

# Family Law Education Reform Project

## Abuse and Neglect

### ABSTRACT

This guide discusses the current issues in the forensic evaluation of child maltreatment and neglect as it pertains to: issues the Court needs to answer when there are allegations of abuse and neglect, assessment factors, and research on children's competence.

### ABOUT THE AUTHOR

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Dr. Robin Deutsch is a graduate of the University of Wisconsin-Madison from which she also received her Ph.D. in counseling psychology. As a therapist, consultant, custody evaluator, mediator, and parenting coordinator, her work has focused on the application of child development research to children's adjustment to divorce and parenting issues, the evaluation of families involved in family change and management of high conflict divorce. She is the training director for the postdoctoral fellowship of the Children and the Law Program.

Dr. Deutsch has published articles on the effects of high conflict divorce, the evaluation of domestic violence, management of cases of Munchausen by Proxy, Parenting Coordination, developmentally appropriate parenting plans, and attachment considerations. She is the co-author of [7 Things Your Teenager Can't Tell You \(and How to Talk About Them Anyway\)](#) (Ballantine, 2005). She is the current President of the Association of Family and Conciliation Courts (AFCC) and the former president of the Massachusetts chapter of AFCC. She is also a member of the AFCC Task Force that developed Guidelines for Parenting Coordination (2005), and the Massachusetts task force that wrote "Planning for Shared Parenting: a Guide for Parents Living Apart". Dr. Deutsch is the former Chair of the American Psychological Association Ethics Committee (2007) and a member of the American Bar Association Child Custody Pro Bono Project. Dr. Deutsch is frequently invited to provide educational and scientific presentations to judges, lawyers, and mental health professionals in the United States and Canada. She is a 2006 recipient of the American Psychological Association Karl F. Heiser Presidential Award for Advocacy.

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### Summary

Child abuse and neglect has short and long-term implications for children. Academic, behavioral, social, and emotional development is strongly negatively influenced by the experience of abuse or neglect. Abuse includes chronic severe physical maltreatment, sexual maltreatment, and witnessing domestic violence. To the extent that children can be stabilized in an environment without maltreatment and with appropriate attention to their basic needs for food, shelter, safety, affection, nurturance, and attention to psychological and special needs, they have an increased opportunity to develop into well adjusted adults. Child neglect and maltreatment is a social policy and legal issue. The courts will focus on risk factors, parenting competence, environmental factors, children's needs, as well as testimonial and competence issues when hearing cases involving child abuse and maltreatment.

### Why this Topic is Important to Law Students

- The 2006 National Child Abuse and Neglect Data System<sup>1</sup> reported that data from child protective service agencies across the United States indicated that over one million children were considered to be maltreated in 2006. These substantiated cases comprised approximately 30% of investigated cases.
- Children suffered neglect in more than 60% (64.1%) of the cases, physical abuse in approximately 15% (16.0%) of the cases, less than 10% (8.8%) suffered sexual abuse and less than 10% (6.6%) suffered emotional maltreatment.
- Child abuse or neglect resulted in 1,530 fatalities and more than three-quarters (78%) of these children were younger than four years of age.
- Parents comprised nearly 80% of the perpetrators of child maltreatment and an additional 6.7% were other relatives of the deceased child.
- Children under three years of age comprise the largest group of victims of substantiated cases of abuse and neglect. Significantly, brain development of children under three is negatively influenced by abuse and neglect.
- When parents separate, more than 1/3 of maltreatment allegations are unsubstantiated. Of that group, 4% are intentionally fabricated. In a custody dispute sample, 12% are fabricated.<sup>2</sup>

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- Research in the forensic evaluation of child maltreatment and neglect has burgeoned in the past two decades. Attention to examination of children applying research on children's memory, suggestibility and competence has resulted in more effective clinical examination by and cross examination of experts.<sup>3</sup>
- **Relevant Federal Laws:**
  1. Child Abuse Prevention and Treatment Act (CAPTA), 1974, created National Center on Child Abuse and Neglect
  2. Adoption Assistance and Child Welfare Act, 1980 Public Law 96-272
  3. Adoption and Safe Families Act (ASFA), 1997
- **Relevant State Laws:**
  1. Child Protective Services and the Juvenile Court
  2. Child Abuse Reporting Laws
  3. Family Court: Divorce and Child Custody

## Current Relevant Issues

### 1. What questions does the Court need to answer?<sup>4</sup>

- What happened?  
Investigation of facts
- What harm occurred?  
Link between maltreatment and child problems
- What can the parent(s) do to help?  
Parental fitness and match between parenting capacities and child's needs
- What hope is there for the future?  
Best interests of the child  
Prognosis for parenting

### 2. The Best Interest Standard in cases of child abuse and neglect

- Assessment of risk factors, which for parents include: a parental history of abuse, depression, substance abuse, isolation, single parenthood, low SES, young maternal age, emotional distress, somatic distress, behavioral distress, and unrealistic expectations for children.<sup>5</sup>
- Assessment of parenting competence which includes: parenting capacities and deficits, ability to meet the child's needs, matching the parent's functional capacities, i.e. behaviors and skills to the individual child's needs, and finally the parent's willingness to obtain available and appropriate services. The behaviors and skills that we are assessing include

the parent's cognitive processing and problem solving skills, supervision and safety awareness, discipline or behavior management skills, emotional support and nurturance, recognition of and advocacy for child's needs.

- Assessment of environmental factors including: socio-economic status and resources, physical living conditions, social support, other family violence, and the results of any previous interventions.
  - Assessment of child factors including: the child's age and developmental level, temperament, current functioning, any special needs, and the history of injuries.
  - Assessment of the quality of the attachment between the parent and child: is it a traumatic attachment, an anxious attachment, a failed attachment, a disorganized attachment? Children often want to be with the parent who abused them, because of an insecure attachment, the known is more comfortable than the unknown, the abuse is intermittent and the relationship is positive at other times, the child identifies with the abusive parent, or the child has been threatened or bribed.
  - Assessment of the match between parenting competence and child's needs: Does the parent have the capacity to parent this child? Is the parent able to provide the basic needs of safety, protection, food and shelter? Can the parent provide for any special needs the child may have? Can the parent advocate for the child's educational, medical, emotional needs? Is the parent attuned and able to appropriately respond to the consequences of any trauma that has occurred? Can they provide warm, involved caretaking with appropriate limit setting?
- 3. How do we consider the research on memory and suggestibility when children testify or when we examine the findings of an investigation?**

**The research tells us that:**

- The ability to resist suggestion depends on situational and personality factors.<sup>6</sup> Hunger and sleep deprivation, and the perception of threat affect memory and the ability to be resistant to suggestibility.
- Suggestibility is the "degree to which children's encoding, storage, retrieval and/or reporting of events can be influenced by a range of external and internal factors."<sup>7</sup> Younger children (especially preschoolers) are more suggestible than older children and adults.<sup>8</sup> Assessment of memory involves methods of recognition, reconstruction, and recall. Recognition tasks may be suggestive.
- Over 80% of five-year olds and over 90% of six and seven year olds can identify truthful statements and lies as such. Not until age seven can children define truth and lie, and then only half. When asked to explain the difference between truth and lies, less than half of seven-year-olds could do so accurately. Four-year-olds could do none of the tasks well.<sup>9</sup>

- Younger children have more difficulty than older children in correctly identifying the source of information.
- Younger children may not have the cognitive capacity to accurately answer questions regarding details about time, date, location and numbers. If a young child cannot sequence, they retain sensory fragments, not sequential, linear accounts. Not until age 7 can we expect children to tell time, though younger children can associate to night time, day time or before lunch.
- Children learn who, what and where questions first. Therefore they are the easiest to understand and to use. "When" questions require understanding of time (around age 7); "why" questions require understanding of causality (around age 6 or 7).
- Children are less likely to remember events that are not unusual or noteworthy; Children are less likely to remember details if event is not unique; Children are less likely to remember events if there is a long delay between event and interview.
- Memory taint usually entails repeated suggestions (8 repetitions for 3-4 year olds), peer pressure, developmentally insensitive personnel, and progressive repeated interviews.<sup>10</sup>
- Children are most motivated to lie to protect loved ones or avoid embarrassment.<sup>11</sup>
- Preschoolers are most likely to make errors when asked "no" questions. They were unlikely to answer "yes-no" questions with "I don't know."<sup>12</sup>
- Repeating yes-no questions may result in younger children changing their responses to please the interviewer or in inhibiting communication in older children.

#### **4. Current controversies in the field as it relates to family law**

##### **What is child abuse or neglect?**

- There is great variability in statutory definitions of abuse and neglect, as well as in understanding of the definitions of abuse and neglect.
- One must consider cultural variability and cultural differences. Focus needs to be on clear and probable harm. Though a parent may act in a manner that is acceptable and safe in their country of origin, if it constitutes neglect in the United States consider probable harm, e.g. leaving young children alone while the parent went shopping. The extent to which the parent is responsive to interventions from social service agencies must also be considered.
- Poverty is also a consideration. To what extent is the child neglected because of extremely limited financial resources. Often, neglect cases occur in families with multiple complex problems including poverty, limited social support, mental illness, unemployment, drug and alcohol abuse.

- Is family preservation the goal? How much risk is too much?
- At what age and to what extent should the court consider a child's wishes?

### **Interviewing Techniques**

- There is a substantial literature on proper and improper interviewing.
- Improper interviewing includes the use of punishments and rewards, social influence, i.e. telling the child what others have said, leading questions (introducing information the child has not disclosed), asking the child to guess.
- Best practice in forensic interviewing of children includes techniques to establish rapport, explain the ground rules, and elicit reliable and accurate information.
- We also know that there are age and gender differences in how children understand and respond to questions. Younger children (ages 4 to 6) provide fewer details and shorter responses than older children; open ended questions are more effective with older children than younger children; preschool children tend to disclose in an accidental way and are more likely to exhibit physical and/or behavioral symptoms than school age children.
- Multiple interviews lead to unreliable results. To the extent that children are interviewed in a multidisciplinary environment (SAIN interview) and/or by skilled highly trained mental health professionals, and the interview is videotaped, further interviews will be unnecessary.

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**ENDNOTES:**

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<sup>2</sup> Trocme & Bala, (2005). Canadian incidence study.

<sup>3</sup> Ceci, S. & Bruck, M. (1995). *Jeopardy in the courtroom: a Scientific analysis of children's testimony*. Washington DC: American Psychological Association; Kuehnle, K. (1996). *Assessing allegations of child sexual abuse*. Sarasota, FL: Professional Resource Press; Saywitz, K.J., Goodman, G.S., Lyon, T.D. (2002). Interviewing children in and out of court: current research and practice implications. In Myers, J.E.B., Berliner, L., Briere, J., Hendrix, CT., Jenny, c., & Reid, T.a. *The APSAC Handbook on Child Maltreatment (2<sup>nd</sup> Ed.)*. Thousand Oaks: Sage.

<sup>4</sup> Barnum, R. (1997). A suggested framework for forensic consultation in cases of child abuse and neglect. *Journal of the American Academy of Psychiatry and the Law*, 23 94), 581-593.

<sup>5</sup> Christman, Wodarski, Smokowski (1996); Kolko, (2002).

<sup>6</sup> Saywitz, K. & Goodman, G. (1996).

<sup>7</sup> Ceci & Bruck, (1993).

<sup>8</sup> Ceci & Bruck, (1993); Goodman & Aman, (1991).

<sup>9</sup> Lyons, (1996).

<sup>10</sup> Ceci, (1999); Ceci & Bruck, (1993); Saywitz & Goodman, (1996).

<sup>11</sup> Ceci & Bruck, (1993).

<sup>12</sup> Peterson, Dowden, & Tobin, (1999).