

Critical Issues In Child Sexual Abuse: Historical, Legal, And Psychological Perspectives

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JUDGING THE CREDIBILITY OF HISTORIC CHILD SEXUAL ABUSE COMPLAINANTS How Judges Describe Their Decisions

Deborah A. Connolly
Simon Fraser University

Heather L. Price
University of Regina

Heidi M. Gordon
Simon Fraser University

Criminal prosecutions of child sexual abuse alleged to have occurred in the distant past raise myriad challenges. One significant challenge involves assessing the credibility of complainants. In the present study, 51 bench trials involving 87 complainants were coded into categories related to complainants' memory for the offense, as well as credibility of the complainant, reliability of the evidence, and judicial inferences. A total of 4,827 judicial comments were identified and categorized. Judges were more likely to describe the allegations specifically than generally; however, they were sensitive to the predictably impoverished nature of memory after such a long delay. Consistent with psychological evidence, there were more judicial comments about inconsistencies in acquit cases than in convict cases and more comments about corroboration in convict than in acquit cases, although neither inconsistencies nor corroboration were strongly associated with verdict. Of some concern was the apparent and considerable judicial interest in complainants' behavior and emotions around the time of the alleged abuse and around the time of disclosure.

Keywords: historic child sexual abuse complaints, recent complaint warning, credibility assessment

"Historically, immediate complaint was a requirement before a sexual assault or abuse prosecution could succeed" (Lewis, 2006, p. 93). This rule probably dates back to 13th-century common law, where failure to make a timely complaint was a full defense to rape (Cossins, 2002). The rule evolved such that, by the 18th century, the trier of fact was expected to draw an adverse inference with respect to credibility if a timely complaint was not made to an official or layperson (Gobbo, 1970, as cited in Cossins, 2002). Accordingly, evidence of earlier complaints, ordinarily inadmissible as hearsay or as previous consistent statements, was admitted if the earlier complaint was made at the first reasonable opportunity after the offense was committed (Lewis, 2006). For at least two reasons this was a particularly oppressive doctrine for child victims of sexual assault. First, most victims of child sexual abuse (CSA) do not report their victimization immediately. In fact, it has been estimated that approximately two-thirds of

Deborah A. Connolly and Heidi M. Gordon, Department of Psychology, Simon Fraser University, Burnaby, British Columbia, Canada; Heather L. Price, Department of Psychology, University of Regina, Regina, Saskatchewan, Canada.

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Correspondence concerning this article should be addressed to Deborah A. Connolly, Department of Psychology, Simon Fraser University, 8888 University Drive, Burnaby, British Columbia, V5A 1S6 Canada. E-mail: debc@sfu.ca

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