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FULL JOURNAL ISSUE: Sexual Abuse of Children
ARTICLE: **Sexual Abuse of Children: Recommendations and Analysis**

Reporting, Investigation,and Adjudication

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As discussed above, government response to sexual abuse of children occurs through either the criminal justice system, the child protection system, or both. The purposes of intervention by the two systems are different in many ways. The primary focus of the criminal justice system is on punishing perpetrators of sexual abuse. The primary focus of the civil child protection system is on protecting the child while, whenever possible, keeping the family together. The systems share the goal of prevention, that is responding to the situation in a way that keeps the offense from happening again to the same child or to other children.

The powers available to the two systems are different. The criminal court determines whether a convicted offender will be incarcerated; the child protection system determines whether the intrafamily offender will be allowed to live with and have custody over the child he has victimized and/or the child's siblings. Both systems can condition a placement or sentencing decision on the offender and/or family receiving treatment. For example, in criminal court, probation can be conditioned on treatment; in juvenile court, family reunification can be conditioned on treatment.

The fact that both the criminal and child protection systems respond to child sexual abuse complicates issues of reporting, investigation, and adjudication. To increase efficiency and minimize inconvenience and trauma to the child, the systems must work closely together. This is often not an easy task. Differences in training and approach need to be resolved, and procedures for sharing confidential information need to be developed.[21]

This section discusses some of the issues that influence both the criminal and the child protection systems: mandatory reporting; the child witness; and the involvement of the mental health and medical professions in the investigation and adjudication of child sexual abuse cases. Recommendations are made in each area.

Pathways for Civil and Criminal Cases

Before discussing reporting, investigation, and adjudication, it is important to note that some observers believe that these processes have received too much priority in the public response to child sexual abuse. As Melton notes in his article, recent reports of the U.S. Advisory Board on Child Abuse and Neglect have cautioned that, in placing the emphasis on proving child sexual abuse allegations, the child protection system has lost its focus on the child and the need for treatment and prevention.[22,23]

Given that so much attention has been focused on the processes of reporting, investigation, and adjudication, it is important to know the results of these efforts and whether children have been protected. Unfortunately, very little information is available. For example, in abuse and neglect cases, both federal and state laws mandate that the child protective service agency make reasonable efforts to prevent removal of the child from the home or, if temporary removal is necessary, make reasonable efforts to reunify the family. Keeping a family together or reunifying a family whose members have been separated usually requires that a variety of services be provided to the family. Yet, very little is known about how this requirement plays out in intrafamily cases of child sexual abuse handled by the child protection system. For many involved in handling these cases, there is a significant question about what family preservation can or should mean in the context of sexual abuse. There are almost no data to describe what currently happens. For example, there is little or no information about the percentage of cases in which a child is removed from his family or the alleged offender agrees to leave the household; about the length of time for which the alleged offender and victim are kept apart; or about the percentage of intrafamily cases in which reunification occurs, either with or without the alleged offender in the home. There is also very little information about what services are typically provided in these cases. It is important to note that, in many child sexual abuse cases, the family also suffers from a number of other problems (for example, substance abuse and physical abuse) for which services are needed.

A few studies have reviewed a sample of individual cases in particular locales. These studies have documented gaps in the provision of services to families[24] and a tendency in these cases for children to be removed from their families and kept out of their homes for significant periods of time.[25,26]

Similarly, with respect to those cases handled by the criminal justice system, we have limited national or state data. Myers describes the possible alternatives in the criminal justice process, including diversion, plea bargaining, trial, probation, and incarceration.

Prosecutors consider many factors when deciding whether to file formal criminal charges. One study found that, among intrafamily child abuse cases reported to child protective services, the percentage of cases in which parallel criminal prosecutions were initiated was higher for sexual abuse than for other types of abuse.[27] In a 1987 survey of 159 cases in three counties in New Jersey, Virginia, and California, 80% of convicted child molesters were sentenced to probation, with 89% of those cases including court-mandated treatment as a condition of probation.[28] (See a discussion of stages in the criminal process in the article by Myers.)

An important concern overall is the need for coordination between the two systems when criminal cases involve intrafamily abuse. This is important not only in the investigative stage, but also in the disposition stage. For example, when an offender is released after incarceration, are child protection authorities alerted and are efforts made to determine whether he should be free to go home if the child victim is in the home?

More data about what is actually happening in these systems would be helpful in improving government response to this problem. Even without these data, however, there are opportunities for both child protective services and law enforcement, working with the mental health and medical professions, to show leadership in improving both understanding and response. These opportunities are discussed next.

Reporting

More effort needs to be made to ensure a reporting system that is as complete and accurate as possible. As Pence and Wilson describe, every state has a mandatory reporting law under which specified categories of persons are required to report instances in which there is a reasonable suspicion that a child has been or will be abused. Typically, these reports are mandated to be made to the child protective service agency, and that agency is mandated to cross-report to law enforcement. Reporters are granted immunity for making these reports, and they are subject to prosecution if they fail to report.

Mandatory reporting laws have greatly assisted our society in identifying and responding to child sexual abuse. However, there may be an excessive number of reports made based on weak suspicions that cannot be substantiated by investigators. Therefore, we agree with Besharov, writing in this journal issue, that more training is needed, especially for mandated reporters, about when a report is required and when a report should not be made. We disagree, however, with his recommendation to amend these laws to give immunity from prosecution for good faith failure to report. Either approach carries risks. If

there is no immunity for good faith failure to report, mandated reporters may act defensively and report even the most tenuous cases. With a good faith defense available, however, reporters may decide not to report reasonable suspicions when they simply do not want to get involved. There is no evidence to quantify which risk is greater. We believe, however, that the decisions about whether there is a reasonable ground for intervention will, on the whole, be better made by child protective or law enforcement officials with training and experience in making such determinations, even if this practice results in some amount of overreporting by mandated reporters.

On the other hand, attention must be given to the large number of reports made that cannot be substantiated. As the articles by Finkelhor, Pence and Wilson, and Besharov discuss, there has been considerable controversy about the extent to which the number of unsubstantiated reports has been and continues to be a problem. Two recent national reports, however, found average substantiation rates nationally of 39%[29] and 35%.[6] (See the discussion in the Child Indicators section of this journal issue.) In some locales, the substantiation rate is only 8%.[30] Unsubstantiated cases are not necessarily bad. Law and policy encourage reports of suspicions, not confirmed cases, and some of these will not be substantiated—either because the protective service agency finds them to be untrue, because there is too little evidence to warrant opening a case, or because there is abuse but it is not judged to be sufficiently grievous. When any type of unsubstantiated report becomes very frequent, it is cause for concern. Are resources being used efficiently? Is too much effort being spent investigating frivolous or excessively weak cases? Or is excessive triaging occurring because of inadequate resources for investigation or follow-through? We believe that each state, and indeed each locale, should look closely at the extent to which mandated reporters or other citizens are reporting incidents that are unsubstantiated, either because the evidence is too uncertain or because the allegations are determined to be untrue. If that percentage is high or increasing, an analysis should be undertaken to understand why and to make sure that mandated reporters and the community at large have the best understanding possible about what constitutes a reasonable suspicion of abuse. A high percentage of cases determined to be untrue is especially wasteful and is intrusive for innocent families.

We also agree with Pence and Wilson that, in record keeping, all states should establish a three-tiered classification system to record the disposition of child abuse reports: reports that are substantiated; reports for which evidence is too uncertain to proceed; and reports determined to be untrue. (The specific names used for each tier are not important, although it would be useful if states employed a uniform set of terms. For example, currently there is great confusion about how different states use terms such as indicated, unsubstantiated,

and unfounded.)

Furthermore, states should be diligent in ensuring that records of allegations determined to be untrue are automatically expunged. Some states already have such provisions, and every effort should be made to ensure that they are followed. These reports should not be part of any registry that is used by law enforcement or other agencies for purposes of background checks or employment decisions. Although states and local child protection agencies should track the numbers and circumstances of reports determined to be untrue for purposes of monitoring and improving administrative practices, there is no need to maintain the identifying names or details of these reports.[31] Innocent persons must be protected from any stigma or negative consequence of such reports.

Investigation and Adjudication

Often immediately after a report is made, child protective services and/or law enforcement agencies investigate the allegation. How allegations are investigated and eventually tried in court has been and continues to be the subject of extensive discussion in the professional literature about child sexual abuse.

The Child as Witness

Much of the attention given in the literature to the investigative and adjudicative processes derives from concerns about the child—how to obtain accurate information from the child and how to protect the child from the stresses that characterize these processes.

- *Suggestibility.* As Myers notes in his article in this journal issue, psychologists have long documented suggestibility in recollections by adults.[32] There has been particular concern, however, that children, because of their developmental limitations, are more suggestible than adults. The concern has been greatest for preschool-age children (typically three- to five-year-olds). There is a growing literature on suggestibility of children in general and of very young children in particular. Since 1980, more than 20 studies concerning children's suggestibility have focused in part on preschoolage children.[33]

Ceci and Bruck recently summarized the results of these studies.[33,34] They observe that preschoolers are more vulnerable than older children to a variety of factors that contribute to unreliable reports and that, although they can be accurate reporters, some do make mistakes, particularly when they undergo suggestive interviews. Ceci and Bruck find that

research does not "provide a definitive conclusion about the reliability of all child witnesses' reports," and state that "past pronouncements by some rather extreme advocates on both sides of the bench are simply unfounded." They find that truth lies somewhere between the extremes, that "children are neither as hypersuggestible and coachable as some prodefense advocates have alleged, nor as resistant to suggestions about their own bodies as some proprosecution advocates have claimed. They can be led, under certain conditions, to incorporate false suggestions into their accounts of even intimate bodily touching, but they can also be amazingly resistant to false suggestions and able to provide highly detailed and accurate reports of events that transpired weeks or months ago."[35]

Children can experience a number of stresses when they are interviewed. A parent or other person important to them may be encouraging a specific line of testimony. This can be a particular problem when sexual abuse allegations are part of child custody disputes. A child may also feel pressure from repeated interviews by investigators or impressions about whether the interviewer is pleased or dissatisfied with the child's report. As Ceci and Bruck note, there is increasing knowledge about measures that can lessen stress for children and the risk of suggestibility. These include minimizing the number of interviews and interviewers of children and using interviewers who are skilled in eliciting information through nonleading questions, do not have an attachment to a particular hypothesis about what happened, and are patient and nonjudgmental when talking with a child. (See also the discussion by Myers in his article in this journal issue.)

Given the evolving research about children's suggestibility, caution is in order. Exaggerated claims that children, including preschool children, can never accurately report or always accurately report are not supported by the literature. In addition, because there is growing knowledge about factors contributing to suggestibility, as well as practical ways to lower it, it is important that those who do interview children are properly trained and that professional groups develop model protocols or guidelines for interviewing children. Some efforts in this regard are under way. For example, in a recent three-year study of multidisciplinary interview centers in Sacramento and Orange counties in California, child interview specialists received a specialized 40-hour course on interviewing children. The research and evaluation panel for this project concluded that trained child interview specialists were critical to the success of the centers and recommended that such specialists receive extensive start-up and ongoing training in child development, forensically defensible interviewing, and the informational needs of investigative agencies. The panel further recommended that California certify professionals who complete requirements established by the state for child interview specialists.[36] We believe that this is a promising approach and that all states should explore the merits of certifying specially trained child interviewers.

Two specific investigative tools relate directly to the issue of suggestibility and deserve mention. They are the use of anatomical dolls in interviewing children and the practice of videotaping interviews with children.

- *Using Anatomical Dolls.* The use of anatomical dolls is widespread. Recent surveys find that 90% of field professionals involved with interviewing children about suspected child abuse use anatomical dolls at least occasionally in their investigative interviews with children.[37] Interviewers find them helpful in understanding children's names for body parts and in allowing children to show what happened without struggling with language. Critics claim that the dolls themselves stimulate sexual play, even in the absence of any experience of sexual abuse.[38] Furthermore, critics claim that no judgments can be made from a child's play with dolls because there are no normative data about the play of nonabused children.[39] Ceci and Bruck's review suggests that the research literature on this issue is not yet determinative of either the benefits or the risks associated with the use of these dolls.

There are some areas of consensus, however. It is now widely acknowledged that doll play is not a diagnostic test for detecting child sexual abuse; how a child uses or plays with a doll is not determinative of whether sexual abuse occurred.[40] There also appears to be consensus that, if dolls are used, they should be used only by people trained to use them properly. Here, too, guidelines are being developed by professional organizations such the American Professional Society on the Abuse of Children to provide direction for the thousands of individuals who interview children.[41] When complete, much work will need to be done to ensure dissemination and use of these guidelines. For example, in 1987, Boat and Everson surveyed 295 child protection workers, law enforcement officers, physicians, and mental health practitioners concerning the use of dolls and found that few doll users had access to a manual, and many reported they had not received formal training in the use of dolls in sexual abuse cases.[42] If states set standards for certified child interviewers as mentioned above, the mandated training should include a component on doll use.

- *Videotaping Interviews.* Given the level of current knowledge about suggestibility, the trier of fact is often asked to determine from all of the evidence before the court whether a particular child's testimony was tainted by the nature of questions asked, the use of dolls, or some other factor. A positive development has been the growing practice of videotaping investigative interviews with children. Videotaping accomplishes several things. First, it may minimize the number of interviews a child must go through because the variety of professionals involved in investigating these cases can view the tape and perhaps get the information that they need without

reinterviewing the child. Second, the tape can capture body language, tone, and facial expressions, all of which can help portray what both the interviewer and the child are communicating. In many cases, issues of the credibility and suggestibility of the child are raised, and the videotape can show a judge and jury a more complete picture of how the interview was conducted.[43]

Some have been hesitant to videotape complete interviews with children for fear that the children will show ambivalence and inconsistencies in their accounts which defense lawyers will exploit at trial. In practice, however, many prosecuting attorneys have found that being able to see the complete interview with the child often provides powerful and moving testimony which convinces jurors that, despite difficulties in telling consistently and easily what happened, the child is telling the truth and was not coerced or led in his testimony. In the California study of multidisciplinary interview centers, videotaping was found to have few negative consequences. Most professionals working with the centers were enthusiastic about videotaping, and the research and evaluation advisory panel recommended that investigative interviews continue to be taped.[36]

- *Minimizing Stress on the Child.* Stress on the child during the course of the investigation and adjudication of child sexual abuse cases can be tremendous. This is particularly so in intrafamily cases. A significant influence on the amount of stress for the child is the family dynamics surrounding allegations of abuse. One of the most difficult situations arises when sexual abuse allegations are made by one parent against another in the context of divorce and child custody proceedings.[44] But even outside the context of divorce, these allegations often split a family apart. A mother may be forced to choose whether to believe her child or her husband. Siblings often blame the disclosing child for the resulting problems in the family. At a time when a child most needs the support of a parent, judges find that many children are not believed but are instead blamed and rejected by one or both parents. Families, particularly mothers, need early support to work through the many stresses they experience and the difficult choices they face.

A number of steps can be taken to minimize stress for the child during the investigation and adjudication stages. Over the past decade, great strides have been made in jurisdictions across the country to minimize both the number of interviewers and the number of interviews for the child and to coordinate the investigative work of all involved. As Pence and Wilson note, most states have laws authorizing or mandating multidisciplinary teams. Integrated, multidisciplinary investigations or, at a minimum, coordinated investigations, should be a priority in every community.

There is also a new awareness of the need to provide preparation and support for the child abuse victim as he goes through the trial process. Myers discusses in his article a number of steps courts can take to make the courtroom a less foreign and frightening environment. These steps include familiarizing the child ahead of time with the courtroom, establishing court schools for children who are scheduled to testify, and allowing a trusted adult to remain in the courtroom while the child testifies. Such efforts should be developed by all courts hearing these cases.[45]

Judges also play an important role in protecting and assisting the child during the adversarial process. As with any witness, judges have considerable discretion in controlling the questioning of the child, either by cautiously permitting somewhat leading questions for the child or by controlling when necessary the tactics and scope of defense cross-examination.[46] Judges also have leeway in some circumstances to allow the child to testify outside the direct presence of the alleged offender.[47] Judges need to be familiar with the available options and the criteria for using them.[45]

The Role of Mental Health Professionals

One of the areas of greatest controversy concerns the proper role of mental health professionals in the investigation and adjudication of child sexual abuse claims. Such professionals can include psychiatrists, psychologists, social workers, family therapists, academicians specializing in child development, counselors, and a wide array of therapists. Melton asserts in his article that mental health professionals should not be involved in these processes, especially in the adjudicative process. He contends that such involvement conflicts with the goals of the mental health profession. Also, because knowledge about the mental health characteristics of victims of child sexual abuse is limited, Melton believes that testimony about these characteristics is more prejudicial than informative. He also argues that placing priority on investigation and adjudication detracts from the time, attention, and resources devoted to helping the child.

We believe that Melton raises many valid points about conflicts in roles and the confusion that can be caused in children and families when mental health professionals interview them not for treatment purposes, but primarily for investigative purposes. However, we do not think that mental health professionals should be banned from the investigative process; they can be among the most skillful interviewers of children. When a mental health professional is involved in investigation, he should be careful to make clear to the parent(s) that he is acting as an investigator, not as a therapist. In this role, his primary concern is determining whether there is evidence of abuse, not treating the child. This may well lead to

lines of questioning that would not be followed in therapy. One important role of the investigative team is to link the child as soon as possible to treatment services when they are indicated.[48]

- *Expert Testimony/Expert Witness Debate.* The greater controversy now, however, concerns the proper role for mental health experts at trial. As discussed by Myers in a recent article, mental health professionals have sought to testify as experts under several different scenarios, and the courts have been divided in their response.[49] First, mental health professionals have been asked to describe behaviors and psychological effects commonly observed in sexually abused children. In this testimony, they do not state an opinion about whether the particular child was abused, but their testimony is offered as part of the effort to prove that allegation. As Myers reports, courts have not agreed about whether such evidence should be admitted. Some have not allowed it;[50] some have allowed it;[51] and some have allowed it under certain circumstances.[52] Melton argues in his article in this journal issue that such testimony should be prohibited as misleading and not based on a sufficient scientific foundation.

Mental health professionals have also been asked to provide expert opinion that the particular child was sexually abused. The courts have been somewhat divided about whether such testimony should be allowed,[53] although some believe that most courts now exclude it.[54]

In a third role, mental health professionals have been asked to testify as experts to rehabilitate a child's impeached credibility. This often occurs when a child delayed reporting the sexual abuse or, in the course of the investigation or trial, recanted or showed inconsistencies in his testimony. As Myers reports, the great majority of courts allow mental health experts to testify that many sexually abused children delay reporting, recant, and are inconsistent.

Finally, expert mental health testimony is sometimes offered by the defendant. Mental health professionals may seek to testify that the defendant does not fit the profile of an offender. However, as noted above, there is no scientifically validated profile of a "typical" offender, and such testimony will not be allowed. A more legitimate type of expert testimony for the defense criticizes the methods that were used to interview the child.

The issues of when science is sufficient to become the basis of expert testimony and who has the proper qualifications to offer such testimony are not unique to the area of sexual

abuse.[55] There is not likely to be a clear-cut resolution of these issues by the courts for years to come. Given this fact, it is very important that judges who handle sexual abuse cases receive training about both the complex case law and the science underlying it.[45] Also, the mental health profession itself should analyze and inform its members about the debate in the courts and develop guidelines about acceptable types of expert testimony and expert witness qualifications.[56]

- *Repressed Memory Debate.* A second, extremely controversial area involving mental health professionals concerns the validity of the accounts by increasing numbers of adults who, through a process of therapy, claim to remember instances of child sexual abuse. Just as the number of these cases and the media coverage given them has been increasing in recent months, so has the vocal movement counter to them, alleging that these are false memories, not repressed memories, encouraged by untrained and/or unscrupulous mental health professionals. One of the key problems seen is the growth in the number of "abuse specialists," many of whom actually have little or no knowledge of either mental illness or the workings of memory.[57]

The subject of repressed and recovered memory is highly divisive within the mental health profession and among the public generally. A body of literature on this topic is beginning to emerge.[58] It is both appropriate and essential that the key professions involved show leadership in improving the science and public understanding about this issue, and in setting standards and guidelines for those providing therapy relating to sexual abuse.[59]

The growing attention to repressed memory carries two dangers important to highlight in this journal issue. First, every effort must be made not to confuse the issue of adults remembering events of childhood with the issue of children remembering events of childhood. As discussed earlier in this Analysis, the issue of the reliability of children's accounts is an important one, but it is different from concerns raised about repressed memory. Second, it is important that absolute positions be avoided at this time. The public should not be encouraged either to believe or to discount every report by an adult of past experience with child sexual abuse. As the Council on Scientific Affairs of the American Medical Association recently stated, "Few cases in which adults make accusations of childhood sexual abuse based on recovered memories can be proved or disproved and it is not yet known how to distinguish true memories from imagined events in these cases."[60]

The Role of the Medical Profession

Doctors and other members of the medical profession also play a critical role in child sexual

abuse cases. The majority of child victims do not show any physical signs of sexual abuse. This can be true even when penetration has occurred. However, when medical evidence is found and presented, it can be extraordinarily influential in a trial. Thus, examination by a doctor is often requested, and testimony is allowed about the results of that examination.

As Kerns and colleagues describe in their article in this issue, there has been tremendous growth over the past decade in both attention to and knowledge about the physical aspects of sexual abuse. There remain, however, many areas where the medical profession can further refine and develop its role in these cases.

First, doctors need to be trained to include anal and genital inspections in routine well-child checkups and to identify when there is a reason to suspect sexual abuse. There is also a need to help physicians resolve their doubts and questions about when and how to report suspected child sexual abuse.[61]

Kerns and colleagues recommend that every child who has been alleged to have been sexually abused be examined by a doctor to determine whether there has been any physical injury. For many of these children, a primary care physician should be able to perform this screening exam and to reassure the child that there has been no physical damage. However, when there are signs of abnormal anogenital findings, an exam by a specialist should be requested.

There are many areas for improving the medical profession's ability to conduct such specialized medical evidentiary evaluations.[62] Common terminology and procedure guidelines need to be developed. More research is needed on many critical issues, such as what is normal pediatric anogenital anatomy; what is the relationship between sexually transmitted diseases in children and sexual abuse; and how does healing occur for anogenital injuries in children. In addition, those medical professionals involved in evidentiary examinations need considerable training in techniques for interviewing children and preserving evidence.

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