



USC Child Interviewing Lab

# Expert Testimony in Child Sexual Abuse Cases: Methodological Difficulties and Logical Fallacies

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# Forthcoming chapters on assessing reluctance

- Lyon, T.D., Wylie, B.A., & Szojka, Z.A. (in press). Understanding child sexual abuse disclosures, delays, and denials. In M.E. Lamb, I. Hershkowitz, & M.E. Pipe (Eds.), *Child sexual abuse: Disclosure, delay, and denial* (2d Ed.). Routledge.
- Lyon, T.D., Wylie, B.A., & Szojka, Z.A. (in press). Initial denial of child sexual abuse: Reluctance or suggestibility. In G. S. Goodman, T. D. Lyon, S. D. Hobbs, and R. Enriquez (Eds.), *The handbook of child witnesses: Improving psychological science and legal practice*. American Psychological Association.

# Overview

- Understanding the proper role of expert testimony on abuse denial. Avoiding the reluctance = proof of abuse fallacy.
- Understanding how to interpret child interview research examining denial. Avoiding suspicion and substantiation selection bias.

## When a child delayed disclosure or denied abuse at some point in the investigation

- Child was not abused, but suggestible.
- Child was abused, but reluctant.
- Suggestion and reluctance are competing explanations for denial.

# Child Sexual Abuse Accommodation “Syndrome”

- Prosecutors initially offered expert testimony on CSAAS to prove that abuse occurred.
- Fallacy: Denials of abuse can't increase the likelihood of abuse, because in that case disclosures would decrease the likelihood of abuse.
- Experts now allowed to explain reasons why sexually abused children may deny abuse in order to rehabilitate child's credibility following an attack by the defense.

# Experts on suggestibility and reluctance

- Suggestibility experts argue that the probative value of disclosures in proving abuse is reduced by factors that increase the percentage of non-abused children who disclose.
  - (because the probative value is determined by the percentage of abused children who disclose divided by the percentage of non-abused children who disclose)
- Reluctance experts argue that the probative value of denial in disproving abuse is reduced by factors that increase the percentage of abused children who deny.
  - (because the probative value is determined by the percentage of non-abused children who deny divided by the percentage of abused children who deny)

# Challenges to reluctance testimony

- In J.L.G. (2018) the New Jersey Supreme Court severely restricted expert testimony explaining delay, and prohibited expert testimony explaining denial in child sexual abuse prosecutions.
- The Court was persuaded by the expert witnesses for the defense, concluding that the “weaker studies—that involved children later found to have made false allegations or children who may have been subjected to suggestive techniques ...produced higher rates of denial. Studies with better methodologies produced low rates.” (p. 462).

# Experts in *J.L.G.*

- Disclosure rates in interview studies vary widely.
- Ground truth problem: Determining whether children really were abused.
- Assume 70% of children in an interview study disclose.
  - Is this low? Not if the 30% were false suspicions of abuse.
  - If the non-disclosers were false suspicions, then 70% = 100% disclosure.
- “Methodologically superior” studies identify subsamples of “highly probable” cases.
- Disclosure rates among “highly probable” cases approach 100%.



# The problem

- Whether cases were deemed “highly probable” was dependent on whether children disclosed!
- There are two types of evidence that allow investigators to conclude that abuse is “highly probable”: Disclosure evidence and non-disclosure evidence (admissions/confessions, eyewitness evidence, medical evidence).
- Non-disclosure evidence is less common, and often less than conclusive, which means it must often be supplemented by disclosure evidence.
- Disclosure rates among cases deemed “highly probable” due to disclosure evidence will inevitably be 100%.

## What happens to disclosure rates if one focuses on non-disclosure evidence?

- They go down.
- Childhood gonorrhea is well-accepted to be near-conclusive evidence of sexual contact.
- Initial disclosure rates among children with gonorrhea are as low as 5%.

# Conclusion

- Denial systematically excludes children from samples of sexually abused children, because disclosure is the primary means by which abuse is suspected and substantiated.
- Avoiding selection bias reveals that children are highly reluctant to disclose abuse, particularly when first questioned.
- Expert testimony on reluctance is appropriate to question the probative value of denial in disproving abuse, analogous to suggestibility testimony.
- Understanding reluctance also has implications for applying suggestibility research to sexual abuse allegations.