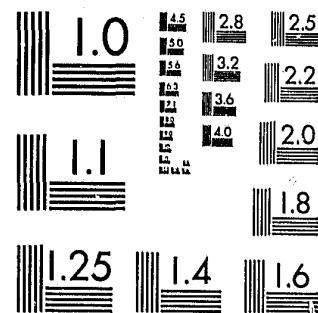


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PROCEEDINGS
OF THE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

COLLOQUIUM ON
"CHILD VICTIMS OF SEX OFFENSES AND
THE CRIMINAL JUSTICE SYSTEM"

APRIL 23-25, 1980

BELMONT CONFERENCE CENTER
ELKRIDGE, MARYLAND

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This colloquium was supported by Grant NO. 79-DF-AX-0018, awarded by the Law Enforcement Assistance Administration, United States Department of Justice. Points of view or opinions stated in this publication are those of the participants, and do not necessarily represent the official position of the United States Department of Justice.

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PART I - OVERVIEW

The Law Enforcement Assistance Administration colloquium on "Child Victims of Sex Offenses and the Criminal Justice System" was convened to address four questions:

- 1) Why should the criminal justice system be invoked when a child is sexually assaulted/abused?
- 2) Does the intervention of criminal justice system professionals generally achieve those ends?
- 3) Does it achieve those ends without doing harm to the child?
- 4) If not, what changes can and should be made to achieve those ends without doing harm to the child?

Participants were asked to consider these and other issues prior to their arrival, with the aid of a discussion outline (Appendix I). Since the participants (See Appendix II) contributed facts and opinions based on experiences in different geographical areas of the country, different professions, and different educational backgrounds, it is not surprising that consensus on these questions and a plethora of subsumed issues emerged only infrequently.

The colloquium began with a keynote address by Edwin Wenck, Esq., Director of the Sexual Offense Task Force in the Baltimore City State's Attorney's Office. Mr. Wenck presented a series of pithy, amusing, highly biased summaries of the professions' roles in cases of child sexual assault/abuse and then reviewed the collaborative multidisciplinary process that evolved in Baltimore. He quoted extensively from Conceptions of Modern Psychiatry by Harry Stack Sullivan on the "quiet miracle of preadolescence" where the child moves from egocentricity to a full social state of personality development that accepts the importance of the satisfactions and security experienced by others as equal to those experienced by himself or herself.

Mr. Wenck agreed with the author that a premature push to such a developmental state by an adult can cripple the child so deeply that it persists to, and affects, the child's own children. He added that he believed that not only is sexual victimization of a child by an adult such a premature push, but that insensitivity toward the child by people in the criminal justice system is also such a push. Using the author's definition of "love" as the state where "the satisfactions and the security of another person become as significant to one as is one's own satisfaction and security," he averred that he would retitile his address as "Dare We Risk the Loving of the Children," and ended with the challenge "I suggest to you that we must love the child victim."

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A panel summarized the potential benefits to the child victim of invoking the criminal justice system. Carol Schrier, Esq., Executive Director of the Support Center for Child Advocates in Philadelphia, discussed their experience in cases of intrafamily child sexual abuse. She pointed out that participation in therapy as a condition of probation following conviction in criminal court can be and is enforced by probation revocation powers; in contrast, participation in therapy as a condition of protective supervision in a family court civil proceeding is rarely enforced by contempt powers, leaving only the remedy of removal of the child from the home. John Tierney, Chief of the Criminal Division of the Office of the Hennepin County Attorney in Minneapolis, discussed the potential direct and indirect benefits to the child victim from the criminal justice system's focus on the offender. The first is safety, due to the potential for temporary removal of the offender by incarceration from an environment where he can continue his criminal acts, deterrence of other potential offenders by the publicity of stigma of conviction and the application of punishment, and the rehabilitation of the offender to prevent future criminal acts. The second potential benefit is reinforcement of the child's sense of "truth" and "justice": people are held accountable for bad acts and the criminal justice system may be the only appropriate civilized process of accountability. Deborah Anderson, Director of Sexual Assault Services in the Hennepin County Attorney's Office, elaborated on the reinforcement of the child's sense of truth and justice. She recounted how child victims report that it's scary to testify, but it's also "strong to say what I feel", and that accepting their role in holding the offender accountable is often encouraged by a parent who has wrestled for years with guilt feelings about non-disclosure. ("I want you to tell what happened so you won't end up like me.") She questioned "the crazy-making we do by not invoking the criminal justice system", and stigmatizing the victim when we investigate the reality of the incident not in a legal setting but in a psychotherapeutic one. Finally, she raised the question of whether the assumption that the criminal justice system's treatment of the child victim is harmful - an assumption made primarily by those outside it - is supported by data.

None of the panelists believed the child victim receives any benefits from criminal justice intervention greater than those afforded an adult victim. All emphasized that the structure of the system is neutral; it is the professionals within the system - their skills, their attitudes and their sensitivity - that affect the child victim positively or adversely.

In the discussion that followed, the importance of intervention with the offender to prevent recidivism was emphasized, particularly with adolescent offenders.

The participants then divided into groups - investigation, pretrial procedures, trial, and sentence outcome - to discuss detrimental aspects of the criminal justice procedures involving the child victim. These will be discussed in Part III below.

A second series of discussion groups focused on the identification of resistance to or support for change in criminal justice system procedures. These groups were constitutional limitations, multidisciplinary issues, and budget issues, and their discussions are summarized in Part IV below.

Participants divided into discussion groups once again to identify policy recommendations for changes, and then met in plenary session where these recommendations were presented and discussed, as summarized in Part V. New federal funding initiatives from the National Center for Child Abuse and Neglect of DHHS were outlined, and the progress in establishing a national coalition on child sexual assault/abuse was reviewed prior to adjournment.

PART II - PHILOSOPHICAL ISSUES

Colloquium participants frequently encountered a lack of clarity or consensus regarding philosophical issues that contributed to the complexity of the child victim's role. Some of these need delineation.

A. Is sexual activity between an adult and a child criminal behavior in all instances?

Some participants advocated the invocation of the criminal justice system simply because such activity is a crime - others advocated it only when the activity did not occur between members of a nuclear family, since arrest and/or incarceration might negate the success of a family therapy approach to incest.

Eventually all participants recognized that it is a crime, if only because society has prescribed it by legislatively enacting criminal statutes with punitive sanctions: incarceration, monetary fine, probation with conditions, mental health commitment, etc. However, society has supplemented these with statutes that permit civil family court procedures and non-punitive sanctions when the activity occurs between a child and the child's parent, guardian or custodian. Since many of the mental health and social work professionals involved with therapeutic programs for the incestuous family believe punitive sanctions for the offender adversely affect treatment, they frequently advocate that no criminal justice intervention occur.

This advocacy is in turn perceived by criminal justice system professionals as a mixed message from society - sexual activity between an adult and a child is a crime unless it occurs within a family context, where it is somehow transformed into a mental health problem.

In fact, the difference in opinion is over the sanction to be applied; punishment or rehabilitation. As one participant noted, "The community always sees it as a crime." As another participant commented, "You can't create a criminal law that prohibits sex between a child and an adult stranger or neighbor but permits it between a child and the child's parent; it would violate the Equal Protection Clause of the Fourteenth Amendment."

B. What is the goal of invoking the criminal justice system?

There was recurring debate about the purpose of invoking the criminal justice system. For some, the criminal justice system's purpose is to enforce societal values, to state publicly, "This is the line of acceptable behavior and you can't go any farther than this. Your behavior offends us and we won't tolerate it." For many of these participants the focus of the criminal justice system is an adjudication - a finding by trial or guilty plea that the defendant crossed that line. ("It is important for the victim to hear society blame the offender." "A child thinks, If I do something wrong, I get in trouble; if a grownup does something wrong, why shouldn't he?") From the civil libertarian viewpoint, no one should have to have social workers or psychiatrists intervening in his life until it has been shown that he did something wrong.

To this group, the sanction imposed after conviction is less important than adjudication, and it can vary according to the relationship between the victim and offender. Punishment, including imprisonment may be appropriate. ("It seems to work with animals and children; why do we think it doesn't work with adults?") Some participants believed punishment is appropriate before rehabilitative efforts are undertaken: ("Even if you're sorry for what you did, you should be prepared to pay consequences." "Punishment and treatment are not mutually exclusive. Punishment is part of the therapeutic process because one learns to think of potential consequences for one's actions when one is forced to face consequences for past actions.")

For others the sanction itself is the *raison d'être* of the criminal justice system. They point out that if the purpose is to inject accountability there is no justification for prosecutorial discretion or pretrial diversion. Of those in this camp, many share the same arguments about punishment and rehabilitation with the former group. However, others believe that the only justification for the criminal justice system is to rehabilitate the offender as a means of prevention. A few in this group believe that if the offender has voluntarily entered a treatment program, no criminal justice system sanction is needed, but the majority in this group believe that the system should be invoked to insure that the offender participates in treatment as a condition of probation (the "coercive therapy model"). ("It gives me leverage over him because he knows judges do revoke probation when conditions aren't observed." "Good treatment isn't pleasant for the offender, because he must be confronted with his behavior. If he can quit when the going gets tough he won't learn to control his behavior." "If he is willing to seek help only if he is promised that he won't be punished, I won't do it because he is holding me hostage to his idea of 'pleasant' treatment.")

C. What are the criteria by which "success" of a criminal or delinquency prosecution is measured?

Some participants believed that the psychological and emotional welfare of the child victim should always take precedence over potential sanctions that could be imposed upon the offender. ("If it comes to letting the offender off to avoid further damage to the victim, I would let him off." "What is the price of prevention?")

Others felt that while individual criminal justice procedures might harm the child victim somewhat, the cumulative effect of the child's participation might be beneficial because of the potential for preventing recidivism by the offender. ("Kids are resilient. You can help them recover from the stress of a trial. But if the offender never gets dealt with, he can re-victimize that child and others.")

D. Since child sexual abuse/assault is a multidisciplinary problem requiring multidisciplinary intervention, where shall decision-making authority lie?

Not surprisingly, there was strong disagreement over the proper amount of authority of various professionals, even though everyone agreed that multidisciplinary consultation and cooperation were essential.

Prosecutors tended to maintain that they should have final decision-making authority. They cited several reasons:

- 1) Society has specifically entrusted them with the sole responsibility for screening and trying cases, as mandated by criminal procedure statutes and court rules.
- 2) They have authority to recommend sanctions to the sentencing judge or jury, and to initiate proceedings to revoke probation when treatment is unsuccessful.
- 3) They have the authority to investigate malfeasance of public agencies that may have contributed to the victimization of the child.

Non-prosecutors pointed out that prosecutors may lack the specialized training in child development and child sexual abuse/assault to make informed decisions about the wisdom of invoking a criminal or delinquency prosecution, or, even if they have such expertise or available consultants, may make unwise decisions based upon evidentiary or bureaucratic concerns unrelated to the child victim's welfare. ("If all you've got is a hammer, you treat everything like a nail.")

PART III - ASPECTS OF THE CRIMINAL JUSTICE
SYSTEM DETRIMENTAL TO THE CHILD VICTIM

There was general agreement that the criminal justice system per se was not detrimental to the child victim, but that the lack of knowledge and/or insensitivity of professionals within the system and some procedural and evidentiary requirements frequently set back the child's recovery.

A. Investigation

There was concern about the procedures used and the attitudes displayed by police officers. In urban areas it is common for police departments to have specialized sexual assault units; however, these have standardized procedures designed for adult victims, and often deal with the special issues involving child victims on an ad hoc basis. Rural areas usually lack an investigator specially trained in sexual assault investigations, and may also lack any standardized procedures for the investigation.

One problem area is the medical examination for collection of evidence. Whereas an adult can be examined on the basis of his or her own consent, a child victim generally requires the consent of his or her parent or guardian. In some instances the child may have to wait alone while the police officer attempts to locate the parent or guardian. In other instances the parent or guardian insists on a medical examination over the child's objection, even though the child's delay in reporting the incident makes the examination unnecessary. (No medical problems have appeared and all evidence has disappeared.) If the police officer concurs, the child may interpret this as a sign that the authorities are attempting to punish the victim. Some police investigators invade the victim's privacy by remaining in the examining room while the child is being examined. Others have insisted on attempting to interview the child when the child is suffering pain or is under the influence of medication; when the child subsequently is re-interviewed and discrepancies in the two statements of facts appear, the officer assumes that the child victim lacks credibility.

The assumption by many police officers that many children fabricate tales of sexual abuse/assault is a particular problem. It is common for adults generally to believe the word of an adult when it conflicts with the word of a child; this is exacerbated by misunderstanding or the lack of knowledge of child development by most police officers. If the police do not believe the child they may not attempt to arrest the offender, thus leaving the child at risk for re-victimization. If they initially believe the child, and the child later recants, the police may fail to pursue the reason for retraction - intimidation by the offender, pressure from family members not to testify in public, difficulty in putting the incident behind him or her when each "helping" professional wants to know what happened and wants to assess his or her emotional state - all of which may contribute to the child's desire to escape anxiety by denying the incident happened. The victim who has recanted is viewed as just another "false complaint" which perpetuates the stereotype of fabrication by children.

Many police do not understand the reasons why a child victim delays disclosure of the incident. Accustomed to the forcibly raped adult victim who immediately calls the police, they view a child who reports a day, week, or month later with suspicion. They do not remember from their own childhood how adults are trusted ("This is our secret game"), believed ("If you tell anyone I'll cut your nose off"), and - in the intrafamily situation - loved despite their sexually inappropriate behavior.

The result of such disbelief and insensitivity is not limited to the offender being free to victimize children again. The child victim often internalizes the investigator's disbelief as blame for his or her victimization, and can develop deep-seated emotional problems that require long-term treatment.

This latter result is compounded in the intrafamily situation where the rest of the family sides with the offender against the victim, or where the child is removed from the home by a protective service worker while the offender is allowed to remain there under pretrial release. In addition, in many intrafamily cases the protective service worker attempts to resolve the problem without notifying the police, so that when the notification is made to the police after those attempts fail, there is no evidence remaining that supports the child's account.

B. Pretrial Procedures

One of the major concerns is the insensitivity and lack of knowledge of many prosecutors. This is first exhibited in the screening function when cases are not accepted for prosecution. Child victims and their families are frequently not told why a case is not pursued. If pretrial diversion for the offender is used, the victim may not understand the purpose of such "leniency". Those prosecutors who are uncomfortable with the topic of childhood sexual abuse/assault may seize upon any excuse to avoid prosecuting the case even if there is arguably sufficient evidence to obtain a conviction at trial. The child often views this as another reason to feel stigmatized and at fault.

A second area of concern is the problem of pretrial release. While most state judges view the right to bail in non-capital cases as a fundamental right of the defendant who is cloaked in the presumption of innocence, conditions may be included in that release. Many prosecutors do not view the problem from the child's fearful perspective: that he or she will have the offender's threat to harm him or her carried out. Thus they do not request that the offender be required to stay away from the victim - which may mean requiring an accused parent, guardian, custodian or sibling to vacate the family home in an intrafamily case.

A third detrimental aspect is the unwillingness of some prosecutors to substitute hearsay testimony for that of the child at the preliminary hearing and grand jury if first-hand testimony isn't required by state law. Since most cases end with a guilty plea, it may be unnecessary for the child to have to relate the incident to anyone other than the police and prosecutor, and avoid proceedings that involve non-professionals.

altogether. Yet many prosecutors view such first person testimony as vital, either to test how effective the child's testimony will be in a trial-like setting or to "lock in" the child's testimony for use in pretrial preparation.

A fourth detrimental aspect is the inability of some prosecutors to find sufficient time to adequately prepare the child for trial due to a heavy caseload. (Preparation should include both rehearsal of direct examination and anticipated cross examination, and a tour of the courtroom so that the physical environment is not totally new and frightening.) Frightened and unprepared child witnesses often become either totally uncommunicative or agree with the defense attorney on every issue, thus reducing their credibility. On the other hand, there can be too much time per occasion spent in preparation. ("A four hour session with a six year old child is counterproductive. You have to vary the time according to the child's age.")

Another criticism of some prosecutors, especially applicable in intrafamily cases, is their unwillingness to be guided by the wishes of the child or by the mental health professionals helping the family as to beneficial case outcomes. Goal-oriented case management may result in some case dismissals or referrals to other systems rather than prosecution. Even in non-intrafamily cases, plea bargain negotiations frequently do not consider the victim's feelings regarding the sanctions that may be imposed if the plea is accepted.

Finally, the problem of pretrial delay affects not only the defendant but also the child victim. Although the solution to this problem lies with the judiciary and not the prosecutor, prosecutors need to be more assertive in contesting frivolous defense requests for continuances. The child needs to put the incident behind him or her, rather than have to brood for months about an approaching trial that is frequently continued.

C. Trial

Three main areas of detriments to the child were identified.

The first is the physical setting and procedures used in trial. Many courtrooms do not provide the child with a feeling of security that the defendant cannot quickly hurt the child while he or she is testifying. The mere fact that the child is required to face the defendant and identify him for the record can trigger anxiety reactions. The requirement that the trial be open to the public can also inhibit the child's frank narration of details.

The second issue is the aura of disbelief that surrounds the child victim. This first comes to light when the young child victim (under the age of seven in most states) must demonstrate a comprehension of the difference between telling the truth and a lie, the meaning of a testimonial oath, and an ability to remember and narrate events. Although many adults have difficulty in expressing the meaning of such abstract

concepts as truth and falsehood, we do not routinely make such an inquiry of them. Moreover, the defense attorney is allowed to cross-examine the child as to testimonial competency and then argue to the judge (often in the presence of the child but not in the presence of the jury) that the child is not competent to testify.

Assuming the child passes this hurdle, he or she must usually narrate the event with little or no help from the prosecutor since leading questions are generally not permitted on direct examination. The defense attorney, on the other hand, has much more freedom in questioning the child during cross examination. The slightest inconsistency between the child's testimony and an earlier statement will be magnified because it is assumed that children are unreliable witnesses.

This is further reflected by the legal requirement in some states that the child's testimony be corroborated by additional evidence. The jury is instructed that it must acquit the defendant if no corroboration is believed to exist. Even in states where corroboration is not formally required by statute or court rule, prosecutors attempt to introduce corroborative evidence because they fear juries will credit the defendant's denial over the child's accusation.

Finally, in many states the jury is instructed that child witnesses must be specially evaluated for credibility because they are generally less trustworthy than adults.

The combination of these procedures frequently results in acquittals, which not only frees the defendant but also reinforces the child's fears about whether others would believe him or her.

The third detrimental aspect is the ambiguous role of the prosecutor. The prosecutor proceeds in the name of "the State" or "the People", not in the name of the victim. Thus he has interests that may conflict ethically, statutorily, and bureaucratically with those of the victim. Above all, at trial the prosecutor's focus is on the provability of the charge against the defendant and not on the short term or long term impact of the trial upon the victim. In those states that allow a victim advocate to participate in the trial, visible conflict between the advocate and prosecutor may jeopardize the prosecution's case in the eyes of the jury.

If the prosecutor cannot resolve the confused and inconsistent societal messages about sexuality and children (and, in intrafamily cases, about family life) in a way both understandable and agreeable to the jury, the case may result in acquittal. If such an attempt at resolution conflicts with the prosecutor's personal values about these issues, the prosecutor may unconsciously transfer his resentment onto the victim or visibly display his unhappiness to the jury, who may then acquit the defendant.

D. Sentence Outcome

One detriment of sentence outcome is its unpredictability. The victim who testified with the goal of incarceration of the offender and the victim who testified with the goal of forcing the offender into treatment as a condition of probation may be equally upset if the offender receives a sentence opposite from that desired. Although the prosecutor or the pre-sentence investigator may voice the victim's wishes in a pre-sentence report to the judge, neither the report nor the victim's opinion are binding upon the judge.

In fact, not only are the victim's wishes not binding on the judge, they may also be considered to be irrelevant. Since few if any judges have studied victimology, it is unlikely that consideration of the victim is a high priority.

This has particularly detrimental consequences in intrafamily cases, where all the professionals and all family members may agree that the offender should be released on probation and participate with the rest of the family in psychotherapy, only to see the judge incarcerate him. Incarceration may also impact upon the family's economic level, necessitating the entry of the mother into the labor force, a move to cheaper housing (with all the attendant changes in schools, neighborhood friends, etc.), and an increase in stress within the family. The victim is frequently blamed for all these consequences of the judge's decision.

A third detriment is the lack of assistance given to the victim. It is unfair that the victim must pay for his or her own mental health treatment while the public pays for the offender's treatment, yet offender monetary restitution and public compensation to the victim are infrequent.

Perhaps the greatest detriment is the lack of sentencing alternatives available, coupled with the lack of criteria for selecting the appropriate alternative for a particular offender. Some offenders who would benefit from outpatient psychotherapy have no resources available and are released upon probation with no treatment. Others are released when adequate screening would indicate incarceration would be best. Virtually nothing is done with juvenile offenders.

PART IV - ISSUES IN CHANGE OF THE
CRIMINAL JUSTICE SYSTEM

A. Constitutional issues

The discussion began with the defendant's right to pretrial release under state constitutional amendments. Most discussants believed that the child victim has to accept the fact of pretrial release, and learn to handle fear of the defendant much as he or she would handle fear of a bully at school. They believed that problems of potential intimidation can be resolved by having the prosecutor notify the defense attorney of potential problems without the need for system reform.

A second issue was the doctrine of Brady v. Maryland which requires the prosecutor to turn over evidence to the defense attorney that tends to exculpate the defendant or mitigate the degree of potential punishment, when the evidence is requested by the defense attorney. This potentially places the victim's right to privacy in conflict with the defendant's rights to due process, and can lead to the disruption of inter-agency cooperation when mental health information shared with the prosecutor - because it is potentially relevant to case screening or pretrial preparation - is shared with the defense attorney. Again, most discussants felt that due process should prevail, but that the prosecutor should educate the jury about mental health issues in the "sexual abuse syndrome."

Most discussants recognized that rights between groups are frequently in conflict, and that the Constitution functions fairly well in balancing the various interests. Child victims or witnesses were not perceived as being so different from adult victims or witnesses that they should have special status. As a class, victims are slowly receiving more consideration within the criminal justice system without necessitating Constitutional reform.

Assuming that reform was needed, it was agreed that political conservatism within legislatures and courts had to be reckoned with. As one participant noted, "Before you get to argue for a change in a statute or constitution that affects procedural due process rights you have to demonstrate that you tried everything else first and failed to solve a serious problem."

Most participants felt that a Constitutional convention would not necessarily change the Bill of Rights and its interpretations. In addition, everyone recognized that there was no groundswell in public opinion for such a convention, or for such changes to benefit child victims even if it was held.

In general it was assumed that Constitutional limits are static; the public genuinely prefers procedural due process in criminal law to remain relatively unchanged.

B. Multidisciplinary Issues

The discussion began by a recognition of the prevalence in much of the nation of the insensitivity shown by criminal justice system professionals in the film "Double Jeopardy." It was felt that sensitivity and skills can be upgraded by a combination of consciousness raising and political pressure from concerned groups. One method is the use of personal contacts with criminal justice system professionals who trust each other and value the skills of each other. If they work together, they may be able to produce "successes" that can be publicized by the media, and the resulting public opinion harnessed to political support.

Specific prosecutorial issues were then discussed at length, beginning with the phenomenon of "burnout". Prosecutors pointed out that it takes three times as long to prepare a child sexual abuse/assault case as any other, yet there were no rewards provided for devoting the extra time. It was stated that prosecutors have two resources, professional legal skills and emotional resources, and that these cases drain both. ("I need more than the Rape Crisis Center folks applauding me.")

It was pointed out that attorneys are attracted to trial work because they are combative, want to win, and because they like to perform in public. Some attorneys use prosecutorial work as a career stepping stone to a criminal defense or civil litigation practice. Some are particularly attracted to child sexual abuse/assault cases because of extra salary incentives or special interest in the subject matter. Yet these cases require prosecutors to exercise social work, child development and mental health knowledge they do not possess, and with few career incentives to pursue study in these areas in addition to law.

Secondly, traditional criteria for measuring a "good case" or successful case outcome do not necessarily apply in these cases, yet have not been replaced with appropriate yardsticks. This leaves many prosecutors with the feeling of failure - the opposite of the attraction to trial work.

Also, prosecutors' offices tend to be chronically understaffed and underfunded. If a vertical representation model is used, the development of new skills of a specialized team tends to cause it to accept more cases for prosecution, which results in having to try more cases several months in the future. The team becomes over-scheduled and must either transfer cases to non-team members or face great overwork, especially in those jurisdictions that have mandatory speedy trial time limits.

Finally, it was pointed out that lawyers traditionally have valued a self-sufficient, emotionally tough personality, rather than one that welcomes group emotional support or individual psychotherapy. Since these cases drain those individual emotional resources, a prosecutor who is "burning out" appears not to have measured up to the standard of the profession.

It was felt that a multidisciplinary team can help the prosecutor in these areas, although it was recognized that lawyers tend not to be "team players". It was also felt that since all professions involved tend to suffer the problem of burnout that perhaps the issue is really poor supervisory and administrative planning and support.

The suggestion that some of the pretrial preparation be assigned from the prosecutor to an outside agency met with criticism. First, it may not reduce the number of people who talk to the child about the incident because eventually the prosecutor will have to ask the questions in court. Secondly, if the agency provides the treatment for the child, the prosecutor may not be perceived as being part of the team. Finally, unless the prosecutor has developed a relationship of trust with the child and the family, the prosecutor's case management may be second-guessed by both the family and the agency.

Another issue was the desirability of plea bargaining. It was recognized that an admission of guilt is therapeutically valuable both to the victim and to the offender. (A guilty plea that still denies guilt - North Carolina v. Alford - was deemed less desirable.) It was also recognized that it eases caseload overloading, and can thus reduce burnout. However, it was also recognized that it does not necessarily result in "successful" case outcomes where there are few sentencing alternatives. It was also pointed out that in states with elected sentencing judges and in those where the jury imposes sentence defendants are less likely to plead guilty. In such states sentencing patterns tend to be harsh - reflecting general public opinion - and it therefore appears more desirable for the defendant to try for an acquittal at trial.

The discussion shifted to a re-examination of the wisdom of using the criminal justice system. One person felt that its two biggest problems were the lack of control over case outcome because authority is fragmented, and the insensitivity shown to both the victim and the offender. She felt that a voluntary treatment model for the offender was more appropriate. Others felt quite strongly that this was wishful thinking; even if there were no legal consequences, no large numbers of offenders would voluntarily disclose their behavior. It was felt that they are not usually concerned for others, not even for the child, but rather that they fear the loss of access to the child and the stigma of society and so they hide their deviancy. ("An offender who comes forward and pleads guilty and takes steps to help the child gets my sympathy, and I'll even argue against incarcerating him to the judge. But that doesn't happen often.")

The discussion compared the phenomenon of intrafamily sexual abuse to child abuse. The group felt that they are different and that the child abuse intervention model may be inappropriate for several reasons:

- 1) Child abuse is frequently caused by excessive corporal punishment; this is rare in intrafamily sexual abuse.
- 2) Child abuse is frequently attributed to overly high parental expectations of child performance.

County budgets are different because they tend to cover those areas unbudgeted by the state or municipalities. The source of funds dictates the degree of competition and the amount of funding. One advantage to inclusion in a budget as opposed to receiving a grant is bureaucratic inertia - despite the zero-based budgeting approach, items once included in a budget tend to remain each year. The source of the funds also dictates the strategy for obtaining funding. For example, a grant application usually requires only additional letters of support from those in key future relationships with the project. Initiatives for budget inclusion, however, require repeated personal presentations before key staff assistants, program administrators, government chief executives, and legislators; pressure for private telephone calls and letters from supporters to these persons; media support, etc. In addition, assurances must be made to existing programs that the addition of the program will not mean a reduction in their budgets, which can be difficult to make in a time of public expenditure reductions generally. ("You have to be able to demonstrate to appropriations committees that one cut in one area of the system has a detrimental impact on other areas that will require more funding to overcome.")

A third issue with public funding is the tension between governmental needs and independent advocacy on behalf of the child victim when his or her needs are sacrificed to those of the governmental agencies' bureaucracy. It may not be possible or prudent for the program to publicly challenge the functioning of other agencies.

The crucial issue with private funding is the amount and duration of the support. Since private foundations generally do not annually refund for program operations, a private agency must combine applications for private grants with sophisticated charitable solicitation campaigns (including participation in unified campaigns) with solicitation of private industries, or with public funding. To administer such a combination can be complicated and time-consuming work, yet underfunding creates overwork that leads to burnout of staff.

A second issue with private funding is the second class status it confers upon the agency vis-a-vis the public agencies with whom it must cooperate. Generally speaking, private agencies can become catalysts for system change, but cannot force system change.

The issue that applies to both types of funding is program integrity. It raises a number of questions: should the program be designed to fit funding availability even though gaps in services are created or perpetuated or should the program be designed comprehensively to provide all services and then funding sought? How will the choice of program design affect policy direction five years in the future? Can a switch be made after the initial choice is made?

4. Interviews with the child victim should be conducted in a child-oriented room with child-oriented interview aids.

Police interview rooms should have some modifications made to appear psychologically reassuring to child victims. Such inexpensive purchases as brightly colored child-oriented artwork for the walls and a child size chair can have this effect. In addition a doll house with human figures and medium sized male and female dolls can be used in becoming acquainted with the child and also specifically used during the interview to help close gaps in the child's language development and vocabulary. Coloring books and crayons can be used similarly; the child's own drawings of himself or herself can be used by an expert in child psychology or development to evaluate the child's mental health and developmental level.

5. Police and protective service workers must reduce the possibility of intimidation of the child victim, especially in intrafamily cases.

Usually the child victim is pressured to secrecy by the perpetrator, either by threat of physical harm or by reference to the effect the disclosure will have on others. The latter is especially common in intrafamily sexual abuse. When the perpetrator is a member of the child's family, (nuclear or extended), a neighbor, or closely associated with the child or his or her family, the potential for intimidation and resulting recantation by the child, is high.

Such steps as warning the suspect not to threaten the child and counselling the victim and his or her family about procedures to be followed if a threat is made may be insufficient. Investigators should proceed as quickly as possible to apply for an arrest warrant.

In intrafamily cases the alleged offender may be encouraged to leave voluntarily or at the insistence of the non-abusive parent. Only if these are unsuccessful should the child victim be removed from the home and placed in temporary foster care.

B. Pretrial Procedures

1. Prosecutors should receive and screen reports of child sexual assault/abuse from public agencies in addition to those from the police.

One reason that child sexual abuse/assault remains hidden from public view is the assumption by some child protective services and mental health professionals that the child victim's only need is treatment. This ignores the potential of the criminal justice system for prevention of recidivism by intervention in the life of the sex offender.

Careful monitoring of reports can also create the data that justifies increased funding for both criminal justice and treatment programs.

At a minimum, prosecutors should explain what will happen and who will be present, show the courtroom or grand jury room to the child, and practice the child's testimony. If time permits, it is better to practice the testimony in the courtroom or grand jury room.

8. If it is necessary for the child to testify at a pretrial proceeding, prosecutors should consider a motion to exclude the public.

Under certain circumstances, pretrial proceedings may be conducted without the general public present (*Gannett Co. v. DePasquale*, U.S. 99 S. Ct. 2898 (1979)). Prosecutors may wish to test the limits of these circumstances if the child is very young or appears to be suffering emotional trauma from the incident.

9. Prosecutors should prosecute cases of child sexual abuse/assault speedily.

Although the right to a speedy trial belongs to the defendant, (who may not assert it because he has an equal right to have sufficient time to prepare an adequate defense), prosecutors should be mindful of the special problems delay poses for children: loss of or confusion in memory due to developmental considerations, and difficulty in overcoming emotional trauma. Whenever possible, child sexual abuse/assault cases should be given priority on trial calendars, and tried early in the day.

Similarly pretrial proceedings should be combined wherever possible to minimize their number and to preclude delay.

10. During plea negotiations prosecutors should consider the feelings of the child and his or her family toward the offender.

Prosecutors should have already explained the possibility and likelihood of a guilty plea to a lesser included offense in discussions with the child and the child's family. While they need not have veto power over a proposed plea bargain, the family may desire the offender to "get help" through psychotherapy or they may desire him to be "put away" in prison. Prosecutors should explore these feelings for three reasons: (1) they may affect the prosecutor's position during plea negotiations on whether to waive a request for pre-sentencing detention and/or to make specific recommendations at the sentencing hearing (2) they may affect the willingness of the child and family to testify at trial if no plea bargain is made, and (3) it is important for the emotional health of the child and family to feel that their concerns are being considered.

C. Trial

1. Courthouses should have the option of a trial courtroom that is less formal and more child-oriented for use in cases where a child will be an important witness.

It is not uncommon for child victims to forget to recite details during testimony despite extensive preparation. Although they have previously given a detailed statement that was recorded by the police or prosecutor, present evidentiary law in most jurisdictions prevents the prosecutor from either asking the child leading questions that will help elicit the details, or using the prior statement substantively, even in refreshing recollection.

The use of a video-taped deposition of the child, conducted within a few days after the event, could achieve the goals of providing the jury with all relevant information regarding the offense while eliminating or reducing the need for the child to testify. Current law prohibits the use of such evidence without a strong showing by the government that the witness is actually unavailable to testify.

Finally, the corroboration requirement is based on fallacious assumptions about the etiology and process of child sexual abuse and assault, and precludes conviction in many instances. The corroboration requirement is unnecessary because the jury is instructed in most jurisdictions to treat a child's testimony with great care and to carefully evaluate the child's credibility, and because the judge retains the power to grant defense motions for judgment of acquittal at the close of all the evidence, for judgment n.o.v., or for a new trial because the evidence is legally insufficient to support the verdict, or for a new trial because the persuasive power of the evidence favors the defendant.

5. Prosecutors should use visual aids, especially for anatomical terms.

The use of visual aids, such as photographs of the crime scene and dolls or large human figure drawings, can orient the child and assist him or her in communicating details to the jury. They also have a psychological impact of establishing the reality of the incident upon the jury.

6. Prosecutors should explore the possibility of synthesizing available research data to establish a "child sexual abuse syndrome" which can be presented by expert testimony to explain the presence or absence of special characteristics of the child's behavior.

In the last twenty years research data in child abuse and neglect has been synthesized into the "battered child syndrome" and "failure to thrive syndrome". These are presented through experts to establish facts in child abuse and neglect trials in family courts. Prosecutors should keep abreast of the current research in child sexual abuse and assault with a goal to establishing a similar evidentiary tool in criminal prosecutions.

7. Prosecutors should explore with the defense attorney the use of a neutral child development specialist as the person to conduct direct and cross examination of the child.

E. Systemic issues

1. Since child sexual abuse/assault is a problem involving several disciplines, it can only be approached successfully in a multidisciplinary, multi-agency approach.

Networking between police, prosecutors, physicians, mental health professionals, educators, child protection workers, social service workers and others is vital.

Since no discipline has a monopoly on effective intervention, all must be accepted as having a role to fill. This means that even in intrafamily sexual abuse cases, the role of the criminal justice system must be carefully evaluated both for its positive and detrimental effects upon the victim and offender and for the general public's response to the criminal justice system's intervention or non-intervention.

2. Further research and dissemination of the results of research in child sexual abuse/assault is vital.

The accumulation of data on the phenomenon of child sexual abuse/assault is still in its infancy; the analysis of that data has barely begun. Skilled clinicians/practitioners must learn to document their findings, or must use observers to abstract information for publication.

Programs should be required to publish their data, analyses, and materials used as a condition of further funding.

3. The juvenile justice system must regard adolescent sex offenders as a class of delinquents that require special intervention.

Evidence is accumulating that large numbers of adult sex offenders who select child victims first began their activities during early adolescence. Yet the juvenile justice system and allied mental health professionals provide little or no meaningful intervention because they often regard the adolescent sex offender of child victims as suffering from "adolescent adjustment reaction" or merely engaging in "peer sex exploration" despite the disparity in offender-victim ages.

The failure of the juvenile justice system to recognize the gravity of this behavior, to assume jurisdiction over the offenders and to provide rehabilitative services different from those afforded other juvenile delinquents may exacerbate the offender's conduct.

4. Legal definitions that identify target populations in child sexual abuse/assault for purposes of system jurisdiction, sanctions and remedial intervention should be re-defined to include larger populations.

The criminal justice system identifies only one target population -alleged and convicted adult offenders - that it addresses in terms of rights, status in judicial proceedings, and sanctions of punishment and treatment. The juvenile justice system similarly identifies one target population - alleged and adjudicated juvenile offenders. Neither system

addresses the victim's needs in terms of rights, status in judicial proceedings, and treatment. Public funding from the criminal justice system goes to victims only if they assist the system in addressing the target population; if they do not, victims are dependent upon funding from the private sector.

In contrast, the child abuse and neglect system identifies three target populations - (1) alleged and adjudicated adult offenders who are the child victims' parents, guardians or custodians, (2) the non-molesting parents, guardians or custodians of the child victims, and (3) the child victims. The system was conceived to address the needs of all three populations, and public funding regulations reflect this.

An anomaly is thus created. When intrafamily sexual abuse occurs, both the public and private sectors of society intervene on behalf of the victim. However, when sexual assault by any other person occurs, only the private sector intervenes.

A re-definition of the scope of the criminal justice system, or its unification with the child abuse and neglect system into one system, would provide authority for the public sector to address child sexual abuse/assault more comprehensively.

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APPENDIX I

Child Victims of Sex Offenses and the Criminal Justice System

I. Goals

A. What are the goals of invoking the criminal justice system in instances of child sexual abuse/assault:

1. Protect the child from further victimization
2. Protect other children from victimization by the accused
3. Coerce the accused into psychotherapy
4. Incarcerate the accused
5. Reinforce the moral taboo against sexual activity with young children
6. Other

B. Can the criminal justice system achieve these goals?

1. If not, why?

C. Is the criminal justice system achieving these goals?

1. If not, why?

II. Benefits and detriments

A. What, in your experience, has been the benefit to the child victim of invoking the criminal justice system?

1. Protection from further victimization
2. Retribution for the offense
3. Emotional support and belief in the victim's experience
4. Other

B. What, If any, of the following have been detrimental aspects to the child victim of involvement in the criminal justice system?

1. Medical examination for evidence

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2. Police interviews

3. Prosecutor interviews

4. Pretrial release of the defendant

5. Defense attorney/investigator interviews

6. Testifying before the grand jury

7. Testifying at trial

8. Outcome of the trial or plea

9. Nature and/or severity of the sentence

10. Procedural delay

11. Loss of privacy

12. The number of professionals involved

13. Lack of sensitivity of professionals

14. Other

C. Do the benefits outweigh the detrimental aspects?

D. If certain modifications would be made, would your opinion change?

III. Reforming the criminal justice system

A. Which, if any, of the detrimental aspects of the criminal justice system could be modified to be less detrimental?

B. What modifications should be made?

C. What financial and other costs would result from such modifications?

D. What are the reasons that inhibit modification of the detrimental aspects?

1. Constitutional rights of the accused

2. Statutory rights of the accused

3. Statutory limits on agency action

4. Agency administrative regulations
5. Agency procedures and policies
6. Budget limitations
7. Concurrent authority of several agencies
8. Lack of coordination between agencies
9. Adversarial relationships between agencies
10. Lack of interest
11. Other

E. How can those inhibitions be overcome?

A. Procedures

1. Constitutional amendment
2. Legislation
3. Appropriations
4. Regulatory action
5. Internal procedural change
6. Inter-agency agreements
7. Training
8. Publicity
9. Personnel changes

B. Support

1. Whose support is necessary?
2. Whose support is helpful?

IV. Alternative systems

- A. What existing systems other than the criminal justice system can achieve those goals of Part I you think are important?

1. Are there limitations on their applicability? (Do they apply to forcible sexual assault, sexual assault/abuse by strangers or non-family members, juvenile and adult offenders?)
2. Are their limitations on their remedies and sanctions? (Can they punish as well as rehabilitate, can they require both the victim and the offender to do something?)

B. What system can you hypothecate to achieve those goals of Part I you think are important?

APPENDIX II

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION COLLOQUIUM

"Child Victims of Sex Offenses and the Criminal Justice System"

Belmont Conference Center, Elkridge, Maryland

April 23-25, 1980

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