

THE IMPORTANCE OF THE FORENSIC PSYCHOLOGICAL EVALUATION ON BEHALF OF A VICTIM IN A CHILD SEXUAL ABUSE CASE

Institute on Violence, Abuse and Trauma (IVAT)

**Irwin Zalkin, Esq.
The Zalkin Law Firm**

September 2014

Two Types of Childhood Sexual Abuse (CSA) Victims

- **Adult Survivors**
- **Child Survivors**

Issues Important to the Evaluation of Adult Survivor Cases

- **Corroborate the abuse**
- **Causal connection between the CSA and adult psychological injuries**
- **Psychological and psychosocial factors present to explain delayed reporting**
- **Recollection of specific dates or time markers when abuse occurred (important for insurance coverage)**
- **Nature, frequency, and duration of abuse**

Issues Important to the Evaluation of Adult Survivor Cases *(cont.)*

- Identify and distinguish other traumatic events
- Causation: address relative impact of CSA versus other traumas on cognitive, ADL, psychological, interpersonal, and quality of life
- Relation and reasonableness of historical medical care
- Importance of choice of testing
- Diagnoses (DSM-IV, PTSD, Axis I–V)
- Future medical care

Issues Important to the Evaluation of Minor Survivor Cases

- **Trained Interrogation**
- **Corroboration of abuse**
 - Medical evaluation where possible
 - Interview parents or legal guardians, teachers, coaches, and others to corroborate
- **Identify certain behaviors identified with CSA**
 - Touching of genitalia, bed wetting, inappropriate touching of others
 - Refusal to go to school or be near perpetrator
- **Identify specific dates of abuse**

Issues Important to the Evaluation of Minor Survivor Cases *(cont.)*

- Nature, frequency, and duration
- Identify and distinguish other traumatic events
- Causation: relative impact of CSA versus other traumas on cognitive, ADL, psychological, interpersonal, and quality of life
- Relation and reasonableness of historical medical care
- Importance of choice of testing
- Diagnoses (DSM IV, PTSD, AXIS I–V)
- Future medical care

Retention By Legal Counsel for the Victim

- **Have a standard fee agreement to be signed by attorney and client**
 - HIPAA Authorization to disclose
- **Limit discussion of the case to facts – do not discuss outcomes in advance of evaluation**
- **If designated as trial expert, all communications with victim's attorney are discoverable**
 - This includes e-mails any other written communication
- **Do not agree to accept a case on a contingency or lien**

Pre-Interview Information

- **Try to get as much information as possible before the interview**
 - Historical, medical, education, employment, criminal records, criminal proceedings
 - Depositions or prior interviews of client, parents, spouses, life partners, children, siblings, friends, employers
 - Prior psychological testing scores and/or data

Conducting the Clinical and Diagnostic Interview

Focused on Adult; Adjust for Children

- **Informed Consent Advisement**

- **Family/social history**

- Similar disorders/Psychological issues
- Nature and quality of home environment
- Exposure to **other** trauma or sexual abuse
- Circumstances lending to victim's vulnerability to CSA
- Quality of life post-CSA
 - Intimacy issues, sexual performance, sexual identity issues, failed relationships, isolation and/or trust issues, anger, depression, anxiety, substance abuse

Conducting the Clinical and Diagnostic Interview *(cont.)*

Focused on Adult; Adjust for Children

- **History of Abuse**
 - Grooming
 - Nature/Frequency/Duration
 - Specific dates and/or relative markers
 - Pre or subsequent other sexual abuse
 - Context and locations

Conducting the Clinical and Diagnostic Interview *(cont.)*

Focused on Adult; Adjust for Children

- **Medical History**
 - Pre- and post-abuse
- **Educational History**
 - Pre- and post-abuse
 - Identify noticeable change
- **Employment History**
 - Pre- and post-abuse
- **Legal History**
 - Criminal
 - Civil

Conducting the Clinical and Diagnostic Interview *(cont.)*

Focused on Adult; Adjust for Children

- **Observations of Mental Status and Behavior**
 - Timeliness
 - Appearance
 - Level of Cooperation
 - Quality of Responses
 - Conduct and Attitude
 - Relaxed v. Anxious
 - Mannerisms

Psychological Testing

- **Objective Corroboration—Common Tests**
 - **MMPI-2**: Assesses personality characteristics and emotional functioning
 - **IBS** (Interpersonal Behavior Survey): Examines social interaction and conflicts at home, on the job, or in school
 - **TSI-2** (Trauma Symptom Inventory, 2nd Ed.): Used to assess a wide range of psychological effects due to trauma
 - **DAPS** (Detailed Assessment of Posttraumatic Stress): Used to measure effects of trauma exposure and posttraumatic stress for victims over 18
 - **SPS** (Suicide Probability Scale): Used where there is a history of suicide attempts or ideation

Psychological Testing (*cont.*)

- **TAT** (Thematic Appreciation Test): Subject interprets a series of drawings from which some themes can be discerned such as drives, emotions, and conflicts
- **Forer Structured Sentence Completion Test**: 100 incomplete sentences that a subject completes; used to measure self-perception and view of other relationships
- **KFD** (Kinetic Family Drawing): Subject draws a picture of himself or family doing something; used to understand victims' perception of family relationships
- **PPD** (Personal Problems Checklist): For adults only, it is 208 common adult problems of daily living; used to screen for different problems that should be examined further

Diagnostic Impressions

- **Axis I**
 - All diagnostic categories except mental retardation and personality disorder
- **Axis II**
 - Personality disorders and mental retardation
- **Axis III**
 - General medical conditions, acute medical conditions, and physical disorders
- **Axis IV**
 - Psychosocial and environmental factors contributing to disorder
- **Axis V**
 - Global Assessment of Functioning (GAF) or Children's GAF (if under 18)

Discussion or Conclusion:

Causation

- **Sequelae of physiological and psychological problems that follow CSA; does the victim's clinical picture resemble that of other CSA victims?**
- **Does the testing support this? If so, how?**
- **Deal with adverse “validity scales” (e.g. faking v. cry for attention)**
- **CSA v. other traumas**
 - Was CSA a substantial factor?
 - Can the examiner make an apportionment based on reasonable psychological certainty or is it too hard to tell?
 - Did CSA exacerbate pre-existing effects of trauma?
 - Did CSA make the victim more susceptible to future trauma?

Discussion or Conclusion:

Causation (*cont.*)

- **Is there support for delayed causal connection/reporting?**
 - Threatened
 - Self-blame
 - Shame
 - Fear of not being believed/harm to family/harm to perp
- **Effect(s) on Activities of Daily Living (ADL)**
- **Effect(s) on employment**
- **Effect(s) on relationships**
- **Effect(s) on quality of life**

Future Care Needs

- **Type of therapies**
 - Frequency, duration, cost per session
- **Inpatient hospitalization(s)**
 - Duration, cost per period
- **Medication(s)**
 - Frequency, duration, cost per prescription
- **Psychiatrist(s)**
 - To prescribe, frequency, duration, cost per visit
- **Special treatment(s)**
 - Frequency, duration, cost

Signature on Report

- **All professionals or degreed assistants**

The Expert Trial Witness: Preparing for Trial

- Visit with the survivor again
- Make sure all additional information discovered since the evaluation has been provided
- Address new issues, if any, with attorney
- Review any reports and testing data of defense evaluator
- Be prepared to answer criticisms of your evaluation by defense expert
- **RELAX!! You'll be great!**

The Expert Trial Witness:

Direct Examination

- **Qualifications**

- Education
 - Professional Degrees
 - Licenses
 - Board Certifications
 - Staffing Privileges
 - Type of Practice
 - Training
- Publications/Peer-reviewed
 - Honors/Special Recognitions
 - Presentations
 - Professional Societies
 - Research

The Expert Trial Witness:

Direct Examination (*cont.*)

- **Who retained you in this case?**
- **What were you asked to do?**
- **What conversations you have had with counsel who retained you and his/her office?**
- **What information were you provided?**
- **How much were you paid?**
- **How often are you retained as an expert by plaintiffs v. defendants?**

The Expert Trial Witness:

Direct Examination (*cont.*)

- **Did you conduct a forensic evaluation of the plaintiff?**
 - Describe a forensic evaluation and how it differs from a clinical evaluation
 - Did that forensic evaluation include a review of documents associated with the case and the plaintiff?
- **Did you have an opportunity to interview the plaintiff?**
- **Did you perform psychological testing on the plaintiff?**
- **After reviewing the documents, interviewing the plaintiff, and performing testing on the plaintiff, did you arrive at certain opinions regarding the plaintiff's injuries and damages?**

The Expert Trial Witness:

Direct Examination (*cont.*)

- **Before getting into that evaluation and your conclusions, let us talk about CSA and the kinds of injuries associated with CSA.**
 - What is CSA?
 - Does a child have to be physically touched to be traumatized?
 - Examples of trauma not involving touching include grooming, porn, and exposure
 - Are there a certain sequelae of problems that tend to develop in a victim of CSA? Please describe.
 - Can CSA cause physical harm/impact on the brain?

The Expert Trial Witness:

Direct Examination (*cont.*)

- Have there been empirical studies that identify the types of injuries associated with CSA? (e.g. CDC/Kaiser ACE study)
- Are CSA victims more susceptible to subsequent trauma?
- Is there evidence that CSA victims tend not to report or delay reporting until later in adult life?
 - Why do they not report?
 - Cite the numerous studies and data
- What is delayed discovery?
- Why does it often take decades before a CSA victim can connect the abuse with his/her injuries?

The Expert Trial Witness:

Direct Examination (*cont.*)

- **What documents did you review in advance of the evaluation of the plaintiff and why?**
- **How many times did you meet with the plaintiff?**
- **How long did the interview(s) last?**
- **When did you interview the plaintiff?**
- **Did you record or make notes of the interview(s)?**
- **Did you prepare a report shortly after the interview(s)?**
 - Does it describe the content of the interview(s)? (You can refer to your report)

The Expert Trial Witness:

Direct Examination (*cont.*)

- **Did you interview any other persons associated with this case? If so, who/why?**
- **What information were you seeking from the plaintiff?**
- **What observations did you make about the plaintiff at the time of the interview(s)?**
- **Based solely on the interview(s) and your review of information, did you form any preliminary opinion regarding the plaintiff's claims?**

The Expert Trial Witness:

Direct Examination (*cont.*)

- **Did you perform any testing?**
- **What testing did you perform?**
 - Why this test? Describe.
 - How does this test work?
 - How are the results scored?
 - What did the test show?
 - What is the significance of this result?
 - Does the test include a validity scale or question?
 - How did the plaintiff do on that?
 - If negative, then why and what does it mean?

The Expert Trial Witness:

Direct Examination (*cont.*)

- **Did the result of the testing confirm your initial impressions?**
 - If not, how does your opinion differ?
- **Have you formed a diagnosis in this case?**
 - If so, what is your diagnosis?
 - On what do you base your diagnosis?
- **Have you formed an opinion as to whether or not the CSA was a substantial factor in causing Plaintiff's injuries?**
 - What is that opinion?
- **Have you formed an opinion as to when Plaintiff discovered that his/her adult psychological injuries are related to his/her CSA?**
 - If so, what is that opinion and on what is it based on?

The Expert Trial Witness:

Direct Examination (*cont.*)

- **Have you formed an opinion as to whether the medical care Plaintiff has received to date was reasonably medically necessary?**
 - If so, what is that opinion?
- **Have you formed an opinion as to whether the cost of that medical care to date is reasonable and customary?**
 - If so, what is that opinion?
- **Have you formed an opinion as to whether the plaintiff will need future medical care?**
 - If so, what future medical care is reasonably probable that Plaintiff will require?
 - What is the cost for that future medical care?

The Expert Trial Witness: Cross Examination

- **Bias**
 - Financial Interest
 - Advocate for CSA victims
 - Relationship with victim's lawyer
- **Other traumas**
 - Can cause PTSD themselves
 - Can cause other serious problems
 - More traumatizing
 - Cannot blame all problems on CSA

The Expert Trial Witness:

Cross Examination (*cont.*)

- **Emphasize failed validity scales as exaggeration**
- **Emphasize self-reporting on certain tests**
- **May ask why not different tests**
- **Challenge future care projections**
 - Pure speculation
 - Does not need the level of care
 - Try to suggest that Plaintiff would likely not follow through with projected care, especially if Plaintiff has a history of abandoning therapy

Irwin M. Zalkin, Esq.

The Zalkin Law Firm, PC.

*Attorneys and Advocates for Sexual Abuse
Survivors Across the Country*

www.Zalkin.com

12555 High Bluff Drive, Suite 260

San Diego, CA 92130

Phone: 858-259-3011

Toll-Free: 800-617-2622

THE **ZALKIN**
LAW FIRM, P.C.