

***You are not a rubber stamp! Remember that!***

Isn't that what the defense wants the jury to believe? That since you're an "advocate for children," and you "want the best for the kids" you're obviously going to testify no matter what that a child's allegations of abuse were substantiated, and the parent's claims that abuse occurred are true? That you're going to testify this way no matter where the facts might lead? That you're going to testify this way even if the facts lead toward "not guilty?"

The defense wants to plant a "bias" tattoo on your forehead in the case being tried before this jury. We can call this defense strategy whatever we want: Untrue; cheap lawyer tricks; frustrating; ridiculous, etc. But in trial, name-calling is inferior to facts.

So are there facts in your toolkit, based upon actual cases from your Center, to combat these claims of rubber-stamping?

**Case:** In the Interest of J.S., a child, Georgia Court of Appeals (decided February 9, 2009).

**Facts:** The juvenile court in this case entered an order against the mother of J.S. finding that J.S. was deprived under O.C.G.A. Section 15-11-2(8)(A). She appealed the trial court's order, which landed the case in the Georgia Court of Appeals.

O.C.G.A. Section 15-11-2(8)(A) defines a ***deprived child*** as a child who is "***without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals.***"

One very relevant consideration for the juvenile court is to determine whether the conduct of the parent toward the child is "egregious conduct . . . of a physically, emotionally, or sexually cruel or abusive nature." See O.C.G.A. Section 15-11-94(b)(4)(B)(iv).

In this case, J.S.'s mother and father separated when the mother moved into a shelter with J.S. after alleging that the father had abused the mother. The mother was awarded temporary custody of J.S., and the father was awarded visitation. Several months later, the mother reported to a social worker and also to the Department of Children and Family Services (DFACS) that a 12-year-old boy at the shelter sexually abused J.S., who was 3-years old at the time. A forensic interview was conducted, and interviews of the 12-year-old, the mother, and shelter workers were done. The allegation was determined to be unsubstantiated.

One month later, after the mother had been ordered at a contempt hearing to allow the father's visitation rights to continue, she told the police that J.S. told her that the father sexually abused J.S. A medical exam was conducted; J.S.'s underwear was tested at a lab for male DNA; another forensic interview was conducted. The allegation was not substantiated.

The next month, when the father filed for divorce, the mother took J.S. to a clinic for an evaluation of sexual abuse after she stated that J.S. told her that the father molested J.S. Another forensic interview was conducted, as well as another physical examination. The mother took J.S. to three other physical examinations over one weekend that month.

An investigation for filing false reports began, and DFACS petitioned the juvenile court for a temporary protective order finding J.S. deprived. Ultimately, a hearing was held and the juvenile court found that the child was deprived due to the mother's repeated unsubstantiated allegations of abuse.

The juvenile court's finding of deprivation were challenged by the mother on appeal. The Georgia Court of Appeals affirmed (also known as "upheld") the juvenile court's finding because there was "clear and convincing evidence" in support of the juvenile court's finding of deprivation.

What was the clear and convincing evidence?

1. Trained forensic interviewers helped investigate the mother's multiple allegations.
2. No medical evidence of abuse was found to substantiate the allegations.
3. One social worker who was part of the investigation testified that it was unlikely that J.S. had been molested by both the 12-year-old boy at the shelter and the father in the same one-month period.
4. Another social worker testified that she did not believe J.S. was at risk with the father.
5. The guardian ad litem also recommended that J.S. be found deprived.

We know that false claims of child abuse is serious business, that is taken as such by CAC professionals and law enforcement. For the Courts, particularly in the context of a deprivation matter, it is serious business as well. The Court of Appeals wrote that ***"[e]vidence of a parent's repeated unfounded investigations of sexual abuse has been held to be an appropriate factor in a finding of deprivation."***

What does your case tracking system do about the percentages of disclosures that are substantiated and disclosures that are not substantiated? If it tracks such information, who at your center knows about the information? As always, it is not for me to make recommendations of standards and protocols, except to suggest that your CAC should know what the standards and protocols are in Georgia regarding case tracking substantiated disclosures and unsubstantiated ones (or your state's), **and** what the suggestion is at the national level. If there is no such standard, that does not mean your center can't track such information.

In past Legal Eagles, we've highlighted cases where crimes against children detectives have testified on the stand about cases they investigated which were not substantiated, and so were placed on inactive status. This testimony is often in re-direct examination, after the defense lawyer on cross-examination has asked questions to try to imply that the detective is a "rubber stamp." In response, this re-direct examination testimony can be effective circumstantial evidence to show that the detective fully takes into account the situation where false claims can arise, but in this instance she moved forward with the case after ruling out such a scenario.

A prosecutor might consider similar testimony if the "rubber stamp" defense heats up to a point where it should not be ignored. The testimony can also include the multiple reasons that misleading allegations of child abuse affect not only the person who is being accused, but also the child involved, and even other children who actually have been abused. The testimony can include why the standards and protocols inherent in forensic interviews and forensic evaluations are effective in making accurate determinations – substantiated **or** unsubstantiated.

**Careful though!** A case that involves substantiated allegations of child abuse can have similar qualities to cases where allegations of child abuse are not substantiated: for example, no medical evidence of abuse; equivocal disclosures; conflicting facts; non-offending parents who make leading and suggestive

statements to the child. So a prepared defense lawyer can compare unsubstantiated cases with the case at hand, then urge to the jury that this is a case of unsubstantiated allegations. In the end, it is best to discuss this with the lawyer who subpoenas you to court to see whether the lawyer is interested in putting this testimony in front of the jury.

Ultimately, when rubber-stamping arguments are used by the defense, be aware that it may be important that the jury needs to know that you understand that blame for alleged child molestation that did not occur is an extremely important consideration in your roles. An advocate for children is also an advocate for the truth.

Best regards.

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