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# FBI Law Enforcement

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# ***Frustrations of Inquiry*** ***Child Sexual Abuse Allegations*** ***in Divorce and Custody Cases***

By SETH L. GOLDSTEIN, J.D., and R.P. TYLER



**W**hen a marriage disintegrates, the partners often change from allies to enemies. They can become bent on winning and employ tactics designed to crush the opposition despite the casualties. All too often, their children get caught in the cross fire.

Sometimes, allegations of child sexual abuse arise in the context of divorce and custody cases. A study of 9,000 families embroiled in contested divorce proceedings found that 1 to 8 percent involved allegations of child sexual abuse.<sup>1</sup> Unfortunately, the warlike atmosphere inherent in divorce often discredits valid claims. Though rare, false

allegations of abuse do occur. Another study revealed that out of 169 cases of alleged child sexual abuse arising in marital relations courts, only 14 percent were deliberate, false allegations.<sup>2</sup> This means that the overwhelming majority were legitimate reports.

Sexual abuse allegations that surface during divorce or custody cases cause more frustration for law enforcement investigators than any other because of a lack of evidence, possible biases, and the acrimony between partners on the verge of divorce. Indeed, the stakes are high—an improper allegation may ruin the reputation of an unjustly accused person; at the same time, a

valid allegation that goes unrecognized may subject a child to continued abuse.

Investigators often forget they have a fourfold responsibility in these cases. First, they must determine whether the child is at risk. Then, they have an equal duty to determine if the accused is responsible or innocent. When investigators decide out of hand that insufficient evidence exists to establish that the accused committed the act, they have not conducted a complete investigation. Instead, they must seek evidence to either prove or disprove the allegations.

Third, investigators must distinguish a valid allegation from one



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that may have resulted from a parent's misguided but honest belief that a child was abused. Finally, they must consider whether the allegation is a malicious complaint made solely to gain an advantage in a divorce or custody settlement. Each scenario requires a different course of action. Although the unique concerns associated with these types of cases make them more difficult to solve, investigators can follow certain guidelines to uncover the truth behind the allegations.

## **INVESTIGATIVE OBSTACLES**

### **Time Constraints**

Competent investigations of sexual abuse allegations take an exorbitant amount of time. Moreover, shrinking budgets and changing priorities have reduced agency staffing levels, leaving fewer people to handle these investigations. The problem becomes compounded when the children involved are too

young to articulate what happened to them in only one or two interviews—the minimum amount of time required in the preliminary phase of a sexual abuse investigation.

### **Credibility Concerns**

Child abuse investigations can be the most difficult cases to prove. In divorce and custody cases, added credibility concerns make abuse allegations even more likely to be unsubstantiated or unfounded.<sup>3</sup> To help address these concerns, investigators must ask certain questions, including:

- To whom did the child first make the disclosure?
- What triggered the disclosure?
- When did the disclosure first occur?
- How did the original disclosure surface?
- Why is the child telling now?
- How many people have talked to the child and who are they?

- What exactly did the child say to each of these people?
- How did these individuals respond to the child?
- How, if at all, did these responses affect what the child is saying now?
- What independent evidence, apart from the statements of the witnesses, is available to confirm or refute the allegation?
- What evidence is available to confirm or refute what the child is saying?
- Do any alternative explanations exist for what the child is saying or how the child is behaving?

The answers to these questions can help investigators assess the credibility of the charges. The mere fact that the allegations have surfaced during a divorce or custody battle may impugn the veracity of the disclosure. These times are ripe for one party to invent allegations to gain the upper hand in the litigation. Yet, children often disclose valid sexual abuse allegations during highly volatile and divisive custody or visitation litigation, and they have sound reasons for doing so.

On one hand, a child separated from an abusive parent and faced with the prospect of reuniting with that parent may feel frightened enough to come forward. On the other hand, a child removed from an abusive situation finally may feel safe enough to make a disclosure. Another child may become angry enough during the turbulent throes of divorce to expose the abuser.

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## CASE CHARACTERISTICS

In general, three types of cases exist:

- 1) The abuse actually has occurred.
- 2) Behavior or statements made by the child are misinterpreted and reported as abuse.
- 3) A parent deliberately and maliciously makes a false allegation.

Too often, abuse cases break down because investigators fail to make the crucial distinction between the motives in each type of case and incorrectly conclude that the reporting parent had a malicious motive. In short, motive establishes the difference between sincere, justified beliefs; innocent, but false, accusations; and intentional, fraudulent charges.

In the first type of case, the reporting parent has legitimate motives; the child has been victimized and may be at risk for additional abuse. The second case, in which a parent is falsely but innocently accused, may occur for a number of reasons.<sup>4</sup>

In the absence of a pathological cause, a parent or other individual may merely misinterpret something the child said or did. For example, a young girl returning from a visit with her noncustodial parent had her photograph taken by a relative. When the relative said, "Show me your smile," the girl responded by lifting her dress to expose her diaper. The relative reported the incident to a child protective services (CPS) worker, who questioned the child and learned that she had been trying to show the relative that her

diaper was dry; the water-reactive "smiles" on the diaper were still intact.

In some cases, a child's actions or words seem to indicate abuse when none occurred. The reasons for the child's behavior may never come to light.

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In the third type of case, a parent who deliberately makes a false allegation—for whatever reason—has committed a crime and may be prosecuted. More important, the child caught in the middle may suffer emotionally from being used as a tool or wedge between the parents or from forced separation from the wrongly accused parent. When this happens, law enforcement or CPS personnel may need to step in and protect the child.

In all three cases, the manner in which the allegation surfaces and the parent makes the report is very much alike. The dilemma, then, becomes how investigators can determine which type of allegation has been made and whether abuse actually has occurred. Only good

investigative practices can establish the proof needed to support or refute an allegation of sexual abuse.

## THE INVESTIGATIVE PROCESS

The serious nature of sexual abuse allegations demands police attention, and whoever receives the initial complaint must notify local law enforcement. The investigator in charge of the case should interview this person, who may not be the estranged parent, to identify the source of the disclosure and, if possible, to separate the allegation from the supporting parent. This means developing independent evidence to establish that a crime has occurred and to prove the allegation.

### Independent Evidence

In one case, a preschool teacher observed the 3-year-old child of divorced parents kneeling over a table to draw. Seeing his obvious discomfort, the teacher suggested that he sit down. He replied that he could not because his "bottom" hurt, so the teacher asked if he needed to go to the bathroom. The child again responded that he could not because it hurt too much. When asked why, after some shifting and reluctance, the child revealed that his father had sodomized him.

The boy was considered credible because he revealed his secret independent of his parents and displayed obvious emotion, fear, and hesitancy when doing so. The investigator's ability to recognize these characteristics helped to support the child's claim and refute the father's contention that his son had

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lied. Unfortunately, investigators may find it difficult to develop such evidence.

Oftentimes, witnesses, relatives, and other involved parties draw battle lines, establish alliances, and attempt to influence the child. When this occurs, any subsequent information gathered can be of questionable value. To prevent this from happening, investigators must address four important concerns:

- 1) The parties involved may talk to one another or draw alliances once the secret is out, thereby contaminating any information they provide.
- 2) The offender may learn of the investigation and try to intimidate the child or witnesses or fabricate a story before the investigator can obtain an admission or confession.
- 3) Offenders or their supporters—often the other parent—may destroy evidence after learning of the investigation.
- 4) Medical evidence may exist that can prove the allegation.

The first concern represents a time, space, and logistics problem. It may require more than the investigative resources allocated to the case. Investigators should interview witnesses as soon as possible to prevent them from talking to one another and influencing one another's perceptions and understanding of the facts and events.

The second concern requires that investigators obtain as much information about the incident and confront the suspect as soon as

possible. Because investigators commonly encounter denial when they confront suspects, they should consider using techniques that encourage offenders to tell the truth. Offenders are more likely to be honest when they do not feel threatened by the person confronting them. The most successful way to accomplish this is through a pretext confrontation by the victim or other involved party. If the victim is too young or incapable, the nonoffending parent or any other party the offender trusts can perform the task.

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***The serious nature of sexual abuse allegations demands police attention....***

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The pretext confrontation involves recording a telephone or personal conversation with the offender.<sup>5</sup> During the call or meeting, the victim or other party confronts the offender with the specific acts committed. The objective is to provide an opportunity for the offender to admit the crime, try to explain it away, or convince the person not to tell anyone about it. When this technique is used, although offenders may not admit specifically what they did, they often will promise that it will not happen again.

In one case, a child called her father and told him she thought she had contracted venereal disease

from him. He responded that this was impossible because he was not having sex with anyone else but her. In another instance, a child told her father that the sex that was going on between them was wrong. He said that he knew—that he had wanted to tell her that it was wrong and also that “we have to stop; we shouldn’t be doing this.”

The personal safety and mental state of the person confronting the offender are essential, which may preclude allowing the victim to confront the suspect in person, if at all. In a case that used an alternate ploy, the victim’s mother confronted the father, who had been accused of having intercourse with their daughter. When she asked him what she should tell the authorities, he replied that she should “tell them it was a mistake; I shouldn’t have done it.”

Some law enforcement officers have initiated phone call confrontations on the pretext of being a counselor working with the child. In doing so, they use the pretense that the child is having problems with disclosure, and as counselors, they need complete details to ensure effective and proper treatment.

The technique of using a child to initiate a pretext confrontation has drawn fire from critics who say that using children in this fashion to secure evidence might make them feel more guilty. However, the opposite is often true.<sup>6</sup> Such confrontations are more likely to result in empowerment for the children involved. It helps them master the event and heal from the trauma, and, in fact, has had more positive effect on the children than any other technique.

The third investigative concern involves securing and preserving evidence. Investigators must consider initiating pretext confrontations at the same time they prepare search warrants. All evidence must be sought in the earliest stages of an investigation, whether it consists of the offender's admissions or tangible objects.

The best tangible proof corroborates what the child has independently reported. Graphic photographs and videos frequently taken by incest offenders to record acts of abuse often are overlooked by investigators. Other corroborational evidence can include lubricant or condoms. Most important, independent evidence that investigators find as a result of the victim's own statements is always more compelling than evidence discovered and brought forward by the accusing parent.

Finally, the fourth concern compels investigators to allow only qualified forensic examiners with experience in child sexual abuse to conduct medical examinations. Moreover, because the body often heals so quickly, every case requires an immediate medical examination using specialized equipment that provides a photographic record of the findings, for example, a colposcope.

### **Additional Considerations**

Investigators must gather essential background information on all crucial witnesses and the accused. What connections do witnesses have with the parties involved? What opportunities did the witnesses have to observe or interact with the child or the parties?



What behaviors did the child exhibit before the disclosure? What were the circumstances of the disclosure? What exactly was said? Who was present? Answers to these questions—all basic areas of inquiry in any abuse case—help to establish the validity of the allegations and to ensure that when the case goes to court, the judge will have the most complete, credible evidence possible.

It is particularly important that investigators conduct all interviews in person, not by phone. The investigation of sexual abuse charges and the potential risk factors involved require the kind of sensitivity achieved only by personal contact. Moreover, investigators cannot effectively evaluate the credibility of anyone by phone. Nothing can substitute for a direct, visual, in-person examination of the facts.

Above all, investigators should not stop their inquiries until they have explored every avenue. They also should not delegate their responsibilities to anyone other than unbiased, independent, well-trained

professionals. In other words, if a mother reports that her child is exhibiting unusual behavior, she should not be told to go back and question the child further. This advice also holds true for third parties, such as teachers. Untrained individuals who question the child improperly or misperceive what the child says may cast doubts upon the case and discredit the child. Or, in cases where no abuse has occurred, a false, though not malicious, allegation may be triggered.

Finally, investigators and other allied professionals must receive proper, regular training. For example, a therapist who helps determine what happened to a child must be properly versed in the art of forensic interviewing. Nothing proves more devastating to a case than to have the validity of the information called into question because someone may have inadvertently influenced what the child said.

### **CONCLUSION**

The answers to the questions raised by allegations of child sexual

abuse in divorce and custody cases are not simple. Investigators should have policies in place and child protection resources available to handle these cases well before the need arises. Only well-planned and well-executed investigations can produce the sound evidence required to prove the allegations and, at the same time, overcome the frustration many investigators now experience.

Both child abuse victims and their accused deserve a complete and competent investigation. Investigators owe it to them to provide it. ♦

#### Endnotes

<sup>1</sup>N. Thoennes, et al., "The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes," in *Child Abuse and Neglect* 14 (1980): 153.

<sup>2</sup>J. Bulkley, citing N. Thoennes, "Summary of Findings from the Sexual Abuse Allegations Project" (Denver, CO: The Association of Family and Conciliation Courts Research Unit), in *Think Tank Report: Allegations of Sexual Abuse in Child Custody and Visitation Situations* (Huntsville, AL: The National Resource Center of Child Sexual Abuse, 1989), 17.

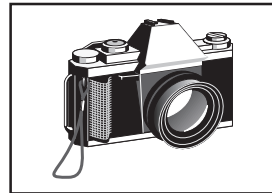
<sup>3</sup>Allegations are *unsubstantiated* when the evidence gathered fails to establish whether a crime actually occurred. By contrast, allegations are *unfounded* when the evidence proves either that a crime did not occur or that it is highly improbable a crime occurred.

<sup>4</sup>*Achieving Equal Justice for Women and Men in the Courts, the Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts*, California Judicial Council, Administrative Office of the Courts, San Francisco, March 1990.

<sup>5</sup>Because the laws of each state differ, investigators should review privacy and wiretapping statutes or consult their local prosecutors before employing this technique.

<sup>6</sup>Based on the authors' experience. See also Seth Goldstein, *The Sexual Exploitation of Children: A Practical Guide to Assessment, Investigation, and Intervention* (Boca Raton, FL: CRC Press, 1987).

## Wanted: Photographs



**T**he *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

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