



## Red Flag or Red Herring?

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You've just arrived at your office on Monday morning after an unusually restful weekend. Before you even have a chance to take off your coat, you are advised that Mrs. Jones, a client involved in a contentious divorce and custody battle, is on the telephone, and is pleading to speak to you immediately. You pick up the phone and she tells you that her 4-year-old daughter, who has just returned from a visit with her father, has a red and irritated vaginal area, and says that her that the father touched her genitals during the weekend visitation. Your client further advises you that she took the child to the Emergency Room for an examination, and was advised by the hospital staff that they were required to report these allegations of sexual abuse to Child Protective Services. Your client wants to know what to do next, how these allegations are going to impact the divorce and custody case, and whether she will be accused of making up these allegations.

Sound familiar? In order to attempt to answer your client's questions regarding whether these allegations will be believed, a review of the literature dealing with allegations of sexual abuse within the context of divorce and custody litigation, and the prevalence of false allegations of sexual abuse, is necessary.

### A Brief History

In the 1980s, experts in the field of child sexual abuse were engaged in a debate between those who believed that children did not lie about sexual abuse, and those who believed that allegations of abuse could never be substantiated solely upon the statements of a child. Superimposed on this first debate was a second debate as to whether such allegations, if they arose during custody or visitation litigation, could be believed at all.

The early literature regarding allegations of sexual abuse within the context of custody and visitation cases was, for the most part anecdotal, based upon the clinical experiences of those practitioners who interviewed parents and children regarding allegations of abuse. In 1986, Dr. Arthur Green, a psychiatrist, published a paper in the *Journal of the American Academy of Child Psychiatry*, entitled "True and False Allegations of Sexual Abuse in Child Custody Disputes." The paper stated that, based upon his clinical experience, approximately 36% of the allegations of sexual abuse, made within the context of custody and visitation cases, were false. Other mental health practitioners, such as Benedek and Schetky (1984), reported that 55% of these allegations made in this same context were false; Jones and Sieg (1988) reported 20%; and Jones and McGraw (1987) reported 5%-7%.

In 1987, "The SAID Syndrome" (Sexual Allegations in Divorce) was coined, and Dr. Richard Gardner published a book entitled "The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sexual Abuse." Dr. Gardner took the position that the vast majority of allegations of sexual abuse within the context of a divorce or custody battle were false, and were made by mothers interested in alienating the estranged fathers from the children.

The major criticism of these early studies was that they were either based upon the authors' personal clinical experience, consisted of a very small number of subjects, or were not published in peer-reviewed journals. Therefore, the conclusions drawn by the authors were not "tested" by experts in the field prior to publication.

Other, more recent studies tend to conclude that the percentage of false allegations of sexual abuse within the context of divorce and visitation disputes is much lower, ranging from 2% to 20%.

### True or False?

In 1990, Thoennes and Tjaden published "The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes." This study, funded by the National Center on Child Abuse and Neglect, was prepared under the auspices of the Association of Family and Conciliation Courts Research Unit.

The study took empirical data from 12 Domestic Relations Courts from around the United States, and included interviews with judges and court personnel in all 50 states. Nine thousand custody/visitation cases were studied -- the largest study sample to date -- and of those, 169 involved allegations of sexual abuse accounting for 1.9% of the total.

In the opinion of the authors, "four factors were significantly associated with the perceived validity of the abuse report: age of the victim, frequency of the alleged abuse, prior abuse/neglect reports, and the amount of time elapsing between filing for divorce and the emergence of the allegation[s]." The report concluded that "[t]hough small, the incidence of sexual abuse reported in families with contested custody and visitation disputes found in our study appears to be greater than the incidence of child sexual abuse reported in the general population."

The authors offered several reasons why sexual abuse allegations might occur more frequently in the context of a divorce: The sexual abuse might create stress in the marriage and lead to its breakdown; a divorce or separation might create opportunities for sexual abuse that would not be present in intact families; and, children might be more inclined to disclose abuse by a parent following a separation or divorce because the abusing parent is not able to enforce secrecy. The authors also observed that because of decreased dependency and increased distrust between the parents, the other parent was more willing to believe the child.

### Four Classifications of Sexual Abuse

In 1991, Faller published an article entitled "Possible Explanations for Child Sexual Abuse Allegations in Divorce." Her study consisted of a sample size of 136 cases that addressed the issue of deliberate fabrication. She proposed four classifications of sexual abuse cases in the context of divorce: divorce precipitated by discovery of sexual abuse; long-standing sexual victimization revealed after the breakup; sexual abuse precipitated by the breakup; and false allegations made during or after the divorce.

In the first classification, the non-offending parent, upon learning of the sexual abuse by the other parent, initiates divorce proceedings, either on his or her own initiative, or upon the advice of others.

In situations where the sexual abuse is revealed after the breakup of the marriage, several possible explanations exist. First, the child may feel comfortable disclosing the abuse since the offending parent is now out of the household and unable to punish the child because of the disclosure. Second, the offending parent may no longer be able to manipulate the child due to his/her absence from the household. Third, the child may have withheld disclosing the sexual abuse in an attempt to keep the family together. Fourth, the non-offending parent, after the breakup, might be more attentive to his/her children, and therefore more able to observe behaviors and symptoms indicative of abuse. Last, the non-offending parent may have been aware of the abuse, but chose not to report it because of other benefits related to keeping the relationship with the offending parent intact (such as financial benefits).

In the situation where sexual abuse is precipitated by the breakup, possible explanations consist of the fact that the preexisting family structure is no longer intact, and therefore there is no longer another adult present to monitor behavior. Other possible explanations include the offending parent, unable to have his/her emotional needs met by the spouse who has chosen to initiate the divorce, now turns to the child to have his/her needs met. Further, the offending parent, seeking to blame the ex-spouse for the breakup of the family, seeks to extract revenge, and the child becomes the object of his/her rage.

Faller has stated that "[p]ercentages of unlikely or false cases reported in the literature vary depending upon research design and criteria used to assign a case to the "unlikely" or false category." She further states that "[t]hus, results from the literature suggest that between one half and three fourths of the allegations of sexual abuse in divorce are true," and that "... data-relevant reports suggest that calculated false allegations are rare" and "... appear to be a minority of the false allegations in divorce cases."

With regard to false allegations of sexual abuse within the context of divorce and custody/visitation disputes, it appears that these allegations may be more likely to be false than allegations in other situations. Further, most false allegations come from adults rather than from children (Bula, 2001; Berliner, 1988; Faller 1988; Faller & DeVoe, 1995; Jones & McGraw, 1987). In terms of evaluating why these false allegations may be more likely in this context, it is understandable that one spouse, in the midst of a particularly bitter divorce or custody battle, may be convinced that the other spouse is capable of such an act. Divorce also raises the stress level of the individual going through it, thereby altering the ability to perceive what is happening around him/her accurately.

Further, behaviors that may be non-specific are given greater significance within the context of the divorce. If the child is suffering from nightmares, regression, bedwetting, and/or inability to separate from the custodial parent when visitation time occurs, these events may be indications of sexual abuse, but may very well also be explained by other, non-sexual abuse explanations. In certain situations, the child may very well have been sexually abused, but the custodial parent may attempt to blame the wrong person, immediately attributing the worst to the ex-spouse, without looking at other possible "suspects." The possibility does always exist, however, that the allegations are made maliciously, with full knowledge that they are false, in an attempt to remove that parent from the lives of the child and the parent making the accusation.

## Conclusion

Many variables must be considered with regard to the validity and broad-based acceptance of studies published in the literature regarding allegations of sexual abuse within the context of divorce, custody and visitation cases. The reader should be cautious about accepting the authors' conclusions at face value. Attention to study sample size, source of the samples, the general criteria used to categorize the study, and possible author bias must all be carefully considered. In addition, a thorough understanding of investigative and evaluation protocols utilized in child sexual abuse cases is crucial. There are no easy answers.

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