“I put it to you, that an answer such as that, in a court of law is inappropriate – what’s your view?”

I will return to this lawyer’s question near to the end of my presentation.
2. Is skill at questioning/interviewing children actually important?

In Norway Myklebust and Bjorklund (2009) found that in court/legal proceedings regarding alleged child abuse a factor that discriminated between cases that resulted in convictions and cases that did not was the length of children’s answers to open questions in police interviews (suggesting that *detail* was important).

This is one of the reasons why I placed emphasis on the asking of open questions when I co-authored Government guidance on the interviewing of children in the 1992 ‘Memorandum of Good practice’ and on the interviewing of vulnerable adults in the 2002 ‘Achieving Best Evidence’.

Other substantial guidance on the interviewing of children such as that produced in the USA by Lamb and colleagues for the National Institute of Child Health and Development (NICHD) also strongly recommends the frequent use of open questions.
3. Is skill at questioning/interviewing children actually important? (cont’d.)

Indeed, Lamb and colleagues (Pipe, Orbach, Lamb, Abbott, & Stewart, 2013) compared the investigative interviews of suspected child sexual abuse victims conducted either before or after a large sample of investigators (in the USA state of Utah) had been trained to use the NICHD protocol. They found that

1. deciding to bring charges was more likely for post-training interviews (53%) than for pre-training interviews (42%)
2. guilty verdicts more often occurred in post-training cases
3. the rates of guilty pleas were similar pre- and post-training, but since post-training interviews were more likely to result in bringing charges, they were associated with more guilty pleas.
4. Is skill at questioning/interviewing children actually important? (cont’d.)

A study in Italy (Roma, San Martini, Sabatello, Tatarelli, & Ferracuti, 2011) compared the contents of children’s ‘testimony’ in sexual abuse cases in which courts rendered either a guilty or not guilty verdict. The cases analysed were those in which a social worker or child psychiatrist or psychologist assisted the child at trial (in a manner similar to that of an intermediary).

The types of content that significantly differentiated between verdicts were (the CBCA criteria of) quantity of details (including unusual and superfluous details), description of the interaction, reproduction of conversation, feelings, and spontaneous corrections/additions.

Thus, obtaining such detail from children does indeed seem to be very important.
5. What makes an account valid/accurate/reliable?

Additionally, my recent overview of some of the literature relevant to determining whether an account can be thought of as being valid/accurate/reliable demonstrated that

*amount of detail,*
*consistency,*
*plausibility,*
*coherence,*
*few/no contradictions*

seem to be very important (Bull, 2016).
6. What about lawyers’ skills?

A recent publication analysed transcripts of 36 child abuse criminal proceedings involving 56 alleged victims conducted between 2009 and 2014. (These were 36 of the 43 trials in six major courts ‘identified’ by the Scottish Court Service as involving alleged victims of child abuse.)

15 of the 56 were under 13 years of age, 26 were aged 13 to 15, 15 were aged 16 to 17.

In 95% of the cases the alleged abusers were already known to the alleged victims. Defence lawyers asked linguistically complex questions significantly more often than did prosecutors, especially “…when prompting children with option-posing and suggestive prompts” (p. 189).

These complex questions resulted in more child ‘unresponsiveness’, ‘expressions of uncertainty’ and ‘self-contradictions’ (Andrews & Lamb, 2017).
7. What about lawyers’ skills? (cont’d.)

The average number of phrases per lawyer utterance was four – and the average number of clauses was two.

Some lawyers’ utterances to the children contained up to eight questions, ten sentences, and over 150 words (some words containing up to 15 letters).

“The findings obtained in the present study, supported by research over the past 30 years...defense lawyers...ask questions of children that sometimes exploit their developmental limitations. Such questioning techniques violate guidelines...outlining the best ways to elicit truthful testimony...raise serious questions about the extent to which courts ensure that guilty suspects are convicted” (p. 191).

The defendants were actually convicted regarding 42 of the 56 alleged victims – an unusually high conviction rate?
8. Our study of lawyers’ skills

We observed 89 children testifying in 40 criminal trials.
11%  5 to 8 years old
29%  9 to 13 years
60%  14 to 15 years
Principal charges were assault, murder/attempted murder, sex related.
75% were bystander witnesses and 25% alleged victims
9. Our study of lawyers’ skills (cont’d.)

Average duration of examination-in-chief was 16 minutes and of cross-examination 10 minutes.

In both examination-in-chief and in cross-examination the number of children we rated as seeming unhappy or very unhappy was similar at 50%.

However, the majority of the children seemed not to be overwhelmed by the proceedings.

Regarding the lawyers’ degree of ‘supportiveness’, the prosecution lawyers were rated as more supportive (all the witnesses appeared for the prosecution).
10. Our study of lawyers’ skills (cont’d.)

12% of examinations-in-chief contained some vocabulary that the child seemed not to understand, compared to 40% of cross-examinations; but the children rarely said they did not understand.

However, 40% of the children did say “I don’t know” to some questions put to them.

So, improvements needed regarding (i) half of the children appearing unhappy/very unhappy and (ii) 40% of cross-examinations containing vocabulary not understood (but children not saying that they don’t understand).

Date of conducting this study = ????  (See question on my first slide.)
11. Little change?

Thus, little change seems to have taken place between our study of cases in the late 1980s and the study I described of cases conducted between 2009 and 2014. (Similarly, studies in England/Wales and around the world have unfortunately found substantial improvements in the questioning of children to be rare – see, for example, Davies, Bull and Milne, 2016; Zajac et al., 2016.)

Perhaps this is why the High Court of Judiciary in Scotland in March 2017 issued a ‘Practice Note’ on the ‘Taking of evidence of a vulnerable witness by a Commissioner’ (a procedure initiated in Scotland in 2008 after input from myself and others).

“Evidence taken by a commissioner as a special measure, involves proceedings being conducted before a commissioner appointed by the court. The evidence of the vulnerable witness is taken in full (in criminal proceedings involving examination, cross-examination and re-examination). The proceedings are video recorded and the recording later received in evidence at the subsequent trial or court hearing.” (See http://www.gov.scot/Publications/2008/04/21142140/9)
12. Video recorded cross-examination?

As most of us are aware, in England/wales the ‘Youth Justice and Criminal Evidence Act 1999’ made provision (in section 28) for vulnerable/child witnesses to have recorded on video their cross-examination before trial.

For a variety of complex reasons (some obscure to me) this was not soon implemented.
13. Video recorded cross-examination? (cont’d.)

Seeking to end on a positive note, the ‘Process evaluation of pre-recorded cross-examination pilot (section 28)’ document seems to suggest that what was proposed in 1999 may at last be implemented. (See https://www.gov.uk/government/publications/process-evaluation-of-pre-recorded-cross-examination-pilot-section-28)

Indeed, the Government has announced that (in light of the above evaluation) it will roll-out from September 2017 pre-recorded cross-examination (PRCE) for complainants of rape and other sex crimes.

*We await what such recordings will reveal about the skills of cross-examiners.*
References


