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CHILDREN'S LAW

REPORT

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The Child Sexual Abuse Accommodation Syndrome

"The sexual abuse of children is a crime that our society abhors in the abstract yet tolerates in reality." Suzanne Sgroi, quoted in Ann Burgess, *Sexual Assault of Children and Adolescents* at xv (1978). Perhaps child sexual abuse is not acknowledged in reality because child victims do not respond in the manner expected by many adults. It is well-documented that children are most likely to be sexually abused by a known and trusted adult, involving acts that become progressively more serious over time and are perpetrated without physical force. Indicators of this crime are likely to be behavioral rather than physical.

Behavioral Characteristics Common in Sexually Abused Children

More than a decade of research has revealed a

typical behavior pattern in children who have been sexually abused by a trusted caretaker. The child sexual abuse accommodation syndrome (CSAAS) represents a categorization of the most frequently observed behaviors of sexually abused children, and has been used by clinicians and the judicial system to understand and respond to the needs of the sexually abused child. This article discusses the basic elements of the syndrome and the use of the syndrome in judicial proceedings related to child sexual abuse.

Dr. Roland Summit, who identified CSAAS, provided a key to understanding the sexually abused child's reality when he described the child's situation in this way: "There is no way out, no place to run." R. Summit, "The Child Sexual Abuse Accommodation Syndrome," 7 J. Child Abuse & Neglect 177, 184 (1983). Sexually abused children, especially those victimized in their homes by caretakers, do not perceive any options: they believe there is no place to go and no one to tell. The child copes with this situation in ways that are difficult for adults to understand, and that may cause adults to disbelieve that abuse has occurred. Believing herself unable to escape the abuse, the victimized child accommodates to the demands and the desires of the abuser, often becoming increasingly dependent on the abuser, as well as self-punishing and self-deprecating.

Dr. Summit identified five behavioral characteristics common in sexually-abused children: (1) secrecy, (2) helplessness, (3) entrapment and accommodation, (4) delayed, conflicted, and unconvincing disclosure, and (5) retraction. These elements in various combinations make up "child sexual abuse accommodation syndrome". The first two, secrecy and helplessness, are

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identified as preconditions to sexual abuse, which continue to characterize the period of abuse. The other three arise and evolve during and following the period of abuse. Although five elements were identified in research that involved primarily female victims of sexual abuse, they have applicability to male victims as well.

Secrecy is the most common and the most harmful characteristic of the syndrome. Studies have indicated that most sexually abused children never tell anyone about the abuse during their childhood. *Id.* at 181. One study of confirmed cases of abuse found that 74% of disclosures made by children were accidental rather than purposeful. T. Sorensen & B. Snow, "How Children Tell: The Process of Disclosure in Child Sexual Abuse," 70 *Child Welfare* 3 (1991). Secrecy is the main tool of the abuser and promotes the continued intimidation, isolation and fear of the child. The child often believes, sometimes realistically, that disclosure would cause destruction of the family or a loved one. This belief is often reinforced by the perpetrator, who controls the child by imposing his version of the experience onto the child's reality. The abuser's effective manipulation of the child's inclination to secrecy precludes the need for force or threats of physical harm, diminishing the probability of physical evidence.

The second element of CSAAS is helplessness, a magnified version of the normal lack of control that young children feel in relation to their adult care-givers. The power imbalance between child and adult is easily exploited in a sexually abusive relationship. Children know that they are expected to be obedient to care givers, and are helpless to resist inappropriate acts. Even when children feel that the experience is wrong and want to tell someone, there is likely to be a sense that others would not believe or help them.

The third element of CSAAS is descriptive of the child's basic response pattern when faced with repeated abuse: the child feels trapped by the situation (entrapment), and therefore feels that her only choice is to accept the abuse and accommodate in whatever ways she can (accommodation). Because the child needs to believe that her parent is good and protective, she often skews her perception of reality to accept responsibility for the abuse, or she may accept the sexual activity and maintain the secret as necessary to retaining the love and protection of her parent. Some children cope by building "pockets of survival," Summit, *supra* at 185, in which the child separates from her abusive reality through such mechanisms as imaginary companions, dissociation from the body, altered states of consciousness, or multiple

personality. Irreconcilable outrage may be expressed in girls as self-mutilation, suicidal behaviors, promiscuity, and running away, and in boys as aggressiveness and anti-social behavior.

The fourth element of the syndrome is delayed, conflicted, and unconvincing disclosure. Sexual abuse is typically reported only after years of repeated abuse, if at all. Disclosures by young children tend to be either inadvertent or in response to questioning by adults who have observed physical or behavioral abnormalities of the child. Disclosures in adolescence tend to be precipitated by severe family conflict. The adolescent's anger which leads to the disclosure appears to result from punishment, rather than from the abuse itself. By the time that an adolescent discloses, the effects of her long-term accommodation may have taken the forms of promiscuity, delinquency, rebellion, or drug abuse. This adjustment pattern and the angry presentation of the disclosure make a delayed disclosure appear even less credible. It is frequently assumed that a difficult teenager has fabricated the story to retaliate against a parent who is exercising reasonable control.

The fifth element, retraction by the victim of child sexual abuse, is directly related to the child's assumption of responsibility for the abuse and for the effects of disclosure of the abuse. The child who experiences disbelief, blame, hostility, family disruption, or removal from the home upon disclosure often retracts in a last ditch effort to preserve the family or return some degree of stability in her life. The retraction is often embraced by adults who find the occurrence of sexual abuse difficult to accept. Summit concluded that "[u]nless there is special support for the child and immediate intervention to force responsibility on the [abuser], the [child] will follow the 'normal' course and retract her complaint." Summit, *supra* at 188.

Use of Testimony Concerning Child Sexual Abuse Accommodation Syndrome in Court Proceedings

CSAAS was conceptualized in order to further adults' understanding of the normal behavior of child victims attempting to adjust to an abnormal situation. It was not designed to be a mechanism for determining the validity of a report of abuse or the retraction of a report. While it can be useful in trials concerning child sexual abuse, it should be used cautiously and under specific circumstances.

Most courts admit expert testimony concerning CSAAS to rehabilitate impeached credibility of the victim/witness or to explain the victim's post-abuse behavior, which may differ from the response expected by

a typical juror. R.L. Flint, "Child Sexual Abuse Accommodation Syndrome: Admissibility Requirements," 23 Am. J. Crim. L. 171 (1995). Dr. Summit supports this approach, agreeing with the California Court of Appeals that "expert testimony may play a particularly useful role by disabusing the jury of some widely held misconceptions about [child sexual abuse and its] victims, so it may evaluate the evidence free of the constraints of popular myths." People v. Gray, 187 Cal. App. 3d 213 (1986). However, expert testimony on CSAAS generally is not admissible as substantive evidence of sexual abuse.

A representative decision, which contains an extraordinarily thorough discussion of CSAAS and the role of expert witnesses in a child abuse case, is State v. J.Q., 617 A.2d 1196 (N.J. 1993). In this case, involving two sisters' allegations of sexual abuse by their father, expert testimony concerning CSAAS was presented as proof that sexual abuse had occurred. The New Jersey Supreme Court held that CSAAS evidence was not admissible to establish the fact of abuse, but would have been admissible to establish that the victims' symptoms were consistent with sexual abuse or to explain a delay in reporting or recantation of an allegation of abuse.

The court concluded that CSAAS was "not the sexual abuse analogue to the battered child syndrome." Id. at 1209. The court noted that while the battered child syndrome is diagnostic of physical abuse, CSAAS is not diagnostic; rather, the most that one can do with CSAAS is to counter arguments that the victim's conduct is inconsistent with the allegation of abuse. The court which compared CSAAS with battered wife syndrome, is used to help the jury understand victim behaviors such as remaining in the home with the abuser or returning to the abusive home.

Although South Carolina's appellate courts have not ruled specifically on the use of CSAAS in a sexual abuse case, the South Carolina Supreme Court's holding in State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), appears to approve admission of such evidence for a broad range of purposes. In State v. Schumpert, defendant appealed his conviction for criminal sexual conduct with a minor, citing as error the court's admission of expert testimony concerning the victim's behavior following report of the rape to prove that the rape had occurred. The court held that "both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect." The court expressly overruled an earlier holding that expert testimony

concerning behavioral characteristics common in child sexual abuse victims is admissible only to explain a child victim's post-trauma behavior, and not to prove that the crime had occurred. See State v. Hudnall, 293 S.C. 97, 359 S.E.2d 59 (1987).

Although South Carolina's rule on admissibility of behavioral evidence, as enunciated in Schumpert, is broad and flexible, courts must carefully assess the probative value of any proffered behavioral evidence. A particular behavior, such as bed-wetting, nervousness, or masturbation, that is common among sexually abused children may also be common among children who have not been sexually abused. In each case the court must assess factors such as the age, gender, and experience of the child and the combined weight of multiple behavioral factors in determining whether the probative value of the evidence outweighs its prejudicial effect.

It should be noted also that both Hudnall and Schumpert involved testimony concerning chronic behavioral abnormalities that were said to result from the abuse. The behaviors encompassed within the CSAAS tend to relate to whether and how the abuse was disclosed by the child, and whether a disclosure was subsequently retracted. It would be absurd to use the fact that the child had told no-one that she was sexually abused, or the fact that she recanted a previous allegation of abuse, as proof that sexual abuse had occurred. Rather, the commonality of these behaviors in abused children is not probative of abuse itself, but of the fact that a child victim's allegation of abuse is credible despite long-term nondisclosure or recantation.

Advisory Committee on Standards of Judicial Conduct Opinion No. 8-1996: Service by Judge on Task Force

A Family Court Judge was invited to serve on the South Carolina Children's Justice Act Task Force. The Task Force, which is coordinated by the Children's Law Office, is a multi-disciplinary body formed to evaluate and recommend improvements in laws, policies and procedures concerning child abuse and neglect cases. The Judge was

asked to serve on the Court Coordination Committee, one of several committees of the Task Force. The letter of invitation described in detail its responsibilities.

The Advisory Committee on Standards of Judicial Conduct allowed the judge to accept the invitation, because the committee is designed to narrowly address matters concerning the administration of justice. Canon 4 permits a judge to engage in specific quasi-judicial activities if they do not cast doubt on the judge's capacity to render impartial decisions. The Commentary to Canon 4 states:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. (Rule 501, Canon 4 Commentary, SCACR)

In approving the request, the Advisory Committee defined the specific issues to be addressed by the Court Coordination Committee and advised the judge to remind other committee members of the constraints on his service so that discussion would not deviate from the improvement of the administration of justice.

Prior opinions have advised against involvement by judges in committees when the scope of the proposed involvement was vague or extended into issues of fact or policy matters other than the improvement of the law, the legal system and the administration of justice. For example, a judge was not permitted to serve on the Family Violence Advisory Committee, which was created by statute in 1994, because development of legislation by the committee would affect issues or parties coming before the judge, thus creating the appearance of impartiality. (Opinion No. 30-1994)

The current opinion observes that, in requests previously denied, the invitations contained only descriptions of broad goals of the committee which would involve the examination of policy matters that are prohibited by Canon 5. Canon 5 prohibits a judge from accepting an "appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice." (Rule 501, Canon 5G, SCACR)

Opinion No. 4-1989, provides further guidance to judges' participation in civic activities. In that opinion a

judge was not permitted to serve on a task force to create a children's center (a community based, multi-disciplinary system and center for the delivery of services to child victims). The Advisory Committee advised that:

1. A judge may participate in civic or educational activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties, and
2. A judge should not serve if it is likely that the organization will be engaged in proceedings that will ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

Legislative Update

Assessment of Fees in Delinquency, Dependency, and Neglect Cases

H3992, R481 amending §20-7-1440, authorizes rather than requires the court to impose a \$100 fee against a defendant in a child abuse and neglect case. The fee may be imposed only after the hearing on the merits. The fee must be waived if neither removal nor intervention by DSS is ordered, and may not be assessed against indigent defendants. Signed by the Governor June 5, 1996; effective on that date.

Sex Offender Registry

S1286, R503 amending §23-3-490 makes information in a sex offender registry open to public inspection upon written request to the sheriff of the county in which the offender resides. The request must specify the name and address of the person as to whom information is sought. The sheriff may also disseminate information from the registry if the sheriff has a reasonable suspicion of criminal activity by a person on the registry and believes release of the information will deter such activity. Information regarding a juvenile adjudicated in family court may not be made available to the public. The act also amends §23-3-470 and adds §23-3-475 to provide that convicted sex offenders who are convicted of failure to register with the sheriff in the county of residence or of knowingly and wilfully giving false information, must be imprisoned for ninety days for the first offense, one year for the second, and three years for the third or subsequent offense. Those convicted and released from custody prior to July 1, 1994, are exempted from the registration

requirements unless served with notice of the duty to register. Signed by the Governor June 18, 1996; effective on that date.

Information Available on Child Protection Reform Act

The Child Protection Reform Act of 1996, H4614, R522, has been signed by the Governor and will be effective January 1, 1997. The May 28 printing of the bill is the final version, except that Section 21 was thereafter deleted. All participants in family court abuse and neglect proceedings need to be knowledgeable of changes that will occur as a result of this act. The following services are available through the Children's Law Office:

- ▶ Response to specific questions concerning changes in the law;
- ▶ A written summary of the major provisions of the act;
- ▶ Presentations to groups.

Call (803) 777-1646 to request these services.

Beginning with the August issue, this newsletter will include a series of articles discussing the major provisions of the act.

South Carolina Cases

Supreme Court Holds That Definition of "Child" in Children's Code Includes a Viable Fetus

Whitner v. State, Opinion #24468 (S.Ct., filed July 15, 1996)

The supreme court held in this case that the word "child" in South Carolina's criminal child abuse and neglect statute, S.C. Code 20-7-50, includes a viable fetus, and hence a pregnant woman can be prosecuted for post-viability acts (in this case, the use of cocaine) that endanger or are likely to endanger the fetus. The impact of the court's decision reaches far beyond the context of criminal child abuse and neglect, as the court stated that its holding was based on the plain meaning of the word person. It would appear, therefore, that any use of the word "person" in the Code that does not expressly provide to the contrary will be construed to include a viable fetus. A more detailed analysis of the impact of the Whitner case, including information on how DSS is interpreting the effect of the case on the child protection system, will appear in a future issue of the newsletter.

Custody Dispute Between Biological Parent and Other Relatives of the Child

Kramer v. Kramer, Opinion #2526 (Ct. App., Filed July 1, 1996)

This was a custody dispute between the mother and the paternal aunt and uncle of a four-year-old child, following the death of the custodial father. The court held that although a presumption favors biological parents over third parties in a custody dispute, it was error to grant custody to the mother in this case. The court cited mother's history of instability and financial dependence on others; her abandonment of the child on his first birthday and minimal contact with him thereafter; and the child's strong emotional bond with his aunt and uncle.

The court also held that it was error for the family court to exclude the testimony of the ex-wife of mother's husband concerning the husband's lack of contact with and failure to support his child from the former marriage. The ex-wife had not been identified as a witness until after the trial was continued at the end of its second day, contrary to the family court judges's policy against allowing previously unidentified witnesses to be called after a continuance. The court held that exclusion of a witness is a severe sanction, and was not justified where the testimony was highly relevant to determining the interests of the child, the testimony would not have caused unfair surprise to the other party, and there was no evidence that any discovery orders had been violated.

Computer Access to South Carolina Supreme Court Opinions

Computer access to opinions of South Carolina Supreme Court is available at <http://www.law.sc.edu/refdssc.htm>.

Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases

National Council of Juvenile and Family Court Judges

Under the direction of Judge David Grossman of the Hamilton (Ohio) County Juvenile Court, *Resource Guidelines* was produced as a comprehensive manual for use by judges, attorneys, caseworkers, and guardians ad

litem in child abuse and neglect cases. *Resource Guidelines* was written with recognition of the court's more active role in decision-making in abuse and neglect cases following passage of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and provides an overview of procedures that have been demonstrated to be effective in abuse and neglect proceedings.

Resource Guidelines provides detailed direction on properly conducting all major child abuse and neglect hearings. The preliminary (probable cause or ten-day), adjudication, dispositional (merits), review, permanency planning, termination of parental rights, and adoption hearings are each treated independently and summarized in a checklist which facilitates easy reference and review. In explaining the goals and process of each hearing the authors clearly identify the persons who need to be present, the minimum time that facilitates adequate attention to the issues, and the appropriate timing of the hearing. Primary activities related to or comprising each hearing are described, including filing of petitions and notices; submission of reports; review of plans and efforts; and determination of parties' understanding of the issues, process and decisions. The key decisions that the court should make at each hearing are clarified and options usually available to the court are indicated. The significance of the court's written findings of facts and conclusions of law and the content of court orders are also addressed in the guidelines.

The guidelines reflect principles embodied in the federal mandate: the need to provide permanent homes for abused and neglected children, and to avoid unnecessary separation of children from their families, and to reunify families following removal wherever feasible. Another important principle underlying the guidelines is the requirement for timely decisions in child welfare cases.

The pivotal premise of the guidelines is that an obligation has been placed on family court judges to assume an active oversight role to assure that the state fulfills its responsibilities and that parents cooperate in meeting the needs of their children. The authors maintain that the judge is more than an arbiter of a dispute, and must perform as a manager and director in child welfare cases. The judge's management role extends to treatment, rehabilitation, family preservation and permanency planning, and the judge must have and exercise authority to enforce delivery of services.

An important part of the court's management role is ensuring timely decisions. In order to reduce delays in

child abuse and neglect litigation, case flow management is deemed essential. To facilitate this function, court administrators are advised to enunciate a commitment to timely decisions, establish binding deadlines, develop systems to monitor timing of proceedings and inform judges, set firm court dates, and control continuances. The authors suggest the need for cases to be assigned to a specific judge and calendared for the same judges throughout in order to provide continuity and consistency, as well as to reduce the family's feelings that their lives are being controlled by strangers who know nothing about them. They also propose that, where necessary to assure effective management, courts should consider appointment of judicial officers to assist judges.

The guidelines also discuss the need for well-trained and experienced counsel and guardians ad litem in child abuse and neglect cases to ensure competent and diligent representation of all parties in these proceedings. The authors recognize the significance of the hearing environment. Suggestions in this area include the availability of recording and computer technology for generation of orders; limiting distractions and elements which might be intimidating to children; and the assurance of the security and confidentiality of the proceedings. Other issues addressed are voluntary agreements and expedited court orders.

Written with attention to the growing number of child abuse and neglect cases coming before the courts, *Resource Guidelines* presents what the authors call "best practice" requirements for effective judicial processing of child abuse and neglect cases. While acknowledging that necessary resources such as docket time, judicial officers, and court staff are limited, the authors outline techniques that they assert can be used to effectively implement the guidelines which have been developed from the working experience of many courts. In view of the reality that court time is in short supply and that timing is critical in cases that impinge on the lives of children, the authors also include an appendix describing alternatives to contested litigation such as settlement conferences and formal mediation.

A copy of *Resource Guidelines* can be obtained for \$8 from the National Council of Juvenile and Family Court Judges, University of Nevada, Reno, P. O. Box 8970, Reno, Nevada 89507. Phone (702) 784-6012. Certain groups may be exempt from this fee. [*Resource Guidelines* will be entered into the Children's Law Office computer database.]

Upcoming Training

21st Annual Conference of the Council on Child Abuse and Neglect:

Child Abuse: It Only Hurts A Lifetime

September 12 - 13, 1996;

Advanced Training Institute September 11;

Sheraton Hotel and Conference Center, Columbia, SC

For brochure call (803) 777-5430.

The Guardian ad Litem in Abuse/Neglect Cases:

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September 16, 1996

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National Children's Advocacy Center Satellite Video Conferences:

September 27 - *Interviewing the Child -- Forensic*

Interviewing of Abuse Victims;

October 4 - *Medical Aspects of Child Abuse for Non-Medical Professionals;*

October 11 - *Team-Building for Multidisciplinary Teams and/or Agency Staff;*

October 18 - *Connections -- Domestic Violence and Child Sexual Abuse;*

This satellite series is being brought to South Carolina by the Children's Law Office. All sessions will be held at the School of Law.

Call (803) 777-1646 for registration information.

Kellogg Advanced Fellowship in Child Welfare Law and Policy

Advanced fellowships are available to lawyers, judges and law professors in eleven *Families for Kids* sites, including South Carolina, who are interested in advanced study and service regarding children in foster care. These fellowships are part of the W.K. Kellogg Foundation's *Families for Kids* initiative that seeks to reduce the time America's children spend in temporary foster care. Each fellow will create an individual educational program tailored to his or her interests and the Kellogg site's legal reform efforts. The fellowship year is divided in two parts with each fellow spending one semester (14 weeks) on site at the University of Michigan Law School and eight

months, involving 20% time, in the home community. A stipend and travel expenses are provided. The application deadline for the winter semester is October 1. For application information call the CLO.

Kingian Nonviolence Training Available

The Martin Luther King, Jr. Center for Nonviolent Social Change, Inc., is dedicated to continuing the legacy and work of Dr. Martin Luther King, Jr. This is being accomplished through research, education, and training in the principles, philosophy and methods of Kingian Nonviolence. In recent months, the King Center, through the South Carolina Department of Public Safety, trained a group of law enforcement officers to conduct workshops in resolving and preventing conflicts. These instructors are available to conduct workshops which can be tailored to meet the needs of diverse individuals and groups. Anyone wishing to arrange a workshop can contact one of the instructors directly. A list of certified instructors can be obtained from Lynne Cain of the South Carolina Criminal Justice Academy, telephone (803) 896-7754.

Correction to Article on Hearsay Evidence in the June 1996 Newsletter

Prior Consistent Statements

The discussion of the "prior consistent statement" exception to the hearsay rule in the article entitled "Hearsay Evidence in Child Abuse Cases" suggested that a prior out-of-court statement by the child that was consistent with the child's testimony could be used to combat challenges to the child's credibility. The case of *State v. Jolly*, 304 S.C. 34, 402 S.E.2d 895 (S.C. Ct. App. 1991), was referenced in that discussion.

The Court of Appeals' decision in *State v. Jolly*, which involved a challenge to a social worker's testimony as to a prior consistent statement by the child, was actually decided on grounds of harmless error. In a subsequent post-conviction relief action in the same case, the South Carolina Supreme Court overturned the Court of Appeals' decision. *State v. Jolly*, 314 S.C. 17, 443 S.E.2d 566 (1994). The Supreme Court held that the social worker's testimony,

as well as testimony of another witness concerning the child's prior consistent statements, should have been excluded.

The basis for the Supreme Court's decision is very important in child abuse and neglect cases, as it would appear to preclude admission under this exception of all out-of-court statements of the child concerning the abuse. The earlier case of Burns v. Clayton, 237 S.C. 316, 117 S.E.2d 300 (1960), held that proof of a prior consistent statement is admissible to rehabilitate the testimony of a witness who has been impeached by proof of a prior inconsistent statement only if the prior consistent statement was made before "the existence of the relation of the witness to the cause." In State v. Jolly, the Supreme Court held that "the cause" in this test refers to the occurrence of the abuse rather than to the initiation of the action. Therefore, the court stated, "because the witness is the victim in the case, she could not have made the prior consistent statement regarding her assailant before she had a 'relation to the cause.'"

Under this narrow interpretation of the exception, out-of-court statements by the child victim concerning the abuse cannot be admitted to rehabilitate the child's testimony when the credibility of that testimony has been attacked by introduction of out-of-court statements by the child denying that the abuse occurred or that the defendant was the perpetrator. Given the frequency of retractions and vacillation by a child victim of sexual abuse (see article in this issue of the newsletter concerning "child sexual abuse accommodation syndrome"), this ruling presents a significant obstacle to presentation of the evidence necessary for the jury to make an accurate assessment of the child's credibility.

[Thanks to Deborah Herring of the Charleston County Solicitor's Office for calling this to our attention.]

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