

DEFINITION OF SEXUAL ABUSE

The Code of Virginia Section 18-2-67.10 provides the general definition of sexual abuse. It is defined as an act committed with the intent to sexually molest, arouse or gratify any person where:

- A. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts.
- B. The accused forces the complaining witness to touch the accused's, the witnesses' own, or another person's intimate parts or material covering such intimate parts.
- C. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material covering such intimate parts.
- D. The accused forces another person to touch the complaining witness's intimate parts or material covering such intimate parts.

S.A.I.D (SEXUAL ALLEGATIONS IN DIVORCE) SYNDROME

In order to gain a superior position for custody and child support in divorce litigation, one parent will make false allegations of sexual abuse by the other parent of the family's children or other children in order to gain a legal advantage. This phenomenon is known as the S.A.I.D Syndrome. More often than not, a mother will make false allegations against a father. If that mother is in an inferior financial or social position to the father, these false allegations can spring from anger, mental infirmity or histrionic behavior by one parent towards the other.

In 1986, Dr. Gordon J. Blush and Carol L. Ross presented their study dealing with the Sexual Allegations in Divorce syndrome prepared for fellow professionals in the field of Child Advocacy. They found in their study that sexual allegations made within the framework of a divorced or divorcing family environment tend to be exaggerated, if not made up out of whole cloth. The study was done in a family services clinic in which cases of custody and visitation problems existed involving minor children in the middle of a divorce. Blush and Ross concluded in their study, that parents in a divorcing family situation typically seek to put the other parent in the least complimentary light as possible with the court. By seeking to establish that they are the best choice for being the primary custodial parent, they then tend to place the other parent in a negative light. Negative aspersions may quickly devolve into allegations of sexual impropriety by one parent against the other. The study found further that when one parent was successful in alleging sexual abuse against the other parent, that accusing parent was given total custody of the children in question, where the accused parent is completely excluded from the children's lives until a court case is resolved, and sometime well after that. This alienation can take years of separation between the accused parent and the children. This is because oftentimes-social agencies get involved in investigating the abuse, sometimes resulting in criminal charges brought in the respective courts. Remarkably, in 1998 a national study revealed that over 70% of all S.A.I.D. cases are false. (Credit: Dean Tong: Elusive Innocence) In fact, other sources suggest almost four out of five such cases are false or exaggerated, or some 80%.

THE SCIENCE OF SUGGESTIBILITY

Suggestibility has been defined as, "the extent to which individuals, usually children, come to accept and subsequently incorporate post-event information into their memory recollection". In particular, the definition implies that:

- A. Suggestibility is an unconscious process. i.e. "information is unwittingly incorporated into memory",
- B. Suggestibility results from information that was supplied after an event, as opposed to before it, "hence, "post-event") and;
- C. Suggestibility is a memory-based, as opposed to a social phenomenon. This final point means that suggestions are thought to influence abuse reports via incorporation into the child's memory system, not through some social pressure to lie or otherwise conform to expectations. (Credit: Stephen J. Ceci and Maggie Bruck: Jeopardy in the Courtroom)

SCIENCE IN THE COURTROOM: FRYE - DAUBERT TEST FOR SCIENTIFIC RELIABILITY

In order for an expert to testify in a state or federal court in the United States, typically the science offered by the expert must be generally accepted by the relevant scientific community.

In the case of *Commonwealth vs McLaughlin* (on retrial) the Loudoun County Circuit Court in Virginia ruled, perhaps for the first time, that “suggestibility” of children was recognized as a science. As a result, Dr. Maggie Bruck, Professor Emeritus at Johns Hopkins University, and co-author of *Jeopardy in the Courtroom*, testified as an expert in the field of suggestibility. She gave an expert opinion that the McLaughlin children were influenced by the police and their mother to provide “suggested” answers to questions they were asked about, identifying the father as having sexually abused them, when such answers were completely false. This expert testimony influenced a jury to acquit Mr. McLaughlin (author) of various sexual abuse allegations against his children after he had spent more than four years in jail, totally separated from his children during that entire time.

This testimony was admissible by Dr. Bruck because of the Frye-Daubert test for scientific reliability in the community, *Frye vs. the United States*, 54 U.S. App. D.C. 293 F. 1013 (1923); *People v. Kelley*, 17 Cal 3d 24 (1976). “*The Kelley-Frye Rule of Reliability*” states that novel scientific testimony is admissible in a court of law if generally accepted by the relevant scientific community. Also, the other key case in the area of scientific reliability is *Daubert v. Merrell Dow Pharmaceuticals*, 113. S. Ct. 2786, 125 L. Ed 2d 469 (1993). The Daubert case expanded the *Kelley-Frye* Rule to require that an expert’s testimony in a novel scientific area must be grounded in the methods and procedures derived from the scientific method. In order to be admissible, a trial judge must examine the scientific validity of the underlying methodology proposed. A court, then should admit novel scientific testimony if:

1. The science has been tested and is reliable;
2. The science has been subjected to peer-review and publication;
3. The science has a known rate of error;
4. The proposed science has attained a general acceptance in the scientific community.

For example, Virginia recognizes the “science of suggestibility” of children today because it is peer-reviewed and published and has attained a general acceptance in the scientific community. On the other hand, Parental Alienation Syndrome is not recognized as a science in Virginia because it has not met the Kelley-Frye and Daubert tests of scientific reliability.

PARENTAL ALIENATION SYNDROME (PAS)

Parental Alienation Syndrome (PAS) is typically defined as one parent conditioning their children, usually in an acrimonious divorce situation, to accuse the other parent of sexual or physical abuse. The chief proponent of PAS and studies performed on this subject were done by Dr. Richard Gardner. Gardner, Blush and Ross identified 6 red flags as key S.A.I.D. Syndrome and PAS case indicators:

- Evidence of a family on the verge of marital breakup;
- Divorce proceedings already in progress
- Divorce proceedings that have been in progress for some time;
- Unresolved visitation or custody problems;
- Unresolved money issues related to the divorce process;
- Involvement of either or both parents in ongoing relationships with others.

Blush, Ross and Gardner identified three personality types in the typical female who makes false allegations against the male parent.

1. The female presents herself as a fearful person believing that she is the victim of manipulation, coercion, physical or sexual abuse in the marriage. She tends to see men, and her husband, as a physical threat, a means of retribution who does not understand the physical safety or psychological needs of children.
2. The woman manifests the characteristics of a “justified vindicator”. This individual is a hostile, vindictive and dominant female who often become insistent that formal legal measures be taken immediately, not waiting for reasonable proof of the allegation of abuse to unfold.
3. A woman who is potentially psychotic, and has suffered sexual or physical abuse in her childhood. Although rare, this type functions in a borderline capacity in which what the woman wants to believe (abusive behavior) is clearer to her than what is actually occurring (non-abusive behavior).

In the *McLaughlin* case, the wife who concocted the allegations of sexual abuse and foisted them on her children, was admittedly sexually abused as a child herself, and was able to dysfunctionally identify with her children in this regard.

In all cases, the experts conclude that a female’s emotional basis of appeal can be very convincing and misleading to the inexperienced or even well-intentioned professional or juror. For these reasons, the above red flag considerations need to be considered in any investigation of child sexual abuse, which usually occurs during the course of divorce litigation.

On the other hand Blush, Ross and Gardner identified in the accusing male parent a personality that is usually intellectually rigid, with a significant need to be “right”, overly hypocritical of his wife in the marriage and exhibiting numerous “nit-picking” examples of her unfitness as a mother. The male accuser usually makes allegations of sexual abuse against males who are with the mother, rather than directly against the mother. The accusations against the mother, generally involve her leaving the children in inappropriate care or generally placing them in “at-risk” situations at home, to be sexually abused usually by a significant other or caregiver.

In *Commonwealth v McLaughlin* (first trial), McLaughlin's first set of inexperienced lawyers sought to use an expert to testify to PAS regarding how his wife had influenced the children against him, only to have the court reject that expert testimony because it failed to meet the *Kelley-Frye-Daubert* scientific reliability standard.

MEMORY ENCODING

The first phase in the "memory phase" is called encoding. This refers to the process by which a trace of an experience becomes registered in memory as a full-blown event. There is selectivity in what gets encoded in the storage system in the brain in the first place. Given the limitations of the human cognitive system, not all experienced information is registered as "encoded" into the brain.

As an example, a beginning driver may invest her entire attention in keeping her car in the center lane. As a result she may have no memory to attend to peripheral information happening at the time, such as what songs were playing on the radio or what signs were posted along the side of the road. Thus, not everything that is "out there" gets remembered. And additional suggested thoughts get stored in permanent memory even though they are not true. A more specific example of this behavior is where a child is asked if his father has ever touched her inappropriately in her "private area." The child has encoded a memory that her father wiped her with a towel while she was naked after a bath. With suggestion, that child may also remember in her encoded memory that such a touching was gratifying to her father, when no such behavior actually was exhibited by him.

As memory encoding relates to *Commonwealth v McLaughlin*, the McLaughlin children remembered certain coded features of their testimony that were true regarding interactions with their father. For instance, they remembered that they were alone with their father in the master bedroom or the basement of their home. These were true encoded memories of the children, although the mother suggested that sexualized behavior occurred there, when it had not. This was proven by virtue of the fact that the basement was not even finished at the time that sexualized behavior had been encoded.

"INSTILLED" OR "RECOVERED MEMORY"

Memory that is implanted by others, consisting of false statements that are combined with the child's "encoded" memory, make those memories appear valid in the mind of the impressionable child. For example, a child may remember being in the bedroom of her father. She may be told, by the mother, that the father fondled her in that bed. She might remember the fact that she was watching television with her father in his bed, but her "instilled memory" re-events, at the suggestion of her mother, that she was fondled there even though such conduct never occurred.

In the *Commonwealth v McLaughlin* case, the children's mother instilled in her children the belief that they had been sexually abused by their father in the same areas of the house where their encoded memory validated that experience of being present there.

INTERVIEWER CONFIRMATORY BIAS - REPEATED QUESTIONING

In child abuse allegations, interviewers should ask children "open ended questions" and not do so repeatedly or in a leading way, with an intention to get a prescribed result. This is what is defined as "confirmatory bias" The inexperienced police officer or child protective services representative who has just spoken with the suggestive parent has a confirmatory bias in getting the child to identify the specific abuse that that parent has suggested. Those interviewers may have spoken to the alienating parent and have developed an inherent bias in advance of speaking to the child about abuse. When interviewers obtain information that is consistent with their pre-existing suspicions, they may repeatedly ask the child for a desired result until they do obtain such information. Thus, a child may be interviewed over a prolonged period of time, and re-interviewed and re-questioned on many occasions about the same set of events. These interviewers usually consist of "power adults", such as police, social workers and attorneys. Often times, these interviewers repeatedly ask the same questions of abuse until the child provides the desired testimony that the power adult wants to hear, just so the child can stop the interview process. (Credit: *Jeopardy in the Courtroom*)

In the *Commonwealth v McLaughlin* case, after talking to the mother, inexperienced Leesburg police detective, Kristi Leigh, asked very leading and repetitive questions of the children in their recorded police interviews, which suggested answers until the children gave in. She had developed an inherent bias in the case after interviewing the mother before interviewing the children. The detective had "confirmed the abuse" in her mind when the mother had told this detective about her husband's abuse of their children that she ironically had never personally witnessed. Before the trial, Detective Leigh admitted in court (second trial) that she had only completed a two-week police course with no prior experience on the subject, before she undertook the McLaughlin case, her first ever child abuse case.

LEADING AND REPEATED QUESTIONS

Biased interviewers resort to a barrage of very specific questions, many of which are repeated or leading. A leading question suggests an answer to an impressionable child from a law enforcement officer whom the child respects. For example, instead of asking the child the open-ended question, “what if anything happened in the bedroom with your father?” the biased interviewer asks, “isn’t it true that your father put his hand on your privates while you were lying in bed together?”

POWER ADULT QUESTIONS

Children are influenced significantly by whom their interviewers are. When one parent is removed from the home, because they are falsely accused of sexual abuse, the interrogating parent is given free reign over unduly influencing the children to eventually make false allegations of abusive behavior. Once false allegations are made, other power adults reinforce the false belief in the children that what they are saying is true. These power adults include pastors, close friends, social workers, police and eventually prosecutors.

In the *Commonwealth v McLaughlin* case, the mother reinforced the instilled memory in the children by having the children repeat their false testimony to her close friends, the pastors of the family’s church, the police, the social workers and the prosecutors. After repeating the false allegations of abuse at least a half dozen times to these power adults, the children were primed to tell the same story over and over again, eventually leading to testimony in a court of law, resulting in drastic ramifications against their father.

STEREOTYPING THE “BAD GUY” ACCUSED

Once allegations of sexual abuse are made against an individual, that individual is stigmatized as being a “bad” person. It does not help that the mother and the other power adults who interview the children make the accused child molester out to be demonic. The nature of the negative questions that they ask has an adverse deleterious effect on the children over time that never hear their father’s contrary position. They wrongfully conclude that something must be wrong with the accused parent and eventually testify against him. In essence, then, “The tail (tale) wags the dog”.

In the *Commonwealth v McLaughlin* case, an associate pastor of the family church, Martin Sayer, believed that “God” was telling him that the children had been molested by their father after the mother suggested the possibility of abuse. This demonization of the father, helped instill false memory in the children that their father had molested them, when he had never done so.

THE EFFECTS OF AGE ON CHILDREN’S TESTIMONY

It follows that younger children are more easily influenced by the power adults in their lives. However, it is surprising that older children, even adults, fall into these same traps as younger children.

IDENTIFICATIONS OF FALSE ALLEGATIONS - QUESTIONNAIRE

The following questionnaire was developed by J. Petty as a suggested guide in identifying true versus false allegations of child sexual abuse.

Identification of False Allegations

1. Relationship of reporter to perpetrator:
2. Was there any evidence that the abuse/neglect reporter:
 - A. Was generally hostile or resentful toward the perpetrator for reasons not directly related to the abuse?
 - B. Had something of persona value to gain if the abuse was substantiated (such as gaining child custody, eliminating visitation, or parental rights, financial gain, etc.)?
 - C. Suffers from posttraumatic stress disorder?

1. History of being abused themselves?
2. Stressors that would evoke significant symptoms of distress in anyone?
3. numbness to external world?
4. Recurrence of recollection of trauma via dreams or intrusive remembrances?

[NOTE: Mothers who have been abused tend to over-identify with their child and believe abuse has occurred.]

D. Had a serious psychiatric disorder and had a pathological symbiotic relationship with the child?

1. Histrionic Personality
2. Borderline Personality
3. Schizophrenia
4. Paranoid Disorder
5. Munchausen-by-Proxy
6. Other

E. Appears to be an over-concerned professional who has prematurely committed themselves to believing the allegations and has influenced others to believe the same?

F. Tended to offer progressively more elaborate version of the original story?

3. Did the child repeat the story consistently to more than one person?
4. How many?
5. Did the child repeat the same story to the same person over time?
6. Was the story consistent with information gathered from other mediums, such as drawings or dolls?
7. Did other involved children repeat the same story? If so, how many?
8. Does the child tend to make up stories, exaggerate, or fantasize excessively?
9. Has the child progressively offered more elaborate versions of the story with unexpected adult words and phrases?
10. Does the child have any reasons, other than having been abused by the perpetrator, to be resentful, hostile, or revengeful toward the perpetrator?
11. Is there any evidence that the child has been influenced by others through leading questions or threats?
12. Were stories told by the child challenged to determine whether the child is consistent or suggestible to adult influence?
13. Did the child maintain consistency following challenge or leads?
14. How influenced by suggestibility does the child appear to be (highly, moderate, not influenced)?
15. By whom? Relationship?
16. Did the child go beyond expected details by telling sensible, credible stories?
17. Is there evidence of the accommodation syndrome?

A. Has the child substantially diminished or withdrawn the allegations?

B. Has the child stated that he/she has been told what to say?

C. Has the child been threatened with harm or loss if they don't withdraw the allegations?

D. Have you directly observed anyone attempting to get the child to change their story?

E. In the presence of particular reporters the child appeared:

Guarded?

Intimidated?

Ambivalent?

Frightened?

In whose presence?

18. Did the mood or affect of the child match what would be expected during disclosure? (Credit: Dean Tong: Elusive Innocence)

IDENTIFIERS OF FALSE VS FACTUAL ALLEGATIONS OF SEXUAL ABUSE

Fake or Factual?

Speedy identifications of Child Sexual Abuse Allegations

The Joint Custody Association, Los Angeles, California

Bona fide sexual abuse:

- Mothers will generally be upset, secretive, and embarrassed
- Child will be fearful and timid in presence of abusing parent
- Description of abuse will be consistent, real, and serious

Fabricated Sexual Abuse:

- Mother has a need to tell the whole world, expresses no shame
- Child also wants to tell the whole world
- Child is comfortable in presence of the accused, and may even scream accusations in the face of the accused parent
- Descriptions often have preposterous scenarios

Children from four to seven:

- Tend to over generalize
- Fabricate in an effort to fill in the blanks
- Will begin to believe what they have said

Common problems among individuals involved in parent-child abuse:

- Impulse control problems
- Difficulty monitoring or directing emotional reactions
- Excessive self-centeredness
- Strong dependency needs
- Poor judgment

Divorced women who accuse spouses of incest:

- Usually overzealous and dishonest
- Histrionic or combative
- Aggressively demand the decision-makers act quickly
- When questioned for specific details, they can provide little information and are reluctant to have their children interviewed alone.

Mothers who are child focused and not fabricating, or exaggerating:

- Express remorse for not protecting child sufficiently
- Willing to consider other explanations for poor behavior
- Willing to have child interviewed without their presence
- Concerned about impact on child if child testifies
- If allegations can't be verified, willing to let go of the investigative process as long as child's well being can be monitored.

Mothers interested primarily in attacking fathers:

- Insist on being present when child is interviewed and prompt the child
- Are unwilling to consider other possible explanations for child's statements
- Are eager for child to testify at all costs
- Shop for other professionals who will verify her suspicions
- Involve the child in multiple examinations
- Demand the investigation continue, irrespective of the impact on the child

Three types of data, in assessing the child, to be considered are:

- Child's verbalizations
- Child's test responses and play interviews
- Reports of parents, teachers, and other knowing child (Credit: Dean Tong: Elusive Innocence)