

Forensic Psychology and Representation of Adult Survivors of Child Sexual Abuse

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Adult survivors of childhood sexual abuse will likely suffer from complex psychological impairments. Many years may pass before survivors become strong enough to speak out and confront their abusers. Because of the passage of time, evidence of abuse may be difficult to produce. In addition, many survivors have complex clinical conditions which overlap different diagnoses, and symptoms wax and wane over time depending on the degree of stress in their lives. For these reasons, a forensic psychologist can be important to help assess child sexual abuse claims. This article analyzes the role played by forensic psychologists and describes some of the ways that their participation can be important in the truth-seeking process of litigation on behalf of adult survivors.

The term "forensic" means the application of principles of a body of scientific knowledge to assist in the answering of legal questions. Forensic examiners should gather information from a wide variety of sources called data fields. They should then evaluate that information in the context of principles and practices that have been confirmed by peer-reviewed research and publications in an effort to reach conclusions based upon reasonable psychological probability. An examiner's opinions

which meet these standards should be admissible under *Daubert*.¹ Such opinions can play an important part in resolving child sexual abuse litigation.

Litigation Process

To successfully pursue adult survivor litigation, in most cases a client must have some memory of the abuse. (Some cases are so strongly corroborated by witnesses and medical records that the cases can be proven without the victim's recollections.) A client's memories, along with other sources of information, can be critically important in an assessment by a forensic examiner. The extent and reliability of a victim's memories vary from case to case. Because the litigation process is adversarial, with each side entitled to cross-examine witnesses, the client and the forensic examiner will usually be subject to thorough testing of their credibility.

A forensic examiner may assist in the litigation process in many ways. For example, a consulting psychologist may serve as a resource to interpret and evaluate treatment records and may also help identify avenues for further investigation. If the investigation includes a clinical evaluation of the victim and appropriate psychological testing, an examiner may be able to offer opinions about a client's clinical condition. In some cases, a foren-

sic expert may also be able to present opinions about the factors which likely contributed to the client's symptoms.

A common challenge to the persuasiveness and credibility of a forensic psychologist is that the evaluation of information within the client's history and the clinical diagnosis of the patient are partially subjective. An additional complication is that certain clinical conditions may overlap between alternative diagnoses in the *Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV-TR)*. In order to establish greater credibility, the forensic examiner should acknowledge the limits of the science and should consider the data-field information gained from thorough and objective investigation.

Therapy Evaluations and Forensic Evaluations

Clinical psychology and forensic psychology have very different purposes behind their methodologies. For clinical psychology, the goal of assessment and treatment is to achieve improvement in the patient's functional capacity. For forensic psychology, the purpose is to attempt to answer questions relating to psychology which arise in a legal proceeding. The forensic examiner owes allegiance to the integrity of the evalua-

tion and may reach decisions which are contrary to the interests or goals of the person being evaluated. An attorney may attempt to persuade a treating clinician to do a forensic evaluation because the clinician already knows the client. The problem with such an arrangement is that the treating therapist knows the patient in a different way. As an empathic listener whose task is to suspend disbelief and enter the patient's subjective world, the therapist cannot perform the kind of objective assessment necessary to form an expert opinion with the requisite degree of objective independence.²

In the context of therapy, the therapist may consider a patient's belief that he or she was sexually abused without the need to establish whether the abuse actually occurred. The belief, combined with corresponding clinical conditions, provides a sufficient basis to develop therapy plans. On the other hand, the forensic examiner does not have supportive duties to the patient. The examiner's duty is to use principles of reliable forensic evaluation to determine if the examiner can reach conclusions independent of the treatment needs of the patient.

Even though there are no uniform or enforceable standards for forensic evaluations, there are still a number of generally understood procedures for a proper evaluation. These procedures include extensive and objective information gathering, continued reflection throughout the process, hypothesis formation, and hypothesis testing in order to address legal questions.

Multiple Data Sources

The forensic examiner explores multiple sources of information in order to test various hypotheses. The forensic method is a process of examining and reexamining different hypotheses in the light of newly obtained information. In addition to the client's memory, another possible source of information is the facts surrounding the initial disclosures about the abuse. To evaluate the claims by adult survivors as well as child victims, it is important to examine the

circumstances that preceded the initial disclosures as well as those which existed at the time of the disclosures. The examination should seek to determine whether there were any factors—such as fear or personal animosity—that could have influenced the nature or substance of the disclosures. Narrative accounts made to different people and under different circumstances should be evaluated for consistency.

Additional important data fields could include physical evidence created by the subject, such as drawings, journals,

diaries, or letters. The examiner should also look at court records, medical records, therapy records, school records, and contacts with relevant individuals to develop a social and family history. The subject may have been involved with sexual abuse programs, or drug or alcohol programs, or there may be elementary, middle, or high school records that might show a dramatic rate of absenteeism or a significant drop in scholastic achievement. The examiner should attempt to obtain statements from teachers or day-care workers to assess childhood behavior,

FORENSIC PSYCHOLOGY IN AN ACTUAL CASE

This author recently served as trial counsel for the victim in a civil lawsuit brought by an adult survivor of child sexual abuse. Forensic analysis was dramatically important to the case's successful outcome.

The client was in her early thirties and related a history of having been sexually abused beginning at age ten. Her abuser first had intercourse with her when she was eleven and continued to do so for several years thereafter. At the start of the case, the perpetrator denied having sexual contact of any kind with the victim prior to her reaching sixteen (the age of consent in Connecticut).

Pretrial investigation uncovered school records that showed the client having missed five days of school when she was ten and then thirty-five, forty-five, fifty-three, and seventy days in the following years. Amazingly, ob/gyn records still existed which showed a surgical abortion at age twelve, a spontaneous abortion at age thirteen, a pregnancy at fourteen, and a live birth at fifteen, in addition to multiple bouts of sexually transmitted diseases. Those school and medical records confirmed that some male (or males) had recurring access to the child. The other evidence at trial overwhelmingly identified the defendant as the only male who had sexual activity with the plaintiff prior to her reaching age seventeen. The victim had first sought hospital/psychiatric care at age twenty. She was diagnosed as having bipolar disorder. For nine years thereafter, she continued to be diagnosed at various psychiatric facilities as suffering from bipolar disorder. Within the records, there were occasional references to the self-reported client history of sexual abuse when she was young, but there were no details and apparently there had been no effort to take a thorough sexual abuse history. Occasionally, the client was treated with lithium, which had some helpful effect. Nevertheless, her treatment course was unsatisfactory. A thorough search for available records by plaintiff's counsel uncovered the ob/gyn records which had not been evaluated or even sought out by any of the psychiatric facilities.

A forensic psychologist retained by the plaintiff's counsel conducted thorough research of multiple data sources including the ob/gyn records, plaintiff's childhood friends, plaintiff's teachers and school records, and the records from her hospitalizations. The examiner also administered and evaluated the Minnesota Multiphasic Personality Inventory, a Traumatic Stress Inventory, and a Dissociative Symptom Inventory. The examiner concluded and testified that the plaintiff's functional impairments were the result of profound PTSD resulting from sexual abuse between the ages of eleven and sixteen. The trial judge concurred with the forensic psychologist and awarded damages of nearly \$1.4 million. **VA**



health problems, unusual behavior, and observed interactions with friends, schoolmates, and parents.

An understanding of the subject's responses over time to stressful factors is helpful in discovering evidence of impaired capacity to respond to stress. A series of interviews, both with the subject and with other contacts, will enable the evaluator to uncover underlying patterns of affective and cognitive functioning, to evaluate the subject's range and consistency of emotional reactions, and to identify areas of particular sensitivity and vulnerability. In these interviews, the evaluator may explore the subject's reactions to confrontation, and may better understand the person's history which contributes to his or her attribution of meaning to particular events. The evaluation of information from other data fields can strengthen the foundation of the examiner's opinions.

Impact of Sexual Abuse on Children

Childhood sexual abuse may be linked to more deleterious long-term outcomes than physical abuse. However, no psychiatric profile or course of adjustment unique to the sexual abuse survivor has been identified.³

Still, there are many clinical symptoms and functional incapacities which have been identified in victims with confirmed histories of childhood sexual abuse. These symptoms include depression, anxiety, sexualized responses, risk-taking behaviors, thoughts or attempts of suicide, self-mutilation, physical and sexual aggression, substance abuse, and sexual re-victimization. Because such symptoms can recede and reemerge during a victim's life, an examiner should develop chronological tables to correlate symptoms with the subject's age and with the occurrence of stressful events.

In assessing the effects of childhood trauma, there are several factors that can impact the degree of the psychological effect of the trauma. These factors include:

- (1) the nature and severity of the event;
- (2) the frequency and duration of the trauma;
- (3) the victim's genetic vulnerability to overwhelming experiences;
- (4) a person's developmental level at the time a trauma occurs;
- (5) the strength and flexibility of a victim's psychological defenses;
- (6) the strength and clarity of the person's sense of self prior to the event;
- (7) a history of other traumas in a victim's life; and
- (8) the degree of external protection and social support available to a victim after the trauma.⁴

These considerations are important for putting the information from the other data sources into proper perspective.

Posttraumatic Stress Disorder

The *DSM-IV-TR* clinical diagnosis most commonly associated with childhood sexual abuse is Posttraumatic Stress Disorder (PTSD)(Classification No. 309.81). The *DSM-IV-TR* recognizes the psychiatric disorder and provides criteria for assessment. PTSD was first recognized in the *DSM* in the early 1980s.

Greater understanding of the disorder has brought about profound changes in the relationship between psychology and the law. In criminal law, variants of PTSD, such as the battered woman syndrome, have bolstered defenses ranging from diminished capacity to self-defense. Crime victims have used PTSD to press their claims for more substantial sentencing of abusers. In civil cases, PTSD provides a reliable diagnostic category which includes physical symptoms and an identified cause for varieties of psychic damage.⁵

Nevertheless, there is an underlying complexity to PTSD that belies its image (in the eyes of critics) as a neat package in which all manner of damages claims can be wrapped with black and white ribbon and an expensive price tag. For example, a subject's memory may be impaired for a variety of reasons and, despite his or her statements to the contrary, there may be substantial doubt that a specific traumatic event actually occurred. In some cases, a subject may attribute symptoms of sexual abuse to a different traumatic event in order to avoid memories of the more traumatic sexual event.

A PTSD diagnosis alone should not be used as a basis for the conclusion that the traumatic events actually occurred. The *DSM-IV-TR* categories were developed to further consistency in diagnosis and to promote more accurate communication among care givers about a patient's conditions. Stating the diagnosis, after appropriate evaluation, is professionally acceptable.


However, even after a thorough forensic review, it is not professionally appropriate for the examiner to express an opinion of whether the underlying trauma actually occurred.

PTSD results from an interaction between the traumatic event (or events) and the victim's preexisting psychological conditions. People are vulnerable in different ways to different kinds of trauma on the basis of their psyche and past experiences. The effects of trauma depend not only on the intensity of the stressor, but also on the feelings of isolation and helplessness the person associates with a type of event.

In essence, a forensic examiner may testify that a traumatic event or events were substantial factors in precipitating identifiable conditions—as long as the examiner acknowledges the complex relation to the conditions of the psyche of the subject. The forensic examiner testing the hypothesis of PTSD should examine a wide range of data sources to seek information which demonstrates the subject's level of vulnerability, the intensity of the traumatic events, or the degree of helplessness experienced by the subject at the time of the occurrences.

Conclusion

Forensic evaluations by psychologists in lawsuits brought by adult survivors of

child sexual abuse can help dramatically in explaining a client's clinical conditions and in assessing factors believed to have contributed to the disorders. The forensic examiner can assist throughout the litigation process, identifying the data fields to be investigated, assisting in the interpretation of information from the data fields, and providing persuasive testimony at deposition and trial. 

Chester W. Fairlie, Esq., primarily represents rape victims and adult survivors of child sexual abuse. Initially, he represented criminal defendants against charges of rape, robbery, and murder, but he developed an interest in helping victims of crime after five years of volunteer work as an EMT in the late 1980s prompted him to join the Victim Rights Committee of the Connecticut State Bar Association. Since then, he has undertaken more than thirty cases, involving numerous civil trials, on behalf of rape victims and adult survivors of child sexual abuse. Mr. Fairlie is an NCVBA charter member and can be contacted at 199 Broad Street, New London, CT 06320, (860) 443-5297, attycf@hotmail.com.

1. *Daubert, et al. v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)(setting forth standards for judging the admissibility during trials of testimony by expert witnesses).
2. Cassandra Kiesel, Ph.D. and John Lyons, Ph.D., *Dissociation as a Mediator of Psychopathology Among Sexually Abused Children and Adolescents*, *AM. J. PSYCHIATRY* 2001; 158: p.1034.
3. *Id.*
4. *Id.*
5. *Id.* at 1038.

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