

The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases

by Merrilyn McDonald

It is commonly believed that false allegations of sexual abuse in the context of divorce are epidemic, that most allegations made in the context of divorce are made by vindictive mothers and that these allegations are almost always false. These beliefs are not supported by scientific evidence.¹

It is widely believed that at least 50 percent of all allegations of child sexual abuse are false, and that an accused person appearing in a court of law is quite likely to have been falsely accused. Those who defend accused child sexual offenders want us to believe that 50 percent of individuals brought to trial are innocent. These beliefs are not supported by scientific evidence, either.²



children were reported.⁶ In simpler terms, that means that out of 10,000 kids, seven reported sexual abuse that year. The number of reports is rising every year due to mandatory reporting laws, better public education and greater public awareness of the problem. Even so, the rate for 1996 was only 1.8 per 1,000 children.⁷ Sexual abuse happens to about one in four girls and a bit less than one in six boys, yet only about 1.8 cases are reported per 1,000 children every year. Even if you multiply by 18 (the number of years in childhood), that would be

only 33 reports of sexual abuse per 1,000 children over their full childhood. Clearly, child sexual abuse is extremely underreported. Most child sexual abuse victims never report the crime.

I. CHILD SEXUAL ABUSE IS A COMMON EXPERIENCE.

Social scientists have done numerous studies to determine what percentage of the population has experienced child sexual abuse. Typically, a researcher gives out anonymous questionnaires to adults that ask a number of questions which allow the researcher to determine whether the person was sexually abused as a child. Usually, there are about 10 to 15 questions that ask about quite specific experiences, though some of the more thorough researchers have several pages of questions.³

These studies show that between 6 and 62 percent of females and 3 to 30 percent of males have had a sexual abuse experience before age 18. The higher rates are from studies with less stringent criteria for sexual abuse and the lower rates are from studies that looked at violent sexual assaults.⁴ A more recent national survey found that 27 percent of women and 16 percent of men reported sexual abuse as a child.⁵ The rates of 27 percent of women and 16 percent of men are considered to be solid, accurate rates by most researchers. Given these rates, there would be about 35 million women and 21 million men in the United States who had been sexually abused.

II. THE INCIDENCE OF CHILD SEXUAL ABUSE REPORTING IS LOW.

Sexual abuse happens to many people. How often does it get reported? In 1986, about .7 cases of sexual abuse per thousand

III. ALLEGATIONS OF CHILD SEXUAL ABUSE IN DIVORCE CASES ARE INFREQUENT.

An excellent study on the incidence of sexual abuse in divorce was done by Thoennes and Tjaden of the Association of Family and Conciliation Courts Research Unit in Denver, with funding from the National Center on Child Abuse and Neglect. Data was gathered from domestic relations court staff in eight jurisdictions, during a six-month period. Staff in these jurisdictions completed a questionnaire each time there was an allegation of sexual abuse in a custody or visitation dispute. More than 9,000 families in these areas had custody or visitation disputes. Of these 9,000 families, less than 2 percent had allegations of sexual abuse.⁸

While it is popularly believed that all allegations of sexual abuse in divorce involved the mother accusing the father, that was not the case. Mothers accused biological fathers in only 48 percent of the cases. Stepfathers were accused by mothers in 6 percent of cases. Fathers accused mothers or mother's new partner in 16 percent of cases and dads accused third parties in another 6 percent of cases. The remainder of accusations were made by third parties.⁹

Half of the allegations of sexual abuse among the custody/visitation dispute group, overall, were considered founded. In 33 percent of cases, no abuse was believed to have occurred and in 17 percent no determination could be reached.¹⁰ These figures

are about the same as validation rates for cases reported to child protective agencies.¹¹ Mother's allegations against father were considered likely to have been accurate in 49 percent of cases and unlikely in 33 percent. Father's allegations against mother were considered likely in 42 percent of cases and unlikely in 41 percent. The remainder of the cases were indeterminate.¹²

To get a different view of this issue, consider that approximately 1,000,000 divorces are granted per year. About 600,000 of divorcing couples have minor children, but only about 90,000 have custody disputes.¹³ If only 2 percent of disputed custody or visitation cases have allegations of sexual abuse, then only about 3 out of every 1,000 divorces involving children have allegations of sexual abuse. This is not an epidemic.

Research in Australia has had similar findings. Allegations of sexual abuse were present in only 1.7 percent of custody or visitation dispute cases.¹⁴

In Canada, the hospital records of all children who were seen for suspected physical or sexual abuse were reviewed at large hospital. In cases where sexual abuse was suspected, children who were involved in custody or visitation disputes had just as much physical evidence of sexual abuse as children who were not the object of a custody or visitation dispute. Interestingly enough, there was evidence of physical battering more often in children who were part of a custody or visitation dispute, than in children who were not.¹⁵

The beliefs that false allegations of sexual abuse in divorce are epidemic and that it is mothers who falsely accuse fathers is not supported by good, methodologically sound research.

IV. WHY MANY PEOPLE BELIEVE THAT FALSE ALLEGATIONS OF ABUSE IN DIVORCE ARE EPIDEMIC.

A number of articles have been published that purport to prove that many, if not most, allegations of sexual abuse in

divorce are false. These articles were based on anecdotal reports of what various clinicians had observed in their private practices. Reports based solely on anecdotal reports cannot be considered as hard science and the findings cannot be used to prove anything about the overall rates of false allegations in divorce or any other situation. These anecdotal reports are merely what a few individuals saw in a non-representative sample of cases. They tell us nothing about what is happening in general in our country.

The impression that rates of false allegations of sexual abuse are enormous has been created by a number of psychologists and doctors who have written up a selection of their cases in which all or most described a false allegation of sexual abuse.¹⁶ These articles have been frequently referenced in other articles where the limitations of anecdotal case studies have not been mentioned. These anecdotal case studies took on the illusion of being hard science and of being supported by factual findings because they were so frequently referred to. Descriptive case studies are nothing more than a tiny slice of reality that tell us nothing about all of the other cases in existence.

One of the case studies commonly cited is that of Arthur Green. He described five cases, four of which he concluded involved false allegations of sexual abuse.¹⁷ Benedek and Schetky described cases involving 18 children referred to them during custody or visitation disputes. They found sexual abuse in only 8 of the children, giving a false accusation rate of 55 percent.¹⁸ Schuman described seven cases, all of which he claimed were false accusations.¹⁹ Wakefield and Underwager claimed

[A]necdotal reports ... tell us nothing about what is happening in general in our country.

Footnotes

1. Nancy Thoennes & Patricia G. Tjaden, "The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Divorce Disputes," 14 CHILD ABUSE & NEGLECT 151, 153-54 (1990).
2. David P. H. Jones & J. Melbourne McGraw, "Reliable and Fictitious Accounts of Sexual Abuse to Children," 2 J. INTERPERSONAL VIOLENCE 27, 30 (March 1987).
3. David Finkelhor, SEXUALLY VICTIMIZED CHILDREN 157 (1979).
4. David Finkelhor, et al., A SOURCEBOOK ON CHILD SEXUAL ABUSE 19-21 (1986).
5. David Finkelhor, Gerald Hotaling, I.A. Lewis & Christine Smith, "Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors," 14 CHILD ABUSE & NEGLECT 19, 19 (1990).
6. Finkelhor, et al., *supra* note 4, at 17.
7. U.S. Department of Health and Social Services, CHILD MALTREATMENT 1996: REPORTS FROM THE STATES TO THE NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (1998), as reported in National Child Abuse and Neglect Statistical Fact Sheet (visited July 7, 1998) <<http://www.calib.com/nccanch/pubs/stats.htm>>.
8. Thoennes & Tjaden, *supra* note 1, at 153.
9. *Id.* at 154.
10. *Id.* at 151.
11. P. Solomon, TRACING OF SEXUAL ABUSE CASES REPORTED TO THE CUYAHOGA COUNTY DEPARTMENT OF SOCIAL SERVICES, JANUARY 1983

THROUGH NOVEMBER, 1984 (publication of the Cleveland, Ohio, Federation for Community Planning); Jones & McGraw, *supra* note 2, at 27.

12. Thoennes & Tjaden, *supra* note 1, at 159.
13. Bureau of Vital Statistics, MONTHLY STATISTICAL REPORTS (1985).
14. S. Bordow, A Survey of Sexual Child Abuse Cases, Sydney, Counselling Service, Family Court of Australia, 1987.
15. L.J. Hlady & E.J. Gunter, "Alleged Child Abuse in Custody Access Disputes," 14 CHILD ABUSE & NEGLECT 591, 592 (1990).
16. For another author's criticism of these anecdotal studies, see P. Susan Penfold, "Questionable Beliefs about Child Sexual Abuse Allegations during Custody Disputes," 14 CAN. J. FAM. L. 11, 13-15 (1997) (concluding that false allegations of sexual abuse are not common, even in custody disputes, despite anecdotal reports).
17. Arthur H. Green, "True and False Allegations of Sexual Abuse in Child Custody Disputes," 25 J. AM. ACAD. CHILD PSYCHIATRY 449, 453-56 (1986).
18. E. Benedek & D. Schetky, "Allegations of Sexual Abuse in Child Custody Cases," paper presented at the Annual Meeting of the American Academy of Psychiatry and the Law, Nassau, Bahamas (Oct. 1984).
19. Daniel C. Schuman, "False Accusations of Physical and Sexual Abuse," 14 BULL. AM. ACAD. PSYCHIATRY LAW 5, 6-20 (1986).

Good samples look at large numbers of people that are likely to represent society in general.

that nearly all allegations of sexual abuse are false. They reported that three-fourths of the cases they had seen had involved false allegations.²⁰

There are some striking similarities in all of these anecdotal reports. All described cases in the private practices of the author. Cases were few in number and there was no reason to believe they were representative of *all* disputed custody cases. There has

been harsh criticism of the work of Underwager and Wakefield²¹ as well as Green²² among respected social scientists.

A good scientist simply cannot claim that anecdotal case descriptions tell us about the population in general. If I were a forensic psychiatrist or psychologist who had a practice devoted exclusively or almost exclusively to serving those who have been accused of child sexual abuse, and if my criteria for determining that an allegation was false was to accept the declarations of the accused, then I could quite easily arrive at findings that 50 or 75 or even 100 percent of allegations of sexual abuse were false. My findings, however, would never be accepted by good scientists as anything more than a description of the people in my own practice. No good scientist would agree that my findings could tell them anything about all people or about all contested custody cases.

To put it another way, if I were to go to a prison and interview twenty men in maximum security, I might conclude, based on that sample of men, that 50 percent of men are murderers.²³

Good samples look at large numbers of people that are likely to represent society in general. The study that found that only

two percent of contested custody cases involved allegations of sexual abuse consisted of *all* of the cases of contested custody and visitation in eight legal jurisdictions situated in several different states. There were 9,000 cases in the sample of contested custody or visitation.²⁴ This is a sample a good scientist can trust. What we see in this sample is very likely to be true in other areas and in the population in general.

The criteria used for sexual abuse are extremely important when doing research. Ralph Underwager never defines his criteria for sexual abuse, but one of his statements might give some insight as to what he might consider sexually abusive. He gave an interview in 1991 to a journal called PAIDIKA, which labels itself as the Journal of Pedophilia. In it, he said: "Pedophiles need to become more positive and make the claim that pedophilia is an acceptable expression of God's will for love and unity among human beings."²⁵

V. ON MONEY, ETHICS AND EXPERT TESTIMONY.

When reading journal articles or hearing the testimony of a forensic psychologist, it is always interesting to discover who the individual usually serves in his/her practice.

An expert who is receiving \$250 per hour to defend those accused of child sexual abuse might be willing to "give the defendant the benefit of the doubt" in making determinations regarding sexual abuse. In the words of Judge Pierre A. Michaud, assistant judge in chief of the Quebec Superior Court in Canada:

In matters of child custody and access rights, the experts would have us believe that science changes as needed to serve the purpose of the prosecution or the defense. Too often, the only objective of the expertise seems to be to knowingly support the point of view of the client.²⁶

20. Hollida Wakefield & Ralph Underwager, "Sexual Abuse Allegations in Divorce and Custody Disputes," 9 BEHAV. SCI. & LAW 451, 455 (1981).

21. Criticism of Underwager and Wakefield is summarized in *Underwager v. Salter*, 22 F.3d 730 (7th Cir. 1993), cert. denied, 513 U.S. 943 (1994). In that case, in which Underwager and Wakefield unsuccessfully sued critics for defamation, the court noted that their books had "not been well received in the medical and scientific press," 22 F.3d at 731, that "Underwager's approach [had] failed to carry the medical profession," *id.* at 732, that Underwager had served on the board of the False Memory Syndrome Foundation "until resigning after being quoted as telling a Dutch journal that sex with children is a 'responsible choice for the individual,'" *id.* at 734, and that the Supreme Court of Washington had upheld Underwager's exclusion as an expert on the ground that his views were not accepted by the scientific community. *Id.* at 735 (citing *State v. Swan*, 790 P.2d 610, 632 (Wash. 1990)). See also John E.B. Myers, "The Child Sexual Abuse Literature: A Call for Greater Objectivity," 88 MICH. L. REV. 1709, 1711-17 (1990) (criticizing a book by Underwager and Wakefield for, among other things, "abdication of objectivity," "unbalanced thinking," and misuse and distortion of the research of others).

22. For criticism of Green's work, see Penfold, *supra* note 16, at 14 (citing study "[s]uggesting that Green's paper was likely to be misused in judicial settings").

23. A classic book on statistics notes this problem of making conclusions based upon data from an unrepresentative sample:

A psychiatrist reported once that practically everybody is neurotic. Aside from the fact that such use destroys any meaning in the word "neurotic," take a look at the man's sample. That is, whom has the psychiatrist been observing? It turns out that he has reached this edifying conclusion from studying his patients, who are a long, long way from being a sample of the population. If a man were normal, our psychiatrist would never meet him.

Darrell Huff, HOW TO LIE WITH STATISTICS 19 (1954).

24. Theonnes & Tjaden, *supra* note 1, at 153.

25. Ralph Underwager, PAEDIKA, The Journal of Pedophilia, Amsterdam, Holland (1991), reprinted on line (visited July 8, 1998) <<http://www.igc.apc.org/nemesis/ACLU/NudistHaloofShame/Underwager3.htm>>.

26. Pierre A. Michaud, Le Psychologue Expert Tel Que Percu Par Le Juge [The Psychological Expert as Perceived by the Judge], Conference Paper, Montreal Bar family law conference at 4 (April 29, 1993) (quotation translated from original French).

At the same Montreal conference at which Judge Michaud spoke, local forensic psychologist Raymond David noted:

The saying "don't bite the hand that feeds you" gets in the way of professional objectivity and morals, when experts turn off their consciences and morals to be assured of getting a continuing flow of referrals from lawyers. Their recommendations are dominated and completely controlled by the client.

..... The expert might also yield to the more or less open pressures of the client, or of his attorney who push the expert to produce recommendations which are in the client's favor.²⁷

VI. FALSE ALLEGATIONS OF SEXUAL ABUSE ARE NOT WIDESPREAD.

There are a number of articles that give what social scientists agree is an acceptably accurate picture of the rates of false allegations of sexual abuse in general.

In a study that looked at all reports of sexual abuse received by the Denver child protective services in 1983, child protective social workers reported that 53 percent of allegations were well founded, 24 percent didn't have enough information to allow substantiation, 17 percent were made in good faith and involved a legitimate concern, but had other explanations, and 6 percent were probably false.²⁸

In another study, researchers looked at results from the child protective files of 100 county social service agencies in North Carolina. They were interested in the false allegation rates of different age groups of children. They found rates between 4.7 and 7.6 percent, with rates of false allegations rising with the age of the child.²⁹

A good number of other researchers have found false allegation rates between 2 and 8 percent.³⁰ These studies have the disadvantage of being clinical studies, and of having relatively small, non-random samples.³¹ Even so, their findings agree with those previously cited, which were methodologically sound research projects using large, naturally occurring samples.³²

Some of the confusion regarding false allegations of sexual abuse has been caused by a misunderstanding of what some of the terms mean. Child Protective Services (CPS) agencies receive a great number of calls. Mandatory child abuse reporting laws have caused the number of calls received by CPS to increase a great deal. These laws have also caused the percentage of reports that are substantiated to drop. Because many professions are required to report even a suspicion of child abuse, a great number of calls naturally will be determined to be unfounded. This does not mean that they are false, or that there was any

malicious intent on the part of the reporter. Many people are simply obeying the law.

Jones and McGraw looked at all of the reports of sexual abuse received in Denver for one year. They concluded that 53 percent of all allegations of sexual abuse were well founded. In 24 percent of the cases, they found that there was not enough information to make a decision as to whether there was any abuse. No one was accused, no one was charged, nothing was done.

These cases might turn up later with enough information to declare them well founded, but they might not. Another 17 percent were considered to be unsubstantiated suspicions. This meant that a suspicion was reported by an adult about sexual abuse. There was not necessarily any malice in the reporting of a suspicion. An alternate explanation for the cause of the suspicion was found and the reporter accepted that decision. No accusations were made. No abuse was alleged, but a suspicion was voiced. In 5 percent of reports, the researchers determined that abuse had not taken place. An adult had made a report, but the caseworker came to the conclusion that sexual abuse had not happened. It might have been a deliberate falsification, a faulty perception or a confused interpretation of events. In 1 percent of the cases, a child made a report of sexual abuse that was thought to be false. This category included deliberately false allegations, faulty perceptions, and confused interpretations, as well as "coaching" by an adult to make a false report.³³

VII. THE TIMING OF ALLEGATIONS OF SEXUAL ABUSE IN DIVORCE CASES.

Much has been written about the timing of allegations of sexual abuse. Allegations that arise in the context of divorce are immediately suspect in many people's minds. The belief that women frequently make false allegations to take revenge on ex-spouses is false but well entrenched in popular culture.

K.C. Faller described four situations that might lead to allegations of sexual abuse arising in the context of a divorce case:

1. Abuse leads to divorce.
2. Abuse is revealed during a divorce.
3. Abuse is precipitated by divorce.
4. Improbable allegations are made during a divorce situation.³⁴

A good number of other researchers have found false allegation rates between 2 and 8 percent.

27. Raymond David, *La Position du Psychologue Comme Temoin-expert Devant la Cour Superieure* [The Position of the Psychologist as an Expert Witness before the Superior Court], Conference Paper, Montreal Bar family law conference at 4 (April 29, 1993) (quotation translated from original French).

28. Jones & McGraw, *supra* note 2, at 30.

29. Mark D. Everson & Barbara W. Boat, "False Allegations of Sexual Abuse by Children and Adolescents," 28 *AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY* 230, 232 (1989).

30. K.C. Faller, *CHILD SEXUAL ABUSE: AN INTERDISCIPLINARY MANUAL FOR DIAGNOSIS, CASE MANAGEMENT, AND TREATMENT* 22, 126 (1988); Jean Goodwin, Doris Sahd & Richard T. Rada, "False Accusations

and False Denials of Incest: Clinical Myths and Clinical Realities," *reported in* *SEXUAL ABUSE: INCEST VICTIMS AND THEIR FAMILIES* 17, 17-26 (1982) J. Horowitz, P. Salt, Z. Gomes-Schwartz, & M. Sauzier, "Unconfirmed Cases of Sexual Abuse," Unpublished Manuscript, Division of Child Psychiatry, Tufts-New England Medical Center, Boston (on file with the author).

31. These studies included from 46 to 181 total cases.

32. See notes 28-29 *supra*.

33. Jones & McGraw, *supra* note 2, at 30.

34. Kathleen Colborn Faller, "Possible Explanations for Child Sexual Abuse in Divorce," 61 *AM. J. ORTHOPSYCHIATRY* 86, 87 (1991).

There are many reasons why legitimate allegations of sexual abuse will arise in the divorce situation.

A consideration of the dynamics of families during divorce shows that each of these situations is, indeed, likely to occur, with some more common than others.

Abuse May Lead to Divorce

Sirles & Lofberg found that about half of non-offending parents decided to divorce the offending parent after the disclosure of sexual abuse was made to the authorities.³⁵ The protective

parent probably informed child protective services prior to the divorce and tried to get them to prevent visitation. The protective parent may have been told by the authorities that if divorce was not initiated the children could be placed outside the home.

A protective parent may have become aware of the sexual abuse and have decided to divorce, but failed to mention sexual abuse because of shame for having married a molester, discomfort with the prospect of CPS investigations (and court hearings) or a desire to protect the children from the stigma of being labeled sexually abused. Most protective parents do not want the world to know that their child was abused or that they married a child molester. Such a parent may naively hope to get custody and restricted visitation without mentioning the sexual abuse. When this does not happen, they are forced to bring up sexual abuse to protect their children. Some protective parents may have been abused themselves during the marriage and may fear revenge from the offender if allegations of sexual abuse are brought up.

Abuse May Be Revealed for the First Time During a Divorce

There are many reasons why legitimate allegations of sexual abuse will arise in the divorce situation. Some children feel less protected during a divorce. The child may feel anxious about having to spend more time alone with the offending parent, and disclose as a result. A child who is very afraid of the offender may feel safer when the offender is not around so much and finally feel able to tell. The child may feel that the perpetrator is no longer able to punish her/him for telling. Some children are told that if they tell, it will destroy the family. When the divorce occurs, there is no longer any reason to keep the secret.

Some non-offending parents are reluctant to believe a genuine disclosure of sexual abuse as long as they are still invested in keeping their marriages. When they divorce, they may be more open to hearing their child's disclosure. The child may sense that their non-offending parent will now believe them if they tell.

Abuse May Be Precipitated by the Divorce

There are a number of individuals who become distressed during a divorce with resulting regressive behavior. They may

sexually offend as result. Such individuals may not have offended prior to the divorce. In a situation of divorce, they not only have more opportunity to offend, but fewer resources to resist the urge to sexually offend. The individual may have had a sexual attraction to children all along, but had been able to resist it during the marriage. With the emotional losses of the marriage, the individual is likely to become dependent and needy. With the spouse unavailable, the individual may turn to the child to get needs met. Because of the underlying sexual attraction and the absence of external hindrances, sexual abuse is able to happen. In some cases, the offender may be expressing anger at the non-offending spouse for leaving the marriage. Sexually offending may be a way of punishing the non-offending spouse for the divorce.

False Allegations May Be Made During Divorce Proceedings

While Thoennes and Tjaden have shown that false allegations of sexual abuse are no more common in divorce than in non-divorce situations, they do exist. A divorcing spouse may adopt a distorted perception of what is happening with the children and believe that sexual abuse is happening as a result. Divorcing parents are often willing to see the worst in their spouses and this may lead to a belief in sexual abuse. Some divorcing parents are simply angry and want revenge. While cases of revenge are very rare, they do occur.

VIII. WHY CHILD VICTIMS MAY ACT AS THEY DO.

Sexually abused children do not always act as we think they should. I was involved in a case in Montreal in which the father had been regularly raping the teen-age daughters. Mother knew something was wrong and finally got one of the girls to tell her about the rapes. The offender had threatened the girls that he would kill both them and the mother if they told. He found out that one of the girls had told and he tried to kill the mother. The mother was too afraid to press charges and the silence was enforced. For a while, anyway. During the period of "silence," the mother told me that she was totally bewildered by the fact that her daughters would laugh and joke with their offender at the dinner table as if nothing were wrong. Eventually, the man was convicted of child rape and served several years in prison. It is important to understand that this is not unusual behavior in a sexually abused child.

It is very threatening for a child to perceive his parent as evil or bad. If his parent is bad, then he is not safe. He depends on his parents to feed, clothe, protect, love and shelter him. If her parent is bad, she is in danger. It is easier for the child to see herself as bad. Offenders may eagerly reinforce this natural tendency in the child to see the parent as good and themselves as bad and many children become convinced that it is because they are bad that the abuse is happening. The child victim is usually deeply ashamed of the abuse and probably completely convinced that he has caused it. She may have been told that no one will believe her if she tells.

35. Elizabeth A. Sirles & Colleen E. Lofberg, "Factors Associated with Divorce in Intrafamily Child Sexual Abuse Cases," 14 CHILD ABUSE & NEGLECT 165, 168 (1990).

Abused children are often extremely attached to their offenders. It would seem that intermittent love and abuse produces some extremely strong bonds between a victim and an offender. One need only consider how often most battered adult women go back to their batterers to realize that this is so.

Even if a child is not strongly attached to his offender, he may pretend to be because he feels the offender is in control and it is safest to do as the offender says. Who among us has not pretended to like someone whom we disliked because that person had power over us and we needed to have his or her approval? Parents have enormous power over children and children are hard-wired to love their parents, regardless of what the parent does. While there are some children who come to hate and avoid their abusive parents, many do not. A child's affection and seeming lack of fear of a parent does not prove that there has been no abuse of that child. Most abusers do not abuse a child constantly, and the child may be eager, sometimes desperately eager, to gain the approval of the abusing parent. The fact that a child shows no fear of the accused does not mean that there has been no abuse.

Why Don't Kids Tell?

Sexual abuse is a very private crime and there are seldom any witnesses. Those who may have seen the crime are often too intimidated to speak up. The child seldom feels able to tell about the crime. The victim is almost always told not to tell. Children in our society are taught to obey adults. All children need love and approval from their parents. It may be enough that the offender makes it clear that the victim will no longer be loved and accepted unless she/he submits and says nothing.

Some children are told that if they submit to the abuse, their sister or brother will be spared. The child may disclose when she or he discovers that the sister or brother is also being abused, and there is no reason to keep silent.

Some kids try to tell their mothers and are not believed. Some mothers get angry at the child. These kids have a hard time. Their feelings of betrayal are enormous.

Some children are told that they will go to jail if they tell because they are as guilty as the offender. Children tend to believe what adults say.

Most children are ashamed of the abuse. If you had done something that you believed was bad and felt very ashamed about and you believed it was your fault and that if you told it would destroy your family, would you tell? If you had been threatened that your cat, mother, sister, or school friends would be killed if you told, would you tell? If you thought no one would believe you if you told and you knew that your offender would be extremely angry at you and would probably punish you harshly, would you tell? What if your offender told you that you would go to jail because you were just as guilty?

I think one of the cruelest things that has happened to many sexually abused children has been to be punished for being seductive. It is believed that most sexually seductive young children have been sexually abused. It is insult to injury when an

accused offender is acquitted because the child "asked for it" by being sexually seductive. No matter how seductive a child is, the adult must refrain. No child has the ability to give informed consent to having sex with an adult. No child has equal power to say no to an adult.³⁶

Male victims may refuse to tell because of the pervasive homophobia in our society. They do not want to be labeled a homosexual. Fortunately, the fact that the accused is heterosexual is no longer considered "proof" that he did not offend a child. Unfortunately, the child may not know this and still be unwilling to tell.

All things seem to favor the keeping of the secret. The child who tells is incredibly brave and very rare.

Why Do Kids Recant?

If you were brave enough to tell about sexual abuse and your offender threatened you, would you recant? What if, after your disclosure, your whole world came crashing down? Your mother became angry with you, your father was taken away from your home by the police, there was no money for food. What if everyone was pressuring you to say it didn't happen? You feel ashamed of what you did. You are told that your disclosure is destroying everyone's lives. The whole world is upside down and it is all your fault. You can make it all go away if you just say it never happened. Would you recant?

The fact that a child recants does not mean that abuse never happened. It often means that pressure has been applied to the child and the child submitted. A child may also recant when he feels he is not being believed. Naturally reluctant to talk about abuse, a child may become silent or recant if those interviewing him seem skeptical of his disclosure.

IX. THE MOTHER WHO REPORTS ABUSE.

A common defense tactic in sexual abuse cases is to discredit those who act to defend the child. Most people do not like to see a child attacked, discredited or emotionally destroyed in a court of law. It is much more successful to discredit and destroy the child's defenders, especially the mother. Focusing on the mother instead of on the offender has a long history in our society and our legal system. It does not serve the best interest and protection of children.

Many women are very reluctant to share the disclosures of their children because of the enormous backlash against women who have made allegations of sexual abuse during divorce in the past. Many women tell me they know of at least one horror story where a mother has lost custody of her children because she (in good faith) brought up a sexual abuse allegation during a divorce.

Mothers have told me that they feel no matter what they do

The fact that a child recants does not mean that abuse never happened.

36. David Finkelhor, *CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH* 19 (1984).

[A] woman can be angry, malicious and mentally ill, but ... her allegations of sexual abuse still may be genuine.

it is considered wrong by the legal system. If they react to their child's disclosure of sexual abuse with anger and take measures to insure the safety of their children, they are called mean, vindictive and hysterical. Mothers who suppress their rage and calmly go through the tasks needed to protect their children say they are accused of falsely accusing their child's offender. The defense says that if it had really happened, she would be enraged. And then there are the mothers who either don't

believe their children or are so emotionally dependent and/or subjugated by their child's offender that they are unable to act to protect the child. They, too, are harshly viewed. An additional subset of mothers are those who have believed their child but are disbelieved by the those who evaluated the allegations. If such mothers continue to believe and support their child, they are labeled hysterical and paranoid. I know of a case in which a mother was declared insane by the psychologist of the accused and court-ordered into psychiatric treatment for believing her toddler had been molested when CPS declared that it had not happened. The sexual abuse of her child was confirmed a couple of years later, but not before the child nearly succeeded in committing suicide. Such mistakes are costly in terms of human suffering.

Failures of the system to protect children have prompted the creation of a number of underground organizations that hide children believed not to be protected by our judicial system. Protective mothers and fathers make huge sacrifices to protect their children when they go underground. If the child has genuinely been abused and this measure is the only way to protect the child, these parents feel the risks are worth it. How many parents would be willing to give up their career, their families, their homes and their safety to punish an ex-spouse? I do not believe that many parents choose this option unless they feel there are no other options left to protect their child.

The urge to protect one's offspring is overwhelming in most parents. Parents have been known to enter burning buildings and risk almost certain death in a variety of situations to protect their children. It is naive of us to believe they will obey court orders if they genuinely believe their child is in danger.

Mothers who choose to divorce a husband when sexual abuse is disclosed often lose much and pay a high price for protecting their children. The mother may lose her source of financial support. She may be threatened with violence if she supports her child and takes legal action against the offender. If the man has been violent with the mother, she may have a very difficult time doing what she needs to do to protect her child. If she is met by

a high-powered legal team hired by her child's offender, and she has no resources to fight, she may give up. She may feel a divided loyalty between her child and the offender. If she has been battered herself, she is likely to be isolated from social support and may have a hard time getting through the court appearances and other ordeals involved in protecting her child. She may be tempted at every juncture to abandon the protection of her child and give in to the offender. If such a mother is not supported by the legal and social services systems, the risk is great that she will capitulate and abandon her children to the offender.

Many times when a mother believes and defends her children, she is accused of being insane by the offender's defense team. It seems easier to believe that a mother is insane than that a clean-cut, handsome man would sexually offend his children. The mother may present to the court as anxious, stressed and upset about the situation, which in some minds seems to support the idea of her insanity. If she has been battered by the accused herself, she may have a number of psychological issues and may, indeed, be in need of therapy. This does not mean that the allegations are false or that any pathology in the mother negates the existence of sexual abuse to the children. If there is pathology in the woman, it is important to have a competent, neutral professional determine first, whether the pathology has been caused by domestic violence, and second, whether the pathology has any relationship to the allegations of abuse. It must be understood that even seriously mentally ill women may have children who have been sexually abused. In fact, Finkelhor found that having a mother who is ill or unavailable was a risk factor for sexual abuse.³⁷ Mentally ill women may be less available, less able to protect their children against sexual abuse and less likely even to know it is happening.

We seem very uncomfortable with the idea that a woman can be angry, malicious and mentally ill, *but* that her allegations of sexual abuse still may be *genuine*. Yet, this is probably quite often the case. Should the children of the mentally ill have less adequate protection from sexual abuse than the children of the mentally healthy? Should a child's disclosure of abuse be ignored because the mother is angry it happened or wants revenge on the offender because of it? Should a child's disclosure of sexual abuse be dismissed because her parents are divorcing?

The situation of mothers is made even more difficult by the existence of instruments that claim to be able to determine if a mother is falsely accusing. Richard Gardner created the "Sex Abuse Legitimacy Scale," which he claims can ferret out falsely accusing mothers and children.³⁸ This scale is often used against mothers and children. Jon Conte, editor of the respected "Journal of Interpersonal Violence," had this to say about the Sex Abuse Legitimacy Scale: "Probably the most unscientific piece of garbage I've seen in the field in all my life."³⁹ It must be noted that Gardner self-published this scale (and most of his other writings as well),⁴⁰ and that this scale has never been subjected to peer review or any kind of scientific scrutiny. There is

37. *Id.* at 32.

38. Richard Gardner, *SEX ABUSE LEGITIMACY SCALE* (1987).

39. Catherine Humphreys, "Child Sexual Abuse Allegations in the Context of Divorce: Issues for Mothers," 27 *BRIT. J. SOC. WORK* 529, 534 (1997).

40. Gardner's books are self-published by Creative Therapeutics, his own publishing company, which has a mail-order catalog and a toll-free telephone number for sales in the United States and Canada. His works are not peer reviewed. Cheri L. Wood, "The Parental Alienation Syndrome: A Dangerous Aura of Reliability," 27 *LOYOLA L.A. L. REV.* 1367, 1367 (1994). For a criticism of Gardner's self-announced "parental alienation syndrome," see *id.*

no basis in published, peer-reviewed research for anything claimed in this scale. Using it, many, if not most, mothers who behaved in a very typical, normal way after hearing a disclosure of sexual abuse would fail to meet the “criteria” for a genuinely accusing mother. Some of the criteria for inclusion in the category of false accusers are initial belief of the child’s disclosure, disclosure during custody or divorce dispute, anxiety about the child being seen alone with a psychiatrist or psychologist, and anger or suspicion toward the accused.⁴¹

I looked to Gardner’s own writings to glean a bit of insight into his ideological position regarding sexual abuse. In his book, *True and False Accusations of Sexual Abuse*, Gardner, who does a great deal of forensic work for the accused, nationwide, said:

My final position on this matter is this: a pedophile is the name given to a person whom the judge and/or jury decides they want to put away. It is of interest that of all the ancient peoples it may very well be that the Jews were the only ones who were punitive toward pedophiles. Early Christian proscriptions against pedophilia appear to have been derived from earlier teachings of the Jews, and our present overreaction to pedophilia represents an exaggeration of Judeo-Christian principles and is a significant factor operative in Western society’s atypicality with regard to such activities.⁴²

There are those who make much of the fact that women report sexual abuse more frequently against their husbands than men report sexual abuse against their wives. Since 95 percent of sexual abuse against girls and 80 percent of abuse against boys is perpetrated by men, it would only seem natural that women report more frequently.⁴³

It is one of the sad realities of our society that both child victims and society often tend to blame mothers when a child is sexually abused. Victims blame mother because mothers are expected to protect children. Victims may be eternally seeking the approval and love of the offender and may not feel it is safe to blame the offender. If mother’s love is unconditional (and it often is), then it is safer to blame her and be angry at her than at the offender. Mothers are often placed in impossible, no-win situations. No matter what she does, it seems wrong.

Protectiveness in a mother may be considered paranoia, and reporting abuse may be seen as vengeful. Mothers may be forced to accept situations that put themselves and their children in jeopardy in order not to be seen as vengeful and difficult. Many fear ultimately losing custody if they do not do as they are told. Most know, or believe they know, a mother to whom this has happened.

One can pose the question of what would be a normal

response to the information that one’s child had been raped or molested. Rage seems to me to be a pretty ‘normal’ response. Does discovering that one’s child has been abused and that one is unable to protect him cause some women to develop symptoms of neurosis?

Rage seems to me to be a pretty ‘normal’ response.

SUMMARY

False allegations of sexual abuse in divorce are a rare occurrence. False allegations of sexual abuse in general are rare. Unsubstantiated is not the same as false. Child sexual abuse is a common experience. Child sexual abuse is grossly underreported. There is a belief that allegations of sexual abuse in divorce is epidemic because a number of anecdotal reports of allegations of sexual abuse were repeatedly referenced by various authors without listing the limitations of such reports, creating an image of “hard science” that did not exist. Allegations of sexual abuse are more likely to occur in divorce situations and must be taken just as seriously as allegations that arise at any other time. Sexually abused children behave in a manner that is hard for most of us to understand. It is extremely hard for a child to disclose sexual abuse and any child who does so must be seen as extremely brave. Children recant because of pressure or a desire to get their family back. Mothers of sexually abused children experience many conflicts and difficulties in our present system.



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41. Gardner, *supra* note 38.

42. Richard Gardner, *TRUE AND FALSE ACCUSATIONS OF CHILD SEXUAL ABUSE* 46-47 (1992).

43. David Finkelhor, *CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH* 12 (1984).