

## Testimony in Sexual Abuse Cases

# Clinical Testimony About Sexual Abuse: Fears and Effectiveness

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When the physical evidence is equivocal, courts often look to mental health expert witnesses for opinions about whether a child has been abused. Expert witnesses are expected to describe the behaviors and characteristics of sexually abused children and indicate if the given child fits that profile (Sagetun, 1991). These experts are confronted with a number of professional concerns, including the well-being of the reportedly abused child; the rights of the accused abuser; the vague legal definition of sexual abuse (Melton et al., 1987); the task of helping judges, juries, and observers to understand the case; and the courtroom questioning that often follows from the sensitive nature of the subject; and criticism of clinical assessments (e.g., Faust and Ziskin, 1988). When experts are able to manage these concerns effectively, they deliver their conclusions more cogently.

In order to assess these issues, we asked sixty-three participants in a sexual abuse expert testimony workshop to document their worst fears. Out of 102 responses, 54% indicated fears of "uncontrollable" trial factors. Most fears were of the cross examination, including irrelevant and personal questions; attacks on witnesses' education, experience, and expertise; manipulations to make witnesses appear unprofessional or ignorant; and rebuttal by a better known expert. Other trial-based fears were that witnesses' own attorneys would conduct the direct examination poorly or sit quietly during badgering by opposing counsel; that children would recant abuse allegations; and that unjust and potentially harmful decisions would be reached.

Of the reported fears 38% were personal factors, such as fear of appearing incompetent through inadequate preparation, making major mistakes, forgetting important information, or rambling on the stand. Other concerns were about maintaining proper demeanor on the stand; being insecure about one's conclusions; and generally humiliating oneself during testimony.

Witnesses should consider that their testimony typically plays a small role in the final decision (Schultz, 1990). They should also have pre-trial meetings with their attorney to discuss case issues and conduct mock questioning (Brodsky, 1991). Witnesses can respond to attacks on their experience by showing an awareness of current literature, demonstrating an understanding of the validity and generalizability of clinical data, and by admitting the bounds of their expertise (Brodsky and Poythress, 1985). Competent experts avoid overly narrow scientific discussion and respond to open ended questions in a confident and natural voice with well-organized information that follows well supported practices (Melton et al., 1987; Schultz, 1990; Ziskin,

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1980). To counter attacks of being biased, witnesses should pursue impartiality through training and supervision, and be able to discuss that pursuit.

Witnesses must also be prepared to provide scholarly responses to attacks upon the validity of their conclusions. An impartial, clinically sound assessment of several domains should support conclusions (Sgroi, 1982). Behavioral indicators of abuse should be assessed through direct observation and informant reports. Physical evidence should be integrated into the conclusion. The credibility assessment should consider the child's developmental level, trauma history, family dynamics, and possible secondary gain. The current report should be examined for consistency with typical sexual abuse cases (Benedek and Schetky, 1987b). The investigative interview should be based in a context of appropriate rapport and should be unequivocally committed to non-leading questions (Bull, 1992). Parental pressure to allege or deny abuse should also be evaluated (Elliot and Briere, 1994).

Since the Criminal Justice Act of 1991, videotaped child interviews are admissible in court and may be used to support the investigative interview. Videotaped interviews appear to reduce the child's stress, increase the ease and accuracy of recall, facilitate more detailed reports, the likelihood of interviews being conducted especially carefully because the otherwise private process of questioning and inquiring becomes public. Videotapes serve one more essential function; given the justified scholarly attacks on the objectivity of child interviews; they offer explicit accountability for one's procedures. They permit other experts to examine the full nature of the child interview. In the present zeitgeist of criticism of interviews of child abuse victims, it is our position that videotaping is a *sin qua non* of responsible interviewing. The concerns of interviewers that they will be attacked in court because of the visibility of the whole interview are not irrational. At the same time, this procedure has the potential for improving the methods of interviewing.

In addition to attacking validity of assessments, attorneys often suggest children are lying. The literature suggests that false victim allegations clearly occur in about one to five percent of cases (Jones & McGraw, 1987; Horowitz, Salt, Gomes-Schwartz, and Sauzier, 1984) while as many as 22% more of reports are unsubstantiated by evidence (Jones and McGraw, 1987). False allegations have been reported to come from children or parents with psychiatric disorders and from disturbed adolescents within the context of custody disputes (Jones & McGraw, 1987).

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Effective witnesses synthesize the child's behavior with the essence of the clinical report. Witnesses should know developmental milestones of logical and sexually mature thinking, language abilities, and cognitive, emotional, and social factors within a developmental context (Benedek and Schetky, 1987a). Sometimes developmentally normative fragmentation or inability to comprehend can make the child's self-report seem inconsistent or vague. However, young children and adults have similar memory abilities (Chance and Goldstein, 1984; Marin et al., 1979) and similar susceptibility to suggestion (Loftus, 1993).

Expert testimony in sexual abuse cases requires many of the same skills needed for any testimony. Withstanding substantive cross-examinations calls for the ability to address accusations of invalid assessments, of partiality to one side, and of false allegations. Familiarity with the literature on sexual abuse and standardized evaluation procedures can help reduce the anxiety often associated with expert testimony in these cases.

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