

SEXUAL ABUSE ALLEGATIONS IN CHILD ABUSE CASES

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Outline

- I. The Forensic Interview
Disclosure, Recantation & Memory
The Attorney Perspective
- II. The Parent's Perspective
Understanding the Non-Offending Parent
The Attorney Perspective
- III. Vignettes & Discussion

The Forensic Interview

Understanding Child Disclosure, Recantation & Memory

Defining Child Sexual Abuse (CSA)

Defining Sexual Abuse

Statutory language describing physical actions & behavioral definitions

Child's Internal Experience

Culture (broadly)
Culture (family)
Level of threat/coercion
Level of violence
Perceived complicity
Level of understanding
Relationship with perpetrator
Quality of relationships with other caregivers.

WHAT HAPPENED

The Importance of the Forensic Interview

Investigative challenges inherent in CSA:

- Witness statements are rare.
- Confessions occur in less than half of cases when perpetrator confronted w/disclosure (Gumpert, Lindblad, & Johansson, 1999).
- Physical evidence rarer still (genital or physical trauma, STD, presence of semen, etc.) Meta-analysis of 21 studies shows these findings present for only 3-16% of child victims (Bays & Chadwick, 1993).




Five Important Questions

1. How do children typically disclose abuse and why do some recant?
2. What do we know about young children's memory for traumatic events?
3. How reliable are children's memories?
4. How does one maximize the utility of the forensic interview?
5. What other indications of abuse do we look for beyond verbal disclosure?

Disclosure
How do children typically disclose abuse and why do some recant?

Most sexually abused children do not disclose their abuse at all.



Meta-analyses indicate that 34-54% of adults admitting CSA said they never disclosed to anyone during childhood.

5-18% of adults said abuse brought to attention of authorities.

Conclusion supports notion of secrecy. 1/3-1/2 of children never tell anyone, even fewer cases come to attention of authorities.

However . . .

(Kulkofsky & London 2010; London et al, 2008)

Disclosure
How do children typically disclose abuse and why do some recant?

. . . Failure to disclose does not imply denial of abuse if questioned.

Metanalyses show wide range of disclosures rates in formal interview settings, 23-96%. (Kulkofsky & London, 2010; London et al., 2005, 2007, 2008).

Lower disclosure rates come from studies with poor interview techniques or cases that were dubious/overturned . Nondisclosure may have been accurate. (Kulkofsky & London, 2010; London et al., 2005, 2007, 2008).

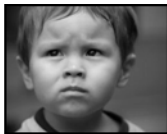
Recent studies with highly trained interviewers show disclosure rates of 71-83% (Kulkofsky & London, 2010; Hershkowitz et al., 2005; Pipe et al., 2007)

Disclosure
How do children typically disclose abuse and why do some recant?

Child Sexual Abuse Accommodation Syndrome (Summit, 1983)

Silence → Denial → Disclosure → Recantation
 Is it characteristic of a "syndrome"?
 (Bruck & Ceci, 2002; Kulkofsky & London, 2010)

Argues that victims of incest display a specific pattern of behavior during/after ongoing sexual abuse due to emotional consequences of shame, fear, embarrassment, or loss of caregiver (Kulkofsky & London, 2010).



- Tremendously influential.
- Be careful of the word "syndrome."
- Not diagnostic, not in the DSM-IV.
- Not supported by empirical research (e.g. higher rates of disclosure/recantation among validated cases) (Kulkofsky & London, 2010).
- Describes behaviors that are present for certain children in certain circumstances, but not universal.

Disclosure


How do children typically disclose abuse and why do some recant?

What does it mean when a child recants an allegation?

Recantations are relatively rare.
 Of validated cases, only 5% of children denied abuse when questioned by CPS, and 3-8% recanted (Bradley & Wood, 1996; Jones & McGraw, 1987).

Recantations are influenced by external events.
 Recantations rates higher (23%) in dependency cases where removal from home might result. (Kulkofsky & London, 2010). More common in groups where:

- Non-offending, disbelieving parent
- Encouragement to recant (explicit or implicit)
- Possibility of removal



Disclosure

When we know abuse has occurred . . .

How do proven abuse allegations compare to corresponding disclosures?

New Zealand: Allegations made by 4 girls abused by a group were compared against photographic and documentary evidence. 40% of documented abuses were not disclosed and 20% of allegations were not supported by the available evidence (Bidrose & Goodman, 2000).

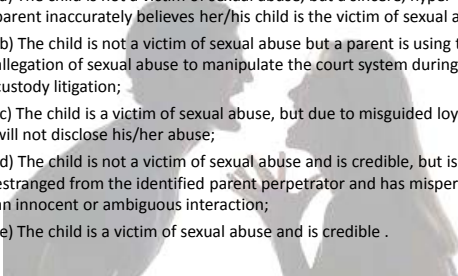
Sweden: Disclosures made by children in cases where perpetrators later confessed and confirmed abuse analyzed. In 40% of cases disclosure was delayed and correlated with young age and close relationship to perpetrator. 37% of cases showed reluctance to disclose at first questioning (initially failed to disclose abuse or details of abuse (Sjoberg & Lindbald, 2002).

Failure to disclose, failure to report all details, and omissions not indicative of false allegations.

Disclosure

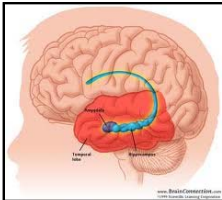
In contested child custody cases . . .

- (a) The child is not a victim of sexual abuse, but a sincere, hyper-vigilant parent inaccurately believes her/his child is the victim of sexual abuse;
- (b) The child is not a victim of sexual abuse but a parent is using the allegation of sexual abuse to manipulate the court system during child custody litigation;
- (c) The child is a victim of sexual abuse, but due to misguided loyalty will not disclose his/her abuse;
- (d) The child is not a victim of sexual abuse and is credible, but is estranged from the identified parent perpetrator and has misperceived an innocent or ambiguous interaction;
- (e) The child is a victim of sexual abuse and is credible .



(Kuehne & Kirkpatrick, 2005; modified from Kuehne, 1996)

Memory
 1. *What do we know about young children's memory for traumatic events?*

<p>Autobiographical (Explicit) Memory</p> <p>Conscious recall of personal experiences.</p> <p>Mediated by the hippocampus. & frontal lobes.</p> <p>Called upon when children questioned about abuse.</p>		<p>Emotional (Implicit) Memory</p> <p>Automatic association between traumatic stimuli and reaction.</p> <p>Mediated by amygdala.</p> <p>Activated when children confront a "trauma reminder"</p>
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Memory
 1. *What do we know about young children's memory for traumatic events?*

AUTOBIOGRAPHICAL MEMORY

After onset of language acquisition, child as young as two can remember important events that they have experienced over time. (Bruck & Ceci, 2002; Peterson & Riseout, 1998).

Details retained increases with age (Bruck & Ceci, 2002; Brainerd & Reyna, 1995).

With young children there is a trade-off between completeness and accuracy – spontaneous statements and responses to open-ended questions tend to be accurate but sparse. Answers to leading questions tend to be more detailed, but more prone to error (Bruck & Ceci, 2002).



"Tell me what happened."

Memory
 1. *What do we know about young children's memory for traumatic events?*

Age is most important predictive factor in reliability of autobiographical memory.

THE FIRST FIVE YEARS.

Infants & Toddlers (0-3 yrs): Implicit memory allows children as young as 1 year to recall events. Explicit memory not available pre-language (Clark, 2002; McDonough & Mandler, 1994).

Preschoolers (3-5/6 years): Development of language underlies explicit memory. Children can recall and describe events, though vulnerable to "contamination." (Clark, 2002).

School Age & Older: At ~age 6 children use strategies to aid verbal recall (e.g. rehearsal). Strategies become more sophisticated w/age. Scripts developed for familiar events, novel events may be remembered more easily. (Clark, 2002).

Memory

What do we know about young children's memory for traumatic events?




Memory is not like a video recording.

Memory

What do we know about young children's memory for traumatic events?

The Tradeoff



Accuracy  Completeness

Younger children are more dependent on context for remembering. They recall more completely when asked specific questions. However, specific questions introduce the specter of suggestibility, decreased accuracy, and erroneous detail (Clark, 2002).


Reliability

How reliable are children's memories?

Young children understand the world through the adults around them.



Source Monitoring Error



"... false reports may become false beliefs."

(Bruck & Ceci, 2002)

Reliability
How reliable are children's memories?

"Children's spontaneous non-prompted statements are likely to be accurate, especially for recently experienced events." (Bruck & Ceci, 2002)

But things get more complicated during questioning . . .

Suggestibility: The child unwittingly incorporates that suggestions of adults and the social environment into their own autobiographical memories. (Bruck & Ceci, 2002)


ALL memory is vulnerable to suggestion.

Although age most important predictor, even adults show effects.

Once memory is "contaminated" virtually impossible to distinguish from genuine experience. (Ceci et al., 1994)

Reliability
How reliable are children's memories?

CHRONIC ABUSE



Unpredictability, horror, and helplessness
 (Freud, 1926; Lieberman, 2011)

Conflation of abuse details

- How many times
- Where occurred
- What time of day
- Which occurred when

Reliability
How reliable are children's memories?

Dissociation, Trauma & Memory

Dissociation: "Compartmentalization of experience."
 (Van der Kolk, 1996). Disintegration of the affective and cognitive experience.

- Occurs with chronic abuse
- Fight, flight or **freeze** response
- Highest frequency in sexually abused children

Dissociative symptoms most predictive of inaccuracy, not simply level of trauma symptoms (Chae, Goodman, Eisen & Qin, 2011).

Reliability

How reliable are children's memories?

PROMULGATED GUIDELINES

American Academy of Child & Adolescent Psychiatry (1997)

American College of Forensic Psychology (Wakefield, 2006)

American Professional Society on the Abuse of Children (1995)

National Institute of Child Health and Human Development (Orbach et al., 2000).

*Shown to elicit increased amounts of detail and fewer leading questions.

Forensic Interview

How to maximize the utility of the forensic interview

Onus is on adults to ask appropriate questions in appropriate settings.



Young children accurate within and across interviews when asked developmentally appropriate, open-ended questions (Clark, 2002).

Young children give inconsistent answers to confusing, repetitive, or (mis)leading questions.

Forensic Interview

How to maximize the utility of the forensic interview?

WHAT NOT TO DO . . .

(Mis)leading questions.

Questions promoting speculation, pretending, or fantasy (e.g. use of puppets, "let's pretend") (Quinn, 2010).

Positive or negative reinforcement (e.g. "You're doing such a good job telling me about what he did.") (Quinn, 2010).

Confusing, compound, yes/no, or why questions. Child may endorse question that is not fully understood (Quinn, 2010).


Repeated interviews by different interviewers with potentially different agendas (law enforcement, CPS, forensic evaluators, therapists, parents) (Clark, 2002).

Questioning after a significant period of time has passed (Clark, 2002).

Forensic Interview

How to maximize the utility of the forensic interview?

Bias in all its forms . . .



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- Confirmation bias
- Failure (omitting) to gather disconfirmatory evidence (Burck & Ceci, 2002).
- Interviewers use leading questions, despite knowing the errors produced (Lamb et al., 1996)

When interviewers hold (conscious or unconscious) a priori beliefs about nature of case that shape interview process. Distorts “architecture” of the interview (Bruck & Ceci, 2002).

Forensic Interview


How to maximize the utility of the forensic interview

THE USE OF ANATOMICAL DOLLS

Use is controversial. Not universally accepted.

For: Some argue helpful as prop to show what occurred, aid to child’s vocabulary, or external memory cue (Quinn, 2010; Everson & Boat, 1994)

Against: Some argue harmful, encouraging suggestion or fantasy play (Quinn, 2010; Ceci & Bruck, 1995)



Not a “test” for abuse.
(Quinn, 2010).

Forensic Interview

How to maximize the utility of the forensic interview?

WHAT TO DO . . .

- Assess developmental & cognitive level, presence of dissociative symptoms
 - Focus on language development & abstract cognitive abilities
- Review all data sources
 - Understand sequence of disclosure events. Who said what to whom and what was the response
- Consider interview questions carefully
 - The accuracy vs. completeness trade-off. Proceed from open-ended to specific. Formulate specific questions using info already provided by child and document assiduously.

(Clark, 2002)

Forensic Interview

How to maximize the utility of the forensic interview?

Instead of . . .

“Has your uncle ever touched you anywhere when he babysits you? Where does he touch you?”



Ask . . .

“Tell me everything your remember about what happens when your uncle babysits for you.”

Forensic Interview

How to maximize the utility of the forensic interview

THE EVOLUTION OF THE REPORT

Most important factor in understanding allegation (Bruck & Ceci, 2002).

The initial disclosure is the most telling. (Clark, 2002)

❑ **Problematic:** Child initially silent, no unsolicited, spontaneous statements. Statements made after questioning by suspecting adult. At first child denies, but then discloses after repeated questioning or therapy. Child may recant, but then reinstates after more questioning.

❑ **Indicia of reliability:** Child makes spontaneous statements regarding abuse, that are all similar, without prompting or suggestive interviewing. (Bruck & Ceci, 2002)

Child Behavior

What other indicators do we look for?

Atypical sexualized behavior one of the most valid indicators or sexual abuse. (Quinn, 2010; Kendall-Tackett et al., 1993).

What is normative behavior?

Not all “sexual” behavior exhibited by children is indicative of sexual abuse.

Freidrich et al. (1988, 1991, 1998)

- ❑ Assessed presence of sexualized behavior in sample of “non-abused” children (N=2135 total)
- ❑ Non-abused children show wide variety of sexualized behaviors, peaks at 5.
- ❑ Family violence and general life stress raise frequency, independent of sexual abuse.
- ❑ Sexual behaviors that deviate in type and frequency from the norm raise more concern for sexual abuse.

Child Behavior

What other indicators do we look for?

Maternal report of non-abused sons age 2-5 years (Freidrich, 1998)

NORMATIVE

ATYPICAL

60.2% Touches own genitals

0.4% Puts mouth on another's sex parts

40% Touches breasts of adult females, mother or others

0.4% Asks other to do sex acts

10% Shows genitals to other children

1.4% Undresses other children

Section I Conclusions

Disclosure, Memory & Recantation

Most young children do not disclose abuse to anyone. However, when formally assessed, most abused children disclose. Recantation is uncommon but becomes more likely the more external pressures are on the child.

Even very young children can show memory for traumatic events. There is an important difference between autobiographical memory and "emotional" memory.

Children have reliable memories when appropriately questioned. However, there is a tradeoff between comprehensiveness and accuracy in memory.

Don't ask (mis)leading questions. It is the professionals responsible to assess in a developmentally appropriate way and prevent tainting of evidence.

Verbal disclosure is only one indication of abuse. Child behavior can be indicative of abuse, but must be contrasted with normative development.

The Attorney Perspective

With all that information now what?

Previous cases have pointed out the inherent difficulty encountered in sexual abuse cases.

In any sexual abuse case, your first hurdle is how is the disclosure coming into evidence?



The Attorney Perspective

The History of Child Statements & Admissibility

In re Malinda S. (1990) 51 Cal. 3d 368

In re Basilio T (1992) 4 Cal. App. 4th, 155

The court of appeal found that a child's statements should be struck from the social study because the child was not competent as a witness at trial.

In re Carmen O. (1994) 28 Cal. App. 4th 908

The court established the Child Dependency Hearsay exception.

In re Cindy L. (1997) 17 Cal. 4th 15

The court added some requirements for a child's hearsay statements to be admitted.

The Attorney Perspective

What is the law now?

Admissibility (cont'd)

The Legislature amended section 355 in 1996. That allowed for hearsay statements in social studies to be admissible but also provided limitations on the court using it solely to establish jurisdiction.

See WIC 355 (c) 1 (B)

In re Lucero L. (2000) 22 Cal App. 4th 1227The Supreme Court agreed that the hearsay statements of the minor contained in a social study are admissible even if they do not have the indicia of reliability as defined in Cindy L. but that they can not be the sole basis for jurisdiction.



The Attorney Perspective

Disclosures

The legal definition of sexual abuse does not necessarily correlate with what children are able to describe.

**Example: Look at WIC Code Section 300 (d) it defines sexual abuse as the child has been sexually abused or is at substantial risk of sexual abuse as defined by Section 11165.1 of the Penal Code.

***The penal code uses terms such as vagina, anal opening and penis.

**As attorneys how are they reconciled?


Understanding the Non-Offending Parent

Non-offending Parents' Responses to Disclosure of Child Sexual Abuse

Multiple Sources of Trauma

Families presenting with CSA may present with range of pathological stressors that also affect non-offending parent:

- CSA
- Physical Abuse
- Emotional Abuse
- Domestic violence
- Social isolation
- Use of coercive control
- Blurring of role boundaries and identities
- Disinhibition and violation



Range of Reactions

Shock Disbelief Confusion Rage Sadness Fear Guilt


Wide variety of evolving reactions is normal.

Studies of mothers show that most (69-78%) believe child disclosures at outset (for review see Elliott & Carnes, 2001).

Further most mothers (~65%) supportive and take protective action in wake of abuse. (Elliott & Carnes, 2001).

Mothers own history of abuse not predictive of level of support/protection (Elliott & Carnes, 2001).

How do we understand non-protective reactions?



A Child's Trauma is a Parent's Trauma

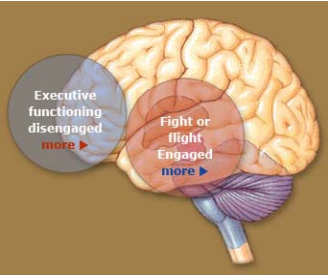
Intrafamilial sexual abuse is a crisis for non-offending parent:

- Child has been horrendously abused and betrayed
- Recovery will be a long-term process
- Partner has betrayed both child and non-offending parent
- Loss of family and partner
- Loss of financial security
- Scorn of acquaintances and community yielding shame
- Divisions between family/friends believe perpetrator
- Conflicting advice regarding forgiveness vs. protection
- Own deep, immutable failure as a parent

"Believing your child means facing the fact that a person you have trusted and loved has betrayed, lied to, and used you and your child." (NCTSN, 2009)

Reaction to Trauma

Fight, flight, or freeze



The "contagious" nature of the trauma response.

Reaction to Trauma

Fight	Flight	Freeze
<ul style="list-style-type: none"> • Anger (at system, self, attorney, perpetrator, child) • Violence • Self destructive acts 	<ul style="list-style-type: none"> • Reluctance to engage with professionals & court • Missing appointments • Not participating in therapy • Leaving jurisdiction 	<ul style="list-style-type: none"> • Disconnection from events • Failure to protect child • Unable to face trauma w/child • Numbing • Substance use

Understanding parent's "irrational" behavior.

Understanding Reaction to Trauma as a Process



The trauma response:

- Evolves over time
- Embedded in past experiences of loss and trauma
- Reactions that may appear nonsensical or “wrong” to the outside observer
- Have potential to be therapeutically influenced by supportive intervention

Paramount Importance of Non-Offending Parent Support



(Alicia Lieberman, 2010)

“Parental belief and support are the factors most predictive of both long and short term outcomes for children after CSA.” (Elliot & Carnes, 2001).

The Crucial role of the Advocate

- Regardless of who the client is, sexual abuse cases require collaborative advocacy to achieve the optimal results for the family.
- What are the requirements of collaborative advocacy?
 - Honesty with your client (See WIC 317 (e)), WIC 349 9(a), (c)
 - Honestly counseling your client on ALL the potential outcomes of litigation
 - Communicating with other counsel about possible settlements, creative ideas and ways to achieve reunification in sexual abuse cases.

Vignettes

Now we'll be breaking into smaller discussion groups of ~20 people to read and discuss two vignettes. After 30 minutes we will come back to the larger group, give feedback, and have time for questions.

Thank you!

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