Running head: *INTERMEDIARY PRESENCE AND/OR INTERVENTION*

**Title: Mock jurors’ perceptions of a child witness: The impact of the presence and/or intervention of a Registered Intermediary during cross-examination**

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Acknowledgements

Many thanks to the following who acted in or recorded the scenario video-recording clips: S. Jones, A. Miller, L. Mountford, J. Perry, R. Pettitt, T. Schrader, and C. Wilson

**Abstract**

In recent years Registered Intermediaries (RIs) have been involved in facilitating communication in children’s investigative interviews and trial proceedings. Their presence and interventions are generally deemed to have a positive impact on child engagement, but their impact on jury appraisal of evidence, during cross-examination is unclear. This study addressed this issue in a more ecologically valid context than that previously used.

Adult mock juror participants (*N* = 217) watched a video-recording of a mock cross-examination of a child witness in which a RI was present or absent, and in which RI type interventions were either included or omitted. The participants rated the quality of the cross-examination and the child’s responses in relation to child credibility, child understanding, legal professional’s behaviour, and trial progression.

Findings indicated that RI presence or absence, and inclusion or omission of interventions had no effect on mock juror ratings. However, an interaction between these variables demonstrated that mock jurors rated trial progression towards a guilty verdict according to which court professional did, or did, not intervene. The findings also demonstrated that mock jurors based their assessment of trial progression towards a guilty verdict on the evidence presented, and that child understanding per se was irrelevant.

Many vulnerable witnesses, such as those who are children or those who have specific cognitive, social, physical or communication impairments, encounter difficulties in accessing and proceeding through legal procedures in the justice system. Extensive previous research has examined these difficulties and found issues relating to the vulnerable witnesses themselves, the legal processes encountered, and in relation to both lay people and associated professionals involved in those legal processes.

***Children’s witness abilities***

There are issues regarding children’s abilities to give complete and accurate testimony (Brown, Lamb, Pipe & Orbach, 2008; Lamb, Hershkowitz, Orbach & Esplin, 2008; Lamb, Malloy & LaRooy, 2011; see also Klemfuss & Ceci, 2012 for a developmental review) and in relation to their responses or reactions to the legal processes encountered (Plotnikoff & Woolfson, 2009), particularly in response to delay between the alleged incident and testifying (Davies, Herderson & Hanna, 2010; Righarts, Jack, Zajac & Hayne, 2015). Research has examined the way in which the quality of interactions and questioning can positively or adversely affect children’s ability to respond appropriately in investigative interviews, and in criminal proceedings (for example, Almerigogna, Ost, Bull & Akehurst, 2007; Cederborg, Hultman & LaRooy, 2012; Hershkowitz, Lamb, Katz & Malloy, 2015), and more recently in respect to family proceedings (Turoy-Smith & Powell, 2016). Should a child’s allegations proceed, the court process itself may be sufficiently stressful as to impede a child’s abilities to respond to questions (Cossins, 2009; Hoyano, 2007).

***Juror perceptions***

Juror perceptions of child witnesses are key in the court decision making process. The extant research regarding children’s testimony in court proceedings demonstrates that jurors have potentially unfair perceptions of child witnesses (Bruer & Pozzulo, 2014; Goodman et al., 2006), with an associated detrimental impact on the perceived credibility (Quas, Thompson & Clarke-Stewart, 2005). Since 1999, in England and Wales, the only requirement for unsworn testimony is that the witness understands questions, and has the ability to to provide understandable answers (Hoyano & Keenan, 2007). However, age of witness has been shown to be a consistent indicator of witness believability, with younger children being deemed to be less accurate providers of information than older children and adults (Holcomb & Jacquin, 2007; Pozzulo, Lemiuex, Wells & McCuaig, 2006). The age of a witness may also have an impact on legal professionals’ questioning practice, with different types of questions (particularly the use of option-posing and suggestive questions), or inclusion of structural or temporal markers, being predictive of trial outcome, rather than the responses given by the child (Klemfuss, Quas & Lyon, 2014; Mungo, Klemfuss & Lyon 2016). Perceived credibility and impact of children’s testimony on jurors may also be affected by testimony presentation format, with jurors viewing testimony more positively when they observe children directly in court rather than via a video link (Landstrom & Granhag, 2010; Landstrom, Granhag & Hartwig, 2007; O’Grady, 1996). These findings have been discussed by McAuliff and Kovera (2012), who propose that violation of juror expectations that a child would be nervous and lacking coherence has a detrimental impact on child witness believability.

***Facilitating children’s engagement in legal proceedings***

Legislation has been introduced to facilitate children’s full and appropriate participation in legal processes. For example, in England and Wales, the Youth Justice and Criminal Evidence Act (1999) made available ‘Special Measures’ to help children (and other vulnerable or intimidated witnesses) give best evidence. These measures include video-recorded evidence in chief, removal of wigs and gowns (the traditional court dress for judges and practicing legal professionals) during trial proceedings, cross-examination via live link, and aids to communication. Research into the effect of the implementation of these measures has shown generally positive effects in improving children’s experiences, thus facilitating their engagement (for a review see Hamlyn, Phelps, Turtle & Sattar, 2004; Applegate, 2006; Landstrom & Granhag, 2010), and their abilities to provide appropriate responses to questions (Doherty-Sneddon & McAuley, 2000) - although Plotnikoff and Woolfson (2009) have suggested work is still needed to fully resolve these issues.

Plotnikoff and Woolfson (2009) conducted an extensive study into the experiences of 182 young witnesses (mean age of 14.3 years) involved in legal proceedings in England and Wales. They found that most young witnesses were anxious before the trial, often experienced lengthy delays (an average of approximately eight months from the time of the defendant’s first appearance and trial), and/or rescheduling. At least half of the young witnesses said that they did not understand the questions that they were asked in court (similar findings are reported in other countries, e.g. Hayes, Bunting, Lazenbatt, Carr & Duffy, 2011, in Northern Ireland). Although judges and lawyers are encouraged to explain that children should say if they do not understand (Equal Treatment Bench Book, 2013, section 5:56), the young witnesses nevertheless not only reported difficulties in understanding, but also reported concerns regarding the questioner’s tone and approach, which was described by almost three quarters of the children in terms such as “sarcastic”, “intimidating”, “relentless”, and “cross” (Plotnikoff & Woolfson, pp. 107-108).

In relation to questioning practices, Henderson (2002) found that principles concerning questioning in court were not always adhered to, or there was a lack of consistency in what was deemed acceptable or appropriate practice. When children were cross-examined, their developmental limitations may not only be ignored, but may also be exploited, particularly by defence barristers. Henderson reports one barrister explaining, “You’re looking… to make sure they make mistakes… give double negatives to kids. And the kids get it wrong… But that is a valid technique that is used by very senior counsel and very successfully” (p. 286). Subsequent research also demonstrated that certain cross-examination techniques used with children were evidentially unsafe, such as using leading or suggestive questions, or questions that were ambiguous or complex (Hanna, Davies, Henderson, Crothers & Rotherham, 2010; Zajac, 2009; Zajac, Jury & O’Neill, 2009; and for a review see Zajac, O’Neill, & Hayne, 2012). These issues, compounded by the potential influence of judicial practices (Nikonova & Ogloff, 2005) and juror preconceptions regarding children’s memory, suggestibility, reactions to abuse, and ability to testify (Quas, Thompson & Clarke-Stewart, 2005), have served to highlight the need for further development in the implementation of appropriate questioning in legal proceedings.

***Registered Intermediaries***

Another Special Measure, introduced in England and Wales through the Youth Justice and Criminal Evidence Act (1999), was the provision of Registered Intermediaries (henceforth referred to as RI). A RI’s role is to assess communication abilities of vulnerable witnesses, and then to facilitate complete, coherent, and accurate communication between the witness and all professionals involved in the legal process (Ministry of Justice 2011; 2015). It is important to note that the RI does not take an investigative role, does not change the substance or meaning of evidence elicited, and cannot provide an opinion on witness veracity. In England and Wales, RIs are communication specialists (for example, experienced speech and language therapists, psychologists, occupational therapists, and other related professionals) recruited, trained, and accredited by the Ministry of Justice. Eligibility for the RI scheme requires a witness to have a mental disorder or learning disability, a physical disorder or a physical disability, or be a child under the age of 18 (raised from 17 by the Coroners and Justice Act, 2009, section 98). In addition, the court must determine whether it is appropriate to appoint a RI; an older child or a less vulnerable witness may be eligible for consideration but be refused the services of a RI, albeit having access to other Special Measures. Following the RI’s assessment of the witness, the RI advises the police and the court how best to communicate with the witness and will intervene, when required, in court to support the maintenance of appropriate communication (though note that the judge retains ultimate control of the questioning throughout). Plotnikoff and Woolfson (2015, pp. 115-116) report the following examples of RI interventions:

Barrister: ‘When you went to speak to the police ladies, do you know why you went to speak to them?’

Intermediary: ‘Your Honour, L finds it difficult to understand “Why” questions.’

Judge: ‘Mr T will re-phrase the question’

…

Barrister: ‘What do you call him?’

Intermediary: ‘Can we clarify who you mean by “him”?’

Barrister: ‘Have you called Richard “Dad”?

Since the introduction of the formal RI scheme in England and Wales in 2008, similar schemes have been introduced in other countries (see Spencer & Lamb, 2012 for discussion of RI schemes in Austria, New Zealand, Australia, Norway, Israel and South Africa). In the last few years the number of requests for, and requests matched (by the assignment of a RI), has risen sharply from 1769 requests and 1692 RIs assigned in 2013 to 5496 requests and 4511 RIs assigned in 2015 (R. Surkitt, NCA, August 2016, personal correspondence). Research examining the implementation of the RI scheme has shown that judges and advocates “were overwhelmingly supportive” of the RI scheme (Henderson, 2015, p. 157), and that the use of RIs enabled access to legal proceedings for a range of vulnerable people who had previously been excluded. Despite this positive response to implementation, RIs report contrasting perceptions of their role, with ‘highs’ regarding the positive and significant difference RIs can make for vulnerable people, and the ‘lows’ relating to inadequate engagement of other professionals and a lack of understanding of the RI role (Cooper, 2014). Henderson reported that some of these other professionals, namely individual judges and advocates, varied in their acceptance of RI involvement and their ability, or willingness, to implement RI recommendations. Indeed, Plotnikoff and Woolfson (2015) reported that whilst the introduction of RIs had led to a reduction in the tendency to overestimate legal professional competence in questioning vulnerable witnesses, nevertheless “the old ways continue to be widely tolerated” (p. 305).

***Mock juror research***

What is less clear is how RI involvement in court affects juror perceptions of vulnerable witnesses. Use of mock juror assessments in research has both advantages and disadvantages (for a review see Bornstein et al., 2017). Bornstein et al. cite a potential drawback in that the research process does not closely reflect those experienced by jurors in the real world, thus diminishing, or limiting, the research’s external validity. In contrast, Borstein et al. also state mock juror simulation research allows for examination of how jury decisions are made, and the factors that can influence their perceptions, judgements and attitudes within a context of high experimental control. In addition, simulation research allows for research into areas that would otherwise be “impractical, unethical or methodologically unsound” (p. 14). Nevertheless, in the context of legal proceedings, research can provide an indication of juror intention, the link to which, of juror behaviour, can increase depending on the ecological validity or naturalistic context of the research study.

Ridley, Rheede and Wilcock (2015) utilised a mock juror simulation in their study which examined whether the presence of a RI had an impact on how a child witness was perceived through presenting a transcript of a mock interview either with or without RI interventions to mock jurors, barristers and Police Officers. In the mock interview in which the RI present a total of five interventions were made but the responses made by the child witness were identical (with one exception where a ‘no’ response was deleted to make sense of the RI intervention) to ensure that any differences in perceptions would be the result of the RI presence and intervention. Ridley et al. found that in response to the transcript in which the RI was present, the interviewer was rated as being clearer during the introduction to the interview, to have included fewer leading questions, but demonstrated no greater levels of question simplicity or interviewer empathy than when the RI was absent. In relation to these results the mock jurors rated the interviewer clarity as higher than either the barristers or Police Officers, both when the RI was present or absent. In contrast, in relation to the question quality, it was the Police Officers who rated the presence of leading questions as higher than either the mock jurors or the barristers in both the RI present and RI absent conditions. Finally, in respect to perceptions of the child witness, RI presence had no impact on participant ratings of witness confidence, honesty, credibility or completeness of account.

To examine the effect on mock jurors further in a ‘live’ context, Collins, Harker and Antonopoulos (2017) presented mock jurors with a videoed cross-examination, with either a RI present or a RI absent, of either a 4-year-old or a 13-year-old child who was being examined regarding the contents of a cartoon that the child had observed. The mock jurors rated the child’s behaviour and the quality of the cross-examination higher when the RI was involved than when the RI was absent. The study also found an effect of age relating to the quality of the cross-examination; despite being identical for both the 4-year-old and the 13-year-old, it was deemed less appropriate with the younger child than with the teenager.

***The present study***

To date there has been no examination of a cross-examination regarding an abusive event experienced by a child witness that proceeded to trial, nor has there been an examination of whether it is the RI’s actual presence or their intervention that has an effect on mock juror ratings. Accordingly, the present study investigated the impact of RI presence or absence, and inclusion or omission of RI intervention in a ‘live’ context using a video recorded cross-examination adapted from an actual case involving the physical abuse of a child. Mock jurors were asked to rate four measures: the quality of the legal professional behaviour during cross-examination, their perceptions of the child’s evidence, the child’s ability to give that evidence, and the likely case progression outcome. In accordance with Collins et al. (2017) it was predicted that the mock juror ratings would be higher in all four measures when there were interventions implemented. It was also predicted that mock juror ratings on the four measures would be higher when the RI was present (Ridley et al., 2015). An interaction was predicted that when the RI was present and actively interevened the mock juror ratings on the four measures would be highest. In addition, as communication is key to appropriate participation in legal proceedings, it was also predicted that three of the measures (child witness characteristics, legal professional behaviour, and child witness understanding) would predict the fourth measure of case progression.

# **Method**

***Design***

The between groups design included two independent variables; RI presence, and RI intervention. In respect to these variables videos of a mock cross-examination were created leading to four conditions: Registered Intermediary present and intervention incorporated, Registered Intermediary present with no intervention incorporated, Registered Intermediary absent with intervention incorporated by the Judge, Registered Intermediary absent with no intervention incorporated (control). Participants, in the role of mock jurors, were randomly assigned to a single condition only.

To measure mock jurors’ perceptions of the child witness and cross-examination process, participants were asked to rate the following: child witness characteristics, legal professional’s (Judge, barrister) behaviour, child witness understanding, and case progression likelihood.

***Participants***

Two hundred and seventeen jury eligible adults (defined by the Criminal Justice Service in the United Kingdom as being aged between 18 and 70 years of age, having no recent criminal convictions, not suffering from mental health problems, and being ordinarily resident in the United Kingdom, Channel Islands, or the Isle of Man for at least the last five years since the age of 13), and not excluded from jury eligibility were recruited. Participants had to confirm their juror eligibility as part of the background information completion. Recruitment took place through snowball sampling in the United Kingdom starting with advertising the study to staff and undergraduates at [anonymised] University, and via posters placed in public places in a separate small market town community in the North West of England – all of which requested that the research link be passed on to other potential participants.

There were 55 males and 162 female participants aged between 18 and 69 years of age (*M* = 36 years, 6 months, *SD* = 16.03, 2 missing data). The 60 participants who were [anonymised] undergraduate Psychology students received research participation credit; no other inducements were utilised for the remaining 157 participants. Ethical approval was obtained through the ethics committee of [anonymised] University.

***Materials***

The mock cross-examination was based on an original interview and cross-examination transcript of a female child witness aged 4 at interview, and aged 6 at cross-examination (as used by Krähenbühl, 2011a, 2011b, example extracts are provided in Table A1 in Appendix A). The legal proceedings in which the mock cross-examination arose were in relation to an allegation of physical abuse perpetrated by the mother of the child. The mock cross-examination was adapted to include a typical form and level of Registered Intermediary interjections (see Collins et al., 2017; Ridley et al., 2015).

Seven RI interventions (approximately 5% of the exchanges) were included in a cross-examination transcript which comprised 161 conversational ‘turns’. This transcript was used as a script for four video recording conditions. The video recordings were conducted in a mock courtroom with adult actors taking the roles of judge, prosecution and defence barristers, RI, child, court clerk and note taker. The actor taking the part of the child was of small stature, remained seated, and her face was obscured in the video recording in order to promote participant belief that the adult actor was indeed a child. The participants were informed that the ‘child’s’ face could not be shown in order to maintain the child’s anonymity. A pilot study involving 20 participants requested feedback on the stimulus materials. This provided conclusive evidence (100% of participant responses) that participants believed the actor to be a child, and that they found the representation of the cross-examination convincing and authentic.

The interventions and rephrasing of the seven interventions incorporated were as follows:

Barrister: Do you remember? Do you remember that which happened in the living room with Mummy?

Intermediary/Judge: Could you say that in a simpler way?

Barrister: Tell me all about what happened with Mummy

…

Barrister: Are you not sure exactly how long you stood there?

Intermediary/Judge: The question is too difficult

Barrister: Was it a short time or a long time that you stood there or something in between?

…

Barrister: Now would it be right to say that the day in question was cold, it was not a particularly warm time of year after all was it?

Intermediary/Judge: Could you break the question up into more than one question and say it in a simpler way?

Barrister: What was the weather like?

…

Barrister: And where were you standing at that time? Were you by the fire, watching television, or were you somewhere else?

Intermediary/Judge: Could you ask one question at a time please?

Barrister: Where were you standing?

…

Barrister: When C switched it on. I presume that would not be a usual occurrence but happened just this time?

Intermediary/Judge: Could you say that in a simpler way?

Barrister: Did C switch it on just this time or other times too?

…

Barrister: You did not think it necessary? Or were you worried about being in trouble for being next to the fire and switching it on? No, that was C you said?

Intermediary/Judge: Could you ask one question at a time please?

Barrister: So, was it C who switched the fire on?

The questionnaire (adapted from Krähenbühl, 2011b) comprised 24 questions (see Table A2 in Appendix B, for a complete copy) each relating to the four measures predicted to be affected by the interventions: eight questions related to child witness characteristics (accuracy, honesty, credibility); eight questions related to legal professional’s behaviour (quality of the questions asked, fairness, professionalism); four questions related to child witness understanding (of the cross-examination purpose, expectations, the actual questions asked); and four questions related to case progression (the likely outcome, alleged perpetrator’s potential future). The order of the questions was randomised and then presented to the participants in the same order. Responses to these questions were in the form of a Likert 6-point scale representing points from 1 “not at all” to 6 “extremely”. Debriefing information (text) was provided on completion of the study.

***Procedure***

The video film clip and questionnaire were presented remotely via Qualtrics (an online survey tool). Participants were advised that the study would take approximately 25 minutes, was to be completed on an individual basis, needed to be fully completed without taking a break, and that once started it would not be possible to return to an earlier part of the study. Participants could watch the video film clip once only, and responses were required to all questions in the questionnaire to complete the study.

# **Results**

There are two sections to the results. In the first section differences in mock juror responses to the experimental conditions were examined through a MANOVA analysis. In the second section a regression analysis was conducted to establish whether cross-examination factors predicted mock juror expectation of trial outcome.

An initial independent samples t-test was conducted to examine whether there were differences between the student and non-student participant groups on their total rating scores for all four measures (child witness characteristics, legal professional’s behaviour, child witness understanding, and case progression) combined. No significant difference was found, *t* (215) = .926, *p* = .355 (2-tailed), so the factor of participant background was not considered further.

Composite scales for the four measures of child credibility, child understanding, legal professional’s behaviour, and trial progression were examined for internal consistency. The mean score for each scale was used in the analysis. Cronbach’s alpha for each composite resulted in .76, .74, .83, and .71 for child credibility, child understanding, legal professional’s behaviour, and trial progression respectively (deemed “respectable” by DeVellis, 2012).

***The impact of RI presence and/or intervention on mock juror perception ratings***

A two-way between-groups multivariate analysis of variance (MANOVA) was conducted to investigate the independent variables of RI presence or absence, and RI intervention or omission of intervention on mock juror perceptions of the cross-examination quality. Four composite dependent variables were used, each with a maximum score of 6: child credibility, child understanding, legal professionals’ behaviour, and trial progression. Preliminary assumption testing was conducted which, through Mahalanobis distance, led to the identification of one outlier. Subsequent assumption testing showed a critical value of 18.71 (slightly above the 18.47 expected) but no further issues were found in relation to linearity, multicollinearity or homogeneity of variance-covariance matrices. Accordingly, with the assumptions met, the MANOVA was conducted.

No differences (see Table 1) were found in mock juror perception ratings according to RI presence or absence (*F* (4, 209) = .223, *p* = .925, Pillai’s Trace = .004, դ² = .004) and RI intervention or omission of intervention (*F* (4, 209) = 1.130, *p* = .343, Pillai’s Trace = .021, դ² = .021), which suggested a neutral impact of RIs on mock juror perceptions

[TABLE 1 HERE]

Despite these non-significant results there was a significant interaction in relation to the dependent variable of trial progression only. An ANOVA (following a Bonferroni adjustment of the significance threshold to .0125) for trial progression resulted in *F* (1, 212) = 6.462, *p* = .012, դ² = .030. This showed (see Figure 1) that the mock juror ratings of trial progression towards a guilty verdict were higher when an RI was present and an intervention was omitted, or when the RI was absent and in intervention was included (by the Judge).

[FIGURE 1 HERE]

***Cross-examination factors as a predictor of trial progression***

A standard multiple regression was conducted to examine whether the three measures of child credibility, child understanding and legal professionals’ behaviour could predict trial progression. Preliminary analyses were conducted on the data from 216 participants (with the aforementioned outlier data removed) and no violations were found.

The total variance explained by the model was 32.4%, *F* (3, 212) = 33.905, *p* < .001. In the model, only two of the three measures were statistically significant, with the child credibility scale recording a higher *beta* value (*beta* = .396, *p* < .001) than the cross-examination fairness scale (*beta* = .174, *p* = .009). Child understanding was not a significant predictor.

# **Discussion**

This experiment demonstrated that the presence or absence of a RI as an additional professional and the intervention or omission of intervention that such a professional may include did not affect mock juror perceptions regarding the cross-examination quality but did affect ratings of trial progression. This was a positive finding in demonstrating mock juror appraisal of the actual evidence provided by a witness during cross-examination rather than the manner in which it was elicited. However, in respect to trial progression, the results suggested that mock jurors consider the roles of the professionals present, and their behaviour, when making decisions as to the likelihood of a guilty verdict. The results suggested that, although the RIs role as a professional with a neutral role in regard to witness veracity, or as having no direct impact on evidence, was being maintained (Ministry of Justice, 2011; 2015), mock jurors nevertheless considered professional presence and role when making decisions regarding case progression.

The significant interaction between RI presence or absence, and intervention included or omitted, showed a differentiated effect of the professional and his or her behaviour on trial progression. Having the RI present but with no intervention included resulted in similar ratings to having the RI absent with interventions being provided by the judge. This suggested that mock jurors found the presence of the RI reassuring in having confidence in the trial evidence as long as the RI did not ‘have’ to intervene. Conversely, the mock jurors found similar reassurance when the judge did intervene. These findings add to those of McAuliff and Kovera (2012) regarding juror expectations and show that the impact of these expectations and assumptions is broader than being limited to that of the child witness’s behaviour. It could also be argued that in addition to variations in professionals’ understanding and acceptance of RI involvement, and/or RI style interventions (Henderson, 2015), it is the jurors who need to be educated and informed about the implications of RI involvement and/or interventions.

The non-significant results showing no effect of RI presence and RI interventions on mock juror perceptions of child witnesses were in contrast with the conclusions of previous research conducted by Collins et al. (2017) and Ridley et al. (2015) who found that the presence of the RI had a positive impact on participant ratings of cross-examination quality. The current findings suggest that mock jurors were assessing the quality of the witness evidence provided ‘on face value’ rather than being based on the underlying participatory process that gave rise to that evidence. The results also demonstrated that as long as cross-examination was conducted fairly, and the child’s evidence had credibility (issues raised by Henderson, 2002; Hanna et al., 2010; Zajac et al., 2012), it was unimportant in mock jurors’ considerations whether or not the child understood what was happening. The results may therefore suggest that RI input could be restricted to pre-trial preparation only. This would enable an increase in the availability of RIs, and the the resources spent on RIs presence in courts could be reduced or legitimately used elsewhere.

Whilst a reduction in expenditure of RI time and resources may be appropriate and considered a positive factor, the findings that child understanding did not have an effect on mock juror perceptions has broader implications. It could be argued that without a high level of understanding the quality of the child’s involvement could be undermined. It also needs to be acknowledged that the impact of the RI presence or interventions on the child witness may not be restricted to the trial process only, but have a longer-term impact (Plotnikoff & Woolfson, 2009). Whilst the RI and RI interventions may not affect mock juror perceptions of cross-examination quality, the facilitation of communication can improve child witness engagement and understanding (Applegate, 2006; Hamlyn et al., 2004; Landstrom & Granhag, 2010). It is possible that without the RI’s assessment and communication support to enable a child’s engagement, a child witness would not proceed to the trial stage Plotnikoff & Wolfson, 2009). The issue of understanding of the cross-examination process is therefore broader than simply understanding the questions being asked. There is a distinction to be made regarding the purpose of the trial; whether it takes place because it is in the child’s best interests, if it takes place for justice to be done in trying criminal allegations, or for both of these reasons. Once the trial stage has been reached the child’s best interests are no longer taking highest priority. Indeed, at the trial stage the child, whilst a crucial witness, is not being directly represented in the structure of the trial – it is the Crown versus the accused, not the child versus the accused. This factor was beyond the scope of the present study but raises the consideration as to the distinct, and potentially contrasting, aspects of legal proceedings being in the interests of justice, or in the interests of the child witness.

The inconsistency of the current study’s results with those of Collins et al. (2017) and Ridley et al. (2015) could be attributed to methodological differences and the nature of the stimulus materials. There is an important distinction found between the studies in that the current study included a more ecologically valid event and process relative to the non-criminal event used by Collins et al., or the reading of a transcript used by Ridley et al.. Accordingly, given the more serious nature of the physical abuse allegation, it would be assumed that the mock juror participants would consider and give more attention to the quality of the evidence elicited than they would in respect to information regarding questions about a cartoon, or the reading of a transcript. The lack of ecological validity in the transcript methodology utilised could explain the discrepancy in results between that and the recording of a ‘live’ presentation. Similarly, the use of a recording of a live presentation of a non-criminal event suggests that results obtained through similar methodologies should be considered with caution in regard to real world application.

For a jury to provide a verdict entails an examination and appraisal of all of the evidence presented in the trial, following the guidance and direction of the judge, and deliberating with other jury members in a group decision making process. The current study did not provide this breadth of information and experience but was limited to individual mock juror decisions on a portion of evidence only and in a context in which the mock juror decision did not have any real consequences for the perpetrator or child witness. This limitation is acknowledged by the author and is juxtaposed by the constraints of ethical, practical and methodological factors (Bornstein et al., 2017). Accordingly, the current study endeavoured to achieve relatively high levels of ecological validity through using materials adapted from a real case, use of a mock court room and actors to give a ‘live’ cross-examination, and a range of participants from a variety of background as would be found in an actual jury. However, the interpretation of the results needs to be seen to be giving an indication of juror intention within an ethical and relatively realistic context only.

The current study used a single age and single modality of presentation. These factors could be relevant in assessing the mock juror perceptions of the RI and RI interventions especially as the child presented in the current study was relatively young and directly observed (albeit with face obscured). Younger children are deemed to be less accurate providers of information (Collins et al., 2017; Holcomb & Jacquin, 2007; Pozzulo et al., 2006) but direct observation leads to an increase in perceptions of child credibility (Klemfuss et al., 2014; Mungo et al., 2016). A future study could examine whether the lack of impact of RI presence and intervention in a more ecologically relevant event remains when mock jurors believe the child to be older, and/or view the child’s testimony via a live link format. In conclusion, the results of this study suggest that whilst RI presence or involvement, that is generally viewed as supportive in facilitating children’s engagement (Henderson, 2015) in legal proceedings, do not independently have an effect on mock juror perceptions, the combination of presence and RI type involvement does affect mock juror perceptions in relation to trial progression. It is not possible, or appropriate, to state whether this is a positive or negative effect in a mock trial context, but nevertheless suggests that jurors may benefit from direction during proceedings to explain the implications of RI presence and/or RI type interventions. In addition, the results of this study indicate that the RIs meet the expectations of their neutral role within the specific context of the quality of a mock cross-examination. This may suggest that whilst RI assessment and recommendations may be useful in informing the cross-examination process, it may not be necessary for RIs to be present during the trial. However, such a finding cannot be assumed as the RI role is not isolated within the cross-examination only but may be pivotal in enabling the child witness to proceed to trial and to help, at least indirectly, to protect the child’s best interests throughout.

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Table 1

|  |  |
| --- | --- |
|  | Cross-examination structural characteristic |
|  | Registered Intermediary present |  | Registered Intermediary absent |
|  | Intervention |  | No intervention |  | Intervention |  | No intervention |
| Cross-examination factors |  |  |  |  |  |  |  |
| Child credibility | 2.00 (.70) |  | 2.95 (.74) |  | 3.05 (.69) |  | 2.80 (.63) |
| Child understanding | 2.82 (.96) |  | 2.77 (.94) |  | 2.82 (.88) |  | 2.54 (.74) |
| Interview fairness | 2.83 (.80) |  | 2.83 (.80) |  | 2.88 (.76) |  | 2.67 (.75) |
| Event progression | 2.80 (.71) |  | 3.05 (.82) |  | 3.00 (.76) |  | 2.75 (.57) |
| *(SD in parenthesis) No significant results* |

Figure 1



# Appendices

*Table A1*

*Example extracts from the transcribed cross-examination*

|  |
| --- |
| Transcript extract |
| Person speaking |  | Dialogue  |
| Judge |  | You will have to listen very carefully and answer as well as you can. You’ll do that will you not? |
| Child |  | Yes. |
| Judge |  | Mrs Granger is now going to ask you some questions; is that okay Kate? And remember, you can ask me if you don’t understand. Mrs Granger, please proceed. |
|  |  | … |
| Prosecution |  | Can you tell me something that would constitute a lie? |
| Intermediary |  | Could you ask this in a simpler way? |
| Prosecution |  | Can you explain what a lie is please? |
| Child |  | Can’t. |
|  |  | … |
| Prosecutor |  | How long did you stand by the fire Kate? |
| Child |  | A long time. |
| Prosecutor |  | Yes, but how long – seconds, a minute, longer? |
| Child |  | Longer. Really longer. |
| Prosecutor |  | Are you not sure exactly how long you stood there? |
| Intermediary |  | The question is too difficult. |
| Prosecutor |  | Was it a short time or a long time that you stood there, or something in between? |
|  |  | … |
| Defence |  | Now, would it be right to say that the day in question was cold, it was not a particularly warm part of year after all was it? |
| Intermediary |  | Could you break the question up into more than one question and say it in a simpler way? |
| Defence |  | What was the weather like? |
|  |  | … |
| Defence |  | Or was it you? And then Mummy was cross with you because you are not allowed to touch the fire are you? |
| Child |  | No. |
| Defence |  | And why does Mummy not allow you to touch the fire? |
| Child |  | She says it’s very hot and we’re not allowed ‘cos it’s dangerous. |

*Table A2*

*Questionnaire Showing Composite Categories*

|  |
| --- |
| Questionnaire questions |
| Composite category |  | Question asked  |
| Child witness characteristics |  | How accurate do you think Kate was in remembering her experiences? |
|  |  | On the basis of the cross-examination alone how likely is it that the jury would be able to make a unanimous verdict? |
|  |  | How likely is it that Kate was truthful with the barristers? |
|  |  | How likely is it that Kate lied to the barristers? (R) |
|  |  | How confident do you think Kate was in the cross-examination? |
|  |  | How credible do you think Kate was in the cross-examination? |
|  |  | How clear was Kate's account of her experiences? |
|  |  | How complete was Kate's account of her experiences? |
| Legal professional behaviour |  | How fair did you find the cross-examination overall? |
|  |  | How fair did you find the questions asked? |
|  |  | How well did the barristers listen to Kate? |
|  |  | How appropriate were the barristers' reactions to Kate's "I don't know" or "[no response given]" type responses? |
|  |  | How appropriate was the language used by the judge and barristers? |
|  |  | How manipulative were the barristers in their questioning? (R) |
|  |  | How likely is it that the barristers elicited as much information as possible? |
|  |  | How professional do you think the barristers were? |
| Child witness understanding |  | How likely is it that Kate understood the questions being asked? |
|  |  | How likely is it that Kate understood how to answer the questions appropriately? |
|  |  | How likely is it that Kate understood the purpose of the cross-examination? |
|  |  | How likely is it that Kate understood the necessity to tell the truth? |
| Case progression |  | On the basis of the cross-examination how confident would you be that the incident took place as described? |
|  |  | How accurate do you think Kate was in describing her experiences to the barristers? |
|  |  | How likely is it that the alleged perpetrator (Kate's Mum) would be found guilty? |
|  |  | If the alleged perpetrator (Kate's Mum) was found guilty how likely is it that she would receive a custodial (prison) sentence? |

*(R) denotes reverse coding required*