

# TEN THINGS EVERY ATTORNEY SHOULD KNOW ABOUT LITIGATING CHILD SEXUAL ABUSE

*FOR: National Center for Victims of Crime, Bar Association  
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# TEN THINGS TO KNOW

1. Research on Child Abuse Reporting
2. Research on False Allegations/Types of False Allegations
3. Myths Regarding Child Sexual Abuse
4. Case Preparation
5. Investigation Necessary
6. Applicable Defenses
7. Evidence to Look for and its Significance
8. Expert Testimony
9. What Documentation May Be Available
10. Resources available to the attorney

# Sexual Abuse Myths: Offense

- **FALLACY**
  - Sexual abuse is an isolated event
- **TRUTH**
  - Sexual abuse does not occur in a vacuum – the child is victimized in many ways
  - There may be other victims
  - There may be evidence of other acts

# Sexual Abuse Myths: Victim

- **FALLACY**
  - A child must be forced to engage in sexual acts
- **TRUTH**
  - Many children are willing, non-complaining victims

# Are there any direct studies of coaching?

- **In fact: Studies show a low rate of false accusations**

(Jones, 1987; Oates, 2000).

- **Both studied all referrals into the Denver Colorado Child Protective Services division over a one year period.**
  - **The 1987 study found a fictitious report rate of 5% arising from adult coaching and 1% from the child's own motivations.**
  - **In 2000, the rate was .02% from adult coaching and 2.5% from children's own motivation.**

*Source: Dr. Fran Waters*

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# U.S. DHHS Report of False Allegations

- This report covered 9 states with data reported on intentionally false allegations.
- **Rate of intentionally false allegations were .002-statistically insignificant**
- Results are consistent with previous national reports which were as low as .001 in 2010.
- U.S. Department of Health & Human Services. (2019). Child Maltreatment 2017.  
<https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>

# ***USING A CHILD CUSTODY DISPUTE TO DISCREDIT ALLEGATIONS OF SEXUAL ABUSE***

**Colorado Department of Corrections Research**

## **USING A CHILD CUSTODY DISPUTE TO DISCREDIT ALLEGATIONS OF SEXUAL ABUSE**

- 1. How and why did you select your victim?*  
She was my step-daughter's best friend, and she was 10 years old at the time of the assault (1994). She seemed to be very naive and gullible, more so than I imagined.

**“After my assault on my victim, I had my step-daughter removed from custody from my ex-wife by social services by telling them how physically abusive she was to my step-daughter...”**

I told her about that I'd get her.  
Y... between my step-daughter and my victim. My step-daughter felt her friend (my victim) lied about the whole thing only to get attention from her mother, because my step-daughter said that my victim had told her once that she felt 2<sup>nd</sup> best to her older sister at times. Also, my 3<sup>rd</sup> ex-wife was going to stand behind me because there was something she didn't

# “DECEPTION DELIGHT”

- **ENJOYS ABILITY TO DECEIVE**
- **“RED HERRINGS”**
- **INTIMIDATION**
- **BLAMES OTHERS**
- **LACK OF FAULT**

Source: Anna Salter, Sex, Lies and Sex Offenders; Bill Eddy, Presentation AFCC, Toronto, 2019



# POLICE AND SOCIAL SERVICE INVESTIGATORS FAIL TO:

- **SEEK EVIDENCE OF**
  - < **MOTIVE/ACTIONS**
  - < **RECOGNIZED SYNDROMES**
- **FOLLOW-UP/ELIMINATION OF ALTERNATIVE EXPLANATIONS**
- **VERIFY, IN PERSON, ACCOUNTS PROVIDED BY PARTIES/WITNESSES**
- **FOLLOW OWN PROTOCOLS AND PROCEDURES**
  - **LAW ENFORCEMENT – P.O.S.T. GUIDELINES; INDIVIDUAL AGENCY REGULATIONS**
  - **SOCIAL WORKER CORE TRAINING; CPS DIVISION 31 REGULATIONS (Force of Law: *Scott v County of Los Angeles*, (1994) 27 Cal.App.4th 125, 145**

# FACTUAL ANALYSIS MUST:

## **REVIEW WORK OF OFFICIAL AGENCIES:**

- **ASSUME NOTHING**
- **INDEPENDENTLY VERIFY FACTS**
- **TEST FACTS AGAINST STATEMENTS OF MOTHER, FATHER, CHILD, COLLATERALS...**
- **SEEK CORROBORATION**

## TYPE OF CASES - MUST AVOID BINARY THINKING: TRUE vs. FALSE

- **SINCERE, LEGITIMATE, VALID REPORT**
- **MISINTERPRETATION**
- **DIRECT OR CORRECT REPORT OF FACTS - OBSERVATION, BUT NO ABUSE**
- **BLIND INSISTENCE**
- **DELIBERATELY FALSE**

# EVIDENCE

- **MEDICAL**
- **WRITINGS**
- **CORROBORATION**
- **FRESH COMPLAINT**
- **INTENT**
- **EROTICA**
- **CONSCIOUS COURSE OF CONDUCT**
- **CONSCIOUSNESS OF GUILT**

# MEDICAL EVIDENCE

- **SIGNIFICANCE**
- **“Normal to be Normal”**
- **Only 8-13% of all cases have medical findings**
- **Same rates for those where offender admits offense.**

Adams, Harper, Knudson & Revilla, *Examination Findings in Legally Confirmed Child Sexual Abuse: It's **Normal to be Normal***, 94 Pediatrics 310 (1994).

## MEDICAL EVIDENCE:

**WAS THE EXAMINATION PERFORMED BY A TRAINED,  
EXPERIENCED, WILLING, MEDICAL EXAMINER?  
ARE THERE COLPOSCOPE IMAGES?**

# CONTEXT IN WHICH EVIDENCE SURFACES?

- **CHILD'S STATEMENT MADE TO MOTHER AT TIME ANNOUNCED MUST RETURN TO FATHER –**
  - **CHILD FEELS SAFE**
  - **CHILD AFRAID OF RETURNING**
  - **CHILD WANTS IT TO STOP**
- **CONSISTENT WITH ABUSE/ FABRICATION?**
- **PREVIOUS CONDUCT?**

When children do disclose of all other family members, mothers are most likely the ones to be told. Few disclose abuse to authorities or professionals. See, United States Dpt. of Justice, Sex Offender Public Website, citing Allnock. D., "Children and Young People Disclosing Sexual Abuse: An Introduction to the Research," Child Protection Research Department NSPCC Fresh Start. April 2010

## IS IT FALSE REPORT?

- **PHYSICALLY POSSIBLE?**
- **DO THINGS DESCRIBED EXIST?**
- **EMOTIONS CONSISTENT WITH ABUSE?**
- **INCREDULITY TO INTIMATE QUESTIONS**
- **PRIOR DISCLOSURE**
- **EVENTS WOULDN'T ORDINARILY BE EXPOSED TO**
  - **SEXUAL KNOWLEGE**
  - **IDIOSYNCRATIC DETAIL**
- **DESCRIBES THINGS CONSISTENT WITH ABUSE**



# CONTEXT IN WHICH EVIDENCE SURFACES?

- **DOES EVIDENCE HAVE OTHER EXPLANATION?**
- **DOES EVIDENCE POINT IN DIFFERENT DIRECTIONS?**

Valid reports of abuse often have "paradoxical" qualities. See *People vs Patino* (1994) 26 Cal.App.4th 1737, 1744-1745

- **DOES EVIDENCE DEMONSTRATE KNOWLEDGE BEYOND YEARS?**
- **DOES EVIDENCE DEMONSTRATE UNIQUE KNOWLEDGE NOT OTHERWISE KNOWN?**

# CONSISTENT WITH ABUSE/FABRICATION?

- **IS ACCOUNT CONSISTENT WITH FACTS?**
- **IS THERE EVIDENCE OF CONSCIOUSNESS OF GUILT?**

Victims of sexual abuse often have secondary responses, including substance abuse, eating disorders, self-mutilation, and suicidal ideation and attempts. Victims of childhood sexual abuse also suffer long-term mental health symptoms, including anxiety, depression, and oppositional defiant behavior or aggression." Cited as above in dicta, *People v. Mckee* 2012 WL 3008783 \*10 (Cal.App. 4 Dist.)

# CONSISTENT WITH ABUSE/FABRICATION?

- **IS WHAT IS DESCRIBED POSSIBLE?**
- **IDIOSYNCRATIC DETAIL**
- **DO THINGS CHILD DESCRIBES EXIST?**
- **OPPORTUNITY?**
- **ACT DONE IN VIEW OF OTHERS?**

# CONSISTENT WITH ABUSE/FABRICATION?

## TEARS OF:

**FEAR**

**ANGER**

**AVOIDANCE**

**RELUCTANCE**

**NERVOUSNESS**

**ANXIETY**

**DISCOMFORT**

**SADNESS**

- **TEARS BECAUSE TELLING TRUTH FOR FIRST TIME IN RECANTATION OR**
- **TEARS BECAUSE OF TRUE EMOTION AT DISCLOSURE?**

*See People vs McAlpin, 53 Cal.3d 1289, 1399-1301 and the 9th Circuit Court of Appeals, Brodit v. Cambra, 350 F.3d 985, 991 (9th Cir. 2003); United States v. Bighead, 128 F.3d 1329 (9th Cir. 1997) (per curiam); United States v. Antone, 981 F.2d 1059 (9th Cir. 1992).*

# CONSISTENT WITH ABUSE/FABRICATION?

- **CHILD'S  
INCREDULITY AT  
INTIMATE DETAILS**
  - **SEMEN IN MOUTH**
  - **ORAL COP OF  
ANUS/VAGINA**

# CONSISTENT WITH ABUSE/FABRICATION?

- **CHARACTERISTICS OF FALSE REPORTER?**

- **AXE TO GRIND**
- **OVERTLY ANGRY**
- **SOPHISTICATED ACTS, NO LEAD-UPS OR RELATION TO SEXUAL STIMULATION**
- **NO EMOTION**

**CAVAET:**

**ABUSE MAY BE CAUSE!**

# SEXUAL ABUSE: SPECIAL CONSIDERATIONS

## IMPORTANT BEHAVIORAL OBSERVATIONS

- **SEXUAL BEHAVIOR OR KNOWLEDGE INAPPROPRIATE FOR THE CHILD'S AGE AND DEVELOPMENTAL LEVEL**
- **SUDDEN CHANGE IN BEHAVIORS OR Demeanor**
- **UNUSUAL BEHAVIORS**

# ALTERNATIVE EXPLANATION?

- **CHILD IS EXPOSED OR HAS ACCESS TO SEXUAL STIMULI**



# ALTERNATIVE EXPLANATION?

- **CHILD DOING SOMETHING ELSE**
- **ADULT DOING SOMETHING ELSE**

# PREVIOUS CONDUCT?

- **PREVIOUS MOLEST VICTIM**
  - PARENT
  - CHILD
- **PREVIOUS ALLEGATION**
- **CO-EXISTING FAMILY VIOLENCE**

Courts recognize that mothers who learn of their children's abuse by their husbands often do counterintuitive things. *People vs McAlpin*, 53 Cal.3d 1289, 1302 [mothers not reporting abuse even though they know about it]

The National Council of Juvenile and Family Court Judges caution judges that "The absence of allegations of abuse or the absence of requests for sole custody does not mean that safety risks are not present. For any number of reasons, victims of abuse may fail to disclose the abuse in their initial pleadings; among them, a fear of increasing the level of dangerousness, embarrassment or shame, or advice from an attorney that asserting such claims may be detrimental to their case or delay resolution." *A Judge's Guide to Child Safety in Custody Cases*, 2008, Sec. C. 7 .3, p.20.

# COLLECTS OR VIEWS CHILD PORNOGRAPHY COLLECTS BOOKS AND WRITINGS ON SEX

**Places found may imply significance (i.e.: under mattress, bedside nightstand)...**

- **KEEPS IN PLACES HAS ACCESS TO, YET, SECURE FROM INTRUSION, *OR* ...**
- **LEAVES IT WHERE CHILD MAY DISCOVER IT *OR* ...**
- **IN PLACES THAT WILL CONSTANTLY SEE**

See: *United States v. Crisman* (D.N.M. 2014) 39 F. Supp. 3d 1189, 1191 good discussion on merits of studies and cases as of 2014; Seto, M, et al “Child Pornography Offenses Are a Valid Diagnostic Indicator of Pedophilia” *Journal of Abnormal Psychology*, 2006, Vol. 115, No. 3, 610-615

# CONSISTENT WITH ABUSE/FABRICATION?

- **FOLLOWS GROOMING/SEDUCTION PATTERN**

“Grooming appears nearly universal, either in place of or in addition to coercion as technique for gaining sexual access to children. The establishment (and eventual betrayal) of affection and trust occupies a central role in the child molester's interactions with children.”

Salter, A, *Transforming Trauma*, Sage Publications, 1995, pp .. 74-83, 88-97.

*Los Angeles County Dept. of Children & Family Services v. Superior Court*, (2013) 222 Cal. App. 4th 149 [grooming sufficient evidence to sustain 300 WIC Petition]

# NEED TO KNOW

- ◆ **WHO DID THE CHILD FIRST DISCLOSE TO?**
- ◆ **WHAT TRIGGERED THE DISCLOSURE?**
- ◆ **WHEN DID THE FIRST DISCLOSURE OCCUR?**
- ◆ **HOW THE ORIGINAL DISCLOSURE SURFACED?**

## NEED TO KNOW

- **WHY THE CHILD IS TELLING NOW?**
- **HOW MANY PEOPLE HAVE TALKED TO THE CHILD (AND WHO ARE THEY)?**
- **EXACTLY WHAT WAS SAID BY THE CHILD TO EACH OF THESE PERSONS?**

## NEED TO KNOW

- **EXACTLY WHAT WAS SAID TO THE CHILD BY THESE PERSONS?**
- **HOW, IF AT ALL, THE AFOREMENTIONED MAY HAVE AFFECTED WHAT THE CHILD IS NOW SAYING?**
- **WHAT EVIDENCE IS AVAILABLE TO CONFIRM OR REFUTE THE *ALLEGATION*?**

## NEED TO KNOW

- **WHAT EVIDENCE IS AVAILABLE TO CONFIRM WHAT THE *CHILD* IS SAYING?**
- **ARE THERE ANY ALTERNATIVE EXPLANATIONS FOR THE CHILD'S BEHAVIORS AND WHAT (S)HE IS SAYING?**



## RESOURCES:

- ***Myers on Evidence of Interpersonal Violence: Child Maltreatment, Intimate Partner Violence, Rape, Stalking, and Elder Abuse, 6<sup>th</sup> Ed., 2018, Wolters Kluwer***
- ***The Sexual Exploitation of Children: A Practical Guide to Assessment, Investigation, and Intervention; 2<sup>nd</sup> Ed., 1999 CRC Press, Seth L. Goldstein***

**THANK YOU**

**Questions or Assistance:**

**Call or email:**

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