HAS A CHILD BEEN MOLESTED?

The Disturbing Facts About
Current Methods of Investigating
Child Sexual Abuse Accusations

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A Handbook for Police, Investigators, Caseworkers, Attorneys and All Who Care About Children and About Justice

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INTRODUCTION

EVERY YEAR THOUSANDS of children are abused in every way imagineable. This has always been true in every society because any person or any group unable to defend itself is vulnerable to abuse unless the larger society offers protection.

Until thirty years ago society was continuing this age-old pattern of failing to protect children from physical, emotional or sexual abuse. Then in the 1960's a major change occurred. We acknowledged the reality of physical abuse of children and within a decade established laws and programs aimed at doing a better job of preventing abuse through education, improved medical diagnosis of non-accidental injuries, and better prosecution of those who abuse a child.

In the ensuing years such actions have inspired other countries to act similarly, and there is no question that this movement will continue to spread and that children throughout the world will benefit. The fact that millions of children worldwide continue to be abused, sometimes even killed, doesn't change the fact that a movement is underway that will grow and will eventually make children safer than ever before.

The sexually abused child, however, presents special problems for the society that is determined to protect its most vulnerable citizens. These victims usually show no bruises. No fractures or dislocations alert teachers, neighbors, doctors or nurses that a child is being victimized. Anyone experienced with children knows molest victims will often suffer considerable abuse in silence, feeling that if they "tell" on the adult, the situation may become even worse.

It was these factors which led a few reformers from law enforcement and mental health in the 1970's to start a new movement, one that sought to broaden the scope of child protection to include victims of sexual exploitation. This was a movement that made friends easily. The thought of an adult using a child for sex is repulsive for many reasons: the innocence of the child is prematurely lost; the child is vulnerable to the power of the adult; children are never in a position to give consent to sex with an adult because they are only children.

And make friends the new child sexual abuse prevention movement did. It was so easy, the movement so overwhelmingly popular, that mistakes were

made easily. No one was in a mood to question new laws and policies lest he or she be seen as one of those who didn't care enough about children. No one wanted to be soft on sexual abuse. As a result, profound mistakes were made from the beginning but few people dared to notice. These were not just the kind of shortcomings we expect in any large, bureaucratic undertaking. They were mistakes at the very heart of what was being proposed and implemented. They were mistakes in theory and thinking, the kind which are bound to lead even the most dedicated and caring persons into practices that harm children rather than protect them.

These mistakes, the reasons behind them, the consequences both for children and for the justice system, and what we believe is the solution, are the substance of this manual. We want to help all those who act in a professional capacity in the investigation of possible sexual abuse of a child. This includes the police, child protection caseworkers, therapists who become involved with children considered as possible victims, attorneys and investigators for both prosecution and defense, and judges. We also believe that other professionals who are not front-line investigators but who nonetheless may interact in important ways with the investigative system will benefit from the materials presented here. This includes nurses, teachers, day care providers and doctors.

The impact doesn't stop with children or those who are directly involved in an accusation. As we will show later, the current system of investigating and prosecuting child sexual abuse not only fails too many children but also threatens the freedoms of all American citizens by eroding Constitutional protections such as presumption of innocence and the right to confront one's accuser.

If anything characterizes the current debate on allegations of child sexual abuse, it is the adversarial, hostile tone that prevails. As an attorney and a psychiatrist, we are in the thick of these encounters in and out of court. Once a trial begins, each attorney tries to win, and each expert has opinions to defend. This manual seeks to improve the process that takes place *before* a trial begins, when all parties stand a better chance of communicating with each other.

Police and prosecutors are mandated to seek the truth in investigations: only those whom the prosecutor personally believes are guilty and can be shown in court to be guilty beyond a reasonable doubt are to be prosecuted. To do

otherwise not only perverts the intent of the U.S. Constitution, but diverts much needed resources from successful prosecution of those who *are* guilty of this or any other type of crime.

Child protection agencies are also mandated to seek the truth because that is the only way to protect children. While it is obvious that sex between a child and an adult is morally wrong, less obvious is the harm which comes to a child when adults mistakenly assume abuse has occurred.

Repeated interviews may sexualize a child, parents may begin to overprotect the child, therapists may enter the child's life when none are needed, and most devastating, a central person in the child's life may be cast as a frightening and dangerous presence, to be avoided. If it is disgusting to think of a child being used by an adult for sex, it should be equally abhorrent to think of a child being trained to believe things that never happened, especially when this leads to the destruction of a central relationship in the child's life. Child protection agencies have a duty to protect children from *this* form of abuse as well.

Defense attorneys have just as much reason to seek the truth. An informed decision whether to seek a plea bargain or proceed to trial requires that the defense attorney first make a good judgment about the client's probable guilt or innocence. In some cases, defense attorneys mistakenly assume guilt because they have not properly understood the evidence. As a result, the client will usually be pressured to accept a plea bargain instead of receiving a vigorous defense. If on the other hand the prosecutor's evidence is solid, it is the wise attorney who negotiates with the prosecution instead of insisting on a trial. Finding the truth, through the investigative methods we will describe in this manual, will allow the defense attorney to urge those whom the evidence shows have molested a child to plead guilty and accept the best offer available, while at the same time promote a vigorous defense for those who are innocent of the charges.

This is not a theoretical treatise developed in an academic setting. It is a how-to manual that summarizes conclusions we have drawn from the study of investigations of thousands of children. Because our ideas are drawn from our own experiences in real cases, and not just on summarizing work of others, we want to briefly describe our respective backgrounds.

One of us, Lee Coleman, is a psychiatrist practicing in Berkeley, California since the early 1970's. From the very outset of my career I experienced situations that led me to the view that the opinions of psychiatrists and other mental health professionals were intensely subjective. The profession covered itself with fancy labels culled from the latest edition of the "Diagnostic and Statistical Manual (DSM)," but I knew from my own medical and psychiatric training and experience that mental health professionals were anything but reliable in their diagnoses, predictions, and "psychodynamic formulations."

As a therapist, psychiatry's pseudoscientific facade did not really prevent me from helping patients. It was clear that psychotherapy was an art and not a science, so there was no need to appear scientific. I did my work in my own way, paid no real attention to the diagnostic labels which were constantly shifting with each edition of the DSM, and let the patients be the judge of whether or not the therapy was helping. After more than twenty years of using my eclectic mix of talking psychotherapy, I am comfortable that I have helped many, many people despite the fact that there is no scientific way to prove this.

But when I began to develop an interest in psychiatry's role in legal matters, I saw that the consequences of psychiatry's pseudoscientific facade were far greater. Individual lives, and important social policies, were being influenced by the opinions of psychiatrists and psychologists, opinions which too many people seemed ready to accept as scientific.

Decisions about whether or not a prisoner should be released on parole, for example, were being strongly influenced by a psychiatrist's prediction of future behavior, despite the mental health profession's inability to predict whether or not a person will return to a life of crime if released. A little at a time, I began to offer testimony in an occasional hearing or trial in which I explained that judgments about someone's freedom should not be influenced by the personal opinions of psychiatrists, even though such opinions might be disguised to look like scientific findings.

Then, starting in 1975, prosecutors began to request that I testify in trials in which the accused admitted having committed the act, usually homicide, but claimed that a mental disorder was in some way responsible for what happened. By now, I have offered such testimony in some 150 cases, but never

for the purpose of describing the defendant's mental state at the time of the crime. This is ordinarily what psychiatrists do in such trials, and I have all the qualifications required to do the same, but because of my skepticism about the tools of psychiatry I am of course unwilling to offer such opinions. The opinions I offer in such cases are not about the state of someone's mind but about the state of psychiatry. I explain to the jury that the opinions of the defense's expert should not be given credibility, since the methods employed in arriving at the opinions are unreliable and unscientific.

Such testimony did not make me popular with defense attorneys. During their cross-examination of me, they regularly sought to characterize me as a whore, a hired gun, a mercenary, an odd-ball who got his kicks by attacking his own profession. "Coleman always testifies for the prosecution," they protested. That could only mean, so the argument went, that I was biased against defendants.

Of course I knew and took pains to explain to each jury that my exclusive testimony for the prosecution in such cases was simply because it was the defense attorneys who in each case solicited a "psychiatric examination," followed by supposedly expert "findings" about the defendant's mental intent and knowledge at the time of the crime. Since my opinion was that psychiatrists had no real skills to do these things, I could hardly agree to do such an "examination" for criminal intent.

But if I was a villain to the defense, I was a hero to the prosecutors. They regularly invited me to speak to their meetings, at which I was hailed as brave and true, a devoted soldier in the fight against defense-oriented psychobabble. I accepted their unstinting praise, knowing full well that I was not biased towards one side or the other, simply convinced that psychiatrists should not influence the jury. I often lamented the fact that defense attorneys were so busy trying to discredit me that they never invited me to speak to *their* meetings.

Then, in 1984, something new happened which brings me to the subject of this manual. I began to see cases in which it was the side of law enforcement and not the defense that jumped into bed with psychiatry. These were cases involving allegations of sexual abuse of a child. What I saw in this new type of case was that the influence of psychiatry was far more dangerous because

the contamination of evidence started at the *beginning* of the case, when the investigation began, rather than at the end, during the trial phase.

I saw that various psychiatric syndromes were being used as supposed evidence that the accusation was true. Patterns of behavior shown by either the child or by the accused or both were said to show that the child was experiencing "sexual abuse trauma," or that the denials of the accused were "typical" of child molesters.

Even more important, I saw that police officers and social workers were acting more like therapists than neutral investigators. In their reports and testimony they proclaimed, "I believe the child." I soon learned from them that "Children don't make false accusations of sexual abuse."

From the cases that began to pour into my office, it was a short step to understanding how the investigators were being trained and to understanding that it was their training which explained the obvious mistakes they were making. Their teachers were my colleagues from mental health. In the next chapter, the origins of this fatal romance between mental health professionals and investigators is fully described.

At the beginning of my exposure to these cases during the mid 1980's, I continued to be called regularly by prosecutors to rebut defense doctors testifying about the mental state of murderers and rapists. But gradually the prosecutors called less and less, and I received no more invitations to speak at their meetings. Now it is the defense attorneys who regularly invite me to consult on cases and to teach at their seminars. Now it is the defense which calls me a hero and the prosecutors who see red when my name is mentioned.

Each side, it seems, uses psychiatry when it is convenient, but cries "foul" when the other side does likewise. Those who, like myself, point out that both sides use psychiatry in ways which corrupt our justice system are apparently to be seen as heroes one day and villains the next.

The other author, Patrick Clancy, is a lawyer practicing in Walnut Creek, California. I expected to be a chemical engineer, and obtained a degree in chemical engineering at the South Dakota School of Mines and Technology. I learned how scientific knowledge was expanded through research and exper-

imentation. I had three to six hours a week of laboratory work in chemistry, chemical engineering, electrical engineering, physics and numerous other related subjects. We set up experiments, established norms, gathered data, and developed skills in scientific methodology.

In 1972 I decided to combine my scientific training with a newly developing interest in the law. I entered law school with the idea of becoming a patent attorney but I soon learned that patent law was too boring for me. In 1975 as a new lawyer, I joined the Los Angeles County Public Defenders office, the only attorney I know of with a degree in Chemical Engineering.

Immediately my scientific training proved immensely useful in hiring experts for the defense and cross examining experts for the prosecution in cases involving everything from drugs to fingerprints, ballistics to gas chromatography for drunk driving cases, establishing paternity to bomb construction. Even a mechanical engineer from South Dakota School of Mines testified against my expert in one case.

What became clear very quickly was that the cross examination was the same in all the cases. First question the expert on the basis of his opinion. Was the opinion based on a scientifically verifiable methodology? It was a rare case in which the experts for the defense and for the prosecution differed widely in their basic opinion.

It wasn't long, however, before I met a different type of expert—the mental health professional. Here the prosecution expert and the defense expert were always diametrically opposed in their opinions. Each was emphatic concerning his own opinion and swore that it was arrived at in a scientific manner. As I examined and cross examined these mental health professionals it became abundantly clear that neither the ones I hired nor those for the prosecution had much, if any, research data.. They always appeared long on opinion and short on scientific methodology.

Nothing prepared me, however, for the role such mental health experts played when I began handling cases of alleged child molestation. It soon became evident that they were closely tied to the law enforcement network of police, child protection, and prosecutors.

As a lawyer with more scientific training than most of my colleagues, I was shocked and anguished by what was passing as reliable information in both investigations and trials. It had such an impact on me that for the past fifteen years I have specialized in cases involving accusations of child sexual abuse.

CHAPTER ONE

A BRIEF HISTORY OF THE CHILD SEXUAL ABUSE PREVENTION MOVEMENT

BAD IDEAS, WORSE CONSEQUENCES

To begin to understand the developments that ultimately led to our current system of investigating child sexual abuse, we will begin with Senator Walter Mondale's 1973 hearings on child abuse and neglect. Those hearings led to the Child Abuse Prevention and Treatment Act of 1974, which required each state to develop programs aimed at faster recognition and treatment of child abuse. We see no reason to doubt that thousands of children benefited, but we also believe that specifically in cases of alleged sexual abuse unintended consequences resulted.

Sexual abuse investigators had special hurdles to overcome, for while physical abuse would often leave behind evidence such as bruises or broken bones, most instances of sexual abuse would not. As a result, investigators from law enforcement and child protection had the difficult job of interviewing young children who might show no outward evidence of abuse, and might also be afraid to say what had happened.

With no real questions asked, law enforcement and child protection agencies allowed a few mental health professionals to become the leaders of this new movement, in the belief that therapists would know best how to interview children in ways which would help them reveal abuse. It is this collaboration between the investigative community and the therapeutic community that is *the* fundamental error that continues to plague the system of child sexual abuse prevention, investigation and prosecution.

THE DIFFERENT WORLDS OF INVESTIGATION AND THERAPY

Neutrality is the hallmark of the skilled investigator. He or she advocates neither for individuals nor political or social causes. Wherever the facts lead, the responsible investigator follows. The present system, however, trains investigators to adopt ideas and methods drawn from the mental health professions, where neutrality is ordinarily *not* to be expected or even desired.

As a rule, therapists hear only the patient's version of what has happened in his or her life. Another crucial difference is that unlike the investigator's focus on facts, therapists work with *feelings*. In countless cases, we have seen therapists declare that they do not concern themselves with the truth or falsity of a patient's statements about past abuse. "We are therapists," they proclaim, "not investigators."

Each of these approaches has its proper place but terrible mischief results when they coalesce into something which is neither therapy nor investigation. Consider, for example, what happens when an investigator is trained to think like a therapist who wants to help victims. The investigator becomes an advocate and genuine investigation become impossible.

Consider as well what happens when an alleged child victim is sent to a therapist specializing in "sexual abuse trauma" and the therapist is encouraged by law enforcement to become the main interrogator of the child. Should we be surprised when the therapist assumes the allegation to be true and repeatedly asks the child to talk about and demonstrate things that may not have happened?

The outcome of this blending of roles has been devastating to the welfare of children and the cause of justice. Especially when the alleged victim is a child and the alleged perpetrator is an adult, the investigator-turned-therapist will selectively focus on information that supports a belief that abuse has happened, and ignore evidence to the contrary. And the therapist-turned-investigator will be unable to maintain the neutrality needed by investigators.

The point, then, is not only that investigators and therapists have different persectives but *contradictory* perspectives. The very *last* persons who should be influencing the investigative community are mental health professionals.

SEXUAL INVESTIGATION AS A ONE-WAY STREET

Such concerns never occurred to the founders of the sexual abuse prevention movement. In the 1970's and early 1980's, no one had ever heard of a false allegation of sexual abuse. This is obvious if one reads literature from those days. The mental health professionals who helped sexual abuse investigation

and prosecution get under way were of the opinion that the central reform needed was to train investigators to believe the child.

Society had for so long ignored victims of sexual abuse, many of whom kept their abuse secret, that the leaders of this new movement perceived the problem solely as one of helping victims disclose their abuse and convincing skeptical adults to support the child. The exclusive focus was on the undeniable fact that molested children might not readily reveal what had happened to them. Investigators, therefore, needed to do two fundamental things to join the ranks of the exciting new child protection network. First, use creative and persistent methods to help the child reveal abuse, and second, convince others that the child must be believed, even if some of the story sounded implausible.

At that time such an approach seemed beyond reproach because the problem of abused children was that they were so often reluctant to alert outsiders to what was happening in the family. Reduced to its essence, the one-way street we are referring to says, "Try real hard to get the child to describe abuse. Those children who have been molested need this kind of help to reveal the truth. Those who have not been abused will never make a false accusation."

The belief that children would never make false statements about sexual abuse became an article of faith among the new child sexual abuse specialists from law enforcement, child protection and mental health. Psychiatrist Roland Summit was a leading figure who more than any other single person became a spokesperson for the movement. His 1983 article, *The Child Sexual Abuse Accommodation Syndrome,* offers us a window into the thinking of the time. In that article he expressed a consensus that had developed amongst the founders of the sexual abuse prevention movement. Summit wrote that

> Acceptance and validation are crucial to the psychological survival of the victim...The validation of the child's perception of reality...even the emotional survival of the child may all depend on the knowledge and skill of the clinical advocate. Every clinician must be capable of understanding and articulating the position of the child in the prevailing adult imbalance of credibility...Children need an adult clinical advocate to translate the child's world into an adult-acceptable language...the more illogical and incredible the intiation scene might seem to adults, the more likely it is that the child's plain-

> tive description is valid...The specialist must help mobilize skeptical caretakers into a position of belief, acceptance, support and protection of the child. (p. 179)

Readers of Summit's article were taught, then, that if a child made an accusation, anything less than immediate and uncritical acceptance of the accusation would be badly out of touch with this new movement to protect children from sexual abuse. Once a child claimed abuse, vigorous investigation was not really necessary to determine whether or not abuse had actually occurred. This was because, as Summit wrote, "It has become a maxim among child sexual abuse intervention counselors and investigators that children never fabricate the kinds of explicit sexual manipulations they divulge in complaints or interrogations" (p. 191)

Such ideas became dogma not only for mental health professionals developing a special interest in sexual abuse of children but also for investigators from police and child protection agencies. Workshops on sexual abuse investigation and therapy promoted the feeling that a competent, sensitive and up-to-date professional would naturally accept an accusation as true, since "children never fabricate...explicit sexual manipulations" (p. 191). Under such pressures, it was easy to feel that every case labeled "substantiated" was evidence of one's professional competence and concern for children.

The idea that children would never describe sexual abuse unless it really happened brought a glorious simplicity to the difficult task of investigating such a charge. Trained to believe that molested children may be hesitant to reveal abuse (which is true) and non-molested children "never fabricate" (which is *not* true, especially if the child is encouraged by an adult) interviewers would naturally conclude that both child protection and justice would be promoted by using techniques designed to help, even prod, a child to reveal past sexual abuse.

Leading questions, for example, that suggested that abuse had occurred, coupled with positive reinforcement for such statements, would help molest victims reveal their abuse. Non-molested children would simply repeat their denials of any abuse, no matter how much the interviewer reassured the child that it was "alright to tell."

Such ideas conflicted with long established scientific knowledge about child development, memory, and suggestibility. All human beings are suggestible and children are quite obviously even more vulnerable to influence than adults. There is considerable irony in the fact that those who should have been the most familiar with this knowledge—mental health professionals—were the ones who persuaded police and child protection agencies that children would never say untrue things about sex, no matter how they were interviewed.

Today the publicity given to cases in which children have obviously been led to make untrue accusations, such as the McMartin preschool case, have alerted even the general public to the problems of such an approach. Methods touted in the early 1980's as being creative, such as the use of "anatomically correct" dolls complete with pubic hair, penises and vaginal openings, are now recognized as potential contaminators of the child's memory, especially if combined with leading and suggestive questioning which broadcasts to the child what the interviewer suspects. Critics of current police and child protection interview methods have also pointed out that the much touted need to "believe" the child is also a one way street: the child is believed if an accusation is made but *not* believed if abuse is denied.

But when the movement was new, the reformers' exclusive focus on how to help the child disclose abuse seemed beyond reproach because both the founders of the movement and their students gave no thought to the potential problem of false accusations. Filled with therapeutic zeal, the new movement saw no need for things like neutrality or objectivity.

It will be instructive to look in more detail at how police and child protection workers learn to adopt these mistaken ideas and methods, and one program in particular has been a leading force.

PARENTS UNITED LEADS THE WAY

Since its origins in the Juvenile Probation Department of Santa Clara County, California, Parents United has trained thousands of police, social workers, and therapists to ignore the crucial differences between legitimate investigation and legitimate therapy. As its *Child Sexual Abuse Treatment Program* (CSATP) train-

ing manual makes clear, police should see themselves as treatment facilitators, and therapists should play a key role in abuse investigations. Workshop attendees learn how "the police use CSATP as a resource to help obtain confessions..." And while therapists were thus engaged in activities normally considered a part of police work, the police would be busy trying to act like therapists.

> We explain...that there is help...from Parents United...The officer interrogates the victim...we want them to know that they are victims and haven't done anything wrong...the children may deny it to us at first. Then we approach them with, 'Daddy may have a sickness...You would want him to get help for any of these things that are wrong, wouldn't you?...We've been told that maybe Daddy has a little sickness in his head. (p. 117)

So sure of themselves were the founders of Parents United that they saw no need to allow an investigation of the facts to get in the way of immediate therapy for the child and the family, and the cooperative San Jose Police department got in step.

> We [police investigators] want to get the family hooked into the CSATP as soon as possible...A volunteer will pick up the mother and victim...There never is any question that they will make a connection...with CSATP. We let them know that this is part of the way they will cooperate with us. (p. 117)

Notice that the even though the accusation of abuse has only just been reported to the police, and no investigation has validated anything, the child is referred to as the "victim" and abuse is to be *assumed* rather than investigated. Once the child is in treatment, where the therapist will help the child recover from the assumed trauma of the assumed abuse, all that is necessary to complete the case is to get a confession. As the CSATP manual states,

> Sometimes a man won't come in...the department must use whatever it has available to...get a confession...There are generally two kinds of fathers, the ones who...confess everything...and the others who deny. (p. 117, 118)

Some idea of the certitude of the founders of the sexual abuse prevention movement can be gleaned by how quickly they felt a case could be resolved.

> The process of investigation and connecting the family to the CSATP is compressed into a few hours. We get a confession from the father, he is persuaded to stay out of the home and not have contact with this child, the connection to CSATP ...is made, the police go right to the district attorney with the evidence and a complaint is filed. (p. 119)

Here we have, in distilled form, the essence of the problem which still plagues the system entrusted to investigate and prosecute child sexual abuse. Investigators see themselves as defenders of children and seek to corroborate the charges rather than evaluate them. Despite the clear indications that the model promoted by Parents United and other similar programs needs an overhaul, today's police investigators, child protection caseworkers, and prosecutors continue to be trained in this same model.

PLAY THERAPY AS AN INVESTIGATIVE TOOL

At the training seminars that spread rapidly during the 1980's, therapists and counselors were in attendance alongside police and child protection workers. They also wanted to join in the fight against sexual abuse and everyone assumed that child therapists were uniquely qualified to help children disclose abuse.

If the ideas of psychiatrist Roland Summit exemplify the philosophy that assumed that false allegations were impossible, the influence of social worker Kee MacFarlane was equally important in promoting methods intended to help the child reveal past abuse and describe it in enough detail to ensure successful prosecution of the abuser.

Despite her not being a licensed therapist, MacFarlane's workshop demonstrations involving handpuppets that would "speak for the child" received unreserved praise. She was in demand across the country. To the play therapist's traditional use of dolls, puppets, drawings, and friendly conversation she added an unrelenting determination to help the child "tell the yucky secrets." Her iron-fist-in-a-velvet-glove style captured the hearts and minds of the new child sexual abuse investigators, prosecutors and therapists who attended her many training workshops. When it came to asking a child about sexual abuse, she simply wouldn't take "no" for an answer.

While most of the thousands of taped child interviews we have studied in sexual abuse accusations have shown a pattern of leading and suggestive questioning, none have demonstrated the kind of doggedness demonstrated in the McMartin tapes. Especially fond of hand puppets, MacFarlane in a voice to match the character of the puppet on her own hand urges the puppet on the child's hand to tell the secrets. The "secret machine" (video camera), she assures the child, will transport the secret through the cable and out of his or her life. The child is told that he or she will feel ever so much better, and that parents will be ever so proud. The idea behind such methods is that by speaking through the puppets, the child will feel that "someone else" is disobeying the abuser's command "not to tell." This will allow the child to feel safe enough to both reveal past abuse and recover from the trauma. Getting out the secret, in other words, simultaneously seals the case and heals the child.

Such methods assume, of course, that the child has been abused. MacFarlane's tactics were the result of a refusal to consider that the allegations might not be true, that the child had not revealed a secret because there might be no secret to tell. This tendency to assume an accusation is true is the main legacy which still haunts our current investigative system.

The following excerpt is from one of MacFarlane's interviews in the McMartin case. The child is an eight-year-old boy who had last been to the preschool at age four. At MacFarlane's suggestion, he has a Pac-man puppet on one hand and he is asked about Ray Buckey, the prime suspect in the case. It was videotaped interviews like this one which convinced the McMartin jury that those children who eventually claimed abuse happened at the school only did so because of their manipulation by interviewers.

> *MacFarlane*: Here's a hard question I don't know if you know the answer to. We'll see how smart you are, Pac-man. Did you ever see anything come out of Mr. Ray's wiener. Do you remember that?
>
> *Child:* [no response]
>
> *MacFarlane:* Can you remember back that far? We'll see how...good your brain is working today, Pac-man.
>
> *Child:* [Shifts puppet, but says nothing.]

MacFarlane: Is that a yes?

Child: [Nods puppet]

MacFarlane: Well, you're smart. Now let's see if we can figure out what it was. I wonder if you can point to something of what color it was.

Child: [Tries to pick up a pointer with the Pac-man's mouth]

MacFarlane: Let me get your pen here. [Puts a pointer in Pac-man's mouth.]

Child: It was...

MacFarlane: Let's see what color it was.

Child: [Uses Pac-man's hand to point to the Pac-man puppet.]

MacFarlane: Oh, you're pointing to yourself. That must be yellow.

Child: [Nods puppet yes.]

MacFarlane: You're smart to point to yourself. What did it feel like? Was it like water? Or something else?

Child: Um, what?

MacFarlane: The stuff that came out. Let me try. I'll try a different question on you. We'll try to figure out what the stuff tastes like. We're going to try and figure out if it tastes good.

Child: He never did that to [me], I don't think.

MacFarlane: Oh, well, Pac-man, would you know what it tastes like? Would you think it tastes like candy...

Child: I think it would taste like yucky ants.

MacFarlane: Yucky ants. Whoa. That would be kind of yucky. I don't think it would taste like...you don't think it would taste like strawberries or anything good?

Child: No.

MacFarlane: Oh, think it would sort...do you think that would be sticky, like sticky, yucky ants?

Child: A little.

While most child abuse investigators would now admit that such methods are overly leading and suggestive, the basic pattern laid down by MacFarlane and others persists to this day. Children are still interviewed in play therapy settings, where drawings, dolls, and puppets are used ostensibly as memory aids for past events. Children are still asked to use such playthings to demonstrate what happened.

Today's interviews also frequently demonstrate that the "believe the child" doctrine so popular among child protection advocates is very selective. Regardless of how suggestive an interview might be, eventual statements of abuse are believed, but statements by the child that abuse has not occurred are *not* believed. The child is said to be "in denial."

All too often, such children are then sent to a therapist known by law enforcement and child protection officials to be a "specialist" in child sexual abuse. A therapist, in other words, who will also assume that the child has been sexually abused and needs professional help to decribe what happened. In a later chapter we will more fully describe how such therapists become investigators for the police but ones who are held to none of the professional standards that responsible investigators should follow.

BRINGING THE DOCTORS ON BOARD

The reformers who so fervently created today's system of investigating alleged child sexual abuse recognized that the lack of any physical evidence would be a major stumbling block in the successful prosecution of many cases. They feared that too many cases would hinge on the word of a child against the word of an adult. How much more powerful their efforts would be if medical examiners were able to determine scientifically whether or not the child had been abused.

What was needed was physical proof from the anal/genital examination of the child, the kind of hard, medical evidence akin to x-ray evidence of old, healed bone fractures which in the 1960's had allowed physical abuse of children to be more easily recognized and more successfully prosecuted.

In a short time, physicians and nurses working for newly established "sex

abuse examining teams" were claiming to have such hard evidence. In Chapter Four, we will describe how some examiners began testifying that they had found subtle indicators of prior abuse. We will also describe the complete lack of scientific evidence to support such claims. Especially disturbing was the ease with which a new community of examiners was recruited, willing to offer testimony that had no scientific support.

IDEAS HAVE CONSEQUENCES

If the child sexual abuse prevention movement was created from fundamentally mistaken ideas and then developed faulty methods based on such thinking, the evidence should be apparent in the cases. Neither theoretical debates nor attempted laboratory simulations will substitute for an in-depth look at what actually happens in real life cases.

CHAPTER TWO

EVIDENCE FROM THE FIELD

DESPITE TODAY'S GREATER awareness that a child's accusation of sexual abuse is sometimes the product of adult influence rather than actual molestation, it is still true that judges and juries are likely to come to each case with a predisposition to "believe the child." They assume that children would have no reason to lie about such things, would have no reason to send an innocent father to prison, would have no way to know about sex in detail unless it had been forced on them.

Over the past decade, a considerable body of knowledge has emerged from the study of actual cases. While laboratory studies of memory and suggestibility are important, and will be discussed in the next chapter, the information contained in real-life cases is even more compelling.

STUDYING THE BEST AND THE BRIGHTEST: THE MCMARTIN CASE

Because the leading figures in the McMartin case, from law enforcement, social work, and mental health, were role models for thousands of professionals across the country, a study of the techniques used in the case will tell us a good deal about methods that have been adopted by police, social workers, and therapists across the country. If any example illustrates the work of "the best and the brightest" in the sexual abuse prevention movement, it is the McMartin case.

According to police records, when Judy Johnson noticed that her two-year, nine-month-old son, Matthew (not his real name), was complaining of pain and was scratching his anus—especially at bedtime—she telephoned her pediatrician. He told her the symptoms sounded like pinworms, a common childhood problem.

To make a diagnosis of pinworms is very easy, and does not involve any painful or invasive procedures. Sometimes the worms can simply be observed around the anus or in a stool sample. Or a piece of cellophane tape can be placed on the anus, removed and then placed under a microscope. If pinworm eggs are seen, the diagnosis is made.

In the morning when Matthew was taken to be examined his mother was convinced that something far more ominous than pinworms was going on. She thought her son had been sodomized. Her suspicion, and the unprofessional response by the law enforcement, mental health and medical professionals who handled the case, led to the longest and most expensive criminal investigation and trial in United States history. Worst of all, the same mistakes, with the same results, continue to happen.

Judy Johnson not only believed her son was being sodomized but also believed she knew who was doing it. Ray Buckey, grandson of the founder of the McMartin preschool, was the only male in contact with Matthew. While Buckey's grandmother had founded the school, it was now run by his mother, and his sister also taught there along with several other women. After more than a decade in the community of Manhattan Beach, the McMartin preschool enjoyed an excellent reputation.

Tragically, when Matthew was examined, the doctor who was available failed to look for pinworms. He noted "slight redness" around the anus, a finding so common in children that it certainly was not evidence of abuse. His mother, nonetheless, said she had suspected sodomy for several months because of Matthew's complaints and his scratching. She said she had once noticed a small amount of blood, but did not have him examined. Instead she repeatedly asked him if anyone had hurt him.

Because of Judy Johnson's suspicions, the doctor filed a report with the police. Arrangements were made to examine Matthew again, this time by a medical and psychiatric team recently formed at UCLA to help spearhead the new sexual abuse prevention movement. His mother told the UCLA team that Matthew was telling her that his teacher Ray had "taken his temperature," but she failed to tell the doctors that she had been questioning the child for months.

In the five days since his first medical examination, Matthew, according to his mother, was telling more about the school. Mr. Ray had "often tied him up, put [a] hairdryer hood over his face, often pulled at [his] clothes and hair," and "took photos of the children." Also, "it was Matthew's job to wipe off Eric Robert's [not his real name] genital areas."

Even though they tried to get him to corroborate his mother's suspicions,

interviewers were unable to get Matthew to repeat these statements. This should have raised the question of whether Judy Johnson was a reliable historian but such skepticism was not very likely at newly organized teams like the one at UCLA. When they examined Matthew and found his anus to be "reddened and excoriated" they were ready to believe her suspicions were well founded. Once again, no one thought to test him for pinworms.

Despite the fact that no professional had heard any description of abuse from Matthew, despite the fact that the physical findings were completely non-specific, and that there had been no testing for the most likely cause (pinworms) of his itching, the UCLA team nonetheless told the police, "Staff impression in reviewing history above and physical exam feel that this child was sodomized."

This is how the the McMartin case, which eventually ruined so many innocent persons, started. Matthew was now officially a molested child because the experts at UCLA said so, and because the police trusted the experts.

To these same experts, it seemed obvious that Matthew needed help in becoming better able to describe the abuse which they were sure had taken place. Play therapy would help him work through the trauma, and further disclosures from him would answer the question of whether or not other children had also been abused, and whether or not other perpetrators were involved. Over and over, he was asked not only by his therapist, but by his mother and by police investigators to talk about what Mr. Ray had done to him. By this time he had not reached the ripe old age of three.

Gradually, Matthew did indeed start to make accusations. He eventually accused his father, as well as a member of the Los Angeles County Board of Supervisors whom he had never met but had seen on television.

It is not always easy to obtain the evidence that speaks to whether a child is being influenced by adults, but it is vital in every case that all records that touch on such potential influence be obtained and thoroughly studied. In Chapter Eight we will address in detail how such records should be obtained. The following example illustrates the importance of studying what happens in therapy for children who are assumed to be molest victims. As Matthew's therapist, who was allowing the mother to be present, noted,

> At no time was there any flow of conversation about the alleged molestation, although Mrs. Johson mentioned the name of the accused perpetrator several times, as well as made comments about the nursery school and related events ....Mrs. Johnson was able to translate most of what he said, although she noted that there were some new phrases he used which she did not understand. *She speculated that these are phrases spoken by or otherwise related to Matthew's experiences with the accused molester.* [emphasis added]

Notes from the next session a week later give further insight into the process taking place between Matthew and his mother.

> Matthew was not very talkative at all, and again, did not respond to verbal cues related to the alleged molestation... Mrs. Johnson indicated that she has had to rely on clues from any unusual behavior or words Matthew uses as possible triggers for conversation with him about what happened. It is in this manner that she has learned much of what happened from her son...Mrs. Johnson observed that Matthew's behaviors with the crayons and the toys were examples of the increased aggressiveness she noted at home. She feels this behavior is an expression of Matthew's anger about what has happened to him (the molestation). Mrs. Johnson mentioned that Matthew disrobes completely to go to the bathroom, and speculated that was what the accused molester had required Matthew to do. Mrs. Johnson and I talked about typical behaviors of 2 1/2-year-old children as including some of what Matthew was exhibiting, although I emphasized our interest in making as accurate an assessment as possible for Matthew's own particular situation.

Judy Johnson took Matthew out of this therapy after just a few sessions, but by this time, the police, with what they believed was clear medical and psychiatric proof of abuse, were busy questioning dozens of other children from the school. Investigators eventually went on to make every mistake conceivable, including writing a letter to parents telling them that an investigation into possible sexual abuse at the school was underway. They should have realized that this would guarantee a rumor mill.

But during that summer and fall of 1983 the police were not having much

success getting the other children to reveal any abuse at the McMartin school. With nothing beyond Judy Johnson's suspicions and a medical examination of Matthew which was hardly conclusive, the case seemed headed for oblivion.

For a number of professionals involved in the case this was frustrating indeed for they were some of the very persons at the forefront of the exciting new developments in child sexual abuse prevention. Los Angeles County prosecutor Jean Matusinka, for example, was not about to let the case be dropped. Besides, she knew just the person with the skills necessary to help the children admit that some "bad touching" was taking place at the McMartin school.

That person was social worker Kee MacFarlane. She had recently come from the National Center on Child Abuse and Neglect in Washington, D.C. to work at Los Angeles' Children's Institute International (CII). More than anyone else, she had promoted the use of dolls and puppets as play devices that would allow molested children to reveal their abuse. Despite not being licensed as a clinical social worker, MacFarlane had already taught thousands of other professionals from mental health, law enforcement and child protection to use puppets and dolls when interviewing children about possible sexual abuse. She was considered the best in the business.

When I (Coleman) later had a chance to study the videotapes of her interviews with the children who had attended the McMartin preschool, I agreed that she was indeed the best in the business, the business, that is, of manipulating children into claiming abuse with no apparent concern for the truth.

MacFarlane and her proteges interviewed not only the few dozen four-year-olds who until recently had been at the McMartin program, but the hundreds of other children who had attended as far back as a decade ago. Every interview was videotaped, and MacFarlane concluded that every one of the 400 questioned had been sexually abused by the McMartin staff. She also reasoned that if "Mr Ray" had been doing this for so long he must have had help. The entire school staff of seven (Ray Buckey was the only male) had, MacFarlane believed, molested hundreds of children in a manner so demonically clever that no one suspected anything until Judy Johnson noticed her son Matthew scratching his anus.

Manhattan Beach police investigator Jane Hoag was apparently satisfied that

the experts were completely trustworthy. She apparently saw no need to independently evaluate the accusations which were now pouring out of CII interviews. In fact there was no need even to review the tapes of what MacFarlane was doing. Instead, MacFarlane's written summaries were simply plugged into Hoag's reports, creating the false impression that *police investigation* had produced each new and increasingly startling allegation.

My viewing of the CII videotaped interviews made it very clear that not a single child was speaking about abuse from actual memory of events. Instead, each child was being prodded and trained to confirm the interviewer's bias. By that time I had studied many leading and suggestive video or audio taped interviews from other cases, but I was nonetheless shocked at the brazen nature of what unfolded before me as I watched the CII videotapes.

Given the limits of this slim volume, we must restrict ourselves to just one more example from the McMartin tapes. We have chosen the very first CII interview, done on November 1, 1983, because it shows that *MacFarlane made up her mind that the McMartin staff were all child molesters before she had interviewed a single child.*

The first child to be interviewed was a four-year-old whom we'll call Kathy. After some play with hand puppets, MacFarlane began to draw pictures of both adults and children, and asked Kathy to name all the body parts. Next, MacFarlane brought out the so-called anatomically correct dolls that have penises, vaginas, anuses, pubic hair and breasts. The use of these dolls, as well as hand puppets, which could "speak for the child" and thereby help the child remember and overcome fears of disclosure of abuse, had helped MacFarlane establish her rapidly growing reputation. Kathy was asked whether or not she had ever seen a naked man or a naked lady before. "No," she responded. Asked who her teacher was and if she liked him, she said she didn't because he was bad.

> *MacFarlane:* Why was he bad?
>
> *Kathy:* Cause my mom thinks he tied up kids.
>
> *M:* Did you ever see him do that to any of your friends?
>
> *K:* No.

M: You never saw him do that?

K: No.

While it is obvious that Kathy should have at this point in the interview been helped to understand that it was important to talk about what *she* had seen at the school, and not what her mother or anyone else might have said, MacFarlane instead pushed on by asking Kathy to "play with the Mr. Ray doll." Then,

M: When you were in school, did anybody ever take your dress off?

K: No.

M: No? Did somebody tell you not to talk about it?

K: [Nods yes]

M: Yeah, is that why you have a hard time telling me...Who told you not to talk to me about it?

K. Ray, my teacher Ray.

M: What did he say?

K: I don't know.

M: Did he say what would happen to you if you talked to me...What did he say?

K: I don't know.

M: What do you think would happen?...Do you think something bad would happen to you if you talk to me?

K: I don't know.

M: You can show with the dolls and you don't even have to talk.

Kathy said she didn't want to talk any more, so MacFarlane, speaking through a doll, continued:

M: It's not nice to have somebody naked. It's not my fault somebody made me. Who did?

K: He did.

M: Who? Somebody made her.

Receiving no name from Kathy, MacFarlane (as the doll) asked:

> *M:* Show me with the dolls if you saw anybody's dick at school?
>
> *K:* No.
>
> *M:* Try. If you can tell me, I'm an ok person to tell. Then you won't have to tell again.
>
> *K:* I remember climbing on the slide.
>
> *M:* That's good. You can show me with the dolls. Put it on a movie and anybody who wants to know can watch the movie. This will be Ray.
>
> *K:* Pull his pants up. [The dolls, conveniently, were already naked.]
>
> *M:* What other kids?

Most of the names Kathy gave did not match any children who attended with her, and then she said, "This is a game, I'll tie you up and I'll leave you there for 100 years."

Kathy had already told MacFarlane that the reason she knew Mr. Ray was bad was because her mother told her he was tieing up kids. She had never seen anything like this herself. But whether it was coincidence, or because Kathy's mother had said something to MacFarlane, she (MacFarlane) handed Kathy some string, and said:

> *M:* Now who gets tied up?
>
> *K:* No one gets tied up.
>
> *M:* Who do you remember, who goes first?
>
> *K:* Kathy.
>
> *M:* What do we tie up?
>
> *K:* How about?...[the leg of a chair]
>
> *M:* You mean you got tied to something? What?
>
> *K:* A bar.
>
> *M:* In the classroom? You mean a pole or something? Do you remember where is was?

K: Yeah, it was outside.

M: That was good. [Helps her tie a doll to a chair with the string.] Was it inside or outside?

K: Inside [still tying a child doll to the chair]

M: Here's Ray, here we go. Now what? Then what happened?

K: He was untying it.

M: Did he do anything while you were tied up?

K: No.

M: You can show us. Did he do anything while you were tied up?

K: No.

M: Nothing? Just looked? Did you have your clothes on?

K: Yeah.

M: What did he say while you were tied up?

K: Go to your chair.

M: Did the other kids get tied up?

K: Yeah.

M: A pole or something else?

K: Something else.

M: Anybody's clothes get taken off?

K: No.

M: No?

K: Yeah.

M: Who takes them off?

K: Ray [Kathy is undressing a doll.]

M: Whose clothes did he take off?

K: Jennifer and Allison, that's all.

M: Then what happened? Jennifer got tied up. What did she get tied to?

K: A pole.

M: Just the same as you Kathy?

K: Like this, but she's up [ties doll upside down to leg of chair].

M: She didn't have any clothes on either?

K: No. Pretend she's tied up. [Ties leg to chair.]

M: What about her hands?

K: Pretend she's tied up. [Wraps string around doll a number of times.]

M: Then what happened? Did anyone touch Jennifer like in the vagina?

K: Yeah.

M: Show me.

K: [Points to chest and vagina.]

M: Anything else?

K: Bottom.

M: What else do you remember?

K: Then she got back on her feet.

M: How about other kids?

K: A big mommy came and tied up Ray.

M: Is that the truth?

K: No, it's just a story.

M: How about the part with Jennifer, is that the truth?

K: All of it is a story.

M: I thought we were remembering. Maybe you're afraid to tell me. Are you afraid?

K: I don't remember.

M: Remember what happened to Kathy? Remember you told your mommy?

K: Kathy got tied up.

M: That's not a story, right? That happened. Do you remember anybody touching you like Jennifer?

K: [Nods yes.]

M: Show me. It's easy.

K: [Points to vagina.]

M: How about tickling, ever play a tickle game?

K: [Tickles under the doll's arm.]

M: Any other parts get tickled?

K: I don't remember the rest.

Banging the dolls on the table, MacFarlane then demonstrated with the dolls how people who touch children should be treated, and went on:

M: You showed me that Ray touched you. Was anything ever put up inside Kathy, in your crotch?

K: No.

M: Are you still afraid to tell me?

K: No.

M: What will happen if you talk about this stuff?

K: I want to go downstairs.

M: Anything else you want to tell me. Anything else? Did anything hurt?.

K: No.

M: How do you feel about Ray?

K: I think he's dumb.

M: Did you like him before? Was he fun?

K: I thought he was good at first.

M: Then what made you change your mind?

K: [Inaudible.]

M: Did you like to play the game of being tied up?

K: No.

M: How come? Did it scare you? When you were tied up is that when you got touched?

K: [Nods yes.]

M: How did that feel?

K: Felt dumb.

M: Show me.

K: [Points to crotch.]

M: It didn't go up inside of you?

K: No.

M: Just on the outside? How about the back? Did that hole get touched too?

K: No.

M: Anything go inside?

K: No.

M: Think anything else beside a finger went inside? [Gives Kathy the "Ray" doll]

K: Pushed it.

M: What?

K: The belly button.

M: Think the finger was the only thing?

K: I didn't see it, my momma saw it and she told me.

M: Was she there in the classroom?

K: She told me. Ray told my momma and momma told me.

M: What did Ray tell your mommy?

K: [no answer]

M: Don't remember? The things you showed me with your finger, are they what you remember happened to you?

K: I want to go

What are we to make of this travesty, of an interview in which the interviewer ignores the child's statement that she saw nothing happen, that *her mother* told her bad things happened, and goes on to train the child with a relentless string of leading and suggestive questions? MacFarlane was apparently so determined to find abuse that she was blind to what she was doing.

That she would videotape all four hundred interviews is the best proof that she didn't understand the nature of how she was training the children.

Even more significant is the fact that leaders of the child sexual abuse prevention movement came to her defense, accusing critics of being insensitive to the needs of children and raising the spectre of a "backlash" that would take our society back to the days when sexual abuse was ignored. Psychiatrist Roland Summit defended MacFarlane's methods, calling them "state of the art" even though he had to admit years later that he never viewed any of the tapes.

I (Coleman) eventually watched sixty hours of these interviews. In each one, the child was told that bad things happened at the school, that the grownups knew about it, and that the kids with the good memories were telling all the "yucky secrets" and making their parents very proud. The videocamera, they were told, was a "secret machine." The more secrets they revealed the better they would feel. The older children were told that they had a special responsibilty to help the younger ones by talking about what Mr. Ray and the other teachers had done.

Their unquestioning faith in the mental health experts was so complete that police investigators never watched any of the videotapes. Nor did any of the parents. With each child, MacFarlane would inform parents that their son or daughter had revealed being abused at the school. MacFarlane would then cue the tape to the spot where the child made an accusation and show it to the parents. Sadly, no parents ever insisted on watching the entire tape so they never saw how their child was manipulated.

Completely trusting in MacFarlane, dozens of parents dutifully took their children to therapists recommended because of their special interest in sexually abused children. Week after week the children were taught that they had been victims of abuse and week after week they were expected to talk about sex between themselves and the teachers at the school.

Most parents came to believe with every fiber of their being that their children had been horribly abused on a regular basis. In one way or another they found ways to dismiss the question of how so many parents could fail to notice something wrong until Judy Johnson went to the police. Los Angeles County prosecutors, just like police investigator Jane Hoag and the parents, also failed

to watch any of these tapes until after enormous publicity had convinced the public that all were guilty. When the McMartin Seven were indicted, *not a minute of any interview* had been studied by anyone from law enforcement. Over a decade later in trials throughout the country, showing the jury the importance of such interviews is still the most crucial aspect of getting at the truth.

After the longest preliminary hearing in United States history (it lasted eighteen months), all seven McMartin defendants were indicted, but only two weeks later newly elected District Attorney Ira Reiner dropped the charges against five of the seven, stating that there was no evidence to prosecute. He never explained how the evidence against the remaining two, Ray Buckey and his mother, Peggy McMartin Buckey, was different, and he never explained why it took so long to admit the lack of evidence against the others.

The fact that in two trials not a single charge was upheld against the McMartin defendants was not surprising to anyone who had direct knowledge of the case. There never was a case: not a single child made an accusation until thoroughly manipulated by interviewers; not a single child had any medical evidence of sexual abuse; not a single shred of physical evidence ever supported the continually growing accusations that ultimately included allegations of murder, ritual animal slaughter, airplane rides to secret hideaways, etc. Some children, to give an example which is but one of hundreds, claimed they were taken to a graveyard, where they were forced to dig up bodies. Asked how the dirt was removed, a four-year-old responded, "I put the dirt in my pocket."

The jury saw on the tapes the outrageous manner in which the children were manipulated, charmed, and cajoled by MacFarlane, and they knew that months of therapy, based on the assumption of abuse, had followed. They also learned that the children had exchanged stories, as had the parents. They realized that the children who came to court and who described abuse were indeed victims, but not of Ray Buckey and the teachers. They were victims of the indoctrination initially foisted on them by Kee MacFarlane and then reinforced by therapists.

It would be a mistake, however, to believe that the McMartin case was bound to end in acquittals. Many other cases have been filled with the same glaring mistakes but have ended in guilty verdicts. The widely publicized con-

viction of Kelly Michaels is one example. She is the young preschool teacher said to have molested children in the schoolyard in front of the entire school after having smeared peanut butter all over them. She served five years in prison before an appeals court overturned the conviction.

This is a pattern seen over and over. The jury's verdict may in one case be based on the evidence, and in the next based on emotion. And for every such case that makes the newspapers, there are thousands that are quietly taking place behind the scenes.

The best chance for a just ruling is if the trier-of-fact (*i.e.*, the judge or jury) learns about the interviewing methods used with the child in the particular case in question. If leading and suggestive interviews have occurred, it is important to explain that such interview methods have been studied and found to cause children to become unreliable informants.

Because *fear* is a major reason why judges and juries may decide cases irrationally—fear of being "soft on child abuse"—the trier-of-fact needs to learn that others have taken a hard look at the evidence. And when they learn that some of those who have criticized certain methods of investigation are themselves from law enforcement, they will be more willing to judge each case on the evidence.

OFFICIAL STUDIES

Another important source of information comes from studies done by law enforcement or other official agencies, especially because they cannot be accused of being pro-defense.

The first was the work of Hubert Humphrey III (Humphrey), the Minnesota Attorney General, and came as a result of a case in Jordan, Minnesota that was much like the McMartin preschool case. It also involved many children accusing many adults of a fantastic variety of sexual and other criminal acts, including murder. Like McMartin, the allegations were recognized as unsupported as the evidence of how the children were questioned eventually was revealed. The main conclusion of the Attorney General was that the false statements from the children came from the interviewing methods of police, social work-

ers, and therapists. The children gradually learned what kinds of answers would satisfy their interviewers.

The same conclusion was reached by the California Attorney General in 1986 (Office of the Attorney General, State of California), who studied a series of cases in Bakersfield that eventually mushroomed into preposterous allegations of satanic, ritualized sexual abuse, murder, mayhem and infanticide. It was in one of these cases that I (Coleman) listened to the tape of a ten-year-old girl tearfully describe how she was made to plunge a knife into the abdomen of an infant, and then pass the knife to other children, who, she said, then murdered other infants.

None of this ever happened. Even the prosecution didn't believe many of the things the children said, especially when one of the children said that the molesters included the lead social worker on the case, the investigating police officer, and the prosecutor.

Just as in Minnesota, the California Attorney General concluded that investigators and therapists simply weren't satisfied until the children described abuse. Dozens of hours of tapes made it obvious why the children's allegations grew and grew. Each time a child succumbed to suggestive questioning and described some sort of sexual abuse, the interviewer made it clear that even more was expected. By the time the interviewers began asking them about masks and churches, the children were talking about murders, killing of animals and ritual mayhem.

The findings of the San Diego County Grand Jury provide further confirmation of the findings of the California and Minnesota Attorneys General, and are especially important because of the repeated evidence cited regarding the crucial role of therapists in these cases. The Grand Jury concluded:

> Therapy frequently is not used to its fullest treatment benefit but is an adjunct to develop evidence for the prosecution of child molestation cases...therapists have been used to encourage disclosures by children of events or perceived events...
>
> The best example of contamination...was the fact that the therapists were not only trying to treat the children but they were also attempting to be criminal investigators. The prosecutor asked the therapists to provide more disclosures of

> abuse...The parents were urging the children to provide more and more allegations that could be used for trial. The pressures on the children were enormous.
>
> Therapists can get children to say just about anything. When children initially say that nothing happened to them, a misguided therapist labels them as being in denial. Then "therapy" is sometimes continued for months or sometimes years until the children disclosed answers the therapists wanted to hear. (San Diego County Grand Jury, p. 15-18)

The San Diego County Grand Jury was convened because of widespread skepticism about the Dale Akiki case, which cost taxpayers a mere $2.3 million (McMartin cost Los Angeles taxpayers $16 million), and kept Akiki in jail two years and nine months (Ray Buckey spent five years in jail) before he was acquitted of all charges.

Suffering from multiple physical handicaps, Akiki helped care for children at a local church. Despite being unable to drive a car, he was nonetheless charged with having driven groups of children from the church to a mysterious house where he tortured and sexually abused them and then returned them to the church without anyone noticing anything wrong. Besides various "bad touches," children said he shot a child to death, threw another out a window, and even stabbed an elephant and a giraffe before drinking the blood.

What the jury quickly understood, however, was that the children said none of this until therapists started a series of highly suggestive interviews. After the case against Akiki had been dropped by the prosecutor for lack of evidence, another prosecutor, Mary Avery, decided to re-open the case. She was a founder of the local Child Abuse Prevention Foundation and a key member of the County ritual abuse task force. Under her leadership, the children were referred to hand-picked therapists known to have a special interest in helping children disclose abuse. Before they were done, the therapists' bills amounted to $850,000 and the children had been trained to make, and undoubtedly believe, wild allegations against Akiki. The parallels to McMartin are unquestionable.

The other case that embarrassed San Diego County child protection agencies was the case against Jim Wade. In May 1989 his eight-year-old daughter, Alicia, was forced to leave her bedroom through the window by a stranger

who subsequently raped her and returned her to her bedroom withouth her parents realizing anything was amiss. When Alicia told her parents what happened, they called the authorities and Alicia repeated the events to them.

The child abuse investigators refused to believe Alicia because they suspected her father. When she insisted that it was a stranger who had kidnapped and raped her, they removed her from the family and put her in a foster home.

They also placed her in therapy with Kathleen Goodfriend in the belief that Alicia needed help to tell the truth about what happened. For a long time she resisted the therapist's attempts to make her admit that her assailant was her father. Eventually, after thirteen months of prodding not only by Goodfriend but also a foster mother, Alicia named her father as the perpetrator.

The authorities were finally satisfied. Charges were filed against Wade, but then defense investigators found that a stain on Alicia's nightgown had never been analyzed. When this was done it was found to contain semen. Subsequent DNA analysis proved that Jim Wade did not rape his daughter.

Finally forced by this information to do some genuine investigation the police had no trouble locating the real culprit. He was a local man who had a prior conviction for sexual assault on a child. Had the authorities investigated what Alicia told them over and over, instead of assuming they knew the truth and then using a therapist to pry something out of a defenseless child, her assailant would have been quickly caught, tried, convicted, and punished.

The San Diego Grand Jury's recognition that therapists in many cases are being used improperly to influence a child's statements is immensely important. Our own study confirms that this problem is not at all uncommon. Many trials nonetheless go forward without the evidence of a therapist's influence ever being studied, let alone presented to the jury or judge. This is a critical mistake which we will more fully discuss in Chapter Eight.

HOW TO USE THE CASES AND THE STUDIES TO EDUCATE THE JURY

Many judges and jurors enter a case with a predisposition to assume guilt. This is natural: we all want to help children, and are disgusted at the idea of an adult using a child for sex. Also, without prior exposure to child sexual abuse

investigations, no one is likely to think about the possiblity that police, social workers, or therapists might be influencing the child's statements.

Those who have had an opportunity to study investigations know that suggestive interviews are common, not because child interviewers are deliberately trying to influence the child but because they are hoping to help children. Their training only serves to intensify the idea that helping the child means conducting an interview at the end of which the child has described abuse. Unaware of these circumstances, it is very easy for judge and jury to assume that children have no reason to allege sexual abuse unless it happened, and would lack sufficient sexual knowledge to describe abuse unless it had actually taken place.

If a trial is conducted in a manner that includes not only the testimony of the child and the accused, but also brings out the development of the child's statements over the course of the investigation, and does so in the context of the methods used by all those (including family members) who have questioned the child, a judge or jury has the best chance of finding the truth. We think of this as an *historical* approach because the jury evaluates not only sworn in-court statements of the child and other witnesses but also the historical evolution of their statements and behaviors, from the beginning of the case to the end.

This method requires calling as witnesses all the important figures in the case rather than focusing too heavily on the child's testimony vs. the denial of the accused. It also requires that the evidence which demonstrates the historical evolution of the case be discovered and presented in court. Such an approach will help convict the guilty and acquit the innocent.

In cases in which the child is a genuine victim, this method will demonstrate that the child has been telling his or her own story and has not been led to it. Taped interviews will prove that no one pressured the child to make the accusations, and other evidence will back up what the child has said.

If the child is not telling the truth the historical approach, which patiently shows how the child's statements have been influenced by the interviewing methods used with the child, offers the best chance to show why this is happening. The evidence of how the child has been led to say and believe things

that are not true requires exposing the behavior and motivation of persons who have influenced the child. Children, especially older ones, may indeed lie about sexual abuse but a more frequent problem is that they have succumbed to the agendas of adults, be it family members, biased investigators, or both. If the accused is innocent, these agendas and methods must become the major focus of the trial.

It is important as well to give judge and jury the benefit of lessons learned in the past decade. An effective way to use the findings from studies of actual cases, like those mentioned in this chapter, is to question expert witnesses about such data. This gives the jury an introduction to the important issues surrounding suggestibility of children. We cannot state strongly enough that this method should help convict guilty persons just as much as it helps acquit innocent ones. The *lack* of evidence of contamination of the child can only be shown if the issue is addressed in the trial.

To make this method most effective, it is necessary for the witness being cross-examined to be familiar with the studies discussed in this chapter. We recommend they be sent to the upcoming witness with a request that the material be read prior to testimony. Here is a brief example of the kind of cross-examination we recommend, in which a police officer or child protection caseworker is being cross examined by a defense attorney.

> *Q*- Do you consider yourself a skilled investigator of sexual abuse allegations?
>
> *A*- Yes.
>
> *Q*- And you have already summarized on direct examination your training and experience?
>
> *A*- Yes.
>
> *Q*- Do false accusations of sexual abuse sometimes occur?
>
> *A*- Yes.
>
> *Q*- Would it be harmful to a child to be part of a false accusation?
>
> *A*- Yes.
>
> *Q*- Based on your training and experience, how would it be harmful?

A- (Witness expounds; the more the better)

Q- What material have you studied, or experiences have you had, to convince you that false accusations sometimes happen?

A- (Witness lists sources)

Q- And I sent you some materials on that subject?

A- Yes.

Q- Have you read them?

A- Yes.

Q- Could you summarize, from your sources, how false accusations may come about?

A- (Witness will probably emphasize divorce/custody cases)

Q- But in the studies I sent to you, like the Minnesota and California Attorney General findings, as well as some of the prominent daycare cases, divorce wasn't involved was it?

A- No.

Q- Isn't the common factor that one or more adults question children in ways which suggest things to them?

A- Yes.

Q- And isn't it true that the studies show that those adults may be either family, or professionals such as police, social workers, or therapists?

A- Yes.

Q- Would you agree that it is important that investigators do their best to recognize which cases are true and which are false?

A- Yes.

Q- What should an investigator do or not do to promote an accurate outcome to an investigation?

A- Avoid leading questions, check out all leads, arrange for necessary examinations, etc.

Q- Would you agree that it is crucial that the investigator not

pre-judge the case?

A- Yes.

Q- What about tape recording of interviews with the child(ren)?

A- In our office, it is optional.

Q- Do you think an interviewer's memory, or a written summary, is an adequate substitute for a verbatim record of how the interview was conducted?

A- If the interviewer is careful, yes.

Q- In this case, did you make any of the mistakes which the studies pointed out can either create or fail to recognize a false allegation?

A- No.

Q- For example...

The witness is then taken through the development of the case, and the faulty investigation laid out for the jury through appropriate questioning. For example, the defense attorney should ask why tapes were not made, or were made only after one or more untaped interviews, why leading questions were used despite the evidence showing the dangers of such questions, and why the investigator failed to seek evidences of innocence as vigorously as evidence of guilt. These mistakes are exposed against the backdrop of evidence from the case studies discussed in this chapter.

This kind of cross examination of prosecution witnesses will work well not only with investigators, but with therapists as well. They often demonstrate the most egregious bias with regard to assuming that the accused is guilty, failing to read (or heed) studies about false allegations, assuming that any child brought to them is a genuine victim, and using leading and suggestive play techniques.

Prosecutors with valid cases have much to gain from the same historical approach which takes the jury through the development of the case and exposes the methods used from start to finish. If, for example, an expert witness for the defense has testified about reasons why children may make false accusations, question the witness about the evidence summarized in this chap-

ter which shows that while children sometimes make false accusations, this most often happens because adults have prodded them to do so, or have developed suspicions without any real evidence of abuse. Then ask the witness if any such pattern exists in this case. If the witness is not familiar with the details of this case, his or her credibility will be erased. If the witness is familiar with the investigation, it should be easy to show that the problems discussed in studies of false accusations are hardly relevant in a case where these mistakes have not been made.

If a child has been able to describe actual experiences during an investigation of alleged sexual abuse nothing will be more convincing to a jury than a record that proves that the child was not unduly influenced by police, social workers or therapists. We believe that the weight of studies, whether done in the laboratory or in the field, will help most jurors realize that those whose job it is to question children about their experiences have an obligation to use reponsible methods and have an obligation to preserve a record that proves they have not unduly influenced the child.

The mistakes of the past should have taught us that both the best interests of children and the cause of justice requires that child interviews be preserved on tape and made a central part of the trial. In this way juries do not have to guess about how a child was questioned, or take anyone's word for what happened. The only persons with anything to fear from this kind of in-depth, historical approach are those who have taken advantage of children, such as child molesters or attorneys trying to cover up the truth. So be it.

CHAPTER THREE

LABORATORY STUDIES ON THE SUGGESTIBILITY OF CHILDREN

AS WE HAVE already demonstrated, evaluating the reliability of a child's statements at a trial in light of the manner in which the child has already been questioned by parents, police, social workers or therapists is crucial. Jurors need to understand that children that have not been abused but have been influenced by leading interviews to make an accusation will usually believe in the allegation as surely as children who are genuine victims of abuse. The question usually is not whether the child is lying, but whether the child genuinely remembers real abuse on the one hand or whether on the other hand the child because of prior influences has come to make false statements.

In the last chapter we discussed evidence from real life cases which shows how improper methods can contaminate a child's memory. In this chapter, we will discuss information gleaned not from case examples, but from the more recent and equally important area of laboratory studies.

Data on suggestibility of children, and the fragile nature of memory for past events, has been available for decades. Not only children but adults as well can be profoundly influenced in their recollection of real events, and can also be led to describe, and believe in, events which never happened.

The new field of child sexual abuse investigation and prosecution has by and large chosen to ignore such data, and instead claimed to have laboratory data showing that children are *not* very susceptible to such contamination. We will summarize these claims, explain why they are poorly supported, and finally describe the studies that demonstrate that interviews with children may all too easily create evidence rather than discover it.

EARLY EVIDENCE

In 1900 French psychologist Alfred Binet, who later would become known worldwide because of his scales aimed at measuring intelligence, conducted one of the first studies on the suggestibility of children. A number of children were shown five objects for a total of ten seconds. One of the objects was a

button glued to poster board. Some of the children were simply asked to write down what they saw. This method of questioning relied upon free recall by the children.

Other children were asked a direct question: "How was the button attached to the board." A third group was asked a leading question: "Wasn't the button attached by a thread?" A fourth group was asked a highly misleading question: "What was the color of the thread that attached the button to the board?"

Binet found that the most accurate statements were from the children who used free recall. The greatest number of errors was found in children who were highly misled.

French courts first made use of this type of research in 1911. A young girl by the name of Cecile had been murdered. When initially asked if they knew the whereabouts of Cecile, two of her friends had denied knowing anything. Later that night one of the girls led the authorities to a spot where they had been playing. When Cecile's body was found the girls were repeatedly questioned in a suggestive manner and eventually named someone as Cecile's murderer.

J. Varendonck decided to conduct an experiment on the question of whether the children's identification was reliable. He spent a day at their school talking to students, asking them to describe the man who had appeared in the school yard earlier that morning. In fact, no such person existed. Seventeen of the twenty two children not only said they saw the man, but even gave his name, the color of his clothes, and other details that were all imagined (1911).

Another telling example comes from French psychologist Jean Piaget, a pioneer in the study of children's intellectual development. Until his adolescent years, Piaget says, he believed that he had nearly been kidnapped as a young child. He was saved by his nanny who was given a reward for her bravery. Piaget adds that he not only believed in the kidnapping; he could remember it.

Years later, however, the nanny confessed that she had made up the entire story so as not to be blamed for being late in returning with the child. Piaget concluded that his memory of the events, which he had never doubted, must have come from overhearing statements from the adults around him (1962)

One more example, this time from America, will suffice to show that such

scientific data on the suggestibility of children has existed for decades. W. Stern (1910) provides an early example of research designed to study not just whether children's memories could be contaminated, but *how* it happens. He conducted two experiments. In the first, children briefly observed a photograph and were then questioned in one of three ways. Some were simply asked what they had observed. This method is now termed "free recall." Others were asked direct questions about objects known to be in the photographs. A third group was asked misleading questions about objects which in fact were not in the photographs. The results were that free recall produced the fewest errors and misleading questions produced the most errors. Younger children made more errors than older children.

Stern's second experiment utilized the same three types of questioning methods, but this time had students watch a mock attack in which one student threatened another with a pistol. Once again, free recall provided the most accurate information.

Stern's major contribution was that he showed the crucial importance of the interviewer's behavior rather than simply focusing on the subject being interviewed. Suggestibility, in other words, was not simply a charateristic possessed to varying degrees by a person, but could also result from the interaction of two or more people.

ENTER THE CHILD PROTECTION MOVEMENT

As we have described in Chapter One, the founders of the sexual abuse prevention movement developed their ideas in an atmosphere of crusading zeal rather than thoughtful reform. Everyone's attention was so completely focused on the genuine problem of molested children who were hesitant to reveal their abuse that no one anticipated the possibility that false accusations could result from overly suggestive interviews. The attitude was a therapeutic one of helping children who had assumedly been abused rather the investigative one of determining, case by case, whether a child had been abused, and then helping those children who were genuine victims.

Once the reformers had succeeded in establishing programs across the

country, it was only a matter of time before investigative concerns would intrude themselves. In some cases, children were describing events that couldn't be true; in others they were contradicting each other. When, for example, one of the children in the McMartin case accused a member of the Los Angeles County Board of Supervisors after seeing him on television, it was clear that some children were making false accusations.

During the 1980's it gradually became clear to more and more people that children's accusations, despite the claims of the therapists and social workers who founded the sexual abuse prevention movement, should not always be assumed to be true. Defenders of the abuse prevention movement fought back by claiming to have scientific evidence that children were resistant to suggestive questioning in cases of alleged sexual abuse.

By far the most influential work was done by psychologist Gail Goodman (Goodman & Clarke-Steward, 1991). In one experiment she asked children aged three to seven to describe their experience of having blood drawn during a recent visit to a doctor. During her interview with each child she asked a leading question or two to see if the child's recollection was influenced. She concluded that children were quite resistant to influence, especially if interviewed in a kind way which made the child comfortable. In a similar experiment in which children had received innoculations and were later interviewed about the experience, she again drew the same conclusion.

Goodman inferred from these studies that children being questioned about sexual abuse were highly trustworthy, but it has become clear that she overlooked the concept of ecological validity. To be valid, a laboratory study must closely mimic the natural environment of what is being examined. Goodman's question or two, asked in a single interview, fell far short of what happens in real life sexual abuse cases. Moreover, not enough interviews were done, and they were not embedded in the atmosphere that pervades sexual abuse cases, where parents regularly question the child, therapists are hired to help the child disclose abuse, and the child is treated as a victim by all concerned.

Perhaps most important, Goodman knew the truth of each child's experience, and children giving incorrect answers were not reinforced by praise. In actual cases, investigators do not know what did or did not happen, but may

nonetheless assume abuse and mistakenly praise a child for describing abuse that never happened.

We believe that factors such as ecological validity were ignored by Goodman and others because they were trying to defend the sexual abuse prevention movement from the growing criticism of those who were questioning the idea that children were invulnerable to suggestion. While some lawyers, mental health professionals, and community groups had been raising questions since the early 1980's, when scientific researchers finally entered the debate by constructing a new generation of experiments their influence was significant.

THE SCIENTIFIC COMMUNITY FINALLY RESPONDS

By the end of the 1980's more and more professionals and laypersons recognized that false allegations of sexual abuse had become a major problem. As a result academic researchers began to study not just whether children could be influenced but also the specifics of just how it happened.

Those with direct knowledge of real life cases, such as defense attorneys, investigators, or mental health professionals hired as consultants, had by this time studied hundreds of audio and videotaped interviews and knew from such study the ways in which children might come to make false statements if adults questioned them in suggestive ways.

In trial after trial across the nation as well as in articles and speeches these professionals explained that children so influenced would easily come to a sincere belief that they could remember things which taped interviews showed were actually a product of repeatred encouragement to "tell the secrets."

But to gain access to such material one had to be a participant in the legal process, either as attorney, investigator, or expert witness. Defenders of the *status quo* routinely dismissed their critics as hired guns and insisted that their conclusions deserved no credibility.

The laboratory researchers who finally emerged in the 1980's were neither students of the sexual abuse prevention movement nor direct participants in legal cases. They had not studied first hand how children were being interviewed in legal cases, and had no knowledge of why police, social workers,

and therapists had the aggressive interviewing style so commonly seen in actual cases. However, the very distance of these researchers from the legal fray meant that when their results came in, defenders of the status quo would find it more difficult to ignore their findings.

Human development specialists W. S. Cassel and D. F. Bjorklund in 1992 conducted a study on kindergarten children concerning their memory of a stolen bicycle. They found that forty-two percent of the children changed their answers if after being asked a question it was asked again. They concluded that the children were changing their answers because they believed that their first answer was unacceptable.

Debra Poole and Lawrence White (1991) conducted a study on four-, six-, and eight-year-olds and also on a group of adults. The subjects viewed an ambiguous event and were then asked first a series of questions that elicited yes or no answers and then a series of open-ended questions. They found that repeated questioning requiring yes or no answers led the younger subjects to inaccuracies while repeated open-ended questions did not. The older children were not as susceptible to this technique. Poole and White concluded that repeated yes/no questions gave the children the idea that the interviewer wanted a different answer while the repeated open-ended question was taken as a request for more detail rather than a change of answer.

In 1993, Poole and White did a followup study in which children were found less consistent then adults on yes-no questions, less accurate in response to open-ended questions, and more likely to fabricate answers.

Stephen Moston of the University of Kent in England in 1987 conducted a study in which University volunteers talked to a group of children ranging from six years to adolescence. At the conclusion of the meeting, researchers asked the children sixteen questions about what they saw and heard, but half the questions were about untrue things. They were asked, for example, about what kind of tie was worn when in truth no one wore a tie.

Mosten found that in all age groups the likelihood of a child giving untrue information increased when questions were repeated. Six-year-olds changed twenty-one percent of their answers whereas adolescents only changed nine percent. Moston concluded that the children took the repeat of a question to

mean that the first answer was wrong. These percentages may not seem particularly striking until it is remembered that unlike real investigations where a child may be asked over and over in multiple interviews about the same allegation, Mosten only repeated the question once, and only interviewed the children one time.

English psychologists Helen Dent and Geoffrey Stephenson in 1979 tested the relative accuracy of free recall, general questions, and specific questions. Ten and eleven year old children watched a film concerning a car theft and were questioned immediately after the film, then a day later, two days later, two weeks later and finally two months later. Free recall produced the fewest correct answers but it also produced the fewest inaccuracies. Specific questions produced more correct answers but also more incorrect answers, proving that more information does not always mean more correct information.

In laboratory experiments such as these the questioners know which answers are true and which are false because the events the child is asked to remember are part of the experimental design. Investigators in legal cases do not have this luxury because they were of course not present at the time the alleged events took place. Having no independent way to know what is the truth, they may fall into the trap of assuming that more statements from the child means more of the truth is coming out. The work of Dent and Stephenson proves otherwise.

Numerous studies have been conducted on the impact of the relationship between the interviewer and the child. Cornell psychologist Stephen Ceci, for example, in 1993 read short stories to preschoolers and then showed them a series of illustrations. Next, an adult interviewer and then a seven-year-old child interviewer gave misleading information to the children. The children were significantly better at ignoring the misinformation and trusting their own memory when the misinformation came from another child than when it came from adults.

Responding to criticsm that her studies lacked sufficient ecological validity to say much about sexual abuse allegations, Gail Goodman has done further studies (Goodman, Wilson & Hazan, 1989) in which interview conditions mimicked at least somewhat more closely those of actual cases. For example, in

one study three and six year old children played with a male confederate that they did not know was part of an experiment. Four years later the children were questioned and told they were being interviewed about an important event. Seeking to instill some of the atmosphere that so often pervades actual sexual abuse allegations, the children were asked by the interviewer, ***Are you afraid?*** and told, ***You will feel better once you have told.*** The fifteen subjects were then asked leading questions: ***Had they been hugged or kissed? Had their picture been taken in the bathroom? Were they given a bath?***

Five children answered wrongly that they had been hugged or kissed. Two children answered wrongly that they had their picture taken in the bathroom. One child said that she had been given a bath. These results clearly show that even a few leading questions which tell the subject what the interviewer expects will produce false statements.

Everyone agrees that during a police investigation, the first interview with the child is crucial. In 1990 at the International Congress on Child Abuse and Neglect, Psychologists F. Petit, M. Fegan, and P .L. Howie presented the results of their study of the impact of initial interviewer attitudes on the reliability of children. Three- to five-year-olds watched a staged event and were interviewed two weeks later by differently trained inteviewers. Some interviewers (group one) were told the truth about the staged event while other interviewers (group two) were given no information about the event. Still other interviewers (group three) were given misinformation about the event. All interviewers were instructed to find out what occurred without using leading questions.

Children who were interviewed by group one gave the truest answers. Children interviewed by group three gave the least accurate answers. Children interviewed by group two fell in the middle. The children in all groups answered incorrectly to forty-one percent of the questions asked by interviewers who had been mislead.

Especially striking was the finding that all of the interviewers put a great deal of pressure on the children. Over thirty percent of their questions were leading and over fifty percent of the leading questions contained misinformation. Interviewers with misinformation were found to use four to five times the number of leading questions. Interviewers with no prior information started out by

using open ended questions but as the children told them some untrue things, the interviewers began to incorporate the misinformation. This led to an increasing use of leading questions which in turn led to more inaccurate information.

The implications of this study are extremely important. Even interviewers who come to a child without prior biases must be careful lest they be *contaminated by the child*, especially if the child has already been interviewed by others. The only way to minimize this problem is for each interviewer to learn as much as possible about interviews already conducted with that child.

Another implication is that the interview with the child is only one source of information. The results must be evaluated against other information. The sentimental notion that the child's statements are somehow sacrosanct is foolhardy. It will not help find the truth and is not in the best interest of children.

In 1989 child development specialists A. Clarke-Stewart, W. Thompson, and S. Lepore presented to the Society for Research on Child Development their study which questioned whether an interviewer's theory of an event influenced subsequent child testimony. Unlike the Petit, Fegan, and Howie study, they instructed interviewers to follow a predetermined questioning method. Five- and six-year-old children watched a janitor clean a room and then either clean a doll in a non-suggestive way or handle the doll roughly and in a sexual manner. The janitor would then reinforce his treatment of the doll with statements reflecting either normal cleaning or rough treatment.

The interviewers were divided into three categories. One group adopted the attitude that the doll was touched inappropriately and questions were designed to suggest this interpretation. The second group adopted the attitude that the doll was merely cleaned, and the third group sought neither to accuse nor to defend the janitor.

Seventy-five percent of the children interviewed in a way that suggested something different from what actually happened quickly changed their story to conform to the interviewer's expectations. When asked to interpret whether the touching of the doll was sexually suggestive or not, ninety percent agreed with the interviewer's theory, proving once again the profound influence of the interviewer's attitude on children's statements.

Jennifer S. Hart, Nancy W. Perry and associates (1996) conducted a research study to determine if the interviews given by social workers in the field took into account what had been learned from empirical research. They found that the majority of social workers failed to begin interviews with open-ended questions but instead relied upon specific, yes/no questions throughout the entire interviews. The majority of interviewers failed to inform the children that "I don't know" or "I don't remember" were acceptable answers. The researchers concluded that field interviewers were not implementing what had been learned from research regarding child interviewing techniques.

Child advocates defending our current methods of investigating sexual abuse allegations sometimes argue that children may confuse details but are relatively immune from suggestion when it comes to central events, especially if the events deal with violence or trauma. Contradicting this opinion is the results of a study done in 1989 by UCLA researchers Robert Pynoos and Kathleen Nader. They questioned children after a sniper attack that had occurred at their school. It turns out that some of the children who had not attended school on the day of the attack nonetheless claimed to have remembered the sniper. A boy that was on vacation at the time reported that when he had approached the school he saw someone lying on the ground. Not only was he nowhere in the area, but he could not have approached the school due to police barricades. Another girl that was a half a block away and not in the line of fire reported that she was closest to the sniper.

Betty Gordon and her colleagues at the University of North Carolina in 1991 reported on their study of three-year-olds following a routine pediatric visit which included talking to the child and doing an ordinary physical examination. The children were later asked leading and suggestive questions such as, *Did the nurse lick your knee?* or *Did the nurse blow in your ear?* Not only did many children respond by saying such things had happened, in interviews done over the next three months, they continued to make false statements which had been originally implanted by the leading questions.

The special importance of this study is that many defenders of current child abuse investigations argue that children are resistant to suggestion when it comes to talking about their own bodies. There is no evidence to support such an idea, and the work of Gordon and her colleagues directly contradicts this claim.

UCLA psychiatrist Karen Saywitz in 1991 joined Gail Goodman in presenting yet another study focused on visits to a doctor. Half of the children, ages five and seven, had received an examination for scoliosis and half had received a genital examination. In the interviews which took place from one to four weeks after the examinations, interviewers used both suggestive and non-suggestive questions about sexual and non-sexual topics. Thirteen percent of the five-year-olds and seven percent of the seven-year-olds responded with untrue answers to abuse related questions.

Even though in experiments of this type, questioning of the children must for ethical reasons be of a very limited sort for fear of implanting a false sexual abuse memory which could be psychologically harmful to the child, significant numbers of false memories were nonetheless created. It is not difficult to see how much more serious the problem becomes if a steady diet of such questions is fed to the child by family and professionals.

In 1995 Bruck, Ceci, Francoure, and Bar conducted a study (1995b) where children were given misleading information after a visit to the pediatrician. Those given misleading information made more false allegations than those who were not. The authors concluded that suggestibilty effects children's reports about salient actions involving their own bodies in stressful conditions.

So called "anatomically correct" dolls, complete with penises, testicles, vaginal openings, breasts and pubic hair, have been hotly debated. With no evidence to support their use, they nonetheless became a staple of child interviewers from the very early days of the sexual abuse prevention movement. Studies on their effects have now been done and as a result they are in use today less than in the past.

In 1990 Gail Goodman and Christine Aman of the University of Denver reported their study of the effects of the use of anatomically correct dolls during questioning which followed a social interaction between a male member of the research team and the child. During the interview the children were asked leading questions such as, *Did he touch your private part?* The dolls were available so the child could demonstrate what supposedly happened. Thirty-two percent of the three-year-olds and twenty-four percent of the five-year-olds gave inaccurate answers.

In yet another study by Rudy & Goodman (1991), children were asked questions about a staged event with a stranger in a trailer. The use of misleading abuse questions resulted in twelve percent of four-year-olds and six percent of seven-year-olds giving misinformation. With the use of direct questions the numbers rose to eighteen percent for four-year-olds and ten percent for seven-year-olds. These figures would undoubtedly go much higher if ecological validity were greater, *i.e.,* if actual conditions prevalent in real cases were in operation.

In 1995 Bruck, Ceci, Francouer, and Renick conducted a study with three-year-olds after a routine medical exam. The researchers' data showed increased inaccurate reporting with the use of anatomically-correct dolls because some children falsely showed that the doctor had inserted a finger into the anal or genital cavity. Bruck, *et. al.* (1995a), recommended against the use of such anatomically-detailed dolls in forensic or therapeutic interviews.

Another important question is whether it is possible not just to influence the accuracy of recall of something which happened, such as a visit to a doctor or an interaction with a stranger, but to implant a whole memory of something which is completely made up. While cases like the McMartin preschool case seemed to demonstrate conclusively that such a thing was the likely result of suggestive interviewing techniques, psychologist Elizabeth Loftus of the University of Washington sought to answer this question in the more neutral setting of a laboratory experiment.

Loftus (1993) arranged to have one of her university students, while at home, remind his younger brother Chris about the time Chris had been lost in a mall at age five. Chris was told by his brother that he was later found with a tall, oldish man wearing a flannel shirt. Chris was crying and the man, whose hand Chris was holding, said that he found Chris walking around the mall crying and looking for his parents.

Within two days of being told this story, Chris remembered his feeling of fear at being lost. Within three days he remembered his mother telling him to never do that again. Within four days he could recall the man's flannel shirt. On the fifth day he started to remember the store and a conversation with the man that found him. Within two weeks Chris was specific in talking about the

store in which he became lost and about his fear that he was in trouble. He could even describe the man that found him. He was old, bald on top with a ring of gray hair and wore glasses.

When Chris eventually was told by his parents and Loftus that no such event had occurred, he found this difficult to accept. He protested that he could remember being lost, crying and looking for his mother.

Besides demonstrating the ease with which memories can be created out of nothing, the fact that Chris was fourteen, and not four, should be kept in mind. Not only young children, but older children as well are susceptible not only to post-event alteration of memory for things that happened, but also to the creation of whole events that never happened.

Another source of false allegations is what has been termed "source misattribution." Research conducted by Steven Ceci, Mary Lyndis, Crottean Huffman, Elliott Smith and Elizabeth Loftus (1994), show that young children have increased difficulties in distinguishing between what they thought about and what actually occurred.

One last type of evidence which may be mentioned is the fact that adults are also susceptible to the manipulation of their memories. If adults are vulnerable, can anyone doubt that children are even more so? David Rubin (1986) has summarized a large body of data on "autobiographical memory." And now we have the remarkable "recovered memory" movement, which we will discuss in Chapter Six. The emergence of this phenomenon has also brought forth some additonal studies which illustrate the susceptiblity of adults (Ofshe 1992, Belli 1989, Loftus 1979, Lindsay 1990, and Gudjonsson 1986). Best known is the example where Richard Ofshe suspected that the criminal defendant he was interviewing was, because of earlier interviews that were highly leading, giving a false confession. Ofshe suggested to the accused that he had committed even more crimes, ones which Ofshe knew to be impossible. In a short time, they, too, were the subject of additional "confessions."

The susceptibility of adults has, in fact, long ago been the subject of legal scrutiny, most especially in the California case of *People v. Shirley*. The California Supreme Court prohibited trial testimony from adult witnesses who had been hypnotized for purposes of investigative interviews. The Court deter-

mined that because of the widespread belief (incorrect as it turns out) that hypnosis enhances memory and leads to true statements, anything said during hypnosis might be given undeserved credibility.

IMPLICATIONS OF THE SCIENTIFIC LITERATURE

The scientific literature on children's suggestibility clearly shows that as researchers have designed experiments which more closely mimic real life situations, the data indicates that children are quite vulnerable to suggestive questioning and quite sensitive to the attitudes and opinions which the interviewer brings to the child. An excellent review of the research on child suggestibility can be found in the Amicus Brief for the Case of the State of New Jersey v. Michaels.

When it comes to an attorney using these studies in court trials, it is most important to show by using research studies what can happen to a child's reliability under even the mildest form of influence. Then, if the evidence of a particular legal case shows that the actual influences brought to bear on a child are far beyond these minimal ones, the impact on the child will be just that much stronger.

Whether these influences come from parental pressure, peer pressure, leading questions, selective re-enforcement of answers, therapist contamination, or other factors that rob the child of his or her independent ability to speak from memory, each one must be carefully explored in a trial.

In the struggle to bring out the truth of a particular court case, what counts most is the nature of the questioning of the child. Prosecutors with a valid case, based on the child's memory, have nothing to fear from the data showing that children may be influenced by suggestive questioning. They should go out of their way to present such data, by way of showing that these improper influences were *not* used in this case. This, of course, requires that tape recorded interviews be available for study by the jury.

If, on the other hand, methods have been used which both case studies and laboratory data show may easily contaminate the child, their role in the case becomes the centerpiece of the effort to separate fact from fiction.

CHAPTER FOUR

MANIPULATED MEDICINE

GIVEN THE DIFFICULTIES inherent in proving sexual abuse of young children, it is not surprising that when the new sexual abuse prevention movement began, police and prosecutors would hope for clear medical indicators of whether or not abuse had occurred. If a child showed medical evidence of sexual trauma, the thorny problem of whether a jury should convict a person based on one person's word over another would largely be eliminated. Just as understandable was the desire of the pediatric community to offer a helping hand in responding to sexual abuse of children.

As early as the mid-1970's, a few doctors were looking more closely than ever at the genitals and anuses of boys and girls whom someone thought had been sexually abused. What happened next will qualify as one of the major medical debacles of modern times. Without any evidence a handful of doctors started to claim they had found subtle indicators, never before appreciated, of genital or anal trauma.

By far the most influential of these doctors was Bruce A. Woodling, a family physician in Ventura, California. He claimed that by looking for certain subtle clues he could determine if trauma had occurred (1981). A hymen that was too "thickened," or had a "rounded" edge, or had an indentation here and a bump there; tiny blood vessels that seemed irregular; or an anus that seemed too relaxed, or had a vein that seemed too large—were anatomical variations Woodling said showed prior abuse.

Woodling did something else that we believe added to his appeal. He urged his colleagues to heighten their powers of observation by the use of a colposcope, a binocular low power (5 to 15x) magnifying instrument which gave an enlarged view of the anal and genital region and also had an attachment for a camera. This expensive instrument, which made everything in view bigger but did nothing to test whether Woodling's claims were correct, was bound to give the false impression that tiny injuries were being observed and measured.

Many of Woodling's observations, or his alleged microtrauma, were barely visible to the naked eye, but when magnified and photographed they seemed to take on a heightened significance. Tiny variations of just a few millimeters,

perhaps one sixteenth of an inch, loomed large indeed. Little bumps became "mounds." Insignificant depressions became "fissures" or "healed tears." Pale areas became "scars." Patterns of blood vessels were said to show "neovascularization," implying that an injury was in the process of healing. Tiny bands of tissue became "synecchiae," considered by Woodling to be scars left over from prior injury.

The fact that no one had bothered to take a magnifying glass to the genitals and anuses of normal, healthy, nonabused boys and girls didn't seem to bother Woodling or his eager students. Instead, he became an overnight sensation, eagerly sought out by prosecutors not only to testify in trials, but also to teach more and more doctors and nurses how to see the subtle evidence that he had discovered.

As support for his claims, Woodling offered only the experience he had gained in examining children brought to him in abuse investigations. This left unanswered the question of how he knew from his experience if his opinions were correct. How, in other words, could he know when a child he pronounced as traumatized had in truth been injured? Certainly the legal outcome of the case was no guarantee that Woodling's claims were correct because his opinions were themselves bound to strongly influence the outcome of the case, thereby proving nothing about the scientific validity of his claims.

Given the climate at the time, no one raised such questions. Woodling was assumed to have what everyone wanted—the magic markers for sexual abuse. It was the start of an exciting new subspecialty of pediatrics. The doctors and nurses who absorbed Woodling's ideas were considered authorities in the detection of child sexual abuse simply by having attended his workshops.

When these new recruits went back to their communities, they trained others. Woodling's uncorroborated notions became the conventional wisdom among members of newly formed sexual abuse examination teams, with names such as SART (Sexual Assault Response Team). They became the SWAT teams of the child sexual abuse prevention movement, with the medical firepower to overcome both the denials of child molesters and the tricks of sleazy defense attorneys. Law enforcement and child protection agencies were delighted to accept the central idea that ordinary physicians didn't have the

skills to recognize the subtle indicators of sexual abuse. Hence, the need for specialized teams of sexual abuse examiners.

And with few exceptions, those who should have objected most strenuously to these unscientific developments, the pediatricians, were simply too frightened to say anything. A polite refusal was the usual response on those unusual occasions when a pediatrician not associated with a sex abuse team was asked to examine a child. Reminiscent of the McCarthy era, no one wanted to be considered soft on child molesters.

Rarely did the children show evidence of fresh injury, such as bleeding, bruising, or tearing. Instead, interpretations of tiny variations of anal or genital anatomy were offered, leaving open the question of whether anyone had studied a group of normal, non-abused children to see if they would show the same variations that Woodling said could only come from abuse.

The leaders of these new medical teams would admit, but only amongst themselves, that Woodling's interpretations were not supported by any research data. At meetings behind closed doors, they acknowledged the fact that no one had gathered data on the range of normal anal and genital anatomy in children of different ages. Without such data, everything Woodling had taught, everything being disseminated in second and third generation workshops, and most important, everything being claimed in expert medical testimony in thousands of criminal and juvenile court proceedings, was scientifically worthless.

All across the country doctors and nurses testified in court that their collective experience allowed them to pick out abuse victims. The fact that they, just like Woodling, had no corroboration and, therefore, might be making the same mistaken judgements over and over seldom made any difference in the outcome of legal cases. It was the rare defense attorney who understood the deception, usually arguing that someone else abused the child. Such a defense was hardly likely to impress a judge or jury, which had no chance whatever to see through the medical manipulations in the case.

It wasn't until the late 1980's, after nearly a decade of medical misinformation, that a few teams of investigators started to publish data which exposed the unreliability of Woodling's alleged indicators of abuse.

FINDING THE WAY OUT

The best place to begin sorting out the truth of the physical evidence in a child sexual abuse case is a clear understanding of how medical terminology may be misused. First, while medical findings may in some cases provide important evidence, only rarely will medical findings alone establish that sexual abuse has occurred. The presence of sperm or disease transmitted only through sexual contact, for example, shows that someone is guilty of sexual abuse of the child. Generally speaking, medical findings may provide important supportive evidence but they do not prove sexual abuse.

Sexual abuse is something that happens, but doctors do not determine if events have happened, only whether there is evidence of pathology. Sexual abuse may be *alleged*, and if proven is a *fact*. Medical findings may help establish the fact, but unless the findings can only be the result of sexual abuse, there is no justification for labeling the findings as a "diagnosis." Too numerous to count are the cases we have seen in which a doctor concludes an examination with a "diagnosis" of "alleged sexual abuse." While it might seem obvious that this is nothing more than a repetition of the accusation, and is not a medical diagnosis, police and social workers regularly become convinced that the doctor has found medical support for the accusation.

Another misuse of medical language is the use of the word "history" instead of "accusation" or "allegation." Typically, medical examiners repeat what they hear from police, social workers, parents, or the child, and record this as the history. But in medicine, history means information given by the patient and is generally assumed to be true. This information may greatly influence the doctor's conclusions about what is causing the problem. While it is reasonable for a doctor to accept at face value a patient's statements of a history of epilepsy, it is obviously *not* appropriate to do the same when someone claims, but others deny, that a crime has taken place.

Statements about abuse are *accusations*, which may or may not be true. Since the doctor who repeats the accusation is clearly *not* making a medical finding, it is highly misleading to base any *medical* conclusions on someone's allegations. Labeling accusations as history gives them the look and feel of medical validation, something which is certain to promote injustice.

This, however, is exactly what is happening in many cases. Logic and common sense have been so lacking in many child sexual abuse cases that examiners in their reports and testimony may even label a normal examination as evidence for sexual abuse! This linguistic *tour de force* comes about by the use of the phrase "consistent with."

A normal examination is always "consistent with" sexual abuse because fondling and perhaps even some kinds of penetration will not leave behind any evidence. If the examination is performed months after genital or anal trauma is inflicted, a normal examination may only mean that the injuries have healed without tell-tale signs. Sexual abuse specialists are eager, and appropriately so, not to have such normal findings convey the impression that abuse could not have occurred.

Therefore, it is true that a normal examination is consistent with abuse, but in the same sense that red hair is consistent with alcoholism. There is certainly no reason a redhead couldn't be alcoholic, but it is hardly evidence for such. Yet unless these distinctions are pointed out to a jury, an innocent person may be convicted of child sexual abuse. A doctor who is merely informed of the accusation and whose examination findings are normal can testify that he or she made the following conclusions: "1. History of sexual abuse. 2. Examination consistent with the history."

Sexual abuse medical examiners often testify that a normal exam said to be consistent with sexual abuse is of course not evidence for sexual abuse. Despite such reassurances, police and child protection investigators usually fail to understand the emptiness of such conclusions. Instead they accept the examiner's findings as support for the allegation of sexual abuse. This is bound to influence their behavior profoundly during the crucial time when a neutral investigation should be taking place.

We ask why, except for reasons of bias in favor of prosecution, sexual abuse examiners would use such language when they could simply state, "Normal examination which neither confirms nor denies the possibility of sexual abuse."

Doctors associated with the new sex abuse teams have also caused a lot of confusion by their misuse of the word "normal." In many cases the impression is given that there is only *one* normal hymen, or *one* normal anus, when in fact

these structures, like other parts of the body, are not identical from person to person. Noses and ears are not the only parts of the body which show variations within a general pattern.

Therefore, if an expert exhibits for a jury a single picture of a normal child's genitalia and argues that this is different from what was seen with the alleged victim, the truth is that no *one* picture could represent all the variations of a normal child's genitalia. The question such testimony overlooks is whether or not the alleged victim's examination findings may be seen in children who have not been abused.

Of course this is what was missing from the beginning. Woodling and all those who so readily absorbed and then repeated his interpretations had no evidence for their claims because they had not bothered to compile information on non-abused children. Instead they presumed, for example, that the uninjured hymen was always thin, with a smooth rim, even though they had no studies validating this presumption.

Sexual abuse medical examiners frequently claim that their medical colleagues in the sexual abuse prevention movement agree that a particular finding shows abuse. This is meant to show consensus and is offered as proof.

But science is not a democracy. Just as one's experience does not guarantee scientific validity, unless the experience has been coupled with corrective feedback, the fact that the new sexual abuse examiners reach agreement proves nothing. As will become clear in a moment, when scientific research finally was done, the consensus born out of the uncritical acceptance of Woodling's claims turned out to be wrong.

RESEARCH: THE FIRST WAVE

The first study to look at the range of anal and genital anatomy in non-abused children was done by McCann, *et. al.* (1989, 1990a). They found that hymens and anuses showed a lot of variation, just as other parts of the body. As McCann admitted at a 1988 meeting at San Diego Children's Hospital, he and his colleagues had been expecting a good deal more uniformity than was confirmed in their study.

In brief, McCann demonstrated that every one of Woodling's supposed indicators of trauma—from rounded hymenal edges, to hymenal notches, to neovascularization or synecchiae—were being overinterpreted. Instead of being signs of healed injuries, they occurred in non-abused children with a frequency that made it impossible to say that only sexual abuse could explain their presence.

Another important study was done by pediatrician Jean Emans and her colleagues. They compared three groups of girls: abused (according to a referring agency); those with neither a history of abuse nor any medical problems; and those with history of genital complaints but no known abuse. Their findings: "The genital findings in groups 1 and 3 [abused vs. nonabused with history of genital complaints] were remarkably similar...There was no difference...in the occurrence of friability, scars, attenuation of the hymen, rounding of the hymen, bumps, clefts, or synecchiae" (p. 783, 1987). Once again, there were no changes that could differentiate between molested and non-molested children.

Emans claimed that she saw healed tears in the hymens of the sexually abused girls. These, however, were not fresh injuries but simply notches which Emans (following Woodling's lead) chose to interpret as abnormalities. McCann in his study had already seen these notches but recognized that there was no justification for interpreting them as healed tears. "When does normal [hymenal] asymmetry become a cleft?" he asked his colleagues at the same 1988 meeting where he reviewed the results of his study. "I don't know," he continued. What Emans claimed she could only see in abused girls, McCann saw in nonabused girls.

Emans also claimed that only the abused girls showed scars which ran from the hymen to the vaginal wall. These were the "synecchiae" which Woodling had claimed were from prior sexual injury. Once again, however, McCann's findings differed dramatically. Rather than these tissue bands being absent in his non-abused subjects, he told his colleagues, "...in the literature, they talk about...intravaginal synecchiae...we saw them everywhere ...We couldn't find [a girl without] those ridges."

Other investigators thought perhaps the size of the vaginal opening would be a sign of prior abuse. Denver pediatrician Hendrika Cantwell had claimed

in 1983 that from such measurement she could distinguish abused from non-abused girls. She offered the rather remarkable claim that in girls up to thirteen years an opening larger than four millimeters (slightly larger than 1/8 inch) was strong evidence of prior penetration. Once again, the few examiners attempting to research the issue published contradictory findings. Emans' study (1987) had shown no such thing, and in an article criticizing reliance on this type of measurement, she and co-author Astrid Heger (Heger & Emans, 1990) pointed out that in order to inspect the area, the examiner must apply lateral traction to the tissues in front of vagina. This pulling can enlarge and distort the appearance of the vaginal opening. McCann showed the same thing in a different study (1990b).

In a notorious example from England, the misinterpretations of overzealous examiners came to light only after dozens of children were snatched from their families by local child protection agencies. In 1986 pediatricians Christopher Hobbs and Jane Wynne had written in the British medical journal *Lancet* that any relaxation of the anus during an examination was proof of buggery (sodomy). For five months Drs. Marietta Higgs and Geoffrey Wyatt, two pediatricians who had accepted the Hobbs and Wynne claims, canvassed the pediatric wards of Middlesbrough General Hospital, examining the anuses of children who were in the hospital for completely unrelated matters.

These doctors were so convinced of the claims made by Hobbs and Wynne that when they saw this alleged indicator of sodomy disappear in subsequent examinations, and then recur a few days later, they assumed that the children were being sodomized again. The children had already been taken away from their suspected abusers—their fathers, so the doctors concluded that someone else was continuing to sodomize the children. In one case, by the time the fourth disappearance and reappearance of anal relaxation was noted, the grandfather, father, and finally two foster parents had all been accused of sodomy.

Before these physicians were finally stopped, 121 children from 57 familes had been removed from their homes and repeatedly subjected to "disclosure interviews." Eventually, this fraud was exposed by an official inquiry but not before dozens of children and families were victims of a brand of governmental child abuse unimagineable a few years before (Butler-Sloss, 1987).

SHRUGGING IT OFF

What is especially disturbing is the difference between what the sex abuse examiners admit at their meetings (and occasionally in their journals) and what they continue to claim in legal cases. Take, for example, the fact that the widely read journal, *Child Abuse & Neglect,* was so concerned about these inconsistencies that an entire issue in 1989 was devoted to the subject of anogenital examinations. Editor and pediatrician Richard Krugman wrote the lead editorial, entitled, *The More We Learn, The Less We Know With Reasonable Medical Certainty?* He admitted that the literature was filled with a "panoply of findings" (p. 165) and concluded that "The medical diagnosis of sexual abuse usually cannot be made on the basis of physical findings alone" (p. 165) When it came to interpreting variations of anal or genital anatomy, Krugman warned, " ...there are no pathognomonic [definitive] findings of sexual abuse" (p. 165). He also predicted that "The data presented in this issue of the Journal may modify some of these opinions in coming months...We may...be asked to do less with what we know in court" (p. 166).

In the same issue, pediatrician Jan Paradise (1989) warned of the dangers of "making a big issue of a little tissue." Paradise wrote, "As scientists confronted with poorly defined and sometimes inconsistent information, we should reserve judgment..." (p. 179)

Neither the research data now available, nor the warnings of Krugman, Paradise or others such as England's Dr. David Paul (1986), a pioneer in the field of specialized examinations for sexual abuse, have had much impact on the "sex abuse teams" that law enforcement and child protection agencies have come to rely upon. The research evidence has for the most part simply been ignored.

Instead, examiners from sex abuse teams continue to misconstrue minor variations of anatomy. Woodling's alleged signs of abuse, from a rounded hymenal edge, to "synecchiae," continue to be used as evidence of past trauma. At the same time, a handful of researchers continue to look for markers of sexual abuse, but their studies are plagued with major problems.

TRYING AGAIN

Dr. Abbey Berenson, *et. al.*, from the University of Texas, for example, studied the hymens of nonabused girls, first in newborns and later in prepubertal girls (1991, 1992). They found that hymenal "clefts" were not seen in the posterior half of the hymen, and therefore concluded that if such clefts were found in girls being investigated for possible sexual abuse, they were "unlikely to [be] a congenital finding but rather a partial transection from trauma" (p. 394). Pediatrician David Kerns (1992) reached a similar conclusion by studying children being investigated as "suspected" victims, although his conclusions are unreliable because he had no good way to know which children had been abused and which had not.

Those who interpret hymenal clefts and notches as "healed tears", or interpret tiny pale areas of the hymen as "scars," fail to take into account the child's history. If clefts and pale areas were truly evidence of old injuries, the child would have been seriously torn at the time of the assault. Since common experience tells us that many tearing injuries to various parts of our bodies heal with no residual evidence, it only makes sense that an injury that does leave behind scarring or other altered anatomy (such as a hymenal notch or cleft) would be even that much more serious. The child, who months or years later, shows what someone claims to be residual evidence of injury would have been bleeding, torn, and suffering from severe pain at the time of the assault. While such a child might in some cases be too frightened to reveal her abuse, caretakers would not fail to notice such an acutely injured child.

Of the many hundreds of cases we have studied in which hymenal notches and clefts were said to be healed tears, or pale areas were said to be scars, rarely did an investigation of the child's medical past reveal that at the time of the alleged assault the child was noted to be acutely injured.

This means that investigators who seek the truth should obtain the child's pediatric records. If a child who is said to have a healed tear or scar of the hymen has no record of a prior medical examination and no history of bleeding and tearing at the time of the alleged assault, it is almost certain that the "healed tear" or "scar" is simply a normal hymenal variation that is being misinterpreted by the medical examiner.

Also, recent hard evidence proves that alleged signs of hymenal injury are usually an unreliable interpretation rather than an established medical finding. McCann studied three children who had sustained a genital injury (1992). These were not children seen months later, with examiners engaging in subjective analysis of "microtrauma," but children seen immediately after an injury which produced obvious tearing and bleeding.

McCann's main finding was that these injuries healed with little if any scarring. "Although scar tissue has been reported," McCann commented, "as part of the healing process of genital injuries, there was little evidence of that type of tissue repair in these children...even the deep lacerations of the posterior fourchettes left little evidence of the trauma they had suffered" (pp. 309-310).

It follows, then, that if major injuries heal with "little evidence," those children said months or years later to show scarring would have been so seriously injured at the time of the alleged assault that emergency medical evaluation would have been necessary, and that during such evaluations significant injuries would have been observed and treated.

In this study, McCann reported somewhat ambiguously that while scarring did not occur, the hymen was narrowed where healing had occurred. In his conclusion, he writes that these changes were "difficult to detect," and noteworthy because their "subtlety" illustrated "the challenging nature of the medical evaluaton of the sexually abused child." To this we would add that if the changes found in children *known* to be injured are this subtle, it takes little imagination to see how easily normal variations of anogenital anatomy in nonabused children could be improperly labeled as evidence of trauma.

A similar misinterpretation occurs when whitish streaks or pale areas near the opening of the vagina are labeled as scars. Pediatrician Nancy Kellogg (1991) of the University of Texas decided to focus on this, noting that there had been no study to support the frequent claim that a "midline avascular streak," "scar," or "white area" was a sign of past abuse. As she has written, "The causal relationship of these structure[s] to sexual abuse remains obscure" (pp. 926-927).

Kellogg studied newborns because with this group there could be no possibility of prior abuse. She found that one fourth of them showed such a white

line in the midline posterior area. What many were calling a scar was a normal remnant of the developmental fusion of the two sides of the body, something that occurs before birth, and is seen in other parts of the body. Cary Grant's chin is probably the most famous example of the fact that a midline cleft is hardly evidence of abuse.

Pediatrician Jane Gardner (1992) did another study of nonabused girls and found "...wide variation among subjects was striking, ranging from vestibules that were featureless to others with multiple irregularities. Similarly unexpected was the high frequency of irregularities, many of which have previously been reported in studies of sexually abused girls" (p. 255). These findings led Gardner to remind sex abuse examiners of "...the nonspecificity of many small findings of the genital examination," and added that ".physicians should not be persuaded to overinterpret physical findings for sociolegal purposes" (p. 256).

Much of the confusion that prevails in the research literature stems from the fact that in many studies children are assumed to be victims of abuse simply because a referring agency says so. If one reads these studies carefully, noting not just the conclusions but also the *methodology,* it becomes clear that children studied as "abused" are usually children referred by police and caseworkers as "suspected" victims. Even when the allegation is said to be "founded," a careful reading of the articles reveals that there is no reliable way to know *how many* of the so-called molested children were actually molested.

MARCHING TOWARD CONSENSUS

Faced with such conflicting data, as well as the very real methodological problems in studying abused vs. nonabused populations, the small but tightly knit community of child sexual abuse medical examiners has once again tried to use consensus as a substitute for evidence. We have already commented on why *agreement* among different evaluators does not necessarily demonstrate validity, especially if the evaluators are embroiled in such a highly sensitive and emotional subject, and when the agreement is not "blind." When researchers lobby each other first and *then* decide what they collectively think, this bypasses the crucial requirement that conclusions must be drawn from the data and not the opinions of others.

Pediatrician Joyce Adams (1992b), a leader in this attempt to substitute consensus for evidence, decided to poll sex abuse examiners. "There has not," she wrote, "been a formal attempt to arrive at a consensus among physicians as to which...findings should be interpreted as being highly suggestive or conclusive of abuse (p. 94)" Such surveys are of course no substitute for data on what is and what is not evidence of prior anal or genital trauma.

That the majority could be very wrong was a major conclusion of research one of us (Coleman) described in 1989. The interpretations made on 158 children said to have physical evidence of abuse was compared with McCann's recently described data on normal children (1990a, b). What emerged was a clear pattern in which the normal variations shown by McCann to be unrelated to prior injury were the very ones being labelled in trials throughout the country as evidence of prior injury.

The explanation was not difficult to find. There was a high degree of consensus between examiners in the 158 cases because they were simply repeating the unsupported litany they had learned from Woodling. With McCann's data from normal children, it was proven that what the majority was saying was simply wrong.

With Adams' recent survey we can once again compare what the examiners *agree upon* with what the scientific data show. Hymenal variations continue to top Adams' list of alleged indicators of trauma. "Laceration," "transection," "remnants," and "attenuation" of the hymen are "suggestive or clear evidence of abuse." A genuine laceration would be evidence of genital injury, but this is very different from claiming that a notch or cleft is a healed laceration. Despite warnings like those of Paradise that examiners should not make "a big issue of a little tissue," they continue to do so with this misuse of terminology.

Adams (1992a), nonetheless, went on to propose a classification based on her survey, despite some rather forthright admissions. "Clear guidelines for examiners as to the significance of anogenital findings with respect to sexual abuse have yet to be developed" (p. 73). She also noted that "...controversy still exists within the medical community as to the significance of certain anogenital findings" (p. 73).

Adams proposes that her classification be used in "determining the overall

likelihood of sexual abuse," adding that it is " a system that we have found helpful." Without a reliable way to know how often her conclusions are accurate, her system might be "helpful" in reinforcing misinterpretations, and "helpful" in assisting prosecutions, but hardly helpful in getting at the truth of sexual abuse allegations.

Adams, and all those who confuse consensus with evidence, demonstrate not only a profound misunderstanding of science but also of the recent history of their own specialty. Before any studies had been done, Woodling's claims created a consensus. Later, genuine research was finally done that discredited the consensus he had created. Now some of the very persons most familiar with these developments are trying to substitute consensus for fact. There is no reason to believe that a new consensus, pieced together over a committee table, will be any better than the earlier one.

What the small group of sexual abuse examiners finds so hard to accept is that unless a child's examination shows fresh injury (such as bruising, tearing, abrasion, contusion, or laceration), the physical examination is not going to be helpful in determining whether abuse has taken place.

This is repeatedly stated in child abuse literature, yet routinely ignored in actual cases, where examiners continue to label normal or non-specific variations as "consistent" with sexual abuse.

LABORATORY SLIPS

Even laboratory tests, which ought to bring greater reliability to this highly charged issue, have been misused and overinterpreted in the name of child protection. Perhaps the best known example involves gonorrhea, an infection which is transmitted by sexual contact.

The *Countrywalk* case in Florida, in which Frank Fuster and his teenage wife Ileana were convicted of multiple counts of molesting children in their home while babysitting, included evidence that Fuster's son had gonorrhea of the throat. This was the result of a throat culture taken at Miami's Jackson Memorial Hospital. Despite there being no evidence that Fuster ever had gonorrhea, jurors assumed that he was the source of his son's infection, and com-

mented after the trial that if Fuster would ejaculate into the throat of his own son, he surely must have done the other terrible things of which he was accused.

Only after the trial did Fuster's lawyers learn what students of sexually transmitted diseases were well aware of: the method used to diagnose gonorrhea was not reliable. A year after testifying in the Fuster trial about the way the children had been suggestively interviewed, I (Coleman) consulted with specialists at the California State Public Health Laboratory in Berkeley.

During the trial, I had told Fuster's attorney that he should consult with the Center for Disease Control (CDC) in Atlanta, but he had not done so. After the criminal trial I was consulted in the *Countrywalk* case again, this time for a civil lawsuit that was being filed by the parents. Having studied every document in the case as well as sixty hours of videotaped interviews with the children, I was convinced then as I am today that there was no evidence of abuse by Frank or Ileana Fuster.

The Berkeley experts told me that the method used to diagnose Fuster's son, a quick screening method that had never been tested for reliability by anyone other than researchers in the pay of the manufacturer, was unreliable. They told me that in every case where such a screening method was used, culture specimens should be saved and follow-up cultures done using more definitive methods. I knew this had not been done in the Fuster case; the laboratory had simply thrown out the culture material after doing the screening test.

Finally, in 1988, the CDC published data (Whittington, *et. al.*) that confirmed what I had learned from local specialists. When specimens from around the country, said to show gonorrhea in children, were sent to the CDC for more definitive, confirmatory testing, more than a third contained normal organisms which can look like gonorrhea on a screening test. Especially unreliable was the use of these quick screening methods in throat cultures, precisely what had happened in the Fuster case.

Another example of a lowering of medical standards in sexual abuse investigations involves *Chlamydia*, which may also be misidentified if screening methods are used instead of more definitive cell culture methods (Hammerschlag, 1988). Despite no supporting evidence, some doctors have testified in court that vaginal infection with *Gardnerella* is a strong indication

of sexual contact (Bartley, 1987). *Condyloma acuminata* are sometimes called venereal warts but are not necessarily transmitted through sex (Bender, 1986; DeJohn, 1982; Seidel, 1979; Shelton, 1986; Stringel, 1985). They are also sometimes called genital warts, but even this may be misleading because they occur in other sites. If *Herpes* lesions are found on the genitals of a child, an investigation is certainly warranted, but even the most definitive cell culture tests cannot prove sexual transmission (Stringel, 1989).

Inadequate testing or hasty interpretations are not uncommon in sexual abuse investigations. That is why investigators should obtain *all* laboratory records and consult with someone knowledgeable in the microbiology of sexually transmitted diseases. A conversation with a member of a "sex abuse team" is no substitute for this, as the Fuster example makes clear.

If laboratory findings are incorrectly interpreted the impact on the investigation is devastating. Some of the most abusive interviews we have studied came in the aftermath of an unjustified medical or laboratory finding that claimed to show sexual trauma or sexually transmitted disease. This happens because investigators and therapists are mistakenly convinced that abuse has taken place. They become absolutely determined to help the child acknowledge what is assumed to have taken place and will feel completely justified in techniques which might otherwise be recognized as unjustified.

In the *Countrywalk* case, Fuster's son was badgered endlessly because his interviewer had been told that a laboratory test proved the boy had gonorrhea of the throat. Repeatedly he was told that he must have been forced to suck on a penis. Every time the boy said this had never happened, he was told that laboratory findings proved it had. Such badgering resulted directly from the failure of Miami's Jackson Memorial Hospital to follow accepted laboratory methods.

SEEKING THE TRUTH

No area of child sexual abuse investigations requires more fundamental change in procedure than the way in which medical examinations are interpreted. The discrepancy between what examiners are saying and what med-

ical data actually shows is so great that police and prosecutors should re-examine their reliance upon the sex abuse examination teams that currently enjoy their confidence.

One solution would be for police and child protection investigators to simply refer the children to pediatricians not associated with such teams. Tragically, however, pediatricians are unwilling to accept such referrals because they are afraid of the controversy surrounding sexual abuse of children.

This does not mean that nothing can be done to improve the situation, even if the sex abuse examining teams are consulted. First, the person receiving the child's history and the abuse allegations should not be the person conducting the medical examination. This would minimize the opportunity for an examiner to interpret medical findings in such a way as to improperly validate the allegations.

What would happen if this were done? In a significant number of cases, examiners would claim to find anal abnormalities while the child was alleging only vaginal contact, and vice versa. We say this because we have already seen it! While in most cases the examiners are told of the allegations before seeing the child, occasionally this does not happen. In the latter situation, it is not unusual that there is no correlation between what is alleged by the child and the supposed abnormalities claimed by the medical examiners. This doesn't mean that a good medical history should not be taken, only that someone other than the medical examiner should record the allegations and take the medical history. Only after the examination results have been recorded should all parties try to understand the meaning of all the medical and historical data.

Were examiners unaware of the alleged sexual acts, some very important research could be conducted at the same time as children would benefit from better investigations. We believe that a comparison of what is alleged with what examiners conclude when not previously advised of the allegations would quickly demonstrate that the interpretations now being given are incorrect.

In addition, whenever an examination is done, police or child protection investigators should insist that photographs be taken. Despite having an instrument (the colposcope) which not only magnifies but also allows for pictures to be taken, sexual abuse examiners often fail to take any pictures. When this

happens, there is no opportunity for other doctors to see whether the alleged anatomic variations are actually present.

In some communities, medical examiners do not have a colposcope, but a good 35 millimeter camera, equipped with a close-up lens and close-up flash, will produce photographs revealing the same information. There is simply no excuse for a medical examiner not having such equipment. If prosecutors were to adopt a policy whereby photographs, just like audio tapes of all interviews, were required before a case would be considered for prosecution, the medical examiners called upon by investigators would have no choice but to comply.

Judges should also in many cases grant defense requests for a repeat examination. The immediate protest that another anogenital examination is unfair (even abusive) to the child seems hollow. McCann and others have shown that these examinations, if handled with sensitivity, are not traumatic to the child. Far more detrimental is an investigation that fails to find the truth, that subjects a child to repeated interviews and that destroys important relationships.

The second medical examiner should not be told about the results of the first examination. If legitimate indication of abnormality exists, it should be found by the second examiner as well as the first. We ask why second opinions are so highly recommended in other crucial medical evaluations, such as diagnosis of cancer or a decision about surgery, but so rarely used in this type of examination, one that is so new, so fraught with consequence, and so easily influenced by the biases of the examiner.

If for some reason a second medical examination is not done, another option is available if photographs are obtained during the initial examination. A second examiner who is told nothing about either the allegations or the interpretations of the first examination can be asked to interpret the photographs. A comparison of interpretations between the first and second opinion would help test the reliability of these examinations.

Even without such reforms, conscientious prosecutors could advance the cause of justice simply by carefully evaluating the medical reports rather than uncritically accepting them. If controversial interpretations or misleading language (*e.g.*, findings "consistent with" abuse) are found, the examiner should be asked about them.

These examiners often alter their conclusions quite dramatically when asked to support their findings. Reports that seem during the investigation to indicate evidence of abuse often are said later to indicate no such thing. This shift occurs once it is clarified that a "history of sexual abuse" is nothing more than a repetition of the allegation. Physical findings, likewise, will often be admitted to be far from conclusive if medical examiners are questioned, before the trial, by knowledgeable and conscientious prosecutors. Only after such a discussion should a prosecutor decide whether a case is strong enough to be placed before a judge or jury.

And finally, there is no reason that if a second medical opinion was never obtained or photographs never taken, these things cannot be requested by the prosecutor.

All this requires is a prosecutor with a good deal of courage. The current climate is guaranteed to put such a prosecutor under considerable pressure from the other members of the multidisciplinary team of which he or she is a part. So be it. A prosecutor's duty is to *the truth*, which is the only way to protect the children involved. It is contrary both the best interests of children and the cause of justice to prosecute sexual abuse allegations that rest on pseudoscientific medical claims, even if the defendant might be convicted. Under the law, the prosecutor's duty is to prosecute *only* when the accusations are believed to be true, and can be proven true beyond a reasonable doubt.

For the foreseeable future, defense attorneys will be facing prosecutors who show little or no interest in adopting such policies. After acquiring sufficient knowledge to understand the real meaning of examination findings, defense attorneys should seek another examination unless the previous one has been interpreted as normal. Defense attorneys should be prepared to counter the prosecution's argument that another examination of the child will be traumatic. They should remind the judge that the child has already been put through many interviews as well as a medical examination, with no one apparently objecting, yet one more examination is suddenly, once the defense requests it, "traumatic." Acquaint the judge with the fact that it is not uncommon for opinions to differ in a new field such as sexual abuse examinations.

Especially when photographs have not previously been taken, argue that

this amounts to failure to collect and preserve the evidence, and that a second examination with photographs might even lead to a resolution of the case, saving the Court the time and expense of a trial, and the child the need to testify.

If such a request is granted, try to find an examiner who is not part of the sexual abuse community. (By and large the sex abuse teams will refuse anyway, once they learn that the defense has requested a second examination.) Do not indicate exactly what sexual acts are alleged. Be sure the child is examined in both the prone (knee-chest) and supine positions, with photographs taken in both positions. Tell the examiner about the allegations, and the findings from the first examination only *after* the results of this second examination are recorded, and inquire about any discrepancy in the findings between the first and second examinations.

If these recommendations to both prosecution and defense are followed, improper medical interpretations will be exposed. Doctors will be disagreeing with each other so regularly that even the most cautious judges will be forced to see that something is wrong with the way the examinations are being interpreted. Prosecutors will lose faith in the medical examiners they have trusted. All concerned will be forced to realize that neither children nor justice is being served by unsupported medical conclusions. Without such false medical evidence, investigations and trials will do a better job of finding the truth, which is the one and only agenda which is consistent with both justice and children's welfare.

CHAPTER FIVE

THE SYNDROME SYNDROME

THE DANGEROUS INFLUENCE of mental health ideology and practice in sex abuse cases is not limited to the investigation. The trial itself is often tainted by further reliance on expert testimony which seeks to substitute misleading theories for genuine evidence.

This is primarily accomplished by using various behavior profiles, syndromes, and diagnostic labels that are said by either the prosecution or defense to be helpful in determining whether a child has been abused. What judges, juries, and lay people may not realize is that these ideas are not only unreliable; they also obscure the truth by substituting psychological jargon for real evidence.

In this chapter, we will describe some examples of our legal system's current willingness to allow these misleading ideas into court and jury trials, and recommend methods of exposing the unreliability inherent in all of them. We will conclude by urging that both prosecution and defense cease their use of such tactics.

BACK TO BASICS

The Oxford English Dictionary defines a syndrome as "a concurrence of several symptoms in a disease." Medical doctors learn about various syndromes because they are clues to the underlying disease that is causing the symptoms. Discovering the cause of the symptoms is called making the diagnosis.

The symptoms, in other words, are not the disease, but the result of the disease. And because different diseases may cause the same symptoms, it is not legitimate to confuse symptoms with causes. If, for example, two patients suffer from the identical symptoms of cough, weight loss, and shortness of breath, laboratory and x-ray tests may show that one patient has tuberculosis while the other has lung cancer. Without the independent, reliable laboratory data, it may not be possible to determine the cause and thereby make the diagnosis.

Psychiatry also tries to rely on syndromes, that is clusters of emotional and/or behavioral problems experienced by a patient. But what are called syn-

dromes by psychiatrists are quite different from medical syndomes. First, psychiatric symptoms are much more subjective than medical symptoms, and are passed through the filter of the psychiatrist's or psychologist's own personal biases. Most important, however, is the fact that there is no way to independently check on what is the cause of the patient's symptoms, and therefore make the diagnosis. No reliable scientific method can determine, for example, that one patient suffers from anxiety disorder while the other suffers from manic-depressive disorder. The objective physical findings and laboratory data of medicine has no counterpart in psychiatry.

What this means is that there are no true syndromes in psychiatry, because none of the patterns of feelings or behaviors seen in psychiatric patients point exclusively to one disorder or another. There is too much overlap in symptoms, and too much subjectivity in what the patient reports and in how the psychiatrist interprets what the patient reports.

This uncertainty in determining causes for patients' distress forces psychiatry to pretend that patients are diagnosed when what is really happening is that the symptoms are merely being summarized and given a label. This is not necessarily a dishonorable endeavor, but it is always subjective and a so-called diagnosis in psychiatry says as much about the doctor's perspective as about the patient's difficulties.

All this is true in every clinical situation in psychiatry, when no legal issue is pending. This is why conscientious therapists in clinical practice do not assume their patients' version of past events are necessarily accurate. They also do not use subjective impressions and labels to infer that a patient must have experienced certain things in the past, a practice which unfortunately is all too common amongst expert witnesses testifying for the prosecution in sexual abuse trials.

Such a thing is an absurdity from a scientific point of view and could only be based on a complete lack of understanding of the legitimate tools of psychiatry and psychology. When such testimony becomes part of legal trials, the result is contamination of the legitimate trial process of seeking the truth.

This unfortunate use of psychiatric testimony is not new (Coleman, 1984). It started in the nineteenth century and has been gathering momentum ever

since. When trials for alleged child sexual abuse became more common, in the 1980's, it was inevitable that both prosecution and defense would once again seek out mental health professionals to help bolster their case. Let us review a few key examples of such testimony, first by explaining what is being offered by experts called by either the prosecution or defense, and then by offering our suggestions for exposing the emptiness of such "syndrome" testimony.

THE ACCOMMODATION SYNDROME

The most influential of these alleged syndromes stems from the work of psychiatrist Roland Summit, who in 1983 summarized ideas he had gathered for several years while consulting with child abuse investigators and therapists. Despite his admission that these ideas were not the product of any research, the Child Sexual Abuse Accommodation Syndrome (CSAAS) has repeatedly been misrepresented by expert witnesses as the findings of "Dr. Summit's research."

A proper understanding of CSAAS must begin with a recognition of the mind-set that pervaded the sexual abuse movement when Summit was developing his ideas. As we have already described in Chapter One, the central problem for the reformers was the very real one of the abused child who refused to disclose what happened, even when directly questioned. False denials were very much a concern of the new reformers, while false allegations were considered virtually impossible (when they were considered at all).

Thus it was that in all sincerity the reformers placed their entire emphasis on the need for everyone to "believe the child." Child advocates urged others to recognize that once the child *could* reveal what was happening, it was crucial that his or her statements be accepted unconditionally. This was the corollary of the mistaken idea that children were not capable to making false accusations of sexual abuse, no matter how they had been questioned.

Like his colleagues, Summit wanted to promote in others an automatic acceptance of a child's allegations. His article was a milestone in this effort, and succeeded largely because the zeal of the reformers was so strong that no one critically looked at the discrepancy between the clinical issue of abused children's reactions and the legal issue to determining if a child had been abused.

Summit glossed over this issue. His article made it clear that he was only talking about abused children, yet he repeatedly urged clinicians to go to court to promote an allegation as true. The five reactions Summit described as "typical" of abused children were in truth equally possible in children making false accusations, but in the years before false accusations were acknowledged as a serious problem CSAAS had virtually free reign in courtrooms across the land. Even today it is frequently used by the prosecution, via expert testimony, to support a child's allegations.

Here are the reactions Summit proposed.

Secrecy

Summit wrote that "Any attempts by the child to illuminate the secret will be countered by an adult conspiracy of silence and disbelief..." (p. 579). This was tragically all too common a reaction until recent times, and while it may still happen it is less likely to occur because popular attitudes have shifted so dramatically. Today adults in the family will probably believe the child and may even have had a hand in prompting the initial allegation.

What counts in legal cases is whether the evidence points toward adults encouraging and leading a child to make an allegation, or instead ignoring (perhaps even actively discouraging) genuine statements from the child. But Summit never even considered the possibility of adults *promoting* an untrue allegation.

When experts use CSAAS and testify about a child's failure to report at the time of an alleged molestation (stating that a child faced with a hostile adult response will keep the secret) such experts usually know nothing about the specifics of the case. Is CSAAS meaningful when the facts show that most if not all the adults, including family, police, child protection caseworkers and therapists were supportive and perhaps even encouraging of more allegations? Testifying experts should be asked whether Summit wrote even one sentence about such adult response to a child. The answer is that he did not.

Helplessness

This is the second characteristic in Summit's description of typical reactions of molested children. He describes how a molested child may feel powerless

if adults reject his or her cry for help, and about "rejection by the mother and other relatives who may be eager to restore trust in the accused adult and to brand the child as malicious" (p. 580). If the child has been abused, and if the adults react in this way, that a child would feel helpless is hardly surprising. Such helplessness is often cited by experts as the reason for explaining a significant gap between the time of the alleged abuse and the first disclosure to an adult.

What may seem obvious on reflection, but must nonetheless be carefully explained through cross-examination of the expert, is that if the alleged abuse never happened, then the time between the alleged abuse and the disclosure was not a delay, but simply the passage of time.

Once again, Summit emphasizes only one scenario and ignores any other. The experts who use CSAAS do the same. The facts of the case should show whether the child was "branded as malicious," or whether on the contrary adults surroundng the child were supportive and perhaps even prompted the child's allegation.

Entrapment and Accommodation

Again speaking of children who are assumed to be abused, Summit writes, "The only healthy option left for the child is to learn to accept the situation and to survive. There is no way out, no place to run. The healthy, normal, emotionally resilient child will learn to accommodate to the reality of continuing sexual abuse" (p. 581). Granted that a child who seems to be doing well may nonetheless be an abuse victim, it is clearly absurd to consider a child's good adjustment to be evidence of abuse. There are no behaviors, positive or negative, that prove that an abuse has not occurred, any more than there are behaviors that prove it has.

As with each of his other categories, Summit focuses on families in which the perpetrator is supported by other adults. The child senses that a disclosure of abuse would be ignored or discredited and therefore feels trapped. This not only ignores cases in which parents are divorced, separated, or hostile towards each other, but also ignores all those cases in which the accused is not a family member, and parents are hardly likely to take sides against the child.

We have also been struck with how regularly those relying on CSAAS seem to ignore the fact that accommodation can work both ways. A child repeatedly questioned by persons who are not only ready to believe abuse occurred, but are probing for it even in the absence of any statement from the child, may accommodate to *these* pressures as well.

As we discussed in Chapters Two and Three, data from sources as divergent as grand juries, attorneys general, memory researchers, and clinicians, has made it obvious that children in all too many cases not only can but do accomodate to adult pressures to describe abuse experiences. That Summit, gathering his ideas in the late seventies and early eighties, overlooked the fact that accommodation is a two way street is perhaps forgiveable. What is unforgiveable is the continuing refusal by many advocates, including Summit, to acknowledge that if children may acceed to adult pressures, it is important to study in each case whether adult pressures are discouraging a child's disclosures or encouraging them.

Delayed, Conflicted and Unconvincing Disclosure

Summit's fourth category once again paints a picture that simply doesn't fit today's world. He writes, "The mother typically reacts to allegations of sexual abuse with disbelief and protective denial...As someone substantially dependent on the approval of the father, ...the mother's whole security and life adjustment and much of her sense of adult self-worth demand a trust in the reliability of her partner" (p. 584).

While because of today's greater recognition of abuse issues this scenario is much less likely now than in the past, the possibility of such maternal nonsupport of the child must be considered in every case. What makes Summit's description an anachronism is that while there will, tragically, always be *some* parents who react in this way, today's children are repeatedly bombarded with messages about the need to reveal abuse if it is occurring. Those outside the family who have suspicions, like teachers, neighbors, or doctors have an aggressive investigative system ready to respond, and professionals are required to report any suspicion of abuse under penalty of criminal sanction.

The result is that in today's legal cases the pressures on the child are precisely the opposite of those described by Summit. Investigation will reveal that

in almost every case once a disclosure is made, the mother supports the daughter, either because she is already estranged from the accused person, or because she quickly learns from police and child protection agencies that the child will be removed from her custody if she shows any doubt about the truthfulness of the accusation.

In a trial, we recommend that the expert simply be asked if he or she has studied the police and/or child protection records that describe the reaction of the mother. It will not be difficult to show that CSAAS is hardly of help in the case if the pressures on the child were so different from the kind of pressures described by Summit.

Retraction

A child might indeed retract a legitimate accusation, as Summit describes in his fifth and last behavior said to be typical of molested children, if pressured to do so. However, the child being continually rewarded with praise for revealing abuse is hardly likely to feel a need to retract. Experts, as well as the investigators they continue to train, persist in seeing a child's retraction as further evidence that the original allegation is true. This, they say, is part of CSAAS.

To repeat what should be obvious, a retraction in one case may be false and the original allegation true, while a retraction in the next case may be true and the original allegation false. There is no "syndrome," no pattern of behaviors, that can tell which is which. Only analysis of each case will show which is more likely, and this study of the evidence is precisely what prosecution experts using CSAAS seem uninterested in doing.

IS THERE A PROPER ROLE FOR THE ACCOMMODATION SYNDROME IN COURT?

A prolonged debate about the proper legal role of CSAAS has taken place in the past decade. Generally, the Courts have said that since CSAAS is a clinical tool, based on possible reactions of children who have been molested, and not an investigative tool for deciding whether a child has been molested, it may not be used to support the idea that a child has been molested. It may only be used to counter any possible belief that if a child delays disclosure, gives a con-

flicted story, or later retracts the accusation, such things mean the accusation could not be true. *(People v. Bledsoe)*

Summit has agreed with these rulings, repeatedly saying that his work has been misunderstood and misused. He now admits that there are no features of the syndrome that help determine if a child was molested, and says he never wanted CSAAS to be used in this way. This, it seems to us, flies in the face of Dr. Summit's own writings. For nowhere in his CSAAS article does he even discuss the difference between supporting a child who has been molested and the legal determination of whether a child has been molested. *(People v. Taugher)*

Instead, Summit simply moves from a description of how some molested children may handle their situation to recommendations that child advocates teach anyone who will listen that allegations must be accepted as true. "Very few children," he writes, "no more than two or three per thousand have ever been found to exaggerate or to invent claims of sexual molestation" (p.191). This figure of "no more than two or three per thousand" was pure invention on Summit's part, but is still today cited by experts in court and doubtless believed by many jurors.

It was in this context that Summit wrote, "It has become a maxim among child sexual abuse intervention counselors and investigators that children never fabricate the kinds of explicit sexual manipulations they divulge in complaints or interrogations" (p. 587).

And as we discussed in Chapter One, Summit urged "acceptance and validation," and told readers to become "an advocate for the child, in therapy and in court" because "the more illogical and incredible the initiation scene might seem to adults, the more likely it is that the child's plaintive description is valid" (p.576).

Clearly, then, whatever Summit or those experts who testify about his syndrome say now, his words make it clear that he *was* trying to influence legal outcomes from the beginning.

NEUTRALIZING THE ACCOMMODATION SYNDROME

Prosecutors regularly use expert testimony on CSAAS to rehabilitate inconsistencies in the statements of alleged victims of sexual abuse. Here are recommendations for the defense, aimed at blocking or at least minimizing the impact of such misleading testimony.

1. First, an *in limine* motion should be filed with the court before the trial begins, explaining that CSAAS offers nothing in determining that the accusation is true. Unless evidence is introduced by the defense to try to show that a delay in reporting, or a retraction, or inconsistent statements indicates that the accusation *could not* be true, CSAAS for any other purpose amounts to the use of profiles of molest victims, something that the Courts have prohibited.

2. If CSAAS testimony is nonetheless permitted at the trial, the defense attorney should make an objection whenever the expert testifies that secrecy, helplessness or any of the characteristics of CSAAS is typical of molest victims. This goes beyond what is permitted, since the behaviors described in CSAAS are not specific to molest victims. They occur in both true and false cases, and this is why court rulings have consistently said that CSAAS may only be used to show that even with delay in reporting, inconsistent statements, or retraction, an accusation might still be true.

Take, for example, an allegation which is reported a year after the alleged abuse took place and which contains many inconsistencies. The expert on CSAAS describes the report as *delayed,* testifying that molested children typically feel *helpless* and therefore *accommodate* to their situation. When they finally disclose, the expert continues, it is common for victims to offer a *conflicted and unconvincing disclosure.*

Now use the same behaviors but assume the allegation is false. The year between the date of the alleged events and the accustion is not a *delay,* since nothing happened. The child during the previous year gave no indication of anything wrong because abuse was not happening rather than because of helplessness and accommodation. The accusation is conflicted and unconvincing because the child is not describing events from her memory but describing what she has learned to say from repeated leading and suggestive

questions from both family and professionals alike, all convinced that abuse occurred.

3. If these objections are not successful in preventing such opinions from being given, then this same material should be used on cross-examination. Once the expert has been forced to acknowledge that each category of CSAAS can be consistent with a false allegation as well, the defense attorney should ask whether the facts of this particular case have been studied. Usually the answer will be "no," and the next question is, How can testimony about a pattern that cannot distinguish one possibility from the other be of any help to the jury?"

4. The defense attorney should also ask the expert hypothetical questions based on the facts of the case, especially facts that touch on the issue of whether the child was subjected to pressures that would, as Summit described, discourage a disclosure. If the expert has to acknowledge that the pressures *in this case* encouraged rather than discouraged a disclosure, he must also be asked if there is any reason a child may not *accommodate* to such pressures. In other words, if there is any reason that accommodation may only allow a child to suppress a true allegation but never allow a child to succumb to pressure to make a false allegation?

These kinds of questions should help a jury recognize that expert testimony on CSAAS is nothing more than an unscientific attempt to bolster a weak case. Another way that prosecutors may seek to introduce misleading testimony is through lay testimony about the behavior of the child.

BEHAVIORIAL TESTIMONY FROM PARENTS OR OTHER LAY PEOPLE

It is not uncommon for a prosecutor to try to bolster a case with testimony from parents or other persons near the child, who say they have observed certain behavioral changes. These behaviors can range from thumbsucking to temper tantrums, from masturbation to fighting, from nightmares to bedwetting. None of these behaviors is helpful in deciding if a child has been abused, since there are so many reasons for a child displaying any of them.

Such testimony is usually presented to show that the onset of the behaviors

coincided with the alleged abuse. However, careful investigation of the case may raise doubts about the observations and the alleged onset of the behaviors.

First, the defense attorney should obtain the child's school and pediatric records. School records may show that the alleged behavioral problems have not been seen in school, raising questions of bias on the part of a parent saying the child has changed. If nothing has been mentioned to, or observed by family physicians or pediatricians, the same doubts will result.

In other cases, behavior changes have indeed been noted by teachers, neighbors, or friends. It becomes very important to find out if the child has been placed in therapy not for the usual reasons, behavioral or emotional problems, but simply because sexual abuse was alleged. As we will discuss in more detail in Chapter Eight, such therapy is commonly initiated at the time the accusation first surfaces, and everyone who surrounds the child assumes that abuse happened.

Every effort must be made to obtain the records of such therapy, given that therapists in these circumstances usually assume abuse occured and then tailor therapy to encourage the child to describe abuse experiences. Such therapists, in other words, take on the role of investigators, but unless records of the therapy are obtained, studied, and made a part of the trial, the potential impact of therapy on a child's reliability will be hidden from a jury.

When such records are carefully studied, it may emerge that only with the onset of therapy, with its repeated message that the child has been victimized and perhaps is still in danger, did the child begin to show the symptoms described later as having resulted from sexual abuse. When a child is repeatedly reassured that he or she will be protected and is therefore safe to "tell the secret," and is then asked if the alleged perpetrator threatened to harm or even kill the child if the secret is revealed, should we be surprised if the child responds to such therapy with the onset of fears, nightmares, clinging behavior and other symptoms of anxiety?

Perhaps the best known example of therapy producing such an outcome involves the McMartin preschool case in Los Angeles. By the time of the trial in 1987, many parents were claiming that their children showed a variety of symptoms during the time they attended the McMartin preschool. But when

these parents had filled out a child behavior questionnaire for the Children's Institute International (CII), at a time when the investigation was still young and the children had not yet been placed in therapy, these symptoms were not reported. The overwhelming pattern of answers revealed that these children were a group of healthy and happy youngsters at the time they attended the McMartin preschool.

Later these children developed many fears but only after Kee MacFarlane and her colleagues at CII pressured them to describe abuse at the preschool and then made sure the parents took the children to hand-picked sexual abuse "specialists" who regularly asked the children to recount abuse.

The videotapes of the interviews at CII show that Kee MacFarlane told child after child that "Mr. Ray" (the grandson of the preschool's founder) couldn't hurt anyone ever again because the police were always parked outside his house, and if he tried to leave his house the police would stop him. Perhaps Ms. MacFarlane is still convinced that she was reassuring the children, but it seems clear that such tactics taught the children not only to believe that all kinds of terrible things had already been done to them, but that the danger was not yet over.

Predictably, the symptoms so many of the children developed, such as clinging, fears, and nightmares, only started after interviews like this had begun. When the staff of the preschool were allegedly digging the tunnels, killing the rabbits and snakes, arranging the airplane flights, and even finding time to play "naked movie star" games, the parents noticed nothing untoward in the behavior of the children.

In summary, then, if such testimony about a change in the child's behavior from either lay persons or experts comes into a trial, it is essential to obtain all medical and therapy records and use them to show the timing of any behavioral changes shown by the child.

PROGRESSIVE DISCLOSURE

While not dignified as a formal syndrome, "progressive disclosure" is frequently said by prosecution experts to explain the common pattern in which

the child, at the beginning of an investigation, either denies abuse or makes allegations that are minor in comparison with those that come later. As the questioning of the child continues, by parents, police, social workers, or therapists, the accusations grow. A typical scenario might involve a five- or six-year-old girl who initially says she was touched once on the outside of her panties but eventually describes intercourse with penile penetration.

The explanation for such expanded allegations becomes a central question of the case. The prosecution argues that abused children are naturally frightened and embarrassed at revealing their abuse, and will at first only reveal a small part of what happened. This is the child's way, prosecution experts claim, to test the interviewer. More of what happened is revealed by the child as trust in the interviewer grows. The prosecution's expert explains that abused children feel guilty, may blame themselves, and often fear retaliation for telling.

This description may fit a particular case. It is clearly wrong to assume that during an initial interview every abused child will reveal everything. Equally mistaken, however, is the opposite assumption that whenever a child reveals more abuse in later interviews, the expanded claims are true. In other words, more information does not always equal more truth. Instead, the child may be learning that every new accusation brings a very warm and positive response from adults surrounding the child.

It should be obvious that if increasingly serious allegations emerge only after weeks or months of questioning of the child by family, police, social workers, or therapists, careful investigation is the only way to decide if the expanded claims are the result of the child's gradually increasing ability to say everything that happened, or are instead the result of the child's attempt to satisfy interviewers who are prodding the child to say more and more.

In our experience, police and social work investigators, and district attorneys, having been trained in the one-sided tenets of the abuse prevention movement, seldom investigate the possibility that the child's progressive disclosure is the product of training rather than gradually increasing ability to tell what really happened. This pattern frequently begins at the very start of a case, when the child is first interviewed. Seldom do we see evidence that the initial police or social work investigator spends much time with the child talking

about which adults, especially family members, have already asked questions. When this is not done, it is easy for the initial police or social work interviewer to become a reinforcer of training the child has already received by one or more adults, such as a mother when the father is the accused, or both parents when the accused is a teacher or neighbor. Not only do such investigators uncritically assume the "believe the child" stance, but their behavior with the child reinforces the child's training. The child sees one more adult, the investigator, responding warmly to each new accusation, just like the others have done.

Investigators who avoid this problem need not be uncaring or unsupportive of the child. They have more choices than either completely accepting every statement from the child as being true, with no real need for any corroboration, or, conversely, adopting a cold and unbelieving attitude with the child. Interviewers must take every statement seriously but this does not require a rush to judgment.

Of all the ways in which a progressive disclosure of untrue allegations may emerge, the impact of child therapy is the one which is most likely to remain hidden from study by a jury. This is because judges often refuse to allow therapy records to become part of a trial. In Chapter Eight we will offer recommendations for convincing judges that such records are crucial to a fair trial.

For now, let us explore how therapy can lead a child to voice ever expanding but untrue allegations. The problem starts with the attitude of therapists who consider themselves specialists in treating the impact of child sexual abuse. Convinced of the ideas and methods discussed in Chapter Two, these therapists assume every child referred to them by a parent, police or child protection agency is a genuine victim. The possibility of a false accusation is not taken seriously. Instead, treatment from the outset is based on the assumption of abuse and the therapist regularly asks the child about the abuse in order to help the child "work through the trauma."

For some abuse victims, such therapy may be appropriate. But in those cases where a child making a false accusation is incorrectly treated as a genuine victim, the child has no real choice but to repeat these accusations week after week to the therapist. The therapist often measures his or her professional

worth by the number of new abuse experiences the child reveals as therapy unfolds. If this sounds like a harsh judgment, it is one that emerges not from theoretical formulations but study of actual therapy records from hundreds of cases.

By the time the police investigation in these cases is received by the district attorney, the child may have had many such sessions with a therapist. Sadly, few prosecutors seem interested in the role that therapy may have played in influencing the child's ability to recall events accurately. Prosecutor's rarely study the therapy records of a child being treated for assumed sexual abuse, in an effort to study whether the child as a witness will be able to testify from his or her memory of actual events, or instead will merely repeat statements made during suggestive therapy sessions.

In many cases, then, it will be up to the defense to investigate the question, so that a jury can best decide the genuine explanation for the child's alleged "progressive disclosure." This means, of course, that the therapy records must first be obtained.

Many defense attorneys are hesitant to call the child's therapist as a hostile witness. We believe that if you are convinced that your client is innocent, this is a risk that might be worth taking. If the jury is being asked to consider the possibility that a very likeable young child, obviously sincere, is not telling the truth, there must be an explanation for the accusations. This, in turn, requires that the jury get the fullest exposure to the persons and methods which have impinged on the child. Especially crucial is an explanation of what we have discussed in Chapters Two and Three, that children making false accusations of sexual abuse are usually not *lying*, but repeating a story they have learned.

When a jury is given the opportunity to study all the records of how a child has been questioned, and understand the attitudes and behavior of the many adults questioning the child, and to study the environment surrounding the evolution of the child's statements, it will be much easier to discriminate between those cases in which genuine memories of real events have been gradually described from those in which the child has learned (and usually come to sincerely believe) in things which never happened.

When the defense does a good job of presenting such information, it is

common for the prosecution to call an expert witness to rehabilitate the child's credibility. These experts are inevitably drawn from the ranks of mental health professionals with close ties to the "believe the child" mentality. In their testimony, they emphasize the reasons why an abused child may initially hesitate to disclose abuse. The prosecutor of course does not ask about children who do not disclose abuse because it has not happened.

Such experts in our experience rarely read the actual documents of the case. They seem, in fact, to take a certain pride in remaining ignorant of the specific case, as if making general comments gives them a neutral and more professional air. Avoiding any reference to the specific case supposedly conveys an "above the fray" kind of neutrality. This is absurd, of course, and the best way to help a jury see through the manipulation is to use the facts of the case as a basis for cross-examination of such experts. During such questioning, the expert should be informed of the kinds of questioning sessions experienced by the child, and the expert should then be asked if such influences might have contaminated the child's ability to give accurate testimony.

When the evidence points to an evolving and expanding story that seems tied to an ongoing series of leading and suggestive interviews, the bias of such experts should become evident. They can be asked to explain why during the prosecutor's questioning, they emphasized the "molested- child-too-inhibited-to-tell-all" scenario while ignoring the "non-molested- child-trained-to-say-more-and-more" alternative.

We recommend that cross examination of such experts begin with questions about the general phenomenon of false accusations of sexual abuse. Having no choice but to acknowledge the reality of the problem, these experts will usually try to minimize its dimensions. Further questioning can quickly force them to acknowledge that false accusations are bad for children, and that professionals have a duty to try their best not to ignore or promote such a thing.

Next, they can be asked what they recommend professionals do to keep from falling into the trap of reinforcing a false accusation. Their answer will usually include the things we have discussed above, such as studying *all* the influences on the child. Now the trap is ready to be sprung. Why was this particular expert willing to testify in a case in which he never studied the investigation?

POST TRAUMATIC STRESS DISORDER

In addition to the use of syndromes and behavioral interpretations, there is yet another way that psychiatric opinions may compromise the truth-seeking process in court. This involves the use of a psychiatric diagnosis to support the claim of abuse.

A favorite amongst child sexual abuse reformers is "post-traumatic stress disorder" (PTSD/DSM IV 309.81). The child is said to show behavioral symptoms and signs which must be the result of a major psychic trauma. In the absence of any other known major catastrophe in the child's life, the expert concludes that sexual abuse is the likely explanation.

Such claims are not only without any scientific foundation; they also fly in the face of accepted standards for use of the PTSD label. Let us look at the legitimate use of PTSD and then see how it is being perverted in sexual abuse accusations.

First, symptoms such as hypervigilance or its opposite, emotional numbing, can be the result of a major trauma but they can come from other causes and therefore do not prove that a major trauma has occurred. Only when it is known by *independent evidence* that a person has suffered a major catastrophe may ensuing symptoms of anxiety be legitimately summarized by the PTSD label, implying that the catastrophe was the cause of the symptoms. Because the same symptoms may come from other causes that have nothing to do with a major catastrophe, it is never proper to work backwards by *inferring* a trauma from the symptoms.

When one moves from these general considerations to the study of specific abuse cases, the self-fulfilling nature of the PTSD label usually becomes all too obvious. First, the *timing* of the symptoms is important. As mentioned above, the symptoms are often only noted after the investigative and therapy questioning starts, rather than at the time of the alleged sexual abuse. Next, the symptoms usually continue to worsen as therapy progresses, indicating that the questioning is probably the cause of the child's increasing fear. As the child describes more and more abusive experiences, it is hardly surprising that symptoms such as nightmares, separation anxiety or behavior disorders emerge.

In a typical pattern we have seen, the child is referred to therapy because of the allegation rather than the presence of symptoms that would lead to therapy for children. As therapy continues, the child *then* develops the symptoms which are said to prove that abuse happened. Clearly, it is crucial that the therapy records be obtained and used as a basis for cross examinating the expert using the PTSD label, as well as direct examination of your own rebuttal expert.

Vigorous discovery of other materials, such as medical and school records, is also important, because in many cases the alleged symptoms are only noted by the accusing adult, often the mother of the child. In many cases, teachers, neighbors and doctors have not observed the problems that the accusing parent says are so striking. This raises the question as to whether the child's behavior is more a response to environmental cues of some adults, rather than indicators of prior sexual contact.

It should now be clear why we have reached the conclusion that the fullest exposure of the child's therapy sessions is so important in finding the truth that the child's therapist should be called as a hostile witness. This allows a jury to see the attitudes of a major figure in the child's life, and also allows discovery of therapy records that might otherwise remain hidden.

THE STOLL DECISION

While less common than the preceding examples, psychiatric evaluation of the accused is sometimes used by the defense. The case of *People v. Stoll* encouraged such testimony, when the California Supreme Court ruled that the trial court had erred in refusing to hear psychological expert testimony which purported to show that psychological tests proved that Stoll did not have any tendencies toward sexual abuse.

There are, of course, no psychological test profiles that help in determining whether a particular person has committed a sexual crime or any other type of crime. Even if a defendant's test responses could be shown to place him in a group more likely to commit a sex crime, use of such information to either convict or acquit a person would amount to using a statistical approach to establish an individual's guilt or innocence. The judicial system might as well

base a trial for armed robbery on the defendant's race and the income level of his neighborhood rather than the evidence of the case, since statistics show that more robbers come from the America's ghettos than from fancy neighborhoods.

If the defense calls an expert to report on psychological test or clinical interview results, the prosecution should bring out on cross examination that there is no evidence whatever that such data improves the accuracy of legal determinations of guilt or innocence. Also, there is another reason that psychological test results have no legitimate place in sex abuse trials, and this has to do with the unscientific way that sex offender profiles are generated. Test patterns said to be typical of sex offenders have come from testing done on prisoners already convicted of sex offenses. An unknown but considerable proportion of offenders, perhaps the majority, are never apprehended and therefore never tested. Testing literature on sex offenders, in other words, is based on a biased sample.

Second, in the past decade so many falsely accused persons have been convicted and sent to prison that there is no longer good reason to assume that all, or even most, of those locked up for sexual crimes are actually guilty. Newer studies, done since this wave of false accusations, have no way to know how many persons considered deviant have been falsely accused and convicted.

Defense experts may argue that while no one test (from an MMPI to a penile plethysmograph) can pick out sex offenders, a "battery" of tests will provide a total picture which can distinguish between genuine offenders and innocent persons. But if individual measures are subjective and unreliable, the subjectivity and unreliability will *increase*, not decrease, when several such measures are combined. If tea leaves, palm readings, and ouijah boards are each useless as predictors of the future, the outcome is not enhanced when they are used in concert.

PARENTAL ALIENATION SYNDROME

Psychiatrist Richard Gardner coined this term for a pattern which is obvious to anyone who studies even a few cases in which a sex abuse allegation occurs

in the context of divorce or custody fights (1987). In short, a parent (usually the mother) comes to believe that the father has molested the child, calls police or child protection, and succeeds in preventing any contact between the child and the alleged offender. Then, through repeated conversations between the accusing parent and child (often buttressed by similarly one-sided dialogues with social workers or therapists) the child develops a fear and dislike of the accused parent.

Two of the clearest indicators of this pattern are 1) the timing of the shift in the child's attitude, which comes only after the allegations begin rather than when the alleged abuse supposedly took place, and 2) the absurd and clearly exaggerated claims made by the child.

In an example of the latter, an eight-year-old boy prevented by his mother from seeing his father and repeatedly told by his mother, social workers, and a therapist that his father had abused him, eventually claimed that his father had *never once* done anything nice, had *never* taken him anywhere, and had on a fishing trip taken a fish caught by the child and put it on his own (the father's) hook.

Our reservations about PAS are not with the features described, which are clearly present in many cases, but with the fact that it is called a "syndrome." This leads to the same dangers as all the other syndromes and profiles: 1) the assumption that mental health professionals should play a key role in investigation of sex abuse charges, as well as train police officers and child protection caseworkers, and 2) the increased likelihood that an expert's opinion about a syndrome will become a substitute for investigation of the facts of the case.

While PAS is usually thought of as a defense-oriented tactic, the features described by Gardner can be used just as easily by a prosecution expert to bolster a weak case. Gardner claims, for example, that by using clinical interviews and PAS he can tell which children are genuine victims and which are false accusers. Genuine victims, he tells us, are inconsistent in their statements since they have not been programmed, while children making false accusations will be consistent over time because they have learned a script.

This alleged method of distinguishing true from false accusations ignores the

fact that a child's inconsistency may result from the fact that it is difficult for anyone and especially for a child to tell a consistent story if the events described never happened and the child has been influenced by leading and suggestive interviewers.

Gardner recommends that judges should appoint mental health professionals to evaluate, using his recommended method (1987b), not only the child but also the parents. Armed with his behavioral checklist of no less than sixty-two items, Gardner claims such experts will be able to find the truth of the case. Even a cursory look at his criteria, however, makes it abundantly clear that mental health evaluations are no substitute for quality investigations.

For example, in what Gardner calls the "Specificity of the Details of the Sexual Abuse," he writes,

> Children who have been genuinely abused are more likely to be able to provide specific details of the sex abuse because they can refer to an internal visual image related to the abuse experience. When talking about the abuse, the visual image that is brought to mind includes many details that go beyond the imagery directly related to the abuse. This includes details about the place where the abuse occurred, often the approximate time of day or night, the presence or absence of other individuals, and statements made by the abuser, the child and others who may have been present. (p.)

We have studied hundreds of hours of audio and video tapes of children being interviewed by police officers, case workers and therapists during sex abuse investigations. Over and over we have observed what so many other researchers have reported, that children ultimately shown to be victims of adult training rather than genuine victims of sexual abuse have nonetheless given very detailed accounts of sexual experiences. This is especially true after a number of interviews. The "internal visual image" which Gardner claims only is present when abuse has actually occurred can just as easily be learned. And, once learned, it can be felt and expressed with as much sincerity as if it were real.

Gardner's PAS, as well as his recommended evaluation schema, suffers the same problems as CSAAS, and all the other attempts by mental health profes-

sionals to develop meaningful evaluations of either alleged victims or alleged perpetrators. It emphasizes the subjective conclusions of mental health professionals, gathered from interviews and tests carried out in their offices, and thereby discourages quality investigation done in the field.

SEXUAL ABUSE IN DIVORCE (SAID) SYNDROME

Psychologists Karol Ross and Gordon Blush have fallen into the same trap as Gardner. Like him, they have studied enough cases (while working for a Court evaluation service in Michigan) to easily recognize certain patterns that emerged in the early 1980's (1987). They noted that the pattern had a strong association to cases involving allegations of sexual abuse when divorce and child custody litigation was pending. This in itself is acceptable, but then Ross and Blush, like Gardner, conclude that mental health professionals have special skills in determining the truth or falsity of an accusation.

Ross and Blush describe what they call "Sexual Abuse Validity Discriminators." Such fancy terminology implies that only mental health professionals have the education and experience to find the truth. They recommend that the expert evaluator look at factors like the timing of the allegation, the nature of the accusation and other information surrounding the accusation, but nowhere do they explain how a mental health professional is able to evaluate such data more expertly than ordinary police or social work investigators.

In addition, they argue for something which we categorically reject—the idea that expert opinions on the personality patterns of the adults and of the child, as determined by clinical interviews and pencil-and-paper tests, should be a crucial part of the investigation.

"We have found," they write, "three major personality patterns in these women in cases where the sexual abuse allegations could not be substantiated and were probably false" (p. 6). They list the "histrionic personality," the "justified vindicator," and the "borderline personality."

Given that personality labels say as much about the evaluator as the evaluated, it is ludicrous to think that such labels should play any part in a legal determination of guilt or innocence. Ross and Blush would be wiser to remem-

ber that if an adult is subjecting a child to improper influences and therefore creating a false allegation, investigation should uncover evidence of *behavior* (such as suggestive questioning of the child, or the giving of unreliable information to investigators) that will impeach his or her credibility. Relying on a personality diagnosis to address the same issues is a sorry substitute for careful investigation.

Blush and Ross also recommend that the child's behavior be analyzed by the mental health evaluator. Echoing Gardner's PAS, they explain that the child making a false allegation communicates an absolute foreclosure against a parent. "For example, adolescents, who in a very intense protest, proclaim that they 'never, ever' want to see the other parent" (p. 7). If this is *characteristic* of a falsely acccusing child, does it conversely follow that children showing some positive relationship with the accused must be genuine victims? Obviously not.

The problem is that just as often the child does *not* demonstrate such a pattern. Genuine victims may hate an abusing parent or love an abusing parent. False accusers may hate a non-abusing parent or, if pressures on the child are sufficient, may falsely accuse a parent they love.

The recommendations of Blush and Ross, just as those of Gardner, would lead us to accept the notion that children who accuse a parent but nonetheless have some good things to say about that parent are thereby more likely to have been abused by that parent. This is the kind of absurdity that syndrome evidence rouinely promotes.

LOOKING FOR SYNDROMES INSTEAD OF EVIDENCE

Behavioral sydromes are not only unreliable. They are also distracting. When mental health professionals are allowed to perform these evaluations in abuse cases, it is more likely that police and social work investigators will neglect important leads because they are awaiting the results of the psychiatric interviews and psychological tests.

Consider, for example, the case in which a three-year-old girl was in her front yard fussing and crying. Her mother came out and was comforting her

when a neighbor, about to take his horse for a ride, asked the child if she would like to join him. When the girl nodded yes and her mother agreed, he placed her in the saddle in front of him and off they went.

They returned about a half-hour later and the child seemed cheerful and content. But when she came inside with her mother and needed to use the toilet, the child started crying and the mother noted a small break in the skin near her vaginal area. This led to an accusation that the neighbor had abused the child during the ride.

The records indicated that during the investigation, the child was taken through the woods by investigators to retrace the route taken on horseback. A small house trailer was spotted and after several interviews, the girl claimed the neighbor had taken her inside the trailer and abused her.

Instead of investigating this charge, a mental health professional was asked to evaluate the credibility of the allegation. The reliability of the statement would be tested not by evaluating it in the context of other facts in the case, but by a mental health professional's opinion of whether the child's "clinical presentation" was what would be expected of an abused child. When the trial took place, the mental health professional testified on behalf of the prosecution that the child's mannerisms were those to be expected with genuine abuse victims.

What was so appalling was not only the use of such psuedo-methods, but the fact that *nothing else* was done to evaluate the credibility of the child's statements. At the very time the investigation was still fresh and leads should have been followed up, the investigators were simply waiting for the "results" determined by the mental health professional.

The police never bothered to investigate the trailer. Were there signs of forced entry? Did the accused have a way of getting in other than by breaking in? Was it already unlocked? Who owned it? The police did nothing because they had been trained to believe that the mental health evaluator had a better way to find the truth. The mental health professional would determine whether the child fit the pattern of a "genuine victim."

MUNCHAUSEN SYNDROME BY PROXY (MSBP)

This is another so-called syndrome that interferes with justice instead of promoting it. Once again, just as with CSAAS, the pattern described by MSBP is real but is not a way to determine whether a person has committed a crime.

In this instance the crime alleged is physical abuse rather than sexual abuse, and because this book deals with sexual abuse cases, we will be brief. It is an unfortunate fact that an occasional parent will repeatedly harm or neglect a child and then the take the child to a doctor, with a false story to explain the child's condition.

Various theories exist to explain the underlying motivations of such a parent (Libow & Schreier, 1986). When someone is suspected of such behavior and charged with child abuse, it is common for the prosecution to call a psychiatrist to testify that the accused suffers from MSBP.

Lacking a good medical explanation for the child's medical problems (or in some cases the child's death), the expert states that the only remaining explanation is that the parent harmed the child.

What is the evidence that the parent did such a thing? It is merely a label. The prosecutor's evidence is that the parent has been diagnosed with MSBP. The argument is that once the parent has been diagnosed, it follows that the parent must be responsible for the child's condition.

Of course the reasoning is absurd, but in a trial where a child has been killed or injured, emotions run high. Unless there is effective cross-examination and defense expert testimony to explain the misunderstanding, a jury can easily be fooled into thinking genuine evidence has been presented.

What must be emphasized over and over is that if there is good evidence of the parent harming the child, then there is no need for expert testimony about syndromes. We urge prosecutors to simply present the evidence showing abuse of the child. If good factual evidence of child abuse or neglect exists, additional syndrome testimony may make the jury skeptical because it may appear that the prosecution seems to need "psychobabble" to bolster its case.

If, on the other hand, there is not good evidence for the parent harming the child, neither MSBP nor any other syndrome is a legitimate substitute for it.

Testimony about MSBP should not be allowed, but if it is permitted, the defense should expose the deception of substituting a syndrome for evidence. The key concept to bring out in both cross-examination of the MSBP expert and direct examination of rebuttal expert is the following:

Just like CSAAS, or "rape trauma syndrome," MSBP is a clinical rather than a fact-finding tool, and may be useful in clinical discussions to try to understand someone known by independent evidence to have harmed a child. It is of no value in determining whether a person has done so.

TOWARD THE SYNDROME-FREE COURTROOM

Every time we rely on psychiatric syndromes to look for a profile or pattern, we become part of the problem instead part of the solution. The findings of mental health evaluators simultaneously focus our attention on patterns that do not reliably discriminate between true and false cases, while distracting our attention from the job of thorough investigation.

It is time we recognize that if the experts from mental health created the epidemic of false allegations, the solutuion is not to be found by either the prosecution or defense relying on syndromes. The solution is to eliminate the influence of mental health professionals, both in investigations and trials, so that investigators from police and child protection can return to common sense methods, and so that the investigators in the courtroom— the judge and jury— can do the same.

CHAPTER SIX

THE MANUFACTURING OF MEMORIES

STARTING IN THE late 1980's, the sexual abuse prevention and treatment movement was ready to expand. No longer would children be the only ones influenced by interviewers and therapists to make accusations of sexual abuse. Now adults also were manipulated into joining the movement, the idea being that the majority of American women have been molested as children but don't know it. They have repressed the memories of their abuse (Blume, 1990).

In recent years, this phenomenon has been increasingly scrutinized by the courts, the media and the general public. Unlike children, who are said by many professionals and non-professionals to be rarely capable of making false accusations of sexual abuse, adults who claim to have suddenly recovered memories of past abuse may be met with a somewhat more skeptical response.

Despite this growing awareness, we believe that a review of the phenomenon by which adult women are being influenced to believe they have recovered long hidden memories of past abuse will deepen our understanding of the process by which children are influenced to make unreliable statements about sexual abuse.

We know, of course, that many women were molested as children, and that some of them have not revealed this to anyone. However, keeping silent about abuse is dramatically different from not remembering what took place.

Proponents nonetheless argue that the uncovering of the memory of molestation is the key to helping tens of thousands of women who suffer a wide variety of emotional problems but don't recognize the true cause of their pain. Advocates of these ideas have written books and articles, continue to give conferences and actively encourage more therapists to use suggestive therapy techniques designed to "unblock the memories," as Loftus (1994) describes.

Such therapy, reinforced by books, articles, TV shows, conferences, and group counseling sessions, resulted in thousands of women, who had no previous memories or suspicion of abuse, believing they were the victims of molestation. The abusers were their fathers, mothers, brothers, uncles, or other relatives and friends. Almost twenty percent of these women also claim their abuse was part of religious rituals practiced by a devil-worshiping cult, and

included acts of killing of babies, torture and mutilation, and the slaughter of animals (Smith & Pazder, 1980). Some have even reported recovering memories of abuse in past lives or during space alien abductions (Stieber, 1987).

For parents suddenly accused of such heinous acts against one's own child, the psychological impact is devastating. This is not a natural disaster, in which survivors at least understand that nature had its own agenda, and that we all must adapt as best we can. This disaster is more devastating than any earthquake or flood; its effects never wear off.

It usually starts with a letter or a phone call from a grown daughter. "Mom, I'm discovering a lot about myself that is very hard, and until I understand it better, I don't want any contact with you or Dad." Bewildered parents eventually learn that through the influence of one or more therapists, and often of other women making similar "discoveries," their daughter has "unblocked" her previously "repressed" memories of what Dad did to her.

Sometimes not only Dad, but Mom, neighbors, members of the neighborhood church, or just about anyone known to the family are implicated. Not infrequently the claims grow over time to include torture, animal sacrifice, killing of babies, and drinking of blood. Sometimes it turns out that Mom and Dad were part of a cult, in which sexual abuse and mayhem were practiced on a religious basis. In many cases the claims are so utterly fantastic that the parents are sure their daughter has had a mental breakdown.

Such a development, which no writer of fiction had ever managed to concoct, is devastatingly real to those accused. As we shall now describe, it is the latest aberration to come from the misguided ideas which still drive the child sexual abuse prevention movement.

Perhaps more shocking than the vulnerability of patients to these ideas is the fact that important segments of the mental health and feminist community continue to promote these ideas. They cloak themselves in scientific rhetoric and misuse legitimate psychological concepts in order to give their claims credibility. "Repression," "dissociation," " psychogenic amnesia," " post-traumatic stress disorder," "multiple-personality disorder," "body memories" are all part of the grab-bag of terms that are meant to convince patients that they show symptoms of abuse, even if they have no memory of such acts.

The most blatant disregard for scientific research is evidenced by the movement's theory of memory, which considers memory to function more or less like a video camera. If one can find the tape in a patient's mind and then play it, whatever is recorded is accepted as literal fact. This violates what all legitimate research on memory has demonstrated since the beginning of this century: memory is fragile and easily manipulated.

Legitimate study of memory has shown its fragile nature (Loftus, 1993). First, memory for events that *did* happen are easily altered by what has been called post-event influences. These are subsequent events, feelings or motivations that contaminate the memory. The fish that grows with each re-telling of the story is not a lie so much as the honest exaggeration of an avid angler whose enthusiasm and desire to impress others gradually influences his recollection.

Second, as in our earlier example in Chapter Three of pioneering researcher Jean Piaget and his "memory" of being kidnapped, a person may come to create, quite sincerely, a mental image of something which never happened at all.

Ironically, it is the extreme nature of the recovered memory movement's claims that has done the most to expose the basically fraudulent nature of the whole enterprise. Most people intuitively understand, for example, that while TV sitcomic Roseanne claims to have a memory from age six months of being molested by her father, this cannot be legitimate since long established research on human development shows that none of us can remember events prior to three or four years of age.

Make no mistake, however. The women who claim to have recovered memories of abuse truly believe what they are saying. If sincerity were the only test of truthfulness, these women would prevail in every legal case they bring to the courts. Let us take a look at how both the therapists, and then the patients who come under their influence, have come to believe so fervently in a phenomenon which is not real.

A CLOSER LOOK AT THE THERAPY

Repressed memory therapy typically encompasses several stages. In the first, therapists focus on a list of symptoms that patients may exhibit and that are

said to prove childhood sexual abuse has occured. These symptoms number in the hundreds and include: headaches, vaginal infections, sleep disturbances, stomach aches, dizziness, eating disorders or fears of eating certain foods, such as bananas or tapioca pudding, problems in maintaining stable relationships, a penchant for wearing baggy clothes, obesity, depression, or low self esteem.

Therapist E. Sue Blume, in *Secret Survivors: Uncovering Incest and Its Aftereffects in Women*, lists the following as symptoms of molestation in her "Incest Survivors Aftereffects Checklist" (p. xxvii):

Nightmares, night terrors	Going into shock
Swallowing or gagging sensitivity	Shut down in crisis
Alienation from the body	Psychic numbing
Failure to head body signals	Pain with a memory or emotion
Failure to take care of one's body	Numbness with memory or emotion
Poor body image	Rigid control of thought process
Avoidance of sexual attention	Multiple personality
Gastrointestinal problems	Humorlessness or extreme solemnity
Gynecological disorders	Childhood hiding or cowering in corners
Headaches	Nervous being watched or surprised
Arthritis or joint pains	Feeling watched
Wearing a lot of clothing	Startle response
Baggy clothes	Total trust, trusting indiscriminately
Unwillingness to remove clothing	High risk taking, inability to take risks
Excessive bathroom privacy	Boundary issues
Eating disorders	Control, power, territoriality issues
Drug or alcohol abuse	Fear of losing control
Total drug or alcohol abstinence	Obsessive, compulsive behaviors
Other addictions	Guilt, shame
Compulsive disorders	Low self esteem
Self destructiveness	High appreciation of favors by others
Skin carving, self abuse	Pattern of being a victim

continued

Phobias	No sense of right to set limits and say no
Need to be invisible	Relationships with much older persons
Need to be perfect or perfectly bad	Feeling demand to "produce and be loved"
Suicidal thoughts or behaviors	Abandonment issues
Depression	Blocking out some period of early years
Anger issues	Feeling of carrying an awful secret
Splitting (depersonalization)	Feeling crazy, different, unreal
Creating fantasy world	Denial
Creating fantasy relationships	Repression of memories
Creating fantasy identities	Sexual issues, aversion to being touched
"Sensory flashes" of unknown meaning	Confusion of sexuality and-emotionality
Ambivalent relationships	Sexual acting out
Desire to change one's name	Compulsively seductive
Limited tolerance for happiness	Compusively asexual
Aversion to making noise	Must be the sexual aggressor
Verbal hypervigilance	Cannot be the sexual aggressor
Stealing	Promiscuity
Starting fires	Prostitute, stripper, porn actress

Patients also are taught early in therapy that just because they do not remember being abused, the symptoms they are experiencing are evidence enough. The lack of any memory of abuse, far from being a cause for hesitation, is used as further evidence for the abuse. The theory is that the childhood trauma has been "dissociated," so of course no memories remain. These therapists tell their patients that the recovery of the memories is the very thing that will heal them and until the memories are recovered, the patient is "in denial."

Books like *The Courage to Heal* (Bass & Davis, 1988) also underscore these same ideas. Authors Ellen Bass and Laura Davis write,

> If you think you were abused and your life shows the symptoms, then you were...If you don't remember your abuse, you are not alone. Many women don't have memories: this doesn't mean they weren't abused. (p. 81)

Blume in *Secret Survivors* agrees: "Many, if not most, incest survivors do not know that the abuse has even occurred" (xxi).

The techniques used to bring back the "memories" are numerous, but all require the patient to first assume abuse has taken place and then to look for the evidence. A few therapists use formal hypnotic sessions, and fewer yet may use sodium pentathol injections as a "truth serum" in an effort to verify memories recovered during hypnosis. Neither of these techniques, of course, enhance memory, but they do make the patient more vulnerable to these therapeutic manipulations.

More often, techniques like guided imagery, age regression, inner-child work, relaxation therapy, channeling, trance writing and crystal reading are introduced to the patient and used indiscriminately. Another such tool is journal writing that is used as a workbook to document a patient's activities at home. Dreams are written out to be interpreted later by the therapist. A persistent itch here or an odd feeling there is recorded and then said to be a "body memory" of previously unrecognized past abuse.

Therapists often place patients in "incest survivor" therapy groups where they are surrounded by other patients who have come to believe they have recently uncovered memories of abuse. Unusual is the patient entering such groups who does not quickly find that pictures of abuse are emerging in their own mind, ready for the telling in the next group session. Tragically, it is also typical that the relationships formed in these groups substitute for family ties. There is tremendous peer pressure to share abuse experiences, and the common bond which now unites these patients is usually irresistible.

Some patients may doubt their newly found memories, especially when they include grotesque images of infanticide, ritual animal slaughter, or bizarre religious ceremony. Such doubts are usually squelched quickly and easily by both the therapist and other patients in the group. They remind the doubter of the many articles, books and TV talk shows, in which advocates argue that if

so many women are recovering similar memories of bizarre abuse, the phenomenon must be valid.

Therapists also manipulate their patients into thinking that all these mental images being labeled as memories are reliable indicators of past events. The therapists ask what is to be gained- by either therapist or patient- by fabricating such horrific events. The answer is that patients are made to feel they have found the explanation for all their troubles. They do not have to take responsibility for their past actions because it is their abuser's fault. They also have a whole new community of victims from which to make new friends.

Therapists receive both financial rewards and the feeling that they are on the cutting edge of an exciting new specialty and the satisfaction of breaking new ground in an area that is, because of the apparent support for abused girls and women, politically correct.

When questioned about whether their methods may do great harm to patients and families, should the so-called "memories" turn out to be fiction, therapists say they have no professional responsibility for examining statements or looking for corroboration. "We are not investigators," they typically say. They claim all they are doing is supporting their patients. Those who have studied the training and methods of these therapists know otherwise. Let us take a look at an example of a real patient whose case history illustrates these points. All quotations will be drawn from her actual records.

MEETING MISS JONES

A woman we'll call Ms. Jones (not her real name) sought treatment for alcoholism. Interviews revealed that her background included two failed marriages, sexual promiscuity (her words) before marriage and several extra-marital affairs, and bulimorexia. Several prior courses of psychotherapy had never included any mention of incest.

Admitted as an inpatient to an alcohol treatment center, she was asked about any sexual abuse in her past. She mentioned a boy who forced himself on her as a teenager, and also mentioned that on weekends her father would come into bed with her and her sister. She described no improper behavior by

her father, but a sexual recovery program counselor nonetheless wrote, "she was able to identify a limited amount of incestuous behavior...Dad would climb into bed with her or her sister on Sunday mornings. She was very uncomfortable about that."

With no other evidence, it was concluded that Ms. Jones had "multiple incest issues with her family of origin." She was put into "Sexual Concerns Group" and upon discharge referred for outpatient therapy.

Her new outpatient therapist inquired about these incest issues. Ms. Jones repeated the same recollections, but the therapist noted in her records that Ms. Jones was "probably blocking others." Within a month, Ms. Smith would fulfill her therapist's expectations, and produce statements which were assumed to be genuine memories of incest.

Because Ms. Jones was asked by this therapist to keep a diary, it is possible to follow how her alleged memories emerged. In her first entry after discharge from inpatient treatment, she wrote, *"Something happened during my childhood that gave an incredibly powerful message of shame about my body and sexuality. My gut level is that I was incested and beaten by my mother for it."* In another entry, describing her inpatient treatment, she wrote, *"They* [hospital staff] *kept asking me—'Why are you protecting your father?"*

Ms. Jones then followed her therapist's recommendation that she join a group to work on these issues, while continuing her individual therapy. In both, she was encouraged to do what her therapist called "anger work." As her journal noted, *"they kept asking me—'why are you protecting your father?"' I thought and thought. I didn't think I was, but I really felt and saw nothing."*

That night, she wrote, *"Have come to realize...I'm running from a feeling or memory...why the sex, why the food, am I protecting my father?"*

Within days, Ms. Jones finally accomplished what her therapist and her group therapy peers had urged upon her: she had her first so-called memories of incest. Yet she also wrote in her journal, *"This is a game I'm playing with myself. It didn't really happen. I'm imagining this. It's just because they told me something happened that I think this happened. I'm misremembering things. I'm making this up."*

As her journals became more and more taken up with these mental pictures, she abandoned all doubt and gave herself completely to the process. In the ensuing months, her claims grew to include:

- Repeated intercourse, sodomy and oral sex with her father
- Repeated beatings by her father and mother
- Repeated rape by her mother
- Repeated insertion of foreign objects into her vagina and anus
- Surgery in which her mother cut her vagina and inserted foreign objects, thereby stretching her vagina for later intercourse with her father
- Multiple murders of children and adults, perpetrated by members of the "cult" which fronted as a normal church
- Three pregnancies, all resulting in live births, prior to age twelve. Each baby murdered in "cult" rituals
- Sterilization at age twelve
- Electroshock treatment to her at home
- Gradual recognition of her 112 personalities
- Torture by electric shock via wires inserted into her vagina and rectum
- Multiple rapes by other members of the "cult"

Feeling more and more attached to her therapist and group-therapy peers, who (as her journals and subsequent interview with her indicated) had by now become her only friends, Ms. Jones felt she finally understood how she lost her awareness of these events. She had "blocked" the memories; she was a "multiple personality."

Along with these new "memories" came other ideas. She filed a lawsuit against her parents, and planned to write a book. Her therapist's notes made it clear that she accepted Ms. Jones' claims as reality. So much so, in fact, that when Ms. Jones said several times that she thought she had exhausted her storehouse of memories, her therapist urged her to keep digging for more.

But while her continually expanding allegations were considered by her therapist to be a sign of progress, Ms. Jones was nonetheless continuing her alcohol abuse and was also in trouble at work. She was then admitted to

another inpatient program solely devoted to treatment of sexual abuse. Every one of her allegations against her parents was accepted at face value by the new treatment team. Not once were the parents contacted to ask for their statements. No attempt was made to corroborate any statement. Despite her claim that she had by age eleven delivered her third child in a nearby hospital, no attempt was made to verify this from medical records.

By the time of discharge, Ms. Jones was diagnosed as suffering from post traumatic stress disorder, the trauma being the assumed abuse by her parents. Her discharge summary gives a flavor of what must have been happening in her treatment: "The patient attended an Anger to Power lecture, two Anger experiential groups, and the Anger and Letters to Perpetrators Workshops."

Months later, Miss Jones sued her parents. Asked by defense attorneys to consult in this lawsuit, I (Coleman) had an opportunity to interview her and study the files from which we have quoted. As with similar cases I have studied, Miss Jones in my interview of her gave no appearance of lying. She told her story with apparent sincerity, and I believe she will continue to believe her wild allegations for the rest of her life. When, however, the Court ordered her to be physically examined by a physician to see if there was evidence of the multiple childbirths and mutilations she claimed, she dropped her lawsuit.

While more and more people are recognizing that persons like Ms. Jones have been victimized by unprofessional therapy practices, there are many others who find it difficult to understand why so many women from widely scattered locations are making similar claims. How can so many people, they ask, who don't know each other, who live hundreds, even thousands of miles apart, have the same kinds of abuse memories if they didn't really experience abuse?

TRAINING THE TRAINERS

The key to understanding how patients who don't know each other make identical false allegations is understanding that while the patients don't know each other, the therapists do. It is at professional meetings that therapists pass to each other the ideas and methods which later guide unwitting patients into the arms of the recovered memory movement.

Sociologist Cheryl Mulhern (1991) has studied the question of why and how in recent years a growing number of patients claiming to have "discovered" memories of abuse have gone on to make allegations involving extreme acts of group violence and mayhem, including mutilation of animals, murder of infants, sexual orgies, and other acts sometimes called satanic ritual abuse. Her findings, I believe, tell us much about the underlying causes of the entire blocked memory phenomenon, and not just those cases which eventuate in ritual abuse claims.

In a draft, Mulhern concludes that it is the intense networking that takes place during professionally accredited courses aimed at "...offering training in the identification and treatment of victims of satanic ritual abuse" (p 1). that accounts for the emergence of, and similarity between accounts coming from patients in recent years. She has, after studying these training workshops, found a pattern that is similar to our own findings. In 1991, she writes, "...listeners are admonished, threatened and exhorted to believe. Belief is presented as vital" 9 p. 159). In her manuscript, she also states that

> SRA seminars assert that the vast majority of SRA victims enter therapy amnesic for the extraordinary abuses which they have suffered. Clinicians are warned that unless these memories are recovered, any hope for significant recovery will be compromised. The recovery of SRA memories, whether they be those of adults or children, is said to depend on the efficient use of specialized therapeutic techniques. (p. 3)

Psychiatrist George Ganaway (1991) has also discussed the emergence of this phenomenon, and his unsparing criticism of therapists who uncritically adopt this stance seems justified. He writes,

> As empirical evidence accumulates...that an apparent international, highly organized conspiratorial system of criminal satanic cults may not, in fact, exist outside the collective minds of those who believe in it, the *true* cult may prove to be comprised of a network of individuals who intentionally or unintentionally are more interested in proving the hypothesis than in discovering what is really there. Due to the emotionally charged nature of the subject...it is not difficult to see how otherwise level-headed and rational authorities and leaders in

> their fields of psychiatry, psychology, social work, law enforcement, and pastoral care could themselves be drawn into a cult-like group through consensual validation with the evolving generic SRA stories of alleged cult survivors providing the dogmatic glue that keeps the group cohesive. Many of these individuals unfortunately appear to have literally staked their reputations on the validity of the 'survivor' accounts. (pp. 17-18)

For those who think mental health professionals always form their opinions in rational ways, Putnam (1991) points out that

> Studies of the sociometric patterns of rumor contagion have demonstrated that rumors, urban-legends, and other folk tales can be rapidly disseminated throughout our society and are shared in common by large numbers of people who have never directly met each other. The child abuse community is particularly susceptible to such a rumor process as there are multiple, interconnected communication/education networks shared by therapists and patients alike. In addition, there is massive media dissemination of material...through dramatic autiobiographical accounts, sensational talk shows, and news reports of alleged cases, not to mention the numerous movies and television programs...Contagion and contamination are very real and powerful processes. (p. 177)

The work of Mulhern, Ganaway, Putnam and others has helped many mental health professionals recognize the illegitimacy of the recovered memory phenomenon. Far more influential, however, in alerting professionals and lay persons has been the fact that in some highly publicized cases, those accused of such heinous acts are fighting back through the courts. As a result, the threat of lawsuits has caused the therapeutic community to take a second look.

THE MOVEMENT LOSES ITS MOMENTUM

There is a certain irony in the fact that it was the very aggressiveness of the recovered memory movement that helped expose its fundamental weaknesses. Many patients, once they had come to believe that they remembered terrible things formerly unknown to them, were strongly encouraged to sever their relationship with the abuser and any family member or friend who did not

believe in the allegations. As part of the anger work said to be necessary for healing, a civil lawsuit or even criminal prosecution against the alleged offender was hailed as the way to make him take responsibility and to transform the patient from a victim to "a survivor."

Many of these lawsuits have led to money being paid to the accusers, usually because the insurance companies didn't want the expense of a trial. They simply didn't want to spend more money defending a case than the amount which would settle the case.

But as was bound to happen sooner or later, the accused finally fought back. In the highly publicized *Ramona* case in Napa, California (Johnston-Block, 1997), an accused father sued the therapists who he said had manipulated his daughter into believing she had recovered memories of his abusing her. When the jury decided in his favor, it sent a shock wave through the community of therapists, many of whom had carelessly given credence to the recovered memory movement. As more such verdicts have received widespread publicity, the movement's unscientific basis has become increasingly apparent and therapists are being cautioned to be more circumspect.

Prior to such publicity, and the growing threat of a lawsuit, the therapeutic community was apparently content to give the recovered memory movement free reign. Now, as the following examples show, the potential for manipulative therapies to creat false memories is being recognized.

R. L. Leslie (1994) stated in *The California Therapist,* a magazine of the Association of Marriage, Family, and Child Counselors, that

> Some therapists contribute to the problem [of recovered memories] by, among other things, inappropriately 'helping' patients to remember sexual and other abuse, sometimes satanic ritual abuse, when it may never have happened...One must exercise caution when utilizing hypnosis in 'repressed memory' and related cases because of the power of suggestion under hypnosis. (p. 22)

Kenneth Lanning, (1992) director of the FBI's behavior science unit, and a long time student of these developments, has pointed out that for some therapists the seductions of a new fad have been irresistible:

> Satanic and occult crime and ritual abuse of children has become a growth industry. Speaking fees, books, video and audio tapes, prevention material, television and radio appearances all bring egoistic and financial rewards. (p. 29)

Dr. Paul McHugh, Chairman of the Psychiatry Department at Johns Hopkins University, warned his colleagues in *Time* (qtd. in Jaroff, 1993), that

> If penis envy made us look dumb, this [recovered memory syndrome] will make us look totally gullible...This is the biggest story in psychiatry in a decade. It is a disaster for orthodox psychotherapists who are doing good work. (p. 52)

Even the Board of Trustees of the American Psychiatric Association (1993), not known for its willingness to speak out on controversial issues, has warned that,

> It is not known how to distinguish, with complete accuracy, memories based on true events from those derived from other sources...Memories also can be significantly influenced by a trusted person (*e.g.*, therapists, parent involved in a custody dispute) who suggests abuse as an explanation for symptoms/problems, despite initial lack of memory of such abuse. It has also been shown that repeated questioning may lead individuals to report 'memories' of events that never occurred. (p.3)

We are still troubled by the fact that it took lawsuits like the *Ramona* case to alert the therapeutic community to the dangers of the recovered memory movement. The problems should have been evident from the beginning, for reasons we would now like to briefly describe.

A QUESTION OF TIMING

First, the fact that such a dramatic "discovery" about memory came right on the heels of the child sexual abuse movement is too much of a coincidence to ignore. Never before had it been claimed, by purported victims or by professionals, that major trauma could be completely lost from awareness. The "repression" which psychiatrists speak of refers to hiding one's feelings and impulses from one's self, not the complete loss of memory of major traumatic

events. If anything, *bona fide* victims of major trauma may be troubled by continuing, intrusive recollections.

Significant also is the fact that about one fifth of recovered memory claims involve allegations of ritualized religious mayhem, sometimes called "satanic ritual abuse" (SRA). The description by Putnam (1991) is as good as any, involving

> the alleged existence of a vast international, multigenerational, conspiracy practicing religious worship of satan through sex and death rituals involving torture, incest, perverted sex, animal and human sacrifice, cannibalism, and necrophilia. In addition to suffering rape, bizarre tortures and being forced to participate in victimizing others, alleged victims of satanic ritual abuse are often reported to have been 'brainwashed' with the aid of hypnosis and drugs and implanted with suggestions to kill themselves or commit other acts on command. (p. 175)

We have personally studied many cases involving such claims. They inevitably were later stages of a buildup of allegations which started in therapy that encouraged "recovery of memories."

Of the thousands of cases involving these wild allegations, *not a single case* has been substantiated by investigative agencies.

> ...there is a complete absence of independent evidence corroborating the existence of such cults or their alleged activities such as human sacrifice, cannibalism, and sex and death orgies. Despite hundreds of investigations in the United States by local police departments and the Federal Bureau of Investigation, there has never been a single documented case of satanic murder, human sacrifice, or cannibalism. (Putnam, p. 175)

FBI agent Lanning (1992) has focused for more than a decade on sexual victimization of children and has written,

> When I first began to hear stories of what sounded like satanic or occult activity in connection with allegations of sexual victimization of children, I tended to believe them...But the number of alleged cases began to grow and grow. We now have hundreds of victims alleging that thousands of offenders

> are abusing and even murdering tens of thousands of people as part of organized satanic cults, and there is little or no corroborative evidence. The very reason many 'experts' cite for believing these allegations (i.e. many victims, who never met each other, reporting the same events), is the primary reason I began to question. (p. 1)

Finally, if accounts of alleged survivors are offered as evidence to support the reliability of "recovered memories," perhaps we will be forgiven for offering a different kind of survivor account. This one is from a woman subjected to the very therapeutic manipulations we have discussed, and who for a while adopted the belief that she had retrieved memories of childhood sexual abuse. Eventually, she had a different opinion:

> ...I'd had some sexual abuse by an uncle,...it was not anything that I ever forgot...Once I got into therapy...it began to be things like, I feel uncomfortable hugging my father so there must be something to that. My father must have sexually abused me...The fact that I didn't like my mother washing my hair when I was eight or nine...that was an indicator that my mother had done more than that in the bathtub...different little things like this were indications that something more than I was willing to say or knew about was going on and the fact that I wouldn't reveal the specifics was only a sign of my denial...So by the time you get through, you've got every school teacher, pastor, every neighbor, anybody...I began to believe that possibly my parents had been involved...and even began to have almost visualizations...based on what he'd told me that I'd suffered this traumatic sexual abuse...that the MMPI's and different tests showed all this, I began to believe...my brothers and sisters came in and...they got to hear from my therapist how bad my parents are and how unless I have the support of my brothers and sisters, I'm liable to kill myself...Someone has taken everything you thought you knew about your family, the people you love, and twisted it and told you that everything you knew was wrong. These people that you loved, the values...are all garbage, they're really a bunch of satanic cult people who kill and eat babies and flesh...It put me in a very serious medical place...I'd never tried to kill myself 'til I started therapy. (Price, 1992)

This woman also described the role of the "survivor group" foisted upon her by her therapist.

> The therapists have told me that I need to make this group of sick, dependent women my new family...I love those women,...but we were not a group that needed to be depending...now you really are depressed so you don't go to work as much, you don't communicate with people on the outside because what are you going to tell them. All you talk about is flashbacks,...incest and cutting and eating...You go to therapy, you work enough to pay for therapy and you just call each other with flashbacks and that's how my life went for a while. (Price, 1992)

STILL MUCH TO BE DONE

It seems obvious to us that the recovered memory fiasco is an outgrowth of the same overzealous and uncritical thinking which created a flawed child sexual abuse prevention movement. But while the recovered memory movement is being more carefully scrutinized, the same cannot be said for the system that subjects too many children to suggestive influences which keep the truth from emerging. It is time to return to other aspects of this urgent problem.

STARTING THE INVESTIGATION

IT IS TIME for our system of child protection to do a better job. In the next two chapters, we will offer suggestions to those who are given the grave responsibility of investigating sexual abuse allegations. Before offering concrete proposals for conducting investigations, however, it is crucial that investigators recognize that they must replace today's emphasis on child advocacy with a method that relies on strict neutrality and objectivity.

A QUESTION OF ATTITUDE

The single most important aspect of the investigation of suspected sexual abuse is the attitude of the investigator. For over a decade the attitude of sexual abuse investigators from police and child protection has been one of child advocacy, and this attitude explains the problems that plague our current system of investigation and prosecution.

Those who interview children for possible abuse and investigate abuse allegations should not see themselves as advocates for children but seekers of truth. A good investigator is neither a therapist nor a child advocate.

Our society needs child advocates who offer services to abused and neglected children and who promote greater support for such services. However, such persons should not be part of a legal investigation because they will naturally favor a child over an adult and be inclined to assume the child was abused and therefore needs protection.

As discussed in Chapter One, no one doubted when the child sexual abuse prevention movement started that child advocates should investigate and investigators should advocate. Each community, the child advocates and the investigators, would take on important aspects of the other's thinking and methods.

The failures of our present system demonstrate that this was a profound mistake. Instead of being trained by child advocates from the mental health professions, abuse investigators should be trained by professionals in police science.

It has been over a decade since psychiatrist Roland Summit described his "clinical maxim" that false allegations of sexual molestation simply didn't happen. By now everyone agrees, however reluctantly, that children are capable

of false accusations, especially if prompted by adults. Despite this grudging acknowledgment, however, most police and child protection investigators are trained to think of themselves as child advocates and as a result they often investigate with an attitude that tends to assume from the beginning of a case that an accusation is valid.

Still lacking in all too many cases is an attitude which demonstrates an understanding that children are harmed by false accusations just as surely as they are harmed by sexual abuse. Still lacking as well is the related understanding that a vigorous and neutral investigation which exposes a false accusation does as much to advocate for a child as does the vigorous and neutral investigation which ultimately convicts a child molester. The neutral investigator must therefore be an individual who does not measure concern for children by how often a case is considered "validated."

What follows applies to *all* investigators, whether they come from police departments, prosecution or defense offices or child protection agencies. If the truth is the best way to promote both child protection and justice, it should be possible to adopt investigative methods which satisfy professionals from these different disciplines.

WHAT TO DO BEFORE INTERVIEWING THE CHILD

It is a mistake for the investigator to interview the child before critical information has been gathered, especially about possible motivations of adults around the child and how these adults may have interacted with the child. The investigation should start with interviews of the reporting party, parents, and all persons present at the first disclosure. In some cases, even the accused should be interviewed before the child, for reasons to be discussed presently.

The Initial Disclosure

When questioning these adults, the investigator should explore possible reasons for the child's accusations coming forth at this time. For example, the investigator should know to whom the initial statement was made and if that person had a prior suspicion. If so, why? What statements, behaviors or other factors led to the suspicion? What is the relationship between the person with

the suspicion and the accused? How has the adult who was suspicious interacted with the child in the weeks and months prior to the disclosure?

The investigator should have the person give a step-by- step account of who said what, with as many details as possible. Furthermore, if respect is shown toward the person being interviewed, it is amazing how much detail can be recreated with persistent and patient questioning.

Potential Influences

Today, even the most vigorous child advocates admit the potential for improper influence on a child in divorce/custody disputes. Tragically, however, in practice many investigators continue to do an inadequate job of evaluating this issue. Is there a divorce in progress? Is visitation or custody an issue in the mind of at least one of the parents or a grandparent? What is the chronology of announcing a divorce, discussions with the child about custody and visitation, filing for the divorce, filing for custody, filing for court ordered evaluations, and hearings on custody and visitation? These should be carefully put in chronological order along with the dates of each disclosure.

Next, what did the child express to each of the parents concerning these changes in their lives? Whom does the child prefer? Is the less favored parent trying to shift the balance of power?

Divorce or child custody battles, however, are not the only situations in which the attitudes of important adults in the child's life should be investigated. Countless cases involving pre-schools and daycare programs, such as McMartin in California or Little Rascals in North Carolina, illustrate that irrational adult suspicion may trigger accusations from children. Judy Johnson, for example, had a history of mental disorder and alcoholism when she started the McMartin case by reporting to doctors her belief that her son's irritated anus was a sign that he was being sodomized.

We have seen cases where grandparents became so angry with a son or daughter that the grandparents sought to gain custody of their grandchild and as a result began questioning the child in suggestive ways. Teachers, nurses or school aides may interpret a child's behavior problems as signs of abuse and question the child in a manner which is suggestive.

Investigators who are sensitive to such potential influence on a child making an accusation will try to learn as much as possible about prior conversations with the child. The investigator may then learn that sexual information was conveyed to the child during earlier conversations with family members or other adults. "Did he ask you to pull on his penis? Did that make anything come out of his penis?"

It may turn out that the adult reporting the accusation had been suspicious for months and had questioned the child several times prior to the disclosure. If, on the other hand, the description of the child's disclosure contains no signs of such manipulations, this will add support to the allegations. The investigation which looks for but does not find such factors will add even greater credibility to the child's statements and may be just what is needed to assure that a child molester is successfully prosecuted.

The need for such inquiries may seem obvious but we see case after case in which the child is repeatedly interviewed by persons who assume abuse took place, and only much later do these investigators learn that the initial disclosure came on the heels of suggestive questioning by family members. In many cases, police or child protection investigators never do find evidence of such suggestive questioning because they do not inquire into this possibility. Only later, during a trial, does it emerge that this was taking place.

Prior to the emergence of the child sexual abuse prevention movement in the late 1970's and early 1980's it may have been more likely, as Summit and many others pointed out, that family members upon hearing an accusation would most often try to suppress it. But in today's climate it is at least as likely that one or more family members may be encouraging an accusation.

Such behavior by one or more adults in the child's life need not be the result of outright malice or a deliberate attempt to create a false allegation. More often it is a parent, a teacher, a nurse, or a neighbor who honestly becomes suspicious and questions the child in a leading manner. Coupled with today's abuse-prevention programs, which can cause many young children to confuse touches that are "uncomfortable" but hardly abusive with those that are genuinely abusive, such factors may lead a child to make untrue or exaggerated statements during a first interview with no prompting by a biased or leading interviewer.

Areas of Inquiry

Here are important areas to be covered.

- Prior questioning of the child. By whom? Setting? Attitude of the adult(s) questioning the child.
- Prior reports to authorities of sexual molestation.
- Prior allegations against suspect in child custody proceedings.
- Mother's own history of sexual molestation.
- Mother's relationship with the suspect just prior to the disclosure.
- Social norms of the family having to do with nudity, bathroom usage, sexual discussions, etc.
- Attitudes of the mother towards suspect's new wife or girlfriend.
- Prior marriages of the suspect.
- Children of prior marriages of the suspect.
- Other children close to the suspect.
- Suspect's abnormal sexual behavior such as use of child pornography.
- Suspect's relationship with alleged victim.
- Suspect's relationship with other women.
- Divorce/custody issues as seen by suspect.
- Corroboration or lack of corroboration of the suspect's explanation for the accustion.
- Child's knowledge of sexual terms.
- Child's exposure to the topic of child molestation (school programs, television, etc.)
- Child's knowledge of the relationship issues between the mother and the suspect.
- Child's medical history, especially pelvic infections
- Child's attitude toward the suspect prior to the allegations.
- Prior allegations of abuse against the suspect or third parties.
- Social norms of the child with reference to nudity, seeing the parents nude, visiting the parents in their bed

- Child's reaction to significant other people in the suspect's life such as a new girlfriend or spouse.
- Child's boyfriends and girlfriends.
- Child's known level of sexual activity with a boyfriend.

Interview the Accused as Early as Possible

It is truly remarkable how many investigators continue to get information only from those persons who strongly believe in the allegation. Most disturbing is the failure to interview the accused before minds have been made up. In many cases this is not an oversight but a deliberate decision to postpone the interview with the accused until later, particularly if the accused is the father. The theory is that if the investigator talks to the perpetrator the child will feel that she is not being believed and will feel betrayed.

This assumes, of course, that the allegation is true, in which case the investigator is not truly investigating but instead seeking to validate what is already assumed. Because investigators should begin every case with a neutral attitude, assuming nothing, and ready to follow wherever the evidence leads, a timely and non-judgmental interview with the suspect is just as important as a timely and non-judgmental interview with the child. Investigators who promptly interview the alleged victim, but only interview the alleged perpetrator weeks later are very likely to have closed their minds to alternative theories of the case.

There are exceptions, of course. In some cases a pretext phone call, in which the child talks to the accused and tries to get him to make incriminating statements, can be a good investigative tool. In those cases, some of the element of surprise would be lost if the accused had already been questioned. We will discuss this more fully in the next chapter.

Respecting All Parties

Whether the accused is interviewed before or after the child, he should be interviewed not only as soon as possible, but also in a respectful manner. Guilt should not be assumed. This sounds obvious, but it is all too common for interviewers to adopt a "we-know-you-did-it-so-just-confess-and-things-will-be-eas-

ier" attitude. This is rationalized as a method that will encourage confessions. We believe the price for this is too high, for too many false accusations go unrecognized when investigators are trained to consider a denial of wrongdoing as simply what is to be expected from a child molester. Too many times at professional meetings we have heard that "denial is a characteristic of child molesters."

Isn't it absurd that there is a need to remind ourselves that while child molesters are likely to deny an allegation, so too will persons who are accused but innocent? Just as a child's accusations should always be treated with respect, even though not all of them will be true, the denials of the accused should be treated with respect, and seriously investigated even though not all of their denials will be true.

Following Up on Leads Provided by the Accused

In many cases the accused has been very involved in the lives of both the child and the adult who reported the case. He will therefore be able to provide much information which will assist the investigation. He may have a different version of certain events, and provide information which can be checked. He may have the names of other parties with important information. He may be able to provide documents, such as previous investigations, or correspondence with the child or with the reporting party.

When investigators make up their minds that the accused is guilty, and only much later conduct an interview with the accused, such information does not become part of the investigation. The interview with the accused becomes nothing more than an attempt to get a confession.

Impact on the Coming Child Interview

All this information, from both the accused and from others surrounding the child, is a lot to gather, especially in light of the fact that the child should be interviewed soon after the accusations are reported. In some cases it will not be possible or desireable to interview all the key adults before interviewing the child, and the kinds of information mentioned above will need to be obtained after the initial discussion with the child. In those cases, a second interview of the child may be crucial.

But in whatever order the interviews take place, the investigator who questions the child must pay attention to the issues we have discussed. The more information gathered before the first child interview—without sacrificing the need to see the child in a timely manner—the better.

THE CHILD INTERVIEW

Having gathered the information necessary to do a thoughtful interview with the child, it is time to turn to the always challenging task of how to talk to a child who may have been sexually abused.

By now most everyone agrees that interviewers should avoid leading the child whenever possible and instead ask questions like "Tell me about it", "How did that occur?","Could you explain?","What happened next? "What did it look like?","Could you describe it?" Such questions contain no information and do not teach the child about what *might* have happened.

These kinds of questions are far different from questions like, "Was his penis hard or soft?" or "Did anything come out of his penis?" or "Did he touch you here?" Such questions may not be leading according to a strict interpretation of the term but are still highly improper because they allow a child simply to pick from alternatives supplied by the interviewer. The penis was either hard or soft. Something either did or did not come out of the penis. He either did or did not touch here.

Such questions, which allow the child to choose one of two alternatives, make it too likely that the child will simply pick one or the other answer to satisfy the interviewer's question rather than stick to his or her memory of events.

In those instances, for example, where the child is asked if something came out of the suspect's penis, and the child says "yes," and is asked if his penis was hard or soft, and the child says "hard," the child will next be expected to describe in more detail the process of erection and ejaculation. The interviewer is very likely to ask further leading questions to try to help the child give further details about what presumably happened.

In some cases, the source will be the child's memory because despite poor

interviewing techniques, the child is a genuine victim. In other cases, when the child is making a false accusation, he or she will usually improvise. In trying to answer the questions, the child often relies heavily on clues given by the interviewer and on whatever sexual knowledge he or she happens to possess.

Has the Child Been Influenced by Prior Questioning?

Many times an investigator is assigned a case only to find that one or more persons from law enforcement, child protection, or even child therapy have already questioned the child. All records and tapes from these interviews should be studied before interviewing the child. If these prior interviews have not been taped, one should never assume the child was questioned properly and one should never ask the child to "Tell me again what you said during the earlier interview." Instead, the goal is to have the child describe events from his or her memory. The interviewer should remember that the truth of the case may or may not correspond to what has been said in earlier interviews.

The challenge is to help the child do just this: describe events from memory and not from ideas that have been influenced by others. There are no precise recipes for doing this, but we offer the following guidelines, beginning with several things to avoid.

Don't Use Play Techniques

When it comes to common mistakes made by professionals who interview children in sexual abuse investigations, second only to the problem of having an attitude which assumes the child is a victim, is the mistake of using play therapy methods. And just as the attitude problem is one that investigators learned from self-styled experts from mental health, the use of play therapy techniques is also imported from mental health.

As discussed in Chapter One, neither the founders of the sexual abuse prevention movement nor the thousands of professionals from police and social work trained by them, have questioned the idea that play techniques are appropriate for investigative interviews with children. To this very day, individual interviews may be recognized as leading and suggestive, but the role of play techniques in investigative interviews remains unchallenged. We believe that

the use of play techniques in investigative interviews completely ignores both common sense and the most elementary understanding of child development.

Children play with play things. While the interviewer sees the dolls, puppets or drawings as aids to help the child to recreate events from the past, jog memory or overcome fear or embarrassment—but not to pretend or imagine, it is dangerous and misguided to assume that the child will, even with help, be able to make such a distinction. The child has never before been expected to use toys solely as a means of recreating past events. Children use play things to pretend, to imagine, to exaggerate, to have fun or perhaps overcome fears.

To make matters worse, interviewers frequently invite the child to "just play" in the early part of the interview, but then switch in mid-stream to using play things strictly as memory aids for what supposedly happened in the past. Now the child is expected *not* to use play things for any other purpose but to demonstrate real events.

We recommend instead that toys be used only during an initial getting-acquainted period, during which a parent may remain in the room to put the child at ease. Once a reasonable level of comfort is established, the child should be interviewed alone and in a comfortable room not filled with toys.

The use of an ordinary room instead of a playroom immediately tells the child that the reason for the interview is not to play but to talk, and this sets the stage for gradually asking the child about events which may include abuse.

Don't teach anatomy

Today's interviewers are taught to review parts of the body, eventually focusing on genitals, to determine the child's name for sexual parts. Once that is done, the next subject frequently brought up by the interviewer is the reason for the interview itself. The child is asked, "Do you know why you came to see me today?" Or, (after a review of good and bad touches) "Have you ever had any bad touches?"

Then a drawing of a naked child is brought out and the child is asked to put an "X" where he or she was touched. If the child puts the "X" on the genital area of the drawing this may only show that the child knows where to place the mark in order to score a bullseye and please the interviewer because

the interviewer has just spent so much time naming "private parts". It is not necessarily an indication that the child has been touched in those places.

These methods broadcast to the child that the interviewer is expecting the child to describe sexual touching. If others have already influenced the child, this approach invites the child to repeat what has already been said, but which may or may not be true.

Such methods are not necessary. Children who have events to describe from memory do not need a lecture about good and bad touches and do not need to go over body parts, and especially do not need to have their attention especially focused on genital anatomy and terminology.

The approach we recommend, described below, is much more likely to help the child to speak from memory and not from any other source. The child who remembers something that happened will be able to point to his or her own body and say what happened without the use of dolls, puppets, or drawings. If the child is unable at first to do so, then there is no substitute for patience and understanding, so that the child has every opportunity to talk about any abuse which occurred. Perhaps another interview will be necessary.

By the same token, the child who has not been molested, but has been influenced by adults to make a false accusation, has a better chance of escaping such pressures, and is more likely to be able to talk about what is genuinely remembered, if the interviewer has not focused his or her attention on genital anatomy.

Don't use misleading tests of the child's truthfulness

Many interviewers, once they have developed rapport with the child, will ask a question like, "If I say this pencil is yellow, is that a lie or the truth?" Once the child answers correctly, as even children as young as three or four are likely to do, the interviewer makes the profound mistake of assuming that if the child then promises to tell the truth, any subsequent statements of abuse are reliable.

But understanding the general idea of lying versus telling the truth says nothing about whether the child's *belief* that abuse occurred is based on his or her memory or is instead a belief that has come from the influence of adults.

Also, many young children believe that the truth is what has already been said to one or more adults, especially if adults praised the child for such earlier statements. If previous questioners, whether family members or professional investigators, have questioned the child in a suggestive manner, untrue things may have been said through no fault of the child. In these circumstances, asking the child to promise to tell the truth may have the opposite effect to that intended. The child feels pressured to repeat earlier statements, which may or may not be true depending on the case.

We recommend that the subject of lying versus telling the truth simply be left alone, at least at this stage. The child's responses, whatever they are, should be treated with respect. Many interviewers seem to believe that if they entertain any doubts about the child's credibility, they will be required to say or do something which would embarrass or discredit the child. This is not necessary.

Instead, the interviewer should make use of the information already gathered. Prior investigation has shown who are the key players in the child's life, what is their attitude toward the accusations, and how such persons may have interacted with the child.

The investigator should use the entire interview, rather than a specific question, as the test of the child's reliability. In the unusual case where the child does not know the reason for the interview, the child should not be told that a particular person is suspected of abuse. Instead the child should be asked about the types of things he or she does with various persons in his or her life. When the suspect is being discussed, the interviewer should not broadcast the fact that the accused is under special scrutiny. In cases where abuse may have occurred outside the family, the investigator should ask about the suspect in the same relaxed but interested way as one asks about teachers, neighbors, or non-family adult members in the child's life.

As the child is engaged in conversation about the people and events of his or her life, the interviewer compares the child's accounts with the information provided by the persons already interviewed, including the reporting party. This comparison gives the investigator a good understanding of the child's intellectual abilities and provides a check on the credibility not only of the child but of the adults as well.

Discussing Possible Abuse

Questions that may reveal evidence of abuse should be approached gradually. After spending some time getting to know the child, too many interviewers suddenly shift the interview in a manner which is unfortunate. First, anatomy is reviewed, finishing with special emphasis on the anal and genital region. Next, the child is asked about the very person named as the suspect. This virtually broadcasts to the child that the interviewer believes the suspect has touched the child in the genital area. Methods such as this make it very difficult to know whether the child's answers are from memory of actual events or the inherently leading nature of the questions, especially if the child has already been influenced by family members or others with a suspicion that the child was a victim of the accused.

Eventually, the child should be asked about how he or she came to talk to a grownup person about being touched. This inquiry must include not only what the child said during this prior conversation but also the circumstances surrounding the initial disclosure. These circumstances should already have been discussed in detail with one or more adults, and the child's account will either support earlier descriptions of the disclosure or raise doubts about the credibility of one or more adults. The interviewer should ask the child for details about how he or she came to tell someone about being touched. An attempt should be made, without leading the child, to reconstruct in detail how the conversation developed as well as the attitude of the adult(s) talking with the child during the initial disclosure.

The interviewer should use the information learned from adults already interviewed to explore with the child the reasons for the disclosure. We stress, however, that there are no formulas that are a substitute for careful investigation. If, for example, one parent in a divorce/custody dispute is asking for custody and then gets accused, the custody dispute could be a motive for a false accusation. On the other hand, the child may have been molested and the fear of living with the abusing parent may be the reason for the disclosure to be made so close in time to the custody battle.

The details resulting from this exploration with the child of how he or she came to talk to an adult about this subject should, once this interview is com-

pleted, be compared with the account given by the reporting party. In some cases, this comparison will support a belief in the allegation while in others such a comparison will support a belief that contaminating factors are at work.

Another area to explore is the child's perceptions of the reporting parties or non-accused parent's desires and motivations. With open ended questions ask the child how the mother or father feels about the accused. The interviewer should ask about the child's perceptions of the relationship between the accused and the other significant people in the child's life. If the child seems sensitive to how other family members feel about the accused, the investigator should ask about this. By continuing with this line of questioning and using information from earlier interviews with adults, the interviewer will learn of any outside pressures being placed on the child.

Investigators should remember that the forces that may influence a child's accusations are not limited to the classic divorce/custody situation. The child may have been inappropriately influenced by a good touch /bad touch program. Studies (Gilbert, 1988) have shown that these programs may teach young children that touches that are "uncomfortable" amount to abuse, an obviously oversimplified conclusion that nonetheless is being presented in many school programs.

Another area to probe is peer pressure or other group interactions in school. Key questions to ask are: Has the child heard friends making such accusations? Was the accusation spontaneous or a response to questions from friends? What were the initial words used?

With older girls, other possible pressures should be explored. The investigator should ask about boyfriends and sexual history. Possible fears about pregnancy should be discussed.

Evaluating the child's description of sex

Twenty years ago the fact that a young girl claimed her uncle put his penis in her mouth, or that she saw something come out of his penis after he made her pull on it, would have been strong evidence that these events actually happened. At that time, before children were very likely to have been questioned in a leading way, and before so much information (good and bad) about sex

and about sexual abuse was available to even young children, it was a relatively safe assumption that the only way a young child could know about these things was through actual sexual experiences.

This is no longer true, but many interviewers in their desire to "believe the child" ignore this fact. They ignore the fact that while in some cases the child's description of sexual events is the result of remembering actual abuse, in others it is the product of what the child has learned about sex from other sources. In our experience, the most common source of such learning is the questioning of various adults, either during interviews conducted by professionals such as police or social workers, or during questioning by family members or other adults such as a teachers, neighbors, or foster parents.

For example, the child who is asked if the penis of the accused was hard or soft knows from that question that penises sometimes get hard. The child who is asked if anything came out of his penis, and is then asked if it was watery like pee or "sticky" (semen is slippery rather than sticky) knows from that question that something besides urine may come out of a penis. When interviews containing such questions are not taped, subsequent interviewers may confuse information learned in earlier interviews with information learned from the experience of being sexual abused.

Even were all investigative interviews taped, so that each interviewer could first study earlier interviews to see if this type of poor questioning had taken place, it would still be true that untaped conversations with family members, teachers, nurses, neighbors or others could have implanted such information. On the other hand, even a child inteviewed improperly by family members or professionals may be a genuine abuse victim. How, then, should the interviewer evaluate sexual information given by the child?

These are the guidelines we suggest:

1) When questioning adults before talking to the child, be sure to include inquiries regarding the child's exposure to sexual information from outside sources. The investigator should learn what sexual information the child has encountered, not only in the home but in the neighborhood and in school. The investigator should learn what the child is allowed to watch on television and also what the child may have seen without parental permission. Older children may have heard about

high profile molest cases and and seen TV documentaries, movies or daytime talk shows about child sexual abuse. Many parents choose to expose even young children to TV talk shows on this subject.

All too many children have, unfortunately, watched pornographic videos found in their parents' bedroom or obtained by an older brother or sister. The child may know students in school who have made, or have threatened to make, allegations of abuse and have talked about sexual matters.

2) Inquire also about how the parents or other adults in contact with the child handle sexual information.. Does the household have *The Playboy Channel,* adult magazines or videos in the parents' bedroom, or even MTV? Take, for example, the second grader who was asking detailed questions about sexual reproduction. Too young for graphic details, his parents gave him accurate but superficial answers. Several days later he came home and proclaimed that he knew how sex happened. As it turned out, he actually did know quite a bit about sexual topics like erection and ejaculation because he found a book in the school library that gave explicit explanations complete with drawings. It is the poor investigator, therefore, who ignores the greater knowledge which today's children possess at ages far younger than earlier generations. Competent investigators will also question children about nakedness within the family. Some interviewers believe an accurate drawing of a penis is a sign of improper sexual contact because it indicates that the child saw a penis during a sexual experience. However, many children have seen their brother(s) or father urinate, or have taken a bath with a father or brother. Erections, furthermore, occur from infancy, so a girl who describes an erection may have simply seen her brother have an erection. Many children, in other words, know a fair amount about sexual anatomy and functioning without having experienced sexual acts.

What children who have not had sexual experiences are unlikely to possess, however, is the ability to describe sexual acts in the kind of realistic detail that only a genuine victim would have. In our study of investigations we find this to be an area shockingly ignored by most child interviewers.

Over and over we study interviews later said by police, social workers and prosecutors to contain credible statements from the child but in which the child's description of sex includes physically impossible contortions or sexual

positions which are not realistic. This is exactly the kind of description we would expect from a child who knows a little about the subject but has no real experience to draw upon.

Take the example of a seven-year-old girl who claims that the suspect was on top of her, spread her legs as she lay flat on the bed and inserted his penis. Unless the child is able to describe more detail without being led to do so, this is not a realistic description. Penile penetration could not happen while the child was lying with her legs flat on the bed, especially considering the vast difference between such a young girl's vaginal opening (generally one-quarter to one-half inch) and the diameter of an erect penis (one- and one-half to two inches).

In those cases in which the child claims that full vaginal penetration took place, investigators should remember that such penetration of a pre-pubertal girl would cause severe pain as well as tearing and bleeding of the vagina and surrounding tissues. Because the erect penis is so much larger than the vaginal opening, it is simply not possible for full penetration to occur without major injury and pain. Doubts should also be entertained when the child describes full penetration with only a little pain and no bleeding, and when the parents saw no signs of an acutely injured child. The child's medical records should be studied to see if medical attention was sought as would be expected in most cases where a child was torn and bleeding. Even if the child were too frightened to say anything in the days after the abuse, caretakers would notice that the child was in pain.

Another common example we see involves children who describe ejaculation happening again and again, within minutes. This is not physiologically possible and should give the investigator an indication that the child is trying to construct a scene from bits of sexual information rather than remembering a real sexual experience. Another example of an unrealistic description of abuse that we have repeatedly seen is the statement of a four-or five-year old who claims that her abuser grabbed her head and forced his penis into her mouth. Such a claim is almost invariably accepted by interviewers at face value, despite the fact that such an act would be very painful to the man unless the child were very cooperative and had been trained to avoid hurting the man's penis with her teeth. This would certainly not be true if an adult simply grabbed a frightened child's head and tried to force his penis into her mouth.

We believe that in those cases where oral copulation has indeed taken place, the child has had some instruction and been persuaded to cooperate. This amounts, of course, to abuse as ugly as that which includes the use of brute force, but will result in a scene very different from the unrealistic one described by children making a false accusation.

Do Not Abandon The Role of Neutral Investigator

It is natural for all of us to react to a child's story of abuse with support and sympathy. This poses a special problem for investigators, however, because support of the wrong kind given to a child making an untrue allegation will harm the child as surely as it will make the investigation more difficult.

The question is, does the investigator allow genuine victims to talk about what happened without encouraging false allegations or ignoring evidence that others have encouraged a false allegation? Is the investigator as sensitive to indications of a false accusation as to indications of a true accussation. We recommend an attitude toward the child which shows respect but not praise for what is being said. This means the child's statements will always be taken seriously, but means also that the investigator should not act as if the statements are unquestionably true. This is as damaging to both children and justice as assuming that the statements are false.

Here are recommended guidelines that will enable an investigator to listen sympathetically to the child's statements without jumping to conclusions and without improperly influencing the child.

1) Upon hearing a child describe sexual acts, the interviewer should not comment on how terrible or frightening the experience must have been.

2) Do not ask what should be done to the accused.

3) Do not reassure the child that it will not happen again.

4) Do not tell the child that by telling the secret he or she will help protect other children from abuse.

There is yet one more thing that must be done when interviewing children. If this volume does nothing more than promote its use, our mission will be fulfilled.

THE TAPE RECORDER

No Excuses — The audio tape recorder should be to the sexual abuse investigator what the pad and pencil is to the journalist—the essential tool that is used as automatically as one breathes in and out. For all the reasons discussed in earlier chapters, it should be clear that only a complete record of all interviews with the child will dispel any questions about whether investigators have influenced the child's statements or ignored indications that other adults have influenced the child's statements.

Especially revealing is the common pattern wherein none of the child interviews is recorded, yet interviews with the accused are recorded and transcribed. By itself, this shows that there are no technical or financial reasons for the lack of recording of child interviews.

Investigators should be as ready to tape interviews with the child as they are ready to tape interviews with the accused. Interviews with suspects are routinely taped because police officers can then prove that a confession was not coerced, that no promises or threats were made, and that no unacceptable methods were used.

All these reasons apply with equal or greater force when children are being interviewed. In child sexual abuse accusations there are even more reasons to tape record. First, by the time the initial investigator meets the child, contaminating influences on the child may already be at work through the influence of powerful adults in the child's life. Secondly, in genuine cases of abuse the child may be witholding information through fear or embarrassment while in false cases the child may be making false accusations because of parental or other adult influence. In either situation the best way for the truth to emerge is to study these early interviews with the child.

Many investigators from police or child protection agencies argue that written summaries of the child interviews are good enough, but this argument falls apart if one studies taped interviews and then looks in each case to see whether the written summary reliably captures what happened during the interview. We have studied thousands of such interviews in this way, and the results are highly disturbing.

Not only are leading and suggestive methods used in the vast majority of cases, but the written summaries give no indication that this happened and instead concentrate on what the child said after such suggestive methods have influenced the child. Nothing in the written summary reveals the process by which the statements were obtained; nothing documents the extent to which the interviewer contributed to the eventual statements of the child.

In a typical case where a recording *is* made, the interviewer eventually testifies, and undoubtedly believes, that leading questions were not used. In an illustrative case, a district attorney strongly believed she had interviewed the child in a neutral and fair way. Because the interview had been taped, it could be played for the jury. Upon reviewing the actual interview, and not simply her notes, the district attorney admitted that she had pressed the child when her initially open- ended questions did not result in the answers she expected. Within minutes of starting the interview in a manner which seemed to indicate an intention of avoiding leading and suggestive methods, she fell into the very patterns that may elicit unreliable information from a child.

This example illustrates that when child interviews are not recorded, neither the written summaries nor the sworn testimony of interviewers is sufficient to allow a jury to truly know whether investigators have either influenced a child through poor interviewing methods or have ignored statements from the child indicating such influence from important adults in the child's life.

When therapists are asked by investigators to question children about possible abuse, they too should record such interviews. Therapists who specialize in treating (allegedly) abused children are notorious for assuming that abuse has occurred to every child referred by police or child protection agencies. This assumption is only strengthened, of course, by the fact that funding may be available to pay for the therapy but only if the child is treated as the victim of a crime.

These therapists commonly use highly manipulative techniques which encourage the child to describe abuse. Many therapists describe this as "disclosure work" and do not feel professionally fulfilled so long as the child is unable to describe a scenario of abuse. While these therapists claim they only treat genuine abuse victims, in fact such therapists have no way to know how

many of these children are genuine sexual abuse vctims. For those children who are treated as abuse victims but have not been abused, the therapy is quite harmful. It also contaminates the child's independent memory of past events.

When criminal or juvenile court trials take place and such therapy is not fully evaluated by the judge or jury to see if the child has been influenced by the therapy, incorrect verdicts are all too common. This is the reason that when a therapist becomes a *de facto* investigator, as happens when the therapist asks the child to describe abuse in therapy sessions, such conversations with the child must be preserved on tape and studied by those who eventually must decide whether abuse has in fact occurred.

Those who oppose routine taping also argue that children being tape recorded are intimidated and embarrasssed and therefore less able to talk about abuse experiences. Anyone who studies in an impartial way interviews which are taped can easily see, however, that children, just like adults, quickly forget about being taped. We also find it interesting, as well, that these same persons who today oppose regular taping were fifteen years ago more friendly towards such recording. At that time, no one was sensitive to the dangers of leading interviews and child advocates saw taping as a way to perhaps spare the child the need to testify in court.

Why do such professionals only now claim tape recording will intimidate and embarrass children? The answer is that in some spectacular cases, like the McMartin Preschool case, the interviews were taped and they clearly showed how the children were manipulated by their interviewers. Tape recordings expose the methods of the interviewer to outside scrutiny, something that makes interviewers uncomfortable. Police and child protection agencies claim the children will be frightened and embarrassed but it is they who are frightened and embarrassed.

Another argument often made is that child interviews should not be taped because clever defense attorneys will be able to use such recordings to manipulate a jury. Inconsistencies in the child's statements will be used to discredit the child. Such an argument assumes that a jury is incapable of recognizing such courtroom tactics. Furthermore, this argument demonstrates no concern

over the possible manipulation of children in what amounts to secret (because untaped) sessions while showing great concern over the possibility of manipulation of adult jurors who have been supplied with a complete record of what happened during the interview and may therefore judge for themselves what took place.

The Tape Recorder as Everybody's Friend

All parties in child sexual abuse investigations and trials have good reasons to advocate for the regular use of tape recordings. Only child molesters have anything to lose if interviews with children are routinely tape recorded.

- *Law Enforcement*

Instead of being afraid to tape their interviews, police, child protection workers and prosecutors should remind themselves that in those cases where the evidence is sound, nothing would promote the conviction of child molesters more than a preserved record that suggests that the child's statements come from memory of actual events rather than a story that has been learned.

Jurors do not expect children to describe abuse in an adult fashion, and tape recordings which demonstrate a child's inability to tell the story as an adult would will not keep jurors from a guilty verdict. Jurors' natural instincts are towards protecting children and juries easily make allowances for a child's immaturity when describing past events.

When a prosecutor receives an investigation from the police, he or she is supposed to review the case and decide whether the evidence is strong enough to prove guilt beyond a reasonable doubt. If a prosecutor takes this duty seriously, he or she will realize that tape recordings of all interviews will make the task of evaluating the case more honest. When an investigator tape records an interview, he or she freezes in time the evidence that points either to the fact that the child seems to be describing real events or to the fact that the child in being influenced by one or more adults.

In sound cases, the tapes will show the prosecutor better than any other way that the child is speaking from memory, about real events. In those cases the prosecutor could look forward to a trial which demonstrates clearly that the child is reliable and that the accusations are true.

In unsound cases, in which the tapes show that the child's story has been contaminated by outside influences, the prosecutor can more honestly decide whether the case should be dropped. The prosecutor could in such cases inform those responsible for supervising the investigation that the investigator's methods need improving. Corrective feedback could be given to the investigator guilty of poor methods.

In this way routine tape recording would encourage improved training of police officers, social workers, and attorneys, all of whom talk to children in the crucial weeks and months preceeding a trial. Just as judges and juries who are kept from hearing tapes cannot know fully how a child has been interviewed, those who train new investigators cannot know fully how their trainees are progressing unless the teachers listen to interviews conducted by their students and evaluate their methods.

- *The Defense*

When the prosecution has strong evidence that the defendant is in fact guilty of child molestation, the defense attorney might consider urging him to plead guilty. Not only is the child spared the long and arduous process of waiting for a trial and then testifying, but the guilty party will on average receive a much lighter sentence than if tried and found guilty.

If an investigation includes tape recordings of the child interviews, and the client is guilty of what the child claims, this fact will most likely be more clear to the defense attorney than if the interviews were not taped. The tapes, then, will make it more likely that defense attorneys will be better able to know which clients are guilty and develop the best strategy for those clients.

On the other hand, when the defense attorney is convinced that the client has been falsely accused, there is nothing more important than developing the evidence of how the child's claims have evolved from the beginning to the end of the case. Exposing a jury to tape recordings of all interviews is the best way to show not only possible contamination by investigators, but also possible improper influence by parents, peers, or others.

Innocent defendants would also have a much better opportunity to compare what a child has told different interviewers. A comparison of what the

child has said at different times is often a powerful way to show that the child is unreliable. Cross examination of the child would be immeasurably enhanced if the defense attorney has a complete record of what has been said in past interviews.

• *The Jury*

As of now, juries are being cheated of the most important tool needed to find the truth. Without a complete record of how the child has been questioned, and what the child has said during prior interviews, it is natural that jurors will rely too heavily on the demeanor of the child in court. This is a highly unreliable method of determining whether the child's testimony is true because by the time of a trial a child testifying about things which never happened will be as sincere and honest as a child testifying about things which did happen. In most cases the falsely accusing child believes what he or she says in Court.

Such swearing contests between the child and the accused will most often be resolved by the jury in favor of the child. It is natural for a juror to believe that the child would have less reason to make false statements than the accused. All this changes, however, if complete recordings of prior interviews are heard by the jury. Because they have so much more information to consider, and because they can study the *development* of the child's story, the jury will not rely so exclusively on the child's demeanor in court.

• *The Child*

Tape recordings of all interviews would also benefit children. They would be subjected to fewer interviews because child molesters would more often plead guilty, thereby avoiding a drawn out investigation and trial. This is because the defense attorney would know from listening to the tapes that the child is reliable and has not been subjected to improper influences. Faced with this information, defense attorneys would apply strong pressure to guilty clients to plead guilty in order to avoid the extremely harsh sentences which result when a defendant is convicted after a trial.

Children making false allegations would be rescued more quickly from the influences which have led them to make untrue statements. This would in

some cases prevent the destruction of relationships which are very important to the child, such as when a parent is the person falsely accused.

Overcoming Resistance to Taping of all Interviews

Tape recording should thus be seen as everyone's friend. It can save a valid case of child molestation from later contamination by well meaning but misguided individuals. Child molesters should not be acquitted just because some poor interviews were done. Neither should falsely accused persons be found guilty because incompetent child interviews are, through lack of tape recording, kept forever secret.

A common response to the call for taping of interviews is for one interview to be videotaped, but only after the child has already been questioned one or more times. This is not only inadequate, but dangerous. Usually it is clear from written reports that one or more interviews have preceded the videotaping, but often no adequate record exists to show how many persons have talked to the child, let alone how the interviews were actually conducted and how the child responded.

It may seem that such a practice is intentionally dishonest, but we believe it most often results because the interviewers have been trained to strongly assume that the allegations are true. They honestly (but mistakenly) believe that whatever precedes the child's eventual description of abuse is unimportant. As a result, in prior interviews the child is interviewed, but not taped, as long and in whatever manner as necessary until statements are produced which confirm the interviewer's beliefs, and then one more session is scheduled, and taped, to get the accusations preserved on tape.

In the early 1990's a movement developed in California to promote regular tape recording in sexual abuse investigations. Bills were introduced to the legislature several years running, with strong support from groups like VOCAL, a grass-roots organization made up of largely of persons claiming to be falsely accused of child sexual abuse.

The bills never passed, however, because police, child protection and prosecutorial agencies opposed them and were able to convince legislators that the cost would be too high. This, we believe, was hypocrisy in its purest form.

Since it is routine for interviews with *suspects* to be audiotaped, the only additional expenditure would be the cost of the tapes. Considering the enormous consequences of verdicts which either convict the innocent or fail to convict the guilty, there is simply no reasonable way to argue that money is the real reason for our current lack of regular taping of interviews. The real reason is that as of today, investigators are too frightened to preserve a record of child interviews, preferring to do their work in secret.

We would like to see every state legislature pass a mandatory taping law. But short of that, there is a strictly administrative alternative that would accomplish the same goal. This alternative will not be put into operation, but we challenge the public prosecutors and county attorneys of the nation to cite reasons why this recommendation would not be in the best interests of both children and the cause of justice. Our recommendation is that prosecutors henceforth refuse to prosecute any case, once a six-month grace period has passed, in which all the child interviews done by professionals from police or child protection are not audiotape recorded.

CHAPTER EIGHT

FINISHING THE INVESTIGATION

WHAT IS MOST striking about the typical sexual abuse case we see is the lack of investigation. A typical investigation includes an untaped interview with the mother and/or the reporting party, an untaped interview of the child, and a taped interview with the accused in which the police pressure him to confess. In a few jurisdictions, a second child interview is videotaped and the child is asked to repeat the allegation for the camera. This videotaped interview is done at a special center, considered to be state of the art, but which adopts the same old believe-the-child approach which has so bankrupted the system.

In many cases a medical examination is done, almost always by the local sexual assault response team, with the conclusion being that the examination is consistent with sexual abuse. The fact that the findings are usually either normal or non-specific and therefore equally consistent with no abuse is conveniently forgotten. Labeling an examination as "consistent with sexual abuse" is as illogical as pointing out that an alleged bank robber's red hair is consistent with his having robbed a bank. This catch phrase nonetheless leads police, social workers and parents to believe that medical evidence of past sexual trauma exists, erasing any doubt about the allegation. This, in turn, leads caseworkers, parent(s), and others to ask the child ever more insistently to describe abuse. In many cases, a therapist with close ties to the child protection network is recommended, and the child begins regular sessions intended to talk about the presumed molestation and to work through the trauma of the abuse.

The typical investigation, in other words, contains grave errors of comission and omission. What little is done aims to confirm the accusation, rather than test whether or not the case is genuine.

This pattern is not surprising, given the way in which investigators continue to be trained. Take, for example, the *Child Abuse Telecourse: Recognition and Impact* by The Commission on Police Officer Standards and Training, State of California, 1994. False allegations, and how to recognize them, are only briefly mentioned, so it is not surprising that investigators in the field continue to do inadequate and one-sided investigations in all too many cases.

Having discussed in the last chapter issues related to the interviews of the alleged victim, alleged perpetrator, the reporting party, and other key persons,

we now turn to other important aspects of good investigations. Even with the best interviews possible, complete with tape recordings, the investigation is far from complete. A vigorous search for other evidence is essential. Otherwise we are left with either a "believe the child" approach discussed in Chapter One, or a reliance on bogus methods like psychiatric evaluations of the alleged victim and/or alleged perpetrator discussed in Chapter Five. Neither of these methods offers real protection to the child or promotes the truth-seeking process.

The goal of this chapter is not to attempt an exhaustive treatment of the non-interview portions of a quality investigation. As we have repeatedly stressed, most of the specialized training provided to police and child protection agencies by professionals from mental health has been misguided. What is required is simply high-quality investigation, like that required for any other alleged crime.

Of course there are differences, given the youth of the alleged victim, the fact that a sex crime is alleged, and the strong emotions evoked by the allegations. This only makes a determined but objective investigation especially important, and the need to avoid easy formulas (like "believe the child") especially important. In this chapter, we will remind investigators to do the things that their current training has encouraged them to ignore.

INVESTIGATE THE CIRCUMSTANCES OF THE DISCLOSURE

Investigating the circumstances surrounding the initial disclosure of sexual abuse is central to finding the truth, yet it is routinely ignored. In every case, the question is, "Why is the child making the accusation?" All too often, investigators consider the accusation, once it has been stated during an interview with the child, to be sufficient evidence to conclude that the case is genuine. No further investigation is judged necessary.

This is clearly improper. The circumstances surrounding the disclosure will always give important clues to the reliability or unreliability of what is being alleged.

Once the interview with the reporting party is completed (see previous chapter), there will be many leads that need checking. This will involve phone

calls, more interviews, and search for evidence. The resulting information, when cross checked with what has been said by the the accused and the child, will begin to favor either the accusers or the accused.

Keep an open mind and let the information be your guide. This sounds so obvious as to be condescending to the reader. Remember, however, that for two decades investigators have been taught *not* to do this, but to "believe the child". This amounts to a thinly disguised prescription for taking sides.

Remember also that if you adopt a truly neutral and objective approach, you will quickly run into colleagues and superiors who will vehemently disapprove of what you are doing. Counter this by reminding yourself and your critics that the truth is in the best interest of children, and that the investigator who uncovers a false allegation is a hero as surely as one who helps prove a true one.

Conversation with police and child protection investigators reveals that there is more discontent amongst investigators than is apparent on the surface. Many investigators fear they would be fired if they were judged by superiors to be too concerned about false allegations. We believe that many of these investigators would welcome a more balanced approach.

INVESTIGATE THE ACCUSED

The background check of the suspect starts with an official records check. The investigator should obtain the suspect's rap sheet, Department of Justice Child Abuse Central Index, Department of Justice Registration and Compliance (P.C. 290.1) records, and records from other jurisdictions where the suspect has lived.

In light of the new case of *People v. Ewoldt* the prosecution may introduce other acts from the defendant's past on the issue of common plan or scheme and intent. This formidable new weapon makes background checks on all the parties more important than ever before.

If the suspect has previously been accused of child sexual abuse, it is easy to assume that he is probably guilty of the current charge. Consider, however, a different scenario that no longer is rare. A person is falsely accused. Criminal charges are either dropped because of lack of evidence, or the suspect is acquitted after a trial. Those who believe the suspect is guilty will rarely change

their minds, and will conclude instead that the system failed. In the months and years that follow, these people will often speak to acquaintances about the accused and convince them that he is a child molester who beat a rap. If the initial accusation received publicity, even more people will presume guilt.

This is fertile soil for a second accusation, especially as more and more persons, such as neighbors or co-workers, learn through gossip of the prior accusation. Parents with young children will of course be especially likely to assume the worst.

All this will be even more likely in those cases in which innocent persons have been not only falsely accused but also falsely convicted. Anyone doubting that this happens should remember cases like like the Little Rascals case in Edenton, North Carolina, or the Wee Care case in New Jersey. For every case where a Court of Appeals recognizes an injustice years after a conviction, many other false convictions go unrecognized.

How should investigators deal with these potential problems? First, investigators must take the time to seriously study the prior accusation. It is paramount not to assume anything. Many times, information from a prior accusation will be helpful in finding the truth of the current accusation.

In some cases the reporting party should have his or her background checked through official records, for prior criminal conduct or prior reports of sexual molestation. This is especially true if the reporting party was hostile to the accused person at the time of the initial report.

PRETEXT PHONE CALL

A difficult question is whether or not to conduct a pretext telephone call, in which the alleged victim telephones the suspect and tries to get him to discuss past sexual activity. The call is secretly recorded and if successful its results can be a powerful tool for incriminating sexual offenders. The main advantage of the pretext call is that the suspect is caught off guard and has little or no time to think. Not realizing that his words are being recorded, and not realizing that the child is working with the police, he may acknowledge things that would be vehemently denied in ordinary investigative interviews.

Caveats

The strongest degree of surprise will occur if the accused has not yet been interviewed by the police and doesn't even know that a report has been made and that an investigation is taking place. These factors argue for doing a pretext phone call sooner rather than later and also argue for delaying the police interview with the suspect until after the pretext phone call.

But there is a problem here. Whereas a pretext phone call may work brilliantly when it takes a genuine child molester by surprise, the same technique may greatly hinder the recognition of a false allegation This is because an investigator too eager to use a pretext phone call is less likely to interview the suspect in the timely and professional manner described in the last chapter. In the hope of obtaining a secretly recorded confession which takes the suspect by surprise, the investigator keeps the investigation a secret from the accused. As a result, important information that the accused alone can provide does not become known until so late in the investigation that the investigator has already made up his or her mind.

Investigators should remember that if the accusation is false, a pretext phone call is very bad for the child. This is because the child must first be taught how to get the suspect to admit to sexual contact with the child. In true cases, in which sexual abuse actually happened, such a conversation will do no harm and may even be psychologically positive for the child.

If the accusation is false, however, the consequences for the child will be quite different. In all too many cases we have studied, the call is made despite the evidence being far from convincing. During the phone call with the suspect, the child tries to manipulate the suspect into admitting something which if it never happened can result in profound resentment toward the child. If the suspect is the child's father, grandfather or some other important person, the eventual impact on the child can be devastating.

In false cases, a pretext phone call also locks the child into continuing to repeat a story he or she has made up or has learned from suggestive questioning, and gives aid and comfort to adults who have helped to create a false allegation.

Interpretation

A word of caution is also in order regarding the interpretation of what is said during a pretext phone call. The suspect may panic when the child says, as previously instructed by the investigator, that she feels the need to tell someone about the sexual things he did to her. The accused may plead with the child not to say these things to anyone else. Investigators usually take this as a sign of guilt, but this is a mistake.

What may be overlooked is the fact that an innocent person threatened with an accusation of child sexual abuse may panic because such an accusation, whether true or not, has the power to destroy lives.

It should also be remembered that in some cases the accused acknowledges physical contact with the child, but the question remains as to whether the touching was sexual. A child says her grandfather touched her under her dress while she sat on his lap, but the grandfather says his hand was resting innocently on her thigh, over her dress. Confronted by a pretext call, such a grandfather who happens to be innocent of any wrongdoing may nonetheless apologize by saying, "If I did anything to upset you, I'm very sorry."

This is not a confession of sexual abuse because many persons, trying out of love or out of fear to placate an accusing child may say they are sorry for things which were innocuous. For this reason, investigators should not instruct the child to plead with the suspect to say he is sorry for what he did, but instead stick to the subject of what actually happened. Ambiguity also results from a call in which the child tells her alleged abuser that he made her "uncomfortable." Many innocent persons will apologize without even remembering what exactly took place. "I never meant to do anything to make you uncomfortable" is a statement that tells us nothing about whether sexual touching took place. The child needs to be specific, to see if the accused will respond to the child in a way that acknowledges specific sexual acts.

Beyond saying in general that she didn't like what happened, the child must, for example, indicate that she feels the need to tell someone about the time he loosened his belt and put her hand on his penis. Such specifics are not likely to lead to an apology from an innocent person.

Involuntary Statements

The law on involuntary statements applies to pretext telephone calls. The officer supervising the calls should control the methods used to make sure that the suspect is neither threatened nor made offers of non-disclosure. It is known that some persons will confess to things that never happened if either of these mistakes is made. And, such mistakes are the surest way to allow a guilty party to escape punishment because the court is likely to throw out the evidence.

Striking a Balance

Done in a professional manner, and with proper timing, a pretext call is powerful. Caught off guard, the perpetrator may go into details in a way that is clear evidence of guilt. In such cases, an eventual guilty plea is highly likely because the tape recording is such strong evidence. When this happens, the child need not go through court testimony, the perpetrator is more likely to acknowledge his behavior, and tax dollars are saved. Done too hastily and carelessly, a pretext call can harm a child, hinder the conviction of a guilty person, or help to falsely convict an innocent person.

We believe the best policy is to use pretext phone calls only in those cases in which the child's accusations seem well grounded and in which there are no indicators of a false accusation. Special care is required when the accused is an important person in the child's life.

SEARCH WARRANT

The search warrant is generally used to seize sex toys, correspondence, diaries, pornography, or other incriminating items that may provide crucial evidence. In many cases we have studied, however, investigators treat all sexual material found as evidence that the suspect is a child molester.

One quarter of the video rentals in America are pornographic, so if these materials are found in the home of the suspect this is hardly evidence of sexual contact with a child. Neither is the fact that a child may be able to say where in the parents' bedroom such tapes will be found or even be able to relate the contents of such videos. It should be obvious that some parents are careless about how they store such materials and curious children may even sneak a look without the parents' knowledge.

THE LINE-UP

The line-up is a well-established technique which we need not describe in detail here. Its current use in sexual abuse accusations, however, is frequently contaminated in a way that is so obvious that it cannot and should not be used as evidence. This misuse of the line-up is a powerful example that illustrates the irrationality that pervades many sexual abuse investigations.

We are referring to the frequent situation in sexual abuse cases in which a photographic line-up is presented to a child despite the fact that the suspect is an acquaintance or even a family member of the child. Common sense tells us that a genuinely positive identification from a lineup requires that none of the persons in the line-up was known to the alleged victim prior to the time of the alleged abuse. Then if the child picks out someone from the lineup, there is no possibility that he or she is simply pointing to someone already familiar.

Misidentifications may still occur with line-ups, of course, but not because the alleged victim recognizes someone from his or her life. With decades of experience in a wide range of legal investigations, neither of us has ever seen such an obvious mistake made in any but sexual abuse cases. Here is a common example.

The accused person is well known to the alleged victim, perhaps as a teacher, father, grandfather, or neighbor. The child is shown a series of photographs, all of whom are strangers except the accused. The child is asked to point out the person who gave the "bad touches." Even worse, the child may simply be asked to look at the pictures to see if he or she recognizes anyone, but in a way which equates this with identifying the person guilty of abuse.

When the child points to the person he or she recognizes, there is no way to know whether the child was actually abused by that person or whether the child is simply pointing to a parent, neighbor, teacher, or other acquaintance who is being falsely accused.

The rule to be followed is simple and obvious. Line-ups are of no use when the alleged perpetrator was already known by the child prior to the time of the alleged abuse.

OBTAINING COUNSELLING RECORDS

Counselling records are often an essential part of bringing out the truth in sexual abuse allegations. While more and more persons are recognizing that the methods used by police or child protection interviewers may influence the reliability of a child's statements, less often recognized is the possible impact of counselling conducted by a therapist who assumes the child has been abused and tries to get the child to describe abuse. In Chapter Three, we discussed the San Diego County Grand Jury's recognition of this problem.

A common way such therapy begins is when a reporting party says a child made a disclosure of abuse but when police or child protection interviewers arrive they are unable to get the child to corroborate what the reporting party has said. The reporting party's version of the circumstances surrounding the disclosure, which may be biased because of the attitude of the reporting party toward the accused, is usually taken at face value. The reporting party's version of what the child supposedly said is considered sufficient evidence that abuse occurred, despite the lack of a statement from the child to a professional. The child is then referred to a therapist, is said to be in denial, and he or she has, according to such reasoning, probably been threatened into silence or is too embarrassed to talk about the abuse. Even if further police investigation is done, it is half-hearted because the therapist is now seen as the main person to engage the child in a dialogue which will eventually incriminate the suspect.

The therapists recommended to the child's parent(s) by police or child protection agencies are those known to be friendly to this approach. From previous cases or attendance at professional meetings in which police officers, child protection workers, district attorneys, and therapists sit side-by-side, these therapists have demonstrated that they will assume a referral from law enforcement is sufficient proof that the child was indeed a victim of sexual abuse.

Perhaps not during the first session but sooner or later the therapist tries to get the child to describe the abuse. Many children who have not been molested will eventually start describing abuse, and in our study of the records from hundreds of examples of such therapy there seems a clear trend that the longer the therapy persists the more extensive the accusations will become. The case of Alicia Wade, described in Chapter Three, is an example.

Even though made with the best of intentions, such therapy referrals from law enforcement and child protection agencies have done much to harm children and at the same time contaminate evidence of a case. This is why both the best interests of children and justice in each case requires that if the child witness has been in therapy, the details should be presented as evidence so the jury can take into account any possible impact on the child's reliability.

Both our own experience and the findings of the San Diego County Grand Jury (discussed in Chapter Three) indicate that therapists do not like to think about the potentially contaminating role they play in sexual abuse investigations and trials. They do not like to think of themselves as investigators, despite the fact that they question children regularly about things which the children will later be expected to testify. Even though these therapists often stay in close touch with prosecutors and pass on each new disclosure by the child, such therapists have grown accustomed to doing their work with no one scrutinizing their methodology.

Despite such reasons why the details of therapy should become part of a sex abuse trial, in most cases the records of the therapy are not made available to the defense. In our opinion, the reasons given by the courts for keeping these records hidden are not sound from either a legal point of view or in promoting the best interests of children.

We agree, of course, that the protection of patient confidentiality is a crucial part of the practice of medicine and psychotherapy. Without such assurances, patients are less likely to give doctors and therapists full information. This in turn makes it less likely that the patient will receive optimal care.

In many legal cases the reasons for protecting therapy records may be even stronger. The laws on confidentiality were designed, and appropriately so, to keep confidential material which is irrelevant from being used to prejudice a jury or embarrass a witness.

However, in many sexual abuse accusations the situation is entirely different. First, the child is often placed in therapy simply because an allegation exists and because the investigator at the outset assumes it to be true. Next, the therapist is handpicked from among those who are known to have the same attitude.

Under such conditions, therapy is bound to include regular discussions in which the child is encouraged to describe abuse which the therapist is sure happened but may never have taken place. The child has no real choice but to comply, and week after week new allegations are made and old ones elaborated upon.

Both justice and the child are ill served if laws on patient confidentiality are used to hide the evidence of such contaminating therapy practices from the people (the jury) who must decide whether a child was molested. Here are our recommendations for those who are trying to convince a judge that the records should be made available to the parties in the case.

First, urge the court to recognize that a therapist who sincerely believes he or she is simply doing therapy, but is nonetheless talking with the child about alleged abuse, is doing more than therapy. Such conversations amount to an investigation, and one which has the potential to contaminate the central witness in the case. Keeping the records hidden amounts to hiding potential evidence that may cast doubt on the reliability of a witness, and perhaps the very competence of the witness to testify from personal recollection versus hearsay or speculation.

Second, inform the court that a very likely theory of the case is that the child has learned the story, rather than remembered what happened. In order to present the evidence for this it is essential that the child's conversations with the therapist be a part of the trial. This will allow the jury to consider whether the therapist may have exerted any improper influence on the child. Without this information, a jury is more likely to judge the child's credibility by simply considering his or her demeanor in court, a practice known to be unreliable and dangerous.

Many judges will want to read for themselves the therapy records, and then release only the material they decide is relevant. This is inadequate because judges generally look for smoking guns, evidence that the child has told the therapist that the accusation is not true. This is rare and misses the point. If therapy was initiated because of an abuse allegation, and not for some other reason, the entire process should be carefully studied by both the prosecution and defense. Since the judge represents neither the accused nor

the state, he or she should not make the judgment about what is helpful to either side's case.

If the judge nonetheless is willing to release only selected portions, defense attorneys should next argue that all material which in any way contains a reference to the accusation should be released. Here is a typical situation in which a judge might fail to realize the relevance of certain therapy records.

A child is reported to have been molested. While the investigation is in its initial stages, the child is sent to a therapist who specializes in sexual abuse trauma. The therapist assumes from the outset that the abuse happened, sees the child once a week for several months, and tries to help the child get ready to testify in court. The judge subpoenas the records after the defense attorney requests them, and reviews them *in camera*. The judge finds that the therapist has not taken any notes from the sessions, and the records consist of a single intake sheet, plus billing records.

The judge tells the attorneys there is nothing relevant or helpful, but this is because the judge doesn't understand the relevance of the intake sheet. It indicates that the reason for the referral was "sexual abuse," the diagnosis was "sexual abuse," and the goal of treatment was to "work through the trauma of sexual abuse."

The intake sheet, without anything further, shows that the child was seen regularly by a person who assumed the accusation to be true and who expected the child to talk about events that were assumed to be true. How else could the therapist help the child "work through the trauma"? This piece of evidence could be crucial in a trial.

If the judge still refuses to allow any of the therapy records to be released, the possibility of calling the therapist as a witness should be considered because then the therapist may be required to bring the records to court and make them available to both sides of the case. If the records show that the child was assumed to be a victim from the beginning of therapy, this topic should be explored with the witness. When asked if it is proper to do therapy based on the assumption of abuse, the therapist will usually respond, "I am not an investigator, I'm a therapist. It is not my job to find out what is true. I'm there for the child."

Such an answer should lead to the follow-up question of whether or not it is good for a child to be treated like a victim and expected to describe sexual experiences if they never occurred.

THE IMPORTANCE OF COMPLETE MEDICAL RECORDS

The child's complete medical records are of crucial importance in many cases. The most common situation involves those cases in which a doctor or nurse from a sexual abuse examining team claims to find evidence of past injury, such as vaginal or anal "scars," "healed hymenal transections," or "worn and abraded hymen." Such alleged findings naturally cause everyone in the case to be completely certain that the child has been sexually abused. They never question the validity of the interpretations made by the medical examiner. Even those believing the accused is innocent are likely to assume that the child has been abused but by someone else.

As we have explained in Chapter Four, these medical interpretations should not be assumed to be valid. Genuine signs of past genital or anal trauma are very rare. Whether or not the medical examination was properly interpreted should be explored in court with the medical examiner. Often a second opinion from a medical doctor familiar with the subject is important. In Chapter Four we discussed details of such testimony.

Frequently overlooked is evidence which speaks to the child's medical condition at the time of the alleged abuse. Typically the medical examination is performed weeks, months or even years after the alleged abuse so it is important to also carefully study the child's medical history from around the time when the abuse is alleged to have occurred.

Doctors and nurses from sex abuse examining teams regularly ignore the fact that while a prepubertal child subjected to full penile penetration of the vagina might show little or no evidence of such abuse months or years later when an examination is performed, this would not be true at the time of the abuse. The child would experience bleeding, bruising, tearing of tissue, and great pain. Medical examiners should, but frequently do not, ask whether the parent(s) ever saw signs that the child was in such acute distress.

In thousands of cases across the country, these same medical examiners are claiming to find evidence of permanent anatomical changes, like scarring or distorted anatomy of the genitals or anus. Yet these examiners fail to check medical records to see whether the child was taken to a doctor at the time of the alleged abuse. If the child was at that time injured severely enough to produce the scarring or other abnormalities now claimed by the medical examiners, the child's caretakers would have noticed that something was wrong and consulted a doctor.

In hundreds of cases we have examined where the child's medical records *are* studied, these records almost never indicate any prior acute injury of the type that would be expected. This is further proof that the variations of anal and genital anatomy being described by medical examiners as signs of past trauma are in fact normal variations.

These same medical examiners are quite ready to explain, and properly so, that a child with a normal examination may nonetheless have been abused in the past, since children quickly heal after genital injuries. As we described in Chapter Four, McCann and his colleagues found that in a few weeks children with acute genital injuries showed no evidence of any residual injury. They healed up with no scarring or other evidence of what had happened. This means that a child examined weeks or months after an alleged abuse, and showing a normal examination, could still be a genuine victim.

But consider a further implication of such findings, one that the sex abuse examining teams (favored by police, prosecutors, and child protection agencies) seem uninterested in acknowledging. If acute, bleeding, swollen, and painful injuries, the kind seen by McCann (1992) in the emergency room, were found to leave no residuals a month or so later, then alleged abuse claimed months later by sexual abuse medical examiners to have left behind a "scar," "healed tears" or a "rounded and abraded hymen" would at the time of the abuse have rendered a child even more seriously injured than those seen by McCann.

Such injuries to a child would be noticed immediately by family, neighbors or teachers. Even if a child did not tell anyone that something happened, the pain from the injuries would be obvious to adults around the child. The child would be taken to a doctor and evaluated.

If such events took place, the evidence would be in the child's medical records. When the records are obtained, if they are found not to contain any such evidence, claims like "scarring" or a "healed hymenal tear" can be exposed for the nonsense they are. During cross-examination of the sexual abuse medical examiner the points we have just discussed can be pursued, starting with why the examiner did not review past medical records, and asking for an explanation for the absence of any evidence of the child being acutely injured at the time of the alleged intercourse.

Another reason for obtaining complete medical records is to be sure that any photographs taken during the sexual abuse examination are secured. Not only defense attorneys and investigators, but police and prosecutors should also be vigorous in obtaining such photographs. We have seen many cases in which photographs were taken but this was not indicated anywhere in the medical records. Neither the prosecutor nor the defense attorney may realize that pictures exist.

In other cases, the prosecutor may be aware that pictures were taken but fail to request them from the medical examiners. Then, when the prosecutor complies with the defense request for all information in his or her possession, the defense receives no pictures and will probably assume none were taken.

The defense attorney should short-cut all this by serving a *subpoena duces tecum* on the medical facility in every case in which a medical examination was performed. Defense attorneys should never assume that the absence of any mention of pictures in the medical examination report, and the lack of any pictures in the information provided by the prosecutor, is proof that no pictures exist. They should make a specific request to the medical facility not only for all written records but also for any slides, negatives, or prints.

CONCLUSION

It should be obvious by now that a quality investigation requires a good deal of dedication and intelligence, qualities that are not lacking in today's investigators. The biggest reason so many cases are poorly investigated has nothing to do with the dedication or intelligence of the investigators, but is the result

of the improper training they receive from the supposed experts from mental health and pediatrics. We urge all investigators to take another look at those in whom they have placed their trust. Do it for the sake of the children.

CONCLUSION

IT'S TIME TO DO BETTER

OUR CURRENT PROBLEM separating truth from fiction in child sexual abuse cases will not be solved by simply throwing more money into the system. The problem is much more fundamental. *The basic ideas being taught to child sexual abuse investigators are wrong*. If law enforcement and child protection agencies are to do a better job of protecting children and promoting justice, they must abandon the faulty principles learned from a few supposed experts. Until this happens, more money will simply add to the problem by training more persons to make the same mistakes.

What is required is a thorough re-training of the professionals who are responsible for investigating sexual abuse allegations and for protecting children. This re-training should begin with a recognition that certain fundamental assumptions should be abandoned:

1. Investigators should no longer view mental health professionals as experts on how to talk to children about possible abuse.
2. Automatic belief in a child's accusations is not a sign of care and concern for children. Such automatic belief is unprofessional behavior that will hurt both children and justice.
3. Investigators should abandon play therapy methods when interviewing children.

Because the weaknesses of our current system of investigating abuse allegations stem not so much from lack of training as from the wrong *kind* of training, we have in this book devoted considerable attention to both the history of our current methods and the theories behind them. We recommend that all those who investigate child sexual abuse allegations replace these flawed concepts with the following substitutes:

1. Investigators should not be advocates for children but seekers of truth.
2. For those whose job description *does* include advocacy, like child protection workers, defense attorneys, or psychotherapists, it still follows that finding the truth is the first step in protecting a child, representing a defendant, or helping an emotionally troubled child.
3. False accusations of abuse may be as damaging to children as sexual abuse.

4. Mental health professionals should not be asked to evaluate either alleged perpetrators or alleged victims. Neither should an allegation of abuse automatically be considered sufficient grounds for referral of the child to a therapist.
5. Mental health professionals should not train investigators.
6. Police officers are the appropriate persons to investigate alleged crimes. They should not demean their own intelligence by deferring to child protection caseworkers or child therapists.
7. In cases where both child protection caseworkers and police investigators are involved, each side should investigate independently. Police officers investigate possible crimes while child protection workers investigate possible danger to children. Because child protection agencies are mandated to make decisions about potential future risks to children, workers are naturally inclined to err on the side of protecting them from possible future harm. This is precisely why police agencies should remain strictly independent of child protection agencies when they investigate whether or not a crime has been committed.

8. In the absence of fresh genital or anal injury, or sexually transmitted disease, attempts at interpreting variations of hymenal or anal anatomy are dangerously misleading.

The system is not getting better. There is no indication that training of investigators is changing and no sign that a more neutral attitude is emerging in either the law enforcement or child protection communities. As a result, we expect today's style of training to continue for the foreseeable future. As long as the basic attitude of sexual abuse investigators does not change, our system of justice will continue to make the same mistakes over and over.

Those who understand what is wrong with our current investigative system have no choice but to strengthen their resolve to continue to educate legislators, police, caseworkers, judges, teachers, and all those who have an interest in a system that both protects children and promotes justice. These goals require that everyone does a more conscientious job of finding the truth. This includes, of course, not just those who make a living working in the child protection and court systems, but every one of us who truly cares about children and cares about justice.

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HAS A CHILD BEEN MOLESTED?

EVERY YEAR THOUSANDS OF CHILDREN are sexually abused, but the system created in the 1970's by a few mental health professionals and adopted by law enforcement and child protection agencies is making things worse. In this book, psychiatrist Lee Coleman and attorney Patrick Clancy describe how and why this is happening. By explaining the history of the child sexual abuse prevention movement, and exposing the fatal romance between mental health and law enforcement, the authors show how caring and intelligent people, including police officers, social workers, child therapists, teachers and even parents, may unwittingly create false accusations of sexual abuse.

The result is a new form of state-sponsored abuse of both children and those unjustly accused. Analysis of real investigations, such as the notorious McMartin Preschool case, makes it an indispensable guide for attorneys, judges, investigators and all those who seek the truth of sexual abuse accusations. The book's importance does not end there: it also calls for legislative reform of our currently misguided child protection system. As such, ***Has a Child Been Molested?*** is important for anyone who believes that child protection and justice need not be incompatible.

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