

Errors in investigations of disputable cases of child sexual abuse

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Abstract

Suggestive questioning in the interviewing of children in cases with alleged child sexual abuse has received a considerable amount of attention in international research. The purpose of this study is to clarify the occurrence of other kinds of serious errors in comprehensiveness and accuracy in these investigations.

Twenty cases of alleged child sexual abuse were taken from the author's files with Swedish cases. In these cases, the author himself had made a thorough written expert witness report to the court over investigative methods and the reliability of important statements. There were no confessions of the allegations in any of these cases. All cases were taken to court by prosecutors.

Fundamental and simple errors concerning comprehensiveness and accuracy in the police investigations were focused and were categorized. Serious errors were found in all cases and were grouped into seven categories.

- I. Errors in documentation
- II. Replies, confrontations or comparisons are missing
- III. Social and psychological situation is missing
- IV. Physical, technical, economical and time details are missing
- V. Clinical investigations are missing
- VI. Ignoring or withholding witnesses or information
- VII. Inappropriate or improper methods

The basic pattern for the majority of errors is that information is missing. The investigator seeks to increase information that supports the allegation of sexual abuse and avoids information that could support an alternative hypothesis, that is the confirmation bias is strong.

Child sexual abuse is considered a very serious crime and is associated with ignominy for the accused. It seems important that investigations of allegations of child sexual abuse which constitute the grounds for the decision to prosecute or not prosecute, are conducted with objectivity and impartiality. Laws and widespread concepts of the legal rights of the individuals involved prescribe this.

Suggestive questioning in the interviewing of children in cases with alleged child sexual abuse has received a considerable amount of attention in international research. However, there are numerous other serious errors that occur in child sexual abuse investigations. The concept of objectivity should include demands for comprehensiveness and accuracy. Critical examination of allegations of crimes is difficult without comprehensiveness and accuracy. More specifically we mean basic demands for

- comprehensiveness and completeness in the relevant information
- precision in the relevant information
- correctness in the relevant and irrelevant information
- systematic comparisons between central particulars, for instance investigating important contradictions
- objective and ethically acceptable basic procedures.

If there are faults in any of the above criteria serious human damages can occur. A perpetrator could go free or an innocent person could be punished and a child can be damaged by a false victim identity imposed on it by the social environment.

The purpose of this study is to clarify the occurrence of the above mentioned kinds of serious errors in comprehensiveness and accuracy in such investigations. However, errors also occur in logic, in strategy, in technique of questioning, in interpretation, and in lack of critical analysis, that are not focused on in this study.

Method

Twenty disputable cases of alleged child sexual abuse with complete documentation were taken from the author's files with Swedish cases. In these cases, the author himself had made a thorough written expert witness report to the court over investigative methods and the reliability of important statements. There were no confessions of the allegations in any of these cases. All cases were taken to court by prosecutors.

Fundamental and simple errors concerning comprehensiveness and accuracy in the police investigations were focused and categorized. With this limited sample of cases it is not possible to state how frequent different errors are in the population of disputable cases at large. However, it should be valuable to clarify what kinds of errors that occur within the domain of comprehensiveness and accuracy.

Results: categories of errors

A significant amount of errors, of a more or less serious kind, were found. The most prevalent error found was that the information gathered was incomplete. To some extent information is insufficient in precision or is incorrect. Other errors involve lack of systematic comparisons and different kinds of oversight or inappropriate behavior in the investigation.

The errors were grouped into seven categories (I-VII) on the basis of similarity.

I. Errors in documentation

Documentation errors mean that documentation is missing, is imprecise, is incomplete, contains errors or that confirmation from source persons or basic control of information is missing. There are large amounts of documentation errors in all twenty cases.

In Sweden investigative conversations between the police and the alleged child sexual abuse victim are as a rule video taped. In several cases, no tape exists of the first interrogation or of other interrogations with the alleged victim. In most cases, there is no dialogue text from the first interrogation with the suspect, which is recommendable. Dialogue texts from the interrogations as a rule are not validated by the interrogator, or the secretary or the interrogated person. When control is conducted errors in details can often be found in the dialogue texts. In some cases, parts of the dialogue is missing, which is not indicated in the text. In one case, the dialogue text was evidently partly forged. Noticeable activities of the child, e.g. doing other things, are as a rule not mentioned in the text. Summarizing texts from interrogations are seldom confirmed by the interrogated person.

What happens between the child and the police before the interrogation, in pauses and after the interrogation is as a rule not documented. In several cases, social welfare secretaries, school welfare officers, day care personnel and others have performed what can be called "pre-interrogations" with alleged victims. These have never been registered on tape and they are as a rule not documented in the notes either. If notes exist the prosecutor is seldom interested in them. In some cases, the police investigator performs thorough interrogations of these witnesses. In some cases, no such interrogation or weak interrogation is conducted. It seems that the police had not informed other organisations that pre-interrogations should not be conducted due to the risk of influencing the child.

In two cases, there are drawings that the child supposedly has drawn. In these cases, there is no witness confirmation that the child had drawn them nor account of the circumstances under which they were drawn. There is no description of how they were selected from the child's portfolio of drawings. For instance, drawings could be found with other relevant, and possibly contradictory, content. All drawings of the child during the relevant time period should be shown. In other cases, where drawings with a specified content are said to exist, they have not been included in the documents, and it cannot be excluded that the descriptions are wrong or biased.

II. Replies, confrontations or comparisons are missing

In investigative work it is necessary to confront reports from different sources, to confront sources with their own earlier reports or other particulars and to make systematic, careful comparisons of, for instance, different descriptions of the same event.

The suspect was often not given the opportunity to reply to all the allegations from the victim and others. In not one case, has the suspect been given the opportunity to reply to the victim detail for detail. The interrogators often present subjective samples and own interpretations from the interrogations of the alleged victim and other important persons. The suspect has not had an opportunity to reply to some of the important allegations. In one case, for instance, the alleged perpetrator was shown only the last half hour of a video tape with 2 hours and 15 minutes with the alleged victim. And he was not given opportunity to respond particular for particular. To ask the alleged victims and persons close to them to respond to details from the suspect is seldom carried out systematically.

In the cases in this study, substantial differences in descriptions of central events or environments are rather common but on the whole ignored by the investigators. As in all other cases I have examined, no compilations of how the alleged victim describes central events at different points in time exist. Nor are important contradictions followed up.

III. Social and psychological situation is missing

Allegations of sexual abuse and alleged unusual behavior of a child always arise out of a social and psychological situation with earlier and present social relations, conflicts, life styles, behavior patterns and social environments. Sometimes such circumstances can provide alternative hypotheses about the allegations.

In most cases the child is not asked about all conversations about the allegations it has had with others before the first police interrogation and in between the interrogations. Not one of the investigations has a systematic account for the social network of the alleged victim or for the flow of sexual knowledge. The level of sexual knowledge of the alleged victim is not clarified. It is, for instance, not investigated what the child may have learned from other children in day care or in school, from playmates, or from media, or from observation of the sexual life of adults. The sexual culture in the family and in the day care is often not explained. When influences from TV programs or video tapes are mentioned the programs etc are never looked for or shown in the investigation.

The lifestyle and behavior patterns of the alleged victim and the routines around the child are not investigated, for instance what kind of games and whom the child has played with. In cases with allegations of sexual abuse in day care, there were no lists of the other children, no lists of personnel,

and no details about work schedule for the personnel. The behavior pattern of the suspect in sexual matters is often not clarified.

In most cases the preconceptions and expectations of sexual abuse of pre-interrogators are not clarified. Gossip and rumours about the suspect and the alleged victim are not clarified. In several cases the alleged victim probably has heard such preconceptions and gossip and it is not clarified what the child has perceived or understood.

Conflicts between the alleged victim or his/her family and the suspect often exist and allegations sometimes arise after an episode fraught with conflict. In some cases the information indicates the existence of a close and friendly relationship at the same time as the alleged painful abuse is said to have been committed. Conflicts and psychological contradictions in the relationships are rarely explored in the investigations. The investigators do not seem to react even when there are clear statements with revenge motives or an earlier history of false accusations from the alleged victim.

IV. Physical, technical, economical and time particulars are missing

In order to evaluate allegations of sexual abuse it is often necessary to have accounts of physical, technical, economical or time conditions around the alleged abuse. Physical descriptions and measurements of the abuse environment are omitted or strongly deficient. In only one case was there a drawing of the rooms, and in only one case a photo existed. Not in one case was there a drawing with the positions of the involved persons marked. Rooms are not described and relevant objects, e.g. beds, sofas, blankets, are not described. The possibility of hegring from one room to another and the possibility of observation by others are not clarified. In one case, for instance, the police confiscated a calendar with a naked girl as evidence. In this same case, the police did not measure and check if it was possible for one man and two girls together to stand and have sexual intercourse in a small shower cabin or if it was possible to have sexual intercourse on a small table. In another case, it was not controlled if a young girl could have carried a heavy rubber boat a long distance. In one case the mobile phone calls from a father to his daughter from other places at the times for the alleged abuse were not investigated.

In a few cases, investigation of economics, could have been of great value. For instance, it was not investigated where the large amount of money a ten year old girl said she had received had disappeared to. There was no confirmation that she had bought things for the money as she said. In other cases with possible money motives for the accusations the alleged victim's economical situation was not investigated.

In most cases, several circumstances such as relevant points of time, time

periods and time relations of events are not specified. In not one case, is there a time line or compilation with events and periods in the documents. Common time periods not specified are periods of living in different flats, vacations, being sick, work schedules, and time periods for relevant articles of clothing. In a few cases, an implausible time order for central events has not been investigated.

V. Clinical investigations are missing

Symptoms cannot prove that sexual abuse has occurred for the simple reason that the alleged symptoms in these cases can have several possible explanations. However, symptoms are nevertheless often presented as evidence and are used as arguments in claim for damages. This being the case, thorough symptom investigations should be made for all symptoms mentioned as evidence. Questions of when, where, how a symptom arose, and how it has developed should be accounted for. Furthermore a symptom investigation should clarify how the symptom varies with situations and influences in the social and physical environment. Alternative explanations should be considered and investigated. Sometimes an alleged symptom exists before the alleged period of abuse or appears during the time of the investigation.

In most cases, one or more symptoms of the alleged victim is presented as evidence. However, in not one of these cases, an investigation of any of the symptoms is conducted and relevant medical or other records are not examined. In most cases, a medical examination with respect to traces of sexual abuse is done, but the need for other medical examinations of the child or the suspect is ignored. In three cases, there was doubt that the suspect could perform the abuse due to medical reasons, but no medical examination into this was made. In one case, fatigue, and in another case coughing, were mentioned as evidence, but no medical examination was made. In the latter case, medical records for whooping-cough were later shown to exist for the period immediately before the coughing. However, the police investigator did not discover this.

VI. Ignoring or withholding witnesses or information

In one case, the alleged victim was not even interrogated. In several cases, very important witnesses or sources are not looked for or even interrogated. In some cases, other possible perpetrators are not interrogated. In some cases, diaries are not taken into consideration. In one case, a young man was accused of sexual interest in teen age girls. Only nine out of thirty pornographic videos found in his flat were listed as evidence, namely those with teen age girls and not the twenty-one with older women. The age of the man's girlfriends was not investigated at all; they seemed to be of his age. In one case, two drawings of the child's father are shown, but other drawings of the father or mother or other persons are not shown. In one case, an expert witness statement which

proved that the alleged victim had lied in an earlier case was withheld. In another case, it was withheld that the child could have been influenced in certain behaviors by an older abused child in the same foster home. In one case, it was withheld that a social welfare secretary had interrogated the child a whole day in order to get information about sexual abuse from the child. In two cases, the child carries a written paper with important particulars to the interrogation, but it is not investigated how these papers were produced. In one case, it was not investigated whether a child could have seen a pornographic video or not. In a few cases, no attempt at reconstruction is made concerning implausible abuse situations.

VII. Inappropriate or improper methods

Some aspects of the methods are inappropriate or unethical. It can be circumstances such as allowing other persons with strong beliefs in the case to sit in the room, and sometimes to intrude into the interrogations, or that the investigator presents his or her own interpretations or faulty summaries of what has been said. There can also be deficiencies in the instructions to those involved or too long interrogations with small children or very unsuitable methods in the interrogations with the children.

In one case, a teen age girl is forced against her will to participate in an interrogation and tries to commit suicide the day after the interrogation. In one interrogation, a nurse with strong beliefs, is allowed to sit in the interrogation room and gives some answers in the interrogation instead of the alleged victim. In one interrogation, the child says three times that she has a headache, but it is ignored and the interrogation continues. In one case, a three-year-old girl is denied to go to the bathroom before she has answered certain questions. In one case, a ten-year-old boy is interrogated in school and strongly wants to leave the interrogation and go out and play with a schoolmate. In another case, the child evidently has had little sleep during the night before the interrogation. In one case, the child has been promised by the foster mother that a much wanted toy will be bought if the child does well in the interrogation. In one case, the investigator speaks about eating a hamburger with the child afterwards. In one case, the child carries a bag of sweets, which probably are bribes from the mother, and these sweets are soon dropped over the whole floor and the investigator has to stop the interrogation.

In not one case, is there any evidence that the police has given instructions to parents, social welfare secretaries or other adults involved not to interrogate, influence or bribe the child. In some cases, pre-interrogations by others have occurred. In one case, the investigator has leaked information by phone to persons before they are interrogated. Telephone contacts are seldom documented, so there can be more leakage in these cases. In some cases, other persons with beliefs about the matter were allowed to sit in the interrogation room and even allowed

to ask questions. In three cases, anatomical dolls are used in a faulty, suggestive and counter productive manner. Several interrogations were much too long; for instance, one hour or more with preschool children.

Conclusions and discussion

Serious and substantial amounts of errors were found in all cases. The investigations are evidently not in accordance with the requirements for objectivity in the Swedish constitutional law. The basic pattern of the majority of errors is that information is missing. It seems that the investigator seeks to quantitatively increase the kind of information that supports or seems to support the allegation of sexual abuse, largely ignoring the quality of the information, and avoiding information that gives or could give support for alternative hypotheses. This does not exclude the possibility that errors of the kind accounted for can reduce the evidence against the alleged perpetrator. It seems plausible that the errors weaken the prosecutors case against the alleged perpetrator as many of the errors are easily detected by defense lawyers.

Another common pattern in the police inquiries is that much work is conducted, many witnesses are interrogated, both interrogations and questions are often repeated and the documentation seems to be fairly accurate in some circumstances. At the same time, the investigators ignore much information that could possibly give support to alternative hypotheses.

Lack of time and other resources does not seem to be a primary cause and the bias can hardly be explained by lack of time. There are probably sociological and psychological factors that can explain at least part of the accounted error panorama. One such factor, is the lack of critical thinking and even expressed fear of critical thinking that seems to exist in the judicial system. The investigators seem to have little training and do not receive much critical evaluation and feedback.

In a few cases, Swedish courts and prosecutors openly show very anti-intellectual attitudes, they do not want any critical examination of the investigative methods. However, the attitude can also be one of discounting the problems (e.g. as academic) or of positive interest. Another set of factors is the common fallacies of thinking that have been shown to exist by cognitive psychological research (see, e.g. Reisberg, 2001).

It seems that the accusations, and maybe also experience of other sexual abuse cases and the cultural sexual abuse ideology, gives the investigator a mental anchor or mental availability that he cannot easily free himself from. The investigation is based in the presupposition that the accusations are at least partly true. Confirmation bias, i. e. seeking confirmation and not at the same time falsification of a hypothesis, is a common cognitive

error that may lead to biased investigative methods including discounting of important information.

The cognitive fallacy imperfecta enumeratio means that the correct alternative is ignored or not discovered. If an investigator works with only one alternative and does not make a strong effort to list and examine other possible alternatives he may miss necessary information and the correct alternative. Many of the errors mentioned in this study will easily lead to imperfecta enumeratio. Overconfidence is also a mental complication. It is evident from their own words that investigators often develop overconfidence in their own judgment.

Measures that could be of value to increase the quality of investigations could be critical evaluation and feedback to the investigators, training programs including basic comprehensiveness, accuracy and logic and access to checklists of investigative operations and possible errors.

References

Reisberg, D. (2001). *Cognition*. 2nd ed. New York: Norton.