

SUMMARY OF FINDINGS FROM THE SEXUAL ABUSE ALLEGATIONS PROJECT*

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INTRODUCTION

Although reports of incest and child sexual abuse can be found throughout history, it was not until the late 1960's that sexual abuse was specifically and explicitly recognized by statute as a reportable offense. Since then, estimates of its incidence have continued to spiral. In 1978 the reporting incidence was believed to be 1.87 per 10,000 children. By 1980 the estimate had risen to 5.76. The figures climbed to 9.0 in 1982 and 15.88 by 1984.¹

Despite growing attention to the problem, numerous unanswered questions remain regarding the causes behind sexual abuse, the long-term effects on victims, and the best methods for diagnosing and treating victims and offenders. In addition, new areas of concern are continually emerging. Recently a special group of cases has received considerable attention: sexual abuse allegations arising at the time of divorce or in subsequent legal actions regarding access to the children. Such allegations pose a variety of special problems to courts, family law attorneys, protective service agencies and private and court-based mental health professionals.

For example, in light of the parental dispute custody evaluators, attorneys, judges and protective service workers may experience special concerns about the validity of the charge. Dependency actions, and certainly criminal proceedings, are frequently hampered by the lack of a parent who is deemed to be "credible."

Additional problems result from the demands on courts and child protective service agencies to work together cooperatively. In most jurisdictions, child abuse cases fall within the domain of juvenile court; perhaps requiring the coordinated actions of juvenile and criminal courts. In cases with a custody or visitation matter pending, the situation is often complicated by the involvement of a domestic relations, family court or superior court. Typically the greater the number of courts involved, the greater the potential for communication lapses.

Similarly, the CPS agency is usually aligned with the juvenile court and has little experience cooperating or communicating with the family court. Indeed, the CPS agency may misunderstand the powers of the family court and its ability to protect the child without CPS agency intervention. It is also true that domestic relations court workers may be largely unaware of the policies and constraints under which the CPS agency must operate.

THE ABUSE ALLEGATIONS PROJECT

The Abuse Allegations Project was funded by a grant from the National Center on Child Abuse and Neglect (90-CA-1165). Research was conducted by the Research Unit of the Association of Family and Conciliation Courts (AFCC) and the National Legal Resource Center for Child Advocacy and Protection of the American Bar Association.

The research focuses on allegations of sexual abuse emerging in family court at the time of a divorce or a custody/visitation dispute. During the research, AFCC personnel conducted telephone interviews with representatives

of 25 large domestic relations courts throughout the U.S.; analyzed nearly 300 questionnaires returned by members of the National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts; kept track of the number and nature of abuse allegations heard by court mediators and investigators in twelve courts; and conducted in-depth personal interviews at five sites.

The primary court sites (Denver, Los Angeles, Seattle, Madison and Cambridge) were selected to maximize geographic and organizational variety. Included are courts in which abuse and custody matters are heard before the same bench and those with separate juvenile and family judges; courts with and without family clinics staffed by social workers, psychologists and psychiatrists; courts with in-house custody investigators and mediators, and those without such services; jurisdictions making routine use of representatives for children in domestic relations proceedings and those rarely employing such services; and systems making both extensive and limited use of private professionals in the psychological and psychiatric communities to aid in the evaluation of the family.

Approximately 70 in-depth interviews were conducted with court mediators, evaluators, and administrators; court clinic staff, domestic relations and juvenile court judges; and referees, guardians ad litem, court appointed special advocates, child protective services workers, private custody evaluators, private family law practitioners and private clinicians experienced in the field of child sexual abuse and sexual abuse evaluations.

The present article briefly explores the following issues: the nature of the allegations, estimates on the incidence of such charges, issues facing court personnel in reporting the case, evaluations resulting from the report, the perceived veracity of the charges and methods of managing cases as they proceed in the CPS agency and the courts.

NATURE OF THE ALLEGATION

Interviews with court personnel reveal that domestic relations courts are encountering a wide range of sexual abuse allegations. Only occasionally do the cases involve charges of actual intercourse with a child. As frequently there are concerns expressed over fondling, kissing, exhibitionism or behaviors which are inappropriate given the child's level of maturity (e.g., bathing with an older child). Not surprisingly, it is sometimes difficult for the court worker hearing the allegation to determine whether these inappropriate behaviors constitute abuse. As one commissioner notes: "There is a range of acceptable behaviors, people with different value systems aren't necessarily guilty of abuse."

Mental health professionals suggest that some "questionable" behavior charges result from the lack of clear norms regarding acceptable interactions between a child and the network of adults she is surrounded by following the divorce. Indeed, we even lack well established norms to govern single fathers and their children. As one protective service worker observes:

Mothers can take their young sons into the women's restroom without question. A father who takes his daughter into the men's restroom might find himself accused of 'questionable' behavior.

On the other hand, not all 'questionable behavior' reports can be dismissed as innocent and misinterpreted actions. Nor, of course, do all sexual abuse allegations arising in the family court involve ambiguous actions; in many instances the alleged behavior clearly represents abuse.

Most reported sexual abuse involves male perpetrators and female victims.² Not surprisingly, then, most sexual abuse allegations arising during the course of a divorce or custody action involve accusations against fathers, stepfathers or mother's boyfriend. Court personnel report that the most common case involves a father alleged to be abusive by the mother. However, charges by a father against mother's male partner are also common and cases also arise in which allegations are brought against the child's stepbrother, grandfather, uncle or a family friend. Similarly, the alleging party may be a parent, a grandparent, or even the child's teacher or therapist. In some cases the allegation is very clearly brought by the child. Several court mediators and evaluators recall instances in which an interview with the child triggered the investigation.

Although not frequent, there are even "charge and counter-charge" situations. In these cases, the party bringing the initial charge is in turn accused of abuse. Thus, a father who alleges that his child is being molested by her stepfather may find himself accused of the behavior. Although on the surface these "counter-charges" appear to be motivated by little more than revenge, court workers and consulting psychiatrists warn against dismissing them too readily. Abusive parents often project their own feelings and behaviors onto others. Thus, an allegation may trigger the accused party into closer scrutiny of both the child and the accusing party and the result can be a counter-allegation.

Finally, it is important to note that discussions of "abuse allegations" may improperly suggest that most of these cases involve specific or direct accusations. In reality, many parents simply relay their concerns about the way the other parent interacts with the child, express a combination of concern and disbelief about possible abuse, or question court workers about whether a suspected behavior is "normal" or cause for alarm. Still other parents are merely conveying suspicions relayed to them by third parties, such as teachers or physicians.

THE INCIDENCE OF ABUSE ALLEGATIONS

Some writers have suggested that the allegation of sexual abuse in divorce constitutes a major problem. Based on reports in the San Francisco Examiner, the LA Times, and the Oakland Tribune, Lee Coleman, M.D. describes the situation:

a wave of false allegations, filed by persons in the midst of custody and visitation disputes, is flooding the police and the courts.³

However, respondents to a survey of courts around the country typically describe seeing "a small but growing number" of such charges.

Interviews with court workers in our five research sites confirm these views. In addition, many individuals believe that the major increase in such cases actually took place 3-5 years ago, in the early 1980's. Since that time they feel the reporting incidence has leveled off. The increased numbers earlier in the decade are largely attributed to increased attention to the problem of sexual abuse. The rise of allegations within divorces is seen as paralleling the rise in reports to protective service agencies in general. The increase in direct reports to CPS agencies has been dramatic, with a national increase of nearly 200 percent during the last decade.⁴ As one commissioner notes, "we've taught parents the warning signs of abuse, we've got to expect more reports".

Similarly, professionals have been sensitized to the problem and to the mandatory reporting laws. One protective service supervisor suggests that courts are hearing more about sexual abuse these days because custody mediators and evaluators are more likely to bring the issue up and, "if you ask the child, you'll hear about it. If you don't ask, you won't hear."

The limited information available to date suggests that in most courts approximately two percent to ten percent of all family court cases involving custody and/or visitation disputes also involve a charge of sexual abuse. Since the incidence of contested custody is estimated to be about 10 to 15 percent of divorce filings with minor-aged children, it may be more accurate to estimate that sex abuse allegations occur in the range of approximately 2 to 15 per 1000 divorce filings.⁵

The perception of these cases as far more common may reflect the fact that such cases are particularly vexing cases for court professionals and their impact is disproportionate to their occurrence. Court personnel as well as private mental health professionals consistently rate such cases as among the most troublesome and time-consuming. In addition to involving the child protective services agency, numerous courts, and a wide array of private professionals, these cases often involve young children, high levels of parental anger, extended family members choosing sides, and a host of other problems, including spousal abuse or alcohol abuse, which further complicate an accurate assessment.

REPORTING ISSUES

Abuse allegations arising at divorce or during custody/visitation disputes may come to the attention of many different court actors including intake workers, court mediators or investigators. In systems lacking such personnel, referees and judges may be the first to hear the allegation. Typically when parties are represented they have shared their concerns with their attorney prior to the court appearance. The attorney must advise his/her client about the actions to be taken: whether to report the case, whether to mention it in a custody evaluation or mediation, whether to introduce it in a custody-visitation hearing. One private attorney described the difficult choices to be made:

As a woman attorney in a firm of women attorneys, I'm usually representing the mom bringing the issue up. Usually she says, 'I can't really believe he'd be doing this, but...', or they've seen something that's got them worried but they're also feeling guilty and ashamed. It makes them feel people will consider them bad moms if it's true. People will question how observant and caring they are. Lots of times you have to convince them to discuss it. I'll explain to them that custody and visitation hinge on it, and child support flows from that. Also, if they wait [to bring the charge up] until it looks like dad will have easy access to the kids, they'll be asked 'why did you wait so long to say something?' The hardest part is that, in all honesty, you have to tell her that her concern about losing the children [because she failed to prevent the abuse] is valid.

Once the allegation is raised there appears to be very little disagreement among court professionals about the procedures to follow. Typically the child protective services authorities are notified. If the allegation is made during mediation, the session is generally terminated. Custody evaluations are more flexible: the investigation may be suspended or it may continue following notification to the CPS agency. In virtually all systems the custody hearing will await the CPS decision and, if the case involves juvenile court actions, the custody/visitation hearing will also be suspended pending the juvenile court ruling.

Professional reluctance to report abuse is far from unusual. National research conducted by the National Center for Child Abuse and Neglect (1981) suggested that only about 50 percent of the sexual abuse known to professionals is in fact reported.⁶ The unwillingness to report abuse probably varies by profession: therapists are especially concerned that such reports violate the family's confidential relationship with the treatment provider. Widespread concern and skepticism about what the child protective service agency will do with the report is also a probable explanation for the failure to report.

However, family court personnel, including custody mediators and custody investigators/evaluators, deny selectively reporting cases with sexual abuse allegations. They point to strong reporting laws and the serious risk posed by failure to report in explaining why court personnel would prefer to error on the side of over-reporting. Family court workers do agree that deciding whether a report is necessary can necessitate some discretion on their part. The discretion centers around determining whether or not a given case entails

"abuse" or merely poor judgment in behavior, and in establishing whether there is a "reasonable suspicion" of sexual abuse.

Family court personnel suggest that reporting all possible cases of sexual abuse, regardless of the alleged behavior or the likelihood that abuse took place, would create tremendous problems, including: escalating family conflicts; creating unnecessary delays in the establishment of custody/visitation orders; subjecting children to unwarranted investigations; and generating extra work for an already overburdened CPS agency. The CPS workers we interviewed expressed confidence that family court workers are responding appropriately and expressed doubt that the level of discretion being exercised poses any risk to children.

THE INVESTIGATION OF THE ALLEGATION

Investigations of possible sexual abuse result in a finding by the CPS agency that a case is either "substantiated," or "unsubstantiated." The former outcome indicates sufficient evidence for the court to become involved in the case and for the CPS agency to provide services to the family. An unsubstantiated finding may indicate abuse did not occur, or may reflect the lack of sufficient evidence to warrant further action. It is generally conceded by all court personnel to be the responsibility of the CPS agency to investigate allegations and reach determinations regarding their veracity. In actual practice, however, the division of labor in an investigation is more complex. Many actors play a potential role. For example, many systems require police involvement in the early stages of the investigation. Still other jurisdictions have adopted team approaches that stress the involvement of pediatricians, psychologists and representatives of the prosecutor's office or dependency court.

The domestic relations court may also play a role in such investigations. While some courts indicate they undertake no action in a case once it has been reported to the CPS agency and rely on that agency's determination to guide the court's action on custody or visitation, others play a far more active role. Some courts report a reluctance on the part of CPS agencies to seriously investigate abuse charges in divorce/custody cases. Caseworkers may dismiss such cases as undoubtedly false or assume that the domestic relations court will protect the child. If the child is not living with the allegedly abusive parent, the case may not be perceived to involve imminent danger, thus resulting in a lower case priority. Even in settings where the CPS agency is believed to adequately perform the abuse investigation, the family court worker may be involved in a simultaneous but more general evaluation of the family such as a custody study.

Not surprisingly, concerns arise when CPS workers and custody evaluators reach differing conclusions. In some cases the differences represent opposite conclusions, in other instances they principally reflect the differing goals or missions of the two professionals. For example, the CPS worker may rule that the case is too weak and questionable to warrant juvenile court actions or the imposition of a treatment plan. The court evaluator charged with recommending the parenting arrangement that will best serve the child may feel the real possibility of abuse is grounds for denying custody or restricting visitation.

It is unclear how domestic relations judges respond to these differing conclusions. According to several counselors, judges in small courts have greater confidence in recommendations of their own, familiar custody workers while those in larger, jurisdictions are more influenced by the conclusions of the official investigatory agency.

Another potential actor in the investigatory process is a representative appointed to protect the child's best interests. Although guardian ad litem (GAL) appointments are rare in domestic relations cases, a few courts have mandatory appointments in custody disputes. In other settings, representatives are appointed in all divorce actions that involve serious allegations such as sexual abuse. Jurisdictions also vary as to whether the representative is a non-attorney acting as a Court Appointed Special Advocate (CASA) or an attorney. In some courts, the non-attorney advocate may in turn be represented by legal counsel, and in rare cases the child may be represented by an attorney who will serve as an advocate, not for "the child's best interests" but for the child's position or opinion.

At worst, the GAL or CASA may play a passive and vague role or may become inappropriately aligned with one parent. In systems with strong programs and skilled advocates, the GAL and CASA are usually greatly appreciated by the court, the attorneys, the consulting mental health professionals, and the parents.

In the early stages of a case, GALs and CASAs frequently investigate the family and to some degree the alleged abuse. To avoid duplication of effort, many advocates report coordinating their actions with the court's custody evaluators. Typically, child advocates and court investigators reach the same conclusions regarding desirable case outcomes. If different opinions exist, family court counselors suggest that attorney advocates would hold more power with the judge, but they feel certain that the disagreement would lead to a full hearing. If the child's representative is a non-attorney volunteer, it is less certain whose opinion would carry greater weight--the court counselor or the advocate. However, in courts with strong CASA programs there is no doubt that this individual's opinion will hold great weight with the court.

In cases which do not proceed to juvenile court hearings, the child's advocate may play a special role in ensuring that the domestic relations court is aware of any possible abuse or risk to the child. This function may not be served by the attorney for the alleging parent because of concerns that introducing the unfounded abuse charge will be viewed negatively by the presiding judge.

A final set of actors in the investigation process are private mental health professionals retained to aid in evaluating the family. Depending on the jurisdiction, the services of these clinicians may be requested by one or more of the following: the child protective services agency, the court hearing the abuse allegation, court custody investigators, referees, judges, or guardians ad litem in the juvenile or domestic relations court.

Mental health experts provide psychological testing, clinical interviewing, collect and analyze corroborating data to help shed light on whether the child appears to fit the pattern of a sexual abuse victim, whether the accused parent is a likely offender, the nature of treatment that

might be beneficial to the family, and other family dynamics that should be considered when determining the child's living arrangement.

These professionals stress that they cannot perform a fact-finding role. They cannot tell the CPS worker or the judge whether or not the abuse, as alleged, actually occurred. Nor can they determine the guilt or innocence of any of the possible offenders. No standardized test alone can accurately predict whether someone is abusive or non-abusive.⁷ Mental health professionals can provide information that will suggest whether sexual abuse would be a likely or unlikely explanation in the case, and how well or poorly the alleged party fits the profile of a sexual offender. They can point out other family dynamics, such as the child's level of attachment to each parent, that may help in reaching the best resolution in the case.

Judges, family court counselors and CPS workers all acknowledge that clinicians do not have definitive answers, and cannot tell them whether the sexual abuse charge is "true" or "false." However, the joking remark of one family court counselor carries more than a little truth:

Even though we know they don't have the answer, we're always hoping they will give it to us anyway!

Similarly, most clinicians feel that their role carries with it tremendous pressures to "produce the answer." Although most maintain that they feel comfortable producing a report that is inconclusive with respect to the abuse, they recognize that such reports must be the source of tremendous judicial frustration:

When a report winds up concluding that "the abuse is not inconsistent..." the court must be frustrated and the judge is probably saying, "I already knew that, I didn't need an 'expert' opinion to figure that out."

Needless to say, custody and visitation disputes only exacerbate the pressure clinicians feel to produce "answers" for impatient judicial audiences. The rival pressures for certainty and respect for the ambiguities of available data are not easily resolved.

Everybody wants a litmus test,...We need to let judges know that lots of professionals have quick answers based on faulty assumptions. I'm not saying that you need to be so vague that you're useless. I'm more optimistic than that. It's a delicate line between being too pat and too vague. You put the puzzle together and you look for consistencies.

ISSUES IN THE INVESTIGATION OF CHILD SEXUAL ABUSE

In general, sexual abuse investigations are difficult and complex. These cases often lack physical evidence and witnesses. Although expert investigators believe that reports from children should be treated very seriously, they can cite exceptional cases in which disturbed children fabricated or embellished sexual abuse stories to please adults, obtain revenge against a parent or step-parent, or to gain attention.⁸

Clinicians also acknowledge that very young victims may misrepresent the person responsible for the abuse. Frightened at the prospect of retaliation, young children may name a person with whom they feel safe as opposed to a less "safe" person, without understanding the consequences of the misreport. Very young children may also offer very vague comments that must be interpreted by the child clinician.

Family pathology, psychosis and spousal abuse factors also complicate assessments in some cases. For example, it is argued that mothers who were abused as children or as wives are overly sensitized to the issue and find it difficult to believe that their children could have a positive father-child relationship. It is too simple, however, to dismiss such charges altogether. Women abused as children may marry abusive partners and may be justified in their suspicions. Similarly, while some women who were abused during the marriage may be worrying unnecessarily that the abuse will be transferred to their children after the divorce, for others the concern is justified.

When sexual abuse allegations must be assessed within the context of a custody or visitation dispute, the investigation is further complicated. No doubt the single greatest difficulty is the tendency for acrimonious disputes to produce a range of symptoms in children that closely parallel many symptoms of child sexual abuse. Depression, withdrawal, anxiety, and fear of abandonment may well be indicators of sexual abuse for children from intact households in the absence of other obvious stresses.⁹ However, children whose parents are in the process of divorce and/or bitterly contesting custody or visitation may be expected to exhibit these stress-related behaviors without the presence of sexual abuse.¹⁰

Exceptionally provocative or aggressive sexual behavior in children is common to sexually abused children but is not routine in children adjusting to a divorce or embroiled in a custody battle. However, in some cases even overtly sexual behavior may be more attributable to the divorce than to abuse. Mental health experts report that children of divorced parents are often surrounded by a higher level of sexual excitement than are children from intact households. One psychiatrist notes that "no matter how good the marriage is" children living with their mothers and fathers are generally far less aware of, or concerned about, the sexuality between their parents. The child who is living with a mother and her new partner, or who visits father and his new partner, is surrounded by more sexual expression between adults, and is more concerned about this behavior.

Evaluations of the alleged offender are also complicated by the presence of a custody or visitation dispute. Thus, in a sentiment echoed by others, one therapist observes:

The perpetrator's hallmark is defensiveness, but this is also true for a lot of people who are involved in custody and visitation disputes.

Another therapist observes that offenders in incest cases, including cases where the allegation arises during the divorce or custody proceedings, will be among those least likely to admit the offense. Divorce cases often involve young children rather than adolescents. Social stigma is probably greatest in the sexual abuse of pre-pubertal children. In addition, although all offenders risk serious consequences for admissions of guilt, the parental offender, but not the outside adult, risks the possibility of losing contact with a child to whom he feels genuine love.

THE QUALITY OF THE SEXUAL ABUSE ASSESSMENT

Investigating the possibility of sexual abuse may involve a wide range of professionals with specialized skills and expertise. In addition to the social worker at the child protective services agency, the investigation may involve the police and medical personnel. In some instances consulting psychologists or psychiatrists may be asked by the court, the CPS agency or the parents' attorneys, to evaluate the family in order to assess the likelihood of the allegation. Although it is with these consulting experts that we are most concerned in this section, the comments are also generally applicable to the evaluation and investigation performed by the CPS worker.

Identifying poor evaluations is sometimes merely a case of becoming familiar with the work of a given psychologist, psychiatrist or protective service worker. Court workers, attorneys, child advocates and other psychotherapists agree that in most communities there are individuals with well-known biases who inevitably reach the same conclusion in every case. Thus, some evaluators predictably find all accused parties fit the profile of an offender, while others routinely find the opposite.

However, even generally unbiased individuals may produce poor evaluations. Respected, experienced evaluators, prosecutors, and guardians ad litem have a variety of insights to help the courts and attorneys in their efforts to assess evaluations. They can also offer recommendations to their peers about how a report should be presented in order to maximize its utility.

The credentials and experience of the expert should be considered. Prosecutors point out that not every pediatrician is skilled in recognizing the physical signs of possible sexual abuse. Similarly, the professional conducting the psychological evaluation must be skilled in the areas of family dynamics in sexual abuse, sexual abuse victims and offenders, and child adjustment to divorce.

Experienced evaluators suggest that to be of greatest value the worker or team should see every member of the family involved in the dispute. At a minimum this would include the two parents and the child. In most cases new spouses, siblings of the child in question, or extended family such as grandparents would be included. The court appointed evaluator is, of course, in the best position to gain access to all parties. If full access is impossible, as it sometimes is, the court should dismiss any report which draws conclusions about individuals the evaluator never saw.

As a general rule, experienced evaluators suggest that reports based on single interviews with parties should also be viewed with caution. In addition, most evaluators prefer to see parties alone and in various combinations. This allows evaluators to observe mother-child or father-child interactions. However, this procedure may not be warranted if there is good reason to believe that the encounter would be traumatic for the child. Multiple interviews are, of course, frequently time-consuming. Evaluators must balance the need to help resolve the case expeditiously, avoiding prolonged family uncertainty and stress, with the need to conduct thorough interviews and data collection.

Properly conducted evaluations will draw on information from sources outside the family. Evaluators should be in touch with any professionals who

have had contact with the family. Schools, and pediatricians, for example, are excellent sources of information.

To be of greatest utility, the evaluation should not be exclusively focused on the issue of sexual abuse. The evaluator is not attempting to prove whether or not the abuse occurred. In order to best assist the court, one must consider the strengths and weakness of each parent. In addition, evaluators must consider all aspects of the family in order to ensure that they do not mistakenly assign symptoms caused by other problems to the alleged abuse. This point is especially noteworthy in cases where children and parents may be reacting to a separation, divorce or conflict over visitation and custody. During the course of the evaluation the following issues should probably be explored:

- * family history, including: abuse histories in parents' homes, past family violence, education and employment histories and social network ties.
- * sexual history of both parents
- * details of the alleged abuse
- * anger control on the part of the alleged perpetrator, and prior history of violence
- * relationship dynamics, including the nature of the custody or visitation dispute and marital history
- * drug and alcohol history
- * cognitive functioning of all parties including presence of major mental illnesses

Although reports may be structured or organized in a variety of ways, some styles will probably make the report more useful and compelling. The report needs to carefully document how conclusions are reached. Interviews with lawyers and judges reveal enormous dissatisfaction with reports that provide "six pages of family history that you already know and one page of conclusions". Equally useless are reports that contain a series of numbers from the standardized tests with no interpretation to explain their relevancy. Documenting conclusions may include explanations and interpretations of test results, verbatim quotes from the indepth interviews, information from outside sources such as the school or physician, and lots of detail. The goal is to provide the court with a compelling picture of how the alleged abuse could very plausibly have occurred, or how the allegation seems inconsistent with the evaluation results.

Although the report should be complete, evaluators are urged to avoid "jargon" and to keep to the point. Reports are viewed as "padded" if they include long family histories which repeat information already available through other evaluations. Keeping the report short and succinct will also increase the likelihood that it is fully read. Some evaluators prepare lengthy reports which contain great detail, but also include brief summary and recommendations sections.

THE VALIDITY OF THE ALLEGATION

The validity of sexual abuse allegations heard in family court has increasingly become a source of contention between those who perceive the court's response to be excessively skeptical and those who believe the court blindly accepts the charge and views the accused parent as guilty until proven innocent. Published accounts are also polarized in their views of the courts' response. Some authors insist that family courts inevitably are inclined to dismiss the allegation.

From report to determination, the fact that these allegations may be a strategy in a custody dispute is weighed heavily by each person who makes any decision about the abuse reported.¹¹

Others have suggested, explicitly or implicitly, that judicial skepticism is advisable since allegations arising in divorces or custody/visitation matters are in fact likely to be false.

For many parents engaged in seriously contested child custody disputes, false allegations of child abuse have become an effective weapon for achieving an advantage in court.¹²

Much of the writing to date has been based on authors' general clinical experiences, rather than on an empirical assessment of probability samples. In attempting to explain why false allegations arise, and how they can be detected, clinicians often deliberately choose a sample of false allegations for in-depth study. While this technique is valid, the reader and the author must not lose sight of the limits to this approach.

An additional problem in considering the validity of sexual abuse charges arising in custody and visitation cases is the lack of information about the disposition of sexual abuse cases in general. There is some reason to suspect, however, that sexual abuse is difficult to detect and a great percentage of the reports in the general population--not simply in family court--are ultimately labelled "unfounded." Highlights of Official Child Neglect and Abuse Reporting for 1984, reports:

Based on data from 19 states, a national estimate of 727 thousand reported children were considered substantiated for child abuse and neglect by CPS systems. This represents approximately 42 percent of the 1.7 million children who were reported in 1984.¹³

These substantiation rates unfortunately include cases with custody or visitation disputes in progress, as well as those without. Nevertheless, these statistics strongly suggest that the incidence of unsubstantiated reports is generally quite high.

In our interviews with professionals at each of our research sites, we asked for insights into the validity of the charges they heard or were asked to assess. In the absence of a generally accepted set of phrases to describe these cases, we refer to true, false, indeterminate, and spiteful or fictitious allegations.

True allegations are those in which the abuse, more or less as charged, was believed to have occurred. False allegations are those offered in good faith, but where, for a variety of reasons, the abuse was unlikely. In

indeterminate cases the likelihood of the charge remained in serious doubt. Finally, "spite or fictitious allegations" describe the case in which the alleging party is believed to have deliberately manufactured the allegation of sexual abuse, or maliciously capitalized on innocent circumstances.

Family court personnel suggest that there is possibly a certain subset of cases in which abuse clearly took place. One court administrator suggests that perhaps half of all the allegations heard may be such cases. More problematic are those cases in which all the professionals remain uncertain about what, if anything, actually transpired. These cases often involve very young children with very confusing, vague stories or totally unwilling to talk. These cases may also involve an accusing parent who seems seriously mentally disturbed and an accused parent who is conceivably abusive. These cases may also involve clear evidence of abuse but a variety of possible perpetrators.

In some cases all the professionals involved in the case feel fairly certain that the abuse did not occur. A few professionals believe such allegations are "the new fad way to deprive a father without due process." However, the more general consensus is summed up by one clinician who notes, "I have seen a couple of manufactured cases, and you do have to be concerned with the rights of the accused parent. But that's not the usual case."

One factor repeatedly cited as a deterrent to deliberate false reporting is the potential damage an allegation may do to the alleging parent's reputation. One guardian ad litem observed, "If mom does bring it up, people are going to ask 'what did she do about it?'. So, if you are just manufacturing a story, you'd better get ready for criticism." The sentiment that the allegation hurts the parent making the charge is echoed by others who believe that the court is likely to view most parents bringing such allegations as vindictive and angry.

Although parental anger is an important feature in understanding sexual abuse allegations that arise in divorce, none of the clinicians and few court or child protective service workers we spoke to believe that the anger commonly leads to direct fabrications. A guardian ad litem concurs:

Moms get very involved in reporting, certainly. Sometimes they get overly involved. Moms are very angry. Often the child tells mom and mom's the only person the child will talk to. As a result, you have to filter what mom's saying through her general anger at dad and her fury at the idea of abuse. You have to try to hear what part of all this is what the child actually says.

In some cases anger undoubtedly results in a parent who is more willing to believe the worst in interpreting less than conclusive evidence.

At least two factors may on the surface seem cause to question the validity of the allegation. Incidents that are reported to custody evaluators or mediators, which have never been mentioned to other authorities such as pediatricians or CPS workers, strike some as "convenient" but questionable. Others doubt reports of abuse which allegedly began only after the divorce. As one CPS administrator admits, "I wonder about the cases where dad suddenly becomes abusive after the divorce."

However, mental health professionals suggest that neither factor is necessarily cause for dismissing the allegation. In a truly abusive household each parent may have a motive for remaining silent. The non-abusive parent may feel that disclosing the problem will only lead to questions about both parents' desirability as a custodian. In post-divorce cases the prospect of returning to visit with an abusive parent may trigger a disclosure by a child. In new divorce actions, the parental separation may provide the child with the necessary conditions for a disclosure: the perpetrator is out of the home and less of a threat, the child may no longer worry that revealing the abuse will cause a divorce. In addition, as one mental health professional notes, "At the divorce, mom is ready to face clues she's ignored before." Thus, the timing of the disclosure is only a concern if the report seems to be almost an afterthought.

Several psychologists and psychiatrists report that, although the onset of abuse following a divorce may strike many as unlikely, the possibility is worth serious consideration. One psychologist offered the following example: In speaking to groups of attorneys I remind them:

Divorce is a crazy-making time, right? I see everyone nod. It doesn't make someone an abuser, but like drinking, divorce can create a lessening of controls and provide situations conducive to it. The attorneys relate to this because they realize that their clients are doing crazy things that they normally wouldn't dream of doing.

Another psychologist points out that if a society wished to ensure that sexual abuse would occur, it would develop arrangements that closely parallel current visitation practices. As he describes it:

It's not hard to believe that some abuse starts after divorce. If you take parents with inclinations and make them lonely and needy, and give them a child who is also lonely and scared and put them together for entire weekends, alone--you've created a perfect opportunity for abuse to occur.

The general consensus among the family court personnel we interviewed, as well as in the child protective service agencies, guardians ad litem and the private sector mental health community, is that deliberately false allegations do occur but they are exceedingly rare. As a result, courts are urged to treat each allegation seriously in order to protect the child.

CASE MANAGEMENT

A survey of courts around the country, as well as in-depth interviews in our five research sites, confirms that the greatest obstacles to the efficient handling of cases occurs when two or more states, or even two or more counties are involved. Courts have not yet begun to address the reforms in policies and procedures that will be needed to remedy this problem. However, courts have considered the difficulties created by the involvement of several courts within a single county.

In systems where sexual abuse and custody/visitation cases are routinely heard before the same judge, cases involving both issues probably create a minimum of extra problems. The judges we spoke to uniformly agreed that one court, even one individual, hearing both issues would no doubt be the preferred approach. However, in many systems the reorganization needed to create such a court is viewed as an impossibility.

At their worst, systems with separate juvenile and family courts can subject families to confusing and contradictory orders, or may provide them insufficient attention as each court assumes the matter will be handled elsewhere. As an arm of the juvenile court, the child protective service agency has on occasion been confused about the role and powers of the family court.

In addition, given the number of agencies and courts involved, the likelihood of duplicated efforts and resulting case delays is increased. The child protective service agency, the law enforcement agency, the child custody evaluation unit of the family court, the private psychologist retained to help investigate the abuse allegation, and the independent custody evaluator may each cover much the same ground in a given case.

Courts and CPS agencies around the nation have developed a number of strategies to help streamline interventions into sexual abuse cases. Systems with specialized sexual abuse teams in law enforcement or child protective services may find that these workers can help to ensure smooth case processing. These specialized workers often have regular meetings with juvenile court personnel to discuss all active cases. The specialized CPS workers are also in frequent contact with the parents and their attorneys. These workers may help to facilitate communication. However, in most systems family court workers are not members of such interagency child sexual abuse groups.

Another method to ensure that cases are not subjected to unnecessary delays or inappropriate orders, is the routine use of representatives or advocates appointed for the child in the family court. CASAs and GALs are involved in each step of the case and are in communication with each of the agencies and courts involved. Thus, family court counselors, child protective service workers and juvenile court representatives report communicating with the child's advocate at some point during the case. This provides the CASA or GAL with a vantage point from which to spot case delays and conflicting actions. It also provides an opportunity to speed the process by facilitating information sharing and decision making. However, to be effective the representative must be well trained, thoroughly familiar with the system and actively involved in the case. This argues for careful appointments and adequate supervision and consultation for non-attorney advocates.

In a similar fashion, court administrators may be able to maximize the amount of communication and cooperation between family and juvenile courts. These individuals are in a position to flag cases that involve both courts and take the appropriate steps to guarantee that everyone involved in the case, including, among others, the judges and attorneys, are aware of the actions being taken in the case.

Finally, some jurisdictions have adopted a policy urging that cases be consolidated. In courts with jurisdiction over custody and abuse matters,

this would simply involve arranging for the same judge to hear both issues. In locations where separate courts are involved in the abuse and custody matters, a decision must be made to have both issues heard before one of the two courts. In many cases this will mean that the abuse allegation and custody/visitation matter will be resolved by the juvenile court. In cases with a long history in family court, including time-consuming custody studies and psychological evaluations, the matters might be handled in family court.

Although arranging for the case to be heard solely in family or juvenile court has obvious advantages, there are also problems. All attorneys handling divorce and custody matters should be familiar with the procedures and practices in the juvenile court. In many cases, however, attorneys actually practice primarily in domestic relations or juvenile court, rather than both. As a result, some attorneys are likely to resist attempts to consolidate the case in an unfamiliar setting.

Some juvenile court judges and family law attorneys insist that family court judges are perceived to be reluctant to hear abuse cases. It is also argued that family court judges will be too concerned with parental rights. Their experience has fostered a strong belief that both parents have a right to see their children. Critics feel that the focus on parental rights, combined with a lack of knowledge about sexual abuse, makes family court judges slow to deny visitation and instigate investigations.

Finally, in some states, juvenile and family court judges question whether the family court has the necessary authority to order families into treatment. Many observers believe that such powers do exist, but are unnecessarily questioned by family court judges. All agree that without this power family judges are at a serious disadvantage in resolving the abuse aspects of the case.

Short of the ultimate goal of a single judge hearing all the issues in the case, improved communication between the juvenile and domestic relations benches would be welcomed. Formal policies outlining the way in which cases will be consolidated or communication will take place are also needed if these policies are to last beyond the tenure of those who developed them.

SUMMARY OF FINDINGS

The Abuse Allegations Project has involved a review of relevant literature and case law, telephone and mail surveys of courts throughout the nation, in-depth interviews in five diverse courts and case tracking efforts in twelve domestic relations courts. Based on the results of all these approaches, the following general findings are offered about sexual abuse allegations arising in domestic relations courts:

- * The number of sexual abuse charges arising during divorces and/or custody/visitation disputes is small in absolute numbers, and as a percentage of all contested cases.
- * The number of cases involving such allegations has increased in recent years, as have sexual abuse reports in the general population. Increased media attention and public awareness campaigns are probably largely responsible for the rise in reports.

- * Probably half of all reported sexual abuse cases are ruled 'unfounded'. At present there is no evidence to suggest that allegations arising at the time of divorces or custody disputes are more likely to be false.
- * Deliberately false allegations made to influence the custody decision or to hurt an ex-spouse do happen, but they are viewed by knowledgeable professionals as rarities.
- * Courts hear a wide range of "allegations". Some are clear accusations, some are expressions of mingled concern and disbelief. The actions in question range from sexual intercourse to behaviors (such as parental nudity) which may be acceptable to some families or cultures.
- * The most typical cases involve charges by mothers against fathers. However, stepfathers and mother's boyfriends are often accused by fathers. Charges are also raised by and against grandparents, uncles, family friends and full and step siblings.
- * The level of discretion in abuse reporting currently exercised by domestic relations court personnel is both acceptable to and appreciated by child protective services workers.
- * Labels employed by CPS agencies may be a source of confusion to some outsiders. Not all "unsubstantiated" or "false" cases are deliberate lies. While these cases lack sufficient evidence, there may have been abuse in some of these cases.
- * Typically a great many actors are involved in these cases: CPS workers, police, physicians, guardians ad litem, custody evaluators, private mental health workers, family, juvenile and perhaps criminal court representatives. Coordinated efforts by these actors can help reduce delays, duplicated efforts, contradictory orders and general trauma.
- * In the past, problems have arisen between CPS workers and family court personnel due to a lack of communication and resulting misunderstandings about the role of each.
- * All but the most flagrant cases of sexual abuse are difficult to validate. In cases with divorces or custody/visitation disputes in progress, the following may be complicating factors: child behaviors may be the result of stress related to either abuse or the divorce; sexual behaviors by children may be the result of abuse or the result of living in a more sexually charged environment following the parental separation; new people in the child's life may be either abusive or simply reacting, perhaps poorly, to the lack of clear guidelines regarding appropriate and inappropriate intimacy; the accused parent's defensiveness may be due to the risk of having the abuse revealed or merely due to the risk of losing custody and visitation.
- * Allegations may arise only after a custody study or other court action has begun. There is no reason to believe that these cases are necessarily false. Many parents hope to divorce, gain custody

and restrict visitation without mentioning sexual abuse and inviting CPS agency involvement.

- * Abuse may begin only after the divorce. Cases alleging such behaviors should not be dismissed as implausible.
- * Mental health professionals can provide valuable assistance to the court, but they cannot be expected to definitively prove or disprove the abuse charge.
- * In general, the court is usually best served when the evaluation report is: prepared by an evaluator with experience in sexual abuse evaluation and treatment, child development and divorce; based on multiple interviews; based on interviews with all relevant parties; based on information from interviews, standardized and projective tests; documented, with support offered for conclusions; focused on the allegation but not to the exclusion of other family dynamics and parental strengths and weaknesses.

Footnotes

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