Think Tank Report

A Judicial Response to Child Sexual Abuse

The National Resource Center on Child Sexual Abuse

A JUDICIAL RESPONSE TO CHILD SEXUAL ABUSE

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A JUDICIAL RESPONSE TO CHILD SEXUAL ABUSE

MR. LLOYD: On behalf of The National Resource Center on Child Sexual Abuse and on behalf of both The Children's Advocacy Center and The Chesapeake Institute, we would like to welcome our distinguished Presenters, Reactors, Invited Participants and other participants. Our first Presenter will be Judge Charles Schudson from the Circuit Court of Milwaukee County, Milwaukee, Wisconsin.

JUDGE SCHUDSON: First of all, what can and should judges do with inherent authority to control judicial procedures to make them more humane? I think judges can do a great many things, and I think all too often judges, in deference to the trial strategies or techniques of lawyers, fail to keep in mind the never-ending obligation of the Court to insure the opportunity for witnesses to give testimony. The statutory authority for that exists in virtually every state, either by exact replication of the Federal Code or a comparable state statute. The Federal Rule of Evidence 611(a) is titled "Mode and order of interrogation and presentation: Controlled by court," and in part it reads, "The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of truth, and protect witnesses from harassment or undue embarrassment."

I think that is a continuing obligation on the part of every judge, and I think that it rises to an active level, depending on the efforts of the lawyers. Notwithstanding that, and particularly as a former prosecutor who always wanted the judges to stay clear and respect my trial strategies, I think the best role of the judge is to try to combine that supervisory power with some deference to the efforts of lawyers. Before the judge initiates actions and really jumps in, it's incumbent on the judge, first, to see what the strategies of the lawyers are, to respect that they may have some things in mind that could not be known to the judge, and at times -- of course, outside the presence of the jury -- to get an understanding of what the lawyers expect to do.

For example, there is absolutely nothing improper, and I think it is quite appropriate, for judges in any case where children are expected as witnesses to approach the subject at the beginning and to learn from the lawyers what is expected, what techniques might be needed, what special dolls or toys or accommodations might be necessary.

In the first place, that just makes common sense so that we don't have "trial by ambush" or trial by surprise, and it helps us gain a sense of what is coming and the appropriate timing that will come along with that. With that, of course, judges are doing what we must do in every case, and that is to assess the timing of the case and make appropriate arrangements for all the witnesses involved.

What I suggest, and what I seek, is that we do for children exactly what we do for every witness. The curiosity, of course, is that when we do it for children, it takes some less than commonly seen forms, but we're really doing the same thing. So, for example, every judge has had the experience at 3:30 in the afternoon of having lawyers approach the bench, and one says, "Judge, I know we could get another hour of testimony this afternoon, but we're on our third day of trial. I didn't expect it to go that long. My office is a mess. I've got calls that have to be returned. Could we cut early this afternoon and resume tomorrow at 9:00?" The other lawyer enthusiastically agrees, and the judge, knowing that he or she also has left things neglected in chambers because of the length of the trial, says yes. In effect, knowing the rhythms and professional practices of adults and lawyers, the judge defers. All we seek is the same deference to children. We should be sensitive enough to initiate the communication that helps us understand the timing and the rhythms of children.

So, for example, if there is a six year old expecting to testify at 10:00 in the morning but, through unforeseen circumstances or developments in the trial, isn't going to be called to testify until after the lunch break, judges should learn whether that child will be able to testify. Every parent knows that the communicative darling at 10:00 in the morning might not be able to testify in the afternoon with a nap and eating schedule upended. All I am seeking now is not favor for children but the removal of discrimination against children. With that we can bring them to equal status with all other persons, witnesses, and lawyers, who have business in our courts.

Under our legal tradition, under the evidence code -- the Federal Code and state codes that provide essentially the same thing -- we have a special obligation to be sensitive to children so that they gain a fair opportunity to be heard in courts. We must be as considerate of children and their communication needs, their timings and schedules, as we would be for everyone else.

It is important to do that and do that far more actively than we see almost all judges doing now. It can be done in a way that is quite compatible with proper deference to the trial strategies of the lawyers. Do it early, do it outside the presence of the jury, broach the subjects, learn as much as possible and as much as is fair from the lawyers and their intentions, and assure them that if they have not been sensitive to the needs of the children the judge himself or herself will initiate the discussion to learn what might be done to enable the child to testify.

That, then combines with the crucial step of providing a fair preliminary jury instruction. If we learn there are going to be some special techniques that might call upon the judge to

adjust his or her demeanor or language or tone with the child, the jury should be instructed ahead of time why that is being done, in a way that is comparable to procedures for a witness who speaks no English or is hearing-impaired or is wheel-chair-bound. Such an instruction can explain to the jury that when the judge removes the robe or leaves the bench or takes what might be perceived as a supportive and friendly tone with the child, the jury is to keep in mind that that is being done not to show favor to the child and not to embrace what the child is saying, but to help the child have an opportunity to say whatever he or she wants to say, so that the jury has the chance to find the truth.

There are some very interesting techniques that can be used to enable children to testify, including closed-circuit TV, video tape, one-way mirrors and screens, and the like. However, it is discouraging to see the enormous confusion at the judicial level about these techniques. For example, I have seen substantial confusion both in the trial courts and appellate courts, regarding the use of video tape as an investigative tool, and video tape as a deposition prepared specifically for a trial. While the technology is essentially the same, the purposes are very different, and the admissibility comes according to very different lines. In some cases where an investigative interview is done by a police officer or a therapist, or any number of others who have a legitimate reason to video tape the discussion with the child, that video tape was not prepared for a trial, but perhaps with the knowledge that it some day might be considered as possible trial evidence. Nonetheless, there are trial judges who have reached the illogical conclusion that the therapist or the police officer or the parent or counselor can take the stand and relate what was said in that interview, but the video tape itself will not be shown to the jury. It is important for us to keep in mind that an investigation interview that is done by a police officer or therapist that happens to be committed to video tape, in almost all instances, should be admissible.

The video tape deposition, on the other hand, is something prepared specifically for purposes of trial and ordinarily would only be admissible if the opening counsel was there and had the right of cross examination. There are all kinds of electronic techniques now that can be used, and we must seek to assure the judges understand the theoretical and practical differences among them and understand why, in almost all instances, they should be admitted.

There are some other techniques that are particularly interesting, and there's one that I think might be worthy of mention, and that is questioning in a trial by a non-lawyer. I think this is something that judges should be very ready to receive and, perhaps, even encourage in some instances. I know of two states where this has been considered: Nebraska, and Wisconsin, with different results.

In both cases a child was not relating to the question from a lawyer. The rapport wasn't there, despite relatively good efforts on the part of the lawyer. The request was made that a non-lawyer continue questioning, and even though the questions were ones that could be submitted in advance to the judge or could be the very questions that the lawyer was going to ask, the Nebraska Supreme Court said no, and with the obvious knee-jerk reaction spoke those words, "Only members of the bar." [*State* v. *Warford*, 389 N.W.2d 575, (1986)] . Well, the unfairness of that is clear when we consider that that same function is provided by the interpreter for the hearing impaired, or for the witness who speaks a foreign language. To think that a counselor or a victim advocate or someone with whom the child has established a rapport couldn't do the same thing is, in my estimate, quite absurd.

The Wisconsin legislature reviewed the same kind of situation and enacted a law that provides for questioning by persons who are not members of the Bar. (Wis. Stats. §967.04(8)(6)(6). That is an example of what judges should allow, if not encourage, in exploring what techniques will be needed to assure a child's opportunity to testify in the courtroom.

What judicial procedures require legislative authority or court rules changes? In my estimation, virtually no procedures need legislative authority and, in fact, as we think we are seeing great in-roads made legislatively, I'm concerned about some of the ironic results. I don't think there is any need for a constitutional amendment and there is no need for a new statute to put a child on a lap, to allow a child to eat graham crackers in the courtroom, to allow a child to sit on the floor, to give a child frequent breaks. As I have been reviewing the new statutes that have been enacted, while I think for the most part they're certainly well-motivated and they've accomplished some nice things, they have suffered the defect of virtually all legislation: as soon as the legislature says, "This is what can be done," everyone assumes that if it is not mentioned, it <u>can't</u> be done. So, for example, we have had some new statutory enactments regarding the presumption of the competency of certain child witnesses. There is in almost every one of those statutes a minimum age, and people are arguing that if you're not at that minimum age then you're not presumed to be competent. We can find numerous enactments of video tape laws or competency laws or any number of other procedural laws attempting to assist children that, ironically, sometimes don't assist many others who are just as deserving.

In other ways I've seen an ironic result. There are a number of state statutes that have carved out these very important innovations on behalf of sexually abused children. In some cases there have been successful arguments made that the merely neglected or abused children shouldn't gain the same benefit. That, of course, is absurd, but yet some of those arguments have

won the day as courts say, "Well, look, the legislature had a chance to consider it, carved out this area, and then implicitly left out all the others." I think that's an incorrect ruling. Nonetheless, it's the kind of ruling that we open ourselves up as we look to legislation as a panacea. Don't get me wrong; I am not going to oppose all such legislation, but if I were to go before a legislative committee, I would always preface my opposition or support by saying, "Incidentally, none of this is necessary. Without new laws, sensitive judges with scholarship and fairness are able to do these things."

Sometimes, it is interesting to see the evolution without legislation. When I first provided a child the chance to testify from a lap, the case hinged on that technique and the child presumably frozen on the witness stand was able to testify. I had the opportunity to tell about that at four judicial conferences in Ohio. Sometime later I got a call from a victim advocate in Canton saying, "Do you have any law on that?" I had no law on that. She said, "You mean you just did this without authority?", and I said, "No, I did it because I'm a dad and I know what would help the kid speak, and, by the way, there's this Federal Evidence Rule that I discovered after having done it." She said, "Well, we've got this strange situation here in Canton with a ten-year old; it's a rape case, the child froze on the stand, but was able to testify from her aunt's lap."

The advocate described the scene, going back to the D.A., about perhaps putting the child on the aunt's lap, and he said, "No, I can't do something like that. I have to be taken seriously in this court, and it's just not done." She said, "What's the downside risk? We're about to lose the case." She convinced him to do it. He went in the court, apologetically made the request to the judge, not knowing that the judge had attended one of the seminars I had just given. The judge said yes, the child went on the lap, the defendant was convicted and is serving 10 to 25 in the Ohio penitentiary.

Now, the evidence was overwhelming, but without that lap, the conviction would not have been gained. It went up on appeal, and the Ohio Court of Appeals, in a splendid decision, said that not only did the trial judge do what he could do but that he was virtually required to do under the never-ending obligation to assure all witnesses the opportunity to testify. [*Ohio* v. *Johnson*, Ohio Ct. App. 5th Dist. (June 9, 1986)] So, without legislation we see some very interesting developments, where perhaps more precisely and more accurately, with case-by-case judicially-made appellate law, we find more wisdom in law-making than might be gained legislatively.

So, I have -- what surprises many -- very mixed feelings about the prudence of a legislative approach. Furthermore, I think that the legislative approach becomes most opportune at

times when we have tried something at the trial court level. I remember if we went back four or five years ago in presentations like this, so often the question from lawyers, particularly prosecutors: "But we'll get appealed on that," and I said, "Great. What's wrong with that?"

Judges would say, "I'm going to risk reversal on that," and I would say, "Great." As a very fine judge in Milwaukee said to me some years ago, "Show me the trial court judge who has not been reversed and I will show you the trial court judge who is not thinking and not ever trying anything new." Then another said to remember, "If you're reversed, it doesn't mean you were wrong, and if you're affirmed it doesn't mean you were right." So, in any event, we can say, "Try it. That's what the process is for. If you don't try it, you're telling me you're going to lose the case anyhow."

So, give it a try, make your record, bring about the appeal, do your best. If you win, wonderful, you have the affirmation you need. If you lose, you have the clarification you need And then, if the clarification means you must go the legislative route, you're in a much more precise position to pursue it.

What can and should be done to help judges understand the state-of-the-art in various areas as they decide whether to admit expert testimony? Well, here I suppose I would broaden the question to say, "What can we do to help judges understand the state-of-the-art in all areas related to this?" I don't think that judges are any more or less educated relative to expert testimony than they are relative to children in general, and laws and the code of evidence as it affects child witnesses in general.

I don't see any singular advantage or disadvantage relative to the subject of expert testimony. So first, let me comment briefly on expert testimony and then more generally on judicial education.

Relative to expert testimony, I think the advantage we have is there's a wealth of case law. We're getting to learn more about where the courts are going so that now we can say with relative confidence that unless you live in Georgia, Hawaii and, as a result of the recent decision within the last month, maybe Wisconsin -- we're not sure yet -- that unless you live in those three states, you must know that experts will not be allowed to give an opinion on the truthfulness of the child. Furthermore, experts will not be allowed to give an opinion on the truthfulness of the child that is veiled in some way by comparison of the characteristics of truthful and untruthful children in general, and the characteristics of this child who has been examined.

The most important decision in this came from the Federal Court of Appeals in *United States* v. *Azure* [801 F.2d 336 (8th Cir. 1986)] where a person many of us know, Dr. Robert Ten Bensel, was the witness and gave, I'm sure, very excellent testimony. He was called upon to give the ultimate testimony on whether the child was truthful, and said, "Yes, in my professional opinion the child was," and it was reversed. The courts across the land, except Georgia, Hawaii, and maybe Wisconsin, are saying that that usurps the function of the jury; no one is competent to give an opinion on the ultimate issue of truthfulness. I find the logic in the Georgia, Hawaii, and maybe Wisconsin decisions to be more persuasive, but I certainly would never recommend that anyone follow that line outside of those states because in comparison to those two-and-a-half decisions, there are at least, perhaps 20, 30 jurisdictions that have gone the other way.

What is more exciting now is the broadening area for expert testimony. If we go back five, six years, no one would have dreamed that a social worker or a school counselor or a parent would qualify as a so-called expert on the child and the child's reaction to what is taking place. Now we have had all of those people qualified as experts to put them in a position of describing everything from bed wetting to nightmares to school behavior, and comparing that against the child's previous behavior and the behavior of other children. That is particularly useful, and now we are seeing some very exciting areas, particularly art therapy and play therapy. We are seeing courts, I think, getting more and more flexible and astute about this and saying some wonderful things about this broadening area for expert testimony.

In a New Jersey case, for example, after having very extensive hearings on the nature of art therapy and qualifying the expert, a fine judge there allowed the art therapist to testify and to explain the meaning of drawings, and said, "When appropriate, a court must act to introduce into the corpus juris a new vehicle to use in its never-ending search for the truth." [*Wilkerson* v. *Pearson* (N.J. Super. 1985)]

Judicial education is so crucial, and it can take place in many different ways: At the national level I can't help but be terribly impressed by judicial leadership, both at the National Judicial College and the National Council of Juvenile and Family Court Judges. I have seen the leadership of the judiciary moving with such vigor and such enlightenment, and saying all of the things I think that we would hope a judicial leadership would say. I've seen these organizations develop training programs and work actively to disseminate them through the country, to be flexible, to help with funding to try and bring that education to judges.

At the state level, there certainly is an important role to be played, and certain states' judicial education programs are outstanding; certain others' bad or virtually non-existent. But here I think there is tremendous potential, and if we can judge anything at all from the requests from state -- organizations to national organizations for education on the subject, we know that most of the signs are very good, and that many state judges are going to their state level education programs and saying, "We would like education on this. What can you do to bring it to us?"

With national resources and state-wide resources, many state judicial education programs are doing a much improved job in that respect. I think there is a tremendous role to play for citizens, and this has to go forward with continuing efforts as citizens and victim witness advocates recognize that the courts don't belong to the judges, they do belong to the people, and the judges are their servants, their employees.

It's up to the citizens, then, to do their utmost to educate their prosecutors and their judges. After all, there are many citizens without legal background who will attend programs such as this. One of the most important messages we can bring to them is after attending a program like this is that they have had much more training on these subjects than most judges in their state. They should not be put off by the lack of the law degree. Instead, they should know that judges lack education in child development and communication and, thus, if we can help those citizens know more about the legal system, they in turn should be in a position to help judges learn more about children and laws related to children. So I think we should encourage citizens to roll up their sleeves, flex their moral and legal muscle, and become advocates and pursue things with great diligence with their prosecutors and judges, and be prepared, with Alinksy-esque tactics and sound scholarship, to assure that their prosecutors and judges are responsive. It can be done in all kinds of interesting, humorous, thoughtful ways. (Please read Rules for Radicals by Saul Alinsky if you need more examples, or perhaps in the balance of the morning I'll have a chance to provide a few of my favorites.)

I hope I've touched on some of the things that might be on our minds this morning, and I look forward to reactions and discussions.

MR. LLOYD: Our Reactor will be Patricia Toth Director of the National Center for Prosecution of Child Abuse, in Alexandria, Virginia.

MS. TOTH: I am really happy to be able to talk on this subject because I feel it is one of the few chances I get to tell judges what I would like them to do. Judge Schudson and I talked

very briefly before this session, and I felt after listening to him yesterday my reaction would be in large part to agree with him and it wouldn't be very controversial.

So, I would like to throw out for consideration what I see as some of the major issues involving the judicial response to child abuse cases, whether they are intrafamilial, criminal, civil, or otherwise. I don't necessarily have strong opinions about everyone of these, but I believe these are issues we should all be considering as we look to the future. Then I will react to some of the things Judge Schudson raised.

One of the major issues is that of unified courts. Should we have one court, one judge, for each child abuse case, even when it is in multiple arenas in the justice system? For instance, a case may be filed as a criminal case but also be a civil dependence case because it involves a caretaker. If there is a divorce going on, it would also be a domestic court case. I have mixed feelings about the concept of a unified court for such cases. On the one hand, it's appealing because it would mean that families and children wouldn't have to be dragged from court to court and judge to judge, and presumably, a judge who is aware of the entire situation would make better decisions. But that assumes the judge hearing the case will do what is right, and is well-educated and knowledgeable. I would have concerns about those cases where the judge was not very skillful or well-educated. The most common scenario involves an ongoing criminal case at the same time as a dependency case in the civil courts. There's a potential check-and-balance if a case in one court is dismissed or otherwise fails, since it can possibly still be pursued in the other court. For example, a judge may dismiss a dependency case, despite there being a case based on the same conduct pending in criminal court. As a criminal prosecutor, I still want to be able to pursue the criminal case before a jury. I was able to get a criminal conviction in a case like that when I was a prosecutor.

If the dependency and criminal cases hadn't been in separate courts with separate judges such a result would likely have been impossible, the child would have been returned home to her abuser by the judge in the civil proceeding who dismissed the dependency. The criminal case was still set for trial and we went ahead with it, the court appointing a guardian ad litem for the child at my request. Because she was a strong witness, the jury returned a guilty verdict.

There was even a positive outcome with regard to the judge who heard the dependency case. When he learned that we'd gotten a conviction, he called me into chambers and indicated he felt he'd made a mistake in his handling of the dependency and wished to discuss it. We ended up accomplishing some good things,

despite the fact that the child was in danger for a time prior to the criminal trial.

Only with separation is there the possibility for such checks and balances. By the same token, there could be real if advantages to unified courts if done right. We have not yet explored all the ramifications in detail, but we must before we consider implementing such a system.

Another issue concerns whether or not we should design special courtrooms for children, which Harry Elias will address.

Yet another issue is whether judicial education on child abuse should be mandatory. I say yes. It should be mandatory for all other professionals who intervene in these cases too -- prosecutors, defense attorneys, case workers, law enforcement, medical personnel and therapists. In fact, judges have gone a long way compared to some other professionals in trying to put together good training programs. However, there must continue to be efforts to control the quality and balance of mandatory training programs. The content must be up to date, and faculty members well-qualified.

Until such training is mandated, though, our main concern is how to reach the judges who don't attend these conferences. Those who voluntarily attend are not the problem. Judge Gothard, Judge Schudson, Judge Smith: these are not the judges who need education and training. We must generate ideas about how to influence those other problem judges. Knowledgeable judges can and do set examples, by publishing articles or books, speaking at training events for judges. Judicial conferences are held in many states once or twice a year. The usually involve a general program covering a variety of topics. A judge is more likely to attend a single session on child abuse at one of those than go to an entire child abuse conference. If one of the judges attending our Think Tank today was presenting even just for an hour, that could have a major impact.

Another idea is to invite those judges who are the biggest problem to a community forum or conference and ask them to speak on the issue of child abuse. Consider having him or her sit next to the Judge Smith you have in your community at the lunch table before the problem judge speaks. Prior to the conference you can provide the judge with copies of some of the best and most recent articles on the subject "just in case" he or she hasn't had a chance to read them yet, saying "I thought you might find it interesting before your talk." Judges want to look good. They don't want to look like they don't know what they're talking about. They'll read the information you've given them and it's bound to make an impact. Like lawyers, they love to speak. They won't turn down an invitation to speak at a conference where they may be talking to potential voters and the media.

Perhaps one of the most important factors influencing the judicial response in child sexual abuse is how much initiative judges should take to control their courtrooms. Most judges are not as innovative as Judge Schudson in taking the initiative to control their courtrooms as he does. What that means for most of us who deal with run-of-the-mill judges is that prosecutors really have to take some initiative to suggest that judges do the kind of things that Judge Schudson does. That in turn means judges must be open to new ideas from prosecutors. Consequently there is some responsibility on the shoulders of the D.A. to open the judge's eyes as to what's possible.

Among the possibilities, of course, is re-arranging seating. Now, if I was prosecuting a criminal trial before a difficult judge who didn't like changes in the court room, I would consider ahead of time whether it would help the child witness if her chair was angled so she didn't have to look directly at the defendants face and would try to arrange things that way before anyone else got to the courtroom. In the county where I worked, whichever lawyer got to the courtroom first was able to pick his or her table, and there was always one right in front of the witness stands. Since I didn't want the defendant sitting there, I'd get to court at 7:30 in the morning if I had to, camp outside the door, and claim that table so I'd have the seat right across from the witness stand. But, also, if I could move the chairs, I would go into the courtroom, at lunch time for instance, before the child came on to testify, and just do it. It would be the way I wanted when everybody walked in the courtroom, and somebody would have to take some time and trouble in order to rearrange everything. Generally, judges don't want to do that. If asked why things in the courtroom had been changed, I'd just explain that I thought it would make it more comfortable for the child. What's the judge going to say at that point? If, instead, you request permission to rearrange the furniture with a difficult judge, it's much easier for him or her to just say no. Nancy Borko, a prosecutor in the Bronx, is one of many who have suggested good ideas. Nancy believes you should not make a motion, for example, to allow a child to carry a blanket or stuffed animal into the court room. Instead, just have them do it. What judge is going to take a teddy bear from a child's arms?

Prosecutors need to have tenacity. You need to push with difficult judges, though you should do so politely. I was able to test the limits as a prosecutor without offending judges, for instance, by asking for breaks and in making reasonable objections. If you are in front of a truly difficult judge and anticipate he will do something outrageous in a child abuse case, you can invite court-watch groups to attend the trial, or invite the media to cover the case. Judges usually recognize the local reporters in their community, and when they see them watching what is going on, they're not as likely to do something which could make them look insensitive or unreasonable.

Those are just a few ideas about what can be done. Another thing that is usually not thought of or done in a child abuse case is the prosecutor standing next to the defense attorney during cross-examination of the child. Why not? Nothing other than tradition prevents it in most courtrooms. As a prosecutor, I found this to be very effective. I didn't ask permission to do it. We were allowed to move around in the courts in Washington State. Traditionally, when a lawyer finished direct examination he or she would sit back down at the table. But I simply stepped back, and when the defense attorney stood to cross-examine the child, I would stand next to him. This accomplished a couple of things. Usually, the defense attorney would position himself so the child would have to look toward the defendant. By standing next to the defense attorney, I was usually able to partially block the defendant's view, and the child could look at me for reassurance. I normally spent a lot of time with the child before trial, and would let him or her know that I'd be close by at all times in the courtroom.

Sometimes defense attorneys would object and say, "Your Honor, I don't want Ms. Toth standing next to me." I'd say, "Oh, I'm sorry. Does it bother you? I'll move," and I'd move a few feet. They might ask me to move again, but again, I wouldn't move very far, and would remain very polite and reasonable. If they persisted, it would be obvious they were trying to intimidate the child by not allowing me to be close enough to offer reassurance.

I would like to react to Judge Schudson's comments about judges' inherent authority to control proceedings. I believe all judges should be required to give the kind of preliminary oral instruction that Judge Schudson gave at his luncheon speech yesterday. Until then, I had never heard a judge in a child abuse case give such an instruction to a jury and was very impressed with it. I assume most states have judge's bench books which usually include preliminary oral instructions given on special issues such as insanity, the death penalty and others. It would seem appropriate to include some version of Judge Schudson's preliminary oral instruction in every judge's bench book in this country for use in child abuse cases. Furthermore, judicial training materials could include a typed version of that preliminary oral instruction. Simply including it would probably result in its being used hundreds of times around the country. This could be very helpful in most child abuse cases.

In reaction to Judge Schudson's suggestion that we allow questioning by non-lawyers, I have some concerns. Special child interpreters are allowed for by Florida law. I have no direct experience or knowledge of how this is actually used in Florida, but I understand it to be fairly successful and I think it's an interesting concept. However, I want to urge everyone to be very careful about such things.

Part of my concern with some of the innovative procedures that have been proposed is that people see them as a way of making their own jobs easier, and may use them as a way of transferring responsibility to someone else. I get nervous when a prosecutor thinks he/she can count on admission of video taped interviews into evidence at trial, and then not put time into preparing the child to testify. Innovative procedures should not be used as excuses for a prosecutor or any other professional to abdicate his/her responsibility. A procedure like that can, and should, be used only when necessary.

Aggressive defense attorneys may be able to use such tools against children. For example, if the state uses an interpreter to help a child in a case, the defense may insist on having an interpreter they have chosen to cross-examine the child. I would not want to see that happen but undoubtedly, some judges would allow it. Thus we must be very careful and aware of how defense attorneys may try to turn things around. I'm not saying innovative procedures are inappropriate, but that they should be used with care and only when needed. We should make sure that we continue to train prosecutors and insist that they be sensitive and that they put the time and effort in to prepare children effectively and understand how to question children in ways appropriate to their developmental levels.

I agree we don't need a whole new statutory structure to accomplish a lot of changes to make it easier for children. There are no panaceas or fancy new technologies that can substitute for hard work, preparation time, sensitivity and initiative.

In terms of helping judges understand the state-of-the-art and the whole subject of expert testimony, I take the position that prosecutors must be very careful about how expert testimony is used and not overstep the bounds. In part, I believe one reason so many defense experts are being allowed to testify today is that prosecutors often called their own experts to the stand without adequate preparation and then expected too much of them. I believe prosecutors should focus more on using expert testimony as rebuttal evidence rather than relying on it as direct evidence. Defense attorneys usually either explicitly or implicitly attack the child's credibility, by bringing up the fact that the child delayed in reporting, for instance, during cross-examination. At that point the prosecutor could make a motion to be allowed to present expert testimony, particularly if this was a serious problem in the case and could not be dealt adequately without expert testimony. The motion should make it very clear that this is in rebuttal to the defense attorney's implication that the child shouldn't be believed because of delayed reporting or whatever else has been raised. Expert testimony under such circumstances is more likely to be upheld on appeal and this should not open the door for the defense to bring in its own expert.

But if the prosecution calls an expert in its direct case, the judge almost has to let the defense bring in a counter expert during the defense case. Some people have gained credibility as experts simply by the fact that they have been called to the stand so many times by defense attorneys. If prosecutors hadn't called experts in the first place in their direct cases, this may not have happened so much.

I am really encouraged that the subject is being discussed, and I'm really encouraged that judges are here. I hope we can continue this dialogue between judges and other people about how to improve the system. It's crucial to talk to each other.

MR. LLOYD: Our first discussant is Judge Sol Gothard of the Fifth Circuit Court of Appeal in Gretna, Louisiana.

JUDGE GOTHARD: We recently had a case that had made headlines. It was only a month ago in Jefferson Parish, Louisiana, in which we had the usual, unfortunate, tragic situation of allegations incident to separation and divorce in the custody dispute. The domestic relations judge got mad at the mother, sent the child to the father and the child was raped in the father's care -- we shouldn't use the term "molestation" when we're talking about rape. It came to me in the Court of Appeal, I put in an immediate stop, I sent the child back to the mother, and I remanded the case to the Juvenile Court where it belonged.

The defense attorney filed a motion that I should be recused. He said, "Judge Gothard, with the prejudice he has shown is like a fly being caught in a spider web and asking the spider to help extricate him." I did not recuse myself, the rest of the judges of the Court of Appeal believed I should not recuse myself. Then it went to the Supreme Court, he asked the same thing, and said, "Judge Gothard on this case is like appointing a Mafia chief as Chief of Police." We said, "Now you've gone too far," we reported him to the Bar Association. Afterwards he apologized, but he was just BS'ing me because I wanted him to publish an apology, not to me, but to the mother because he intimidated the mother, not me. Otherwise, I was going to recommend that he be suspended. I was completely and totally vindicated in the long trial afterwards in the juvenile court, completely and totally.

With their attitude, then, that I am prejudiced, Judge Schudson, in my years as a juvenile court judge I couldn't go as far as you because they thought I'm nothing but a warmed over social worker anyhow, having been a social worker before I was a lawyer. I don't think these innovations would fly in conservative Louisiana. The progress we have made has been slow and deliberate. But at least from the perspective of a juvenile court judge, I wasn't critical in the prosecution of our cases.

Remember, it's a different standard in juvenile court: you don't need "beyond a reasonable doubt," you need "by a preponderance of the evidence." We made a documentary film at a mock trial in the Sexual Victimization of Children Conference in New Orleans where I removed the father once the young girl came in to testify, and we were upheld by the Supreme Court in the actual case.

What Judge Schudson didn't bring up -- and I find that it was not a tremendous handicap that I was not allowed to use your excellent innovations -- was that preparation was the key. I had court rules that said, first of all, there was to be absolutely no secrecy whatsoever, so you cannot be accused of violating the rights of defendants. I had all children -- remember, this is in juvenile court now; the issue is whether this is a sexually abused child, whether the caretaker was involved -- come to me in advance. If attorneys wanted to come, they were welcome to. I'd see the defendant in advance, too. They had to come in advance in the company the child felt most comfortable. It could be a parent, it could be a therapist, anybody, and they had to meet me in advance. It didn't take long. It only took about 10, 15 minutes. They had to see the black robe that I was going to wear. I worried if they were a victim of satanism, cults, and suddenly they'd be coming into a building with a judge staring down at them, wearing a black robe, with flags behind him -- you know, that fits the terminology -- with a police with a gun. They might wonder, is he there to kill me? They have been warned they could be killed, very many of them.

So, I had to show them the robe, I had to show them the picture of my five kids, my two Collie dogs. I had to say, "This is the dress I'm going to wear." Then I took out my Mardi Gras beads and put them on. Then I had to take them inside the court to show them in advance -- we couldn't have your innovations -- but at least to show them what it's like, and let them know, "Now once we go in there I'm going to be very, very serious, but I'm the same person and nobody is going to hurt you."

Then I called in the bailiff with the gun, and asked, "Do you know why he is going to be there? Is this going to bother you?" Eventually, I said, "He is there to protect you and he's going to stand behind you all the time." And then I gave them the option if they (the children) wanted the parent in there or not. I had no secrets, with all defense lawyers knowing this and so forth. The vast majority wanted the father there. The vast majority did pretty well. All it took was the little preparation. They loved having the policeman with the gun behind <u>them</u> to protect them.

MR. LLOYD: Mr. Jeff Kuhn with the National Council of Juvenile and Family Court Judges in Reno, Nevada.

MR. KUHN: Our organization has been involved for some time in child victimization training for the judiciary, specifically judges of the juvenile and family court bench. I would like to endorse the motion of mandatory judicial education. Probably our biggest impediment to providing judicial education is the individual states themselves, either because states don't have mandatory continuing judicial education and therefore their interest is minimal in terms of this topic, or based on perhaps budgetary limitations. It's important to stress the importance of this popular topic to the state judicial educators. That's often where a breakdown occurs beyond mandatory judicial education requirements. Even in states that do have it, the judicial educator may consider tax liability or personal injury topics to be more important than abuse and neglect. So, that's our uphill battle in terms of dealing with mandatory judicial education.

The other think I'd like to comment on is Patti's recommendation to disseminate Judge Schudson's preliminary oral instruction. I fully intend to include that in our materials. That's an outstanding idea, and I fully endorse and will carry it out.

MR. LLOYD: Mr. Richard Fisher, of the District Attorney General's Office in Nashville, Tennessee.

MR. FISHER: I have a couple of comments. The unified court system worries me for the same reason recognized, and that is our judge is in there for eight years. A bad judge can wreak a lot of horror in eight years: in one case the juvenile judge found no dependence and neglect, the domestic relations judge awarded weekend visitation -- it was an admittedly weak case, but in criminal cases we condition our plea upon no visitation until recommended by the therapist, if this man is an adult offender.

In Tennessee in 1985 we passed our Child Sex Abuse Act and we included required training for every person exposed to the child sex abuse problems, specifically including judges. Now, they do meet at a seminar once a year, and CLE [continuing legal education] is required for judges. Not only did we require that in the law, we then set up a task force to monitor the implementation progress of the law and made certain that judges were being instructed on a periodic basis. Of course, the defense lawyers are not behind us very far, and they have the defense experts there presenting to judges during the same sessions.

MR. LLOYD: Ms. Donna Medley, Victim/Witness Coordinator in San Francisco.

MS. MEDLEY: When we talk about innovative procedures in court, I feel like I'm in a time warp because I don't see children getting to the level of equality with adults in court, let alone extra special procedures. In fact, I find children penalized as witnesses because they are children, and by the idea, the

presumption that children not only can be so easily coached but that they have been coached, first of all generally by the mother and then, secondly, by the therapist and then, thirdly, by the victim/witness advocate and then, finally, by the D.A. By the time they get to court everything is seen in terms of this child having special treatment, having been coached, and somehow not being a credible witness.

I would like judges trained or recognizing the fact that children have the right to be witnesses like other regular witnesses. I see adult witnesses prepared all the time by the D.A.'s. But we don't touch children. We don't give them the advantage of preparing them to be good witnesses in court. I think that's unfair. I think we just take the prejudice and try and work around it, and I think the kids suffer.

Informationally, I don't know if you mentioned this, Jeff, the National Council of Family and Juvenile Court Judges will be sponsoring a Think Tank or a symposium on unified court systems and coordinating court systems in May of this year. Also Judge Len Edwards, of Santa Clara County, California has written an article that discusses this in a positive way in the *Santa Clara Law Review*.

MR. LLOYD: Judge Lynwood Smith, Circuit Court, Madison County Alabama, here in Huntsville.

JUDGE LYNWOOD SMITH: Many of the comments that have been made this morning are excellent, but I think the most important were made by Ms. Toth. Judicial education is very important; and the fact that we have mandatory judicial education in this state reflects the importance of that concern. But it's even more important, in my opinion, to educate district attorneys and prosecutors, because I think the district attorneys have to take the initiative in dealing with judges to suggest procedures, to argue for alternate ways of going things, to push different judges. I think the comment that was made about putting the difficult judge in a difficult situation in a public courtroom, where he's got to take the teddy bear or security blanket away from a child is on point: many times you just have to do that. We judges have our own problems; depending on the circumstances of our life at any particular point in time, we may not be as thoughtful or as sensitive as we ought to be. So, the district attorneys, I think, are the ones upon whom education has to focus. After all, it is the district attorney's case and it is the district attorney's responsibility to prosecute successfully, and not the judge's. So the district attorney is where the focus should be to move the quality of child advocacy forward, in my opinion.

MR. LLOYD: Ms. Penny McNees, Program Coordinator of the Mobile College Children's Center in Mobile, Alabama.

MS. McNEES: I'm one of the people who works at the grass roots level. My biggest concern in the past has been the juries that are as dumb as dirt. I am a firm believer that we do need to educate our judges and our district attorneys and our defense attorneys, but as I see it, when you get a jury in there, the only education they really get is either what the judge presents them with or in the course of opening statements by the prosecuting attorney. I mean, it's just pitiful.

I have spoken to over 40 groups of common citizens in Mobile County, Alabama hoping that, eventually, if I keep telling everybody flat out that child abusers are not dirty old men in raincoats, they're wearing pinstripe suits -- if I tell enough people this, just maybe we'll get juries that are a little bit more informed. But I was completely taken with Patti's statements in regard to inviting a judge who is your problem to speak on child abuse -- I thought that was wonderful -- and presenting him with literature beforehand. We had a conference for our judges, and out of 13 judges six showed up. You know, of course, the six that showed up were your more informed, less bull-headed judges, who were already informed to begin with.

But, anyway, there's a lot of work to be done, and there's a lot of work to be done on the grass roots level. I appreciate this opportunity to be drawing in all this information so I can go home, roll up my sleeves as a citizen and set the example.

JUDGE GOTHARD: Just one last word on judicial education, since that came up. Some of us, after the laws are promulgated, usually in the summer time and in the fall, we bring those involved in the entire gamut of child abuse, and we review the laws. It's a good opportunity for the child protection and the social workers and the educators in this area to be speaking.

Just lastly on Patti's idea, I've asked advocates, why don't you start in your local community on the really grass roots levels, not on the state conference level. At state conferences I've been unsuccessful in Louisiana to get child abuse and sexual abuse as one of the topics. It's an extremely low priority. I've told social workers and others, "Have the judge be in charge of your program on the most local level there is. Invite the people, and then proceed to educate them. That may be a way you'll get them out and influence them because I don't think he's going to go to the state conference."

MR. LLOYD: Harry Elias, Chief of the Child Abuse Division in the San Diego District Attorney's Office.

MR. ELIAS: Patti Toth, who is an extremely good friend of mine, commented that it is the prosecutors who cause defendants to bring in experts. I think that's a bunch of horse

pucky. I think despite all the efforts we have gone to try to educate ourselves, make courtrooms more amiable places and to make the process easier for the kids it is the jurors who still don't know anything about these issues.

In the beginning, when nobody used experts and there was a recantation or an inconsistency in a child's statements -- the defense attorney would stand up there when all evidence was done and point out what a liar the child had been for saying X, Y or Z. Prosecutors were put in a position of trying to find a way to rebut this argument. There was no where else to go except for this whole idea of using psychologists and others as experts. So, I don't think the issue is whether or not we have caused the defense to use more experts. Rather, it is that children deserve to have their credibility fairly judged.

Now, you should know I'm very a very strong proponent of using expert witnesses, and the idea of waiting until rebuttal is fine unless the defense attorneys don't put on a case. They rip the dickens out of your child witness and then the prosecution says, "We rest." If the defense then says, "We rest," you're done. I think expert testimony has to be rebuttal in a manner of sorts, but not necessarily for actual rebuttal.

MS. TOTH: When I suggested that sometimes prosecutors were at fault, I was referring to those prosecutors -- not every prosecutor -- who went overboard when they started putting on experts and asking them, "In your opinion, Expert, has this child been abused by the defendant?"

MR. ELIAS: But the key appellate court decisions that are critical of expert witnesses didn't come out of criminal cases. They came out of the juvenile court, they came out of dependency cases.

MS. TOTH: Civil or criminal, whoever was prosecuting those dependency cases put on experts and asked them such questions, giving defense attorneys the bright idea to put defense experts on to say, "That child hasn't been abused." I'm obviously simplifying greatly, and I don't mean to suggest that expert testimony shouldn't be used. But it needs to be used very carefully and limited to those things that are fair. I don't think it's fair to ask an expert to come in and make the judge's decision or to do the prosecutor's work by putting everything on their own shoulders. I think it invites the defense to put on opposing experts.

I agree that you run the risk that the defense won't put on a case and thus not should wait; rather, as soon as the defense attorney implied in cross-examination that the child was untruthful, you should make a motion immediately and say, "This would be in the manner of rebuttal testimony," but ask to do it then.

Even though, technically, it's not the prosecution's rebuttal case, it's rebuttal testimony and should stand up. The evidence comes into your case in chief, but a record is made that it's rebuttal and the professionals explaining the exact reason the evidence is needed. It's a tactical way to justify the use of expert testimony rebuttal evidence made necessary by the fact that the defense attorney misled the trier of fact.

JUDGE SCHUDSON: Just a few quick things based on what has been stated. I think both Patti and Harry are correct. I think you're both right, and I think we have understood that any of those approaches is going to make a lot of sense, depending on the case, and, in fact, will make sense over time. Every prosecutor or judge or anyone who has worked in criminal justice can take another example to help us understand this.

If you go back ten years, think how difficult it was to successfully prosecute a case of drunken driving. Everyone said, "That defendant is just like me." Ten years later every jury is presuming the defendant in a drunken driving case to be guilty, and I see case after case resulting in conviction on evidence that is paper thin compared to what brought convictions just ten years back. Just as the community shifted its focus there, it is starting to shift in child sexual abuse. Jurors walk into courtrooms in 1989 in a very different fashion than they did in 1982. They walk in believing that child sexual abuse does occur, and that different belief puts them in a completely different posture, and has an impact on whether one uses experts or not.

In considering whether to use experts in a prosecution, keep in mind what is sometimes called the "kiss" technique, "Keep it simple, stupid." If a prosecutor presents a case with the implication that it is so complicated that the jury will need experts to understand the evidence, the jury may consider the subtleties of expert testimony to be reasonable doubt. Part of what used to be accomplished with expert testimony sometimes can be accomplished through the prosecutor's questions on voir dire. For example, "Ladies and gentlemen of the jury panel, if the evidence proves guilt beyond a reasonable doubt, is there any member of this jury panel who would come back with a 'not guilty' verdict because you believe that there is some rule that a victim must report a crime right away?" That is a fair voir dire question, that starts to address the so-called "recantation" issues.

Incidently, there's a very interesting decision of the Oregon Supreme Court in which a judge allowed experts to testify based on what was learned about the jurors during voir dire. [*States* v. *Middleton*, 657 P.2d. 1215 (Or. 1983)] Because these questions showed that the jurors were not familiar with child sexual abuse, expert testimony was permitted.

I'm aware that there are some who say you don't want to use so many special techniques or novel theories in a prosecution. Having prosecuted many cases, and presided over many cases involving sexual assault that were done very successfully in completely conventional ways, I would agree. However, the things that I'm describing should always be part of the repertoire, to be used as needed. The techniques shouldn't be overused. As soon as we do something a bit unusual, while it has its advantages, it has some downside risks.

After reviewing all sorts of recommendations and all sorts of literature in preparation for our book, we did come to one single, specific, absolute "do-not-delay" recommendation: that every state enact a law that requires that before any judge preside over any case involving children, whether juvenile, family, probate or criminal, that judge must have specialized education on child development, communication, and laws related to children. That is a law that no legislature can oppose. That's a law that grass roots can bring about immediately in every state. Who's going to oppose it in your legislature? Once we get that required in every state, then we will forever more avoid the atrocity of judges presiding over child sexual abuse cases when they know nothing about children.

Further, let me offer an example of citizens having an impact on the judiciary that can be replicated over and over again. The Wisconsin legislature had enacted a law to assist battered women. A citizens' task force for battered women was very concerned that the new law would have no impact because it might not be understood or would remain unknown to the judiciary. The task force went to our judicial college, proposed a program, got judicial education credits for the judges attending eight hours of training on the law. They planned it for two consecutive nights, 5:30 to 9:30 p.m. You can imagine the enthusiasm of judges being trained by women, being trained by social workers, and being trained at night. So obviously, no one attended, right? Wrong, because the task force had read their Alinsky, and they went to the media. "Battered Women to Train Judges." It's a good story, and every judge read that headline and knew that the press would attend and note who was there and who wasn't. Attendance was excellent.

MR. LLOYD: Dr. Joseph Braga, a psychologist and co-director of the National Foundation for Children, in Coconut Grove, Florida.

DR. JOSEPH BRAGA: *Expert testimony is appropriate in the case-in-chief to dispel commonly-held myths about the behavior of victims, and to educate the jury about normal child development. For example, most people do not know the memory and language capabilities of preschool children. An expert in child development could testify as to the capabilities of three year old children, in general, for example, thus providing the trier of fact with a set of eyeglasses to assess the capabilities and credibility of the particular child in that case. The expert should not discuss the specific credibility of this child, merely the ability of children the same age to remember and report on their experience.

MR. LLOYD: Judge Sandra Butler Smith of the Municipal Court in Stockton, California.

JUDGE SANDRA SMITH: If there is concern about the defense "experts" coming in and doing judicial training, there is a very expedient way to take care of that wrong. Invite them, put them on a panel with the Braga's, put them on a panel with Kee MacFarlane, put them on a panel with other people. It doesn't take judges or trained listeners very long to get the picture.

MR. FISHER: I disagree; if the defense "expert" goes to that by invitation and makes a presentation, it looks bad.

JUDGE SANDRA SMITH: But they're going to be there anyway.

MR. FISHER: By invitation.

MS. TOTH: He has a point. The unfortunate thing about the defense "experts" is they're then asked, "Have you ever been qualified as an expert before?" "Yes, I have, 25 different occasions and in 25 different states," and the judge's first reaction is, "Must really be a great expert." It's something to think about.

MR. LLOYD: We now move into the tag-team phase of the Think Tank. We're going to have an interesting time situation among our presenters and respondents here, and I'm going to let them divide it: Kee MacFarlane, Director of the Child Sexual Abuse Diagnostic Center, Children's International, in Los Angeles, and Harry Elias.

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MS. MacFARLANE: I felt really uncomfortable being on this panel at all, but even though I've always felt free to tell a lot of people what I thought of a lot of the judges I came in contact with, being asked to actually do that in public is very uncomfortable. Who am I to tell judges how to do their job? I can just tell them how it feels from my side. I decided, instead, to go back, to what I usually do, to try to talk from the perspective of the kids that I've worked with.

I have really mixed feelings listening to Charlie Schudson. Some people who listen to him feel very encouraged on the one hand but very depressed on the other because of the comparison of some of his perspective and what is possible. When you have a view of what's possible and you are forced to compare it with what is actually going on in a lot of places, it's both encouraging and depressing.

Overall, being in this field so long, I remain encouraged because of remembering what it was like in 1970 and '72, but I have in some ways come a full circle. Lucy Berliner and I used to talk about the days when we were bitter enemies when she was advocating working with the legal system and I was advocating blowing it up -- a great Saul Alinsky tradition in social work. I've come full circle in that I have put a lot of effort in the interim to helping that system work better, helping children survive it better. I know there are many things you can do on both sides and many things you can do to make children more armored to face this.

If I had to chose, I would still say I believe the court is a toxic environment for children and a lot of other living things. I've spent a lot of time in it myself lately, and I know that perhaps I project that identification because I know how it affects me to have been so attacked for my believability and how personal the assault has been in courtrooms for me. I can see, I can feel what the children feel, I think. I also am not willing to start handing out hunting licenses to hurt child molesters, so I believe we need a legal system and a court system. So, I don't work totally to keep them out, but I want to be the voice that says, "You can make it better." I don't believe that you will succeed in making it something that we <u>aspire</u> to have children go through. It is toxic in the sense of nuclear power: maybe we need nuclear reactors, even though sometimes they poison the land. But when we look around at some of the Three-Mile-Island areas and other areas where there is toxic waste coming through the ground, infecting children and giving them long-term, permanent-kind of effects, we need to start looking at moving them out and away from those places. If crazy adults chose to live there, that's fine, but children don't have power to consent to do that. Our goal, I still believe, should be to keep children out of court whenever we can, and I believe there are ways to do that which are not being done at all by the system.

I believe that when we bring child victims into a courtroom we are setting up a situation which in its highest likelihood is going to create post traumatic stress disorder (PTSD) reactions. That is from a therapeutic point of view contra-indicated as something you do with victims. You don't set out to deliberately create PTSD reactions, especially through confrontation. It sort of amuses me that in another Think Tank on the divorce/custody issues, one of the things they're going to be debating is whether or not you can or should do an interview with the alleged abuser in the room. You can go on and on about how difficult and harmful that is for children, it's so confrontational. It's the basis of the other half of the system. Once we finish these interviews where we protect children, or try to, from sitting in there in the same room with the accused, then we all agree that they have to go do it in this other room. It's far more intimidating, and there he has a lot of people on his side.

I react very strongly when I hear people talk about court experiences being therapeutic for children, and maybe it's the use of the word "therapeutic." I think that the legal system in no way can be defined as therapeutic for children. I'm not trying to say there are no positive things that come out; I've seen positive experiences of children in court. But having a positive experience is not the same as having a therapeutic experience. If the goal is to have a child somehow feel validated in her disclosure of something that happened to her, there are far more therapeutic ways to do that than a courtroom. The most therapeutic as is done in many tremendously powerful programs and treatment programs, is where the accused stands before the child and says, "My God, I did this, and I don't ever expect you to understand or forgive that, but I want you to know that I acknowledge it, and I know and you know that this happened."

That's not what happens in court, usually. It's not Perry Mason. People don't jump up at the end of the prosecution's case and say, "You're right. I did it." It just doesn't happen. At best, you get 12 bozos to maybe agree that he did it, while he's still denying it. But, at worst, you have no control over the outcome.

I would also say it is not by definition traumatic. "Traumatic" is also a word that gets kicked around, like "therapeutic." It is not inherently harmful. It's like sexual abuse. I don't think that we can say that sexual abuse, per se, has any particular long-term effect that is inherently one way or the other. It has a whole array of effects on people. If we sat back and tried to design an environment that was more antithetical, not only to helping children get over being abused, but also from my non-legal point of view antithetical the bathroom"to truth-gathering, I don't think we could come up with a better environment as far as children go.

It's so inherently intimidating that "stranger anxiety" is something we try to get over with kids. We don't foster it and dwell on it. We ask, at this moment when we want them to disclose the most private and painful things, to throw into that all the things that children go through when they deal with strangers. Strangers are not people children are usually comfortable with. They avoid strangers. They don't feel safe; they're frightened by them.

While you're trying to get them to say these things, they're focusing on all these bizarre elements of court: these people, the uniforms, these funny-looking little machines, and doing all these distracting things that children will get mesmerized trying to figure out. "Where is the bathroom?" is something they could be working on for an hour in their head, just because nobody bothered to tell them. I won't even go into confrontation. There's a lot of talk that's been discussed about it, and I think it is one of the most critical areas.

We have a program called KICS, "Kids in the Court System," one of the new court-school kind of programs. We've done some research on it, and have very preliminary findings. There needs to be a lot more research in this area. I'm really trying to go back to the simpler level of talking to children about "What's good about this? What's bad about this? What was the worst? What was the best? How did it feel? What are you afraid of? What are your expectations?"

This work was primarily done by Dr. Karen Saywitz at UCLA and Dr. Marsha Welton, who was a psychology intern in my program; I only supervised it. In terms of their feelings about going to court -- This is a compilation of a small sub-sample of 26 children between the ages of about 5 and 14 -- for the majority of them, their feelings were negative, about 63 percent. Less than a quarter of them had positive feelings, 22 percent. Fifteen percent had a lot of mixed feelings. Their major concerns were somewhat different than some of the things I've heard people say before. Their major category of concern had to do with the outcome of the case. That is the part that we have the least control over. We can take robes on and off, we can move furniture, we can use puppets. Sometimes I worry that we are rearranging the deck chairs on a Titanic because some of the issues are those which we haven't even started to address.

Outcomes for them have to do with where are they going to go, what's going to happen to them, will they be taken from home, what's going to happen to the offender. They're not like robbery victims where we all know where we want the guy to go who robbed our house.

Testifying itself was the second highest: "How am I gong to know what to say? What am I going to do?" It's this tremendous

anxiety level that they have. Another one is the sort of lack of support: "Who will be there? Who won't be there? What if I mess up?" That's in the feelings. More significantly was the work that Dr. Saywitz did, which was just to simply look at their expectations, based on what they know about court. For most of them, what they know about court -- not surprisingly -- is from television; it's from all these court shows.

There are some very amazing things, I realized, reading this data that have given them a skewed view of court. In most of these TV things, Judge Wapner, "Divorce Court," or a lot of those small-claims-court scenarios, you don't even have all the actors. What you have is two adults coming in and duking it out. You know, "Shame on you, you despicable bitch. You ruined my suit, you and your dry cleaners." They know there are two sides. This is an adversarial thing; they understand that: it's they and it's the abuser. They see themselves, and you tell them you have lawyers and all that. But to me, the most significant finding of all has to do with two findings. One is people's roles which they do not get straight. They mix them up a lot -- the roles of judges and law enforcement versus judges and juries.

More than that, there is a sense that this is a two-sided contest; it's adversarial. Someone is going to win, and someone is going to lose. They see themselves as losing if the other side wins. This is primarily children under eight; after eight their understanding is a lot clearer. They understand that court is a stopping ground on the way to jail.

There was a number of children -- and we never even talked to them -- that we found who believed that if they lost they were going to go to jail. Now, think of how that would inhibit you when you went into court. I go in there and die as a witness, but at least I know I'm probably not going to jail, although I have been held in contempt. They really think that they could end up incarcerated. And we don't think to tell them that they can't. It seems so obvious to us.

I'd like people to think that despite these wonderful gains that we're making in some ways, every gain or everything you can do is dependent upon the judges and prosecutors you've got. But what do we do to prepare these kids for this experience? In my opinion prosecutors in L.A. have stopped preparing children. They're chickening out. They don't want the defense to say they coached them. They hear what the defense has done to the rest of us that have spent time with these kids. They used to be a lot better. I think they're now backing away from preparation. They would never send an adult witness in with the lack of preparation the children are going in with. It's absolute cowardice, in my opinion, on the part of prosecutors to go in there and say, "Yes, I spent the last six mornings with this child -- no, no, I only spent one." What are we asking them to do? We're asking them to

relive what they have been through in the most graphic way they can. The more upset they get, the more PTSD reaction they can display, the better it is for our case. We're asking them to confront the people who did these things and we're asking them to cope with the outcomes.

How do we schedule these things? One of the single, most negative findings we have from our study of kids going to court wasn't what happened to them in court; it was the continuances. We averaged three to four continuances on every single hearing. We prepared these kids all the way up to the night before. We watched them stay away all night, not eat the week before, and then walk into court, sit in the hall all day, and have it continued for the third time. And who do the judges apologize to when this happens? The adults, or to the defendant. "I'm so sorry, Mr. Johnson, we had to keep you from work all day." He at least was in the coffee shop. The kids were sitting on benches in the hallway.

And, finally, what do we do to compensate them for asking them to be put through this? They don't get treatment afterwards to help them cope with what they went through in court. One of the McMartin kids in the trial didn't end up testifying. The issue was that, presumably, she was too frightened of the defendant to go back in. When they finally got down to it, it wasn't the defendant. It was what happened to her in the preliminary hearing. The defense so successfully terrified her that she wouldn't come back in there because of the lawyers and the experience she had before. She was dropped from testifying. We end up with kids saying, "It's okay. I'll take my chances on face-to-face confrontation. You don't have to worry about closed-circuit TV because I'm not coming in there because of the lawyers."

You know, the defense is succeeding in a way that's far more profound, I think, than some of the other strategies that they've ever had before.

Let me read this little poem. I found this under the glass in the desk at the Huntsville Hilton. It referred to working at the Hilton, but I modified it.

> "A child knocked at the Heavenly Gate, her face looked drawn and old. She stood before the man of faith for admission to the fold.
>
> 'What have you done' St. Peter asked, 'to gain admission here?'
>
> 'I've been a witness in a trial,' she said, and shed a tear.

The pearly gates flung open wide,
St. Peter touched the bell.

'Come in and chose your harp.' he
said, 'you've had your share of
hell.'"

MR. ELIAS: Even though other people have talked about my topics, I want to talk about them anyway. I want to discuss two things: a kids' courtroom, and children's court. They are two different things. I also want to quickly hit a few other topics. One was what Judge Lynwood Smith talked about: it is the prose cutor's job. I come from an old school of prosecutors; if we don't take charge of the situation, nobody else will. So, to some degree it is our job to guarantee that the lawyers are educated, to guarantee that the motions are brought that need to be brought, because there may be very many judges who now have gone through legal education. There are, from my experience, very few like Judge Schudson who will take the initiative themselves in a courtroom, recognizing there's an appellate court above them, to do things on their own.

I also come from a different environment than most of you where you have one judge and he's there for eight years. I don't face that experience. I have to worry about 70 different judges in my community; any one of those I can see.

So, let me first talk about a kid's courtroom. I don't mean that it has to be a special little playroom environment for every case that involves a child. San Diego County is facing a massive crush of cases, and available judges need to be appointed. So, last week they entered into an agreement with the San Diego Hotel to take over one floor of that hotel and convert it to courtrooms. That involves taking a room like this, gutting it out, bringing in furniture that's only going to be there temporarily -- because eventually we're going to build a new courthouse -- and that room becomes a courtroom. It will have a bench, a witness stand, counsel tables, and a jury box. When our lease is up, they will rip out the court furniture and it will be a hotel room again.

Why can't a courtroom be built so that, when it's appropriate, it can be traditional, (i.e., containing a bench, have a witness box, have a jury box, and a place for spectators)? But when you need to modify it, you bring the court personnel movers and they move the bench out and they bring in a smaller table? If you want a child to be able to sit in contact with the floor, why can't you take a regular witness stand out and bring a little one in? If you don't want twelve jurors sitting six and six, why can't you take those chairs out and you bring in some sofas, or some other kinds of chairs, just to make the room more comfortable? It doesn't lose any of its dignity, it can be as tradi-

tional as you want it to be... when you need to be traditional. But you can be flexible as well because things move -- that's all. You can paint the walls different colors. You don't have to have pictures of President Lincoln and President Washington. You can have pictures of penguins or ducks or whatever. Nobody pays attention to that stuff except the kids; that's all. It doesn't entail making gigantic changes or using big puffy chairs. All I'm asking is that we modify a little bit so that we are not so structured.

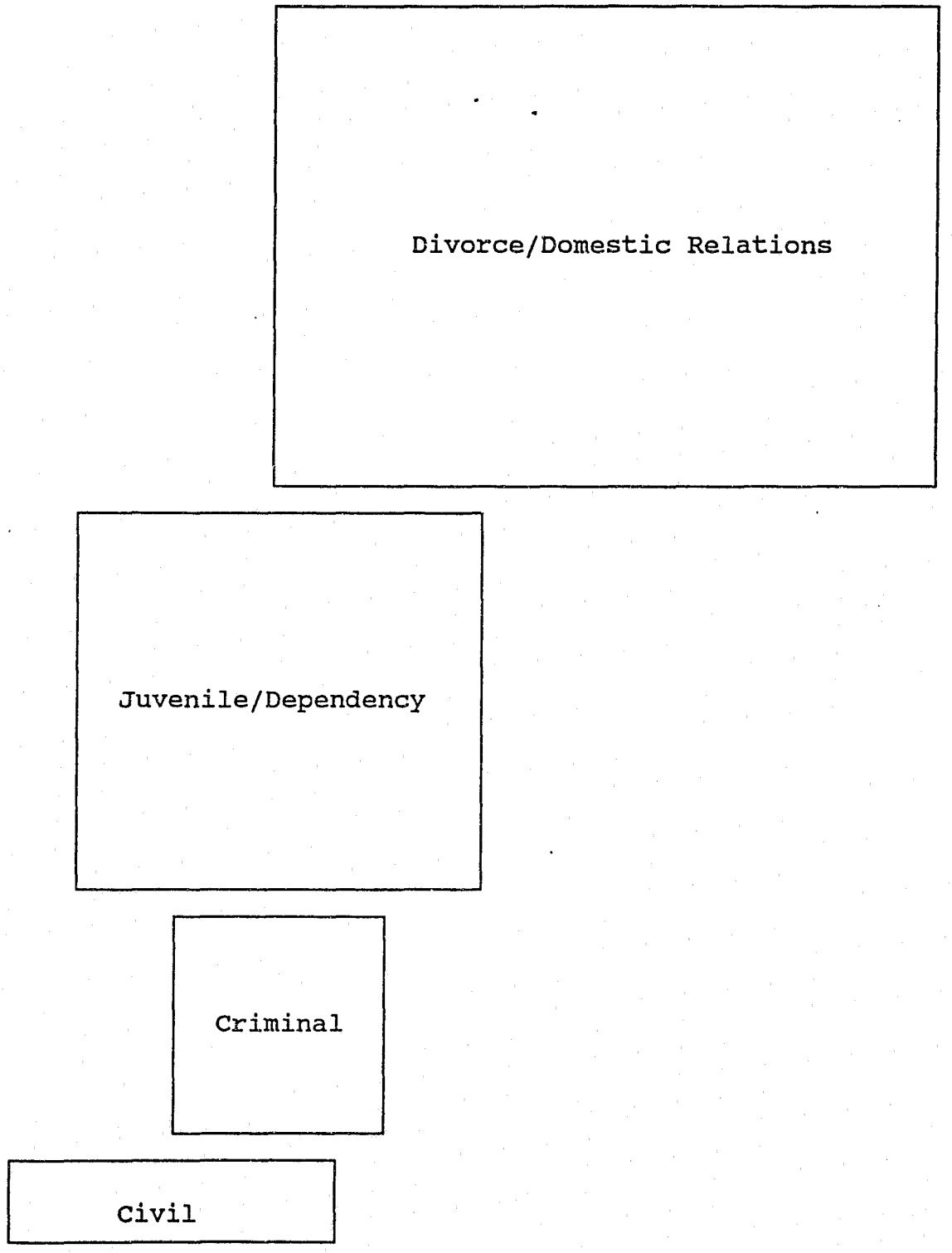
We've been talking about this in our country for a couple of years. It's gone up and down the Board of Supervisors, which is our governing agency, and the head of our municipal court is now talking about actually gutting out one of our courtrooms, for this purpose. A room which happens to be close to the elevators, close to the bathrooms, close to the child witness waiting room, but still in the courthouse. It may be repainted and modified to be used for all kinds of children's trials but be limited to criminal cases. I invite any input I can get before I fly back tomorrow morning when I have to meet with the architect and actually put this down on some sort of blueprint plan so the county can figure out what it's going to cost.

Now let's talk about Children's Court. I'm not an innovator of any of these concepts; I steal ideas like crazy. I stole the "Kids in Court" program after I met Kee and after I came to a Huntsville meeting two years ago. We now have our own "court school" program at the courthouse. I was able to get a master key to all the courtrooms so now the kids can go in at night and look around the courtrooms as part of our witness preparation program.

When I talk about the concept of Children's Court, I'm talking about a unified court system. If you look at all the kinds of cases that children testify in, they encompass a variety of legal issues and systems. First, there are the divorce/domestic cases. They constitute a massive case load that's going through our court systems, where judges are making determinations which have a direct on impact children (although the kids don't usually have lawyers). It's the parents interests that are represented by lawyers. Domestic cases represent a big group because, in California, approximately 50 percent of all marriages end in divorce.

Then we have the juvenile/dependency court case load, some of which comes out of divorce cases, some of which involve intact families. There's a big overlap. In our country we see about 5,000 cases a month in our juvenile/dependency court. In these cases, the child may have a lawyer, the accused parent has a lawyer, the other parent may or may not have a separate lawyer, and the Department of Social Services, or CPS, has a lawyer.

CONCEPTUAL MODEL OF A CHILDREN'S COURT
by
Harry Elias, Esq.



That's four new lawyers, and a different judge, than in the divorce case but the issue may be exactly the same.

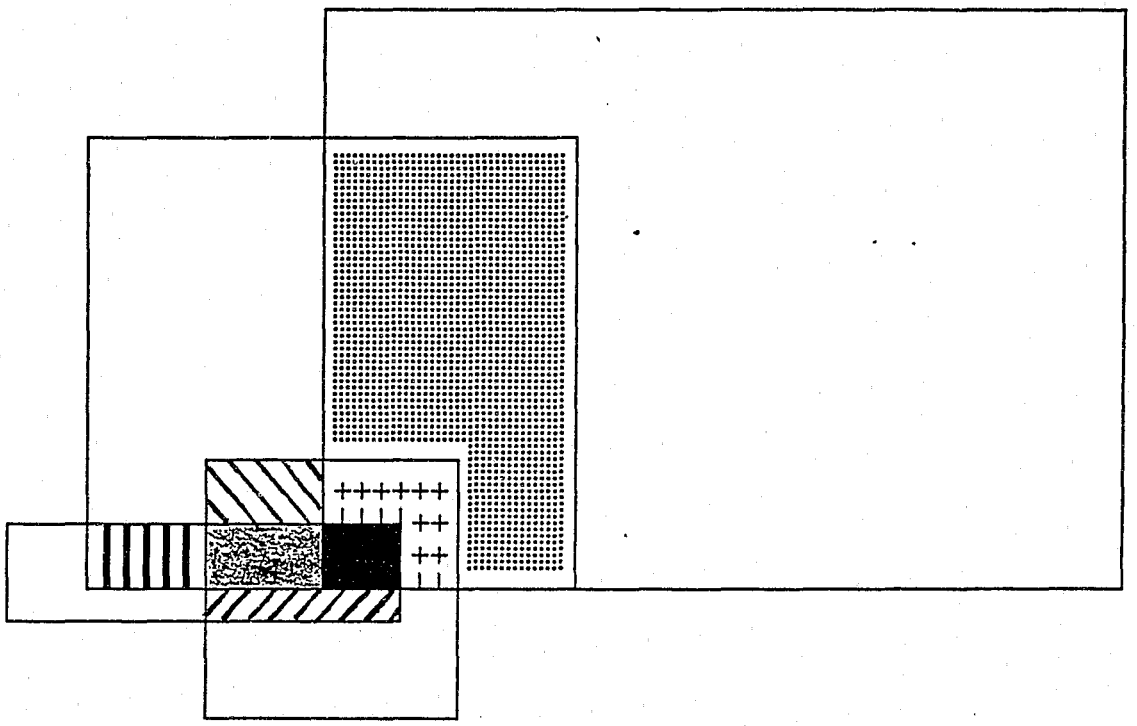
Then there's an a even smaller group comprised of criminal cases, some of which involve divorce/custody situations while others involve allegations that also come under juvenile/dependency court jurisdiction but may not involve a divorce. Still another group involves children who are victimized by total strangers.

Another group which appears to be on the rise -- includes civil litigation of child abuse cases. That's where the child and the child's family are suing the perpetrator because they're not satisfied with the amount of justice they're getting from the criminal system. Again, there's some overlap with other types of cases. Finally, there's a whole other group which I haven't even talked about. That is the juvenile or youthful offender who has committed a crime, but who also was sexually assaulted or abused in the past and raises that issue as a defense.

I don't know exactly how the mechanics of a coordinated system would work, but my question for all of us is: Regardless of whether a situation is considered a domestic, dependency, criminal or civil case, if it involves an issue of physical or sexual abuse of a child or even child neglect and emotional abuse, why can't it be heard in a courtroom or specialized court that deals specifically with these issues? You could train all 70 judges in my county, but you'd need to assess the impact of the training. Some are going to be like the judge who Judge Schudson referred to yesterday; the one who thought it was a little crazy when he came in, but thought he learned a lot when he went out. But a lot of them may still think it's crazy when they leave. You may get your judges into training, but in order for them to practice in this special court they would have to pre-test and post-test for what they learned. Not only do they have to be trained, but you've got to know they picked it up.

Now, I'm a prosecutor, so what does that mean to me? Let's say you have one of these cases that is also pending in other courts. Do you know which case takes complete priority? The criminal case. That's the case that goes first. We all talk about reducing the number of interviews; well, why not reduce the number of times a child has to testify in court? Why not, actually package them all together: one judge, and a lot of lawyers. If the child's going to testify, the criminal case goes first. Therefore, there's going to be a jury present when the child testifies. The prosecutor, the defense attorney, and all the other attorneys also would be obligated to be there. Then when the D.A. and the defense attorney are finished with their examination, the jury would be excused, at least temporarily. Then, the D.A. and the defense attorney take a seats in the back, and all the other attorneys come forward. They can now ask the

CONCEPTUAL MODEL OF A CHILDREN'S COURT



Divorce/Domestic Relations + Juvenile/Dependency

++++ Divorce/Domestic Relations + Juvenile/Dependency + Criminal

Divorce/Domestic Relations + Juvenile/Dependency + Criminal + Civil

Juvenile/Dependency + Criminal + Civil

Juvenile/Dependency + Criminal

Juvenile/Dependency + Civil

Criminal + Civil

child questions which they feel are pertinent to their cases or issues. The judge, however, does not allow repetitive questioning of the same issues. When they're done, if there are some truly new matters that are relevant to the criminal case, the jury could be brought back and the child would finish testifying.

All the other issues, all the other burdens of proof would be decided upon by the judge. He or she would make the determination as to juvenile/dependency matters, as well as the determinations pertaining to divorce. All the other witnesses in the criminal case can then proceed and, when the D.A. finishes with them, the jury can go about its merry way. I haven't figured out the logistics for civil juries yet or how to coordinate that with the other cases. There are no juries in dependency cases, and there have been very few, in my experience with divorce cases (although they're obviously entitled to one because it's a civil case).

I think it's a concept that is potentially workable, although it may not be. In order to get this accomplished, it would probably take legislative changes because every state tends to be so different. In some states, the child usually only has to testify once anyhow. I know that in Washington State children only testify one time, but they also undergo depositions. In California we have preliminary hearings. I haven't yet factored in how I would accomplish that in a coordinated system.

Every time I go to these meetings with the mental health people, cops and legal people, we all talk about reducing the number of child interviews. Our alleged purpose is to try and make the whole system more functional and less traumatic for the kids. I think this concept might accomplish that. It is clear from my experience that we're not doing it now. Not with the way we're structured and set up in most states. It's time to start being more innovative if we're really gong to make a difference.

MR. LLOYD: Drs. Joseph and Laurie Braga, co-directors of the National Foundation for Children.

DR. LAURIE BRAGA: *Courtroom experiences don't have to be detrimental for children. Testifying can be a positive and constructive experience if some adjustments are made to reflect the special needs and capabilities of children. A good place to start is to help children understand the court process.

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A significant problem for children who go to court is that everything is unfamiliar. They don't know the rules, they don't know what is expected of them. Judges and attorneys can help by explaining the courtroom environment, procedures, and personnel in simple terms the child can understand: Who's going to be there? What are their jobs? What is your job? What's going to happen?

For example, in the film "When Children Are Witnesses,"** the judge explains, as she points out individuals, "Those people are lawyers, and their job is to ask questions. And that person is the court reporter, and his job is to take down what everybody says. The man in the uniform is called a bailiff. His job is to make sure everyone is safe." She continues to explain who all the people are and what they will be doing. She then explains that the child also has a job -- to tell the truth and not to guess or answer questions she doesn't understand and proceeds into competency questions phrased in simple and concrete terms.

Through a procedure such as this, and by familiarizing children with the physical environment of a courtroom ahead of time, they can be helped to feel comfortable and safe so the courtroom experience can be constructive rather than destructive.

Judges and attorneys can help make the courtroom experience less traumatic for children, also, by allowing them an element of control over what happens to them. For example, children can be told that it's okay to say "I need to take a break." Unless they're given permission, children don't know whether they just have to sit in the witness seat and do whatever they're told, or whether it's acceptable to ask to go to the bathroom, get a drink, or just get away for a few minutes.

Another way to give child witnesses a sense of control and safety is to let them know they can say something if they're confused or frightened. For example, if a lawyer is asking questions in a hostile manner, the child could turn to the judge and say, "Judge, he's being mean." Or, if an attorney keeps asking the same question, the child could say, "I already answered that." Or, if a question is confusing, the child might say, "I don't know what you're asking." Knowing they can speak up for themselves in this manner can give children a feeling of having at least some control in a circumstance that otherwise can feel very much out of their control. Even something as simple as the questioning attorney asking, "When I ask you the questions, do you want me to stand right up there next to you or back here at the podium?" can really make a difference for children.

**Available from Guilford Publications, 72 Spring Street, Dept. 42, New York, NY 10012, (1989) 1-800-221-3966.

It's also important that children understand exactly what their responsibilities are and are not when they go to court. It is not their job to win the case. It is their job to tell the truth about what they witnessed or what happened to them. And that means telling what they remember and know for sure, not guessing or trying to answer questions they don't understand. Even very young children can understand these ideas when they're explained in simple terms using concrete examples from their own experience.

It is unlikely that being a witness will ever be an enjoyable experience for children. But, it is possible to make testifying in court a more positive and constructive experience when judges and other court personnel modify routine procedures to make them less confusing and intimidating to children.

DR. JOSEPH BRAGA: *Judges cannot depend on the attorneys to insure that children are adequately prepared for and protected during the courtroom experience. For various reasons, including concern that their child witness might appear coached, attorneys too often fail to acquaint children with the courtroom environment, personnel or procedures prior to their testimony or to request of the judge such protective measures as control of objections, planned breaks, and use of language the child can understand.

Judges are understandably reluctant to intervene with child witnesses in ways that might be considered advocacy. Since it is their responsibility to be the arbiter between the two sides in adversarial proceedings, judges do not consider it appropriate for them to take too active a role in protecting child witnesses. However, because the court process is an adversarial proceeding between what is presumed to be two equally balanced opponents, children are, by definition, at a disadvantage and require some special consideration just to be put on an equal footing.

When children are confused and frightened by the court process, the justice system also suffers. But, when children understand precisely what they are being asked and feel safe enough to answer, it not only helps them, it also insures that truth and justice will be served. The film "When Children Are Witnesses" explores ways in which judges can make the courtroom environment less intimidating to children so they can be more effective participants in the search for the truth. Through a dramatic presentation of portions of a criminal court trial for child sexual

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abuse, the film deals with issues relevant to any kind of case, criminal or civil, in which children may be called upon to testify. These issues include familiarizing children with the courtroom and its personnel and procedures, wording questions so children understand what they're being asked, and handling objections so they are not intimidating.

For example, in the film, Judge Charlin, a Los Angeles County Superior Court Judge, regularly asks the attorneys to simplify their questions to the children and translates their "legalese" into plain English when they don't. She admonishes both prosecutor and defense attorney when their objections become intimidating and suggest they quietly raise their hand to come to sidebar to discuss objections that are worthy of interrupting the proceedings. In a pretrial conference, the judge sets the ground rules in terms of taking breaks when the child witness seems tired and keeping in mind that the procedures which are so routine to regular participants in the court process can be confusing and intimidating to a child. Through a dramatic presentation, "When Children Are Witnesses" attempts to <u>show</u> judges, rather than tell them, ways in which their normal courtroom procedures can be altered to accommodate their special needs and capabilities of child witnesses so that children's voices can be heard in court without harm to them or to the rights of adults. Such measures in no way compromise the search for truth, but in fact enhance the probability that the truth will be found.

Judges at all levels of the justice system are seeing more and more children in their courtrooms, as witnesses to or victims of crime and in various family and civil court proceedings. Laws passed in many states to protect children when they are witnesses are being tested in courtrooms throughout the nation, and appellate decisions are clarifying what kinds of protective measures are necessary and appropriate. In the meantime, there are a wide range of simple procedures that judges can use to make their courtrooms less intimidating which fall in the realm of judicial discretion.

DR. LAURIE BRAGA: *An assault and battery case before Los Angeles Superior Court Judge Judith Chirlin provides an excellent illustration of the way in which a judge can insure that attorneys modify their language so child witnesses understand the questions. The prosecutor, questioning his child witness, asked "Were you present in the vicinity prior to the altercation?"

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Judge Chirlin intervened, suggesting, "Counsel, why don't you ask him if he was there before the fight?"

As the authority figure in the courtroom, the judge delivers a message to the attorneys and to the child witness by acting to insure that questions are stated clearly and simply. Some judges may prefer an alternative approach to correcting the attorneys themselves. On such alternative is the use of an "interpreter" to translate complicated questions or "legalese" into questions which are understandable at the cognitive and language level of the age of the child witness. Such a person, in time, might be available through the court administrator's office, much the same as interpreters are available for witnesses who speak a language other than English.

DR. JOSEPH BRAGA: *Another area for consideration is that of special jury instructions with regard to assessing the credibility of child witnesses. Recent research into jury perceptions of children's testimony has confirmed the experience of many attorneys who have put child witnesses on the stand: the existence of many prejudices against children, especially very young ones, that have little, if any, relationship to those children's actual abilities and limitations. Expert testimony regarding these matters is usually required to confront these prejudices in a meaningful way by sorting fact from fiction with regard to children's capacity to recall and report on their experiences. Jury instructions that remind the jury not to discount children's testimony simply because of their age and limited language skills can also help children to be given a fair hearing when they are witnesses.

Children are denied access to the justice system in too many courtrooms because of confusion between issues of competency and credibility. Some states no longer require that children's competency be tested before they are allowed to give testimony. In those that still do, defense attorneys and their experts regularly challenge children's competency on the argument that their testimony has been contaminated by inappropriate questioning during the investigative stages of cases. As Judge Chirlin says in answer to such a challenge in the film, "When Children are Witnesses," this is an issue of credibility, and the defense will have ample opportunity to attempt to raise questions about the children's credibility through cross-examination. The determination of competency rests on the judge's assessment of the child's

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ability to demonstrate that he or she knows the difference between telling the truth and lying, that s/he knows that lying is wrong, and that s/he understands that it is very important to tell the truth in court. As Judge Chirlin demonstrates in "When Children Are Witnesses," it is possible to assess the competency of even very young children as long as such abstract questions as "Do you know the difference between truth and lies?" are made concrete enough that the child knows what is being asked.

It is difficult for children to be witnesses in legal proceedings that were never designed with their needs in mind. But, it is important that the courts deny them access to the justice system because it takes some extra effort to accommodate normal procedures to their special needs and capabilities. Children cannot be safe in a society whose system of justice regularly excludes them. And, a nation that does not protect its youngest citizens places itself at risk of being victimized by them as they grow older.

DR. LAURIE BRAGA: *In order to develop ways to accommodate routine courtroom procedures to the special needs and capabilities of children, it's important to look at some of those procedures through the eyes of children and understand how intimidating they can be. For example, when attorneys go to a sidebar conference with the judge and court reporter, unless someone has explained it ahead of time to the child, it seems as if they're whispering behind the child's back. And, because sidebar conferences are called in response to some matter related to the child's testimony, the child's perception is that it's because he/she's said or done something wrong.

When attorneys ask children the same question over and over again, many children conclude that they must not be answering the question right if they haven't been prepared for the possibility that the opposing attorney may ask the same question repeatedly, and that if they're already answered the question, it's permitted to say "I've already answered that."

Cross-examination of children often includes questions that imply by their tone that there's something wrong with the child having discussed their testimony with anyone prior to his/her courtroom appearance. Unless the attorney who is presenting the child's testimony explains to the child in simple terms that lawyers always talk to witnesses before they testify, the child will think he/she's done something wrong.

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If children haven't been prepared for the occurrence of objections during their testimony, and objections are not handled in some manner other than the attorney's jumping up and yelling "Objection!," many children perceive that as adults arguing and themselves as the source of the argument.

MS. MacFARLANE: That was one of our strong findings --

MR. FISHER: I OBJECT, YOUR HONOR!!" It will scare an adult.

MR. LLOYD: Let us start the discussion with Patti Toth.

MS. TOTH: I want to mention one concern I have about Harry's idea about unified courts and having all the lawyers there to ask questions of the children. If you have a criminal proceeding first, because the burden of proof is so high, that usually will be *res judicata* for any subsequent proceedings. So, the child may not have to testify as to whether or not the abuse occurred at all in subsequent proceedings. This would avoid having all these other lawyers question the child for two or three days on the witness stand. I know of no state other than California where children or any other witnesses are on the stand as long. California is unfortunately strange in that way. I don't want to see us creating situations where children end up being on the witness stand for days at a time, when it needn't be.

Harry does something with children in the courtroom that follows up on what the Braga's were talking about, about giving them permission to have some control, to let their concerns be known, and that it is okay to have talked with the prosecutor and to have prepared. I couldn't agree with Kee more in this regard. I think it is cowardly of prosecutors not to prepare their child witnesses, and you're an utter fool if you don't. Harry gives child witnesses a piece of paper with his "rules of court:" Be polite, answer the question, and tell the truth."

As a prosecutor I told children, "It's okay to say that you talked to me. The defense attorney will probably ask you if you talked to me, and you go right ahead and tell that defense attorney exactly what I told you to tell when you got on the stand, and that's to tell the truth." I went over that with children enough so they were real comfortable saying, "Yes," and if asked by the defense attorney if I told them what to say following it up by, "She told me to tell the truth." If defense attorneys were to ask what the piece of paper was that the children were looking at, with Harry's "rules of court," it could only help the prosecution's case as well.

I agree with those things.

MR. KUHN: I'd just like to comment on the comment Joe Braga made about judges generally wanting to be taught by other judges. That does certainly become a problem at times for us, and one way that we deal with that is to say that a judge is not a good teacher just because he's a judge, or she's a judge. So, we spend a lot of time training our trainers. Those judges who are interested in training and teaching, we spend time in specific programming for them. We also encourage our membership to attend multi-disciplinary programs such as this one so that they are not just being taught by other judges, so that they get the exposure from all different sources.

JUDGE GOTHARD: I want to pick up on a comment that Kee made. She said some of these issues are real fine, but she had the feeling you're moving deck furniture on the Titanic. Maybe an issue that has a little more guts that we have not discussed today was the experience Kee went through and Sandy went through on the issue of bias and that they weren't competent enough to be expert witnesses. In Louisiana -- and I'm sure in many other places -- the law of bias is primarily there so that a juror sitting in judgment on you, who may send you to your death, in the capital punishment states, or who may send you to life in prison, is sitting in judgment on you in complete and total fairness. Therefore, if the juror had been raped, and if I am an accused rapist, perhaps you shouldn't be a juror.

In the paper I wrote on social workers and expert witnesses in the materials handed out there is a case in which the social workers are accused of bias because the issue is termination of parental rights relative to Native American children. The judge said, "You don't have to be an Indian to know about emotional needs of the children, whether the emotional needs were met, and whether the parental rights should be terminated."

Similarly, I am appalled that the district attorney did nothing and permitted these questions. I am appalled that her attorney was not permitted to come to her aid, that this business was allowed to go into asking personal questions that you certainly cannot ask of rape victims, and rightfully so. If you are going to permit these questions and you ask Kee whether she was an abused child and anything else, and the judge permits this to show bias, then the other attorney should state to the judge, if this is the case, and if this is truly a criteria for having a fair trial, then I demanded that each male attorney be asked the same thing, each male witness be asked the same thing and, judge, you have to answer the questions, too, because you are the ultimate decider of whether this is going to be a fair trial.

MS. MacFARLANE: I would just like to add a postscript that I think along with not being able to ask it, I don't think they should be able to declare us molested just because we refuse to answer.

MR. FISHER: I've been a prosecutor for 17 years. I've averaged 25 to 30 jury trials a year. Since I started the child sex abuse prosecution unit, I think we've only tried 15 in the last 16 months, along with a few other types of cases, and one of them was an eight-week long trial in which four defense experts testified. I will stand up and defend juries. I think there are more juries that think we're bozos than we who think they are.

Court Group, I think, is the answer. You can maybe change a courtroom in a comfortable setting, and that is interesting, but I really believe in a good court group or whatever you want to call it. It's an adjunct to the district attorney's office in Nashville. It takes the children in a group, it takes them to the courtroom, and they understand. We don't make the courtroom comfortable for the child, we make the child comfortable in the courtroom. This Court Group does not discuss the case, but the child knows where the judge sits, that the hammer is not to harm the child, where the jury sits, where the different people sit. They learn court officers are karate experts, and they're not going to hurt them. The only thing they ever tell them about testifying is to tell the truth, and we've never had a successful attack upon a child who has been through Court Group. It's becoming my belief, given the untrained quality of prosecutors in the area of child sexual abuse, that a good Court Group can have a child ready for a pre-trial interview and a trial by any competent prosecutor.

Case workers, therapists, all of them are as dedicated, as is shown by their being here. The judges are held out in public; they can't do much. I mean, they can do a lot of harm, but we can always call the news media. But the prosecutor can hide the case, can defer prosecution, can say, "No, we're not going to present it." I take very case that my team wants submitted to the grand jury and submit it. I'm not going to be the person responsible for screening the case out because I'm afraid I might not win it.

Then we'll take it from there. Maybe we'll have to forego a jury trial, maybe some other sanctions will be imposed, but we are going to move along in that direction.

I want to mention Dr. Gail Goodman. I was very impressed by her study, "The Emotional Effects on Kids Who Testify." The bottom line is none. The down side, the most harmful thing was not the continuances, surprising to her; continuances seemed to reinforce a child's emotional stability. It was the number of times the child had to testify. The subgroup of non-improved children seven months later was identified by, (1) the extent of maternal support at time of disclosure; (2) the number of times the child had to testify; and (3) the amount of corroborating testimony necessary to support that child's views.

MS. McNEES: I just wanted to comment on what Kee said, that we all agree that we go into the other room going to criminal court. Well, I just want to say, for the record, I don't agree. I say Hooray for Harry. I liked his architectural drawings. I think it's wonderful. Before I took on this job, I was a Rape Crisis Counselor, and I remember my last case. There were two children, a brother and sister, and the four year old little boy said in the emergency room in the hospital, with his father standing here (indicating) and the male doctor standing here (indicating) and myself standing here (indicating), he said, "He put his tongue on my peepee." Well, now, as far as I'm concerned, when that man put his tongue on that little peepee, he lost all his rights. He doesn't have any more rights. We've done research and research and research, and we know once a child molester, always a child molester. We know that he has to get into treatment, and we know that the child who has been molested has to get into treatment. This hearsay jazz just really get me. I know the father heard him say it, the doctor knows that I heard the child say it, I know the doctor heard the child say it. I mean, it happened. There's no doubt that the four-year-old said it in four-year-old language. Why do we have to go through criminal court to get to the point to mandate that this person is guilty, and second of all, to mandate that this person get into treatment? It seems to there's got to be a better way than to do what we are doing.

JUDGE LYNWOOD SMITH: The only footnote I would add to what has been stated is that there is no substitute for hard work and thorough preparation in the trial of any case. That observation applies to all participants in the trial process, of course; but, again I think the initiative rests with the district attorney. In this circuit we don't have that problem, because the district attorney has a very good witness preparation team that takes the children from intake to, and through, trial. They come by my courtroom; I'm introduced to the child; we do all of these things that you have heard statements about. But that is how you approach the case: thoroughly, and through hard work.

MS. MEDLEY: I think one of the things in remembering to prepare the child that we haven't talked about is that we have to prepare the protective parents in the home environment that the child comes from and returns to and lives outside of the court. It's critical; that can make or break the experience, I think, for the child. If you've ever read German fairy tales, they're frightening things. They are so scary, but kids can live through that if the parent who is telling the story somehow puts it in a context that's safe for this child. I don't think we ever make the court experience much better than a German fairy tale, but protective parents prepared for the court experience and prepared to be supportive to that child can make all the difference in the world. And, also, the parent or parents themselves deserve prep-

aration for the court experience. In a sense, everyone is a child when she or he goes to court. We have to prepare the parents for their experience, we have to prepare the parents for their supportive role. I know that San Diego and L.A. have that kind of training as part of their court process for kids. I think everybody should.

MR. LLOYD: Dr. Desmond Runyan a pediatrician from the Medical School at the University of North Carolina, Chapel Hill, North Carolina.

DR. RUNYAN: I wanted to comment on something that Kee said earlier on this issue of whether court can be beneficial. It seems to me a pretty bad commentary that we turn to courts to be therapy for kids because we can't provide it in other ways. The kids that said court has been beneficial in the other study were the kids that were among the most distressed and the ones that were going through hell, and giving them a chance to say their piece was probably quite beneficial. But they should have been allowed to say their piece in some other way. It's a little bit like sending David to battle Goliath and then deciding what shields you're going to put on David before Goliath kills him.

My own feeling is that we are probably talking about the wrong places to deal with these kind of situations. I don't know it does the child any good, nor the perpetrator any good, for us to stand up and say, "We're good guys because we put child abusers away in jail." We don't put them away for long, and they come back and interfere with the kids' lives.

MR. CHRIS GARDNER: I had a couple of reactions: One, as a prosecuting attorney, I believe the comment that we need to take the initiative is exactly correct. There are many things that we can do that don't take any strategies other than us thinking and being creative. One example came to my mind: In my state I have to do depositions with defense counsel every case they want to, and I always make the point to introduce the defense attorney to the child in those depositions. "This is defense counsel John Smith." Then in the pre-trial preparation I just tell the child, "Look, the first time this guy raises his tone of voice, makes you feel uncomfortable, I want you to look him right in the eye and say, "'You didn't treat me that way the last time we met,'" and it empowers the child. It crushes the defense attorneys. They don't want to do something to make them look like jerks. The jurors sit there, and they've got this blustering defense counsel, and all of a sudden they realize that's exactly what they're doing; they've met in other circumstances they were kind and nice and civil to each other.

My second reaction is to having special charts. Sometimes it's too hard to identify just what it is that intimidates one particular child about the courtroom. I was going through a

whole thing with a child one time, sort of like, "Well, is it me?" "No." The police officer that worked the case very intuitively realized the child was physically afraid of the defendant, that the defendant would come up and grab him. He just right out of the blue interrupted it -- and I was annoyed when he did it -- but he was so intuitive. He told the child, "I want to let you know something. Either I or another armed police officer will be in that courtroom, and we will punch the defendant in the nose if he moves an inch toward you." And the child said, "Let's go for it." The formal setting of a trial is something that can be positive to a child as protection for the child. "There are twelve average citizens that sit there and stand between you and the defendant. There is an armed guard whose job is to protect you, there is a judge whose job is to protect you. I'm your lawyer, I'm in there." The very formality of it and the purpose of this proceeding is to disclose the truth.

I know it's going to have to be a case-by-case, child-by-child sort of determination.

JUDGE SANDRA SMITH: I'm going to play Harry Elias now. I'm going to stir things up. It serves absolutely no purpose, as far as I'm concerned, to sit here and say that we're going to find some other people to deal with the problem, to find another forum for it. The courts are the place where we pose our most difficult legal questions, the right to live, the right to die, the right to have an abortion, the right to do this, the right to do that, the right not to do this, and the right not to do that. We take them to courts. I don't think that any of the judges here are going to stand up and say, "I really want to hear that case," because we know that we're the ones in the public spotlight when that happens. But the fact of the matter is, when all else fails, that's where they end up.

When they end up in the courts, as they will, then we are put in the position of, "What can we do to make it a better experience for everyone that is before the court?" Whether it's a right to live, right to die, or a children's issue, that's where we are in this position. It doesn't do any good to look at the alternatives, because short of high risk early intervention and doing things political and doing things with resources, we're going to have these problems in our court.

DR. JOSEPH BRAGA: *Beyond the specifics of developing more effective procedures for integrating children into the

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courtroom environment without harm to them or to the rights of opposing parties, there is a historical perspective to the ultimate impact of this often difficult process. When the courts grapple with issues that involve resolution of the rights of opposing interests, their decisions have an impact on society beyond the individual cases they consider. The manner in which this country began to address the issues surrounding racial discrimination was substantially influenced by the *Brown* v. *Board of Education* 1954 Supreme Court decision. In a similar way, the issues that will be decided in the next decade regarding child protective measures in the courts will influence the ways in which our entire society views and deals with children.

DR. LAURIE BRAGA: *The value of incarcerating convicted child molesters should not be overlooked as a practical and immediate measure of child protection. The research on pedophiles clearly indicates that perpetrators typically victimize hundreds of children over a lifetime, some many more. At the very least, while they are imprisoned, child molesters are not assaulting children. Beyond saving the children they might have assaulted from being victimized, more certain and serious punishment for the crime might, in the long run, send a message to those who victimize children that it is not as safe a crime as they used to think it was.

JUDGE SCHUDSON: I don't often have the occasion to say anything terribly complimentary about the justice system, but here I can. I'm just picking up on some of the last comments and thinking what Dr. Dziech and I went through when we were preparing our book and hoping to provide ammunition for people outside the legal profession to learn about judges and courts. Early in the book we quote Kee and Lucy Berliner and Gail Goodman in some of their writings. We quote them with great favor for delivering accurate and scathing indictments of the system. In those indictments is hope, because not only are they saying courts should be better, they're saying they can be better. That implicit optimism has a basis in fact, recognizing that when citizens and causes have been failed by all else in American society, the one place where they sometimes have gained justice has been the courts: Because we have seen that experience, we hold out this hope.

Related to that, then, are my comments on prosecutors and jurors. I've heard jurors called yoyos and bozos, but in my experience in prosecuting and presiding over hundreds of criminal

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jury trials, I recall only a few cases where I thought jurors reached the wrong verdict. There have been countless times when prosecutors have come to me afterwards and said, "That jury really blew it," and I can identify specific ways in which the prosecutor failed to deliver; failed to prove it, beyond a reasonable doubt. We can quarrel with that "beyond a reasonable doubt standard," but it's been around about 200 years, and it's going to stay.

As we work through the case study in the book on how children and their parents were victimized and defendants who may have been guilty were acquitted, we find over, and over, and over again the times the prosecutor foolishly acquiesced, did everything the defense wanted, and more. Not understanding the rules of hearsay, the judge was just the caboose coming right along on that train.

My experience with juries has been that they're incredibly astute, that they do get the right answers. When defendants waive juries before me and I'm the trier of the fact, it's as if I wanted 11 people to talk to. Sometimes when I think jurors have reached a wrong conclusion, I meet with them in chambers afterwards and I am impressed with the perspectives that tell me indeed they did reach the correct answers.

Regarding the question of whether the court is toxic or can be therapeutic, I'm one who has been guilty sometimes of explaining why a court can provide a therapeutic experience. Perhaps the choice of words is wrong. I've sometimes used the world "cathartic." It's important for us to recognize some good advances. I've see victim/witness advocates and prosecutors who have started to bring some focus to what happened to the child after leaving the courtroom. Here, of course, it does vary according to age, but a child's perception of winning often has nothing to do with reading the newspaper count two or three days later of the verdict; it may have everything to do with the immediate reaction of parents, therapists, and prosecutors as the child leaves the courtroom.

Even if a child walks in and, in a legal sense, fails to testify, that child can walk out of the courtroom and be surrounded by adults, who say, "You did it. You walked in there and you did it." There's a victory there than can never be lost regardless of the verdict. By the same token, I've seen disastrous things happen when a child goes in and testify beautifully, but walks out of the courtroom to find Mom and Dad or therapist or lawyers there with those long faces. They're worried that perhaps this didn't go as well as hoped. The child looks for that response right away. Even if there is a conviction three days later, there may be a sense of defeat that can never be repaired. So, sometimes what happens in a courtroom can be, to some extent, cathartic. We have something to do with the extent to which it

might be less toxic and more therapeutic by the way we respond to children after their time in court.

Shouldn't there be a better way? After all, "He put his tongue on my peepee." Well, of course there can be a better way, and countless times there are better ways because in most cases the defendants plead guilty. They admit the crime so there's not a trial. But let us keep in mind that in the cases where there is a trial it is because the defendant said, "No, I didn't." That's a very important statement to be made and something has to be recognized.

We are used to talking about kids in the courtroom, but we have to keep in mind that some techniques will help kids avoid the courtroom. One of the reasons to use video tape is not necessarily that it gets used at trial, but that it prevents there ever being a trial. The defendants walk in, see it, and they say, "Game's over. No need to take this one to trial." Some of what we do is intended to preclude the need for a trial.

Finally, I've heard all your wonderful ideas, and maybe there's something evolving here. We know that there are Miranda Warnings; maybe there will be the "Elias Warnings." Every child will be able to take the witness stand and having been told, "Be polite, listen carefully, tell the truth. If you need something, tell the judge." Maybe there are some "Elias Warnings" that should be given to every child. It's an interesting idea.

MS. MacFARLANE: There's a far better way than going into courtrooms. I truly believe there's a far better way than the end result of this system, but it involves our systems. It isn't saying, "Forget courts." We're spending a lot of energy on making testifying in courtrooms less toxic for kids, and I think it's a very important effort. But it's such a tiny, tiny percentage of these kids. Our criminal justice system, in conjunction with our mental health system, could spend as much energy as that on a far better goal, which is confessions and acknowledgements. Now, we're pretty successful in that to some extent with plea bargains, but we could be much better at it now.

If you give us a chance -- and it's being done in places like the Sacramento program, in some of the versions of Parents are so United and some of the other places -- a lot of these offenders are absolutely vulnerable at the point of disclosure. They hate themselves. They weren't hard to crack. A lot of what happens is they get attorneys, they get in the legal system, and it gets adversarial. You are doing some of it by plea bargaining, but you're plea bargaining away a lot of years that we could probably use in having a handle on these guys. Even though the sentences, as we all know, are so short, the controls that a good program -- in conjunction with the district attorneys in conjunc-

tion with the courts -- can have are probably far more protective of our children in society than the sentences that get held out.

As we've said in some of these programs, the threat of the criminal justice system is more powerful than the clout that it really has in a lot of ways, when you hit them with what will be done if they don't acknowledge what they did and agree to a contingency, or whatever the arrangement is for that treatment. It's happening in a few places, but it isn't the goal of most places. I know from the kids I've worked with it can be a positive experience; being in court may have a very positive aspect. I've never really seen it be as positive as having the person who did it stand there and acknowledge to the child that he did it, rather than all those friendly lawyers and everyone else say, "I believe you, even if the judge or the jury didn't, or he says he didn't do it."

My last comment is a response to Charlie. Everyone else is saying there's good news and bad news on this business of judicial discretion. We keep hearing the good news is there's no need for legislative authority to do a lot of this. I somewhat believe that. But then I think, the bad news is it's at the discretion of the prosecutors and judges, and most of them are choosing not to.

We have killed ourselves to get this closed-circuit TV bill in California, and nobody wants to use it. It's not good for prosecutors and cases, and it risks appeals. It creates some problems, and it's not being used at all. The same is true of a lot of other things. There are prosecutors that I respect, there's even a few I love, but I don't want to depend on the future of kids in courtrooms on either judges or prosecutors. I don't want to have somebody there to direct them. She's too rare a creature. Too many judges will say, "Well, I had a four-year-old once. I was five years old, and we know what they're like." We don't get into arguments over whether somebody who's deaf should or shouldn't have an interpreter because that's not a discretion issue. Mental health people agree it's good for children, and judges agree they can do it. Let's figure out a way. We don't need prosecutors to do court school programs and they don't have time to do them. We need them to come into them at some point, but ours are being done by the Junior League. There's no need to have prosecutors spend time showing kids courtrooms when other people can do it.

The same is true of most programs. It's wonderful to have this team of people at the end. It is important how they respond to the child's testimony, but I see them weeks later, and we owe them treatment. We don't just owe them a pat on the back. We owe them the cathartic process of dealing with what they went through in court. We're too quick to judge how it's affecting them later. The studies that are being done are starting to

help, but it's like child sexual abuse; it doesn't tragically harm all of them, so should we not treat them? If courts are in any way -- and I think the studies are showing that they are having negative effects -- why don't we at least help match up some of that process as long as we agree that they have to go through? It's back to "First, do no harm." We will do our best to help these kids, but, first, let's try not to harm them, and there's a chance that we have. Let's at least provide them treatment for that. Most children -- especially kids in the criminal courts, because a lot of them are not abused by family members -- walk out of that courtroom and never see another therapeutic intervention. That's our experience, and the most vulnerable population for no treatment are the kids that we've seen in criminal courts because they sort of fall through these cracks.

Now that we have all these statutes now to let parents be in the courtroom, parents are flaking out. They're anxiety is one of the detrimental things that happen to kids because they have nobody helping them to contain their anxiety for the kids. We spend as much time patching together parents as we do the children.

MR. LLOYD: Patti Toth is now at the Think Tank on Child Protective Services because she was involved in the process of drafting some of those standards, and her comments were particularly viewed as valuable to that process. Judge Gothard had to leave, but we have Commander Jack Dunlap from the Navy to be one of our invited observers.

We are fortunate to have Chris Gardner, Chief Deputy District Attorney, from Bloomington, Indiana, to speak now.***

MR. GARDNER: I entitled my remarks today "Backlash from the Bench," and I am going to do a little judicial bashing. I know from what I've heard today that very typically the judges who show up are already interested, are already educated, and are already responding. I'm relatively new to the field. I've only been a prosecutor for two years, but I want to assure you that some courts in Indiana have guaranteed that I will have the full wealth of experience that all of you went through 10 or 15 years ago because they're not about to catch up overnight.

What is a backlash, and why do I use that term "backlash?" A probation officer came in the other day and said, "Mr. Gardner, we're getting sick of doing these pre-sentence investigations on child molesters." I asked, "Well, how many have you done?" It's a relatively small jurisdiction, and this was in October. She

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***[Ed. Note: Mr. Gardner is currently Deputy District Attorney, Office of the District Attorney for Deschutes County, Oregon.]

said, "We did six last year, we did four the year before that, then you get four, five, three, going back about six years, then you hit a whole string of zeros, every now and then punctuated by a one." This summer when I met David Heckler, who wrote the book Battle of the Backlash, I said, "What's a backlash? I don't understand. Do you mean they are not against child abuse?"

He looked at me like I was a little naïve. I wasn't, I was a lot naïve. He said, "Try it. Try and turn up the heat." And we did. We have increased eight-fold the number of convictions in a year, but we've begun to see a response to that increased attention that I call a "backlash." I think that's relevant to and reflects something that's happened nationwide.

How do we recognize this backlash? When you walk into your court administrator's office and, out of the clear blue, she asks, "So you want to put men in jail for putting medicine between their daughter's legs?" "No, I don't want to do that." Or, a judge in pre-trial conference saying, "I know what this is like. This is like what they taught me at my judicial conference this summer. If you tell a kid the same story long enough and often enough, even they'll come to believe it's true." I thought about asking for a change of judge then.

At the end of the state's case-in-chief, after the motion for judgment on the evidence, the judge very sympathetically looked at the defense counsel and said, "I share your concerns about the gross inconsistencies in this child's testimony, but there is just that shred, a scintilla of evidence, to get the case to the jury." He then called me to his chambers after the trial and closing arguments and said, "Of course, you realize you lost." I didn't want to tell him that I didn't realize that, and two hours later after a guilty verdict he scratched his head.

We had a pre-trial competency hearing and went through the arguments that were raised here about the limits of a competency hearing. We had gotten the judge to limit that inquiry, and we had asked, pursuant to the *Stincer* case, that the defendant be removed from the courtroom through the competency hearing -- clearly something that we were entitled to request and that the judge was empowered to do. The judge refused.

When we informed the child that her father would be there -- she was three years old -- she cried hysterically. We had support staff available, we had her mother and therapist and a secretary from my office there As they were confronting the child, I ran to the courtroom, told the judge what was going on and asked him please to reconsider, hoping to buy enough time to at least allow this child to recompose herself. Most kids, sort of go down pretty quickly, and then they pop back up.

Well, they got her comforted, and by the time we brought her in the courtroom she was smiling and not crying any longer, and he implied after the hearing that I was lying to him. Some judges have very little understanding of the dynamics of these cases. The same judge in that case did a very interesting thing; he had the three year old in the competency hearing. He leaned over, and asked her a leading question, -- an authority figure in a robe. The child had told him that she was going to a circus the following weekend, and he said, "Well, little girl," sitting in his superior seat, "this," meaning the courtroom, "is kind of like a circus, isn't it?"

Like most courtrooms, when the child had taken the stand there was a hushed atmosphere. The child looked at him like he was having some cognitive problems, looked around the courtroom, and said, "No, this is a little more like a church." He still found her incompetent to testify -- and that was only the third time she had corrected him that day.

A more experienced prosecutor told me that, "If you can convince the jury that child abuse occurs, and then have the victim, I don't care how weak a witness she is, testify that she's been abused, you're likely to win your case." I use voir dire to attempt to educate jurors, but we had in one case a rather exceptional education of the judge as well. Once again, referencing his lack of sensitivity, he asked 39 prospective jurors, "Are there any of you who believes because this is a child abuse case you cannot be fair?" And one woman in the corner, with great anxiety, raised her hand and said, "I can't be fair." And he asked, "Why?". She said, "Because, this is a child molesting case." He said, "Well, I know that, but why specifically?" And she said, "I just can't be fair in a case like this," and was getting more visibly agitated. As far as I was concerned, if she had a billboard behind her head that said, "Former abused child," it couldn't have been clearer. The judge persisted, and he said, "Ma'am, I remind you you are under oath, and I instruct you now to specifically tell me why it is that you can't be fair in this case."

Thank goodness, she had the gumption to do this, she stood up, she looked him right in the eye, and said, "It's a personal reason, and I'm not going to tell you." And at that point the billboard apparently lit up for the judge as well. She was allowed to leave the courtroom, and immediately thereafter a young man raised his hand. He was explicit, "Sir, I was sexually abused as a child. I can't be fair." Then I asked the rest of the prospective jurors the question, "Have you or any of your friend been abused?" and we had five more jurors raise their hands. A total of seven out of 35 jurors indicated contact of abuse -- and it was an educational experience for the judge. But initially he was without that perspective, without that sensitivity, and without that understanding.

Now, I'd like to be able to say that, "Gosh, it's just an incidental thing. It's just one little judge from Bloomington, Indiana." However, the judge ruled on the case with the three-year-old I was telling you about, that she was not competent, yet, pursuant to our child's hearsay statute, that she still had to be available for cross-examination during the pre-trial evidentiary hearing.

I couldn't call her. She was incompetent, but defense counsel could. We were going to appeal that until an opinion came down from the Indiana Supreme Court. We've heard here, "Don't be scared away by *Coy* v. *Iowa*." Well, the Indiana Supreme Court has taken that and run far beyond any reasonable boundaries. This is an Indiana Supreme Court opinion handed down on December 7th, 1988; I had some idea what a battleship in Pearl Harbor felt like after this opinion. The opinion discussed this set of facts: The parents took a three-and-a-half-year-old girl to the baby sitter, picked her up at midnight, things seemed normal. At 3:00 a.m. she woke up crying hysterically and bleeding vaginally. The bleeding was not sufficient to seek medical attention immediately, or maybe it had stopped and there was staining. The child didn't want to talk about it, they put her back to bed.

The next morning dad came home from work, approached the child at 10:00 a.m. and asked what happened. She didn't answer. A few minutes later he asked her again, she said, "Richard," the baby sitter, "hurt me," and pointed to the appropriate area.

The parents then took that child to a doctor who found two vaginal tears: One was half of a centimeter and one was three-quarters of a centimeter. The doctor testified that that would have been extremely painful, and that it was consistent with penile penetration, and other relatively bizarre accident scenarios. The parents then took the child to the welfare department, who realizing the severity of the allegations, brought in a police officer. They took her to the police station, where they did an interview. She, in the words of the Indiana Supreme Court, "Answered their questions with questions of her own about subjects that interested her."

If any of you have ever dealt with a three-and-a-half year old that didn't want to talk to you about something, that's tactic number one. They asked the parents to leave the room, thinking maybe they were inhibiting her, and she revealed that Richard had hurt her between the legs with his "potty thing" that she defined as a penis, using the anatomically correct doll.

That out-of-court statement was sought to be admitted pursuant to the hearsay statute, once she was found to be incompetent to testify. Now, this is the way the Indiana Supreme Court characterized that set of facts, first, commenting on her lack of competency: "While the child's inability to understand

the nature and consequences of an oath does not render her statement inadmissible as a matter of law, it is a significant negative factor. That inability bespeaks a lack of conscious and the absence of a understanding of duty." You know, she's not of military age yet.

But even more frightening, listen to this characterization of the facts. "She was under intense control and scrutiny from 11:00 a.m. until 6:45 p.m. when the statement was given. During the time she was subjected to a stressful physical examination by a doctor. She was taken to the welfare department where she was confronted with a strange adult. She was then taken to the sheriff's office where she was confronted in these strange surroundings by yet another stranger. When she did not concentrate upon the questions being asked her, she was left alone with two strange adults who, with difficulty, finally elicited the answer sought and expected. One cannot imagine a more exhausting, stressful, or coercive situation." I can: The night before when her baby sitter was raping her.

They comment about a few other things in here. They characterize this question as the type of leading question that gets children to reveal sexual abuse at the drop of a hat. Here is the question: "Tell us exactly what happened at the baby sitter's."

What occurred here, the Supreme Court of Indiana says, "Seems able to reoccur under a literal interpretation, is that an interview with a child carefully orchestrated following earlier questioning, or even rehearsal, with questions designed to elicit the desired responses would be admissible against the defendant in a sexual abuse case." This is the whole witch-hunt theory. It's right here in an Indiana Supreme Court opinion. This is backlash.

My first response was that we're getting nowhere in the courts. So we just went to the legislature with amendments to our children's hearsay statute. We have a two-tiered factual criteria for admitting hearsay. The Courts also ruled in this case that there was a wall between indicia of reliability, evidence, times, circumstances, and manner of the statement, and the corroborative evidence requirement, and that the judge could not consider the vaginal tears in determining if there were indicia of reliability in her statement.

That's a totally absurd ruling. There's no state in the Union that lists factors for indicia of reliability that doesn't have as the number one factor confirming physical evidence. Not Indiana. We're trying to change that in the legislature. Further there was never even a suggestion by the defense attorney that there was coaching, rehearsing, etc., in this case. It's interesting that the Indiana Supreme Court raised those issues. We

would expect that the defense would be the direction from which the backlash would enter the courtroom. I would suggest it may come from the other side of the bench.

Well, accepting that this occurs, what are the motives for it? Why do we see this happening? I would suggest, first of all, that there are no easy answers.

I would suggest that the motives reflect first of all, societal denial of this problem. These allegations are hard to believe, because it is hard for those of us who are not molesters to understand potential motives of perpetrators. Further, there is an avoidance of the toughnut issues in child abuse prosecutions. On behalf of judges I'd like to say that there are things we can all agree upon. Children need services, children need attention. But the two most controversial issues in the field: What is the interplay of legal rights as they relate to the defendant and a victim in a trial, pursuant to long-standing constitutional principles, and then ultimately, what to do with convicted perpetrators, are the two problems that fall right in our judges' laps. This is the tougher stuff. Thus I think judges are often afraid of potential negative publicity, if for instance they go with a sentence seen as too lenient.

There's another factor. Child abuse is such an irrational crime. We all fear what we cannot understand, I had a judge tell me once, "Look, my daughter had a little problem learning to wipe when we were potty training her, and I'd go wipe her. One time she said, 'Oh, Daddy, you hurt me,' and I was wondering if my wife were really mad at me that day or considering divorce and she went and said, 'Gosh, Mom, Dad touched me between the legs and hurt me today,' how could I defend that?'" So judges, being in that environment, see that possibility. It's fearful to them that an allegation cannot be refuted because of the very irrational nature of the crime.

My final comment is this: Judges lack experience in these cases. Social workers in my county get 1,000 reports a year. They see all 1,000 cases. I probably review superficially about 300 of those, I review intensely about 100 of those, extremely intensely about 50 of those. In our county where we had approximately 30 felony convictions last year, the judges saw 29 guilty pleas and one trial. They don't know when the man said, "I put my hand in her pants" that the victim was asked leading questions. They don't know that the victim incrementally revealed, or that she recanted once. All they see is the guilty plea at the end of the line.

I guess it relates back to the old Mark Twain quote, "The fellow who picks a cat up by the tail gets nine or ten times more information than the fellow who just hears about it." We need to

give them more experience and not expect and assume that they have it.

I have some suggestions.

Number one: As prosecutors we should accept the obligation to go to our judges and lay those cases out after the guilty pleas. So, they can get a full feel for the texture of the number of cases, all the cases, coming through the court.

Number two: We should work to educate them generally, and this will work. I invited a judge from my jurisdiction to come to this conference. We were hardly speaking the say before this conference. However, the other night at dinner he said, "Chris, I've been thinking a lot here, and I think we should start having meetings when we get back to Bloomington to discuss an interdisciplinary team approach to these types of problems."

Sometimes, we need to circumvent them when necessary and go straight to our legislators and change the laws that we believe are being misinterpreted so that the laws are clear.

We need, in addition, I believe, special courts to handle children as victims. Ironically, we have special courts to handle children as perpetrators of crimes, but no special courts for children as victims.

That may be special certification of judges, that may be an entirely special court. I'm not sure. I think there are some dilemmas with the "Elias model," that we all accept, but I don't think it's something we should quit exploring. Finally, I think we need to address the rich defendant problem. The vast majority of child molesters cannot afford to have defense experts fly into town and do their defense for them. But those experts almost inevitably, as in all other cases in criminal and civil law, come where we have wealthy or influential defendants of some sort or another. There is some need to respond and guarantee that a rich defendant does not get a different form of justice than any other defendant. I don't quite know how to deal with that.

MR. LLOYD: Janet Fine will respond based on her perspective as Deputy Chief, Victim Witness Service Bureau, Middlesex County in Cambridge, Massachusetts.

MS. FINE: I am especially pleased to have Victim Witness Services represented in this session. The participants here reflect a group of professionals enlightened to the critical role played by Victim Witness Advocates, a knowledge that is not necessarily shared by other judges, prosecutors, and court personnel. In fact, in our County, there are judges who have considered ordering mistrials on the basis of the interaction between a Victim Witness Advocate and a victim in the courtroom.

Specifically, there was a mother of a homicide victim sitting in court next to the Victim Witness Advocate who had been working with the family for a long period of time. At a very horrifying point in the testimony, the mother grabbed the Victim Witness Advocate's hand. The judge mistakenly thought the Advocate was holding the mother's hand, deemed it to be extremely prejudicial, and considered ordering a mistrial. The Advocate was questioned by the judge in chambers and the role of the Advocate was scrutinized. In the end, the judge did not declare a mistrial; however, this is an illustration of a lack of true understanding of the services provided by Victim Witness Service programs.

The Middlesex County Victim Witness Service Bureau is a model in the country. Scott Harshbarger, the District Attorney, has committed a large amount of resources to Victim Witness Services and to child abuse prosecution. Funding from the Massachusetts Victim Witness Assistance Board has been allocated to all district attorneys' offices in the state to be used for child abuse prosecution. We are in the process of planning and implementing a specialized child abuse prosecution unit that will be separately housed and multi-disciplinary in its approach to criminal investigations and prosecutions.

I have worked in the Victim Witness Service Bureau for almost six years and have specialized in child abuse cases and other cases involving child victim/witnesses. My extensive experience with children in court included a case that our office prosecuted in two consecutive trials in 1986 and 1987 -- a case of multiple victim, multiple perpetrator day care abuse in the Fells Acre Day School in Malden, Massachusetts. The owner of the day care center, in her early 60s and her son and daughter, were all accused of molesting a large number of children. The cases were severed; the first trial was against the son, the second trial, a year later, was against his mother and sister. I was the Victim Witness Advocate for all of the children and their families, and there were three prosecutors who comprised the prosecution team.

I am proud to say that both of these prosecutions were successful and all three defendants are serving state prison terms. The son of the day care owner is serving a 30 to 40 year prison sentence; his case is presently on appeal. The Supreme Judicial Court heard arguments in December and we are awaiting their decision. Interestingly, one of the issues raised on appeal was the use of various courtroom accommodations allowed by the very enlightened trial judge. It will be helpful to see what, if any, opinions are offered on that issue.

Judge Elizabeth Dolan, who presided over the first trial, is exemplary in this area. She was extremely sensitive to the pare-

nts of the children and understanding of all the inherent limitations of child witnesses.

The second trial was presided over by a judge who was previously not particularly knowledgeable or sensitive to these issues. I was able to observe the impact Judge Dolan had in instituting these courtroom accommodations. Since some of the children who testified in the first trial also testified in the second trial, Judge Sullivan, who presided over the second trial, allowed the children to testify under the same circumstances as the first trial.

This was an informal and practical way to educate the judge who presided over the second trial, albeit the media attention played a significant role. While I have witnessed some progress, there is still a great deal of disparity among judges' handling of these cases. Children's experiences in court remain significantly dependent upon the trial sessions to which their cases get randomly assigned. This is clearly unequal justice.

I do question, however, the "backlash" phenomenon Chris just discussed. At least in Massachusetts, I have seen an upward curve in the judiciary's appropriate response to child abuse cases. We have seen drastic differences in the way some judges have handled these cases and in their willingness to be educated about the dynamics of child abuse and the needs of child witnesses. Nobody likes having to handle these cases and judges are no exceptions. We have had to learn over time how to handle these cases without causing further trauma to the children; judges are just beginning to do the same. Public attention and media scrutiny have caused us to spotlight those judges who have never been enlightened and educated as to the relevant issues in these cases.

In large part, the response from the bench has been a recoiling reaction to the large numbers of child abuse cases. This response is related to judges' frustrations, insecurity, and lack of education. The frustration and insecurity arises from not knowing how to handle these cases and not being comfortable with children in an adult system. Prosecutors sometimes comment that they did not go to law school so that they could sit on the floor and play "duck-duck-goose" with a child. Some judges probably share that sentiment.

Judges are also frustrated over dispositions in these cases which raise some very difficult issues. For example, they do not know how to sanction otherwise respectable defendants; they are not typically confronted with a college professor who is found guilty of sexual abuse.

They are often perplexed by issues inherent in incest cases. Should the defendant be incarcerated when the child says that she

loves her father and does not want him to go to jail? Will the sentence break up the family? Will the family be punished if their sole breadwinner is sent off to prison?

I would agree with Chris that there is societal denial and judicial denial that adults sexually abuse children, hence, the sentiment that these cases do not belong in the criminal courts. For this and other reasons, judges may choose not to give these cases priority.

On the issue of competency, there is absolutely no uniformity among judges with whom we have worked, as to how competency hearings should be conducted. The judge who presided over the first Fells Acre trial was extremely sensitive, developmentally appropriate in the language she used to communicate with the children, and very considerate of scheduling for the child--that is, conducting the competency hearing immediately prior to the child's testimony to prevent the child from having to appear in court more than once.

In Judge Schudson's keynote address yesterday, he said, "I know that as I am speaking, you are all thinking of a judge who does not fit this model." He was absolutely right; other judges are not as sensitive and appropriate in their response to children's specific needs. At the other end of the continuum is a very intimidating judge. I have seen him conduct competency hearings from the bench, at a distance from where the pre-school age child was sitting on telephone books on the adult witness stand. The judge stood up from his chair with his arms extended at his sides, leaning forward on his hands, in his black robe--an amazing likeness to Dracula. He asked the child, "What's the truth?" and then, "What's a lie?" That was his idea of a competency hearing. The same judge often conducts competency hearings a week or two before the child had to testify at trial.

As to competency hearings, one of my suggestions for prosecutors is to submit age-appropriate questions for the judge to use, or as an alternative, request that the prosecutor, who is known to the child, be allowed to conduct the hearing.

Chris commented on judges not fully understanding the child's experience vis-à-vis the abuse, the investigation process, and while waiting in the courthouse to testify. This is especially true since the majority of these cases are resolved with guilty pleas. Even in cases that do proceed to trial, where the judges are privy to a lot of the information that they may not have if the case is a plea, they still have no idea what goes on behind the doors of that courtroom before the child emerges and takes the witness stand. In our county, the responsibility lies with the Victim Witness Advocate to be supportive and helpful to that child before she or he enters the courtroom. The

Victim Witness Advocate is with the child for the period of time immediately prior to his/her testimony.

An illustration from my experience: A judge and jury were waiting in the courtroom while a child witness was uncontrollably sobbing outside the courtroom prior to her testimony. There was nothing I could do to stop that child from crying, nothing anybody could do to calm her down. The court officer came out and told me that the judge said to bring her in. I told him that I could not bring her in right then, that she could not speak or even walk at that moment. She was just sitting in the victim witness waiting room sobbing. The court officer went back into the courtroom and told the judge that we needed a short recess, but the judge said, "No, bring her in." The court officer came back out to again attempt to bring the child into the courtroom. I insisted that I could not bring her in and that I would explain it to the judge if he so desired.

That judge, who was sitting in the courtroom with the jury and the attorneys present, had absolutely no concept of what it was like for the child before she testified. I do not know how you explain that experience and emotional reaction to judges.

I have some comments about courtroom accommodations. I agree that the responsibility for requesting these accommodations lies with the prosecutor. It is the prosecutors that need to be educated, trained, and aggressive in asking for the kinds of accommodations that are critical for child witnesses. It is also their burden to attempt to educate judges. But as much as prosecutors can be educated, trained, and aggressive, I do not think that this is enough. Indeed, the only thing the prosecutor can do is recommend the use of courtroom accommodations or file motions in this regard. The ultimate decision is made by the judge.

I strongly believe that it is important to legislate these accommodations. Judges all too often feel conflicted in their efforts to be fair--they have difficulty finding that balance between sensitivity and fairness. If they are going to struggle with that conflict, they are likely to err on the side of the defendant. Legislation would not completely usurp judges' discretion as to the necessity of such accommodations; it would simply empower judges to use them.

In addition, the defense bar is getting increasingly sophisticated and will increasingly oppose motions for courtroom accommodations. Legislation can only help to empower judges to make courtrooms more accommodating and, therefore, accessible to children.

I agree with Kee that courts can be traumatic for children. However, I have also seen that the court experience can be very

positive and therapeutic for children. While I do not have any qualitative data to support that notion, my personal experience, including follow-up with parents, therapists, and the children themselves, tells me that it can be an empowering, cathartic process.

An expert who testified for the prosecution in both of the Fells Acre Day School trials was Dr. Renée Brant, a child psychiatrist and former director of the Sexual Abuse Treatment Team at Children's Hospital in Boston. She and her colleagues are presently undertaking a retrospective pilot study of the impact of court on all of the children involved in the investigation and prosecution of those cases. They intend to initiate a subsequent prospective study as well.

It is unlikely that we are going to be successful in enlightening all judges. Therefore, we, as prosecuting officials, need to work towards minimizing children's involvement in the court system. One of the innovations that we are instituting in our new Child Abuse Prosecution Unit eliminates the need for children to testify in the grand jury. If, after a disclosure interview, we determine that the child is both competent and credible, the interviewer, with whom the child is already comfortable, will conduct a grand jury presentation with the child on videotape. The videotaped testimony will replace the child's live testimony in the grand jury. The grand jurors (and eventually defense counsel) will still be able to make an accurate assessment of the child's credibility as a witness, but without the trauma associated with describing sexual abuse in front of a large group of adult strangers.

One other issue that I want to address is how to handle objections made during a child's testimony. One effective alternative to lawyers standing and shouting their objections is to have the lawyers remain seated and whisper or just note their objections at the appropriate time. The objections would be noted quietly by the judge; there would be no side bar arguments in the middle of a child's testimony. In my experience, this approach helped move the child's testimony along and did not cause interruptions that would have been both disruptive, confusing, and traumatizing to the child.

We all need to constantly remind ourselves and to teach others to view children's experiences in the court system through <u>their</u> eyes and not our own.

MR. LLOYD: Let's begin discussion with Judge Smith.

JUDGE LYNWOOD SMITH: There's a natural tendency to say, "That ain't me." However, Richard Garman's remarks keep coming to mind: "If it looks like a duck, walks like a duck, and quacks like a duck, it probably is a duck." I think we do have problems

at the bench level; there's no question about that. My reaction to what has been said is that there are some areas in which we don't have problems in this state. We have legislated changes to remove discretion. For example, we have a statute that states unequivocally that all children are competent to testify; period. So we don't have to fool with that type of discretionary problem. We have other statutes, that -- while they have not removed discretion from the trial judges, as Ms. Fine suggested -- empower judges to do those types of things that the defense bar traditionally is opposed to.

Education is still important. Even though I have twice before emphasized that I believe the education effort should begin with the district attorneys, such comments should not denigrate the importance of education at the judicial level.

And then, finally I come back to a point that I made fleetingly early in the day, and that is: you just have to push on different judges. There's no other way around it. As part of your job as a prosecutor, you push to create situations where you try to accomplish what you want to accomplish, with or without the friendship of the judge; and get him reversed if you have to. That's the way the system is designed.

MS. McNEES: I too, have read The Battle and the Backlash, and I have seen some of what this gentleman referred to as the backlash. It is out there. It is really hard on children to have to go through these continuances, mistrials and hung juries. If there's any way that some of this can be brought under a certain amount of control that would really help in this traumatization of children.

MR. RICHARD FISHER: The public is going to demand punishment for sex offenders of children. We can't send a burglar, or a rapist of an adult person, or an armed robber to prison and say, "Well, we're not going to send the rapists of children." I attended the National Institute of Corrections seminar in Boulder, Colorado. Anna Salter and others were teaching, and they presented their program that puts treatment at the end of punishment, the last few years of imprisonment. There is a lot there to induce those prisoners to enroll in treatment programs. In every state in the Union, we need two things: (1) lifetime tracking, whether they are convicted and in prison, or just convicted. Lifetime tracking is so that "big brother" government can keep a thumb on these people. At least they will feel that pressure as they go to report for a job or something. (2) There should be a central registry of indicated perpetrators so that from Nashville, Tennessee, I can call this central registry and find out if this guy from Los Angeles had ever been indicated in Los Angeles as a perpetrator with a charge or not.

I've discussed this and they're going to consider making or putting in place a national registry. Like Alabama, in Tennessee we have passed legislation in '85 that provides that all child victims of sexual abuse are competent witnesses, period. We limited it to that because we didn't want opposition from other lawyers who had other interests in other areas, and the law passed without opposition. We have sentencing guidelines for sentences to be run consecutive or cumulative with each other. You've got to prove either that he's a dangerous offender or a professional criminal, a mental or abnormal perpetrator. There are certain items that must be proved at the sentencing hearing. Whether there's been a guilty plea or whether there's been a trial, I will load up that judge with all the evidence I can put together. Guidelines on evidence are loosened at a sentencing hearing; you can get in a lot of hearsay and a lot of other documentation to the horrors of the situation before a judge. It's a continuing process, not necessarily for that case in and of itself, but for that judge's education on down the line as he/she becomes more and more exposed to these types of cases.

I think for the first time we have a criminal that all prosecutors are proceeding against the rich and the poor equally. Everybody knows that there are "emoluments to the office" of being rich. The rich don't pay the full price for their crimes except in child sex abuse, and none of us accept that as a political reason or a power reason to avoid a prosecution. I really think most prosecutors are not drawing a distinction and cutting slack to the wealthy.

A child loves a father very much, a father is a breadwinner. I concluded at our presentation a couple of days ago to the prosecutors: the bottom line is he will re-offend, there will be other victims, and that's a burden that we have to face and keep on our minds as we are considering diversions out of the system, or whether or not to prosecute. If we're going to take an alternative, it's got to be a meaningful alternative that will offer some protection.

COMMANDER DUNLAP: A couple of quick follow up comments: Within the Navy we take the view that there does seem to be the possibility of treating incest offenders. We do not find any indication that non-incest offenders, extrafamilial offenders, are amenable to treatment.

Negotiated pleas can be used in conjunction with very severe sentences. A negotiated plea for suspension of confinement may leave the threat of confinement hanging over the defendant's head for years, depending upon your jurisdiction and the degree of flexibility of the judges. In the military we can have a 25-30 year sentence hanging over the defendant's head even if he doesn't serve a day, a week, or a month of confinement.

Chris mentioned using the facts of the case to educate judges. In military courts martial, we have "providency," which to a lesser extent, also exists in all civilian courts: The judge reviews what happened in the case when a defendant pleads guilty. You could expand providency to say, "Okay, in addition to the facts upon which the defendant is pleading guilty, here are the circumstances beyond the offense." Factors could include that the victim recanted, that the victim suffered severe trauma, and that the victim didn't want to testify. Instead of seeing guilty plea cases in which the defendant just comes in and says, "Oh yes, I did it," the judges begin to see that there is recantation even when the defendant pleads guilty. Judges see and learn in court through information provided. That's extremely important, and I strongly support your idea there. Think about other places to plug it into the trial other than at pre-sentencing.

One other thing I am concerned about. We sometimes hear, and may occasionally even make, snide or derogatory remarks about others involved in or associated with these issues.

One of the big points that's made in *The Advisor*[****] is that we can't go around sticking our fingers into everybody else's eyes because they don't agree with us, or because they're not doing what we think they should be doing.

Some people act out of ignorance, others out of stubbornness. Others may have good reasons for doing things "their way." It's especially important not to go sticking our fingers into their eyes, because it blinds them. Then, when the truth is set before them, they can't see it; they're too emotionally blinded. It's important to keep moving away from emotionalism and not to denigrate people because they disagree or don't do things our way or to our satisfaction.

From the point of view of a judge -- I hope that I haven't been guilty of this -- sometimes judges don't like to be told what to do. They particularly don't like to be told what to do regarding matters about which they are responsible. Judges are concerned about a fair trial the for defendant, as well as being fair to a victim, especially a child. They're also concerned about being told what they have to do in their courts. Our suggestions for judicial training should be phrased carefully to be supportive and non-threatening. "How do you control your courtroom?" Not, "How do you make things easy for the victim witness." How do you ensure the defendant receives a fair trial?" Not, "How can I ensure a conviction?"

[****] [Newsletter of the American Professional Society on the Abuse of Children]

The movie that the Braga's produced is fantastic in that regard because it shows how the judge can be fair to all; it's not an "either/or" situation. It's extremely important for us to realize when we're talking to judges that for them, a fair trial is the critical factor. Judges must be fair. That's the bottom line, so we should orient our efforts accordingly.

From my experience, the attitude of the person preparing the child is extremely important. If the person goes in with the attitude, for court, "You've already been a victim of this offense, and now you're a victim of the court," the child is going to be a victim of the court. If, on the other hand, the child is told, "This is going to be tough, but you're going to survive it," then, the child will survive it and may not be re-victimized. The attitude of the advocate, whoever it is with the child, is vitally important.

MR. KUHN: From the judicial-educator perspective, neither Chris nor Janet said anything I could disagree with. You mentioned that it's very hard to put judges in the shoes of the child. That's been something we've been concerned about. We teach developmental aspects of children in court, but it's still very hard to put them in that situation. Judge Schudson does that as well as anyone. If you have any ideas about how we could do that better, I'd sure love to hear them, because that is a difficult issue.

Secondly, we deal with the treatment versus sentencing issue. We spend anywhere from a couple of hours up to a week on the topic when we can. It's not something that we take lightly, and we try to include it in our training and educational curricula whenever we can.

MS. MEDLEY: When we talk about backlash, I feel I'm so much more aware of it in the youth court, juvenile court, and in the civil courts, and that it's impacting children and the complaining or protective parent a great deal. I don't feel that we've really talked about that or addressed it very much. We need to do a lot of training, not only with criminal court judges, but with family court judges, juvenile court judges. There's so much power that's perceived by the victims and protective parents in the hands in those judges, and their lives are changed dramatically by those judges.

I think part of society's outlook is that they're "baby judges"; "real" judges don't do family court. But I don't think that's true. It's important that we give credit to family court judges and put a lot of attention into those courts. I have a lot of questions about the perception that they lack real power and are not real courts; what follows is a lack of real rights in those courts. We're not really looking at what's happening

there. We're not being able to monitor them. I have some questions about confidentiality: does it protect children or does it make them invisible and their rights invisible? Those are things I really don't know yet. I hope that we have a change to argue and debate those things as well.

MR. GARDNER: First of all, Ms. Medley, You're exactly right. We sometimes ignore those courts, but those issues are always there. I am often called upon by civil attorneys to teach them, "How do I go about educating judges?" This issue has come up in the civil context. It's important that at conferences like this we discuss things like sentencing issues, where we have a multi-disciplinary panel that could sit and talk about them. People are talking about everything from treatment and no prison on one hand to some sort of radical surgery at the other. I think it is appropriate to shift the focus of the criminal justice system from exclusively on perpetrators, where it is in every other type of crime, to the victim.

That's appropriate, and I would never argue against doing that. But in doing that we've avoided addressing the tough-nut question of sentencing and we should begin to take that on more aggressively.

JUDGE SCHUDSON: This morning I presented my reservations about legislation in some areas and some of the ironic down-side risks in legislation. However, I probably should have hastened to add that there are some areas where legislation can be very important. About half of our states have conformed now with the Federal Evidence Code and abolished the competency requirement. Clearly, that's been a big help.

There are two other areas I see where there should be and, I think, easily can be, important legislative change. Every state can enact a Victim/Witness Bill of Rights. Wisconsin became the first to do it; it should be replicated everywhere. Wisconsin also became the first to establish a Child Speedy Trial Act, and now in Wisconsin in any case which an adjournment or continuance is to be considered where a child is involved, the judge is required to consider the impact of the adjournment on the child. There is no restriction on discretion, except to say, "Judge, in looking at this, that is one of the things that must be considered, and you must make an inquiry as to the impact of the adjournment on the child." That's something that clearly could be enacted everywhere and would bring to judges' minds what they should have been thinking about all along.

The next subject I'd like to talk about briefly has to do with sentencing, but in a curious way. Let me preface it by suggesting the scene. On Monday morning probably across the country 500 different times this is going to happen: a defendant is coming to criminal court charged with battery. He is going to

walk into the courtroom and is going to plead guilty to battery. The judge is going to be reviewing the case and is going to see that the complaint alleges that the defendant committed the battery against a woman by striking her six times with the fist. When the judge -- if he or she does it properly -- says, "Are you pleading guilty because you really did it? Tell me what you did," the defendant will acknowledge slapping once.

The elements of the crime may be satisfied, there may be a basis for the finding. The judge, if he or she is like 99 out of 100 judges will not dare to pursue the apparent discrepancy between the defendant's account and the allegation for fear that the plea negotiation will break down and there will be another case that has to be tried. So, content with the elements and the factual basis for the finding, the court moves forward. Then, whether it's at sentencing at that point or some later point, the judge has failed to do what is fundamental to any intelligent sentencing; that is: determine what happened. For a sentence to be intelligent, the judge has to, at the very least, know what it is that occurred.

When you bring that to the context of child sexual abuse, I think it becomes more important, in many ways, because some of the sexual assault statutes of our states can provide for any range of activities under even a first degree sexual assault. The complaint may allege repeated acts of intercourse, the defendant may admit one act of touching, and the factual basis may be there.

It is preposterous for courts, in most instances, to allow lawyers to stipulate to something as the factual basis. Fundamental to justice for all the people in the case is to have the judge ask the defendant, "Are you pleading guilty today because you really did the crime? What did you do?" We know that there will often be discrepancies between the defendant's account and the state's or the child's allegations. That leaves the court in a very, very difficult position in sentencing if some of that isn't resolved, or at least if there isn't an attempt to resolve that. It leaves probation, should probation be involved, in a most compromised position, particularly when the defendant is denying virtually everything that occurred. Then when you're requiring things in treatment, the probation officer rightfully throws up his or her hands and says, "What do you want me to do? This defendant denies. What am I to treat?"

This is what I suggest: where we have a defendant pleading guilty and the defendant's account is very, very different from that of the child's, in order to provide justice in every common sense way, to provide a very secure appellate record, if the sentence proves to be a very substantial one, as part of the plea process itself it's important for the judge to say to the defendant, "I understand what you are telling me. I want you to un-

derstand that the allegations from the state are quite different."

Now, the judge should turn to the district attorney. "When it comes to the day of the sentencing, D.A., are you going to be recommending a sentence to the court based on your version of what occurred, or will you be content with the factual basis that the defendant just said? Let's make that clear now so that the press doesn't write some critical report of the sentencing based on a different version, and you don't call a press conference and criticize the court based on what was not part of the factual record here." More often than not, the D.A. will say, "Oh, yes, Judge, we intend to maintain and show you at sentencing that our original allegations are true, and we do not accept the minimization here the defendant presents."

If that's what the state says, the judge must turn to the defense attorney and say, "Do you understand that? Does your client understand that?", and then directly to the defendant, "Look, sir, I know your account, but I want you to know something: Fundamental to fairness in sentencing is that I gain the best understanding I can of what occurred. I want you to know this now before you tell me for sure that you want to plead guilty. Before I sentence you, I am going to listen to you fully. I am going to try and understand your account with all the fairness I can muster, but yours will not be the only account. I will insist that the child and the D.A. and the family also have an opportunity to express their version. To the extent humanly and legally possible, I will attempt to resolve differences to my satisfaction so I know what I am sentencing. Understand this, sir: On the moment of sentencing, I may be sentencing you based on my understanding that you repeatedly had intercourse with that child, not that it was merely one touching. Do you understand that? On that basis, are you still going to be pleading guilty?"

Only with that, then, do I think that we provide a secure appellate record, regardless of the sentence we decide. Only with that do we provide the basis for saying, "Sir, it wasn't just touching. You're going to prison for a long time. That does provide justice in this case. Don't come in here and minimize it because that is part of what gives me concern about your potential for rehabilitation."

Now, all of this very often runs the risk of making a plea negotiation dissolve. I would simply submit that sometimes when those plea negotiations do dissolve on that basis, dissolve they should.

MR. FISHER: Once the judges get educated, we prosecutors are going to be in trouble. We're going to have to explain why this plea and why this sentence is recommended. We gloss over

the facts when we read them in the record. We don't want the public to see what really happened. We don't want the newspaper to see what we are recommending to this judge.

MR. ELIAS: Someone talked about letting everybody know that a guy's a child molester. I'm going to provide all these citations later. California has Penal Code § 290 that's mandatory life-time registration as a sex offender if you're convicted of specified sexual offenses, regardless of whether you go to prison or not.

As it relates to what Judge Schudson was saying, we have what's called a *People* v. *Harvey* waiver in our Supreme court which says the defendant can state a minimal basis as to what is the factual basis for his plea. Under *Harvey* he's advised at the time of this plea, that we have "Change of Plea" forms, that the court can consider everything that's dismissed, everything that's been discussed, everything that wasn't charged, his whole prior record in deciding the appropriate sentence. Our California Penal Code § 1192.6 requires that D.A.'s state on the record why we're dismissing counts, why we're agreeing to a plea bargain before the sentence ever occurs. I'd be the one to go up front and tell the judge, "I'm going to take the heat for what happens. I want the plea to go down because I don't want the kid to testify."

We take pleas where guys get street probation and don't do any time. We took a plea last week where the guy's going for 22 years, pre-prelim, which really means 11 years under our sentencing laws. That's another thing our state just enacted: now the court has to state on the record at the time of sentence what the credits are when the guy goes to prison so that the press and the families get to know exactly what the real time is.

California is seen as sort of a crazy, bizarre state, and we do crazy things. But we have a speedy trial; law we have Penal Code § 1048. I've got a case now that's 14 months old, the defendant continually fires his lawyer, and when the new lawyer comes in and we've got a trial date that's been set, he stands up there and say, "Your Honor, I cannot adequately represent my client if you force me to trial right now." You're stuck in a box. You either force him to trial and it gets reversed, because now he's creating what we call incompetency error, or you relieve him because he's a jerk, and you put a brand new lawyer out who says, "I just got this case. I need X amount of time." I don't know a way around that. The only way I've been able to do that a little bit is with those cases where we end up allowing the first continuances, the judge makes them state on the record, "How much time do you need, and what is it, without revealing your defense, you have to do?" When they come back the next time they've either done it, or if he gets booted, that attorney doesn't get any court-appointed cases.

MR. LLOYD: Dr. Joseph Braga.

DR. JOSEPH BRAGA: *With regard to issues of sentencing, distinctions have been drawn between pedophiles, who prey upon large numbers of children in the community, and incest offenders, who limit their sexual abuse to their own children. Studies of offenders themselves, as well as reviews of large numbers of cases, suggest this is an artificial and misleading distinction. If a person can get beyond the taboo and prohibition of assaulting his own child to whom he is responsible for care and nurturance, why, other than convenience and safety, should he hesitate to prey upon children to whom he owes no emotional allegiance? From a perspective of interviewing children brought into the system because of suspicions of incest, asking the question "Do you know if he did this to any other kids?" often reveals other victims outside the home who would not have been identified had the question not been raised because of prejudices that incest offenders limit their abuse to their own home.

Protecting the confidentiality of children ought to be an important consideration in any proceeding. For example, judges should consider the use of children's initials instead of their names to protect their identities in the court record. Also, if a case is high profile, attracting media interest, judges need to consider such matters as entry to the courtroom that will shield the children from the waiting press and restrictions on photography and videotaping of the children's faces.

In addition, where video tapes of the children's early disclosures exist, judges ought to consider not only sealing those tapes for any purpose other than use in the legal proceeding, but also making sure they issue and enforce orders to prevent individuals who were given the tapes to review as part of their expert consultancy from showing them publicly or using them in any other manner.

Finally, to the extent that they can do so under the laws of their state, judges should consider ways to limit the audience of casual and media observers of children's testimony. Currently, there is considerable review of possible alternatives to in-court testimony in order to protect children who need it from the potential trauma of testifying in the same room as the person they've accused of abusing them. Even when children are prepared to testify in the presence of the accused, a jury, and normal

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courtroom personnel, consideration should be given to the additional embarrassment and discomfort which accompanies disclosing details of their sexual assault to an increasingly large audience of strange adults.

MR. LLOYD: People who have been wrestling with the issue of what do we really know, and what don't we really know about what happens to children who pass through various stages of investigation, prosecution, trial, and sentencing have come to know the name of Desmond Runyan and his colleagues down at the University of North Carolina Medical Center in Chapel Hill. At last, and certainly by no means last, Judge Sandra Butler Smith will be responding to Des at the end of his presentation.

DR. RUNYAN: I got into looking at the court process and sexually abused kids because I was interested in foster care, and did a study at the University of North Carolina looking at the impact of foster care on kids, using retrospective design and looking at social services. I got very frustrated with that and said, "I want to do a prospective design looking at foster care." The National Center on Child Abuse and Neglect said, "We'll fund you to do that study if you'll look at it among sexually abused kids." I said, "Great" and sent them a proposal. They sent it back and said, "You have the money, but there's only one small problem. You only have 17 months to do the study."

I had designed a four-year study. I sat and thought about it for a while and decided I needed to look at something that happens a little quicker than foster care and its effects. I sat in one lunch hour talking over with some other people what we were going to do with our dilemma, and we said, "Well, let's add the courts to it." That little afterthought at lunch has driven my life for the last six years.

So because of a combination of where the money is and that little afterthought, I've been introduced to a whole new audience. Now I actually talk to lawyers and judges, which I never expected to do before.

Part of our concern was there an awful lot of heat and very little light in the whole issue of child sexual abuse and what happens to kids. The way we find out about what happens to kids, we talk to adult survivors who have bad stories. And we talk to other people that say, "Oh, sexual abuse isn't that bad," or people who say, "Sex before eight or else it's too late." You get this distorted picture, either it's a little bit bad, or it's not bad at all. But all the data I've collected is from very funny places.

So, what I thought was needed was of a systematic study where you identify kids who are already out of the process, follow them forward, calculate indirectly what the risks are of bad

outcomes, and try to look at the process that's happened. So, we designed such a study in North Carolina. We collaborated with six departments of Social Service and convinced their courageous directors that they ought to cooperate with us in the study. We identified prospectively 100 children who had been sexually abused. It was supposed to be more than that, but 100 is what we got. We followed them forward for another 18 months to find out what happened to them. We've had an interview done five months after the initial one. We interviewed them initially when they first began the investigation process; five months later, and 18 months later.

In this process we do a systematic psychiatric evaluation. It was done the same on each of those times, but with some extra added attractions. The idea for us was that we were going to compare the kids who testified in court to the kids who didn't testify in court, the kids in cases where there were plea bargains and the kids that went through trial, and try to tease out some of the differences in some of the effects.

One hundred children was kind of small for that study, but we did the best we could with as many children as we could. That study had an organizing framework: David Finkelhor and Angela Browne have summarized a lot of literature on the effects of child sexual abuse and said that there come four dynamics, or four traumatogenic dynamics. These kids were introduced to sex in an unusual way -- traumatically sexualized. These kids are powerless; control has been taken over of their bodies by the perpetrator. They've been betrayed by adults who abused them with the adult's interest in mind. And, then, finally, they're stigmatized in their own minds and in the minds of society. People identify them, "Hey, those are sexy kids." We see them a lot. A lot of those kids and other kids that we see over the years have been victimized over and over again by other people after being victimized first within the family.

So, we thought those four organizing constructs in terms of how kids are affected by the process ought to be looked at to see whether the system, if it's exacerbating what goes on, goes along those same directions. We can traumatically sexualize kids by our interview process and our interview technique. Kids who didn't know what some of the bizarre things we wanted to talk about may have been introduced to some concepts of human sexuality they had never even considered before in the context of the questioning. We introduced them to dolls that had great big, giant genitalia and called them "anatomically correct."

We had lots of people asking lots of questions about things that happened, in a kind of poker-face, non-judgmental way. We're not supposed to indicate that we think that's bad, and we say, "Has your dad ever put his mouth on your penis?" We ask

those questions as if that's not at all unusual. Those are the kinds of situations we find ourselves in.

We certainly betray kids when we say, "This isn't going to hurt a bit," and it hurts, or we say, "I'm going to be there in the courtroom with you," and then something happens and we can't be there, or the courtroom is cleared. Or, "You won't have to be scared the perpetrator is going to see you afterwards," and other promises we make that we can't keep. We certainly stigmatize kids when we put them on the front page of the paper, which happens despite our best efforts in a variety of communities. We had a young child in my community of Chapel Hill whose name was put in the paper as an incest victim by virtue of the article's mention that some man was charged with incest with his 11-year-old daughter. It didn't take much imagination for the kids in school to figure out who that was. That child did not go back another day to that school system. The editor of the local paper defended his First Amendment rights to publish information that was public record. So, we certainly added to the stigma that child got.

On the issue of powerlessness: we have the adult come in and take over the kid's body, and then we have social workers come in and decide what's going to happen, we've got doctors coming in deciding what's going to happen, and we've got judges and lawyers. There are lots of people making decisions, and perhaps nobody is listening to the child.

So, each of those different areas that David Finkelhor and Angela Browne so nicely summarized from the psychological literature on the effects of abuse on kids, we need to think about as we think about how the system works.

That was the organizing framework of our setting. As I said, we have 100 children. We restricted it at the lower end to age six. The reason for that was because we couldn't find any reliable psychological measures that we wanted to use that we could generalize for the whole age range, and we thought that we would focus on the older kids. So, 6 to 18 was the age range.

The samples were recruited by contacting social services and asking them to refer kids to us. We asked them to give a letter of information about the project at the time they did their initial interviews, if they thought they were likely to substantiate them. The counties varied quite a bit in terms of their cooperation. Overall, I think we have about 75 percent of the eligible kids in those six counties referred to the project.

We use a Child Assessment Schedule, a structured standardized interview which is fairly child-friendly; in fact, the kids liked taking them. In many cases kids mentioned that that was actually a pretty nice interview. It was designed by a woman at

the University of Missouri who developed the instrument to train psychology trainees and medical students how to do a psychological interview. It's very supportive. There's a chance to listen to the child and then follow up on clues, and yet still can be scored in a reliable way.

We also used the Child Behavior Checklist, which is something parents fill out about their children's behavior, although we had concerns. A lot of people had concerns about whether asking parents whose kids have been victimized how the kids are doing makes a lot of sense, if in fact the parents haven't been in touch with the child's needs.

Obviously, we always asked other questions and filled other things in, but those are the main things. What we did was that the overall mean level of distress in the Child Assessment Schedule was exactly identical to the mean of the limited population of in-patient child psychiatry patients. Forty-four points out of a total possible of 196 was a mean score, and they ranged up to scores over 100. So, there were some kids that were quite distressed.

We took this as clinically significant. Our interviews were all done by either psychiatrists or psychologists, and they felt these kids were all distressed. It surprised us, in fact. The literature had generally suggested that kids weren't in that much need; as an overall group that the effects weren't that dramatic. We felt they were very dramatic. So, our data suggests they're worse off.

Five months later there was an average of 26 percent reduction in a lot of their symptomatology, as endorsed by those instruments. This suggests that in fact kids do get a little better over time. Those were the general findings. The other observations I should make is at the 18-month follow-up a lot of our other findings disappeared; we couldn't find a lot of differences between kids at 18 months. Part of that may be attrition in terms of sample size.

At the five-month level we had 76 kids that we had the full measures on out of the 100 that we started. We lost some because we couldn't find them. Either they moved out of the state or wanted to join the Army or other kinds of things. Continuances and the issue of testifying were the two things that we were interested in.

Continuances were forced on us because very few trials had actually been conducted. So, we had to look at the continuance effects. We hadn't originally intended to study the continuances issue, but what we found is that while in general the kids were getting better, the kids who were getting continuances weren't. They made a very modest improvement, about 11 percent improvement

in their overall reduction in their score. In contrast, the kids who were not in the criminal court process made a 32 percent reduction in their score, and that was statistically significant. We found several other variations in that, which suggested that depression and anxiety all went in the same direction, but not all of them reached statistical significance. What we found was the continuances were really hard on kids.

In terms of testimony, we found that only one kid actually testified in the case that actually came and went to fruition in the five months that we had the usual follow-up. As it turns out, none of the kids ever testified after that five months. So, even though we felt that five months was too early, when we did the 18-month follow-up most of the rest of the cases that hadn't been tried at five months still hadn't.

Twenty-two kids were described as waiting in limbo when they were at five months; there were going to be criminal prosecutions but they were in limbo because of the continuances and whatever, and the kids didn't know when the trials were coming or anything. We asked them what they knew about it. Those kids didn't make progress and their depression scores hadn't changed, while the other kids' had.

Testimony was the other thing we looked at. There are 12 kids who testified in Juvenile Court, and of those kids who testified in Juvenile Court, the Juvenile Court group, overall, was among the worst. Their average score was 56 points on the scale of high risk, and a difference between 44 and 56 is clinically quite significant, according to both our psychologists and the person who developed the test. So, the kids who were ultimately going to testify in court were much worse off. The kids who testified were 20 times more likely to improve by one standard deviation on the scale than the kids who did not testify. We didn't look at criminal court because we had, as I said, one child who testified at five months, and the rest of the cases didn't happen in our jurisdictions before we were all done. So, we really can't answer the questions about criminal court.

We tried to look at a variety of things like what happened to the perpetrator got off, and we discovered the numbers vanished in terms of confidence. So, we really were not able to extrapolate beyond that.

There are a couple of other things that we observed in all of this. One was that maternal support was very important. One-third of the kids had their mother decide to support the perpetrator instead of the kid. There were some very clear differences between mothers who supported their kids and the ones who didn't. The most obvious was the perpetrator who was the mother's boyfriend in the majority of the cases where the child was not supported. The mother didn't see it as incest, didn't

see it as a violation in that kind of sense, but instead saw the child as the competitor with her. "My daughter is the other woman," one said to us.

We found very clearly that teenage girls were the least likely to be supported and that young boys were the most likely to be supported by the mother. There's some very clear differences there. Maternal support appeared to be very important in one other thing, and that was who went into foster care. It appeared that that was a very important factor with social workers as to which kids went into foster care.

So, in summary, the maternal support was a very important variable in determining how the kids were doing and, also, apparently, in determining what happened to the kids and how they went though the process.

We learned a couple of other things in terms of watching all this. We had some of our investigators sit in the courtrooms and watch these kids and the courtroom around them. We were impressed with several things: one is that very few lawyers knew how to interview kids or even are comfortable around kids. That was not just the prosecution; it was also the defense. We saw an awful lot of very bad work with kids -- perhaps the majority of cases. It ranged in two directions: One is the interviewers were so direct and so offensive that they upset the courtroom and the kids were upset, or the other is that they were so gentle and mild that they were ineffectual and couldn't get the data out. They just weren't very good at that.

The other thing we observed is that everyone had an excuse about lack of time for doing poor work. Over and over again we heard the poor things that were done: people didn't talk to the kids ahead of time, people didn't talk to the doctors ahead of time, this didn't happen, that didn't happen. The answer was always, "Well, they just didn't have time for it." Yet these cases would come back to court four or five times for continuances, whereas if all that work had been done in the first place there might have been a net savings of time. Time was something that everybody felt acutely, and yet they wasted an awful lot of it in all kinds of situations. There are people that are experts in time and motion management, and maybe the courts would be a place for that kind of intervention to come in. It seemed like an awful lot of time sitting around cooling one's heels, but at the same time people were saying, "We don't have the time to do this case right, to do this right."

I guess the final thing was the preparation of kids. With all of our 100 kids, the social workers said, "Yes, these kids have been prepared;" all the kids that went to court, "Yes, they've been prepared." Well, how had they been prepared?

"Well, I talked to them." There were no organized programs for preparation of kids in any of the jurisdictions that we were working in, and yet all these kids were prepared. That seemed to be the party line. They said they all got preparation for court because that's what we're supposed to do. But yet, in fact, it looked like that didn't happen.

And, finally, one last observation; it was case number two in our series. It was a 15-year-old girl who was sexually molested by her mother's boyfriend. The mother's boyfriend left the home but the mother was still enamored with the boyfriend. The 15-year-old was very determined to testify in court when she came in for our first interview. She was very determined to go after the guy. She was very angry, very forthright, and a very impressive young woman. Her case was continued five times. She came to see us at the five-month interview, and told us about these five continuances, said the perpetrator had attempted to run her over with a car on the way home from court on each of the five occasions.

The interviewer asked, "Well, did you tell your social workers?" And she said, "Well, I don't have a social worker." Our interviewer asked, "Well, why not?" She said, "Well, Social Services closed the case because it's in criminal courts." And our interviewer asked, "Well did you tell your guardian ad litem"? She said, "I don't have a guardian ad litem because it's not a juvenile court matter." There was no one that she told about these attempted running-over. Her mother was still enamored with the boyfriend, so she didn't tell her, and there was no one else she talked with.

A week after we saw her, she ran away to Alabama, so she's now a problem of Huntsville or some place. The case was dropped the next week by the prosecutor because the witness was no longer available.

Well, I guess I'll leave you with that. Overall, I have a lot of mixed feelings. I didn't think that people who abuse kids ought to get away with it, but it seems to me an unequal contest to have kids come into a courtroom; it's supposed to be equal. They need equal advocates to equal grown-ups who have all the things on their side. I'm convinced after watching what's going on in the cases in North Carolina that money does make a difference, that the rich defendants can find a private psychiatrist who will say they're in treatment, whether or not they're in treatment. The defense attorney can age the case and the defendant will essentially never serve time. If you're poor and black, you're more likely to get a plea bargain or go to jail; if you're rich and white, you're more likely not to go to jail. The combination of that and the unequal contest with kids just makes me despair that this is a system that wasn't designed for kids. I wonder if we can't do better by starting over.

MR. LLOYD: We now have Judge Sandra Butler Smith, from the Municipal Court for the Stockton Judicial District, Stockton, California.

JUDGE SANDRA BUTLER SMITH: I am not going to stand up here and be an apologist for the system in terms of kids in court. I really can speak from experience in that. I've shared with some of you the fact that I myself was a molested kid, although it never went through the court process. But I start from that background, go on to the fact that I was a prosecutor for a number of years in San Joaquin County. In the early days when the only other place in the whole United States that was really doing child molestation prosecution was Los Angeles, I started doing them simply because a social worker got in "under the radar" and brought me a case. There was a kid named Amy, and I had a kid named Amy -- these things happen and I ended up prosecuting the case.

Lo and behold, because I ended up prosecuting the case, the police agencies, who had routinely been investigating these cases, routinely been taking them to the District Attorney's office and routinely having them dumped in the garbage can, found somebody who would actually prosecute them. So, I ended up doing them all. I always kept a homicide on a back burner; I always kept a murder case because they were so easy. I never had a murder victim who gave me a bad time. On top of that, long after I went to the bench, my youngest daughter and her best friend were victims in a molest. It was touching of breasts of girls that came through a teacher's class, including my daughter.

At any rate, I became aware of it at the point where there was a police investigation. My daughter hadn't told me. I talked to my daughter, she said, "Oh, yeah, well, you know, he's just weird and we all know it and we all ignore him." The prosecution came to me -- you know, even in San Joaquin County they know that I have somewhat of a reputation. So they came to me and said, "Hey, here's the deal, we're going to really go after this guy."

And I said, "Don't. You're never going to get a conviction on this case; the reason is because the acts were not that perverted. You will never get a conviction." But the prosecutor who was involved had a bigger ego than I did, and he was determined he was going to show me that he could prosecute this case to conclusion and get a conviction on it. He went ahead and subpoenaed these kids, who all said, "We don't want to go do this." They went ahead with the prosecution. My daughter was brutalized in the courtroom, absolutely brutalized.

They brought back a retired judge. He put on a good show in the courtroom of being very patronizing to the kids, but the minute they were out of the courtroom, he did all kinds of things

to clearly indicate to the jury that this case should never have seen the inside of a courtroom. I happened to agree; I don't think it ever should have seen the inside of a courtroom. However, it was there, and the kids deserved to be treated with respect. He turned it into a circus.

I went in and heard the verdict, and when they said, "Not guilty," the defendant's supporters jumped up and down and screamed and yelled and clapped. They had brought in kids from the school who had not been bothered by him who all would run up and hug him in the halls and do things. It was a circus. So, my kid and I, personally, because it happened right down the hall from my courtroom, were victims of this very system that we're talking about.

Also, on the bench I have sat through innumerable cases of this sort, and, like other judges who were here today, kids get a lot of deference in my courtroom. As far as just coming in my court, it has not been an impossible experience for any of them -- certainly an unpleasant experience many times, but not awful.

So, I think I've got a wide range in background in terms of what happens to kids in court. I am now going to turn around and say, "But I've got to stand up in some ways for the judiciary." A lot of us forget, because we get caught up in the day-to-day life of what we do out there, that we have come a long way. I'll give you just a couple of examples.

There is a guy in the Los Angeles Area by the name of Armand Arabian, who is now in the Court of Appeals in California. He has never been known as a particular friend to women or a particular friend to victims. He was a Superior Court Judge, and in 1964 he had a case before him, a rape case. In that rape case they were going to give the admonition to the jury, as was given in all rape cases in California at that time, "This is a charge that is easily made and difficult to defend against." That was read in every rape case in California.

The prosecutor said, "I don't want to give it. I am willing to take my chances on appeal," and the defense, of course, was screaming bloody murder. Of course, you have to give it. It is in our instructions, you have to give this. Judge Arabian said, "I'm not going to give it," and he took heat from the entire bench on which he sat. He was given a bad time by everybody there. He was given a bad time by all the defense bar, and he did not give it. There was in fact a conviction; of course, it went straight to the Supreme Court. It's the *Rencon Pinada* case, and it threw out that instruction. The instruction no longer exists in the state of California. He did that simply because it didn't seem to him to be fair. He stood in the face of all the other people on his bench, of the whole defense bar. He took a stand.

You talk about how you can get judges to listen to judicial education, how you can get judges to learn about this area. Even if they don't want to do it out of good motives, how you can get them to make the courtroom and the system a better place for kids, or victims in general.

You talk about kids, but when you talk about making the courtroom accessible and making it a place where children can be heard, you're really talking about all witnesses, whether they're victims or just witnesses. You're really talking about simply making it available.

As of January 1st, 1987, all the budget for training California judges comes out of general fund of the legislature. A group of people like you got together and said, "Legislature, we want you to mandate that 10 percent of that money that's used in judicial education be used to train judges on children in the courtroom," and it passed. What legislator is going to say, "No, we don't think that should be important"? They all jumped right on the band wagon. Fingers planted firmly in the air, they got the drift, and they knew in '87 that they should be doing this.

So, 10 percent of the budget goes for training judges about children in the courtroom. I was put on a subcommittee that decided how to use that money. One of the things we did -- and it was actually kind of a throw-away, but it's been an incredible experiment, and one of the things that I am going to suggest to every state in the Union that they look at -- we decided to have a "Transfer of Knowledge" workshop. Now, it happened like this: there were four of us on the committee. We decided that we should bring together people from various counties and see if we couldn't restructure the way counties handled kids as they went through the system, not just the court process, but through the whole system to the end of prosecution, or whatever was going to happen to that child ultimately.

Well, we chose ourselves. There were four judges, and we all said, "Well, let's use our counties." So, we had Santa Clara County, Orange County, Fresno County, and San Joaquin County. We put together teams from our county, and we decided to pick the people. We put together the people that we thought would be the most instrumental in changing the way we dealt with kids in our county.

One of the most important decisions we made from the first was "We are not going to bring front-line workers. We are not going to bring the people who know the most about this. We're going to bring in the people who have the bucks, the people who have the power, the people who can make changes happen." We brought in one of the members of the Board of Supervisors. We brought in the head of Human Services, our welfare department; we brought in the head of it, not Child Protective Services, Human

Services. We brought in the Chief of Police, we brought in the Sheriff, we brought in the head of pediatrics at our county hospital, and there were 13 of us altogether, plus we brought the presiding judge of the criminal court, the presiding judge of the juvenile court, the judge that handled family law, and the Community Court judge.

We had the people who actually controlled the money and the resources that were available when this happened, got them all together. One of them was a judge who has no great love for victims of rape or child abuse. Everybody said, when I said I was inviting him to come, "Oh, God, Sandy, have you lost your mind? This really proved that you've gone over the edge." But I said, "No, we're going to bring him in."

He came, and we had about three-fourths of the day of education. We brought in people from various programs, and we had them talk. Lucy Berliner came and talked about abuse and molest and all that stuff. Then we broke apart into our various counties and just said, "Okay, Now we have the information, What are we going to do about the way we handle kids?"

As a result of that, we completely trashed the way kids were handled in our county; there was absolutely no disagreement. They were horrified to find out that kids were being interviewed 16 times. Not only did we talk about what was going to happen in terms of investigation and in terms of sharing information and in terms of protocols for that investigation, we got so far as talking about how we could reorganize the courts to make it a better place for kids. Some real simple things in the first place, just in terms of sharing orders and always deferring to the juvenile court in terms of stay-away orders because they had the most information.

We did all that, but on top of that we even talked about reorganizing the courts. So, shortly after that, the same judge who everybody thought I was out of my mind to invite in the first place had a case in which a man pled guilty. He was a very large developer in San Joaquin County, built beautiful custom homes in Lodi. He came in and pled guilty to molesting his step daughter. In exchange for not going to prison, which is really where he belonged, the judge is allowing him to build a 5,000 square foot home for the new Child Advocacy Center. He is doing that, and he's also in treatment and is doing some other things. He has to build the shell and put in the basic wiring and the basic plumbing and all that.

The judge had his consciousness raised, I like to think. He's actually a doer, and he just had never learned about what was going on. It was an incredible experience to see that change in him, and he put in the order of probation that the plan had to

be approved by Judge Smith. So, I get to say yes or no whether or not it's going to work.

So I guess the message that I'm trying to make with this is that I think it's fine to sit around and say that judges should know X, Y, and Z; it's fine to sit around and say that prosecutors should be doing X, Y, and Z. It is not enough to say that I have no triggering mechanism for making that happen.

I am suggesting that the triggering mechanism to make that happen is money; is to know where your money comes from, to know who spends that money, and know how to get at it. The reason this worked in these four counties -- Orange County has done incredible things with what they have done, Santa Clara has made big changes, and so has Fresno as a result of this -- was the knowledge that we, first of all, had access to these judges by virtue of the legislature saying that 10 percent of that money had to be spent in this area. But, secondly, we brought in and educated the people at the top, not the front line workers. Front line workers know what we need; they don't have the resources, the power, to make it happen. It's the people at the top who have the power to do that. I am suggesting in each of the states that you come from to look at what judicial education has done.

The reason it worked was judges. The reason that we got the head of Human Services to come was because we had four judges. Now, we judges who are here, we know we really don't have any power. We have power if you're standing in front of us. But outside of that, we don't have any power. But we have apparent power, which is almost as good as real power. People think we have power. So, consequently, they usually want to try to please us.

So, it was the fact that we had four judges there that made the head of Human Services come, that made the Chief of Police come, that made the Sheriff come. That was what made this work.

In each of your states, look and see what the structure is the start at the top. I long ago gave up on people's good motives, You either are interested and you're going to do something about it and you're going to get educated on your own, you're going to be receptive to it, or you're going to have to have it shoved down your throat. I don't mind doing it either way.

If you want to hear what we have to say about how to make this better, I'm glad to approach it that way. On the other hand, if you don't, then we'll approach it the other way. As far as legislation goes, I think I am in complete agreement with Charles that I don't think we need a lot of changes in the evi-

dence law to make this a more comfortable place for kids to be. I think that the inherent powers of the court allow us to do that. There was one piece of legislation passed in California that I think was very helpful in terms of kids in court, and that was 288-C, which says you've got to take the best interest of the child into account.

Now, that really doesn't say anything. That's not a mandate to do anything. It really doesn't tell the court anything. What it really does is give the court permission to be a nice guy. And it's helped. It's used a lot of times by attorneys, and the judge can say, "Well, see, it's the law. I have to take this into account." It's not anything that they didn't have the power to do before, but at least now it's codified, and they know that they can do it.

So, I don't think that we need big changes in the legislation in terms of evidentiary things. What I do think we need is to look at the structure as a whole and determine how we can legislate to put power and money in a position where we can change the whole system. And I am with Kee completely. Dr. David Corwin and I have had many an argument. I keep saying, "David, the cases we see in court are the tip of the iceberg. They are not the big problem here. The big problem is where this whole pool of cases came from in the first place." I think we should address the problems that are in the court, but the bigger problem lies underneath, and that's where the legislation needs to be. That's where the accountability needs to be, that's where the money and the power needs to be going -- to intervene before the cases ever get to court.

MR. LLOYD: Mr. Fisher will begin the discussion.

MR. FISHER: When you see this child, she smiles and she plays, and she masks perhaps some true feelings. We talk in the abstract about this area for that reason. I think we forget frequently the real damage in the intrafamilial, nonviolent penetration. For that reason and the shock value it has, I carry around my little package of horrors. I've used them for social workers who really wanted to keep the family unit together at all cost, I used it very effectively in seeking legislative approval for every proposal, and I'm going to use it today.

I'm going to pass a photograph around of this child. I knew her personally, and I know all the things I'm telling you are true. This photograph was taken sometime the day after her nonviolent sexual assault. I think it brings home a thing that we're really talking about. Everybody needs to look at it because that's what we're talking about. We're talking about the adult male, in this particular case, who could do that damage to that child.

Bringing it back to a realistic perspective, look at it, get sick at it, but understand that there are a lot of other issues than prison space, cases and how we cure it. That child is 11 years old.

MS. McNEES: I would like to carry this a little bit further. This is something that really has bothered me all along. It really gets to me when the defense attorney gets up and tears apart children on the witness stand, and seems to have this intense desire to prove that his client is not guilty. And that is the inherent -- the absolute responsibility that the judicial system has to the rest of us in society. All of the research shows the horrible impact that one child molester can have on the health of future society. Yet we still go through court, we go through trial, we go through sentencing hearings and end up with a man who might get a sentence but ends up on the street in a year, two years, four years, and we're right back to square one. We're still not concentrating on the responsibility of the judicial system in keeping society a safe place.

MR. ELIAS: I want to change to an altogether different topic. I was hoping you were going to comment a little bit about some of the prospective studies, to give some ideas on some of the things the whole interdisciplinary field is looking at, trying to make some assessments as to where we're going in the future.

DR. RUNYAN: I'm happy to do that. Actually, Judge Smith, I understand, has now joined our Board of Advisors. I'm involved with a group from UNC, (University of North Carolina) and Patti Toth over at the National District Attorneys Association's National Center for Prosecution of Child Abuse, as well as the staff we have at UNC, on a collaborative project in which we're attempting to prospectively assess the impact of the court process on kids. As I indicated before, we had done this in North Carolina and had problems in terms of numbers. We decided to try and go for a larger sample size and include within our study design some things that we could do to modify the court process. In San Diego, Harry's part of that program team that's designing modifications in the court process there. We have similar teams in each of the other cities where the local prosecuting team is getting together with social workers and the judges, people are making some decisions about how they're going to handle cases in their community. We have a research design that will accommodate looking for changes in trying to assess whether they make a difference for kids.

JUDGE SANDRA SMITH: *The California Child Victim Witness Judicial Advisory Committee Report to the Governor* was prepared over a two-year period by an Attorney Generals' commission which was headed by Judge Len Edwards from Santa Clara County. It had two other judges on the commission, as well as social workers,

researchers, and the same sort of interdisciplinary things that we're talking about here. They came up with a five point plan that included much of what Harry was talking about here in terms of a family relations court. They let the criminal court out of it; they deduced that the changes that would have to be made in California in order to make a total court, if it included criminal, were too great. They did suggest a family relations court in which all issues of divorce, domestic and juvenile -- of all the orders that go along with that -- be handled in a domestic relations court, that it be done by a judge who has special training in the area of children, and who must demonstrate that special training in the area of children. It recommends that there be a Civil Superior Court, a Criminal Superior Court, and a Domestic Relations Superior Court -- not Domestic Relations, Family Relations, Superior Court. In other words, three equal parts of the Superior Court. Also, that there be child advocacy implemented in the state, and that certain changes be made in the evidence and the procedure laws in the state.

It was a total look at how California handles these cases and a total attempt to address those problems. As a result of that, there is now before our legislature a piece of legislation that would mandate four or five pilot programs in which these things would be implemented. Now, of course, the problem with that is there is no money, but since we've got this core going, I'm going to see if I can sell them on the idea of trying to do it.

MS. MacFARLANE: I just wanted to say one thing that's stuck with me all the way through today. It's just a thought about the concept of educating judges. I thing it's really important to educate judges to the extent that we can with the vehicles we have about the general aspects of what children needs are. There are two parts: Children's needs, and Victims, sexual abuse victims, and what they're like what they need and that sort of thing. One of the things that is probably needed for a lot of very young children are people who specialize in this. That specialty takes a minimum of four years, and sometimes a lot longer. When I meet with people who have had training, it just strikes me that they know how much they know about kids and how important it is.

When we talk about training judges, we need to be very careful that we not substitute a couple of days at your judges' training, or a couple of hours at a seminar for what is really needed in the courtroom. The people who are there, we need the judges to only see them as being an adjunct of them, somebody who's there for the judge, not necessarily for the kid, because you're talking about keeping the courts fair. Every time I hear that sort of thing I know it really means fair for the defendants.

Keeping courts balanced, maybe, is a better way; that person is there to deal with the funny, little alien population that comes from another planet that doesn't speak our language any more or we don't speak their's any more. They're there to work for the judge and make sure the judge's courtroom isn't a toxic place. Because I go to the court with children, nobody has suggested that if I get a couple of hours training I could prosecute the case. Child development is a real specialty and you could tell judges about the short sentences children use, their cognitive ability. That's fine, but let's not be deluded into thinking if judges get that they become child development specialists and, therefore, we don't need more, because I think we do.

COMMANDER DUNLAP: Following along with that, the whole concept of the teamwork approach, we need to respect each other's positions. The judges must respect those professionals who have had years of training and experience. Part of that training as judges needs to be treating you with the proper respect. At the same time professionals in the field need to respect the fact that it is the judge who makes certain decisions in court. Maybe we won't agree with decision that the judge makes, but we must respect the fact, like it or not, it is the judge who makes that decision.

MS. MacFARLANE: I have full respect with regard to legal decisions. I don't presume to think that I should have the right to make that legal decision. When I see judges making decisions that have to do with a completely other discipline, like what a child understands or is capable of, or whether a child should be brought into a courtroom shrieking and crying in somebody's arms, I don't respect that because I don't believe that they should be in a position to be able to do that to a child when it's not necessary. It's not necessarily something that is going to have a legal effect.

I don't know quite how to put that. One of the things that Lucy Berliner says, and I truly agree, is it's a danger that we have to watch out for in our galloping ahead in all of our interdisciplinary coordination, that -- and it's happened to me -- we tend to become meshed in a way that we lose sight of our own goals. I'm trying to get more legal, and I'm forced to look at it from a law enforcement perspective. All of that's good, but sometimes boundaries get all mushed together. People need to stop and say, "Here's what I know about it, here's what you know about it. You do this, I'll do this, and we'll watch each other."

We don't want to make prosecutors feel like they have to be therapists. Harry's convinced me of that. Their first job isn't the best interest of the child. That's sort of like something that they want to keep in mind. Their first job has to be with

the legal thing that's going on, and that's okay. It is okay to have different goals. We can't all become the same creature.

MR. LLOYD: I think perhaps Ms. Medley is saying something that I wonder about, and that is: in a situation where the judge has a poorly trained D.A., you're not suggesting that it's the judge's role to save that case, are you? In the family court are you suggesting that the judge save the case of the plaintiff, whose attorney doesn't know how to present the evidence with respect to an allegation of sexual abuse?

MS. MacFARLANE: Is that what you're saying? Cross the boundary? Some of the concerns that parents are making are in fact more appropriately directed to unprepared attorneys.

MR. ELIAS: That's right. A judge has an obligation to see that justice is carried out, but also has an obligation to assure complete impartiality to all of those that are around. There's no question a judge, at least in our state, can intervene at any stage of the proceeding, ask questions, call witnesses, if he/she thinks it's appropriate. I think those occasions are few and far between. Part of that reason, I think, is to avoid any appearance of anything other than impartiality. There are in fact occasions, and I've seen occasions in our courtrooms, where judges have seen things turn disastrous right in front of their eyes. Out of an obligation of fairness and impartiality, really, for the whole system, they have taken a role. Obviously, I as a trial lawyer do not want an activist trial judge. But I do want someone there who will, if either I or anyone else in the courtroom who is a participant loses sight of what is supposed to be going on in there, and not be so fearful to just sit back and do absolutely nothing.

MR. LLOYD: Some comments from the observers? Please identify yourself for the record.

DR. ROLAND SUMMIT: I'm Roland Summit from Los Angeles. There is something fundamental I want to say, and it's so fundamental it may seem to be irrelevant. I think the greatest irresponsibility of the judicial response has to do with the definition of the relevance of the courts to the problem of child sexual abuse.

The problem of child sexual abuse goes beyond any single question of what you do with the people who commit the sexual abuse. It goes beyond our other vested interest in protecting the children who are sexually abused. It has a lot to do with the fact that sexual abuse has been rampant probably throughout human history, and it will continue to be rampant, no matter how many convictions there may be. The whole hope of deterrence through threat of incarceration is an ideal that can't be

ignored, but if it becomes the do-all or end-all primary concern, then without realizing it, we're forgetting what this problem is.

Harry pointed out very well the proportions of relevance of numbers of children in the court system. If we compared these children to the number of children who have been sexually molested, abused, sadistically penetrated, threatened with all kinds of terrific harm, then we would have a flat line here which represents the horizon of a sphere so large that it doesn't even seem to be in the same universe.

As I calculate, about 1,400,000 children will be sexually molested this year. Only a relative few will dare to tell anyone of their experience. If each one of those was relevant to the court system, we'd have to build not just new techniques of court hearings but new cities full of courtrooms.

Now, that's really not the thrust of my argument. What I want to say is that the relevance of court decisions can be both positive and negative. Creating deterrents and establishing the reality of a certain amount of crime is positive, but the other side has to be considered, too. We have very little sense of a public health or preventive or an expository model of child sexual abuse apart from the reporting of crimes for child protection or for deterrence. What we could learn from the bulk of the cases, the normal cases, is observed by preoccupation with the few cases that are argued in court.

There tends to be an ownership of any reported case within systems that will lead to judicial review. The illusion is that what is meaningful is that which is validated by judicial review. In the absence of a public health forum, court outcomes tend to be the public's ultimate test for credibility of children, tested against a century of prejudice that assumed children are lying about these things unless somebody in authority can prove that they're telling the truth.

If the criminal court is the bellwether for reality of child complaints, then we have a lot of strategic problems that we've discussed today about whether or not children can express themselves. But even if all the possible reforms were accomplished to create perfect justice in the criminal courtroom, the criminal courtroom is a system, not to define the nature of the crime and not to determine whether or not a crime has occurred, but to find whether or not some specific individual can be held accountable beyond reasonable doubt for committing that crime.

Everyone knows in other kinds of crimes that the failure to convict on various technical and constitutional grounds does not imply that all the witnesses in that trial were lying Neither does acquittal of a conventional crime imply that no crime occurred. But we've never quite reached that alternative reality

when the courtroom is used as a test for the existence and nature of sexual abuse, rather than a test of the guilt or innocence of the accused.

Where that becomes really important is that there is no mature body of knowledge of scientific authority that defines a common sense of what sexual abuse really is about. The cornerstone of psychiatric therapy was based upon a fundamental flaw in theoretical development, in which Freud decided that the majority of people who talked about childhood sexual contact with people in authority were making it up, out of their own grotesque need to see themselves as special. Complaints of that nature were thought to be a reflection of some form of mental illness. This view became fundamental in forensic theory as well. John Henry Wigmore taught that anyone who made such a complaint should be presumed to be mentally ill unless certified by a competent psychiatrist.

We're tending to reinforce that same argument by the preferred use of psychiatrists and Ph.D. psychologists for evaluations by complaining children and for expert testimony in family law, juvenile protection and criminal hearings. No one seems to acknowledge what I believe is an overwhelming paradox of presumed authority versus genuine expertise. The real expert in the upstart field of child sexual abuse is likely to be the social worker with a Master's Degree who has spent five or ten years working with sexually abused children. The least qualified may be the dean of psychiatry at the local medical school. Yet prosecutors continue to shop for senior male psychiatrists to enhance the credibility of children. As Judge Schudson said, the theory of the adversary argument is that in the friction between diametric points of view, the spark of truth will be struck off. However, if the friction exists between adversarial positions which, on one hand, insist that children are only parrots echoing the cues of whomever asks them questions, and on the other assume that children typically make up fantasies of sexual encounters, I think it's very hard for a little kid coming into a courtroom to be the one to say the emperor on both sides has no clothes.

The point I want to stress is that the net effect of court arguments is to discourage the case finding and therapeutic endorsement that is vitally needed by child victims as a whole. All of these 1.4 million children should have an equal opportunity to tell somebody that they were molested, equal access to somebody who would believe they were molested and endorse the reality of the experience. Among the five to fifteen percent of false or misplaced allegations, most would be recognized as such in multidisciplinary review. The specter of false accusations would be less horrific if those complaints were investigated more discretely and if they were not so inevitably linked with criminal charges.

The criminal court system is seen as the ultimate test of whether or not abuse happens, and yet it entertains arguments which have no basis in fact or experience. The prevailing argument, that children merely reflect the bias of overzealous interrogators, gains credibility not from human research but from outrage. It was coined in Jordan, Minnesota and advanced in the McMartin case in response to allegations that were so odious and bizarre as to demand a more reasonable explanation. These isolated, stereotypic cases of ritual abuse allegations are vastly atypical of all other known child abuse. With at least 50 cases known to the western world there is an obvious need for careful investigation and reasonable understanding -- understanding that will not emerge in premature, dialectic explanations. At the very least, arguments coined to explain new, unexplored phenomena should not be allowed to be generalized to discredit all children and all investigators who are trying to communicate about the more familiar, far better studied patterns of sexual assault.

An argument is created and empowered through successful repetition in adversarial hearings that a clinical, empathic, directly questioning interview with a suspected victim of child sexual abuse is dangerous to adult civil rights. Although child abuse is almost never discovered except with pre-existing suspicion and deliberate probing, this forensic argument attempts to discredit everything a child may say to an adult who betrays a willingness to believe that abuse could occur. That believing adult may then be blamed for contriving false charges. A parent with that brush may lose custody of the complaining child to the other parent named as abusive. A clinician so charged can be sued in federal court and publicly humiliated.

The court system becomes dangerous to children as a whole when adult exculpatory arguments diminish the pool and punish the effectiveness of those who will ask questions of children. There has to be, in addition to the courts, a much broader child-centered system, much more open, using a standard of proof far short of "beyond reasonable doubt" to help children communicate with somebody safely, without risk of either conversant coming into the criminal court as a witness or into a civil court as a defendant. Anyone named as a potential suspect in that conversation would also deserve careful protection against preemptory arrest and public exposure. If child protection and victim rehabilitation are to be held at least as important as criminal sanctions, we need to conceptualize and endorse some no-fault sanctuary where a child can confess an otherwise paralysing, ultimately guilty secret.

MR. LLOYD: Are there any questions or comments? I want to thank you on behalf of The National Resource Center on Child Sexual Abuse. Thank you all.

APPENDIX A

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The National Resource Center on Child Sexual Abuse

A Collaborative Effort of
The National Children's Advocacy Center
and The Chesapeake Institute

APPENDIX B

THE NATIONAL RESOURCE CENTER ON CHILD SEXUAL ABUSE

The National Resource Center on Child Sexual Abuse is an information, training, and technical assistance center designed for all professionals working in the field of child sexual abuse. The primary goals of the Resource Center are to advance knowledge and improve skills. We pull together a vast network of information comprising the expertise of outstanding leaders in the field to help professionals better respond to child sexual victimization cases.

The National Resource Center on Child Sexual Abuse is a collaboration of the National Children's Advocacy Center of Huntsville, Alabama, and The Chesapeake Institute, Inc., of Wheaton, Maryland. They share a commitment to a child-focused multidisciplinary approach in the investigation, treatment, and case management of child sexual abuse.

The Resource Center offers state-of-the-art information, consultation, and training to all agencies and personnel involved in protecting children through an array of services:

- Information Service, providing consultation and referral for professionals through a toll-free number (1-800-543-7006), and the preparation of selected bibliographies and other reports.
- Roundtable Magazine, a quarterly publication offering a central ground for open communication through timely articles, book reviews, conference notices, columns on the personal side of working with child sexual abuse cases, and a gallery of children's artwork.
- Multidisciplinary Training and Consultation, in comprehensive conference programs and internships exploring practical aspects of investigation, management, treatment, and prosecution of child sexual abuse cases.

Alabama Office
106 Lincoln Street
Huntsville, Alabama 35801
1-205-533-KIDS
Maryland Office
11141 Georgia Avenue
Wheaton, Maryland 20902
1-301-949-5000
Information Service
1-800-KIDS-006

- Think Tanks, dynamic forums for experienced practitioners and researchers to explore current knowledge of critical issues and point directions for future work. (Reports of the proceedings may be purchased.)

- Targeted Assistance to foster culturally based competence in addressing the ethnic and cultural needs of children and families in the context of child sexual victimization, and to foster increased participation of minority professionals in the field.

GOALS OF
THE NATIONAL RESOURCE CENTER ON CHILD SEXUAL ABUSE

To provide information, training, and technical assistance to professionals working in the field of child sexual abuse

To help bridge research and practice

To serve as a model of interagency and multidisciplinary cooperation

To identify successful and newly developing treatment models

To support the professional and the field

To become a center of leadership and excellence in the field