CHILD MOLESTATION: THE CRIMINAL JUSTICE SYSTEM

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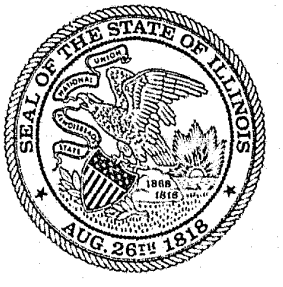

LATIVE INVESTIGATING COMMISSION
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of the State of Illinois

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CHILD MOLESTATION: THE CRIMINAL JUSTICE SYSTEM

A REPORT TO THE ILLINOIS GENERAL ASSEMBLY

BY THE ILLINOIS LEGISLATIVE INVESTIGATING COMMISSION

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THIS REPORT IS RESPECTFULLY SUBMITTED PURSUANT TO HOUSE RESOLUTION 138 ADOPTED BY THE ILLINOIS HOUSE OF REPRESENTATIVES ON APRIL 24, 1979

Cover: The sentencing of Walter J. Kaleta, February 14, 1980.
Sketch by L.D. Chukman, WLS TV News, Chicago.

TABLE OF CONTENTS

HOUSE RESOLUTION 138

This resolution, sponsored by Representative Peter P. Peters, was adopted by the Illinois House of Representatives on April 24, 1979, and is quoted below:

"WHEREAS, The reported incidence of the sexual molestation of children has doubled in the past two years; and

"WHEREAS, There can be little doubt that the actual incidence of said molestation is even greater having reached near epidemic proportion; and

"WHEREAS, Persons familiar with the scope and nature of the problem agree that repeat offenders constitute the greatest threat to potential victims of this heinous crime; and

"WHEREAS, The state has a clear responsibility to afford children adequate protection from these repeat offenders; and

"WHEREAS, It is clear that the laws already enacted to deal with this problem appear to be grossly inadequate; and

"WHEREAS, The courts, even when empowered to punish these offenders, have been unwilling to mete out punishment that effectively protects society from these persons; and

"WHEREAS, It is obvious that we must undertake a thorough re-examination of our codified law on this subject, especially the rehabilitative model, applicable bureaucratic regulations, and compilation of court decisions and sentences; and

"WHEREAS, That re-examination must consider a wide range of alternatives, including but not limited to mandatory sentencing, which might include long-term incarceration for repeat offenders; and

"WHEREAS, This evaluation should result in appropriate reforms of the laws and regulations dealing with this subject; therefore, be it

"RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, That the Legislative Investigating Commission is directed to undertake a thorough investigation of the increase in the incidence of child molestation and of the inadequacies in present state laws and regulations on the subject and to report to the General Assembly by January 1, 1980, pursuant to the provisions of the Illinois Legislative Investigating Commission Act."

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TO: HONORABLE MEMBERS OF THE GENERAL ASSEMBLY

This report presents our findings pursuant to House Resolution 138, adopted by the Illinois House of Representatives on April 24, 1979.

The resolution directed the Illinois Legislative Investigating Commission to determine the extent of the child molestation problem in Illinois. The resolution referred to the reported increase in cases of child molestation, the responsibility the state must assume to protect children from acts of child molestation, and the possibility that Illinois law is not adequate to address child molestation crimes.

Our investigation determined that reports of child molestation have increased but that there are no reliable statistics to indicate whether actual incidents of child molestation have increased.

Our investigation determined that first-time offenders pose just as great a threat to children in Illinois as do repeat offenders. We determined that many offenders go undetected or remain uncharged for long periods of time. When some offenders are charged, they may be charged with a crime that does not, on its face, appear to be a child sex crime, such as disorderly conduct.

Our investigation determined that, while not perfect, Illinois law is adequate to deal with child molestation. Changes in the law should be considered, as we have recommended in our report. But the ways in which the police, the State's Attorney's Office, and the judiciary resolve these cases is due to differing degrees of discretion afforded them by our criminal justice system. Discretion may affect any case of child molestation; the laws themselves are not inadequate to resolve these cases. The courts have not been unwilling to mete out proper punishments for child molesters; they have had to take into account many different factors in each case, as we have reported here.

Our investigation has taken into consideration not only Illinois law and sentencing under the law, but also rehabilitation of child sex offenders and alternatives to conviction. At the same time, we have studied cases in which repeat offenders have been given long terms of incarceration. We have examined the issue of mandatory sentencing and found that present law provides for its use.

Our investigation revealed that a major problem in the prosecution of a child molestation case turns on the use of the child victim as a witness. Many judges in Illinois make varying individual determinations concerning the competency of a child witness. Many prosecutors also make determinations concerning the strengths of a case based upon the competency and credibility of a child's testimony. Finally, even the police become involved in determining whether a child is credible in what he or she says has occurred, thus affecting the initial charge placed against a suspected offender.

Our investigation determined that present programs to treat sex offenders appear to be inadequate. Furthermore, child victims of a sex crime and their parents are often unable to utilize counseling that may be needed to alleviate a child's anxiety following a molestation incident.

Our specific findings and conclusions span a broad range of issues relative to the criminal justice process. Some of our findings replicate what we found and reported in our companion report, Sexual Exploitation of Children. And we have reserved some conclusions that will fall more appropriately into our final report, The Child Victim.

We have offered suggested recommendations for consideration at public hearings later this year. The hearings will cover the entire spectrum of child abuse and our final recommendations will grow from the hearings. The final recommendations regarding child abuse, child molestation, and the sexual exploitation of children will be contained in the Commission's final report on child abuse, The Child Victim: Child Abuse in the Family and Society.

Respectfully Submitted,

Co-Chairman:
Rep. James C. Taylor

Senate Members:
Karl Berning
Prescott E. Bloom
Jeremiah E. Joyce
Samuel C. Maragos
James "Pate" Philip
Frank D. Savickas

House Members:
Jane M. Barnes
Peter P. Peters
W. Timothy Simms

Executive Director:
Ronald Ewert

[Child sexual abuse] is not limited by racial, ethnic, or economic boundaries--the sexual abuse of children exists in all strata of society.

The National Center on Child Abuse and Neglect estimates that the current annual incidence of sexual abuse of children is between 60,000 and 100,000 cases per year.

In a retrospective study of 1,800 college students, almost a third of the respondents of both sexes reported that they had been subjected to some form of sexual abuse as children.

The familiar images of "perverts," "molesters," and "dirty old men" are not accurate portraits of the majority of persons responsible for the sexual abuse of children.

The reactions of parents, members of the child's community, and intervening professionals to the sexual abuse of the child are of crucial importance in determining its psychological effects on the child. Indeed, in the words of one researcher, "by far the greatest potential damage to the child's personality is caused by society and the victim's parents, as a result of 1) the need to use the victim to prosecute the offender [to whom the victim may be deeply attached, as in the case of an incestuous parent], and 2) the need of parents to prove...that the victim was free of voluntary participation and that they were not failures as parents." Some parents respond with greater expressions of concern about the disruption of their own lives caused by the occurrence than with concern for the child victim.

--Excerpts from Child Sexual Abuse: Incest, Assault, And Sexual Exploitation, a special report from the National Center on Child Abuse and Neglect, Children's Bureau, Department of Health, Education, and Welfare, August, 1978.

Chapter 1

INTRODUCTION AND BACKGROUND TO THE PROBLEM

The quotations presented as prefatory material to this report reveal some of the issues that the Illinois Legislative Investigating Commission was faced with in its examination of the criminal justice response to child molestation in Illinois. Not only does the term "child molestation" encompass a wide range of criminal behavior, but there are numerous side issues that are extremely important to a proper consideration of effects upon the child victim, not merely central to an examination of the criminal justice response to such crimes. Concern for the child victim and the society in which he or she lives suggested the course this investigation took.

House Resolution 138 states that the reported incidence of sexual molestation of children has doubled during the period 1977-1979. In examining statistics, we attempted to determine whether the incidence itself had risen so dramatically, or whether, for reasons to be determined, reports of child molestation had increased so greatly. As we shall see soon, statistics in this area have been either nonexistent or unreliable.

Statistics gleaned from the Crime Studies Division of the Illinois Department of Law Enforcement actually show a decrease in founded incidents and reports of incidents from 1976-1978 with regard to the criminal charge Indecent Liberties with a Child (Ill. Rev. Stats., Chap. 38, Section 11-4). There were slight increases in both founded incidents and in reports of incidents with regard to the criminal charge Contributing to the Sexual Delinquency of a Child (Section 11-5). There was a small decrease in both founded incidents and reports regarding the charge Indecent Solicitation of a Child (Section 11-6). There was an increase in both founded incidents and reports of Aggravated Incest (Section 11-10) and an increase in reports but a decrease in founded incidents of Incest (Section 11-11) [see Appendix A for verbatim descriptions of these statutes].

These statistics do not tell the whole story, however. This report shall demonstrate that often certain charges will be reduced or changed at one point or another of the criminal justice process. What the police may charge as a rape may become an indecent liberties charge at the State's Attorney's level; the indecent liberties charge may be reduced to a contributing to the sexual delinquency of a minor

SEX CRIME STATISTICS FROM DEPARTMENT OF LAW ENFORCEMENT, CRIME STUDIES DIVISION

	Indecent Liberties With A Child		Contributing to the Sexual Delinquency of A Child		Indecent Solicitation of A Child		Aggravated Incest		Incest	
	Reported	Incident Founded*	Reported	Incident Founded*	Reported	Incident Founded*	Reported	Incident Founded*	Reported	Incident Founded*
1975	508	483	348	339	128	125	56	49	29	28
1976	578	539	338	320	101	95	62	55	26	25
1977	491	462	338	325	127	119	46	43	34	31
1978	557	527	376	353	98	96	61	57	28	27

*NOTE: These numbers of incidents actually reflect the reported number of cases charged with the offense. It does not necessarily correlate with the number of cases prosecuted.

STATISTICS ON SELECTED SEX OFFENSES AGAINST CHILDREN*

OFFENSE CODES	OFFENSE CLASSIFICATION	OFFENSES KNOWN TO POLICE	UNFOUNDED NUMBER	UNFOUNDED PERCENT	OFFENSES ACTUALLY OCCURRED
1550	Deviate Sexual Assault	305	8	3	290
1555	Indecent Liberty With A Child	643	18	3	614
1560	Contributing to the Sexual Delinquency of a Child	367	9	2	351
1565	Indecent Solicitation of a Child	91	2	2	88
1570	Public Indecency	3103	68	2	3017
1575	Aggravated Incest	66	2	3	61
1580	Incest	44	3	7	39

OFFENSE CODES	OFFENSE CLASSIFICATION	OFFENSES KNOWN TO POLICE	UNFOUNDED NUMBER	UNFOUNDED PERCENT	OFFENSES ACTUALLY OCCURRED
1550	Deviate Sexual Assault	248	5	2	240
1555	Indecent Liberty With A Child	557	18	3	527
1560	Contributing to the Sexual Delinquency of a Child	376	11	3	353
1565	Indecent Solicitation of a Child	98	1	1	96
1570	Public Indecency	2901	64	2	2805
1575	Aggravated Incest	61	1	2	57
1580	Incest	28	1	4	27

*NOTE: Offense Codes Do Not Include Chicago Police Department Data.

Information furnished by Illinois Department of Law Enforcement, Division of Support Services, Bureau of Identification.

OFFENSE CODES	OFFENSE CLASSIFICATION	OFFENSES KNOWN TO POLICE	UNFOUNDED NUMBER	UNFOUNDED PERCENT	OFFENSES ACTUALLY OCCURRED
1550	Deviate Sexual Assault	184	4	2	175
1555	Indecent Liberty With A Child	487	16	3	458
1560	Contributing to the Sexual Delinquency of a Child	337	6	2	324
1565	Indecent Solicitation of a Child	127	7	6	119
1570	Public Indecency	2588	54	2	2523
1575	Aggravated Incest	46	3	7	43
1580	Incest	34	2	6	31

1550	Deviate Sexual Assault	222	8	4	209
1555	Indecent Liberty With A Child	578	21	4	539
1560	Contributing to the Sexual Delinquency of a Child	337	12	4	319
1565	Indecent Solicitation of a Child	100	3	3	94
1570	Public Indecency	2558	66	3	2471
1575	Aggravated Incest	62	5	8	55
1580	Incest	26	1	4	25

SENTENCE IMPOSED: SELECTED OFFENSES

	COOK COUNTY				DOWNSTATE COUNTIES			
	Sentence				Sentence			
	Average Minimum	Average Maximum	Range High	Range Low	Average Minimum	Average Maximum	Range High	Range Low
RAPE								
1974	5.2	11.2	2	50	6.2	17.1	4	75
1975	5.5	11.4	2	50	5.7	14.9	4	60
1976	5.5	10.7	2	55	12.7	29.9	4	200
1977	7.0	14.0	4	225	8.4	19.3	4	90
1978 (I)	6.2	11.5	4	100	8.6	19.2	4	60
(D)	8.4	8.4	6	20	12.2	12.2	6	50
1979 (I)	10.6	21.5	4	100	30.0	60.0	30	60
(D)	10.0	10.0	4.3	30	12.2	12.2	4	30
ATTEMPTED RAPE								
1974	2.2	5.8	1	15	1.8	6.1	1	10
1975	1.5	4.4	1	10	2.8	9.6	1	20
1976	1.9	5.5	1	15	2.7	7.4	1	20
1977	1.9	5.8	1	15	2.7	8.6	1	20
1978 (I)	1.4	4.2	1	12				
(D)	4.1	4.1	1	7	4.0	4.0	2	6
1979 (I)	2.0	4.0	1	6	-	-	-	-
(D)	6.3	6.3	1.5	15	5.1	5.1	1.2	8
DEVIANT SEXUAL ASSAULT								
1974	3.5	9.0	1	14	5.4	11.8	4	24
1975	6.2	12.4	4	20	6.8	17.3	3	40
1976	5.4	14.6	1	30	9.0	20.1	4	50
1977	7.1	15.8	4	60	4.4	11.0	2	15
1978 (I)	7.5	17.5	5	20	4.9	11.6	4	20
(D)	14.1	14.1	6	60	12.7	12.7	6	20
1979 (I)	5.0	10.0	5	10	-	-	-	-
(D)	8.2	8.2	6	15	7.5	7.5	6	13
INDECENT LIBERTIES WITH A CHILD								
1974	3.9	6.7	1	15	4.6	11.4	1	45
1975	4.0	7.3	1	18	4.5	10.4	1.5	20
1976	4.6	9.1	2	30	5.2	13.1	1	40
1977	5.6	9.0	1	50	7.0	15.0	3	75
1978 (I)	11.0	22.5	4	100	3.8	7.4	1	12
(D)	6.7	6.7	3	14	6.6	6.6	4	15
1979 (I)	8.0	15.3	4	30	-	-	-	-
(D)	5.6	5.6	4	13	6.2	6.2	4	15

(I) = Indeterminate
(D) = Determinate

ADMISSIONS TO ILLINOIS DEPARTMENT OF CORRECTIONS FOR SELECTED OFFENSES 1970-1979*

YEAR	RAPE	ATTEMPTED RAPE	ASSAULT TO RAPE	DEVIATE SEX ASSAULT	SEXUALLY DANGEROUS PERSON
1970	71	13	6		
1971	54	10	1		
1972	84	15	4		
1973	101	15	1		
1974	116	19			
1975	139	40		18	6
1976	147	29		17	2
1977	139	32		18	
1978	145	37		17	3
1979	141	26		20	5

* Data refer to number of people admitted for whom rape was designated as committing offense. Data do not include those committed on another offense who may have rape as a multiple offense. Figures are admissions from counties year-to-date as of December 31 for years 1970-1978. Data for 1979 are admissions as of October 31.

charge through the course of plea bargaining. We discovered that what may appear to be a rape could be prosecuted as a battery, and that an incest charge often will be prosecuted differently, if indeed it is prosecuted at all.

The Illinois Department of Children and Family Services (DCFS) keeps its own statistics of reports of child abuse, including sexual abuse. Our analysis of fiscal year 1978 statistics on Child Abuse and Neglect Reports indicates that child abuse reporting in general has risen 20 times in amount between 1970 and 1978. Part of this increase in reports is due to a 1975 law that requires certain categories of individuals to report cases of suspected child abuse to DCFS; certainly the new law does not account for such a sharp increase in reports, however.

Sometime during the 1970's DCFS began breaking out sexual abuse cases from general child abuse cases. Because there was a sharp increase in reports across the board, percentages of increases of reported cases of sexual abuse do not appear dramatic (i.e., in FY 76, 5.2% of all reports were of sexual abuse; in FY 77, 6.9% of all reports were of sexual abuse; and in FY 78, 7.0% of all reports were of sexual abuse). When one considers the actual numbers of reported cases, though, one does encounter an alarming increase. There were 351 cases reported in FY 76, 632 cases reported in FY 77, and 948 cases reported in FY 78. Later we will look at some of the research into sex crimes against children and discover that most experts agree that even today only a very small proportion of such crimes ever are reported to police or social service agencies.

In a study exceptional for statistical information, Defining Child Abuse (New York: The Free Press, 1979), authors Jeanne M. Giovannoni and Rosina M. Becerra present a table titled "Category of Mistreatment by Mean Seriousness, Overall Frequency, and Frequency of Single Occurrence." Of eight designations included in the table, sexual abuse of children ranks second under "mean seriousness of cases," following only "physical injury." Slightly later in this report, when we examine the sexual child abuse literature in more depth, we shall note the agreement among experts not only that sexual abuse of children has been steadily increasing, perhaps to what may be called "epidemic proportions," but also that it is a very serious form of abuse.

A great deal of child sexual abuse allegedly occurs in the home. Unfortunately, from some experts' standpoint, the offenders in such cases frequently are not prosecuted and their cases rarely end up in the criminal justice system.

Because the police and other authorities are often reluctant to pursue cases of incest, usually only the most obvious and grotesque or damaging cases end up in the criminal justice system. Later in this report we will examine one such case. But because incest cases in general fall out of the purview of our concerns, we deal with them in passing and have reserved our emphasis on incest for our third report, The Child Victim, in which we shall discuss child abuse and exploitation in all of its manifestations.

A cursory review of child abuse reporting, particularly in the area of child sexual abuse, shows that more and more reports are being handled in all jurisdictions every day. The Commission developed information during its investigation that showed that no area, whether urban or rural, was immune to increased reporting and to a necessary emphasis on child sexual abuse. The head of the Sexual Assault Unit at the Children's Aid Society in Detroit stated that "I don't know if it's really increasing, or we're having more cases reported to us. But the numbers are going up." Her thoughts echo what most authorities in the field have told us during the course of the investigation.

A thorough analysis of this problem requires a review of applicable law, sentencing issues, judicial discretion in determination of sentences, the role of the police, state's attorney's office, and social service workers, and several other technical variables that are explained in more depth later in this report. Before attempting to understand what happens to both offender and victim in a case of child sexual abuse, one must become familiar with the crime.

A. A Review of the Literature

The Rape Study Committee of the Illinois General Assembly issued its first report in 1976. Another report was disseminated in 1978. The Committee, whose chairman was Commission member Representative Aaron Jaffe and whose Vice-Chairman was Representative Peter P. Peters, another Commission member and sponsor of House Resolution 138, looked extensively into sexual abuse of children. The focus of the Committee was not limited to examining the crime of rape. In the report to the Illinois House of Representatives released in December, 1978, the following information is offered about the offender in these types of crime:

> Little is known about the conditions that create potential rapists, deviates, or child abusers. If identification of probable offenders is made, there are no established

> therapeutic programs available for early behavioral modification. When the offender commits one or even several criminal sexual acts, he is seldom apprehended. (The average rapist has committed 5 to 19 assaults before he is convicted.) If the offender is arrested, he probably will not be brought to trial. If he is prosecuted, his chances of acquittal are very good. If he is convicted, he will be sent to prison, where his already aberrant behavior patterns will be reinforced by further dehumanizing experiences. Untreated and unchanged, the offender, who rarely dies in prison, returns to society stigmatized and more likely than before to commit crimes of violence.

The Rape Study Committee was formed in 1973 and is still in existence. In March, 1980, the Committee held public hearings in Chicago to look into the problem of child sexual abuse, specifically incest. The two witnesses who testified at the hearings were Dr. Nahman Greenberg, Executive Director of the Child Abuse Unit for Studies, Education, and Services (CAUSES), a rehabilitation program specializing in incest therapy, and Douglas Besharov, former Director of the National Center on Child Abuse and Neglect and a Fellow of the Brookings Institution.

Besharov testified that awareness of child abuse has greatly increased in just the last four years and that, because of the increased awareness, there has been and will be an increase in reporting also. He emphasized that there was a great need for more research into the etiology and treatment of sexual maltreatment in general. He did state that:

> In terms of this Committee's concern, up to 100,000 children are sexually maltreated each year. Often, sexually maltreated children are also physically abused or neglected.

The Committee's 1976 report offers additional valuable information. Included are statements that little has been done to treat the offender, whether he or she is a parent or stranger. Rehabilitation is practically nonexistent..

Illinois Legislative Investigating Commission staff attempted to find treatment programs for sex offenders and were unable to find many. Programs do exist, but there seem to be few in Illinois. There is a voluntary sex offender treatment program at the Menard Correctional Center.

The program has limited space, however. We did take a look at the Dr. Geraldine Boozer Rehabilitation Program for Sex Offenders at South Florida State Hospital. That particular program emphasizes self-help and the concept of peer counseling. Residents of the program are largely responsible for their own rehabilitation, and some of the program descriptions have been written by the residents themselves. Missing from program descriptions were specific descriptions of the dynamics of treatment of the child molester.

The Rape Study Committee looked at several studies and reported in its 1976 report that, in a 1975 New Jersey Prison System study, it was discovered that 75% of the interviewed rapists had been sexually abused as children. In a study conducted by researchers at the University of Washington, 22% of a sample group of 200 prostitutes had been incestuously assaulted as children.

A study written by Dr. Gary May, titled Understanding Sexual Child Abuse and published by the National Committee for Prevention of Child Abuse, mentions that at least one psychoanalytic study of children who have been raped indicates that the children, once they become adults, feel a compulsive need to repeat the traumatic sexual act over and over. This hardly means that they become rapists, or that they become willing victims of rapists; rather, they are apt to expose their own children to potential similar sexual experiences by not protecting them.

May's study further states that the "dirty old man" syndrome is completely inaccurate, as we have mentioned already in this report. May's work has demonstrated that sex crime in general is mostly committed by young people. May refers to Vincent DeFrancis' classic 1969 study Protecting The Child Victim Of Sex Crimes Committed By Adults (Denver: The American Humane Association, Children's Division). DeFrancis has stated that the median age for a sex offender is 31 years of age; that 21% of the sex offenders he studied were under 20 years; that only 10% were over 50 years; that the race of both offender and victim is usually the same; that 15% of the offenders studied had prior records and that only 7% had convictions for sex crimes; and that 65% of the offenders were known to their victims prior to the commission of the crime.

In a moment we will look at the DeFrancis research material in more depth.

A pamphlet titled Sexual Abuse of Children: Information

for Educators, Counselors, Social Service Professionals and Parents, published by the Rape Crisis Center in Binghamton, New York, indicates that 34% of all child molestation is in fact incest. The pamphlet also states that violence in a child molestation incident is uncommon, but that coercion of one sort or another usually is present.

This latter statement is amplified in Robert L. Geiser's book Hidden Victims: The Sexual Abuse of Children (Boston: Beacon Press, 1979). Geiser indicates that the violent child molester usually responds as he does because his own sexual experiences while young were violent or abusive and frequently were sadistic in nature. Geiser offers several graphic examples of this behavior, including the case of a man who sodomized young boys in order, in his words, "to put them down." As is usually the case with rape, this was not a sexual crime; it was a crime of violence.

Geiser believes that the nonviolent child molester is probably psychologically still a child himself. This type of person identifies more easily with children than with adults and may view adults negatively. But like the violent child molester, the nonviolent child molester frequently has been molested while still a child. The trauma from the sexual assault can arrest sexual development at the prepubertal level.

Geiser is quoted extensively in the companion report to this one, Sexual Exploitation of Children. His book covers all areas of sexual exploitation and abuse of children, including child pornography and child prostitution, the focus of the companion report. Regarding child molestation and child rape, Geiser has accumulated equally interesting information.

According to Geiser, only one rapist in 20 is ever arrested; one in 30 is prosecuted; and one in 60 is convicted. This is the lowest conviction rate for any crime of violence. When discussing the efforts of rape in general, Geiser specifically refers to the "time-bomb effect" of child rape that we have discussed here already. Geiser mentions that one psychoanalyst whom he contacted has discovered that a number of her patients showed the tendency to repeat their own child rapes on their own children, much as May found in separate studies. Again, in this case, the "repetition" of the child rape was fostered by refusing to instruct or protect their own female children and by placing them in compromising situations. The anxiety experienced by these women as children turned to aggression with adulthood whose only release was this compulsive need for repetition of the incident.

Geiser also mentions that studies have demonstrated that, again in general, neither rapists nor child molesters are psychotic. Rapists, at one time, had all been assumed to have been psychotic. The profile of a child molester suggests no one single psychiatric characteristic in common except for the acting-out behavior that is labelled "deviance." Child molesters, according to Geiser, are not normally the "criminal type," nor are they usually violent.

Geiser's book includes a profile of what Geiser calls "the man who uses boys."

> He is described as married, often financially secure, often holds a college degree, has poor interpersonal relationships with adults, acts considerate toward his victims, usually is nonviolent, passive, takes pride in his personal cleanliness, often works with youth services, likes children, may associate with other "boy lovers," is often considered a "good" citizen, generally takes pictures of his victims which he swaps with his pals, and prefers his boys as young as possible (down to ten to twelve years old).

Several of the men interested in young boys whom we profiled in Sexual Exploitation of Children fit this profile extremely well. Still, it is not what the public is used to when asked to conjure up an image of a "typical" child molester and is all the more reason for more research and study to be applied to the problem of child molestation.

Later in his book, Geiser reiterates his premise that adults tend to reenact traumatic moments from childhood when they become adults. The psychoanalytic name for this type of behavior is "repetition compulsion." If violence was part of that childhood scenario, it will often be repeated in adulthood. In a study of Auburn, New York, State Prison inmates, all of whom were incarcerated for violent crimes, 95% of them had been abused as children.

Vincent DeFrancis has written what for years was a definitive study of sex crimes committed by adults against children. Though the study itself is voluminous, several portions directly pertain to our purposes here. When speaking of the use of "force or inducements" toward propagating a child sex crime, DeFrancis states that "The adult offender against children is able to exploit the child through the use of enticements, threats or bodily force. In about 15% of the cases the lure was tangible--a sum of money, from

small coins to substantial bills; or a gift, from pieces of candy to rather expensive items." He found that more subtle forms of enticement were used with another 25% of the victims studied, including the child's wish not to displease the offender, whom frequently he or she knew. DeFrancis found that threats alone were employed in only 10% of the situations studied:

> The threats were, in most cases, directed toward the child, i.e., the threat was to hurt, maim, wound or kill the child unless there was compliance. In some instances, the offender threatened to harm some member of the child's family unless the child cooperated. Both were effective and achieved the offender's purpose.

Further,

> Bodily force, with, in some cases, immediate hurt to the child, was employed in 50% of the cases. Here the offender struggled with the child, held the child down, struck the child or simply overpowered the child by the sheer weight of his body.

DeFrancis notes that there is an inverse relationship between the use of tangible inducements and/or force and the relationship between the offender and the child, so that the greater and closer the relationship, the less common was the use of physical force or tangible inducements. In a review of the types of offenses studied, the most numerous was rape, occurring in almost 40% of the cases. "Carnal abuse" accounted for 19% of the cases, sodomy for 14%, "impairing morals" for 12%, and incest for 9%.

Though obviously much of the research is fragmented, often it replicates data found in previous studies. Some of the findings and conclusions from research and other studies shed new light on old presumptions, and a review of disparate sources can turn up interesting attitudes and even statistical "trends."

An example may be an article published in the American Journal of Diseases of Children in June, 1975, titled "Sexual Abuse of Children: An Epidemiological Study," written by Arthur C. Jaffe, M.D.; Lucille Dynneson, R.N.; and Robert W. ten Bensel, M.D. Basically, the article is an analysis of sexual offenses against children in Minneapolis in 1970. Data were collected from several different sources, including the Minneapolis Police Department and the Child Protective Services of the Hennepin County Welfare Department.

The authors report almost any information which conceivably could be of significance to their own study or to some other researcher's. Data include types of offenses, to whom the offenses were reported, the sex of the victims, profiles of both victims and offenders, and an analysis of the reported cases of incest among the victims, among other things. Sex crimes against children in 1970 accounted for one-third of all sex crimes committed in Minneapolis that year. There were 291 cases; of these, almost half involved indecent exposure. 39% were classified as indecent liberties charges, and rape, sodomy, and sexual intercourse together totalled 11% of the reports.

The police reported no incest cases to the researchers, but the Protective Services department reported 11 incest cases that had been reported to them by the police. The police explained this apparent discrepancy "...as being due to the difficulty of obtaining conviction for incest. As these offenses often involve husbands, fathers, or other heads of the family and breadwinners, many family members are reluctant to press charges or to give damaging testimony on so serious an offense. The police, therefore, often resort to filing charges under the heading of indecent liberties, where conviction is easier and may be obtained without family members having to give testimony about incest." We will see later in our report, when we examine the types of offenses charged and actual court dispositions of charges, that this is not an atypical response.

This study also determined that 88% of the victims were female; that the mean age for a victim was 10.7 years; and that the "mean estimated age" of the offenders studied was 28. The authors make a point to mention that their findings are conversant with the findings of DeFrancis and many other experts in the field of child molestation. The authors also noted:

> Although 85% of the reported offenses in our study were categorized as exposure or indecent liberties, which on first impression might be expected to be relatively benign physically, they may in fact hide potentially injurious offenses. In a study of 25 sex offenders, Swanson found 64% of the sexual contact involved kissing, touching genitals, or mouth-genital, genital-genital, or rectal stimulation. McGeorge studied 200 girls and 200 boys who were victims. Of the 200 girls, he found 35% of the cases involved carnal knowledge, 22.5% digital interference, and 20% "manipulation of genitals." Of the cases involving boys, 53.5% involved masturbation, 26.5% sodomy, and 16% fellatio. We do not know how many offenses

> such as these are buried in our category of "indecent liberties."

What this study presents is reiterated in the literature often. Later in this report, both when we examine case studies developed by Commission investigators and when we discuss sentencing and judicial discretion, we will see that there are many variables to the reporting, investigation, charging, disposition, and treatment of child sexual abuse. The authors of this particular study conclude:

> The limitations of our study include the fact that not all cases in the community are referred to the police for investigation, nor is there any way of substantiating whether or not a report is in fact accurate. Also, the police data tell us nothing about the medical, social, or psychological outcome of the abusing situation. There is also no way of analyzing the socio-economic status of victims, nor of assessing the psychological makeup of children who are abused.

B. The Investigative Approach

Our primary task was to address the various clauses in House Resolution 138. In order to do so, the Commission interviewed judges, state's attorneys, private attorneys, representatives from the Attorney General's Office, correctional officers, police, and others empowered to participate in one way or another in the disposition of a child sexual abuse case.

The Commission also developed case studies of offenders and victims who had recently gone through the judicial system throughout the state of Illinois. Commission staff attempted to cover a wide range of possible dispositions and circumstances in the development of these cases; as we have noted, incest will be covered in detail in our third, overview report, but one incest case was developed for this investigation. The Commission rejected cases which seemed to duplicate the circumstances of other cases, instead concentrating on different possible variables along the incident-to-disposition continuum.

The Commission examined Illinois law and interviewed authorities conversant with the practical application of our laws regarding child sex crime. Commission staff also looked at comparable statutes from other states, as well as proposed federal legislation regarding uniform sentencing. We solicited opinions from various experts concerning reform and change of present Illinois law and have presented several

suggested recommendations in this report which will further be pursued at public hearings later this year and in our third and final report. We attempted to look at rehabilitation programs but, as noted, were largely unable to do so in Illinois, with a few exceptions. Some programs and program descriptions from other states are included elsewhere in this report, as possibly applicable to Illinois.

One important focus of the investigation was the Illinois Sexually Dangerous Persons Act, which has a corollary in most other states. We examined the intent of the Illinois law and its practical application, and we looked at the parallel laws from other states. There are significant differences between most states' laws and that in Illinois.

Another focus of this investigation was the entire area of discretion. Initially we expected that the issue of judicial discretion would be a key issue to the investigation, but as the investigation developed we realized that many different parties in the entire criminal justice system are able to exercise different forms of discretion and, in fact, do so. This discovery broadened the investigation to include additional interviewing and review, including a close look at the probation system in Illinois and other states.

We did not look at court decisions and sentences in isolation of the facts surrounding them. Instead, we interviewed all of the parties involved in a particular crime, except for the victims. As we have seen, the statistical information regarding sentences and even crimes committed is uneven; therefore, the examination of dispositions of cases would also not give a true picture of what had transpired in individual cases. As a result, the individual case studies were important to us in determining a qualitative analysis of sentencing and other discretionary issues.

The Commission looked closely at the issue of repeat offenders, particularly as the issue might be applied to the Sexually Dangerous Persons Act. We wanted to determine whether individuals were being committed to the Department of Corrections as sexually dangerous, then released, then recommitted after being involved in another sexual incident. We found that commitments are lengthy and that recommitments in Illinois are rare or nonexistent. Further, the population of Sexually Dangerous Persons is quite small.

Several repeat offenders are examined for this investigation. As we have noted in our rather cursory review of the literature, these are not typical sex offenders, but

they do pose serious hazards to the safety of the citizenry. We found that a comparison of their criminal histories with those of other individuals who had committed single but comparable crimes to be useful to an understanding of child sex crime and dispositional and post-dispositional treatment of the offender.

The Commission is concerned with judicial process because of its effects on victims of child sex crimes and the effects of these crimes on society as a whole. Our case studies of offenders focus on dispositions and post-adjudicatory treatment of these individuals. Our case studies of victims focus on the process in which the victim had to participate in order for a disposition to be rendered. Not only were we concerned with the facts of these cases, but also in opinions of victims' family members, opinions of police, state's attorneys, and judges, and the treatment module as it may exist in Illinois, whether it be correctional or probationary. We did not attempt a quantitative study of either victim or offender; rather, we attempted to present several cases in depth to point out, qualitatively, just what happens in the criminal justice process.

C. Companion Report Follow-Up

The companion report to this report, Sexual Exploitation of Children, was written approximately six to eight weeks earlier. In Sexual Exploitation, we singled out certain individuals who had been involved in child molestation and, usually as only an adjunct, child pornography. We stress in our companion report that we encountered, during our three-year investigation, very few "pure" child pornographers; that is, child pornography as a commercial product is not occurring domestically. Such material may be coming into this country from overseas, but it is not being produced in bulk in this country. It is not even being distributed in quantity in this country since the passage of federal and state child pornography laws.

Our conclusions in the Sexual Exploitation report are expansive and are best reviewed in their entirety. Certainly there will be some overlap between these two reports, since we discovered that most child sexual exploiters are best described as child molesters, the focus of this report. In the interim of writing between the two reports, the Commission developed additional information on sexual exploitation. Some of this material is research-oriented and will be incorporated in our third and final report, but some of the information relates directly to individuals identified during our previous investigation as child molesters and/or child

pornographers. In cases in which we have accumulated additional information of value, we will present partial updates in this report. Undoubtedly we will do the same in our third report.

One of the chapters of Sexual Exploitation details the activities of individuals arrested by law enforcement authorities for their participation in child molestation and/or pornography schemes. The Commission developed extensive information on seven individuals, all of which was turned over to appropriate law enforcement bodies for their use. Of the seven arrests that resulted, three were disposed of and are reported upon in Sexual Exploitation. The Commission has developed further information on the other four.

John P. Mikalauskas

In late 1979 and early 1980, a Commission undercover investigator contacted John P. Mikalauskas of West Chicago. The two arranged a meeting and discussed child pornography by phone. Our investigator met with Mikalauskas on February 10, 1980, at which time Mikalauskas discussed his sexual interests in young boys and showed a child pornography film in his apartment. While the meeting was occurring, agents from the Illinois Department of Law Enforcement (IDLE) were conducting a surveillance of the meeting. At its conclusion, our investigator briefed the IDLE agents, who, the next day, obtained a search and arrest warrant. The arrest warrant charged Mikalauskas with exhibition of child pornography. Mikalauskas was arrested the same day and child pornography magazines, films, and Polaroid photographs were confiscated from his apartment.

On February 14, 1980, the DuPage County Grand Jury indicted Mikalauskas on one count of exhibiting child pornography, one count of deviate sexual assault, and three counts of indecent liberties with a child. We mentioned in our companion report that the first two charges would be dropped and Mikalauskas had agreed to plead guilty to the indecent liberty charges. Mikalauskas' sentencing hearing was set for July 29, 1980, but has been continued to August 21, 1980, after this report will have been written. DuPage County Assistant State's Attorney Robert J. Anderson has told us that there has been no agreement on a sentence and that the state and the defense will present arguments before Judge John Teschner on August 21. The three charges to which Mikalauskas has agreed to plead guilty are felonies.

David I. Preston

The Commission also developed information regarding David I. Preston of Belleville, Illinois. Preston had placed an advertisement in an underground sex journal to which a Commission undercover investigator responded. We determined that this individual had been the intended recipient of a shipment of child pornography that was seized by Customs agents in May of 1979. Preston told Commission investigators on the phone that he was interested in purchasing child pornography and that, further, he had some child pornography in his possession which he was willing to mail to our undercover investigator. He did indeed mail us a copy of an overseas child pornography magazine, Lolita #41, which was immediately turned over to the IDLE crime lab.

On January 16 and 17, 1980, St. Clair County Assistant State's Attorney James K. Donovan prepared a warrant for Preston's arrest for delivery of child pornography. He was arrested by IDLE agents at his business, Dave's Office Machines, in Belleville. Preston signed a consent-to-search form and led IDLE agents to a locked file cabinet in the master bedroom of his home. Among the material contained therein and confiscated were approximately 54 hard-core child pornography magazines, including 27 issues of Lolita, six child pornography films, and correspondence with distributors of child pornography.

On May 1, 1980, Preston pled guilty to a violation of the "Harmful Material" statute, Ill. Rev. Stats., Chapter 38, section 11-21. A violation of this statute is a misdemeanor. St. Clair Assistant State's Attorney Angela Blackman told us when our companion report was being prepared that her office would recommend one year's probation. Since that time, we have learned that Preston was sentenced on June 20, 1980, to one year's probation, was fined $250 plus court costs, all of his material confiscated was permanently to be held by the Illinois Department of Law Enforcement, and he was ordered by the court to seek appropriate mental health treatment.

Richard James Seeden

Richard James Seeden, of Brookfield, Illinois, had also placed an advertisement in the same underground sex journal in which Preston had placed advertisements. California police had confiscated the magazine's mailing list in early 1978, and Commission investigators identified Seeden from his advertisement in an issue of the magazine. His advertisement read:

> Gentleman would like contact with men/women; subject, girls 6-14, photos, film or live, money no problem, will answer all.

A Commission investigator contacted Seeden and arranged a meeting at the Brookfield Zoo. During the meeting, Seeden showed our investigator three Polaroid photographs of a nine-year-old girl engaged in sexual activities with Seeden. Seeden also told our investigator that he had been involved with this girl sexually for three years and that her own brother had taken the photos.

Seeden also mentioned that his business, Central Auto Rebuilders in Brookfield, was where the photos had been taken. Seeden agreed to take the Commission investigator back to his business, where Seeden produced 20 more photos similar to the three displayed at the zoo.

A search warrant was served on Seeden at his place of business on Monday, August 13, 1979, by IDLE agents and officers from the Brookfield Police Department. Besides the photographs already mentioned, the search uncovered pornographic publications and pornographic films. Seeden was charged with delivery and exhibition of child pornography. Since the writing of our companion report, we have learned that Seeden pled guilty on July 24, 1980, to exhibition of child pornography and possession with the intent to distribute. Seeden was sentenced to one year in prison and immediately was remanded to the custody of the Illinois Department of Corrections.

We mention in the companion report that the Commission made it appear that our undercover investigators were running a summer camp that would appeal to child molesters and child pornographers. We attempted to get in touch with individuals using this technique. As a result, we identified approximately 35 individuals interested in attending the camp as counselors or "sponsors" of youth who, by implication, would be interested in and involved sexually with youth attending the summer camp.

John R. Spargo

One summer camp applicant two years in a row was John R. Spargo of Lake Geneva, Wisconsin. Spargo wrote us indicating his interest in serving as a sponsor of one individual youth. Portions of the letters he sent to our undercover postal box follow:

> Ideally, I would like to provide a home for a boy 11-13 here at Lake Geneva. I have much to offer, what with my involvement in sailing. The boy I "adopt" could learn to sail and travel all over the country, racing with me. Failing this ideal situation, I'd certainly enjoy getting to know a boy who'd like to spend all or part of his summer here, getting involved in the yacht club activities and regattas that are such a large part of my summer.
>
> I would most prefer knowing boys age 11-14, blond, slender. I feel that boys of this age can benefit tremendously from close contact with an adult. In the area of sexual fulfillment, my experience has been that boys of this age are awakening sexually and are enormously interested in sex, but as yet have no viable relationships with girls. A mature adult can be extremely valuable in bridging this "gap" and teaching a boy what he needs to know to become a sexually successful and free-thinking person. I have no desire to impose my philosophy on a boy, but rather to provide him with a range of experiences so he can make his own decisions based on warm, loving relationships with many people, including men.

Spargo had worked as a school teacher for two years and had been a camp counselor for six summers. At the time of his arrest, he was Assistant Program Director and Sailing School Director at the Lake Geneva campus of George Williams College.

A Commission investigator spoke with Spargo on the phone several times. During these conversations, Spargo mentioned his sexual activities with young boys. Eventually a meeting was arranged for August 17, 1979, at McHenry Dam State Park. When Spargo met with a Commission undercover investigator, he brought with him his entire photo album, consisting of approximately 76 photographs of 12 boys engaged in sexual activities. Spargo told our investigator that he had been involved with at least 30 boys altogether and that the album was not indicative of the full range of his sexual interests in boys.

Accompanying the photographs were index cards that referred to the informal "sex education" school Spargo told us that he ran. Information on these cards included a boy's name, his age at entry to the "school," his age at "graduation," frequency of his "lessons," and often the name of a young girl with whom Spargo had "placed" the boy after successful "graduation." At this meeting Spargo told our investigator that he had an 18-year-old girl who was responsible for "recruiting" young girls with whom to place his boys.

Spargo also brought with him a list of all of his sexual partners for the past 2-3 years; there are 28 boys on the list, ranging in age from 7-16.

After displaying the photo album and relating the above information, Spargo was placed under arrest by plain-clothes officers of the McHenry County Sheriff's Department. Spargo was charged with exhibition of child pornography. The first hearing in this matter occurred on August 27, 1979. Since that time, Spargo's attorney has indicated to the State's Attorney's Office that his defendant is interested in pleading guilty to a reduced, misdemeanor charge. As of August, 1980, the State's Attorney's Office has rejected this offer. Spargo's attorney also has introduced a motion to dismiss the charge against Spargo. The motion was denied. As of this time, Spargo's case is set for bench trial before Judge Henry L. Cowlin of the 19th Judicial Circuit on September 29, 1980.

Our companion report describes the undercover operations that Commission investigators ran for two years in some detail. Mentioned in that section of the report is that child molesters frequently group together in what we described as "loose-knit networks." Often child molesters are interested in child pornography and exchange such material, in addition to correspondence, through the mails. Sometimes child molesters will find a way to meet others interested in the same crime, as so many felt anxious to do when contacted by our undercover investigators.

During our investigation of a soft-core child pornography publication known as the B.A.F.S. Journal, former Commission senior investigator Edward J. Flynn developed information linking three individuals from different locales together. One of them was Randall K. Wilke, of St. Louis, Missouri, with whom we corresponded for a short time immediately prior to his arrest by the St. Louis Police Department. The Missouri criminal code includes a violation known simply as "Child Molestation," which is a felony. Wilke was arrested on March 16, 1978, and charged with four counts of the charge after police broke up a ring of child molesters who also used young boys for the production of child pornography photographs and films. Wilke and three other men had been engaged in this activity for at least four years.

Since the printing of our companion report, we have learned that Wilke pled guilty to one count of child molestation and the other three charges were dropped. He received five years' probation. There are no particular terms attached to the probationary sentence, as there were in the Preston

case. There was no court order that Wilke seek mental health treatment, either. Wilke is a former school teacher whose present employment is unknown.

As detailed in our companion report, on March 25, 1980, Donald E. Manning was arrested and charged with possession and sale of child pornography by the Chicago Police Department. As we stated in the report:

> His arrest occurred as a direct result of postal inspectors taking a Commission undercover technique and writing to the suspected pornographer, using an alias and a postal box and advertising an interest in "sincere youth development."

On three separate occasions, Manning sold an undercover Chicago policeman two rolls of film that were determined to be child pornography. Police confiscated a large amount of pornography from Manning's residence and determined that only a small proportion was child pornography. Also confiscated, however, were letters from individuals who had been involved in the distribution of child pornography and the molestation of children.

Manning was charged with three counts of violation of the state child pornography statute. On May 15, 1980, Manning pled guilty and was sentenced to one year's probation with an order that he receive psychiatric counseling from the court's Probation Department.

On October 18, 1978, Harry Meier was arrested and charged with possession and production of child pornography. Meier had been active in trying to solicit young boys from known youth prostitute hangouts to act in his films, according to the Chicago Police Department. Police confiscated 30 rolls of homemade film depicting young boys engaged in sexual acts.

The Commission learned that Meier's arrest history for sexual delinquency with children dates back to 1961. At one time Meier served two years in prison on two counts of indecent liberties; he had been discharged less than a year before being arrested in October of 1978. The charges against Meier were withdrawn by the State's Attorney's Office.

During our three-year investigation into child pornography and child prostitution (Sexual Exploitation of Children), we developed information concerning an individual named Robert M. Cleveland. An informant had advised us that Cleveland had been involved in sexual molestation of young

boys for some time. Commission investigators followed up this lead and eventually were able to produce three boys who agreed to testify at a special aggravation hearing prior to Cleveland's sentencing on an indecent liberties charge.

As we have mentioned in our companion report, Cleveland had been involved with young boys aged 7-14 for at least six years prior to his 1978 sentencing. The three victims whom we identified graphically described the sexual involvement that had occurred between them and Cleveland on several occasions, both in Chicago and in a small town in Wisconsin.

At the sentencing hearing, on March 30, 1978, Judge Warren Wolfson heard testimony from one of the three boys brought forward by the Commission. Soon after listening to testimony, Judge Wolfson sentenced Cleveland to four years of probation, 52 weekends in jail, and a $2,000 fine, and ordered that Cleveland be required to receive psychiatric care. We discuss this last requirement more thoroughly in our companion report.

Soon after sentencing, Cleveland was seen in the same small town in Wisconsin. Because Cleveland had been freed on appeal bond, he didn't even have to spend his weekends in jail. He spent them in Wisconsin instead, just as he had prior to his arrest and conviction. Cleveland's sentence was still being appealed when we completed work on our Sexual Exploitation report.

Since that time, we have learned that the Illinois Appellate Court has affirmed Cleveland's conviction. On July 30, 1980, the Appellate Court ordered that the case be returned to the original trial court for final execution of judgment so that the sentence could begin. On August 14, 1980, a Commission investigator attended a hearing before Judge Wolfson by Cleveland's attorney.

The defense motion asked that the sentence of 52 weekends of periodic imprisonment be set aside, presenting five reasons, including that his client, Cleveland, has received psychiatric care costing in excess of $20,000. Judge Wolfson denied the motion, stating that Cleveland had inflicted serious psychological damage on his victims and that due to the gravity of the offense, the original sentence of periodic imprisonment would stand. Judge Wolfson added, however, that if Cleveland could provide proof of his psychiatric counseling, including the dollar amount of fees incurred, that he would terminate the two conditions of Cleveland's sentence calling for a $2,000

fine and outpatient psychiatric treatment. Cleveland's hearing on this issue will be held in September, 1980.

On August 15, 1980, Cleveland began his term of periodic imprisonment, staying in Cook County Jail from 6:00 P.M. Friday to 6:00 P.M. Sunday. While out on appeal bond, Cleveland began reporting to his probation officer, who told our investigators that Cleveland has since been reporting as ordered.

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One of the crucial findings of the Sexual Exploitation report is that, for the most part, child pornography is produced overseas and distributed from overseas, except for Polaroid photographs and homemade films. The latter types of child pornography are made by individual child molesters. While not every child molester is also a child pornographer, as we point out in our report, it is safe to say that many child molesters become involved with some sphere of child pornography while they are engaged in the commission of their crimes of molestation. The image commonly held of a child molester may be that of the "dirty old man," or it may be that of a violent and psychotic rapist, or it may be that of an innocent "flasher" type. We have pointed out in our brief review of the literature that these images are largely false. But we want to reemphasize here the point made in Sexual Exploitation that child molestation, child pornography, and child prostitution are all interrelated crimes about which the public must become more aware and to which the public must become more sensitized.

Chapter 2

THE OFFENDERS

As noted, the Commission has been interested in selecting case studies based on their quality. We have not attempted to review all of the child molestation cases in any known locality or jurisdiction. A mere reiteration of dispositions and sentences would not serve our purposes nor those of the General Assembly. By attempting to concentrate on individual cases, several of which concern repeat offenders, we hope to be able to examine a wide range of issues available in the spectrum of the handling of child sex crime, from police discretion to judicial discretion.

We chose both offenders and victims from several different counties in Illinois, of course aware that the size of a jurisdiction and the frequency with which some crimes have occurred in that jurisdiction might influence a judge's sentencing and, indeed, might even influence every step leading up to that point. Certainly there have been many more cases of child molestation of differing types in Cook County than in some other counties. We wanted to see if such cases are prosecuted more vigorously in Cook County because the traumatic effects on the victims become obvious as the victims multiply, or whether the opposite is true: as police, state's attorneys, and judges see more and more of the same crimes, they may become immune to the crime or think that it is less serious than it really is. Similarly, we wanted to determine whether other counties might treat these crimes differently, perhaps believing that a crime of child molestation is so rare and hard to conceptualize as to make the crime seem inhuman and horrendous, thus resulting in a stiff sentence--or whether the appropriate officials in another county might see such an act as an aberration that certainly could not happen twice, thus resulting, perhaps, in a suspended or probationary sentence with mandatory psychiatric counseling.

What we actually found is very interesting. To a large extent, the details of the cases speak for themselves.

A. Gerald R. Wojtasik

Jerry Wojtasik is one of the repeat offenders whose case the Commission examined. Unlike many child molesters, Wojtasik's crimes made the newspapers in no small way. A portion of one Chicago Tribune story follows:

A man charged with sexually assaulting six southwest side girls was convicted Tuesday of aggravated kidnapping, deviate sexual assault, and two other counts in connection with one of the attacks.

The defendant, Jerry Wojtasik, 29, of 3245 S. Ashland Ave., was found guilty by a Criminal Court jury of the Aug. 2, 1979, assault on a 9-year old girl.

Wojtasik, an unemployed day laborer, was arrested two days later, minutes after attempting a similar attack on a 16-year old girl near 63rd Street and Pulaski Road.

Wojtasik was convicted Friday of attempted deviate sexual assault in connection with the second attack. He still faces charges in four similar attacks....

(February 27, 1980)

Commission investigators pursued the Wojtasik case by speaking with the parents of victims to determine their perspective on how the cases were handled and with assistant state's attorneys handling some of the cases. We also obtained criminal history sheets and police department descriptions of the incidents and their investigations.

Wojtasik's arrest history dates back to 1968, when he was charged with two counts of contributing to the sexual delinquency of a minor. The charge originated in the small Illinois town of Vandalia, and Wojtasik received 75 days in jail for the two offenses. After that, Wojtasik's criminal history consists of no sex-related crimes until 1979, when he was charged with the deviate sexual assault mentioned in the Tribune story and several other related sex offenses against children.

We spoke with the assistant state's attorneys handling the Wojtasik case in Chicago in October and November, 1979. Assistant State's Attorneys Michael Kane and Richard Trainer were assigned to the case, which involved multiple counts. Trainer told us in October of the six cases pending against Wojtasik and told us that he was trying to choose one of the cases to prosecute, preferring not to take the offenses in order of occurrence, perhaps because one case was much stronger than another. We spent more time speaking with Kane.

Kane told us that he had previously handled cases involving sex offenses against children, though he was primarily assigned to murder cases. He told us that there is

no one assistant state's attorney (A/S/A) assigned to child molestation cases, even in Cook County. In making several general remarks, Kane mentioned that few child molestation cases ever go to trial: most are "pled out" or dismissed. As we noted in Sexual Exploitation, in many cases of indecent liberties or a related charge, a defendant will plead down from a felony to a misdemeanor and reach an agreement with the prosecuting attorney. Usually a judge will go along with the plea agreement, though a judge is not bound to do so. Kane told us that Wojtasik would go to trial because of the number of indictments.

On August 15, 1979, Wojtasik was indicted by a Cook County Grand Jury on 12 counts, including one count of rape, three counts of indecent liberties with a child, two counts of deviate sexual assault, three counts of aggravated battery, and three counts of unlawful restraint. Kane told Commission investigators that he felt all of the cases pending against Wojtasik were simple cases. He said that the State's Attorney's office expected to get at least two convictions with no trouble.

Again in speaking in general terms of these sorts of crimes, Kane told us that assistant state's attorneys never receive any special training to help them communicate with child victims of sex crime. He did not seem to think that lack of such training was a problem, implying that one learned how to handle the cases through experience. He did mention that his office did offer a seminar on handling of a rape case.

Kane told us that the main problems encountered by his office in prosecuting cases involving sex offenses against children are the age of the child victim or witness, the fear of parents that their children will be adversely affected by going through the court process, and the delay in reporting of incidents by the child to the parents. He said that it is particularly difficult to determine the date and time of an occurrence with a young child victim, and that if this determination is not made a case may not be credible.

The Commission reviewed voluminous police reports concerning Wojtasik. Since most of the incidents for which he had been indicted took place within a few days of one another, they are best described as one single series of events. Wojtasik, according to police reports, attacked his victims in the alleys by force. One victim was grabbed in the middle of the afternoon in an alley, forced to the ground, and forced to perform a deviate sexual act upon Wojtasik. Prior to the sexual assault, Wojtasik beat the victim and released

her only after she began screaming. She ran down an adjoining street and the police were able to arrest Wojtasik very close to the area of occurrence.

In another incident, a young girl was picking flowers in a southside alley when Wojtasik approached her with his penis in his hand. He grabbed the girl and told her to open her mouth. When she started to scream, Wojtasik grabbed her by the throat and began choking her. She stopped screaming and Wojtasik forced her to perform oral sex upon him. She started screaming again and Wojtasik choked her again. The victim told him that "I won't tell if you let me go," and Wojtasik released her and walked away through the alley. The girl ran to her aunt's house, where she had been visiting, and told her about the incident. The victim had failed to identify photographs or any individual in a line-up at the 8th district police station. The police were called but did not arrest Wojtasik until later that day.

The victim, who had suffered contusions about the neck from the assault, viewed another line-up with her mother present at Cook County Jail six days later. She made a positive identification of Wojtasik and the Grand Jury indicted him in this incident for deviate sexual assault, indecent liberties with a child, aggravated battery, and unlawful restraint.

Less than a month earlier, an 11-year-old girl returning from a local market in her own neighborhood had been approached by a man as she cut through an alley toward her home. He pulled her down in the alley behind a garage and attempted to force her to perform an act of oral copulation upon him, but without success. The man fled through a gangway. A canvass of the neighborhood revealed one witness who had seen the victim running through the alley and a young man in blue jeans running in the opposite direction. Area 3 Homicide/Sex investigators later interviewed the victim at her home, where she related basically the same story that beat officers had heard from her at a local hospital. The victim described the offender for a police artist but failed to identify the assailant from police mug-shots. Therefore, in spite of the similarity of the attack, Jerry Wojtasik was not immediately implicated in this incident.

Upon further investigation, however, and at the time of a line-up in which seven young female victims were asked to participate, four of the victims, including the victim mentioned immediately above, positively identified Jerry Wojtasik as their assailant. One victim made a tentative identification, and two made negative identifications.

In yet another incident, Wojtasik forced a young girl into an open garage in an alley near her home and forced her to perform a deviate sexual act. The victim was able to make a positive identification of Jerry Wojtasik as her assailant.

Wojtasik was finally arrested after he attempted to force a 16-year-old girl to perform an act of oral copulation on him in still another southside alley. She was able to resist him and get away to summon help. Several of her friends spotted Wojtasik leaving the neighborhood and grabbed him until the police could arrive to conduct an arrest. In this case, Wojtasik was again charged with deviate sexual assault.

As we have seen, Wojtasik was facing a twelve-count indictment. Ultimately, he was sentenced for six of the twelve incidents.

Commission investigators interviewed the parents of five of Wojtasik's victims in order to determine their perceptions of how the cases were handled.

One mother with whom we spoke was concerned with the police response to her call. She told us that though she had used the special emergency "911" number to report the incident involving her daughter, it took 15 minutes for a beat car to respond to her house. The mother was of the impression that it was the fault of 911, not the police themselves. She was critical of the police investigation, though, and in this instance did blame the police officers assigned. It was her opinion that the police failed to canvass the area of the incident when they arrived. She told us that she spoke with her neighbors after the incident took place and that none of them saw any policemen checking the very spots where Wojtasik had been seen.

The victim's mother singled out three Homicide/Sex investigators for poor handling of her daughter's case. She said that the investigator handling the questioning of her daughter at the hospital appeared not to listen to her responses or, alternately, to try to "put words in her mouth." The mother told us that the other two investigators told her less than a week after the incident occurred that no one would probably ever catch the offender. She said that these two investigators, who also handled other cases of child molestation that we shall discuss in this report, seemed very casual in their approach to the investigation and did not seem to care very much about it.

The mother also complained about the police line-up procedures, which required her daughter to be in the same room face-to-face with all of the suspects at the time of identification. She felt that her 11-year-old daughter was upset needlessly by this procedure and that some other arrangement could have been made. The mother of this victim was so upset and concerned about the handling of the case that she called then-Homicide/Sex Commander Joseph DiLeonardi to complain about the lack of concern and sensitivity exhibited by some of his investigators. DiLeonardi was concerned that up to the time of her call no one had bothered to send a police artist out to her house to put together a composite sketch. An artist came to the home two days later.

The mother's complaints about the central two investigators on the case covered practically every area one could imagine. While she mentioned that hospital personnel were very kind and reassuring both to herself and to her daughter following the molestation incident, the two Homicide/Sex investigators told her that counseling for her daughter would be a waste of time and that she should just let her daughter forget the whole thing. Furthermore, after her daughter had identified Wojtasik at the line-up, the same two investigators acted "very casually," as though they thought that he would have been caught sooner or later and it was "no big deal."

This particular parent found her initial dealings with the State's Attorney's Office to be handled professionally and well, but she mentioned that the only way she ever learned of hearing or trial dates was for her to call the office herself. She was also somewhat upset that one of the assistant state's attorneys was willing to plea-bargain in her daughter's case, but she was willing to accept his decision.

Finally, the mother commented that her daughter was doing well dealing with the incident's aftermath (except when questioned about it at school), probably because of the close family relationships that existed at home and because she had engaged her daughter in professional counseling.

It should be noted that the Chicago Police Department case report stated that "a canvass of the area proved negative." When Commission investigators interviewed the two Homicide/Sex investigators, they had reasonable responses to each of the alleged problems mentioned by the victim's mother.

The parents of another victim were also questioned about the handling of their daughter's case. They told us that police response time was about 10 minutes, after which their daughter was taken to the same hospital as the victim mentioned above. The parents reported that a canvass of the area was conducted immediately and that several officers from Area 3 Homicide/Sex came to the hospital, including a lieutenant and a female youth officer, who handled most of the questioning and who, the parents thought, had been very sensitive and professional.

This case differed from all others studied for purposes of this report, because the father of the victim was a prominent citizen. At some point during the investigation, he visited Area 3 and District 8 and told officers there that he wanted something "done fast" on the case. As a result, the case was given additional personnel, more individuals in the neighborhood were questioned than in other cases, and the way the victim was handled may have been affected. The Chicago Police Department case reports are more lengthy in this case and indicate that more work was put into the case.

However, because more personnel were assigned at the demand of the victim's father, the victim ultimately suffered by having to repeat her story over and over to different investigators. As the strain of recounting the incident again and again began to show, the father called the police again and requested, this time, that some of the investigators be taken off of the case. The two investigators about which so many complaints were registered above remained on the case as the primary investigators, and the father thought that they did "a good job."

Neither parent was happy with the line-up procedure. In two of the three line-ups in which their daughter participated, the victim had to face suspected offenders face-to-face. The parents remarked that at one of the line-ups their daughter told them that Wojtasik "looked at me the same way as he did that day." The mother did mention that it was a consolation to her to be able to meet with the parents of the other victims at the line-up, however.

These parents mentioned that the handling of their daughter's case by hospital personnel also went very well. The hospital social worker visited their daughter in the emergency room and the family doctor told the parents what to watch for in their daughter's behavior that might warrant further counseling. The mother mentioned that her daughter still occasionally has nightmares and breaks out in a cold

sweat at night. She also seems to be afraid of any kind of violence she sees or hears of, no matter how slight. The daughter told her parents that Wojtasik had told her several times during the molestation incident that he was going to kill her. Because her behavior still hasn't returned to normal, the parents told us that they were going to take her to see a friend, who is a psychiatrist, for regular treatment.

The mother told us that the only contact her daughter had with the assistant state's attorney was at the line-up. She said that he was very rough on her but understood that he acted that way to prepare her for the realities of a trial situation. When we spoke with A/S/A Kane about his feelings about child sex crime and its prosecution, we asked him specifically about face-to-face line-ups. He told us that he felt it was good exposure for potential witnesses in preparation for a face-to-face confrontation with the alleged offender at the trial.

Neither parent was anxious to have their daughter testify at the trial and both hoped that her case would be one of the last called, if indeed it was necessary. The A/S/A had told them that their daughter would make a good witness, so their apprehension was increased somewhat by that knowledge. The parents did say, with reference to the actual trial, that if they wanted information about hearing dates, they had had to call the court or the State's Attorney's Office to obtain the information.

The victim's mother mentioned that just a few weeks prior to our November 9, 1979 interview, a hospital social worker had called her offering counseling sessions for her daughter. The emergency room fees had been paid by the mother's insurance from work, and the mother was upset that these counseling sessions would cost $20 a session. It was her opinion that they should be free of charge.

Her main concerns, mentioned at the close of our interview, were that the state seemed more interested in the rights and welfare of the alleged offender than they were of an actual victim, and that Wojtasik would retaliate against them when he is released from jail. She felt that not only would Wojtasik "go after" her daughter, but that he would carry out his threats to kill her.

We also spoke to the mother of the girl who was assaulted while visiting her aunt and uncle. She told us that response time by the police was extremely good, though the police did not come to the home to speak with her that evening. She was uncertain whether a canvass was conducted,

but she was not present at the incident scene so she could not have known of such a canvass. She told us that the police had a good attitude about the case and exhibited concern for both the case and for the victim. Investigators not only questioned the mother and her daughter in the home, they brought mug-shots for her daughter to view in the home and they called periodically to inform her of the status of the case.

The mother's only objection concerned the line-up procedure used by the police. She said that the face-to-face line-up situation was very upsetting to her daughter and therefore to her also. She told Commission investigators that she had told the police after the first line-up that she would not allow her daughter to view any more line-ups if they were set up in the same way. She did have her daughter participate in one more line-up, that with the other victims at the Cook County Jail that led to the multiple-count indictment against Wojtasik.

The mother said that the police told her that they understood that a face-to-face line-up is upsetting, but that her daughter would have to face the alleged offender in court. The mother told our investigators that her daughter had nightmares the evening after the first line-up.

The mother mentioned that she was less than pleased with her first contact with the assistant state's attorney handling the case. She told us that the first A/S/A who spoke with her daughter seemed "agitated" at her daughter's inability to relate her story extremely well. She also said that the A/S/A implied that there was no reason to be so upset about a deviate sexual assault when one of the other victims involved in the case, a rape victim, was less upset. The mother told us that this was "kind of ignorant" on the part of the A/S/A, explaining that he should have taken into account the personality differences in the victims with whom he was dealing.

The mother said that at the time of the incident, neither she nor her husband saw any reason for their daughter to go into counseling or treatment of any kind. At the time of the interview, however, the mother told us that her daughter still was exhibiting fear and apprehension around strange men, even her father's friends who came over for dinner. At these times she would cry, seemingly for no reason. The parents of this victim also hoped that their daughter would not have to testify at the trial, though the A/S/A had told them that their daughter would make a good witness. The assistant state's attorney assigned to the case had, at the

time of our interview with these parents, been supplying the parents with written notification of hearing dates and the names and phone numbers of the appropriate personnel handling the case.

Yet another set of parents was interviewed by Commission investigators on October 10, 1979. With regard to the way the case was handled by the police, hospital personnel, and the State's Attorney's Office, the mother said that "Everyone was great." A policewoman took the initial report information and apparently did an excellent job. Again, the major criticism of police procedure was the line-up situation, which again was face-to-face with the alleged offender. In this case, we learned the details of the line-up. Each man involved in the line-up, including Wojtasik, was asked to walk up to the victim, introduce himself, and turn several different directions so that the victim could get a very clear look at him. The mother told us that her daughter was not at all prepared for this procedure and that it was very traumatic for her to be forced to face Wojtasik in such close proximity again so soon after the incident had occurred.

The daughter in this case had to receive counseling, which cost $35 a session. The father mentioned that he thought his medical insurance might cover a small portion of the fees, but that he would probably have to pay the remainder himself. He had looked into monetary compensation through the Crime Victim Compensation Act, but found that use of the act would not suit his purposes. The daughter's fear of strange men is being allayed by counseling and she is beginning to regain her security, which had been seriously damaged at the time of the incident.

During our interview with the parents, the mother mentioned an interesting fact. She told us that when she was 14, she had been a runaway and had been raped. While riding in a police patrol car to return her home, she had been called a "bitch" and a prostitute by the policemen. Her unpleasant memories of the incident made her hesitant to call the police in her daughter's case. She was afraid that the police would respond the same way. She was pleased, though, with the way things worked out.

Finally, we spoke with the parents of Wojtasik's final victim, whom he attempted to molest but who resisted his advances and was able to get her friends to grab and detain him. The victim's father in this case is a Chicago police officer. The parents, when interviewed, mentioned that the face-to-face line-up held at the 8th District station was quite upsetting to their daughter.

Assistant State's Attorney Richard Trainer kept the parents informed of court proceedings and told them that it was likely their daughter's case would be heard first, since she was the oldest victim (16) and probably therefore the most credible.

The parents had praise for the handling of the case. The same two investigators mentioned in our interview with the first parent were involved in this case. According to the parents, they were interested in the case and even came down to the station on their day off when they learned that Wojtasik had been arrested.

Their final comment was that their daughter was doing fairly well by the time of the interview, having gone through a time of apprehension around strange men. The daughter was not looking forward to the trial but she was quite ready to testify.

From interviews with these sets of parents, we have seen that there were contradictory perceptions or opinions of how the cases were handled. In each case, the police, the hospital personnel, and the assistant state's attorneys received some kind of assessment. Most of these did not agree. The one obvious point of agreement among all five sets of parents, though, was that the face-to-face line-ups were difficult and/or detrimental to their children. Both police and at least one state's attorney rationalized the need for such a procedure. Otherwise we will allow the reader to draw his own conclusions from our interviews and case descriptions.

In a Chicago Tribune story dated March 21, 1980, Wojtasik reportedly was sentenced to a maximum of thirty years in prison for his molestation of six southside girls during the summer of 1979. Referring to the nine-year old victim, Criminal Court Judge James M. Bailey said, "What you did with this young girl is one of the worst cases I ever heard in my life."

B. William R. Wagnon

The Commission reviewed an entirely different sort of case when it looked into the case of William R. Wagnon. The case was furnished to the Commission by the Champaign County State's Attorney's Office in January, 1980. The Wagnon case involves one crime that occurred on July 28, 1979, in Rantoul, Illinois. Police reports and court records furnished to the Commission summarize the incident below.

On the date mentioned above, the 15-year-old victim was in a bedroom of her home when she noticed several men standing outside of her window. She got out of bed, went to the window and began to speak to one of the men, the eventual suspect in this case. The suspect asked the girl if she wanted to go for a ride in a pick-up truck. The girl agreed and climbed out of the window and left with the suspect and two other men. The four entered a pick-up truck and began to drive around. The driver of the truck took the suspect and the girl to a local motel, let them off, and drove away. The suspect and the girl began walking around until they came to a dilapidated old barn.

At that point, according to the girl's statement to the police, the suspect removed the girl's clothes, laid her on the concrete floor of the building, and began to have sexual intercourse with her. After the intercourse was completed, the suspect allegedly got up and ran off toward a local air base. The girl dressed and began walking toward town.

While on the way into town, she was picked up by the Rantoul Police for a violation of the curfew ordinance. She did not tell the police at the time that she had been sexually molested. She was released to her mother.

Two days later, the mother brought her daughter to the Rantoul police station. The two told the police that on the night she had been picked up for the curfew violation she had been raped by one of the men who had driven her around. The police attempted during the initial and later interviews to establish whether the girl knew what a rape really was. When one officer asked the girl for her definition of rape, she said that a rape meant "having sex." When asked if rape meant having sex <u>voluntarily</u>, the girl answered that it did. The girl elaborated that a friend of hers had talked with her about the word, and then told police that she had not known that a rape was against the law. It was the opinion of the investigating officer that the girl used the word "rape" as just another term for "sexual intercourse."

The police attempted to collect physical evidence from the girl and her mother, and from the site of the occurrence. No evidence was found on the site, and the mother had washed the girl's clothing. Two days had elapsed between the alleged rape and its report, and the girl told the police that she had been in the midst of her menstrual cycle on the night of the alleged rape.

The police finally decided that an act of sexual intercourse definitely had taken place on July 28, but that it could not be classified as a rape. The police determined that the case would be handled as an indecent liberties case, because of the age of the victim.

The police investigation turned up a suspect who admitted having driven a girl and a friend named Billy Wagnon to the site where the incident had occurred. Soon thereafter, Wagnon was arrested by the Rantoul police and charged with indecent liberties. Wagnon was a resident of the local air base, and a search warrant was obtained for Wagnon's quarters there, where police confiscated a pair of underwear that appeared to have blood on them.

Sometime between Wagnon's arrest in August and his trial in October, the State's Attorney's Office added the charge of contributing to the sexual delinquency of a minor to the original felony charge of indecent liberties. On October 11, 1979, Wagnon waived his right to a jury trial. A bench trial began on the same date, and Wagnon was found guilty of the contributing to the sexual delinquency of a minor charge, a misdemeanor. He was found not guilty of indecent liberties.

On October 29, 1979, Wagnon was sentenced to 364 days in the Department of Corrections with credit for 97 days already served.

C. Robert V. Hodge

The Commission developed information on Robert V. Hodge with the assistance of the Peoria Police Department. Hodge was arrested on September 19, 1978 in Peoria and charged with deviate sexual assault. On January 4, 1979, Hodge was adjudicated to be a Sexually Dangerous Person and was remanded to the Psychiatric Center at Menard Prison. Because the option of adjudication as a Sexually Dangerous Person is a little-known and less-understood statutory procedure that is available to any prosecutor hearing the case of a sex offender, we have pursued the details of this case. Again, later sections of this report will contain more definitive information and descriptions of the Sexually Dangerous Persons Act, including a comparison of the Illinois statute with statutes from several other states. We shall see that Illinois' statute differs significantly from the other states whose laws we reviewed.

The victim in the Hodge case was a 12-year old boy. Police reports indicate that the boy left his father's place of work and was walking through the back parking lot on September 17, 1978, when he noticed that a man was following him. The boy walked several blocks further on until he was approached by the man, who asked him to help him carry something from his car. When the boy hesitated, the man offered to pay him and produced a wallet, but the boy

noticed that it contained no money. He then declined the offer and began to walk away when the man pulled a knife from his pocket and told the victim not to run away and that if he did he would "get him." He told the boy he knew who he was and where he lived and that he would get him one way or another.

The man took the boy to a parking garage and forced him into a freight elevator. The man pushed the emergency stop button between floors, preventing the elevator from moving. Then the man told the boy to remove all of his clothes. When the boy began to cry the man pulled his knife out and told him to shut up or he would be stabbed. After the boy removed his clothing, the man stuffed a handkerchief in his mouth, removed his own clothing, and performed an act of sodomy on the boy for ten minutes. When he was finished he allowed the boy to get dressed. The victim was instructed not to tell anyone about what had occurred, particularly the police. The man told him that he had three good friends on the police force and if the boy went to the police, they would "take care of him." The man followed the boy out of the building and repeatedly told him not to tell anyone because he would kill him with his knife if he did. After the boy was able to get away from the building, he ran back to his father's business where he told him of everything that had occurred.

Shortly after the incident, the boy's father was driving through Peoria with his son when the boy suddenly told him that he saw the man who had assaulted him. The boy's father got out of the car and called the police from a restaurant near a store he saw the man enter. The police responded, picked up the man soon to be identified as Hodge, and the boy identified him on the street as his assailant. The police frisked the suspect and found the knife that had been described to them as the weapon used in the assault. The boy was able to render an exact description of the man because of the way the assault occurred. For some reason, the police officers assigned to the case requested the boy to take a polygraph test "to verify his truthfulness in this matter." It was the opinion of the polygraph analyst that the boy had been truthful in his statements to the police. Only after the polygraph examination did the police take the boy back to the scene of the crime to look for evidence, take photographs, and retrace the boy's steps. While in custody, Hodge described the incident as the boy had described it. He was subsequently charged with deviate sexual assault and held on $100,000 bond.

This matter was disposed of by plea agreement. The defendant's attorney first suggested to the state's attorney the possibility of proceeding under the Sexually Dangerous Persons Act. Supposedly, the state proceeded with the Sexually Dangerous Persons disposition because the state's attorney was having a difficult time locating the victim of the crime. A defense attorney cannot demand use of the Sexually Dangerous Persons Act. The state presents it as an alternative to prosecution and conviction. In this case, an agreement was reached informally between the defense attorney and the state's attorney, both attorneys agreeing that it might be wise to pursue the case in this way. With this disposition, Hodge can receive some treatment and be kept off the streets. Though we will describe it in much more detail later, briefly the Sexually Dangerous Persons Act provides for sex offenders to be adjudicated sexually dangerous. They are not found guilty of a crime. Unlike some other states, the Illinois act provides for Sexually Dangerous Persons determinations to be made prior to any conviction. In other states we reviewed, the act is used as a post-conviction tool to determine the sentence and treatment for sex offenders.

Commission investigators spoke with Judge Calvin Stone. He is assigned to one of the two felony courts in Peoria. He handled the Hodge case and also the cases of L.C. Eugene Magee and Robert C. Pudney, which are described later in this chapter of the report. Judge Stone said there might be a constitutional problem with attaching a minimum period of treatment to the Sexually Dangerous Persons Act. Judge Stone told us that he isn't sure if the Department of Corrections asks for the release of an inmate because their officials really feel he is cured or because they do not know what else to do with an inmate because they cannot determine if he really is or even can be "cured."

Judge Stone told Commission investigators that consideration might be given to adding a provision to the Act stating that a person committed under the Act for a sex crime be subject to prosecution upon his being released. There may be a double jeopardy problem with such a provision, however.

Judge Stone's other opinions will be presented here because they apply to his sentencing of three offenders under study. They cover a range of issues. Judge Stone, like all of the judges with whom we spoke, is an advocate of the present system of judicial discretion. If one takes that discretion away, a judge will be performing a mechanical task which will not be in the best interests of society. Judge Stone made the point that a judge hears all of the

evidence presented at a trial as well as information from presentencing reports by the probation department and information offered at a sentencing hearing. The general public is not privy to this information and therefore cannot always understand a judge's considerations in handing out a particular sentence.

Judge Stone felt that some judges are too lenient. As a preventive measure to unwarranted leniency, he suggested that perhaps second and all further convictions should be added to the list of offenses for which probationary terms are not permitted.

Finally, the judge mentioned that he has not seen, in his courtroom, any increase in the numbers of child molestation cases. But he qualified that observation by stating that he sees only what comes before him, not what the police or State's Attorney's Office might see. He admitted that there appears to be an increase in prosecutions of incest cases and that he sees a fair number of repeat offenders (in non-incest cases).

Finally, with respect to Hodge, we spoke with John Barra, Chief Felony Assistant State's Attorney and the prosecutor on the Pudney case. Though Barra commented on several different elements of the child molestation problem, his comments on the Sexually Dangerous Persons Act are most relevant here. Barra indicated that since the court now requires that the burden of proof necessary to have someone adjudicated a sexually dangerous person is the same as that for a criminal case, there has been little incentive to go with the Act. Most prosecutors are more inclined to go with the straight criminal conviction. When the Act is utilized, he sees it being used to get the offender off the streets for a while.

During our investigation of the Hodge case, we spoke with police officers and others in Peoria. Portions of their comments will appear below in our discussion of the Pudney and Magee cases.

D. L. C. Eugene Magee

The Magee case also came to our attention through the assistance of authorities in Peoria County. Briefly, Magee was arrested on April 10, 1979, and charged with indecent liberties and aggravated incest for sexually molesting his daughter. Magee was 36 at the time and his daughter was 10. A plea agreement was reached in the case and the aggravated incest charge was dropped. Magee pled guilty to the indecent liberties charge and on October 5, 1979, was sentenced to the minimum jail term for the offense, four years in jail.

According to the police reports, the police first learned of this case following a call from a local grade school. The principal reported that there was a possible incest case at his school after a young girl complained to him that her father was sleeping with her. The police spoke with the victim's teacher, who stated that the girl had come to see him and had started crying. Another girl who had accompanied her told the teacher that she had something to tell him but that she was afraid. Finally, the girl mentioned that since her grandmother had gone to the hospital, her father had been sleeping with her. Before the grandmother had been hospitalized, the same thing had occurred and the grandmother had made her son stop it, but as soon as she went into the hospital, the activity resumed. The girl reported the same story soon thereafter to the school principal.

The girl reported to the police that on several different occasions her father had performed oral and anal sex upon her and had forced her to perform oral copulation on him. When police asked how long the father had been sleeping with her, she replied "since first grade." She said it had started when the family had lived in a trailer and her mother had been working. Since that time, apparently the parents had separated and the girl, her brother, and their father had gone to live with her grandmother. Apparently the father left her alone for more than a year, until the grandmother went back to work. Then the incestuous activity began again. The grandmother discovered it on one occasion when she came home from work early; the grandmother admonished the father and he stopped his behavior until the grandmother's hospitalization.

After hearing this story, police officers picked up her brother and took the girl to a local hospital for examination. On the same date, the father was notified of the whereabouts of his children and was told that the police wanted to talk with him. He was advised of his rights and agreed to speak with the police. On the same date, a representative of the Illinois Department of Children and Family Services (DCFS) was notified concerning the case. The State's Attorney's Office also was notified concerning the case. A hearing was scheduled for the two children on April 10, 1979 in order to keep the two children away from the father, and neglect proceedings were instituted regarding the case.

The hospital report indicated that the 10-year-old girl had been engaged in sexual intercourse recently and that complete examination was impossible because of pain.

The girl's brother was questioned regarding knowledge of sexual contact between his sister and father and he stated that he never knew of anything happening between the two. When asked if the father had ever attempted anything sexual with him, he answered that his father was always good to him and never had tried anything of that nature. Both children were taken to a shelter care home for temporary placement.

L.C. Eugene Magee came voluntarily to the Juvenile Bureau of the Peoria Police Department after learning that his children had been picked up. He was informed of the allegations against him and was read his rights. He said that he understood them and agreed to talk with police about the allegations against him.

Magee told the officers that there was no truth to what his daughter had claimed. He also mentioned that his daughter had told these same stories to her grandmother several years ago but after being confronted with the stories, had admitted that she had been lying. Upon further questioning, Magee told the police that he did get into bed with his daughter "and kissed on her and loved her." Magee said that this had occurred on April 7th and that it was the only time that he "had had sexual relations with his daughter." The police then told him that the daughter alleged that sexual relations had occurred on at least four separate occasions. Magee responded that his daughter must have been lying about these incidents.

However, the case narrative continues that upon further questioning the suspect admitted having sexual relations with his daughter on at least two occasions. Magee described these sexual relations in detail and stressed that any oral sex that occurred between them was of his daughter's volition.

Upon completion of questioning, the suspect was arrested and charged with aggravated incest and indecent liberties with a child; bond was set for $50,000. As we have already mentioned, Magee pled guilty to the indecent liberties charge. The other charge was dropped and Magee received the minimum jail term for his offense.

Commission investigators spoke with A/S/A John Barra regarding this case as well as regarding the Pudney case. Barra told us that one of the biggest obstacles to the successful prosecution of a child molestation case was the credibility of the child as witness. In a case such as this one, a child's mind could be confused by others in the

family--in this case, obviously, by the father, had the daughter been allowed to return home with him. Barra admitted to us that there could be changes in sentencing provisions for sex offenses. He mentioned that cases that are more serious than fondling charges could carry mandatory prison terms. Barra also told us that another obstacle to successful prosecution of these cases is the time lag between the date of the incident and the time of reporting. In the Magee case, there was little lag, but the daughter came forward only after repeated assaults by the father.

Barra recommended one change in evidence law. He told us that statements made to a physician immediately after an incident occurs are not admissible as evidence because of the hearsay rule. Barra would like to see this changed, stating that such declarations by the victim should be as admissible credible as other evidence permitted under the hearsay exceptions. We will discuss this issue later in our report.

Commission investigators also spoke with Sergeant Lawrence Hammer and Officer James Graham of the Peoria Police Department regarding both the Hodge and the Magee cases. Both officers have been on the force for more than ten years.

Hammer had no complaints about the lengths of sentences being handed down by the courts, but he felt that offenders were being "cut loose" too soon. Graham was more critical. He agreed with Hammer that early release was a problem, but he also felt that the sentences were not stiff enough. Graham said that judges tend to look at sex offenders as being sick rather than criminal. He told us that he admittedly is hard-nosed on this subject because he sees the effects these crimes have on the victims.

Both officers agreed that the increase in child molestation reflects an increase in reports due to greater public awareness of the crime, rather than an actual increase in child molestation incidents. Both officers also agreed that witnesses having to remain in close proximity to the offender can be compromised and wished there were a way to protect such witnesses prior to trial. Both officers reported good rapport with the State's Attorney's Office and with the local schools. But both were critical of DCFS. They told our investigators that DCFS caseworkers and supervisors often do not tell them of molestation cases that they know of, and that often the police are called into a case only to learn that DCFS already knew about its occurrence. They feel that DCFS should be required to report to the police when crimes have been committed.

Finally, both officers said that the criminal statutes seem adequate. Increasing the sentencing or making prison time mandatory might make it more difficult to convict a person.

Our interview with the judge who handled the Magee case did not reveal the terms of the plea agreement or the rationale for the sentence that was finally given.

E. Robert C. Pudney

The third and final case we reviewed from Peoria County was that of Robert C. Pudney. A brief review of his criminal arrest history reveals that prior to the 1979 offense we shall discuss here, Pudney had five previous arrests and convictions, including an attempted rape in 1937, for which he was given 1-5 years in prison; a 1972 charge of contributing to the sexual delinquency of a child, for which he was given 1 year in prison; and a 1975 conviction for taking indecent liberties with a child, for which he received 4-6 years in prison but from which he was paroled in 1977.

Pudney was rearrested on May 29, 1979 for attempted rape, indecent liberties, and kidnapping. The victims, both girls, were ages six and eight. Pudney was 64 years old at the time of the incident.

The Peoria Police Department case narrative states that both victims were out walking when the suspect called to them and invited them to come over to see his dog. The victims told the police that they did not know the man, but that they crossed the street to look at the dog. The man asked them to come into his house, which they did, at which time the man took the two of them to the basement. Once in the basement the man placed them on a table and started pulling down their pants. One victim stated that at one point after that, the suspect had his hands down both their pants at the same time and was fondling them. One of the victims got off of the table and asked permission to go upstairs, which was granted. Once upstairs, she ran from the house. She was on her way home when she ran into the mother of the other girl. She told her where her daughter was and that the suspect would not let her go. The parents of one of the girls immediately went to the house and banged on the door in order to get in. There was no response except for crying coming from inside of the house. When one of the victims' fathers kicked in the door he discovered there was no floor beyond it and that he could not get into the house. Finally he went to the front door of the house and the other victim, crying and hysterical, exited from the front

door. The father tried to get into the house, but the suspect would not let him and at one point even sent a dog out after him. Soon thereafter a police officer arrived and the suspect left the house and tried to run away down an alley. Several people in the neighborhood pursued him and the police officer apprehended the suspect.

Police interviews with hospital personnel indicated that both victims had been sexually molested very recently. The suspect, identified as Robert C. Pudney, was given his Miranda rights, which he said he understood. The officers conducting the questioning thought that the suspect had been drinking too heavily for a proper questioning and he was returned to his cell.

Meanwhile the victims were interviewed by the police. Their stories matched and the police were able to photograph palpable bruises where Pudney allegedly had assaulted the girls. Soon thereafter Pudney was charged with attempted rape, indecent liberties with a child, and kidnapping. The kidnapping charge was changed to aggravated kidnapping and bond was set at $300,000.

Pudney was found guilty on October 10, 1979 of two counts of indecent liberties with a child and one count of aggravated kidnapping. On November 16, 1979, Pudney was sentenced to 12 years on each count, the sentences to run concurrently.

A Commission investigator spoke with the mother of one of the victims after the sentence had been rendered. She told us that the police had handled the case very well and that they were quite compassionate when dealing with her daughter. One of the first things they did was to recommend counseling for her. The mother had not pursued counseling at the time of our December 17, 1979 interview, but she was looking into its costs. The mother also indicated that she had no problems being informed about the case, hearings, or the trial. In each case, either the police or the State's Attorney's Office called her to inform her.

Her only complaint was that the judges are not doing a good job of keeping people like Pudney off the streets. She told us that Pudney's sentence of 12 years was not long enough.

Finally, Commission investigators interviewed Detective Dean Dearborn of the Peoria Police Department. Dearborn was able to share a good deal of general and specific information with us.

He told us that repeat offenders are no more numerous than first-time offenders. He observed that most repeat offenders with whom he has come in contact commit further offenses after they have satisfied the terms of either probation or parole. Dearborn agreed that the reporting of child molestation has doubled, but that there is not a doubling of such incidents. Rather, a greater awareness on the part of the public and a greater willingness to report the crime accounts for the increase in reports. Dearborn also said that he has seen an increase in the reporting of incest cases and that he sees more and more of these cases going to trial.

Dearborn told us that he feels our present laws are adequate. He just thinks that some people aren't using the laws or don't know about the options available to them in pursuing a child sex crime case.

Like other Peoria Police Department officers already mentioned, Dearborn feels that child witnesses are underprotected. He favors protective custody of some sort to prevent their testimony from being tainted by family members--obviously, primarily in incest cases. Dearborn also thought that DCFS should be mandated to report cases of abuse, of whatever sort, to the police. It is Dearborn's opinion that the DCFS philosophy is of keeping the family unit intact "at all costs." As a result, he told us that he has encountered numerous cases of child molestation of which DCFS workers were aware, but which had not been reported to the police. Dearborn told the Commission of one particularly "bad" case in which he actually felt that DCFS hampered and impeded the police investigation.

This was an incest case involving a father and daughter. The case came to the attention of the police and DCFS at the same time. It was decided that DCFS would handle the case and keep it as an open, active case. A year later the same charge of incest was lodged with the police. The case did not go to trial, Dearborn said, because the DCFS caseworker convinced the victim not to testify. A year after this occurrence, the girl was again the victim of incest and was finally removed from the home by the court for her own protection. Dearborn described the girl as now being a "mental case."

Dearborn also mentioned an incest case in which a DCFS caseworker had told the offending father that if he denied the incident and said that his daughter had lied, he could not be arrested. Dearborn was able to make several recommendations for change in the present system involving DCFS:

he felt that DCFS workers should be trained in interviewing and interrogation techniques; that they should be better trained in the laws that relate to child abuse, child neglect, and sex offenses against children; and that they should be informed, and taught, that the police are not "the bad guys."

Dearborn agreed with Officer Graham that the courts often are too lenient. He feels that the penalty provisions are adequate but that the judges are not using the provisions properly. He would be in agreement that second and subsequent convictions for same or similar offenses should carry greater penalties.

Dearborn's final point referred to the Sexually Dangerous Persons Act. He said that he did not feel that the psychiatric counselors at Menard are releasing these individuals before they are cured, but that no one really knows how to measure such a cure. There is no barometer.

It was Dearborn's general impression that the Pudney case had been handled correctly.

F. Frank DePew

The Commission received information from the Champaign County State's Attorney's Office regarding a child molestation case involving Frank DePew. We did not receive police reports, nor did we conduct interviews in this instance. We were more interested in the court disposition of the case and were able to piece together a case narrative from other documents released to us by the State's Attorney's Office. In summary, DePew was involved sexually with his own 15-year-old step-daughter. The indictment consisted of 35 counts of taking indecent liberties with a child. There were so many counts contained in the indictment because the State's Attorney's Office decided to indict DePew for every case of sexual intercourse or deviate sexual activity that the victim could remember specifically by date. The victim in this case also stated that DePew was the man who made her pregnant through his sexual activities with her. The indictment was filed on December 8, 1978.

Later in December of 1978, DePew was examined by two psychiatrists. Their records are confidential, but we can state that one of the psychiatrists found DePew fit to stand trial and the other found him to be unfit. It was determined during the investigation of DePew that he had checked himself into a psychiatric hospital prior to his arrest, supposedly for control of his wild sexual impulses. The psychiatric reports shed some light on DePew's sexual problems but cannot be presented here.

We received a letter from the State's Attorney's Office to DePew's attorney indicating that the state would be willing to plea bargain in the case. Basically, the letter states that 34 of the 35 counts would be completely dropped if the defendant agreed to plead guilty to the one remaining count of indecent liberties. The recommended sentence would then be four years probation with credit for jail time served, psychiatric counseling arranged by the probation department, and agreement with a permanent protective order forbidding him contact with his step-daughter.

DePew's attorney advised his client not to accept the offer and then filed a motion to withdraw as counsel, stating in his motion that it was his belief that the defendant does not need a lawyer to plead guilty to a charge, that psychiatrists have indicated that the defendant is legally insane when committing acts of a sexual nature and that therefore a probation revocation in the near future would be likely, and that the defendant is not guilty of any of the 35 counts by reason of insanity.

On March 5, 1979, the defendant pled guilty to one count of indecent liberties; all other counts were dismissed. The defendant was sentenced to four years probation and 80 days with credit for time served; payment of court costs; a condition that he obtain medical counseling arranged by the Champaign County Probation Office; and agreement with a permanent protective order involving his step-daughter.

In August of 1980, we contacted DePew's probation officer to determine whether, indeed, there had occurred a probation revocation. The probation officer told us that DePew has been functioning well on probation. The probation officer is in "frequent contact" with DePew and, to the best of his knowledge, DePew has not been rearrested. DePew was involved in professional counseling for a year and apparently remains in some sort of part-time counseling on a limited basis. Finally, DePew has obeyed the protective order.

This case is interesting primarily because it illustrates how a charge is handled differently from jurisdiction to jurisdiction and from case to case. The reader can compare the sentence rendered in DePew's case with some of the sentences rendered in Peoria. Later in this report, we shall discuss the issue of judicial discretion and sentencing and analyze the issue from several different angles.

G. John White

NOTE: The name John White is fictitious. We are unable to use this offender's real name for reasons that will soon become apparent.

As part of our analysis of the criminal justice response to sex crimes against children, the Commission attempted to analyze every issue that might present itself in the long and involved criminal justice spectrum. One of the issues that we came across is an order that a judge has within his discretion to make, that of agreeing to sustain a motion to vacate the judgment. Simply put, this means that the judge would agree that if the terms of his sentence are met by a defendant, on a certain date the judgment (conviction) made by the judge would be completely set aside, as though the conviction never had occurred.

A further reason that such a motion is interesting has to do with Illinois law dealing with the expungement of arrest records. Under our law, an arrest record that does not result in a conviction can be expunged at any time upon a motion by the suspect in a police case. If one is picked up for littering and arrested, but the case never comes to court, a person can present a motion in court to have all identifying information being held by the police returned to the alleged offender. A conviction in such a case would mean that the police have the ability to retain any arrest or investigative information relative to that conviction forever. Information relative to a conviction normally cannot be expunged.

This information came into play in the case of a man whom we will call John White.

On May 8, 1978, John White was arrested by officers of the Chicago Police Department and charged with two counts of violating the Illinois child pornography statute. White was specifically charged with the following offenses: Soliciting a minor under the age of 16 to appear in child pornography; exhibition of child pornography; and contributing to the sexual delinquency of a minor. The last two charges were stricken-on-leave-to-reinstate. White was found guilty of the remaining charge on June 16, 1978, and was sentenced by Cook County Circuit Court Judge John Reynolds to 18 months' probation. Part of the plea agreement to which Assistant State's Attorney James Keil agreed was a stipulation that the state would not oppose any motion to vacate the judgment of guilt pending satisfactory completion of probation. Defense attorney Dean Wolfson was responsible for negotiating this plea agreement with Klein.

Judge Reynolds stipulated that if White did not violate his probation during the 18-month period, then the conviction of guilt would be vacated, and that is what happened. On December 17, 1979, the motion to vacate the judgment was sustained.

This decision left White free to initiate proceedings to expunge his arrest record, which he did. In effect, White has not been convicted of a crime. Furthermore, should White become a suspect in a similar crime in the future, the police would have no way of knowing anything of his prior criminal history, because the records would indicate that he has no prior criminal history.

Commission lawyers were able to examine White's petition, filed on February 21, 1980. The petition was signed by the presiding judge of the Criminal Court, Judge Richard J. Fitzgerald. We were told by the clerk at the Criminal Court that criminal court files which are the subjects of orders of expungement are not open to public inspection. The clerk also told us that expungement orders developed following sustained motions to vacate judgments, as in White's case, are unusual. We thought that it might be useful to include the actual proscriptions detailed on an expungement order. The following information would be found on any blank expungement order:

> It Is Hereby Ordered:
>
> That pursuant to the authority granted to the Court, the arrest of _____ which took place on _____ is hereby expunged and null and void ab initio and the Police Department of the _____ _____, its Police Chief, agents, servants, employees and assigns, be and they are hereby ordered to forthwith expunge from their records and from the records of any other agency who may have received such information, from, by or through them, all records of any kind whatsoever relating to said arrest and to return to_____ any and all original, facsimiles or copies of fingerprints, photographs or other means of identification taken from him by reason of or as a result of the aforesaid arrest.

The Petition to Expunge, presented by attorney Jay I. Messinger, states that "...the Defendant was discharged and made free of conviction."

Commission investigators and legal counsel spoke with several individuals with regard to White's case; it should

be clear by now that we have created a fictitious name for this individual because of the conviction discharge and subsequent successful expungement of arrest.

Daniel Leonardi, Probation Supervisor for the 4th District and the supervisor in charge of the White probation material, told us that we would have to obtain a court order to obtain the release of the White file.

Assistant State's Attorney Klein told us that he could remember nothing about the White case. When questioned further, he said that he handles hundreds of cases like this and told us that there was "nothing special about this case." Klein was able to remember the case well enough, though, to tell us that the Special Prosecutions Department did not handle the White case because "Special Prosecutions wouldn't touch the [White] case." When asked why they would not, Klein said that he couldn't remember.

After the interview with Klein, Commission investigators stopped in the Special Prosecutions Office. There they learned that a motion to vacate a judgment is highly unusual. When asked how often he had been involved in or even had heard of such an arrangement, Klein said "only in the [White] case."

Commission investigators also spoke with Judge Reynolds. Judge Reynolds refused to answer any questions about this case unless he had the case file before him at the time of the interview. After one of our attorneys synopsized the case for him, he still said he couldn't answer any questions because he could not remember the case. Nevertheless, during the course of this interview, Judge Reynolds remarked about the man we are calling John White that maybe he had been a young kid. "Maybe he wanted to be a priest or a fireman or a policeman," apparently referring to his agreement to the motion to vacate the judgment. Judge Reynolds also told us that an arrangement such as the one he made to vacate a judgment was "very, very, very, very unusual." He told us that the special circumstances regarding the White case would have been presented to him in his chambers by the defense counsel and the assistant state's attorney, but that in any case, the circumstances would have had to have been extraordinary for him to sustain such a motion. In spite of <u>that</u> admission, Judge Reynolds told us he couldn't remember <u>what</u> the circumstances were.

Finally, Judge Reynolds suggested that we bring in our entire file on White and he would agree to a joint meeting with Dean Wolfson and James Klein. At that time, with the file before them, they would be willing to answer our questions.

H. Walter J. Kaleta

A portion of a Chicago Tribune story about Walter J. Kaleta follows:

> A Southwest Side man with a record of child molestation has been arrested and charged with aggravated kidnapping and taking indecent liberties with the 10-year old daughter of a Chicago policeman.
>
> Police said Kaleta, known as the "candy man" because he offered candy to his victims, has a record of child molestations dating to 1956, when he was placed on a year's court supervision on a charge of contributing to the sexual delinquency of a child.
>
> He has been convicted of child molestation six times since then and, with one exception, had been placed on probation or under court supervision after each conviction. In 1961, he was sentenced to 45 days in the House of Correction for contributing to the sexual delinquency of two girls, age 7 and 10.

Of all of the child molesters the Commission looked at, Kaleta has the greatest number of repeat offenses. In examining cases involving his sexual activity with young children, we tried to determine why he had been arrested and even convicted so many times without serving appreciable jail time, receiving psychiatric counseling, or being adjudicated a Sexually Dangerous Person. Not all of these questions have been answered, but we have determined most of the facts of the cases involving Kaleta.

A brief review of Kaleta's arrest history reveals an unbelievable number of incidents in which Kaleta was involved or was alleged to have been involved. The Tribune story above mentions that Kaleta first was involved in child molestation in 1956. The arrest sheets we examined begin with 1961. And the criminal history information given us by the Illinois Department of Law Enforcement lists his first arrest as occurring in 1965.

Commission investigators did extensive field work to find other possible arrests of Kaleta, and we have compiled information from police departments, primarily in the suburban Chicago area, concerning incidents that date back to April 25, 1962. The vast majority of these arrests involve minor charges, including disorderly conduct, public indecency, indecent solicitation of a child, fleeing police, and contributing to the sexual delinquency of a child. These

charges are only relatively minor, however. Kaleta also was charged with several counts of taking indecent liberties with a child, several instances of parole violations, and at least one count of aggravated kidnapping. Obviously, however, the more serious charges either were dismissed or Kaleta was allowed to plead down to misdemeanors, if the Tribune story is accurate in describing Kaleta's sentencing history, and it is.

Commission investigators concentrated on descriptions of past incidents and also heavily pursued the 1979 incidents alluded to in the newspaper story. We will present what we found in both areas below.

As mentioned, Kaleta's earliest arrest about which we have developed extensive information was the April 25, 1962 arrest. Kaleta was identified as the person who had "annoyed a child" somewhere in Chicago. On June 14, 1962, Kaleta was sentenced to three years' probation for contributing to the sexual delinquency of a child.

Kaleta was rearrested on May 3, 1962 after being identified by the victim of an act of indecent exposure. Kaleta was charged with public indecency and on the same date that he received three years' probation (in the case described above), the charge was stricken-on-leave-to-reinstate.

Kaleta was rearrested on October 18, 1962, and charged with taking indecent liberties with a child. On November 28, 1962, Kaleta was placed on one year's court supervision on a reduced charge of contributing to the delinquency of a minor.

Kaleta was rearrested on May 23, 1963, and charged with contributing to the delinquency of a minor. On June 11, 1963, the charge was dismissed.

Kaleta was rearrested on August 22, 1964, by the Riverside Police Department. According to case reports, two ten-year-old girls were approached by a man who wanted them to show him where he could buy some safety pins. He also wanted them to show him a place where he could pin up his pants, which he told them he had torn. The girls led Kaleta, who was in the car, to a nearby vacant lot where they noticed that his pants were pulled down and a towel was draped over his legs. He then asked the girls to get into his car and rub his legs for him. At that suggestion, the girls became frightened and ran away.

Following this incident, Kaleta was charged with indecent solicitation of a child. The case was not prosecuted on the stipulation that the defendant continue psychiatric treatment that supposedly he was receiving at the time of the incident.

Kaleta was rearrested on January 27, 1965, by the Oak Park Police when he enticed a young girl into a hallway where he supposedly wanted to repair a rip in his trousers. Kaleta was charged with disorderly conduct, but only after two 11-year-old girls told the police that they were approached by the same man on February 6, 1965. The man told the girls he had a rip in his pants and had one victim walk in front of him and one behind. The victims refused to go into a hallway with the suspect. Kaleta was arrested the same day with regard to both incidents. He was then charged with two counts of disorderly conduct. Kaleta admitted to police that he was on one year's probation stemming from an incident that had occurred in Chicago. His bond was set at $200. On March 15, 1965, Kaleta's attorney told the judge that his client was on probation and was then receiving psychiatric care. Kaleta was found guilty on that date and fined $25 plus court costs.

Kaleta was rearrested on June 12, 1965, by the Chicago police after exposing himself to a 10-year-old girl in an alley. Kaleta was charged with both public indecency and disorderly conduct. On October 4, 1965, he was sentenced to three years' probation, which was to run until October 5, 1968.

On June 22, 1965, two girls aged 9 and 11 reported to the Oak Park police that they had been approached by a man who asked them if they had a safety pin to fix the zipper on his pants. The children said that he pulled them into an alley, they gave him a safety pin, which he did not use, and he began talking to the children about how they were standing--he thought that he could teach them how to be ballet dancers.

On June 24, 1965, Kaleta was rearrested and charged with disorderly conduct. Bond was set for $500. Allegedly, Kaleta admitted the offense, stating that he was to appear in a Chicago court on the date of this most recent arrest for a similar prior incident, that he had stopped seeing his psychiatrist and that he knew he needed help to stop doing "these things." Kaleta had just finished serving a three-year probationary term on June 15, 1965 for contributing to the delinquency of a child.

On November 1, 1965, Kaleta was found guilty and assessed a fine of $20 plus court costs.

On November 8, 1965, Walter Kaleta was identified by a 20-year-old woman as the man who had exposed himself to her on that same evening. Kaleta was arrested following another line-up on November 23. Kaleta requested a continuance on this case on January 3, 1966; on January 31, 1966, Kaleta requested a jury trial and the trial date was set for April 11, 1966. On that date the judge found Kaleta not guilty. He had an alibi for his whereabouts on the evening of the incident. Mentioned in the case report information was a notation that Kaleta was on probation until 1968.

On November 20, 1965, two girls, aged 13 and 12, were stopped in Oak Park by a man later identified as Walter Kaleta. The victims told police that Kaleta asked them: "Do you have any safety pins or bobby pins, or are there any stores around here that I can go to, to get some? Are there any drug stores around here also?" The man told them that his trousers were ripped. One of the girls gave the man a bobby pin and the girls began to walk away, with Kaleta following several steps behind. When they reached a nearby alley, he asked the girls to wait while he fixed his pants. Then he asked one of the girls to come into the hallway with him while the other was to stay outside to tell him if anyone was coming. Kaleta asked the girl to remove her thigh-length stocking and to act as if she had something caught in her shoe if anyone approached them. Apparently she did as she was told. Then after several minutes Kaleta exited the hallway, stopping to shake both girls' hands, telling them that the next time he saw them he would buy them both a soda.

On November 24, 1965, the mother of one of the girls spoke to a neighbor, who complained that her daughter had been involved in a similar incident. She then called the police department to make a report. One of the two girls identified Kaleta from a photograph, and a complaint charging Kaleta with disorderly conduct was drawn up, setting bond at $500. Kaleta was apprehended the same night, when he posted the required 10% bond. A court date was set for January 3, 1966. In this case, as in the previous one, Kaleta was first granted a continuance, then requested a jury trial. The trial date was set for April 11, 1966. At trial, Kaleta, who was represented by Dean Wolfson, was found guilty of disorderly conduct and was fined $500.

On November 22, 1965, two girls, aged 7 and 10, told their parents that they were bothered by a man driving around in a yellow car in Oak Park. One of the girls reported that

the man in the car followed her into the local public library and also followed her when she left. One of the girls also reported that the same man drove his car up onto a driveway in such a manner as to block her path. On November 23, one of the victims' fathers signed a complaint, and on the same date Walter Kaleta came to the police station after learning that a complaint had been signed. From what Commission investigators can determine, Kaleta was being charged with so many counts of disorderly conduct arising from so many different arrests and incidents that it is difficult to distinguish one case from another. At least one of these charges was dropped and apparently Kaleta was found guilty of a separate count of disorderly conduct that already had been filed.

In November of 1979, Commission investigators received a packet of materials from the Madison, Wisconsin, Police Department. Included in the packet were case summaries of incidents involving Walter Kaleta in that town. The first incident listed occurred November 30, 1965. An 11-year-old girl was approached by a man in a car as she walked home from school. The man wanted the girl to drive with him to the nearest service station so that he could obtain a map of the city. She agreed, and upon arrival at the service station the man asked the girl if she had ever taken ballet lessons. She admitted that she had and the man asked her to remove her shoes and knee-high stockings. She told him that he was "nuts" and he told her that he had seen two girls do the same thing for him some time earlier, but while his pants were ripped. Apparently the girl thought that she was driving around with a real mental case, but by this time the man was holding the girl by the shoulder. When she reached down to open the car door, she found that it was locked. When she next looked up, the man had exposed himself and forced the girl to masturbate him. He tried to hug the victim and then drove the girl back to where he had picked her up.

Walter Kaleta was arrested the same day and questioned. The police said that he admitted the offense and volunteered to police that he had been arrested twice before, but in Illinois and for disorderly conduct. He also told them that he had been ordered to seek psychiatric help and was at that time in therapy. On November 30, 1965, Kaleta was charged with enticing a child for immoral purposes; he was arraigned the same day and pled not guilty. Bail was set at $1,500 cash or $3,000 in property. A preliminary hearing was set for December 8, 1965. On April 28, 1966, Kaleta was committed, pursuant to a court order, to the Wisconsin State Prison at Waupun, Wisconsin for a 60-day pre-sentence in-

vestigation. Following this commitment, Kaleta was sentenced on September 19, 1966. The judge sentenced Kaleta to an indeterminate sentence at Waupun State Prison where he was to be treated in a special sex deviate program. Kaleta was not to be released until such time that prison officials felt he had been cured.

According to Chicago Police Department records, Kaleta was parolled to Chicago from Wisconsin on July 16, 1969, after serving two years and nine months. On December 4, 1970, Kaleta was arrested for a parole violation and turned over to Wisconsin authorities. On November 15, 1972, Kaleta was released from parole.

On December 13, 1965, Walter Kaleta was arrested by the Evanston Police and charged with disorderly conduct. At the time he was apprehended he was speaking with a young girl, aged 13. Allegedly he was asking her the following questions:

> Do you know where a drug store is?
> Do you have a purse?
> Do you have any pins?

On January 28, 1966, the charge of disorderly conduct was discharged and Kaleta was found guilty of "driving under suspension." On February 17, 1966, he was sentenced to one year's probation with the stipulation that he continue to seek psychiatric care and that he stay out of Evanston.

The Commission followed up on this incident and called Evanston police regarding it. Apparently the police, at that time, had assembled police reports from other jurisdictions in an attempt to consider handling Kaleta as a Sexually Dangerous Person. The police also contacted the Cook County Probation Department to advise them of Kaleta's activities.

On May 22, 1970, a man later identified as Walter J. Kaleta approached two 12-year-old girls in Oak Park. He asked where the nearest alley was and the girls took him to it. At this point the man gave the girls a camera and had them take pictures of each other. After a few pictures the girls tried to leave, but Kaleta stopped them, telling one that "you make a sexy model," and asking her to let him take a few pictures of her lying on the ground. When the girls told the man that they had to leave, they noticed that he was rubbing his penis and had started to unbutton his pants. Because the man never did expose himself or touch either girl, the police decided the only charge that could be brought was disorderly conduct.

Kaleta was picked up two days later and charged with the offense. His first court appearance was set for July 13, 1970. Kaleta failed to attend the hearing, his counsel explaining that he could not appear because he had been arrested on a previous charge to which he was attending. The attorney provided the judge with a writ releasing him from the Cook County Jail and placing him under psychiatric care for the next two weeks. A psychiatric report was to be furnished by the 27th of July.

On July 27, Kaleta appeared in court in Oak Park. Kaleta stated that he was in custody at Cook County Jail, serving six months for contributing to the sexual delinquency of a child, for which he had been sentenced two weeks earlier. The case was continued until August 24, 1970, at which time Kaleta requested a jury trial. The trial date was set for October 7, in Cicero.

On that date Kaleta appeared in court to face four consolidated charges, two counts of disorderly conduct from the incident described immediately above, and two charges of public indecency. (The latter charges occurred after Kaleta took photographs of two 11-year-old girls in an alley in Oak Park; following the "photo session," Kaleta apparently began masturbating himself, at which time the girls left the area and told their mothers what had occurred. Kaleta turned himself in on June 14, 1970, and posted 10% of the $1,000 bond set for the offenses.) At the trial, it was revealed that Kaleta was at that time serving a 6-month term in Cook County Jail following a conviction for contributing to the sexual delinquency of a minor and that, further, he had a "hold" placed on him for a violation of parole from Wisconsin.

The public indecency charges were stricken-on-leave-to-reinstate and the defendant pled guilty to the two charges of disorderly conduct. Kaleta was fined $125 plus $10 court costs on each charge.

On August 3, 1975, a man driving a car stopped three Elmhurst girls, aged 7 to 12, twice in one afternoon to ask them directions on how to get to the local public swimming pool. On the second occasion the man asked the 12-year-old to come closer to the car because he didn't want anyone else to hear what he had to say. Instead she backed away. The girls still gave the man directions and the man drove away. The police determined that there was not evidence that a crime had been committed. The car was discovered to be registered to Walter J. Kaleta.

On August 9, 1975, two girls standing at the York Commons Pool in Elmhurst were approached by a man who appeared to have a hole in the front of his swimming suit, between the legs. The girls laughed about it and shortly thereafter the man approached, saying that his name was "Joe." He then asked the girls to accompany him outside to his car, so that they could stand guard while he got dressed. He asked one of the girls to sit in the car to watch for passersby from that vantage point and he wanted the other girl to remain in the play area, some distance from the car. The first girl followed the man's instructions and the second girl also complied, but she frequently came back to the car. When she did so, the man, who was completely undressed, gave the first girl money to give to the other girl so that she would go away and buy something to eat. The man then lay down on top of the girl in the car, where he remained momentarily. Shortly thereafter he got up, got dressed, and said he wanted to go look for the second girl. The man walked with the girls to a public phone, which the first girl used to call her father for a ride, bought a can of soda pop, and drove away.

On August 15, 1975, Walter Kaleta was apprehended. During police questioning, Kaleta admitted that he had asked the two girls for directions, had the first girl fondle him in the car, and had approached other girls in Elmhurst for other purposes, i.e., for safety pins. Kaleta was charged with taking indecent liberties with a child. After five continuances, the case was dismissed.

A Commission investigator spoke with the investigator who had handled the case, wondering why the case had been lost. He replied that the witness, who was only eight years old, had broken down on the stand and that her parents had refused to allow her to continue. The investigator remembered Kaleta and told us that Kaleta had mentioned to him that he knew he needed help and that he had a daughter of his own, whom he did not want to have to go through experiences that the other girls had.

On June 27, 1977, in Chicago, four children in addition to Walter Kaleta's daughter drove with him to a local ice-cream parlor. On the ride home, Kaleta placed the one boy in the group and his own daughter in the back seat, and arranged the other three girls next to him in the front. He had bought them all ice-cream and began to tuck napkins in their laps. During the ride home Kaleta allegedly unzipped his pants, removed his penis and rubbed it on one girl's leg. The girl later told police that Kaleta demanded a kiss in exchange for the ice-cream. He also told the girl

that he loved her. She told police that though she told Kaleta to stop what he was doing, and though she tried to move closer to the other girls, Kaleta continued to rub his penis on her leg until they reached an alley near their homes, when he zipped up his pants.

Kaleta was called to the police station and voluntarily came in. He told police that he felt embarrassed about the incident and that he was seeking psychiatric care. He told police that he hoped the parents were not signing complaints against him. Kaleta was charged with three counts of contributing to the sexual delinquency of a minor. He pled guilty and was given one year probation and one year of weekends in jail.

In this last case, Commission investigators contacted the victim's mother and one of the Chicago police officers assigned to handle the case. Because the Commission had received little more than case history information, we decided to examine several cases in more depth. This was impossible in cases dating back many years. We wanted to elicit the different reactions that individuals involved in the cases would have when presented with similar questions.

In a February 25, 1980 interview, the mother of Walter Kaleta's victim as described in the case immediately above spoke with Commission investigators. She told us that on Sunday, June 27, 1977, she gave her children permission to go with Kaleta to get some ice cream. She said they were given permission to be gone 45 minutes but they were really gone for 2½ hours. When the children arrived home they reported the incident that we have described above. The mother of the young victim said that it was hard for her to believe that this had happened because she considered Kaleta to be a very articulate, nice man. However, she told us that she had herself been molested as a child and she recalled how upset she had been when her own mother had refused to believe her. Because of her own personal history, she never challenged her children's story. Still, the mother was mixed up. She was unsure what to do about the incident. She didn't want her children to enter the criminal justice system because of possible negative effects it might have had on them. She finally decided to confront Kaleta herself in her own home. When she did so, he claimed that he did not know what he could have done to make the children think he ever had participated in such an activity.

The day after the incident allegedly occurred, the mother spoke with a friend who happened to be a police officer about the incident. This person said that the in-

cident should be reported and that the police have sensitive officers trained to handle such cases. Finally, after questioning her children more extensively, on Wednesday, June 30, 1977, she called the police and the initial report was taken. On Saturday, July 9, the mother went to Area 6 Homicide/Sex headquarters to speak with an investigator. The investigator weighed the possible charges that they could go for. At this meeting the victim's mother requested that the police not arrest him in front of his own daughter. The investigator responded with the information that Kaleta was a repeat offender and that she thought it likely he had been arrested in front of the daughter before.

During the course of the police investigation, the mother of the victim learned that another neighbor's child had allegedly been sexually molested by Kaleta as well. The other mother did not want her daughter to have to testify but finally agreed.

The case was continued several times, once because Kaleta arrived late and claimed to have no attorney, and once because Kaleta's lawyer wasn't ready with his case. In September of 1977, the case transferred courtrooms, going to the Traffic Court building, where a new assistant state's attorney was given the case--"dumped in her lap," according to the mother we interviewed. At this time Kaleta had been charged with several counts of a misdemeanor, but the new A/S/A, Margaret Frossard, wanted to consider upgrading the charge to a felony. Frossard told the mother that in order to do so, however, the two cases would have to be combined, that the grand jury would have to consider the facts, and that if the other girl were considered incompetent as a witness, the entire charge would be thrown out. Frossard claimed that there was no way to separate the two cases and that both should go to felony court.

The final decision to transfer was left up to the witnesses. They were informed what the stipulations of a likely plea agreement would be--two years' probation--and the mother of the victim decided to accept the plea agreement. On September 30, 1977, Judge John F. Reynolds called the case and sentenced Kaleta to two years' probation and weekends in jail for one year. At the conclusion of the proceeding, the judge asked this victim's mother how she could be satisfied with such a light sentence, given the circumstances of the crime. The judge allegedly said something to the effect of, "If you had stuck to your guns we could have done more."

A Commission investigator asked the mother that if that was how the judge felt, why hadn't he sentenced Kaleta to the maximum sentence available to him (one year in jail)? She

responded that it was her impression the judge didn't want to impair Kaleta's ability to make money to support his family. She said that Kaleta, according to court order, was supposed to report to a psychiatrist twice a week and also report to his probation officer twice a week. Thus, with weekends spent in jail, Kaleta theoretically would be very unlikely to continue his aberrant behavior.

On June 7, 1979, the children of this interviewee told her that they saw Kaleta's photograph on television. Apparently he had just been arrested for still another child molestation. This made the mother become curious about how Kaleta had been spending his probationary time. As a result, she made several inquiries and learned that the police had incorrectly recorded his probation time as one year; that he had gone to court in May, 1978, and had his sentence reduced; and that there was no record of Kaleta's having spent any weekends in jail. This last piece of information was obtained from an investigator for the news media team.

The mother then spoke with Kaleta's probation officer. He told her that Kaleta, according to his records, had spent every weekend required in jail through May when his sentence had indeed been reduced. He said that it was not his responsibility to notify her when such a proceeding occurred. The mother was completely distraught upon learning that Kaleta had been discharged early. She was certain that, with his proven history, he would be victimizing other children. She told us that, "It took a lot physically and mentally to go into court the first time. It was living hell, because I sent my children with that man."

The woman with whom we spoke also mentioned that she had called DCFS to express her concern about Kaleta's daughter. She told us that the woman with whom she spoke at DCFS told her that if she had not personally seen the child being abused by Kaleta, the Department could not investigate the case.

The victim's mother told us that she felt that, overall, the police, state's attorneys, and the judge all did a good job on the case.

When we spoke again to this woman, she had a suggested recommendation for us. She would like to see something done to keep children, that is, child victims, out of the courtroom environment in Cook County. Ideally, she would like to see a closed court, which she admitted was an impossibility. Her second preference would be for a special courtroom for child victims. She mentioned how A/S/A Frossard had made

it a point to keep the children in her daughter's case in the chambers and not in the courtroom itself prior to hearings. She considered it very thoughtful and sensitive and would like to see something more formalized take place to protect child victims in such cases.

Finally, in regard to the above case, Commission investigators spoke with Barbara L. Valenti (formerly Barbara Gladden), a Chicago Police Department investigator assigned to the North Side Sex Investigations Unit. Valenti handled the case described in detail above. Our primary concern in speaking with her was to determine why Kaleta was charged with the contributing charge, a misdemeanor, when it seemed that the offense contained elements that would have made it classifiable as an indecent liberties charge, a felony.

Valenti seemed to recall that the problem was due to the lapse in time between the occurrence and the reporting to the police. Obviously, physical evidence would be impossible to collect after a lapse of ten days; Valenti mentioned that some assistant state's attorneys hesitate to charge a felony when such a time lapse occurs. Valenti told us that an experienced investigator will attempt to guide the A/S/A regarding the proper charge to file and that she, Valenti, would accept responsibility for the filing of a misdemeanor. As she recalled the case, she never spoke with felony review and decided to try to go with the misdemeanor charges. She mentioned that she knew that often a suspect will plead guilty to a misdemeanor, eliminating the need for the victim to testify. She also told us that in Cook County there is a "rule of thumb" that unless there is sexual intercourse or deviate sexual assault, the prosecution will not proceed with an indecent liberties charge.

Valenti also said that when proceeding with a felony charge, it could take six months to two years before a trial actually would begin. She pointed out that this makes using a child victim precarious. Moreover, the families of molested children often want to try to put the molestation behind them and not have to resurrect their thoughts and feelings about the incident constantly. She told us that some therapists instruct families not to pursue prosecution because it will be psychologically detrimental to a victim's readjustment after the molestation incident.

Valenti told us that her opinions are based on her work as a youth officer, investigator for Homicide/Sex, and her then current (March, 1980) assignment in the Sex Investigations Unit (SIU). She described SIU for the Commission because it is germane to our investigation.

At the time of our interview, there were 24 SIU investigators on the north side and 24 on the south side of Chicago. These units handle any crime involving sex. Previously, these crimes were handled by Homicide/Sex. Valenti thought that the new units work well, because the investigators assigned want to handle sex cases and are not only interested in the more glamorous homicide investigations. She said that SIU investigators have been involved in developing crime patterns and have received training in psychology so that they will know how to handle emotionally distraught victims and families of victims of sex crimes.

One very interesting observation that Valenti made was that witnesses between the ages of five and eight often make better witnesses than older children. She said that they usually are very matter-of-fact about an incident. When children get a little older, she said, they begin to develop guilt and become more emotional about an incident.

Valenti was able to shed some light on the change of courtrooms. She said that the case was moved from misdemeanor court to a court at Belmont and Western Avenues in Chicago; she described the move as a defense maneuver intended to try to wear the victim out. She thought the defense would try to request as many continuances as possible until the victim/witness would stop coming to court and the defense would at that time say they were ready for trial.

Valenti also told us that all sex offenses that are felonies go to Judge Maurice Pompey's courtroom at 26th Street and California Boulevard for a preliminary hearing. Valenti had high praise for Judge Pompey, explaining that he took the time to understand and "relate" to children who had been involved in sex crime.

Valenti was able to shed light on this incident and also provide us with useful general information, some of which we shall return to later in this report, particularly Judge Pompey's role in the handling of child sex offenses.

The next incident allegedly involving Walter Kaleta which we looked at occurred August 24, 1978, and involved three Naperville girls between the ages of nine and eleven. This time one of the girls reported that she had met a man near a local market. He was looking for someone to buy some safety pins for him because his pants had been ripped. She bought some for him with his money and then left. Several days later, the same man reappeared in the neighborhood. He spoke with the same girl, telling her and her friends

that he was trying to find a home to buy in the area. After the girl gave him some information on homes that might be for sale in the area, the man told her he wanted to buy her some ice-cream in thanks for what she had done for him. The girl declined.

Several days later, on August 24, the man returned and offered the girl and some of her friends ice-cream again. This time they accepted his invitation. Police were able to check the registration on the car and learned that it belonged to Walter Kaleta. The Naperville police also learned of the extent of Kaleta's criminal record. The police determined that Kaleta was receiving mail through someone else in an unincorporated area near Naperville. Though the police spoke with the state's attorney's office regarding an arrest, they were advised that no felony had been committed and a warrant would not be authorized. When police officers spoke with David Deenihan, Kaleta's probation officer in Cook County, they were told that Kaleta had not missed a meeting with him and that Kaleta was "very cool and showed no signs of being under any pressure." Deenihan went on to say that, overall, "if Kaleta presents himself on the street as he does in the office, you never would suspect he was the suspect in sex cases involving small children. In fact, you think he would be the greatest guy in the world and would love to have such a person as your next-door neighbor."

No arrest was made with regard to this incident. While it was under investigation, another incident occurred, this one involving a 10-year-old Naperville girl. On September 6, 1978, late in the afternoon, the victim was approached by a man in a car who blocked her way on the sidewalk. The suspect involved asked the girl where a nearby street was and, upon being told, left, saying he would see her again in a couple of minutes. The man did indeed return several minutes later. He walked up to the girl and told her not to tell anyone, but he had ripped his pants. He asked her if she knew where he could buy some safety pins and the girl replied that she would go home and get some for him from her mother. He told her not to do that. At this time, a friend of the victim approached and asked her to leave with her. The man told the first girl not to leave, and her friend left alone. After the friend left, the suspect told the girl that she had beautiful legs. He asked the girl to stand "sexy" and to move around a little while she straddled her bicycle. He pulled a blanket from the car seat over his crotch and moved his hands around under the blanket, according to the victim. She told police that she was not watching the blanket closely while this occurred.

The Naperville police engaged in an extensive follow-up investigation. The victim picked the suspect out of a photo line-up and the suspect was determined to be Walter Kaleta. On September 8, 1978, a warrant was prepared charging Kaleta with indecent solicitation of a child. Kaleta was apprehended by the Chicago police the next day. He posted bond after being taken to the DuPage County Jail.

Naperville police reports indicate that the DuPage County State's Attorney's Office, at that time, was interested in pursuing disposition of the case under the Sexually Dangerous Persons Act. There was no disposition of this arrest; when we called Thomas Callum, First Assistant State's Attorney of DuPage County, on April 1, 1980, he told us that the Sexually Dangerous Persons petition had been withdrawn. The petition was withdrawn following Kaleta's conviction under charges which we shall review in a moment. The stipulation for withdrawal of the petition was that Kaleta receive at least 10 years' jail time for charges filed in Cook County; when Kaleta received 10½ years, the petition was withdrawn. Callum also told us that the misdemeanor charge from Naperville, upon which the petition was based, had not been prosecuted.

Apparently Kaleta was arrested again on November 18, 1978. He was charged with two counts of public indecency after he exposed himself to two Chicago girls. When we interviewed the mother of the victims a little more than a year after the arrest, she told us that the case had been continued a number of times and that she did not really know exactly what had happened regarding it. She told us that she spoke only once to an assistant state's attorney regarding the case and that she has never heard from the police department regarding court appearances. When the mother read a newspaper article dated June 9, 1979, which reported Kaleta's arrest for molesting a Chicago policeman's daughter, she went down to the station to find out why Kaleta was still "on the streets." She told us that she was not given an answer. She was simply told that Kaleta had been rearrested.

Still, the only complaint that she had was that neither the police nor the State's Attorney's Office had bothered to keep her informed of court dates.

Kaleta was arrested again on June 22, 1979, for three charges stemming from an incident that occurred in Cicero on May 15, 1979. The victim, an eight-year-old girl, told her mother that a man later identified as Walter Kaleta motioned for her to come over to his car. When she did so, he told her that she was a gorgeous girl, that he was a policeman, that she should not tell anyone what he had said to her, and he then removed his penis from his pants and held

it in his hand. At that time the girl ran home to tell her mother, who was able to record the license number of the car he was driving. The police were notified, but only after the victim saw the offender's picture on the news as a suspect in a new child molestation case were they able to apprehend Kaleta. On June 11, 1979, he was charged with indecent liberties with a child, false personation of a police officer, and public indecency. Kaleta was arrested on June 22, 1979.

When Kaleta received his 10½ year sentence, he did so after agreeing to a plea bargain made between defense and prosecution. Part of that arrangement provided that the state drop five outstanding misdemeanors and one felony (which the state felt was too weak to pursue). The charges stemming from the Cicero incident were disposed of in this way.

Meanwhile, Kaleta had been arrested again on June 1, 1979, by the Chicago Police Department. Kaleta had been identified the day before by a 9-year-old girl as the man who had, earlier in May of 1979, asked her to get into his car on the pretext of offering to buy her some ice-cream. While in the suspect's car, the suspect forced the girl to put her hands into his pants and fondle him. Kaleta turned himself in with regard to this incident and was charged with indecent liberties and aggravated kidnapping. Later, the aggravated kidnapping charge was dismissed by the state.

With regard to this last incident, Commission investigators spoke with the mother of the victim. As we shall demonstrate in a moment, Kaleta ultimately was convicted of the indecent liberties charge placed against him following the incident. This was part of the package that netted Kaleta 10½ years' jail time.

The mother of the victim told us that Roger Lacny, one of the investigators assigned to the case from the Chicago Police Department, was very helpful and cooperative in his investigation. The woman told us that he constantly kept her informed of how things were progressing on the case and even gave her his home phone number to call in case anything came up. His partner, Ronald Bohanek, also was very helpful, according to this victim's mother.

Though she was able to praise the police greatly, she felt quite differently about the assistant state's attorney who handled the case. With regard to court dates, hearings, and other court-related matters, the mother was forced to call his office. No information was ever offered to her

without her having to call first. The mother told our investigators that the A/S/A spoke with her daughter several times but failed to interview a possible witness to the incident and failed to inform her of the initial court date on the matter. The mother was also quite critical of the A/S/A's questioning of her daughter, telling us that his line of questioning was so harsh that it seemed that he was placing part of the blame for the incident on her daughter. She did point out that perhaps he may have become overzealous in his questioning and had not intentionally upset her daughter. (We interviewed the A/S/A and will present his remarks after describing these incidents in further detail.)

The mother of this particular victim told us that her daughter was having psychological traumas as a result of the incident perpetrated by Kaleta. These problems also manifested themselves as physical problems, including stomach pain, eye dysfunction, and bed-wetting. All physical examinations and tests have been negative, and the behavior has begun only since the incident occurred. The mother explained that one of the problems may have been that her daughter knew the Kaletas and had been going over to their house for more than a year prior to the incident. Finally, her daughter became so distraught and anxious that she was hospitalized with stomach pain and constant nausea. She missed 17 days of school.

Interestingly enough, the mother told us that she had been able to help allay her daughter's fears, especially after Kaleta had been arrested and held in Cook County Jail, because she had experienced exactly the same sort of incident when she was the same age. She said that the circumstances were almost identical, and that the offender was the friend of her father's. In the mother's case, the facts did not come to light until years after the incident occurred, and her mother had just told her to forget the whole thing.

Three months after our initial interview, we spoke with this same woman again. We were in the process of contacting several of the victims' parents to determine what problems they were having regarding the Kaleta prosecution. She told us that all of her efforts to contact the A/S/A and receive court information had been fruitless and that her calls had not been returned.

On June 20, 1979, Kaleta was indicted on two charges of taking indecent liberties with a child. Bond was set for $500,000. Kaleta turned himself in on June 22, 1979, to the Cicero police on the public indecency charge. When Kaleta

appeared in court for arraignment, he was presented with the arrest warrant for the two indecent liberties charges. In this case, the victim was a friend of Kaleta's daughter and had stayed overnight at the Kaleta home on several occasions. Also on several occasions, Walter Kaleta allegedly had sexually molested the girl, who was eight years old at the time of indictment.

We spoke with this victim's mother also. She told us that after reading in the newspaper of one of the indictments against Kaleta for child molestation, she questioned her own children, since they had stayed in the Kaleta home overnight. Though her daughter refused to admit that anything had happened, the mother told us that her behavior "gave it away." After some coaxing and reassuring words, her daughter told her of numerous sexual contacts with Walter Kaleta. The mother called the 911 emergency number and reported that her daughter had been sexually molested. The operator said, "What do you want, lady, do you want us to send a car out or what?" Eventually a beat car was sent out. Officers Lacny and Bohanek were assigned to this case as well, and they immediately went out to search for Kaleta.

Two weeks later, the mother took both of her daughters to court to testify before the grand jury. The A/S/A on the case, Rebecca Davidson, had hoped for $350,000 bond, but the judge raised it to $500,000. The mother told us that both officers were "great" in their handling of the case; they called frequently to tell her of the status of the case and that once, before Kaleta had been arrested for the offense, she saw Kaleta drive by the house. Lacny and Bohanek called a beat car to respond immediately and both officers began a canvass of the area themselves, though it was their day off. Though the mother had high praise for these two officers, she criticized not only the emergency number operator but also a detective of Area 3 Homicide/Sex. She characterized him as being "very crude in his approach to the investigation" when he called to determine certain facts for his report.

The mother also complained that the A/S/A never bothered to inform her of court dates and only "rarely" called to let her know what was going on. On one occasion, when a trial date was advanced, she only learned of the change by calling the state's attorney's office and speaking to another A/S/A. The first A/S/A told her that he wanted to speak with her daughter again after it appeared that Kaleta was going to agree to a plea, but he never did, nor did he return the mother's phone call regarding his permission to speak to a Commission investigator about the case before its disposition. The mother also complained about the A/S/A's line of

questioning when he did interview her daughter. At one point she stopped the questioning to reassure her daughter that she had done nothing wrong; she felt that the questions seemed to impart some of the blame for the incidents to her daughter. When this same thing happened again, later in the same interview, the mother told us that the A/S/A's partner stopped the questioning.

The mother did commend the A/S/A for going to the trouble of asking her to come down to court to see the courtooms, which he personally showed to them, and he even introduced them to a judge. She thought that this was helpful not only for her daughter, but also for herself.

When we spoke with the same woman three months later, she told us that she had been unable to determine a trial date for the offense. She was also concerned about the "deal" that the state was trying to make with the defense. When we spoke with the A/S/A about a plea agreement in January, 1980, he told us that all that he would offer the defense was 15 years on each count, the maximum sentence available, and the judge would only reduce each count by 2-3 years. The defense decided at that time to go to trial.

The next month, the mother called to tell us that the state was considering a plea agreement that would give Kaleta a prison sentence of 10 years and that she was to "think it over" and call him back with her final decision. If the agreement were reached, he said, there would be no trial. This had been a courtesy call on his part.

A Commission investigator attended the sentencing hearing of Walter Kaleta on February 14, 1980. The hearing was held in Judge Frank B. Machala's courtroom. We had been notified the previous day by the A/S/A that there had been a pre-trial conference. At the conference, the defense attorney and the judge had agreed to 11 years in prison in exchange for a guilty plea; the state had objected, advising the judge that it wanted the maximum sentence imposed; the defense had countered by stating that the defendant never had injured anyone; and the state had argued that the defendant had injured his victims mentally if not physically.

The families of the two latest victims were present in the courtroom. When questioned by our investigator, both families said that they had been contacted by the state's attorney's office and were satisfied with how the case had been handled and with the plea arrangement.

Judge Machala made certain that Kaleta understood what his sentence could have been if he pleaded guilty--he could have received 30 years for each charge against him. He was then given 10½ years and all lower charges were dismissed. The judge made no comment about Kaleta or the case during the proceeding. Later, the A/S/A told our investigator that the judge had agreed to accept the guilty plea because he did not want the young girls to have to testify but he did want to keep Kaleta off the streets for awhile.

We had interviewed the A/S/A on October 16, 1979, with regard to this grouping of cases he was handling against Walter Kaleta. He told us at that time that he had been successful in handling cases involving child victims and that was why he was handling the Kaleta case. He told us that the biggest problem in handling child sex crime cases is proving the credibility and qualifications of the witnesses/victims. He said that the Court regularly assumes that a child under 12 is not competent to testify. He said that it is the A/S/A's job to go over testimony and be sure that the witness or victim maintains a consistent and credible story. He must also prepare the child for the courtroom experience, which he admitted can be traumatic.

He added that children often hurt their own chances by not reporting these incidents as soon as they occur. He said that this had occurred in several cases in which Kaleta had been implicated. He told us that one of the reasons many child sex offenders receive relatively light sentences or probation is due to a "defeatist attitude" that many A/S/A's experience going into a case involving a child victim. He said that a state's attorney may be prematurely prepared to "plead a case out" and settle for a conviction of some kind on a lesser charge. The alleged "reward" in such a case is that the defendant will have a criminal record with convictions on it. He said that he personally receives little solace from that. He would much rather tell a victim's parents that he will try to put the offender in jail.

He told us that, in order to obtain a conviction of Kaleta, he had to gain the confidence of the child victims involved in incidents with Kaleta. To do so, he said it was necessary to get them "to open up" and talk with him freely about their experiences with Kaleta. He described Kaleta as "the typical guy next door-kind of guy any prosecutor would want on a jury, as a matter of fact." He said that many child molesters retain a respectable community image

and, when called to the stand for a crime, "talk circles" around the accusers. He said that they portray a very convincing picture of a person victimized by the misconception of a child. He mentioned that if Kaleta is called to take the stand, the A/S/A can impeach his testimony by bringing up his Wisconsin conviction. If Kaleta didn't testify, the record could not be used at the trial.

He told us that he wanted to see Kaleta convicted of one of the charges against him and hoped to get his sentence increased, at an aggravation hearing, up to 30 years in prison.

On June 26, 1979, the Chicago Sun Times ran an article about Walter J. Kaleta, the "Candy Man." Portions of the article follow:

> For most of the 24 years since his first conviction he's been free and officials estimate he has been involved with more than 100 young girls.
>
> The reason Kaleta has been out is because the crimes he commits are so difficult to prosecute. His crimes are not violent ones. He will usually fondle the girls or expose himself, so there is little evidence.
>
> Further, his victims are children, and children make bad witnesses.
>
> "If he had just hit one of the girls, he would have been off the street long ago," said the frustrated mother of one victim. "There were no marks, but my daughter gets hysterical when the doctor asks her to undress for an examination."
>
> "These cases are so tough, you're happy to get anything," said one prosecutor. "Anything" was usually probation and a promise that he would seek psychiatric care.

Under Illinois law, Walter J. Kaleta could serve 5 years and three months and be released.

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Obviously, case histories of child molesters provide different sorts of information. These have provided the reader with some indication of the modus operandi of different offenders. But the cases also offer important information about the perception of those involved in the criminal prosecution of child molesters, including victims, the parents of victims, police officers, state's attorneys,

judges, probation officers, and others. The cases reveal what the effects of child molestation really are, particularly on the unfortunate victims of these crimes.

Finally, and most importantly from the point of view of House Resolution 138, the case histories offer an inside view of the workings of the criminal justice process. Attitudes and practical considerations both have been examined here. It might prove useful, in regard to the criminal justice process, to review the original charges presented against these eight men, and to compare them to offenses for which they were tried and convicted. We shall then look at the sentences that the men received. We refer the reader to an appendix that explains the details of each of the crimes with which the men were charged, together with their penalties.

Frank DePew was originally charged with 35 counts of indecent liberties with a child, a felony. He was allowed to plead guilty to one count of indecent liberties and received four years' probation and 80 days with credit for time served.

Robert V. Hodge was charged with indecent liberties. The charge was changed to deviate sexual assault and Hodge was not convicted of any crime. Instead, he was adjudicated a Sexually Dangerous Person and remanded to the Menard Psychiatric Center under the jurisdiction of the Department of Corrections.

Walter J. Kaleta has been charged with dozens of crimes. These have included disorderly conduct, indecent solicitation of a child, contributing to the delinquency of a child, contributing to the sexual delinquency of a child, false personation of a police officer (during the commission of an act of child molestation), unlawful restraint, and indecent liberties. In his most recent cases, he was charged with multiple misdemeanors and multiple counts of indecent liberties. In 1980 he was convicted of three counts of indecent liberties and received 10½ years in jail.

L.C. Eugene Magee was charged with indecent liberties and aggravated incest. The aggravated incest charge was dropped and Magee received four years in jail for indecent liberties.

Robert Pudney was charged with attempted rape, indecent liberties, and kidnapping. He was convicted of aggravated kidnapping and two counts of indecent liberties and was sentenced to three 12-year concurrent terms in jail.

William R. Wagnon was charged with indecent liberties and contributing to the sexual delinquency of a minor. He was convicted of the latter charge, a misdemeanor, and received 364 days in jail.

John White (a pseudonym) was originally charged with soliciting a minor for child pornography, contributing to the sexual delinquency of a minor, and exhibition of child pornography. He was convicted of soliciting a minor for child pornography and received 18 months' probation. A motion to vacate this conviction was sustained, the court record was wiped clean, and White proceeded to expunge his arrest record as it relates to these offenses.

Gerald R. Wojtasik was charged with rape, three counts of indecent liberties, two counts of deviate sexual assault, three counts of aggravated battery, and three counts of unlawful restraint. He was convicted of aggravated kidnapping, deviate sexual assault, and two counts of indecent liberties, with other charges pending at the time of disposition. He was sentenced to 30 years in jail.

It should be noted that, almost without exception, these men were convicted following a plea arrangement between the defense and the state.

Chapter 3

THE VICTIM

> Sexual abuse of children rarely involves physical injury and is perpetrated primarily by adult males known to the child. The child may readily submit to the known authority figure because she has been taught to respect and obey adults; therefore, the use of violence by the offender is generally unnecessary. Sexual abuse of the pre-adolescent child usually does not include sexual intercourse but consists of fondling, oral-genital contact, or manual penetration of the child's vagina or anus. The offender may have offered the child a bribe of affection, gift, or money. Unlike forcible rape which is a single dramatic attack, sexual abuse may begin insidiously, progress to greater intimacy, and continue over a long period of time. This is especially true of cases involving family members, the most common of which is father molesting daughter. If the adult molester denies the allegations, the child may be disbelieved and her tales of abuse characterized as "vivid imagination."
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> Popular mythology dictates that children often fabricate tales of sexual assault despite a lack of any research to substantiate this belief. Thus it is incumbent on the investigator, police, or prosecutor to dismiss such misconceptions and evaluate each case on its individual merits. Unfortunately, this task is usually made difficult because of the absence of corroborating evidence. If the overall adjustment of the child to family, school, and peers is satisfactory, it is highly unlikely that she would be deviant in one area of her personality development (i.e., producing an elaborate fabrication of sexual abuse).

These two paragraphs have been excerpted from a paper written by Doris Stevens and Lucy Berliner of the Sexual Assault Center, Harborview Medical Center, Seattle, Washington. They were furnished to us by the Center for Women Policy Studies in Washington, D.C. We shall refer to this paper, titled "Special Techniques For Child Witnesses," more later, particularly when we address the reaction of the child victim and witness to the criminal justice process.

Most of what Stevens and Berliner say should be obvious to any reader by now, having read of the effects on many victims in our case studies of offenders. And some of the information offered may be new. In each case we present below, we offer details concerning specific incidents of child

molestation of one sort or another. Often we present information on the offender as well as the victim; equally often we present information on the criminal justice process. So these cases do not differ significantly from those dealing with the offenders except in terms of focus. Because our proper responsibility is on the protection of child victims and potential victims, this chapter presents a necessary view of how and why some children are sexually assaulted and how their cases are handled by our criminal justice system.

We have tried whenever possible to also mention the effects that child molestation per se have had on the victims of the act, as well as possible effects from reporting of incidents and further involvement in the criminal justice system. The cases that follow have not been chosen at random, but they are fairly representative of incidents occurring recently in Illinois.

A. Victim #1

The first case we will attempt to document was developed from information furnished by the State's Attorney's Office of Jackson County. Commission investigators interviewed former Assistant State's Attorney (A/S/A) John Clemons in Murphysboro. In September, 1977, Clemons had successfully tried a man named Norman Smith for the rape of his niece. The offense had taken place in Murphysboro in July of 1977. The victim did not inform anyone of the incident until September 3, 1977. On that date she told her mother of the rape and another sexual incident involving Smith. The related sexual incident took place at the mother's residence, which was located in Williamson County and investigated by the sheriff's police of that county; any criminal action also would have originated there. The rape took place in Jackson County and so was prosecuted by A/S/A Clemons. Smith was successfully prosecuted on the rape charge and a charge of taking indecent liberties with a child. Judge Richard Richman imposed a sentence of 15-45 years on each of the two counts. These were the same charges originally filed by the police.

Smith was prosecuted successfully despite the following:

1) The offense was not reported until two months after it had occurred.

2) The victim could not remember the day or date it had occurred.

3) The State's Attorney had no physical evidence and the victim was not examined by a physician until two months after the rape.

4) The State's Attorney had no eyewitnesses.

We learned in investigating the details of this case that the night the victim was brought to the emergency room of a hospital, the attending physician refused to examine her because he did not wish to become involved in any court action. She was subsequently examined by her own family physician.

We asked Clemons why he tried the case when it seemed weak. He admitted that the case may have seemed "marginal," but also said that "it was so heinous, I had to try it." He added that he was not afraid to prosecute a case just because he thought he might lose. Clemons also told us that he had the victim take a lie detector test, supposedly to eliminate the possibility that the victim's complaint was the result of a family dispute between the relatives.

When we spoke with Officer James Nesler of the Jackson County Sheriff's Police Department, he told us that Smith originally promised the parents of the victim that he would obtain professional help for the girl if they would agree not to prosecute. When this attempt failed, he allegedly offered them money, which they would not accept. When questioned by police, Smith denied these allegations.

Clemons told us that his tactic of having the victim's mother relate what her daughter had told her to the jury is what helped them make their decision to convict.

Our final piece of information on this case is that the rape conviction in Jackson County has since been reversed because of a technical error made by Judge Richman during the trial proceedings. The conviction for taking indecent liberties was upheld in Williamson County.

B. Victim #2

This victim was a 15-year-old girl from Jackson County. A/S/A Clemons also handled her case. Originally, the defendant, Mark Gibbs, was charged with rape. Clemons wanted to reduce the charge from rape to indecent liberties, also a felony, because the victim made a poor witness due to emotional instability after the incident, because the victim lived in Alabama and would have had to have been transported back and forth for every court hearing, and because the victim's aunt was supportive of negotiating the plea on the case.

The details of the police report indicate that Gibbs did have sexual intercourse with the victim and that, when finished, he drove the girl across town, even making a stop at a store in order to get some change. When he returned to the car, the victim was still inside. He then placed a five-dollar bill in her pocket.

When Clemons was asked why the victim didn't run away as soon as she had a chance, Clemons said that she was no longer afraid of the offender at that point and figured that she could get home safely by agreeing to ride with him. Clemons said that she was indeed correct and that when she finally got home "she fell apart." The aunt corroborated this explanation. Clemons told us that he questioned Gibbs after the arrest and that Gibbs was very willing to admit to having sexual intercourse with the girl but was adamant that it had not been a rape. Clemons told us that he knew he had him "boxed in" because consent to sexual intercourse is not a valid defense when charged with taking indecent liberties with a child.

Officer Nesler told us that it had been very helpful that the Rape Action Committee, located in Carbondale, had been able to speak with the victim after the incident. He even told us that victims often would go to the Committee rather than go to the police. Since the Committee is more interested in the best interests of the victim than those of the "state," if a victim requests anonymity and no prosecution, the Committee will honor that request. Officer Nesler agreed with their methods of operation, which he described as being very professional.

Mark Gibbs was found guilty of taking indecent liberties with a child and was sentenced by Judge Richman to four years probation, a $750 fine, and three months periodic imprisonment.

C. Victim #3 and Victim #4

These two victims were 12- and 13-year-old sisters, also residing in Carbondale at the time of the incidents that occurred. Though certainly none of these cases is "typical," this one seemed unusual. The offender Timothy W. Krajcir, knew both of the girls because he lived in a trailer on their property. Krajcir, who had previously served 13 years for rape, was eventually charged with two counts of indecent liberties. According to police reports, statements were collected from both girls and from their parents. One of the girls reported in her statement that she had been having sexual intercourse with Krajcir for at least one year; the

other girl stated that sexual activity had occurred with her sister. The first girl said that she had seen Krajcir attempt to have sexual intercourse with her sister. Both girls said that they had known Krajcir for two years and that he knew their ages.

A Commission interview of the girls' father revealed that he had warned Krajcir about his activities prior to the February 9, 1979, incidents for which he was indicted. He told us that he first noticed Krajcir's taking an interest in his daughters in Fall, 1977. At that time, he had said nothing to Krajcir even though one of his daughters had told him that he tried to "touch" her after chasing her into a tent set up on the lawn. The father instead warned the other girl to stay away from Krajcir. Early in 1978, one of the girls told him that Krajcir had kissed her. Again the father did not talk to Krajcir but had a long talk with the girl, followed with a discussion with his wife, from whom he was at the time separated. The wife called Krajcir and warned him to stay away from her daughters. The following day, Krajcir approached the victims' father and denied ever having done anything with his daughters. The father of the victims said that he didn't believe Krajcir then and should have thrown him off his property.

We asked the father why he didn't take more forceful action, particularly after he told our investigators that he didn't believe Krajcir but did believe his daughters concerning the alleged incidents. He told us that he felt that, without any really solid evidence, it would seem like "my word against his." He added:

> Also, my grandmother was actually the landlord at the time and I didn't want to upset her. I think I had the right to throw him out though. I realized later that's the way it should have been handled. We thought he would back down after this. We didn't know his background.

The father told us that he saw one of his daughters in a compromising situation with Krajcir in July or August of 1978 and again spoke to the girls, telling them to stay away from Krajcir, but he refused to speak with the offender. It was in February, 1979, and only after his wife had told him that the girls had confided privately in her that Krajcir had molested them, that the father went to the police to report any incidents. The police arrested Krajcir and advised the father to send his daughters to live with his wife temporarily to keep them out of harm's way.

When we asked the father if he didn't suspect that anything serious had been going on between Krajcir and either of his daughters, he said that he had his suspicions but couldn't "put his finger" on anything. The father told us that he was busy working most of the time and that some of the supervisory responsibilities were given to other relatives, all of whom had failed to note any sexual interest between Krajcir and the girls. The father attributed the occurrence of the incidents to a lack of any sex education for his girls, for which he obviously felt some culpability.

Finally, the father had high praise for the conduct of the police and for then-State's Attorney Howard Hood (now a judge in Williamson County). He told us that they had acted in a very professional manner and had no complaints concerning their performance of duty.

Commission staff interviewed Judge Hood in January of this year. He told us that Krajcir had been convicted in Cook County in connection with a rape and stabbing incident and had been given a 25-year sentence, as we have already noted. Judge Hood pointed out that Krajcir's sexual molestation of these two girls began only after he had finished his term of parole on the rape charge. He also told us that the two sisters were the only witnesses in the case, making it extremely weak. As the investigation of the allegations developed, it was learned that the mother of the victims really learned of the incidents from one of the girls after a routine physical examination by a local doctor. The doctor was reluctant from the beginning to testify in any way about the case; he had informed the mother that it appeared as though one of her daughters had been engaging in sexual intercourse.

As the state prepared its case, it became apparent that at least the older of the two girls was quite proud of her sexual relationship with Krajcir, and Judge Hood said that the case became weaker with the passage of time. At a preliminary hearing, the daughters' stories did not match; one changed her story slightly at the time, and the older daughter did boast at the hearing of her relationship with Krajcir. Her consent did not remove the possibility of guilt in an indecent liberties case in which the defendant knew the age of the victim, but it made the case weak because then-State's Attorney Hood never knew what sort of story the girls would tell or whether they would even agree, finally, to testify.

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1 OF 3

During our interview with former Assistant State's Attorney John R. Clemons, he mentioned the Krajcir case specifically. He told us that Hood had been having problems with the mother of the victims. She vacillated between stating that her daughters would testify and indicating that she did not want them to testify in the case.

Hood told us that one of the girls finally caught on that what she had said at the preliminary hearing wasn't helping Krajcir any more, and he indicated that she probably would have changed her story, thus casting doubt on the entire case. As a result, he decided to use the arrest to attempt to adjudicate Krajcir a Sexually Dangerous Person. He was successful in his attempt and Krajcir was remanded to the custody of the Department of Corrections. Judge Richman was also the presiding judge in this matter.

Finally, the Commission spoke with two detectives of the Carbondale Police Department, John Kluge and Larry Kammerer. We wanted to determine if there was additional insightful information available concerning the Krajcir case. The detectives corroborated what we learned from other sources. They told us that even after the older daughter was confronted by her doctor and by her mother about having a sexual relationship, it was the younger sister who first admitted anything. They said that there was something of a rivalry between the two sisters for the attentions of Krajcir; the statements given by the sisters indicated that they were both in the same room when engaging in sexual activity with Krajcir. They told us that the older sister thought that she was in love with Krajcir and thus did not report the incident or cooperate in Krajcir's prosecution.

Detective Kluge said that a lack of physical evidence made it hard to proceed with the case. There was a five-day lapse between the time of the incident (the latest reported incident) and the report. The detectives also mentioned that, as time passed after Krajcir's initial indictment, the parents of the victims both got "cold feet." The mother supposedly thought that the girls would be affected adversely emotionally by having to testify, but Kluge thought that she was completely wrong, particularly after seeing the girls testify at the preliminary hearing.

Kluge also told us that Krajcir had been a suspect in other sex crimes and that the police had developed a good case on him for public indecency. Though it was a good case, Kluge said that it was handled improperly because Krajcir was well-liked by some police officers on the

Carbondale force, with whom he had played softball. He told us that when Krajcir was arrested, a policeman "put in a good word" for him and promised on his behalf that he would see a psychiatrist. As a result, the case was handled only as a city ordinance violation. Kluge told us that the office of the State's Attorney was very upset about the handling of the case and said that he didn't blame them. Further, Kluge said that he never determined if Krajcir ever indeed did see a psychiatrist for his problems.

Kluge also shed some light on the investigation of sex crimes against children in general. He said that he had never heard of a seminar on sexual child abuse and said that it appeared as though no one wanted to talk about it. He said that none of the policemen like to handle sexual child abuse or incest cases because they are "uncomfortable" doing so. By contrast, he said that everyone wants to get involved in a homicide investigation, partially for the glory given the officer who solves a case. Kluge said that we really need experienced investigators to handle child sex crime cases successfully. But apparently the only way to gain experience is to handle investigations without the experience until it can be gained.

Kluge admitted that it was easy for an officer to get emotionally involved in a child molestation case. He recommended a "special team" from the state police that would be responsible for sex crime against children in every particular region and upon request from the local police department involved.

D. Victim #5 and Victim #6

These two victims are brother and sister. At the time they were molested, the boy was nine years old and the girl was six. Gerald Dean Leggans was arrested in Murphysboro on June 17, 1977, and was charged with three counts of taking indecent liberties with a child and one count of indecent solicitation of a child.

In pursuing this case, first we spoke with Officer Nesler of the Jackson County Sheriff's Police Department. He told us that Leggans had been living with the victims and their mother at the time the incident occurred. The only other information of substance that Nesler provided was contained in the police reports.

On December 18, 1979, Commission investigators spoke with Edward Buerger, a caseworker for the Illinois Department of Children and Family services (DCFS) for the past nine years in Murphysboro. He told us that DCFS had first

provided services to the mother of the victims at least five years before the molestation incident. He told us that the mother had a very low I.Q. and was able to function only minimally as a mother. He told us that she had the propensity to be influenced by "unsavory characters," thus causing her to neglect her children at times. At other times, Buerger said, she seemed to be a devoted and caring mother.

In fall of 1973, one of the other children in the home came to school with bruises covering his body. Apparently either the mother or father had beat him with a belt buckle for upsetting them by returning home late one night.

After this, Leggans was extradited to Texas by law enforcement officials and the victims' mother married another man, who was described by Buerger as well-meaning and hard-working. After the marriage occurred, Leggans returned to Illinois. He approached the mother of the victims and asked her to let him live with her. After a short discussion, she packed her bags and moved in with Leggans, leaving her husband behind. When asked why she had done so, Buerger said that she was easily manipulated by people. A week later, Buerger called a meeting at school concerning the mother's behavior and her leaving her husband. He offered her advice, including the suggestion that she leave Leggans.

Soon after this meeting, at which the mother had been inattentive, she asked to meet privately with Buerger. When they met, she told him that Leggans had not approached her sexually even once since they had been living together. Buerger asked her what the sleeping arrangements were. She told him that Leggans slept with her son on a couch every night. After Buerger pursued the question, she admitted that Leggans had been molesting her son. She told Buerger that she was afraid that Leggans would harm her or her children if she left. Buerger told us that she seemed more concerned that DCFS might try to take custody of her son than she was with getting help for him.

Buerger went to the police and the State's Attorney's Office with his information. Leggans was arrested and charged as noted above. He was convicted by Judge Richman of one count of indecent liberties and one count of indecent solicitation (after the boy in the family admitted that Leggans had engaged in deviate acts with him and had attempted to fondle his sister). He was sentenced to 25-75 years on the first count and 360 days on the second, the latter sentence to run concurrently with the first. Normally, our story would end here, because with the removal of the offender, usually the victim is protected. That is not the case here.

After Leggans was convicted and sent to prison, the mother of the two victims returned to live with her husband. In December of 1978, the mother reported to the Murphysboro police that her daughter had been molested by her husband. The husband did not deny that he had fondled her, but he said he did it on the advice of his wife and while she watched. The mother told her husband that if he agreed to take a lie-detector test, which he had agreed to at first, she would not allow him back in the home. Buerger speculated that, according to the mother's twisted logic, she could get rid of her husband the same way, theoretically, that Leggans had been gotten rid of. Buerger told us that she viewed her husband at that time as only a "temporary meal ticket" and that she had prepared to move in with someone else.

In agreement for accepting the husband's testimony, the state agreed not to prosecute him. All four children in the home were removed permanently and placed in adoptive homes. Through the husband's testimony, the state was able to prove that the mother was unfit.

Buerger told us that both children were making good progress in their new homes but that both had received counseling on a periodic basis. He told us that not all caseworkers would have handled the case that way; discretion plays a big role in the determination of a case. He said that he works closely with the police and that they are called in whenever a case is serious enough to warrant it.

Buerger also said that DCFS in Jackson County has a special team developed to deal with sexual child abuse cases, composed of doctors, A/S/A's, caseworkers, and concerned professional people. They meet on a monthly basis to discuss the details of particularly difficult cases. The caseworkers themselves also have weekly internal meetings.

The day after the Buerger interview, Commission investigators spoke with the mother of the victims in this case. She admitted that when she was living with Leggans she knew he was acting strangely. She noticed his disinterest in sexual relations with her and his particular interest in one of her sons. Leggans was forever asking permission to take the boy to friends' houses or for car rides. On one occasion, her son complained, following an overnight incident with Leggans, that Leggans "was playing nasty with me." The mother discovered blood in her son's underwear and asked Leggans about it, but he denied everything. The mother told us that Leggans had begun sleeping on the same couch as the boy two nights before, but she was not sus-

picious until her son complained to her and she found the underwear. She told us of her call to Buerger and also told us that, when she returned to her husband, her son had observed Leggans molesting her daughter.

The mother told our investigators that both children complained of her husband's molestation of both of them. She told us that her own suspicion was that her husband began molesting the children after becoming sexually aroused from hearing of Leggans' behavior in court during Leggans' trial. She said that her husband's logic was: "He did it, so why can't I?" She also mentioned that the period of time during which her husband was allegedly molesting the children was after she had a miscarriage and could not engage in sexual intercourse. She denied that she ever told him to molest the children. She told us that he fabricated that story in order to exact revenge on her for reporting the incidents to the police.

A Commission investigator asked the mother several pointed questions concerning discrepancies in her statements, concerning the chronology she related to him. Supposedly, the molestation occurred in May and again in September of 1978, yet she waited until December of that year to contact the police to report the incidents. At first she said she hadn't been aware of the molestation until September, but when confronted with her own story, retracted the statement. Then she told us that at one point she couldn't believe her daughter's stories and thought that she was making them up to get revenge against her stepfather. Our investigator asked the mother why she allowed her children to remain in close proximity to the man if she had suspicions of any kind. She replied that "I had a strong suspicion it happened but I could never catch him in the act." The following exchange then occurred, with our investigator asking the questions:

Q. In the meantime, you knew you would be leaving the kids in danger?

A. Right.

Q. So, as long as he was the provider, put clothes on their backs and you didn't catch him--everything was o.k.?

A. Right.

Q. Knowing the danger, what could happen to those kids, you continued to stay in the house?

A. Right.

Q. Why?

A. I didn't want to be left in the cold. A mother and father should stick with the kids. My mother died early, when I was young.

Our investigator later asked the mother if she had been sexually molested as a child. She replied that she had had a sexual relationship with her father and also with "some" of her uncles. She said that at first the sexual relationships with them were forcible, but that when she turned 12 she stopped fighting it. She said she began to enjoy it. She told us that every friend she had in a small town in Missouri "did it with their daddy." In her case, however, her mother learned of the incidents, the father was arrested, and he spent 21 months in jail.

The mother ended the interview this way: "Men is just trouble, women can do without men--if you have your kids you can do without anything."

E. Victim #7

The Office of the State's Attorney of Lake County furnished the Commission with details of our seventh victim's story. In summary, a 14-year-old girl stated that on the morning of December 14, 1978, Arthur Pope, a security guard at her school, grabbed her in a hallway and forced her down a stairwell. There, he exposed himself and forced the girl to touch his penis. The girl indicated that she resisted him and that he tried to force her to perform an act of oral copulation on him but was unsuccessful. Finally, she said, she was able to break away and flee up the stairs.

The next morning, the same girl was en route to the bathroom with a hall pass and was approached by the same security guard. She was afraid but said she thought he only wanted to check her pass. Pope allegedly grabbed her and locked her in a vacant room, saying that he would return shortly. When he did return, the girl escaped again.

The girl and her mother reported the incident to the Waukegan Police Department on the afternoon of December 6. The girl was able to identify the offender from mug shots furnished during this police interview. Later that day, Waukegan police officers arrested Arthur Pope and told him that he was being charged with attempted deviate sexual assault, indecent liberties with a child, and unlawful restraint. After he was read his rights, and while he was

being transported to the station, Pope commented that a lot of kids just don't like him because he has had to report them to the main office for violations of school rules.

Later, at the station, after he had been read his rights again and had signed a rights waiver, he was asked to relate what had occurred on the two dates in question. Pope said that the girl followed him down a stairwell he was checking for smokers. He found no one there and had turned around to walk back up the stairwell. The girl preceded him back up the stairwell and he said he began pushing her around, but that that was all that had occurred. He claimed that after he saw her run down the hallway, where she stopped to speak with another security guard, he did not see her again that day.

Pope said that the following morning he first saw the girl in the gym. Pope said that the girl said to him, "We could do it right here." Pope said that he asked her what she had meant but that she didn't say anything. They left the gym together and walked down a corridor near the industrial arts section, holding hands. He said that when they reached the end of the hallway, he unzipped his pants, took his penis out and had the girl hold it. Pope said that he guided her head to his penis and that she kissed it. After that he rezipped his pants and they went their separate ways, according to Pope. When asked if he had locked the girl into any room, he said no, that he had no keys.

On February 22, 1979, Pope entered a plea of not guilty and a pre-trial conference was set for March 23. The trial was continued several times for different reasons: to request a withdrawal of a guilty plea, to request withdrawal of Pope's counsel, to enter another request to enter a not-guilty plea. Finally, Pope agreed to plea-bargain and pled guilty to one count of attempted deviate sexual assault; the other charges were dropped. This agreement was reached on September 24, 1979. Pope was sentenced by Judge Thomas Doran to two years probation.

Commission investigators interviewed the stepfather of the victim in November, 1979. He stated that Detective Carl Nelson of the Waukegan Police Department responded to his call and that he was always courteous and sympathetic in his handling of his daughter. He said that Nelson also expressed concern for the daughter's physical condition. The stepfather also commented that the officers who handled the questioning at the station told the girl and her mother that it could be rough and repetitious. His final comment was that he did not know if the police or State's Attorney's Office offered his daughter any form of counseling but that the school did.

We spoke with Detective Nelson, but he did not furnish us with any significant, new information.

We also spoke with Judge Doran of the Lake County Circuit Court. In opening conversation, Judge Doran defined what he sees as the two most common types of child molestation. The first occurs in the home between father and daughter and is not limited to poor or "blue-collar" working families. The second involves a "flasher," a harmless person with a "psychopathic compulsion" to commit his deviate acts. Judge Doran said that this type of offender is next to impossible to cure and that certainly "the penitentiary can't do it."

Judge Doran commented that Illinois law is entirely adequate to deal with child molestation. What is needed is more public awareness of the crime, an emphasis on enforcement in this area, and the cooperation of the victims and their families in both reporting and prosecution. Judge Doran opposes long-term incarceration for repeat offenders because he feels that the typical repeater is harmless and is not a "hardened criminal." He said that if mandatory sentencing were instituted, judges would be likely to suggest reducing the seriousness of the offense to evade the mandatory requirement. Judge Doran did not have an answer to how to handle repeat offenders. He mentioned that prison is "warehousing" people and that prisons consist of "dehumanizing environments" in which treatment programs employed are failures. He commented that "neither the victim nor society is served by this system. I don't know the answer; the resources are not available to the judge for what justice, humanity, and society desires."

Judge Doran could not recall the details of the Pope case but recalled that a plea agreement had finally been reached in the case.

Judge Doran also addressed the issue of competency of child witnesses. He said that he has never allowed a child under the age of seven to testify. Between ages 7-14, he said that he allows approximately 75% of the witnesses to testify. Competency of a child witness is determined by the judge at the trial prior to questioning on the merits of the case. Judge Doran mentioned that occasionally he would question a child in his chambers if the situation warranted it. It was the judge's opinion that 25-40 cases of molestation are heard in his courtroom each year and that these represent only 10-20% of those reported.

Judge Doran concluded the interview with observations made elsewhere by other authorities.

F. Victim #8

This case was also furnished to the Commission by the Office of the State's Attorney of Lake County. The case involves a 15-year-old girl who was sexually molested by her own father.

On Christmas Day, 1976, the victim returned home in the early afternoon to find both of her parents drunk. The girl went to her bedroom, which she shared with her three younger brothers, ages 15, 10, and 11. Soon thereafter her father entered the room and told her to "get ready for him." He took her by the arm into his own bedroom, where the mother was passed out on the bed and would not wake to the girl's screams. When the girl refused to take her clothes off, he ripped them off. After striking the girl on the head several times, he forced her to have sexual intercourse with him, after which he fell asleep. The girl then ran to a friend's house and called the Round Lake Beach Police Department. The girl told the police that this molestation had occurred many times before but that she had always been afraid to do anything about it. She said that about three years earlier she had gone to court on the same complaint but that she had dropped the charges after her father threatened her. The girl also told the police that DCFS had become involved with the family about six months earlier and that she had told caseworkers of her sexual intercourse with her father. The girl claimed that nothing ever had been done about it.

Commission staff spoke with Officer Harry Crammond of the Round Lake Beach Police Department, a seven-year veteran on the force and the arresting and investigating officer in this case. He said the case was the first of its nature that Crammond ever had seen go to court. He said that cases of this type are rare in Round Lake Beach.

Crammond responded to the call for assistance alone. During his initial questioning of the girl, she mentioned the blows to her head but not the incestuous relationship with her father or the rape that had occurred. Only after Crammond took her to the station so that the Youth Services Bureau in the area could become involved with the family did she reveal all of the details of the case. Crammond informed his superior of the allegations. Crammond said that the Department's only investigator said, after hearing the details of the case, "I would not handle that case with a 10-foot pole." Crammond's superior told Crammond to pursue the case. Crammond contacted Caseworker Donald Warner of DCFS and informed him of the allegations. Warner suggested

the State's Attorney be called. Crammond called A/S/A David Lumb, who told Crammond to get the girl to the hospital for tests and to go to the house to collect evidence. Crammond told us that he knew that he had "fouled up" by not collecting evidence immediately. By the time he reached the home, the mother had already washed the sheets where the rape had occurred.

The father was arrested the following day after a conversation the police had with the mother, who told them that her husband probably was intending to leave town. The arresting officer told the suspect that he was under arrest for rape and aggravated incest. The suspect began to respond to the charges but the officer stopped him, advising him that he should not say anything until learning his constitutional rights. The suspect continued to talk, stating that the entire story was fabricated and that he was leaving town because he was tired of his daughter developing these stories about him. He was told again to be quiet before hearing his rights. The suspect was read his Miranda warning at the station.

Further investigation of the incident, and statements made by parties involved, revealed that the father had forced his daughter back into her bedroom, where her three brothers were. The rape had taken place in that room, where all three boys could watch. Immediately following the rape, one of the brothers broke open his piggy bank to give his sister money to leave home with. When investigating officers went to the house on December 26 with the girl and her mother, they collected her ripped blouse and bra and the broken bank.

The mother was read her Miranda warning and asked to give a statement concerning what she knew about the incident. She said that she knew what the neighbor (from whose house her daughter had phoned the police) had told her, but that she was unaware of what had transpired the day before. She had found the ripped blouse and bra but did not know how they got there. After speaking together with her daughter for a time, the mother was able to recall to the police that the girl had made accusations six months earlier about the father's having had intercourse with her. The mother had not believed the girl and thus nothing was done. For some reason, though, DCFS became involved at that time. The mother did admit that three years earlier her daughter had made the same accusations but had refused to testify in court and the charges had been dropped.

The victim's brothers were asked to come in to the station to respond to police questioning. One of the boys said that he knew his father was doing something to his sister because he could see the bed shaking. The other boy, 10 years old, at first refused to discuss the incident but ultimately corroborated his brother's story.

When the father was requestioned, he said that the same thing had happened three years earlier and that he had had to spend 90 days in Lake County Jail, presumably awaiting trial. He said that on Christmas Day of 1976 he was so drunk he would have been incapable of having sexual intercourse with anyone. He said that he had slapped his daughter for talking back to him and that he had tried to force her to sleep in another bed, but he denied any sexual contact.

Officer Crammond told us that no one at the Police Department, himself included, recommended counseling of any kind to the victim, but Crammond said that he had intended to call the Youth Services Bureau to send a worker out. He said that calling them just slipped his mind. The Bureau, a county agency, is located in Lake Villa and Crammond told us that when called, a worker is always dispatched immediately.

Commission investigators interviewed the victim's mother in November, 1979. She told us that the police were very polite and considerate in their handling of the case, including their questioning of her daughter and the two youngest brothers. She also said that the A/S/A was very good at keeping her informed of everything that occurred regarding the pretrial hearings and the trial itself. She revealed that DCFS became involved with the family in the summer of 1976 because her daughter had been involved in running-away incidents. She said that Caseworker Warner "did the best job he could." The mother finally suggested that we speak directly with her daughter, which we did on that same day with her mother present.

The victim also had praise for the investigating police officers. She said that Officer Crammond was quick to respond to her call and that he was very concerned with the incidents that had occurred. She mentioned that someone from the Police Department took her to the hospital for tests and for photographs of her bruises. She mentioned that when the trial date arrived, the photographs were discovered to be missing. Apparently, however, lack of the photographs as evidence did not harm the state's case. The victim said that she had "no problem" with the state's attorneys handling the case. She also mentioned that Donald Warner from DCFS had set up weekly counseling sessions for her in Grayslake,

Illinois. He even picked her up and took her to the sessions himself. She admitted that "after awhile" she cancelled her appointments.

Our final interview regarding this victim's case was of Donald Warner. Warner offered our investigators many comments about the DCFS system in general, which we will not repeat here but which will be incorporated in our consideration of DCFS in the final report, The Child Victim.

Warner told us that in this case, he did not take protective custody of the girl because she was already staying with neighbors. He said that he knew as soon as he took the call from the police that the situation demanded prosecution and therefore suggested calling the State's Attorney's Office. He set up counseling quickly for the victim, her two youngest brothers, and her mother. The mother, however, felt that there was no need for counseling for the boys, in spite of what they had seen and in spite of the youngest son's problems talking about the incident. Warner said that because DCFS has no provisions for mandatory counseling, he could not force them to attend sessions. He said that the daughter soon became disinterested in counseling, though he did not say specifically why, and he said that soon after she stopped attending, he closed her case.

A few of Warner's observations pertain directly to this report. Warner was a member of the Lake County "Child Protection Team," a group of professionals who sit down together to discuss serious cases of abuse and neglect. Other representatives on the team include doctors, nurses, and assistant state's attorneys. In regard to cooperation between DCFS and the Office of the State's Attorney, Warner said that the Child Protection Team was formed primarily because the State's Attorney's Office did not feel that very serious cases were being referred for prosecution. At the same time, however, Warner said that DCFS does not have to report to the police or the State's Attorney because "we are professional and can determine appropriate avenues." None of Warner's general comments pertained to the investigation or treatment of child molestation.

The offender was finally sentenced to serve 20-30 years for the crimes of rape and indecent liberties with a child, and six and two-thirds-20 years for the crime of aggravated incest.

G. Victim #9

The Commission developed information on several cases from Cook County. We have discussed several of these in our chapter on the offender; information on the victim is also contained therein. But we shall also present several other case studies developed more from the point of view of the victim. Again, overlap in information cannot be avoided and should, in fact, be welcomed.

While the majority of cases we have looked at, with the exception of those involving Walter Kaleta, have involved felony charges being lodged against the offenders, victim #9 was the victim of a misdemeanor charge--and not a misdemeanor charge as the result of a plea agreement. The incident in question occurred on July 2, 1979, in Marquette Park in Chicago. According both to police reports and to the parents of the victim, the girl, a 13-year-old, was fishing in the Marquette Park lagoon when she was approached by a man who sat down next to her. He told the girl that the best way to catch fish was to sit quietly. The girl agreed to do so. The man then grabbed the girl and made her sit close to him. He then kissed her and got up and walked away, saying he would like to sit with her again later. The girl began to cry and move away from the lagoon when the man grabbed her by the arm. At this point her mother saw the two and said something to the man, who again began to move away. The mother stopped a passing squad car and the police officers stopped the man and placed him in custody. The mother and victim went to the station to give statements. The man was charged with contributing to the sexual delinquency of a child. He was identified as Michael Schmitz.

The mother of the victim told us that the offender did not seem very concerned with what he had done, even when the mother went to get the police. She said he scoffed at her, saying, "I suppose you're going to say I did something terrible, right?" and "...all I did was kiss her like they do in church."

It should be noted that this case is atypical in at least two ways. First, the victim had been the victim of an attempted rape some five years earlier, and that had caused her certain emotional trauma. Second, she was the daughter of a Chicago policeman, who happened to be the second officer to respond to the call. In fact, the offender, Schmitz, was arrested by the father of the victim. It is understandable that neither the mother nor the father had any complaints about how the case was handled by the police. The parents said that their daughter sustained no injuries

and that no medical examination was necessary. The incident was not considered very serious, particularly when compared to the attempted rape, which the parents had described as very traumatic and very poorly handled by police from another jurisdiction. Although no one suggested that the parents seek counseling for their daughter, they told us that they plan to do so.

The victim's attitude toward this offense differed significantly from the attitude she had after the attempted rape. After the first incident, she felt guilt, shame, and confusion. After the second incident she felt anger and bitterness toward the offender. Of course, it is difficult to compare the two cases, considering the different variables: difference in circumstances, difference in age of the victim, difference in the crimes. But the parents felt that their daughter's attitude following this second offense was healthier. They wanted her to receive some counseling to be "on the safe side."

The parents commented that although their daughter did not have to testify in this second case, the A/S/A took a genuine interest in the case, unlike in the first incident. They said that the A/S/A in the first incident, from Oak Lawn, tried to "brush them off" or was "looking for the easy way out" in the prosecution of the offender.

With regard to the second incident, we interviewed A/S/A Wilbur Crooks in the State's Attorney's Office on N. LaSalle Street in Chicago. Crooks had been a Chicago policeman for 13 years before becoming an assistant state's attorney. He handled the prosecution of Michael Schmitz. In Misdemeanor Court, Crooks said that an A/S/A doesn't see the victim or the state's witnesses until the day the case is called in court. Until that time, contact with the victim occurs only with the police. Only if there were a question whether a case should be tried as a felony or a misdemeanor would felony review be involved; in that situation, the victim would speak with an A/S/A prior to the court date. But if the offense is a clear-cut misdemeanor, as in this case, the first A/S/A-victim contact takes place in court on the court date.

Crooks told us that there is no real difference between preparation for a misdemeanor trial and preparation for a felony trial. An obvious difference, though, is that in a felony case, the A/S/A has longer to prepare his witnesses. In a misdemeanor situation, he must prepare his witnesses within an hour of the case being called. Furthermore, in Misdemeanor Court, an A/S/A does not know in advance which cases will be called on any given day. He learns of his list of cases that morning.

Crooks could not recall all of the details of the case in question, but he based his actions concerning final disposition of the case on his knowledge that the offender was employed, had no prior record, and "was not likely to commit another offense." Judge Clarence Bryant agreed to give Schmitz a sentence of one year of court supervision.

Crooks offered some miscellaneous observations regarding cases of child molestation. He said at one point that the age of the victim "...has forced me to pitch a lot of cases." The embarrassment that accompanies these cases often inhibits the child from being a good witness. Finally, parents do not understand the judicial system. They want justice done in these cases, he said, but they do not want their children subjected to cross-examination. Crooks said that there is no way to prevent a defense attorney from asking unpleasant questions, but an A/S/A can prepare for this possibility by "thoroughly preparing the child."

Crooks said that "not all people have good rapport with kids. I can get kids to relax. I know some assistants can't do it." He said that it is crucial that both police and A/S/A's develop more patience when handling children, whether victims or witnesses. He said that it is important to be sure the victim not feel guilty or responsible for a crime.

With regard to a sentence of court supervision, Crooks said that supervision, which is a court disposition but not a finding of guilt, is a good alternative in cases in which the defendant "can straighten his act out." At the time of our interview with Crooks, he believed that a defendant given supervision should be able to expunge his arrest record three years after successfully completing supervision. As of January 1, 1980, the law was changed to allow a defendant sentenced after that date to petition for such expungement after two years and on his own initiative. Crooks said that if a defendant given court supervision is going to "screw up," the chances are good he will do it within three years anyway.

Our last interview regarding this case was with Judge Clarence Bryant of Branch 49 (previously referred to as Misdemeanor Court). Judge Bryant had found Michael Schmitz guilty of contributing to the sexual delinquency of a minor on August 23, 1979. While Judge Bryant had nothing to say specifically about the case, he did talk about supervision and related issues.

The judge told us that the only sex offense cases he hears in his courtroom are contributing to the sexual delinquency of a minor, indecent exposure, and a rape if it

has been reduced to a simple battery. On an annual basis, he said, sex offenses comprise approximately less than 3% of his total calendar call. He said that in spite of the small number of sex offense cases heard in his courtroom, it is his tendency to expedite trial of these cases. He does not like to dismiss the cases or to strike them with leave to reinstate. The judge told us that it is extremely likely that a defendant, when convicted, will receive probation or supervision in his courtroom if the conviction is for a first offense. He further stated that approximately 3% of the total number of defendants he sentences receive jail time. But he added that if one includes those who are sentenced to probation with jail time considered served while the defendant waited for trial, that percentage climbs to approximately 10-15%.

Judge Bryant said that the present condition of our jails both in Cook County and in the rest of the state is so deplorable that he avoids sending a convicted person to jail if he can help it. He added that, "I don't think it does anything for anyone." Judge Bryant argued that supervision is an "excellent" alternative to a conviction, and he also felt that the present expungement system is useful.

Judge Bryant said that child competency hearings are conducted the same way as in felony court rooms. He mentioned that he will allow a child to testify in chambers if the defense agrees, and he said that he has had occasion to question a child witness in his chambers to determine if there were aggravating circumstances to an offense, such as a long period of abuse.

Judge Bryant said that he does not recommend counseling or psychiatric treatment to victims because it is not his responsibility; rather, it is the responsibility of "some" medical or social department. He said that he did not think that a special court should handle sex offenses. Finally, he commented that, "We have one of the best court systems in the country--it's almost model."

H. Victim #10

During the period March 21-22, 1979, an eight-year-old girl was allegedly the victim of a sexual molestation/fondling. On March 23, 1979 the victim's stepfather, Albert E. Mayweathers, was arrested by the Chicago police and charged with taking indecent liberties with a child. Mayweathers was scheduled to appear in a special courtroom in Juvenile Court, Calendar 21, on April 3, 1979.

Calendar 21 of the Juvenile Court is a special courtroom in which hearings are held relating to criminal complaints resulting from crimes allegedly perpetrated by members of a victim's family. A Circuit Court General Order, signed May 23, 1978, and numbered 78-9, specifies the assignment of criminal complaints to the juvenile division. It follows:

> Since Chief Judge John S. Boyle has directed that certain criminal complaints relating to child abuse initiated by the Chicago Police Department shall be assigned to the Juvenile Division of the Circuit Court of Cook County.
>
> It is ordered that criminal complaints initiated in the several police districts and units of the Chicago Police Department against adults for abuse of children who are members of their household for violation of the following provisions of the Illinois Statutes and Municipal Code of Chicago relating to child abuse....

A list of eight different criminal charges follows the order. Though indecent liberties is not on the list, the implication is that the eight charges listed must be sent to Calendar 21 and that certain other offenses occurring in the home that may cause injury to a child will also fall under this general order.

Mayweathers was reported by his wife, but only after she had heard her daughter complain of the incident the day before. The mother told the police that she was afraid of the man's violent temper. She mentioned threats that he had made against her.

The child was taken to a nearby hospital and examined. The doctors found vaginal inflammation and irritation but no severe trauma. Their conclusion was that the girl may have been sexually molested. They were unable to furnish any physical evidence of the molestation. After Mayweathers was arrested, the victim was released to the care of her mother.

Commission investigators spoke with the police who had handled this incident. We spoke with Officer Gertha Booth and Sergeant Robert Maher. Booth and her partner, Joyce Smith, had followed up on the case. Booth recalled that the natural mother was hesitant to press charges against her husband after she made the initial call to the police. She said that the mother apparently did not want to return to court a second time (after a continuance) because of possible psychological trauma it would cause her daughter. Booth told us that she never makes any social service or

counseling recommendations to a victim or a victim's parents because it is the responsibility of the courts. She said that if a victim needs hospital care, she will provide certain information about the Crime Victims Compensation Act.

Booth complained about the general handling of these types of cases by the judiciary. She said that unless there is physical evidence introduced in court, a judge will almost always grant probation or court supervision, even if the child makes a good witness.

Next, Commission staff spoke with Assistant State's Attorney Edward Rothchild regarding his handling of this case. He told us that, after nine court continuances, Mayweathers pled guilty to a reduced charge of contributing to the sexual delinquency of a child on August 21, 1979. He was sentenced by Judge Jose R. Vazquez to one year supervision with the Circuit Court Social Services Department. Rothchild told us that during the five months of court proceedings, the defendant vehemently denied ever touching his step daughter. Rothchild told us that he thought the case was somewhat atypical of the cases he is used to handling because he was not sure that the offender was guilty. He added that the victim refused to provide any testimony at all during the proceedings beyond her initial brief police statement. He also mentioned the lack of any physical evidence in the case from the hospital examination. In general, Rothchild said that the state had very little it could use even to substantiate the charges against Mayweathers.

At one point, the mother even considered dropping the charges against Mayweathers. Rothchild felt that when the mother realized that she would have no financial support with her husband in jail, she wanted the charges dropped. However, after his arrest, Mayweathers moved out of the house and at this point the mother again vigorously pursued prosecution against him.

When a Commission investigator queried Rothchild why the state pursued such a weak case, he replied that Mayweathers wanted to return home but felt that there would be problems stemming from the arrest alone, regardless what the disposition of the case was. Mayweathers wanted some sort of counseling to ensure a successful re-entry to the home. It was explained to him that by pleading guilty to a reduced charge he would be able to take part in a program providing counseling and care to both him and his family. It was also explained to him that if he agreed to one year's court supervision, upon successful completion of the term he could have his entire arrest record relating to the incident expunged. Although reluctant to do so, Mayweathers agreed to the plea.

I. Victim #11, Victim #12, and Victim #13

The sexual molestation of these three children, two of them female and one male and aged 4, 6, and 6, took place on November 18, 1978, in Chicago. Police reports indicate that two men, identified as Daryl Clayton and Willie J. Taper, forced all three children to perform acts of oral copulation upon the two of them. Police officers were summoned to the scene of the crime by the mother of one of the victims. Part of the initial police report states that, "The victims in this case are at a very young and tender age and it is very doubtful that they realize the viciousness of this offense." Assistant State's Attorney David Sabatini was summoned to the hospital where the victims were being examined and the following notation concerning his questioning is excerpted from the police report:

> ASA Sabatini of Felony Review responded to...Hospital and after interviewing the three victims who were 4, 6, and 6 years of age, felt that the victims would not be competent enough to testify in court in regards to a felony charge. ASA Sabatini at this time rejected the felony charge.

Still, the report goes on to note that it was "apparent" that all three victims had experienced some sort of sexual abuse. The defendants were charged with three counts of contributing to the sexual delinquency of a child.

Commission investigators spoke with several different individuals involved in this case. Among them was an investigator from Area 3 Homicide/Sex, Chicago Police Department. He had been the investigating officer assigned to these three related cases. He told us that he interviewed all three victims at 1:00 a.m. on November 18, 1978. He told us that they were poor witnesses. One of them kept falling asleep during the interview, he said. Furthermore, the children didn't appear to know "right from wrong," they didn't understand what had happened, they had no comprehension of what the two men had done, all of the children contradicted themselves repeatedly, and questioning by police and the A/S/A was often met with blank stares from the victims, according to him. He told us that all three children knew that something had happened but none of them could express it. He complained that they would respond to his questions with "childish remarks."

He also commented that the parents repeatedly interferred with the questioning process and that they tried to answer questions for the children. Even when they did answer

for the victims, the victims then would contradict their own parents. When a Commission investigator told him that Judge Clarence Bryant was so impressed with the victims' testimony that he found both offenders guilty in misdemeanor court, he said, "Well, they weren't good that night." When he learned that Judge Bryant had sentenced each man to only one year probation, he commented that he must not have been quite as convinced as he said he was.

A Commission investigator read the investigator the statement from the police report that we have quoted above, which he had written. We asked him if there were a difference between being competent to testify with regard to a felony as opposed to a misdemeanor. He answered that with a felony charge a competency hearing is required. Our investigator responded that Judge Bryant had told us that there is no difference between a competency hearing in a misdemeanor court as opposed to a felony court. The investigator replied that in felony proceedings there is more pressure put on the witnesses and that it is more difficult to convict in felony cases than in misdemeanors.

He was very critical of Felony Review in general, commenting that they appear "to be trying cases before they go to court." He suggested returning to the old grand jury system, to allow the grand jury to hear the facts and determine whether there is reasonable belief that the offense occurred or not. He suggested that it should be up to a judge to determine whether a defendant should be charged with a felony or misdemeanor.

We also spoke with Chicago Police Department Officer Victoria Cerinich, who had responded to the call about the incident together with her partner. We asked her about the competency of the victims in this case. She mentioned that they were vague in their presentation of the incident but that the questioning was also very long and drawn-out. She said that one had to expect their shyness when in the presence of so many adult strangers and that they were inhibited by the whole process. At one time the children even pretended the whole incident was a joke, apparently to break the tension of the questioning. Cerinich also mentioned that the children did not lie or contradict themselves in relating the incident. She said that initially the officers got the names of the offenders mixed up and consequently the officers were confused at the responses the children gave them, a confusion that seems to have been transferred to the children. She said that if there were a problem of competency for these children, it would have been because they apparently had no concept of time. They did not know if

the offense had occurred the same day or as many as three days earlier, or at least did not respond in such a way as to indicate that they knew the difference.

Cerinich said that Judge Bryant appreciated the police effort that went into the case and was very tolerant of problems associated with the case. She said that despite their ages they were able to communicate effectively in court. When we asked Cerinich if the children's testimony would have been effective toward a conviction in felony court, she offered the opinion that it would have been good enough if there had been some sort of adult corroboration. Cerinich made a point of telling our investigators that when she talked with the victims, they did not tell conflicting stories, contradict themselves, or fabricate any part of the incident.

We asked Cerinich if the Felony Review A/S/A could have possibly interviewed the children sometime later, instead of fighting to keep them awake at one o'clock in the morning. She said that for that to happen, the offenders would have had to have been held by the police without charging. She said they either can't or won't do that without approval from the State's Attorney. It becomes a circular problem because the State's Attorney usually will not approve holding someone without charging unless he can speak with the victims immediately.

We also spoke with A/S/A David Sabatini. He told us that he tried to determine whether a judge would deem the children to be competent as witnesses by speaking to their parents and relatives. He said that "some" of the parents were not convinced that the children were telling the truth to begin with. He said he refused to approve the felony charge of indecent liberties because the children made poor witnesses. He said the first child would say one thing happened, the second would agree but then change her mind, and the third child would make a flat denial of the entire incident.

Sabatini conceded that the hour of the interview, and the place of the interview, may have caused some untoward problems. We asked if the children should have been requestioned the following day. He said that every case is different and that it depends on the children. He said that some children may be competent but may hold back from fear or guilt; but when children cannot express themselves, follow-up interviews will do no good.

We asked Sabatini to comment on the Homicide/Sex investigator's words that "ASA Sabatini...felt that the victims would not be competent to testify in regards to a felony charge." Sabatini said that those were not his words and he surmised that the investigator wrote the case up that way so that the statement would be vague enough to obscure the fact that the children were such poor witnesses, thus leaving the door open to a misdemeanor charge without "tipping off" the defense that the case was weak. Sabatini said that he did not consult with the investigator on the use of this tactic but that he had seen it used before and could recognize it easily.

Commission investigators spoke with A/S/A Jeffrey Pattee regarding this case. The charges against Clayton had been rejected by A/S/A Sabatini, but the further charges against Taper were reviewed by A/S/A Pattee. Pattee rejected felony charges against Taper. He told us that the foremost reason he rejected felony charges was that the victims could not agree on what had happened during the incident in question. The second reason was that he felt that a judge wouldn't find them to be competent witnesses. He said the children were neither "outstanding nor intelligent." He told us that he thought the state stood a 0-10% chance of success with a felony charge.

Pattee also mentioned two items of more general interest to us for purposes of this report. The first was his advice that the concept of competency is hundreds of years old and any attempted changes in the policy would meet with stiff opposition from the "legal community."

The second point was that while he was aware of many groups that assist adult rape victims, he was not aware of any that provided counseling or therapy for a child victim or for a victim's parents. He said that it is important to have someone available to explain to the parents how to deal with their children after such an experience as a molestation incident, and that it would be best to have someone on call 24 hours a day to provide therapy, or at least advice on where to get it.

Finally, Commission investigators interviewed two of the parents of two of the three victims. One of the mothers told us that the policewoman who responded to the call did a good job but that her partner, who was male, was insensitive and apathetic about the whole affair. She said that the policeman seemed to be blaming her for not having called sooner and for not having any adult witnesses to the incident. The woman did mention that after the first day the

policeman changed his attitude, possibly, she suspected, because of the influence his partner may have had upon him. The woman complained that after the offenders were arrested, the police left in a hurry and provided no way for them to get to the station to give their statements, even though there were six officers present by that time. She said that once at the station the stories the children told all were consistent, but she admitted that at the hospital one of the children changed her story. The woman said she did so after speaking with her older sister about the incident, who advised her to forget the whole thing ever happened. The sister, it turned out, had been sexually abused herself while quite young.

One of the women interviewed said that one of the state's attorneys suggested that because of the age of the victims it might be best to forget the whole thing--apparently including prosecution as a misdemeanor. She said that if she had it all to do over again, she never would have called the police or initiated a complaint. She said that when the offenders received one year probation each, "it was all for nothing." She believed that the offenders should have received at least some jail time for the offense. She was also furious that the offenders were released a day later on bond and allowed to return to the same apartment building where the victims resided.

One of the women volunteered the suggestion that child molestation cases be heard in a special courtroom for that purpose. One of the women also mentioned that DCFS representatives contacted her and the other parents regarding the molestation incident. She said that the caseworker did not interview her son or offer or suggest any counseling or therapy for him, however.

Judge Bryant heard the case. He told us: "I didn't think jail would do them any good, and I don't think they had any prior record."

J. Victim #14

This case was very peculiar. It involved an incident of mother-daughter incest, which is extremely rare, according to the literature. On June 20, 1979, a nine-year-old Chicago girl was subjected to fondling and having an artificial penis inserted into her vagina by her mother. The incident was observed by the victim's brother, age 8, and reported to the police after the victim ran from the home. The offender was arrested by officers of the Chicago Police Department the same day.

The police interviewed the offender after informing her of her constitutional rights, which she waived. In summary, she told the police that she had forced her daughter to participate in the incident because she wanted "to save her daughter and she did not want her to be de-flowered by someone on the street." Because of the relationship between offender and victim, the case was sent to Calendar 21 at Juvenile Court.

We spoke initially with the neighbor who found the young girl huddled on her doorstep clothed only in a black plastic garbage bag. The girl tried to explain to this woman what had happened to her but was hysterical. The woman called the police immediately. She said that they responded promptly and questioned the girl at length. She said that she thought that the police were appropriate in their line of questioning and expressed concern over her condition. One of the officers said that he would call a female officer to "check her," but this officer, if indeed called, did not come to the neighbor's home while the young girl was there. The police officers then took the girl back to her home to question her mother. There was no mention or suggestion that the girl should see a doctor or be taken to a hospital.

We then spoke with A/S/A Steven Luchsinger, who was contacted by the police to make a determination in the molestation arrest. By this time the police had arrested the mother and charged her with indecent liberties. Luchsinger is a Felony Review assistant state's attorney. He had little information to offer except that he remembered that the mother was very mentally disturbed and had simply decided to "deflower" her own daughter herself. Luchsinger had recommended that the felony charge stand.

We also spoke again with A/S/A Edward Rothchild of Calendar 21 in Juvenile Court. He described the mother as a "real wacko" who definitely needed treatment. As a result of her condition and her plea of guilty, Judge Vazquez sentenced her to a one-year conditional discharge requiring her to report to the Social Services Department of the Circuit Court. In cooperation with the Illinois Department of Mental Health (DMH), she was assigned as an inpatient at Elgin State Hospital. The terms of her discharge were that, should she violate any of the conditions to which she had agreed, she would have to spend 3-5 years in a state prison.

Rothchild told us that unless there is a family relationship in a molestation case, a defendant found guilty will normally be given either jail time or probation. But

if there is a family relationship, the court tends to opt for either court supervision or a conditional discharge, depending on the past record of the guilty party. The objective is to "get things back together" in the home rather than separate family members.

K. Victim #15

Our final victim case study also comes from records furnished by the Chicago Police Department. Briefly, a nine-year-old girl was sexually molested by her own stepbrother on June 29, 1979. The offender was arrested and charged with taking indecent liberties with a child. On July 30, 1979, he was convicted of the same charge and sentenced to two years felony probation by Judge Maurice D. Pompey. Police reports indicate that the victim had been fondled by the stepbrother and that the offense that occurred on the morning of June 29 was the latest in a series of incidents stretching back for several weeks. An assistant state's attorney from Felony Review responded to the Police Department and interviewed all parties. After being advised of his rights, the alleged offender said that he had fondled the victim but that he had not placed his finger in her vagina, as the victim had stated to the police. Upon hearing all of the statements, the assistant state's attorney advised that the suspect be charged with indecent liberties. Later, according to police reports, the suspect admitted to the police that he had done what the victim had said and that he had performed deviate sexual acts upon the victim.

Commission investigators interviewed Chicago Police Department Homicide/Sex Investigator John Herman regarding this case. He confirmed what the police reports reflect, that the offender initially denied everything and then broke down and gradually told the entire story. Herman said that the suspect, Richard Ray, had told him that he had known he had a mental health problem and had been going to a neighborhood mental health center to try to help himself even before the incident occurred. He said that he wanted to obtain further psychiatric help. The parents were adamant that he be prosecuted and pushed for prosecution even before the police showed their interest in the case. Herman told us that he did not make the arrest or attend the court hearings. The offender had been arrested immediately after the incident by beat officers. He said that it is the role of the police investigator to conduct any follow-up investigation that is necessary and to act as a liaison with the State's Attorney's Office. He mentioned that the A/S/As do not like to deal with the beat officers until speaking

with and working with the investigator, supposedly because investigators have more experience. Herman said that there were no particular problems in presenting the case to the State's Attorney's Office. He said the case was "open and shut."

In his general comments, Herman reiterated what many others have told us about prosecution of child molestation cases: that the biggest problem involves qualifying the witnesses and obtaining corroborating evidence; that parents have to be willing to cooperate with the police and assist in the interviewing process; and that he has no special training in sex cases but that he "picked it up" on his own through experience.

We attempted to speak with the victim's mother concerning how this case was handled. The mother told us that it would be too painful to discuss any element of the case and that she was trying to disassociate herself from it entirely. She did say that her son, who abused the victim, is no longer considered a member of the family. She said she had not wanted to have her son jailed but that she wanted to obtain the proper guidance for him. She said that at the time of our October 1979, interview, her son still lived in the Chicago area, had gotten a new job, was receiving psychiatric care, and was forced by a court order to stay away from both home and sister. The mother had high praise for the State's Attorney's Office and said that they had done an excellent job.

Commission investigators interviewed the prosecutor in this case. He had little to say about this particular case but offered some comments about the prosecution of these crimes in general. He said that one problem is trying to qualify a witness. He had worked for some time in Judge Pompey's courtroom and, with regard to competency hearings in general in his courtroom, described them as "extremely rigid" and said that Judge Pompey "doesn't bend too much." He said that he tries to prepare a child to testify by using patience and going over a story again and again. He said he tries to use a vocabulary easily understood by the victim. He said that in Judge Pompey's courtroom it is not necessary for the prosecutor or the witness to use technical language. The witness need not even be explicit in what he or she describes. What is important, according to the A/S/A, is that the witness is clear about what he or she is talking about.

He said that the State's Attorney's Office does not have a policy for advising or suggesting that a victim receive therapy. If there were such a policy, furthermore, he would

not agree with it. He told us that the job of his office is to prosecute offenders, not to interject counseling into the process. In elaboration, he said that therapy is defnintely not for everyone. He said that a teenage girl might need therapy following a molestation incident but that a young child probably would be better off forgetting the incident. He said that therapy in such a case could upset a victim and cause him or her to assume feelings of guilt.

We mentioned that we had been told that misdemeanor courts do not put the same amount of pressure on a victim that felony courts do. The A/S/A said that in felony court a judge will look more critically at a case simply because the seriousness of the charge can be accompanied by a more severe sentence.

We spoke with Judge Pompey, primarily about the larger issues involved in molestation cases. He told us that he did not have a transcript of the trial concerning the incident at hand and that he would not comment on it unless he could reveiw such a transcript beforehand.

Judge Pompey presides over preliminary hearings for homicide and felony sex offenses except incest cases (and related charges), which as we have seen, are heard in Calendar 21, Juvenile Court. Judge Pompey would have occasion to pass sentence in a case if a defendant pleads guilty at a preliminary hearing. Further, he would only accept such a plea after holding a pre hearing conference with the defense attorney, the A/S/A assigned to the case, and the parents of a victim of a child molestation incident. Judge Pompey told us that he likes to allow parents to express their opinions and desires in a case, which, of course, he is in no way bound to consider when agreeing to a sentencing bargain. This practice is more of a courtesy on the judge's part than anything else.

Judge Pompey told us that he personally demands the following criteria be met before he considers accepting a guilty plea:

1) There must be agreement between the State's Attorney and the defense.

2) The defendant must arrange to be evaluated at the psychiatric institute and undergo treatment if necessary before Judge Pompey will accept a guilty plea and pass sentence.

3) The defendant must waive the patient-psychiatrist privilege in cooperation with the court.

The judge told us that he rejects as many plea agreements as he accepts because one or more of the parties involved will not meet his terms. He said that often he rejects the plea agreement because the agreed-to sentence is, to him, "too light." Judge Pompey told us: "I think I've only given probation twice on child molestation cases in five years. The rest have been sent to the penitentiary." With regard to sex offenses, he told us that he receives a maximum of four pleas each year.

Judge Pompey stressed that one of the most misunderstood rules of evidence concerns the competency of witnesses. He said that on one occasion someone from CBS news called him and asked how he could find a complaining witness competent to testify and yet find a defendant not guilty. He stressed that competency itself and truthfulness are not the same thing.

Judge Pompey's recommendation to us was to do away with the competency hearing as it now is structured. He advocates substituting allowing the witness to testify and to let the credibility of his testimony stand on its own merits. He said that the burden of deciding whether a child is competent should not be on a judge's shoulders to begin with and that many judges allow themselves to be persuaded to find a child witness competent to testify anyway. He said that every competency hearing is subjective and thus might not truly reflect on the competency of a witness. He said that a young child may not be able to understand the abstract nature of the "truth," but the same child can adequately explain and describe the incident that occurred in detail. He said, for instance, that children often define truth as "not telling a lie," which for prosecutorial purposes is unacceptable.

Judge Pompey employs a 31-page report that he prepared as a guide to determine the competence of a child witness in a sex offense. The report includes a good deal of case law on which he bases his decisions and offers criteria that must be met in order to make a competency determination. The child must be able to: receive correct impressions; recollect those impressions; understand questions and narrate answers; and appreciate the moral duty to tell the truth and understand the truth as well as to comprehend the meaning of taking an oath.

Judge Pompey allows a child to testify in chambers if the defense has no objection. He said that in these circumstances, to which the defense rarely objects, only the testimony of the child would be offered and the child could have his parents present with him.

Regarding confidentiality, Judge Pompey said that it is not threatened because after he has sentenced an offender, he is not expected to provide detailed reports of his therapy and/or psychiatric counseling. He said that he only wants to know if an offender is attending his therapy sessions. If the offender is so dangerous that a detailed narrative of his progress is necessary throughout the course of probation, Judge Pompey will not impose a probationary sentence.

Judge Pompey stated that the biggest problem he sees in a child molestation proceeding is the time lag between the occurrence of an incident and the child's outcry to his parents or to the police. The longer the delay, the more difficult the case will be to prosecute, for reasons which are obvious from the cases which we have presented here.

Finally, Judge Pompey said that he thought the State's Attorney's Office was doing a good job with these types of cases and that he has detected no automatic propensity on the part of assistant state's attorneys to make plea agreements with the defense in molestation cases.

The last person with whom we spoke regarding this case and related concerns was Chief Probation Officer Mel Williams. Williams told us that the offender in this case was cooperating well in his therapy and that he had been reporting promptly to his probation officer.

Williams told our investigators that in the past few years judges have generally recommended that about 90% of all sex offenders receive some sort of psychiatric treatment as a condition of probation. The offender is referred to the Psychiatric Institute, where doctors evaluate him and refer him to a clinic unless he already has a private psychiatrist.

Regarding the treatment itself, the offender is only required to inform his probation officer that he is or is not reporting to his psychiatrist or therapist. The Probation Department is entitled to verification of such verbal reports but it is not entitled to further information. The only requirements that sex offenders must conform to are the normal rules for probation, that they refrain from

committing criminal acts, that they refrain from use of firearms and other weapons, and that they report to the probation officer assigned to them.

The reality of this situation is that the offender is required to visit his psychiatrist or therapist but that he need not cooperate with therapy or respond to it. The court will never know the results of this therapy, whether the probationer responds to it or fails miserably to respond. It is the psychiatrist, rather than the judge, who determines the number of sessions and their length. The only clue the court ever receives that an offender may not be cooperating with treatment occurs when the therapist requests that another therapist be assigned a case, and Williams stressed that this occurs rarely. Williams did say that if psychiatrists would advise the probation officers of the progress of an offender, the Probation Department would not hesitate to inform the court of its findings.

The only function of the Psychiatric Institute in a molestation case is to determine what type of treatment an offender may require. It is not the function of staff at the Institute to determine if a person is treatable.

Finally, Williams said that there is no clear-cut policy for how to conduct a session or interview with a probationer, and it was his wish that there never be any clear-cut policy. He said that probation officers are professionals who must be allowed to use their own discretion to determine how to handle any given case. He said that it is administrative policy that a probation officer not receive criminal history information from the police so that it will not adversely affect the relationship the probation officer must establish with the probationer.

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An analysis of child molestation cases from the point of view of the victim necessarily involves information about the offender and the entire process in which the victim is involved. Even had we wanted to, we would have been unable to furnish qualitative information on the experience or aftereffects of an incident on a victim without conducting related interviews. Hopefully, through an examination of case details, the reactions of victims and parents, the opinions of state's attorneys and judges, and the functions of others involved in the entire system, the reader will be able to better understand the milieu in which child molestation cases are handled.

The effects of sexual molestation of children can be devastating. They need not be, depending on many variables, not the least of which is how the victims are treated within the context of the system that investigates and may prosecute an offender. A report from the National Center on Child Abuse and Neglect, published in 1978, notes:

> Most researchers agree that, other things being equal, the psychological trauma to the child is greater when the perpetrator of the abuse is close to the child than when he is a stranger. The closer the relationship between child and offender, moreover, the more likely is the sexual abuse to be repeated.

Furthermore, an incestuous relationship between a child and a family member "held in high esteem," according to the report, can be very serious and cause serious complications. The public disclosure of an incestuous situation may awaken feelings of guilt associated with denial of the act and depression over it.

The report notes that short-term effects of child sexual abuse include regression to an early childhood stage, difficulty eating or sleeping, general depression, and sleepwalking. Long-term effects have not been researched conclusively, but undoubtedly many effects linger for the rest of the abused person's life. Possible effects include self-destructive behavior, drug or alcohol abuse, self-mutilation, and frigidity. Finally, incestuous acts tend to perpetuate themselves in a family, and child molestation committed by a stranger can still affect the victim's psychology, even to the point, as we have demonstrated, that a parent will allow his or her child to be exposed to a potentially dangerous situation.

Leroy G. Schultz, in his article "The Child Sex Victim: Social, Psychological, and Legal Perspectives" (Child Welfare, Volume 52, March, 1973), notes that, in and of themselves, non-violent sexual assaults do not usually have a serious effect on a child's personality developement. However, he makes the point that society and the child's parents can and usually do make the experience traumatic for a child, often with long-lasting results. Society supposedly reacts out of "the need to use the victim to prosecute the offender" and parents react out of the need "to prove to themselves, family, neighborhood and society that the victim was free of voluntary participation and they were not failures as parents."

Though our next chapter shall concentrate on the cogs within the system, one must bear in mind that the welfare of the individual child should be the most important matter about which that system is concerned. If the system breaks down, the child will be the primary one to suffer.

Chapter 4

THE CRIMINAL JUSTICE SYSTEM: THE DISCRETIONARY PROCESS

A. Introduction

More often than not, at least in the recent past, child abuse cases have not resulted in criminal prosecution. This is partly because many incidents of abuse go unreported. The trend is to employ every available means other than prosecution to protect the child victim and to maintain and rehabilitate the family unit. It is felt by many that criminal prosecution only exacerbates the problem and prevents any possibility of improving the family situation. This assumes that keeping the family together is the ultimate goal, if possible. However, there are cases in which the welfare of the child might possibly be served best by the prosecution of the alleged perpetrator, as in cases in which a child has been repeatedly seriously injured, where ongoing patterns of incest within a family exist, or where sexual abuse by a paramour (a parent's lover who lives in the house) exists. The prosecution need not even result in conviction and incarceration to have a desired effect on the ultimate welfare of the child. Involvement in the criminal process might encourage the alleged perpetrator to face up to his problem and urdergo counseling, when previously nothing forced him to take responsibility for his conduct and its effect on his family.

B. The Arrest and Charge

The preceding chapters illustrate the variety of ways that a charge of a sexual offense against a child will be handled by the police, the Department of Children and Family Services, the State's Attorney, the Court, and other parties--counselors, therapists, doctors, etc., directly or indirectly involved in the criminal justice system. For the reader to better understand the interplay among the many parties and the many routes available to resolve an allegation, the procedures and practices involved in initiating, charging, prosecuting, and sentencing a child sex offender will be delineated here. The disposition of the matter will depend, as we will see, on the various parties that become involved, the decisions they make, and the discretion they exercise during the course of the proceeding.

The sex offense against the child will either be committed by a person related to the child--the parent, stepparent, brother, or sister--or it will be committed by a stranger or by a party known to the child but not related.

If the incident is reported, and a large number of cases, particularly incest cases, go unreported, it will be reported to the police, to the Department of Children and Family Services (DCFS), or to any number of private or public agencies coming in contact with the child. The response to the report will not only depend on the agency receiving the call, but also on the age of the child involved. The charge and ultimate disposition can very easily turn on the age of the child and whether or not he will be allowed to testify during the criminal process.

If the report is made to DCFS and the offense was committed by a party who is not a caretaker--not a parent, paramour of the parent, family member, member of the household or babysitter--DCFS is not authorized to get involved. DCFS only gets involved when parties responsible for the welfare of the child are accused of sexually abusing the child. They do not get involved in "stranger molestation cases." Such cases are handled by the police.

If a caretaker is involved and DCFS has jurisdiction of the case, they can proceed with the case in a variety of ways. If the incident is a first offense and did not result in serious injury or was not a particularly shocking crime, it may go unreported to the police. Instead, DCFS may work with the family through counseling or other treatment programs or may refer the case to any number of social service agencies on contract with the Department. If the offense is serious or shocking or is the second offense by the caretaker, DCFS should, as its policy requires, refer it to the police for prosecution.

When a report of a sex offense against a child comes in to the Police Department, either through DCFS or a private citizen's complaint, the police will investigate to the extent of determining whether a complaint is founded. If founded, an investigation may take place depending on manpower constraints and other variables, such as investigatory information. An arrest will take place either through an arrest warrant issued by a magistrate upon a showing of probable cause or by an "on-the-spot" arrest when an officer has reasonable grounds to believe that an individual is committing or has committed an offense.

Because "probable cause" is generally a tougher standard to meet than "reasonable grounds," and because the issuance of a warrant takes time compared to an on-the-spot arrest, most arrests are made without warrants. An individual police officer is accorded much discretion at this initial arrest stage. The decision to arrest without a warrant is, in most

cases, made solely by the officer on duty. If this officer later decides there are no grounds for a criminal complaint against the arrestee, he can release him without requiring him to appear before a judge.

When a police officer decides to arrest by warrant, it is the judge who must decide whether the arrest should be made. The complaint will come either from a private citizen (usually a victim or eyewitness who has reported a crime to the police) or from the police officer's own information. The judge, after examining the complainant and/or any witness, will issue a warrant if it appears, from the evidence presented, that a crime has been committed and the party charged has committed the crime. The warrant of arrest is required to be in writing and must include: 1) the name or description of the person to be arrested; 2) the nature of the offense; 3) the date when issued and the county or municipality where issued; 4) the signature of the judge; 5) an order to arrest and to bring before the judge; and 6) the amount of bail.

After an arrest, the charging process begins. Initially, the charges are determined by the police officer or by the police officer with the aid and advice of a state's attorney. If the offense is committed in Cook County and police desire to charge the party with a felony, a special unit of the Cook County State's Attorney's Office, the Felony Review Unit, must also be consulted. The Felony Review Unit acts as a check on the police officer's charging discretion. A Felony Review A/S/A will examine the facts of the case and determine whether the evidence supports the intended charge. Felony Review can either accept the police officer's determination or reject totally the felony charge, leaving the officer with the option of charging the party with a misdemeanor, attempting to gather more evidence, dropping the case completely, or appealing the felony review decision to the Deputy Superintendent. The Deputy Superintendent of Police may overrule the Felony Review Assistant on anything but a homicide. If the crime is a misdemeanor, the police, alone, are involved in the initial charging process.

At this time, it is interesting to note the range of charges that can be brought against a party who has committed a sexual offense against a child. There are at least 9 different sex crimes that could be charged, from rape, a Class X felony, to public indecency, a Class A misdemeanor. There are also many different offenses against children that could be charged, from endangering the life or health of a child, a Class 4 felony, to contributing to the delinquency of a child, a Class A misdemeanor.

The chart below illustrates the many charges that can be brought against an offender, in varying combinations. The charge will very often affect the outcome of the case. It can affect a plea bargain agreement that can be proposed by the State's Attorney later in the criminal process, and may also determine the division of the Circuit Court that will hear the case and dispose of it.

C. The State's Attorney's Role

Once the police arrest and charge the offender, the State's Attorney's Office takes control of the case. The decision to prosecute a case rests ultimately on the State's Attorney. Once involved, the assistant state's attorney will review the case file and the police reports. His review will make him familiar with the case and help him determine whether there is sufficient evidence to sustain a conviction. If a felony, he will review the work file of the Felony Review Unit. He will evaluate the offense and its effect on the community. He will also review the physical evidence to ensure that it is properly inventoried and preserved for trial.

The assistant will interview the victim and all available witnesses. These interviews will be a determining factor in the future of the case. The State's Attorney will be alert to certain factors, such as the reluctance of the victim to come to court or testify, support by the parents and other family members, the reluctance of witnesses to tell the whole story as opposed to just the part most favorable to the case, and the relationship that exists between the victim and the defendant. If the interview of the victim and witnesses is not satisfactory, charges may be dropped or reduced in exchange for a guilty plea by the defendant.

Because the assistant state's attorney exercises such complete discretion, he can decide to prosecute on the initial arrest charges brought by the police, add to or subtract from the original charges, or drop the case completely. If the decision is made to continue with prosecution, the State's Attorney will either take his case to a grand jury or to a judge at a preliminary hearing. Both the grand jury and the preliminary hearing exist to determine if probable cause exists to believe that the defendant has committed the offense charged. The decision to have the case heard by the grand jury or preliminary hearing judge rests with the prosecutor, who weighs the subtle differences between each proceeding.

RANGE OF POSSIBLE CHARGES REGARDING SEXUAL CRIMES AGAINST CHILDREN

FELONIES

MISDEMEANORS

SEX OFFENSES

Ill. Rev. Stats., Ch. 38, § 11-1
Rape-Class X

Ill. Rev. Stats., Ch. 38, § 11-3
Deviate Sexual Assault-Class X

Ill. Rev. Stats., Ch. 38, § 11-4
Indecent Liberties with a
Child-Class 1

Ill. Rev. Stats., Ch. 38, § 11-10
Aggravated Incest-Class 2

Ill. Rev. Stats., Ch. 38, § 11-11
Incest-Class 3

Ill. Rev. Stats., Ch. 38, § 11-20a
Child Pornography-Class 1,
Class 4

Ill. Rev. Stats., Ch. 38, § 11-5
Contributing to the Sexual
Delinquency of a Child-Class A

Ill. Rev. Stats., Ch. 38, § 11-6
Indecent Solicitation of a
Child-Class A

Ill. Rev. Stats., Ch. 38, § 11-9
Public Indecency-Class A

KIDNAPING AND RELATED OFFENSES

Ill. Rev. Stats., Ch. 38, § 10-1
Kidnaping-Class 2

Ill. Rev. Stats., Ch. 38, § 10-2
Aggravated kidnaping-Class X,
Class 1

Ill. Rev. Stats., Ch. 38, § 10-3
Unlawful restraint-Class 4

BODILY HARM

Ill. Rev. Stats., Ch. 38, § 12-4
Aggravated battery-Class 3

Ill. Rev. Stats., Ch. 38, § 12-1
Assault-Class C

Ill. Rev. Stats., Ch. 38, § 12-2
Aggravated assault-Class A

Ill. Rev. Stats., Ch. 38, § 12-3
Battery-Class A

FELONIES	MISDEMEANORS

DISORDERLY CONDUCT

Ill. Rev. Stats., Ch. 38, § 26-1(a)(1)
Disorderly conduct-Class C

OFFENSES INVOLVING CHILDREN

Ill. Rev. Stats., Ch. 23, § 2368
Cruelty to children and others-Class 4

Ill. Rev. Stats., Ch. 23, § 2351
Unlawful employment-Class A (First offense); Class 4 felony (Second or subsequent offense)

Ill. Rev. Stats., Ch. 23, § 2352
Unlawful to exhibit-Class A (First offense); Class 4 felony (Second or subsequent offense)

Ill. Rev. Stats., Ch. 23, § 2354
Endangering life or health-Class A (First offense); Class 4 felony (Second or subsequent offense)

Ill. Rev. Stats., Ch. 23, § 2361
Contributing to dependency or neglect of child-Class A

Ill. Rev. Stats., Ch. 23, § 2361a
Contributing to delinquency of child-Class A

This range of offenses is not exhaustive. Attempted offenses (such as attempted rape) may also be sex offenses against children. Municipal codes and ordinances may also, in reality, represent sex offenses against children.

1. Preliminary Hearing

The preliminary hearing is held either in lieu of a grand jury proceeding or together with it. It is held before a judge with the State's Attorney, defense attorney, defendant, and material witnesses present. It is an informal proceeding, wherein the state will present its witnesses who, in turn, can be cross-examined by defense counsel. It is not a trial; instead, it merely establishes that there is reason to believe--probable cause--that this defendant committed the crime. If probable cause is found, the judge will hold the defendant to answer to the court with appropriate jurisdiction. Thereafter, the defendant will stand trial for charges either on an information signed by the State's Attorney or by an indictment returned by a grand jury acting either before or after the preliminary hearing has been held.

The preliminary hearing is another opportunity for the prosecutor to gain insight into the quality of his case when witnesses and their testimony are exposed to a court proceeding. While the purpose of the preliminary hearing is to establish probable cause, which, realistically speaking, is not difficult, it is also a good time to determine how viable the state's case may be. If the case is weak and probably will not be won at trial, at the conclusion of the preliminary hearing the State's Attorney can reduce the charges (particularly in a felony case from a felony to a misdemeanor), or agree with the defense to a trial on a plea of guilty on an information--a plea bargain. Conversely, if the case appears stronger than had been originally thought, the State's Attorney may upgrade the charges.

2. The Grand Jury

Should the judge find no probable cause at the preliminary hearing and dismiss the charges, the State's Attorney can always re-present his case to the grand jury, if he feels the facts of the case so warrant. The grand jury is another means of establishing probable cause that the defendant committed the offense. Prior to 1975, the great majority of felony matters were handled by the grand jury indictment process. The Illinois Constitution provided that no person would be held to answer for a criminal offense punishable by death or by imprisonment unless on indictment by a grand jury. In 1975, the state legislature, under the authority of the Constitution, limited the requirement of a grand jury indictment so that prosecutions of felonies could be begun by information (the result of the preliminary hearing) as well as by indictment (the return of a finding of probable cause by the grand jury).

The grand jury is composed of a jury foreman and twenty-two other jurors. They hear the evidence presented by the prosecutor and determine, independently, whether or not probable cause is present. In theory, the grand jury is to act independently of the State's Attorney, but it can be an important tool for the prosecutor. Grand juries place enormous trust in the prosecutor's guidance and may return a finding of probable cause which might not have been returned at a preliminary hearing. The grand jury does not have to be informed of the previous "no probable cause finding" and the only requirement of the state is that the return of the indictment by the grand jury be prompt. The State's Attorney, thus, has another means of continuing his case, even after an unfavorable result at the preliminary hearing.

When presenting his case to the grand jury, the prosecutor is not bound by as stringent rules of evidence as exist at trial. There is no cross-examination, as in the preliminary hearing, and leading questions can be used to guide witnesses. The grand jury process is a good vehicle for initiating witnesses to the court process of testifying. It also will "lock in" the testimony of a witness, who might change his or her story at trial, through perjury sanctions. If the prosecutor should desire to "test" the competency or credibility of a child witness so that he is satisfied that the child can withstand the rigors of trial, the grand jury is one opportunity to do so. A child, competent or not, can testify at a grand jury proceeding. But if the child is the only witness to testify in a proceeding and is shown to be incompetent, the indictment is subject to attack. If the grand jury should find that probable cause exists that the defendant has committed the crime charged, it returns a "true bill" (an indictment). If the case is stronger than originally anticipated, the grand jury can return an indictment to upgrade the original charges. If the case appears weak, the prosecutor can determine whether a plea bargain is appropriate or whether the case should be dropped completely. The prosecutor also has another option in a case in which the party is charged or has been charged with a sex offense--proceeding against a defendant under the Sexually Dangerous Persons Act.

D. Sexually Dangerous Persons Act (Ill. Rev. Stat. ch. 38, §105-1.01 et seq.)

The Illinois Sexually Dangerous Persons Act (SDPA) provides an alternative to the criminal prosecution of sex offenders. The decision to initiate the proceedings lies solely within the discretion of the prosecutor, although the defense counsel can suggest its use to the prosecutor. It is a civil proceeding which results in a defendant's being

committed for treatment rather than criminally prosecuted. A person found to be sexually dangerous is committed to the Department of Corrections for an indefinite period, ending only upon a subsequent judicial determination of his recovery. Upon a finding of recovery, the criminal charges pending at the time of commitment must be dismissed.

The process begins by the State's Attorney's filing a petition alleging facts tending to show that the person named is a sexually dangerous person. Any criminal charge, sex crime or not, can be the basis of an SDP action. The petition must allege and the state will be required to prove all of the following elements:

A. a pending criminal charge;

B. the existence of a present mental disorder;

C. the existence of the mental disorder for not less than one year prior to the filing of the petition;

D. criminal propensities to the commission of sex offenses;

E. demonstrated propensities towards acts of sexual assaults or acts of sexual molestation of children.

When a petition is filed, the Court will appoint two "qualified psychiatrists" to personally examine the defendant to ascertain whether he is sexually dangerous. The psychiatrists must then file written reports with the court, and deliver copies of each report to the defendant.

While proceedings under the SDP Act are civil in nature, a defendant is entitled to certain due process procedural rights allowed a defendant in a criminal proceeding. The state has to prove its case "beyond a reasonable doubt" and the defendant is entitled to counsel at all stages in the proceeding. If indigent, counsel will be appointed. The defendant has the right to a jury trial, to confront witnesses against him, and to be present at all court proceedings. The defendant also has a right against self-incrimination and cannot be called as an adverse witness.

The right against self-incrimination is particularly important in the psychiatric examinations. The SDPA does not grant immunity for statements made to examining psychiatrists. Accordingly, although the defendant must submit to a compulsory psychiatric examination, he may refuse to answer substantive questions (i.e., the privilege against self-incrimination protects the defendant from making any statements to

the psychiatrists which may tend to incriminate him). He should be advised of this before examinations, and his attorney may certainly be present during examinations to assist him in exercising this privilege.

The decision to proceed with an SDP proceeding, while initiated by the prosecution, probably will not be opposed by the defense counsel when: A) the facts of the underlying offense are strong for the prosecution, and B) the defendant's psychiatric prognosis seems favorable for an early recovery (and, therefore, early discharge from confinement). It is possible that the defendant who is committed under the SDPA might be confined for a shorter term than were he convicted and sentenced for the underlying criminal offense. However, confinement under the SDPA is for an indefinite period of time and may last longer than the term the defendant might have served had he been committed on the straight criminal charge.

The Sexually Dangerous Person will be confined and will receive treatment until such time as he can demonstrate that he has recovered. If the Sexually Dangerous Person is successful in showing that he has recovered (i.e., he is found no longer to be sexually dangerous based on a preponderance of the evidence), then the court must order that he be discharged. Furthermore, "Upon an order of discharge every outstanding information and indictment, the basis of which was the reason for the present detention, shall be quashed." The charge must be dismissed upon the ordering of an absolute discharge. When the SDP is able to show by a preponderance of the evidence that he is no longer sexually dangerous, his incarceration period may be greatly diminished (possibly shorter than what he would have served if he had been convicted and sentenced based on the underlying criminal charge).

The prosecutor's decision, then, to proceed under the SDP Act, rather than in a criminal proceeding, does involve some amount of risk. It is important that the State's Attorney evaluate the facts and evidence in each case to determine whether the accused should receive care and treatment under the SDP Act.

Other factors that might influence an A/S/A to proceed under the SDP Act rather than on the basis of the underlying (pending) criminal charge follow. According to former Will County A/S/A Barbara Badger:

A. The defendant's having a long series of convictions and the prosecutor's possessing only minimal evidence on the criminal charge may be influential factors.

B. The age and testimonial capabilities of the victim are also key factors. If the victim is very young ("of tender years"), or if there are other reasons why the prosecutor wishes to avoid having the victim testify, it is probably better to proceed under the SDP Act. This is true since there is no requirement under the SDPA that the prosecutor prove the facts contained in the underlying criminal charge.

C. Commitment under the SDP Act does not result in a criminal conviction on one's criminal history record. A finding of SDP may not be introduced in aggravation of sentence in a subsequent criminal conviction, nor may it be introduced for the purpose of impeachment in a subsequent criminal conviction, nor may it be introduced for the purpose of impeachment in a subsequent civil or criminal case (not only because it is not a conviction, but also because it does not relate to the defendant's truth or veracity).

D. Conditional release under the SDP Act after an SDP has "recovered" may be more restrictive than a period of parole after serving time on a straight criminal offense.

E. The civil nature of the proceedings, together with the due process rights afforded the defendant under the SDP Act, suggest that the A/S/A must provide complete discovery. This all means that civil discovery devices may be employed by the defense counsel where criminal procedures are not sufficiently comprehensive.

At any time, an SDP may initiate a recovery hearing. At the recovery hearing, the court or jury will consider socio-psychological reports and other relevant data about the SDP that has been prepared and submitted by the Department of Corrections. Following the recovery hearing, the court or jury will decide whether to deny the petition, absolutely discharge the petitioner or order a conditional release. An absolute discharge of the SDP releases all restrictions on him and automatically results in the dismissal of the underlying criminal charge.

When a court conditionally releases an SDP, the court finds that the SDP appears to have recovered but that the conditions of institutional care make recovery impossible to determine with certainty. Where apparent recovery is shown, the court enters an order permitting the SDP to go at large, subject to supervision and conditions which in the court's opinion will adequately protect the public. This supervision is handled by the Director of the Department of Corrections.

A conditional release is subject to revocation at any time prior to the final discharge for a violation of any of the conditions of the release order, or for commission of any additional sex offense during the period of conditional release.

Finally, the record of an arrest and subsequent SDP proceeding and confinement under the Act could be later expunged by the defendant. The expungement process and its ramifications are discussed later.

E. The Trial

Once the State's Attorney commits himself to the trial of a sex offender against a child, he is faced with differing considerations and problems. Sexual abuse cases not only involve issues that are present in many criminal prosecutions, but also issues that are unique.

For example, there may be a general reluctance and embarrassment of families or witnesses to speak openly of such occurrences; it is less likely for there to be physical signs of abuse in sexual molestation cases than might exist in physical abuse cases, such as black and blue marks, welts, bruises, etc. In incest, particularly, the offense by nature usually takes place in the privacy of the home with either no witnesses to the act at all, or no witnesses outside the immediate family members. Also, the victim of incest is more susceptible to the offender's influence than most victims of other types of crime, and may change his version of the sexual occurrence to match the one given by the alleged perpetrator.

Further problems are:

A. Young children are usually not looked upon as qualified witnesses.

B. The non-offender in the home (very often the mother) may put a lot of pressure on the child not to testify.

C. The family may not want to follow through on prosecution because of the social and economic factors involved (i.e., by prosecuting father/boyfriend, the mother of the child may lose her only means of support for herself and her children).

Because the trial of a child sex offender will often lack demonstrative physical evidence, lack testimony of adult witnesses to the occurrence, and lack expert testimony, such as that of doctors, the State's Attorney is

forced to rely heavily on the testimony of the child witness. Illinois has certain rules about children testifying at trial, and these rules on the use of a child at a trial significantly affect the prosecutor's decision to go along with the case.

In Illinois, when the conviction of an alleged child molester turns solely on the testimony of a child witness, the testimony of the child must be clear and convincing. This means that the child's testimony alone must be able to support a determination that the defendant is guilty beyond any reasonable doubt. If it is not clear and convincing, but rather is unclear and subject to question, there must be corroboration to save it.

Although corroboration is technically not required where the complaining witness' testimony is clear and convincing, when a child is involved, the cautious state's attorney will usually try to have satisfied both before proceeding to trial, so as to provide the court with a stronger basis upon which to base a finding that the evidence of guilt is sufficient.

The corroboration requirement is unique to the prosecution of sex crimes and many prosecutors feel it places an unfair burden on the prosecution of the heinous crime of sexual molestation of children.

F. The Competency Question

In addition to the problem of corroborating testimony, the prosecutor is also faced with the issue of competency of his child witness. (Competency is being found by a judge to be legally fit to give testimony in a court.) In Illinois, any person, including a child, is allowed to testify, so long as that person is competent and there is no testimonial privilege invoked, such as doctor-patient privilege or attorney-client privilege.

There is no statutory minimum age requirement in Illinois stating whether a child is competent to testify; however, it appears that the youngest age at which a child has been qualified in Illinois to testify in a criminal proceeding is six years old. There are a number of Illinois cases in which seven-year-olds have been found competent to testify.

Every person who is 14 or older in Illinois is presumed competent to testify. The competency of a witness under the age of 14 must be shown and such determination is addressed to the sound discretion of the court. Generally, it is the duty of the court to hold a preliminary inquiry to determine

the child's competency, though there have been cases in which no preliminary examination took place. In either case, presumptions as to a child's competency to testify are not conclusive, and a judge, in the exercise of his discretion, may allow a much younger child to testify. He may also decline to permit a child over the age of 14 to testify.

It is not the age of the child, but rather the child's intelligence, which is used to determine his competency to testify at trial.

The question of whether a particular child is competent to testify is decided on a case-by-case basis, and the decision is almost wholly a matter of the trial court's discretion, which is very broad. Such a determination by the judge is based on whether the child witness has the mental capacity to observe or receive accurate sensory impressions; whether he has sufficient capacity to remember and recollect what he has observed; whether he can understand questions about his impressions and can articulate his answers; and whether he understands and appreciates the duty to tell the truth, and the consequences of lying (i.e., the nature of the oath). The determination concerning how a child meets this test and is thus capable to testify rests within the sound discretion of the court.

Where a child is held to meet the test so that his testimony is deemed admissible, his youth will merely go to the weight of his evidence to determine how much credibility it should be afforded.

Another problem prosecutors in all criminal cases are faced with, but which can be particularly bothersome in child abuse cases, is the problem of continuances. The longer the child witness may have to wait, the longer he is subjected to the sometimes hostile or negative feelings of the family influencing him not to go ahead to trial. He is also likely to forget details as his memories fade. Witnesses are also likely to disappear.

From the standpoint of the defense strategy, it is to the defendant's benefit, especially if he is out on bail, to delay the trial for as long as possible. A competing interest is that a defense-requested continuance does not count against the time in which the state must bring the defendant to trial (generally within 120 days).

There is very little direction given to judges regarding continuances. By Supreme Court Rule, in considering a continuance, the judge should "insist upon a proper observ-

ance by counsel for their duties to their clients and to adverse parties and their counsel, so as to expedite the disposition of matters before the court." The criminal law sets forth certain specific instances in which a continuance may be granted.

Although probably not as frequent, the state can also be a cause of continuance. Sometimes a continuance is due to a heavy caseload and the prosecutor does not have the time to prepare for trial, or is at trial in another case. At other times he may request a continuance because he really doesn't want to try the case and is procrastinating in the hope that the victim will drop the charges or that circumstances will change so that the case will be dismissed.

Once the prosecutor has overcome the problems unique to prosecutions of child sex offenders as well as the typical problems associated with every case, the trier of fact--the judge or jury--must decide the guilt or the innocence of the offender. The state must prove the guilt of the accused beyond a reasonable doubt or the accused will be set free. The trier of fact weighs all the evidence and decides the fate of the accused.

If the accused is found guilty, his sentence will turn not only on the offense committed, but also on other factors. A judge's most frequent choices for sentencing include:

A. a period of probation;

B. a period of periodic imprisonment (i.e. work release);

C. a term of conditional discharge;

D. a term of imprisonment;

E. a fine or other restitution; and

F. supervision (if a misdemeanor).

Supervision

Of all these available sentences, supervision may be unique. It is available to the court in misdemeanor cases. In cases where the judge feels that the defendant would be better benefited if no conviction were entered on his criminal record, and if the circumstances of the case warrant it, the judge may, upon a plea of guilty by the defendant or upon a finding of guilt, enter an order for supervision of the defendant. The period of supervision imposed must be reasonable, but in any case cannot be longer than two years.

In effect, the judge, in ordering supervision, defers further proceedings in the case until the conclusion of the period of supervision. If, at that time, the judge determines that the defendant has successfully complied with all the conditions of supervision, the judge shall then discharge the defendant and enter a judgment dismissing the criminal charges against him.

The end result of a successful completion of supervision and dismissal of charges is that the defendant has not been convicted of a crime. He may proceed to have his arrest record expunged. However, there is a two-year waiting period for those defendants placed on supervision after January 1, 1980, before the arrest record can be expunged. The expungement process is described in more detail in another section of this report.

G. Determinate Sentencing

Illinois criminal sentencing law provides for a system of determinate sentencing. The statute provides that conviction for a certain crime may incur a possible disposition, for example, of 4 to 15 years. This 4-15 years provides a range from which the judge must select a specific number of years to impose as the sentence. For example, a judge may sentence a defendant convicted of Indecent Liberties With a Child, a Class 1 felony, to 9 years, based on the different facts and circumstances of the case. The sentence might be higher within that range if the crime were particularly heinous, or if the defendant had been convicted on a previous occasion. The sentence might be lower if this were the first time the defendant had ever been arrested and convicted; if the victim and the defendant knew each other or were close in age; or for any number of other reasons.

According to Illinois law, no sentence can be entered for a person convicted of a felony unless there has been either a written presentence report presented to and considered by the court or both the state and the defense have agreed to waive the report and have agreed to the imposition of a specific sentence. The judge may still order a presentence report, however. For a misdemeanor conviction, the presentence report is prepared at the discretion of the judge.

By law, the report is to include information concerning:

A. the defendant's personal and family history;

B. special resources in the community that might be available to assist the defendant's rehabilitation;

C. the effect of the offense on the victim and any compensatory benefit various sentencing alternatives would have on the victim;

D. the defendant's status since his arrest;

E. where appropriate, a plan as an alternative to institutional sentencing;

F. any other relevant matters; and

G. if by order of the court, a physical and mental examination.

The law is silent on who shall conduct the presentence investigation and prepare the report. As a general rule, it is conducted by a probation officer. The law allows the circuit courts of the counties to appoint probation officers. Any reputable private person can be appointed, including a member of a city or village police force. The only qualifications set out in the statute are that the person "be of good character and possess such other qualifications as may be provided by rule of the court."

Neither the conduct of the presentence investigation nor its format is found in any statute or regulation, though the Judicial Conference has developed standardized guidelines for presentence information. Aside from the list of information that is supposed to be included, it is at the complete discretion of the presentencing reporter to decide who to contact and what information is relevant. Because of the varying backgrounds and qualifications possessed by probation officers, this can influence sentencing and its disparity, depending upon the degree to which the judge lets the report influence him. This can be so particularly when there is a sentencing recommendation included with the report either gratis or at the direction of the court. As stated by one author, "Whether the probation officer has a law enforcement perspective or a social welfare one; whether he writes his presentence report in a vivid, novelistic prose style or in a cold, bureaucratic one; whether he edits out unverified information or leaves the reliability of the data for the judge to determine--these and other factors are likely to have an impact on the sentencing judge's impression of the defendant..." (J.C. Coffee Jr., "The Repressed Issues of Sentencing: Accountability, Predictability, and Equality in the Era of the Sentencing Commission," 66 Georgetown L.J. 975, 1044, 1978).

Before a person can be sentenced, a hearing must be held at which the court shall consider:

A. any evidence that may have been adduced at trial;

B. any presentence report;

C. aggravation and mitigation factors;

D. arguments by counsel about sentencing alternatives; and

E. any statement the defendant wishes to make on his own behalf.

In imposing a sentence for a felony conviction, the trial judge must specify on the record the particular evidence, information, factors, or other reasons which led to his sentence determination.

A major complaint is the discretion possessed by the judge in determining the sentence to be imposed. Many articles have been written about the existence of discretion. None has advocated eliminating it, for all realize that although two individuals might have been convicted of a crime bearing the same name, the individual circumstances of the offenders and the incidents can be vastly different, so much so that to impose the same sentence may be grossly unfair to the one and grossly charitable to the other. One author sees the sentencing problem as "one of providing guidance and a frame of reference to the judge, and of shaping and controlling judicial discretion; not of supplanting it." (Norval Morris, "The Sentencing Disease--The Judge's Changing Role in the Criminal Justice Process," 18 Judge's Journal 8, 11, 1979).

One device being studied is the use of a "grid system." Under funding from the Law Enforcement Assistance Administration, a sentencing guidelines research project was conducted by the Criminal Justice Research Center. One of the participants is the Criminal Division of Cook County Circuit Court. The system being studied assigns point values to various characteristics of both the crime and the criminal. The point values assigned are determined from responses of judges from a form they fill out after each sentencing. These values are then located on a sentencing grid which will indicate a model or suggested sentence. Neither the use of the grid nor the suggested sentence is mandatory.

The legislature has also addressed this area by creating a Criminal Sentencing Commission. Among its duties is the development of standardized sentencing guidelines designed to provide for greater uniformity in the imposition of criminal sentences. That same legislation permits the Supreme Court by rule to prescribe such practices and procedures as will promote a uniformity and parity of sentences within and among the various circuit courts.

To date, little has been done regarding that provision. The Sentencing Guidelines Subcommittee provided the Administrative Office of the Illinois Courts with a cost estimate for developing and maintaining sentencing guidelines. The Subcommittee then decided to wait to see what the Supreme Court was going to do before embarking on any independent effort.

H. Appeals

The defendant, at the conclusion of every criminal trial, has the right to appeal the verdict of the judge or jury. The defendant in a criminal case has a greater right of appeal than the state, whose right to appeal in criminal cases is limited. An appeal by the state from a not guilty verdict is prohibited by the Illinois Constitution. Nor may the state appeal the sentence imposed on the defendant.

If the state does take an appeal, the defendant cannot be held in jail or be required to post bail during the appeal unless there are "compelling reasons for his continued detention or being held to bail." During the appeal, the sentence may be stayed and the defendant may be released on bail. However, the stay order may be revoked or the bail amount changed upon a motion showing good cause. If the defendant serves any of his sentence pending the appeal and his conviction is reversed and a new trial ordered, credit is given in any subsequent sentence for the time he served pending the appeal.

Basically, the appellate court can affirm or reverse the conviction, reduce the degree of the offense of which the appellant was convicted, reduce the punishment imposed, or order a new trial.

By statute, the defendant also has the right to appeal from the sentence imposed for conviction of a felony. In such an appeal there is a rebuttable presumption that the trial judge's sentence was proper. The appeals court can modify the sentence by entering any sentence the trial judge could have (including increasing or decreasing the sentence) or by entering an alternative sentence. A sentence

can only be increased, however, where the defendant raised the issue of the sentence on appeal.

When an offender is sentenced to a term of imprisonment for a felony, he is committed to the Illinois Department of Corrections. He first reports to the Reception and Classification Center at either Joliet or Menard. At these Centers new inmates are tested, interviewed by psychologists, and given a complete medical workup. Based upon the information gathered, they are then transferred to an appropriate correctional facility.

There are essentially three categories of sex offenders reporting to these Centers. Persons who have been committed under the Sexually Dangerous Persons Act are automatically transferred to the Sex Offenders Unit at Menard. The second category is comprised of inmates whose commitment papers clearly show a conviction for a sex crime. The third category is made up of persons who committed sexually oriented offenses, but who were convicted of crimes that on their face do not disclose that fact.

In terms of services to assist these last two groups, the Department is faced with a number of problems. Only persons committed as sexually dangerous are automatically admitted to the Sex Offenders Unit. Any other inmate who desires the treatment services of that Unit must volunteer. According to William Doyle, Intake Supervisor at the Joliet Center, which processes approximately 90% of the incoming population, most of the identified sex offenders are desirous of help and do volunteer. There are some, however, who do not, either because of the stigma attached to being labeled "mentally ill" or perhaps because of the geographical location of Menard (in extreme southern Illinois). These persons cannot be forced to go there.

One of the biggest problems facing the Joliet Center staff is the lack of adequate, oftentimes even minimal, information about the offender, particularly those from Cook County, who account for the majority of Joliet's cases. Generally, staff receives only the commitment papers stating the offenses for which inmates were convicted, even though the law requires State's Attorneys to furnish such information for transmittal to the Department. The staff gets no information concerning the specifics of the incident, the victim, or even the inmate. Since inmates volunteer very little information, especially those who have committed sex crimes involving children, it is sometimes difficult to determine who the sex offenders are so that appropriate placement can be made. This problem is more acute when there

was a plea bargain, because the staff won't even know what the original charge was. According to Doyle, offenders sent to Joliet from counties other than Cook County come with more information concerning their acts and past records, often in the form of a thorough presentence investigation.

This lack of information poses an additional problem. Occasionally the staff will surmise through their interviews with the offender that a child was involved in the incident. However, Doyle said that staff can only act on verified information; a lack of documentation can delay or frustrate the staff's inmate assessment.

Whatever the reason, the bottom line is that an unidentified (hence untreated) sex offender against children eventually will be released and will be returned to the community. Treatment may not be successful, but no treatment is guaranteed not to be.

The potential for no treatment for such offenders is far greater for those who have been convicted of misdemeanors. Under the law, those over 17 may be committed to either the county jail or the Department of Corrections. Except in Cook County, it is doubtful that appropriate resources exist for any viable treatment program for those who are incarcerated.

I. Habitual Offender Statute (Ill. Rev. Stat. ch. 38, §33B-1, et seq.)

Many states, Illinois among them, have enacted some type of habitual offender or recidivist statute. The purpose of such a law is to provide a more severe punishment for offenders who, by their repeated commission of criminal offenses, have shown a disregard for the law.

The Illinois Habitual Offender Law was amended in July of 1980 to provide that a person who is convicted for a third time of a Class X offense after the effective date of the Act must be sentenced to a term of life imprisonment, except in those cases in which the death penalty has been imposed. Class X offenses include rape, deviate sexual assault, and aggravated kidnapping for ransom.

No person serving a term of natural life imprisonment may be paroled or released except through executive clemency.

J. Related Information

There are certain other miscellaneous considerations that arise out of the criminal justice system but which are not directly a part of it. One involves programs to aid the victims of crimes. Another describes the Rape Victims Emergency Treatment Act. The other involves the right of an arrested party (and sometimes a convicted party) to expunge his records.

1. Crime Victims Compensation Act

In 1973, the Illinois legislature enacted the Crime Victims Compensation Act (Ill. Rev. Stat. ch. 70, §71, et seq.) to compensate victims of violent crimes and dependents of deceased victims for their pecuniary losses. The Act applies only to victims of those crimes described as "crimes of violence"--murder, voluntary homicide, kidnapping, aggravated kidnapping, rape, deviate sexual assault, indecent liberties with a child, assault, aggravated assault, battery, aggravated battery, heinous battery, reckless conduct, arson, and aggravated arson.

Any person who is (1) a victim of the crime itself, (2) hurt while helping a law-enforcement officer to capture the criminal or prevent commission of such a crime, or (3) a dependent or relative of persons in either of the two categories above who is killed, causing the dependent to lose support, or a relative who incurs burial expenses, is eligible to receive compensation.

No compensation is to be paid on account of a victim who lives in the same household as the assailant at the time of applying for or receiving compensation, or who lived with the assailant and was killed during commission of the crime, or to any claimant who was an accomplice of the assailant. In addition, law-enforcement officers must have been notified of the crime within 72 hours after it occurred, unless a good reason for delay can be shown, and the applicant must have cooperated fully with them in trying to capture and prosecute the offender. These rules may be somewhat difficult for the child/victim to satisfy if a charge of indecent liberties is pending against the parent or custodian.

Compensation may be made for medical, psychiatric, and nursing care expenses; artificial limbs or other devices, eyeglasses, and hearing aids damaged or made necessary by the crime; loss of earnings or of support to dependents up to $750 per month; and funeral expenses up to $2,000. No compensation is to be made unless these losses total $200

or more, and the first $200 of loss will not be compensated except for applicants 65 or older. Total compensation to all applicants for one crime may not exceed $10,000 for crimes occurring before September 22, 1979, or $15,000 thereafter. Property damage and pain and suffering are expressly excluded from compensation. Unfortunately, pain and suffering may be the only type of loss suffered by many victims, especially victims of sex crimes.

It is unclear whether the Act allows compensation for counseling. Appropriate psychiatric care expenses are allowed, but counseling by a psychiatric social worker is not compensable. Possibly, a psychologist's or social worker's counseling might be compensable if done under the supervision of a psychiatrist.

In order to receive compensation, an applicant must, within six months after the crime, send notice of intent to file a claim to the Attorney General's Crime Victims Program in either Chicago or Springfield. The Attorney General's Office sends claim forms, which must be completed under oath and filed with the Illinois Court of Claims within a year after the crime. Each application is to be investigated by the Attorney General's office, and the applicant must cooperate with this investigation.

The Attorney General's Office will present the recommendation and an opinion based on the findings of the recommendation to the Court of Claims. The Court of Claims may reject or accept the recommendation, reject or accept the opinion, or request that a hearing be held. The recommendation is usually accepted by the Court. If a claimant disagrees with the Attorney General's recommendation, he or she may request a formal adversarial hearing. The Court of Claims has, however, the discretion to deny such a request.

2. Rape Victims Emergency Treatment Act (Ill. Rev. Stat. ch. 111½, §87-1, et seq.)

Effective January of 1976, this law has two primary purposes. The first purpose is to require that hospitals licensed by the Illinois Department of Public Health provide emergency services (pursuant to a plan) to rape victims for injuries or trauma resulting from the rape. The law further sets forth the minimum requirements that the emergency services plan must provide:

A. Medical examinations and laboratory tests for services to the victim or for evidence in any criminal prosecution. Records must be kept and made available to law enforcement personnel;

B. Information about the possibility of venereal disease, infection, and pregnancy;

C. Information regarding treatment of possible infection or disease;

D. Appropriate medication;

E. Blood tests for venereal disease;

F. Information regarding the need for a subsequent blood test; and

G. Appropriate counseling.

Plans must be approved by the Department of Public Health.

The second purpose of the law is to provide reimbursement to the hospital for charges not otherwise paid for emergency services which were rendered to the rape victim.

The law was amended effective January 1, 1980, to broaden the reimbursement coverage portion. Although the law still only requires a plan developed for and services provided to rape victims, reimbursement for emergency services will now be made to ambulance providers in addition to hospitals, for both rape victims and victims of deviate sexual assault.

See Appendix B for more information concerning the Act.

3. Expungement

Generally speaking, any party who has never been convicted of a crime and who is arrested and charged with an ordinance violation, a felony, or a misdemeanor which results in an acquittal or release without a conviction may have his arrest record expunged. An expungement wipes out all record of an arrest that does not result in a conviction. All information that would identify a party as an arrestee is obliterated and the criminal case file is made blank.

An expungement is possible in instances in which a defendant pleads guilty to a misdemeanor but is placed on supervision. It is also possible when a party is arrested and adjudicated a sexually dangerous person and released. Expungement can also be accomplished, we found, in a highly unusual case, when a defendant pleads guilty to a felony charge, is placed on probation, but also enters a motion to vacate the judgment upon successful completion of

the probation. In that case, the guilty plea is eliminated and the record can then be expunged. And, of course, an expungement is possible when a party is arrested and never convicted and charges are dropped.

In certain legislatively enacted situations, an arrest resulting in a conviction can be expunged. In the instance of a first offense, misdemeanor or felony drug-related proceeding, the defendant can plead guilty to the offense, but the judge does not enter a finding of guilty, pending successful completion of the term of probation. Upon successful completion, the defendant is discharged and the proceedings against him dismissed, thus making the charges expungeable. Also, in the case of minor traffic offenses, the record of arrest and court records for violation of a misdemeanor or municipal ordinance can be expunged.

To have one's records expunged, a party must petition the Chief Judge of the Circuit in which the charge was brought. Notice of the petition is served on the State's Attorney or prosecutor charged with the duty of prosecuting the offense. Unless the State's Attorney or prosecutor objects to the petition within 30 days from the date of the notice, the court will enter an order granting or denying the petition.

If the expungement request is granted, not only are the records of the arrest from the arresting authority destroyed, but so too are the records of the Clerk of the Circuit Court relating to the arrest.

If the arresting authority sends out records of the arrest to any other agency, such as the State Bureau of Identification or the Federal Bureau of Identification, then the arresting authority is responsible for seeing that the records held by those agencies are also returned.

While it has been shown that in certain legislatively-mandated situations an arrest and conviction can be expunged, a party who is pardoned for an offense may not expunge his arrest records. The rationale behind this rule is that the legislature meant an expungement to occur in instances in which no conviction resulted or a conviction resulted under a special statute, such as in first-time drug offenses. The legislature did not mean for any other convictions to be expunged; a pardon necessarily involves a conviction.

Except in cases of supervision, there is no requirement that a party wait any period of time in bringing his petition. When there is a discharge and dismissal upon a successful conclusion of supervision, the party must wait two years after

the discharge to have his record expunged. This two-year waiting period applies to all defendants placed on supervision after January 1, 1980. Any party placed on supervision prior to that time could have his record immediately expunged.

K. Conclusion

Our description here of codified law and the ways that such laws are brought into play in the criminal justice process is not exhaustive. We have tried to point out areas of the law and related issues that pertain to an examination of child molestation. Necessarily, such an examination must be partially theoretical and partially practical. The statutes on their face do not indicate how the process of meting out justice occurs, nor would a description of the process do justice to the criminal justice alternatives available to all the parties involved in a molestation case.

It should be clear that there are many issues that can come into play in a child molestation incident, from the initial report (or even the lack of a report) to the expungement of an arrest record by a person convicted at one time (or not convicted, depending on circumstances) of a molestation crime. Further, the range of actual crimes that encompass the term "child molestation" is wide and is not limited to the statutes that seem to provide protection to children, such as "contributing to the sexual delinquency of a child." Seemingly innocuous charges filed against a party can actually constitute a discretionary response to a case of child molestation.

Between reporting and possible expungement lie a number of issues and alternatives. One must understand them thoroughly in order to understand the way the criminal justice process can deal with these types of crimes.

Chapter 5

INTERVIEWS WITH AUTHORITIES IN THE FIELD

In order to fully discuss individual case studies, Commission staff interviewed dozens of authorities in the field of child molestation. Obviously, from the case studies we have presented, most of these authorities have been able to, and have wanted to, speak to issues larger than the specifics of cases that we were investigating. Many of their comments relate directly to issues, not just individual cases. These issues include sentencing, the theory of discretion, the use of child witnesses, the competency of child witnesses, the proper handling of a case by the police, the proper handling of a case by the State's Attorney's Office, the use of probation as a sentence, the use of supervision, the employment of the Sexually Dangerous Persons Act in an adjudicatory proceeding, and many, many more issues.

This chapter will not break down specific issues. Rather, we will present the thoughts and recommendations of authorities in the field generally according to their specific orientations; that is, we will place together police, and we will place separately assistant state's attorneys. We will put judges into a specific category, regardless what their concerns may have been in our interviews. And we will do the same with others interviewed. We will do so in an attempt to have the reader understand the points of view of individuals who handle these cases on a day-to-day basis. To focus on issues alone may tend to isolate problems and concerns from the victims, offenders, and the people involved in the entire system which we are describing. Hopefully, this approach is more inclusive and more informative.

A. Interviews with Police

Commission investigators spoke with Commander Rudolph Nimocks and Detective Robert Mason of Homicide/Sex, Chicago Police Department. Both were quite informative with regard to their own involvement with sex offenses against children.

Detective Mason told us that the Chicago Police Department keeps only three categories of statistics on sex crime: rape; attempted rape; and "other" sex crime. Mason said that the Department does so in accordance with what the Federal Bureau of Identification requires for their National Crime Figures reporting. Mason told us that if that bureau required a breakdown of sex crimes against children, probably the Chicago Police Department would provide it. Mason also mentioned that none of the sex crime information is broken down by age.

Early in this investigation, we realized that statistics could be misleading and that many statistics would not provide us with any information of value at all. We have yet to develop a sound system in Illinois that will reflect the actual incidence of reported sex crime against children.

Commander Nimocks and Detective Mason both agreed that identification of the problem and subsequent prosecution are very difficult in child molestation cases. They reiterated what many others had told us about the problems. They mentioned that young children usually are not regarded as being good witnesses in a criminal proceeding, that there often are no adults to corroborate their stories, that a parent in the home may put a lot of pressure on a child not to testify in court, and that in cases involving a family member or live-in paramour, often the family will not want to follow through with prosecution because a mother, for instance, might lose the sole source of income for her and her family.

Both Mason and Nimocks stated that the inability or difficulty of using a young child as a witness is probably the major problem in the prosecution of these crimes. However, they added that to change the way the system now handles the determination of competency of witnesses, to contradict Judge Pompey somewhat, would be in direct violation of our Constitution.

Mason mentioned that there seems to be more reporting of sex crime. He could say authoritatively that there is not more sex crime against children occurring, but that more reporting is occurring and that if there is a rise in sex crimes, according to Mason, probably it is slight.

Both Mason and Nimocks were in favor of developing and keeping statistics of the number of sex crimes against children. Nimocks said that through use of statistics, the Police Department could develop crime patterns for use both in investigations and in their Preventive Programs Division. The Division could attempt to educate the public-at-large of specifics of the problem. Nimocks could see no problem in developing these statistics except for manpower reassignment and transition to inclusion of a new category of offenses.

Commander Nimocks was somewhat critical of the judicial response to sex crimes committed against children. He said that often the sentence handed down is not beneficial to the child victim, especially in cases involving incest. Nimocks was of the opinion that incest should not be always solely viewed as a social problem and never as a criminal one. Nimocks said that often the sentencing of an incest offender involves provisions for counseling, psychiatric treatment, and the removal

of the offender from the home. He said that there are no effective provisions in the judicial system for monitoring these very orders.

Mason spoke to the issue of repeat offenders first by stating that he personally had not encountered very many. One reason, however, that he has not encountered many is that many offenders are either not charged or not convicted. In reality, a defendant charged with a sex offense against a child may have committed other offenses at some time but may never have been charged. He said that often the Chicago Police see cases in which a mother will come to them with a molestation complaint because she has been fed up with many incidents occurring against a particular child. Though these cases usually involve family members or paramours, his point was that many cases are more complicated than they look on their face.

The most important point made by Mason and Nimocks is that statistics can and should be kept regarding the incidence of sex crime.

B. Interviews with Judges

Commission staff interviewed several judges, including those already mentioned in regard to individual cases. Among these was Cook County Criminal Court Judge John F. Reynolds who had granted a defendant a motion to vacate a judgment in a sex offense involving a child. The defendant had agreed to plead guilty to one of the offenses with which he was charged if the motion to vacate the judgment following the successful completion of his probationary sentence were sustained. Judge Reynolds agreed to the motion. When we spoke with him he refused to speak in any detail about the case but did acknowledge that the result of granting a motion to vacate a judgment is tantamount to a sentence of supervision (as would occur in a misdemeanor), but for a felony, for which supervision cannot be granted.

We also spoke with Judge Richard J. Fitzgerald, Presiding Judge of the Criminal Division of Cook County. Our primary purpose in speaking with him was to discuss sentencing and sentencing guidelines that he may have established for the Criminal Court.

Judge Fitzgerald said that he had been involved in the development of a "grid system" for use by the other judges. Through the use of the system, a judge could determine some loose guidelines for the sentencing of an offender for a given crime depending on many variables and circumstances. The grid provides for addition of jail time in a felony determination if the victim were of a young age, for instance. Similarly, but on the other end of the spectrum, a judge could subtract jail time

in a felony if the sentence were for a first offense. When we asked the judge if using the grid system were mandatory, he said no. He admitted that sentencing was the most difficult job a judge had to do. He said that it would be impossible to force a judge to follow strict guidelines for sentencing because all judicial discretion would go by the wayside. Judge Fitzgerald said that the purpose of the grid system is to develop "equity" in sentencing rather than wide disparity, though some disparity is perfectly all right.

Judge Fitzgerald noted that such a system would establish some guidelines without being too restrictive. He also noted that the state legislature already had reduced the amount of discretion that every judge should enjoy. He mentioned the following parties being privy to a sentencing determination: the jury, the probation officer, the State's Attorney, and, ultimately, the Governor himself (in granting a pardon). Judge Fitzgerald said that such "whittling away" is contrary to the separation of powers and functions within the three branches of government.

Judge Fitzgerald explained Illinois' new determinate sentencing laws. In the past, a judge might have given a defendant a sentence of 15-40 years for a crime and the defendant would have had to serve at least one-third of the minimum sentence (in this case, he would have had to serve at least 5 years). Now, however, the statutes provide that a conviction for a certain crime can bring a sentence of anything from 6-25 years. The judge is able to choose a number of years between those two figures and is supposed to base his decision on mitigating and aggravating circumstances. A judge now sentences an offender to a determinate number of years, such as ten. The offender would receive one day off that sentence for each day served if he behaved properly in jail. Each day off is popularly known as "good time." It would be possible and even likely, then, that a person sentenced for 10 years in jail for a crime would be released after serving five years.

In late October, 1979, Commission investigators spoke with Cook County Circuit Court Judge Sylvester Close, assigned to the Repeat Offenders Trial Court in Chicago. We wanted to discuss the operation of his courtroom and the issue of repeat offenders in general, because they are mentioned specifically in House Resolution 138.

Judge Close mentioned that few sex crime cases against children are heard in his courtroom. He said that may be because of the orientation of his courtroom. The Repeat Offender Trial Court (ROT) hears cases involving known criminals, usually who have been convicted of violent crimes. Judge

Close told us that when it comes to a consideration of a child witness, there are really two concerns: competency and credibility. He said that even if you can go beyond the "threshold" of competency, you still have a far way to go to reach credibility. As a result, child witnesses can make the prosecution of an offender difficult. Judge Close told us that in his courtroom most sex crime prosecutions are handled as bench trials. He said that this is preferable to jury trails because the judge can let almost anything in as evidence and then sift through it and, "based on case law, a conviction can be passed down." Judge Close was opposed to changing the rules around which competency is established. He told us that "There are certain fundamental criminal procedures that apply to everyone and that's the way the system works--you can't apply them one way to some cases and another way to other cases."

With regard to repeat offenders, Judge Close is of the opinion that they cannot be helped. He said to speak of rehabilitation with regard to such people is predicated on a belief that they had been "habitable" to begin with. He does not believe that this is the case, and he feels that repeaters should be imprisoned. In this regard, Judge Close stated that he likes the new criminal sentencing procedures described by Judge Fitzgerald earlier in this report.

Judge Close feels that there is little legislatively that can be done regarding the problem of child sex crimes, competency, or repeat offenders. He said that we in Illinois have all the tools and must learn to apply them correctly. The key, he said, is the wise use of discretionary procedures by all individuals involved in the criminal process.

Judge Close gave us some parting comments that are quotable, including "I don't...care what another judge's mental processes were at any other hearing. I will decide for myself. If there's enough evidence, the guy goes away."

Our investigators, as noted earlier, spoke with former Jackson County State's Attorney Howard Hood, now a judge in Williamson County. Most of his comments are pertinent to a description and explanation of the Sexually Dangerous Persons Act. He mentioned that when a defendant is tried under the Act, all the elements required under the act, discussed in the preceding chapter must be proven beyond a reasonable doubt. He mentioned with regard to the case involving offender Timothy Krajcir that even though Krajcir confessed to the allegations in the Sexually Dangerous Persons (SDP) petition and provided no contest to the petition, nevertheless the state still had to satisfy the court as to the validity of the allegations in the petition; that is, the state still had to show by the evidence

that the defendant should be commited as an SDP.

In talking about the Sexually Dangerous Persons Act, Judge Hood told us that when the court can make a determination that the defendant is fully recovered, the court may absolutely discharge the defendant. He will, that is, be discharged from the jurisdiction of the Department of Corrections. Such a discharge also automatically results in the dismissal of the underlying criminal charge upon which the SDP petition was based. When a person is found to be "recovered," there is no conviction record. That is, a finding that an individual is an SDP does not constitute a conviction under Illinois law. Furthermore, because commitment as an SDP does not constitute a conviction, the SDP finding may not be introduced in aggravation of sentence on any subsequent criminal conviction.

We also spoke with Judge Hood about the Habitual Offender Act, under which a defendant is sentenced to prison for life after having been convicted of three separate felonies not arising out of the same incident. Judge Hood said that the Act was passed in 1978 to keep offenders in jail and off the streets. He was uncertain whether it would be successful in its aims. He said it will take about ten years after passage to determine its validity and usefulness. The Act has since been amended to resolve Judge Hood's last concern.

Finally, we spoke with Judge Richard E. Richman, Presiding Judge of Jackson County, Illinois. His name has come up with regard to several cases discussed in our chapter on victims.

Judge Richman does not feel that punishment or penalties solve problems. He is opposed to mandatory sentencing. He said that judges should always have discretion in determining sentences.

Judge Richman explained his sentence of two separate defendants charged with the same crime, indecent liberties with a child. One of the defendants, Mark Gibbs, received four years' probation and periodic imprisonment, plus a fine. The other, Gerald Dean Leggans, was given 25-75 years in prison. Judge Richman explained to us that there were aggravating circumstances in the Leggans case and mitigating circumstances in the Gibbs case. Leggans had just served time in Texas on a sodomy charge. Judge Richman gave him a very stiff sentence because he called him a "sex maniac." Leggans also had a very long record of sex-related arrests and convictions. Leggans had had to be tried twice; the first trial resulted in a hung jury because one of the jurors just could not take the word of a child over an adult.

Gibbs received a much lighter sentence partically because he had no prior arrests, he was very young, he was a college

student, and the victim was, the judge felt, a mature 16-year-old girl. In these cases, the necessity of judicial discretion if eminently clear.

Judge Richman told us that a judge can order mandatory psychological counseling when a defendant receives a sentence of probation. However, he said, due to the "separation of powers" doctrine, a judge does not have the power to order such counseling in cases in which the defendant has received a prison sentence.

Judge Richman also commented on the Sexually Dangerous Persons Act. He said that one element that the state must ultimately prove in an SDP proceeding is the criminal propensity to the commission of sex offenses. When asked to elaborate on this clause in the Act, Judge Richman said that it usually is not necessary to show the existence of prior criminal convictions for sex offenses. Whatever the state produces to prove propensity just goes to the weight of the proof, though undoubtedly evidence of prior convictions would probably influence the judge.

Judge Richman said that young child witnesses can present problems in prosecution because they are scared and do not understand what is going on around them. Judge Richman, like Judge Pompey in Cook County, supports the idea of creating a legislative presumption that anyone, including a child of any age that the state may want to use as a witness in a trial, is competent to testify. He said that credibility and weight of a child's testimony should be subject to attack, not the child's competency to testify.

Judge Richman holds his competency hearings in his chambers, but the criminal trials per se are held in open courtroom. Judge Richman would not want to see this procedure changed. He feels that, as a witness, a child should be treated no differently than an adult. A child's testimony should be open and subject to cross-examination. Furthermore, Judge Richman doesn't feel that testimony should be open and subject to cross-examination. Furthermore, Judge Richman doesn't feel that testifying in chambers makes much difference anyway.

Judge Richman expressed the opinion that one problem area in prosecution is that the state's attorneys have absolute prosecutorial discretion, yet many smaller state's attorneys' offices are often filled with inexperienced attorneys. As a result of this absolute discretion in charging a criminal offense, a judge has no discretion to reduce or dismiss charges assigned a particular case by the state's attorney. This seems to be a unique and somewhat unusual complaint, however.

The comments made by these judges, taken together with comments elicited by judges in connection with case studies, should provide the reader with a broad view of the opinions and decisions made be the judiciary in child molestation cases and with regard to child molestation issues.

C. Interviews with State's Attorneys

Though we have mentioned several separate interviews with Assistant State's Attorney Edward Rothchild, we also interviewed him specifically with regard to House Resolution 138, and not because of any specific cases we later pursued. Rothchild is the A/S/A who handles proceedings in Calendar 21, Juvenile Court.

Rothchild told us that at the time of our interview (October 16, 1979), Calendar 21 was only about 18 months old. The court was established for the purpose of handling preliminary hearings of adult defendants criminally charged with the abuse of children. We have already mentioned elsewhere the crimes which the Chicago Police Department must refer to Calendar 21. Apparently other crimes involving family members also are sent to the courtroom for preliminary hearings. Apparently, as in Judge Pompey's court, the judge in Calendar 21 (Judge Vazquez) primarily sentences individuals who agree to plead guilty to a charge.

Rothchild told us that he handles many incest cases. He also mentioned that physicians in private practice regularly fail to report abuse of any kind, including incest and sexual molestation of other kinds that takes place in the family. One reason for their failure to report is monetary--they lose money while waiting to testify and while testifying in court when they could be attending to their private patients. Rothchild said that the problem was at one point "somewhat alleviated" when the court began to pay $50 witness fees to physicians if they agreed to testify. This practice was not looked upon with favor, however, so apparently it has been discontinued.

Rothchild agrees with several of our interviewees in that he believes that a child of any age should be allowed to testify. He said it is then up to the defense counsel to argue how much weight should be placed on a child's testimony.

Rothchild said that one problem with sentencing in an incest case is that the children frequently blame themselves when a parent is incarcerated. In cases of sexual abuse in which there have been no violent acts, Rothchild will try to give the offender probation and bring in the entire family for therapy. Rothchild said that the problem with this approach is that the parent must admit the abusive behavior in order to receive a probationary sentence and receive the therapy. If the defendant does not plead guilty, Rothchild sends his file to Criminal Court together with a recommendation that the offender be sent to prison.

When a defendant pleads guilty and receives an order to obtain counseling, the court's order will stipulate that the

defendant stay away from the home during the counseling period. The defendant may only return home when the court or DCFS allows such a return.

Rothchild said that he favors the establishment of a felony court at Juvenile Court to handle those familial sexual and physical abuse cases which go to trial.

Rothchild also favors a dual reporting system: that is, he is in favor of every case of suspected child abuse of any kind being reported to both DCFS and the State's Attorney's Office (or the police). He also favors license revocation for professionals who have failed to report suspected cases of child abuse, again of any kind.

Rothchild said that the Juvenile State's Attorney's Office does not maintain statistics on their abuse cases. During this interview, Maurice Dore, Supervisor of the Juvenile Office of the Cook County State's Attorney, joined the interviewing parties. He said with regard to this question that he does not keep statistics because he does not want his A/S/A's to become "conviction-conscious." He would rather have an individualistic response to cases involving children because of all the factors involved.

A Commission investigator spoke with First Assistant State's Attorney Robert Gaubas in December, 1979. Gaubas is with the Peoria County State's Attorney's Office. Gaubas was able to offer the opinion that molestation reports are way up, but he is not sure that the incidence of molestations is also way up. His office handles more cases involving incest than it does stranger molestation. Gaubas was in favor of mandatory minimum sentencing in cases involving defendants with a prior record of similar offenses. He also was in favor of mandatory psychiatric treatment in such cases. In general, Gaubas felt that our present law does not offer enough alternatives in sentencing for a judge. He thinks that many judges who convict on an indecent liberties charge do not want to mete out four years jail time, even if they think that the defendant should spend some time in jail. The result is that the defendant may be given four years probation. Gaubas was in favor of changing the minimum for such an instance (a Class 1 felony) to two years. Then judges, he felt, would be less inclined to dictate probation and might incarcerate an offender for two years.

Gaubas also favored increasing the mandatory minimum sentence for repeat offenders. Unlike the vast majority of those with whom we spoke, Gaubas felt that in this area a judge is given too much discretion and that the discretion should be taken away. Gaubas mentioned that victims of child molestation crimes should be able to be placed in protective custody to prevent

someone in the family from "tampering with the victim's mind," as we have noted elsewhere in this report.

Gaubas also had criticisms of the way the Sexually Dangerous Persons Act is administered. He said the way the Act is worded, the Department of Corrections could approve of a petition for release of an SDP after 30 days. Gaubas felt that it was too easy for an SDP to get out early. He said that perhaps some consideration should be given to providing for a minimum period of treatment before an SDP could petition for release or discharge.

Commission staff spoke with Assistant State's Attorney James Obbish of Repeat Offender Trial Court (ROT). Most of the offenders he sees have committed one of the following offenses and are being charged with a similar offense: attempted murder; aggravated battery; burglary; rape; indecent liberties; deviate sexual assault. Obbish observed that the time from arrest to final disposition at ROT was averaging less than 7 months, which he considered good. He felt that such a short time frame would be an advantage in cases involving children because the cases will go to trial faster and the child will be able to remember the incident. Also, the incident will not be drawn out in the child's mind. He also mentioned that everyone's enthusiasm, from parents to police, remains high when a case can be brought to trial quickly.

Obbish told us that the police have a harder time finding the offender in a stranger molestation case and thus he sees more cases involving family members. He agreed with Judge Close that not many cases involving sexual or physical abuse are heard at ROT. Most of the offenses do not meet the courtroom's criteria.

Obbish also mentioned Violation of Probation (VOP) hearings. He said that at such a hearing the judge has all the discretion and the defendant does not enjoy the same "rights" he would in a normal trial situation. Obbish said that only when judges take such hearings seriously is the system helped. He said that he knows that "almost nothing" is done on misdemeanor probation violations. He added that the sentencing judge in such a case does not handle his own VOP case.

Commission investigators spoke with A/S/A John Mannion of the Fifth District Circuit Court, Oaklawn. Mannion repeated that the age of a victim does mean a lot to a prosecutor deciding to prosecute a case. He said that the competency issue affects children up to the age of 10 or 11. He told us that most judges use two criteria to determine competency. These are: can the victim/witness "relate sensory perceptions," and can the

victim/witness understand the meaning of an oath (i.e., can he understand and define the term "truth")?

Mannion said that the great benefit of accepting a plea agreement is that a defendant will then have a record of a conviction. In a case that is weak due to the age of the victim or for other reasons, it is often attractive to a prosecutor to be able to agree to a plea (plea bargain). He said that since these offenders "usually come back again," little is lost and something positive may have been gained in negotiating a plea. The prior arrest record can help both the police and the State's Attorney.

Mannion favors a "relaxation" of the competency laws. He said that the trend at the federal level has been to allow more and more evidence in at the preliminary hearing stage, evidence which is then weighed when the trial commences. Mannion mentioned that just because there is a finding of incompetency doesn't mean that a case is lost. The state can proceed with other evidence or can refile the charges at a later date, when the child victim/witness can be re-evaluated for competency.

Mannion mentioned that the Sexually Dangerous Persons Act is an attractive alternative because the burden of proof is on the defendant to be released from the Department of Corrections, once adjudicated sexually dangerous. In a case in which the prosecution is sure that the offense did occur and was perpetrated by the offender, the Act is a good option to have available. Mannion said that the Act is rarely used now because of its prior unconstitutionality. During the court battle over its constitutionality, prosecutors did not see any reason to use the Act because its use had not been clarified. Possibly the Act is not used as often as it might be because of afterthoughts by prosecutors who remember that period of time.

Mannion also said that, in effect, use of the Sexually Dangerous Persons Act precludes a defendant from invoking an insanity defense because mental disease or disorder is one of the requirements for a person to be adjudicated sexually dangerous. If an insanity defense is affirmed and there is no conviction, though, it is likely there will be a court order for some sort of treatment.

Finally, Mannion told us that the State's Attorney's Office has no special training concerning sex crimes involving children. He said that female state's attorneys are always available (presumably in Cook County) should the victim want to speak with a woman.

Commission counsel spoke with Michael Conroyd, Head of the Criminal Division of the Lake County State's Attorney's Office. He told us that there is no one A/S/A assigned to sex crimes against children and that the office was not set up to handle such a particular assignment. Conroyd told us that incest is more common than stranger molestation in Lake County, but that even in cases of stranger molestation, the offender probably is known to the victim. He mentioned to us that if the offender is known to the victim, it is very doubtful that he will receive a prison sentence.

Conroyd ran through most of the standard reasons why these cases are difficult to prosecute. He mentioned competency of witnesses, lack of corroborating evidence, spontaneity in reporting by a child, and "general family problems."

Conroyd was of the opinion that juries are more liable to convict on misdemeanor cases than on felonies, particularly in these kinds of cases in which it is one person's word against another's.

Our counsel determined that in order for a spontaneous declaration to be admissible in court (as an exception to the hearsay rule, to which we have alluded earlier in this report), the following three conditions must exist:

1) An occurrence must be sufficiently startling to produce a spontaneous and unreflecting statement;

2) There must be an absence of time for fabrication; and

3) The statement must relate to the circumstances of the occurrence.

If these conditions are met, the entire declaration is admissible in court as evidence. Obviously, and as numerous interviewees have mentioned, the problem exists when there is a time-lag between the time of an incident and its reporting.

Conroyd told us that he has never tried anyone under the Sexually Dangerous Persons Act. It is his opinion, however, that the facility in which the offenders are housed, at the Menard Correctional Facility, suffers from space problems. He also felt that there is a potential (if not actual) problem with premature release of an SDP from the facility, though Conroyd was not clear concerning why this would occur.

Conroyd said that in Lake County, in an indecent liberties case in which the offender is a stranger or known to the victim, but has no prior arrests, he will probably receive a sentence involving work release instead of "hard time" in jail.

Commission staff spoke with Robert Anderson, a DuPage County A/S/A concerning several issues. Most of the opinions offered reflect others indicated in this report. Anderson offered some opinions concerning the Sexually Dangerous Persons Act. His biggest problem with use of the Act is that he feels that it is "uncertain." By that he means that commitment under the Act does not hold the same certainty as a criminal conviction, presumably because a finding does not constitute a conviction. He also did not want to have to rely on the Department of Corrections or the committing court for a determination of release or discharge. It was his opinion that SDP's do not stay incarcerated for very long, though there is no evidence to support that opinion.

Anderson suggested that the Act might be more appealing to state's attorneys if it provided for a minimum amount of time to be served by anyone adjudicated sexually dangerous. He thought there could be a minimum number of years attached to the Act as there is now for Class X or even Class 1 felonies. He acknowledged that it is difficult to set a minimum number of years if one is speaking of actual "recovery," which theoretically could occur at any time.

Anderson relayed several possible recommendations to us. One was a consideration to amend the indecent liberties statute to include a Class X penalty in situations in which violence is involved in the incident or in situations in which a very young child is the victim.

Anderson recommended making aggravated incest a Class 1 felony and recommended including lewd fondling under the offense of aggravated incest.

Anderson was supportive of House Bill 1715 (81st General Assembly), which would allow a person of any age to testify regardless of that person's age. This would in effect eliminate the need for a determination of competency.

Anderson agreed that a motion to vacate a judgment is "out of the ordinary" and told us that undoubtedly the judge in such a case would be interested in protecting the offender for whatever mitigating reasons suggested by the defense and agreed to by the state.

Finally, in spite of his suggestions concerning aggravated incest, he told us that he felt that most sex offenses are "probationable."

Commission Counsel spoke on the phone with former Will County A/S/A Barbara Badger specifically about the Sexually Dangerous Persons Act. We will present portions of her remarks in our last interview with state's attorneys in a final clarification of the Act.

Badger told us that it was her opinion that, when discharged, a person adjudicated an SDP could have his arrest record expunged. The expungement would be up to the judge and it is hard to determine if the entire record could be expunged (i.e., the Department of Corrections probably would not expunge its records concerning time spent under its jurisdiction).

Badger said that the SDP Act should provide more definite time limitations (both minimums and maximums) concerning when discharge could occur. She felt that an SDP should not languish in prison forever, nor should there be a possibility that an SDP could be released two months after adjudication and transfer. It was her opinion that a person who, by definition, suffers from a mental disorder could not possibly be cured in two months.

Badger affirmed that if an SDP petition is unsuccessful, the offender can be tried for the crime for which he had been arrested.

D. Miscellaneous Interviews

It is difficult to categorize all of the interviews conducted pursuant to our investigation of child molestation. Several were single interviews of experts in little-known fields. Several involved several interviews, but also may have spanned several different areas of concern. This section of the report places in juxtaposition several different interviews of individuals who have added insightful comments on issues relative to our investigation and to the area of inquiry.

Commission staff interviewed Marc A. Schneider, a clinical psychologist on the staff of Cook County Jail. We wanted to speak with him concerning the treatment capabilities for sex offenders, particularly those who have committed sex offenses against children.

As we have indicated elsewhere, a defendant controls most of the information developed from his own therapy; that is, he may decide to release some of the information to the court or he may decide to keep it confidential. Without the defendant's permission, according to Schneider, all that a defendant need tell the court is that he is or is not attending his therapy sessions. He need not elaborate further. According to Schneider, the law prohibits a therapist from releasing information under any circumstances without the consent of the patient. He said that a therapist may be able to testify that a patient is or is not attempting to cope with his problem, but even such an admission as that would not be made by many psychologists. He did say that the psychologist may be required to offer information if a person's life has been threatened and he has been privy to information about it. Schneider opposed any efforts to force a therapist to divulge any more information than is presently divulged. He said that if an offender distrusted him, he would be unable to treat the person. It is necessary for the therapist to establish a position of trust with his patient, regardless if he is a sex offender.

Schneider speculated that the recidivism rate for sex offenders who receive treatment is about the same for all other offenders: about 85%. He added that he was sure it would be higher if no treatment were administered at all, however.

Schneider recommended making available periodic seminars for judges so that they will develop a better understanding of the mental problems of offenders and the alternatives available to treat them. He commented that judges deal with behavioral problems all day and the only background they are required to have is a law degree.

Commission staff spoke with two private attorneys regarding motions to vacate judgments. One of them said that the only reason he could see for such a motion to be sustained might have been that the state had a weak case or did not want to subject the victim/witness to cross-examination in court. Therefore, the A/S/A might have been willing to make concessions in order to obtain a plea of guilty. This theory does not fully take into account that the plea of guilty would then be vacated, there would be no conviction, and the arrest information could be expunged.

Anther attorney told us that such motions are perfectly legal and can occur in both felony and misdemeanor situations, but that they are very rare in felony cases. He said that it is "not easy" for a judge to go along with such an

agreement. He said that such a motion would have to have been agreed to by the defense counsel, the State's Attorney, and the judge.

Because a motion to vacate a judgment can lead to an expungement of arrest records, we shall interject a bit of further detail concerning expungement. Section 206-5 of Chapter 38, Ill. Rev. Stat., provides for the return of identifying information. The statute indicates that on "unconvicted arrestees," all photographs, fingerprints, or other records of identification must be returned to the person charged with a crime. What is not clear is how this shall be accomplished. In an expungement, a court procedure provides for this process. With regard to return of records alone, the statutes are silent.

The Bureau of Identification of the Department of Law Enforcement told Commission Counsel that it would require a party to petition the court before release of any records. They will not voluntarily return records, nor will they return them if a party requests them without going through the court process.

Our interpretation of the expungement statute would indicate that expungement could occur in the case of a sexually dangerous person's being discharged unconditionally, should he go through the court process to achieve expungement.

Somewhat related to this area is an interview Commission investigators conducted with Jean Essary, a Public Defender assigned to Calendar 21 in Juvenile Court. We discussed the issue of court supervision with her. Essary reaffirmed that anyone given court supervision has not been convicted of any crime and may have his record expunged. The initiative toward expungement rests with the defendant or arrest material will remain a matter of record. Essary said that Public Defenders had considered bringing their own motions to have their clients' records expunged, but as of January 7, 1980, the date of our interview, this had never been done.

A defendant who violates the terms of supervision may be brought before the judge by the A/S/A for immediate trial. It is difficult to determine if the terms of supervision have been violated, however, since "supervision" really is a misnomer. Probation requires some monitoring by the court, but court supervision is basically release without any monitoring, predicated on the assumption that the defendant will not commit another crime.

Essary favors supervision over either jail time or probation, as long as therapy is built into the supervisory order. She said that the probation department is much more concerned that a person not violate the terms of probation than that a person is really being helped by the sentence he received.

Essary said that by recommendation of the Court, the State's Attorney, or the Public Defender, a Behavior Clinical Examination (BCE) may be ordered for the defendant. The examination serves to provide recommendations concerning the final disposition of a case. The BCE is available not only in Calendar 21 but in all courtrooms.

Regarding the Sexually Dangerous Persons Act, Essary said that she thought that arrests alone are not enough upon which to base an SDP petition. She favored an actual conviction for a sex crime as the underlying motive for proceeding under the Act.

In May, 1980, we interviewed James R. Anderson, Cook County Adult Probation Supervisor. He addressed the question of pre-sentence investigations first. He said that in Cook County there are 30 pre-sentence investigators responsible for uncovering information on a convicted defendant. His office averages 400 pre-sentence investigations per month. The Adult Probation Department has a probation officer assigned to every court who will gather information at a judge's request, but the judge must make the request. The investigation is not done automatically. Juvenile history can be obtained only with the defendant's permission. But if the defendant refuses to give permission, a notation to that effect is made in the investigatory file to be given the judge.

Anderson said that his investigators try to interview the defendant at least two or three times. Usually his office has three-four weeks to complete an investigation and report. We asked if a judge might be influenced by the way a probation officer or investigator might phrase his report. Anderson responded that his men try to be as objective as possible and that there should be few nuances to the report; its bulk should consist of facts and fairly objective observations. His men are taught to go into detail, even if cumbersome, rather than to delete information that is seemingly trivial at the time.

We asked whether investigators keep aggravating and mitigating circumstances in mind when conducting their investigations and writing their reports. Anderson said that again, his investigators are told to collect as much information as objectively as possible. When asked if the investi-

gators look for any particular information, Anderson said that a judge may request certain kinds of information, and, if so, his investigators will go into detail. He said that such requests have never evolved into a situation in which the reports only reflect what a judge seems to indicate he wants to hear.

Anderson said that probation officers do not make, nor do they attempt to make, sentencing recommendations or attempt to sway a judge in his sentencing deliberations. The judge must depend on the report and its attached social investigation.

From Anderson's Department we obtained the following statistics on pre-sentence investigations conducted between December, 1978, and November, 1979. There were 15 reports on contributing to the delinquency of a child, three on cruelty to children, 11 on indecent liberties, 29 on deviate sexual assault (but not broken down according to age of victim), and 102 for rape (again, not broken down for age of victim).

We spoke with Barry Bollensen, Supervisor of the Division of Probation, Administrative Offices of the Illinois Supreme Court for additional information on pre-sentence reports. He told us that the Illinois Supreme Court has no authority to develop regulations governing pre-sentencing investigations, sentencing guidelines, or probation standards. Each circuit in the state is autonomous in these areas. Bollensen characterized the Illinois probation system as extremely fragmented. He said that the state needs to achieve more uniformity. As an example, he mentioned that while all pre-sentence investigations are done by probation officers, in some circuits some probation officers specialize in pre-sentence reports while others have to be "all things to all people." He added that in some instances some probation officers are only involved in case management (treatment and monitoring of services provided by outside community resources). In other instances, direct services are provided by probation officers. Bollensen believes that probation officers should only be involved in the former activity. He does not believe that probation officers should function as counselors.

Our final miscellaneous interview was with Dean Wolfson, criminal defense attorney with offices in Chicago. He was the attorney who successfully presented a motion to vacate the judgment in the John White (a pseudonym) case mentioned in our chapter on offenders.

Wolfson told us that discretion in charging in Cook County rests almost entirely with Felony Review and not with the police. The police will usually charge the most severe crime applicable, and the A/S/A from Felony Review will have to examine the individuals involved, the circumstances, and the evidence before approving the proper charges.

With regard to the child being found competent as a witness, Wolfson maintained that it is easy for a child seven years old and older to be found competent. He admitted that younger children may not be found competent. He said that competency is just as easy or difficult to establish in a misdemeanor as it is in a felony. Wolfson's reaction to House Bill 1715, which would be "legislating competency," was extreme. He thought the bill was terrible, calling it an "unfair element thrown in against" the accused. He also thought that it would fail any constitutional test. Wolfson believes that any child under seven lives in a fantasy world and must be shown to be competent. Wolfson believes that if a child can be clear and convincing, then his testimony is all that is needed to convict a defendant. To allow a child of any age to testify would, in his eyes, lessen the burden of proof that must rest with the state.

Wolfson said that, from the point of view of a defense attorney, child witnesses present a tremendous problem. It is the duty of the defense counsel to argue for his client, but he must also be sensitive to the emotional needs of the child testifying. He added that the child witness gets a lot of sympathy to begin with from the jury and the judge, and that it can hurt a defense case to attack a child's testimony too strenuously. In general, Wolfson does not like to contend with the testimony of any child witness.

Wolfson thought that the Sexually Dangerous Persons Act was a valuable alternative to prison. He said that it should help society as well as the defendant by providing him with some modicum of treatment as opposed to "hard time."

It was Wolfson's view that 90% of all sex offenders will "do it again." He said that prison does nothing to rehabilitate anyone.

Wolfson thinks that parents of children who have been molested are foolish to send their children to trial. He thinks they should allow the children to forget the incident, rather than have it excerbated by the criminal justice process, which can be painful and trying. He said that a constant retelling of a traumatic story would prevent the child

from going on with his or her own life. Wolfson said that he would not allow his own child to go to court under those circumstances unless the offense had been "serious." He admitted that he was being selfish with such an attitude, but he said he would consider his own child's welfare first before worrying about the welfare of future and potential victims of the same offender.

Wolfson said that expungement was a good idea, and he admitted that when a motion has been vacated, an expungement could occur. Wolfson said that discretion cannot be applied when it comes to accepting a motion to vacate a judgment. He said that certain circumstances must be met for the procedure to be used.

Chapter 6

A BRIEF SUMMARY OF RELATED ISSUES

Thus far we have focused more on descriptions of interviews, cases, and the process as a living and active organism than we have isolated certain issues that are of moment in a child molestation case. This chapter will focus briefly on certain issues in order to clarify them in the reader's mind; many of the issues are only tangentially related to our central concerns in this investigation and report.

A. The Illinois Crime Victims Compensation Act

We spoke with Patricia Goldman, Head of the Crime Victims Compensation Program in Chicago regarding the Act and its administration. We have referred to it previously and will not review the Act statutorily here. The Attorney General's Office, as of September 22, 1979, has assumed the responsibility of administration of the program. Public awareness of the Act and how it works has always been a problem, according to Goldman. All law enforcement agencies must advise crime victims of the existence of the Program, but that has not always been the reality. Administrative costs of the program also are high, although the recent changes should alleviate some of these problems. The new amendments to the Act also require all Illinois hospitals licensed by the Board of Health to post notices and information about the Act in their emergency rooms.

Goldman said that the Act never was intended to cover domestic violence cases; rather, it was intended to be used by the victims of random or inadvertent crime. Children may be victims under the Act. Goldman said that psychiatric care is included in compensation rules, or possibly some similar different therapy if conducted under the supervision of a psychiatrist. Goldman also said that free psychological counseling for victims of incest exists and that the information may be referred by the Program to those who seek assistance as victims of the crime.

An important consideration relative to the Act is the $200 deductible. Often in cases of child molestation, it is difficult to run up a counseling bill for enough of an amount over $200 to make compensation attractive. Property damage and pain and suffering are excluded from coverage under the Act. In cases of sexual abuse, the only type of loss suffered may be pain and suffering, making the Act almost useless to the majority of victims of sex crime.

As the Act stands now, victims sharing the same household as the assailant cannot be compensated for any crimes committed against them. Though the prohibition makes sense, it leaves the incest victim out in the cold.

After speaking with Goldman, we spoke with Alan R. Boudreau, Assistant Attorney General in the Crime Victims Division of the Illinois Attorney General's Office.

Boudreau said that after a person files a claim, the Office writes an opinion concerning its validity. This is done for the convenience of the Court of Claims, which must accept the recommendation of the Attorney General before they will consider the claim for an award. Boudreau said that proper procedure is for a victim to first attempt to file a civil suit against the offender. Only if the civil suit cannot be brought or is unsuccessful should a victim apply to the Crime Victims Compensation Program. If the Attorney General approves a claim, it takes two consenting judges in the Court of Claims to make an award to a victim. Only judges in that court can make the final decision to approve a claim.

In cases involving a child victim, the Attorney General's Office will examine the criminal proceeding to see if the parents are going to proceed with the criminal action. If they are not, the Attorney General will look at the merits of the case. If parents decide not to prosecute, an award still may be made. The facts of the case are reviewed liberally. Investigators examine material with a view toward a preponderance of the evidence rather than proof beyond a reasonable doubt.

Under the Act, a person must show that he notified the proper law enforcement body within 72 hours after the incident occurred or that there was ample reason not to notify that quickly. The Act covers pecuniary loss and calculates losses by averaging a person's net monthly earnings for the six months immediately preceding the date of the application claim.

Boudreau admitted that the statute is somewhat vague regarding which individuals may provide therapy or counselling that is compensable. Physicians of any specialty may, but it is questionable whether a clinical psychologist or registered social worker may, as might be the case in a child molestation incident.

Similar statutes in other states differ in degree. New York and Texas have programs which do not spell out the

qualifications of those providing therapy. Michigan, Florida, and Ohio do not specify that counseling is covered under their statutes, but they also do not define who may provide therapeutic help. California and Massachusetts have statutes whose language is vague enough to indicate that counseling probably is provided through their programs. Wisconsin, on the face of its statute, leaves out counseling by detailing the sorts of services which are compensable.

The Commission plans to pursue the issue of what sorts of care are compensable and which are not, especially as the issue relates to child molestation.

B. The Sexually Dangerous Persons Act

We have already spoken at length about this Act; this very brief section shall mention issues not touched upon in our description of cases, the judicial process, and other interviews.

We interviewed Donald Jensen of the John Howard Association, a prison watchdog group, regarding its work with offenders adjudicated sexually dangerous. The Association had done a study of offenders released to the general population and had attempted to help resettle such offenders in communities, provide job counselling, etc. Jensen was able to speak to several related issues. Jensen told us that, to the best of his knowledge, the Menard Center where SDPs are sent has no special programs for its SDP inmates. The Menard Center is a general psychiatric facility which also offers a sex offender treatment program.

Jensen mentioned a lawsuit challenging the constitutionality of the SDP Act, brought in 1976. After the decision was made regarding constitutionality, a number of individuals classified as sexually dangerous were released. This was not the only option open to authorities after settlement of the suit, however (which required a stricter standard of proof). SDPs could be retried and recommitted as SDPs. They could also be committed to the Chester Mental Health Center.

Jensen gave us several reports about the John Howard Association Resettlement Program. The program came about when it became clear that a number of individuals were going to be released because of the lawsuit and that they would need assistance rejoining the community. The Mandel Legal Aid Clinic contacted the Association, even though it is usually not involved in direct service projects, and it

agreed to take on the project. Participation in the project on the part of an SDP was strictly voluntary. At this time, there is no formalized follow-up on SDPs who are released.

Jensen said that judges, first, are not using the Act to commit violent, dangerous sex offenders; instead, it is being used against "nuisance" offenders (flashers, fondlers, etc.). SDPs usually come from weak cases, he said, and an A/S/A is more likely to pursue a straight criminal conviction with a dangerous sex criminal.

The Association reports, covering only a brief period of time, indicate that there has been very little recidivism. The reports are not designed for long-term tracking of the individuals with whom the Association worked.

The Illinois Sexually Dangerous Persons Act differs from most states whose statutes we examined. In Illinois, the finding of SDP is a pre-conviction procedure and is not a criminal conviction. In a number of other states, the finding of SDP occurs after a conviction has been determined, and is part of a sentencing process in those states. In a way, this gives the Illinois law much more flexibility because it can be initiated after an arrest but before conviction, which could be difficult to render in some cases.

C. Other Issues

We have already spoken in depth about sentencing options and issues and the probation department and its role, two areas which we could have pursued in more depth here. We intend to pursue probation at the juvenile and the adult level in more depth in our third and final report. We shall conclude this chapter with several observations by Stevens and Berliner, quoted early on in this report.

> If the child molesters are prosecuted, child victims must endure the same processes as adult victims do, without benefit of special procedures or protection. This fact contrasts with the differential treatment which our society provides to minors in other areas of the criminal justice system.
>
> It is our opinion that the problems inflicted on child sexual assault victims in the criminal justice system result from (a) an inadequate understanding of children and their capabilities by system personnel, and (b) misconceptions held by those same personnel about the nature of the crime of child molestation. Increased reporting

of sexual abuse of children and improved conviction rates depend on changing those aspects of the legal system which inhibit victim cooperation.

Even when the parents respond in a calm, appropriately supportive, believing manner, the activities of the criminal justice system will usually exacerbate the child's distress. Perpetual discussion of the sexual assault in repeated interviews over many months discourages rapid resolution of the assault-related trauma for both child and parents. The criminal justice system must address the conflict that exists between a child victim's emotional needs following a sexual assault and the requirements for prosecution of the case.

Thus the child is abandoned to a set of abstract beliefs in justice, and we ask if justice is indeed being carried out without the complete participation of the witness. One possible model to address this problem is assigning a legal representative to advocate for each child appearing as the victim/witness in a criminal matter. This person would be appropriately qualified with knowledge of child development and the law and could speak out in court when the questioning became inappropriate to the child's age, level of comprehension, or emotional state. The child victim advocate role would not interfere with the proceedings or abrogate the rights of the defendant.

If criminal prosecution is the avenue society chooses to deal with this important problem, then there is an obligation to adjust the requirements of the legal system to conform to the special needs and abilities of children. These changes would clearly necessitate specialized training for all official figures involved with the investigation, as well as development of new and flexible procedures. Legislation should be explored to provide the legal foundation for special protection of the child witness.

Chapter 7

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Any examination of child molestation in any state necessarily will have its limitations. We were not able to speak with every judge or state's attorney in Illinois who has ever handled a child molestation case; doubtless, we have missed some very authoritative individuals involved in molestation cases in the criminal justice system. But our analysis of cases, our review of law and literature, and our interviews have given us a broad perspective from which to view the problem, discover certain facts, and offer recommendations for change.

A. Findings and Conclusions

1. It is true that the incidence of reports of child molestation has risen recently. Whether actual child molestation incidents themselves have increased remains unclear.

2. Repeat offenders constitute a great threat to the safety of potential victims of child molestation, but no more so than first-time offenders, or offenders who have been detected for the first time.

3. The courts are empowered to mete out appropriate punishments. Judges have been willing to do so, even in situations in which it may appear that justice is not being done. Frequently there are mitigating circumstances to a crime of which the public remains ignorant. One cannot judge the criminal justice process regarding child molestation based solely upon the information generally available to the public.

4. We found during our investigation that the laws intended to deal with child molestation are not "grossly inadequate." An examination of codified law shows that our present laws are not perfect but that they are adequate to deal with child molesters when handled correctly by interested parties to the prosecution. A cog in the system can break down at any moment and appear to render the entire system useless or ineffective. There are problems with rehabilitation in this state that we will address later. Bureaucratic regulations are addressed in our last section of this report, on recommendations. Finally, court sentences and decisions have been compiled by the Commission during this investigation in order to present case studies and point out the discretionary processes that exist in the criminal justice system.

5. Mandatory sentencing already is an alternative open to judges in certain circumstances. Repeat offenders often already receive long terms of incarceration when convicted on appropriate charges.

6. In Cook County, probation for sex offenders can be a threat to the safety of the public. Probation personnel now do little more than monitor the comings and goings of the probationers; little meaningful supervision actually takes place.

7. One of the reasons that it is impossible to evaluate to what extent children are being sexually victimized is due to the way statistics and records are being kept. In a rape offense, for instance, no record is kept of the victim's age. Furthermore, offenders may be charged with a number of seemingly innocuous crimes such as disorderly conduct that are, in reality, child molestation cases. The Illinois Department of Law Enforcement, as we mentioned in Sexual Exploitation and as we refer to it in our recommendations here, is attempting to address this problem.

8. Police and state's attorneys both are generally uncomfortable investigating or prosecuting cases of child molestation. They frequently do not know how to interview effectively a child victim or even a victim's parents, nor do they know how to prepare them to testify in court.

9. Both police and state's attorneys have the burden of presenting a good case to a jury or a judge for a trial. The problems that come into play with any sex offense are exacerbated when the victim has been a child. Among other things, the police must be able to prepare a useful and accurate police report and the state's attorney must be able to prepare a victim/witness for testifying in court. In Cook County misdemeanor court, a state's attorney generally has, at most, one hour to prepare a witness to testify. The result can be less than quality prosecution.

10. There are few treatment programs available for sex offenders in Illinois Department of Corrections facilities. The existing sex offender treatment program serving the inmate population is largely voluntary and can serve only a fraction of Illinois' sex offenders anyway. Most sex offenders will re-enter society untreated.

11. There are few treatment programs outside of correctional facilities. Private psychiatric care is available, but there are few truly viable programs or alternatives for a sex offender seeking treatment while on probation, parole, or supervision.

12. As we have noted, mandatory jail time is available in certain circumstances for sex crime against children. However, to institute mandatory jail time for all sex offenses could result in fewer convictions and an increase in plea bargaining.

13. We have found that judicial discretion in sentencing is appropriate and should not be eliminated.

14. A sex offense committed against a child can result in any number of different charges being used, or a combination thereof. A conviction for an offense that is not, on its face, a sex crime can affect a sentence rendered in a subsequent trial unless a judge is made aware of the circumstances underlying the previous conviction.

15. Discretion is not limited to the judiciary. Each step in the criminal justice process involves some degree of discretion that can affect the outcome of a case.

16. Regarding the Sexually Dangerous Persons Act, we found that: a) presently, commitments under the Act are lengthy; b) the Act is not utilized very often, partially because state's attorneys are not familiar with the Act, or do not understand the result of an adjudication under the Act; and c) the Act is an alternative to prosecution and conviction of sex offenders in this state which stresses treatment.

17. How state's attorneys and police exercise discretion often depends upon the skills and attitudes of individual state's attorneys and police.

18. We found that the use of face-to-face line-up procedures is improper; they are damaging to the child victims and to the victims' parents both. Police departments lack sufficient proper facilities for line-ups and should upgrade their facilities.

19. Often, none of the authorities involved in a child molestation case refer a child or his parents to anyone for counseling. Many authorities feel that it is not "their job" to do so, and they rely upon others in the system to make counseling referrals.

20. In most child molestation cases, the child victim is forced to tell his story to a number of different parties, perhaps needlessly. Were there a special unit designed to handle child sex crime, at least in larger municipalities, this problem might be alleviated.

21. Few child victims or their parents are aware of or take advantage of the Crime Victims Compensation Act; even those aware of the Act might find it difficult to take advantage of it. We will examine some options in our section on recommendations.

22. Plea bargaining can enable a state's attorney, when faced with a weak case, to obtain a conviction where, without it, the case may have been dismissed or a defendant found not guilty.

23. Our case studies have indicated that the stereotyped images of child molesters as "dirty old men," psychotic and compulsive rapists, or homosexuals is not correct. Child molestation cuts across all societal strata. Furthermore, the majority of child molesters are not violent.

24. The final decision to prosecute a case rests with the State's Attorney's Office. The public seems to have a misimpression that the police or the judiciary have it within their powers to decide if or how to proceed with a case to or in prosecution.

B. Suggested Recommendations

The Commission is scheduling public hearings on all facets of the child abuse problem, including the criminal justice system and the sexual exploitation of children. Rather than present specific recommendations within this report, we have developed general suggestions for recommendations which will be explored further at the public hearings this year.

The following represent our suggested recommendations concerning child molestation and the criminal justice system.

1. The Rape Victims Treatment Act should specifically include victims of sexual child molestation.

2. Several changes should be considered in the Crime Victims Compensation Act. These include changing the language of the Act to allow compensation for services rendered by clinical psychologists, an attempt by the Attorney General's Office to further publicize the availability and conditions necessary for compensation under the Act, a provision allowing the Attorney General's Office to waive the prohibition that victims who are related to the assailant and reside in the same household cannot be compensated (under special circumstances), and the General Assembly's consideration of re-

ducing the $200 deductible now in force in certain circumstances for all persons under age 65.

3. Whenever possible, special units should be designated to handle child sexual abuse. These units can exist at many different levels besides that of the police, such as the hospital level, the prosecutorial level, etc. Any authorities dealing with child sexual abuse should have received special training in its handling. Whenever possible, children should undergo a minimum of interviews about the incidents and attempts should be made to speak with children in judicial chambers or special settings conducive to alleviating a child's anxiety. Children need to be treated with sensitivity and compassion at all levels of the process.

4. Selected police officers and state's attorneys should be trained to handle child sexual abuse cases and should be available as consultants to other jurisdictions to help prepare cases for prosecution.

5. The police should be required to give written information to the parent or guardian of a child victim regarding counseling options available to them. Authorities involved at any point in the criminal justice system should be sensitive to counseling needs and should have available information for victims of child molestation.

6. Illinois should expand its available treatment programs for sex offenders in prisons; more correctional programs are needed to treat sex crime. More programs may also be needed outside of the correctional system.

7. We urge all local law enforcement bodies to cooperate fully with the new computerized sex offender information system now being instituted by the Illinois Department of Law Enforcement.

8. We encourage law enforcement agencies either to join the Hotline group described in the Sexual Exploitation report or to start their own similar group. The Hotline group investigates child sex crime, including indecent liberties and other crimes. The northern portion of the state is well-covered by law enforcement representatives, but other portions of the state could benefit from such a cooperative group.

9. Parents and the public-at-large must have made available to them information concerning the various crimes that constitute child molestation. Such information could

be provided through existing law enforcement crime prevention programs or through similar programs sponsored by governmental or private agencies. Furthermore, parents and the public-at-large must have made available to them information concerning the effects of child sexual abuse in order to detect possible abuse among children. They should be cognizant of the effects of such abuse on children during and after the prosecutorial process.

10. The Illinois Supreme Court should establish by rule uniform regulations to govern certain probation functions throughout the state without removing local administration functions from the individual circuits. There should be established mandatory standards for pre-sentence reports, for instance.

11. There are many possible recommendations for changes in the Illinois codified law. One would provide for a Class X penalty in a molestation case in which the victim is of a very young age or in which a child has encountered violence in the act. Another would make aggravated incest a Class 1 felony and would include the offense of lewd fondling under the offense of aggravated incest. These additions to the criminal code, as well as changes in the code, possibly including a single sex-neutral criminal sexual conduct statute covering all sex crime as has been developed in other states, should be analyzed by the General Assembly.

12. The General Assembly should consider enacting an evidentiary rule to allow statements made by a child to an adult regarding sexual assault admissible as corroboration of a child's story. Complaints made by a child victim, though perhaps falling outside of the "spontaneous declaration" or "immediate outcry" exceptions to the hearsay rule, will be admissible at trial as corroboration of the child's version of the criminal occurrence. In effect, this means that the adult to whom the child made the complaint may be permitted to testify that the complaint was made.

13. The General Assembly should consider legislation requiring the court in criminal cases to allow all victims of the crime charged in the case to testify, regardless of that victim's age at the time testimony is sought.

Appendix A

TEXT OF SELECTED OFFENSES WITH WHICH A CHILD SEX OFFENDER MAY BE CHARGED IN ILLINOIS

SEX OFFENSES

Ill. Rev. Stat. ch. 38, §11-1. Rape

(a) A male person of the age of 14 years and upwards who has sexual intercourse with a female, not his wife, by force and against her will, commits rape. Intercourse by force and against her will includes, but is not limited to, any intercourse which occurs in the following situations:

(1) Where the female is unconscious; or

(2) Where the female is so mentally deranged or deficient that she cannot give effective consent to intercourse.

(b) Sexual intercourse occurs when there is any penetration of the female sex organ by the male sex organ.

(c) Sentence

Rape is a Class X felony.

Ill. Rev. Stat. ch. 38, §11-2. Deviate sexual conduct

"Deviate sexual conduct", for the purpose of this Article, means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another.

Ill. Rev. Stat. ch. 38, §11-3. Deviate sexual assault

(a) Any person of the age of 14 years and upwards who, by force or threat of force, compels any other person to perform or submit to any act of deviate sexual conduct commits deviate sexual assault.

(b) Sentence

Deviate sexual assault is a Class X felony.

Ill. Rev. Stat. ch. 38, §11-4. Indecent liberties with a child

(a) Any person of the age of 17 years and upwards commits indecent liberties with a child when he or she performs or submits to any of the following acts with a child under the age of 16:

(1) Any act of sexual intercourse; or

(2) Any act of deviate sexual conduct; or

(3) Any lewd fondling or touching of either the child or the person done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the person or both.

(b) Any person, regardless of age, commits indecent liberties with a child when he or she:

(1) Photographs, videotapes, films or otherwise makes reproductions by similar means of any of the acts set forth in subsection (a) of this Section, between a minor of less than 16 years of age and any other person regardless of age or of any of the following acts: (A) a minor of less than 16 years of age engaging in sexual intercourse or deviate sexual conduct with an animal; (B) a minor of less than 16 years of age engaging in acts of excretion or urination in a sexual context; (C) a minor of less than 16 years of age being bound or fettered in any sexual context; or (D) a minor of less than 16 years of age engaging in masturbation; or

(2) Solicits any minor under the age of 16 to be photographed, videotaped or filmed or to appear in any similar reproductions of any of the acts described in subsection (a) of this Section or in paragraph (1) of subsection (b) of this Section; or

(3) Is a parent, legal guardian or other person having care or custody of a child under the age of 16, and knowingly permits or arranges for such child to participate in any of the acts described in subsection (a) of this Section or in paragraph (1) of subsection (b) of this Section for the purpose of being photographed, videotaped or filmed or of having similar reproductions made by any person in such a way as to constitute a violation of paragraph (1) of subsection (b) of this Section.

(c) It shall be an affirmative defense to indecent liberties with a child that the accused reasonably believed the child was of the age of 16 or upwards at the time of the act giving rise to the charge.

(d) It shall be an affirmative defense to indecent liberties with a child, under subsection (a) of this Section, that the child has previously been married.

(e) Sentence

Indecent liberties with a child is a Class 1 felony.

Ill. Rev. Stat. ch. 38, §11-5. Contributing to the sexual delinquency of a child

(a) Any person of the age of 14 years and upwards who performs or submits to any of the following acts with any person under the age of 18 contributes to the sexual delinquency of a child:

(1) Any act of sexual intercourse; or

(2) Any act of deviate sexual conduct; or

(3) Any lewd fondling or touching of either the child or the person done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the person or both; or

(4) Any lewd act done in the presence of the child with the intent to arouse or to satisfy the sexual desires of either the person or the child or both.

(b) It shall not be a defense to contributing to the sexual delinquency of a child that the accused reasonably believed the child to be of the age of 18 or upwards.

(c) Sentence.

Contributing to the sexual delinquency of a child is a Class A misdemeanor.

Ill. Rev. Stat. ch. 38, §11-6. Indecent solicitation of a child

(a) Any person of the age of 17 years and upwards who

(1) solicits a child under the age of 13 to do any act, which if done would be an indecent liberty with a child or an act of contributing to the sexual delinquency of a child; or

(2) lures or attempts to lure any child under the age of 13 into a motor vehicle with the intent to commit an indecent act, commits indecent solicitation of a child.

(b) It shall not be a defense to indecent solicitation of a child that the accused reasonably believed the child to be of the age of 13 years and upwards.

(c) Sentence.

Indecent solicitation of a child is a Class A misdemeanor.

Ill. Rev. Stat. ch. 38, §11-9. Public indecency

(a) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:

(1) An act of sexual intercourse; or

(2) An act of deviate sexual conduct; or

(3) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person; or

(4) A lewd fondling or caress of the body of another person of either sex.

(b) "Public place" for purposes of this Section means any place where the conduct may reasonably be expected to be viewed by others.

(c) Sentence.

Public indecency is a Class A misdemeanor.

Ill. Rev. Stat. ch. 38, §11-10. Aggravated incest

(a) Any male or female person who shall perform any of the following acts with a person he or she knows is his or her daughter or son commits aggravated incest:

(1) Has sexual intercourse; or

(2) An act of deviate sexual conduct.

(b) "Daughter" for the purposes of this Section means a blood daughter regardless of legitimacy or age; and also means a step-daughter or an adopted daughter under the age of 18.

(c) "Son" for the purposes of this Section means a blood son regardless of legitimacy or age; and also means a step-son or an adopted son under the age of 18.

(d) Sentence.

Aggravated incest is a Class 2 felony.

Ill. Rev. Stat. ch. 38, §11-11. Incest

(a) Any person who has sexual intercourse or performs an act of deviate sexual conduct with another to whom he knows he is related as follows commits incest:

Brother or sister, either of the whole blood or the half blood.

(b) Sentence.

Incest is a Class 3 felony.

DISORDERLY CONDUCT

Ill. Rev. Stat. ch. 38, §26-1. Elements of the offense

(a) A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace[.]

....

(b) Sentence.

A violation of subsection 26-1(a)(1) is a Class C misdemeanor.

....

KIDNAPING AND OTHER RELATED OFFENSES

Ill. Rev. Stat. ch. 38, §10-1. Kidnaping

(a) Kidnaping occurs when a person knowingly:

(1) And secretly confines another against his will, or

(2) By force or threat of imminent force carries another from one place to another with intent secretly to confine him against his will, or

(3) By deceit or enticement induces another to go from one place to another with intent secretly to confine him against his will.

(b) Confinement of a child under the age of 13 years is against his will within the meaning of this Section if such confinement is without the consent of his parent or legal guardian.

(c) Sentence.

Kidnaping is a Class 2 felony.

Ill. Rev. Stat. ch. 38, §10-2. Aggravated kidnaping

(a) A kidnaper within the definition of paragraph (a) of Section 10-1 is guilty of the offense of aggravated kidnaping when he:

(1) Kidnaps for the purpose of obtaining ransom from the person kidnaped or from any other person, or

(2) Takes as his victim a child under the age of 13 years, or

(3) Inflicts great bodily harm or commits another felony upon his victim, or

(4) Wears a hood, robe or mask or conceals his identity, or

(5) Commits the offense of kidnaping while armed with a dangerous weapon, as defined in Section 33A-1 of the "Criminal Code of 1961."

As used in this Section, "ransom" includes money, benefit or other valuable thing or concession.

(b) Sentence.

(1) Aggravated kidnaping for ransom is a Class X felony.

(2) Aggravated kidnaping other than for ransom is a Class 1 felony.

Ill. Rev. Stat. ch. 38, §10-3. Unlawful restraint

(a) A person commits the offense of unlawful restraint when he knowingly without legal authority detains another.

(b) Sentence.

Unlawful restraint is a Class 4 felony.

OFFENSES INVOLVING CHILDREN

Ill. Rev. Stat. ch. 23, §2354. Endangering life or health

It shall be unlawful for any person having the care or custody of any child, wilfully to cause or permit the life of such child to be endangered, or the health of such child to be injured, or wilfully cause or permit such child to be placed in such a situation that its life or health may be endangered.

Ill. Rev. Stat. ch. 23, §2368. Cruelty to children and others--Penalty

Any person who shall wilfully and unnecessarily expose to the inclemency of the weather, or shall in any other manner injure in health or limb, any child, apprentice or other person under his legal control, shall be guilty of a Class 4 felony.

Appendix B

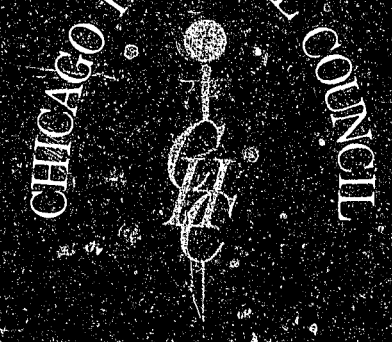
TEXT OF "GUIDELINES FOR THE TREATMENT OF SUSPECTED RAPE VICTIMS," PREPARED BY CHICAGO HOSPITAL COUNCIL.

Note: These guidelines are presently in the process of being updated.

CONTINUED

2 OF 3

guidelines for the treatment of suspected rape victims



Approved by the
Chicago Hospital Council
Board of Directors
February 21, 1974
Revised, February 17, 1977

introduction

Chicago area hospitals will treat about 2.5 million emergency room patients this year.

The emergency room is often called upon to substitute for the family doctor in responding to routine medical needs. Sometimes the patient's life is at stake. In other instances the emergency may require specialized care and counseling. The victim of a rape attack is one such patient.

In 1974 the Chicago Hospital Council published GUIDELINES FOR THE TREATMENT OF SUSPECTED RAPE VICTIMS. Since their publication both the City of Chicago and State of Illinois have passed statutes which address the emergency room treatment of rape victims.

This revised edition is designed to assist hospitals in complying with the special needs of the rape victim and the family, of law enforcement authorities, and with requirements imposed by local and state statutes. We are especially grateful to the members of the committees, the Chicago Police Department, the Citizens Committee for Victim Assistance, members of the medical profession and other dedicated persons who assisted in this effort.

Publication of these guidelines reaffirms hospitals' adherence to the highest ideals of humanity in serving those patients most in need of help.

Howard F. Cook
President
Chicago Hospital Council
February 17, 1977

preface

Increasing public awareness of, and concern with, the plight of rape victims led the Chicago Hospital Council Board of Directors in August 1973 to recommend development of criteria for the treatment of rape patients. Because of the brutal nature of rape and frequently serious emotional aftereffects, the Chicago Hospital Council's Board of Directors urged formulation of guidelines designed to meet the patient's needs for sympathetic and comprehensive care.

The original guidelines were approved by the Council's Board of Directors on February 21, 1974. This revised edition reflects subsequent requirements governing treatment and procedures under City of Chicago and State of Illinois statutes.

Comprised of seven sections and special appendices of reference sources, these Guidelines provide helpful information on such matters as conditions for treatment and interrogation of patient, notification of authorities, collection and release of evidence, follow-up care and the governing legislation. Hospital emergency room personnel, medical staff members, nursing, public relations and social services departments will find these Guidelines useful. These Guidelines will also be especially helpful to new employees, medical and para-medical students.

Chicago Hospital Council staff worked closely with a special committee of the Council in framing this revised document. The Chicago Police Department, The American College of Obstetricians and Gynecologists, other public agencies and professional groups were consulted. We, again, express our thanks to each of them for their help.

James Burks, M.D., Chairman
CHC Committee on Hospital Treatment
of Victims of Sexual Assault

1. notification of authorities

mandatory in city hospitals

Chapter 137-16 of the Municipal Code of Chicago (copy attached as Appendix A) requires that hospitals located in Chicago report by telephone to the Chicago Police Department the fact that a crime may have occurred, and the name and address of the patient whose treatment is the result of such an apparent crime. (Rape and other sex offenses presumably are included in the list of reportable incidents.) Documentation of such a telephone call should be placed in the patient's medical record. Such documentation should include:

(1) The date and time of the call;
(2) The name of the person making the call;
(3) The name of the person receiving the call;
(4) The information provided to the police.

Such notification is not required if the patient is accompanied to the hospital by a Chicago police officer.[1]

hospitals outside chicago

In situations where an alleged rape or sexual assault occurs *outside* the Chicago city limits, but the patient is brought or transferred to a hospital located in Chicago, the incident apparently must be reported to the Chicago police. Hospitals located outside Chicago should ask their local law enforcement agency if they are affected by a reporting requirement similar to that of Chicago.

It should be remembered that hospitals located in Chicago (or other jurisdictions having a reporting requirement similar to Chapter 137-16 of the Municipal Code of Chicago) *should not attempt to determine whether a rape or sexual assault actually occurred* before deciding whether to report an incident to the police. The police are to be notified in any case in which a rape or sexual assault may have occurred (see footnote number 1).

juvenile cases

If the patient is under 18 years of age, and apparently has been raped or molested by a person responsible for the child's welfare, the Illinois Abused and Neglected Child Reporting Act

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[1]It should be noted that the Municipal Code of Chicago states that the police are to be notified in cases in which the hospital *knows* that the person being treated at the hospital is at the hospital as a result of an "injury sustained . . . as the victim of a criminal offense." Rape is a criminal offense, but the determination of whether a rape has in fact occurred can only be made by the courts. The Chicago Police Department has apparently been interpreting the word "knows" in the Municipal Code to mean "have reasonable cause to believe." Hospitals should be cognizant of this apparent difference between the wording of the Municipal Code and the police department's interpretation of the Code.
Also, the Municipal Code does not specify what information is to be provided to the police. The code is interpreted by the police to mean that the hospital is to provide the patient's name and address, and to indicate that the patient may have been raped.

(a copy of which is attached as Appendix B) requires that the hospital *immediately report the incident by telephone* to the *Illinois Department of Children and Family Services (793-2100).* The hospital must also mail *a written report* to the Department of Children and Family Services within 24 hours after making a determination that a patient under age 18 apparently has been assaulted.[2]

Since reports to the police (where required) and the Illinois Department of Children and Family Services (where appropriate) must be made immediately upon the hospital's awareness of a reportable incident, the hospital should designate a staff member in the hospital emergency room to make such notification. This will help insure that notification is prompt and not overlooked.

Generally, hospitals may release information on police and fire cases to the news media. However, as stated in the Chicago Hospital Council's Guide to Hospital and News Media Relations (see Appendix C), rape cases are an exception to the standard information-release policy applicable to police or fire cases. Hospitals are advised not to release information about the alleged rape victim.

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[2]It should be noted that Section 3 of the Abused and Neglected Child Reporting Act does not specifically refer to rape or molestation. It is assumed that rape or molestation is within the meaning of the words "injury," "physical abuse," or "neglect" as those terms are used in the Act. Therefore, rape or molestation are assumed to be incidents reportable under the Illinois Abused and Neglected Child Reporting Act.

2. setting for treatment and police interview

coding of rape cases

Because it is likely that the patient will be suffering from emotional trauma, it is essential that the patient be treated promptly, carefully, and sympathetically. It is advisable that possible rape cases be referred to by a *code* so that comments by hospital personnel such as "Where's the rape?" are avoided. For example, one hospital refers to such cases as "Code R" cases.

Examination of and consultation with the patient *should take place in a private setting,* preferably a private office or examining room located within or adjacent to the emergency department. Similar facilities should be made available for use by the police in interviewing the patient.[3] Under no circumstances should consultation or interviewing of any kind occur in the emergency department waiting room or other public area.

presence of observer

Both the Chicago Ordinance and Illinois statute require a sympathetic hospital staff member to remain with the patient through the police interview *in the event the patient desires such support.* The hospital staff member may serve as an observer, but should not participate in the interview itself.

To minimize guilt feelings and anxiety on the part of the patient, hospital personnel should provide sympathetic counsel to the patient and family or friends who may accompany the patient to the hospital. If the patient's family or friends should use such terms as "ruined," "violated," "dirty," etc., in reacting to the patient's experience they should be cautioned against so doing.

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[3]In most cases, the patient is brought to the hospital by the police in a patrol or "beat" car. The patrolman bringing the patient to the hospital is required by the police to conduct a preliminary investigation and file a report of same. The patrolman will normally have conducted this investigation prior to bringing the patient to the hospital. The police department also dispatches a special investigator to the hospital to interview the patient and conduct an in-depth investigation. ***The patient should be examined and treated prior to talking with the special investigator.***

3. consent and release of evidence

consent for collection of specimens

The usual consent for examination and treatment should be obtained prior to examining and treating the patient. Such consent should cover the collection of specimens needed for proper examination of the patient as well as collection of specimens which may later be given to the police as evidence.

All information shall be retained by the hospital and may only be released upon the *specific, written consent* of the patient (or the parent or guardian if the patient is a minor [under age 18, in Illinois]) or upon receipt by the hospital of a subpoena or court order. It should be noted that information includes not only medical records, but smears, slides, x-rays, clothing, photographs, etc.

Thus, the *only information* that is to be *released without the patient's specific consent*, a subpoena, or a court order, is:

(1) The report to the police of the injury and the patient's name and address; and even that information is to be released only in Chicago and other jurisdictions in which such reporting is required by law (see footnote 1 on page 3 and Appendix C);

(2) The report to the Illinois Department of Children and Family Services as required by the Illinois Abused and Neglected Child Reporting Act (see Appendix B and footnote 2 on page 4).

An *authorization form* covering release of information to the police is attached as Appendix G. Should the patient refuse to authorize the release of information to the police, such refusal should be noted in the patient's medical record.

4. examination and treatment

what city code requires

Both the Chicago Municipal Code and the Illinois "Rape Victims Emergency Treatment Act" mandate certain procedures be given as part of the emergency care of the rape victim.

Examination of the consenting victim by a qualified gynecologist (including licensed residents in a gynecological-obstetrical service) is required under the Chicago Municipal Code, Section 137-20.[4] The actual examination and treatment of any patient depends upon the physician's judgement of the patient's needs as well as the patient's wishes.

Under the Municipal Code (see Appendix A):

1. The victim is to receive immediate preliminary examination by the attending physician to identify and treat any emergency other than rape.
2. A trained hospital staff member, preferably a female psychiatric social worker, should interview the consenting victim in a private setting. This staff member will evaluate and counsel the victim, advise follow-up care and assist the police in obtaining information needed to carry out their investigation.
3. The consenting victim will be examined by a qualified gynecologist. An appropriate gynecological history should be obtained and an appropriate examination should be performed as specified in the Chicago Department of Health form, "Medical Report—Suspected Sexual Assault" (see Appendix D). (During the physical examination, the presence of bruises and lacerations should be noted. Note also if the patient's clothing is torn, bloody, or soiled in any way. Torn, soiled or bloody clothing should be retained in accordance with Section 5 of these guidelines. Evidence of trauma to external genitalia should also be noted.)
4. Prophylactic treatment for venereal disease and treatment against pregnancy are to be furnished to the consenting victim, unless contraindicated for medical reasons.
5. The examining gynecologist must fill out the prescribed Department of Health form, which details the time, place and findings of the examination. This form is to be typewritten and signed by the examining gynecologist within seven days and be furnished upon request *with the consent of the victim*, to the appropriate investigating police officer, the State's Attorney, and the venereal disease section of the Chicago Department

[4]Illinois statute, however, permits examination by licensed physicians.

of Health when appropriate. One copy is to remain as part of the victim's medical record.

what state law requires

The State law (PA 79-564) requires that the victim be given (see Appendix E):

1. Appropriate examinations and laboratory tests and maintenance of records.
2. Written and oral information on the possibility of infection, venereal disease and pregnancy.
3. Written and oral information on the medical procedures, medication and contraindications for prevention or treatment of infection or disease.
4. Appropriate medication.
5. A blood test for venereal disease.
6. Written or oral instructions indicating the need for a second blood test.
7. Appropriate counseling.

(For the clinical requirements of the Illinois Department of Public Health, see Appendix F.)

policy aids

In addition to the above requirements, the following policies have been recommended by various medical sources and are meant to serve as an aid in the development of the medical staff's policy.

1. Explain all procedures clearly to the victim by means of both written and oral instructions given to each patient.
2. Address patient formally—Miss, Ms., Mrs., or Mr.
3. The patient history should contain pertinent information *only*.
4. The examining physician giving a pelvic examination should consider the use of sedatives prior to the pelvic examination.
5. A speculum examination (using a non-lubricated, but water-moistened speculum) may or may not be done, based upon the judgement of both the physician and the patient (or patient's parent or guardian, if the patient is a minor). It should be understood that such an examination may enhance the proper collection of specimens and the proper examination of the patient.
6. Patients receiving diethylstilbesterol (DES) must receive information on its possible side effects.[5]
7. Pregnancy and serology tests must be performed to obtain baseline data.

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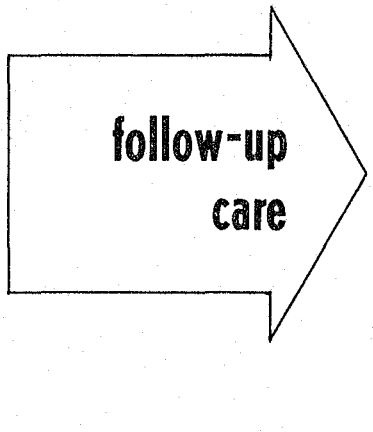
[5]This product is limited to emergency situations, such as rape. The requirements for marketing, dosage and patient information on the post-coital DES product are set forth in 21 CFR 310.410 and published in the *Federal Register* of February 5, 1975.

8. Shower should be offered to the victim, as well as food and change of clothing.

In addition, the treatment of a patient suspected to have been the victim of rape or sexual assault should be more extensive than what would be required in obtaining evidence for use by the police, and treating the patient's immediate symptoms (often contusions, lacerations, etc.).



Follow-up care should be provided at the hospital, or the hospital should offer to arrange for follow-up care elsewhere.

Follow-up care should include:

(1) Treatment of contusions, lacerations, etc.

(2) Surveillance for venereal disease.

(3) Surveillance for pregnancy.

(4) Counselling to prevent any significant, long-term harmful psychological effects (such counselling should involve family or friends, as appropriate).

If the patient has a personal physician, she should be referred to that physician for follow-up care. If the patient does not have a personal physician, she should be treated at the hospital or referred to the most appropriate treatment source.

Where follow-up treatment is to be provided by a source other than the hospital initially treating the patient, the hospital, with the proper consent, should provide the treatment source with all information that would be helpful in such treatment.

5. evidentiary material

conditions for release

Evidentiary material should be gathered and held for possible release to the police. Absent an appropriate subpoena or court order, such material should not be released without the *express written consent of the patient* (or parent or guardian in the event the patient is a minor).

The Criminalistics Division of the Chicago Police Department has requested that specimens provided to the Chicago Police Department be collected and handled as follows:

a. *Vaginal Swab*
A cotton swab should be used to swab the vaginal orifice and remove liquid from the vaginal vault by aspiration. The cotton swab should be placed in a sealed test tube or vial with aspirated liquid from the vaginal vault. The cork or vial cap should be sealed with tape to prevent loss of liquid. A label showing the patient's name, date of collection of specimen, and the name of the person collecting the specimen should be affixed to the container.

b. *Vaginal Smear*
A cotton swab should be used to swab the vaginal orifice. The cotton swab should be gently rubbed onto a microscopic slide. The slide should not be stained or fixed. It is preferred that a frosted end slide be used so that the patient's name, date of collection of the specimen, type of specimen, and the name of the person collecting the specimen can be written on the slide. The vaginal smear should then be placed in a suitable medical specimen slide mailer and sealed with tape. The name of the patient, the date of collection, the type of specimen, and the name of the person collecting the specimen should be placed on the slide mailer.

c. *Oral Swab (for cases in which there may have been oral sexual contact)*
A cotton swab should be used to swab the interior of the mouth. The swab may be moistened with distilled water before swabbing the mouth. The cotton swab should be placed in a test tube or vial and then sealed with a cork or tape and appropriately labeled.

d. *Oral Smear (for cases in which there may have been oral sexual contact)*
The mouth should be swabbed with a cotton swab. The cotton swab should then gently be applied to a microscopic slide. The slide should not be fixed or stained. The slide should be labeled and placed in a suitable

medical specimen slide mailer which should also be properly labeled.

e. *Rectal Swab (for cases in which there may have been anal sexual contact)*
The swab should be moistened with distilled water. After swabbing the rectum, the swab should be placed in a test tube or vial and sealed with a cork or tape and properly labeled.

f. *Rectal Smear (for cases in which there may have been anal sexual contact)*
The rectum should be swabbed with a cotton swab. The swab should then be gently rubbed onto a microscopic slide and appropriately labeled. The slide should be placed in a properly labeled medical specimen mailer.

The Chicago Police Department asks that, with respect to evidence to be submitted to the Criminalistics Division, the following should be observed:

a. Microscopic slides and smears not be wrapped in gauze or tissue paper, or placed in any container containing liquid.
b. Specimens not be cultured.
c. Smears not be affixed to one another with rubber bands.
d. Smears not be stained.
e. Swabs not be placed in saline solution (if the swab must be placed in solution, distilled water should be used).
f. Foreign materials be removed from the body (i.e., fibers, hairs), placed in a clean test tube which is then corked or sealed with tape and appropriately labeled.
g. Transparent tape be placed over labels on test tubes or vials to help prevent loss of the label.
h. Containers with liquid (blood, vaginal aspirate, etc.) should have cork or cap sealed with tape to prevent leakage or contamination of liquid.

patient's clothing

Clothing that is torn, bloody, or soiled may be helpful to the police in their investigation. However, the patient usually will not have brought extra clothing to the hospital for her to wear home in place of garments provided to the police. If the patient's clothing is torn, bloody, or soiled, the physician or another hospital staff member should advise the patient that:

a. Turning such clothing over to the police may be helpful to the police in their investigation.
b. The patient should point out to the police the fact that her clothing is torn, bloody, or soiled, immediately upon completion of the examination and treatment.
c. The patient should arrange to provide such clothing to the police as soon as is practical.

If the patient agrees to turn clothing over to the police, and it is practical to remove such clothing at the hospital, the Chicago Police Department asks that garments to be turned over to it:

a. Be removed without cutting through any existing holes (the seam line should be followed wherever possible).
b. Not be shaken.
c. Be placed on a clean piece of paper.
d. Be placed in a sealed container which is then appropriately labeled. Each garment should be placed in a separate container.

"chain of evidence"

It is important that a "chain of evidence" be maintained. That is, a method should be established to insure that all persons who were responsible for keeping or handling the evidentiary material can be easily traced. Consequently, it is advisable that evidence be handled by as few personnel as is possible. Also, a form should be attached to each item of evidence showing the date, time, and name of the person receiving the item(s), and from whom they were received.

receipt for evidence

When giving the material to a police representative, a receipt for the material(s) should be obtained showing what item(s) were given to the police, who gave them to the police, the date and time of the transfer, and the name of the police representative to whom the item(s) were given. A copy of the emergency room medical record should be given to the police as well, provided the patient agrees to release of such information or the hospital is served with a court order or subpoena calling for such information to be released. The police representative should be asked to sign the receipt; one copy should be given to the police representative; one copy should be placed in the patient's medical record; one copy should be given to the individual turning the item(s) over to the police. If the information is released on the basis of a subpoena or court order, the subpoena or court order should be placed in the medical record.

The *release form* attached as Appendix G shows the required method for authorization for release in Chicago. A receipt for evidentiary material may be obtained on the form. The form is a three-copy snap-out set.

The hospital should establish a policy as to *who is responsible* for:

a. Collecting the various specimens and other evidentiary material.
b. Retaining evidentiary material.
c. Obtaining consent for release of evidentiary material.
d. Notifying the police that evidentiary material is available for collection.
e. Turning the evidentiary material over to the police.

6. medical record

The Chicago Department of Health developed a form for the medical report of suspected sexual assault (see Appendix D). The form is in two parts: 1) the medical report containing the time and findings of the physician's examinations as well as the laboratory report and 2) the authorization for release of information and evidentiary materials. The first part is to be filled out by the examining physician and typewritten within seven days of the examination. The second part is to be filled out *only* with the victim's consent and signature.

The Illinois Department of Public Health does not require a special medical report form for sexual assault cases.

value of well-detailed record

It should be remembered that since the determination of whether or not a rape occurred is the responsibility of the court rather than those treating the patient, the medical record should not reflect any conclusions regarding whether a crime (e.g., rape) occurred.

Proper completion of the medical record is extremely important. While it should be remembered that both the physician and the medical record may be subpoenaed, statistics for Cook County indicate that physicians testify in less than two percent of reported cases of suspected rape. Often the only reason for subpoenaing a physician is to clarify an issue that would not have arisen if the medical record had been carefully completed. Also, a well-detailed record will assist in recalling the incident in the event the physician or others are called upon to testify in court.

7. transfer

A patient claiming to be the victim of a rape or sexual assault should be treated as a *medical emergency*. This is because, in some instances, the patient will suffer physical trauma warranting such treatment. In many other cases, prompt and effective treatment may be necessary to prevent prolonged effects of psychosexual trauma. All hospital emergency rooms categorized as comprehensive or basic under the appropriate emergency medical services plan should develop the capability for treating such patients.

transfer arrangements

A patient should never be summarily turned away from any hospital emergency room by being told, "We don't handle rape cases here."[6] Hospitals which do not treat patients believed to have been raped should *offer to arrange for the transfer* of the patient to a comprehensive hospital emergency room, a private physician, or another appropriate source of treatment providing care conforming to these guidelines.

A transfer may be indicated because the patient requires care not normally available at the hospital to which she initially goes or is taken, or for some other reason. When a transfer is necessary, the patient should be transferred in accordance with the Chicago Hospital Council's *Guide for Inter-Hospital Transfer of Patients* (a copy is attached as Appendix H), and the appropriate area-wide hospital emergency medical services plan.

If the transferring hospital is located in Chicago or a jurisdiction having a reporting requirement similar to that of Chicago, the transferring hospital should report to the police the patient's name and address, that the patient may have been raped, and that the patient is being transferred elsewhere for treatment. (See footnote 1 on page 3.) The transferring hospital should notify the Illinois Department of Children and Family Services if appropriate. (See footnote 2 on page 4.) Section 1 of these guidelines contains information on such reporting.

The receiving hospital should provide or arrange for the provision of follow-up care as described in Section 4 of these guidelines.

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[6]This should not occur within the City of Chicago since the Chicago Police Department will bring victims only to those hospitals on the Chicago Department of Health list. However, the possibility exists for victims who walk in off the street without having first contacted the police, as well as for victims brought to hospitals outside the Chicago city limits.

SUGGESTED READINGS

A. Legal

The following readings have been helpful in this study:

B. Badger, THE SEXUALLY DANGEROUS PERSONS ACT, PROSECUTION OF A CRIMINAL CASE (Ill. Inst. for CLE, 1979).

Bayley, Plea Bargaining: An Offer a Prosecutor Can Refuse, 66 JUD. 229 (1976).

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B. General

The selections below may give additional insight into the topic of this report. Most of these resources come from the following bibliographies:

"Bibliography of Sexual Abuse" compiled by the Central California Child Abuse Project, School of Education, California State University, Fresno.

"Bibliography" compiled by the Wayne County (Michigan) Task Force on Child Sexual Abuse/Assault.

"Selected Bibliography" compiled by the Sexual Assault Center, Harborview Medical Center, Seattle, Washington.

"Selected Bibliography on Child Sexual Abuse--1976" compiled by the Center for Women Policy Studies, Washington, D.C.

"Bibliography" of Susan Forward and Craig Buck's Betrayal of Innocence: Incest and Its Devestation (1978).

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