

# FALSE ACCUSATIONS OF CHILD ABUSE

A SURVIVAL GUIDE

Reclaim your honor & your life



CHARLES D. JAMIESON, ESQUIRE

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**ISBN:** 978-1-941645-36-9

Design and Published by:

**Speakeasy Publications**

73-03 Bell Blvd #10

Oakland Gardens, NY 11364

[www.SpeakeasyMarketingInc.com](http://www.SpeakeasyMarketingInc.com)

888-225-8594

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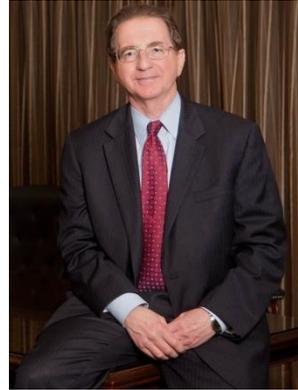
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## AUTHOR INTRODUCTION

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Attorney Charles D. Jamieson is a highly principled legal professional driven by a passion for his work. Mr. Jamieson has practiced law for more than 28 years. He began his family law practice in Maine, assertively representing clients in divorce cases. As lead attorney and/or legal consultant to individuals with divorce issues in more than 20 states, Mr. Jamieson has developed a wealth of experience regarding family rights, and has been invited to share his knowledge and insight at seminars throughout the United States.



Mr. Jamieson is respected among criminal defense lawyers, domestic violence attorneys and divorce attorneys in West Palm Beach. While his practice is based in West Palm Beach, Florida, he is committed to proactive, assertive representation for each of his clients, regardless of their geographic location.

Mr. Jamieson graduated from Dartmouth College in 1975, magna cum laude, and earned his Juris Doctorate (J.D.) from the University Of Maine School Of Law in 1978. While in law school, he was very active in advocacy issues, served as the co-chairman of the Moot Court Board and was successful in arguing legal issues in intramural and

international moot court contests. He was admitted to practice law in Maine in 1978 and was admitted to the Florida Bar in 1990. Mr. Jamieson has been Board Certified in Marital and Family Law by The Florida Bar since 2009. In cases of divorce, the best interests of all children involved are priority. To this end, Mr. Jamieson regularly networks with experts in the field, as well as child custody lawyers and family divorce attorneys.

## HOW LONG HAVE YOU BEEN HANDLING CASES INVOLVING FALSE ALLEGATIONS OF CHILD ABUSE?

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I have been handling these types of cases since about 1985, which coincided with the first wave of child abuse allegations coming across the country during that time period, would be an example of the McMartin case, out of California, in which the trials in that case lasted for years and cost the State of California \$15 million and resulted in no convictions. Another famous case from the same time period was the Jordan Minnesota case, which was a much different kind of situation; it happened in a town of about 2,500, in which about one out of every 100 people were accused of child abuse. Again, there were no convictions.



Although both cases dealt with allegations of child abuse in daycare centers, the difference in the latter case was, an insurance company in Minnesota hired a psychologist to do what was then called a social psychological brief, (which basically tells us everything we need to know about young children and how they might come to make false allegations or make statements about people that are not true). It gave us our first insights as to how false child abuse allegations can occur. I was practicing law in Northern New England at the time, and working on a huge divorce case in Southern New Hampshire.

My client had holdings around the country; the case was litigated long before the Internet, so we had to have either long distance telephone conferences or fly people in for strategy meetings. During these meetings, we would discuss the issues in his case, his holdings, and plan tactics and strategy. I was the “point man” on the custody issue. During the litigation, I thought we were turning the corner regarding getting him custody of his two young boys until a child abuse allegation was made against him by his wife in the middle of the trial. He turned to me and said, "Listen, you are connected with (what was then called) the Father's Rights Movement, or the Family Rights Movement, there have to be some experts out there who can do something about this."



That's how I got connected with the psychologist who was involved in the Jordan Minnesota case. We brought him to New Hampshire and we were able to quickly undermine and defeat the child abuse allegation and get back on track regarding the custody trial. An attorney from Florida was involved in that case, and he was starting to field phone calls from around the country regarding legal assistance concerning child abuse allegations. Because of the volume of requests for legal assistance, he started to send me out around the country dealing with these cases. After a year or so, he gave me an

offer I couldn't refuse and I moved to Florida and worked for him for 2-3 years, basically flying around the country, litigating child sexual and physical abuse cases and child neglect cases.

Once I left his firm, I focused on child abuse cases, but then started to drift more and more towards family law. In the course of my career, I've handled scores of child abuse cases in the context of criminal cases, juvenile court cases, and family law cases, and have litigated and/or acted as a consultant in such cases in over twenty states.

False allegations of child abuse cases have not been limited to the 1980s. There have been other notorious cases. The Wenatchee case came out of Washington State and there was the Kelly Michaels case, another daycare case in New Jersey during the late 1980's and early 1990's. Many of these cases possessed similar characteristics: an unsophisticated or uneducated adult saw or heard something and overreacted, or they got involved with therapists who were not well-versed and overreacted. The allegations escalated out of control. Individuals who didn't know proper interviewing techniques or weren't aware of how easily young children's memories can be contaminated got involved and the allegations again increased in terms of alleged acts and alleged perpetrators of abuse.

In the McMartin case, the authorities claimed that the authorities were taking hot weather balloon rides with the

other teachers in the school, who obviously denied doing so. They claimed that there were tunnels underneath the property into which the children were taken and abused. There are some famous pictures from that case in which law enforcement officers used earth movers in the yard surrounding this daycare to try to find these alleged underground tunnels and, of course, none were ever found.

This pervasive failure to question child abuse allegations, no matter how unbelievable they may become, is one of the reasons why these allegations are so dangerous.

## HOW DOES THE LAW ACTUALLY DEFINE CHILD ABUSE?

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Child abuse can be defined in different ways. In criminal law, it is determined based on terms of ages of the victim and the acts allegedly committed upon the child. For instance, in the State of Florida, there's a crime called Sexual Abuse, which basically requires two circumstances:



(1) The alleged perpetrator must be 18 years old or older and have committed sexual battery (meaning an adults sex organ makes contact with or penetrates the mouth, anus, or vagina of the alleged victim) against someone 12 years or younger; or (2) An alleged perpetrator injures the sexual organs of the alleged victim during a sexual battery attempt. In both categories, to become the crime of capital sexual battery, the alleged perpetrator must be either someone who is related to them by family or someone who is in an authority position over the alleged victim (such as a school teacher, daycare protector, doctor, nurse, or parent of or similar figure of authority). The crime of capital sexual battery can put you away in Florida for life without parole and there's no right to bail.

We can go down the line from that with regard to age and action. When one is involved with civil juvenile court, it's

a much more general standard; basically, it's some type of act or threatened act which results in any physical, mental, or sexual injury or harm or any act or threatened act that causes or is likely to cause a child's physical, mental, or emotional health to be scientifically impaired. You can define almost any number of things as abusive or potentially abusive under that type of definition. Then, in family court or divorce cases there may be circumstances where abuse is defined as a component or concept considered within the analysis of "best interest of the child".

Then, you also have different standards of proofing different courtroom settings. We are all familiar with the standard "beyond a reasonable doubt," which is the criminal standard. If you were to imagine the set of scales, (you remember the statue with the scales of justice must begin balanced evenly). To prove a case beyond a reasonable doubt in criminal court, the prosecution must tilt its scales substantially in its favor using the substantial weight of the evidence. In civil, non-criminal cases, you only have to prove your case through a preponderance of the evidence, which is a slight tipping of the scales in your favor.

Although there's no mathematical formula to describe "preponderance of the evidence", think about having two piles of copy paper, (with both piles having an equal number of sheets). If you take only one sheet from one pile and place it on the other pile, that's a preponderance

of the evidence. You may think that you have an advantage in being in a criminal case with a higher burden of proof. In criminal cases, someone who's accused may be protected by a higher standard of proof, but you will probably go to jail if you're convicted and you will have a number of other problems that will occur in your life if that happens. In a civil case, you may not go to jail, but the accusing party has a smaller, less difficult burden of proof to establish the false allegations of abuse against you.

OJ Simpson wasn't accused of sexual abuse. However, his case clearly demonstrates the difference between the burden of proof in criminal cases and in civil cases. He was accused of murder, but OJ was found not guilty in his criminal case because the prosecutor could not prove to the jury's satisfaction beyond a reasonable doubt that he had killed his wife, Nicole, and her friend, Ronald Goldman. However, in the civil case brought against him for killing Nicole, his wife, he was found to have done it because a less substantial burden of proof (preponderance of the evidence) had to be met. Although there are different ways to define child abuse and different burdens of proof to establish, if you are the moving party, nevertheless, the allegations are incredibly serious in terms of the potential impact on your life.

## **Can Threatening Behavior Be Considered Abuse Under the Law?**

It can be considered a form of abuse, depending upon what was done and said. When it comes to juveniles, it can be any actions or words that either cause or are substantially likely to cause emotional, mental, or physical harm or impairment to a child. The problem is there are often not diagnostically specific signs which are the result of such abuse and there is often no witness to the alleged abuse, so there is little evidence; it can often be one parent accusing another of saying XYZ to a child.

If you threaten a criminal act against someone, that itself can be considered a crime, but the question is, what kind of proof do you have? If I threaten to rape someone and they have a legitimate fear that I will do so, that might constitute the crime of assault, which is the threat of touching, hitting or injuring someone by contact from another person. But again, how do you investigate or determine what actually happened? How do you make sure that your investigative techniques are not “clouding up the water” or making it more difficult to determine what actually happened?

## WHAT PERCENTAGE OF CLIENTS ARE FALSELY ACCUSED OF CHILD ABUSE?

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A subset of child abuse cases deal with false abuse allegations, but the exact number or percentage of false allegation cases will depend upon how you define a false allegation of child abuse.



Obviously, the majority of accusations are true, but a recent study showed that the percentage of allegations that are false maybe as high as 36%, depending on the factors you use to define a false allegation of child abuse and the circumstances of the allegations. For instance, if you look at highly conflicted, highly contentious or highly contested divorce cases in which the parties feel and demonstrate acrimony towards each other, you are likely to find a larger number of false abuse allegations in these cases, because every statement, action, and incident is being construed in a negative fashion against the other spouse. In such cases, all actions, statements and incidents are tainted and construed against the suspected perpetrator in the most negative fashion.

A common problem in most false allegation cases is the concept of confirmatory bias. With confirmatory bias when we analyze the facts or evidence in an abuse case (such as Mr. Jones sexually abused his daughter), we only focus on those facts or alleged facts that may support that

allegation we conveniently or subconsciously ignore all evidence indicating that the abuse didn't happen. Basically, we tend to only look for facts that support what we believe. This type of confirmatory bias often is at issue in many of these cases.

A classic example occurs when Mom doesn't think highly of Dad, so little Sally comes home and while she's in the bathtub, she says, "My pee pee hurts," and when Mom asks what happened, she says Daddy touched her. Sally is still in diapers and Daddy is changing her diapers and is bathing her appropriately; Sally may have a diaper rash; so, of course, even if dad is cleaning her properly, Sally may believe Daddy is hurting her because of his touches (even though the cause of her pain is her diaper rash). What we do is disregard the explanation indicating that abuse didn't happen, (in which Dad was just acting normally and Sally has a diaper rash) and we leap to the explanation that confirms our suspicions that Dad must have sexually abused Sally.

It gets even scarier; confirmatory bias does not just affect spouses who are at war with each other. It can negatively influence the investigations and conclusions reached by the police, state social services investigators, and mental health professionals. Unless a rigorous analysis is applied to the evidence that is unearthed during an investigation, (whether you're a police officer, a worker for DSS, a forensic professional, or even a mental health or a medical professional), one can easily fall prey to confirmatory bias.

One of the easiest ways to understand whether that process of confirmatory bias may be contaminating an investigation is to ask the investigator or the parent how many alternative hypotheses or explanations they considered when evaluating whether someone sexually abused a child.

Other important questions which often are not explored in false child abuse allegations are whether a negative environment against the other parent was present in the other parent's household and was an untrained or ill-trained professional involved in the questionings/interviewing of the child or in other aspects of the investigation?

Other areas which need to be explored in a thorough child abuse investigation is whether this young child was asked questions in a manner that would contaminate the child's memory, or does the child suffer from a condition that may create suspicion about the accuracy of what the child said? Is the child confabulating his or her memory (meaning has memory been contaminated by some other processor source)? Unless you examine all of these alternatives and many others, you are likely to fall prey to confirmatory bias, because you're not taking into account any existing evidence that may indicate that the allegations could be and are false.

One advantage I have over most attorneys and many other professionals involved with the issues of false child abuse

allegations is that I have been involved in litigating these cases since the mid-1980's. Since 1984 (when the first rigorous analysis regarding how false allegations of child abuse began to evolve), I've been litigating child abuse cases, advising people, talking to experts, reading the scientific literature in this area. I have studied child abuse literature as it has evolved over time. I have reviewed and analyzed scientifically-based studies and texts from both the mental health and the medical fields, dealing with issues such as the contamination of children's memories and how they can convincingly make false statements, dealing with what is the baseline percentage or the existence of what's considered to be medically normal findings in children versus abnormal findings in children's anal and genital areas, which might indicate abuse.

Knowing the baseline rate (how frequently it is found) for behaviors and medical findings for non-abused children is critical. What's the baseline of sexualized behavior or medical finding in a normal non-abused child versus an abused child? If we don't know the baseline of how normal kids act in a particular way, then we can't use those behaviors to depict or come to a conclusion that child abuse has occurred. For instance, at one time, there was a belief among mental health professionals the court system, DSS investigators, and police investigators that childhood masturbation was an indication that a child had been sexually abused. However, we now know (based on scientific studies and studies of child development) that

masturbation by itself is not a specific indicator of abuse because children who have not been abused also masturbate.

You have to remember that the population size and numbers are also involved. No matter how many abused children exist, there are always a much larger number of children who have not been abused. Consequently, in any case, there is a far greater likelihood that the behavior witnessed or medical condition observed, (unless it's specifically diagnostic of child abuse), cannot be used to prove that abuse has occurred. This is because (since there are more non-abused children than abused children) the behavior or medical finding is more likely linked to a normal child than an abused child.



However, people forget these important concepts in evaluating child abuse allegations when they're blocked subconsciously by confirmatory bias. Sometimes, we see unsophisticated parents make a declaration, or a child may make a statement or act in a certain way that causes the parent to become uneasy. If they are thinking badly of the other parent (because it's in the middle of an acrimonious divorce or disintegrating relationship), suddenly they believe that the child has been abused, and it sometimes doesn't matter who tells them that what they saw or heard is normal behavior. They are fixated on that

“false reality” and they go running to court for a domestic violence injunction against the other parent on behalf of the child, or contact the police on the phone, the State social service agency, or hire an attorney who is clueless about false allegations. Then the false allegation train begins to leave the station.

## WHAT ARE SOME COMMON MISCONCEPTIONS THAT PEOPLE FALSELY ACCUSED OF CHILD ABUSE HAVE ABOUT THE PROCESS?

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We live in a world in which we are reinforced and socialized by our parents, other adult relatives, and other important authority figures in our lives with an underlying belief when we are young that if we live a decent life, and do the right things, we will not get into trouble. Consequently, we want to believe if we live that way throughout our lives, that we can live our lives freely and be safe (short of an unexpected catastrophe – becoming mortally ill or a meteor lands on us in the middle of the road). We will get up in the morning, live our life during the day, come home and go to bed and we keep doing that day after day! Even though we instinctively know that this belief is naïve and unreasonable, we still cling to it.



In the same way, we want to believe additional messages we have received and been socialized to believe. We are taught that police and other government agencies are competent and know what they are doing. In addition, there is an expectation that if we live honorably, then we will be treated honorably. For example, we want to believe that if we tell the truth, we will be believed. This is one of the major misconceptions which people, who are falsely

accused of child abuse, possess. The falsely accused don't realize that everything they say in denying the allegations of child abuse have also been used by people who have actually abused children. The falsely accused person seldom understands at the beginning of the false abuse allegation that the guilty also deny committing acts of child abuse. Obviously, if the guilty admit their acts of child abuse, then they will go to jail.



Consequently, the innocent and the guilty sound the same in their denials of guilt. The investigating authorities seldom admit this sad fact that when a person, who is falsely accused, denies the allegation of abuse, the denial of abuse often increases the authorities' suspicions that the falsely accused person is guilty. Falsely accused people cannot comprehend why no one believes their proclamations and protestations of innocence.

The accused often ask the investigating authorities to look at their life, noting that they've lived their life honestly, as a good parent, and positively contributed to their families, their community, and their employment. They may also protest that they they've been around children all their lives and they have never done and never could do any act like this accusation. They will urge that the authorities interview their friends, managers, co-workers and other

people who know them well. In response, the investigating authorities will note that the guy convicted last month (who admitted sexually abusing 30 kids), said the same things. What happens then is that your life, your belief about society, and your belief about yourself is turned upside down because nothing is safe or makes sense anymore.

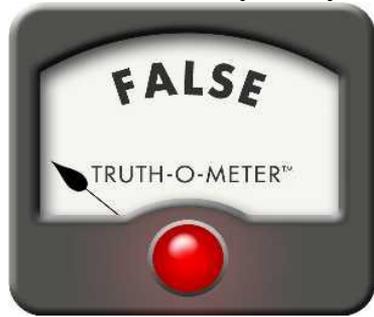
The falsely accused often feel lost in the tempest of the storm (that has erupted from the allegations) without a compass, without knowing how to navigate, and without knowing how or when the storm will end. All at once, your friends and neighbors start looking at you differently because that's what happens when you read in the newspaper that someone has been arrested or accused of sexually abusing children. The reader thinks the accused probably did some abusive act and, if not this particular offensive act, then the accused is guilty of some other horrendous act, and the authorities should put the accused away for a long time.

Most people want to believe that "where there is smoke there is fire". People generally need and want to believe that mental health professionals or government investigators are well trained, well educated, and experienced in the proper methods of investigating child abuse allegations. People also want to believe that only individuals, who are guilty of child abuse, end up being prosecuted or pursued on child abuse charges. In other words, the authorities only pursue and prosecute the

guilty. People do not understand that the reality in some cases may be just the opposite. If they understood that in false child abuse cases the innocent are often pursued and prosecuted and that their lives and families are destroyed, then they would realize that this terrible injustice could just have easily have happened to them. However, if people did so, then they would have to admit that the authorities are not competent and that their lives and families are not safe and that they also could be similarly victimized. It is far easier and safer to assume that the authorities know what they are doing and that "where there is smoke there is fire".

People who are falsely accused are confronted by that mindset and belief system and they can lose their jobs, their reputations and their families. One of the major cases I handled in the late 1980s, when I was working for a firm in Florida, was to represent a pilot and a flight attendant, who were in labor arbitration with a now-defunct major airline, who had dismissed them because they had been accused of abuse (not convicted, just accused). After two years of litigation, we were able to get them reinstated because you just can't fire people based on an accusation. The company's fear was, if these employees— again, this was the 1980s – were around kids on their flights, after being accused of abuse, it may negatively impact or affect the reputation and profits of the airline.

Let's say you're arrested for capital sexual battery and you didn't do it, you may not get out of jail. Think about what life in jail is like if you are accused of abusing a child. Within the jail or prison population, you are considered to be the lowest of the low. In jail or prison, all abuse and negative activities flow downhill. In jail or prison, your life will become a living hell. Everyone who wants to make themselves feel good or score a point will score those points off of you. However, even if you are not in jail (while your case is being processed through the courts), your life may still be turned upside down. You can also lose your job. What if you are a professional, like a doctor or lawyer; do you think you'll get any clients? Look at the dentist and his practice after he trophy hunted a publicly known lion in Africa in 2015. Even though he did nothing technically illegal, his practice was destroyed because of negative public opinion. Isn't an accusation of sexually abusing a child worse than hunting a lion? So, you can expect to lose your livelihood; you may lose your job, you may be demoted, or you may be put in a position in which you can't do your job. After that, you're afraid to start going out on the street because of what you think people will say.



People, who are falsely accused of child abuse, often turn inward on themselves, and avoid people, events, and participating in the normal activities of life such as shopping, movies, eating out, even to the extent of avoiding visiting friends or family members. When our office represents them, we have to get them to straighten their shoulders, stand up straight, and look at themselves in the mirror. They have to go out in the world because we have to reestablish to the public and to themselves of who they really are. If they're not guilty, they have to act as if they're not guilty, because we are sociologically conditioned to believe that people who are not guilty will act a certain way, (despite the financial, psychological, and emotional damage they may be suffering). To successfully represent people on these kinds of charges, you not only have to understand the allegations and how to defend against them, you have to understand what's going on with them, and assist them in dealing with it.

When it comes to a juvenile court child abuse or neglect case or investigation, whether the acronym for your state's social service agency is DCF, (as it is here in Florida), or DSS, DFC or DFCS, its goal is the same: to protect the child.



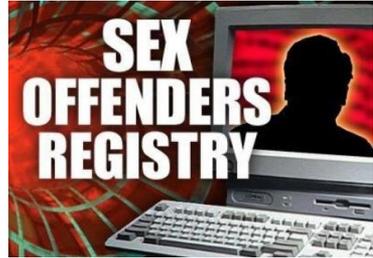
If you're going to protect the child, then the alleged abuser must be out of the house. Let's say you are married and there's an allegation that you sexually abused your two-

year old daughter, Sally. Your spouse will be faced with a dilemma, or Hobson's choice, by the State social service agencies. The agency or the court will require that either the accused spouse immediately move out of the home, or the agency will remove the child. So your falsely accused spouse will have to move out and have no contact with you and the child.

Your spouse will have to declare if he or she believes you (the falsely accused) when you deny committing the child abuse. Your spouse will be encouraged to commence a divorce case against you because the State social service agency will make it very clear that you have to keep the child away from the accused abuser. Your spouse has to take all actions necessary to keep the child "safe". Failing to start a divorce action against a spouse accused of child abuse can be interpreted as supporting the accused child abuser and not believing that your child has been abused. Either of these opinions may result in your child being removed from your spouse's care.

A false allegation of child abuse can result in the accused losing their family, their employment, reputation and their freedom. A false allegation of child abuse can also cost the accused his or her freedom. If a plea bargain deal occurs for a criminals offense, the accuser will be designated as a sex offender on a government public sex offender registry for decades, if not the rest of his or her life. Being labeled as a sex offender generally requires that the individual can't live within several hundred feet of any

facility, business, or agency dealing with children, (and good luck trying to successfully meet this requirement in today's urban society) and the individual must register with local law enforcement as a sex offender. As part of their probation, they often have to identify themselves as registered sex offenders to their neighbors, or their neighbors are notified by local law enforcement. However, even if they don't have to perform this requirement, people can look on the public sex offender registry and discover them. Job opportunities will become rare or non-existent.



People in that position can end up living under a bridge because they can't locate an appropriate residence or afford a residence which meets the registered sex offender restrictions. If they are fortunate and have some money, they may be able to find a residence far out into the country. Although even then, they can't be around daycare centers or schools. Another frequent requirement of sex offender probation is sex offender therapy which must be successfully completed. One element of successful completion is the repeated admission of your alleged sexual offenses. No easy task for someone who is falsely accused of child abuse. Their lives are over. Even if they take a plea bargain to avoid jail, because (they likely will have to plead guilty to a child sex crime, even if it is a less

serious crime than the original criminal charge) they will still be placed on the child sex offender registry and sex offender probation. Consequently, this version of "freedom" is a shadow of the freedom they experienced before, and which all of us in our "safe" worlds would take for granted.

## WHAT ASPECTS OF THE PROCESS DO YOU HAVE TO EXPLAIN TO CLIENTS FALSELY ACCUSED OF CHILD ABUSE?

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What I do in my practice now is to assist criminal defense attorneys and attorneys in civil cases in terms of cross examining the opposing party's experts or other witnesses for the opposing side, assisting in the location of appropriate experts; assisting in the



analysis of issues in their case and assisting in preparing their case and witnesses. I also represent clients and consult with other attorneys in false allegation cases in juvenile court and family court. What I tell my clients is that what happened in their life is the equivalent of a nuclear missile attack by the enemy; if you happen to survive the first wave of missiles, the enemy hopes that the nuclear fallout will kill you. You are in a race for who can acquire more information first; if we can acquire the information to demonstrate the child abuse allegation is false, we will win.

The first major task that a person falsely accused of child abuse should perform is to prioritize their goals; if there's a criminal charge, your first priority must be to not go to jail because, as bad as your life seems to be, it always will be better than being at the bottom of the food chain in jail

or prison. The second goal should be to make sure you are not criminally convicted or take a plea deal. The third is to demonstrate to the world that this child abuse allegation is a false allegation. The final priority is to be reunited with your child and family.

We try to prioritize our client's goals because not everyone has great sums of money to combat false allegations. If OJ Simpson taught us anything, it's that: If you have the money, you can buy justice. In other words, you can afford to pay attorneys who are knowledgeable and experienced in dealing with child abuse allegations; you can afford to pay experts who can make it clear to a judge or jury in criminal, juvenile, or family court that this is a false allegation; and you can make clear that you should have a relationship with your child. If you don't have the money to do all of those things, you have to prioritize your goals so that your funds for your case can be used to your best advantage.

Another reason for prioritization is because certain cases must take precedence over others. You don't want to do something in one case that jeopardizes your position in another. For instance, you don't want an attorney representing you to make a statement or file a document in juvenile or family court that may jeopardize your ability to obtain a "not guilty" verdict in criminal court. In the pantheon of cases, the criminal case comes first and the family and/or juvenile case comes after. There also must be coordination among the attorneys in the cases located

in the various courtrooms, to make sure the client's position in the criminal case or in the other courtrooms is not compromised.

Our clients know they are traveling on a tough road. We keep them informed about the progress of their case and our strategy. But we also explain why they'll feel depressed and that the process, at times, will be hard on them emotionally and we discuss things he or she can do to make them feel a bit better about themselves and about the case. In doing so, we have our clients become involved in identifying and outlining the importance of it.

One of the most important things that can happen in the preparation of the defense against a false allegation of child abuse case is the creation of the timeline of events, meaning a chronological table of what happened, when and by whom, as well as who said what and when. This is important because in many sex abuse cases, the child's first statement is perhaps the most important, but we need to know when it happened, to whom and the context.



In other words, we need to know if the child was being asked questions by someone. How the questions were structured? Who asked the questions and Where? Perhaps it was a party in which the kids were fooling around or

maybe it was a teenager who had recently been grounded by the parent against whom the allegation was made. We also need to look closely at that chronological outline to see if the alleged victim's statements changed (how, when, where and why). There may be contradictions within the alleged victim's statements. We also look for multiplicity of interviews. We want to know how many people (who have not been educated in proper questioning techniques with children) may have asked questions or interviewed the child and whether they have an agenda or bias against my client, or which may affect the interviewer's actions.

We will try to gather all timeline data, which may take a lot of time and effort. Then my private detectives/researcher or other professionals can be used to confirm the accuracy of that information. For clients,



assisting in the development of an accurate timeline makes them feel like they have some involvement in fighting against a process that has been battering them. Now they can actually start doing something to try to get their life back. We also try to educate them about how false allegations can develop, so they can understand how the system can leap to a wrong conclusion. Doing so

provides them a sense of hope and prevents them from questioning themselves.

I have been a parent of girls and when they were young; I bathed them and changed their diapers. I know I have never done anything improper to my children, but if I had been hammered by society and suffered reversal after reversal (loss of job, loss of family, loss of housing, loss of my respected place in the community), I might start questioning myself.

These are some basic things our office instructs our clients to do. We try to get them involved in exercise, which is a holistic way of trying to elevate your mood. We try to make sure they're eating and sleeping as best they can. Although we're not doctors or therapists, we try to direct them to services in these areas also because this is a mental as well as a physical marathon.

## WHO GENERALLY REPORTS ABUSE IN THESE CASES?

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It depends upon the type of abuse; things like burns, unusual bone injuries and bruises (indicative of abusive discipline or abuse) are most often reported by hospitals or medical workers, where the child has been taken



for medical treatment. In terms of child sexual abuse, all states have an abuse hotline phone number which can be used by any person to report suspected child abuse, with state social service agencies fielding the calls. Many professionals are mandated (required) reporters, including teachers, nurses, doctors, police officers, judges, and any professional who deals with children. Frankly, based on the statutes in the majority of states, anyone with a reasonable suspicion has to report abuse.

If someone has reasonable suspicion that a child has been abused, they must report to the 1-800 child abuse hotlines and the relevant agency takes over from there. Parents, relatives, and people with a grudge against you can call in a report of child abuse against you. Unfortunately, the agencies must keep the reporter's identity anonymous, so we have no statistical data on who is actually doing the reporting. Whether it's a civilian or a police officer calling

in the 1-800 hotline, their name is redacted and you can't read it.

In child sexual abuse cases, if the redacted final report by the investigating state social service agency is reviewed by the accused, he or she can often tell from the context and the wording of the allegation, who may have reported it or narrow down the range of possible accusers. In most cases, the accused should be able to determine if the reporter is likely to be the former wife, the mother-in-law, a teacher, or a neighbor (who had a grudge against them) or other possible candidates.

## HOW OFTEN DOES A CHILD MAKE ALLEGATIONS OF ABUSE?

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The majority of sex abuse cases do not possess any physical finding or medical finding specifically diagnostic for abuse. Nevertheless, the child will say or do something which results in someone appropriately or inappropriately believing that abuse has occurred. It can be a direct statement of abuse that happens in passing conversation or an indirect statement that creates suspicion or the famous case of "Daddy put his pee pee in my pee pee."

We hear that last statement and automatically think, "All right, this small young child described a penal-vaginal contact of some type." That is what happened after a pre-school age girl made this statement. This statement and its interpretation by an adult generated significant and bitter litigation until a forensic psychologist became involved and interviewed the child and some other people and realized that what the child was describing was not an abusive incident. This pre-school age child actually was describing an incident when she had urinated in the toilet and not flushed and the child's father then urinated in the toilet also. Consequently, he put his pee-pee (urine) in her pee-pee (urine).

Most people immediately jump to the conclusion that this young child described child sexual abuse. We didn't consider any alternative, non-abusive explanation,

because we fell prey to pre-confirmatory bias. You can see how something as innocuous and as innocent, in retrospect, can be twisted and turned into something horrible.

## HOW DO YOU DEFEND STEP PARENTS FALSELY ACCUSED OF CHILD ABUSE?

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The dilemma is, an accused person can be in two different legal arenas at the same time; a criminal case and a civil case. If the child is a teenager and can spin a convincing story, that's sufficient for a conviction. You do not need medical evidence or someone witnessing the act or an admission from the alleged perpetrator to obtain a conviction for sex abuse in criminal court. Similarly, in a civil case, whether it is in juvenile court or family court, you do not need medical evidence, a witness or an admission by the alleged perpetrator to get a finding that the child may have been abused by this other parent. In family court and juvenile court, safety controls will be put into place (which may require the dad or stepdad to have little or no contact with the child). In this scenario, mom or stepmom has to choose child or spouse and she'll always choose the child. Consequently, the father figure loses, through no fault of his own.



Remember also that in the majority of states, if a divorce occurs, then a stepparent has no legal right to have contact with his or her stepchild. All an accusing spouse

has to do is commence a divorce and then demand that no contact occur.

That's painful, because here's a child you have raised for a period of time in whom you have invested emotionally and whom you love, but it's what may happen when we deal with teenagers. We have to understand that, even though parents hate to think this way, our kids lie to us from the moment they start talking. We can detect it when they're very young, but as children get older, they learn and get better at it, so it becomes harder for us to detect.

With something as terrible as sexual abuse allegations, people automatically think no one would ever make a false child abuse allegation. But we forget how teenagers think (or fail to consider the ramifications or results of false child abuse allegations). We must remember that with children and teenagers, teenagers pre-frontal lobe (the part of the brain that deals with logic when it comes to weighing long-term consequences) does not fully develop until people are in their mid-20s. While we, as adults, can extrapolate and consider how terrible it is for someone falsely accused to be in prison and all the bad things that could happen to them as a result of an allegation of abuse, teens simply don't think that way.



Teenagers tend to be what I call concrete thinkers, meaning they think people are either all good or all bad. If you are in the all-bad phase, lookout; if you ground them and take something away that they want, you may be in trouble (particularly, if you are a parent/stepparent and not well bonded with the teenager). Teenagers can be tough and these are tough cases. In false allegation cases dealing with teenagers, the attorney should be looking for the lie, something the teenager may have seen that may match the allegations (such as if they saw it on a TV show or movie) or a similar abusive event happened to a friend or was publicized in the news, or any motive to shift responsibility (not getting grounded for breaking curfew or avoiding punishment).



We look for those kinds of things, which is, again, why the timeline is important. It is important to know what was happening in the relationship between the accused stepparent/parent/adult and the teenager.

The stepparent is also vulnerable to other ways false abuse allegations can be generated via younger stepchildren. It could be an innocent statement that everyone interpreted as something very, very damaging such as "he put his pee pee in my pee pee" or it could be something that an inexperienced parent heard or saw that they immediately assumed was caused by child abuse.

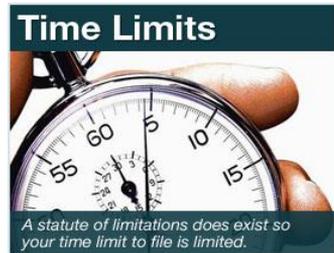
It may also be a case in which one parent has an agenda against the other parent (which can occur in highly contested divorce cases) to rip the child away from the other parent. They may initiate a criminal case against their spouse/significant other. Unfortunately, if and when the falsely accused parent/adult successfully fights their way through the criminal allegation, the falsely accused may not have financial resources to fight the allegations in the divorce/civil case. The accusing spouse can now win custody of the child by default, receive a percentage of the family assets, and they may also obtain some alimony out of it.

Whether you are a parent or stepparent, there exist many situations which may generate a false allegation of child abuse. Every allegation needs to be taken seriously and requires a thorough evaluation and analysis.



there are no time limits (no statute of limitations) for several types of criminal child sexual abuse charges. This means for these crimes, there exist no time limits preventing a prosecution for the crime. A prosecution for such criminal charges could commence against you at any time in the future.

What also happens in many cases is some kind of private or public condemnation by the family of the alleged victim against the family of the alleged abuser. These actions can be followed by preventing any contact between the alleged child victim and the falsely accused and their family members. Such contact can also include: blocking contact between grandparents and their grandchildren (even if the grandparents have not been accused of abusing the child). In other words, it's like, "Mom and/or Dad, you abused me as a child. I'm not going to permit you to abuse my child. You will have no contact with your grandchildren." Or it can be: "Mom and/or Dad, you are supporting or believe the person who abused your grandchild. You will have no contact with your grandchildren."



Sometimes, a celebrity will publicly accuse one or more of their parents of abusing them when they were a child. There's no forum, frankly, other than the forum of public opinion in which to wage that battle and if you are a

celebrity, you win. The celebrity wins because you, as a non-celebrity, do not have a place to vocalize your contrary evidence and public opinion is, basically, if you didn't do that abusive act, you probably committed some other form of abuse and you should fry for it.

## WHAT ARE THE INITIAL STEPS AFTER BEING FALSELY ACCUSED OF CHILD ABUSE?

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Sometimes before the authorities get involved in a child abuse investigation and before criminal charge is brought, that's when you run (not walk) to find yourself a lawyer because you need some advice as to what to do. The lawyer will tell you when you should talk, who you shouldn't talk to, and what to look out for. One of the favorite devices law enforcement agencies use is what we call the "pretext phone call". In a "pretext phone call", the investigating authorities will usually have the child, if they're old enough, telephone the accused and say something like, "If you just tell me you did it, I won't say anything else. Nothing's happened, but I just need to hear you say it," or something to that effect; meanwhile, the officer is listening in to the phone call. Sometimes, the "pretext phone call" is made by the estranged spouse. However, if, in response to this phone call, the falsely accused makes any statement that could be interpreted as an admission of guilt, then the officer will claim that the accused admitted to committing the child abuse.

Sometimes, people are so desperate to have their families back and to put things back to where they were, they are willing to say or do almost anything to make it happen, so if that's all it takes to make the crazy false allegation go away, they'll say that they did it or some other statement that can be construed as an admission. For you and I and

the rest of the world, the accused's false admission sounds ridiculous; why would anyone ever admit to such a heinous thing if they hadn't done it. Well, if it is your family and you are desperate to get them back, to get your job back, to get your reputation back, and to get your life back, then the temptation to tell some small lie over the phone in private in order to regain or restore all you have lost, may overwhelm you.

The first thing an attorney will tell the client, who is falsely accused of child abuse, is to beware of a "pre-text phone call"; if your spouse or the alleged victim calls you and wants to talk about the abuse, tell them you didn't do it and that the phone call is over and then hang up.

If a criminal case has been brought, a domestic violence injunction has been filed or the police or the State social service agency is nosing around, you immediately need to attempt to see an attorney, who will tell you not to talk to anyone unless the attorney is present. You must follow this advice.

One of the first strategies for the falsely accused to consider is to derail the "False Allegation Train" before it leaves the station. If our office has seen something that we think can do so, we will talk to the police, because they know certain events, like contested divorces, may generate false allegations of abuse. If the allegation itself is somewhat weak, or police are not involved because it's not a strong enough allegation and DCF is nosing around, I'll

Consider having my client talk to them; with me present. If we have strong evidence demonstrating that the allegations are false, we will try to move investigators away from their pre-confirmatory analysis and at least document that we provided evidence to indicate the abuse hasn't occurred.

Every case needs a thorough investigation. Each case is different. When it is appropriate, we will also commence the timeline, analyzing which experts we need and commence the process of locating them and retaining their services. We'll also get all records we can about this child, including complete pediatrician and school records. In addition, the records of any investigative agency need to be obtained and analyzed. We want the investigators/researchers to talk to teachers, coaches and every other adult that this child has been around and pinpoint the time period during which the allegations first occurred. We also want to learn whether this child manifested any type of behaviors out of the ordinary. Every state has what we call in Florida, Child Protection Teams, who have access to medical and mental health professionals, who will interview and examine the child. We need to obtain those records and the records of any investigation conducted by any State agency.

During this process, we will try to pinpoint when the allegations occurred, what's happened since the allegations occurred and how the statements have changed. We also want to see medical evidence and

whether it's consistent with medical findings occurring in children who have not been abused, and we want to evaluate the behaviors of the alleged victim against the baseline rates for such behaviors in normal non-abused children. If normal children, who have not been abused, exhibit the same medical and behavioral signs, it may mean the alleged child victim hasn't been abused or, at the very least, the accuser cannot use that information to prove that the child has been abused.



Sometimes, an ill-informed expert may state that a certain behavior doesn't mean a child has or hasn't been abused. In addition, these experts may opine that many behaviors or medical findings (by themselves) are not diagnostically specific to prove that child abuse has occurred. However, if you add all of those non-specific findings or behaviors together, then child abuse can be established. Beware of this sloppy thinking or logic. Behaviors and medical findings, which are insufficient to establish abuse by themselves, do not magically transform into specific findings when placed in a group. Remember your basic math:  $0 + 0 + 0$  still =  $0$ .

## WHAT IS GENERALLY THE END RESULT OF THIS PROCESS?

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Litigation is a process. In civil litigation, if you're representing someone who has been falsely accused, the parties and witnesses may have to take a deposition. A deposition consists of a witness, a court reporter, and the attorney representing the other side being present. The attorney for the accused can ask questions and the person being deposed has to answer them under oath. The testimony is recorded by the court reporter. A deposition can be an excellent process to establish facts, nail down gaps in the timeline and try to test or establish theories of the case (such as the teenager was punished, and said dad or stepdad abused him or her to get back at them, or that the child's memory has been contaminated in some way).

While exploring the facts and theories of your case, remember a common, fundamental misunderstanding about memory, which has been propagated by popular television. The misunderstanding is that everything that we see, do, hear, say, and smell is fully and accurately recorded in our memory and it can be accessed or recalled accurately. But that's a fundamental misunderstanding of how memory works. Memory is not a passive process. It is an active process and when we hear, see, smell, feel certain things, our brain is going to pick up on some of these sensory inputs and encode them (meaning chemical

and electrical processes translate what we see, hear and feel into memories ).

While encoding these memories, we'll drop out some of the stuff we hear, smell, see, taste, or whatever the sensation is. Consequently, the process of encoding itself will cause some contamination. As it sits there over time, memory is subject to any number of contaminating processes, including the process of slow erosion. No one remembers everything that happened with equal precision, in part because there are other, more important things that will override that process. When we're asked to call up memory, whether we do it ourselves or people ask questions, depending upon what question is asked and how it is asked and the context in which it is asked, the retrieval itself can cause contamination of the memory process.

There are a number of ways your memory can be contaminated, including suggestibility. All people, at any age are suggestible. However, the memory of pre-school age children is the most easily contaminated and suggestible. If pre-school age children are asked suggestive questions, they'll often give a response which they think the inquirer wants or expects or a response that the question suggests. An analogy is that little kids live in the land of giants. Even though the memory of people at all ages can be modified because of suggestibility, it appears that pre-school age children and early age children are most highly likely to be suggestible to and

subject to this form of memory contamination. If the giant keeps asking you the same question or concept, you're not likely to give the same answer because you figured out the first time you said the response the giant didn't like it.

Your goal as a little person in the world of giants is to get away from the giant as best as you can, while keeping the giant happy. Studies have shown that if you are asked the same set of questions repeatedly, that process itself can permanently alter the memory of the event. This means not only does



the child give a different answer which does not accurately describe what really happened, but the child believes that his or her inaccurate description of the event actually occurred. That's one cause of memory contamination. Another form of memory contamination occurs when there are naturally occurring gaps in our memory. We have a subconscious tendency to fill in the gaps. There have been instances in which children have been subjected to abuse, but they've identified the wrong perpetrator.

Also, it's possible that gaps in a child's memory are filled in, but with information suggested by an investigator who knows what the investigator wants as an answer (the identity of a perpetrator), which generates an even more

damaging, inaccurate response. This becomes a process that is not neutral or objective and it can result in a false allegation.

Another issue of memory is in the area of source monitoring. We all have recollections of actual events and recollections of events that never happened and sometimes we forget what's real and what isn't.

I grew up in the wilderness of Maine, in the 1950s and 1960s. In the mid-1950s, when my dad would drive me through the woods in the spring or early summer, on occasion I would see bear cubs hanging from trees. But as the area became more populated, the cubs disappeared because mama bears were no longer staying in the area. My youngest brother, who is 16 years younger than me, swears that he has those same memories driving around in the car, when I know for a fact there were no more bear cubs to be seen in these areas.

That's an example of mistaken source monitoring; my brother heard me and my dad repeatedly telling the story and he incorporated it into his own memory. So, to my brother, the incident of viewing bear cubs by the road was as real as if he had been there. This occurrence with bear cubs was in his memory and was as real as if it had actually occurred.

There's also a concept called childhood amnesia: We don't remember anything that occurred in our lives prior to the age of 3; I don't know the biological or the psychological

reason for it, but its established fact. When most people tell you they remember things from before the age of 3, it's because their parents and others have told them what happened and they envisioned these incidences or occurrences as a memory from before they turned 3, even though development and memories highly improbable.

Another explanation for memory contamination is based on the social forces in the child's life; if they live in a household in which everyone acts or makes statements which clearly indicate that the other parent (Dad) is dangerous and no one is safe around him. Because of consistent exposure to such conscious and unconscious messages, the child develops and incorporates these negative concepts into his or her statements and beliefs about the targeted parent. Sometimes, the grandparents are involved and they hate the other parent. Often, the grandparents or other relatives freely express negative statements and opinions about the targeted parent. If a child is living in that toxic environment, it's easier for the child to say or believe something negative about the targeted parent because it's expected. The child may even get positive strokes/reinforcement for doing so and whether those strokes are subconscious or conscious is irrelevant. The fact is, they exist and the result is the same.

There may be a combination of these contaminating issues. But what we know is that there are usually very few properly trained professionals, who are knowledgeable

about memory contamination, involved in these cases. Even therapists, involved in child abuse cases, may not be doing their job well enough and may be contributing to memory contamination. Certainly, parents don't know how to question their children without contaminating them. If we're dealing with young children, any case will have a number of potential problems and concerns about this issue.

As children get older, we start looking at lying and self-serving motive, but we still also look at contamination, because all people are susceptible to having their memories contaminated. We know that adults can be brainwashed (a form of contamination or changing of one's memories of the past). Look at almost any cult that exists. They engage in a process of brainwashing, in which they continuously present a belief or question your belief, to the point that you begin to accept whatever you're being told as reality, whether it is or not.

Another important issue in false child abuse allegation cases is parental alienation. This process can happen if a child is blocked from having contact with the parent prior to the allegation of abuse and, in addition, if Little Johnny is being fed a negative image about his safety around dad. But if he goes somewhere with Dad, and Dad acts in an appropriate responsible fashion, Little Johnny will actually feel safe and see that Dad's actually a pretty good guy, and not as bad as others in the family say. On the other hand, if he has no contact with Dad, he has no

experiential ability to contradict the consistent negative message that he is receiving against his father, then Little Johnny will subconsciously accept and believe the negative messages about his father, regardless of the reality of Dad.

## WHAT HAPPENS DURING THE LITIGATION PROCESS?

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The litigation process may start with the State social service agency getting a call on the abuse hotline and assigning investigators, who will come to the home, possibly accompanied by a police officer, who will ostensibly be there to keep the peace, but who will also listen in on everything that's said. In some areas, the Sheriff's office or local police will be subcontracted by the State social service agency to perform the actual investigation. At this point, the agency may be just investigating the allegation and they have not pinpointed you as the alleged perpetrator yet, although they probably have a strong suspicion that you are a suspect.



At that point, neither representatives from the State social service agency nor the police officer will read you your rights because they allegedly have not determined or focused upon who may have allegedly committed an abusive act. The investigators don't have to inform you of your right to an attorney, so anything you say can and will be used against you in the court of law. In addition, because you haven't been given your rights, you will not be on guard and will have a tendency to talk freely to two witnesses for the State. In Florida, DCF investigators are

trained that if a person requests a lawyer, they have a right to have a lawyer present, but they're not required to tell you that fact, since it's not yet a criminal investigation focused specifically on you.

If you contact an attorney, he or she will contact DCF (or other social service agency) right away and inform them that while you don't intend to derail or impede their investigation, you want your attorney to be present during any interview of you. DCF (or other social service agency) generally will accommodate that request.

The investigators may still want to go into your house and they will interview the child separately from you. If you refuse to do that, the investigators may go to the child's school the next day to interview your child, or, if they're concerned about a sex abuse allegation and/or the danger is great, they're authorized to remove the child right then. Although they may just say there's an allegation of abuse, and ask the parent accused of abuse to arrange to leave the residence and stay somewhere else for a day or two. If the accused parent agrees, they're fine and won't do anything more. If the accused parent does not agree to do so, then the investigators may have to make a decision to remove the child right then.



The decision whether or not to permit State investigators to interview your child can have some very serious implications immediately. And frankly, if someone asks me what decision do we make, I'll say, "Dad leaves right now". Even if I'm representing dad, dad should want to keep mom happy and to keep that child in the home with mom.

An allegation of abuse generally blindsides people. They are not expecting it. However, there are people who live questionable lives, not the lives you and I live and people who do commit child sexual or physical abuse, so it probably doesn't surprise them when they get the call from DCF. But for most people, you get a call from Officer Friendly who says, "I need to talk to you about something that's going on; would you mind coming down to the station to talk?" Most people want to cooperate and they will agree to go down and talk with the officer. However, if you get that call, call an attorney, and let the attorney call the officer and find out what's going on and let your attorney decide whether you're going down to the station to talk to them or not.



## DO PEOPLE HESITATE IN HIRING AN ATTORNEY FOR FEAR OF LOOKING GUILTY?

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That is a legitimate concern, but then also consider what people will think if an abuse allegation comes out, especially if the potential client gets arrested? Remember, the reason to go to an attorney is to derail the train before



it leaves the station or while it's still moving slowly. If a person hesitates to hire an attorney out of fear of looking guilty, then he or she should understand that when a child abuse allegation becomes known, most people will think you are guilty of some act.

You are better off looking guilty and having an active strategy in place to get this allegation exposed as false, rather than going down to the station and have a police detective try to pry information out of you, make you look bad and try to get enough for the cop to believe a criminal charge can be brought against you.

You must remember that child abuse allegations are no-lose situations for prosecutors and police departments, no matter what happens. If the authorities have to drop the charges, the authorities can say they had to do so because of the lack of sufficient evidence. If the authorities arrest

someone and they lose at trial, it's no-lose for them publicly because they can blame "that damn defense attorney pulled the wool over the jury's eyes," or they can claim "the jury didn't understand the facts". If the authorities win the trial, then they can brag about the good job they're doing, keeping kids safe.

They have no incentive to stop once the train is up and running. The State usually looks good no matter the result. They'll never admit that dynamic. But you don't have to be a "rocket scientist" to figure out the end result with the public. What that means is, you should lawyer up immediately with someone who knows what they are doing, because if you don't, the results for you can be catastrophic.



## WHY SHOULD YOUR ATTORNEY CONSULT WITH OTHER ATTORNEYS ON CHILD ABUSE CASES?

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I have an advantage here, since I started back in the early 1980s and all research and science has developed since then; I have had the ability to learn the theories, science, and tactics regarding child abuse allegations. When I consult with you or your attorney, I can speak fluently about these issues and strategies of child abuse cases because I have distilled relevant information in the area of child sexual abuse and I have presented it to attorneys in other cases. Attorneys can read about child abuse representation and attend seminars about it, but not every attorney who reads and listens to this information understands what they're doing.

That's why I offer the services I do to criminal defense attorneys; remember, criminal defense attorneys generally defend their client in a vast number of crimes from drunk driving, to breaking and entering, and to murder, all of which involve different issues and different types of science. You can be a great criminal defense attorney, but not necessarily be a great sex abuse defense attorney.

If someone wants an attorney experienced in child abuse cases, there are certain things to ask the attorney. Not only should they have handled child abuse cases in criminal court, but they should also be experienced in child abuse cases in juvenile dependency or parental

rights termination cases and family court cases. Different courts require different levels of evidence, follow different procedural rules, and apply different statutory requirements. That is important because attorneys may have to consider defending the same allegation with different tactics in different courtrooms (criminal, juvenile, and/or family court). Also, don't go with an attorney who wants to wait and see what happens; you need one who will give you an affirmative game plan and tell you what they want to do.

For instance, our office will work with the client to pull together a comprehensive timeline. As a parent, you have the right to get your child's school and medical records, so I'll ask you to get those records immediately. We can get our private detectives/researchers out there pounding the street, all as part of a proactive strategy. Ask the attorney about the last book they read about child abuse allegations or the science concerning memory. Ask them to recommend books for you to read. If the attorney has a website, then check to determine if the attorney has attached to the website any blogs or videos about child abuse allegations.



You also need to know that you can work with your attorney. Confirm which attorney in the firm will be in charge of your case. Make sure they're experienced with

criminal court, juvenile court and have had success with these allegations in divorce cases, and can represent you in all three venues, if necessary. It's like anything else in your life. When you have a serious problem in your life, you hire an expert. For instance, you don't go to the general family medicine physician for a brain surgery issue. The problem is when you go to an attorney, they may be a criminal defense attorney, but how much experience do they have in child sex abuse cases? If the answer is not much, are they willing to work with someone else who has done more?

## IS IT COMMON FOR OTHER EXPERTS TO OFFER CONSULTANCY IN OTHER AREAS OF LEGAL PRACTICE?

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A criminal defense attorney may be an expert in criminal aspects of intellectual property law, or white collar crime dealing with stocks and bonds, or drunk driving cases. However, to be a successful criminal defense attorney, you must have an extraordinary ego, which is not necessarily a negative thing. In their world, one day you are a God in the courtroom (a winner) and the next day, you're a goat (a loser). In order to be able to get up in the morning and keep facing that uncertainty day after day, you have to have a pretty strong sense of self-worth and self-confidence. (Sometimes, you can sit in a group of attorneys and I can easily pick out the criminal defense attorneys. Their ties are a little askew and they swagger and look and sound confident). This ego serves them well, but it can also be a detriment. They like to think they can do everything and they don't want to admit to anyone they don't know everything. In addition, many attorneys in other areas of the law suffer from this issue. That's the nature of the beast. But if you know the nature of the beast, as a layperson, you'll be better able to understand and respond appropriately when your attorney states they don't need help in dealing with your child abuse case. However, the false allegation case probably will be the most important issue/situation which you will face in your

lifetime. Unlike you, your attorney will not face a potential prison sentence, a ruined reputation, lost employment, or a destroyed family. Because you face these consequences, you have the right to demand that your local attorney consult and work with any other attorney or other expert who are willing to retain. If your local attorney is not willing to comply with your request, then you are entitled to fire that attorney and hire a new attorney. You want your local attorney to want to create the best defense and approach. If your local attorney really wants to do so, then he or she will be happy to welcome all the assisting that you can provide them from other attorneys or experts.

## CAN A CLIENT ASK AN ATTORNEY TO CONSULT

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You can make it a term or requirement of your attorney's employment. Tell the attorney that you've "consulted with an experienced attorney in child abuse cases and I want you to do everything possible to win this case. I know you are a great attorney, but I want to know you are willing to work with this expert." If you require or instruct your attorney to work with a legal consultant, then they probably will agree. But every attorney's concern will be who is in charge. This is a legitimate concern. Someone has to be in charge and that person has the final say regarding trial strategies and tactics because they know the local prosecuting attorneys, the judges, law enforcement, and how local judges and juries may react to certain theories, testimony, experts, or evidence, the local attorney generally makes these decisions better than an out-of-town consultant. So I make it clear from the beginning that your local attorney generally should be leading the case.

I can consult with you and/or your attorney regarding issues in your case: developing an overall strategy; locating experts; analyzing issues in the case; and prepare arguments, motions and legal memos concerning the issues/arguments in your case; prepare direct examination or cross examination questions and outlines for expert and lay witnesses. I can do all these tasks from

my office in Florida. I can also travel to your location and perform these tasks where you reside.

Typically, the demand has to come from the client. If you demand that your local attorney work with an outside expert, then your local attorney will agree to do so. But you have to demand it and do so the right way. One way is to directly instruct your local attorney to do it.



An alternative is to define specifically what you want me to do, (such as prepare questions for cross examinations, develop motions to suppress, depose a witness, or just consult about overall strategy). In some cases, I will just sit here in Florida and they will send me documents and ask my opinion.

What I offer is a wide compendium of knowledge and experience accumulated over many years; I'm not someone who has just picked up a few books and handled a few cases. The issue is for you to insist that your local attorney utilize it for your advantage.

## WHAT INSIGHTS HAVE YOU GAINED FROM DEFENDING PEOPLE FALSELY ACCUSED OF CHILD ABUSE?

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We all know that anyone can be struck down by a reckless driver on the street, but even though we know that, we compartmentalize it in a way that allows us to get out of bed in the morning and go out in the world. If we think our world can be easily turned upside down by a false allegation, many of us would be paralyzed; we wouldn't be able to interact with our children because we'd be afraid it would be misinterpreted, like, "Daddy put his pee-pee in my pee-pee."



These cases require a great deal of time to adequately investigate, analyze, and try in court. But they can be won; families can be returned; reputations recovered; and parents reunited with children. At the same time, I have reviewed cases in which insufficient offers and resources were expended and which ended with disastrous results. Sometimes the difference was the lack of legal expertise or lack of thorough investigation.

You may go all the way through the false allegation case. You can be acquitted in the criminal court. You can battle and get a relationship with your child back in family court.

But you and your family probably will need plenty of therapy when the legal cases are over to assist you in re-establishing normal relationships and in restoring some level of trust in the world again.

### **Are Child Abuse Charges Bondable In Florida?**

There are certain charges, particularly the more serious ones like capital sexual battery, which are not bondable offenses: capital sexual battery is when there's an age difference and you are in a position of authority and those cases carry a life sentence. In Florida, cases that carry a life sentence do not have bond as a right. Technically, as citizens



of the United States, and as a citizen or an individual state, we have a right to bail for most offenses. But in some cases, because of the seriousness of the charge, you do not have a right to bail.

Does that mean you can't get out on bond? No, but you have to convince the court why you should receive a bond. In other words, if you have a right to be out on bond, the State must prove you need to stay in jail pending trial; but in capital sexual battery case, you don't have a right to get out of jail, so you have to prove to the judge why you should be let out.

## IS THE PROCESS DIFFERENT IF THE CHILD MAKING ALLEGATIONS IS NOT RELATED TO THE ACCUSED?

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If the alleged child victim is not related to the accused, then the immediate issues are: (1) does the governmental investigator believe you committed the alleged abuse; and (2) how suspicious is your spouse of you? Let's say your relationship is deteriorating with your spouse and an allegation comes out that you sexually abused another child. Your spouse may demand that you leave the residence because your spouse doesn't want you around her children until the case is over. Alternatively, your spouse may support you and risk being ostracized the same as you or suffer the same fallout from the allegation as you are experiencing. I've had people come to me and say a kid down the street made an allegation against them and the police and DCF (or other State social service agency) has interviewed them and they're scared about what may happen next. My office examines and explores the context and the background facts and I find out they were interviewed a month earlier and there has been no additional contact from any State agency.

The child who made the allegation may have other issues, so I tell them they don't have a lot to worry about, but to be careful about potential "pretext phone calls". The client and their family members are advised to stay as far away from the accused child from down the street as possible. The family also is instructed to try to live as

normal a life as possible. If DCF (or other State social service agency) and/or the police want to interview them again, then I tell them to respectfully decline and to have the State investigator contact our office. You have to take every allegation seriously, and have it reviewed carefully by an expert, so they can tell you whether it's something to worry about or not.

For instance, in our area of Florida, police will conduct an investigation and sometimes make an initial decision not to send it to the prosecutor to review and to do nothing further in the case. Nevertheless, the client and their family must keep their distance from the child (making the allegations) and their family and make sure the alleged perpetrator is not involved in any questionable or ambiguous circumstances with any other child in the future.

In one case, my client, the parents, moved into a new home and there was a sink in the garage. The prior owner was a mechanic, who worked on his car in the garage and washed his hands in the garage sink before going into the house. The hot water heater was next to the sink and it had been set well above its normal temperature, so that what came out into the sink was scalding water. My clients had a 3-year old boy who was a climber. Shortly after my clients moved in, the child climbed up into the



sink while the father was distracted, turned on the hot water and was badly scalded and burned.

The parents rushed their injured child to the hospital. To the physician, it looked like an intentional burn, so the hospital notified DCF (State social service agency in Florida), who took all the children away from both parents because Mom supported Dad in his denial that he had not abused his son by intentionally burning him. Fortunately, we got DCF to place their children with nearby grandparents, who supervised contact with the children and the parents, so the family remained together for part of each day. The strategy was to obtain a biomechanical engineer; our office recruited one out of the University of Miami, explained the circumstances and sent him photos of the sink and the hot water heater. The expert instructed us to construct an actual replica of that sink. The purpose was to ascertain if the child could or would climb it voluntarily. The youngster did so easily with no hesitation (which we filmed) and the expert stated, "There's your answer."

We took video and submitted it and the biomechanical engineer's report to the State's attorney, who sent back a letter saying that you've done a great job for your client here. We're not going to prosecute this case. It's clear. I've got a 3-year-old and a 4-year-old myself, so I can see exactly how this could have happened. Since this appears to be an unfortunate accident, we're not prosecuting. This is an example of what I mean when I say "you have to try

to keep the train from leaving the station or derail it before it gains too much momentum."

In some cases, if you have a set of facts and if you can obtain outside experts quickly enough; your attorney can do something to derail the charges. Some criminal defense attorneys might say that's great evidence for your side, but let's save that for trial, because we can win with this kind of evidence. My response is, if you can win without a trial, then do it; it's easier to fight DCF (or other State social service agency) in their juvenile court than to fight a criminal prosecution and DCF in two different court rooms at the same time. In the burn case described above, DCF was reluctant to let the case go, but they really didn't have a whole lot of choice; DCF eventually dismissed their case against my clients, and the parents and their children were reunited.

## HOW DOES IT IMPACT A CASE IF THE CHILD HAS BRUISES OR OTHER SIGNS OF PHYSICAL VIOLENCE?

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When does corporal punishment become abuse? In Florida and most states in the country, corporal punishment is not illegal. We all recognize that children get bruised. However, when does corporal punishment become abusive? If corporal punishment results in cuts, physical impairment or injury, significant welting or bruising or you can see the imprint of a hand, fingers, a belt, a wire, or something that struck the child, then you are likely to have crossed the line into abusive behavior.

Having said that, there are children with blood problems who bruise easily, and they might bruise when a parent grabbed them by the arm (even if not in an abusive fashion). In such a case, the accused adult may be confronted with an allegation of child physical abuse. One reason an attorney should obtain all of the medical records for the child is to determine if a pre-existing medical or genetic condition can result in symptoms identical to symptoms of abuse (even though the child has not been subjected to the alleged abuse). We also know children suffer from brittle bones disease or any number of medical issues that can cause symptomology that may be similar, if not identical to abuse symptomology. The possible



explanation a non-abusive reason for the child's medical symptoms emphasizing the importance of thoroughly investigating the complete medical history of these allegedly abused children and not just to accept the findings and opinions of the "experts for the State".

You have to hit these cases running hard right off the bat; if you do that, you have a chance of stopping the train at the station or getting it derailed before it takes off.

### **What Repercussions May Someone Face After Acquittal For Child Abuse Allegations?**

Remember when I said a child abuse allegation is like a nuclear bomb. If the first strike does not destroy you, the nuclear fallout from the bomb may still kill you. Even if you are successful and are acquitted in criminal court, the damage may already have been done. You may have lost your job and, whether you are acquitted or the civil case was dismissed, your boss is not likely to re-hire you. Your neighbors' look will still be suspicious, and they may still not permit their children to come over to your house. Just because you got off doesn't mean they'll take the risk; people will still look at you and wonder.



I recently read about the case in Jordan, Minnesota, a town of 2,400, and while this case was going on, a business owner from Jordan, Minnesota went away for a vacation to escape the controversy and uproar of the allegations and investigations. They traveled to a far away area in Wisconsin. When his wife signed and put their address down, the hotel clerk asked, "Well, what's really going on in Jordan, Minnesota?" The business owner remarked that he couldn't travel hundreds of miles away from Jordan, Minnesota and escape the controversy and publicity generated by the allegation.

The same thing may still occur today; even if you defeat the allegation and are reunited with your family, you may still be a marked person. Suppose you're single and you get serious with someone in a relationship; do you say, "Oh, by the way, a few years ago, I was accused of child abuse, but it really was a false allegation. Is that a deal breaker for you?"

If you have a good attorney, who sought out and used additional experts, presented a strong defense and you haven't done it, you probably won't go to jail. But in the age of the Internet, there are all kinds of sites listing who has been arrested and for what charge. Therefore, even if you are acquitted in criminal court or the allegation is dismissed in family or juvenile court, it may

**CHOOSE THE  
RIGHT  
ATTORNEY**



be difficult to escape from being somewhat tainted by the allegation. So, even if you've been acquitted, and in the civil case the judge rules it's more likely than not that this didn't happen and even though you are falsely accused, without reputation management you may be branded. The way to manage this potential fallout is to work with an attorney experienced in the child sex abuse field. That attorney should be able to also advise you on how to manage your reputation so to minimize the negative fallout that can occur.

## HOW LONG DOES IT GENERALLY TAKE FOR SOMEONE FALSELY ACCUSED OF CHILD ABUSE TO RETURN TO NORMALCY?

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The more well-adjusted person who lives in a context of a family unit (in other words, the dad's accused and his children and his wife support him) has the best chance to return to normalcy. There are some accused, who might have a child from a prior marriage, and they and their current spouse don't get divorced; they can recover. Nevertheless, even in this case, the falsely accused and their family may need therapy to recover from the trauma and fallout from being falsely accused of child abuse.



The people who have the toughest time are those who are in marginal financial circumstances. If they are to have a chance to be successful, they will have to borrow money from family, friends, and other sources just to be successful in confronting the allegation. It may take them years to recover financially from the false allegation. Those people who are at the end of their life or getting close at the end of their productive lives also have a difficult time recovering financially from a false allegation of abuse. If they are in their late 50s or in their 60s, they

may not have a sufficient number of years of productive income to recover financially from the allegation.

If you're a professional in a small town, your professional reputation may suffer so much damage, you have to relocate far away to recommence your career. At best, it can be a long run back to normalcy. At worse, you may never recover the finances and life that you once possessed. However, as bad as it may seem, successfully fighting your way through a false child abuse allegation (with its negative fallout) is still much better than going to prison as a convicted sex offender, or having to register as a sex offender (with its far worse negative fallout).

## CAN YOU DISCUSS SOME CASES YOU HAVE HANDLED?

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The most recent case I handled was what I call a three-ring circus. It took place in a major metro area in Southeast Florida. When my client came to me, he had a young child, (less than 3 years old) and he was only permitted supervised visitation a few hours each week that he had to pay for. He had a domestic violence injunction against him brought by his wife and another for his child, also brought by his wife. In addition, he was in the middle of a divorce case, in which his wife also had accused him of sexually abusing his child. Fortunately, there was no criminal charge. The allegations were brought by the wife, who was somewhat naïve about what she saw and heard. The Wife alleged the child was saying and doing things that were proof that the child was abused by the father. However, the child's alleged statements and actions were certainly within the developmentally normal range for non-abused children.

The local Child Protective Team (CPT) – the organization of mental health and medical professionals the State brings together to conduct evaluations of children in one central location – evaluated the child. There were no medical findings on this child, so no medical evidence existed to support the allegation. The child made no statements during the CPT interview that the father had ever acted inappropriately with the child. Mom was told

by the CPT interviewer at that session, "This appears to be within the range of normal, I don't think the child was abused," Nevertheless, Mom proceeded with her charges and we had to fight tooth and nail. Dad went through a polygraph and a psychological evaluation, all of which were positive for him.

The father jumped through all these hoops, but Mom wouldn't budge from supervised visitation and her declaration that the alleged abuse had occurred. We had to force it to a hearing to obtain unsupervised visitation. Dad received, at the end of the case, 50/50 overnight timesharing, shared decision-making (which means both parents have to agree on major decisions in their child's life). But Dad could select where his child would go to school. He paid no child support or alimony and paid no attorney's fees for his wife. That was a resounding victory for Dad.

There was a case early in my career involving a pilot and flight attendant for a major airline. The case started with the flight attendant's brother, when his pre-school age daughter made an ambiguous statement that was taken out of context and Dad was accused of child sexual abuse. The child continued to be interviewed inappropriately and her allegations escalated. As her allegations of child abuse increased in scope and number, the number of alleged perpetrators of abuse also increased. The alleged abusers came to include the aunt (who was a flight attendant), her fiancé (who was the pilot), and the child's paternal

grandparents. Even though the child's allegations became more and more unbelievable over time, the five family members were indicted five times by the local prosecutors, and the indictments were overturned on appeal five times.

The repeated indictments occurred even though the child's allegations became unbelievable. The child talked about adults basically defecating on the deck of a public pool, putting pieces of bread around it and feeding it to her. The child also described acts that were, frankly, physically impossible, but this case occurred during the witch hunt era of the mid-1980s; the era of the McMartin Case and the Jordan, Minnesota case. The prosecutors finally let the case go when I basically said I would bring in every expert I knew in the country to testify at the next grand jury, and would move to admit all the polygraphs the falsely accused family members had taken.

In fact, this last demand was based on an unwritten opinion by the Supreme Court for the state (which means it was written but not published for the public). Each family member took a polygraph with a well-respected polygrapher and their scores for truthfulness in their response were through the roof. On appeal, the governing state's Supreme Court found that, even though polygraphs are not generally admissible in court, the fact that if all five of these people had they done the acts (that they were accused of doing), it was impossible that all five family

members would have passed the polygraph examinations at such a high level.

Finally, after my demands and after five failed indictments, the prosecutors just gave up, claiming that the child doesn't remember some of the “important facts” anymore. Unfortunately, by then, the lives and reputations of the five family members had been severely damaged. The pilot and the flight attendant had been fired from their jobs, the father had been fired from his job and all five had used all of their savings to fight against the allegations and had borrowed huge sums of money from their friends.

After another two-year fight, we were able to get in front of a labor arbitration board and get both the flight attendant and the pilot reinstated with full benefits and back pay. This case is another example of a child or a teenager, who made a false statement, and the failure of the system to consider exculpatory evidence or consider non-abusive explanations to explain the allegations. In addition, the authorities failed to compare baseline rates for certain behaviors or statements in non-abusive children and compare them to the alleged behaviors of the child in this case.

If children who allegedly have been abused say something and show these kinds of medical symptoms, then you cannot use those statements or symptoms to prove that abuse actually happened. All you are demonstrating is

that they are normal kids. To prove abuse we want to believe that the authorities must possess something more conclusive, like medical evidence clearly demonstrating that child abuse has occurred,(and most cases do not have that type of evidence) or an admission from the perpetrator (and most cases do not have that type of evidence).

Then, there is the alleged victim's statement, but the child's statement, by itself, may be suspect, as you already have seen. Nevertheless, the state may be able to obtain a conviction against you in criminal court,



based solely on the child's statement. Also, a finding of the child being a victim of child abuse in family court and in juvenile court can be based only on the alleged child's victim statement. Nevertheless, if the state's case depends on the child's statements, that may be a more difficult case to defend against.

Such a case centers on the credibility of the child. That's why you have to go through the time-consuming effort of creating the timeline of who said what to whom, when, under what circumstances and how it changed over time, as well as other factors that may have impacted the child's memory or their statements, as well as other adult influences in their life.

These are difficult cases; they take time and they require attorneys with a certain expertise in defending against child abuse allegations. If you are facing a false allegation in a criminal case, you should run to a criminal defense attorney who's well-respected in the community and ask for help. If you are confronted by a child abuse allegation in family or juvenile court, you need to run, not walk, to a well respected family law attorney who is knowledgeable and experienced in defending against false child abuse allegations. They will quote you a somewhat large retainer amount and you'll find some way to pay it. You then think you will be fine, but why?

You believe the truth will prevail, and that if you tell the truth, everything should work out. But you consider these beliefs to be true because you're not an educated enough consumer to understand that even an experienced criminal defense attorney or family law attorney may not be an experienced child abuse defense attorney. To maximize your chances of success, make sure that you have on your team an attorney who is experienced in successfully defending against child abuse allegations. Make sure that an attorney, who is experienced in successfully representing people in child abuse allegations either is consulting with your team or is actively representing you in your case.

Having an attorney with such experience and knowledge may be the difference between defending the allegations

to losing your career, your reputation, your family, and your life as you know it.

To discuss engaging The Law Firm of Charles D. Jamieson, P.A. for a consultation or to assist you with your child abuse allegation or child abuse case, please contact the firm at, (561) 478-0312 or via e-mail at [cdj@cjamesonlaw.com](mailto:cdj@cjamesonlaw.com).

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