

CHILD SEXUAL ABUSE, ASSAULT, AND MOLEST ISSUES

REPORT NO. 8

A Report by the

1991-92 San Diego County Grand Jury
June 29, 1992

CHILD SEXUAL ABUSE, ASSAULT, AND MOLEST ISSUES

(A Report by the 1991-92 San Diego County Grand Jury)

INTRODUCTION TO SEXUAL ABUSE ISSUES

Through expert testimony and case studies, the Jury obtained a wide range of information in the area of child sexual abuse. This controversial and highly complex subject has suffered from excessive, sometimes bordering on hysterical, media attention, reporting of inaccurate or questionable statistics, and the failure to define and identify child sexual abuse accurately. Within the limits of the expert testimony received by the Jury, and a study of cases brought to the Jury's attention, this report will provide an overview of some child sexual abuse issues existing within the dependency process.

ALLEGATIONS OF SEXUAL MOLEST

Allegations of in-home molest/abuse seem to cause the most severe conflict within the system. There are many reasons for this. Child molest is a societal taboo. It causes extreme emotional upheavals in the family, internally, and for family members in relation to society at large. Allegations of molest provoke bias in everyone within the system. Molest can rarely be proven. Molest leaves no physical evidence. Because it can rarely be proven, the system seems determined to err on the side of assuming guilt—that which cannot be proven to be false must be true. This is an aberration in our system of justice. (Appendix A defines sexual abuse; sexual assault; sexual exploitation within the Criminal and Dependency Systems.)

Child sexual molest is real, it happens, and it is terrible. Whether or not it is as prevalent and widespread as the media would have us believe is subject to considerable debate. The current trend in therapeutic treatment is to accept reports of molest as true, notwithstanding that they may be inherently incredible, made for motives of harm or gain, or the product of months or years of "therapy". The justice system, particularly the dependency process, has "bought into" this therapeutic model. The legal system's traditional truth-finding tools—witness confrontation, cross-examination, restrictions on hearsay and "expert" testimony—have been abandoned in a rush "to protect". However, when truth suffers, as it has, the system

fails to protect and ultimately harms the innocent child as well as parent.

In many cases, those who deny molest are guilty. However, in many other cases, those who deny are, in fact, innocent. Ironically, "denial" is taken as evidence of guilt. Unlike any other area of our judicial system, in Juvenile Court the alleged perpetrator of in-house molest does not have to be proven guilty in order to achieve a true finding. The dependency process focuses on the child as an object of molest or abuse. Precise issues relating to the alleged abuser and the abusive incident lose their focus and become nearly irrelevant. The Jury has witnessed the court take jurisdiction on the basis of a true finding that "the child believes she has been molested." Once the system musters sufficient cause to suspect molest, the child becomes a ward of the system and the family is forced to comply to its dictates or suffer the loss of the child.

If the court believes a molest occurred and the family member could have been responsible a "true finding" is made and wardship declared. If a father denies molest and a true finding is made, he suffers the ultimate Catch 22—he can either admit and take a chance that the department will allow him to begin reunification with his family or he can deny and no reunification will occur.

But the irony does not end there. If the spouse supports her husband's denial, she is "accommodating his denial". If she accommodates this denial, she cannot be trusted to protect the child and she too will not be allowed to reunify with the child. Even when the mother believes the molest occurred and wants to protect the child, a current assertion is that the mother must have known all along and failed to protect. That then becomes a protective issue and reason to remove the child from the mother.

Still worse, if the child denies the molest, this can be seen as part of a "child abuse accommodation syndrome"¹

¹ Child Abuse Accommodation Syndrome has been used excessively to explain "denial", "recantation", "disclosure" by children after they have spent months in therapy. The Pennsylvania Supreme Court in *Com vs. Dunkle* 604 A.2d 30 1992 reversed the lower court and found that admission of expert testimony on this syndrome was reversible error. The Court noted that the expert did not relate any of her testimony to the child in question. Finding that "abused children react in myriad ways and that abused and non-abused children often exhibit similar behavior problems, the court found that "[T]he existence of a child abuse syndrome as either a generally accepted diagnostic tool or as relevant evidence is not supportable" and therefore inadmissible. The court also determined that the expert's testimony failed to meet the threshold determination of relevance and probativity.

Finally the Court found that the expert's testimony concerning the reasons abused children delay reporting an incident of abuse to family members, why children omit details of the abuse and why a sexually abused child may be unable to recall dates and times of abuse were "not beyond the realm of the average layman" and, thus, were inappropriate subjects of expert

and an additional reason why the child should have no contact with the parents. The child may be diagnosed as "multi-phasic" dissociative, or "in-denial" and thus unable to remember the experience. (While this does happen on occasion, the Jury has been convinced by numerous experts in this field that this is infrequent and should not be treated as the norm.) Thus, all members of the family can deny a false molest allegation and, in each instance, the system uses the denial as evidence of guilt.²

In the case of Alicia W., the father persisted in denying allegations of molest, but the mother was repeatedly told by her attorney and the social worker that her only chance to reunite with Alicia was to say that she believed her husband did it. The child, who persistently described a stranger perpetrator, was not believed. In order to allow her "the freedom" to "remember" without trauma, visits with her parents were terminated until she could come up with "a more believable story." This child was kept in court ordered therapy for two and a half years, twice a week, "dealing with the molest".

The Jury has heard reliable expert testimony that it is a mistake to force a child to relive and keep talking about an alleged traumatic event. Further, there is little evidence that a child will repress a traumatic event. There is good evidence that a traumatic event tends to etch itself indelibly on the mind.

After a true finding of molest, and the establishment of wardship, a reunification plan may be put in place. The reunification plan will inevitably require that the offending spouse complete Parents United. Parents United is a self-help group for in-home perpetrators of sexual abuse. The only way to complete Parents United is to admit the molest. If Parents United is not completed, there is failure to comply with the reunification plan. Not complying with the reunification plan is grounds for termination of services to the family and termination of parental rights.

Parents United has not always required admission of guilt to complete the program. In fact, it is still not required in some Parents United chapters. All psychologists testifying before the Jury were unalterably opposed to this requirement. Testimony was also received indicating that the recidivism rate for heterosexual child molest is 7-14%, irrespective of the treatment received.

A consensus of experts found that: parents and children

testimony.

2 The system has responded with therapeutic "deniers groups" designed to induce admissions. However, as one father quipped, there is no denier group for those who are truly innocent.

need to learn to establish boundaries; children need to learn to protect themselves; an admission of guilt should not be required for reunification; the present system does not distinguish between degrees of molest; and removal of the father is not always in the best interest of the family or the child. The Jury has heard testimony from parents who have "admitted" molest only in order to reunify with their children. A permanent bitterness and distrust of the system results.

One of the most profoundly disturbing discoveries by the Jury was an extensively used test which is highly touted by many professionals for its ability to predict "age-inappropriate" sexual response. This test is called penile plethysmography. An attachment is made to the male penis, various sexually arousing slides are displayed, and the subject is asked to fantasize. The penile erection reaction is measured. Experts hotly debate the validity of this controversial test. In San Diego County almost every man accused of sexual perversion of any kind will take this test.

Due to the inherent difficulty in determining the truth in sexual molest cases, the Grand Jury recommends that the standard for a "true finding" be changed from "preponderance" to "clear and convincing" evidence. The effect of such a finding is so profound, on the offender, the child, and the family unit, that this heightened standard of proof is truly justified.

When an allegation of sexual molest is made, the offending parent's contact with the child is usually terminated. The majority of the psychologists who testified before the Jury maintained strongly that this was not healthy for the child and that the child should at the least have conjoint therapeutic visits with the offending parent. The Jury concurs with that recommendation.

FALSE ALLEGATIONS OF SEXUAL MOLEST DURING CUSTODY DISPUTES

There is no dispute within the Juvenile Dependency System that false allegations of sexual molest during custody disputes occur and that the system fails to deal with them properly. There is, however, considerable dispute about how to handle these cases. The Jury has found that a parent making a false allegation of abuse or molest during a custody dispute is very likely to achieve the desired result. These accusations are made primarily to avoid visitation and joint custody provisions and the accuser frequently succeeds.

Particularly with allegations of molest, visitation will almost certainly be at least temporarily terminated. The longer the accused parent goes without visitation, the more difficult resolution of the case becomes. The Jury has studied numerous cases of allegations of molest in custody disputes which have never been at Juvenile Court and where the father has had no further visitations. Parents who knowingly make false allegations generally seek to contaminate the child's relationship with the other parent. The children are subjected to a range of contamination starting with simple personal deprecation and escalating in the worst cases to brainwashing. Parents who do this are not stable, not protective, and doing permanent harm to the child.

The Jury has studied many of these cases. Not one of them has been resolved despite years of conflict. Because all of these cases involve mothers who made allegations against fathers, we will speak in those terms. It does happen the other way around, and is, of course, equally damaging to the child.

Family Court Services has recognized the seriousness of this problem and has instituted the Family Court Case Study Team to try to help resolve some of these long term cases and to reestablish fathers' visitations wherever possible. Unfortunately, by the time a case gets to that point the child is usually so contaminated that (s)he fears the father and psychologists are loathe to force the child to see a feared parent. Furthermore, only a fraction of such cases stay in domestic court where they reach the attention of this team. Most of the cases end up in Juvenile Court where there are no resources to redress the problem.

This situation is best illustrated by a brief overview of three cases with which the Jury is most familiar. (The Jury received a large number of similar complaints.) The summaries of these cases were written in January, 1992. The updates, as of June 1992, are in the footnotes.

Case 1: Michael P. (6) and Calle P. (8)

A young military couple with two children were divorced in 1986. There was no custody dispute though there was bitterness as the genesis of the divorce was the wife's affair with a neighbor. The wife ultimately married this man and had several more

children over the course of years. The father was almost immediately transferred East. During the next 18 months he visited the children several times on very short trips to San Diego solely for this purpose.

On a Christmas visit in 1988, he called the mother because Calle was complaining of pain in her vaginal area. He applied hot compresses and returned the child home. Three months later after a phone visitation with the children he told the mother that he was arranging for the children to have an extended summer visit with him and with his extended family. The father reported that the mother said no and that if he proceeds with his plans, she will find a way to stop him, including making allegations of molest. Such allegations were made. CPS became involved.

Calle was interviewed and reported her daddy touched her. A medical evidentiary was done which showed extensive ongoing molest inconsistent with the child's statement of just touching. The father was contacted in the East. He came to California, hired a lawyer, and began a battle which continues to the present. He subjected himself to polygraphs, penile plethysmographies, psychological profiles, etc. Upon his lawyer's advice he cooperated completely with everyone. The mother was, by all accounts, uncooperative with everyone and had a hard time following through on anything. It was discovered that there were other CPS reports on the mother and her new husband. These included reports of neglect of the children and reports of battery.

Because the father had no contact with the children, there was no Juvenile Court jurisdiction and the case stayed in Family Court. Family Court Services provide years of counseling, mediation, and the father still has no visitation. The father was concerned that Calle might have been subjected to ongoing molest as evidenced the medical finding of molest. Michael, by that time, reported satanic abuse. Each child was sent an individual therapist. The stories escalated dramatically. They have not seen their father for years. They saw him a couple of times this year in supervised therapy for the purpose of a psychological evaluation.

The child who reported satanic abuse was less than two when he last had an unsupervised visit with his father. Interestingly, while he expressed fear at the thought of seeing his father, he immediately relaxed and enjoyed these visits. All therapists and evaluators seem certain that the mother has contaminated the children but still are unwilling to assist in putting the children back into a relationship with their father.

The father requested temporary placement of these children in a neutral foster home to allow them to recover from the alienation and to see whether it would be possible for him to reestablish a relationship. Never reevaluated in this case was the original physical finding of sexual molest. The Jury has information that this doctor's findings are no longer being accepted as the basis of petitions filed with Juvenile Court. This case is now with the Family Court Case Study Team.³

Case 2: Melissa F. (4) and Kimberly F. (7)

Melissa and Kimberly's parents were living an apparently normal life in North Carolina. They had lived there several years and were well established in the community with many friends. The mother left abruptly in December, 1990 without warning to the father. She was eventually located, with the children, living with the maternal grandmother in San Diego County.

3 This case has been with the Family Court Case Study Team (FCCST) during the entire tenure of this Jury. There were numerous delays in the evaluation process. These delays were all attributed to the mother's failure to follow through and to her intentional obstruction of the process. The evaluation has been complete for three months but the mother now has refused to pay her half of the \$3,000.00 owed to the psychological evaluator. The evaluator refuses to release the report until he receives payment. Michael and Calle had several joint sessions with their father during the evaluation process. Michael was at ease with his father. Calle was angry at first but relaxed during the visits. A psychologist on the FCCST strongly recommended that these children be sent to live with their father for a three month summer vacation. He felt that this would allow the children to readjust to their father without contamination. There was team consensus with this recommendation but given the current deadlock over the release of the evaluation it is doubtful that anything will occur anytime soon. The father has had no visits with the children since the evaluation process was completed.

In April, 1991, the father left North Carolina and relocated to San Diego in the hope of maintaining regular visitation with his children. He had several visits with the children in San Diego always in the company of the mother and the maternal grandmother. The children had begun seeing a therapist who was just starting his internship. The father asked to meet with the therapist. The therapist refused.

Five weeks after the father's arrival in San Diego, a molest report was made. The record shows that this was not the first attempt to file a complaint of molest in this case. Five weeks later a petition was filed in Juvenile Court alleging sexual molest by the father. Ultimately the children testified to a wide range of abuse. This abuse was described in fantastic detail during the jurisdictional hearing. Kimberly provided graphic descriptions of oral, vaginal, and anal intercourse. All of the physical evidence was inconsistent with this testimony.

The referee in the case found that the stories were "incredible, potentially exaggerated, and maybe even sometimes fantasized." He found the physical findings inconclusive. Nonetheless he concluded that the children had exhibited "acting out" sexual behaviors and that these behaviors were learned. The petitions were sustained.

The father took a polygraph administered by a respected polygrapher who said he would trust the father to baby-sit his grandchildren. The father went through many psychological tests. He passed them all. He had a psychological evaluation done by a court-appointed psychological evaluator. It differed dramatically from every other evaluation done. Notably, it said nothing good about the father and quoted the mother extensively.

Social worker notes in this case are exhaustive. The maternal grandmother and mother moved the children to several different schools and have now changed the children's first and last names. Social workers have investigated reported inappropriate discussions of the molest by the mother and grandmother in front of the children, and concerns expressed by teachers, etc. Nonetheless, the social workers have continued to

support the mother.

The original minor's counsel did no independent investigation and supported the Department in all motions. In January, 1992, there was a substitution of minor's counsel. The request for an independent psychological evaluation of the children was finally granted. A change in therapist for the children was also ordered. These psychologists now are convinced that the children have been heavily coached. However, because the children now fear their father these psychologists are opposed to forcing the children to visit with him.

If indeed the children have been so heavily coached that they can no longer tell truth from fantasy then the Department of Social Services and Juvenile Court have played a pivotal role in this tragedy. These children should not be left in the custody of a parent so severely disturbed that she would do this to her children. She needs help and the children need time to recover.⁴

Case 3: Shannon S. (8)

Shannon's mother was hospitalized for severe manic depression. Initially, she had other emotional problems which led to a The parents lived close to one another. The child attended a private school a block from her father's and a couple of blocks from the

4 An independent psychological evaluation of the whole family was requested by father's counsel and then ordered by the court after the new therapists for the minors reported contamination. The court-appointed psychiatrist prepared this evaluation to be ready for the contested disposition in February. This evaluation was favorable to the father and confirmed the therapists in their concern about contamination by the material family. The mother's attorney informed her of the conclusions of this evaluation several days before the trial. The mother did not appear at disposition. It has subsequently been learned that the entire family has disappeared and is probably relocated in Chile. A bench warrant was issued for the mother's arrest. Since Chile is not a signatory to the Hague Convention guidelines, there are no remedies available to this father. The father has been granted a rehearing before a judge. The father has also appealed the jurisdictional decision of the lower court on numerous grounds. Interestingly, minor's appellate counsel has agreed with the elements of the father's appeal. Note: 6/11/92 In the rehearing the trial judge determined that there was new evidence, that the referee had erred in not allowing evidence exculpatory to the father, and hence reversed the true finding against the father.

mother's. She spent approximately half the time in each home. It seemed to be going as well as these things ever go in a divorce. The child was in weekly therapy for over a year to help her adjust to the parent's separation. The therapist reported that she was happy and well-adjusted despite the divorce and mother's illness.

Shannon also had the added benefit of a large, extended, paternal family. She had always been very close to her paternal grandparents and they continued to play a major role in her caretaking.

The mother decided to move to the San Francisco area to be closer to her family. The father agreed but wanted extensive visitation. The mother and father began a protracted custody dispute which eventually cost everything both parents had.

It led, immediately after Shannon started with a new therapist in the bay area, to an allegation of sexual molest. Minor's counsel was appointed in Family Court and determined after an extensive investigation and psychological profiles that a molest had not occurred. An order was entered for a new therapist for the child.

At the continued instigation of someone, most likely the San Francisco therapist, CPS became involved and a petition was filed. When the petition was heard in Juvenile Court, the appointed minor's counsel from Family Court appeared to explain the findings in Family Court. He was told by the judge that he had no standing in Juvenile Court and he was dismissed. A panel minor's counsel was appointed. He examined the existing records and also recommended that the case be returned to the jurisdiction of Family Court. The Judge dismissed him too. A third minor's counsel was appointed. The third minor's counsel agreed to the judge's jurisdiction and stayed on the case. There was a five-month trial in Juvenile Court with little resolution. (Mid-trial, the parties agreed to stipulate to a "true finding" which stated that the "child was saying she had been molested.") The child continued with the same therapist who is convinced of the father's guilt.

There is very probable contamination of the child by

the therapist. The Jury spoke with the professionals involved in the case who are convinced that the child has been manipulated and contaminated.

It is not likely that this child will ever have a normal relationship with her father. Her therapist is adamantly opposed to a resumed relationship. The first time she saw her father in over a year she gave him a huge hug and immediately sat on his lap. The savings to provide for Shannon's college education are gone. The mother was receiving a large property settlement and substantial alimony and child support. That is gone too. Everyone lost because no one within the system seemed willing to challenge the therapist's allegations and what was likely a child's distorted story.⁵

In all three of these cases the children have been deprived of their fathers for extended periods of time. Their relationships with their fathers are probably irreconcilable. The professionals have backed away from the hard decision that contamination occurred, that contamination a protective issue requiring at least temporary removal from the contaminating parent, and giving custody to the accused parent or a neutral family member until the accusing parent can receive help.

Included in the Jury recommendations is the establishment of a protocol which recognizes that without prompt attention in these cases they will continue to be the source of many of the most serious, ongoing problems in the dependency process. This protocol could include the establishment of a multi-disciplinary court team, like the Family Court Case Study Team, with a highly trained counselor appointed to coordinate these teams and to facilitate cooperation between the Domestic and Juvenile Courts.

It is also recommended that visitation not be stopped when an allegation of sexual molest is made, but that visitation be continued under therapist supervision. Where a false allegation is suspected, the complaining party should be warned that contamination of the child's relationship with a parent is sufficient grounds for a change of physical custody, and visitation should not be altered while an investigation is occurring.

5 There has been little change in this case. The father now has only supervised visitation once a month with his daughter.

SEXUAL MOLEST CRIMINAL PROSECUTION AND THE DISTRICT ATTORNEY

Guilt or innocence is not determined in Juvenile Court. That is a standard of criminal court. Perpetrators of in-house molest are sometimes charged in criminal court and tried by a jury. A verdict of not guilty in a criminal court will not effect the "true finding" in Juvenile Court because that finding is based on a different and lower evidentiary standard.

The Jury finds that the criteria for criminal prosecution is also less than objective and consistent. Law enforcement submits cases to the District Attorney for prosecution. The District Attorney has a special Child Abuse Unit. The official criteria for filing a criminal case is whether the evidence will support a determination of guilt beyond a reasonable doubt. However, in the case of Alicia W., the case was ranked as very weak by the District Attorney and prosecuted anyway. Other prosecuted child abuse cases were also very weak and seemed to have more of a personal flavor to them than an objective decision to take the worst cases and prosecute.⁶

In sexual abuse cases there appears to be a prosecutorial reliance on the likelihood that a charge will produce a plea to a lesser offense. The penalties for conviction are very high, and the cost of a defense prohibitive. Further, a criminal proceeding against a father keeps the reunification process from proceeding. Pleas are often structured to salvage a "minor" guilt admission for the prosecution.

Numerous defense attorneys testified that they allow and even encourage their clients to plea to a minor charge even when they are certain of the client's innocence in order to facilitate the reunification of the family and to avoid a trial. Defense attorneys feel it is in the client's best interest to avoid a trial because of public sentiment about allegations of

⁶The following studied cases are offered as examples.

* A school teacher was tried for child abuse after pushing a child. A jury found her not guilty. It was acknowledged by the supervising Deputy D.A. that this was a weak case, prosecuted "to teach a lesson, test the parameters of the law, educate the public."

* A teenager was prosecuted for felony child molest upon an allegation by a foster child in his mother's home. There was no physical evidence. The D.A.'s office prosecuted despite its awareness that this child's DSS file contained references to previous unfounded allegations as well as psychological evaluations of the child as a pathological liar.

* A step-grandfather was prosecuted for the felony child molest of his 11 year old granddaughter. He and the family adamantly denied the allegations. Again, DSS files available to the D.A. contained contradictory information and evaluations of the child as a pathological liar. There was also a child molest report involving the natural father and the child. None of this information was revealed to the defense. The child testified at the preliminary hearing but was not cross-examined. At the time of trial, the D.A. stated that the child could not be located. The preliminary hearing testimony of the child was entered. The step-grandfather was convicted. Between conviction and sentencing the defense became aware that the child's whereabouts was known, and had been known, by the D.A. The defense asked for a re-trial; it has been granted.

molest.

In one case investigated by the jury, the father was accused of 13 felonies. After 18 months in Juvenile Court and personally bankrupt, he decided, upon the advice of counsel, to plea to a single misdemeanor. After reunification with his family, he asked to have his case reexamined. He contacted a ranking detective in the Child Abuse Unit and asked how he could do this. It was suggested that he take a polygraph exam. He did. He followed other procedures recommended to him. The detective began to believe that this man was innocent. He talked to the Deputy District Attorney on the case who treated the exonerating evidence as irrelevant and refused any action.

In the case of Alicia W., the first DNA results returned indicated that the father was not the perpetrator and that the identified and previously convicted serial attacker was within the 5% of males who could be the perpetrator. A repeat test to confirm these results was pending. The Department of Social Services had responded rapidly to a Grand Jury request to look at the new evidence and stop the pending proceedings in Juvenile Court. In response to a motion from DSS, the court ordered the hearing for the termination of parental rights vacated, ordered unsupervised visitation with the mother and supervised therapeutic visitation for the father. The District Attorney refused to lift the "no contact" order.

There was apparent proof that the father had not raped his child. Moreover, there was very strong evidence pointing to the person who had. Instead of "letting go", even the District Attorney's office looked for unsubstantiated scenarios in which the father could be involved.

The most specious statement was made by the head Deputy District Attorney of the District Attorney's Child Abuse Unit. "We have a believable child saying her Dad did it." This child gave a very credible description of another man for over a year. A detailed description was given to law enforcement on the day of the rape. That description was even used by a another Deputy District Attorney to obtain physical evidence to aid in the prosecution of another sexual assault perpetrated by the man described by this child. During the intervening year Alicia was in twice a week therapy with a therapist who believed the father was the perpetrator. She was isolated from anyone who would believe her other story. The therapist and the social worker blocked defense efforts for her to see the judge on the case, have an independent psychological evaluation, and be placed with

relatives.

This same head Deputy District Attorney had provided the Jury early in its investigation with a copy of the Child Victim Witness Protocol which she had helped develop. This protocol clearly states that the earlier uncontaminated statements are the most reliable. It cautions against employing multiple interrogations. Why was the child not believed when she told her early story but believed implicitly more than a year later when she told a story implicating her father?

The Jury believes that personnel within the District Attorney's Child Abuse Unit subscribe to many myths about the dynamics of sexual molest which were described in this report under Allegations of Molest. The District Attorney's Child Abuse Unit needs to maintain strict objectivity in its decisions to prosecute and to maintain a protocol of cooperation, but a distinct separation from the Child Protection system.

SEXUAL ASSAULT VERSUS SEXUAL MOLEST

Alicia W. was treated as a case of alleged sexual molest. This was a violent sexual assault. While incestuous sexual molest is relatively common, particularly with step children and within extended families, it is extremely rare to have a sexual assault on a natural child. It is even more rare for that sexual assault to be a first time sex act.

If there was one major flaw in the way Alicia W. was handled, it was this initial assumption by the system. Alicia W. was a sexual assault and should have gone to the sexual assault team instead of to social workers conditioned to assume that it was sexual molest.

One of the tragic ironies of this case is that Alicia's detailed description of the perpetrator was actually used to obtain the physical evidence necessary in another case to convict Alicia's own rapist. The case of Nicole S. was handled by the sexual assault team which is the team which should have handled Alicia's case. The Jury heard evidence that the sexual abuse team was called in on Alicia W. because it happened to be available. This employment of the sexual abuse team had a long term and serious prejudicial effect on the case. It is the Jury's recommendation that all sexual assault cases be handled by the sexual assault unit.

The social worker, the investigators at the Center for

Child Protection, the physician, and the therapist all agreed to the sexual molest theory and all evidence to the contrary was ignored as unessential, unreliable, or irrelevant. Even the detective to whom Alicia gave a detailed description later decided it was not believable.

Evidence of this bias is found in written reports of the initial evidentiary interview of Alicia done at the Center for Child Protection. When asked what Alicia would tell her brother to keep him safe, Alicia responded, "tell him to keep his window locked." That statement was omitted from the narrative report because it didn't fit with what the interviewer wanted to hear. Far more damning, Alicia was asked with whom she would feel safe. She clearly stated, as attested by the Grand Jury's viewing of this tape, "my mom, dad, and brother." This is reported in the narrative of this interview as, "my mom and brother." It was later cited by the evidentiary interviewer in her narrative, the social worker in her social study, and the Director of the Center for Child Protection in his letter to the court. This statement was used to show Alicia's exclusion of the father as a person with whom she felt safe. The best that can be said is that these people heard what they wanted to hear. The worst is that they committed perjury.

The Jury has heard expert testimony that rape or sexual assault on a natural child is highly unlikely. In fact, any harmful act against a natural child is 100 times less likely than is such an act against a non-blood relative. There was no evidence in the father's family of any previous history of abuse much less molest. The professionals involved in this case considered no such evidence or research, and made decisions based on their own biases.

These biases were activated by "red-flag markers". The "red flags" present in this case were freely revealed by the parents in initial interviews. The mother said she had been molested as a child. The father had recently completed an obesity program with the Navy and had decided to stop drinking at that time. He volunteered that he had occasionally, when away from home, consumed sufficient alcohol to black-out. The son was hyper-active. The mother didn't drive. The father was an enlisted man in the Navy. Both parents were over-weight. They didn't know many people in the community.

Jurors have heard testimony and seen evidence that these "red flags" are used regularly as diagnostic, risk-assessment indicators. This is appropriate. However, there has also been

testimony and evidence has been seen that such "indicator" information is actually employed as evidence. Such information is set out in social study reports without any balancing information and proffered and accepted as evidence of abuse.

For example, the social study in Alicia W. detailed all of the above indicators in detail. It did not mention that the father's drinking was not a source of a problem in his family. It did not mention the father's superb rating and a history of excellent performance reports and rewards in the Navy. It did not mention a family with extended paternal relatives. It did not mention that the mother managed all of the household finances and was very independent with a day care business in her home. It did not mention that there were no reports of any problems with her day care service. There was no interview of the parents of these children. It did not mention that Alicia was an "A" student who had just won Student of the Month. No one at her school was interviewed. It did not mention an active participation in church and community activities despite a relatively recent transfer to San Diego.

DO CHILDREN LIE ABOUT ABUSE AND SEXUAL TRAUMA?

Psychological experts testified that children lie about these issues. Recent literature reflecting studies conducted by the American Psychological Association not surprisingly concluded that some children lie and others don't. Studies also indicated that young children can be very easily contaminated to believe that things happened which, in fact, did not occur.

Witnesses from DSS and the District Attorney's Child Abuse Unit told the Jury that children rarely lie about abuse and sexual trauma. It was disturbing to the Jury that these same witnesses often concluded that a child was in denial or being protective if they denied abuse by a parent but were never lying when they accused.

The Jury examined cases where children made allegations of abuse and then later wanted to retract them. The children said they had lied and were sorry. The same social workers, therapists, prosecutors, and judicial officers who believed the stories of abuse, refused to believe the children when they admitted to a lie.

Jurors observed a teenage girl testify to molest by her step-father. She reported to a school counselor that he had touched her once on the breasts and genital area while she was

clothed. She denied any previous occurrence. Evidence presented at trial included love letters she had written to an older maternal uncle with whom she was romantically involved. In these letters she wrote graphically about her sexual attraction to this uncle. She also wrote that she was trying to get her mother to strike her so that she could report the abuse to CPS and live with the grandmother. (Not coincidentally, the uncle also lived with the grandmother and the mother was trying to limit contact.)

Prior to the introduction of the letters the teenager had testified to a good relationship with her mother and no conflicts. The letters clearly indicated that this was not true. Despite contradictory testimony from three adults who were awake and present within 15 feet, and a sibling who was awake in the next bed, at the time of the alleged abuse, a true finding was made. At no time was the teenager cautioned about telling the truth. Everyone in the courtroom was solicitous of this child to the point of ignoring contradictions in the girl's testimony.

The Jury investigated a case brought by citizen complaint. The natural 18-year old son of a foster mother was accused by a 10-year old foster child of sexual molest. The child was immediately removed, the foster care license pulled, and the 18-year-old prosecuted for felony-sexual assault. The only evidence in the case was the child's allegation. The 18-year-old adamantly denied the charge. The 18-year old pled "nolo" to a misdemeanor charge with the understanding that this would be removed from his record in one year.

The foster mother had not been informed prior to the placement of this child that the child had a history of sexual molest, multiple placements, and false allegations against various parties. While in this home the child made allegations against his social worker and classroom teacher.

The DSS file includes a long history of psychological problems and psychological evaluations which reported that the child was a pathological liar. The District Attorney and DSS had this information, the defense did not. There was no physical evidence and the decision to prosecute was based solely on the child's allegation. Defense costs bankrupted this family. The Department lost a foster care provider.

A professional family adopted an abused, very petite, four year old. She did well in this home until puberty. She began

to act out, lie, not come home, etc. She told a counselor at school that she was being abused at home. She told the counselor that she wasn't being fed and that was the reason she was so small. The family was investigated. The family cooperated and agreed to services in the hopes that the child and family could be helped. The child wasn't pulled but social worker contact continued. The child made allegations to her social worker of sexual molest by her brother. The parents became alarmed and agreed to her placement in foster care in order to protect their son. Each person who believed the stories told by this child ultimately regretted it. The social services record shows a trail of gullible adults. Even a Deputy District Attorney tried to adopt this child. She returned the child after several serious problems. This deeply troubled child now has an extensive record as a delinquent and no family to turn to. The adoptive family no longer feels capable of coping with her problems.

There are dozens of these stories. Some children lie. Failure to recognize this as fact is ultimately not in the child's best interest. Each one of the children in the stories above has suffered as a result of the system's gullibility.

SATANIC RITUAL ABUSE

In October, 1991, a Grand Juror was present at a meeting of the San Diego Commission on Children and Youth when a report on ritual abuse was adopted. This report, entitled Ritual Abuse Treatment, Intervention and Safety Guidelines, was the result of a task force effort and made numerous recommendations for handling ritual, and, of particular concern to the Jury, satanic abuse. The following definition of "satanic" appears in this report.

Satanic - Satanists may infiltrate other types of cults, or remain separate. Satanic cults may range from an extra-familial collection of methamphetamine abusers who torture for excitement, to decades old, multi-national sects, with established political systems, revenue mechanisms, etc., which indulge in the deification of Satan. Numerous cults exist which have sophisticated suppliers of sacrificial persons, from kidnapers through "breeders" (women who bear children intended for sexual abuse and sacrifice).⁷

Within the week Jurors were present at a dependency proceeding where a referee was presented a detention petition

7 Ritual Abuse p.5

involving allegations of satanic abuse. The referee followed the recommendations in the social study which were almost verbatim from the recommendations made for handling these cases in the Commission on Children and Youth report. The children named in the petition were placed in confidential placement with no family contact whatsoever. They were also placed with a therapist "well-versed" in ritual abuse.

Citizen complaints of social workers pursuing satanic ritual abuse cases began to come to the Jury. Four families were from the same church congregation; the other complaints were unrelated. In one case the County Counsel filed a petition actually alleging that the child would be sacrificed on his birthday. All of the cases tested rational credulity. Each involved the same set of social workers, therapists, and detectives. At this time, all cases with which the Jury is familiar have been terminated. The emotional cost to the children and families cannot be calculated. In at least two cases, lawsuits against the County have followed.

Jurors contacted expert witnesses across the country. The ritual abuse report was sent to various experts for evaluation.

Police detectives involved in these investigations, members of the task force who wrote the report and an involved therapist were interviewed. Jurors attended a conference workshop by another therapist who served on the task force which prepared the report and was being used as a recommended ritual abuse therapist. Witnesses were asked to provide any factual information or evidence they had available which would substantiate the existence of satanic ritual abuse in San Diego County or elsewhere. No such information or evidence was provided. The Jury found that there is no physical evidence of satanic ritual child abuse in San Diego County. There is evidence and considerable professional testimony that the existence of satanic ritual abuse is a contemporary myth perpetuated by a small number of social workers, therapists, and law enforcement members who have effected an influence which far belies their numbers. These "believers" cannot be dissuaded by a lack of physical evidence.

The Jury had extensive contact with Ken Lanning, head of the FBI Behavioral Sciences Investigation Unit. Mr. Lanning has spent ten years in a nationwide search for reliable evidence of satanic ritual abuse. He has found none. It is his position that if satanic ritual abuse were occurring his unit would have

found some concrete evidence during their exhaustive search.

Mr. Lanning advised jurors that epidemic allegations of satanic abuse frequently follow conferences where social workers and therapists are exposed to a "survivor" or speaker on the subject. Jurors attended one of these sessions at a national conference on child abuse held locally and coordinated by the Center for Child Protection. "Survivors" told about their abuse in detail. One "survivor" had memories of sexual abuse on the day she was born. This same survivor reported memories of her mother's attempts to abort her. Another "survivor" told a detailed story of satanic ritual abuse which included a large number of prominent citizens from her hometown.

Mr. Lanning also stated that the blurring of the diagnosis of dissociative disorder and a resulting logically false conclusion is at least partially responsible. This opinion was confirmed by other expert witnesses. The DSM-III defines Multiple Personality Disorder under Dissociative Disorders. Multiple Personality Disorder is an unusual condition with childhood abuse (often sexual) as a predisposing factor. Therapists who have expanded the parameters of the dissociative disorder diagnosis to include any form of dissociation have fallen prey to the logical fallacy followed that all of these patients also suffered severe childhood trauma. Proponents of this theory believe that with a sympathetic therapist, if any dissociative disorder is found, memories of childhood abuse will follow.

According to professional testimony, there is some evidence that many patients who receive therapy from a therapist who ascribes to this theory, will eventually "testify" to such memories. In fact, the "memories" may be the product of the therapist. The therapy itself may be the abuse. John Money, Ph.D. of Johns Hopkins University has labeled this abuse in therapy as nosocomial abuse.⁸

Grand Jurors viewed a Calvacade video circulated by a

⁸ The False Memory Syndrome Foundation, located in Philadelphia, was established in February, 1992. The Advisory Board of FMS Foundation includes twenty Professors of Psychology and Psychiatry from the University of Pennsylvania, Harvard, UCLA, Stanford, John Hopkins, UC Berkeley, Carnegie Mellon University. The Foundation is deeply concerned about the growing phenomenon of false accusations coming out of therapy. The Foundation is concerned that this dangerous phenomenon will ultimately impact the profession's credibility. Already they attribute inappropriate therapy with destroying families and creating abuse in the minds of children and adults.

County official. This video shows "therapy" being given to very young "victims". Professionals advised that the type of therapy used in this video could be defined as nosocomial abuse.

The alleged satanic abuse cases which have surfaced nationwide during the past ten years share many common elements. No matter how incredible the allegations, the "believers" believe them. No physical evidence is found. The "believers" have complex theories to explain the absence of physical findings and evidence. The "evidence" presented is the testimony of children. The children testify to fantastic tales which can not be confirmed. The children have spent a considerable time with therapists. Most often, religious fundamentalism is an element. Frequently, a "survivor" or someone who has "memories" of having been ritually abused as a child is involved either as the therapist, the social worker, the prosecutor, or the reporting party. Criminal trial juries find it hard to believe that children can tell such incredible stories if nothing has happened to them. They find themselves faced with either believing the children are lying or the perpetrator is guilty. In some cases they have chosen to believe the children. Another option is to choose to believe that the child's narrative memory has been contaminated by the therapy.

Of particular interest is the information the Jury received about the Little Rascals pre-school case in North Carolina. Eighty-five percent of the children received therapy with three therapists in the town; all of these children eventually reported satanic abuse. Fifteen percent of the children were treated by different therapists in a neighboring city; none of these children reported abuse of any kind after the same period of time in therapy.

Experts have told the Jury that the first story a young child tells is most likely the true one. Testimony given by very young children after a year in therapy should be treated with great caution. Testimony given by children after a year in therapy with therapists who are "believers" should be treated with deep skepticism.

The Grand Jury is aware that the Department of Social Services has reevaluated the investigative protocols on ritual and satanic abuse. The social worker who investigated in this area has been reassigned and the Ritual Abuse report is no longer being distributed by the Commission on Children and Youth. This is as it should be.

SB 1771 (Russell) is currently before the state legislature. If passed, it will create a state-wide task force on ritualistic child abuse. By statute, this task force will be made up of fourteen members chosen by two groups, one of which is the Los Angeles County Commission for Women Task Force on Ritual Abuse. Much of San Diego County's Report on Ritualistic Abuse was borrowed from materials compiled by this group. The purpose of this state task force is ostensibly to determine the extent of the problem of ritualistic abuse. It would appear that the selection process makes this task force less than objective. The Jury strongly urges the Board of Supervisors and San Diego's Department of Social Services to oppose this legislation.

CONCLUSIONS

Child sexual abuse issues are complex. These issues bring out the strongest bias in the dependency system. There is little attempt to view or treat sexual abuse on a spectrum of severity. All molest issues are treated in much the same way. The system has made little distinction between molest and assault.

At the time "Families in Crisis" was issued, procedures still dictated pulling children whenever sexual molest was alleged. Frequently, children were re-victimized by being pulled from their homes even when there was a protective parent, and removal of the perpetrator was an option.

The Grand Jury recognizes the need for careful investigation in these complicated cases due to the risk to the child if left in a dangerous situation. It is necessary that investigation be done by highly trained, objective professionals.

Bias in the system frequently prevents an objective observation of the case, particularly cases which have originated as custody disputes in Family Court.

Children "in denial" who are placed in therapy for sexual abuse should be with highly-qualified therapists who will not contaminate the child.

The Department of Social Services has recently instituted a task force on Sexual Abuse issues. The Grand Jury recommends that this task force be expanded to include formerly impacted

parents and psychologists who specialize in Family Court evaluations. This task force should be asked to provide recommendations to the Department of Social Services, the Juvenile Court, and Family Court Services.

SI-HSS9