

Utilizing an Expert to Assess the Reliability and Credibility of Child Sexual Abuse Victim's Statements in Criminal, Civil, and Family Court Cases.

In forensic interviews, where there are allegations of child sexual abuse, it is imperative that interviewers incorporate the current Professional Standards of Care in order to obtain forensically sound information from the alleged child victim. Interviews that produce unreliable information present significant risk to both the alleged victim as well as perpetrator. Those falsely accused suffer irreparable damage; the risks are equally significant if a perpetrator is allowed to continue to offend, simply because the interviewer used techniques that undermined the forensic reliability and credibility of the child's statements.

In most Civil, Criminal, and Family Law cases involving child sexual abuse victims there are often no witnesses to substantiate the abuse, let alone observe the identification of the perpetrator. Furthermore, there is rarely physical evidence or specific medical findings to substantiate sexual abuse in child victims. Instead, the court and fact finders rely on interviews with the child to substantiate allegations of child sexual abuse. Unfortunately, credible information from alleged victims is often contaminated, by even well-intended police officer and trained interviewer.

While it is common for the Prosecution or Plaintiff attorney to use an expert to describe typical victim disclosure patterns or to explain the research to the court regarding the credibility of child sexual abuse victims, it is less common for the Defense or Defendant to obtain an expert in such cases. When I am obtained as an expert by either the Prosecution/Defense or the Plaintiff/Defendant to evaluate the credibility of an alleged child sexual abuse victim, I evaluate a number of issues that contribute to obtaining credible statements from children. Ultimately it is the court's role to address the issue of whether or not a particular defendant sexually abused the child in question. The research indicates witnesses as young as three years old, when interviewed correctly, can make credible reports of sexual abuse. A qualified forensic expert can provide valuable assistance to the court in evaluating the process of obtaining information from the child; as well as the impact of that process on the reliability and credibility of the child's statements.

In my role as an expert evaluating the reliability and credibility of victim's statements, I employ the same criteria whether I am hired by the Prosecution or Defense. I begin by reviewing both the police records as well as the process in which the child disclosed the abuse. Were there multiple interviews with the child prior to the videotaped interview? If so, all of these previous interviews may have contaminated the child's statements. I also obtain the victim's medical and school records, as well as police and social service records to assess the consistency of the child's statements over time, as well as to assess any presence of behavioral problems both prior to and subsequent to the victim's Disclosure.

There are presently professional Standards of Care for interviewing young alleged victims of sexual assault (American Professional Society on the Abuse of Children, American Psychological Association, and the American Academy of Child and Adolescent Psychiatry). These professional standards all concur that the most credible information from young children is obtained when the interviewer allows the child to narrate the events of the alleged abuse. This contrasts with interviewers engaging in numerous questions that can potentially introduce new information to the alleged victim, which results in information from the child that is not

forensically reliable. Thus, in my role as an expert, I also evaluate how the interview process did or did not conform to these Standards of Care.

Professional Standards also indicate that interviewers should avoid bias. To alleviate bias, interviewers should address multiple hypotheses in their interviews with the child. Such hypotheses should address, at a minimum, two possibilities: one, that the child has been sexually abused; and two, that the child has not been the victim of sexual assault. The interviewer should also consider multiple hypotheses regarding the identity of the perpetrator.

In evaluating the interview process, I specifically review both the child's statements to others prior to the videotaped statement as well as during the videotaped interview. In doing so, I look for any potential evidence of leading, suggestive, or repetitive questioning that could have affected the child's statements. Such questions are a violation of the current Standard of Care.

The current Standard of Care indicates that interviewers should refrain from asking leading questions; such questions introduce new information to the child and undermine the credibility of the child's responses. Questioning where the interviewer assumes information or words that the child has not provided or that introduce new information to the child is not forensically sound. Extensive research indicates that young children are subject to *suggestibility* which refers to errors in memory that arise when the child is exposed to information that is false, or is exposed to social pressure from the interviewer that encourages particular types of answers. It is also generally accepted as a Standard of Practice that young children are highly susceptible to assuming their answers are wrong if the interviewer repeatedly asks the same question over and over again. In such cases, most children, even over the age of 10, try to give a response that they *think* is more acceptable to the adult. We also know that interviews that last too long become fatiguing for children and present the risk of the child saying anything to end the interview. It is therefore important that the interviewer conduct the interview in a manner that recognizes the young child's short attention span. The current professional Standard of Care also questions the use of media in interviews with children who have allegedly been sexually abused. Studies indicate that the use of anatomical dolls can particularly elicit high rates of both false positive and false negative statements from young children (Bruck, Maggie, Stephen Ceci, Emmet Francoeur, and Ashley Renick, 1995; and Bruck, Maggie, Stephen Ceci, and Emmet Francoeur, 2000).

In order for a witness of any age to recall an event, the facts under investigation need to be encoded into memory. If an event is not encoded due to inability, inattention, or divided attention tasks, the memory is not preserved and is not subject to accurate recall. Esplin (2014) indicates that scientific reliability refers to the trustworthiness of the evidence, not to the honesty or credibility of a witness. Statements can be unreliable due to various processes, including decay of memory, distortion, and external influences during the reconstruction process. Statements can also be contaminated if they are obtained by procedures that are suggestive in nature. From a scientific perspective, reliability issues are a foundation to an examination of the validity and the credibility of the child's statements.

I was recently hired by the Prosecution in a criminal sexual abuse case where a 16-year-old male was accused of sexually abusing his niece. I reviewed the initial police and child protection records as well as the videotaped statement of the alleged victim. In reviewing this information, the child had been questioned on multiple occasions by her parents prior to the videotaped

interview occurring. The videotaped statement from the alleged victim was conducted in a regional child services center, specifically used by the County to interview all alleged child victims of sexual abuse. In reviewing this videotape which led to the 16-year-old boy being charged criminally, it was clear that the interviewer of the five-year-old child did not conform to the recognized Standard of Care for conducting such interviews. The interviewer assumed information received from the police and parents, prior to the interview, rather than refraining from an initial bias. Consequently, when the child victim did not provide information regarding penetration, the interviewer began to ask leading, yes/no questions that did not rely on information obtained in the interview with the child. When the child did not provide the desired response to these leading questions, the interviewer continued to repeat yes/no questions as well as multiple choice questions that introduced new information to the child. Finally, now 40 minutes into the interview, the interviewer asked the child, “Did Johnny put his finger in here” (referencing the rectal opening on the anatomically correct doll). At this point the child responded yes; unfortunately, this leading, suggestive interview including anatomical dolls, resulted in my conclusion that there was no way to conclude whether the child was or was not abused given the nature of the interview.

In summary, interviewing child sexual abuse victims has evolved over the past 40 years. Unfortunately, well-intended and even well trained interviewers may not be aware of the recent research and techniques that now serve as the current Standard of Care for interviewing young alleged victims of sexual assault. It is anticipated more research will occur that will undoubtedly continue to change the standards of interviewing young victims of child sexual abuse. Forensic experts trained in child development, who also have a background in the identification and treatment of victims, *and* are well versed in the Standards for interviewing alleged child sexual abuse victims can assist both the attorney for the Prosecution as well as the Defense, as well as the court, in evaluating the credibility and reliability of the victim’s statements. The stakes are high for everyone involved. Both alleged victims and alleged perpetrators, as well as the public, are dependent on law enforcement and interviewers to elicit uncontaminated, credible information.

About the Author: Dr. McNaught is a licensed psychologist in the State of Minnesota and has been in private practice for the past 36 years. Throughout her years of practice, Dr. McNaught has maintained both a clinical and forensic practice. In her clinical practice she specializes in evaluating and treating adults and children who have been physically or sexually abused. Dr. McNaught is a national expert with specialized training in the area of Forensic Psychology and is Board Certified. In the forensic area, Dr. McNaught practices within the Civil, Criminal and Family Law areas. Dr. McNaught has been a presenter at National Professional Conference regarding the diagnosis and treatment of alleged child sexual abuse victims. Dr. McNaught has treated more than 500 adult and child victims of sexual assault and has conducted more than 1700 psychological evaluations throughout the course of her career. Dr. McNaught has testified as an expert for both the prosecution and the defense on more than 700 occasions.

Contact Information: Jane K. McNaught, Ph.D. 3300 Edinborough Way #730 Edina, MN 55435

Telephone: 952-896-1772

Email: Jane@ JaneMcNaught.com

Website: Janemcnaught.com