ZARELLA, J., dissenting. The issue in this appeal is whether an expert witness may testify that the complainant in the present case exhibited behaviors that are consistent with victims of sexual abuse in general. To be clear, what is not at issue is whether an expert may (1) state generally the traits exhibited by sexual abuse victims, or (2) diagnose the alleged victim in a particular case as abused or opine as to the alleged victim's credibility. The former is clearly admissible, whereas the latter is clearly not. In the present case, the testimony at issue consists of opinion testimony that links the general behavioral characteristics of sexual abuse victims to the specific behaviors exhibited by the complainant. Thus, the testimony falls somewhere between an enumeration of the general behavioral characteristics of sexual abuse victims and a diagnosis of the complainant as having been sexually abused. Notwithstanding the reasoning of this court in previous cases,[1] the majority concludes that the admissibility of this type of expert testimony is an issue of first impression for this court. Primarily relying on the reasoning espoused by a "persuasive minority" of sister jurisdictions,[2] the majority further concludes that the expert's testimony linking general characteristics of sexual abuse victims to the complainant goes beyond the scope of admissible testimony and invades the province of the jury. Accordingly, the majority holds that the trial court improperly admitted the portions of the expert's testimony that the defendant, Anthony L. Favoccia, Jr., challenges on appeal.[3] I disagree and conclude that, regardless of the persuasiveness of the reasoning espoused by those jurisdictions on which the majority relies, this court should allow testimony linking an alleged victim's behavior to the behavior generally exhibited by sexual abuse victims. This would reflect more accurately our rules of evidence and our precedent governing expert testimony, align with the reasoning of a majority of the jurisdictions that have considered the issue, and avoid elevating testimonial form over substance. For these reasons, I respectfully dissent.

I

A brief review of the applicable provisions of the Connecticut Code of Evidence provides the starting point for my analysis. Expert testimony is governed by §§ 7-2 through 7-4 of the Connecticut Code of Evidence. Specifically, § 7-3 (a) of the Connecticut Code of Evidence provides in relevant part that "[t]estimony in the form of an opinion is inadmissible if it embraces an ultimate issue to be decided by the trier of fact, except that . . . an expert witness may give an opinion that embraces an ultimate issue where the trier of fact needs

expert assistance in deciding the issue." Section 7-4 (a) of the Connecticut Code of Evidence provides that "[a]n expert may testify in the form of an opinion and give reasons therefor, provided sufficient facts are shown as the foundation for the expert's opinion." Section 7-4 further provides in relevant part that "[a]n expert may give an opinion in response to a hypothetical question provided that the hypothetical question (1) presents the facts in such a manner that they bear a true and fair relationship to each other and to the evidence in the case, (2) is not worded so as to mislead or confuse the jury, and (3) is not so lacking in the essential facts as to be without value in the decision of the case. A hypothetical question need not contain all of the facts in evidence." Conn. Code Evid. 7-4 (c); see also *State* v. *Christiano*, 228 Conn. 456, 460–62 and n.5, 637 A.2d 382 (approving use of hypothetical questions during expert's testimony to explain general character traits of sexual abuse victims but suggesting that court give cautionary instruction that testimony is offered to aid fact finder in gauging alleged victim's credibility and not as proof of defendant's guilt), cert. denied, 513 U.S. 821, 115 S. Ct. 83, 130 L. Ed. 2d 36 (1994).

This court has delineated several rules specifically governing the admissibility of expert testimony in cases involving the sexual abuse of children. In *State* v. *Iban C.*, 275 Conn. 624, 881 A.2d 1005 (2005), we explained: "[I]n cases that involve allegations of sexual abuse of children, we have held that expert testimony of reactions and behaviors common to victims of sexual abuse is admissible. . . . It is not permissible, however, for an expert to testify as to his opinion of whether a victim in a particular case is credible or whether a particular victim's claims are truthful. . . . In this regard, we have found expert testimony stating that a victim's behavior was generally *consistent with* that of a victim of sexual or physical abuse to be admissible, and have distinguished such statements from expert testimony providing an opinion as to whether a particular victim had *in fact* suffered sexual abuse." (Citations omitted; emphasis in original.) Id., 635. We further explained that, "in cases in which an expert witness reaches a conclusion on the ultimate issue . . . based [in part on] statements made by the victim . . . Connecticut case law has previously recognized the general rule of law that the expert is necessarily making a determination about the victim's credibility. . . . Such credibility determinations are more properly within the sole province of the jury." (Citation omitted.) Id., 635–36; see also *State* v. *Grenier*, 257 Conn. 797, 805–806, 778 A.2d 159 (2001) (holding as inadmissible expert testimony that alleged victim was credible or that supplies diagnosis of sexual abuse).

I note that the Connecticut Code of Evidence provides for a liberal treatment of the admissibility of expert opinion testimony. Experts are allowed to offer

opinions that are relevant to the case, including opinions on the ultimate issue, if such opinions assist the trier of fact in understanding the evidence or determining a fact in issue. Conn. Code Evid. §§ 7-2 and 7-3. In other words, Connecticut has abandoned the common-law prohibition on opinion testimony concerning the ultimate issue. Cf. *United States* v. *DiDomenico*, 985 F.2d 1159, 1164 (2d Cir. 1993) (noting that rule 704 [a] of Federal Rules of Evidence, which provides that opinion testimony is not objectionable merely because it embraces ultimate issue, "abrogates the [common-law] rule and allows an expert witness to give opinion testimony embracing an ultimate issue in the case"). Moreover, the Connecticut Code of Evidence allows for experts to opine on hypothetical situations that are based entirely on the facts of the case. See Conn. Code Evid. § 7-4 (c); see also *State* v. *Christiano*, supra, 228 Conn. 460–62.

Thus, in determining the admissibility of expert opinion testimony, the question is not whether the opinion embraces an ultimate issue in the case but, rather, whether the opinion is relevant and helpful to understanding an issue beyond the ken of the average juror. In most cases, allowing an expert to testify that an alleged sexual abuse victim's behavior is consistent with the behavior exhibited generally by sexual abuse victims will be relevant and helpful to a jury.[4] The jury will need to be apprised of *both* the general behavioral characteristics of sexual abuse victims *and* whether the behavior of the alleged victim in a particular case is demonstrably similar. Failure to demonstrate that consistency—or inconsistency—will render the expert's testimony irrelevant and unhelpful, particularly in cases in which the behavioral traits are not common or readily understood by the average juror. Indeed, we previously have condoned such an approach.[5] See, e.g., *State* v. *Iban C.*, supra, 275 Conn. 635; *State* v. *Freeney*, 228 Conn. 582, 592–93, 637 A.2d 1088 (1994); see also *State* v. *Butler*, 36 Conn. App. 525, 536–37, 651 A.2d 1306 (1995).

Additionally, a majority of jurisdictions that have addressed the issue allow an expert to testify that the alleged victim's behavior is consistent with the behavior of sexual abuse victims in general. See footnote 26 of the majority opinion (citing cases). "When [the defense attacks] the credibility of the [child sexual abuse] victim . . . it is proper to allow an explanation by a qualified expert regarding the consistencies between the behavior of that victim and other victims of child sexual abuse." *People* v. *Peterson*, 450 Mich. 349, 375, 537 N.W.2d 857, amended on other grounds, 450 Mich. 1212, 548 N.W.2d 625 (1995). Although "it is true that an expert may not offer an opinion as to the veracity of the alleged victim, that is, whether the alleged child sexual abuse victim has been truthful, it is within the scope of permissible testimony for an expert to testify

regarding his or her opinion that the alleged victim's characteristics are consistent with [those of] a child who has been sexually abused." *Bishop* v. *State*, 982 So. 2d 371, 381 (Miss. 2008).

The underlying rationale for allowing this type of testimony is that sexual abuse victims exhibit peculiar behaviors that a layperson may incorrectly interpret as being inconsistent with having been sexually abused. See footnote 4 of this opinion. Thus, an expert is needed to explain the behaviors associated with sexual abuse victims and opine on whether the alleged victim exhibited these unusual behaviors. See *State* v. *Davis*, 422 N.W.2d 296, 298–99 (Minn. App. 1988). In *Davis*, the court approved of the use of expert testimony to explain that the alleged victim exhibited characteristics generally associated with sexual abuse victims. See id. At trial in that case, "[a]fter describing [those] characteristics, [the expert] testified regarding the conduct [of the alleged victim that] she observed, specifically that [the victim] wore heavy makeup, appeared to be older than she actually was, used her sexuality for attention getting, and was troubled by separation from her mother. [The expert] then testified that this behavior was common in sexual abuse victims of the same age." Id., 299. The court concluded that "[t]hese are characteristics that the jury had already observed and may have found peculiar. *The expert testimony was helpful to the jury in that it provided relevant insight into the cause of some of* [*the victim's*] *peculiar behavior . . . and assisted the jury in evaluating her credibility.* Under these limited circumstances, the expert testimony [was admissible] . . . ."[6] (Emphasis added.) Id.

Significantly, allowing this type of testimony is *not* the equivalent of allowing the expert to vouch for the alleged victim's credibility. "What is forbidden is expert opinion testimony that directly addresses the credibility of the victim . . . or expert opinion testimony that implicitly goes to the ultimate issue to be decided by the jury, when such issue is not beyond the ken of the average juror, i.e., [an opinion that] the victim was sexually abused. Although the distinction may seem fine to a layman, there is a world of legal difference between expert testimony that . . . the victim's psychological exam was consistent with sexual abuse, and expert testimony that . . . the victim was sexually abused. In the first situation, the expert leaves the ultimate issue/conclusion for the jury to decide; in the second, the weight of the expert is put behind a factual conclusion [that] invades the province of the jury by providing a direct answer to the ultimate issue: was the victim sexually abused?" (Internal quotation marks omitted.) *Brownlow* v. *State*, 248 Ga. App. 366, 368, 544 S.E.2d 472 (2001), cert. denied, Georgia Supreme Court, Docket No. S01C0928 (June 25, 2001); see also *State* v. *Tibor*, 738 N.W.2d 492, 497–98 (N.D. 2007).[7]

Finally, the rule that the majority adopts elevates form over substance. The majority would prohibit testimony linking general traits of sexual abuse victims to the alleged victim in a particular case. Yet, the Connecticut Code of Evidence and this court's precedent specifically allow for an expert to use a hypothetical that tracks the facts of the case. Thus, an expert may testify that all of the behaviors exhibited by the alleged victim are consistent with those generally exhibited by sexual abuse victims, provided that the testimony is in the form of an answer to a hypothetical question. The rule in the majority opinion, then, effectively fails to preclude an expert from connecting the general behaviors of sexual abuse victims to the alleged victim in a particular case.

In sum, the better approach is for this court to follow the rule adopted by a majority of jurisdictions that have considered the issue. "A qualified expert may inform the jury of characteristics of sexually abused children and describe the characteristics exhibited by the alleged victim but may not state an opinion that sexual abuse has in fact occurred." *United States* v. *Johns*, 15 F.3d 740, 743 (8th Cir. 1994); see also *United States* v. *Charley*, 189 F.3d 1251, 1264 (10th Cir. 1999) ("the court did not abuse its discretion by allowing [the expert] to summarize the medical evidence and [to] express an opinion that the evidence is consistent or inconsistent with the victim's allegations of sexual abuse, and allowing him to inform the jury of characteristics in sexually abused children and [to] describe the characteristics [that] the . . . victim exhibits" [internal quotation marks omitted]), cert. denied, 528 U.S. 1098, 120 S. Ct. 842, 145 L. Ed. 2d 707 (2000).[8] In these circumstances, the inquiry into whether an expert may testify that an alleged victim's behaviors are consistent with the alleged victim having been sexually abused essentially turns on two factors. First, the testimony must provide insight into the alleged victim's behavior that is beyond the ken of the average juror. Second, the expert must not actually reach a conclusion in his or her testimony as to whether the alleged victim actually was abused.

II

Having established the standard for the admission of expert testimony that connects the general behavioral characteristics of sexual abuse victims with those of an alleged victim in a particular case, I now turn to the testimony at issue in the present case. Defense counsel objected to four portions of the testimony of Lisa Melillo, the state's expert. In the interest of clarity, I identify and analyze each portion separately. At all times relevant to this analysis, the proper standard of review is whether the trial court abused its discretion in admitting the testimony. See, e.g., *State* v. *Iban C.*, supra, 275 Conn. 634 ("The trial court's ruling on evidentiary mat-

ters will be overturned only upon a showing of a clear abuse of the court's discretion. . . . The trial court has wide discretion in ruling on the qualification of expert witnesses and the admissibility of their opinions. . . . The court's decision is not to be disturbed unless [its] discretion has been abused, or the error is clear and involves a misconception of the law." [Citations omitted; internal quotation marks omitted.]).[9]

A

The first portion of the challenged testimony consists of the following colloquy between the senior assistant state's attorney and Melillo:

"Q. With respect to your formal review of the documents, and I believe you said you looked at the [video recording of the complainant's forensic] interview, can you render an opinion whether [the complainant's] disclosure was an accidental disclosure or a purposeful disclosure?[10]

"A. I can render an opinion. . . . My opinion is it was an accidental disclosure.

"Q. Why is that?

"A. Okay. When I was reviewing the [video recording of the complainant's interview], it was my understanding that she had not wanted to tell someone in a position of authority, a parent, parental figure, what was happening. She had shared it with some girlfriends in confidence, and they said they wouldn't say anything, which we all know teenagers do . . . . It was my opinion, as I said before, that it was my understanding that she did not intend to tell, make a purposeful disclosure, and so she shared it with some friends, and it came out by accident."

I conclude that this portion of Melillo's testimony is admissible under the rule set forth in part I of this opinion. The testimony demonstrates that Melillo was rendering an opinion about the complainant's traits on the basis of the facts that had been presented to her. Although it may appear that Melillo was premising her opinion on a conclusion that the complainant had been abused, when Melillo's statement is viewed in the context of the entire colloquy, it is clear that her opinion was much narrower than that. After opining that the disclosure was accidental, Melillo explained that her opinion was rendered solely on the basis of the facts that had been presented to her. This is the functional equivalent of an expert answering a hypothetical question on the basis of the facts of the case, which is clearly admissible.

In any event, application of the deferential standard of review to the admission of this evidence leads to the conclusion that the trial court did not abuse its discretion in admitting it. It certainly can be argued that the trial court viewed Melillo's testimony as responding

to the narrow question of whether, based on her review of the video recording of the complainant's interview and other documentation, the complainant had acted in an accidental or purposeful manner when she disclosed the defendant's alleged abuse. Significantly, such an opinion would likely be helpful to the average juror who, not understanding the concept of a sexual abuse disclosure generally, would benefit from an expert's assistance in determining whether the complainant displayed traits associated with a certain type of disclosure. Finally, Melillo's response followed the court's instruction that she was not testifying about the complainant's credibility but solely rendering an expert opinion on the complainant's type of disclosure. See footnote 10 of this opinion. Thus, the trial court did not abuse its discretion in admitting this testimony.

B

The second portion of the challenged testimony consists of the following colloquy between the senior assistant state's attorney and Melillo:

"Q. . . . Is it an unusual or usual situation that a child would refrain from telling someone in authority about the abuse?

* * *

"A. It is my experience [that] it is more typical for [a victim] not to share [the disclosure] with somebody who can be in a position to intervene.

"Q. Is there a term associated with that type of disclosure?

"A. There is.

"Q. And what is that called?

"A. It's called delayed disclosure.

"Q. Okay. And what is that?

"A. Again, we talk about the word 'disclosure,' about it being a report or statement from . . . the child. Oftentimes, we believe that kids just automatically tell, but what we [have] found is [that] it's just the opposite. They . . . either delay in reporting it or they never tell at all. So, the process of disclosure . . . is not one event. It's a process. And delayed disclosure[s] are also found out; people report things that have happened in the past to them.

"Q. And, in this particular case, upon reviewing the documentation, as well as the [video recording], what is your opinion with respect to whether or not [the complainant] engaged in this process that you're talking about, delaying her disclosure?

* * *

"A. My opinion is [that] she did fit the characteristics of a delayed disclosure."

This portion of the testimony clearly is admissible under the rule set forth in part I of this opinion. Melillo testified only that the complainant exhibited a characteristic associated with a characteristic generally exhibited by sexual abuse victims. Melillo does not conclude that the complainant was abused or that, by virtue of exhibiting these characteristics, it was more likely than not that the complainant was abused. Moreover, such testimony certainly could be considered helpful to the average juror. If a juror does not understand the traits associated with sexual abuse victims generally, then it is unlikely that a juror would be able to identify those particular traits in the alleged victim, even after the expert explained those traits. Put differently, because the concept of delayed disclosure is not within the ken of the average juror, it reasonably follows that the peculiar traits associated with it are also not within the ken of the average juror. Thus, an expert could assist jurors by testifying that the alleged victim's specific traits are consistent with the traits generally exhibited by sexual abuse victims. For the foregoing reasons, this testimony was admissible.

C

The third portion of the challenged testimony consists of the following colloquy between the senior assistant state's attorney and Melillo:

"Q. Now, also in your training, experience, as well as the literature that exists in the field, is it possible for a child to continue to show signs of respect [toward] the abuser after the abuse has occurred?

"A. Yes, that is very possible.

"Q. Okay. And why is that?

"A. Oftentimes, if a child has made a decision not to tell anybody and wants to keep this within themselves, they have to cope somehow to maintain that, and if they either act differently than what they are typically doing or don't act in a certain way, that can bring, you know, some suspicion. So, if a person's conduct, a child's conduct, is typically respectful and polite to someone, if they should suddenly change, that might arouse suspicion, and then being asked questions, sending a flag to somebody, saying, what's the matter, why aren't you nice to that person anymore. That is a coping method to accommodate keeping that inside them.

"Q. And did you see any evidence of that in your review of the documentation . . . or the [video recording of the interview]?

* * *

"A. . . . [A]s I viewed the [video recording of the interview], again . . . I saw [the complainant] talk about how she, you know, was raised to be polite and respectful, and wasn't going to change that behavior

. . . in a situation like that."

This portion of the testimony also is admissible under the rule set forth in part I of this opinion. As with the second portion of the challenged testimony, in this third portion, Melillo testifies only that the complainant exhibited characteristics associated with those exhibited by sexual abuse victims in general. The testimony does not contain any suggestion, conclusion or opinion that the complainant was abused. It is a closer call, however, whether this portion of Melillo's testimony could be considered helpful to the jury. Unlike the traits associated with disclosure that were mentioned in the first and second portions of Melillo's testimony, the traits associated with being "respectful and polite" are more likely to be considered commonly understood and, therefore, within the ken of the average juror. Nevertheless, applying the proper standard of review, I cannot conclude that the trial court abused its discretion in admitting this testimony. In light of the broader context of Melillo's testimony, namely, the need to explain the myriad characteristics exhibited by sexual abuse victims that are not commonly understood, the trial court, in its discretion, reasonably could have determined that the jury would need assistance in identifying the specific traits that the complainant exhibited. Thus, the trial court did not abuse its discretion by admitting this testimony.

D

The fourth portion of the challenged testimony consists of the following colloquy between the senior assistant state's attorney and Melillo:

"Q. Have you . . . ever encountered, in your dealings as a forensic interviewer, as well as a school psychologist, behavioral issues or behaviors that young ladies may engage in to address issues of their contact with the abuser?

"A. Yes, I have.

* * *

"Q. Did you see any examples of this, whether it be by the documentation or the [video recording] that you viewed?

* * *

"A. There are many. I used the word 'accommodations' before. There are many ways that a child . . . can cope. Typically, if a child feels kind of powerless and trapped, [he or she] might—particularly with some of the females that I work with at the high school level, have told me, I really just made myself look unattractive. . . . That [is] one of the things they can control—is how they present themselves, their appearance. So, oftentimes, they might try to make themselves look unattractive, hoping that would turn somebody away. Yes, that is a coping mechanism. That is the way of

accommodating something, to be able to control a situation that they really can't control. Similar to what I had said before about changing or not changing a certain behavior to try to cope and survive in a situation.

"Q. Did you note [the complainant's] examples of that in the documentation or the [video recording]?

"A. I did."

This portion of the testimony is admissible under the rule set forth in part I of this opinion. Melillo's testimony, which is similar to the second portion of the challenged testimony, merely links the general traits of victims of sexual abuse with the complainant's traits. Melillo's statement that the complainant displayed examples of accommodation is the equivalent to testimony that the complainant's traits were consistent with accommodation. Moreover, application of the deferential standard of review to this portion of the testimony leads to the conclusion that the trial court did not abuse its discretion in admitting it. I must presume that the trial court understood the testimony in an admissible form. Additionally, like the first portion of the challenged testimony, Melillo's opinion here would be considered helpful to the average juror. A juror would benefit from an expert's assistance in determining what types of coping mechanisms were typically employed by victims of sexual abuse and whether those traits were exhibited by the complainant in this case. Thus, I cannot conclude that the trial court abused its discretion in admitting this portion of Melillo's testimony.

For the foregoing reasons, I disagree with the majority's conclusion that an expert witness cannot provide testimony that links the general behavioral characteristics of sexual abuse victims to those of the specific victim in a particular case. This rule is inconsistent with Connecticut law. The better approach is to allow this testimony when it assists the jury. Applying the foregoing principles to the present case, I would conclude that the trial court did not abuse its discretion in admitting any of the challenged testimony. Accordingly, I would reverse the judgment of the Appellate Court and affirm the judgment of conviction.

[1] Specifically, the majority concludes that *State* v. *Iban C.*, 275 Conn. 624, 881 A.2d 1005 (2005), which I subsequently discuss in more detail in this opinion, is not dispositive of this appeal for two reasons. First, because the issue in *Iban C.* concerned the admissibility of testimony in which the expert diagnosed the alleged victim as having been sexually abused, the court's discussion of other types of testimony was mere dictum. See id., 633. Second, the majority rejects this court's reliance in *Iban C.* on *State* v. *Freeney*, 228 Conn. 582, 637 A.2d 1088 (1994), for the proposition that an expert may testify that an alleged victim's behaviors are consistent with having been sexually abused. See id., 635. The majority declares that "the comparative nature of the testimony was not directly at issue therein, as *Freeney* considered only the broader topic of general behaviors of adult assault victims."

[2] In brief, the majority finds persuasive the decisions of those courts that have deemed as inadmissible expert testimony that the general behavioral characteristics of sexual abuse victims are consistent with those of an alleged sexual abuse victim. First, the majority finds that such testimony comes " 'too close' " to stating that the alleged victim is credible. Second,

the jury may misunderstand such testimony as substantive evidence of actual abuse, rather than properly relying on it for rehabilitative purposes only. Third, such expert testimony often is unnecessary because the jury can, without the expert's assistance, connect the general behavioral characteristics of sexual abuse victims with the characteristics exhibited by the alleged victim in a particular case. See part I of the majority opinion.

[3] The majority further holds that the error was not harmless and affirms the judgment of the Appellate Court, which reversed the judgment of conviction and remanded the case for a new trial. *State* v. *Favoccia*, 119 Conn. App. 1, 30, 986 A.2d 1081 (2010). Because I conclude that the admission of all four portions of the challenged testimony was not improper, I do not address the majority's harmless error analysis.

Justice Palmer, in a separate dissent, agrees with the majority's conclusion that the admission of the testimony at issue in this case was improper but for different reasons. In his dissent, Justice Palmer rejects the majority's application of *State* v. *Iban C.*, 275 Conn. 624, 635–36, 881 A.2d 1005 (2005), and *State* v. *Grenier*, 257 Conn. 797, 806, 778 A.2d 159 (2001), because, according to Justice Palmer, those cases addressed the issue of whether an expert could indirectly vouch for the credibility of an alleged sexual abuse victim, which is an issue that is not implicated by the testimony in the present case. Nevertheless, rather than follow, as I do, the rationale espoused by a majority of jurisdictions allowing the type of testimony at issue in this case, Justice Palmer reasons that such testimony should be barred because the jury might improperly consider it as proof of the alleged victim's claim instead of properly considering it for rehabilitative purposes. Justice Palmer provides no authority for this proposition, nor am I aware of any. For the reasons set forth in this opinion, I reject this rationale and instead follow the rationale espoused by a majority of jurisdictions that allow such expert testimony.

[4] The rationale is that sexual abuse victims often behave inconsistently with the common understanding of how crime victims generally behave. For example, sexual abuse victims may not immediately or purposefully report the abuse. See, e.g., J. Myers, "Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion," 14 U.C. Davis J. Juv. L. & Policy 1, 44–46 (2010). These behaviors may lead a rational juror to find the sexual abuse victim less credible, and, therefore, an expert is needed to dispel this confusion.

[5] The majority states that allowing this type of testimony would be inconsistent with *State* v. *Spigarolo*, 210 Conn. 359, 377–80, 556 A.2d 112, cert. denied, 493 U.S. 933, 110 S. Ct. 322, 107 L. Ed. 2d 312 (1989). See footnote 31 of the majority opinion and accompanying text. The majority, however, misconstrues my conclusion when it distinguishes between offensive and "defensive" uses of expert testimony. Id. Contrary to the majority's assertion, I do not suggest that expert testimony may serve as substantive proof of abuse. Rather, and fully consistent with *Spigarolo*, I conclude that an expert may explain the general behaviors associated with abuse victims and then further opine on whether an alleged victim's conduct is consistent with such behaviors. The mere fact that an expert connects those general behaviors to the alleged victim in a particular case does not transform the testimony into a conclusion that the alleged victim was in fact abused. As the majority acknowledges, this court explicitly has approved of the use of expert testimony to explain behaviors that typically follow traumatic events, such as abuse and sexual assault. I therefore reject the majority's suggestion that I expand the scope of admissible expert testimony beyond our precedent. To the contrary, it is the majority's conclusion that does not comport with our treatment of expert testimony under the rules of evidence.

[6] Thus, as my reliance on *State* v. *Davis*, supra, 422 N.W.2d 299, demonstrates, Justice Palmer incorrectly states in his dissent that I offer no reason why this type of testimony should be allowed. To reiterate, there may be instances when expert testimony expressly linking the complainant's conduct with that of sexual abuse victims may be helpful in understanding the relevance of the expert's opinion. For example, such testimony may be relevant when the complainant has exhibited a wide range of confusing or complex behaviors.

[7] In *Tibor*, the expert testified that the alleged victim apparently went "through the five stages of child sexual abuse accommodation syndrome, and [the victim's] behavior was consistent with [that of] someone who [had] been abused. [The defendant's] attorney asked [the expert], 'you have no opinion on whether or not [the victim] has, in fact, been sexually abused; is that correct' . . . and [the expert] said, '[c]orrect.' " *State* v. *Tibor*, supra,

738 N.W.2d 498. The court concluded that, although the expert's "testimony support[ed] a determination that [the victim's] allegations [were] true, it also left open the possibility that [the victim's] testimony was not truthful and that [the defendant] did not sexually abuse her. [The expert] did not testify [that] she believed [that the victim] had been sexually abused . . . . [The expert] did not testify about the [victim's] credibility . . . and therefore her testimony did not invade the province of the jury." Id.

I note that the majority views this distinction as nothing more than a distinction between indirect and direct vouching for a witness' credibility. See footnote 30 of the majority opinion. The majority reasons that, in *State* v. *Grenier*, supra, 257 Conn. 805–806, this court held that an expert witness may not directly or indirectly vouch for a witness' credibility. The indirect vouching at issue in *Grenier*, however, concerned experts who testified that they had treated the alleged victim for sexual abuse. See id., 802–804. Although those statements may constitute indirect vouching, testimony that merely connects general behavioral traits of sexual abuse victims with those exhibited by an alleged victim does not.

[8] The holdings of jurisdictions applying the Federal Rules of Evidence are persuasive because the federal rules treat expert opinion testimony similarly to the Connecticut Code of Evidence. Compare Fed. R. Evid. 702 ("[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: [a] the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue"), and Fed. R. Evid. 704 (a) ("[a]n opinion is not objectionable just because it embraces an ultimate issue"), with Conn. Code Evid. § 7-2 ("[a] witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue"), and Conn. Code Evid. § 7-3 (a) ("an expert witness may give an opinion that embraces an ultimate issue where the trier of fact needs expert assistance in deciding the issue").

[9] But see *State* v. *Saucier*, 283 Conn. 207, 218, 926 A.2d 633 (2007) ("To the extent a trial court's admission of evidence is based on an interpretation of the [Connecticut] Code of Evidence, our standard of review is plenary. . . . We review the trial court's decision to admit evidence, if premised on a correct view of the law, however, for an abuse of discretion." [Citations omitted.]). *Saucier*, however, focused on the admissibility of hearsay evidence, and three members of the court disagreed with this standard of review. See id., 233 (*Norcott*, *J.*, with *Zarella* and *Sullivan*, *Js.*, concurring in part) ("we should review all purely evidentiary claims, including determinations of whether out-of-court statements are hearsay, solely for abuse of the trial court's discretion").

[10] Melillo previously discussed the terms "accidental disclosure" and "purposeful disclosure" in her testimony:

"Q. . . . What types of disclosures are there?

"A. They can be accidental disclosures. They can be purposeful disclosures. . . .

"Q. . . . What is an accidental disclosure?

"A. An accidental disclosure is a situation where a child has decided never to talk about their experiences for various reasons, but, despite the efforts of that child to keep this . . . to themselves, it has come out by an accident, by a discovery process outside of themselves.

"Q. And you mentioned the term 'purposeful'?

"A. Purposeful disclosure is exactly what it sounds like. The child has made a conscious decision to tell someone who can stop it or do something about it.

* * *

"Q. . . . Upon your review of the documents in this case and the video [recording] that you reviewed . . . would you state for us whether this was an accidental or purposeful disclosure on the part of [the complainant]?

"[Defense Counsel]: Objection, Your Honor. . . . [F]or her to express an opinion as to whether it was purposeful or not, I think would run counter . . . to someone in her position making a statement about the credibility of a witness in this case, which is prohibited by . . . *State* v. *Grenier*, [supra, 257 Conn. 797], and other cases cited in [that case], including *State* v. *Ali*, [233 Conn. 403, 660 A.2d 337 (1995)], and talking about a particular, alleged victim. This witness should not be allowed to answer questions about the credibility and the definition of what that person is alleged to

have done, putting some kind of stamp of approval on it.

"The Court: All right. The objection is overruled. The witness is absolutely not allowed to testify as to credibility, but she is an expert and can render an opinion, and the jury is entitled to give it whatever weight [it] deem[s] appropriate based on her expertise."