

## Case Studies:

### Using a Forensic Psychologist in Civil and Criminal Cases to Evaluate the Reliability of Delayed Reports of Sexual Assault

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Allegations of sexual assault present numerous challenges even to the seasoned attorney. Most sexual assaults have no eye witness to the crime and inevitably, the credibility of the victim becomes a focus in criminal and civil cases involving allegations of sexual assault. Cases involving delayed reports of sexual assault present even more challenges to the credibility of the alleged victim. Despite the relatively rare occurrence of false allegations of sexual abuse, in cases of delayed reporting the issue of credibility becomes the primary focus of the criminal or civil case. Using a forensic psychologist to evaluate the credibility of a victim's delayed report of sexual assault can be of invaluable assistance for the attorneys involved. Defense and Plaintiff attorneys, with the assistance of the forensic psychologist, can proactively address the issue of their client's credibility in delayed reports of sexual assault. Likewise, Prosecution and Defense attorneys benefit from the assistance of the forensic psychologist in utilizing psychological testing to specifically assess the credibility of the alleged victim's delayed report.

It is not uncommon for victims to delay reporting sexual assault. Often victims repress the memory of the assault until sometime later when they are better able to integrate the trauma. Shame and confusion are other reasons for the victim delaying the report of sexual assault. Victims most often feel as though they did something wrong that caused the assault. Victims may blame themselves for being in the area where the assault took place, or having a simple conversation with the assailant that eventually led to sexual assault. The identity of the perpetrator can also make the victim unwilling to report the assault. If the assailant is a family member, friend of the family, or respected authority figure, the victim may fear that no one will believe them. Alternatively, the victim may become confused about whether the assault was an act of love or affection. Another reason for delayed reporting is related to the victim's fear of unwanted publicity and litigation. Recent high profile cases involving the delayed reports of sexual assault victims against Bill Cosby and Candidate Trump demonstrate the complexities in such cases. Unfortunately, delayed reporting can make it difficult to prosecute such cases as well as move forward in civil cases where the emotional damages of the alleged assault *become the issue*.

Two recent cases in which I have been involved represent the challenges inherent in civil and criminal cases involving delayed reports of sexual assault. In both cases, criminal charges were filed against the alleged perpetrator, and later the victims filed a civil suit alleging emotional damages related to the alleged assault. One case involved a nurse who had been involved in a sexual relationship with a staff doctor for over a two year period on the hospital premises. During their affair, the nurse believed the doctor cared for her romantically during a time when the nurse's own marriage became unfulfilling. Eventually eight other hospital staff came forward alleging sexual harassment and sexual assault by the same doctor. The victim in question was interviewed because of the other women's disclosure of sexual assault by the same doctor; when questioned, the nurse denied that she had been assaulted by the physician. When she later learned that the doctor had sexually assaulted other hospital staff members, the nurse came forward with her civil complaint.

A second case involved a 21- year- old woman who worked on a fishing vessel over the summer months. Two years after her employment ended, she alleged that the captain of the vessel, who was a friend of her father's, sexually assaulted her while she worked on the vessel. In this case, the victim filed criminal charges, which were later dismissed because of the victim's inconsistent statements over the course of the investigation, as well as the delay in reporting. In this case the victim had previously been sexually assaulted as a child by another friend of the family. The victim came forward to report the assault when her father, several years later, was involved in a bar room fight with the Captain. The victim's inconsistent statements about the assault as well as the identity of the perpetrator, and the timing of her delayed report served to undermine the victim's credibility.

In both cases, one where I was hired by the plaintiff's attorney and the other by the defense attorney, my involvement included evaluating the victim's credibility as well as evaluating potential emotional damages related to the alleged assault. In order to do so, I requested all of the legal and medical documents available regarding each plaintiff. Secondly, I specifically looked at the victim's disclosure to assess the possibility that the interview was conducted using suggestive questioning or was conducted outside of the standard of care for such interviews. To evaluate potential damages, I administered a battery of psychological tests that specifically address possible malingering as well as the alleged victim's psychological functioning. In addition, lengthy history taking was conducted to assess pre-existing conditions and the degree to which the alleged incident exacerbated or aggravated the pre-existing conditions, either physically or exacerbated previous mental health conditions such as anxiety and depression.

In criminal and civil cases involving significantly delayed reports of sexual assault an experienced forensic psychologist is a valuable addition to the legal team. The importance of utilizing testing to assess the alleged victim's overall credibility is imperative in such cases as the testing becomes demonstrative evidence regarding credibility for the jury related to cases of delayed reports of sexual assault. Psychological testing also provides additional demonstrative evidence to show the jury how the alleged victim's psychological functioning compares to that of the average person as well as to other sexual assault victims . Also, the history of pre-existing, co-existing-and post traumatic injury can be outlined and their impact, in addition to the alleged assault in question, can be explained to the jury. Finally, the alleged victim's statements must be examined and compared to what would be expected in other cases of verified delayed reporting such as is present in clergy abuse cases.

I have been involved in a number of cases over the years involving adults who had been sexually assaulted as children by their parish priest. In such cases, there is often clear corroboration of the victim's delayed report by other victims coming forward, who describe similar grooming as well as abuse experiences. In these cases, there is clearly more corroboration to substantiate the victim's delayed report and provide credibility for the victim's allegations. Victims of clergy abuse often repress the memory of their abuse until well into adulthood when some event triggers their recall of the prior abuse. Often the victim's memories are triggered by learning of other victim's abuse by the same priest. My experience working with such victims is that they continue to describe specific and detailed information about their prior abuse that includes sensory experiences as well as an ability to describe a chronology of their experiences. Utilizing my experience with verified cases of delayed reporting becomes another way to evaluate the victim's credibility in other cases where delayed reporting occurs.

In summary, in analyzing the credibility of delayed reports of sexual assault, the evaluator as well as the attorney must entertain two hypotheses. One is that the victim's statements are credible and have been

repressed due to a variety of factors. Alternatively, the possibility of false allegations of sexual assault must be considered. Utilizing the expertise of an experienced forensic psychologist, skilled in psychological testing with trauma victims, is critical in cases of delayed reports of sexual assault in assisting both Plaintiff/Defendant and Prosecution/Defense in evaluating the reliability of such statements.