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Child Sexual Abuse Accommodation: Current Evidentiary Status


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History of accommodation and accommodation testimony


- Summit (1983): Children keep sexual abuse a secret, delay disclosing (if they disclose at all), disclose inconsistently, and often recant.
- Summit (1992): "Abuse of the child sexual abuse accommodation syndrome": Not a syndrome; Does not prove abuse.
- Most courts allow expert testimony on accommodation, but not as *proof of abuse*, but as *rehabilitation testimony*, in order to *rebut misconceptions* in cases of delayed disclosure and denial.
- *California v. McAlpin* (1991): Rebuttal use OK
 - If the defense suggests that delay or denial (or other behaviors of the child, such as positive feelings toward the suspect) suggests abuse did not occur, an expert may explain accommodation to the jury.
- Still good law (most recently, *California v. Ramirez* (December 22, 2023)



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Exception: New Jersey


- *New Jersey v. J.Q.* (1993): Rebuttal use OK
- Model jury charge (2011): Accommodation "relates only to a pattern of behavior of the victim which *may* be present in *some* child sexual abuse cases" and "may help explain why a sexually abused child *may*" delay reporting and recant or deny abuse.
- *New Jersey v. J.L.G.* (2018): Rebuttal use NOT OK for denial and recantation
 - Testimony regarding delay only admissible if child is unable to explain the reasons for delay.



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Why did New Jersey change its mind?


- Found that "methodologically superior studies" reveal low rates of denial and recantation.
- Implicitly adopted a standard that denial and recantation must occur in *most* cases.
- Methodologically superior studies? (London et al., 2005, 2008)
 - Can't conclude that large percentages of abused children don't disclose, because studies examining disclosure include children who may not have been abused.
 - So, for example, if 50% of children in a study disclosed abuse, perhaps only 50% were abused.
 - When studies look at *substantiated* cases, disclosure rates are much higher, often close to 100%.



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Substantiation bias


- Because substantiation is usually dependent on disclosure, only looking at substantiated cases *exaggerates* disclosure rates (Lyon, 2007, 2009; Lyon et al., 2020).
- When abuse can be substantiated through means other than disclosure, disclosure rates are lower, hovering around 50% (Lyon et al., 2020).
- Even this exaggerates children's willingness to disclose, because abuse is usually *suspected* because of disclosure. If the *prior* disclosure rate in a study is high, this is evidence of suspicion bias.
- See, e.g., Dubowitz et al., 1992; Farrell et al., 1981; Gordon & Jaudes, 1996; Ingram et al., 1991; Lawson & Chaffin, 1992; Muram et al., 1991; Lyon, 2007 (review)



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Recent evidence of abuse denial


- Hershkowitz et al. (2014): NICHD protocol with external evidence of abuse; 43% denied physical abuse, 56% denied sexual abuse, and 29% recanted physical or sexual abuse.
- Malloy et al. (2007, 2016):
 - Substantiated cases of sexual abuse: 23% recanted
 - Recantations more common when child under 10, abused by father figure, lacking support from family
- Studies in which internet and photographic evidence led to discovery of abuse show high rates of denial and reluctance (Katz et al. 2018; Leander, 2010; Sjöberg & Lindblad, 2002).



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Have other courts followed New Jersey?


- No.
- But most opinions are by *intermediate* appellate courts that are bound by prior *state supreme court* opinions. E.g., California.
- Some inklings of influence:
 - Michigan v. Mejia (2020): 3 (of 7) state supreme court justices dissented from a denial of review, arguing that accommodation testimony should be reassessed.
 - Ohio v. Svoboda (2021): FN4: Perhaps, sometime in the near future, the Ohio Supreme Court will agree to revisit this issue in light of the numerous other state courts that have rejected CSAAS expert testimony.



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