



CHILD SEX ABUSE

By Susan Seahorn

Unreliability of Child Witnesses in Sex Abuse Cases: a Tool for the Defense

Children are susceptible to suggestion. The investigative interview is "a crucial, perhaps determinative, moment in a child sex abuse case."¹ If suggestive or coercive interview techniques are employed, the child's memory of the events may be irremediably damaged at every interview.

Reliability cannot be equated with credibility in children's statements. They are different. "Credibility" implies that the speaker knows whether what is said is true or false. Credibility connotes some amount of culpability. When a person is not credible, that person may be lying. "Reliability" is comparable to accuracy. It is not a product of the speaker's will. When the person's memory of events is changed or lost, the person no longer knows what is true and what is false. It is not a case of the person lying; the person's memory is damaged or lost.

When what a person says is unreliable, the information is wrong, but the speaker is unaware of it. The inaccurate information is related innocently by the speaker. Where suggestive techniques are used, the child's recollection of events may be irreversibly altered. The child cannot distinguish the real memory from the altered one. Unreliable statements in child sex abuse cases spring from misunderstanding, misinterpretation and/or the destruction of the memory through improper questioning.

Justice Stewart of the Utah Supreme Court outlined the reliability problems of children's statements in sex abuse cases in *State v. Matsamas*:²

Children's declarations concerning abuse may raise special problems of reliability. That is especially true when the adults concerned are involved in a custody dispute or for other reasons

are antagonistic to each other. Accusations made by children may have such a reverberating clang as to all but drown out the exculpatory evidence in the minds of jurors. For the most part, children, especially young children, do not lie, at least in the sense that gives rise to a judgment of moral culpability. However, they can misstate reality and even confuse imagination, fantasy, and confabulation with reality, and sometimes not know that they have done so. Children may also perceive in a reasonably accurate way, but describe the perception in an unintentionally misleading manner. A child's inaccurate declaration may also result from psychological processes that have the appearance of accurate recall, but in reality are not. Discrimination between factually accurate and inaccurate statements can be difficult, and sometimes impossible. One important cause of unreliability may be a child's desire to please adults or avoid blame or guilt feelings. The willingness to give suggested answers to leading questions and thereby construct 'facts' in response to a suggested scenario is not uncommon. Children — and sometimes adults — who accept such suggestions and transmute them to "facts" can "construct" a "memory" of those "facts" that becomes indistinguishable from reality in their minds.³

U.S. Supreme Court Justice Scalia noted the problems in the dissenting opinion in *Maryland v. Craig*:⁴



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The "special" reasons that exist for suspending one of the usual guarantees of reliability in the case of children's testimony are perhaps matched by "special" reasons for being particularly insistent upon it in the case of children's testimony. Some studies show that children are substantially more vulnerable to suggestion than adults, and often unable to separate recollected fantasy (or suggestion) from reality. See Lindsay & Johnson, "Reality Monitoring and Suggestibility: Children's Ability to Discriminate Among Memories From Different Sources," in *Children's Eyewitness Memory* 92 (S. Ceci, M. Toglia & D. Ross eds. 1987); Feher, "The Alleged Molestation Victim, The Rules of Evidence, and the Constitution: Should Children Really Be Seen and Not Heard?," 14 *Am. J. Crim. L.* 227, 230-233 (1987); Christiansen, "The Testimony of Child Witnesses: Fact, Fantasy, and the Influence of Pretrial Interviews," 62 *Wash. L. Rev.* 705, 708-711 (1987). The injustice their erroneous testimony can produce is evidenced by the tragic Scott County investigations of 1983-1984, which disrupted the lives of many (as far as we know) innocent people in the small town of Jordan, Minnesota. At one stage those investigations were pursuing allegations by at least eight children of multiple murders, but the prosecutions actually initiated charged only sexual abuse. Specifically, 24 adults were charged with molesting 37 children. In the course of the investigations, 25 children were placed in foster homes. Of the 24 indicted defendants, one pleaded guilty, two were acquitted at trial, and the charges against the remaining 21 were voluntarily dismissed.⁵

Due process principles acknowledge that, "Reliability [is] the linchpin in determining admissibility" of evidence.⁶

- tioning of the child;
- how many times was the child questioned;
- were some of the same questions asked at each interview;
- what were the surrounding circumstances, etc. as to each series of questioning;
- what if any books, tapes or other information about sexual abuse were given or shown to the child;
- what relationship does the questioner have with the accuser and what, if any, animosity exists between them;
- what is the relationship of the child and the questioner;
- what is the relationship of the child and the accused;
- what relationship does the child have to both people and has there been any rift between the child and the people involved;
- what other people may have been present during any questioning of the child;
- what, if anything, did the questioner believe happened.

You must find out who else may have interviewed the child. With professionals such as psychologists and social workers, you should also find out what their relationship to the prosecution is and if their payment requires a finding of sexual abuse. Contingency of payment on a finding of abuse would clearly impinge on an interviewer's neutrality. You should find out as much as possible about interviews conducted by police investigators as well. Many law enforcement investigators who label themselves specialists in the investigation of child sex abuse really do not have adequate training to justify such a title. When they do not have adequate training, often they will make serious mistakes when interviewing the child. As the defense lawyer, you must not assume that the interviewer followed proper protocol in interviewing the child simply because the officer is called a sexual abuse investigator. Look carefully at all records of interviews, the form of questions used, repetitive use of questions, subtle coercion or rewards, etc. Often there will be improper procedures followed even by the purportedly well trained investigator.

If video tapes have been made of interviews, ask to have copies of them or at least be allowed to view them yourself. If that request is refused, at a minimum you should seek a court order to preserve the tapes so that they can be reviewed by an expert or an appellate court at a later date. Make a motion as early as possible requesting an order directing that all future interviews with the child be recorded. There is ample authority which states that proper interview

techniques include recording the interviews. Thus, there are large bodies of scientific and legal authority to support the court granting such a motion.

Use of Improper Interview Techniques that Affect Reliability

The unreliability of evidence is something the defense should always be allowed to show.²¹ Reliability cuts to the heart of admissibility of evidence. It is a due process violation to allow conviction of a defendant on the basis of unreliable evidence.²² Clearly, the defense may attempt to show unreliability of the evidence through cross-examination of the witnesses. The defendant has a constitutional right to cross-examine witnesses as part of the right to confrontation. When the goal of the cross-examination is to show violation of another constitutional right, *i.e.*, the reliability of the evidence impinges on due process, there should be little if any limitation on the cross-examination.

Persons who interviewed the child should be cross-examined about methodology used and about their knowledge of proper, accepted standards as practiced by experts in the field. However, when the reliability of the evidence has been lost through the use of improperly suggestive interview techniques, there is little hope that cross-examination of the child will reveal that the reliability of the evidence has been lost.

The risk with young children is that they may be unable to distinguish between a memory of something which actually happened from a memory of something they imagine happening. *See e.g.*, Johnson & Foley, *supra*, at 45 ["Differentiating Fact from Fantasy: The Reliability of Children's Memory," 40 *J. Soc. Issues* 33 (1984)] If an interview technique leads a child to imagine an event, the child's memory of that imagined event will be indistinguishable from memories of events which the child actually experienced. Loftus & Davies, *supra*, at 52-53. ["Distortions in the Memories of Children," 40 *J. Soc. Issues* 51 (1984)] Once this tainting of memory has occurred, the problem is irremediable. That memory is, from then on, as real to the child as any other. This "confabulation" is precisely the [same] problem with hypnotically enhanced memory. . . . *See* Loftus & Davies *supra*, at 65; Stafford, "The Child as a Witness," 37 *Wash. L. Rev.* 303 at 309 (1962).²³

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Because cross-examination of the child will not be effective, the defense should be allowed to show the unreliability of the state's evidence through presentation of independent defense evidence. Expert witnesses can testify about the proper techniques for interviewing children and how the use of improper methods can irrevocably destroy the reliability of a child's memory of an event. The experts can relate the methodology to the facts of the case and point out to the jury what was done improperly in that particular case, thus educating the jury about specific things that should raise reasons to doubt the reliability of what the child says happened. The North Carolina Supreme Court has held that hypnotically refreshed testimony was inadmissible because it was unreliable.²⁴ Previously the North Carolina Supreme Court's accepted view was that hypnotically refreshed testimony was admissible but its reliability was assailable through the presentation of "expert testimony on hypnosis, its risks, and limitations; and appropriate instructions from the court, purportedly [to] enable the jury to evaluate properly the credibility of a witness who has been hypnotized."²⁵ Similar rulings have been made by other courts.²⁶

Since hypnotically refreshed memory is inadmissible because of the suggestive nature of hypnosis, it would follow that any time evidence is admitted about which a question has been raised as to its reliability, the question should at the very least be presented to the jury through expert testimony. The jury can then consider the potential problems in determining whether such evidence is reliable.

Another analogous situation involving reliability of evidence arises where there is a question of the voluntariness of a confession. Even if a court has ruled as a matter of law that a confession is admissible, the defense is allowed to inform the jury through presentation of evidence, of the environment surrounding the giving of a confession to question the reliability and trustworthiness of that confession. In *Crane v. Kentucky*,²⁷ a defendant was prohibited at trial from introducing evidence concerning the surrounding circumstances at the time he gave a confession. The United States Supreme Court reversed the conviction and remanded for a new trial because the trial court had prohibited "the defendant's traditional prerogative to challenge the confession's reliability during the course of the trial," and thereby denied the defendant his constitutional right to a fair trial.²⁸ "The Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'"²⁹ "[A]n essential component of procedural fairness

is an opportunity to be heard. . . . That opportunity would be an empty one if the state were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence . . . exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encountered and 'survive the crucible of meaningful adversarial testing.'"³⁰

Additionally, many states have recognized a defendant's constitutional right to present a defense. For example, North Carolina recognized the defendant's constitutional right to present a defense in *State v. Hill*.³¹

A defendant has the constitutional right, in a criminal prosecution, to confront his accusers with other testimony. Every defendant is entitled under the Constitution to have a reasonable opportunity to prepare his defense. This includes the right to consult with his counsel and to have a fair and reasonable opportunity, in the light of all attendant circumstances, to investigate, to prepare, as well as to present his defense. This right must be accorded every person charged with a crime.

N.C. Const., Art. I, § 11; U.S. Const. Amend. XIV.³²

The North Carolina Supreme Court has recognized the right to present a defense as well, "Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law."³³

In addition to cross-examining witnesses with the purpose of exposing the use of improper interview techniques that will raise doubts as to the reliability of the accusations of the child, the defense should present testimony to more clearly inform the jury of the problems involved in interviewing child witnesses. The attack on reliability of the child's statements cannot be adequately made without the use of experts who will be able to inform the jury fully of the things they should look for in evaluating the evidence.

Unreliability as a Way of Keeping the Case from the Jury

Recent decisions have been handed down by state supreme courts which acknowledge the serious problems with the reliability of statements of child witnesses in sex abuse cases. These courts found that where the reli-

ability of a child's statements is undermined by taint induced due to improper interviewing, the statements may be so much in question that the evidence should not be presented to the jury. Not all of these courts have agreed as to the proper procedure for addressing this problem, but they are unanimous in the belief that where the reliability of the child's statements was lost the fundamental question of admissibility of the evidence must be addressed.

The view that the reliability of the evidence may be so undermined as to prohibit its introduction would appear to be correct. There are studies that show that once the memory of a child has been tainted by suggestive questioning and false information has been adopted as part of the memory, there is no way to reveal this through the use of cross-examination or other courtroom procedures. Because the child is unable to distinguish the real events from the imagined, suggested events no amount of questioning will reveal the damage. "[S]ocial science research indicates that suggestive interviews will change children's cognitive memory of an event. In such a situation, no amount of cross-examination would shake a child's credibility because that child would not be consciously lying."³⁴

The problem of cross-examination being an inadequate means of testing the reliability of evidence has been previously acknowledged by the courts. In the dissenting opinion in *U.S. v. Owens*,³⁵ Justice Brennan said that the right to confrontation and cross-examination means the right to effective cross-examination that affords the jury a sufficient basis for evaluating the truth of the statement. The mere fact that a person was physically available to be cross-examined does not fulfill the right to confrontation. In *Owens* the witness had a near total loss of memory due to a head injury, and Justice Brennan said that the witness' "near total loss of memory precluded any meaningful examination or assessment of his out-of-court statement and thus should have barred the admission of that statement."³⁶ The majority in *Owens* held that the fact the witness testified and was subject to cross-examination was sufficient to satisfy confrontation requirements under the facts of that case, but specifically stated that if suggestive procedures had been used and the reliability of the statement was at issue, then confrontation may not have been satisfied simply by the fact that the witness was physically before the court and therefore technically available for cross-examination.³⁷

*State v. Peoples*³⁸ also acknowledges the fact that where the reliability of the witness' memory has been lost due to the witness

having been hypnotized, cross-examination would be an inadequate means by which to test its reliability. The court in *Peoples* held that because cross-examination would not aid in evaluating the reliability of the tainted testimony, the evidence should not be admitted into evidence at all. "[H]ypnosis not only irrevocably masks whether a subject's recall induced by it is true, it also creates a barrier to the ascertainment of its truthfulness through cross-examination."³⁹ "[H]ypnotically refreshed testimony may well be completely unreliable. More important, this unreliability may be impossible for even an expert to ascertain since neither the hypnotist nor the subject can accurately determine whether a hypnotized person's recall under or after hypnosis is actual memory or confabulation."⁴⁰ Because "overwhelming scientific evidence suggests that hypnotically refreshed testimony is not inherently reliable and that cross-examination is not an adequate safeguard against the dangers inherent in hypnosis[.],"⁴¹ the court concluded that hypnotically refreshed testimony is inadmissible in North Carolina.⁴²

Similarly, the view that unreliable evidence should be excluded because such unreliability cannot adequately be tested in the courtroom setting is well settled with regard to statements that are unreliable because they

are involuntary or coerced.⁴³ Most states have accepted the view that involuntary, coerced confessions are inadmissible because they are unreliable. For example, North Carolina held that involuntary confessions are inadmissible because they are unreliable in *State v. Pruitt*.⁴⁴ The North Carolina Supreme Court said where a confession is, "made under the influence of hope or fear, there is no test of its truthfulness."⁴⁵

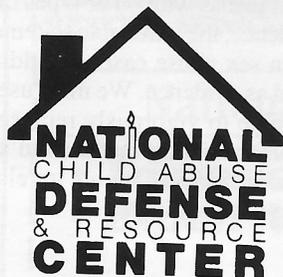
That unreliable evidence should be excluded and not considered by the jury is a well-recognized concept. Not until recently, however, has this concept been adopted and applied in the context of child sex abuse cases. Some courts have held that where a child has been subjected to suggestive interviewing and the reliability of the statements made by the child are questionable, the evidence may be so untrustworthy that the jury should not be allowed to consider it at all.

State v. Margaret Kelly Michaels,⁴⁶ involved multiple allegations of sexual abuse against a day care worker. Investigatory interviews of the alleged child victims that were conducted by the state of New Jersey involved the use of highly improper interview techniques that included:

[A] lack of investigatory independence by the interviewers; pursuit by interviewers of a preconceived notion of

what had happened to the child; the use of leading questions; incessantly repeated questions; explicit vilification and criticism of the person charged; a lack of control over outside influences such as contact with other children and being told what other children said in their interviews; repeated almost incessant interviews of the children over a two year period; use of mild threats, cajoling, bribing, and positive reinforcement; failure to challenge or probe outlandish statements made by the children.

The New Jersey Supreme Court found that as a result of the improper interview techniques used, "a substantial likelihood exists that the children's recollection of past events was both stimulated and materially influenced by that course of questioning. . . . This Court has a responsibility to ensure that evidence admitted at trial is sufficiently reliable so that it may be of use to the finder of fact who will draw the ultimate conclusions of guilt or innocence. That concern implicates principles of constitutional due process."⁴⁷ The court acknowledged that because the reliability of the statements may have been lost, the use of cross-examination will not reveal its inaccuracy because the child will



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not be aware of the taint that has been introduced. As a result of this finding, the New Jersey Supreme Court affirmed the decision of the appellate division, which reversed the convictions and remanded the case for a new trial. Most importantly, the New Jersey Supreme Court ordered that prior to retrial, a hearing must be held to determine whether the statements of the children possess sufficient indicia of reliability to allow them to be admitted into evidence in any retrial.

After finding that the required threshold showing had already been met in *Michaels*, the court laid out a procedure to be followed in similar situations. The procedure requires that when a defendant has made a showing of "some evidence" that the victim's statements were a product of suggestive or coercive interview techniques, a hearing will

changes in the child which began shortly after the divorce, the mother believed that some form of sexual abuse had occurred. She took the child to a doctor who could find no physical evidence to support abuse. After the separation, the mother began taking the child to see a "master's level" psychologist. In conducting her sessions with the child, the psychologist used a book and accompanying tape called "Sometimes It's OK to Tell Secrets" which is a book about sexual abuse of children. Evidence introduced at trial showed that the psychologist acted more as an investigator than as a therapist and resorted to the use of both repetitive and leading questions. The child's mother obtained the same book from the library and played the tape and read the book to the child numerous times over sev-

child witness has been subjected to suggestive interview techniques; the statements obtained thereby are unreliable. The same reason exists for excluding unreliable evidence in child sex abuse cases that has long existed for excluding hypnotically refreshed testimony or statements that have been involuntarily obtained, or situations where a witness has lost his or her memory and there is a question of the reliability of the statements. Children's unreliable statements in sex abuse cases should be excluded from evidence just as they are in other situations where the evidence is found to be unreliable.

This has been acknowledged and put into practice in three states. Most states have previously accepted the view that unreliable evidence in contexts other than sexual abuse cases should be excluded. This view should

not be aware of the taint that has been introduced. As a result of this finding, the New Jersey Supreme Court affirmed the decision of the appellate division, which reversed the convictions and remanded the case for a new trial. Most importantly, the New Jersey Supreme Court ordered that prior to retrial, a hearing must be held to determine whether the statements of the children possess sufficient indicia of reliability to allow them to be admitted into evidence in any retrial.

After finding that the required threshold showing had already been met in *Michaels*, the court laid out a procedure to be followed in similar situations. The procedure requires that when a defendant has made a showing of "some evidence" that the victim's statements were a product of suggestive or coercive interview techniques, a hearing will be held at which the burden of proof will be on the state to prove the reliability of the proffered statements by clear and convincing evidence. Such proof may include the testimony of experts which may be countered by defense expert testimony. Testimony is not to extend to the ultimate issue of the credibility of the child. If under the totality of the circumstances, the statements do not retain a sufficient degree of reliability, the statements will not be admissible at trial. If under the totality of the circumstances, the statements retain a degree of reliability sufficient to outweigh the effects of the improper interview techniques, then the statements may be introduced at trial. If the statements are introduced at trial, the court specifically held that experts may be called "to aid the jury by explaining the coercive or suggestive propensities of the interviewing techniques employed."⁴⁸

Michaels is a landmark in the law of child sex abuse cases. It recognizes the unreliability of children's statements where the child has been subjected to improper interview techniques, and establishes that if the state cannot prove by clear and convincing evidence that the statements are reliable, the statements will not be admissible. Most important, this procedure is to be carried out pretrial. This allows the defense the possibility of preventing the client from ever having to endure a trial.

The Minnesota Supreme Court had similar concerns about the reliability of the statements of the child in *State v. Huss*.⁴⁹ In *Huss* the defendant and father of the child was convicted of sexual abuse of his three-year-old daughter. The abuse allegedly occurred after he and his wife were separated. There was a dispute over custody and visitation in the case with the wife objecting to unsupervised visitation with the father/defendant. Because of behavior

changes in the child which began shortly after the divorce, the mother believed that some form of sexual abuse had occurred. She took the child to a doctor who could find no physical evidence to support abuse. After the separation, the mother began taking the child to see a "master's level" psychologist. In conducting her sessions with the child, the psychologist used a book and accompanying tape called "Sometimes It's OK to Tell Secrets" which is a book about sexual abuse of children. Evidence introduced at trial showed that the psychologist acted more as an investigator than as a therapist and resorted to the use of both repetitive and leading questions. The child's mother obtained the same book from the library and played the tape and read the book to the child numerous times over several months.

After over six months of exposure to the book and tape, the child made an allegation of abuse against her father. At trial, the only direct evidence in support of the sexual abuse charge was the testimony of the child. The child's testimony was contradictory, and it took an hour of direct testimony to induce the child to make any accusation against her father. The Minnesota Supreme Court considered whether the evidence presented was sufficient to survive a motion of nonsuit. The court held that because of the extensive use of the book and tape and the suggestive interview techniques employed by the therapist, coupled with the therapist's lack of neutrality, there was sufficient reason to question the validity and reliability of the accusations such that the evidence was insufficient to be sent to the jury. The defendant's conviction was reversed due to insufficiency of the evidence.

In *Felix v. State*,⁵⁰ the Nevada Supreme Court held that statements of children regarding alleged sexual abuse perpetrated against them were unreliable as a result of numerous interviews, the use of leading questions, allegations never being made to the child's parents but only to a therapist and later repudiated, and several of the allegations being clearly false or incredible. The court therefore reversed the convictions of the accused. The court in *Felix* determined that the trial court had failed to adequately assess the reliability of the statements before allowing their admission, leaving the impression that future cases should address the issue at the time the evidence is proffered.

Conclusion

"Reliability [is] the linchpin in determining admissibility."⁵¹ The reliability problems that exist in involuntary confessions and hypnotically refreshed testimony exist where a

child witness has been subjected to suggestive interview techniques; the statements obtained thereby are unreliable. The same reason exists for excluding unreliable evidence in child sex abuse cases that has long existed for excluding hypnotically refreshed testimony or statements that have been involuntarily obtained, or situations where a witness has lost his or her memory and there is a question of the reliability of the statements. Children's unreliable statements in sex abuse cases should be excluded from evidence just as they are in other situations where the evidence is found to be unreliable.

This has been acknowledged and put into practice in three states. Most states have previously accepted the view that unreliable evidence in contexts other than sexual abuse cases should be excluded. This view should be expanded to include unreliable evidence in child sex abuse cases.

To adequately represent a defendant in a child sex abuse case, you must explore the possibility that the child may have been subjected to suggestive interview techniques. Where there is reason to believe that the child's memory of events has been damaged or lost, you should introduce the idea to the jury to help them assess the evidence. Based on the case law cited here, a pretrial motion to exclude the evidence because it is unreliable should be made. The court may recognize that just as with other types of unreliable evidence, the unreliable statements of children in sex abuse cases should not be introduced as evidence. We must use every tool available to vigorously represent our clients. Substantiating that a child's statements in a sex abuse case are unreliable is just such a tool. Use it. ■

NOTES

1. Gail S. Goodman and Vicki S. Helgeson, *Child Sexual Assault: Children's Memory and the Law*, 40 U. MIAMI L. REV. 181, 195 (1985).
2. 808 P.2d 1048 (Utah 1991).
3. *Id.* at 1055 (Stewart, J., concurring).
4. 110 S. Ct. 3157, (1990).
5. *Id.* at 3175 (Scalia, J., dissenting).
6. *Manson v. Braithwaite*, 97 S. Ct. 2243, 2253 (1977), 53 L. Ed. 2d 140, 154.
7. *State v. Michaels*, 642 A.2d 1372, 1994 N.J. LEXIS 504, at *34 (N.J. June 23, 1994).
8. See Goodman and Helgeson, *Child Sexual Assault: Children's Memory and the Law*, 40 U. MIAMI L. REV. 181, 195, (1985); David C. Raskin & John C. Yuille, PROBLEMS IN EVALUATING INTERVIEWS OF CHILDREN IN SEXUAL ABUSE CASES IN PERSPECTIVES ON CHILDREN'S TESTIMONY 184, 195-196 (Stephen Ceci ET AL. eds., 1989).
9. 110 S. Ct. 3139, (1990).
10. *Id.* at 3148.
11. *Felix v. State*, 849 P.2d 220, 243, (Nev. 1993); See also, D. Younts, *Evaluating and Admitting Expert Opinion Testimony In Child Sexual Abuse Prosecutions*, 41 DUKE L. JOURNAL 691 (1991), (wherein

the author advocates video taping of interviews so that a court can make a determination of whether or not suggestive techniques were used by the interviewer).

12. See *The Suggestibility of Children's Recollections: Implications for Eyewitness Testimony*, (American Psychological Association), J. Doris ed. 1991.

13. *Id.*

14. See Debra A. Poole and Lawrence T. White, *Effects of Question Repetition on Eyewitness Testimony of Children and Adults*, 27 DEVELOPMENTAL PSYCHOLOGY, November (1991) at 975; *The Suggestibility of Children's Recollections*, supra, J. Doris ed., 1991; and Goodman and Helgeson, supra, 40 U. MIAMI L. REV. at 184-187.

15. Goodman and Helgeson, supra, 40 U. MIAMI L. REV. at 184-187.

16. See *The Child as a Witness*, 89 PEDIATRICS 513, 514 (March 1992).

17. See Goodman and Helgeson, supra, 40 U. MIAMI L. REV. (1985); White, ET AL., *Influences of an Interviewer's Behavior in Child Sexual Abuse Investigations*, 17 BULL. AM. ACAD. PSYCHIATRY & LAW 45 (1989).

18. *Influences of an Interviewer's Behavior in Child Sexual Abuse Investigations*, 17 BULL. AM. ACAD. PSYCHIATRY & LAW 45 (1989).

19. See *The Suggestibility of Children's Recollections: Implications for Eyewitness Testimony*, Doris, ed. (American Psychological Association), 1991.

20. See *The Child as a Witness*, 89 PEDIATRICS 513, 514 (March 1992); D. Younts, *Evaluating and Admitting Expert Opinion Testimony In Child Sex-*

ual Abuse Prosecutions, 41 DUKE L. JOURNAL 691 (1991).

21. See *Idaho v. Wright*, 110 S. Ct 3139 (1990), (wherein the Supreme Court reversed the conviction because the hearsay statements of the child did not bear sufficient indicia of reliability).

22. See *Manson v. Braithwaite*, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977).

23. *State v. Wright*, 775 P.2d 1224, 1228 (Idaho 1989) (this is the Idaho Supreme Court's opinion in what was later *Idaho v. Wright*), 110 S.Ct. 3139 (1990), in which the U.S. Supreme Court affirmed the Idaho Supreme Court's opinion.)

24. See *State v. Peoples*, 311 N.C. 515 (1984).

25. *Id.* at 525.

26. See *Rock v. Arkansas* 107 S. Ct. 2704 (1987), in which the Supreme Court discusses the introduction of hypnotically refreshed testimony and says that when such testimony is admitted, "a jury can be educated to the risks of hypnosis through expert testimony and cautionary instructions." *Id.* at 2714.

27. 106 S. Ct. 2142 (1986).

28. *Id.* at 643.

29. *Id.* at 645.

30. *Id.* quoting *United States v. Cronin*, 104 S. Ct. 2039 (1984).

31. 9 N.C. App. 279 (1970).

32. *State v. Hill*, 9 N.C. App. 279, 284 (1970), reversed on other grounds 277 N.C. 547.

33. *State v. Wells*, 290 N.C. 485, 491, (1976), quoting *Washington v. Texas*, 388 U.S. 14, 18 L. Ed. 2d 1019, 87 S. Ct. 1920 (1967). Where the defense being presented is an attack on the reliability of the state's evidence and thus a defense based

on a violation of due process, there is an absolute right to present evidence that puts forward that defense.

34. D. Younts, *Evaluating and Admitting Expert Opinion Testimony In Child Sexual Abuse Prosecutions*, 41 DUKE L. JOURNAL 691, 703-704, (1991); and see, *State v. Wright*, 775 P.2d 1224, 1228 (Idaho 1989).

35. 108 S. Ct. 838, 484 U.S. 554, 98 L. Ed. 2d 951 (1988).

36. 108 S. Ct. at 848.

37. *Id.* at 84.

38. 311 N.C. 515 (1984).

39. *Id.* at 523.

40. *Id.* at 526.

41. *Id.*

42. See *Rock v. Arkansas* 107 S. Ct. 2704 (1987), wherein the United States Supreme Court discusses the problems with reliability of hypnotically refreshed testimony. Note 14 lists the states in which hypnotically refreshed testimony is excluded because it has been found to be unreliable.

43. See *Culombe v. Connecticut*, 81 S. Ct. 1860 (1961), which discusses the history of jurisprudence excluding involuntary confessions.

44. 286 N.C. 442 (1975).

45. *Id.* at 456.

46. 642 A.2d 1372, 1994 N.J. LEXIS 504 (N.J. June 23, 1994).

47. *Id.* at *33-34.

48. *Id.* at *49.

49. 506 N.W.2d 290 (Minn. 1993).

50. 849 P.2d 220 (Nev. 1993).

51. *Manson v. Braithwaite*, 97 S. Ct. 2243, 2253 (1977).

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