"CHILD ABUSE - A MEDICAL / LEGAL TRAINING PROGRAM"

PRESENTED BY THE
OFFICE OF THE DISTRICT ATTORNEY
SAN DIEGO COUNTY, CALIFORNIA
EDWIN L. MILLER, JR.
DISTRICT ATTORNEY

MARCH 24, 29, and APRIL 5, 1977

6:30 P.M. - 9:30 P.M.
ROOM 151
2901 MEADOWLARK DRIVE
SAN DIEGO, CALIFORNIA

"CHILD ABUSE" - A MEDICAL/LEGAL TRAINING PROGRAM

Limited to Deputies and Investigators
of the Office of the District Attorney

LOCATION: Room 151 (Probation Department)
2901 Meadow Lark Drive
San Diego, California 92123

DATES: March 24, 1977
March 29, 1977
April 5, 1977

PROGRAM SCHEDULE

MODERATOR - Deputy District Attorney Frank R. Costa,
Training Coordinator, Office of the San Diego
County District Attorney
Phone: 236-4966

March 24, 1977 -	"Introductory Comments" Frank R. Costa	6:30 p.m. - 6:40 p.m.
	"Medical Aspects/The Battered Child" Capt. John Schanberger, M.D.	6:40 p.m. - 7:40 p.m.
	QUESTIONS, COMMENTS	7:40 p.m. - 8:00 p.m.
	BREAK	8:00 p.m. - 8:15 p.m.
	Dr. Kenneth Miller, M.D.	8:15 p.m. - 9:15 p.m.
	QUESTIONS, COMMENTS	9:15 p.m. - 9:30 p.m.
March 29, 1977 -	"Child Abuse/An Overview" Ms. Sandra Morris	6:30 p.m. - 7:30 p.m.
	QUESTIONS, COMMENTS	7:30 p.m. - 7:50 p.m.
	BREAK	7:50 p.m. - 8:00 p.m.
	"The Law and Case Preparation" Deputy D.A. Jay Coulter	8:00 p.m. - 8:10 p.m.
	QUESTIONS, COMMENTS	8:10 p.m. - 9:30 p.m.
April 5, 1977 -	"Probation Department's Role in Dependency Matters"	
	Mrs. Jemma Pasto (S.D. Co. Probation Dept.)	6:30 p.m. - 7:00 p.m.
	"Child Abuse Case Investigation" Mr. Robert Ring (Bureau of Investigation, S.D. Co. District Atty's Off.)	7:00 p.m. - 7:30 p.m.
	Ms. Florence Helms (S.D. Co. Sheriff's Office)	7:30 p.m. - 8:00 p.m.
	BREAK	8:00 p.m. - 8:15 p.m.
	Sgt. Bill Dunn (S.D. Police Department)	8:15 p.m. - 8:45 p.m.
	PANEL DISCUSSION	8:45 p.m. - 9:30 p.m.

INDEX

COMMUNITY RESOURCES IN THE FIELD OF CHILD ABUSE

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SCHOOLS AND/OR COURSES ON SUBJECT

The Council is not aware of any local schools or curriculum courses on this subject. However, there are conferences and seminars presented with considerable frequency by a variety of local agencies and organizations, including the San Diego County Bar Association.

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THE BATTERED CHILD SYNDROME

"Husbands and wives can drive each other mad, but they can get a divorce. Children are stuck with their parents."

Ronald Laing

INTRODUCTION:

The "Battered Child Syndrome" is the non-accidental physical attack inflicted upon a child by its parents or by other persons intrusted with its care. This also includes failure to provide the child with its basic needs (neglect).

The abuser is usually a parent, but the term is applied to any person who is supposed to be caring for the child.

The entity received its present name, "The Battered Child Syndrome," in 1962 in an article written by Henry Kempe, M.D. in the Journal of American Medical Association. Since that time there have been great changes in the laws and in the public awareness of the problem; however, unfortunately virtually no change has occurred in the incidence or nature of the syndrome.

Children have died and been maimed by it for centuries even though it was not recognized for what it was and had no formal name. Back in 1874 a case of child-beating came to the attention of a group of church workers. They took the case to court, but since there was no law against child abuse at that time, the case was thrown out. However, the Society for the Prevention of Cruelty to Animals heard about it, and since technically, the little girl was a member of the animal kingdom, they took the case back to court. This time the child was removed from the custody of the

parents. This led to the formation of the Society for the Prevention of Cruelty to Children.

TYPES OF CHILD DEATH:

1. Infanticide:

The slaying of a newborn infant by the mother. The death may be due to a deliberate act of violence by the mother or it may be due to neglect or failure to provide proper care to the infant.

The child must have been born alive and achieved a separate existence from the mother. The child must have breathed on its own.

The child must be viable; that is, capable of a separate existence. By law this is placed arbitrarily at 20-weeks or 5-months gestation. Any child issuing forth from the mother prior to 20 weeks is considered a miscarriage or abortion.

A child born after 20-weeks gestation, but showing no signs of life is a stillborn. The law assumes that a dead infant is stillborn until proven otherwise. This requires medical proof that is often difficult to establish.

In proving infanticide, once it has been determined that the child is viable and born alive, it then becomes necessary to prove that death occurred from a deliberate act of commission or omission on the part of the mother.

2. Concealment of Birth:

An offense (usually a misdemeanor) for any person

who by any secret disposal of the body of a newly born child attempts to conceal the fact of birth, whether or not the child was stillborn or born alive.

3. Child Murder:

The slaying of a child. This usually refers to a non-parent or guardian and is no different from other forms of homicide.

4. Battered Child:

Incidence:

1. No one knows the true incidence. Fifteen to twenty-thousand cases are reported in this country each year, but the usual estimate is sixty-thousand. Everyone agrees that only a fraction of the cases comes to official attention.
2. About 10% of children seen in hospital emergency rooms for injuries turn out to be battered children when thoroughly investigated.
3. About 5% of cases prove fatal; another 5-10% sustain injuries severe enough to cause permanent damage. Much of this is brain damage.
4. The mortality from child abuse exceeds that of leukemia, cystic fibrosis and muscular dystrophy.
5. More than half of the children involved are under 3 years of age (the crying period) and about a fourth are under 1 year of age.
6. More common in boys than in girls.
7. Higher evidence in non-white than in white children.

8. Cases predominate in the lower socio-economic strata of society, but may be found in all levels.
9. The abuser is usually the mother; but the father, grandparents, boyfriend of mother, baby-sitters, guardians, foster parents, etc., have all been implicated. Recently, instances of abuse by siblings have also been reported.

MANNER OF INJURY: Clues to Possible Child Abuse.

1. The alledged manner of injury is inconsistent with the findings.
2. An accident history inconsistent with the developmental age of the child.
3. Unexplained injury in a small child, especially a fracture.
4. History of previous or frequent "accident" and "easy bruisability."
5. Time-lag which elapses between the alledged "accident" and the time the child is brought to medical attention.
6. Disturbed parent-child relationship:
   A. Lack of attachment of child to mother.
   B. Inappropriate maternal empathy.
7. When the child is removed from the parents, no more injuries occur and the child recovers quickly. When child is returned to the parent, injuries begin to show up again.

PATHOLOGY OF CHILD ABUSE: The Six B's.

1. Brain (Head Injuries):
   a. Subdural hematoma.
   b. Fracture of skull.
   c. Cerebral contusions.

2. Belly (Abdominal Injuries):

   a. Laceration of liver.

   b. Laceration of spleen.

   c. Laceration of mesentery.

   d. Contusion and rupture of bowel.

3. Bones (Fractures of Ribs and Extremities):

   a. Total body radiation should be done in all suspected cases. The radiologic manifestations of child-abuse are so characteristic as to be scarcely confused with anything else.

   b. Predilection for the epiphysis and adjacent metaphysis of long bones.

   c. Exaggerated periosteal reaction.

   d. Multiple lesions in various bones.

   e. Different stages of healing and repair of multiple bone lesions.

   f. Association with fracture of skull.

   g. It is thought that the extremities of the child are used as handles for shaking and throwing him about.

4. Bruises:

   Multiple contusions of the skin of varying ages and varying stages of healing. They often are accompanied by scars and areas of hyperpigmentation and hypopigmentation.

5. Bleeds:

   Bleeding from lacerations and blood in nose, mouth or ears.

6. Burns:

Also in all stages of healing. Commonly found on the buttock area because the child may be set down on a hot radiator or into hot water. Consider small round scars as cigarette burns.

PATTERNS OF ABUSE:

1. Neglect:

Result of failure on the part of the parents to adequately feed and care for the child.

a. With few exceptions, these infants are dead when first seen by a physician.

b. The clothing may be soiled and matted together with dirt and feces.

c. Body unwashed, skin in danger of denudation, severe diaper rash.

d. Severe dehydration and malnutrition.

e. Skin may be infected or infested with insects.

f. Autopsy shows death caused by infection, pneumonia, sepsis, cellulitis, etc.

g. No congenital anomalies or acquired constitutional diseases or intoxications found to explain the child's condition.

h. Occasionally the child will be taken to a hospital dead or dying and be recently scrubbed clean and clean clothes applied. A brief visit to the house, however, will reveal the true nature of the problem.

2. Single Episodes of Abuse:

   a. Characterized by a single wound confined to one area of the body with no evidence of old or repetative injuries by examination or x-ray.

   b. The most common injury is a fracture of the skull with a subdural hematoma.

   c. Children of this group are usually well-cared-for with the exception of the single injury.

   d. In most instances the assailant is a natural parent who acts during a period of fatigue or exasperation. He is provoked by the child's excessive crying, etc.

3. Children with Repetative Injury:

   a. Examination shows variation in number, type, age and location of injuries.

   b. This child is subjected to repeated physical assaults over a long period of time.

   c. This is the type of case that will end up permanently injured or dead if it is not taken away from the parent.

4. Whiplash Injury:

   Results from repeatedly shaking a child.

PSYCHOLOGICAL ASPECTS:

1. "Sick but slick" syndrome. The majority of parents seem normal from all outward appearances. However, a closer examination generally reveals that they are usually impulsive, unable to bind tension and insensitive. Where

intellect is high, an easy appearance of social conformity and an ability to manipulate others is often found.

2. They generally deal with the child as if it were an adult and have inordinately high expectations.
3. They generally treat their children the same way they were treated when they were children.
4. The parent tends to be an immature and an irresponsible individual and often lacks confidence in himself.
5. Parents' attack on the child is often a symbol of all their own problems and is a way of releasing frustration instead of dealing with the problem.
6. They tend to be excessive in their demands on their children seeking emotional support from the child, rather than the other way around.
7. They tend to be frustrated, despondent, emotionally deprived with a history of repeated marital and vocational failures.
8. The head of the child is a convenient and vulnerable target; it also represents "the person"; so to strike the face is to strike the person. The most convenient weapon for striking a child is the hand.

THE LAW AND THE ABUSED CHILD:

1. All 50 states have passed laws requiring physicians, hospitals and other professional people caring for children to report to the proper authority all instances of suspected child-abuse.

2. Immunity from civil or criminal liability is part of the law of most states for any person who makes such a report in good faith.

3. Since Kempe's paper in 1962, there has been a tremendous change in the attitude of the law toward Battered Children. Ten years ago the District Attorney would rarely attempt to prosecute such a case; now it is commonplace on the court docket.

4. Public awareness of the problem has changed as well. Ten years ago you could not convince a jury of 12 average American citizens that any parent--and particularly a mother--could possibly do such a thing to her own child. Publicity, education and Senate hearings have changed all that.

5. Child Protective Services Agencies have been created within the Welfare Department of most states to deal with this problem. Although courts are still reluctant to remove a child from its parents, it's being done more and more in the Juvenile Courts through the Protective Services Agency and thus bypassing the criminal courts.

6. Malpractice Case:

A physician was successfully sued by a father for not reporting a case of child-abuse. Father and mother of the child were separated. The mother beat the child repeatedly. The child was treated several times for injuries by the physician who never reported the case. The child eventually ended up in a mental institution with brain damage.

CRIB DEATH (SUDDEN INFANT DEATH SYNDROME):

1. Is a dead infant a battered baby or a victim of crib death? Only your pathologist knows for sure.
2. An autopsy is mandatory to determine the difference.
3. Crib death victims are usually well-cared-for, but not always. They may have suspicious-looking wounds--a lesion on the skin which may be mistaken for abuse. Skin rashes, diaper rash, resuscitation wounds, etc., may be misinterpreted.

PROBLEMS:

1. The difference between discipline and maltreatment is often difficult to define.
2. Many physicians and many hospitals are reluctant or unwilling to identify trauma in a young child as the product of child-abuse.
3. The parent many times does not perceive his treatment of the child as abusive.
4. The police, at least, have a procedure to follow; the physician does not. "One of the greatest fears that the private pediatrician in the suburban area, when support is not available, is that if he accuses a family of child-abuse, he may lose a good part of his practice."

IDENTIFICATION OF ABUSE

I. Physical Abuse

Accidental vs. Inflicted

History as given, does it logically explain injuries identified?

Is there no explanation

Child's age and development can challenge history as given.

Range of "normal" accidental injuries.

A. Observable Injuries

1. Bruises (Ecchymoses)

Suspect inflicted:

Infant less than 9 months old

Multiple

Multiple surfaces of body especially posterior (back as opposed to front)

Instrument imprint, repeated

Both sides of face

Both eyelids("Black eye")

Likely to be direct trauma

Timing:		
	Immediate - few hours	red
	Soon 6 - 12 hrs	Blue
	Later 12 - 24 hrs	Black-Purple
	4 - 6 days	Green Tint, dark
	5 - 10 days	Pale Green to Yellow

Gross timing above based on ammount of blood, closeness to skin surface, racial pigmentation of skin.

Accidental:

Good explanation

Single bruise forehead or chin: Toddler falls against hard surfaces

Front lower legs (Shins) several bruises preschool child

2. Abrasions

Suspect Inflicted:

Multiplicity and location as with bruises

Timing: raw surface with oozing blood, clear fluid (moist surface) is fresh within several hours

Dry Red: more than 6 hours depending on treatment

Scabs formed: over 24 hours

Accidental:

Good explanation

Massive: over large areas of body and extremities, several surfaces, not uncommon as a result of automobile vs. child where the child is dragged a distance under the car.

Scraped knees: Preschool child - also elbows. Sometimes from skateboard accidents.

Linear scrapes on infant face: from infants fingernails (self inflicted)

3. Lacerations - (Less common)

Suspect Inflicted:

Multiple

Amputation: ear, genital, sharp incisional rather than compression.

Accidental:

Good explanation

3/4" horizontal at the point of chin Toddler, Preschool - very common from fall on hard surface.

Fingers, hands: Often self inflicted from play with sharp instruments.

4. Scars represent healed lacerations, deep abrasions, 2^{o} - 3^{o} burns.

Suspect Inflicted:

No good explanation

Multiple

Distribution (See Burns)

Accidental or Illness

Multiple small round areas ¼ - ½ inch may be result of healed chicken pox, other skin infection.

5. Burns often difficult to evaluate

Causes: liquid, flame, hot surface.

a. liquid, forced immersion

pattern, i.e., stocking distribution, both ankles (or glove for hands wrists) sharpe edge which can match depth of water.

Accidental: Irregular splash distribution. Course of burn downward from point of initial contact, i.e., side of face, shoulder, upper back and/or chest.

Depth of burn and scar potential relates to temperature of liquid and time of immersion both of which cannot be accurately quantitated.

b. flame: unusual

Mechanism: holding hand in gas stove burner flame or lighted match "To Teach Child It Is Hot"

Cigarette burns are not diagnostic, usually multiple :

Fresh: deeper center 1/8 - 1/4 inch red ring around
Healing: Central scab
Healed: round 1/4 inch scar.

c. Hot surface

Pattern of instrument "Brands skin", i.e. waffle marks of wallheater grill.

B. Fractures

Suspect Inflicted:

No precise explanation

Any fracture in infant under 12 months.

Humerus (upper arm) Femur (upper leg) in an infant under 12 months old. (Does not occur from an unimpeded free fall, i.e., dropped on floor, rolled off bed.

Metaphyseal chip fracture tubular bones (occurs under @ 18 months).

Mechanism: sharp yanking of extremity away from body with or without twisting component.

Multiple fractures in varying stages of healing.

Rib fractures.

Accidental:

Single fracture older child

Skull fracture infant without evident other injury. This may result from suprisingly minor fall with or without local evidence of overlying injury to scalp, and the whole spectrum of no brain injury to brain death.

Note: Healing of flatbone fractures cannot be accurately timed by serial x-rays, i.e., skull scapula (shoulder blade), and pelvic bones.

C. Subdural Hematoma

Collection of blood beneath the dural membrane if large amount presses against the soft brain, distorting vital brain tissue and function (unconscious, seizures, blindness, paralysis, death may result).

Mechanism: Blunt Trauma - shifts brain toward point of impact then away from this point causing rupture of blood vessels (shearing).

May also occur as a result of vigorous shaking, causing acceleration and deceleration of brain within and against inside of rigid skull.

This may account for "contracoup": injury to both sides of the brain.

Subdural injury often associated with other injuries.

Accidental:

Fall striking head usually infant, but may occur any age.

D. Internal Injuries

Blunt trauma to abdomen. Often has no surface bruises because skin gives with impact.

Laceration (rupture) Liver

Laceration (rupture) Spleen

Renal (kidney) contusion or actual rupture

Intramural (within the wall) bleeding Duodenum or first portion of Jejunum. This occurs because of short relatively fixed attachment to the back of the abdomen.

Rupture of Duodenum or Jejunum resulting in spilling of intestinal contents into abdomen. May cause death if not corrected surgically early enough.

Hemorrhage or contusion of the Pancrease.

General Clinical Manifestations:
- Shock - loss of blood
- Vomiting
- Fever
- Distension abdomen (swelling)
- Intestinal Obstruction

All of these may occur within a few hours or 2 - 3 days depending on the severity of the injuries.

E. Sexual Abuse

Female -
- Lacerations vagina, bleeding
- Bruises external genitalia
- Vaginal discharge
  - Culture for G.C.
  - Smear for Spermatazoa
- Evidentiary difficulty: Identifying specimen, witness exam and lab.

Male - External Mutilation
Multiple Bruises in area

Accidental:

Common fall astride fence or bar of tricycle, play apparatus causing bruises external genital area.

Preschool females may injure themselves pushing pencil or other foreign object into vagina.

II. Physical Neglect, Failure To Thrive

There are a number of signs which may indicate neglect but do not singly or even when grouped confirm the diagnosis in all cases.

Some of these are:

1. Poor skin hygiene
2. Lack of medical attention for fairly obvious infection such as purulent draining ear, soft tissue abscess.
3. Lack of medical attention for prolonged symptoms of pain, diarrhea vomiting, respiratory distress.
4. Injuries untreated
5. No immunizations
6. Inadequate or grossly inappropriate clothing
7. No Dental Care
8. Aberrant behavior: unresponsive infant, sad or withdrawn preschooler, almost any behavior off the norm in the school age child; often aggressive.
9. Exagerated fears, preschool night terrors.

Some of the major associated signs are:

1. Failure to Thrive ("FTT") defined as an infant or young child whose height and weight measurements are below the third percentile of standard growth charts.
2. Often overlooked: Head circumference 2 or more standard deviations below the mean for age.
3. Chronic as opposed to acute malnutrition. The relatively acute form is manifested by disproportionately low weight with relatively normal height and head circumference.
4. Marasmus is easily recognized as starvation to the point of death, when survival, achieved by careful and vigorous medical management, is very likely to result in clinically recognizable brain function deficits particularly in the cognitive area.
5. Severe malnutrition in infancy may permanently impair brain growth. Clinical correlate: small head circumference.
6. Kwashiorkor, rare in USA, but the most prevalent manifestation of severe malnutrition in the world: results from lack of essential amino acid protein substances provided in the diet or metabolized by the child.
7. Although malnutrition may occur as a result of socio-economic reality factors it can result from inadequate emotional nurturing in spite of good caloric intake.

Rejection, lack of infant and child stimulation is not limited to any economic, social, educational, or ethnic parental "classification."

Differential diagnosis of the child, whose emotional and/or physical progress differs from the norm for age in an adverse sense, must exclude premature birth, organic, malformations, function, or disease before the cause can be considered neglect or deprivation. (Synonym: Adverse psychosocial environment).

MAJOR SYSTEMS AFFECTED

Brain
Cardio-vascular
Gastro-intestinal
Urinary Tract (Renal)
Respiratory

MECHANISMS OF MALFUNCTION

Congenital anomalies
Intrauterine infections
Acquired infection (post-partum)
    Acute: Brain damage, i.e., Menningitis
    Chronic: T.B., Syphilis, etc.
Birth trauma
Subsequent Brain Trauma

GENETIC

Cystic Fibrosis
Brain Degenerative Disease
Hereditary or constitutional short stature
Chromosomal abnormalities, i.e., Downs, Turners, Etc.
Metabolic i.e., storage diseases, aminoacidurias, malabsorption
Endocrine (rare)

Laboratory examinations to define organic cause of Failure to Thrive (re: Table) should only be utilized after:

1. Careful history, physical exam (90% presumptive diagnosis at this point, 30% establishes diagnosis).
2. Monitored (Hospitalized environment) observation of caloric intake, weight gain.

It is unfortunate when the term "maternal deprivation" is used rather than the broader concept of adverse psychosocial environment.

Father and Mother or responsible guardians may be unable to provide for their child's needs due to physical, emotional, or intellectual incompetency which must be identified for the protection of the child.

Sympathetic evaluation and alteration of the child's environment often requires the services of many different health care professional disciplines.

III. Sudden Infant Death Syndrome

Age 2 - 3 months

Previously well

Found dead in crib

Occurs during sleep

Cause: Unknown many theories

Autopsy: Mild interstitial pneumonia
Nothing
Aspiration into lungs

IV. Testing

Physical Trauma

Bruises: Bleeding tests to rule out underlying disease
Prothrombin Time
Platelet Count
Ivy Bleeding Time
Partial Thromboplastin Time

Fractures: Skeletal Survey
X-rays of all bones to identify unsuspected bone trauma
Serial xrays to date healing, identify, fracture not initially seen (chip fracture)
Xray bones to identify bone pathology (weakness)

Soft Tissue: Contrast x-rays of G.I. Tract (Barium Swallow "Upper G.I. Series").

Radioactive scan for liver, spleen, kidney trauma

Serum amylase, or urine diastase levels for traumatic pancreatitis.

Subdural hematoma: Often associated Retinal hemorrhages seen in Neurological exam)

Needle aspiration (infant)

Neurosurgical exploration

Radioactive brain scan

E.E.G. (Brain wave test)

V. Child or Infant Suffering As A Result of Adult Psychosocial Distress.

Diagnosis of Physical Abuse Should Be Considered When Some Of The Following Are Present:

<u>When The Parent</u>:

1. Shows evidence of loss of control, or fear of losing control.
2. Presents contradictory history.
3. Projects cause of injury onto a sibling or third party.
4. Has delayed unduly in bringing child in for care.
5. Shows detachment
6. Reveals inappropriate awareness of seriousness of situation (either overreaction or underreaction).
7. Continues to complain about irrelevant problems unrelated to the injury.
8. Personally is misusing drugs or alcohol
9. Is disliked, for unknown reasons, by the physician.
10. Presents a history that cannot or does not explain the injury

11. Gives specific "eye witness" history of abuse.

12. Gives a history of repeated injury.

13. Has no one to "bail" her (him) out when "up tight" with the child.

14. Is reluctant to give information.

15. Refuses consent for further diagnostic studies

16. Hospital "shops."

17. Cannot be located.

18. Is psychotic or psychopathic.

19. Has been reared in a "motherless" atmosphere.

20. Has unrealistic expectations of the child

<u>When The Child</u>:

1. Has an unexplained injury.

2. Shows evidence of dehydration and/or malnutrition without obvious cause.

3. Has been given inappropriate food, drink and/or drugs.

4. Shows evidence of overall poor care.

5. Is unusually fearful.

6. Shows evidence of repeated injury.

7. "Takes over" and begins to care for parents' needs.

8. Is seen as "different" or "bad" by the parents.

9. Is indeed different in physical or emotional makeup.

10. Is dressed inappropriately for degree or type of injury.

11. Shows evidence of sexual abuse.

12. Shows evidence of repeated skin injuries.

13. Shows evidence of repeated fractures.

14. Shows evidence of "characteristic" x-ray changes to long bones.

15. Has injuries that are not mentioned in history.

FRESH

SHARP EDGES

1 - 2 Days

EDGES ROUNDED

LESS SHARP

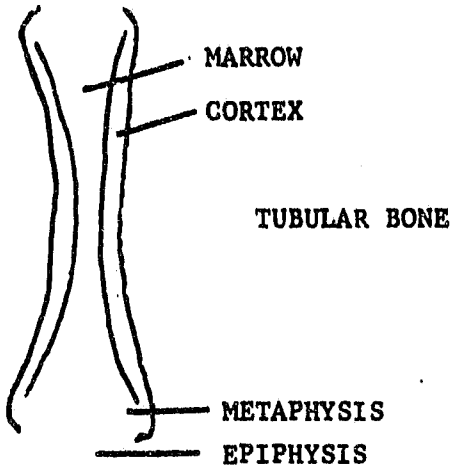
3 - 6 Days

BEGINNING CALLUS

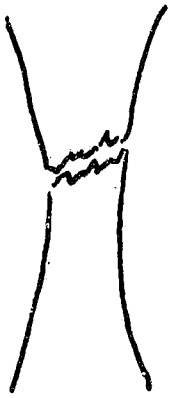
7 - 14 Days

MATURE CALLUS

3 - 5 Weeks



GREEN STICK FRACTURE

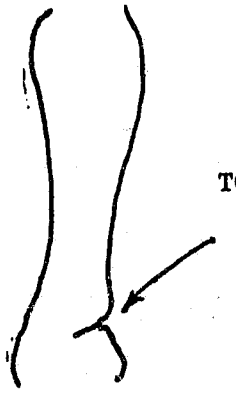


SIMPLE NON-DISPLACED FRACTURE

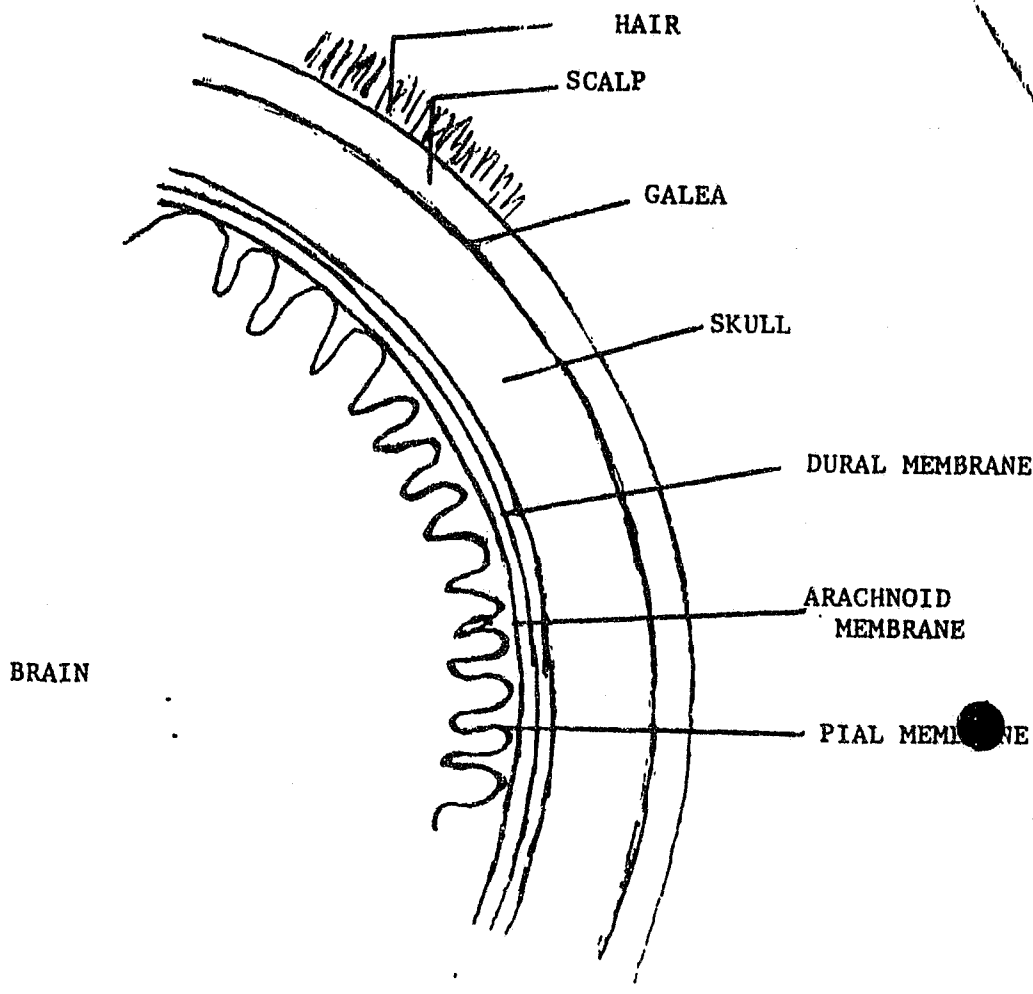
SIMPLE DISPLACED FRACTURE

SPIRAL FRACTURE

"CHIP" AVULSION METAPHYSEAL FRACTURE



TORUS "BUCKLING" FRACTURE


HAIR
SCALP
GALEA
SKULL
DURAL MEMBRANE
ARACHNOID
MEMBRANE
BRAIN
PIAL MEMBRANE

GLOSSARY OF MEDICAL TERMS

Abrasion: an area of the body surface denuded of skin or mucous membrane by a scrape.

Callus: an unorganized meshwork of woven bone developed on the pattern of the original fibrin clot, which is formed following fracture of a bone and is normally ultimately replaced by hard adult bone. Calcium shows on x-ray.

Calvarium: (calvaria) - the dome like portion of the cranium composed of the superior portions of the frontal, parietal, and occipital bones.

Comminuted: broken or crushed into small pieces, as a comminuted fracture

Congenital: existing at, and usually before birth; referring to conditions that are present at birth, regardless of their causation.

Contusion: a bruise; an injury of a part without a break in the skin. Brain contusion - contusion with loss of consciousness as a result of direct trauma to the head, may be associated with fracture of the skull

Burns: 1st degree - red sunburn 2nd degree - red with blisters, may or may not scar 3rd degree - white with blisters, loss of local sensation, always scars.

Differential Diagnosis: the determination of which one of two or more diseases or conditions a patient is suffering from, by systematically comparing and contrasting their clinical findings.

Distal: remote; farther from any point of reference; opposed to proximal.

Duodenum: the first portion of the small intestine from the stomach to the jejunum.

Ecchymosis: a small hemorrhagic spot, larger than a petechia, in the skin or mucous membrane forming a nonelevated, rounded or irregular blue or purplish patch. Black and Blue mark "Bleeding into Skin."

Edema: the presence of abnormally large amounts of fluid in the intercellular tissue spaces of the body; usually applied to demonstrable accumulation of excessive fluid in the subcutaneous tissues. Swelling soft tissue.

Epiphysis: the end of a long bone, usually wider than the shaft, and either entirely cartilaginous or separated from the shaft by a cartilaginous disk. Part of a bone formed from a secondary center of ossification. Commonly found at the ends of long bones, on the margins of flat bones, at the tubercles and processes; during the period of growth, epiphyses are separated from the main portion of the bone by cartilage.

Hemophilia: a hereditary hemorrhagic diathesis due to deficiency of coagulation Factor VIII, and characterized by spontaneous or traumatic subcutaneous and intra-muscular hemorrhages; bleeding from the mouth, gums, lips and tongue.

Hemorrhage: the escape of blood from vessels; bleeding. Small hemorrhages are classified according to size as petechiae (very small) purpura (up to 1 cm.) and ecchymoses (larger).

Hematoma: a massive, localized accumulation of blood, usually clotting, in an organ, space, or tissue, due to a break in the wall of a blood vessel.

Hypopigmentation: abnormally diminished pigmentation, as distinct from complete loss of pigment.

Jejunum: that portion of the small intestine which extends from the duodenum to the ileum.

Laceration: a torn, ragged, mangled wound. A cut.

Mesentery: a membranous fold attaching various organs to the body well in the abdomen. Commonly used with specific reference to the peritoneal fold attaching the small intestine to the back of the body wall.

Metaphysis: the wider part at the extremity of the shaft of the long bone. adjacent to the epiphyseal disk. During development it containe the growth zone and consists of spongy bone; in the adult it is continuous with the epiphysis.

Ossification: the formation of bone or of a bony substance; the conversion of fibrous tissues or of cartilage into bone or bony substance.

Osteogenesis imperfecta: an inherited condition, usually transmitted as an autosomal dominant trait, in which the bones are abnormally brittle and subject to fractures.

Osteomyelitis: inflammation of bone caused by a pyogenic organism. It may remain localized or may spread through the bone to involve the marrow, cortex, cancellous tissue and periosteum. (Bone infection).

Osteoporosis: abnormal rarefaction of bone, seen most commonly in the elderly.

Pathognomonic: specifically distinctive or characteristic of a disease or pathologic condition; a sign or symptom on which a diagnosis can be made.

Perineum: the space between the anus and the scrotum or vagina.

Periosteum: a specialized connective tissue covering all bones of the body, and possessing bone - forming potentialities.

Proximal: nearest; closer to any point of reference; opposed to distal.

Retina: the innermost of the three tunics of the eyeball, surrounding the vitreous body and continous posteriorly with the optic nerve. Inner surface of the back of the eyeball.

Scapula: the flat, triangular bone in the back of the shoulder; the shoulder blade.

Sclera: the tough white outer layer of the eyeball, covering approximately the posterior five-sixths of its surface.

Subarachnoidal Space: Situated or occuring between the arachnoid and the pia matter. (The innermost of the three membranes covering the brain and spinal cord.)

Subdural: situated between the dura (the outermost, toughest, and most fibrous of the three membranes - meninges - covering the brain and spinal cord) and the arachnoid (a delicate membrane interposed between the dura mater and the pia mater, being separated from the pia mater by the subarachnoid space.)

Subgaleal: situated beneath the scalp close to the skull. (The white, flattened or ribbon-like tendnous expansion of the scalp, serving to connect the frontal and occipital bellies of the occipitofrontalis muscle.)

Subperiosteal: situated benath the periosteum, and next to the bone surface.

Sutures: a type of fibrous joint in which the opposed surfaces are closely united, as in the skull.

THE CHILD-ABUSING PARENT: A PSYCHOLOGICAL REVIEW[1]

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Why does a parent physically abuse his or her own child? During the past decade, many attempts have been made to answer this question. An extensive literature has emerged on the medical and legal aspects of the problem of child abuse since the publication of an article by Kempe, Silverman, Steele, Droegemueller & Silver (1962) and the pursuit of child protective laws in California by Boardman (1962, 1963). Sociologists and social workers have also contributed their share of insights, and a few psychiatrists have published, but surprisingly little attention has been devoted to the problem of child abuse by the psychologist. Throughout the literature one seeks without success for studies of personality characteristics of abusing parents that are founded on rigid research design. Without experimental design capable of scientific exactitude, continued efforts in the search for such personality characteristics might well be wasted in repeating tests of hypotheses that may, in the long run, prove inadequate.

The purpose of this review is to bring together a decade of professional insights into the psychological characteristics of the abusing parent, in order to delimit the worthwhile hypotheses and lay the groundwork for more systematic and rigorous research design.

Definition

What is child abuse? Although much has been written on the topic, it is difficult to establish a workable definition. At one end of the spectrum is the child accidentally abused by the disciplining parent who got "carried away." At the opposite end is the child traumatized by the parent who methodically and chronically sets about to physically harm him. Inbetween are the many children who have been physically assaulted by adults, or those who have not been assaulted but whose parents, through neglect, have failed to protect them from physical danger and injury.

There are those authors who would distinguish between abuse and neglect (Elmer, 1963, 1967), and those who would look at abuse and neglect as points on a continuum (Fontana, Donovan & Wong, 1963; Kool, 1969). There are those who would extend the term child abuse to include any kind of injury to the child's good health, physical, psychological, or otherwise (Delaney, 1966; Finberg, 1965). Silver (1968), in his review of the literature, includes in the term all aspects of abuse: physical, emotional and social. Cautioning that from the legal aspect the concepts of emotional and social abuse are too vague to be useful, he adds the hope that eventually, as psychiatrists and social scientists better understand and define emotional and social neglect and abuse, the legal professions can begin to incorporate such definitions into law.

Kempe *et al* (1962) limited their study to children who had received serious physical injury, in circumstances which indicated that it was caused willfully rather than by accident. They coined the term "battered child" to encompass their definition. Zalba (1966), after a brief review of definitions, addressed himself primarily to those cases in which physical injury was willfully inflicted on a child by a parent or parent-substitute.

Because of the difficulty of pinpointing what is emotional or psychological or social neglect and abuse, and because of the extent of the literature on physical abuse alone, this paper, following Kempe's and Zalba's lead, will limit the term "child abuse" to the concept of physical injury to the child, willfully inflicted. The paper will omit studies of parents who neglect their children--emotionally, socially, or psychologically--and adults who sexually molest them.

Save for brief references in the following section of this paper to the strictly medical and legal aspects of the problem of child abuse, mention will be made only of those articles which make some attempt to understand the psychological and social determinants of parental abuse of children.

Medical and Legal History

The problem of child abuse is not a recent phenomenon. In his documented study, Radbill (1968) discusses the history of child abuse and infanticide from the earliest written records of biblical times, through the middle ages, to

modern times. Silver (1968) gives a more extensive outline of the development of interest in the problem in the last half century.

In 1946, a significant medical discovery contributed valuable insights into the identification of the abused child. Caffey, a radiologist, made observations associating subdural hematoma with abnormal X-ray changes in the long bones. Several years later, Silverman (1953) reported similar findings, and was the first to relate the findings to traumatic episodes which were not always consistent with the history as given by the parents. In 1955, Woolley & Evans suggested that the trauma as noted on the X-rays was in many cases willfully inflicted.

In 1961, the American Academy of Pediatrics conducted a child-abuse symposium under the direction of Kempe. Since that time, pediatricians and radiologists have extensively published their casework.

Silver (1968) has presented an overview of the medical literature, while Paulson & Blake (1967) have drawn up a comprehensive bibliography on both the legal and medical aspects of the problem. Helfer & Kempe's (1968) edited volume contains several chapters on both the legal and the medical aspects of the problem (Collins, 1968; Helfer, 1968; Silverman, 1968; and Weston, 1968a, 1968b). General overviews can be found in Elmer (1967), Fontana (1964), Young (1964) and Zalba (1966).

The most influential writer in the legal field is Paulsen (1966a, 1966b, 1967, 1968a, 1968b; and 1966, with Parker & Adelman). McCoid (1965) drew up a legal survey, while the United States Department of Health, Education and Welfare (1965, 1968) summarized the laws on child abuse in the fifty states.

Pleas that the laws should be protective, not punitive, and that physicians should be given immunity from legal prosecution when reporting cases of child abuse, come from De Francis (1963, 1966, 1967). That reporting of itself will not remove the undesirable social ill is reiterated extensively in the literature, notably in Baker & Berdon (1966), Barabas (1967), Berant & Jacobs (1966), Berlow (1967), Elmer (1966), Karolitz (1966), and Paull, Laurence & Schimel (1967). Simons & Downs (1968) give and overview of patterns, problems, and accomplishments of the child abuse reporting laws.

Review of the Literature

Most of the studies of child abuse are subject to the same general criticism. First, the studies which set out to test specific hypotheses are few. Many start and end as broad studies with relatively untested common-sense hypotheses, such as the belief that low socioeconomic status is positively correlated with the frequency of child abuse, or that abusing parents were themselves abused as children. Although such broad studies were necessary at the start in a field as rela-

tively new as is the study of child abuse, such breadth leave specific hypotheses still untested.

Secondly, it may be said of most studies in this area that the researchers used samples easily available from ready-at-hand local populations, and thus the samples were not truly representative. Because of this, child abuse research has formulated unwarranted generalizations, from the standpoint of true psychological research. For the most part, we shall have to rely on the convergence of conclusions from various types of sampling to establish generalizations.

Thirdly, practically all of the research in child abuse is ex post facto. What is left unanswered and still to be tested is whether one can determine prior to the onset of abuse which parents are most likely to abuse their children, or whether high risk groups can only be defined after at least one incident of abuse has occurred.

In spite of these criticisms, the studies of child abuse do give data which can furnish hypotheses for better research design, and for a more differentiated approach to the question of why parents abuse their children.

The aim of this review is to determine which generalizations can be induced from a decade of professional opinions, and, in so doing, lay the groundwork for later, more systematic and more rigorous testing of hypotheses.

Parental History

One basic factor in the etiology of child abuse draws

unanimity: abusing parents were themselves abused or neglected, physically or emotionally, as children. Steele & Pollock (1968) have shown a history of parents having themselves been raised in the same styleewhich they have recreated in the pattern of rearing their own children. As infants and children, all of the parents in the group were deprived both of basic mothering and of the deep sense of being cared for and cared about from the beginning of their lives. All had experienced a sense of intense, pervasive, continuous demands from their parents, who required superior performance. submissive behavior, and prompt obedience. In addition, they were expected to be a sympathetic source of comfort in times of parental distress and an approving agent for parental actions. Mistakes were not tolerated. Yet, no matter what they as children tried to do, it was either not enough, not right, or at the wrong time. These factors, found by Steele & Pollock in three generations, seem to be essential determinants in the early life of the abusing parent: the excessive demand for good performance with the criticism of inadequate performance, and disregard for the child as an individual with his own needs and desires.

Fontana (1968) also viewed the parents as emotionally crippled because of unfortunate circumstances in their own childhood. The parents reacted to their children in keeping with their own personal experiential history of loneliness, lack of protection, and lack of love. Many authors corroborate the hypotheses of Steele & Pollock and of Fontana.

In a study surveying 32 men and seven women imprisoned

for cruelty to their children, Gibbins & Walker (1956) concluded that it was rejection, indifference and hostility in their own childhood which produced the cruel parents.

Ten years later, Tuteur & Glotzer (1966) studied ten mothers who were hospitalized for murdering their children, and found that all had grown up in an emotionally cold and often overtly rejecting family environment, in which parental figures were either absent, or offered little opportunity for wholesome identification when present.

Melnick & Hurley (1969), in one of the few attempts at rigid research design, conducted a study of child-abusing mothers, to determine distinctive personality attributes. Comparing two small, socioeconomically and racially matched groups on eighteen personality variables, they found an inability of the mothers to empathize with their children, severely frustrated dependency needs, and a probable history of emotional deprivation in their own upbringing.

Further support for the hypothesis that the abusing parent was once an abused or neglected child is found in Bleiberg (1965), Blue (1965), Curtis (1963), Duncan, Frazier, Litin, Johnson & Barron (1958), Easson & Steinhilber (1961), Fairburn & Hunt (1964), Fleming (1967), Green (1965), Harper (1963), Kempe et al. (1962); McHenry, Girdany & Elmer (1963), Miller (1959), Morris, Gould & Matthews (1964), Nurse (1964), Paulson & Blake (1969), Reiner & Kaufman (1969), and Silver, Dublin & Lourie (1969b).

Going a step further, Corbett (1964) considered the parent who was beaten as a child as the most dangerous of abusing parents, while Wasserman (1967) concluded that the abusing parent, having within himself gnawing, unfulfilled feelings of having been unloved as a child, has learned only one means of communication from his parents: violent, explosive behavior.

Komisaruk's (1966) study adds another insight into the past history of the abusing parent, for he found as the most striking statistic in his study of abusing families the emotional loss of a significant parental figure in the early life of the abusive parent.

In a summary statement, Gluckman (1968), repeating the findings of earlier observers, set up a ten-level differential diagnosis category. His main point, and the point of this section of the paper, is that the child is the father of the man. The capacity to love is not inherent; it must be taught the child. Character development depends on love, tolerance and example. Many abusing parents were raised without this love and tolerance. They were raised with some degree of abuse or neglect.

Parental Attitudes toward Child Rearing

In addition to concurring on the fact that many abusing parents were themselves raised with some degree of abuse or neglect, the authors agree that the abusing parents share common misunderstandings with regard to the nature of child rearing, and look to the child for satisfaction of their own

parental emotional needs. Steele & Pollock (1968) found that the parents in their study group expected and demanded a great deal from their infants and children, and did so prematurely. The parents dealt with their children as if the children were older than they really were. The parents felt insecure and unsure of being loved, and looked to their children as sources of reassurance, comfort, and loving response, as if the children were adults capable of providing grown-up comfort and love.

Galdston (1965) concurred that abusing parents treated their children as adults, and he added that the parents were incapable of understanding the particular stages of development of their children.

Bain (1965), Gregg (1968), Helfer & Pollock (1967), Hiller (1969), Johnson & Morse (1968), Korsch (1965), and Morris & Gould (1963) also find that abusing parents have a high expectation and demand for the infant's or child's performance, and a corresponding disregard for the infant's or child's own needs, limited abilities and helplessness.

In his parental sample, Wasserman (1967) found that the parents not only considered punishment a proper disciplinary measure, but strongly defended their right to use physical force. In a 1969 study, Gregg & Elmer, comparing children accidentally injured with those abused, judged that the personal appearance of the child and the mother's ability to provide medical care when the child is well, sharply differ-

entiated the abusive from the non-abusive mothers.

The authors seem to agree that abusing parents lack appropriate knowledge of child rearing, and that their attitudes, expectations, and child-rearing techniques set them apart from non-abusive parents. The abusing parents implement culturally accepted norms for raising children with an exaggerated intensity and at an inappropriately early age.

Presence of Personality Disorders

There has been an evolution in thinking regarding the presence of a frank psychosis in the abusing parent. Woolley & Evans (1955) and Miller (1959) posited a high incidence of neurotic or psychotic behavior as a strong etiological factor in child abuse. Cochrane (1965), Greengard (1964), Platou, Lennox & Beasley (1964) and Simpson (1967, 1968) concurred. Adelson (1961) and Kaufman (1962) considered only the most violent and abusive parents as having schizophrenic personalities. Kempe et al. (1962), allowing that direct murder betrayed a frank psychosis on the part of the parent, found that most of the abusing parents, though lacking in impulse control, were not severely psychotic. By the end of the decade, the literature seemed to support the view that only a few of the abusing parents showed severe psychotic tendencies (Fleming, 1967; Laupus, 1966).

Giving his personal observations, Wasserman (1967) surmised that the abusing parents, absorbed in their own feelings, could not sympathize with the feelings of others. Though all,

in his view, had a marked inability to set up a genuine relationship with another human being, only a few were overtly psychotic.

Steele & Pollock (1968) recognized that their patients, almost inclusively, had emotional problems of sufficient severity that, had they presented themselves, they would have been accepted for treatment at a clinic or psychiatrist's office. But the authors singled out no one personality trait as outstanding. Sociopathic traits were rare, as were overt psychoses.

It can be said, then, that there has been an evolution in professional thinking regarding the presence of frank psychoses in the abusing parent. At one time, child abuse was regarded as a result of severely disturbed behavior. Now it is seen as a consequence of poorly controlled impulses, and not as due to general personality impairment.

Psychodynamics and Behavior Characteristics

A review of opinions on parental psychodynamics leads to a conglomerate picture. While the authors generally agree that there is present in the abusing parent a defect in personality allowing aggressive impulses to be expressed too freely (Kempe et al., 1962; Steele & Pollock, 1968; Wasserman, 1967), disagreement comes in describing the source of the aggressive impulses.

The various authors claim that abuse is an overflow from an aimless way of life, or a final outburst at the

end of a long period of tension, or that abuse stems from an inability to face life's daily stresses, from a sense of insecurity, from deep feelings of inadequacy, or from parental inability to fulfill the roles expected of them as spouses and as parents. The authors find that the parents are immature, self-centered people, who fail to take parental responsibility, fear close relationships, and are socially isolated. In addition, they are dependent, impulse-ridden, demanding, narcissistic, unassumingly passive, and-or overtly aggressive (Birrell & Birrell, 1968; Braun, Braun & Simonds, 1963; Cochrane, 1965; Delaney, 1966; Fontana, 1964; Green, 1965; Hall, 1967; Heins, 1969; Jacobziner, 1964; Krige, 1966; Laupus, 1966; McCort & Vaudagna, 1964; Mintz, 1964; Nomura, 1966; Platou et al., 1964; Sauer, 1965; Sheriff, 1964; Silver & Finkelstein, 1967; Storey, 1964; Sullivan, 1964; Ten Bensel, 1963; Ten Have, 1965).

The sheer enumeration of the varied authors' opinions on parental psychodynamics and behavioral characteristics leads to the questionability of some of the characteristics, such as whether or not "unassumingly passive" and "overtly aggressive" can be predicated of the same person. Steele & Pollock (1968) consider most of the descriptive adjectives as essentially appropriate, but find them so prevalent among people in general as to add little or nothing to the etiology of abuse. They prefer to view the parents as persons essen-

tially striving to be good mothers and fathers, but having within them a yearning for the infant or child to respond in such a way as to fulfill the emptiness in their own lives and bolster their low self-esteem. If anything interferes with the parental care or intensifies the parents' feelings of being unloved and inferior, the parents' harsh, authoritative demand for the infant's or child's correct response surges up, and attack is likely to occur. Concurrence on this point is found in Cohan, Raphling & Green (1966), Court (1969), Johnson & Morse (1968), Komisaruk (1966) and Silver (1968).

Not infrequently the child is the product of an unwanted pregnancy, a fact which often elicits the abuse (Cameron, Johnson & Camps, 1966; Kempe et al., 1962; and Nurse, 1964). Fontana (1964) attributes the emergence of the psychodynamics of abuse to a personality immersed in a history of uncontrolled behavior.

Parents sometimes take children to different hospitals to avoid detection (Baker & Berdon, 1966; Boardman, 1962; Braun et al., 1963; Fontana, 1964; and Gwinn & Barnes, 1965), and when discovered often deny any knowledge of injury to the child and maintain an attitude of complete innocence when questioned (Bakwin, 1956; Boardman, 1962; Browne, 1965; Caffey, 1957; Green, 1965; Gwinn & Barnes, 1965; Kempe et al., 1962; Parker, 1965; Pashayan & Cochrane, 1965; Touloukian, 1968; and Young, 1964).

Another often-mentioned factor influencing the behavior of abusing parents is role reversal between the spouses. A home in which the father is unemployed and the mother has taken over the financial responsibility of the family is a breeding ground for abuse (Galdston, 1965; Greengard, 1964; Nathan, 1965; and Nurse, 1964). Those parents ill-prepared for pregnancy for a variety of reasons often single out the unwanted child for abuse (Kempe et al., 1962; Komisaruk, 1964; McHenry et al., 1963; and Nurse, 1964).

Are parents who abuse their children primarily of low intelligence? Fisher (1958) hypothesized that the frequency of child neglect and abuse was inversely proportional to parental intelligence, and maintained that low intelligence is a factor in the parental psychodynamic. Simpson (1967, 1968) reiterated Fisher's view, but Cameron et al.,(1966), Holter & Friedman (1968), Kempe et al. (1962), and Ounsted (1968) disagreed because, in their study samples, only a few parents were found to be of low intelligence.

It is, of course, impossible that any one parent could possess all of the above characteristics. Realization of this fact, and knowledge that many of these seemingly dichotomous characteristics were found to exist in individual circumstances, led some authors to group together certain characteristics in clusters, and to evolve a psychodynamic within each cluster.

The first major attempt at a typology was made by Merrill (1962). In the hope that a typology, at this point, may help

unify the foregoing paragraphs, and because Merrill's typology is the most often quoted, his typology will be summarized in some detail.

Merrill identified three distinct clusters of personality characteristics that he found to be true both of abusing mothers and fathers, and a fourth that he found true of the abusing fathers alone. The first group of parents seemed to Merrill to be beset with a continual and pervasive hostility and aggressiveness, sometimes focused, sometimes directed at the world in general. This was not a controlled anger, and was continually with the parents, with the only stimulation needed for direct expression being normal daily difficulties. This angry feeling stemmed from conflicts within the parents, and was often rooted in their early childhood experiences.

The second group Merrill identified by personality characteristics of rigidity, compulsiveness, lack of warmth, lack of reasonableness, and lack of pliability in thinking and in belief. These parents defended their right to act as they had in abusing their child. Mothers in this group had marked child rejection attitudes, evidenced by their primary concern with their own pleasures, inability to feel love and protectiveness toward their children, and in feelings that the children were responsible for much of the trouble being experienced by themselves as parents. These fathers and mothers were extremely compulsive in their behavior, demanding excessive cleanliness of their children, and characterizing as bad, to b

generally feared and avoided, sex, dirt, and bodily processes. Many of these parents had great difficulty in relaxing, in expressing themselves verbally, and in exhibiting warmth and friendliness.

Merrill's third group of parents showed strong feelings of passivity and dependence. Many of these parents were people who were unassuming, reticent about expressing their feelings and desires, and very unaggressive. They were individuals who manifested strong needs to depend upon others for decisions, to be told what to do and when to do it. In brief, they needed to depend on someone simply to get through life itself. These mothers and fathers competed with their own children for the love and attention of their spouses. Generally depressed, moody, unresponsive and unhappy, many of these parents showed considerable immaturity.

Merrill's fourth grouping or cluster of personality characteristics included a significant number of abusing fathers. These fathers were young, intelligent men with acquired skills who, because of some physical disability, were now fully or partially unable to support their families. In most of these situations, the mothers were working, and the fathers stayed at home, caring for the children. Their frustrations led to swift and severe punishment, to angry, rigid discipline.

Merrill notes that, although child abuse was the primary method of expressing disturbed behavior by these parents, a

few of them displayed other socially disapproved behavior. The fathers were often in legal difficulties for offenses based on hostile expression, such as assault and battery, while many mothers were often arrested for drunkenness, vagrancy, or sexual offenses.

Two further attempts at classification, Delsordo (1964) and Zalba (1967), with slight modifications, can be reduced to Merrill's categories.

However seemingly simple, unifying, and time-seving the use of categories may be, a too hasty clustering of personality characteristics without empirical verification may lead, in the long run, to efforts wasted on testing inadequate hypotheses. If further work can be done in refining the categories validating them in field research, perhaps they or similar clusters shown to be empirically valid can be used as an aid in the determination of high risk parents.

In the literature, there is no dearth of pleas for further investigation of the character structure of abusing parents. The various authors call for a simpler, clearer understanding of the mechanisms involved in the control and release of aggressive impulses. Such an understanding would aid in the earlier diagnosis and treatment, and prevention of abuse, as well as give a stronger ability to predict the likelihood of further attack and abuse (Boardman, 1962, 1963; Elmer, 1966; Helfer, 1968; Holter & Friedman, 1968; Kempe et al., 1962; Paulson & Blake, 1969; and Pollock, 1968).

Certainly, one would hope that research can eventually develop criteria to distinguish those inadequate parents who, with professional help, can meet the needs of their children from those who cannot. We eventually need to be able to identify the high risk families prior to the onset of abuse, but should be satisfied for the time being if we can help determine which families must receive the most attention to assure the further safety of their child.

We saw earlier that the abusing parent was himself raised with some degree of physical or emotional deprivation. We found that the abusing parent brings to his role as parent mistaken notions of child rearing, a misunderstanding of the developmental stages of child growth, an excessive reliance on physical punishment, and the expectation that the child's role is to fulfill the parent's emotional needs. We found, thirdly, that there need be no sign of psychosis on the part of the abusing parent.

In this section, we have seen a conglomerate picture of parental characteristics of behavior and parental psychodynamics, with one author's attempt to cluster the characteristics into a workable unity. One basic fact of agreement emerges from the studies in this section. The authors feel that there is present in the abusing parent a general defect in character--from whatever source--allowing aggressive impulses to be expressed too freely. During times of additional stress and tension, the impulses express themselves on the helpless child.

Demographic Characteristics

In an attempt to discover whether or not various social or economic stresses make abuse more likely, many of the studies of the decade have described the demographic characteristics of the abusing families within their own samples. Kempe et al. (1962) found a high incidence of divorce, separation, and unstable marriages, as well as of alcoholism, sexual promiscuity, and minor criminal offenses. Kempe found that often one child would be singled out for injury, the child that was the victim of an unwanted pregnancy.

Various other studies enter figures from their own samples. The studies generally repeat Kempe's findings, adding factors of social and economic stresses, lack of family roots in the community, lack of immediate support from extended families, social isolation, high mobility, unemployment, and role reversal between spouses (Elmer, 1967; Fontana, 1964; Gil, 1968a, 1968b, 1969; Young, 1964; and, in less detail, Birrell & Birrell, 1968; Ebbin, Gollub, Stein & Wilson, 1969; Elmer & Gregg, 1967; Gregg & Elmer, 1969; Helfer & Pollock, 1967; Holter & Friedman, 1968; Nurse, 1964; Paulson & Blake, 1969; Schloesser, 1964; Skinner & Castle, 1969; Sussman, 1968; and Tuteur & Glotzer, 1966).

In most of the studies, the children who were abused were very young, often under one year of age. In many of the families, children were born in very close succession.

One study, that by Milowe (1964), suggested that often factors in the personality development of the child lead the child to invite hurt and the parents to lose their ability to control themselves. However, most of the studies identify social and economic stresses as the strongest external forces for parental abuse of children. Johnson & Morse's (1968) study is typical. They recorded a high incidence of poor housekeeping, and poor economic conditions generally, with only about one third of the families managing on their income, while over one third were receiving public assistance. Only about one half of the fathers were working, and only about one third of these were employed full time. Almost thirty per cent were unskilled. The fathers who had not inflicted the injuries had the most education; the mothers in homes without fathers had the least. Seventy per cent of the families in the study group were going through severe marital conflict as a result of the inflicted injury. Almost one third of the parents had been raised outside their homes.

Simons, Downs, Hurster & Archer (1966) conducted a thorough study delineating abusing families as multi-problem families where the interplay of mental, physical and emotional stresses were strong etiological factors, and where the abusive acts appeared chiefly as late indicators of serious family difficulties.

While pointing to the role that economic and social stresses play in bringing out underlying personality weak-

nesses, the great majority of the foregoing authors caution that economic and social stresses alone are neither sufficient nor necessary causes for child abuse. They point out that, although in the socially and economically deprived segments of the population there is generally a higher degree of the kinds of stress factors found in abusing families, the great majority of deprived families do not abuse their children. Why is it that most deprived families do not engage in child abuse, though subject to the same economic and social stresses as those families that do abuse their children?

A study that sheds light on the fact that social and economic factors have been over-stressed as etiological factors in cases of child abuse is that of Steele & Pollock (1968), whose sample of abusers consisted mainly of middle and upper-middle class families. Though social and economic difficulties may have added stress to the lives of the parents, Steele & Pollock consider these stresses as only incidental intensifiers of personality-rooted etiological factors.

Allowing that child abuse in many cases may well be the expression of family stress, Adelson (1961), Allen, Ten Bensel & Raile (1969), Fontana (1968), Holter & Friedman (1968), and Kempe et al. (1962) also consider psychological factors as of prime importance in the etiology of child abuse. There is a defect in character structure which, in the presence of added stresses, gives way to uncontrolled physical expression.

Paulson & Blake (1969) mention the deceptiveness of higher-class abusers, and caution against viewing abuse and neglect as

completely a function of educationally, occupationally, economically or socially disadvantaged parents, or as due to physical or health impoverishment within a family.

Abusing parents come from all walks of life, from all races, and from all socioeconomic and educational levels (Blue, 1965; Bolz, 1967; Green, 1965; Guandolo, 1968; Gwinn & Barnes, 1965; Hartley, 1969; Miller, 1959; Wasserman, 1967).

If child abuse is common to every walk of life, research into etiology must be aimed at every economic and occupational level. If it is true that the majority of parents in the socially and economically deprived segments of the population do not batter their children, while some wealthy parents do, then one must look for the causes of child abuse beyond environmental stresses.

Critique of a Survey

Of the studies surveying the demographic characteristics of families in which child abuse has occurred, the most extensive in scope was the national survey undertaken by Gil (1968a, 1968b, 1969). In 1969, Gil reported that the phenomenon of child abuse was highly concentrated among the socioeconomically deprived segments of the population. Concluding that "physical abuse is by and large not very serious as reflected by the data on the extent and types of injury suffered by the children in the study cohort (p. 862)," Gil places his

intervention strategy in the general betterment of society. For Gil, the cultural attitude permitting the use of physical force in child rearing is the common core of all physical abuse of children in American society. Since he finds the socioeconomically deprived relying more heavily on physical force in rearing children, he recommends systematic educational efforts aimed at gradually changing this cultural attitude, and clear-cut cultural prohibitions and sanctions agsinst the use of physical force as a means of rearing children. He views this educational effort as likely to produce the strongest possible reduction in the incidence and prevalence of physical abuse of children.

For Gil, child abuse is ultimately the result of chance environmental factors. While admitting to various forms of physical, social, intellectual, and emotional deviance and pathology in caretakers, and in the family units to which they belong, Gil stresses a global control of environmental factors as the solution to the problem of child abuse. He suggests: (a) the elimination of poverty from the midst of America's affluent society, (b) the availability in every community of measures aimed at the prevention and alleviation of deviance and pathology, (c) the availability of comprehensive family planning programs and liberalized legislation concerning medical abortions, to reduce the number of unwanted children, (d) family-life education and counselling programs for adolescents and adults in preparation for and after marriage, to

be offered within the public school system, (e) a comprehensive, high-quality, neighborhood-based national health service, to promote and assure maximum feasible physical and mental health for every citizen, (f) a range of social services geared to the reduction of environmental stresses on family life, and (g) a community-based system of social services geared to assisting families and children who cannot live together because of severe relationship problems. Gil's ultimate objective is "the reduction of the general level of violence, and the raising of the general level of human well-being throughout our entire society (p. 863)."

While one must praise the efforts of the Gil study in data collection, and the ultimate objective of reducing the general level of violence and raising the general level of human well-being in our entire society, one cannot help but feel that Gil did not address himself to the question of child abuse. If there really does exist a link between poverty and physical abuse of children, why is it that all poor parents do not batter or abuse their children, while some well-to-do parents do so? Eliminating environmental stress factors and bettering the level of the society at all stages may reduce a myriad of social ills and may even prove eventually effective, indirectly, in reducing the amount of child abuse. But there still remains the problem, insoluble at the demographic level, of why some parents abuse their children, while others do not. Why is it that the majority of parents with severe socio-

economic stresses do not abuse their children, while some parents without such stresses do abuse their children?

Other authors throughout the decade have allowed for the types of services outlined by Gil, but less globally and in a manner less disregarding of parental personality factors. That raising the general educational and financial level of families that are socioeconomically deprived is of long-range value in the lessening of the prevalence of child abuse is generally agreed upon, and finds support throughout the literature (Elmer & Gregg, 1967; Fontana, 1968; Gregg & Elmer, 1969; Helfer & Pollock, 1967; Isaacs, 1968; Kempe, 1968; Korsch et al., 1965, Oliphant, 1966; Ounsted, 1968; Parker, 1965; Silver et al., 1969a, 1969b; Simons et al., 1966; Stringer, 1965; Torr & Watson, 1968; and Wasserman, 1967).

The authors have pointed to psychological factors within the parents themselves as of prime importance in the etiology of child abuse. They see abuse as stemming from a defect in character leading to a lack of inhibition in expressing frustration and other impulsive behavior. Socioeconomic factors sometimes place added stress on the basic weakness in personality structure, but these factors are not of themselves sufficient or necessary causes of abuse. The authors caution against viewing abuse as completely a function of educational, occupational, economic, or social stress.

Summary

Why does a parent abuse his or her own child? It would appear from the literature, first, that the abusing parent was himself raised with some degree of physical or emotional deprivation. Secondly, the abusing parent brings to his role as parent mistaken notions of child rearing, a misunderstanding of the developmental stages of child growth, an excessive reliance on physical punishment, and the expectation that the child's role is to fulfill the parent's emotional needs. Thirdly, while there need be no sign of psychosis on the part of the abusing parent, and while the psychodynamics of the abuse take on various forms and the behaviors show up differentially, there seems to be a general defect in character structure allowing aggressive impulses to be expressed too freely. Finally, while socioeconomic factors might sometimes put added stress on the basic weakness in personality structure, these stresses are not of themselves sufficient or necessary causes of abuse.

The purpose of this review has been to bring together a decade of professional insights into the psychological characteristics of the abusing parent, in order to delimit the worthwhile hypotheses and lay the groundwork for more systematic and rigorous research design. Hopefully, the task was accomplished.

The psychologist, both as a specialist in the functioning of the human as an individual, and as a scientist trained in

research methodology, is in a unique position to test the hypotheses raised in a decade of work by professionals in the fields of medicine and social work, in the study of the personality characteristics of the abusing parent.

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[2]Request for reprints should be sent to John J. Spinetta, University of Southern California, Psychological Research and Service Center, 734 West Adams Blvd., Los Angeles, Ca., 90007.

OUTLINE

THE LAW ENFORCEMENT CHILD ABUSE & NEGLECT INVESTIGATION

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- B. Protection and Preservation of Family Entity

II. HISTORICAL BACKGROUND OF CHILD ABUSE PROBLEM

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- B. English Custom and Literature
- C. Lack of Child Labor Laws in Late 1800's in America
- D. Radiological Findings in the Sixties
- E. C. Henry Kempes "Battered Child Syndrome"
  - (a) Profile of Abusing Parent Coupled with Crisis
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- H. There are Two Sides to the Law - Civil & Criminal
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- E. Problems of Proof - Explanations Inconsistent with Injuries
- F. Temporary Custody
- G. Interviews with Suspects (differs from normal criminal case) - Stress on Social History - Background personality, crisis, etc.

IV. COMMENTS ON COMMUNITY TEAM APPROACH TO CHILD ABUSE PROBLEMS AND UNDERSTANDING EACH AGENCY'S FUNCTION AND PHILSOPHY.

"THE LAW ENFORCEMENT CHILD ABUSE & NEGLECT INVESTIGATION"

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All law enforcement must approach this type of case with a view towards following the legislative intent of the particular State where the abuse or neglect occurs.

With few exceptions the legislative intent of most state statutes is two-fold:

(a) the safety of the child

(b) the preservation of the family entity

The peace office must also approach the problem with an understanding of some of the historical aspects of child abuse.

For centuries man has believed that physical punishment of a child is justifiable.

1. To maintain discipline
2. Please the Gods
3. Transmit educational and religious ideas
4. Drive out evil spirits

In both oriental and anglo cultures we find references to the sacrifice of children and biblically in the Old Testament we find reference to it.

English literature reflects our attitudes towards children generally and seems to follow the concept that children are mere chattels.

In early Roman law the doctrine "Patria Potestas" referred to paternal authority or power.

The term denoted the aggregate of those peculiar powers and rights which, by the civil law of Rome, belonged to the head of a family in respect to his wife, children and many more remote descendants who sprang from him through males only, embracing even the power of life and death.

Referring to attitudes toward children reflected in English literature we can recall the child battered about by all with whom he encountered in "Great Expectations."

Alice in Wonderland has a jingle that reflects the attitude towards children clearly:

> "Speak harshly to your little boy
> And beat him when he sneezes.
> He only does it to annoy - because
> Because - because he knows it teases."

Caning was a popular and acceptable method of discipline in English schools for years.

Today we live with numerous anglo saxon axioms which clearly reflect our attitudes: "A man's home is his castle." This could meanwhatever a parent does behind the closed doors of his house with his wife and children is none of society's affair. "Spare the rod and spoil the child" is another axiom which seems to reflect that if a child is not physically beaten he may be "spoiled." (whatever that means!)

Child labor laws were non-existent in the United States in the late eighteen hundreds and early nineteen hundreds. Children of immigrants worked 16-18 hours per day in the garment district of New York City. They were poorly clothed and fed and treated as mere slave laborers.

In 1875 in order to safeguard a severly beaten, tortured child in New York City from sadistic parents, the "Society for the Pre-Vention of Cruelty To Animals, through a legal fiction had the child declared a member of the "animal kingdom," thus were able to safeguard her from her cruel guardians. Another sad commentary on our country's attitude toward the safety of its children.

Problems of child abuse and neglect were highlighted as early as 1906 when at a radiology seminar it was noted that X-rays of children revealed old, recent, and new fractures of the long bones, rib cage and skull.

In 1961, Dr. C. Henry Kempe, National Child Abuse Center, Colorado University School of Medicine, proposed the term "Battered Child Syndrome." His studies of children as a pediatrician not only revealed old, recent, and new fractures of the long bones, rib cage, and skull, but also revealed certain facts about the psycho dynamics of the abusing parent.

He discovered that a certain type of child abuser has in his or her own childhood been abused as a child.

The profile of the abusing parent indicates that such person has some or all of the following characteristics:

1. Immature personality
2. Suffers from social isolation
3. Is usually a very dependent person
4. Tends to be an impulse ridden individual
5. Has been abused as a child
6. Is a frightened, insecure person
7. Generally feels unloved, and rejected.

Dr. Kempe found that these people deal with children as if they were much older than they are.

The expectations of the parents in respect to the child's

responses are totally unrealistic. If the infant isn't warm, loving, and affectionate, the parent reacts inappropriately.

Frequently there is a role reversal wherein the parent becomes the child, and the child becomes the parent. In effect what we view is the parent, not the child, being the dependent being.

The child is looked to as a source of comfort and reassurance and a loving response is expected from the child.

The expectations of the parents in reference to the child are unrealistic and impractical.

The child is sometimes viewed as a symbolic or delusional figure who either must be controlled or destroyed.

With almost all parents of this type the burden and responsibilities of the parents are shifted to the child who is blamed for the parents particular dilemma.

Instead of facing his or her own problems the child is blamed and therefore attacked. The child is viewed as a "bad person", or object.

These parents believe that the child exists to satisfy the parents needs and the child's needs for love, affection, care, etc., are disregarded.

George Bernard Shaw, emminent writer and playwright, once said, "We are educated in everything except how to be parents."

The type of person described above, coupled with a crisis usually results in a child abuse situation.

The crisis could be for example any one of the following:

(a) Financial problems (e.g. rent due, bill collectors, eviction notices, loss of jobs, lay-offs, etc.
(b) Drinking and/or drug problems

(c) Plumbing breaks down
(d) Marital problems
(3) Isolation (TV-radio breaks - phone is removed for non-payment)

The people described are not necessarily anti-social and are rarely psychotic. They are ignorant usually of normal things attached to infant or young child functioning:

e.g. (a) failure to eat
(b) crying excessively
(c) fretfulness
(d) hyper-kenetic behavior
(e) retardation
(f) hydro encephally
(g) autistic children (child doesn't respond to love, caressing, prefers no talk, no love, wishes to be alone
(h) schizophrenic child
(i) The encopretic child ("messers" - never allowed to express anger - more prevelant in boys than girls)
(j) arsonists (expressing anger as early as age 3)
(k) children who lie, steal, masterbate

Most beaten children who die from battering are under age 3.

Frequently one child in a family is a "scapegoat." When he or she is removed from the family environment, another child in the family assumes the role of scapegoat.

In conclusion the type of child abuser described requires a great deal of understanding and careful handling before they can be considered safe with their offspring.

The socio-economic strata of the person, or the race means nothing for child abuse occurs in rich, poor, and middle class and in any racial category in our country.

Indeed in Dade County, Florida which had 4,000 cases in 1974 the statistics indicated that the most common child abuser was a college bred, upper middle class anglo, or caucasian female.

It is well for the law enforcement officer investigating

child abuse and neglect to understand the type of persons he is dealing with in order that he can more effectively investigate the individual child abuse and neglect situations.

He should approach each case in a judicious, impartial, and objective manner.

The normal tendency of a law enforcement officer and indeed nurses, teachers and other professionals when first investigating these cases is to take a very judgmental attitude. The normal reaction to viewing a dead battered child on a morgue slab or seeing one badly bruised, battered, burned, or whatever, is to want to take out your own particular retribution on the offending caretaker of the child.

Keeping ones personal feelings in check, regardless of your professional duties, towards the child and the family is the first obstacle to overcome.

One has to keep in mind that from the stand point of the criminal act of child abuse, the corpus delecti of the crime consists in the:

(a) injury or death of a child, (in most states a person under age 16).
(b) and the criminal agency of another as its means.

This is a crime, much like a homicide investigation; usually committed in secret.

Confessions are rare.

Most criminal cases are proven because the prosecution is able to prove, beyond a reasonable doubt, that the explanations by the caretaker given for the injuries are totally inconsistent with the injuries that have in fact occurred.

In most cases the evidence is purely circumstantial.

The child abuse definitions vary somewhat from state to state but generally cover the following types of conditions:

(a) skin bruising
(b) bleeding
(c) mal-nutrition
(d) sexual molestation
(e) burns
(f) fracture of any bone
(g) subdural hemotoma
(h) soft tissue swelling
(i) failure to thrive
(j) death

Any of these conditions must be justifiably explained or be accidental to take the case out of the meaning of "abuse".

Where the history given concerning such conditions is at variance with the degree or type of such conditions, then a situation exists where child abuse may be present.

Other statutes cover not only physical battering but some of the following situations:

1. knowingly, intentionally or negligently, and without justifiable excuse, causing a child to be

   (a) placed in a situation that may endanger its life or health; or,
   (b) Exposing a child to the inclemency of the weather, or,
   (c) Abandoning, torturing, cruelly confining or punishing a child, or
   (d) Depriving a child of necessary food, clothing, or shelter.

The problems of neglected or dependent children I will leave to my colleagues in the field of social work. As usually these cases can be handled on the civil side of the law, as opposed to a criminal filing.

Most states provide in their legislation, (and wisely so),

that child abuse and neglect can be prosecuted in the criminal courts and also that it can be handled in the civil courts through, usually, dependency and neglect proceedings.

The latter course of action usually involves taking a child from his home, in some way via process and placing the child in foster care. Sometimes children are in foster care for short term placements and sometimes for long term placements. Sometimes the courts, in severe cases, will sever parental rights permanently.

It is well for the law enforcement officer to know of both alternatives in the law when he initiates his investigation.

He should know for instance, that children are generally placed in foster homes because the social history of the family indicates that there has been a continuous neglect or abuse pattern over a long period of time.

The officer should know, for instance, that prior transactions or instances of prior abuse are introducible in most states in criminal trials and that therefore his investigation must necessarily go in back of and far beyond the investigation of the most recent abuse or neglect incident.

Evidence of other child abuse crimes is frequently admissible in child abuse cases, where it tends to:

1. Establish the particular crime charged
2. Prove motive
3. Prove intent
4. Prove absence of mistake or accident
5. Prove plan, scheme, or design
6. Prove the identity of the person charged with the commission of the crime.

Evidence of prior abuse, e.g. whippings, abandonments, particularly towards other children, is frequently admissible.

Habitual mistreatment of a child by a defendant goes a long way in convincing a jury that injuries were non accidental and were committed by the defendant.

In some states in cases such as child abuse homicides, even prior acquittals can be admissible to show not that they were criminal acts but that they did occur and that the jury in the prior case decided that there was not enough proof to show, beyond a reasonable doubt, that the defendant acted criminally.

It becomes essential, therefore, for the law enforcement officer to investigate, beyond the present abuse incident because he can sometimes rightfully assume that it probably has occurred before.

The ideal situation in any city is to have both the police and the social worker respond simultaneously to any child abuse emergency situation and this is what occurs in the county of El Paso, at Colorado Springs, Colorado.

The question of who responds depends upon your particular state's reporting procedures.

The first duty of an officer in responding to a call at a residence or hospital wherein there is an alleged child abuse, is to decide whether the injured child, and any siblings should be taken into temporary custody for their safety.

If a Social Service case worker, is waiting outside, the officer can, in some states, take the child or children into temporary custody without a warrent and immediately place it with the social worker for temporary foster care placement.

Thus the case worker is advised of the situation, knows

what's happened, first hand, and can accompany the police officer and the injured child or children to a hospital for a physical examination.

The question of the decision as to whether or not to take a child into temporary custody is a serious judgment call that I feel should be the function of the peace officer. If there is any doubt about whether or not the child should or should not be taken, it should always be resolved in the light of the best safety interests of the child.

In most states peace officers, case workers, etc. and anyone reporting, investigating, or testifying in child abuse cases are immune from civil liability or criminal prosecution, unless they act in bad faith.

The child should be taken immediately to a hospital for a complete physical.

Long bone x-rays of legs, arms and of the skull should be taken.

In all cases colored photographs depicting the injuries should be taken immediately, else the evidence of the bruising, burning, or whatever the injury is, could be irrevocably lost. In death cases colored autopsy photographs are absolutely essential.

Polaroids are sometimes acceptable but are not to be preferred.

It is essential that the attending physician, a nurse, technician, or even an officer chart all the injuries with notes regarding whether the injuries appear old, recent, or new.

The doctors opinions as to age of fractures, bruises, burns,

lacerations can be extremely important.

X-ray photographs showing old, new, or healing fractures of the arms, legs, rib cage and skull can be vitally important to show a continuous course of mistreatment.

Prompt interview of all essential witnesses is vital.

Initially this hould include anyone having any contact whatsoever with the victim and the caretakers of the child. . .

e.g. ambulance attendants, emergency room personnel, attending physicians or surgeons, E.R. nurse supervisor, nurses and nurses aides on the pediatrics floor.

The reason for this is obvious. Frequently the offending parent or parents will give to different medical personnel, different explanations for the injuries.

Frequently in head injury cases - subdural taps are made by neuro-surgeons. The freshness or oldness of the blood obtained can be important in deciding how recent the trauma occurred.

Statements made by the person or persons bringing the child to the hospital or physicians office, should be in great detail.

Frequent explanations that we hear are:

(a) the child fell from a chair, or table couch or crib
(b) the child stumbled and fell
(c) the child fell off a hobby horse or sofa (sometimes the hobby horse turns out to be 14 inches high and the rug is 4 inches thick, yet the child has a subdural hematoma and a fractured skill)
(d) the car stopped suddenly and the child hit the dash board
(e) the child is clumsy
(f) the child bruises easily.

The key is always that the child's injuries are inconsistent with the caretaker's explanations.

Officers should request Toxicology and tissue examinations where it is believed such examinations might be helpful in establishing cause of death. (e.g. poison - drugs - alcohol - food poisoning, etc.).

If there is some type of form to be filled out notifying the state or the District Attorney that suspected child abuse has occurred this should normally be filled out by the attending doctor but any other medical or law enforcement or social worker type may normally do so.

Just as promptly as the above interviews are conducted, similar interviews should be conducted with:

(a) All those at the place where the alleged injury occurred
(b) Neighbors (present and past)
(c) Baby-sitters (present and past)
(d) Relatives
(e) Employers and fellow employees
(f) School teachers and counselors where appropriate
(g) The family pediatrician (if any) and family doctor

Checks with family pediatrician and/or family doctors and even checks at other local hospitals sometimes reveals that children have been treated before for injuries. (Among child abusers there is considerable doctor and hospital "hopping.")

Checks should be made with Department of Social Services (D.S.S.) and police record bureaus to determine if victim and or parents are recidivists.)

In respect to any investigation made at the place of occurrence, (usually the residence), weapons such as belts, bottles, paddles, sticks, knives, matches, should be obtained either through consent or search warrant.

CONTINUED

1 OF 2

Alleged objects from which child fell should be measured for height from floor or confiscated.

Photographs of the pertinent rooms should be taken and where pertinent diagrams should be made.

In all of the investigations above indicated, the peace officer should develop as much social history as he possibly can obtain about the family, keeping in mind that abuse and neglect is usally a continuous type of activity. Also the Department of Social Services can utilize much of this information in their custody hearings.

The point here is that although you may not prove your criminal case you may develop enough facts to allow the court to safeguard the child or children by taking them out of the home and thus allow D.S.S. to work with the family to see if some of the problems which caused the abuse or neglect can be solved and the family ultimately reunited.

Lastly, we consider the interviews with the suspect parent, parents, or caretaker.

They should be interviewed promptly, separately, and in a setting which is convenient rather to the officer than the parent.

Attempts to interview parents in emergency rooms or corridors of hospitals or in confusing residence situations should be assiduously avoided.

Parents should be interviewed in great depth, with strict attention being given to Miranda warnings.

The interview should differ from that conducted in the

usual criminal case where a suspect is involved.

Similar to the homicide your concern should not only be "who done it," so to speak, but "why", which goes to motive or intent.

Initially, again, the attitude of the pfficer, when he has seen the severely injured child is likely to be judgmental, accusative, outraged, perhaps, even vindictive and angry.

That won't get you too far if you really want to know what makes this suspect "tick" and why he injured a helpless infant.

In order to get "inside of this type of persons head," Dr Brandt Steel, associate of Dr. C. Henry Kempe has stated that an interview of a suspect parent, by case worker, doctor, policemen, or therapist should have the aspects of "Entre voir" about it. The meaning of this french term is "to catch a glympse of" and suggests the idea of two people looking at each other face to face.

The "suspect", or other person, I suggest to you, is looking at you initially just as you look at them. They are, then, viewing you too.

I suggest that the interview could be a gently "finding out who you are," or as in "The King and I" - a "getting to know you."

I believe that in these cases the officer should be looking at the total way of life of the suspect not just "who hit who and when?"

One, when interviewing such a suspect should keep in mind Tennyson's poem "Ulyses" where it says "I am a part of all I have met.:

Try to see what that person's life has been all about, not

necessarily through your eyes but through the suspect's eyes and try to understand why he or she is what they are.

The denial response of child abusers can be extreme. The direct approach doesn't usually work - don't push.

Interviews can be punitive or somewhat protective or sympathetic.

These are some suggested questions:

Has anything like this ever happened before? You're certainly in a tough situation.

How has it been at home? You look tired. You look worried.

Have you been sleeping?

Is there anything bothering you besides the children?

Has this been an unusually difficult child?

Does he give you more trouble than the other children?

Express an interest in the person's past and childhood.

How did your parents treat you as a child?

What did you do that pleased them?

What things have they done to hurt you?

What things have you done that you enjoy and are proud of?

What social outlets do you have?

How do you feel when the child cries?

Does it upset you?

How did your folks criticize, correct, or punish you?

What do you do when the baby won't stop crying?

Do you have behavior problems with your child?

How do you handle potty training?

Have your problems become too much for you to handle?

Does this particular child bother you more than any other?

What problems do you have at home?

Drinking
Cooking
Drugs
No telephone - Tv - Radio
Bills or Finances
Relatives
Illnesses

Go through suspect's entire social history - Education
Family
Employment - etc.

In your interview look for something wrong in the family.

Look for premeditation (pre-planning), especially in detecting psychotics, religious fanatics, torture cases.

Look for "quirks" in personality and things like post-partems depression in new mothers.

Lastly, if no confession is forthcoming yet you have inconsistencies consider asking suspect to subject himself or herself to polygraph examination.

Obtain signed statements where possible.

Lastly have a thorough interview with your medical examiner or doctor in those cases where the injuries are not compatible with suspect's explanations to determine if he will testify that the injuries or death could not have occurred in the manner described by suspect. Without his medical testimony your case usually disintegrates.

In conclusion I'd like to point out that it has been my experience in the District Attorney's Office for over 9 years, that less than 5% of your cases will be prosecuted to the fullest extent. There are alternative methods to prosecution which deal with behavior

modification of parents, etc., on the civil side of the law, which subject matter I will leave for my Social Worker colleages and for the District Attorneys.

I suggest to you that each District Attorney's Office should have a team approach to the child abuse problem and that all community agencies such as police, social service agencies, schools, hospitals and doctors in the community be involved in a community effort to detect it, treat it and ultimately prevent it.

All hospitals should have protective teams for child abuse cases.

Your offices should encourage continuing community education to encourage reporting particularly.

Your police should understand the social workers function and the social worker should understand the policeman's function and this must extend to an understanding of the basic philosophy of each profession.

Education should extend to emergency room personnel and pediatric wards.

Basically without a joint community team concept functioning we can never begin to attack the child abuse problem with any degree of success.

SECTION 307
CHILD MOLESTING AND OTHER CRIMES AGAINST CHILDREN

A. APPLICABLE STATUTES

1. Principal Penal Code sections summarized

Penal Code Section	Subject Matter	Sentence Classification
261.5	Unlawful sexual intercourse with female under eighteen	Felony (16 mo. - 2-3 years) alternative misdemeanor sentence possible)
272	Contributing to delinquency of a minor	Misdemeanor (up to one year County Jail) (Registrable if lewd and lascivious conduct involved)
273a(1)	Infliction of physical or mental suffering on child or endangering health under circumstances likely to result in great bodily injury or death	Felony(16 mo. 2-3 years) alternative misdemeanor sentence possible)
273a(2)	Same as above but not under circumstances likely to result in great bodily injury or death	Misdemeanor
273d	Infliction of unusual or inhuman punishment on child resulting in traumatic injury	Felony 16 mo - 2-3- years alternative misdemeanor sentence possible)
273g	Immoral practices in presence of child	Misdemeanor
285	Incest	Felony 16 mo - 2-3 years (Registrable)
286(b)(1) (288a(b)(1))	Sodomy (Oral Copulation)-victim under 18	Felony 16 mo - 2-3 years alternative misdemeanor sentence possible)
286 (b)(2) (288a(b)(2))	Sodomy (Oral Copulation)-victim under 16 and accused over 21	Felony 16 mo - 2-3 years
286(c) (288a(c))	Sodomy (Oral Copulation)-victim under 14 and accused 10 years older or use of force	Felony 2 - 3 - 4 years
286(d) (288a(d))	Sodomy (Oral Copulation)-acting in concert with force	Felony 3 - 4 - 5 years
286(e) (288a(e))	Sodomy (Oral Copulation)-in correctional facility	Felony 16 mo - 2-3 years alternative misdemeanor sentence possible)
288	Child Molesting	Felony 3 - 4 - 5 years
647a	Child molesting; annoy and molest a child under eighteen	Misdemeanor (up to one year County Jail) (Registrable)
	With prior conviction for this section or P.C. § 288	Felony 16 mo - 2-3 years

2. **Felony child molesting** (P.C. § 288)

The elements of this crime are:

a) Willfully and lewdly

b) Committing any lewd or lascivious act (including any act separately punishable in Part I of the Penal Code)

c) Upon or with the body

d) Of a child under age fourteen

e) With the intent of arousing, appealing to, or gratifying the lust, passion, or sexual desires

1) Of such person *or*

2) Of such child

One of the major charging problems with the section is the existence of the alternative misdemeanor child molesting section discussed below in Subsection A.3. and the vagueness of some of the terms used. As a general policy, the prosecutor should charge a violation of this section whenever the victim is under fourteen and the accused commits an act of sexual intercourse, oral copulation, or sodomy; attempts penetration of the vagina or anus with his hands or sexual organ; fondles the victim's penis, vagina, breasts, or anus under the clothing; or masturbates the victim. Other forms of molestation, generally including fondling over the victim's clothing, should be charged as misdemeanors under P.C. § 647a unless excessive force was used or the victim was extremely young (e.g., age six) and the fondling was of more than a brief duration.

Penal Code § 288 is a straight felony with a 3-4-5 year sentence & mandatory referral for a possible MDSO commitment (W. & I. Code § 6302(c)). PC§290 is applicable PC§288 is a violent felony under §667.5(c) of the Penal Code

3. **Misdemeanor child molesting** (P.C. § 647a)

This section makes it a misdemeanor to "annoy or molest" a child under eighteen. However, if the accused has a prior conviction for P.C. § 647a or P.C. § 288 it is chargeable as a felony with a 16 mo - 2-3 years state prison sentence. It is not classified as an alternative felony-misdemeanor. The registration provisions of P.C. § 290 are applicable and an MDSO commitment is possible.

The acts proscribed by this section are those which are motivated by an unnatural or abnormal sexual interest or intent with respect to children. The statute's purpose is to protect children from sexual offenders. *In re Sheridan*, 230 Cal.App.2d 365 (1964).

Subsection A.2. suggests the practical distinction to be drawn between felony and misdemeanor child molesting. This distinction is based on the use of the words "lewd and lascivious act" and the specific intent required in P.C. § 288. The distinction is somewhat narrower than that permitted by case law but is made with the provisions of Standard II.A.3., page 28, in mind.

The acts necessary to constitute a violation of P.C. § 647a must be sexual in nature. They include continuous kissing, and fondling the breasts, sexual organs, or buttocks from outside the clothing. They also include continuous fondling of any other part of the body underneath the clothing. They would not include holding hands, hugging, patting a victim on the buttocks, or a few brief kisses unless the accused continued to repeat these acts against the victim's will. The basic test to use is whether the act under all the circumstances was one which would be engaged in by persons involved in a romantic relationship as opposed to a blood or platonic relationship.

The section is also applicable to verbal acts. *People v. Carskaddon*, 170 Cal.App.2d 45 (1959). Direct solicitation of a child to do any of the acts discussed above as appropriately charged under

this section, would be covered provided the solicitor is significantly older than the victim and would be the type of individual appropriately considered a sex offender.

Penal Code § 647a should not be charged in a consensual situation unless the accused is significantly older than the victim and was not in the age bracket of those who would normally date one who was the victim's age. If the conduct involved constitutes a separate violation of law like P.C. § 261.5, 288a, or 286 those sections should be charged instead where the age difference is minor and the victim consents.

Pleading forms must be carefully reviewed so there is no confusion between P.C. § 647a and P.C. § 647(a). The latter section involves the solicitation to engage in, or the actual engagement in, a lewd and lascivious act in a public place. Of course, that charge should be joined if applicable to the facts of the particular case. See Subsection D.1. below.

4. Contributing to the delinquency of a minor (P.C. § 272)

This section covers many different possible offenses. It includes inducing someone by threats, commands, or persuasion to do an unlawful act or do anything that would cause them to lead a lewd, idle, dissolute, or immoral life. See W. & I. Code 600, 601, 602. Because of cross-references to the Welfare and Institutions Code it is necessary to specifically plead the nature of the violation.

Penal Code § 272 is particularly useful in child molesting cases because, unlike P.C. § 647a, it has a maximum one year sentence as a misdemeanor. A MDSO commitment or P.C. § 290 registration is possible, however the pleading must contain a specific allegation that the offense involved lewd and lascivious conduct. Use Form No. 2 under P.C. § 272.

5. Immoral practices in the presence of children (P.C. § 273g)

Penal Code § 273g makes it a misdemeanor to indulge in any degrading, lewd, immoral, or vicious habits or practices in the presence of children or to be habitually drunk in the presence of children under one's care, custody, or control. This section is not covered by the registration provisions of P.C. § 290.

This charge is appropriate where the conduct does not fall within the provisions of P.C. § 647a or P.C. § 314(1) (indecent exposure) but is covered by the language set forth. It serves no particular purpose to charge this violation in addition to those charges unless the circumstances of the case are such that a prosecutor believes registration is inappropriate, the charge represents additional conduct not covered by the main charge, or reflects an on-going situation.

6. Child mistreatment (P.C. §§ 273a, 273d)

Penal Code § 273a(2) is a misdemeanor. It proscribes conduct which *causes or permits* a child to undergo *unjustifiable physical pain* or *mental suffering* or which endangers the child's *health* under circumstances that *are not likely to result in death or great bodily injury.*

Penal Code § 273a(1) is a felony which proscribes similar conduct under circumstances that *are likely to result in death or great bodily injury.* This crime is an alternative felony-misdemeanor with a 16 mo - 2-3 sentence.

Penal Code § 273d is an alternative felony-misdemeanor which proscribes the intentional infliction of cruel or inhuman punishment which results in a traumatic condition.

B. SPECIAL EVIDENTIARY PROBLEMS

1. Jurisdiction

Penal Code § 784 has a special provision applicable to kidnaping, false imprisonment, and enticement of minors cases. It confers jurisdiction in any county where the offense was com-

mitted, where the victim was taken, or where the accused or any other principal instigated, procured, promoted, or aided the commission of the offense or the parties involved. If jurisdiction is available in more than one county under this section, and one of these crimes is involved, the prosecutor should comply with Standard V.E., page 69, before he makes a decision to charge or reject.

2. Use of child witnesses

Child molesting cases pose many of the same proof problems that rape cases do and the prosecutor is referred to Section 324 for a discussion of the matters to be covered by the initial investigation and witness interview. Witnesses should be interviewed personally by the prosecutor to determine if the witness will be competent to testify in court and to establish rapport.

There are certain distinctions with rape cases which make child molesting cases even more difficult to successfully prosecute absent strong corroboration. One factor is the victim's age. Many children are so young that even though they can qualify as witnesses, their memories are poor on details and they can be easily confused. Grand Jury proceedings may be helpful in alleviating some of the prosecution problems inherent in such cases. However, if the child is very young, a preliminary hearing might be preferable because the testimony could be substituted later if the child forgot principal portions of his testimony.

If the child is very young it is less likely that he would fabricate or know enough to fabricate. The prosecutor should interview the victim carefully to determine the extent of his prior knowledge about sexual activities and to learn what terms he uses for different parts of the body. That information should be noted in any case evaluation sheet designed for use by the trial prosecutor.

Because of the problems posed by lapse of memory and simple confusion it is important that the interview be witnessed by a police officer so he can testify in court for purposes of admitting evidence on the basis of past recollection recorded.

The prosecutor should be aware that P.C. § 1048 provides that any criminal action in which a minor is a victim or a material witness is to be given precedence over other criminal actions.

The prosecutor should, at the time of interview, alert the child's parents to the possibility that a court might, upon defense motion, order that the child submit to a psychiatric examination. The prosecutor should suggest to the parents that they consult a private attorney regarding the obligation of the child to submit to such an examination in the event of such an order.

3. Proof that the act took place

Medical examinations, similar to those suggested in Section 324 on Rape, should be given where appropriate. Unfortunately, many of the acts involved in P.C. § 288 and all those involved in P.C. § 647a are not subject to medical corroboration. If it can be proven that the act took place the only other major issue is identity. Consent is not in issue.

The prosecutor should consult Standard I.E.2.b., page 25, to see if the case falls in any one of the four categories for charging uncorroborated crimes of a sexual nature.

Subsection (1) recommends charging if there is no reasonable possibility of a motive to fabricate. If the child does not know the accused that possibility will probably not exist. On the other hand, great caution should be exercised if the accused is a teacher or a stepfather.

Subsection (2) covers signs of physical injury or damage to clothing. Few child molesting cases involve this type of evidence.

Subsection (3) covers information provided by additional witnesses. This subsection would include evidence of other offenses (see, e.g., *People v. Wells*, 13 Cal.App.3d 265 (1970)), testimony by witnesses seeing the victim with the accused shortly before or after the act, and evidence of contradictory or false statements by the accused.

Subsection (4) recommends charging if there are "sufficient facts" to warrant a "convincing argument that the victim told the truth." One example would be a case involving multiple victims who were strangers. Another example would be a demonstration that the child had no previous knowledge about sexual activities or details about the accused, his clothing, apartment, or car and that he must therefore be telling the truth.

The prosecutor, in deciding whether to charge or reject, must place himself in the position of the trial prosecutor and ascertain how he would argue the case. If the case does not fall in one of these four categories it should not be filed.

4. Proof of identity

See Standard I.E.2.a., page 24, and Section 318 on Identity.

Corroborating evidence of identity is frequently provided by information like car descriptions, license numbers, and house or apartment descriptions. Any witness who saw the victim and accused together near the time of the crime should be subpoenaed if identity is in issue.

Note that proof of identity is extremely difficult in child beating cases if the child is young and cannot testify. A medical opinion that injuries were intentionally inflicted may be sufficient to establish the corpus but identity cannot generally be proved on the basis of access and opportunity alone unless the specific time that injuries were inflicted can be ascertained.

Even where a confession has been made to the crime of child mistreatment, it may be very difficult to prove the corpus delicti. Where child beating is involved, it is necessary to have an appropriate medical expert exclude the reasonable possibility that the injuries were caused by accident. See *Iiams v. Superior Court*, 236 Cal.App:2d 80 (1965).

C. CHARGE SELECTION POLICY CONSIDERATIONS

1. Charging Penal Code Section 647a as a felony

Charging the offense as a felony is not a prerequisite to a MDSO commitment or P.C. § 290 registration.

The offense should be charged as a felony if the prior offense (P.C. § 647a or 288) is less than five years old or if the accused has otherwise demonstrated himself to be a sexual offender within the previous five years. This guideline can be modified in application either way by considering the nature of the prior conviction and the severity of the present offense.

The offense is not subject to the provisions of P.C. § 17(b)(4). It is governed by the maximum five year term prescribed in P.C. § 18. Since no fine is provided, no alternative county jail sentence is either.

2. Joinder of Penal Code Section 272 charges

Penal Code § 272 charges should be joined with P.C. § 647a charges where appropriate because the former provides a higher maximum sentence and could cover more acts.

Penal Code § 272 charges should not be joined with P.C. § 288 charges or other sex offense charges unless the conduct to be covered by that charge is predicated on additional wrongdoing. Penal Code § 272 is a lesser, included offense of P.C. § 288. *People v. Harvath*, 1 Cal.App.3d 521 (1969).

3. Joinder of other felonies with Penal Code Section 288

If the accused commits felonies like rape, incest, or sodomy those felonies should be joined. Unlawful sexual intercourse should not be joined. If the accused commits an act of oral copulation that charge should be joined if there was force or duress or if the age difference clause is applicable.

The prosecutor should be careful to allege the proper sub-section of P.C. § 288a depending on age, age differences, or use of force if oral copulation is charged. However, unless P.C. § 288a(c) or 288a(d) is applicable, there is no need to join because P.C. § 288a is a lesser included offense of P.C. § 288. See People v. Cline, 2 Cal.App.3d 989 (1969). It is desirable, though, to specially plead out P.C. § 288a language in the P.C. § 288 pleading. Use Form No. 2 under P.C. § 288.

4. Joinder of Penal Code Section 288 and 647a charges

These charges should not be joined if they reflect identical conduct or conduct closely related in their commission with the same victim. Penal Code § 647a charges should be joined if the conduct involves a different victim or conduct with the same victim at a different time. Penal Code § 647a charges should also be joined under the same conditions if the felony to be charged is another sex offense felony like rape.

5. Use of child mistreatment charges

In determining whether to charge under subdivision (1) or (2) of P.C. § 273a the prosecutor should be governed by the principles of Standard II.C.3., page 33, relating to great bodily injury allegations. Even though subdivision (2) could be filed as a misdemeanor pursuant to P.C. § 17(b)(4) it should not be. If the case warrants a filing under subdivision (1), as opposed to subdivision (2), it generally warrants a felony sentence.

In most situations, if subdivision (1) charges are warranted, P.C. § 273d charges are also warranted and should be joined. For purposes of deciding whether a "traumatic injury" has been inflicted the prosecutor should be guided by the definition of great bodily injury contained within Standard II.C.3.

D. ALTERNATIVE CHARGES

1. Disorderly conduct (P.C. § 647)

Many of the subdivisions may be applicable to the facts of a particular molesting case and should be joined. Subdivision (a) proscribes solicitation of anyone to engage in lewd or dissolute conduct, or actually engaging in such conduct, in a public place. Since the offense is registrable, and since the elements of the crime differ somewhat from P.C. § 647a the two charges should be joined where applicable. The charge should not be joined with a felony unless there is a different victim or the conduct occurred at a different time. *Note:* This section is applicable even if the act solicited in public is to be done in a private place. *People v. Dudley*, 250 Cal.App.2d 955 (1967).

Penal Code § 647(d) proscribes entering in and about a public toilet for the purpose of engaging in, or soliciting, a lewd or lascivious act. This offense is registrable. However, it would be very difficult to prove absent an actual solicitation or lewd act. If there were an actual solicitation or lewd act other charges would be more appropriately filed.

2. Indecent exposure (P.C. § 314(1))

This section makes it a misdemeanor to willfully and lewdly expose one's private parts in a public place or any other place where other persons are present to be offended or annoyed. It can be charged as a felony if there is a prior conviction for this offense or for P.C. § 288.

If there is an exposure by the accused of his penis in the course of a child molest, whether it be a felony or misdemeanor child molest, then this section should be joined. However, when no molesting is involved the prosecutor should only charge if under all the circumstances the accused's conduct was willful and lewd. See *In re Smith*, 7 Cal. 3d 362 (1972).

In determining whether to charge P.C. § 314(1) as a felony or misdemeanor where there is a prior conviction, follow the same policies advocated for charging P.C. § 647a as a felony or misdemeanor. See Subsection C.1. above.

3. Kidnaping and related offenses (P.C. §§ 207, 236, 278, 279, 280)

Kidnaping (P.C. § 207) or false imprisonment (P.C. § 236) charges should be joined where appropriate, however, the prosecutor should review Manual Section 319 carefully because of the evidentiary problems involved. Neither charge should be joined where simply incidental to the main offense. False imprisonment should not be joined simply because the child was confined unless the confinement was for a substantial period of time against the child's will or unless the child was actually confined by the use of force.

Penal Code § 236 may be appropriate, particularly as a misdemeanor, if the victim is unclear about what the accused did or if the accused spoke only in general terms about sexual activity and did not actually solicit a particular sexual act.

There are specific provisions relating to child stealing. Penal Code § 278 is a felony. It would generally be applicable if there was an intent to conceal the child from his parent. The intent is analogous to the "permanently deprive" intent involved in theft statutes and would generally be inappropriate in the typical child molest case. Penal Code §§ 279 and 280 involve divorce and adoption situations and would also generally be inappropriate in the typical child molest case.

The Penal Code also has specific provisions for substituting a child (P.C. § 157) and taking any person from the parent without the parent's consent for the purpose of prostitution (P.C. § 267).

4. Alternatives to Penal Code Section 272

There are many sections in the Penal Code covering specific types of conduct that could come within the provisions of P.C. § 272 and should be joined where applicable.

Penal Code Section	Subject Matter
273e	Sending minor employee to house of prostitution to deliver message, package, etc. or permitting such minor to enter
273f	Sending minor to saloon, gambling house, or house of prostitution
309	Admitting or keeping minor in house of prostitution
311.4	Employing minor to assist in sale or distribution of pornography
314(2)	Procuring, counseling, or assisting anyone to indecently expose himself (felony upon second offense)
501	Purchasing or receiving in pledge any junk, metals, mechanical tools, or implements from someone under sixteen

If the facts of a particular case do not warrant a P.C. § 272 charge, they probably do not warrant a specific charge under these special sections.

Several sections in the Health and Safety Code apply to minors as well. Because they are felonies, P.C. § 272 should not be joined unless predicated upon additional unlawful conduct.

Health & Safety Code Section	Subject Matter
11353	Furnishing to a minor, inducing a minor to use, and use of a minor to sell(all scheduled)controlled substances (felony)
11361	Same as above but marijuana is involved (felony)
11371	Encouraging minor to write or pass false prescription (alternative felony-misdemeanor)

Penal Code § 31 provides that a person who counsels, advises, or encourages a child under age fourteen to commit a specific crime is guilty as a principal in that crime. If such a fact can be proven in a particular case, the appropriate crime, felony or misdemeanor, should be charged in addition to P.C. § 272. For example, an accused can be charged with a violation of P.C. § 288 on this theory even though the act was done by one child under fourteen to another. *People v. Roberts*, 26 Cal.App. 3d 385 (1972).

While technically a child under fourteen cannot be an accomplice, his testimony should be corroborated by strong evidence as a practical matter.

E. SPECIAL ALLEGATIONS

1. Sterilization (P.C. § 645)

A court may direct that an accused be sterilized if he commits an act of carnal abuse of a female under the age of ten years. A special allegation should be used. Use Form No. 3 under P.C. § 288.

"Carnal abuse" includes sexual intercourse, oral copulation on the victim, and sodomy.

Because of the seriousness of this section, it should only be utilized in extreme cases where the prosecutor is convinced its application is warranted upon conviction. A history of similar offenses and the seriousness of physical or psychological injuries to the victim would be crucial in this determination.

Supervisory review should be mandatory in determining whether to utilize this allegation.

2. Enhancement allegations (P.C. § 12022, 12022.5, 12022.7)

Armed allegations should be utilized whenever appropriate. The prosecutor must be certain that the victim can accurately describe the weapon and that it fits within the definition contained in PC 12022 For example, if a knife is involved, the allegation should not be used unless the victim is certain the blade was longer than five inches. Unless the weapon is recovered, proof of the truth of the allegation may be difficult Note: PC 12022, PC 12022.5, 12022.7 applies to any felony. It would appear that rape would not be "great bodily injury" pursuant to PC 12022.7 despite People v. Cardenas 48CA 3d203 due to the narrow definition in the new legislation.

F. INVESTIGATION AND PREPARATION CHECKLIST

1. Check Subsection E under Rape, Section 324, for matters to be covered in considering credibility.

2. Interview victim (and other child eye-witnesses) to determine competency, credibility, and to establish rapport.

3. Consider interviewing parents or guardian separately. They might provide helpful background information.

4. Take recommended steps to assist in child's later recollection. (See Subsection B.2.)

5. Review medical reports on injuries and any other available scientific evidence. Be certain necessary witnesses are available.

6. See that persons first coming into contact with child after offense are interviewed and available to testify.

7. See that persons witnessing accused with child around time of alleged crime are interviewed and available to testify.

8. Consider statements of accused and see that appropriate witnesses are available to testify even if exculpatory. They may be needed for rebuttal.

9. Determine if modus operandi evidence is available and helpful. Investigate background of accused.

10. Ascertain appropriate arguments to be made to trier-of-fact and make these notations on any case evaluation sheet in use.

11. Determine if there are appropriate alternative charges and special allegations.

CHILD ABUSE

BY RICHARD HOLMES

Deputy District Attorney
Ventura County

I. PRETRIAL INVESTIGATION AND EVALUATION.

A. Medical.

1. First and foremost, obtain the services of a doctor who is a pediatrician and a battered child expert, and who has and will testify to an opinion that the victim is a battered child.

2. The injuries of the child should be fully explored and categorized. This means that all tests which need to be done, including X-rays, blood tests (prothrombin time partial thromboplastin time, I.V. bleeding, capilliary fragility and platelet count) should be done. It should be noted that cigarette burns and bites can only be proven by scraping a sample from the damaged tissue and having it checked by a laboratory for either tobacco ash or dental germs.

3. Take as many color photographs of the child from different angles as possible. Be sure there is not too much light in the photograph on Caucasian children, since the glare will make the bruise difficult to see. If possible, have color Polaroids taken so that you can immediately know whether the pictures are adequate and so that they can be utilized in an interview with the defendants and with the doctor. Make sure that the child has been measured and weighed, since this may be important for future exhibits (such as lifesize diagrams of the child and the bruises).

4. Later, photographs should be taken of the child at the hospital (after some time has passed) to show that in normal care the child does not bruise easily and is a healthy child.

5. Note that the battered child is not necessarily the same as a neglected child, so that the child may not be undernourished; however, if the child is a "failure to thrive" child, he still comes within the provisions of section 273a(1) of the Penal Code.

6. Ask the doctors to put their opinion as to whether the child is a battered child in the medical records and make sure that you have all the medical records on the victim.

7. Press the doctors for other causes, and test to check other causes of the injuries. If the doctors stated that further tests can be done, make sure that they are completed.

8. Make sure the doctor has included in his medical chart an opinion as to the likelihood of the injuries occurring and the manner in which the parents stated the injuries occurred.

9. Talk to all other doctors who have seen the child. [NOTE: There may be many doctors in the child's past, because the parents have switched doctors and hospitals frequently to avoid suspicion of a battered child.]

10. Talk to the nurses in the emergency room and obtain from the nurses and from the attending physician complete statements of the parents' reactions and the parents' statements. [NOTE: Many battering parents are more worried about themselves than about the child's condition.]

11. Have the nurses write down all communications with the child into the hospital records. If the child cries or says something in the night, make sure they put it in the medical records. Use it later to form the doctor's opinion.

12. Have all medical personnel note the behavior of the child and whether that behavior is normal--often battered children are exceedingly obedient, and will follow commands to raise their arm by raising their arm and keeping it raised, instead of squirming like normal children.

B. Family and Relatives.

1. Note that timing of the events is often very crucial. Make sure that the dates on statements given by the defendants are correlated to some known hour, such as a T.V. program or the time that they usually get up or go to bed, etc.

2. Talk to the mother and father separately and tape record the conversation.

a. Show pictures of the child to each parent separately and ask if this is a bruise or a birthmark, how old the bruise is, how the bruise was received, etc.

b. Ask who tends the child regularly; e.g., babysitters or relatives, and interview them in the same manner you interviewed the parents.

c. Who are the doctors of the child? Where have they lived in the past? Who has been the child's doctor in the past?

d. Get a full history of the child and its development; whether the child is unusual in any way, and all of the diseases the child has had.

3. Talk to the other children in the family and ask about the parents' treatment. [NOTE: Many battered children may be loyal despite the beatings they receive, and note that the fact that only one child in the family appears to be abused is not abnormal. In fact, in most cases, only one child is picked out as the target of the beatings.]

4. Talk to the relatives and ask them about the history of the child, when they last saw the child, whether the child bruises easily, what bruises they have seen on the child and what explanations were given by the parents for those bruises, etc. Ask both the relatives and the parents if either parent has been gone for some time and any differences which were noted in the condition of the child during that parent's absence. Also, ask both whether the child was planned or was an unplanned birth.

5. Get a rap sheet and documents on any prior violent behavior of any type by the defendants. Make sure to submit this to the doctor to help him form his opinion.

C. Other things to do.

1. Get a search warrant for the house or place where the child was injured. Seize any items the parents claim the child bumped into. Take as many pictures from as many angles as possible to show the arrangement of furniture, etc. Have a member of the Public Works staff diagram the house and the furniture.

2. Potential eyewitnesses should be interviewed thoroughly.

3. Check with schools, as teachers and student nurses, for any bruises they may have seen, possible explanations given by parents, etc.

4. Investigate former girl friends and boy friends of the defendants for their violent tendencies--see if they had children by ex-wives, etc., and their treatment of the children in those cases.

5. If the child is in a foster home, talk to the foster parents about the child's behavior, any injuries since the child has been placed in the foster home, etc. Photograph the child at the foster home.

II. TRIAL OF THE CASE.

A. Jury selection.

1. Plus factors.

a. People who appear to like children, or who have had frequent contact with children in the past.

b. People who show some familirarity with the Battered Child Syndrome (there has been quite a bit of publicity about this lately).

c. At least one survey has shown that as one moves up the socio-economic-educational ladder, people tend to view the Battered Child Syndrome as more of a treatment problem, rather than a criminal problem, and are less desirous of punishment for the batterer. (To me, this clearly demonstrates that, in general, you are better off with working class, blue collar-type people.)

d. Virtually, all other plus factors are the same as in the trial of a sex case.

2. Negative factors.

a. People who are single, or have been married and never had any children.

b. Virtually all negative factors listed in the outline of the trial of a sex case would be pertinent here.

D. Prosecution case-in-chief.

1. Be sure and introduce all exhibits which may help the case, including color photographs of the injuries. (See points and authorities on introduction of gruesome photographs in a battered child case.) Medical records, diagram of house, photographs of inside of house, X-rays, etc.

2. Do not hesitate to put on brothers and sisters of the victim if it appears their testimony would be helpful, either their direct testimony or impeachment by former statements.

3. The doctor.

   a. It is most helpful to spend a great deal of time on the doctor's qualifications--do not stipulate to them. Note the number of children the doctor has seen over the years, the number of battered children he has seen over the years, the number of occasions upon which he saw this child.

   b. Go over the injuries to the child from head to toe. It would be useful to use a lifesize diagram of the child with shaded areas showing the bruises. (Use a medical illustrator to draw this diagram.) Have the injuries numbered so that reference can be made to them by number when the doctor refers to them.

   c. Have the doctor explain the Battered Child Syndrome both medically and sociologically. In other words, have him explain the medical findings in battered child cases, and what is the usual age, typical characteristics of battered children, the usual injuries, and the usual explanations by the parents. Correlate each of these with the findings in this case to show the consistency of this case with the Battered Child Syndrome.

   d. Make full use of diagrams and photographs in the doctor's testimony, and make sure that you have him say it is necessary for an analyst to look at these photographs.

   e. Note the defendant's explanations to the doctors and why these are not likely to be the true explanations. Couch the doctor's explanation in terms the jury will understand, and make sure he explains every medical word.

f. Have the doctor state his opinion that the child is a battered child. (People v. Jackson, 18 Cal.App.3d 504, makes this opinion admissible.) Have the doctor state his degree of certainty in the diagnosis.

C. Defense case.

1. If the defense calls an expert witness to rebut your expert testimony, ascertain immediately when you begin cross-examination, what information the doctor was supplied with and what examinations (if any) he conducted. Make him give you the entire packet that he was given. If necessary, after a recess, so you can review it carefully, make him tell you what he understands to be the facts. It may be that the material with which he was supplied contradicts his statement as to what he understands the facts to be, or the other evidence that you have put in may contradict it, or his summary may simply not be complete and, therefore, inadequate.

2. Don't let the defense make you prove prior injuries by shifting the main focus of the injury from the counts in the Information to the Battered Child Syndrome. The defendant is guilty or not guilty of Count I, etc.; he is not going to be found guilty or not guilty of the Battered Child Syndrome. The Battered Child Syndrome is a tool for understanding, it is not the charge in this case--make sure the jury understands that.

3. If the defendant(s) testifies, cross-examine him thorougly and precisely as to each and every injury suffered by the victim shown by the evidence, both as to the present charge and to any past injuries which you may have been able to show. In some cases you may be able to show the defendant did not seek out medical treatment when he should have, ask him his explanation for that.

4. Note that CALJIC 2.62 (defendant testifying--when adverse inference may be drawn) might be a useful instruction in a case where the defendant fails to explain that which he should be able to explain.

REH:ym

CRIMINAL PROCEEDINGS
by
DAVID R. DISCO
Deputy District Attorney
Los Angeles County District Attorney's Office

I. FILING

A. General standards stated in the manual are applicable.

1. Prosecutor is satisfied that guilt is shown.

2. Sufficient evidence of corpus.

3. Sufficient evidence of I.D.

4. Evidence of such force would warrant a conviction before neutral trier of fact.

II. SPECIFIC CODE SECTIONS

A. Two general categories dealt with in child abuse:

1. Sexual assault or misconduct with children; and

2. The infliction of pain and suffering on the child.

B. Sexual offenses:

Two categories felony and misdemeanor.

1. Felony child molesting (P.C. § 288)

The elements of this crime are:

a. Willfully and lewdly.

b. Committing any lewd or lascivious act (including any act separately punishable in Part I of the Penal Code).

c. Upon or with the body.

d. Of a child under age fourteen.

e. With the intent of arousing, appealing to, or gratifying the lust, passion, or sexual desires

1) Of such person or

b) Of such child.

One of the major charging problems with the section is the existence of the alternative misdemeanor child molesting section discussed below in Subsection A.3. and the vagueness of some of the terms used.

As a general policy, the prosecutor should charge a violation of this section whenever the victim is under fourteen and the accused commits an act of sexual intercourse, oral copulation, or sodomy; attempts penetration of the vagina or anus with his hands or sexual organ; fondles the victim's penis, vagina, breasts, or anus under the clothing; or masturbates the victim. Other forms of molestation, generally including fondling over the victim's clothing, should be charged as misdemeanors under P.C. § 647a unless excessive force was used or the victim was extremely young (e.g., age six) and the fondling was of more than a brief duration.

Penal Code § 288 is a straight felony with a one year to life sentence or mandatory referral for a possible MDSO commitment [W. & I. Code § 6302(c)].

Under new statute, § 288 remains a straight felony but the term is three, four, or five years.

2. Misdemeanor child molesting (P.C. § 647a)

This section makes it a misdemeanor to "annoy or molest" a child under eighteen. However, if the accused has a prior conviction for P.C. § 647a or P.C. § 288, it is chargeable as a felony with a one to five year possible state prison sentence. It is not classified as an alternative felony-misdemeanor. The registration provisions of P.C. § 290 are applicable and an MDSO commitment is possible.

The acts proscribed by this section are those which are motivated by an unnatural or abnormal sexual interest or intent with respect to children. The statute's purpose is to protect children from sexual offenders. In re Sheridan (1964) 230 Cal. App.2d 365).

Subsection A.2. suggests the practical distinction to be drawn between felony and misdemeanor child molesting. This distinction is based on the use of the words "lewd and lascivious act" and the specific intent required in P.C. § 288. The distinction is somewhat narrower than that permitted by case law

but is made with the provisions of Standard II.A.3., page 28, in mind.

The acts necessary to constitute a violation of P.C. § 647a must be sexual in nature. They include continuous kissing, and fondling the breasts, sexual organs, or buttocks from outside the clothing. They also include continuous fondling of any other part of the body underneath the clothing. They would not include holding hands, hugging, patting a victim on the buttocks, or a few brief kisses unless the accused continued to repat these acts against the victim's will.

The basic test to use is whether the act under all the circumstances was one which would be engaged in by persons involved in a romantic relationship as opposed to a blood or platonic relationship.

The section is also applicable to verbal acts. People v. Carskaddon (1959) 170 Cal.App.2d 45. Direct solicitation of a child to do any of the acts discussed above as appropriately charged under this section would be covered provided the solicitor is significantly older than the victim and would be the type of individual appropriately considered a sex offender.

Penal Code § 647a should not be charged in a consensual situation unless the accused is significantly older than the victim and was not in the age bracket of those who would normally date one who was the victim's age. If the conduct involved constitutes a separate violation of law like P.C. § 261.5, 288a, or 286 those sections should be charged instead where the age difference is minor and the victim consents.

Pleading forms must be carefully reviewed so there is no confusion between P.C. § 647a and P.C. § 647(a). The latter section involves the solicitation to engage in, or the actual engagement in, a lewd and lascivious act in a public place. Of course, that charge should be joined if applicable to the facts of the particular case. See Subsection D.1. below.

3. Sodomy

Section 286. Sodomy; punishment

a) Sodomy is sexual conduct consisting of contact

between the penis of one person and the anus of another person.

b)* 1) Any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison for a period of not more than five years or in a county jail for a period of not more than one year.

2) Any person over the age of 21 who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

c)** Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he is, or who has compelled tha participation of another person in an act of sodomy by force, violence, duress, menace, or threat of great bodily harm, shall be punished by imprisonment in the state prison for a period of not less than three years.

d)** Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of sodomy by force or violence and against the will of the victim shall be punished by imprisonment in the state prison for a period of five years to life.

		State	County
*	Under SB 42		
**	Victim under 18	16 mos, 2, 3,-1 year	
***	Victim under 16/ D over 21	16 mos, 2, 3	
	Victim 14/ D 10 years older or force	2, 2, 4	
	In concert	3, 4, 5	
	In prison	10 mos, 2, 3	

4. Oral copulation

Section 288a. Oral copulation; punishment

a) Oral copulation is the act of copulating the mouth of one person with the sexual organ of another person.

b)* 1) Any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison for a period of not more than five years or in a county jail for a period of not more than one year.

2) Any person over the age of 21 who participates in an act of oral copulation with another person who is under 16 years of age shall be guilty of a felony.

c)**Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he, or who has compelled the participation of another person in an act of oral copulation by force, violence, duress, menace, or threat of great bodily harm, shall be punished by imprisonment in the state prison for a period not less than three years.

d)***Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of oral copulation by force or violence and against the will of the victim shall be punished by imprisonment in the state prison for a period of five years to life.

		State	County
*	Under SB 42		
**	V under 18	16 mos, 2, 3	1 year
***	V under 16, D over 21	16 mos, 2, 3	
	V under 14/ D 10 years older or force	2, 3, 4	
	In concert	3, 4, 5	
	In person	16 mos, 2, 3,	1 year

5. Contributing to the delinquency of a minor (P.C. § 272)

This section covers many different possible offenses. It includes inducing someone by threats, commands, or persuasion to do an unlawful act or do anything that would cause them to lead a lewd, idle, dissolute, or immoral life. See W. & I. Code § 601. Because of cross-references to the Welfare and Institutions Code, it is necessary to specifically plead the nature of the violation.

Penal Code § 272 is particularly useful in child molesting cases because, unlike P.C. § 647a, it has a maximum one year sentence as a misdemeanor. A MDSO commitment or P.C. § 290 registration is possible, however, the pleading must contain a specific allegation that the offense involved lewd and lascivious conduct. Use Form No. 2 under P.C. § 272.

6. Immoral practices in the presence of children (P.C. § 273g)

Penal Code § 273g makes it a misdemeanor to indulge in any degrading, lewd, immoral, or vicious habits or practices in the presence of children or to be habitually drunk in the presence of children under one's care, custody, or control. This section is not covered by the registration provisions of P.C. § 290.

This charge is appropriate where the conduct does not fall within the provisions of P.C. § 647a or P.C. § 314(1) (indecent exposure) but is covered by the language set forth. It serves no particular purpose to charge this violation in addition to those charges unless the circumstances of the case are such that a prosecutor believes registration is inappropriate, the charge represents additional conduct not covered by the main charge, or reflects an on-going situation.

C. Child mistreatment (P.C. §§ 273a, 273d)

Penal Code § 273a(2) is a misdemeanor. It proscribes conduct which causes or permits a child to undergo unjustifiable physical pain or mental suffering or which endangers the child's health under circumstances that are not likely to result in death or great bodily injury.

Penal Code § 273a(1) is a felony which proscribes similar conduct under circumstances that are likely to result in

death or great bodily injury. This crime is an alternative felony-misdemeanor with a one to ten year sentence. Under SB 42 16 mos, 2, 3, or 1year.
Penal Code § 273d is an alternative felony-misdemeanor which proscribes the intentional infliction of cruel or inhuman punishment which results in a traumatic condition. under SB 42, 16 mos, 2, 3, or 1 year.

1. Statute

Section 273a. Willful cruelty or unjustifiable punishment of child; endangering life or health.

(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years. (See SB 42 above)

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

Filing a 273a under subsection (1) or (2) depends on assessment of whether conduct is "likely" to produce great bodily injury or death. Principle to be applied.

Great bodily injury allegations.
Due to the significant penalties attached to the application of great bodily injury allegations for certain felonies, the use of such allegations should be limited to situations where:

a. The accused has inflicted a permanent bodily injury (other than a minor scar) on the victim; or

b. The accused has inflicted a serious temporary bodily injury causing hospitalization or substantially incapacitating the victim for a significant period of time.

2. 273(a)(1): Prohibits three types of acts; willfully causing or permitting:

a. Child to suffer "unjustifiable" physical or mental pain.

b. The "person or health" of a child in one's care and custody to be injured.

c. Child to be placed in a situation which "endangers" its person or health.

In addition, for defendant to be convicted of a felony, it must be shown that the prohibited acts were committed "under circumstances likely to produce great bodily harm or death."

Points to note about 273(a)(1):

a. Worded in very broad terms; covers an enormous variety of acts.

b. Actual physical injury to child is not a necessary element of the offense.

People v. Harris (1966) 239 Cal.App.2d 393 - Defendant's home, where she and her children lived, was marked by conditions of extreme filth and degradation.
HELD: Defendant guilty of misdemeanor violation of 273(a), forerunner of 273(a)(1).
QUERY: Whether there was a showing here of "circumstances likely to produce great bodily harm or death."

c. Child must be willfully endangered.

People v. Schneider (1970) 6 Cal.App.3d 983 - Defendant, in an epileptic fit, injures child. Found guilty of 273(a)(1) violation for allowing child to remain alone with him.
HELD: Conviction reversed. No showing of "willful" endangering where it is not shown that defendant knew that his fits were likely to cause him to hurt people.

3. General intent crime

People v. Atkins (1975) 53 Cal.App.3d 348 - As used in statute "willfully" means a purpose or willingness to commit the acts or make the omissions in question. A general intent to inflict any cruel or inhuman corporal punishment is enough - a deliberate intent to cause a specific traumatic condition is not required.

4. Criminal negligence

People v. Peabody (1976) 46 Cal.App.3d 43 - Where defendant did not actually inflict injuries may be liable for causing or permitting injury under a criminal negligence standard. But note definition:

(1) Where negligence is required as a predicate for a criminal act, a fundamental question arises: what quantum of negligence is required? Clearly, ordinary negligence sufficient for recovery in a civil action will not suffice; to constitute a criminal act the defendant's conduct must go beyond that required for civil liability and must amount to a "gross" or "culpable" departure from the required standard of care. (See People v. Penny, 44 Cal.2d 861, 879 [285 P.2d 926]; People v. Rodriguez, 186 Cal.App.2d 433, 440 [8 Cal. Rptr. 863]; 1 Witkin, Cal. Crimes, §65, pp. 69-70.) The conduct must be aggravated or reckless; that is, it must be such a departure from what would be the conduct of an ordinarily prudent person under the same circumstances as to be incompatible with a proper regard for human life. The conduct must show an indifference to the consequences, and this has been said to require knowledge, actual or imputed, that the act tends to endanger another's life. (People v. Penny, supra, 44 Cal.2d 861, 879.)

This applies to situations where one stands by and the other does it.

5. 273(d)

a. Prohibits inflicting on a child "cruel or inhuman corporal punishment" resulting in a "traumatic condition."

b. A "traumatic condition" is defined as "a wound or

other abnormal bodily condition resulting from the application of some external force." People v. Burns, 88 Cal.App.2d 867.

Points to note about 273(d)

a. It is difficult to see that 273(d) covers any acts not already prohibited by the broad language of 273(a)(1).

b. The punishments called down by each statute is almost identical.

c. Harder to prove than 273(a)(1). There is no "permitting" language. Defendant must be shown to have inflicted the injuries with his own hand.

Tangible physical injury to the child is an element of the offense. There can be no conviction without evidence of a "traumatic condition." People v. Stewart (1961) 188 Cal.App.2d 88.

III. PRACTICAL PROBLEMS AND TECHNIQUES

1. Corpus problems: The typical case will consist of injuries and statements of the defendant.

A. Rule that corpus must be established before defendant's out of court statements can be admitted. It is not surprising that many of the leading cases on this rule involve child abuse; very frequently, the only evidence that a child's injuries were inflicted, instead of accidental, aside from the injuries themselves, is contradictory or obviously false statements from the parent(s) as to how the child got injured.

1. Rule defined:

"No person may be convicted of a criminal offense unless there is some proof of each element of the crime independent of any confession or admission made by him outside of trial."
CALJIC 3d Ed. No. 2.72

["Corpus delicti" defined: (1) the facts establishing the injury, loss, or harm. (2) The criminal agency causing these facts to exist.]
People v. Lopez, 254 Cal.App.2d 185, 188-90.

B. How much proof is needed to establish corpus, so that defendant's statements may be admitted?

1. Various word formulas are repeated again and again in the cases:

   a. "Slight, or prima facie, proof is enough. People v. Mehaffey (1948) Cal.2d 535.

   b. "To prove a prima facie case of corpus delicti, all that was required was to show a reasonable probability that a criminal act of another had been the direct cause of the death..." People v. Ogg (1958) 159 Cal.App.2d 38.

   c. "A prima facie corpus may be shown by circumstances and legitimate inference..." People v. Miles (1969) 272 Cal.App.2d 212.

2. Note that a prima facie corpus may be made out even if there is "an equally plausible, noncriminal explanation of the event." (emphasis added)

   People v. Jacobson (1965) 63 Cal.2d 319 - Victim, 21 months old, is found drowned in her home. Defendant, home alone with her, is found with his clothes wet from chest to waist. Autopsy surgeon says it is not likely that a 21-month old could drown accidentally. Pediatrician called by defendant says it is possible for a child of that age to drown accidentally.
   HELD: Prima facie corpus is established. Only need "evidence which creates a reasonable inference that the death could have been caused by a criminal agency. (emphasis added). Defendant's statements: - "I killed the little bastard," etc., are admissible.

C. How does Prelim DA establish corpus so that defendant's statements may be admitted?

1. Above all, through testimony by a medical it was established that the child's injuries were probably inflicted, and are not likely to have come about accidentally.

   People v. Jackson (1971) 18 Cal.App.3d 504 - Victim, 13 months old, has burns over 23% of his body, two fractures in right arm, one fracture in left arm, and ten broken ribs. Defendant-father is convicted under both 273(a)(1) and 273(d).

HELD: "Battered child syndrome" is a recognized medical phenomenon. Therefore, no error to admit expert medical testimony that child's injuries were probably inflicted.

Medical factors showing deliberate infliction:

Bruises or fractures on child date from different times.

Amount of force needed to produce fracture too great for normal childhood accident. E.g., accidental skull fractures composed of many cracks radiating from a common center were probably inflicted.

Injuries too numerous, or distributed over too wide an area.

Finger marks, or belt marks, or ring marks on child.

Certain distinctive burns:

a. burn has the outline of a heating utensil, so-called "geographic" burn.

b. "zebra" burns on the abdomen or upper legs. If those parts of the body are exposed to a stream of scalding water, as from a faucet, the skin crinkles up. The flesh inside the crinkles is protected, so the burns appear as stripes.

c. "doughnut" burns on the buttocks. If child himself accidentally sits in a tub of water, the entire surface of his buttocks will be burnt. But if child is forcibly held in a sitting position in the water, the flesch in the center of the buttocks is pressed tightly against the tub, and so is not burnt. The result is circular burns.

In non-death cases, the medical expert who testifies will be the doctor who originally treated the child's injuries.

Very often, in death cases, the coroner will not be able to say whether the injuries were inflicted. If the autopsy report indicates that the coroner

can't help, check the police reports and the master witness list. Possibly a doctor who treated the child during his lifetime will be able to testify.

If no such doctor appears, contact either

Dr. David Friedman, USC, County General Hospital - 226-3868, or

Dr. James Apthorp of Children's Hospital - 660-2450, Ext. 2534.

these are child abuse experts who cooperate with the DA's Office. Arrange to meet them to discuss the autopsy photos, reports, and police reports. Possibly they will be able to tell whether the injuries were inflicted.

2. Nonmedical factors showing corpus

Defendant did not get medical attention for victim until long after the "accident."

Defendant has history of abusing victim.

People v. Ogg (1958) 159 Cal.App.2d 38 - Defendant's wife dies of fractured skull. Defendant says wife had a "terrible fall," in his presence.
HELD: Corpus is established by many factors, among which are defendant's failure to notify anyone after wife was hurt; defendant's background as a boxer, and his history of beating victim.

D. Is evidence of previous acts of child abuse by defendant admissible?

1. Yes, apparently. Various cases mention past abuses, taking for granted their admissibility.

People v. Villalobos (1962) 208 Cal.App.2d 321, Ogg above.

2. Such evidence is received under § 1101(b) EC.

To prove motive or intent: if defendant was continually beating the child, it shows that he strongly disliked the child.

To prove lack of accident. People v. York (1966) 242 Cal.App.2d 560.

To show a distinctive modus operandi, or behavior pattern peculiar to defendant.

People v. Weisberg (1968) 265 Cal.App.2d 476 - victim, seven weeks old, dies of skull fractures. Also has certain leg fractures, unlikely to have been accidental.
HELD: Evidence that defendant's other child, victim's sister, has history of similar leg fractures is admissible against defendant.

Note that both York and Weisberg held admissible evidence of defendant's previous abuse of a child other than the victim in the charged offense.

3. A case not entirely in point, but possibly of some use is:

People v. Aeschlimann (1972) 28 Cal.App.3d 460 - Defendant is charged with murder by torture (C §189) of his 11-month old son. Trial court admits evidence of five previous occasions when defendant viciously beat victim.
HELD: Such evidence is not made inadmissible by §1101(a) EC. "Murder by torture" implies prolonged series of attac s on victim. Medical testimony shows previous beatings weakened victim's ability to survive abuse. Hence, the five previous beatings are all part of the corpus.

E. Privileges

General rule is that the privileges you are familiar with do not apply in this area.

1. The privile not to testify against your spouse per §970 EC does not apply in a proceeding where the crime was committed against the child of either §972(c)(1) EC.

2. The privilege accorded confidential marital communications per §980 does not apply in similar circumstances §985(a).

3. There is no medical privilege in a criminal proceeding § 998 EC.

4. There is no such creature as a parent-child privilege. See In re Terry W. (1976) 59 Cal.App.3d 745.

F. Witnesses

1. In the typical child endangering case [273a(2)] the victim will not be a witness due to age. E.g., six weeks old. In that case it is more like a homicide where victim is more like an exhibit.

2. Children are qualified to be witnesses, §700 EC. Can be disqualified only if (1) the child is incapable of expressing himself so as to be understood; or (2) incapable of understanding the duty of wit to tell the truth (EC 701).

COMMENT to EC 701:
Under the Evidence Code, too, the competency of a person to be a witness is a question to be determined by the court. See Evidence Code § 405 and the Comment thereto. However, § 701 requires the court to determine only the prospective witness' capacity to communicate and his understanding of the duty to tell the truth. The missing qualifications -- the capacity to perceive and to recollect -- are determined in a different manner. Because a witness, qualified under Section 701, must have personal knowledge of the facts to which he testifies (Section 702), he must, of course, have the capacity to perceive and to recollect those facts. But the court may exclude the testimony of a witness for lack of personal knowledge only if no jury could reasonably find that he has such knowledge. See Evidence Code §403 and the Comment thereto. Thus, the Evidence Code has made a person's capacity to perceive and to recollect a condition for the admission of his testimony concerning a particular matter instead of a condition for his competency to be a witness. And, under the Evidence Code, if there is evidence that the witness has those capacities, the determination whether he in fact perceived and does recollect is left to the trier of fact. See Evidence Code §§ 403 and 702 and the Comments thereto.

Although Section 701 modifies the existing law with respect to determining the competency of witnesses, it seems unlikely that the change will have much practical significance. Theoretically, Section 701 may permit children and persons suffering from mental impairment to testify in some instances where they are now disqualified from testifying; in practice, however, the California courts have permitted children of very tender years and persons with mental impairment

to testify. See Witkin, California Evidence §§ 389, 390 (1958). See also Bradburn v. Peacock, 135 Cal. App.2d 161, 164-165, 286 P.2d 972, 974 (1955) [reversible error to preclude a child from testifying without conducting a voir dire examination to determine his competency: "We cannot say that no child of 3 years and 3 months is capable of receiving just impressions of the facts that a man whom he knows in a truck which he knows ran over his little sister. Nor can we say that no child of 3 years and 3 months would remeber such facts and be able to relate them truly at the age of 5." (Emphasis in original)]

3. Ballard motion: Ballard v. Superior Court (1966) 64 Cal.2d 159.

The trial court has discretion to order psychiatric examination of the complaining witness in a sex case if the defendant presents a compelling reason for such an wxamination. Necessity for such generally where (1) little or no corroboration and (2) if defendant raises effect of mental and emotional condition on veracity. If refusal - defendant can comment on resufal - witness still can testify.

a. Ethical issue --- D.A. role see People v. Davis (1971) 20 Cal.App.3d 890.

4. Expert witnesses

a. § 800, 801 E.C. the basis for doctor's testimony.

b. "Battered child syndrome" accepted as opinion testimony. People v. Jackson (1971) 18 Cal.App. 3d 504.

c. Materials for opinion ----- USE S/W in view of Carlson v. Superior Court (1976) 58 Cal.App.3d 13.

G. Other offenses

1. Other sections 245/217, etc., apply.

2. § 273a(2) is a felony inherently dangerous to life and will support a second degree felony murder conviction.

People v. Jackson, 18 Cal.App.3d 504
People v. Gentry, 270 Cal.App.2d 462
People v. Roman, 256 Cal.App.2d 969
People v. Fuentes, 253 Cal.App.2d 969.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. JOSE LUIS MACIAS, Defendant.	COURT NO. CR-9913 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTRODUCE PHOTOGRAPHS

The People intend to offer a number of black and white and color pictures at the forthcoming jury trial of People v. Jose Luis Macias, which depict the deceased prior to and during the autopsy. The test for admissibility of such photographs, if they are relevant, is whether their probative value outweighs their prejudicial effect. See People v. Murphy, 8 Cal. 3d 349, 363.

The defense may contend that the prejudicial effect of these photographs is overwhelming because the case involves the death of a child and the photographs are large, gruesome color pictures. Numerous cases have held that none of the above objections are sufficient in themselves to exclude the photographs. Many cases which the People will cite involve child homicides. People v. Arnold, 66 Cal. 2d 438; People v. Thomas, 65 Cal.2d 698; People v. Brommel, 56 Cal. 2d 629; People v. Aeschlimann, 28 Cal. App. 3d 460, and People v. Seastone, 3 Cal.App.3d 60. A number of these cases involve more gruesome exhibits (jars containing pieces of tissue from the child--Seastone, supra,) and photographs (the burned body of a child in an arson case--People v. Thomas, supra) than the present case. None of the authorities cited above state that the standard should be any different for homicides involving children than it is for other crimes.

The fact that the pictures are in color and thus more vivid does not render them inadmissible. Indeed, in the case at bar where the time of injury is so crucial,color photographs of the injuries aid the time analysis by the jury and are thus more probative than black and white pictures. Among the cases which allowed color photographs of the victim's body are: People v. Milan, 9 Cal.3d 185; People v. Murphy, 8 Cal.3d 349; People v. Salas, 7 Cal.3d 812, cert. denied, U.S. Supreme Court; People v. Brawley,

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1 Cal.3d 277, cert. denied, 400 U.S. 993; People v. Bradford, 70 Cal.2d 333, cert. denied, 399 U.S. 911; People v. Lavergne, 64 Cal.2d 265, cert. denied, 385 U.S. 938; People v. Talbot, 64 Cal.2d 691, cert. denied, 385 U.S. 1015; People v. Mathis, 63 Cal.2d 416, cert. denied, 385 U.S. 857; People v. Schader, 62 Cal.2d 716; People v. Harrison, 59 Cal.2d 622; People v. Modesto, 59 Cal.2d 722, reaffirmed 62 Cal.2d 436; People v. Aeschlimann, 28 Cal.App.3d 460; People v. Cruz, 264 Cal.App.2d 350; and People v. Deriso, 222 Cal.App.2d 478.

Enlarged pictures were specifically objected to and yet rendered admissible in People v. Nye, 63 Cal.2d 166, 170, U.S. cert. denied 384 U.S. 1026 (twenty inches by sixteen inches pictures of the victim's body) and People v. Cruz, 264 Cal.App.2d 350, (color post-autopsy photographs blown up). The latter case allowed the photographs in evidence despite the offer of the defense to stipulate to cause of death.

Indeed, the courts have consistently overruled the defense objections that the proffered photographs are unnecessary due to offers of stipulation or due to the fact that oral testimony has adequately described the areas depicted. See People v. Milan, 9 Cal.3d 185, 194, People v. Murphy, 8 Cal. 3d 349, 364, People v. Aeschlimann, 28 Cal.3d 460, 475, People v. Seastone, 3 Cal.3d 60, 64, People v. Kopp, 275 Cal.App. 2d 38, 41, People v. Lillilock, 266 Cal.App.2d 419, 437, People v. Cruz, 264 Cal.App.2d 350, 355, People v. Crawford, 259 Cal.App.2d 874, 879, People v. Campbell, 233 Cal.App.2d 38, 43, and People v. Allen, 220 Cal.App.2d 796, 801.

"The prosecution, faced with the necessity of convincing the jury of the quantum and character of force, was not required to stop at the point of bare sufficiency. There was no abuse of trial court discretion" in admitting the photographs. People v. Crawford, 259 Cal.App.2d 874 at 879.

Gruesomeness alone is not a sufficient basis for exclusion of photographs as the California Supreme Court noted in People v. Murphy, 8 Cal.3d 349 at 365:

> Although the photographs in the case might be characterized as bloody and gruesome, they were relevant to the issues. . . . The trial court did not abuse its discretion in receiving the exhibits.

See People v. Milan, 9 Cal.3d 185, People v. Terry, 2 Cal.3d 362, 403, appeal dismissed, 406 U.S. 912, People v. Brawley, 1 Cal.3d 277, 295, U.S. cert. denied, 400 U.S. 993, People v. Arguello, 65 Cal.2d 768, 776, People v. Thomas, 65 Cal.2d 698, 706, People v. Mathis, 63 Cal.2d 416, 423, cert. denied, 385 U.S. 857, People v. Harrison, 3 Cal.2d 622, 627, People v. Brommel, 56 Cal.2d 629, 636, People v. Chavez, 50 Cal.2d 778, 792, cert. denied, 3 L.Ed.2d 353 982, People v. Seastone, 3 Cal.App.3d 60, 64, People v. Lillilock, 265 Cal.App.2d 417, 437, People v. Campbell, 233 Cal.App.2d 38, 43, People v. Deriso, 222 Cal.App.2d 478, 488, and People v. Magee, 217 Cal.App.2d 448, 475.

The People contend that the probative value of these photographs and the context of this case is overwhelming and clearly outweights any prejudicial effect.

There are five areas in which these photographs have probative value: (1) to illustrate and explain the autopsy surgeon's testimony; (2) to show the nature and extent of the child's injuries; (3) to show the force and means used to injure the child; (4) to prove the People's theory of the case; and (5) to rebut the defense theory of the case.

I.

TO ILLUSTRATE THE AUTOPSY SURGEON'S TESTIMONY

The main reason for offering these photographs is that they will aid the jury in understanding the testimony of the autopsy surgeon. The autopsy surgeon in the present case is a Korean immigrant who has some difficulty communicating in nonmedical terms. His understanding of nonmedical terms is somewhat limited (see Reporter's Transcript), and in order for the jury to fully comprehend his testimony and the basis for his opinion the autopsy photographs are essential.

The courts have repeatedly upheld the introduction of photographs on the basis that they illustrate the autopsy surgeon's testimony and aid the jury in understanding the medical testimony. C.f. People v. Murphy, 8 Cal.3d 349, 365, People v. Salas, 7 Cal.3d 812, 817, U.S. cert. denied, People v. Terry, 2 Cal.3d 362, 403 cert. denied, 406 U.S. 912, People v. Robles, 2 Cal. 3d 205, 214, People v. Brawley, 1 Cal.3d 277, 295, cert. denied, 400 U.S. 993, People v. Stanworth, 71 Cal.2d 820, 839, People v. Arguello, 65 Cal.2d 768, 776, People v. Sanchez, 65 Cal.2d 814, 828, People V. Talbot, 64 Cal.2d 691, 706, cert. denied, 385 U.S. 1015, People v. Schader, 62 Cal. 2d 716, 732-- 733, same case appealed on other points, 71 Cal.2d 761, People v. Harrison, 59 Cal. 2d 622, 627, People v. Lindsey, 56 Cal. 2d 324, 328, People v. Brommel, 56 Cal.2d 629, 635--636, People v. Aeschlimann, 28 Cal.App. 3d 460, 475, People v. Brunt, 24 Cal.App3d 945, 957, People v. Seastone, 3 Cal.App. 3d 60, 64--65, People v. Kopp, 275 Cal.App.2d 38, 40, People v. Cruz, 264 Cal. App. 2d 350, 355, People v. Whitmore, 251 Cal.App. 2d 359, 367--368, People v. Deriso, 222 Cal.App. 2d 478,488--489, People v. Magee, 217 Cal.App.2d 443, 475 and People v. Taylor, 189 Cal.App.2d 490, 494--495. In this case, Dr. Choi felt the photographs were so essential to understanding his testimony that he used several of the photographs at the preliminary hearing before Judge Pollack. When the autopsy surgeon or any doctor "has testified that it was necessary to use the photographs to show the basis for his opinion as to how the wounds were caused and the amount of force necessary to inflict such wounds" the court did not abuse its discretion in allowing the photographs into evidence. People v. Deriso, 222 Cal.App.2d 478, 488--489.

The above is especially true in child homicide cases, and the California Supreme Court recognized this in People v. Brommel, 56 Cal.2d 629, 635--636:

> Over defendant's objection, the court admitted in evidence eighteen of the twenty-seven colored slides, autopsy photographs produced by the prosecution and deemed necessary by the doctors in explaining and demonstrating their testimony. The pictures were of the face, neck and torso of the child, showing certain aspects of the injuries to her skull, various burns, bruises

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and discolorations, and the condition of some of her internal organs. Defendant objected to the autopsy photographs on the ground that they were gruesome, shocking and unnecessarily inflammatory--particularly those pictures showing the child's head completely shaved with a large incision made and the surgical procedure followed for removal of the subdural hemotoma.

Defendant contends that the doctors did not find it necessary to use the slides for their testimony at the preliminary hearing and they should not be required at the trial. However, the rule pertaining to the quantum and character of the evidence required for a preliminary hearing as compared with the final trial are different in scope. . . . In weighing the advantages of clarity and the necessity for pinpointing the character of a child's injuries as not the result of a series of general accidents as testified by the defendant, as against the possibility of arousing any emotional disturbance on the part of the jury, we cannot say that the trial court abused its discretion in admitting them.

In the case at bar the photographs to be used were, for the most part, used at the preliminary hearing. Furthermore, the People do not intend to use the photographs of the skull of the victim as was used in People v. Brommel, supra. The fact that the People's photographs reveal a Y-type incision made by the surgeon is no reason to exclude them, for it was necessary to reveal the contents of the peritoneal cavity. See People v. Cruz, 264 Cal. App.2d 350, 354--356 (Y incision already sewn up in picture used at trial, no abuse of discretion).

Not only would the photographs enhance the understanding of the jury, but they obviously constitute "the most accurate evidence of these matters and lend clarity to the testimony of the doctors who testified in connection therewith. (People v. Sanchez, 65 Cal.2d 814, 828, remittitur recalled, reversed on other grounds, People v. Sanchez, 70 Cal.2d 562.)" People v. Stanworth, 71 Cal. 2d 820, 839--840

As the court, in People v. Seastone, 3 Cal. App. 3d 60, another child homicide case, stated:

There is a proverb attributed to the Chinese that "One picture is worth more than 10,000 words". . . . It is as true today as when written by the ancients. The trial judge believed it to be so. In overruling an objection to the photographs, he said in part "The jury will be much better able to understand this case, I am sure. I know that I am much better able to understand this case by observing these pictures than I would be listening to the doctor discuss the problems of the child in technical terms. . . . I get a much better impression of the testimony by looking at the pictures. I am sure that will be true of the jury." People v. Seastone, 8Cal.App.3d 60,64--65.

The photographs are essential here since Dr. Choi is not particularly adept at describing the wounds in layman's terms. Certainly here "the dry medical terms used by the witness are really inadequate to describe the wounds". People v. Cruz, 264 Cal.App.2d 350 at 355.

The color photos of the bruising are most helpful in the jury's determination of the time and cause of death. In the present case the cause of the death is the most crucial issue, and autopsy photographs are admissible to aid in that determination. In a recent child homicide case the very same issues arose:

> Defendant Aeschlimann contends that the "court errored in admitting physical evidence consisting of (autopsy) photographs and jars of preserved tissue". We disagree. In light of the extensive medical testimony at trial we find no abuse of discretion in the trial court's admitting real evidence upon which most of the medical opinion was founded. (Evidence Code section 352.) One of the major issues was the cause of death; namely did the infant die as result of a lacerated duodenum caused by trauma or physical force, or did he die as a result of adrenal vein thrombosis? Exhibits aided in the analysis of this issue and were properly before the witnesses for their use in that determination. It follows that the evidence was properly admitted. (People v. Arguello, 65 Cal.2d 768, 775--776.) People v. Aeschlimann, 28 Cal.App.3d 460, at 475.

In People v. Brunt, 24 Cal.App.3d 945, at 957, the court opined that "The photographs were offered to show the wounds inflicted by the defendants and to explain and show those which, in the opinion of the doctor, caused the death of the deceased. . . . We find no abuse of discretion by the trial judge in admitting the photographs in evidence."

Numberous decisions have upheld the use of photographs to aid the jury in determining the time and/or cause of death. See People v. Bradford, 70 Cal. 2d 333, cert. denied, 399 U.S. 911, People v. Thomas, 65 Cal.2d 698, 706, People v. Talbot, 64 Cal.2d 691. 706, cert, denied, 385 U.S. 1015, People v. Brommel, 56 Cal.2d 629, 635--636, People v. Brunt, 24 Cal.App.3d 945, 957, People v. Cruz, 264 Cal.App.2d 350, 355--356, and People v. Whitmore, 251 Cal.App.2d 359, 368.

In People v. Cruz, supra, the court went so far as to declare that "Indeed, under the baffling circumstances of this case, it might well have been an abuse of discretion not to have admitted the pictures." at page 356 (italics added.)

II

TO SHOW THE NATURE AND EXTENT OF THE INJURIES

In the case at bar, where the defendant claims the death resulted from an accident, the location, nature, extent, and origin of the injuries is crucial. Case law supports the introduction of photographs to prove these matters.

The photographs here illustrate, better than any witness could describe, "the precise location of the wounds". People v. Murphy, 8 Cal.3d 349 at 365. See also People v. Brawley, 1 Cal.3d 277, 295.

Moreover, the nature and extent of the injuries is crucial in this case where Count II and Count III involve standards of "great bodily harm" and "traumatic injury", which the People must prove beyond a reasonable doubt. The courts have recognized such as the basis for admitting photographs. "A silent motion picture file of (victim) exhibiting his injuries was also properly admitted, for it showed the extent of those injuries, a fact important to the determination of whether he had been assaulted by means of force likely to produce great bodily injury." People v. LaVergne, 64 Cal.2d 265 at 271. "Their (the photographs) probative value was great, for they alone constitute proof from which the degree of force used on (victim) can be deduced. Whether the force used was likely to produce great bodily injury so as to justify a finding of a felony murder of the second degree was a crucial issue in the case." People v. Lillilock, 275 Cal.App.2d 419 at 437. Appealed on other grounds at 62 Cal.2d 618. "The character and extent of the victim's injuries were probative elements in emonstrating the degree of force. Thus, the trial court did not abuse its discretion in admitting the photograph." People v. Allen, 220 Cal.App.2d 796 at 801.

III

THE FORCE AND MEANS USED TO INJURE THE CHILD

The manner in which the victim received the injuries is highly important here wherein the defense claims it was by accidental means and the prosecution claims it was due to an attack by the defendant. Photographs which show the nature of an attack or the means used are highly probative and thus admissible, even though they are often gruesome. C.f. People v. Sanchez, 65 Cal.2d 814, 828, cert. denied, 394 U.S. 1025. People v. Conley, 64 Cal.2d 31?, 326, People v. Crawford, 259 Cal.App. 2d 874, 879, People v. King, 240 Cal. App.2d 389, 403, People v. Campbell, 233 Cal.App.2d 38, 43 and People v. Magee, 217 Cal.App.2d 443, 475.

IV

TO PROVE THE PEOPLE'S THEORY OF THE CASE

Photographs are probative and admissible if they tend to prove or disprove the People's theory of the case. "The disputed photograph of (victim's) body are unquestionably relevant and material to the People's theory of murder and the perpetration or attempted perpetration of rape.". People v. Nye, 71 Cal.2d 356, 370. C.f. People v. Robles, 2 Cal.3d 205, People v. Arnold, 66 Cal.2d 438, 451, and People v. Schader, 62 Cal.2d 716, 732--733.

One of the People's theories is second degree murder, relying on implied malice from the surrounding circumstances. The photographs depict, better than the most descriptive witness could, the viciousness of the attack. Recently the California Supreme Court recognized this as a basis for admitting photographs in a homicide case "The photographs are relevant to show the

circumstances of the crime. . . and constituted circumstantial evidence of malice." People v. Milan, 9 Cal.3d 185, 194. C.f. People v. Murphy, 8 Cal. 3d 349, 365, People v. Brawley, 1 Cal.3d 277, 295, People v. Nye, 71 Cal.2d 357, 370, People v. Arguello, 65 Cal.2d 768, 776, People v. Modesto, 59 Cal. 2d 722, 733, and 62 Cal.2d 436, 440, People v. Harrison, 59 Cal. 2d 622, 628, People v. Seastone, 3 Cal.App.3d 60,64--65, and People v. Taylor, 189 Cal. App. 2d 490, 495--496.

In the case at bar the People are also proceeding on theories of murder by torture (first degree) and felony murder (second degree). The photographs in this case show the mutilation of the body and the extensive damage done. As such, the People believe that the photographs are highly probative and should be admitted. "Whether there was a sadist--masochist relationship between defendant and Betty Jo, whether or not defendant was made jealous by the tic-tac-toe pattern that was possibly inflicted by someone else, or whether Betty Jo's wounds--obviously not self-inflicted, if she was normal--were caused during a fight having a more conventional origin, it cannot be denied that (the photographs) throw some light on the defendant's mental state. (People v. Arguello, 65 Cal.2d 768, 775--776.)" People v. Cruz, 264 Cal.App.2d 350, at 355.

The photographs depicting the bruises and distended abdomen are relevant to the People's theory that the defendant must have noticed the condition of the child and in failing to obtain medical aid was guilty of second degree murder. (Penal Code section 273a(1) as the underlying felony.) In a very similar case on a manslaughter theory (Penal Code section 270 as the underlying misdemeanor), the court allowed in "A photograph of (victim's) nude body taken after her death. . . . (to be) introduced simultaneously with the photograph taken of (victim) before her illness (which) served to demonstrate that the defendant should have noticed (victim's) loss of weight. We can find no abuse of discretion. (People v. Thomas, 65 Cal.2d 698, 706, People v. LaVergne, 64 Cal.2d 265, 271, People v. Modesto, 62 Cal.2d 436, 443, People v. Harrison, 60 Cal2d 402, 495.)" People v. Arnold, 66 Cal.2d 438, at 451. C.f. People v. Nye, 63 Cal.2d 356, 370, People v. Lillilock, 265 Cal.App. 2d 41 , 437, appealed on other grounds 62 Cal.2d 618, People v. Cruz, 264 Cal. App. 2d 350, 355, People v. Crawford, 259 Cal.App.2d 874, 879, People v. Allen, 920 Cal.App.2d 796, 801 and People v. Taylor, 189 Cal.App.2d 490, 495.

V.

TO REBUT THE DEFENSE CASE

Photographs are probative and admissible if they tend to prove the People's theory, or rebut the defense case. The photographs here, coupled with the doctor's testimony, rebut the defense theory of accident.

> The photographs support the theory of the prosecution and completely refute the theory of the defense. The photographs were relevant to meet the burden of proving burglary and rape to support a finding of first degree murder. . . the evidence was properly admitted. People v. Tolbert, 70 Cal.2d 790, 806, cert. denied, 406 U.S. 971.

In addition to other grounds justifying the receipt of the photographs, they tend to discredit extrajudicial statements made by the defendant. . . . The photographs of the victim's condition tend to refute defendant's statements to the officer. (See People v. Tolbert, 70 Cal.2d 790, 806; People v. Mathis, 63 Cal.2d 416, 423.) People v. Murphy, 8 Cal.3d 349, at 365. C.f. People v. Terry, 2 Cal.3d 362, People v. Schader, 62 Cal. 2d 716, People v. Henderson, 60 Cal.2d 482, People v. Modesto, 59 Cal.2d 722, People v. Brommel, 56 Cal.2d 629, and People v. Aeschlimann, 28, Cal. App.3d 460.

In conclusion, the People feel that the probative value of the photographs is overwhelming when compared to any potential prejudicial effect. Any of the five bases cited above is sufficient for the court to allow these photographs into evidence, and the People feel that the combined weight of these five reasons compels the introduction of the photographs.

Dated: September___, 1973 at Ventura, California.

Respectfully submitted,

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County of Ventura, State of California

By_____
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NATIONAL COLLEGE OF DISTRICT ATTORNEYS

Presentation on

INVESTIGATIVE PROCEDURES IN CHILD ABUSE AND NEGLECT CASES
THE ROLE OF THE SOCIAL WORKER

LECTURE BY DAVID J. ALDRIDGE, SOCIAL WORKER
EL PASO COUNTY DEPARTMENT OF SOCIAL SERVICES
CHILD PROTECTION UNIT
COLORADO SPRINGS, COLORADO

WORKSHEET AND SCHEMATIC OUTLINE

OUTLINE OF PRESENTATION — NOTES

I. INTRODUCTION

General objectives of the social worker's investigation (this may involve an intake or ongoing social worker).

A. Determination of the existence of immediate danger to the child(ren)

B. Appropriate action to insure the child's safety

C. Importance of inter-agency investigative procedures in casework planning

D. Evaluation of specific problem areas and needs of the family

E. Establishment of a working relationship with the family

F. Identification of the case as either protective service or one which should be referred elsewhere

II. INITIAL REPORTS

A. Twenty-four hour telephone and pager service

B. Law enforcement

C. Medical personnel

D. School personnel

E. Mental health personnel

F. General public

OUTLINE OF PRESENTATION

NOTES

III. COOPERATIVE EFFORTS OF LAW ENFORCEMENT AND SOCIAL SERVICES PERSONNEL IN CRISIS INTERVENTION TO INSURE IMMEDIATE SAFETY OF THE CHILD(REN)

A. Protective and preventive measures taken when child is not removed

B. Removal of the child

C. Law enforcement protective custody hold in the hospital

D. Procedure when incident occurs on a military reservation

E. Consideration of siblings who might be in danger

IV. PRELIMINARY INFORMATION

A. Apparent physical condition of the child

B. Demographic data

C. General behavior of the child and his/her interaction with his/her parents

D. Characteristics of the abuser (if identified)

E. Doctor's report (including statements to the state registry of child abuse)

F. Present and former hospital growth data

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V. INTERDISCIPLINARY EVALUATION

A. Composition and function of the interdisciplinary Child Protection Team

B. Composition and function of the military Child Protection Team

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A. Burden of proof

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C. Petition in dependency and neglect

D. Preparation of the family for the hearing

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A. Plan for the child and his/her family

B. Goals

NATIONAL COLLEGE OF DISTRICT ATTORNEYS

Presentation on

INVESTIGATIVE PROCEDURES IN CHILD ABUSE AND NEGLECT CASES ROLE OF THE SOCIAL WORKER

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DISCUSSION NOTES AND DETAILED OUTLINE

OUTLINE OF PRESENTATION

I. INTRODUCTION

General objectives of the social worker's investigation (this may involve an intake or ongoing social worker)

A. Determination of the existence of immediate danger to the child(ren)

There is sometimes confusion about this issue. "Immediate danger" does not pertain only to children who have been subjected to abusive behavior but also to children whose environmental conditions would reasonably result in abuse.

B. Appropriate action to insure the child's safety

In very minor cases this action may be in the form of counseling with the family. In more severe situations it may mean the removal of the victim and at times the siblings as well.

C. Importance of interagency investigative procedures in casework planning

After the child's safety has been secured the focus is centered upon the family in terms of resolving problems which attracted the attention of law enforcement and social service agencies. Specifically, if the child has been removed from the home, the reuniting of the family must be a first priority. Cooperative investigative efforts between law enforcement and social service personnel greatly facilitate a more workable case plan to achieve this purpose.

D. Evaluation of specific problem areas and needs of the family

It is gratifying to note that over the years law enforcement personnel have developed a significant degree of sophistication in perceiving

some of the more subtle symptoms of family dysfunction while making routine criminal investigations. Extensive in-service training programs and personal commitments have created a most desirable team effort in the evaluation of immediate and long term needs of the family.

E. Establishment of working relationship with the family

Families differ in their initial reaction to law enforcement and social service intervention and also to the ongoing investigation. Hostility and denial must often be dealt with at the onset of the investigation. Attention to the needs and problems of the parents rather than the injuries sustained by the child can help to minimize these negative reactions and build a more non-threatening basis on which to conduct the investigation.

F. Identification of the case as either protective service or one which should be referred elsewhere

Any investigation revealing gross neglect and/or physical abuse is automatically considered a protective case. Less severe cases may be referred to a preventive services unit and cases involving older children to an adolescent crisis intervention unit.

II. INITIAL REPORTS

A. Twenty-four hour telephone and pager service (see attachment A)

B. Law enforcement

C. Medical personnel

D. School personnel

E. Mental health personnel

F. General public

III. COOPERATIVE EFFORTS OF LAW ENFORCEMENT AND SOCIAL SERVICES PERSONNEL IN CRISIS INTERVENTION TO INSURE IMMEDIATE SAFETY OF THE CHILD(REN)

A. Protective and preventive measures taken when child is not removed

When the investigation indicates that a child is not in immediate danger it is usually decided that the removal of the child is not necessary except in cases of recidivism. Certain measures of prevention may be implemented including homemaker services, parenting aides, parenting classes and ongoing protective supervision (voluntary or court ordered) by the social worker.

B. Removal of the child

It is important to note that only a duly sworn law enforcement officer may remove a child from the home in Colorado. The decision to remove a child from the home may be an immediate one on the part of a law enforcement officer without consulting anyone. Routinely, and by law, the Department of Social Services is contacted for purposes of reporting the case and for placement of the child. A more desirable situation would be for the law enforcement officer and the social worker to be present when the child is removed as the social investigation should be initiated at that time. Detailed explanation to the parents and to the child, if old enough, as to what is happening and what will happen will help minimize the trauma of separation and aid in the establishment of a relationship with the family.

C. Law enforcement protective custody hold in the hospital

When a child has been admitted to a hospital as the result of having been abused in some manner it is sometimes necessary to request a police hold on the child to prevent his removal from the hospital against medical advice. It is not uncommon for parents in panic to attempt to forcefully remove the child. This action automatically initiates a temporary custody hearing if the hold is to be in force beyond the optional period of protective custody prescribed by state law.

D. Procedure when incident occurs on a military reservation

Civil law enforcement and social service personnel are only allowed on military reservations by invitation. An agreement usually exists as to how child abuse and neglect cases which occur on the reservation are to be handled. The more desirable arrangement would include a military/civilian child protection team and specially trained military police in a behavioral service unit. Military mental hygiene, social services and community service units are usually employed in coping with child abuse cases and in offering ongoing services.

E. Consideration of siblings who might be in danger

The decision as to whether non-abused siblings of the victim are to be removed from the home is often controversial. It is common for a sibling to become a new victim of abuse when an abused child is removed. In situations of severe neglect it is obvious that all of the children are victims. When a child has been severely injured or killed the safest option is to remove all remaining children. Another situation which may require the removal of all children involves absent parents because of incarceration.

IV. PRELIMINARY INFORMATION

A. Apparent physical condition of the child

During the initial physical survey for indications of non-accidental trauma general signs of overall health must be noted. Indications of

malnutrition and other manifestations of a chronically neglectful environment as well as other uncorrected physical problems should be recognized.

B. Some patterns of child abuse and neglect may be related to or the result of behaviors unique to certain cultures or ethnic groups. Within these groups such behavior may be considered expected and normal. A typical case might be behaviors related to a "coming of age rite". Individuals from foreign cultures who take up residency in the United States continue some child rearing practices which might be considered abuse and neglect in our society.

C. General behavior of the child and his interaction with his parents

According to Dr. Vincent Fontana, abuse and neglect may be present when several of the following factors are in evidence:

"The child seems unduly afraid of its parents.

The child is unusually fearful generally.

The child is kept confined, as in a crib or playpen (or cage), for overlong periods of time.

The child shows evidence of repeated skin or other injuries.

The child's injuries are inappropriately treated in terms of bandages and medication.

The child appears to be undernourished.

The child is given inappropriate food, drink, or medicine.

The child is dressed inappropriately for weather conditions.

The child shows evidence of overall poor care.

The child cries often.

The child is described as "different" or "bad" by the parents.

The child does indeed seem "different" in physical or emotional makeup.

The child takes over the role of parent and tries to be protective or otherwise take care of the parent's needs.

The child is notably destructive and aggressive.

The child is notably passive and withdrawn.

The parent or parents discourage social contact.

The parent seems to be very much alone and to have no one to call upon when the stresses of parenthood get to be overwhelming.

The parent is unable to open up and share problems with an interested listener and appears to trust nobody.

The parent makes no attempt to explain the child's most obvious injuries or offers absurd, contradictory explanations.

The parent seems to be quite detached from the child's problems.

The parent reveals inappropriate awareness of the seriousness of the child's condition (that is, of the injury or neglect) and concentrates on complaining about irrelevant problems unrelated to the injured/neglected appearance of the child.

The parent blames a sibling or third party for the child's injury.

The parent shows signs of lack of control, or fear of losing control.

The parent delays in taking the child in for medical care either in case of injury or illness, or for routine checkups.

The parent appears to be misusing drugs or alcohol.

The parent ignores the child's crying or reacts with extreme impatience.

The parent has unrealistic expectations of the child: that it should be mature beyond its years; that it should "mother" the parent."

"The parent indicates in the course of conversation that he/she was reared in a motherless, unloving atmosphere; that he or she was neglected or abused as a child; that he or she grew up under conditions of harsh discipline and feels that it is right to impose those same conditions on his or her own children.

"The parent appears to be of borderline intelligence, psychotic, or psychopathic. (Most lay persons will find it difficult to make a judgment here. It might be better for the observer to note whether the parent exhibits the minimal intellectual equipment to bring up a child; whether the parent is generally rational or irrational in manner; whether the parent is cruel, sadistic, and lacking in remorse for hurtful actions.)"

D. Characteristics of the abuser (if identified)

An individual who calls an agency or hotline expressing fear that he or she almost hurt a child or might hurt a child.

The otherwise non-abusive individual who reacts to severe stress and attacks a child on a one-time basis then calls an agency to report the incident.

Another common case involves a father who views the world as a "tough place" in which one must learn to survive by being tough. To this person overdisciplining a child is merely preparing the child to cope with the world by learning to be tough.

The parent who, through some religious conviction, sees himself as the agent of a supreme being and attempts to purge the child of some wrongdoing through corporal punishment. These attacks sometimes have strong sexual overtones.

(The following categories of abusers are not being presented as the only types in existence but rather those types found to be common in the Boisvert study. This study was conducted by Maurice J. Boisvert, Executive Director, Youth Opportunities Upheld, Worcester, Massachusetts and appeared in Social Casework, Ocotber 1972)

PSYCHOTIC PERSONALITY. This person is unpredictable and will not accept help. The child may play some role in the fantasies of the abuser. Injuries are usually severe and removal of the child necessary.

INADEQUATE PERSONALITY. This person is usually irresponsible, immature and impulsive with low tolerance for frustration. Marital problems are common and the relationship is primarily biological. Messy house, problems with alcohol, difficulty in holding a job are typical manifestations of dysfunction. The needs of a very dependent child readily clash with the inadequate parent. This person does not admit guilt and is usually supported by the mate. Injuries common to the child are multiple bruises or mild fractures. Environment is considered to be very dangerous for infants.

PASSIVE-AGGRESSIVE PERSONALITY. This person experiences much hostility and anger at having to meet the expectations of others. The child (often stepchild or illegitimate) is viewed as a competitor in terms of dependency and sometimes represents the abuser's failure to meet role expectations i.e. husband, father etc. Abuser has a poor self image, is very dependent, will not admit guilt and demonstrates little or no emotion in discussing his/her abusive behavior. Two to three years of age is a dangerous period for the child when locomotion promotes

independence. Injuries are usually internal and multiple bruises.

SADISTIC PERSONALITY. This parent usually has a history of sadistic behavior i.e. frequent beating and killing of animals. There is no emotional involvement, anxiety or guilt associated with the abuse. He/she is also sometimes masochistic. Child is usually older than a toddler. Typical injuries are skull fractures and concussions or limb fractures.

DISPLACEMENT OF AGGRESSION. The mother is usually the abuser. A major cause is marital conflict through which the mother is the victim of aggression from her mate and feels unable to return this aggression. This hostility is expressed in the form of displaced aggression toward the child (usually over two years of age and typically a bedwetter and withdrawn). The abuser is unable to control her behavior under stress and abuses the child impulsively while immediately regretting the act. This type of abuser is usually somewhat adequate and cooperative. Often the attention of the Department of Social Services stops the abusive behavior.

COLD-COMPULSIVE DISCIPLINARIAN. This abuser is often compulsively clean and neat while cold, rigid and unfriendly in interpersonal relations. Often an upstanding citizen who defends his right to discipline. The abuse is a reaction to the child's need for closeness and affection. The abuser generally appears to cooperate, primarily to end the involvement of the Department of Social Services. The abuse is often an isolated incident. This person needs to learn to express affection and deal with fears of warmth and intimacy. Also to learn to communicate with the child.

E. Doctor's report (including statements to the state registry of child abuse).

If the attending physician fails to file a report with the state registry of child abuse he or someone on his staff should be encouraged to do so. (See attachments A and B) A detailed description of all injuries and the general physical condition of the child is necessary information for the child protection team and for the social worker.

F. Present and former hospital growth data

In suspected or identified cases of failure to thrive growth data must be observed and carefully recorded while the child is in the hospital. Significant weight gain during periods of hospitalization and loss while in the custody of the parents tends to rule out any organic factors and identifies the failure to thrive as neglect. If the child's physical condition due to weight loss becomes dangerous this information will be vital when the court is petitioned for custody.

G. Existence of recidivism

A high rate of recidivism can often be traced to two major problems within the social services system. First, delayed intervention on the part of the social worker, for whatever reason, and second, caseload sizes which render the task of supervision unmanageable. Without the development and proper use of state and local registries many cases of recidivism will be identified as "new" cases.

H. Legal status of the case

Preliminary information on a new case should include the status of the child and family in both civil and criminal courts. The case plan will have to accomodate all pending activities such as dissolution of marriage and pre sentence criminal matters.

V. INTERDISCIPLINARY EVALUATION

A. Composition and function of the interdisciplinary child protection team (mandated in Colorado - January 1976)

Members of the Child Protection Team
Chairman (Department of Social Services staff member)
Coordinator (DSS staff member)
Social Worker (assigned to the case)
Representative of the District Attorneys office
Reporting or investigating law enforcement officer
Representative of the Juvenile Court
Independent Attorney
Representative of community ethnic groups
Representative of Department of Mental Health
Representative of Department of Public Health
School District representative
Emergency room/pediatrics nurses involved
Admitting or examining physician
Family physician or appointed ongoing physician
Hospital social worker
Therapist (as needed)
Pathologist (as needed)
Radiologist (as needed)
Hospital Administrator (as needed)

B. Members of the military Child Protection Team (Fort Carson, Colorado) are as follows:

Chairman - Physician on the pediatrics staff
Coordinator - Department of Social Services staff member
Social Worker (assigned to the case)
Attending physician
Military social services personnel
JAG office representative
Military Police representative - behavioral specialist unit

Army Health nurse
Army psychiatrist
Civilian law enforcement and district attorney's representative
(if involved in the case)

VI. THE TEMPORARY CUSTODY HEARING

A. Burden of proof

In the adjudicatory hearing on a petition in dependency and neglect the burden of proof is usually preponderance of the evidence.

B. Standards of evidence

Civil matters involving temporary custody hearings, petitions in dependency and neglect and termination of parental rights generally proceed on "relaxed" rules of evidence. The interpretation of the term "relaxed", however, may vary widely between judges and juvenile referees.

C. Petition in dependency and neglect

After the child has been placed in protective custody and sufficient cause for such action has been demonstrated to the court during the temporary custody hearing, the court may grant permission to file a petition in dependency and neglect. The allegations in such a petition are usually the products of medical reports, social investigation and final recommendations of the child protection team. (see attachment D) Stipulated agreements may at times slow or stop the progress of the adjudicatory process. If the petition is sustained the court may grant legal and physical custody of the child to the Department of Social Services for a specified period of time. During the following dispositional hearing the court is advised of the proposed treatment plan as well as the plan for the child's placement. The court usually requires periodic progress reports from the social worker. If custody of the child has been awarded to the Department for a period of two years and the family has not progressed to the point of having the child returned during that time the social worker has the following options:

1. Petition the court for a renewal of decree
2. Petition the court for termination of parental rights
3. Counsel the parents about relinquishment

D. Preparation of the family for the hearing

With the exception of cases in which the parents cannot be located, parents must be prepared for any court action. The hostility and fright generated by the multi-agency interventions and investigations are greatly magnified by the lack of preparation for the court appearance.

VII. TREATMENT

A. Plan for the child and his family

It has been stated that the plan for the child and his family is centered about the eventual return of the child to his parents when everyone concerned is confident of his safety. The treatment plan for the family may vary from low-keyed intervention within an educational framework, i.e. parenting classes, use of a homemaker, to intensive psychiatric care and casework involvement. The plan is designed to meet the immediate and long range needs of the child and the family.

B. Goals

The following treatment goals are always to be set within realistic limits:

1. Continued safety and proper care of the child
2. Integration of the child back into the family structure
3. Improved parenting skills and techniques
4. Reduction of isolation of the family from others in the community
5. Establishment of lifelines during times of stress
6. Decreased behaviors within the family which bring about law enforcement intervention
7. Practical signs of stability, i.e. steady employment, budget control, school attendance and achievement, etc.
8. Realistic family planning
9. Minimize the length of time child is out of the home

END