 68$, $p = .535$, $r = .2$).

4. DISCUSSION

The first research question concerned how the prosecution rates were influenced by: a) The amount of evidence provided, b) The number of inappropriate and appropriate questions used during the police questioning as well as the c) Interviewers years of experience. The study's outcomes indicated that prosecution mainly relies on the number of evidence provided despite the issue of whether this evidence was gained from inappropriate or appropriate question types or from experienced or inexperienced interviewers. The most significant factor influencing whether a case was prosecuted was the number of evidence within the child's testimony. This outcome replicated earlier studies suggesting the importance of eliciting informative testimonies that could proceed to prosecution (Wood and Garven, 2000). This finding reflects the necessity of potential forensic details from children's testimonies to satisfy the prosecution criteria of a police department.

On the other hand, this study contradicted our hypothesis that police interviews with higher number of inappropriate questions would have resulted in fewer chances for prosecution. This hypothesis was based on studies which showed that adults are more likely to characterize a child's testimony less convincing when inappropriate questions have been used (Lindsay and Lamb, 2010; Tubb, Wood and Hosch, 1999). Similarly, the hypothesis that testimonies with higher number of appropriate questions would have more chances to result in prosecution was also proven false. Cases that proceeded to prosecution had about equal numbers of inappropriate questions with cases that did not proceed to prosecution. The same applied for appropriate questions where there was an equal distribution of them in cases that proceeded and did not proceed to prosecution. This finding suggests that police officers may not consider whether the details gained by children came from appropriate questions or questions that may produce inaccurate information. Officers and the Attorney General Office seem to base their decision on whether to proceed to prosecution or not mostly on the amount and not on the quality of evidence.

In addition to this, the experience of the interviewer of a case did not result in an increase in the prosecution rates. This links with a finding from the second research question where the experience of an interviewer did not result in an increase on the amount of evidence provided, therefore, there was no reason to expect an increase on the prosecution rates for experienced interviewers. It is also associated with a finding from our third research question where interviewers' experience did not end up increasing the amount of appropriate questions or decreasing inappropriate questions; something that was in agreement with Myklebust and Bjørklund's (2006) study. It seems that the interviewers' performance was constant irrespective of their experience.

This finding should cause great concern for the police force as measures should be taken to ensure a greater amount of evidence as well as the accuracy of this evidence gained by children during police questioning.

Our second research question was how children's potential evidence provided during police questioning were correlated with: a) The number of inappropriate and appropriate questions used during police questioning and b) Interviewers' years of experience. The evidence provided correlated with the increase of both inappropriate and appropriate questions but it was irrelevant with the experience of the interviewer. This replicated earlier findings demonstrating the need for using inappropriate questions in order to elicit details that may not be otherwise gained with the sole use of open-ended questions (Davies et al., 2014). Likewise, it appears that open-ended questions are also essential for gaining important evidence for criminal investigations (Bull, 2010).

The third research question investigated whether appropriate questions were related with: a) The number of inappropriate questions used during the police questioning and b) Interviewers' years of experience. Interestingly with the increased use of appropriate questions, the number of inappropriate questions also increased. This outcome suggests a stable link between appropriate and inappropriate question types, with the likelihood of each interviewer relying equally on both to obtain useful details from children.

4.1. Suggestions

Two main practical implications for policing children's testimonies arise from the present outcomes of the study. The first one relates to the need for the police force to recruit intelligence analysts specializing in children's forensic investigations in order to assist police officers in determining which testimonies can be prosecuted or not. This study suggests that cases that proceed to prosecution cannot be distinguished through the quality of question types, but rely heavily on the amount of evidence provided. As a consequence these testimonies may lead to unsatisfactory evidence that may end up causing difficulties during a trial (Ashworth, 1998; Bedward, 1991; Leng, 1993). There may be cases, in which interviewers gained few evidences by relying on appropriate questioning and have not proceeded to prosecution due to the inadequate number of evidence. However, in such cases, an intelligence analyst could argue for the prosecution of the case as the accuracy of these few evidence could result in convicting a suspect. Intelligence analysts can help on this theme by providing an opinion not only on the quantity of the evidence elicited but also on their accuracy.

A second suggestion would be for the police force to consider changing its policing from the provision of one training course to the adaptation of the supervision and addition of repeated training courses. Benefits of any training program could be short-lived without any on-going practice (Powell, Fisher and Hughes-Scholes, 2008).

As Jones (1992) argued “*The support of a team or colleagues within an agency or department is essential. Supervision and/or consultation is/are a must, not only as the clinician starts in the area of sexual abuse, but throughout his or her career. Many who have tried to continue in this field without these emotional and professional supports have become less effective over time*”. If police officers receive regular feedback on their interviews and if this feedback or supervision is repeated, it could improve the way interviewers approach children during forensic investigations (Lamb, Sternberg, Orbach, Esplin and Mitchell, 2002). Lamb et al. (2002) conducted an experimental study where 74 interviews conducted by interviewers who received supervision and interviewers who did not receive any supervision were analysed. The study demonstrated that interviewers who received supervision used more open-ended questions (equivalent 1:4) than interviewers who did not receive any supervision (equivalent 1:2).

It is concluded that prosecution reliance on the quality rather than the quantity of evidence from children’s testimonies should be reconsidered by police forces and that recruiting intelligence analysts within its premises and offering further training should be explored further.

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