

# **Alleged Sexual Abuse in the Context of Divorce**

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## **Introduction**

Alleged sexual abuse looms as one of the most difficult, controversial and challenging issues facing society. In almost all cases, it is one person's word against another's in a crime that is not witnessed. Assuming we have a special ability to discern truth, society often calls upon psychiatrists to either substantiate or to invalidate such a claim. This task is complicated enough in the course of normal therapy and without the threat of litigation. In the context of divorce, the allegation by one party that a child has been abused poses a question that would cross Solomon's eyes.

According to the Surgeon General, each year, about 110,000 children are the victims of sexual abuse. In order to cogently discuss the issue it is critical to first define child sexual abuse. Child sexual abuse occurs if any person under the age of 18 is made to engage in, or to help someone else engage in, any sexually explicit conduct, such as intercourse, sodomy, genital fondling or oral copulation. It also occurs if the child is molested, raped, involved in incest or is sexually exploited as in child prostitution or pornography. A child is abused if he or she is enticed, bribed, threatened, or coerced in some way, particularly by force, to engage in any of these acts, or if the child is developmentally not old enough to mature enough to understand the consequences or implications of these acts.

Divorce is an adversarial situation. Although it may be hard to find data to support the claim, clinicians believe that it is increasingly common for allegations of child sexual abuse to be levied by one party, against the other, especially in situations where custody is to be a central theme to the divorce.

## **Statistics**

About 35% of alleged sexual abuse allegations are proven in court. About 10% of custody cases are contested and in these cases, about 2.5% allege sexual abuse. Mother's accuse fathers in about 50% of the cases and accuse stepfathers in about 20%. Fathers accuse mothers in about 5% of cases. Only about 22% of alleged child sexual abuse cases are proven in court. Allegations of sexual abuse are more common in contested custody cases. Guyer and Ash reported that 33% of 400 cases of court ordered evaluations

involved such an allegation. The incidence of intentionally false reporting of child sexual abuse is 5%-8%. Benedek and Schetky found that allegations were false in 10 of 18 cases (56%) referred for sexual abuse evaluations in custody or visitation disputes.

## **Questions**

There are a number of questions which must be answered through an evaluation. Has abuse occurred? Does the child need protection? Does the child need treatment? Who is the abuser? Where, when and how did it occur? How was the child approached? Were threats used? Was violence used? How was secrecy enforced? Who has the child told about the abuse?

## **Evaluation**

Full, proper and impartial evaluation of a suspected case of child sexual abuse is omniscient. Without an unbiased interview there is no chance of making reasonable conclusions and a great risk that the procedure itself will traumatize the child. Unless you are willing to see the case through to the end, including being cross-examined by a well trained attorney, you should not embark on an evaluation. Unfortunately, the child may have been interviewed multiple times before ever being seen by an expert. The interview should be conducted by a person with a solid knowledge of child development and the dynamics of sexual abuse. It need not be conducted by a child psychiatrist; experience and knowledge, rather than credentials should be the determinative factors.

Often the most critical evaluation is overlooked. Never pursue a case without first having reviewed the available medical data from the case. If the child has not yet been medically examined, insist that a well trained pediatrician or pediatric gynecologist with experience in alleged sexual abuse be involved in the case and that the child be examined prior to your evaluation.

Many evaluators have an extreme bias either always or never finding the allegations to be true. Unless an evaluator has seen cases where both conclusions have been reached their expertise and neutrality should be questioned; false negatives and false positive are to be expected. Too often, evaluators have an unspoken agenda.

All interviews should be videotaped. This should start with the first evaluation by the police or physician but unfortunately this is rarely done. Although some children may express fear of the camera (which is sometimes suggestive of being videotaped or photographed as part of the abuse) it is important to tape the interview. This allows the data to be made available to both sides in the dispute and allows the questions and questioning technique to be evaluated. This is especially true as the concern for coercive techniques and leading questions that have proven to be a problem in many cases to date. In addition, videotaping may allow for fewer evaluations in that both sides may access the same data and thus subject the child to fewer sessions. Remember, children are highly suggestible and may integrate information from leading questions into their story in an effort to please the interviewer. Video and television may also introduce their own fantasy elements in children; just because things are taped their credibility is still subject to question.

The interview should be conducted in a relaxed atmosphere. The child should be afforded privacy and the interview should be free from interruptions. Developmental history, cognitive history, history of prior abuses, traumas and treatments, relevant medical history, behavioral changes, history of parental abuse as children and family attitudes towards sex and modesty are critical. These will often be obtained from family but should be corroborated where possible. This forensic approach differs from the standard psychiatric approach where a patient's expressed perception is taken to be truth. Forensic evaluators have a certain edge here in that they are accustomed to being skeptical of information and to using other sources, external to the interview, in forming opinions.

Each parent should be interviewed independently and their concerns fully understood. It is preferable to also be able to observe the child with each parent alone so as to watch the interaction. Discuss this with the child first and observe his or her reaction to a proposed meeting with a possible abuser. Often, appointment of a guardian ad litem will protect the child and keep parents from finding an "expert" sympathetic to his or her position.

Anatomically correct dolls may be used as part of the evaluation but should be seen only as another technique, along with play, drawing, talking, etc. There is a great tendency to mistakenly teach children through the use of the anatomically correct dolls. In addition, some states prohibit testimony based on material acquired through using such dolls. It is important to know your state's law, if any in this area, prior to starting any evaluation.

## **Clues**

The field is flooded with "pearls" of how to clinically discern the truth. Most of these are clinical hunches; there is no single statement or behavior which proves whether or not abuse occurred. If a child independently seeks out a teacher or older adult to make the allegation this is indicative of validity; new allegations made by a parent after filing for divorce or custody in the absence of the child's participation should be questioned. Similarly, the child should make the allegation using a child's vocabulary; clinical, anatomic descriptions suggests rehearsal with an adult. Although children's memory is less linear than that of an adult, the central events of the abuse are usually remembered. Usually, sexual abuse begins with seduction, gradual touching, fondling, exposure and progresses to more overt sexual contact. A child who asserts that the first event was anal intercourse raises suspicion.

The child's affect when describing the events should be congruent to the material being discussed. Only rarely will a child who has been abused display an incongruent affect with laughter, giddiness and smiling. The material is generally difficult for the child to discuss and may not be disclosed on the first interview.

The description of the events should remain relatively stable over time. A story that continues to be embellished with more events and more details is reason for concern. Details may be filled in but disclosure of multiple new major "facts" is not usual.

Be sure to ascertain from reliable sources descriptions of the child's behavior and life events. Has he or she been acting in a precocious manner, showing regressive behavior. Does the medical history include recent circumcision (or seeing such performed on a sibling), herniorrhaphy or repeated genitourinary examinations?

Children often have difficulty distinguishing fantasy from reality. Externally derived memories are more likely to contain temporal, spatial and sensory information. This is especially so in younger children. Remember, children are often concrete in their thinking and in their vocabulary. This means that inaccurate information (words) does not necessarily mean that things are fabricated. A home, apartment, trailer and townhouse may all be the same to a child.

Any investigation of alleged sexual abuse needs to address the issue of motive. This is especially so in the divorce case. Understanding the secondary gain for the child and/or parent is critical to the evaluation. A parent with a severe mental illness, especially with paranoia may get the child enmeshed in their own delusional system and believing that they were abused.

### **Conclusions**

Evaluation of alleged child sexual abuse is never easy. In the context of divorce and custody litigation the problems with contamination of material by both adversarial parents is of special concern. The need for impartial evaluation is critical. If possible, a single, court appointed expert or team of experts should conduct the evaluation and make the videotapes available to both sides. Non-specialists should refrain from making conclusions and should instead document precisely what is said or observed and refer the case to the proper individuals.