

Forensic Evaluation of Child Sexual Abuse

Being typically the weaker party, an alleged victim of child sexual abuse (CSA) particularly warrants the court's protection of one's rights and interests and the assurance of receiving a fair and just outcome. It can be extremely hard for the child to disclose abuse, due to fear of retaliation from the abuser, manipulation that makes one believe that the abuse is one's fault or that the victim will not be believed, shame and guilt, lack of awareness, a sense of loyalty or love towards the abuser and lack of support.

On the one hand, a safe and supportive environment for children, where they feel empowered to disclose abuse is crucial. This includes building trust, providing education on abuse prevention, and maintaining open lines of communication. On the other hand, however, accusations of CSA are not always genuine. At times, the child denies or recants the abuse initially reported *or* the child may develop false memories of non-existent events *or* may deliberately lie about being abused *or* a concerned or mentally ill adult sincerely misunderstands some words or action of the child while there was no abuse *or* an adult or other child can make a malicious false accusation to achieve some specific aim. Actually, "There is a lot of concern about the issue of 'false allegations.' While it is difficult to 'prove' that sexual abuse has occurred, it is arguably even more difficult to prove that it has not occurred."¹ In any case, the person adjudicating criminal cases needs great human maturity to confront situations that are always odious: "Only the prudent man will be able to arrive at moral certainty, completing with the elements of life experience those which are sometimes lacking in proof, without

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¹ R. McElvaney, *Helping Children to Tell About Sexual Abuse Guidance for Helpers* (London & Philadelphia: Jessica Kingsley Publishers, 2016), 66.

distorting their content. Only a man of experience can read between the lines of the depositions and testimonies to ‘reconstruct’ the reality of the facts and offer a right decision.”² Furthermore, this competence should be accompanied by a passionate search for the objective truth that steers clear of any prejudice favouring any party in question.

Elements of Evidence

CSA is not an isolated incident but often occurs within a broader system involving various individuals, institutions, and societal factors. Understanding these systemic issues surrounding CSA is crucial for its evaluation. These issues include family dynamics, community support, institutional responses, legal frameworks, and cultural attitudes towards child protection.

A notable issue in this regard is represented by the dependency and power dynamics that can significantly impact a child’s ability to speak out about abuse. Children who are dependent on their abusers or are in situations where they lack support or resources may face barriers in reporting abuse. These barriers can include fear of retaliation, lack of awareness about available support services, limited access to communication channels, and a lack of trust in authorities.

The proof of CSA is twofold: (a) hard or sound evidence such as perpetrator confessions, medical evidence, photographs, electronic messages or videos³ of the abuse and other physical evidence and (b) *soft* or weaker evidence, containing psycho-social elements. These are per se the material constituents of proof, which can be formally acquired as full proof even by the resulting combination of soft evidence and other exacerbating factors.⁴

The therapist’s testimony, though valuable, calls for a critical analysis due to the allied relationship with the client, being somewhat an advocate for the alleged victim, who together with the latter’s guardian might be likely the only

² Damian G. Astigueta, “La certezza morale nella decisione penale,” *Ius Ecclesiae* 34, no.1 (2022): 93-110.

³ Forensic examination tools can still be used to recover files deleted from hard drives. See Rick Brown, *Eliminating Online Child Sexual Abuse Material* (London: Routledge, 2002), 124.

⁴ *Per analogiam*, the same reasoning applies in the proof of psychological inability as regards the invalidity of marriage, “eo quod concludi possit exigitam a lege gravitatem non instare dumtaxat in anomalia vel psychica perturbatione, sed potius, in determinatis casibus, una in simul et coniunctim (combinato disposito) in quadam anomalia una cum peculiarissimis adiunctis quae locum habuerunt tempore efformationis nuptialis consensus” (coram Sciacca, 16.6.2005, n.8; cf. n.9).

source of information for the therapist, apart in cases where there are other alleged victims.

Soft evidence regards the contents of the child's verbal statements (if weird, implausible or in harmony with known sequences of CSA); the narrative quality of the report (if logical and with realistic contextual details) and nonverbal conduct (if emotional while interviewed); the psychosocial setting of the report (if done spontaneously or after lengthy interrogation or if the child initially denied having been abused); the child's psychological history (if there were conflicting feelings and conduct towards caregivers, significant behavioural changes, as unexpected and age-inappropriate sexual conduct after the alleged onset of the abuse); the psychosocial history and behaviour of other parties in the case, and the contents, narrative qualities, and historical contexts of their statements. The mental health professional can offer a lot of help to determine or help determine if the child was in fact abused. Indeed, "When a child is abused, medical professionals are key actors in the diagnosis of abuse."⁵

If there is clear and convincing hard evidence that corroborates or contradicts an abuse allegation, then the soft psychosocial evidence is needless. Yet, a substantial minority of cases lack strong independent evidence, leaving only psychological evidence, pro or contra, obtainable.

Children Who Testify

Because sexual abuse most often occurs in private, cases rely heavily, if not only, on children's accounts with a degree of veracity that can vary immensely. For example, children can be led to make totally false reports, even of sexual abuse, as attested by several high-profile, controversial cases in which children claimed almost impossible events.

False allegations of abuse by children are a complex and sensitive topic that has to be approached with caution. Children may make false allegations due to misunderstandings or misinterpretations of events as they may not fully understand the context or the consequences of their statements. In some cases, children may be influenced or coached by adults to make false allegations, as in conflicts where one party may try to manipulate the child's statements. Besides, children have active imaginations, and sometimes they may create stories or make-believe scenarios that involve abuse. Also, children passing through

⁵ J.E.B. Myers, "Legal Issues in the Medical Evaluation of Child Sexual Abuse," in *Medical Evaluation of Child Sexual Abuse. A Practical Guide*, eds M.A. Finkel and A.P. Giardino (Elk Grove Village, IL: American Academy of Pediatrics, 2019), 389.

emotional distress or seeking attention may make false allegations as a way to gain support or attention from adults. In rare cases, children with certain mental health conditions may make false allegations due to delusions or other symptoms of their condition.

Though pre-schoolers tend to be more suggestible than older children, even they can be highly accurate. Actually, the research disclosed that there is no simple relationship between age and suggestibility.⁶ Suggestibility on a particular occasion depends on a host of situational, emotional, personality, and developmental factors. One 4-year-old resists suggestive questions, while another 4-year-old goes unthinkingly along with the interviewer's suggestions. Furthermore, some adults in some circumstances are more suggestible than some children. Therefore, questions should be adapted to suit the child's concrete situation.

The most reliable factor affecting children's suggestibility, memory and ability to describe events they experienced or witnessed is age.⁷ Virtually, for all events, with age, children's memory precision increases and suggestibility declines.⁸ Obviously, the trauma experienced by child victims of abuse obstructs this process.

The Memory System

This brings us to the theme of memory. Its first phase is "encoding," that is, how information enters the memory system. There is great selectivity in what gets encoded. One cannot pay heed to everything in an event, but generally attends to certain aspects of an event and ignores others.

Factors that can influence what enters the memory are one's expectations about and familiarity with the event,⁹ its duration,¹⁰ the stress level at the time

⁶ See *The Evaluation of Child Sexual Abuse Allegations. A Comprehensive Guide to Assessment and Testimony*, eds Kathryn Kuehnle and Mary Connel (New Jersey: John Wiley & Sons, 2009), xxiii.

⁷ See L.C. Malloy and J.A. Quas, "Children's Suggestibility. Areas of Consensus and Controversy," in *The Evaluation of Child Sexual Abuse Allegations*, 290.

⁸ See *ibid.*, 268-269.

⁹ See Michelle D. Leichtman and S.J. Ceci, "The Effects of Stereotypes and Suggestions on Preschoolers' Reports," *Development Psychology* 31, no.4 (1995): 568-578.

¹⁰ See M.R. Leippe, A. Romanczyk, A.P. Manion, "Eyewitness Memory for a Touching Experience: Accuracy Differences Between Child and Adult Witnesses," *Journal of Applied Psychology* 76 (1991-1993): 367-379.

of its encoding¹¹ and the sensory conditions of the stimuli as light and sound. Younger children encode less information than older ones.¹²

At last, comes the “retrieval” of stored information. Retrieval is seldom perfect – sometimes the contents of the memory are not accessible, though in principle available somewhere in long-term storage. Younger children retrieve less due to their processing limitations.¹³

The memory is constructive, not static: it elaborates, deletes and shapes its contents. Not everything that impinges on our senses gets encoded. Nor is everything encoded also stored. Seldom what is stored remains as it was when it arrived and not all stored material in long-term memory is retrievable. Young children are at a greater risk of forgetting, failing to retrieve and having their original encodings altered because of limitations in processing speed and attention.

Young children may have difficulties with both observing and recalling events. It is hard for them to encode information and store it for later retrieval, though symbolic memory, that is, their ability to use symbols or mental representations to remember and use information, may be stronger.¹⁴

There are some common misconceptions professionals harbour about children’s memory.

(a) One misconception is that repeated general open-ended questions such as “Tell me everything that happened? What else happened?” usually lead to false claims of CSA. Actually, in general, it is more efficient to use closed-ended and leading questions to get responses from children.¹⁵ Yet, the more the information in a question, the higher the risk that children will falsely incorporate that information into their reports and memories. Asking open-ended questions is harder but also the least damaging to a child’s memory and the most likely to

¹¹ See N.M. Hall-D. Berntsen, “The Effect of Emotional Stress on Involuntary and Voluntary Conscious,” *Memory* 16, no.1 (2008): 48-57.

¹² See R.V. Kail, “Processing Time Declines Exponentially During Childhood and Adolescence,” *Developmental Psychology* 27, no.2 (1991): 259-266.

¹³ S. Ghetti and P.J. Bauer, “Developmental Changes in Memory Retrieval Across Childhood and Adolescence: The Transition to Declarative Memory,” *Advances in Child Development and Behavior* 35 (2007): 139-195.

¹⁴ *Chapter 9: Memory and Information Processing*, in <https://quillbot.com/courses/effective-learning-strategies> (accessed on 25th September 2023).

¹⁵ See K.J. Saywitz et al., “Children’s Memories of a Physical Examination Involving Genital Touch: Implications for Reports of Child Sexual Abuse,” *Journal of Consulting and Clinical Psychology* 59 (1991): 682-691.

extract correct information.¹⁶ While repeatedly asking children closed-ended questions about past events has been shown to decrease their accuracy for past events, repeatedly asking children open-ended questions will at worst, have no effect, and at best, may improve their memories of those past events.¹⁷

Forensic interviews typically start with a pre-substantive or rapport phase while focusing on building a rapport between the interviewer and the child, preparing the child to reply to questions, and evaluating the latter's capabilities. A substantive stage follows with questions going from open-ended/free recall to specific questions for clarification.¹⁸

(b) Anatomically detailed dolls, with genitalia are used to show what abuse happened. However, no reliable research shows that these help children's reports of abuse, while there is evidence that such use may lead children to make false claims. Young children cannot understand that the doll represents themselves and they likely explore the dolls in ways that may appear sexual when in reality the explorations arise as affordances.¹⁹

This brings us to the topic of symbolic or indirect reporting when a child may not explicitly disclose the abuse but may communicate their experiences or concerns through non-verbal cues, art, play, or other indirect means. These methods, such as projective play and drawings are not infallible evaluation techniques. They are not a direct way to assess pertinent psychological constructs, require tremendous inferences²⁰ by trained professionals and are not to be relied upon as the sole method of identifying or addressing CSA. Admittedly, such material can provide valuable insights and additional information that can support the investigative process, but they have to be followed up with a thorough investigation.

(c) Professionals mistakenly assume that a psychologist can tell if a child's description of an event was influenced by another adult. Conversely, children who believe their false testimony – and children often believe the suggestions in

¹⁶ See D.B. Battin and S.J. Ceci, "Children as Witnesses: What We Hear Them Say May Not Be What They Mean," *Court Review* 40, no.1 (2003): 4-5.

¹⁷ See J. Zoe Klemfuss and S.J. Ceci, "Normative Memory Development and the Child Witness," in *The Evaluation of Child Sexual Abuse Allegations*, 197.

¹⁸ See M.F. Davis, *Forensic Social Work: Interviewing Sexually Abused Children*. Dissertation at Southeastern University 2019, 39.

¹⁹ See Klemfuss and Ceci, *Normative Memory Development*, 198.

²⁰ See D. Murrie and D.A. Martindale-M. Epstein, "Unsupported Assessment Techniques in Child Sexual Abuse Evaluations," in *The Evaluation of Child Sexual Abuse Allegations*, 414.

suggestive interviewing – may be very difficult to discern from others telling the truth.²¹

Paradoxically, children who have better overall narrative skills usually have less exact narratives. Thus, a child who tells a long, detailed story is more likely to include a high ratio of inexact details in that story.²² So, there is no reliable technique that can distinguish children with exact reports from those influenced by suggestive questions, therefore wherefore various techniques, such as telling, designing, playing a situation and so on need to be explored.

The predictions of clinical psychologists and social workers about the exactness of children's sexual abuse reports are disturbingly unreliable and span the full range of probabilities, from concluding pro to contra that there was abuse, despite being given the same detailed case descriptions.²³ There is no reliable measure that professionals or laypersons can use to determine which children's reports have been tampered with, especially when the child was influenced by suggestive interviews.

(d) A child repeatedly and painfully sexually abused up to one year old can remember it when growing older. Nevertheless, scientific evidence generally casts doubt on such claims, even for severe and repeated abuse. It is rare, if not impossible, for a person to remember anything from the first year of life.

The hypothesis of 'body memory' suggests that our bodies may have the capacity to store memories alongside the brain. To speak of memory here is quite unclear because memory as such pertains to the psyche as one of the internal senses,²⁴ which belongs to the sensitive part of the soul.²⁵ In any case, the said theory is often associated with the idea that traumatic experiences can leave a lasting impact on the body, but this concept is still a topic of debate and needs more research.²⁶

²¹ V. Talwar and K. Lee, "Social and Cognitive Correlates of Children's Lying Behavior," *Child Development* 79 no.4 (2008): 866-881.

²² See C. Sarah Kulkofsky and J.Zoe Klemfuss, "What the Stories Children Tell Can Tell About Their Memory: Narrative Skill and Young Children's Suggestibility," *Developmental Psychology* 44, no.5 (2008): 1442-1456.

²³ See T.M. Homer and M.J. Guyer-N.M. Kalter, "Clinical Expertise and The Assessment of Child Sexual Abuse," *Journal of the American Academy of Child and Adolescent Psychiatry* 32 (1993): 925-931.

²⁴ See *Summa Theologiae*, I, q.78, a. 4.

²⁵ See *ibid.*, q. 79, a. 1.

²⁶ G. Riva, "The Neuroscience of Body Memory: From the Self Through the Space to the Others," *Cortex: A Journal Devoted to the Study of the Nervous System and Behavior* 104 (2018): 241-260.

The most reliable factor that affects children's memory and suggestibility is age. With age, children's accuracy generally improves, though children still cannot remember events that occur before the offset of infantile amnesia. Children between the ages of 2 to 3 can remember some earlier experiences, but it is unlikely that older children or adults' descriptions of events that occurred before approximately their 4th birthday are based on actual or detailed memories.²⁷ Admittedly, a phenomenon like flashbacks and nightmares can testify to actual abuse, but a skilled and trustworthy interpreter is needed to read it.

Given children's limited abilities, inaccuracies in children's answers do not necessarily show that the report was entirely false. Maybe, children simply do not yet understand time well enough and often they have trouble understanding legal terminology. Since recantation occurs among true cases of sexual abuse, it does per se indicate a false report. Inconsistencies or even contradictions in children's reports do not necessarily show a false report. Recantation may be due to filial dependency and children's vulnerability to adult influences. More attention needs to be paid to the conditions that give rise to a recantation rather than its simple occurrence.

Suggestibility of Children

Children, like adults, are suggestible. Yet, time and again, children's descriptions of abuse ring true. Centuries ago, the great English Judge William Blackstone observed, "Infants of very tender years often give the clearest and truest testimony."²⁸ Children should be interviewed no more than three times and ideally, the interviewer should be the same person across multiple interviews.

Many children notably resist false suggestions. Research indicates that many children, under varied circumstances, remain accurate despite misinformation. Suggestive interviews do not necessarily lead children to make false reports.²⁹ Intelligence and creativity offer two reasons. Brighter children tend to better resist false suggestions and though intellectually disabled children tend to be

²⁷ See L.C. Malloy-J.A. Quas, "Children's Suggestibility. Areas of Consensus and Controversy," in *The Evaluation of Child Sexual Abuse Allegations*, 278.

²⁸ W. Blackstone, *Commentaries on the Laws of England*, IV, 1769, electronic edition 2003/2005, www.longang.com, 124 (accessed 12th December 2023).

²⁹ See S.J. Ceci et al., "Unwarranted Assumptions About Children's Testimonial Accuracy," *Annual Review of Clinical Psychology* 3 (2007): 311-328.

more suggestible, they are not unavoidably so.³⁰ Also, less creative children are sometimes less suggestible.³¹ Cultures in which children are taught to defer to adults entail greater resistance to adults' suggestive questioning.³²

Trauma-Related Psychopathology

Children and adolescents can forget traumatic events like child abuse, and some sparse evidence suggests that they might later remember such events despite earlier periods of forgetting. There is little evidence that this forgetting comes from forces like repression and dissociation, making memories unconscious and indelible but which can be later recovered. Children are most likely to forget traumatic experiences if they occurred when they were very young, if they are not re-exposed to the trauma or reminders of it over the delay and if they have poorer memory skills. Seemingly forgetting trauma involves standard forgetting mechanisms rather than repression or dissociation. So traumatic memories forgotten for a period of time are not necessarily preserved intact. When once-lost memories are later remembered, their accuracy depends on the conditions of retrieval and exposure to misinformation during the delay interval.³³

There is also little evidence that traumatized children experience amnesia for large periods of childhood, though they may tend to avoid broaching past experiences – as they may also be reluctant to talk about highly traumatic non abuse experiences – which could reduce memory accessibility over long delays.

Though children may exhibit behavioural signs of preverbal trauma, there is little evidence to suggest that these indices, or later verbal redescriptions of them, provide veridical accounts of the events.³⁴

³⁰ See L.A. Henry and G.H. Gudjonsson, "Individual and Developmental Differences in Eyewitness Recall and Suggestibility in Children with Intellectual Disabilities," *Applied Cognitive Psychology* 21, no.3 (2007): 361-381.

³¹ See L.S. Harris et al., "Children's Resistance to Suggestion," in *The Evaluation of Child Sexual Abuse Allegations*, 189.

³² See *ibid.*, 191.

³³ See A.F. Greenhoot and M. Tsethlikai, "Repressed and Recovered Memories During Childhood and Adolescence," in *The Evaluation of Child Sexual Abuse Allegations*, 237-238.

³⁴ See *ibid.*

Symptoms of Abuse

No single sign or symptom, including aberrant sexualized behaviour, characterizes the majority of sexually abused children.³⁵ Some common developmental issues might be confused with symptoms of sexual abuse. Sudden changes in behaviour are common throughout childhood. Normal child development is not steadily forward but more like a winding road that sometimes heads backwards and frequently. Besides, children have different temperaments. There are two primary categories: repeaters and avoiders. The repeaters tend to gravitate towards trouble and abusive relationships, repeatedly finding themselves in similar situations. On the other hand, avoiders are hesitant to enter into any new relationships. Since this conduct is often a family behaviour pattern, one can cautiously infer the comportment of an abused child by appraising the demeanor of others.

One should always look at how current behaviour compares with past behaviour, how recent issues in the family and at school may relate to troubling behaviour, and what picture is conveyed by the overall intensity of symptoms, the number of related problems, and the expression of problem behaviour across contexts.

Many children who are sexually abused show no behaviours that alarm or alert adults, so the absence of behavioural change cannot be taken as evidence that abuse has not occurred.³⁶ It depends on one's character and learning history. Thus, not showing visible problems and always fitting in can be a sign of having been abused, as the victim might have never developed self-security and independence while finding acquiescence comfortable. Introverted persons are more vulnerable as they do not easily express their problems. Hence, an assessment of the child's social surroundings is crucial, to unveil the treatment of the individual by others, for instance, if the young person was dominant or dominated.

Though clinicians evaluating a child witness should consider individual differences affecting the accuracy or distortion of a child's report, the associations between these differences do not account for all the variance. Thus, many children with low intelligence, self-esteem and socioeconomic status or who have traumatic pasts can still report accurately, while others with superior

³⁵ See B. Friedrich, "Correlates of Sexual Behavior in Young Children," *Journal of Child Custody: Research, Issues, and Practices* 2, no.3 (2005): 41-55.

³⁶ See D.A. Poole and M.A. Wolfe, "Child Development Normative Sexual and Nonsexual Behaviors That May Be Confused with Symptoms of Sexual Abuse," in *The Evaluation of Child Sexual Abuse Allegations*, 120-121.

intelligence, high self-esteem, elevated socio-economic status and nontraumatic backgrounds, still make mistakes. Interview factors can be more important than individual differences. A strong memory, for example of a recent personally significant event, likely overrides individual difference factors.³⁷

Role of the Psychological Expert

Ultimate decision-making authority about what happened and the guilt or innocence of the accused rests with the judge. The psychologist is a behavioural scientist, connecting the data to opinions clearly, without passion or bias but psychological assessment cannot make an ultimate determination.

The judge should be free of issues that might compromise a full objective evaluation. Thus, people who regard themselves, or their significant others, as strong victim advocates, survivors of abuse, or as having faced false accusations of abuse can scantily assess objectively.

The mental health professional may be asked if the child can testify about alleged past events or if the child had intellectual or communication deficits, about the child's inconsistencies and if the latter, in reporting, was prey to suggestibility or else to comment on a previous opinion expressed by another expert witness. Only the trier of fact can answer such questions properly on the strength of a broader extent of evidence.

The judge remains the dominus of the process, *peritus peritorum*. Generally, character evidence about the alleged perpetrator or victim is inadmissible to prove that the conduct in question actually happened³⁸ and testimony about the alleged sexual abuser's personality may be barred for that reason. The sort of person the alleged perpetrator or victim may be or how that person has generally behaved, does not by itself prove or disprove a particular allegation of wrongdoing. A holistic appraisal of the concrete case will best tell if and to what extent character evidence is usable. This includes, among other elements, factors that concern the objective and subjective credibility of both the alleged perpetrator and victim. At times, the behaviour of the accused offender in the presence of the child

³⁷ See L.S. Harris et al., "Children's Resistance to Suggestion," in *The Evaluation of Child Sexual Abuse Allegations*, 198.

³⁸ See Federal Rule of Evidence 404, a, 1, in https://www.law.cornell.edu/rules/fre/rule_404 (accessed on 25th September 2023).

Uncorroborated Report

Should expert witness testimony that purports to support the validity of such an uncorroborated report of CSA be considered legally admissible evidence in court? In the absence of corroborative evidence, forensic evaluators have a limited ability to discriminate between true and false reports based on children's reports during structured interviews and are unable in cases of unstructured interviews. Professionals and laypersons are generally not good at detecting deception and false or distorted memories can be unintentionally created in both children and adults as a result of suggestive questioning techniques.

The excessively high risk of error by expert judgments saying that uncorroborated allegations of CSA are true requires that no legal decisions should be based only on such evaluators' judgment that an uncorroborated allegation of CSA is likely to be true. Expert testimony backing the soundness of an accusation of CSA, which rests on an analysis of psychosocial evidence is scientifically unreliable.³⁹

Expert opinions can help if they serve the attempt to obtain hard evidence but if they just note that psychosocial information is "indicative of," "consistent or inconsistent with" sexual abuse, they are too imprecise.

Conclusion

Searching for truth in cases of child sexual abuse is a crucial and complex process. It involves gathering evidence, conducting thorough investigations, and ensuring the well-being and safety of the child as well as curbing the risk of false accusations. These investigations, which aim at gathering accurate and reliable information while minimizing any potential trauma to the child, can benefit considerably from collaboration among professionals from various disciplines. Yet, this multidisciplinary approach does not relieve the judge from the task of a holistic appraisal of the case, while remaining the *dominus* of the judicial process.

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³⁹ See S. Herman, "Forensic Child Sexual Abuse Evaluations. Accuracy, Ethics, and Admissibility," in *The Evaluation of Child Sexual Abuse Allegations*, 261.