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Child Maltreatment

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Stacia N. Stolzenberg[1] and Thomas D. Lyon[1]

Abstract
Evidence summarized in attorney's closing arguments of criminal child sexual abuse cases ($N = 189$) was coded to predict acquittal rates. Ten variables were significant bivariate predictors; five variables significant at $p < .01$ were entered into a multivariate model. Cases were likely to result in an acquittal when the defendant was not charged with force, the child maintained contact with the defendant after the abuse occurred, or the defense presented a hearsay witness regarding the victim's statements, a witness regarding the victim's character, or a witness regarding another witnesses' character (usually the mother). The findings suggest that jurors might believe that child molestation is akin to a stereotype of violent rape and that they may be swayed by defense challenges to the victim's credibility and the credibility of those close to the victim.

Previous studies have examined a variety of factors that may influence jurors' verdicts, and comprehensive reviews are available (Devine, Clayton, Dunford, Seying, & Pryce, 2000). However, most of the research analyzed the decision making of mock jurors (Bornstein, 1999). Child sexual abuse (CSA) cases are particularly difficult to prosecute, because the child victim's testimony is often the most important evidence in the case, but child witnesses find testifying extremely difficult (Myers, Redlich, Goodman, Prizmich, & Imwinkelried, 1999). Here too, most of the research on juror decision making examined mock jurors (Bottoms, Golding, Stevenson, Wiley, & Yozwiak, 2007). Surveys of jurors and lay people reveal that they often harbor misconceptions about CSA, expecting to see medical evidence and assuming that physical force is usually involved when often subtler methods of grooming and seduction are used to engage children in sexually abusive acts (Shackel, 2008). The unanswered question is how jurors in actual trials react to corroborative evidence, including medical evidence, other physical evidence, defendant confessions, and prior victim statements. This study systematically examined attorneys' closing arguments in child sex abuse court cases to assess the relation between evidence and acquittal rates.

Factors Related to the Filing and Dismissal of Charges

Estimates suggest that only 2–9% of cases reviewed by prosecutors ultimately go to trial (Cross, Whitcomb, & De Vos, 1995; Faller & Henry, 2000; Martone, Jaudes, & Cavins, 1996; Tjaden & Thoennes, 1992), with many cases resolved before trial through rejection by the prosecution, dismissal for insufficient evidence, or pretrial plea deals (Cross, Walsh, Simone, & Jones, 2003). Cases are more likely to be accepted for prosecution if they involve victims who are over 6 years old (Brewer, Rowe, & Brewer, 1997; Cross, De Vos, & Whitcomb, 1994; Murray, 1989; Stroud, Martens, & Barker, 2000; Tjaden & Thoennes, 1992), victims who are consistent in their reports (Gray, 1993; Rogers, 1982), a suspect confession (Cross et al., 1994), medical evidence (Smith & Elstein, 1993), evidence suggesting forceful perpetration (Dolan, 1984), and other evidence to support more severe allegations of abuse, including number of incidents, number of victims, duration of abuse, and severity of sexual acts (Brewer et al., 1997; Cross et al., 1994; Murray, 1989; Walsh, Jones, Cross, & Lippert, 2010). With respect to dismissal of the charges, cases with a victim aged 4 or older are less likely to be dismissed (Tjaden & Thoennes, 1992). (Readers should be aware that by referring to "victims," we imply no judgment regarding the veracity of the allegations.) Further, many cases are dismissed for insufficient evidence due to an unavailable witness (or one that refuses to testify), lacking medical evidence, or the lack of corroborating witnesses (Bradshaw & Marks, 1990; Gray, 1993; Martone

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et al., 1996). Hence, not surprisingly, there appears to be a relation between the strength and persuasiveness of the evidence and the likelihood that charges are filed and the case survives dismissal.

Factors Relating to Trial Outcome: Plea Bargains and Trial Verdicts

Most cases are ultimately resolved through pretrial plea bargaining (Cross et al., 2003). Here, the relation between the evidence and the likelihood the case moves forward is less straightforward. For example, cases are more likely to go to trial if the suspect confessed or the charges are more severe (Bradshaw & Marks, 1990; Cheit & Goldschmidt, 1997). On the other hand, cases are also more likely to go to trial if the suspect had no prior record (Gray, 1993). The relation between case strength and plea bargains is complicated by the fact that a strong case for the prosecutor increases the defendant's motivation to seek to avoid trial, at the same time that it emboldens the prosecutor to reject lenient deals. A weak case for the prosecutor increases the prosecutor's motivation to offer a lenient deal, at the same time that it may embolden the defendant to insist on a trial. Confessions tend to be highly convincing evidence of guilt (Leo, 1996). The fact that cases with confessions are more likely to go to trial suggests that prosecutors are confident of their chances of winning when the defendant has confessed and therefore reject any plea deals. On the other hand, the fact that cases in which the defendant has a clean record also are more likely to go to trial suggests that in those cases, it is the defendants who are rejecting a plea deal. Defendants with no criminal record can testify without fear that their criminal records will be admitted against them as impeachment (Mueller & Kirkpatrick, 2009).

Because of the complications of plea bargaining, one should examine the effects of evidence on plea bargains and trial outcomes separately. Moreover, only trial outcomes can provide insight into what actually affects jury decision making. When prosecutors and defendants make plea deals, they are merely speculating about the effects of the evidence on the jury. However, the research examining outcomes combines cases that went to trial with cases that were resolved through plea bargains. This research found that cases with victims aged 7 or older (De Jong & Rose, 1991), offender confessions (Walsh et al., 2010), medical evidence (Bradshaw & Marks, 1990; Walsh et al., 2010), eyewitness evidence (Walsh et al., 2010), and a suspect with a history of intimate partner violence (Hill, 2008), are all likely to predict a conviction. No studies have conducted systematic assessments of the evidence presented during sexual abuse trials and the relation between that evidence and trial outcome.

A commonsensical prediction is that the stronger the evidence for the prosecution, the more guilty verdicts at trial; and the stronger the evidence for the defense, the more not guilty verdicts. Hence, the same factors that predict filing of charges and surviving dismissal are likely to predict trial outcomes. However, the research on case processing also documents the fact that a large proportion of cases are rejected, dismissed, or pled (Cross et al., 2003), and this may affect the likelihood that a given type of evidence will predict conviction rates at trial. For example, prosecutors' reluctance to pursue cases with younger children will increase the likelihood that when younger children do go to trial, they will be unusually capable for their age. This process of selecting out only the strongest young witnesses to testify will weaken an expected relation between age of the child and trial verdict. Similarly, the persuasiveness of confessions could lead defendants who have clearly confessed to be particularly eager to negotiate a guilty plea. This would increase the likelihood that when cases with confessions do go to trial, they are disproportionately flawed confessions that the defense can attack as coerced or false. If this occurs, then the relation between confessions and guilty verdicts at trial will be weakened.

At the extreme, selection biases influencing the types of cases that make it to trial may undermine any relation between evidence strength and trial verdict. The commonsensical prediction that stronger evidence of guilt increases the likelihood of guilty verdicts must therefore be tentative. Even with selection biases, however, some factors are likely to predict outcome. First, recall that prosecutors' decisions regarding charging, dismissal, and plea bargaining reflect their perceptions of evidence strength and their speculation regarding what will influence juries, rather than juries' actual decision making. If prosecutors misevaluate the effects of certain types of evidence on juries, then that evidence can affect trial verdict outcome despite selection biases. For example, prosecutors may underestimate the extent to which jurors expect abuse to be violent. Although prosecutors are less likely to move forward on cases without evidence of force (Dolan, 1984), non-forceful sexual abuse cases nevertheless predominate. Attorney guides warn prosecutors that they should help jurors understand how suspects accomplish abuse without the use of force (Lanning, 2010; Long, Wilkinson, & Kays, 2011), because just as jurors are likely to assume that adult rape entails violence (Estrich, 1987), they may equate CSA with violence. However, prosecutors only infrequently discuss seduction and grooming in CSA cases (Stolzenberg & Lyon, 2014). If prosecutors exaggerate the likelihood that they will win cases without force, then they will not screen out those cases as aggressively as they should, and one will see a relation between lack of force and acquittals at trial.

Second, prosecutors may underestimate the strength of the defense's case. Prosecutors are constitutionally required to divulge exculpatory evidence to defendants (*Brady v. Maryland*, 1963), and defendants obtain copies of the police reports and social service reports (Cal. Penal Code 1054.1, 2014) as well as hear the testimony presented by the prosecution at the preliminary hearing (Cal. Penal Code 864-865, 2014). In California, a reciprocal discovery rule requires that defendants also share evidence with prosecutors (Cal. Penal Code 1054.3, 2014). However, it is likely that the prosecution will know less about the defense case than vice versa. The Constitution places limits on the extent to which defendants may be punished for

failing to divulge information about their case: defendants enjoy a right against self-incrimination and a due process right to present evidence at trial, and prosecutors cannot appeal acquittals (and therefore cannot complain of defense failures to share evidence). If prosecutors understate the strength of the defendant's case, then overlooked evidence supporting the defense may be related to the likelihood of an acquittal at trial.

The Current Study

We examined attorneys' closing arguments in CSA trials to gain a better understanding of how evidence persuades juries. Although attorneys may not be able (or inclined) to summarize every piece of evidence presented in a case, it is fair to assume that they summarize the most relevant or salient evidence in support of their case—for this reason, closing arguments are an effective way of assessing evidence presented. The goal was both to describe the types of evidence presented and their relation to acquittal rates. We searched for individual predictors and then, based on the most robust individual predictors, created a final model.

We predicted that evidence would predict acquittal rates, but because of selection biases, we were unsure what specific types of evidence would be most predictive. We tentatively predicted that factors regarding the dynamics of sexual abuse would be significantly related to higher acquittal rates (e.g., lack of threats/force, desensitization to abuse, and child's continued contact with the defendant postabuse), because prior research suggests that prosecutors fail to ask children about the seductive aspects of sexual abuse, potentially having a negative impact on children's credibility (Stolzenberg & Lyon, 2014). Furthermore, because prosecutors may underestimate the strength of the defendant's case, we anticipated that defense-controlled evidence might relate to higher acquittal rates.

Methods

Transcript Selection

Pursuant to the California Public Records Act (California Government Code 6250, 2014), we obtained information on all felony sexual abuse charges under Sect. 288 of the California Penal code (sexual abuse of a child under 14 years of age) filed in Los Angeles County from January 2, 1997, to November 20, 2001 ($N = 3,622$). Sixty-three percent of these cases resulted in a plea bargain ($N = 2,275$), 23% were dismissed ($N = 833$), and 9% went to trial ($N = 309$). For the remaining 5% of cases, the ultimate disposition could not be determined because of missing data in the case-tracking database. Among the cases that went to trial, 82% led to a conviction ($N = 253$), 17% an acquittal ($N = 51$), and the remaining five cases were mistrials (which were ultimately plea bargained).

For all convictions that are appealed, court reporters prepare a trial transcript for the appeals court. Because criminal trial transcripts are public records (*Estate of Hearst v. Leland Lubinski, 1977*), we received permission from the Second District of the California Court of Appeals to access their transcripts of appealed convictions. We sought out and paid court reporters to obtain transcripts of acquittals and nonappealed convictions. Given funding limitations, and our attempt to obtain a sufficient number of acquittals for comparison, we prioritized the acquisition of acquittals. We were able to obtain trial transcripts, including complete closing arguments, for 189 of the cases, which included most of the acquittals and mistrials (73% or 41/56) and 59% (149/253) of the convictions. All of the transcripts included one or more child witness under the age of 18 at the time of the trial. These transcripts included a total of 300 child witnesses, ranging in age from 4 to 18 ($M = 10.84$, standard deviation [SD] $= 3.87$), with only 7% of children at trial 6 years or younger. All children were under 14 at the time of the alleged incident. The average length of time between filing charges and the beginning of a trial was 245 days ($SD = 134.63$). Generally, more severe cases of sexual abuse were prosecuted, with 48% of cases alleging genital or anal penetration, 23% alleging genital contact or touching, and the remaining 29% alleging less serious acts (exhibition and fondling). In the present sample, 82% of suspects were charged with multiple acts of abuse and 88% of suspects were familiar with the victims.

Coding

We developed a coding scheme to assess the evidence presented in closing arguments. We reviewed the research on case factors related to case outcomes to develop a preliminary list of evidence types and supplemented it with types we anticipated based on our legal training and experience in working on sexual abuse cases. A comprehensive explanation of the coding is presented in Table 1. Major categories of evidence included eyewitnesses to abuse (or the lack of abuse), hearsay (witnesses quoting the victim, the defendant, or others), character evidence (evidence suggesting a proclivity for abuse or nonabuse by the defendant or a proclivity for lying or telling the truth by another witness), defendant behaviors to induce victim compliance, victim behaviors or evidence postabuse, defendant behaviors postabuse, real evidence (physical objects), and evidence of other acts of abuse by the defendant. Coders read through the closing arguments and independently evaluated whether any information was aligned with a type of evidence. Each piece of evidence was flagged and coded for whether it supported the prosecution or the defense.

We worked with a supervising coder in refining the scheme. The supervising coder trained three research assistant coders on the coding scheme and gave them a small set of sample arguments to code. She then met with the coders and discussed their responses, providing feedback. After the coding scheme was formalized, reliability was calculated on 20% of the data: 10% at the initiation of coding and 10% at the completion. The supervising coder was selected as the gold standard coder and the other three raters were compared to her. Every passage coded by the supervising coder that identically matched a research assistant's coding was considered one data point of agreement; when there was an inconsistency, this was noted

Table 1. Types and Frequencies of Evidence.

	Coding definition	Coding example	% Cases observed
Eyewitnesses			
Victim testimony	At least one child victim in the case testified	"You heard from the victim in this case Jane Doe—she was open with you . . . .she talked about going to the doctor . . . and having something that made her feel uncomfortable."	93
Defendant testimony	Defendant testified	"What we heard from the defendant on that stand is a flat denial, that he actually didn't even go near Jane to touch her."	60
Prosecution eyewitness to abuse suspicion	Witness present during alleged abuse or witnessed behavior of defendant/ victim surrounding the crime	"You heard from Maria and she told you about an event when she was in her bed and she turned over and saw Jane and her father. Her father had his hands underneath the covers, he was doing something with his hands, but she could not see."	37
Defense eyewitness to lack of abuse	Witness present during alleged abuse or witnessed behavior of defendant/ victim surrounding the crime	". . . other people were around him in the living room, and we asked the sister . . . she said she never saw him do any acts like that."	15
Eyewitness to abuse	Witness saw the abuse	"We have the testimony of Maria . . . an eyewitness. She told us [she] saw that man get on top of her cousin while both of them were naked from the waist down and he was moving his body . . . on top of her."	15
Alibi witness	Witness testified to defendant's whereabouts during the alleged crime	"We heard from Mr. Gutierrez. He told you that he was out with the defendant on the night of the alleged incident. He told you that they went out to various night clubs."	15
Hearsay			
Prosecution hearsay witness re victim	Witness testified for the prosecution regarding victim's statements	"You saw [the victim's aunt] on the stand, heard her testify as to the screams she heard, the pain she saw in her niece's eyes when she said 'he's going to kill me, please don't call the police.'"	87
Prosecution hearsay witness re defendant	Witness testified for the prosecution regarding defendant's statements	"Jane describes a game in which the defendant said 'let's play a game. Take off your clothes.' Then he tricked her and he started touching her."	60
Prosecution hearsay witness re other individual	Witness testified for the prosecution regarding third parties' statements	"We first heard from Peggy, the police officer . . . she told you that while she was working a mother and her children came in . . . the mother [said] she just found out that her husband has been molesting her daughter since age five."	18
Defense hearsay witness re victim	Witness testified for the defense regarding victim's statements	"The victim's mom told you that her son first disclosed to her that he had a strange dream but that it might have been real."	27
Defense hearsay witness re other individual	Witness testified for the defense regarding third parties' statements	"According to [Alan Lees], [the victim's mother] told the police she never saw the defendant in bed with the two girls."	18
Defense hearsay witness re defendant	Witness testified for the defense regarding defendant's statements	"The bottom line is Susan who came in here, is not going to lie for the defendant. I asked Susan on the stand, didn't he tell you that he had done these things in the past and she said 'No, he denied them.' She's not going to say something that's wrong just to help the defendant."	6
Character evidence			
Prosecution character witness re the defendant	Witness testified for the prosecution regarding defendant's bad reputation or character of defendant or other acts suggesting defendant's bad character	"You also heard from Jessica who is not a victim in any of these counts. Her testimony was solely for the purpose of showing this man's disposition, his propensity to commit these kinds of crimes."	29
Defense character witness re prosecution witness	Witness testified for the defense regarding prosecution witnesses' bad reputation or character or other acts suggesting bad character	"Mr. Montes also told you that Jane's mother spent an inordinate amount of time watching these shows focused on rape and child molestation. He indicated that he has seen his wife talk to Jane about sexual matters, sex and body parts at a very young age."	27

(continued)

Table 1. (continued)

	Coding definition	Coding example	% Cases observed
Defense character witness re the defendant	Witness testified for the defense regarding the good reputation or character of the defendant or other acts suggesting defendant's good character	"You have heard some testimony from two character witnesses about the defendant. They don't think the defendant is a pedophile or a monster. He is a moral, honest person."	20
Defense character witness re victim	Witness testified for the defense regarding the bad reputation or character of the victim or other acts suggesting victim's bad character	"Susan testified here. She has no axe to grind. She's related to both the defendant and the victim. Susan said Jane's not to be believed; that she's not truthful."	14
Defendant prior criminal record	Defendant's prior criminal record (unrelated to sexual abuse)	"These two convictions that Mr. Gottlieb went over with [the defendant] during his testimony, there's a conviction for forgery and a false driver's license and for drug trafficking."	12
Prosecution character witness re defense witness	Witness testified for the prosecution regarding defense witnesses' bad reputation or character or other acts suggesting bad character	"The victim's mother came in here and testified that the defendant's brother is a liar. His alibi is not to be trusted."	10
Prosecution character witness re victim	Witness testified for the prosecution regarding the good reputation or character of the victim or other acts suggesting victim's good character	"Miss Hazelton, Jane's teacher came in and testified that Jane was the teacher's pet. She was the one [student] that she could always trust. She was the one that even when the truth might get her in trouble, she came forward and told the truth."	4
Defendant behaviors to induce victim compliance			
Threats	Defendant threatened the victim before/during/after the abuse	"He told Jane not to tell anyone, or he would be arrested, he would be taken away."	31
Charged with force	Defendant used physical force as part of the abusive act (includes threatening the child with a weapon before/during the crime)	" . . . it was done by the use of force, violence, duress, menace, in that he pushed her down on the bed, he got on top of her and held her there to the point where she was having difficulty breathing."	23
Bribery	Defendant offered the victim something (money, candy, and attention) in exchange for a sexual act and/or silence after the abuse occurred	"Jane says that [the defendant] would offer her a dollar to lift her skirt."	10
Exposure to pornography	Defendant showed victim pornographic videos and/or photos	"He showed her a movie where someone is licking their private parts."	10
Sex talk	Defendant talked about anything sex related with the victim	"Jane said he had a sexual conversation with her. Included within that sexual conversation he let her know that he wanted to have sex with her."	9
Desensitization	Defendant initially engaged in innocent or less serious touching	" . . . it started off by rubbing and touching . . . it escalated into full on sexual intercourse."	5
Giving victim alcohol or drugs	Defendant gave victim alcohol and/or drugs	"What we heard from Jane is that . . . the defendant would sometimes give her alcohol."	3
Victim behaviors or evidence postabuse			
Emotional effects of abuse on victim	Victim was emotional during disclosure or suffered emotional harm	"[The] Detective told you that Jane was extremely emotional, that she cried during the interview when she had to relive this event."	41
Medical testimony	A medical professional (doctor and nurse) testified to the significance of physical signs of abuse and/or injuries	"We have medical evidence. Dr. Smith come in here, a pediatrician for 26 years . . . and she was very straight forward with you about the damage she saw."	39
Victim injuries	Victim suffered substantiated physical injuries	"[the nurse] observed some injuries to the hymen and lesions that we subsequently learned were diagnosed as the human papillomavirus"	32
Continued contact with defendant	Witness testified that defendant failed to avoid defendant after abuse allegedly occurred	"[The suspect's son] told you that the defendant and the victim continued to be around each other, and that Jane would even jump on his back up to two weeks before she disclosed."	15
Initial denials	Victim denied allegations when initially questioned	"These children did not want to tell. They wanted to keep it a secret. In fact, when Jane was first asked by a grown-up 'Did this happen?' She said no."	13

(continued)

Table 1. (continued)

	Coding definition	Coding example	% Cases observed
Forensic testimony	A forensic expert testified to any physical evidence of abuse (e.g., DNA, semen, and blood)	"The DNA evidence in this case, as testified to by . . . Dr. Worth . . . the sperm cells are consistent with [the defendant's] DNA."	11
Accommodation testimony	An expert witness explained otherwise counterintuitive characteristics of child sexual abuse victims, such as delayed disclosure, inconsistency, and recantation	"We had the child sexual abuse accommodation syndrome expert who also, like the doctor, explaining how to help you evaluate the testimony of the children . . . we learned from his testimony that it's the exception that kids are consistent. It's the exception that they don't delay in disclosures . . . "	9
Physical effects	Child experienced negative physical symptoms from abuse	"The doctor also told you that she has some bed wetting, which can be normal, but certainly can be exacerbated in conditions of trauma."	7
Victim sexual behavior	Witness observed child behaving sexually (e.g., touching himself or herself and touching another child)	"Jane's mother told us that Jane tried to kiss her by putting her tongue in her mother's mouth. [She] said, 'Hey, what are you doing?' Jane said, 'Papa kisses me this way.'"	6
Suspect identification	Victim identified defendant	"And then she identifies [the defendant] from the six-pack. She says: 'Number four is the man who took me.'"	6
Victim recantation	Victim recanted all allegations of abuse	" . . . When Jane came back [to court] she said: 'No, no, no. Nothing happened to me. The defendant never did anything. It was my father.'"	5
Mental health testimony	A mental health professional (psychologist, psychiatrist, and social worker) testified to any mental and/or behavioral signs of abuse	"Jane made the second reporting to Dr. Greenfield immediately after she had seen the video. Dr. Greenfield testified that she contacted the police immediately."	3
Defendant behaviors postabuse			
Defendant denial of abuse	Witness testified that the defendant denied abuse	"Isabela came to court to say she confronted [the defendant] about what he had done and he said he didn't do anything."	30
Admission or confession to law enforcement	Defendant confessed sexual abuse or made incriminating statements to law enforcement	"The defendant from the very first day that any question was raised by law enforcement authorities admitted that he had sex with this girl. He said yes, I had sex with her. He wrote out a confession."	23
Videotaped confession	Defendant confessed on videotape	"We have [the defendant's] statement on the tape . . . it is a confession. He admits to doing all these things."	14
Admission or confession to third party	Defendant confessed sexual abuse or made incriminating statements to third party	"[The defendant] also admitted to Tina on the phone . . . she came in here and played up that entire conversation."	12
Defendant contact with other witnesses	Defendant contacted witnesses postdisclosure by victim	"Maria also testified that the defendant called her . . . two to five times over the last several weeks."	5
Law enforcement witnessed suspicious defendant behavior	Law enforcement testified that defendant behaved suspiciously or made inconsistent statements	"One thing that was interesting, when you saw the defendant's underwear, how far he had ripped them when the detective was trying to collect them for evidence."	5
Third party witnessed suspicious defendant behavior	Witness testified that defendant behaved suspiciously or made inconsistent statements	"You heard the employees of the store say they thought his behavior was suspicious."	2
Defendant contact with child	Defendant contacted victim postdisclosure	"Jane told us that in the last several weeks the defendant had called her approximately three times . . . and told her that he wanted her to help him get out."	2
Real evidence			
Real evidence for prosecution	Material objects favoring the prosecution (photos, letters, weapons, etc.)	"We know that he [secured] that [motel] room . . . because we have the actual receipt . . . where you have the defendant's signature, his name, his alleged driver's license number that all end up matching up to him."	39

(continued)

Table 1. (continued)

	Coding definition	Coding example	% Cases observed
Real evidence for defense	Material objects favoring the defense (photos, letters, weapons, etc.)	"Another important piece of evidence is that during a significant period of time the defendant wasn't even in the country. We presented evidence of his passport showing the dates of entry and departure. It would have been impossible for him to sexually abuse Jane during that period of time"	14
Photos or video of abuse	Photo or video documentation of abuse	"But you know from Det. Hunter that there was an attempt to erase more than one time every one of those naked photos."	2
Other abuse			
Prior victims (charged or uncharged)	Witness testified that defendant had abused him or her but not charged in the current case	"You heard from Nora [who] is the defendant's younger sister . . . for ten years, she was molested by her brother . . . she never told anyone."	27
Multiple victims	More than one victims charged in the current case	"As the court has heard, the testimony in this case is that [the defendant] molested four girls."	24

as one data point of disagreement. Agreement percentages were calculated for every coder, for every closing argument coded for reliability. Given that there were no set parameters on what passages should or should not be coded, and these determinations were left for the coders to designate, it is hard to imagine coders agreeing purely by chance. Further, given the coding process of selecting relevant passages from entire closing arguments and then assigning them a code of evidence type (when there were over 50 categories of evidence), Cohen's κ was an inappropriate measure of agreement. As such, reliability was calculated per transcript and represented the extent to which individual items of evidence were identically coded. Reliability ranged, per coder and per transcript, between 84 and 100% agreement with the gold standard coder, averaging 92% agreement.

Results

First, we examined the frequency with which various evidence types were presented. Second, we examined the extent to which factors predicted acquittals at the bivariate level of analysis. Finally, we entered factors that were significant at the bivariate level into a multivariate model predicting aquittals.

Case Evidence Frequency

The frequency of different types of evidence is presented in Table 1. Victims virtually always testified; defendants did slightly more than half the time. Hearsay was also extremely common, typically prosecution witnesses quoting the victim. Testimony regarding the defendant's modus operandi emphasized coercion; witnesses more likely referred to threats or the use of force than to more seductive methods. The most common types of evidence for the defense, besides the testimony of the defendant, were witnesses who heard the defendant deny abuse, witnesses quoting the victim, and witnesses testifying to the bad character of a prosecution witness.

Bivariate Predictions of Acquittal Rates

Cases were coded as resulting in a conviction or acquittal. We predicted the likelihood of a case resulting in an acquittal, and as such the change in acquittal rate when a given evidence type was present or not present, the odds of a case resulting in an acquittal, given a piece of evidence was present, and a bivariate test of significance in predicting acquittal rates, as presented in Table 2. Only categories of evidence that occurred in at least 10% (but no more than 90%) of cases were assessed in their ability to predict case outcome, in order to eliminate factors that rarely occur and are likely to be unreliable in a statistical model and those that nearly always occur and are likely to be unhelpful in predicting case outcome (Tabachnick & Fidell, 2012). Five variables were significant at the bivariate level, using $p < .01$ as a cutoff, 10 using $p < .05$.

Multivariate Predictions of Acquittal Rates

A hierarchical binary logistic regression was conducted to assess the relation between evidence and acquittal rates. Because of the high probability of Type I error with the large number of bivariate analyses (33), only factors that were significant at $p < .01$ for bivariate analyses were included in the multivariate model. Two of the five variables significant at the bivariate level were entered at Step 1; whether the defendant was charged with force and whether the victim had continued contact with the defendant after the alleged abuse began. These two factors establish a model of CSA akin to a stereotype of violent rape, in which jurors may expect a child to be forcefully abused and then avoid the alleged perpetrator afterward. At Step 2, the remaining three variables were entered: defense character witness re victim, defense character witness re other witness, and defense hearsay witness re victim. The three variables entered at Step 2 can all be considered "defense-controlled" variables, as they all regard eyewitness and hearsay evidence assisting the defense's case. The defense-controlled variables were entered at Step 2 to see

Table 2. Bivariate Analysis of the Relation Between Case Factors and Acquittal.

Factor	% Observed	% Acquitted without	% Acquittal with	Odds ratio	χ^2	p Value
Defense hearsay witness re victim	**27**	**15**	**39**	**2.60**	**12.63**	**.000**
Defense character witness re prosecution witness	**27**	**15**	**39**	**2.60**	**12.63**	**.000**
Defense character witness re victim	**14**	**18**	**46**	**2.56**	**10.62**	**.001**
Continued contact with defendant	**15**	**18**	**46**	**2.56**	**11.84**	**.001**
Charged with force	**23**	**27**	**4**	**0.15**	**9.93**	**.002**
Defendant denial of abuse	30	17	33	1.94	6.51	0.011
Defense eyewitness to lack of abuse	15	19	39	2.05	5.99	0.014
Prosecution hearsay witness re defendant	60	30	16	0.53	5.50	0.019
Defendant testimony	60	13	27	2.08	5.12	0.024
Forensic testimony	11	24	5	0.21	3.99	0.046
Victim injuries	32	26	13	0.50	3.62	0.057
Defense character witness re the defense	20	19	32	1.68	2.74	0.098
Multiple victims	24	24	13	0.54	2.68	0.102
Real evidence for the defense	14	20	33	1.65	2.51	0.113
Defendant prior criminal record	12	23	9	0.39	2.33	0.127
Real evidence for prosecution	39	25	16	0.64	2.15	0.143
Defense hearsay witness re other individual	18	20	30	1.50	1.75	0.187
Prosecution hearsay witness re other individual	18	20	30	1.50	1.75	0.187
Exposure to pornography	10	23	11	0.48	1.55	0.213
Medical testimony	39	24	18	0.75	1.06	0.304
Initial denials	13	21	28	1.33	0.68	0.411
Prosecution hearsay witness re victim	87	16	23	1.44	0.55	0.458
Prosecution eyewitness to abuse suspicion	37	23	18	0.78	0.52	0.471
Admission or confession to third party	12	21	27	1.29	0.46	0.499
Bribery	10	21	28	1.33	0.43	0.510
Admission or confession to cop	23	23	19	0.83	0.31	0.576
Alibi	15	22	18	0.82	0.29	0.594
Prior victims (charged or uncharged)	27	22	20	0.91	0.12	0.735
Emotional effects of abuse on victim	41	23	21	0.91	0.11	0.741
Eyewitness to abuse	15	22	19	0.86	0.11	0.743
Threats	31	22	21	0.95	0.05	0.824
Prosecution character witness re the defendant	29	22	22	1.00	0.01	0.911
Videotaped confession	14	22	22	1.00	0.01	0.943
Prosecution character witness re defense witness	10	22	22	1.00	0.00	0.954

Note. $N = 189$. The table is organized by descending *p* value with evidence significant at *p* < .01 bolded.

Table 3. Multivariate Analysis of the Relation Between Case Factors and an Acquittal.

	Predictor	df	Alone Wald	At entry Wald	Final model		
					B	SE(B)	Odds ratio
Step 1	Charged with force	1	7.48**	7.03**	−2.17	0.82	0.11
	Continued contact with defendant	1	10.72**	5.54*	1.17	0.50	3.23
Step 2	Defense hearsay witness re victim	1	11.83**	3.63	0.81	0.43	2.26
	Defense character witness re prosecution witness	1	11.83***	3.29	0.76	0.42	2.14
	Defense character witness re victim	1	9.63**	3.20	0.94	0.53	2.57

Note. $N = 189$. SE = standard error.
*p < .05. **p < .01. ***p < .001.

whether they accounted for significant and unique variance in predicting case outcome after assessing the contribution of the model of CSA akin to violent rape. Table 3 presents the findings of the hierarchical binary logistic regression including each step and the full model.

Both the first model of CSA akin to the violent rape stereotype and the second model with defense-controlled variables were significant, $\chi^2(2, N = 189) = 23.13$, $p < .001$, $\chi^2(3, N = 189) = 15.41$, $p < .01$. Further, the final model including all five predictors was significant, $\chi^2(5, N = 189) = 38.54$, $p < .001$. Inspection of the final logistic equation revealed that being charged with force and continued contact with defendant were significant individual predictors of verdict.

Cases were more likely to result in an acquittal when the defendant was not charged with force, the child had continued contact with the defendant after the alleged abuse occurred, the defense presented a hearsay witness regarding the victim's statements, a character witness regarding the victim, or a character witness regarding a prosecution witness. To better understand the final model, we more closely examined this last variable. The prosecution witness being undermined was the victim's mother in 64% of the cases, a relative 12%, a detective 10%, a prosecution eyewitness 8%, an uncharged victim 2%, an alibi witness 2%, and the victim's friend 2%. In addition, this witness's character was being undermined for concealing evidence or lying to the police in 25% of the cases, failing to protect the victim postdisclosure 25%, having a prior record of mistreating a child 16%, having a previous criminal record 10%, abusing drugs/alcohol 8%, suggestively influencing or encouraging a false disclosure from the child 8%, not believing the victim 4%, and admitting to making a previous false report 2%. A remaining 2% of reasons were unclassifiable.

Discussion

This study examined closing arguments in CSA criminal trials to systematically determine how evidence summarized by attorneys' closing arguments is related to acquittal rates. Our study provides a unique contribution by exhaustively categorizing the evidence as summarized by the attorneys and assessing the relation of evidence type to acquittal rates. We found that five different types of evidence significantly predicted acquittals.

Our final model classified the five types of evidence into two categories: factors suggesting that jurors expect CSA to be akin to a commonly false stereotype of violent rape and defense-controlled variables that attack the prosecution witnesses' credibility, particularly the victim. The first category of factors was the most robust, with both variables predicting acquittal rates independent of other variables in the final model. Jurors were 9 times more inclined to convict in cases in which the defendant was charged with using force and 3 times more likely to acquit if the victim had continued contact with the defendant after abuse. These factors suggest that jurors' decisions may be influenced by their expectation that CSA is violent (Lanning, 2010).

Because jurors may expect violence instead of seduction, prosecutors have been advised to explain the dynamics of sexual abuse to preserve the child's credibility in cases where seduction was utilized (Long et al., 2011). However, references to bribery, exposure to pornography, sex talk, desensitization, and providing drugs or alcohol were quite rare, appearing in no more than 10% of the cases. Reviews of perpetrators' modus operandi have shown that seductive methods are common (Leclerc, Proulx, & Beauregard, 2009). In our sample, several case characteristics associated with seductive abuse were prevalent: 88% of defendants knew their victims, 77% were not charged with the use of force, and 82% allegedly abused their victims on multiple occasions.

Also significant in the final model was a cluster of factors relating to defense-controlled variables attacking the victim's credibility. It appears that if the defense can present character and hearsay evidence to suggest that the child is dishonest, this may influence the jury's verdict. This is consistent with literature recommending that defense attorneys emphasize the likelihood that the child is fabricating his or her allegations (Myers, 1994; Stilling, 2008; Taylor, 2004).

Further, a potentially influential defense strategy was attacking the character of another witness close to the child, most commonly the child's mother. When attorneys demonstrated that mothers and other prosecution witnesses concealed evidence, lied to the police during the investigation, failed to act after hearing the child's original disclosure, or engaged in other questionable behaviors, this was significantly associated with a higher acquittal rate. This relation to case outcome could be explained by two mechanisms. First, jurors could believe that prosecution witnesses had coached or suggested the victim's report. Researchers have stressed that biased caretakers may be the source of false allegations, particularly in cases involving custody disputes, and biased investigations are also often at fault (Bruck & Ceci, 2013). In contrast, with respect to evidence that a prosecution witness failed to act after a child's report, jurors could conclude that the child's allegation was not believed by those closest to the child and therefore must not be valid. This may overlook other explanations for a failure to believe a child's disclosure. The literature on children's disclosure and caretaker supportiveness reveals how those closest to the child are sometimes inclined to be skeptical of the child's initial disclosure, as well as motivated to conceal the abuse, given their relationship with the defendant (Elliott & Carnes, 2001; Sas & Cunningham, 1995).

With regard to our bivariate analyses, the nonsignificance of certain factors was surprising at first glance. For example, the existence of a videotaped confession did not relate to the likelihood of an acquittal. However, when considering case selection, it becomes clear that there may be characteristics of confessions that make them less predictive of guilt as one moves forward in the trial process. In prior research, confessions have been found to predict guilt (Bradshaw & Marks, 1990; Walsh et al., 2010). However, that research included guilty verdicts arrived at through a plea bargain. When defendants insist on going to trial despite a confession, there may be weaknesses in the confession that are revealed at trial.

Five of the bivariate correlations were significant at the .05 level but not at the .01 level: defendant denial of abuse, defense eyewitness to lack of abuse, prosecution hearsay witness regarding the defendant, defendant testimony, and forensic testimony. Because of α inflation, we were reluctant to assess their importance. However, they are worthy of continued study, and may prove meaningful in future research, ideally with larger samples and fewer variables to improve statistical power. For example, forensic evidence, which was present in only 11% of the cases, increased the odds of conviction by 5 times.

Our findings also draw attention to the infrequency with which expert testimony on CSA accommodation was discussed: fewer than 1 of the 10 trials. The cases were drawn from Los Angeles County, the source of Roland Summit's influential

article on abuse accommodation (Summit, 1983), and California courts have long approved of expert testimony designed to reha-bilitate sexual abuse victims' credibility by explaining to jurors that victim behaviors which may appear to be inconsistent with abuse are actually quite common (e.g., closeness to the abuser, delayed disclosure, and inconsistencies in reports; *People v. Bowker, 1988*). Taken in conjunction with the finding that seductive aspects of abuse are rarely discussed, the results sug-gest that prosecutors may be missing the opportunity to explain the dynamics of sexual molestation to jurors.

Several limitations of the current research should be acknowledged. Only final arguments were coded for evi-dence presented, rather than all testimony. It was both time- and cost-prohibitive to obtain and code entire trial tran-scripts, because a single transcript is frequently thousands of pages. It is therefore likely that evidence was presented that was not captured by our coding. On the other hand, an advantage to coding only closing arguments is that this is the evidence that attorneys emphasize to juries as most important and, as such, likely reflects the most significant evidence. An additional limitation is that all of the cases were drawn from cases tried 13 to 17 years ago. It is possi-ble that attorneys' strategies have changed; for example, defense attorneys may place greater emphasis on the dan-gers of children's suggestibility (Bruck & Ceci, 2013). Because the cases were tried in Los Angeles County, how-ever, attorneys were surely well aware of the dangers of suggestibility; the county was home to the McMartin day-care molestation case, one of the first and most highly pub-licized sexual abuse cases in which the suggestiveness of interviewing was highlighted (Eberle & Eberle, 1993). It is also possible that the increasingly punitive reaction to sexual offending has changed the dynamics of plea bargain-ing; for example, California adopted lifetime registration of sex offenders for all sex crimes in 2007 (Cal. Penal Code 290, 2014) and this may make defendants less inclined to accept reduced charges.

Future research can profitably examine larger portions of transcripts in more recent cases to provide a complete picture of the factors that affect jury trial outcomes in CSA cases. This study thus provided a first step in systematically asses-sing the evidence presented in CSA criminal trials. The find-ings suggest that the use of force, the child's postabuse contact with the defendant, and whether the defense presents hearsay and character evidence against the child and those closest to the child are the strongest predictors of jury verdicts.

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