

**DEALING WITH THE CHILD INTERVIEW, THE ASSESSMENT AND THE  
EXPERT**

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**I. WHAT YOU MUST KNOW ABOUT ASSESSMENTS**

There was a book written in 1996 by a woman named Kathryn Kuehnle. This book is **Assessing Allegations of Child Sexual Abuse** by Kathryn Kuehnle, Ph.D. The publishing information is: Professional Resource Press, P.O. Box 15560, Sarasota, Florida 34277-1560 (1996), 800-443-3364. The book consists of a summary of the most notable studies involving child sexual abuse that had been done up until the time of the publication of the book. The author gives an overview of the studies and draws conclusions from the overview of the studies as to what should be done to come up with reliable results when assessing a child who has made an accusation of sexual abuse. This book has gradually become what most competent people involved in the field of assessing children for abuse rely upon as the proper protocol. In other words this book has become the guide that is recognized as the proper way to do assessments. This book is a must for understanding what should be done and is highly recommended as reading for anyone who does any child sexual abuse cases. It really is more than recommended, it is a must. Buy it and read it. This book will allow you as the lawyer to understand what should have been done, to move to exclude expert opinions where the opinion is not based on an assessment that was properly done, and to point out the flaws in the opinion of the expert if you are unable to exclude the opinion. What has become apparent in my experience is that few of the so called experts out there who are being relied upon by the state come anywhere near to doing the assessment in a manner that makes their conclusion reliable according to this book. Thus, many more of the opinions than you may think will be vulnerable to a challenge that is very well grounded based on Kuehnle's information and should allow you to exclude much of this testimony or show that it is not reliable.

This paper sets out some of the important points of the book for you. This paper,

however, cannot cover the contents of Dr. Kuehnle's book in enough detail such that reading this paper alone will be sufficient for you to make challenges to expert opinions. You really must read the book itself. Detailed familiarity with the book is a necessity if you are doing child sex cases.

#### A. Role of the Evaluator

The first problem with most assessments is that they are not done by someone who is truly a forensic evaluator. A true forensic evaluator is a neutral data gatherer. Most often the persons who do the examination of the child claim they are doing a forensic evaluation or at least are willing to give an opinion that seems to be based on a forensic evaluation, but they often also characterize themselves as a treatment provider, i.e. doctor or therapist or social worker. The studies in the book caution that it is dangerous to mix the role of forensic evaluator and treatment provider because the roles are conflicting. An evaluator's goal is to obtain uncontaminated data that is not biased by the evaluator aligning themselves with the child or any party involved or by any pre-conceived notion or pet hunch. A true evaluator should be completely unbiased and only interested in obtaining raw, unbiased data. A treatment provider, on the other hand, is more of a child advocate who accepts whatever information is given as correct without questioning its reliability or remaining neutral, which is essential in order to perform the neutral evaluator function. The problem is that when one is a treatment provider, they are not neutral at all because in that role they tend to automatically believe the information provided by the child. In order for the data collected to remain uncontaminated by the opinion of the person performing the evaluation and in order to avoid confusion in their role, it is necessary that the evaluator remain completely neutral and unbiased. It is difficult if not impossible for someone who is in a treatment role to do that because their job is to accept information given by the child as true and then help the child deal with that situation and with their feelings about being abused. Where you have someone who is trying to perform both functions or at least are not clearly performing the role of one or the other, the information gathered is very likely to be contaminated by the evaluator's bias caused by their empathy with the child or some other party. This type of bias, often called "confirmatory bias", is what causes some evaluators to accept certain statements

made by a child as true, while not accepting other statements also made by the child.

### B. Necessary Data

Another thing that is immediately apparent from reading the book is that in order to do a reliable assessment a large amount of data must be collected and a large number of people need to be interviewed. The common practice in most evaluations used in the courts is that the evaluator most often interviews only the child and whoever decides to accompany the child to the interview. The interview may include a physical examination of the child, however even when these three or sometimes two components are the total data collected, this is not sufficient data upon which to base a reliable conclusion as to whether or not the abuse is likely to have occurred.

The underlying reason why most of the experts relied on by the state do not follow a comprehensive protocol is because in their assembly line rubberstamping style of assessments of the state's cases, they don't take the time to do a thorough gathering of data upon which to base their conclusion. In previous cases, some of the state's experts have admitted that they recognize that their data alone, which generally consists only of the child interview and an interview of whoever accompanies the child to the interview, and usually a physical, is not sufficient. They will also acknowledge that other data is necessary for a full evaluation, but state that they assume that someone else somewhere is gathering all the necessary data and that some unknown party will consider all that and give another opinion. Who that is or what it means in terms of the reliability of the opinion that person gives when they testify does not seem to be any problem for them, even though they don't have the other data and just assume that someone else is going to consider it. The fact they don't know anything about that other data that they acknowledge they need and don't know about, nor do they know how it would affect their conclusion, has never seemed to stop them from making a conclusion without it. This is a fatal flaw in their being allowed to voice any opinion at all. This is what you as the lawyer must understand, expose, and exploit to your client's advantage.

Once you are familiar with the book and the protocol recommended, it will become very clear and frightening how the assessments are actually being done and on

what very thin information they have been willing to rely in the past, and upon which they have been willing to send people to prison. A truly thorough assessment requires at a minimum a thorough consideration of at least seven types of information concerning the child: 1) school records; 2) any social service records that may exist concerning the family; 3) any mental health records concerning any treatment or counseling the child may have received; 4) any juvenile court records that may exist regarding behavioral problems of the child; 5) medical records of the child that involve any prior genital examinations or illnesses that would have any affect on the genitalia of the child; 6) and any other records that may exist concerning the child. In addition to records that must be thoroughly considered, 7) interviews with people who have had contact with the child must be conducted such as: family members of the child who lived in the home or spent time with the child, neighbors who had regular contact with the family, church members who were in regular contact, coaches or teachers in extra-curricular activities who had regular contact with the child and family. Attempts should be made to interview family friends who had regular contact with the child, especially if they had any contact with the child alone. A crucial portion of the data is information concerning the initial accusation, how it was made, to whom it was made, what if any questions were asked, how many times the child was questioned over what time frame, and as much detail as possible about the questions asked. It is absolutely essential that information be gained about the persons involved, the setting of the disclosure, and the relationships between the person to whom it was made and the person accused. It is vital that a comprehensive assessment include a thorough, retrospective reconstruction of all the interviews a child has experienced. The reconstruction should include all interviews, both informal interviews such as those done by caretakers who are often the persons to whom the initial "disclosure" is made, and also those done by professionals.

As one can clearly see, a very large amount of data is necessary for a thorough evaluation to be correctly undertaken. Because this is a very time consuming process, the people who now are performing the average evaluation just don't have the time or resources to do thorough enough information gathering to be able to accumulate sufficient data upon which to do a reliable assessment. While this lack of time and

resources may be factually true, it is not defensible when the reliability of the opinion is raised.

It is necessary to point out at this juncture, that in order to fully prepare your case and to assess the evaluation yourself and through any expert the defense may employ to assist, it is going to require that the defense gather the same data and interview the same witnesses that the forensic evaluator should have done. In other words, the defense must conduct the same comprehensive forensic evaluation of the case that the evaluator should in order to be able to know what all the necessary information should have shown concerning the conclusion reached by the state's expert. With full knowledge you can see their weakness, which will give you the ability to challenge the admissibility of their opinion, or at the very least show the jury why the opinion should not be given any weight if you are unsuccessful in excluding the opinion.

### C. Interviewing Techniques for Interviews of the Children

A lot of changes have occurred in the method by which the child interviews should be conducted since the early 1980s. Researchers have concluded that structured interviewing techniques, including both the actual structure of the interview and the type of questions, are crucial to obtaining reliable information. Age differences in children affect accuracy and susceptibility to contamination, with pre-school age children being the most susceptible. Time delay in the questioning after the event also may cause there to be more inaccurate information obtained, especially if any improper questioning of a suggestive nature occurs. The most crucial factor in any interview is that the interviewer must remain neutral and open to alternative hypotheses to abuse so that their personal beliefs about the abuse (i.e., confirmatory bias) do not contaminate the interview results.

With regard to interview structure, the interviewer should follow a well-established interview format that includes the following. The first step should be a time devoted to building rapport with the child by discussing neutral topics that are age appropriate. The interviewer should be relaxed, interested in the child, and not dominate the conversation with questions. Sufficient time to truly make the child comfortable is

essential. There are specific scripts that have been developed to follow for the rapport-building step.

The second step of the interview should be to assess the child's ability to answer questions and provide details. This assessment requires developmental information previously obtained about the child, observation and interaction with the child, and training in the area of child development to know the age capabilities of the child. The interviewer must determine the linguistic capability of the child so that age appropriate language can be used. Unfamiliar words can be confused and the ability to think in chronological order may be a problem for children. Concepts such as inside and outside may be beyond the understanding of the child. The child's concept of truth and a lie must also be assessed. It is generally believed that by age four, a child can identify a truthful statement, but not until the age of ten or older can a child explain the difference in the concept of a true statement or a lie. The truth or lie capability has not been found to affect suggestibility of the child.

The third step of the interview establishes the ground rules for the interview. This is where the interviewer gives detailed instructions that help to avoid the adult interviewer from pressuring the child or overwhelming the child by the fact that the interviewer is an adult and the child is accustomed to responding to an adult in a compliant manner. The instruction phase includes things the child must be told such as: 1) the child must tell only what happened; 2) the child must admit lack of knowledge if the child doesn't know the answer rather than guessing at an answer; 3) the child must understand that the interviewer does not know what happened because the interviewer was not present; 4) the child must be told that it is the child's job and that it is ok for the child to correct the interviewer when the interviewer makes a mistake about a fact; 5) the child must be made to understand that the child should not think that they made a mistake if the interviewer asks a question more than once; 6) the child should be asked to tell all the details the child remembers even if the child thinks they are not important. These techniques should be practiced in the fourth step after the child has been instructed in these ground rules.

The fourth step of the interview consists of practicing interview concepts with non-abuse related questions. This phase helps the child learn to volunteer elaborate narratives so that the interviewer can minimize the use of specific questions about abuse to avoid being suggestive. One such technique asks the child to establish what the child did when the child first got up that morning, then elaborate on that by asking more about details and what happened next. The interviewer should seek to practice the rules set forth in step three until the interviewer is comfortable with the child's ability to follow the rules.

In the fifth step the interviewer introduces the topic of sexual abuse. This phase should be conducted with open-ended questions. The topic of sexual abuse should not be directly brought up by the interviewer, nor should any particular suspect be named by the interviewer, and there should be no implication by the interviewer that the child has been harmed. The interviewer should make no adult judgments that are conveyed to the child in any manner. There should be a transition statement used by the interviewer to introduce this phase of the interview, such as, "Now that I know you a little better, it's time to talk about the reason that you are here today. Tell me the reason that you came to talk to me today." As much as possible the interviewer should rely on the use of open-ended questions in obtaining any information given from the child about any abuse.

It is almost universally accepted at this time that the best method for insuring non-contaminated interviews is that the interview should be videotaped in its entirety. There is still disagreement among legal authority on whether it is suggestive to use techniques such as anatomical dolls, drawing techniques, and pictures of bodies with genitalia, however, the forensic experts in the field are of the opinion at this time that it is best to avoid use of dolls or drawings as a test for diagnosing sexual abuse. The use of such aids may open the door to an accusation of suggestiveness in the interview process that may be vigorously raised to challenge the reliability of the information obtained and used to suggest that the information is contaminated such that it should not be introduced into evidence. Such challenges may be raised based on the ethical conclusions and studies outlined in Kuehnle's book.

Suggestive questions, questions that supply information and questions that probe too directly about the information sought are to be avoided. The whole interview should be conducted with the use of open-ended non-suggestive questions. Yes and no questions should not be used. It is crucial that the interviewer have training in the method of avoiding suggestive questioning.

#### D. Assessing the Data

Kuehnle came up with a set of hypotheses that the assessor should use in evaluating the data before coming to any conclusion. These hypotheses are as follows:

1. The child is a victim of sexual abuse and the allegation is credible and accurate.
2. The child is a victim of sexual abuse, but due to able or cognitive deficits, does not have the verbal skills to provide a credible description of his or her abuse.
3. The child is a victim of sexual abuse, but due to fear, will not disclose his or her abuse.
4. The child is a victim of sexual abuse, but due to misguided loyalty, will not disclose his or her abuse.
5. The child is not a victim of sexual abuse and is credible but has misperceived an innocent interaction.
6. The child is not a victim of sexual abuse but has been unintentionally contaminated by a concerned or hyper-vigilant caretaker or authority figure.
7. The child is not a victim of sexual abuse but has been intentionally manipulate by a caretaker or authority figure into believing that he or she has been abused.
8. The child is not a victim of sexual abuse but knowingly falsely accuses someone of sexual abuse because of pressure by caretakers or authority figures who believe the child has been abused.
9. The child is not a victim of sexual abuse but knowingly falsely accuses someone of sexual abuse for reasons of personal aggrandizement or revenge. (This is known to happen with pre-adolescent and adolescent children for the purpose of secondary gains, but is highly unlikely with preschool and young school-age children who are probably not sophisticated enough to intentionally initiate a false accusation.)

Other experts also consider a tenth hypothesis in the assessment of the data which essentially is that it may be highly suspicious of non-abuse if the accusation resulted during a divorce or custody battle that involves the person accused.

Methodology for employing this set of questions is to go through the entire collected data and rule out other explanations for the accusation before coming to a conclusion that abuse has or has not occurred. There should not be a conclusion that abuse has occurred if there are other hypotheses that could explain the accusation.

## II. OVERALL CONSIDERATIONS

An additional important detail to remember is that there are no specific symptoms of child sexual abuse. More recent studies support, as older studies strongly suggested, that sexual abuse does not cause a discrete set of behavioral or emotional symptoms as does a psychiatric disorder. The wide variety of so called "symptoms" are affected by a number of individualized characteristics particular to the specific child that include: personality differences between individual children, personal interpretation by the child of the event, who the alleged perpetrator was in relation to the child, specific characteristics of the type of sexual activity, other types of abuse that exist concurrently in the family such as mental and physical abuse, the stability of the family environment in which the child lives, and the belief or disbelief of parent or caretaker of the child as to whether or not the abuse occurred. Many if not most of the so called symptoms that may exist in a given child where abuse is suspected are likely to be present in a significant number of non-abused children as well. Very interestingly, studies have shown that between 21% and 49% of sexually abused children exhibit no symptoms of abuse at all. Thus, you must be very wary of any expert who lists a specific set of so called symptoms to support the expert's conclusion that abuse occurred, i.e. in the manner of saying these symptoms exist, therefore there must have been abuse. That is why the necessity exists for a thorough assessment of a wide variety of data that includes more than looking at the child and whatever "symptoms" that the expert supposedly detects through the interview and examination of the child. You may find causes other than sexual abuse for any

"symptoms" when a thorough review of the full range of data is conducted. These "symptoms" may be within normal range for non-abused children or you may discover that these "symptoms" existed prior to the time of the alleged abuse.

An additional bit of information is offered the reader. In In the Matter of Stumbo, 357 N.C. 279 (2003), the North Carolina Supreme Court addressed the question of whether or not DSS could conduct interviews of children as part of a neglect investigation based solely on an anonymous report that a very young child had been seen naked and unsupervised standing in the driveway of a house. The Court concluded that before an investigation can be undertaken by DSS that there must be probable cause that neglect has occurred. The Court held that the sole evidence of an anonymous phone call about a naked unsupervised child in a driveway did not constitute probable cause to support the initiation of an investigation. This case seems to suggest that a suppression motion could be made in cases where there is a third party anonymous report that has initiated a sexual abuse allegation and there has been no prior statement by the child. This is an untested idea, but an interesting development in the law that should be pursued.

### CONCLUSION

There are many things involved in a reliable assessment of a child where there has been an accusation of sexual abuse alleged. Often times, the type of thorough examination of data that is accepted as necessary by the world of forensic evaluators is not done before an opinion is allowed into evidence in the courtroom. It is incumbent on us- the practitioners in the court system and defenders of the accused- that we be intimately familiar with the requirements of a reliable assessment in detail. Understanding how a reliable assessment needs to be done, and what must be considered in making such an assessment allows you to challenge the admissibility of such opinions, as well as, to point out weaknesses when the opinions are admitted. In order to effectively and adequately represent a client accused of the sexual abuse of a child, you must be familiar with the work of Dr. Kathryn Kuehnle.

Bibliography

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