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Thomas D. Lyon, *University of Southern California Law School*



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## **Summary of Proposed Testimony: State of New Jersey vs. J.L.G.**

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**USC Gould School of Law**

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I am a professor at the USC Gould School of Law. I teach a course in evidence and a child interviewing seminar. My research is designed to identify methods for interviewing children that maximize children's willingness to disclose negative events while minimizing suggestibility and error. I have received research grants from the National Institutes of Health, the National Science Foundation, and National Center on Child Abuse and Neglect. I publish widely in peer-reviewed psychology journals, law reviews, and books.

I regularly conduct trainings with child abuse professionals regarding interviewing children, and I developed the Ten Step interview for interviewing children, which is taught throughout California by CFIT (California Forensic Interview Training) and through a webinar-based course I teach through the Midwestern Child Advocacy Center. I also conduct and supervise forensic interviews with children at the request of the Los Angeles County dependency courts and the Los Angeles district attorney's office.

In order to prepare this report, I have borrowed heavily from my published work (see list of my peer-reviewed publications on page 17), and have re-reviewed some of the research literature. I have published observational research on children's disclosure and recantation of sexual abuse (18, 19, 21), observational research examining accommodation in criminal trials (22, 23), experimental research examining children's non-disclosure of transgressions and attitudes about disclosure (1, 4, 11, 13, 14, 17, 20, 24), and literature reviews that discuss children's disclosure of abuse (2, 3, 5, 6, 7, 8, 9, 10, 12, 15, 16).

I have never testified as an expert witness. Given time constraints and the size of the research literature, I have not been able to review all the relevant research for this report, and will continue to review research over the next few months in preparing for my testimony.

### **I. Introduction: Accommodation testimony in New Jersey courts**

In this report, I will address the scientific support for testimony on child sexual abuse accommodation, as that testimony is defined by the New Jersey courts. The model jury charge for child sexual abuse accommodation syndrome notes that in many crimes involving adult victims and suspects that are strangers to the victim, expert testimony on the behavior of crime victims would not be admissible: "To illustrate, in a burglary or theft case involving an adult property owner, if the owner did not report the crime for several years, your common sense

might tell you that the delay reflected a lack of truthfulness on the part of the owner. In that case, no expert would be offered to explain the conduct of the victim, because that conduct is within the common experience and knowledge of most jurors.” Model Jury Charge (Criminal), Child Sexual Abuse Accommodation Syndrome (rev. 5/16/2011). In contrast, “[t]he Accommodation Syndrome, if proven, may help explain why a sexually abused child *may* [delay reporting and/or recant allegations of sexual abuse and/or deny that any sexual abuse occurred].” Id. (emphasis added). The warning emphasizes that accommodation “relates only to a pattern of behavior of the victim which *may* be present in *some* child sexual abuse cases.” Id. (emphasis added). The warning also instructs jurors that they “may not consider expert testimony about the Accommodation Syndrome as proving whether abuse occurred or did not occur.” Id. The testimony is admitted “only to explain that the behavior of the alleged victim was not necessarily inconsistent with sexual abuse.” Id. (emphasis added).

The New Jersey Supreme Court has repeatedly emphasized that accommodation testimony is not proof that abuse occurred: “[Accommodation testimony] is not admissible to prove that a particular child was the victim of a sexual offense.” State v. J.R., 227 N.J. 393, 399–401 (2017); see also State v. W.B., 205 N.J. 588, 610 (2011) (“Simply stated, [accommodation testimony] cannot be used as probative testimony of the existence of sexual abuse in a particular case.”); State v. R.B., 183 N.J. 308, 322 (2005) (“Testimony concerning [accommodation] is not admissible as substantive proof of child abuse.”); State v. P.H., 178 N.J. 378, 395-96 (2004) (“[W]hen [accommodation testimony] is admitted, the jury must receive a specific instruction that such testimony does not answer the ultimate question whether the victim’s molestation claims are true.”).

### **A. Proof of abuse vs. accommodation testimony**

In order to properly interpret the research on child sexual abuse, it is important to distinguish between substantive proof of sexual abuse and accommodation testimony, which fulfils an “exclusively rehabilitative role.” State v. J.R., 227 N.J. at 417. In a child abuse case, evidence that a child exhibited a particular characteristic would constitute relevant evidence proving abuse if the characteristic increases the chance that abuse actually occurred. One can determine whether a characteristic increases the chance that abuse occurred by considering two proportions: the proportion of abused children exhibiting the characteristic, and the proportion of non-abused children in which the characteristic occurs. If the proportion of abused children who exhibit the characteristic is greater than the proportion of non-abused children, then the characteristic is relevant for proving that abuse occurred.

In cases of alleged child abuse, one cannot establish the relevance of a characteristic merely by determining whether the characteristic is common among abused children. The characteristic might be as common among non-abused children, making the characteristic logically irrelevant. Conversely, the fact that a characteristic occurs in only a small percentage of abused children does not prove that a characteristic is irrelevant. The characteristic might be rarer still in non-abused children. For example, pregnancy is very rare among sexually abused children, but obviously highly relevant in proving that abuse occurred. Relevance can only be determined by comparing the relevant proportion in both the abused and non-abused population.

What does it mean when testimony is not offered to prove that abuse occurred, but to rehabilitate a child's credibility? Child sexual abuse accommodation testimony need not refer to characteristics that are more common among abused children than among non-abused children (if it did, it would be proof of abuse). Accommodation testimony informs the jury that a characteristic is more common among abused children than the jury might assume, or, if the defense has brought up the characteristic, more common than the defense has argued. As the jury instruction emphasizes, the purpose of the testimony is to prove that the characteristic "is not necessarily inconsistent with sexual abuse." Model Jury Charge (Criminal), Child Sexual Abuse Accommodation Syndrome (rev. 5/16/2011).

With this caveat in mind, this report will consider the extent to which aspects of accommodation are found among substantial proportions of abused children. The report will cite percentages, but this is not an argument that specific percentages should be presented to juries. The courts are understandably resistant to experts testifying about percentages, because they may be misconstrued. *State v. W.B.*, 205 N.J. at 613-14. For example, one must avoid the inverse fallacy--if one told a jury that 25% of abused children recant their abuse, one would not want them to conclude that if a child recants abuse, there is a 25% chance that he or she was abused (Lyon & Koehler, 1996). Rather, an accommodation expert would explain reasons why abused children sometimes recant abuse.

## **B. Summit's child sexual abuse accommodation article**

Roland Summit's article on child sexual abuse accommodation (Summit, 1983) described sexually abused children's secrecy, helplessness, entrapment, delayed disclosure, and retraction. Child sexual abuse accommodation documents how repeated sexual abuse by an adult in a position of trust is often initiated and maintained in secrecy. It describes how sexual abuse progresses through exploitation of the helpless and dependent child, and through inducements to keep the abuse a secret. It describes how the child's inability to report the first acts of abuse guarantees future victimization and leads the child to blame herself for the abuse. Accommodation describes how disclosure, if and when it occurs, is delayed and unconvincing, due to the child's ambivalence about the utility of telling and the reluctance of the non-offending parent to believe the child. Finally, accommodation describes how abused children may recant their allegations in response to the negative consequences of disclosure, most notably the rejection by those to whom they turn for support.

I have deliberately refrained from using the term "syndrome." Using the term "syndrome" invites analogies to battered child syndrome, in which a child's symptoms, taken together, suggest that otherwise innocent injuries are abusive. In contrast, as noted above, accommodation is not evidence of abuse. Moreover, a child need not show a cluster of accommodation symptoms in order to be accommodating abuse. For example, a child may delay reporting, yet never recant. Summit (1992) states that had he anticipated misunderstanding of child sexual abuse accommodation "syndrome" as proving abuse, he would have avoided the term.

Summit cited data showing that most child sexual abuse is perpetrated by trusted adults rather than strangers (Finkelhor, 1979, 1980; Gagnon, 1965; Groth, 1978; Russell, 1983), that most abuse victims delay disclosing, if they disclose at all (Finkelhor, 1979, 1980; Gagnon, 1965; Russell, 1983), and that victims' disclosures often elicit unsupportive reactions from adults (Finkelhor, 1980). However, he emphasized that many of his arguments were based on his work as a clinical consultant and endorsements from professionals, victims, and their families (Summit, 1983).

### **C. Subsequent reviews of the research**

Summit did not attempt to exhaustively review the research available at the time, and a substantial amount of research has appeared in the 34 years since he published his paper. Reviews of that research have supported some of his claims (Paine & Hansen, 2002; London, Bruck, Ceci, & Shuman, 2005; London, Bruck, Wright, & Ceci, 2008; Lyon, 2002, 2007, 2009; Lyon & Ahern, 2011). Most notably, reviews that criticize accommodation nevertheless conclude that sexual abuse victims usually delay disclosing abuse (London et al., 2008), and that delays are longer the closer the relationship of the child to the perpetrator (London et al., 2008).

This report will detail how the research also supports many of Summit's claims about other aspects of accommodation. Critical reviews have questioned some of these claims (London et al., 2005, 2008). The critical reviews, however, focus on a different issue. This report will consider the extent to which substantial percentages of abused children in the population are likely to exhibit accommodation. Accommodation experts testify to how abused children may behave in counterintuitive ways, and yet still be abused, despite the fact that they may look different than most children substantiated as abused, or most children who testify in child sexual abuse cases. The jury's job is to assess whether a child has been abused, not whether he or she is similar to children seen by authorities, or children who testify in court.

In contrast, the critical reviews addressed how children should be interviewed about abuse, focusing on the fact that methods historically used to overcome children's reluctance to disclose risked eliciting false allegations. They emphasized that accommodation should not be used to justify coercive questioning of children, because most children seen by authorities have previously disclosed and are likely to disclose again if appropriately questioned (London et al., 2008). As a result, they relied on data that "admittedly and clearly...do not generalise to all CSA victims" (id. at 41). One can agree with their argument (that children should not be coercively questioned) but nevertheless maintain that if a child exhibit signs of accommodation, this does not prove that the child's allegation is false, and is understandable in light of how children often react to sexual abuse, particularly sexual abuse at the hands of a trusted adult.

### **D. Overview of the argument**

In Section II., I will discuss methodological challenges, given the fact that most of the relevant research is observational. I will note that we must always be concerned about false allegations and false denials. I will suggest several ways to work around these problems.

In Section III., I will discuss the population surveys asking adults whether they were ever abused as children and whether they disclosed.

In Section IV., I will discuss child interview studies in which children were questioned about suspected sexual abuse.

In Section V., I will discuss other research relevant to accommodation, including experimental research on children's disclosure of transgressions and research questioning admitted child abuse perpetrators about their modus operandi.

## **II. Methodological challenges**

Most of the research on sexual abuse is observational, which means that researchers assess people who report that they were abused in the field. Researchers do not randomly assign people to be abused. Rather, they classify people as abused or not abused based on the evidence of abuse that they are able to collect. When doing observational research, one problem is that it is often difficult to establish ground truth with certainty. That is, one cannot be sure whether one is properly classifying people as abused or not abused. Of course, there are two types of mistakes. False positives occur when we falsely call people abused, and false negatives occur when we falsely call people non-abused. Throughout this report I will discuss the effects of these mistakes, usually referring to them as false allegations and false denials.

The problem is particularly difficult when studying the disclosure of sexual abuse. Sexual abuse is often difficult to prove without the word of the victim. Corroborative evidence, when it does exist, is often not conclusive proof of abuse. If we rely on the words of the alleged victim, then we have the false allegation and false denial problems. Worse, we make it impossible to test major tenets of sexual abuse accommodation, because accommodation posits that true victims often fail to acknowledge and even actively deny that they were abused.

We will be able to get around the false allegation problem in three ways. First, when we talk about population surveys, we will discuss whether there are likely to be a lot of false allegations, based on what we know about what causes false allegations. Second, when we talk about child interview studies, we will sometimes take the same approach, but we will also be able to identify subsamples in which abuse is highly likely because of evidence other than the child's report, including sexually transmitted diseases (STDs). Third, we will ask the perpetrators themselves about the dynamics of abuse. Of course, their reports present their own problems, but to the extent that they corroborate the children's reports, they can be good evidence.

The false denial problem is tricky, because a high rate of false denials doesn't just undermine our classification, but hides evidence of accommodation. When we talk about population surveys, we will discuss evidence that survey respondents are reluctant to disclose. Of course false denials themselves are evidence of accommodation, because they demonstrate how abuse victims are reluctant to disclose, even anonymously to surveyors. But they also lead to an exaggeration of how often victims disclose their abuse. How is this so? The basic idea is

that the victims most willing to tell the surveyors they were abused are the victims who were most willing to disclose to others.

When we talk about child interview studies, the false denial problem distorts results in two ways. First, victims who never tell are less likely to be questioned about abuse, or brought in for evaluation in the first place. Second, victims who don't disclose when they are evaluated are less likely to be labelled as victims. As with false denials in surveys, this will lead to an exaggeration of how often victims disclose their abuse. The idea, again, is that victims most willing to disclose are the victims most likely to appear in substantiated child interview samples.

Another challenge with observational studies is that one can establish correlation, but it is difficult (if not impossible) to establish causation. For example, in studying the effects of threats on the disclosure of abuse, researchers do not randomly assign abuse victims to be threatened or not threatened. Therefore, those who are not threatened may be different than those who are threatened in other important respects. Sometimes I will mention multivariate analyses, which help a little in resolving causation issues--they enable researchers to estimate the effects of one factor holding other factors constant. However, correlational analyses never solve the causation problem, and one must always be cautious in interpreting the results.

### **III. Adult surveys: Non-disclosure is common**

Surveys of adults have documented that about 20% of girls and 5-10% are sexually abused, and that most abusers are family members or otherwise familiar to their victims (1). The surveys are also useful for understanding disclosure. Large-scale nationally representative surveys of adults reveal that most respondents who disclose sexual abuse to surveyors do not recall disclosing the abuse to anyone as a child, and only 10% report that their abuse was ever reported to authorities (see review in 8). 13-60% had never told anyone about the abuse before the surveyor. The study finding the lowest rate of non-disclosure, 13%, presents a special case, which I discuss below.

#### **A. Adult surveys: False allegations?**

If a substantial percentage of survey respondents who claim to have been abused were actually repeating false allegations they had made as children, this could undermine the validity of conclusions about delay and reluctance. In order to determine if this was likely, one should consider whether they were exposed to influences that could have led to false reports. One possibility is that they were suggestively questioned by adults. Respondents who report abuse in population surveys indicate that only about 10% of the abuse they disclosed was ever reported to authorities (Martin, Anderson, Romans, Mullen, & O'Shea, 1993; Russell, 1983; Smith et al., 2000). Therefore, their reports are unlikely to have been the product of having been suggestively questioned as children by biased adults (either officials or perhaps parents hoping for official intervention). Another possibility is that they had false memories of childhood abuse. Only a very small percentage (2%) of women in population surveys who report abuse report having remembered abuse with the help of a therapist (Wilsnack, Wonderlich, Kristjanson, Vogeltanz-Holm, & Wilsnack, 2002). Hence, their reports are also unlikely to be the product of suggestion through recovered memory therapy (Geraerts et al., 2009).

## **B. Adult surveys: False denials?**

There is reason to think that the surveys will miss abuse victims because they will deny abuse when directly asked. There are several lines of research that support this point. First, substantiated abuse is often subsequently denied by survey respondents. Reviewing the research on retrospective reports of childhood maltreatment, Hardt and Rutter (2004) concluded that "the universal finding [is] that, even with well-documented serious abuse or neglect, about a third of individuals do not report its occurrence when specifically asked about it in adult life" (p. 240).

Second, more respondents acknowledge abuse if more questions, including more direct questions, are asked about sexual abuse. This was first recognized by Russell (1983) in piloting her survey of San Franciscan women, and confirmed by Wilsnack and colleagues in their nationally representative survey of 711 American women (Wilsnack et al., 2002) in which they found that the percentage of respondents reporting abuse doubled (from 15 to 31%) when they asked a greater number of specific questions about sexually abusive experiences. Several reviewers have noted that the most important determinant of prevalence rates in retrospective surveys appear to be the number of questions asked (Finkelhor, 1994; Hardt & Rutter, 2004), an observation formally confirmed in a meta-analysis by Bolen and Scannapieco (1999).

Third, survey respondents inconsistently disclose abuse across survey interviews. Fergusson and colleagues (1996) interviewed individuals when they were 18, and then questioned the same individuals when they were 21 (Fergusson, Horwood, & Woodward, 2000). They found high rates of inconsistency in reporting. Among the respondents who reported sexual abuse at 21, 45% had failed to report abuse at 18 (37/83). Conversely, among the respondents who reported sexual abuse at 18 years of age, more than half (54%) failed to report abuse at age 21 (54/100). The inconsistencies cannot be attributable to uncertainties about whether the reported behaviors were in fact sexual abuse, as some have claimed (London, Bruck, Ceci, & Shuman, 2005), because respondents were, if anything, less consistent in their reports of more serious abuse (Fergusson et al., 2000).

## **C. Adult surveys: False denials demonstrate that reluctance is common, and leads to underestimation of non-disclosure**

False denials in surveys is itself evidence of reluctance and denial among victims of abuse. And to the extent that false denials when responding to surveys caused by the same factors that inhibit disclosure more generally, false denials will bias upward estimates of the proportion of abuse victims who previously disclosed their abuse. That is, adults who acknowledge abuse to surveyors will be disproportionately likely to be those who have previously disclosed. As a result, false denials will lead to inflated estimates of prior disclosure. This helps to explain why Fergusson and colleagues (1996) found a relatively low rate of non-disclosure (13%) among their 18-year-old respondents--the respondents who were abused but who had never disclosed weren't disclosing abuse to the surveyors either. This also drove the prevalence rate down, compared to other population surveys, which Fergusson and colleagues (1996) suggest is due to the fact that these young adults were not yet ready to disclose their abuse.



#### **D. Adult surveys: False denials of prior disclosure?**

Critical reviewers have speculated that the adult surveys underestimate prior disclosure because respondents forgot that they had disclosed their abuse (London et al., 2005, 2008). Indeed, London and colleagues (2008) argue that this explains the low rate of non-disclosure in the Fergusson et al. (1996) study; the younger respondents were less likely to have forgotten that they disclosed. A more parsimonious explanation for Fergusson's results, consistent with the researcher's follow-up research, is that younger respondents were less likely to report abuse in the first place, particularly abuse that they had never disclosed. This explains both the lower prevalence rate and the higher rate of prior disclosure.

London and colleagues (2008) speculated that there might be false denials of prior disclosure, but failed to consider whether there could be false claims of prior disclosure. Although the population surveys did not ask about the content of disclosures, less systematic surveys have done so. Disclosures were often less than explicit ("things were not right at home"; Palmer, Brown, Rae-Grant, & Loughlin, 1999, p. 269). In Ullman and Filipas's (2005) survey of college students, 75% of the respondents who had previously disclosed abuse characterized their disclosures as a "vague, brief or general reference" (p. 774). Similarly, in their sample of criminal court cases, Sas and Cunningham noted that (1995) "[s]ometimes the failure of an adult to catch on to the children's meaning stemmed from the vague terms used by children, words which do not match adult language of sexual abuse" (1995, p. 138).

#### **E. Adult surveys: Factors influencing disclosure**

Four of the five representative surveys that tested for the effects of the victim-perpetrator relationships on disclosure found that the relationship mattered, with closer relationships leading to lower rates of reported disclosure (Anderson et al., 1993; Kogan, 2004; Smith et al., 2000; Wyatt & Newcomb, 1990; but see Fleming, 1997). Moreover, a study examining the same sample as Smith et al. found that reporting to the police was more likely when the perpetrator was a stranger (Hanson, Resnick, Saunders, Kilpatrick, & Best, 1999). Three of these studies utilized a multivariate design (Kogan, 2004; Smith et al., 2000; Wyatt & Newcomb, 1990), which means that they could control for the effects of one factor on another factor.

Two of the nationally representative surveys asked respondents what deterred disclosure (Anderson et al. 1993, Fleming 1997), and the most common reasons included embarrassment, shame, and expectations that the disclosure recipient would blame the child or fail to believe the allegation. Respondents also mentioned wanting to protect or fearing the perpetrator, wanting to avoid upsetting others, and not feeling bothered by the abuse.

The pattern of results with respect to the victim-perpetrator relationship has to be assessed with caution because the problems noted earlier with respect to false denials recur, including their effects on both estimated prevalence and rates of reported disclosure. False denials may be greatest when respondents are asked to discuss intra-familial abuse. Discussing a sample of 10- to 16-year-olds, Finkelhor and Dzuiba-Leatherman (1994) commented that "it is probably difficult for children even under the best of circumstances to disclose especially intimate victimizations and family abuse to a stranger interviewer, especially if they are under

any risk of retaliation by the perpetrator. This is suggested, for example, by the relatively low rate of intra-family sexual abuse disclosed in this study compared with what is reported by adults retrospectively" (p. 418). Similarly, Martin and colleagues (1993) found, in their interviews with women surveyed via mail by Anderson and colleagues (1993), that "a small core of women had suffered experiences of at least genital touching by a close family member, but chose not to mention the episode to an interviewer. Fifteen percent of women who admitted an incident [child sexual abuse] involving a close family member, reported this only in writing" (p. 389). If respondents' greater reluctance to disclose intra-familial abuse extends to their survey responses, then this will both decrease the apparent prevalence of intra-familial abuse and potentially inflate the extent to which acknowledged victims of intra-familial abuse report having disclosed.

#### **F. Adult surveys: Summary**

The adult surveys provide support for child sexual abuse accommodation. There is evidence for non-disclosure, denial, and delay, and this is related to closeness between the child and the perpetrator. Furthermore, abuse victims provide explanations of their failure to report that are consistent with accommodation.

#### **IV. Child Interview studies: Methodological issues**

Child interview studies are studies in which child suspected of being abused are interviewed. There are three major methodological issues in interpreting research on children's willingness to disclose. The first is the false allegation problem: We are often unsure whether the children have in fact been abused. If a study finds a low rate of disclosure among children suspected of being sexually abused, this may simply mean that the suspicions were untrue.

The false allegation problem may depress observed disclosure rates, because children who haven't in fact been abused are less likely to disclose abuse. Two other methodological concerns may, in contrast, inflate disclosure rates. These problems are disclosure suspicion bias and disclosure substantiation bias (London et al, 2008; Lyon, 2007; Rush, Lyon, Ahern, & Quas, 2014). Suspicion bias occurs when disclosure is the reason abuse is suspected in the first place. If disclosure increases suspicions of abuse, the percentage of children disclosing abuse in samples suspected of having been sexually abused will be inflated.

Substantiation bias occurs when disclosure is a reason why abuse is substantiated by authorities. If disclosure increases the likelihood that abuse will be substantiated, then the percentage of disclosure in substantiated samples of abuse will be inflated. Both suspicion bias and substantiation bias are likely if disclosure is the primary evidence of abuse.

Suspicion bias may operate in at least two ways. If an abused child never discloses abuse, this may decrease the likelihood that anyone will question the child about abuse. If an abused child shows soft signs of abuse (e.g. sexualized behavior), but does not acknowledge abuse to caretakers, this may decrease the likelihood that anyone will have the child formally evaluated. Children who never tell, or who deny abuse when questioned by caretakers, may, as a result, be disproportionately excluded from samples of children evaluated for suspected sexual abuse.

Suspicion bias is evinced by high rates of prior disclosure in disclosure studies. For example, in Bradley and Wood's sample of children substantiated as sexually abused by social services (1996), at least 72% of the children had previously disclosed abuse. In contrast, as noted above, representative population surveys of adults reveal that most victims of sexual abuse report having never disclosed as children, and only about 10% came to the attention of authorities. Hence, a representative sample of abused children would find a lower rate of prior disclosure.

Substantiation bias operates in a similar fashion. Surveys of social workers document that disclosure is the primary means by which sexual abuse cases are substantiated (Everson & Boat, 1989; Haskett, Wayland, Hutcheson, & Tavana, 1995). The substantiation process weeds out children who do not disclose, or whose disclosure does not satisfy legal standards of proof. Substantiation bias operates at every step of the legal process so that the less forthcoming and less consistent child witnesses are less likely to be referred for prosecution by the police (Davis, Hoyano, Keenan, Maitland, & Morgan, 1999; Stroud, Martens, and Barker, 2000) and more likely to be rejected for prosecution by prosecutors (Gray, 1993).

One might try to solve the substantiation bias problem by treating as true all cases suspected of being abused. However, this increases the false allegation problem because many suspicions are unfounded. On the other hand, one might try to solve the false allegation problem by limiting one's analysis to substantiated cases. This is the solution offered by London and colleagues (2005, 2008), who find that substantiated cases show much higher rates of disclosure. But this increases the substantiation bias problem because substantiation is largely dependent upon disclosure. For example, London and colleagues (2005) note that disclosure rates in DiPietro, Runyan, and Fredrickson (1997) "increased as a function of abuse certainty," suggesting that as the number of true cases increases, disclosure increases. As the authors of the original research emphasize, however, "the medical opinion of certainty of abuse was related to disclosure which would be expected in that a clear history is a major contributor to diagnoses" (DiPietro, et al., 1997, p. 140). London and colleagues acknowledge this problem in their 2008 review: "using children's statements as indicators of abuse to some extent is tautological in studies of disclosure" (p. 39), but they then make little effort to control for this problem, concluding that "substantiated" cases have the highest rates of disclosure.

An additional problem is that insofar as substantiation is dependent on disclosure, focusing on substantiated cases doesn't really solve the false allegation problem. Children who disclose abuse may not be telling the truth. Adults may have elicited the abuse disclosures through highly suggestive questioning. Further, the suspicion bias problem remains no matter how one decides to count cases as true abuse.

#### **A. Child interview studies: Corroborative evidence independent of disclosure can reduce the false allegation problem and the disclosure substantiation bias problem**

The reader has probably wondered by now whether a way out of this dilemma is to focus on those cases for which there is corroborative evidence of abuse. If one can be more confident that children classified as abused were in fact abused, the false allegation problem is reduced. If

corroborative evidence allows one to substantiate abuse without a disclosure, then substantiation bias is reduced as well. Under some circumstances, corroborative evidence can even reduce suspicion bias. Recall that suspicion bias occurs if abuse is initially suspected because of the disclosure of abuse. If corroborative evidence is the *first indication* that a child has been abused, then suspicion bias is less of a concern.

It is important to add, however, that the corroborative evidence must be independent of disclosure. If disclosure increases the likelihood that corroborative evidence will be discovered, or if corroborative evidence increases the likelihood that disclosure will occur, then estimates of disclosure in corroborated cases of sexual abuse will be inflated. As an example of corroboration that is highly dependent upon disclosure, consider a criminal conviction of abuse. Prosecutors will rarely go forward without a disclosure by the child, and subsequent inconsistencies or recantations increase the likelihood of dismissals and, most probably, acquittals. Hence, disclosure rates associated with convictions are likely to be inflated (indeed, they are virtually 100%; Faller & Henry, 2000). Confessions are also sometimes cited as corroborative evidence of abuse. However, confessions are not clearly independent of disclosure. Confessions both trigger disclosure and are triggered by disclosure. If the child has disclosed, this can be a tool to elicit confessions, and if the offender has confessed, this can be a tool to elicit disclosures. This positive relation will inflate disclosure rates in cases with confessions.

Medical evidence of abuse may have fewer dependency problems, but they are nevertheless likely to occur. The fact that a child exhibits medical signs of sexual abuse may lead interviewers to push harder to elicit a disclosure. If this does, in fact, increase the likelihood of disclosure, then the percentage of disclosures among cases with medical evidence will be inflated. Conversely, the fact that a child has disclosed abuse may make medical examiners look harder for medical signs of abuse, or may lead them to call ambiguous medical conditions supportive of abuse. To the extent that this increases the likelihood that positive medical evidence will be found, the percentage of disclosures among cases with medical evidence will be inflated. On the other hand, suspicion bias and substantiation bias will be minimized to the extent that the medical condition is both reliably diagnosed and diagnosed without knowledge of the child's disclosure. Examining research on disclosure rates among children with medical evidence of abuse is thus likely to reduce but not eliminate substantiation bias and suspicion bias.

## **B. Child interview studies: Reducing methodological problems by examining children whose sexual abuse was suspected and substantiated without relying on disclosure**

Lawson and Chaffin (1992) examined the rate of nondisclosure among children with sexually transmitted diseases (STDs), a large proportion of whom suffered from gonorrhea. The authors excluded children who were so young they may have acquired the STD congenitally, thus minimizing the false allegation problem. They excluded children too young to provide a verbal disclosure of abuse, and children who were old enough to have conceivably acquired the STD through consensual sex with peers.

In order to minimize suspicion bias, they also excluded children for whom the presenting complaint was sexual abuse. Suspicion bias is an important issue, because disclosures often

trigger medical evaluations. For example, in Heger, Ticson, Velasquez, and Bernier's (2002) medical study, of the sample of children with diagnostic medical evidence of sexual abuse, 82% were referred for medical evaluation only after disclosing abuse. Of course, because STDs are strong evidence of sexual abuse, substantiation bias was also minimized. (There may have been some dependence between the STD finding and disclosure to the extent that interviewers, aware of children's diagnosis, pressed harder for a disclosure.)

The authors found that 43% (12/28) of the children made allegations of sexual abuse during the initial interview. Among children whose parents were supportive, 63% (10/16) disclosed abuse. These results are consistent with other medical research in which abuse is initially suspected and verified without reliance on the child's disclosure. Muram, Speck and Gold (1992) examined girls for whom suspicions of abuse had not arisen but who were siblings or associates of girls known to have been abused. Of the 35 girls with medical findings specific to abuse (such as hymenal tears), 51% (18/35) disclosed abuse when questioned.

Review of the research on gonorrhea in children reveals that false denials are quite common, and that medical researchers have understood reluctance and denial of abuse by children for nearly a century (Pollack, 1909; see also Beilin, 1931; Cohn, Steer, & Adler, 1940; Rice, Cohn, Steer, & Adler, 1941). I identified 21 studies (from 1965 to 1993) examining gonorrhea in children from which one can calculate upper bounds of abuse disclosure. Although some studies explicitly refer to disclosures by children, some refer to a "history" of abuse, which could come from a child or an adult, or a "conclusion" that abuse was involved, which may or may not involve disclosure. For example, Ingram and colleagues (1992) accepted as proof of sexual contact a "history of males isolating themselves with the children under unusual circumstances that the family believed resulted in sexual contact" (p. 995). Despite the fact that this approach exaggerates disclosure rates the average rate of "disclosure" was only 43% (250/579). Whenever possible I removed children younger than three years of age, who may be too young to disclose abuse. If one excludes the studies in which it was impossible to separately analyze children three years and older, the rate of "disclosure" across the remaining studies was 42% (185/437). One might object that teenagers could have contracted gonorrhea from a peer following consensual sex. If one also excludes the studies in which it was impossible to exclude teenagers, the rate of "disclosure" among the remaining studies was 53% (126/239).

Of course, only a small percentage of sexually abused children have STDs or other medical findings. As a result, they are likely unrepresentative of abused children in general (Lawson & Chaffin, 1992). But this is insufficient reason to ignore them, particularly since these studies control for the false allegation, suspicion bias, and substantiation bias problems. If representativeness were the standard, then we should ignore all child interview studies, since the population surveys teach us that only 10% of all child sexual abuse is ever noticed by the authorities. Rather, the question is whether abused children with STDs are systematically less likely to disclose abuse when questioned than abused children without STDs. For example, London and colleagues (2008) argue that gonorrhea is more common among poor African-Americans suffering from repeated penetrative abuse. But they offer no evidence that this would lead to the dramatically lower disclosure rates observed in these studies.

The medical research also provides evidence of incremental disclosure, another aspect of accommodation. In Ingram et al. (1992), 87% of the children with gonorrhea eventually disclosed abuse (33/38). However, no more than 5 of the 29 girls with gonorrhea named a sexual contact during the first interview, whereas 13 had done so after "further interviews" (p. 995). Hence, of those who ultimately disclosed, at least 62% (8/13) did not do so initially. (It should be noted that the study selected children on the basis of suspicions of sexual abuse, so they did not control for suspicion bias. As such even these low rates of disclosure are conservative.) In Farrell et al. (1981), 24 children ultimately provided a history of sexual contact. At most, 7 children disclosed sexual contact when seen in the emergency room. Hence, of those children who ultimately disclosed, at least 71% (17/24) failed to disclose abuse when first questioned. As the authors conclude, "Our data support that of other investigators that a history of exposure to gonorrhea is infrequently obtained during the initial interview. We have demonstrated that when these same children are hospitalized and interviewed repeatedly by a skilled and sympathetic social worker, they often do give a history of exposure" (p. 152). In Shapiro et al. (1993), the authors noted that of the 10 children whose chief complaint was vaginitis at the initial visit but who ultimately disclosed abuse, only 1 of the 10 disclosed at the initial emergency room visit (p. 343). Of course, in all these cases one worries about suggestive interviewing and the possibility that the methods used by the interviewers would lead to false allegations. But accommodation testimony is not offered to justify coercive interviewing, but to help jurors understand why abused children might initially deny abuse when asked directly.

Finally, the medical research also supports the fact that children will often only partially or incompletely disclose. In Dubowitz et al. (1992), in addition to the 25% who disclosed nothing, another 28% of the children with medical findings indicative of sexual abuse "partially" disclosed, defined as suggestive doll play or an inconclusive account of alleged abuse. Similarly, in Gordon and Jaudes (1996), 21% of the children with an STD initially failed to disclose the name of the perpetrator.

The phenomenon of partial disclosure is also supported by a novel study that questioned children who had disclosed sexual abuse about their experience with investigative interviews (Wade & Westcott, 1997). Children often reported that they provided incomplete reports, attributing this "to the difficulty of talking about their abuse; lack of knowledge about what was happening; anxiety about what the investigation would lead to; concern that what they would say would cause distress to people they cared for; the stress of the interview itself; or their dislike of the interviewer." (p. 58).

### **C. Child interview studies: Factors influencing disclosure**

If the child is familiar with the perpetrator, the child is less likely to disclose abuse (Lyon, 2007; Lyon & Ahern, 2010; Paine & Hansen, 2002). London and colleagues' review (2008) comes to the same conclusion (citing DiPietro et al., 1997; Goodman-Brown et al., 2003; Hershkowitz et al., 2005; Pipe et al., 2007; Sas et al., 1993; Sjoberg & Lindblad, 2002). Particularly persuasive is Hershkowitz and colleagues' sample of over 10,000 children interviewed about abuse.

In Sas and Cunningham's (1995) sample of 524 children whose sexual abuse was prosecuted in criminal court, one-third of the children waited more than one year after the first incident to disclose. Immediate reporting was less likely when the victim and perpetrator were emotionally close and when the perpetrator practiced pre-abuse grooming (rather than force) (see also Hershkowitz, 2006, documenting the effects of grooming on disclosure).

Studies questioning children about their disclosure decisions support the contention that fears of negative consequences to the perpetrator, the self, and others close to the child deter disclosure (Goodman-Brown et al. 2003, Hershkowitz, Lanes, & Lamb, 2007; Malloy, Brubacher, & Lamb, 2011; Sauzier, 1989).

For example, in Sauzier's (1989) review of 156 abused children seen for evaluation and treatment, initially silent children who were victims of more serious abuse "described the fear of losing the affection and goodwill of the offender; fear of the consequences of telling (being blamed or punished for the abuse by the non-offending parent); fear of being harmed; and fear of retaliation against someone in their family" (p. 460).

These studies speak to children's perceptions of consequences; the proposition that adult supportiveness directly influences disclosure was documented by Lawson and Chaffin (1992), who found that in their sample of children with sexually transmitted disease, 63% of children with supportive caretakers disclosed abuse compared with only 17% of children with unsupportive caretakers.

#### **D. Child interview studies: Recantation**

We examined recantation of sexual abuse in a randomly selected sample of 250 children whose cases were heard in the Los Angeles County dependency court over a one year period (18). Using a multivariate model (that allows one to isolate the independent contribution of each factor), we found that recantations were more likely among younger children, among children who had accused a parent figure, and if the mother was unsupportive. Unsupportiveness was also found to predict recantations in Elliot and Briere (1994).

In about 60% of the cases, children were placed in foster care because of the abuse. Somewhat surprisingly, these children were slightly (but statistically non-significantly) *less* likely to recant. Notably, a child in foster care has less contact with a mother and other family members who may be unsupportive of the allegation (we found evidence that the beliefs of the family were also related to recantation in a follow-up study) (19).

We did not find that the recantation rate was lower in cases that were corroborated by other evidence, which one would expect if recantations were evidence that the allegations were false. We also did not find that the recantation rate was higher in cases in which there was mention of a custody dispute between the parents (about 20% of the cases), again what one would expect if recantations were evidence that the allegations were false. Of course, in custody battles, children are likely to receive substantial parental support (at least from one of the

parents), so it is easy to imagine how recantations might be *less* likely to occur in cases in which a parent is highly invested in proving the allegations.

The overall rate of recantation in our study (23%) was higher than some studies, particularly the most often-cited study on recantation (Bradley & Wood, 1996; 4%), and higher than London and colleagues (2005) calculated was the norm if one excluded studies examining dubious claims (such as ritual abuse). In part, this could be due to different definitions of recantation: Bradley and Wood (1996) only counted recantations to the police and social services, and London and colleagues (2005) defined recantations as “statements that are made to the same assessment team who heard the disclosure.” Furthermore, we followed our cases throughout dependency court supervision, and found that the average recantation occurred the fourth time the child was questioned about abuse. Bradley and Wood (1996) did not report the number of interviews conducted, excluded open cases, and acknowledged that recantations may increase over time.

## **V. Other relevant research**

### **A. Experimental work examining children’s disclosure of transgressions**

Experimental work has the potential to supplement the observational research on the effects of fear on disclosure. Laboratory research has both advantages and disadvantages. In the lab, researchers know whether a transgression occurred, and have control over the variables that may or may not influence children's reporting. On the other hand, researchers do not abuse children or threaten them with serious consequences should they tell. One can therefore question the applicability of experimental research to the disclosure of sexual abuse. More serious transgressions than those studied in the lab might provide stronger motives for disclosure, whereas stronger warnings would increase the need for secrecy.

With these caveats in mind, there is a large body of laboratory research demonstrating that by a very young age, children will routinely conceal their transgressions, the transgressions of others, and transgressions in which they are jointly implicated (e.g., Bussey & Grimbeek, 1995; Ceci & Leichtman, 1992; Talwar, Lee, Bala, & Lindsay, 2002). Moreover, researchers have shown that mothers can easily induce recantation in their children (Malloy & Mugno, 2016). My lab has conducted a number of these studies using what we call the broken toy paradigm (1, 4, 13, 14, 17, 24). Four to nine year old children play with a friendly stranger, and during the course of play two toys appear to break in the children’s hands. The stranger expresses concern, and asks children to keep the breakage a secret. We typically find that only about 30% of children disclose breakage when questioned immediately after the interaction by a supportive interviewer, who uses rapport building and open-ended questions recommended by interviewing protocols. In response to a series of yes/no questions explicitly asking about the transgression (which risk eliciting false allegations), about half of the children who had not previously disclosed will do so, but the other half will maintain the secret. Hence, about a third of children will maintain their secret.

### **B. Research questioning perpetrators**



The research examining abuse from the perspective of admitted perpetrators also helps explain nondisclosure and reluctance. Of course, this research must be reviewed with caution, because perpetrators may mischaracterize the extent to which they were overtly coercive with victims.

According to self-reports, perpetrators often choose children on the basis of their vulnerability and the likelihood that they will comply and keep the abuse a secret (Beauregard et al. 2007, Conte et al. 1989). Perpetrators describe spending time with the child (Christiansen & Blake 1990, Smallbone & Wortley 2001) and giving the child gifts (Budin & Johnson 1989, Christiansen & Blake 1990). When the perpetrator is the child's parent (or parent figure), the extra attention paid to the child not only has the effect of making the child feel special but also isolates the child and the offending parent from other family members (Christiansen & Blake 1990).

Perpetrators commonly desensitize the child to sexual touch through progressively more invasive sexual touch and talk (Kaufman et al. 1998). The perpetrator can test the child's willingness to acquiesce (Christiansen & Blake 1990) and the likelihood that the child will disclose (Kaufman et al. 1998). If the child discloses at an early stage of the process, the perpetrator can claim that the touch was merely affectionate, accidental, or otherwise nonsexual (Lang & Frenzel 1988). As the abuse progresses, the perpetrator can assure the child of the harmlessness and morality of his actions (Christiansen & Blake 1990). In part because of careful victim selection and preparation, initiation of overtly sexual acts need not involve violent force. Moreover, much of the persuasive power comes from the perpetrator's status as an authoritative adult (Kaufman et al. 1998).

Once the abuse has begun, perpetrators make an effort to keep the abuse a secret. The perpetrator may overtly threaten the child with harm, but more often the threats concern harms to the perpetrator (whom the child wants to protect) (Smallbone & Wortley 2001) and harms to the family if the abuse is disclosed (Lang & Frenzel 1988).

## **VI. Conclusion**

Based on population surveys with adults, child interviewing studies, experimental work on children's disclosures of transgressions, and research questioning perpetrators about their modus operandi, there is substantial scientific support for expert testimony on child sexual abuse accommodation.

## Peer-reviewed publications I authored or co-authored relevant to child sexual abuse accommodation

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