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Published

2022

Journal Title

Journal of Criminology

Version

Accepted Manuscript (AM)

DOI

[10.1177/26338076211068182](https://doi.org/10.1177/26338076211068182)

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**An evaluation of the question types used by criminal justice professionals with
complainants in child sexual assault trials**

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Acknowledgements:

This research was funded by a grant awarded to Martine Powell, Jane Goodman-Delahunty, and Nina Westera from the Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Views and findings expressed in this report are those of the authors and do not necessarily reflect those of the Royal Commission.

Abstract

The way that complainants of child sexual assault are questioned about their experiences can profoundly influence the accuracy, credibility, and consistency of their evidence. This is the case for all people, but especially children whose language, social and cognitive capacity is still developing. In this study, we examined the questions used by a representative sample of Australian prosecutors, defence lawyers, and judges/magistrates to determine if this is an area that warrants improvement. Our focus was the type of questions used by the different professionals and how (if at all) these varied across complainant age groups (children, adolescents and adults, total $N = 63$). Our findings revealed that each complainant group was questioned in a manner known to heighten misunderstanding and error (e.g., complex and leading questions were used frequently by all professional groups). There was also little indication of question adaption according to age (e.g., prosecutors asked children more complex questions than they asked adults). When the results are considered in the context of the broader literature on the impact of different question styles, they suggest that professional development in questioning would improve the quality of trial advocacy and judicial rulings.

Keywords: Court Questioning, Perceived Credibility, Eyewitness Memory, Child Sexual Assault Trials, Question Type.

An evaluation of the question types used by criminal justice professionals with complainants in child sexual assault trials

Prosecuting allegations of child sexual assault is particularly challenging. Complainants are required to recall highly personal and distressing events, often after extensive time delays, and trials inevitably focus on complainant credibility which compounds suffering (New South Wales Law Reform Commission ‘NSWLRC’, 2003). Irrespective of whether the complainant is a child or adult, these trials are also characterised by high rates of attrition and low prosecution outcomes (Daly & Bouhours, 2010; Fitzgerald, 2006). Acknowledgement of these concerns has led to numerous legislative reforms over the years, such as the introduction of alternate measures and guidelines for eliciting evidence (e.g., the use of pre-recorded evidence, testifying via CCTV, intermediaries and support persons; see, Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, for a review). While research evaluations support these reforms, the questions used by trial lawyers (which have had less focus) are also critical (Bull, 2014; Lamb et al., 2018; Pichler et al., 2020). In this study, we used standardised question coding criteria to examine how lawyers and judges question child, adolescent, and adult complainants in child sexual assault trials. We used the scientific memory literature on what constitutes best (recommended) questioning practice as the backdrop for evaluating trial lawyer questioning.

For ease of presentation in this paper, we categorise questions into two main categories; cued-recall questions and closed questions. Cued-recall questions direct the speaker to report specific details using their own words. These questions, which typically commence with ‘who’, ‘what’, ‘when’, ‘where’ or ‘how’, require *recall* processes; that is, respondents must generate the response by searching their own memory (Lamb et al., 2007). Examples of these questions include “Who else was there?”, “What did you say to your mother?”, “How hard did he hit you?” (when the complainant had previously disclosed that

they were hit). Open-ended questions, which invite elaborate information with few cues as to what needs to be reported (e.g., “Tell me everything that happened when...”, “What happened next?”, “Tell me more about the part where...”) also rely on recall processes, although such questions feature more in the investigative (police interviewing) stage because trial lawyers need to be quite directive about the detail needed to support their case.

In contrast to cued-recall questions, closed questions require the respondent to provide a yes/no response (e.g., “Did he touch you?”), or to choose from multiple interviewer-generated options (e.g., “Did he touch you over or under your clothes?”). These questions rely on *recognition* memory where the respondent must choose, confirm, or reject details that are provided by the questioner (Lamb et al., 2018).

In contexts where accuracy of response is paramount, memory researchers are unanimous about which of the two question categories is superior. For people of all ages, error rates are typically heightened with closed questions as opposed to cued-recall questions. There are two main reasons for this (Poole & Lamb, 1998; Powell et al., 2005). First, irrespective of whether a questioner suggests (in tone or manner) the desired answer (e.g., “Surely you fought back, didn’t you?”), there is a tendency for people to exhibit a response bias toward “yes” when response options are narrowed to yes or no, or to choose an option provided by an interviewer instead of saying “I don’t know” (Goodman et al., 2014). Response bias, which is largely a socially driven phenomenon, is more prevalent among complainants of relatively low social status (e.g., children, Aboriginal complainants, people with communication impairment), and is not easily dampened with warnings about the importance of saying ‘I don’t know’ and not to guess responses (Beauscher & Roberts, 2005, Cohen & Harnick, 1980; Eades, 2008; Earhart et al., 2018; Henry & Gudjonsson, 2003). Indeed, children typically perceive adults as competent and sincere communication partners and thus they often comply with requests for information without even fully understanding

the question (Ceci & Bruck, 1993; Ceci et al., 1987). For example, in a study where 5- to 7-year-old children were asked nonsensical questions such as “Is red heavier than yellow?”, the children almost always responded with yes or no, without requesting clarification or saying “I don’t know” (Hughes & Grieve, 1980). Errors are usually a product of the question rather than complainants’ intention to deceive. When children want to be compliant, they try to provide the best response they can (e.g., for the question, “Is red heavier than yellow?” children may choose red as the more reasonable answer because red is a darker colour; Ceci & Bruck, 1993; Tobey & Goodman, 1992).

Second, closed questions lead to higher errors than cued-recall questions because the memory retrieval process is more superficial (less elaborate) and rapid, and the questioner is more likely to be imposing a certain state of events (Fisher & Geiselman, 1992). These factors enhance the likelihood that information from other sources will be used to reconstruct the event (a normal and often unconscious human phenomenon), at the expense of reduced reliance on retrieved episodic memory traces. Contamination of memory can originate from interviewer-suggested details but it can also arise from intrusions of related (similar but distinct) events that the complainant experienced, imagined or observed, but were not actually part of the target event (e.g., Roberts & Blades, 2000). Intrusions from similar events (i.e., attributing experienced details to the wrong occurrence) is more prevalent in response to closed (compared to cued-recall) questions (Powell & Roberts, 2002).

When considering the effects of question type on response accuracy, other factors (not just whether the question requires recall or recognition processes) need to be considered. In particular, the extent to which the question is suggestive (by the use of leading or repeated questions), or complex, also needs to be considered. Research indicates that complainants are particularly likely to make errors when asked leading questions which introduce information that has not been previously disclosed by the complainant and which imply or suggest a

particular response (e.g., “He touched you under your clothes, didn’t he?” when the complainant had previously disclosed they were touched, but not where; Roebbers & Schneider, 2000). Repeated questions, especially when they are closed, can also be considered a coercive technique as respondents who want to please the interviewer (or get the process over with) tend to change their response option, believing that their first answer was incorrect or not desired (Poole & White, 1991; Howie et al., 2004). Finally, and commensurate with the recommendation that questions should be phrased simply (Powell & Snow, 2007), questions that are difficult to comprehend (due to ambiguous phrasing or sophisticated syntax and vocabulary) also tend to elicit a high rate of errors (Lamb et al., 2018; Poole & Lamb, 1998; Powell et al., 2005).

Although no age group is completely immune to suggestion and interviewer manipulation, the detrimental effect of leading and complex questions is much greater for younger children compared to adolescents and adults (Roebbers & Schneider, 2000). This is especially true after lengthy questioning. While all witnesses tire rapidly when the task is effortful, children tire more quickly than older children and adults, as their ability to sustain attention over time is still developing (Betts et al., 2006).

In sum, research indicates that sexual assault complainants are particularly prone to making errors in response to closed, leading, repeated, and complex question types. Although children are especially susceptible to the negative effects of these questions, the differences in error rates between younger children and the older age groups is merely a matter of degree (the qualitative effect of the questions is similar for all individuals; Ceci et al., 2016; Goodman et al., 2014; Sharman & Powell, 2012). Given the strong relationship between questioning style and response accuracy, and the need to ensure that our justice system allows respondents to provide their best evidence, it is important to evaluate how complainants are questioned in court.

Questioning of Complainants at Trial

Various players question complainants of child sexual assault at trial in common law legal systems. Judges and magistrates interact with complainants during the trial to instruct and question complainants primarily in relation to the trial procedure, such as taking the oath (Andrews & Lamb, 2016). Most questioning, however, is conducted by the prosecution or defence, each of whom are regulated by different rules of evidence.

During examination and re-examination, prosecutors are expected to question complainants in a way that protects the accuracy of the evidence and enables them to give evidence in their own words (Australian Law Reform Commission 'ALRC' et al., 2005). Consequently, it is a general rule that prosecutors should not ask leading questions (*Evidence Act 1995*, NSW, s. 27). In contrast, the purpose of cross-examination is to test the complainant's evidence and their credibility, although it is generally accepted that the underlying goal of cross-examination is to discredit the witness's evidence (e.g., ALRC & NSWLRC, 2010; Caruso, 2012). In accordance with the different aims of prosecution and defence questioning, defence lawyers tend to ask child complainants more leading, closed, and complex questions than prosecutors (Andrews & Lamb, 2016; Stolzenberg & Lyon, 2014; Zajac et al., 2003; Zajac & Cannan, 2009). Concerns about the types of questions employed during cross examination and lines of questioning that make use of sexual assault myths, have led to the commonwealth, NSW, and ACT to impose a duty on the court to disallow improper questions that arise during cross-examination (ALRC et al., 2005; Cossins, 2020). For example, Section 41 of the *Evidence Act 1995* (NSW) mandates that improper questions, including those which are misleading, confusing, repetitive, or intimidating are disallowable. Despite these legislative changes, however, concerns about inappropriate cross-examination questioning have remained (e.g., Cossins, 2020). The creation of enactments and laws does not mean they are applied in a positive way.

Do Lawyers Adapt their Questioning Style to the Complainant's Developmental Stage?

Little prior research has considered the degree to which lawyers tailor their questions to the developmental needs of the complainant. An Australian study analysed sexual assault trial transcripts involving child complainants aged 6-17 years, revealing that defence lawyers exhibited some sensitivity to the age of the complainant in their questioning (Zajac et al., 2018). Defence asked younger children a higher proportion of cued-recall questions and a lower proportion of leading questions compared to older children. Nonetheless, all children (irrespective of age) were asked a low proportion of cued-recall questions and a high proportion of complex and leading questions. The study, however, only analysed the questions during cross-examination. Given that prosecutors aim to maximise the reliability of evidence, we would expect prosecutors to tailor their questioning to the needs of the complainant more than the defence. Research conducted in international jurisdictions has found conflicting evidence regarding whether prosecutors (cf. defence lawyers) do in fact use more appropriate questions with children compared to adolescents (e.g., Andrews & Lamb, 2016; Stolzenberg & Lyon, 2014; Zajac et al., 2003).

Considering the detrimental effect of fatigue on response accuracy, and that younger complainants suffer fatigue more quickly than their older counterparts, it is important to consider whether lawyers adapt the duration of questioning to the complainant's developmental stage. Few studies have examined this question, and the findings that do exist are mixed. There is some evidence that younger children are asked fewer questions during cross-examination than older children (Zajac & Cannan, 2009), however, cross-examination even with young children is typically lengthy (the duration of cross-examination in Australian child sexual assault trials is much longer for all witnesses than it was a few decades ago; Zajac et al., 2018).

To our knowledge, only one study has directly compared how child and adult complainants are questioned at trial (Zajac & Cannan, 2009). This study examined trial transcripts involving child or adult complainants of sexual assault in New Zealand. Overall, lawyers did not tailor their questions to the developmental needs of the complainant. Prosecutors asked child complainants (aged 5-12 years) a higher proportion of leading questions, and a lower proportion of cued-recall questions than they asked adults, and defence lawyers asked children a higher proportion of closed questions than adults. Although defence lawyers used leading questions less frequently with children (compared to adults), almost half of the questions they asked children were leading. As this study did not examine how complainants aged 13-18 were questioned, it is unknown how lawyers question adolescents relative to children and adults.

The Current Study

The aim of the current study was to evaluate the extent to which lawyers and judges adapt the question structure (cued versus closed), as well as the length of their questioning, to compensate for the developmental needs of the complainant in Australian courts. We were also interested in the extent to which lawyers use leading, complex, and repeated questions. Given the different roles of the legal professionals at trial, we were interested in the extent to which they tailored their questioning to the age of the complainant. We expected that judges (impartial overseers who ensure a fair trial) and prosecutors (who aim to maximise the accuracy and informativeness of complainant evidence) would moderate their questioning to the age of the complainant more than defence lawyers. To examine this issue, we obtained a representative, contemporaneous sample of court transcripts of lawyers' and judges' questioning of complainants of child sexual assault from three different age groups; children, adolescents, and adults.

We also measured the types of responses complainants gave to the various questions; we were interested in the degree to which the complainants across the age groups indicated confusion or poor comprehension of questions. Accuracy of responses cannot be determined in trial transcripts because the ground truth of what the complainants report is not known. However, since under optimal (laboratory) studies, errors consistently arise in response to closed questions, errors would also be occurring at trial where the cognitive load and discomfort would be even higher than that in the laboratory. If (as we expect) children willingly answer closed trial questions with few ‘don’t know’ responses, this would indicate that the detrimental effect of the closed questions is potentially undetected. This heightens the importance of ensuring that the onus for minimising error rests with the interviewer (quality of questions) rather than the child.

Method

Selection of Court Transcripts

Transcripts of the evidence given by complainants in 156 trials of child sexual abuse were obtained from three Australian jurisdictions (New South Wales, Victoria and Western Australia). The transcripts were obtained under notice or summons issued by the Royal Commission into Institutional Responses to Child Sexual Abuse. All trials were held between 2010 and 2015 and include a mixture of ‘historical’ (where the alleged abuse occurred before 2010) and ‘contemporary’ cases (where the alleged abuse occurred after 2010).

To obtain a representative sample from each of the three jurisdictions, the complainants were matched for age (within one year of each other’s age) at the time of the trial. This process resulted in transcripts of evidence given by 63 complainants across three jurisdictions.

Complainants aged under 12 years at time of trial were classed as ‘children’ ($n = 21$, $M = 8.95$ years, $SD = 1.65$, range = 6–11) complainants aged from 12 to under 18 years at time of trial were classed as ‘adolescents’ ($n = 21$, $M = 14.52$ years, $SD = 1.54$, range = 12–17) and

complainants aged 18 years and over at time of trial were classed as ‘adults’ ($n = 21$, $M = 34.67$, $SD = 12.07$, range = 21–62). The majority of complainants in each group were female—there were four male complainants in the child sample (19.1%), six male complainants in the adolescent sample (28.6 %), and six male complainants in the adult sample (28.6%). All defendants were male, except for one female defendant in the child sample and one female defendant in the adolescent sample.

Question Types

Each question asked by the prosecutor, defence lawyer, or judge was classified into one or more of seven categories displayed in Table 1. These categories included cued-recall questions (which engaged recall processes) and closed questions (which required the complainant to recognise the correct response) as well as questions that were leading, complex, and repeated. Additionally, the instructions given to the complainant were coded.

Insert Table 1 near here

Type of Complainant Responses

The responses complainants gave to each question were categorised into one or more of seven categories. Table 2 details how complainants’ responses were coded. These categories included adaptive strategies (such as asking for clarification, seeking clarification, and resisting leading questions), as well as potentially unhelpful strategies (such as compliance, misunderstandings, and changing evidence). Responses that did not fit any of these categories were coded as ‘other’ and omitted from the analyses. Because some of the courtroom questions and complainant responses could be assigned to more than one category, the sums of question type and response type may exceed one.

Insert Table 2 near here

Inter-coder Agreement

All of the transcripts included in the study were coded by one researcher, and a second researcher coded 20 per cent of the transcripts to calculate inter-coder agreement. Inter-rater reliability was high, $\kappa = .87, p < .001$. Coding disagreements were resolved by discussion, after which one researcher coded the remaining transcripts.

Analysis

The data were analysed using a combination of ANOVAs and *t*-tests depending on what was deemed most appropriate. Due to the small sample sizes, post-hoc testing was conducted using more conservative Bonferroni testing. The differences are statistically significant unless otherwise stated. To control for the variation in the total number of questions asked by each party, analyses were performed on proportional values. Because some of the courtroom questions and complainant responses could be assigned to more than one category, the sums of question type and response type may exceed one.

Results

How do Lawyers and Judges Question Complainants?

There was a difference in the pattern of results depending on professional group. Statistical testing showed that the types of questions asked varied as a function of the questioner and there were differences in the types of questions asked by prosecutors, lawyers, and judges, $F(6.43, 385.86) = 86.88, p < .001$. Separate analyses on questioner and question type revealed no differences according to jurisdiction (all $ps > .15$). Subsequent analyses examine the question types used by each professional group.

As Figure 1 shows, prosecutors used some types of questions more than others, $F(3.47, 208.33) = 71.22, p < .001$. Prosecutors tended to ask closed questions. They used leading questions (the least desirable type of questions) as much as they used cued-recall

questions (the most desirable types of questions). Prosecutors used complex language in about a third of all questions, but they seldom used repeated questions and questions that had a complex meaning.

Defence lawyers also used certain types of questions more than others, $F(2.71, 162.52) = 296.14, p < .001$. Given that more than 60 percent of defence lawyers' questions were leading, and less than 10 per cent were cued-recall questions, their questioning was most likely to result in errors when compared with judges' and prosecutors' questioning. Compounding these problems, 44 per cent of all questions asked by defence lawyers used complex language. One in every 10 questions was a repeated question, and one in every 10 questions was a 'complex meaning' question.

Judges also used some types of questions more than others, $F(3.63, 217.47) = 75.85, p < .001$. Overall, judges tended to give instructions and use closed questions. Leading questions were present in nearly one-fifth of all questions and cued-recall questions were seldom used. Judges used complex language in just over one-third of all questions, but used complex meaning and repeated questions less frequently.

Insert Figure 1 near here

Do Judges and Lawyers Adapt their Questioning to the Age of the Complainant?

The types of questions that complainants were asked varied as a function of the age group of the complainant as well as the questioner ($F(13, 386) = 3.75, p < .001$); prosecutors, defence lawyers and judges used different types of questions with different age groups. Subsequent analyses examine the extent to which each professional group tailored their questioning to the age of the complainant.

The types of questions prosecutors asked varied as a function of age, $F(6.94, 208.33) = 3.22, p = .003$. As Table 3 shows, prosecutors' questioning methods did not promote

accurate responding from complainants. Prosecutors asked children and adolescents fewer cued-recall questions and more complex questions than they asked adults. Of note, post-hoc testing showed that the differences in complex questions did not meet the threshold of significance (children: $p = .08$; adolescents, $p = .89$). More positively, prosecutors asked children and adolescents fewer repeated questions and gave more instructions than they did to adults, Bonferroni, $p < .05$.

Insert Table 3 near here

The types of questions defence lawyers asked varied as a function of age, $F(5.42, 162.52) = 2.29, p = .04$. As Table 4 shows, differences in defence lawyers' question types according to age group were marginally significant. A comparison of the means indicated that defence lawyers used fewer leading questions with children than with adolescents and fewer complex questions with children than with adults. The high number of leading and complex questions for all age groups, however, negated the ability to draw meaningful interpretations of these age differences in terms of their effect on complainant accuracy.

Insert Table 4 near here

The types of questions judges asked varied as a function of age, $F(7.25, 217.47) = 3.72, p = .001$. As Table 5 shows, consistent with practice that promotes response accuracy, judges asked children fewer leading questions than they asked adults, and more cued-recall questions than they asked adolescents and adults. In follow-up testing the differences in open questions by age were only marginally significant, $p = .06$. Judges also asked children more closed questions than they did adolescents and adults, and gave fewer instructions than they did to adults, Bonferroni, $p < .05$.

Insert Table 5 near here

Did Lawyers and Judges Adapt the Length of their Questioning to the Age of the Complainant?

There was limited evidence that legal professionals adapted the length of their questioning to the age of the complainant. Figure 2 displays the average number of questions asked by prosecutors, the defence, and judges (during evidence-in-chief and cross-examination). Defence lawyers did not adapt the number of questions asked to compensate for differences in age. Although defence lawyers asked children slightly fewer questions than adolescents or adults, this difference was not statistically significant, $F(2, 60) = 0.76, p = .47$. The number of questions prosecutors asked varied as a function of age, $F(2, 60) = 24.15, p = < .001, \eta^2_p = 0.45$. Prosecutors asked adults more questions than they did children and adolescents, Bonferroni, $p < .05$. This finding is likely due to the use of the police video interview as evidence-in-chief, which means police, not prosecutors, are essentially eliciting the evidence-in-chief from children. The length of questioning did not vary according to jurisdiction (all $ps < 0.09$). During evidence-in-chief the number of questions judges asked varied according to the complainant's age group, $F(2, 60) = 11.89, p < .001, \eta^2_p = 0.28$. Children were asked twice as many questions as adolescents and over three times as many questions as adults, Bonferroni, $p < .05$. This could be due to judges asking young children questions to test their competence to give evidence. During cross-examination, the number of questions judges asked did not vary according to the complainant's age, $F(2, 60) = 0.002, p = 1.00$.

Insert Figure 2 near here

How Often did Complainants Show Compliance, Confusion, or Engage in Adaptive Strategies During Questioning?

Overall, there were high rates of compliance with leading questions and misunderstanding during questioning. Additionally, complainants used adaptive strategies (i.e., seeking or providing clarification) infrequently. Table 6 displays the type of responses complainants gave according to their developmental stage. This shows that the types of responses complainants gave varied as a function of age, $F(3.89, 116.55) = 9.30, p < .001$. Children and adolescents complied more often with leading questions and gave fewer clarifications than adults. Children also sought clarification less than adults, Bonferroni, $p < .05$.

Insert Table 6 near here

Discussion

The way that legal professionals questioned complainants was broadly consistent with how we would expect criminal trials to operate. Prosecutors asked relatively more cued-recall questions than other professionals, whereas defence lawyers asked high a proportion of leading and closed questions. Two main findings were surprising. First, all professionals, even prosecutors and judges, asked a low proportion of cued-recall questions. Indeed, prosecutors asked a similar proportion of leading and cued-recall questions. Second, there was limited evidence that professionals tailored their questioning to the age of the complainant. Judges for example, asked children more closed questions than they asked older complainants, and prosecutors asked children and adolescents fewer cued-recall questions, and more complex questions than they asked adults. These patterns in how complainants of sexual assault are questioned can undermine the legitimacy of trial verdicts (Dennis, 2013).

The high prevalence of closed, leading, and complex questions compromises the accuracy of trial verdicts because these question types heighten error even under optimal conditions. The negative effect of these question types on response accuracy is likely to be heightened at trial due to enhanced complainant stress. Child and adult complainants of sexual assault commonly report that interrogative-style and complex questioning is one of the most stressful aspects of engaging in the trial process (Eastwood & Patton, 2002; Hamlyn et al., 2004; Hayes & Bunting, 2013; Konradi, 1999). Stress increases cognitive load, compounding the detrimental effect of closed and leading questions on respondent accuracy (Barrett et al., 2004; Lindau et al., 2016; Qin et al., 2009). This is especially problematic in sexual assault cases where the primary evidence is typically the complainant's account (Shead, 2014).

The finding that prosecutors and judges did not adapt their questions to the age of the complainant suggests that the problem of poor questioning is a skill-based one. We know from prior research that prosecutors and judges understand the importance of accommodating children's developmental limitations (Hanna & Henderson, 2018; Krähenbühl, 2011), and they have expressed the desire for more training to improve the quality of their questioning (Westera et al., 2019). Further, they have reported that their difficulty in interviewing is not in the identification of instances of inappropriate questioning but the formulation of alternate, more appropriate questions (Hanna & Henderson, 2018; Krähenbühl, 2011, Plater et al., 2021).

There has been significant scientific advancement in recent years in understanding precisely what training activities are needed to bridge the questioning skill gap (Lamb, 2016; Brubacher et al., in press). Even relatively short training programs can lead to sustained improvement in professionals' interviewing skills, provided the programs include several evidence-based activities, including identification of question types, distributed practice and

provision of expert instruction and feedback. Fortunately, such training programs can be effectively administered online, at individuals' own pace, which enhances ease of administration and accessibility (Benson & Powell, 2015).

Overall, it is likely that a shift toward more cued-recall, simply phrased, and non-leading questions during the trial process would markedly improve both the quality of evidence and experience of sexual assault complainants during the trial process. The threshold of potential error tolerance in the phrasing of questions, however, is a matter of degree and will warrant extensive future discussion. Minimising all likelihood of error (i.e., phrasing questions in a way that would fully satisfy an eyewitness memory expert) is not likely to be a feasible goal. The extent to which one can adhere to cued-recall and non-leading questions, without jeopardising the right of the accused, is likely to be more clear-cut with judges and prosecutors as opposed to defence lawyers.

A central component of a fair trial is the right to test the evidence (VLRC, 2016). This is achieved through cross-examination – a process which aims to test the veracity and accuracy of complainants' evidence by eliciting ambiguities and inconsistencies (*Mechanical Inventions v Austin* [1935] AC 346, 359). Yet careful attention must be given to *how* these ambiguities and inconsistencies are elicited. We distinguish between cross-examination which reveals versus produces unreliability (Bowden et al., 2014). Leading, complex, and closed questions often produce inconsistent details and errors when witnesses provide a genuine, and otherwise highly accurate account of a previous event (Fisher et al., 2009). These question types are even more likely to generate inconsistent details when witnesses recall similar events that occurred repeatedly, a common feature in the majority of child sexual abuse cases (Coburn et al., 2021; Connolly & Read, 2006). In our study, these problematic question types were regularly used by defence lawyers (e.g., the majority of questions asked by defence lawyers were leading, and approximately half of the questions

posed were complex). Inconsistencies that are produced in this way are typically used to undermine the credibility of the complainant – even when the details are peripheral to the central events and actions in the case (Lamb, & Fauchier, 2001; Pichler et al., 2020). Thus, when cross-examination consists of a high proportion of leading and complex types, the validity of cross-examination as a tool for discriminating the credibility and reliability of complainants is reduced.

Measures designed to re-focus cross-examination as a tool for revealing (rather than producing) ambiguities in witnesses' evidence have met with considerable resistance (e.g., pre-trial 'ground rules hearings', intermediaries, and tighter restrictions on cross-examination; Cossins, 2020; Deck et al., in press; Plater et al., 2021; Victorian Law Reform Commission [VLRC], 2016). We speculate that the resistance may be driven by a lack of shared vision about what 'best practice' cross examination looks like (most of the literature focuses on what good cross examination is not; e.g., Cossins, 2009). Such a vision can only come about through *systematic* research. Specifying how to use cross-examination questions to reveal ambiguities in the evidence of sexual assault complainants may be assisted by focus group research with various stakeholders (such as lawyers and memory experts) to engage in in-depth discussions grounded in case examples. Survey research may be useful to determine the widespread acceptability of recommended approaches.

In conclusion, while sexual assault trials have undergone considerable reform in the last century to improve the evidence and experience of complainants, poor questioning (i.e., high prevalence of closed, leading, and complex questions) has persisted (Zajac et al., 2018). In our study, children and adolescents frequently complied with leading questions and professionals rarely utilised adaptive strategies during questioning to accommodate developmental limitations. The onus of responsibility for eliciting accurate evidence lies with

the questioner, who must be afforded high-quality training opportunities and systematic research to assist them.

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Table 1*Descriptions of Codes for Question Type*

Category	Explanation	Example
Cued-recall	Open invitations, and input-free utterances used to elicit free-recall responses.	<i>Q. What happened there?</i>
	Cued-recall questions that focus the complainant's attention, mostly using 'Wh-' utterances.	<i>Q. Who else was in the house?</i>
Instructions	Giving the complainant instructions, usually about the trial process.	<i>Q. I'm going to have to start at the beginning due to the interruption, okay?</i>
Closed	Yes/No or forced-choice questions.	<i>Q. Did anything happen during those stays?</i>
Leading	A statement to agree with, or tag question.	<i>Q. You had been separated from your father.</i>
Complex Language	Multi-part Question	<i>Q. So between moving to [family friend's] house and going to the police station on [date], you would have spoken to your mum about what was going on? Q. How old were you then?</i>
	Abrupt change of topic	<i>A. Six.</i>
	Uses legal jargon	<i>Q. What do you do on Sundays?</i>
	Uses complex non-legal language	<i>Q. You recall that we spoke about two main incidents that occurred.</i>
	Embedded clauses	<i>Q. Is the playroom adjacent to the kitchen? Q. And the one that's got red on it, that would be your sister's bed.</i>
	Inappropriate negation	<i>Q. Because they were watching boys' programs, weren't they?</i>
Complex meaning	References to measurement (such as height or time).	<i>Q. And that was really, in timing wise, about April 2012?</i>
	Ambiguous	<i>Q. You said that your pop came into your bedroom one day and did something to you.</i>
	Fragment	<i>Q. What about your sister?</i>
Repeated question	Grammatical error or fumble	<i>Q. Okay. So the – can you see the bed that has white posts on it?</i>
	Repetition of the question or answer	<i>Q. When did you last see her? A. Last year. Q. Last year?</i>

Table 2*Description of Codes for Complainant Response Type*

Code	Explanation	Example
Complies	Agreeing with leading or closed questions	<i>Q. Were there any customers in the shop that day?</i> <i>A. Yes.</i>
Resists	Resistance to leading or closed questions	<i>Q. I suggest that didn't happen.</i> <i>A. It happened</i>
Gives clarification	Giving more information than is required to answer the question	<i>Q. Did she ask you that?</i> <i>A. She asked all of us that.</i>
Seeks clarification	Seeking clarification from the questioner	<i>Q. Well you've grown up in two years since then, haven't you?</i> <i>A. Sorry, what was that?</i>
Misunderstands	Clear misunderstandings of the question	<i>Q. What was the rude thing that he said?</i> <i>A. He'd be gay and I'd say no.</i>
Expresses uncertainty	Saying that they are unsure or do not know	<i>Q. Did he whisper it or say it in a loud voice?</i> <i>A. I don't know.</i>
Changes evidence	Changing earlier evidence	<i>Q. What I'm suggesting to you is that at no stage did you tell the police that the accused restrained you.</i> <i>A. No. Yeah, I agree.</i>

Table 3*Prosecutors' use of question types by age of complainant*

Question type	Under 12		12-17		Adult	
	M	SD	M	SD	M	SD
Cued-recall *	0.20	0.03	0.17	0.03	0.33	0.03
Instruction**	0.11	0.03	0.10	0.03	0.02	0.01
Closed	0.41	0.04	0.44	0.04	0.44	0.03
Leading	0.28	0.04	0.28	0.05	0.20	0.02
Complex language**	0.37	0.08	0.37	0.04	0.27	0.02
Complex meaning	0.10	0.03	0.07	0.02	0.09	0.02
Repeat question**	0.05	0.01	0.05	0.01	0.10	0.10

Note. * $p < .001$, ** $p < 0.05$ **Table 4***Defence lawyers' use of question types by age of complainant*

Question type	Under 12		12-17		Adult	
	M	SD	M	SD	M	SD
Cued-recall	0.09	0.01	0.08	0.01	0.07	0.01
Instruction	0.03	0.00	0.03	0.01	0.02	0.00
Closed*	0.33	0.03	0.24	0.03	0.28	0.02
Leading*	0.56	0.02	0.65	0.03	0.64	0.02
Complex language*	0.40	0.03	0.43	0.03	0.49	0.02
Complex meaning	0.11	0.02	0.10	0.02	0.12	0.03
Repeat question	0.15	0.02	0.13	0.01	0.14	0.01

p = < .001, ** p = < 0.05*Table 5***Judges' use of question types by age of complainant*

Question type	Under 12		12-17		Adult	
	M	SD	M	SD	M	SD
Cued-recall*	0.15	0.02	0.08	0.02	0.07	0.02
Instruction*	0.31	0.03	0.42	0.03	0.46	0.05
Closed*	0.41	0.03	0.30	0.03	0.25	0.03
Leading*	0.13	0.02	0.19	0.03	0.22	0.03
Complex language	0.42	0.03	0.38	0.04	0.40	0.03
Complex meaning	0.06	0.01	0.08	0.02	0.07	0.02
Repeat question	0.08	0.02	0.07	0.02	0.11	0.02

Note. * $p < .001$, ** $p < 0.05$

Table 6*Complainants' response to question types by age of complainant*

Question type	Under 12		12-17		Adult	
	M	SD	M	SD	M	SD
Complies leading*	0.74	0.04	0.75	0.05	0.56	0.02
Resists leading	0.04	0.01	0.10	0.04	0.08	0.01
Gives clarification**	0.13	0.02	0.12	0.02	0.27	0.02
Seeks clarification*	0.01	0.01	0.02	0.01	0.03	0.01
Misunderstands	0.01	0.01	0.43	0.03	0.49	0.02
Expresses uncertainty	0.01	0.01	0.01	0.01	0.05	0.01
Changes response	0.01	0.01	0.00	0.00	0.00	0.00

Note. * $p < .001$, ** $p < 0.05$

Figure 1

Proportion of each question type asked by legal professionals

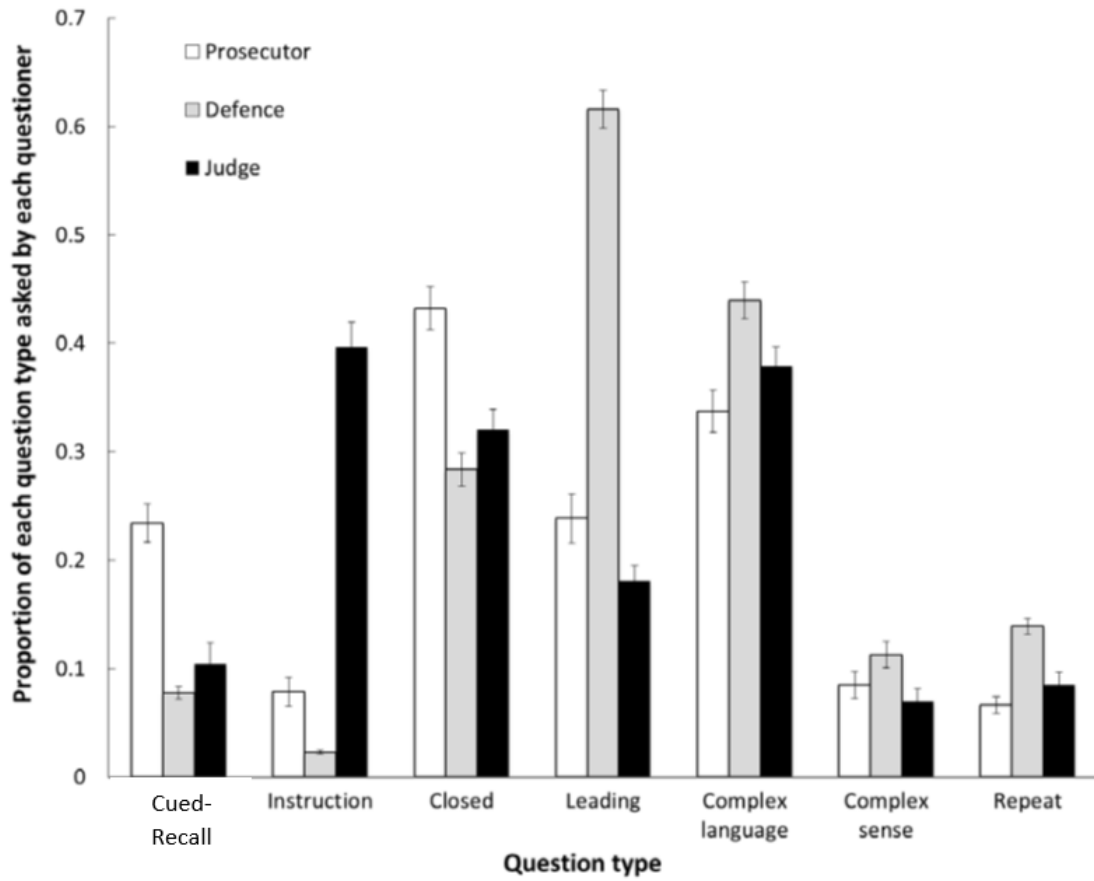


Figure 2

Mean number of questions by age group

