

# Think Tank Report

*Allegations  
of  
Sexual  
Abuse  
in Child  
Custody &  
Visitation  
Situations*

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The National  
Resource Center  
on Child Sexual Abuse

ALLEGATIONS OF CHILD SEXUAL ABUSE  
IN CUSTODY AND VISITATION SITUATIONS

Proceedings of a Think Tank

Huntsville, Alabama  
March 4, 1989

in conjunction with the  
Fifth National Symposium on Child Sexual Abuse

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IN CUSTODY AND VISITATION SITUATIONS

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MR. CRAMER: Good morning.

Let me tell you about the format. The issue in this session is Allegations of Child Abuse in Custody and Visitation Situations. Each presenter will be given around 20 minutes, reactors around 20 minutes, and then there will be an additional 20 minutes for general discussion. The invited observers can make comments about what they had heard during the two presentations. Then, if there is time within that, we will open it up for comments from the general audience as well.

This is a session where we would like to define the issues involved, make some comments, and then perhaps move the agenda from here with recommendations for what to do in the future. A number of people: presenters, reactors, and invited observers have been involved in this subject matter intensely. Many of you have done things in advance of this meeting that we are aware of. We attempted to invite people that were already doing things in the field, people that were sitting on top of information, that could impact on our discussion of this subject matter. We looked at the Symposium -- the speakers, the APSAC meeting, and the National Resource Center Advisory Meeting. We looked at who we could invite, within the people attending. We thank you for taking the time to stay over to be here on Saturday; we also thank you general observers for taking time to be here.

Before we begin, I would like to take some time for everyone to introduce yourself, say a little bit about your experience and your position. We'll will start with you, Sarah.

MS. KING: I'm Sarah King. I've been on the receiving end of the system for about six years. About two years ago I got involved with the court watching groups of parents, protective parents, that were going through the system.

MR. CRAMER: Would you tell me a little bit about what you mean by you have been going through --

MS. KING: I would like to, but there is a court case pending, and the parties are gagged by court order.

MR. CRAMER: You have a court case pending very soon; right?

MS. KING: Yes.

MR. DUCOTE: Sarah's children were sexually abused by the father and it's in the midst of a court battle between the states of Virginia and South Carolina, caught between their two courts and child protective services (CPS). The case involves a rather clear coverup in the protective services system. It's awaiting trial next week.

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MR. CRAMER: Richard, do you represent Sarah in that matter?

MR. DUCOTE: No.

MS. KING: He's been a wonderful consultant.

MR. PLUM: I am Henry Plum. My experience is that of a former prosecutor for 14 years in the area of abuse and neglect, and am now a private attorney. Part of my practice involves guardian ad litem appointments. Many of these cases involve visitation and custody issues. In addition, I serve as a consultant, trainer and I teach at the University of Wisconsin in the field of Criminal Justice. My experience comes from the courtroom and the classroom.

MS. LOWRANCE: I'm Linda Barker Lowrance. I am director of program services of the National Victims Center. Our center represents or administers to 6,500 organizations around the country that deal with issues of victimization, not necessarily just sexual abuse, but also homicide, assault, child abuse, and a variety of other types of victimization. We became involved in the issue of sexual abuse allegations through custody disputes when parents began calling us for help. I will go into that further later on.

DR. SALTER: I am Anna Salter. I am a clinical psychologist. Until December I was on the full-time faculty at Dartmouth Medical School in Psychiatry and Pediatrics. I am now in private practice. I have a book out on treating child molesters and victims and I also have several grants that I am working on in this area: I'm developing a curriculum for training mental health providers on how to treat sex offenders, and I'm also developing rebuttal material that can be used to refute those who claim that all children lie. The third grant is to develop a new treatment program which will help physical abuse in families.

DR. CORWIN: My name is David Corwin. I am a child, adolescent, and adult psychiatrist in practice in Orinda, California<sup>1</sup>. I have worked with sexually abused children and adults molested during childhood since early in my psychiatry residency that began in 1976. During my fellowship in child psychiatry at UCLA I specialized in working with sexually abused children and their families. I was co-director of the UCLA Family Support Program, a specialized treatment program focusing on child sexual abuse. In 1981, I founded the L.A. Task Force on interviewing sexually abused children. The Task Force worked on developing a uniform protocol for videotape recording of inter-

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<sup>1</sup>Ed note: Dr. Corwin is now with the Department of Psychiatry of Washington University School of Medicine in St. Louis.

views of allegedly sexually abused children. The goal was to reduce the redundancy of such interviewing.

Since entering private practice in 1981, courts and others have frequently sought my evaluation or review of these difficult situations involving separated parents and suspicions or allegations of sexual abuse. Over the last eight years I have looked at 60 or 70 such cases in various capacities.

I have followed the literature on child sexual abuse allegations between separated parents as it has developed. I initiated and chaired the National Summit Conference on Diagnosing on Child Sexual Abuse in 1985.

Particularly relevant to this meeting here today, there was a meeting in Los Angeles in the summer of 1986, at the same time that the California Professional Society on the Abused Children (CAPSAC) and the American Professional Society on the Abuse of Children ((APSAC) were initially organized, addressing false allegations of sexual abuse and false allegations of false allegations. At that meeting, we reviewed Green's article, "True and False Allegations of Child Sexual Abuse and in Custody Disputes."<sup>2</sup> This group of 20 to 30 clinicians experienced in the education of such cases decided that a rebuttal article was need-ed to help prevent misuse of Green's article.

In 1987 I chaired a task force for CAPSAC which focused on this problem. I authored, along with four colleagues, the article entitled "Child Sexual Abuse and Custody Disputes: No Easy Answers."<sup>3</sup> Our concerns were echoed by many other experts on child sexual abuse. We tried to stop what has happened during the last two years, that is, oversimplification and backlash against such allegations.

MS. BULKLEY: My name is Jo Bulkley. I am an attorney who has worked on numerous projects with the American Bar Association since 1980. I am presently a consultant to the ABA on child abuse legal issues. I am taking some time off to be with my two little kids. I have a new baby! I have written a number of books and articles. One I am going to talk about somewhat about is Sexual Abuse Allegations in Custody and Visitation Cases,

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<sup>2</sup>Green, A.H. *True and False Allegations of Sexual Abuse in Child Custody Disputes*. Journal of the American Academy of Child Psychiatry 25, pp. 449-456 (1986).

<sup>3</sup>Corwin, D., Berliner, L., Goodman, G., Goodwin, J., and White, S. *Child Sexual Abuse and Custody Disputes: No Easy Answers*. Journal of Interpersonal Violence 2:1, pp. 91-105 (March, 1987).

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published by the ABA, I believe, last year.<sup>4</sup>

MR. DUCOTE: My name is Richard Ducote. I am an attorney in private practice in New Orleans. I am also on the clinical faculty, psychiatry department, at LSU Medical School, New Orleans.

Our firm specializes in representing parents of sexually abused children, primarily in custody situations. Typically, the call we get is from a mother who says, "I just went to court and there are three or four experts who said my child was sexually abused. I went to court to try and stop visitation and ended up losing custody," or, "I ended up losing my visitation," or, "I'm being held in contempt of court. Can you do something?" We try to fix those cases. We have been involved in, I guess, over 30 states now at some level or another.

I am co-author of one of the articles in the ABA book.<sup>5</sup> I am also involved in doing training.

We also represent kids who have been sexually abused in civil suits against the abusers. We are involved in civil malpractice litigation against child protective agencies and other state agencies. We are also involved in malpractice suits against psychologists and other physicians who have been neglect in protecting kids.

We also have a suit in federal court in New Orleans in which we hope to convince a jury that VOCAL<sup>6</sup> is a group that operates in bad faith to protect child molesters. On child in particular in Louisiana suffered as result of that.

MS. PENCE: My name is Donna Pence. I am a special agent for the Tennessee Bureau of Investigation, assigned to the Special Investigation Unit.

My work, basically, is in three different categories. One, I do actual investigations, and have run into custody and visitation disputes where they get involved in the criminal court process and our agency is asked to come in and investigate the

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<sup>4</sup>E. B. Nicholson and J. Bulkley (eds.) Sexual Abuse Allegations in Custody and Visitation Cases. Washington, DC: American Bar Assn. Center on Children and the Law, 1988.

<sup>5</sup>DuCote, R. and Harrison, D. "Aggressive Advocacy for Parents Protecting Children in Child Sexual Abuse Cases" in E. B. Nicholson and J. Bulkley (eds.) Sexual Abuse Allegations in Custody and Visitation Cases, op. cit., pp. 246-254.

<sup>6</sup>Victims of Child Abuse Laws

allegations. Two, I act as a consultant to various agencies in reviewing cases already underway and making suggestions as to what they can do to either improve or get themselves out of a mess that is already existing. Number three, I am the primary law enforcement trainer for the State of Tennessee in the investigation of child sexual abuse cases.

MS. BROGNA: My name is Sheila Brogna. I am staff attorney for Legal Services for Children in San Francisco. It's a private, non-profit law firm that has been in existence for about 12 years to represent children only in non-fee-generating cases concerning welfare.

We represent child clients in juvenile court proceedings, domestic, relations, and related civil proceedings in the Bay area and elsewhere.

I am also the attorney in California for Chrissy Foxworth.

MR. CRAMER: Howard Pohl is co-moderator.

MR. POHL: My name is Howard Pohl. I am chief of the Sexual Battery and Child Abuse Unit in the Dade County State Attorney's Office, Miami, Florida. I have been prosecuting adult physical and sexual abuse, as well as child physical and sexual abuse, for approximately six years.

DR. FRONING: My name is Mary Froning. I am a clinical psychologist in private practice in the Washington, D.C. area. I became involved in this issue because I was the therapist for the child of Elizabeth Morgan for about two years. That prompted me to start an organization called the Coalition Against the Sexual Abuse of Young Children, which is an educational organization to try to help in this area for kids who were six and under. We publish a quarterly newsletter.

DR. BUNK: My name is Barbara Bunk. I am a clinical psychologist from Connecticut. I have worked in the field of child abuse for about the last seven years.

I am currently in private practice. Until last summer I worked with Dr. Suzanne Sgroi in doing exclusively child sexual abuse work, teaching, training, and treatment. I have co-authored chapters on children's sexual behavior as well as adult survivor of sexual abuse.

MR. BERG: My name is Tom Berg. I have been specializing in the field of child sexual abuse for the past ten years. By training I am a marriage and family therapist. I have had the opportunity to work in a variety of settings, in hospital settings and in CPS settings.

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For the past seven years, I have been Executive Director of Clinical Services at The Chesapeake Institute. We have a comprehensive treatment program for children from age two through 18, adults molested as children, adolescent and adult offenders and their families.

I currently hold the same position at the National Resource Center on Child Sexual Abuse.

DR. SAUNDERS: My name is Ben Saunders. I am on the faculty of the Medical University of South Carolina, Department of Psychiatry and Behavioral Sciences. I direct the family and child programs of the Crime Victims Center there.

MR. CRAMER: Before we begin, could each person here identify yourself and tell us where you are from. We will start here on the back row.

MS. LAWSON: I am Donna Lawson. I am a social worker from Gainesville, Florida. I do investigations in the State Attorney's Office.

MS. WATSON: I am Martha Watson, interested applicant.

MS. CARSWELL: Mary Carswell, Child Protective Service, Alabama.

MR. VINCENT: My name is Frank Vincent. I am a supervisor for the Shuttle Space Department.

MS. FRIEDMAN: I am Ginger Friedman.

DR. SMOCK: Jerri Smock, doctor and family therapist.

MS. HOWE: Barbara Howe, Columbia, Missouri.

MS. KINNEY: I am Nina Kinney. I work for the Department of Public Safety, Juneau, Alaska.

MR. BECHER: I am Bob Becher. I work for the District Attorney's Office, Montgomery, Alabama.

MR. HILL: I am Ron Hill. I work for the Mental Health Center, Bloomington, Indiana.

MR. HERCH: I am Jessica Herch. I work for the Mental Health Center in Bloomington.

MS. STEIN: I am Joan Stein; Santa Barbara, California.

MS. KLANE: My name is Linda Klane. I am a marriage and family counselor in private practice in Los Angeles.

MS. ELLIS: I am Claire Ellis. I chair a multi-disciplinary task force in Philadelphia.

MS. KRININ: Tomara Krinin, New Orleans, Louisiana.

MS. TIDWELL: I am Maggie Tidwell, New Orleans, Louisiana.

MR. CRAMER: Thank you. During this we would like to know of articles, authorities, documents. We would like to come out of this with a list of them as well. So I will ask you to be thinking about that, getting ready for the commentary part.

Linda, I would like for you to start.

MS. LOWRANCE: Again, I want to stress that the National Victims Center does not see children who are abused, or children who are allegedly abused. We are not attorneys. Basically, what we are is an advocacy organization with information and a referral system that allows us to link victims of crime with people who are in their locality, people who can provide services for them. Our role is not to provide direct services to crime victims.

On an average of three to five times a day I get a call with usually a mother on the other end of the line, and she says that, "My three-year-old daughter is being abused and I can't stop it. I've been in court 14 times in the past four years. I am out of money. I have a court date next week. My attorney will not be there to represent me. My child is forced to go visit her father. She screams when she goes and she screams when she comes back. It takes me weeks to settle her down. Once she is settled down and gets back into a normal routine, then she goes back for another visitation and she's upset again. I've lost my job because I have to work on this issue. There isn't any physical evidence because she has not been penetrated yet. This individual continues to abuse her and abuse me." The mother will tell me that she is taking the child to doctors and their investigation or their questioning of the child indicates the child is being abused; however, the court fails to recognize that abuse.

The court has ordered the mother to stop taking her daughter to doctors. So, therefore, the child is not getting treatment. She is out of money; she doesn't know where to go. She is not represented by the attorney. My role is to help her identify her problems and link her with individuals that can help her pursue her case and find relief for her child.

In the scenario that I have just mentioned the problems that we would identify are (1) that her child is being abused, (2) the child protective services agency is not responding to her pleas, (3) she has no attorney to represent her in court (4) she is in debt and has no job, (5) she is emotionally drained and has lit-

tle support, (6) her child is not getting treatment for her problem and she is anticipating committing a felony by taking her child and hiding, and (7) criminal charges of sexual abuse are not filed with local law enforcement officers because no one called the police.

Once we have identified those problems, we try to locate individuals who would help this mother. It may be an attorney. However, attorneys cost money and she is possibly looking at a \$5,000 retainer before she could obtain counsel to represent her in court next week. We may be able to call someone like Richard Ducote, who can refer her to another attorney, but she is a week away from a court hearing and is not able to get the time that is needed in order to present the information to the court. Remember, the court has usually heard this evidence, or has denied the introduction of this evidence into the court hearing. So, therefore, they are not really interested in her problem.

Last April we held a meeting with eleven concerned professionals. After we had gone about a year and a half of getting these kinds of calls, we became concerned at the National Victims Center as to what was being done on this issue. We called many of the people that are in this room. During that day long meeting we identified problems within this issue. We also tried to identify solutions. We had a similar meeting to this, although it was just the professionals who sat and talked and threw out everything we could on the floor, dissected the problem, looked at it, and I think came up with some very good solutions, and I would like to share those problems and the solutions with you.

First of all, the basic problem is the ignorance of the issue by the professionals. Mental health workers, attorneys, teachers, pediatricians, and child protective service workers are not adequately trained in the issue of child abuse. The state of the art is not sufficiently advanced to permit consistent decisions. In other words, when we have cases that are presented to all of these professionals with all the information, how do we determine if this child is actually abused? Oftentimes we hear that a case was unfounded. So we think, "Well, it didn't really happen." Actually, the case may be unfounded, but the child was actually abused.

Second, we discussed abuse of judicial discretion. If a judge has decided that the evidence, including physical evidence and testimony by a child psychologist, will not be admissible in court, there is very little that a parent can do to have that information submitted and looked at. It's up to the judge's discretion. Now, someone said to me the other day, "Well, they can appeal." But, remember, most of these parents don't have the money to appeal. They have been drained. It's not unusual for them to have already spent \$30,000 by the time they are back for the hearing.

The next problem which was identified was that there was no accreditation for experts who testify. In reality, what does a judge know about the individual who is coming before him and saying that the majority of children lie about being sexually abused, and that most of the allegations of child sexual abuse are false allegations? This is what the judges are hearing. What agenda do they have, or what guidance do they have, to determine whether or not this individual really knows what he or she is talking about? How many patients has this person seen? What is his or her background? Has this person basically read information, or has he or she actually been involved in cases?

The next problem is the failure to report child abuse to law enforcement. Somewhere along the line we have forgotten that children who are sexually abused are victims of a violent crime. We have focused on keeping the family together. We have focused on treatment for the offender. We are not looking at the criminal side of the child abuse issue. With many of the moms that I have talked to -- one of the first questions that I ask is, "Has it been reported to your local law enforcement agency?" "Oh, no, I called CPS." The last time I looked, in every state in this country, it is a crime to sexually assault a child, and yet law enforcement is not getting reports of sexual abuse. In many jurisdictions when parents do report they are told, "Well, it's a domestic dispute," and so parents fail to follow-up. The active participation by law enforcement has not been as it should be.

Fifth, we have a lack of compiled data. We don't know how many children are actually being sexually abused. We don't know how many cases there are in this country of false allegations. We have to admit that there are false allegations of abuse, but we don't actually know what the numbers are. We hear different statistics from different places. There is no central record keeping location. We are not able to tell how many cases are actually happening, how many are false allegations, and how many are true allegations of abuse.

In addition to the five major problem areas, the task force listed a variety of other problems.

- (1) Again, the cost factor for parents.
- (2) The blurred boundary for professionals. Blurred boundaries could be more for CPS and less for law enforcement. Does one or the other investigate or do they work together on the investigation?
- (3) Untrained professionals conducting supervised visitations. Oftentimes we hear about supervised visitations when the supervisor is someone related to the offender, or someone from an agency that has not been trained in the issues of child abuse.

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The supervisor doesn't know what to look for. Yet these people come into court and are a crucial part of the case.

(4) There are no hotline numbers for parents, for parent support or information. There is the CHILDEHELP Hotline, but CHILDEHELP sends them to me, and I try to send them out to you so that you can respond to their needs. But there is no real support system that the parents can link up to. There are a couple of good organizations around the country, but they are inundated with calls and are overworked.

(5) The effect on the personal lives of the professional. Therapists have been attacked. The first case that I got involved in on a sexual abuse allegation happened to be the reverse: the dad made the allegation against mom, and Lucy Berliner was the therapist in the case. The judge decided that Lucy was abusing the child because she was providing therapy, and that had an impact on her. I am sure that all of you who deal with this issue, you are being impacted as well.

(6) There is a definite need for peer review at all levels. Whether we are talking about mental health, or whether we are talking about attorneys, the judiciary, law enforcement, or prosecutors, we need to have peer review. We need to have checks and balances in these cases, and I don't think at this point in time we really do.

(7) We also need to be active together. Multidisciplinary teamwork must be done on individual cases so that each professional involved with the child is aware and understands how the case and the child are progressing. How much more can we put that child through? What is going to happen if the parent decides to run with the child? In other words, we need everyone to be part of this individual's case, rather than having politics taking place between CPS, law enforcement, and attorneys. Professionals must work together rather than working at cross purposes.

We have to admit that there is a degree of sexism in this issue, the "vindictive woman's syndrome. She's out to get him." That is a major issue in cases that I have seen. With no-fault divorces, we have taken away the argument in divorces. There is no more adultery or mental cruelty. There are no more allegations of "you did this to me." So, therefore, the child becomes a focal point. That's all that is left to fight about.

Our recommendation was to develop training programs for judges and attorneys. Get the information to those people that are going to be making decisions. At least give them as much background as possible prior to seeing cases of sexual abuse.

What can an attorney do -- I know there was a paper that Linda Blick and David Lloyd worked on. What can an attorney do when the client calls them at 5 o'clock in the afternoon and says, "My child is being sexually abused and leaves in an hour for visitation."? Educational materials should be widely available so attorneys can react responsively.

We need to develop and distribute guidelines for parents. These parents are working in the dark. If we could get the parents in the beginning, before they spend \$30,000 to \$40,000 on this issue and before they are worn out, and help them to link up with people that can provide them with information and assistance, then maybe we can stop the long-term, four or five year old, court cases. It's a long battle that not only the parents go through, but it's obvious that it has an emotional effect on the children.

We should prepare information packets for attorneys. Those attorneys that aren't even involved in child custody disputes may find that they are in criminal cases -- they are defense attorneys and their clients are facing criminal charges of abduction, or custodial interference.

We should prepare guidelines to assist judges in the recognition of expertise, establish a data bank of these cases. I know that Sarah must have her caseload. I have cases that I get on a daily basis. Everyone has their cases, but we don't have a centrally-located data bank. We need to have that. We need to know what the issues are in each of these cases and we need to know the number of cases.

We should coordinate a national coalition of organizations involved with family-related issues. Again, all of us working together, even though we are from different professionals.

It is important to acknowledge that this problem is not going to be solved unless the people in this room solve it. It's not going to happen out there. The people who were at the first meeting in April, with all of the work that David Corwin has done in California, we are the ones that are going to solve it. We need to recognize that and put our time and our resources from our agencies into this issue and share that responsibility.

We need to establish a parents network. We need to help them establish organizations in their community that will provide them support. They are not the only ones in the city that are going through this crisis. We need to be linking those people together so that they will have someone there to be with them when the emotional strain becomes too much for them, because we know that if the parent is emotionally troubled, so is the child.

We need to encourage additional research on the topic. We are beginning to see some research. We need to encourage more and look at the different aspects of issues. What happens when a child runs. What is the emotional impact on the child? What is the emotional impact of false allegations on those who are falsely accused of sexual abuse? We need to expand the level of fact-finding. "Unfounded:" what does "unfounded" mean? "Unfounded" could mean there is no abuse, or "unfounded" could mean there is abuse. So we need to look at the terms we are using and develop the level of fact finding beyond where it's at today.

We ought to establish well-organized assessment centers. We need to go look at the assessment of the abuse. What do we know, what don't we know, and what should we know, about assessing a child who may or may not have been abused?

We must encourage multi-disciplinary agency approaches to casework, so that there will be greater communication among individuals involved with the child.

We must mandate, through legislation, CPS reporting of child abuse to law enforcement. I can tell you that in some states where that has been done, it doesn't always work. So we need to follow through. You can't legislate attitudes. We need more education of those professionals who are working on the issue.

We need a responsible approach to media reporting on the subject. We have people who are coming from different organizations, different professions, talking on the issue and saying different things. It's very confusing to the general public, and if we continue to muddy the water they are going to ignore the issue and we are not going to get the support we need.

Along the same lines we should establish a speaker's bureau that will go out and talk about the problem, educate the public, educate parents, educate educators. We need to educate the public responsibly. Through education we can achieve the goal we are hoping to attain; to decrease the number of incidents and bring about satisfactory case results.

As I said earlier, our concern at the National Victims Center is to create concern for an issue that needs attention. That's how the "sexual abuse allegations during custody disputes task force" was formed. What will create change is not just those 11 members of that task force working. It's going to take everyone being involved in child abuse coming together. It's going to take agencies dedicating resources and time to develop those training materials that are needed to help the professionals working with those victims. ..

MR. CRAMER: Linda, thank you. I know that you made a personal sacrifice to come and I really appreciate that. We'll now hear from Josephine Bulkley.

MS. BULKLEY: I am going to do what Bud suggested. Some of my comments will be a reaction to Linda's presentation, much of which will support what she has said.

We don't know what other people are going to say today and I am afraid there is going to be significant overlap. I know that David Corwin will be covering in greater detail some of the issues I am going to address briefly, but I want to highlight the issue of validity. With some of the other things that I am going to talk about, I don't know to what extent other people are also going to talk about them. I am sorry I won't be able to hear, for example, David's presentation, Sarah's, and others. I will probably miss some of the interaction which I would enjoy. I will try to limit this to 20 minutes and we can perhaps have a discussion afterwards, because the feedback is helpful to me and I think to others.

I want to address three or four key issues that are problems in these cases in particular, although, some of the problems are really no different than in other sexual abuse cases. I think we should keep that in mind. But there are some differences that force the legal system and other professionals to come up with some new ways of dealing with them. I think it's good that we are focusing on that, because I think it's also true for other types of abuse. We are getting beyond the idea that sexual abuse occurs in one particular way or one type of situation. For example, the whole issue of sexual abuse in day care, or out-of-home care, is another area that is coming out. I worked on a project at the ABA that has just come out with a final report related to sexual abuse in day care. Other people are also doing research on that issue.

The first of the issues that I want to briefly address is the idea that somehow in custody cases there is a higher frequency of false allegations than in other cases of sexual abuse, and that the validity of the allegation becomes the focus. Basically, the assumption is, I think, that it's not true, or it's automatically questioned. Some people believe just the opposite, that as soon as an allegation of sexual abuse is made, the judge believes it in Family Court and will automatically take away custody or restrict visitation. I think this is less true today than in the past. But, either way, the validity of the allegation becomes the central question. As to specialty cases, I think this is becoming true in general. On the one hand there are differences and on the other there are not. I think there is increasing concern whether all reports, or many reports, of sexual abuse are true. There are certainly many many situations,

day care cases, for example, with very young kids where the validity of the allegation is questioned frequently.

I am concerned like everybody else about the literature. There is an article called "Problems in Evaluating Interviews of Children in Sexual Abuse Cases," by Raskin and Yuille in a book just published, edited by Steve Ceci<sup>7</sup>, that recommends the use of a systematic analysis, called "statement validity analysis," to evaluate whether children are telling the truth in all cases, based on a technique used in Germany called, "statement reliability analysis." It's a very systematic and rigorous videotaped interview format and analyses according to a set of criteria developed in Germany. In Germany experts testify as to whether the allegation is true based upon these criteria. Premising their recommendation for this type of approach were comments that there has been an "epidemic of false allegations" in sexual abuse cases, particularly in custody situations. Raskin and Yuille also indicated that there is a national rate of 50% of false allegations in custody cases.

MR. CRAMER: Do they cite that, Jo?

MS. BULKLEY: They generalized to the larger population from one study. Further, it's typical of the increasing problem of misrepresenting what is really happening. I agree that we have to be concerned about validity for many reasons, even in a custody case. In a criminal case, we should have greater concern because the liberty rights of the defendant are at issue. However, in many of these cases we are not talking about a criminal case; many cases lack sufficient evidence to meet the standard of proof at beyond a reasonable doubt. And while we may want more criminal prosecutions, I would have to say that we may not get them. In response to Linda's comments, I think, unfortunately, many of these cases simply will not meet the standard of proof. Even if you were to prosecute, I think you would perhaps end up with an acquittal -- an even worse situation. So I don't know if that's the route we are going to be able to go. I am not sure that even the CPS system is the route we want to go, either. One of the issues raised in a study that I am going to mention in a minute about the interaction of the CPS on child welfare system and the family or domestic relations court is that some of these cases are unfounded by CPS. What does the domestic relations court do with that knowledge? It's pretty difficult.

In any event, while I think there should be concern about those who may be falsely accused, I think we should really look at what the research shows before we make any conclusions regarding the frequency of accusations. I think that Linda is right,

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<sup>7</sup>Ceci, S. J., Toglia, M. P. & Ross, D. F. (eds.) Perspectives on Children's Testimony. New York: Springer-Verlag (1989), pp. 184-207.

that the vindictive parent myth, meaning the mother image, has just got to be done away with. I think we can do that, and I think we need to get that out. I think we can do that based on what we know now about what these cases are like.

Again, there are legitimate concerns about the number of cases although the National Incidence Study<sup>8</sup> indicates an increase in substantiation. Still there are a significant number of child abuse reports that are not substantiated. Whether it is growing or not is not an issue as much as the fact that we do have a high number now that are not confirmed.

One book I would like to recommend was published by the ABA as a collection of articles -- Sexual Abuse Allegations in Custody and Visitation Cases.<sup>9</sup> It can be purchased through the ABA in Washington. I think it's useful because it contains a number of articles by different people on various issues, including Richard Ducote and myself. It was designed for judges, particularly family court judges, and other domestic relations court personnel and attorneys. We also reprinted, additionally, excerpts of some of the key literature in the field of child sexual abuse. In response to what Linda was saying, we need to educate people in the family court system about child sexual abuse issues. We tried to put the information in a short compact way, because we know the judges, in particular, and others are not going to go through a vast amount of literature on child sexual abuse.

MR. CRAMER: Let me quickly interrupt and say that this is one of a series of publications that the ABA Center on Children and Law has put out. We have regularly bought those publications and given them to judges and then hoped that they would read them.

MS. BULKLEY: This one in particular was designed for judges. We have sold quite a few. I don't know how many judges are actually buying it or seeing it. I would recommend that.

This came out of a joint project with a group called the Association of Family and Conciliation Courts, in Denver, Colorado. They actually did the bulk of the research for the project. They came out with a number of products that are also excellent. One is their final report on *Sexual Abuse Allegations*

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<sup>8</sup>National Center on Child Abuse and Neglect. *Study of National Incidence of Prevalence of Child Abuse and Neglect: 1988*. Washington, D.C.: Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U. S. Department of Health and Human Services (U. S. Government Printing Office), 1988.

<sup>9</sup>See note 4 *supra*.

in *Custody Cases*. They have also written several other monographs for other audiences, as well as an article with the same findings in the Judges Journal.<sup>10</sup>

Their study was very wide-ranging and covered a lot of issues, and I am going to discuss some of their findings and recommendations in my presentation because it's one of the few comprehensive studies to date on the issue. They cover a number of issues, not simply validity, but also nature of the cases, who is bringing the cases, issues relating to experts, the courts involved, and some of the problems with conflicting jurisdiction of courts, et cetera. It's an excellent study.

There have only been a few critical studies dealing with the validity of sexual abuse allegations. They involve extremely small samples that are non-random, and not in the naturally occurring population, and possess innate bias because they were referred as complex, troubled cases to begin with. They are discussed in depth by Sink.<sup>11</sup> Some of those studies came out with a high rate of false, meaning deliberately incorrect, allegations. So I don't think we can use that. I think it's incorrect to use their data to state what the overall rate of false allegations is in these cases, and yet this is being done, as I mentioned previously.

There are obviously differences between unsubstantiated cases and false ones. In the press particularly, and sort of in a non-professional arena, the two terms are often dumped together. Sometimes I think even among professionals it is used instead of "unsubstantiated" -- meaning insufficient evidence. When CPS makes an "unsubstantiated" finding, it doesn't mean that the abuse definitely did not occur, but that there was insufficient evidence. Even in those percentage of cases where there was a determination that no abuse occurred, very few, according to the studies that we have and the AFCC studies, involve deliberate, malicious allegations. Instead they involve misperception, meaning the behavior of the child was misperceived. Or the touching turned out to be non-sexual contact. Other reasons for maybe a determination of no abuse are the wrong person was identified or the child's statements simply were too vague or ambiguous. Finally, a parent may have some type of psychological disturbance, but really believed the child was abused. There are cases of that type. On the issue of the deliberate false accusations by a parent, however, most of the studies indicate that

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<sup>10</sup>Thoennes, N. *Child Sexual Abuse: Whom Should a Judge Believe?* Judges Journal 27:3, pp. 14-18 (Summer 1988).

<sup>11</sup>Sink, F. "Studies of True and False Allegations: A Critical Review," in E. B. Nicholson and J. Bulkley (eds.) Sexual Abuse Allegations in Custody and Visitation Cases, op cit., pp 37-47.

purposeful brainwashing of the child is a rare situation in these cases.

The AFCC study obtained information from eight jurisdictions directly from actual cases. They picked cases involving contested custody or visitation where sexual abuse was alleged, and they end up with -- I believe it was 169 cases. They were able to get data from 129 cases that could be reported for this study. What they came out with was that in half, 50%, they found that sexual abuse had occurred. This is comparable to the figure for unsubstantiated reports of child abuse in general. In one-third of the total cases they reported there had been a finding of no sexual abuse. In the remaining 17% of the total cases they could not make any determination at all, or it was inconclusive.

Within the one-third where there was a finding of no abuse there were a number of explanations: for one half, (162/3% of the total) there was no explanation for why they could not find or establish sexual abuse. In 27% of the cases where no abuse was found the allegation was deliberately false. Nine percent involved a severe psychological problem on the part of the parent. Five percent involved a legitimate, although erroneous, concern. Thus, only 14 percent of all unsubstantiated cases involved deliberately false accusations.

There were a number of factors that they found in terms of a finding of no abuse, or where no clear conclusion about sexual abuse could be made. For example, in something like a third of the cases where there were kids ages one to three there was no clear conclusion about abuse. There was half that number for older kids. This confirms our belief that cases involving very young children are more problematic.

There were also a significant number of allegations brought against someone other than the parent, and it flies in the face of the myth that all of these are brought by mothers. Half were brought by mothers, but many were brought by fathers against the mother's boyfriend and a few were against the mother. Many were brought against neither parent, but against somebody else, which I think is an interesting finding. Another factor found in connection with a finding of no abuse, or with no clear conclusion about abuse, was the prevalence of single episodes. So we are talking about cases where there was only one incident that either a "no abuse" or "no clear conclusion about abuse finding" was made more often.

They also found that it was only in 1.5%, less than 2%, of all the contested custody cases, which by itself is something like 10% of all divorce cases, in which allegations about sexual abuse were raised at all. So we're talking about extremely small numbers, I think, based on this study.

AFCC undertook three major data collection efforts. One method was to interview workers in depth in six jurisdictions, and another was a 50-state written survey. The data from interviews and the survey paralleled their empirical findings. They found that most people believe that allegations of sexual abuse being raised in custody cases were a small, very small, but growing number. But this AFCC study indicated that this growing number merely parallels the growing number of child abuse reports in general. It's not that it is a higher percentage than other cases. This study's major conclusions, and I would echo this personally, was that there aren't any more allegations of sexual abuse raised in these cases than any other type of situation, and they are not more likely to be false. We really have to use that to buttress some of the claims sometimes made about these cases, because I think that really prefaces everything else. I really want to underscore that.

As I quoted earlier, the cases involving very young children are among the most problematic. There also are problems with evidence in these cases, as there are with any sexual abuse case. In terms of the very young child, if you are talking about a two or three-year-old, he/she probably can't be a competent witness. Even if he/she can, the child's capabilities as a witness I think are difficult. If the child is willing to talk, in family court, a formal witness procedure is not necessary. The judge can take the child into chambers and talk to him/her. Frequently counsel do not have to be present. There are ways of getting information from the child in domestic relations cases that can't be done even in juvenile court, let alone the criminal court. On the other hand, we may have problems with a child's willingness to communicate at all where she simply will not talk about it, after having had to talk about it many times before.

In addition, there are other evidentiary barriers. Hearsay is still excluded by many judges. Despite the fact that much has been written about this, there are a variety of hearsay exceptions that can be liberally interpreted to admit the child's statement. So even if the child cannot testify, at least what she told mom, what she told the therapist, what she told the doctor, may be able to come in under specified hearsay exceptions, such as statements made to doctors and excited utterances. Also, almost half the states have adopted special hearsay exceptions for children's statements of abuse. I would recommend that all states adopt these. They have had a tremendous effect on admitting evidence that a lot of judges won't let in under other traditional hearsay exceptions.<sup>12</sup>

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<sup>12</sup>[Ed. note: The utility of special hearsay exceptions for statements of abuse may be affected by the U.S. Supreme Court decision in *Idaho v. Wright*, 497 U.S. \_\_\_, 110 S.Ct. \_\_\_, 111 L.Ed.2d 638 (1990).

A good case on this issue is Morgan vs. Foretich.<sup>13</sup> I might point out that there are a lot of cases on this issue that involve sexual abuse custody, but this was a federal civil suit, not a custody matter. It's an excellent case on the admissibility of hearsay. The child's statements were not admitted by the trial court. On appeal, the Fourth Circuit said that this evidence should have come in.

The case is also good for another evidence issue, prior sexual acts. A lot of judges won't allow other evidence of abuse with that child or another child. In the Morgan case, there was a child by another marriage who alleged that similar sexual acts had been perpetrated against her. Again, the trial court would not allow it, but the Fourth Circuit said that the court should have let that in. That's where the appeals process is very helpful; it really establishes where we should be going legally.

There are a lot of problems in using experts in general, although they are very important in certain limited ways. Another controversial issue in custody cases involving sexual abuse allegations is the use of expert witnesses, particularly mental health experts. Psychological experts can be very useful to defuse the judge of misconceptions about these cases on such issues as behaviors that might seem inconsistent with being abused, like not telling right away or retracting. The courts around the country are grappling with how far experts can go and what they say. Basically, opinions about whether a child has been sexually abused, or a child's credibility, most courts are not going to allow, especially in criminal cases. I am sure it is being allowed more often in civil cases, but I'm not sure that's a good idea, for a number of reasons.

There are a lot of problems with using experts, particularly in these cases. In the first place, many judges don't give much credence to them, particularly if they think they can make a judgment on the particular issue using common sense, that the issue is within their common experiences. I think in many cases they can make that determination based on other evidence in the case. That's true particularly if the child is testifying. You have a bigger problem when the child cannot be a witness.

I also think the issue of bias has got to be addressed. There is inherent bias in any case if you have experts for each side who are obviously there in favor of one party. Some argue that through that debate, the truth comes out. I don't really believe that in these cases. My advise is to keep them all out. I know that may mean that some cases don't get to court, but I think you may end up with the defense expert being more impressive to the judge.

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<sup>13</sup>846 F.2d 941 (4th Cir. 1988.)

Perhaps we can figure out how to keep some of these experts from being qualified. I'm not sure that's possible, being realistic about it. I think most judges, particularly when the experts are retained by the parties, don't really trust either one. My recommendation is to find some way of getting court-appointed experts involved, but I don't know of any independent experts. I think people believe that most experts are aligned with one side. It's a real problem.

The other problem with using experts for anything other than giving general descriptions of child victims' behaviors is that basically much of what they say is not grounded in scientific evidence. There are a number of cases that have been decided under the Frye<sup>14</sup> rule, particularly in California, that address whether expert testimony on the "child sexual abuse accommodation syndrome"<sup>15</sup> has gained general acceptance in the scientific community. These cases raise the issue of whether experts can testify about whether a child has been abused, give a diagnosis, when these are legal questions to be answered by the judge, or a jury.

I think it would be better if the experts simply limited their testimony to a discussion of the child's behaviors what the child is presenting in the family. I might even agree that they could testify about typical characteristics of child abuse victims without an opinion about whether a child was abused, although even that suggests that the child matches such characteristics. Testimony about typical characteristics is problematic, however, since the truth is, there is no "typical" child victim. While the emotional effects of abuse are common to many victims, there is no clinically or scientifically accepted typical child victim as yet. There are substantial variations in how children react to abuse, and some of the new research supports that. There are many who have no stress at all and others that are severely disturbed. A recent study by Conte and Berliner<sup>16</sup> shows 20% of confirmed cases asymptomatic at initial evaluation.

The other thing, more critical to these cases, is that the behaviors reflect something else. They may not mean sexual abuse. Divorce in itself is highly traumatic. Anybody that has

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<sup>14</sup>*Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

<sup>15</sup>Summit R. *The Child Sexual Abuse Accommodation Syndrome*, Child Abuse & Neglect 7:1, pp. 177-193 (1983).

<sup>16</sup>Conte, J. R. and Berliner, L. "The Impact of Sexual Abuse on Children: Empirical Findings," in L.E.A. Walker (ed.) Handbook on Sexual Abuse of Children. New York: Springer, pp. 72-93, 1988.

read Wallerstein's new research on the effects of divorce on children<sup>17</sup> will see how very traumatic the effects are of the divorce itself. Many of them parallel effects of abuse: bedwetting, nightmares, anxiety-related symptoms of many kinds. It often reflects normal behavior as well. I am happily married. I have a three-year-old daughter. She occasionally is bed-wetting, she has nightmares, she has all kinds of issues. Developmentally, a normal child could be going through something.

Now, I'm not saying these symptoms may not reflect sexual abuse. I do think however, if an expert says a child has these characteristics, and therefore, has been sexually abused, by saying or stating it's consistent with it, I think it's too much of a jump. I understand why they are doing it. I understand that they may really believe it. But the truth is, the type of judgment they are making is absolutely wonderful for therapy, for identifying and helping victims. But I don't think the kind of clinical judgment they are making to provide treatment belongs in a courtroom. There are legal reasons for excluding this type of prejudicially expert opinion, including its effect on the defendant. On the other hand, such opinions can be counteracted by the defense bringing in its own expert. Nevertheless, we are talking about a legal proceeding where the judge makes the decision about whether a child has been abused, or what happened in a given case.

The last issue is the jurisdictional conflict or overlap between court systems and investigations. This is perhaps an area in which could really make some headway, in addition to the problem of validity. The problem is that the CPS and juvenile court system is very different from the family court system, in terms of their purposes, orientation, laws, and procedures, and there is no communication between the two. Here you have a situation that really involves the jurisdiction of both courts, as well as possible criminal proceedings.

For example, to child protective services, the mother may be adequately protecting the child. So CPS may not initiate an investigation at all, or if they do, they don't go to court, because state intervention is considered only where neither parent is available to protect the child; that is, there is a parent who is abusing the child and another parent who clearly does not protect the child. In this case you have a private dispute where one parent finds out and immediately protects the child. So there is some argument about the extent to which CPS, or the juvenile court, should really be involved.

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<sup>17</sup>Wallerstein, J. *Children of Divorce: Report of a Ten-Year Follow-Up of Early Latency Age Children*, American Journal of Orthopsychiatry 57, pp. 199-211 (1987).

Or, child protective services may assume that the family court is dealing with this and they don't do anything. The family court, on the other hand, thinks that if CPS hasn't done anything, there must be no abuse. So you end up with a case in which the abuse is really never dealt with in either proceeding or system, particularly when the mother is happy to get services for the child, or for herself, to deal with the abuse. There may be no specific finding in the juvenile court that can be taken over to the family court.

So, basically, there needs to be some coordination between the child protective services system and the family court system, some formal policy in which information can be shared, some kind of a team effort. For example, every case of sexual abuse could be referred from the domestic relations system to the CPS system, where the case could become part of a team process. Judge Leonard Edwards from California has written a law review article reprinted in the ABA book<sup>18</sup> that's excellent on these issues. It's also in the Santa Clara Law Review.<sup>19</sup>

In essence, the juvenile court judges have greater experience and expertise relating to abuse issues. They don't know anything about custody, but they know what the signs of sexual abuse are and how to handle these cases. Some have recommended that there be one court to handle all family matters, abuse, custody, and this has happened in about half a dozen states. Another is to consolidate all sexual abuse and custody cases into one court with primary jurisdiction throughout the whole case, whether it's juvenile court or family court. Another idea is, if it comes up in family court, have a procedure in which the case is referred to the Juvenile Court, let them decide it, and then send it back for custody, so that there is some formal interaction or communication between the two courts and between the judges in the case.

I think the real problem is that if the family court is hearing these cases alone and CPS is not involved at all, for whatever reason, that we are not going to end up with good results, because the family court judges, particularly without education, will continue to be reluctant to hear that a child has been abused. They don't know anything about it, and they are very concerned with parental rights.

Obviously, the issue of a parent's fitness is something that family courts hear all the time. They deal with issues of alco-

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<sup>18</sup>*The Relationship of Family and Juvenile Courts in Child Abuse Cases.* In E.B. Nicholson and J. Bulkely (eds.) Sexual Abuse Allegations in Custody and Visitation Cases, *op. cit.*, pp. 122-190.

<sup>19</sup>27 Santa Clara L. Rev. 201 (1987).

hol problems and other family problems to decide what is in the best interest of that child in terms of a custody placement. So theoretically they should be dealing with allegations of abuse in hearing these, but they seem reluctant. I think it's because of the assumption that there is mud-slinging on the part of one parent. But I think if they are going to hear them, they need to know more about sexual abuse issues.

The other area raised by the AAFCC in their study is that family court judges may not have authority to order parents into treatment. Again, that's something the juvenile court has been able to do for a long time. Another way to ease the conflict is to appoint guardians ad litem (GAL's) in all cases. This is done in juvenile court. But in all custody disputes where abuse is alleged, the child also should be appointed his or her own representative, and I think preferably an attorney.

Finally, I agree with training cross-training of both systems about sexual abuse and jurisdictional issues. Nevertheless, if the CPS agency is involved, and makes a finding, but it's unsubstantiated, where do we go with that, when it's in the family court and the judge knows there has been an unsubstantiated finding? I think those probably are the most difficult cases to deal with.

MR. CRAMER: Thank you, Jo. Comments?

DR. FRONING: I have no data to support this, but in terms of the women's issue, one of the things that may be happening is that moms or wives who are being emotionally and physically abused by their husbands no longer stay. They have the option now, in the last ten years especially, of being independent financially and leaving the situation. Muriel Sugarman's<sup>20</sup> work on what divorced incest fathers are like is very much like that on the man who beats his wife. So instead of having an intact incest family, now we have the separation that didn't happen before. Now we have a mother who is willing to protect her kid instead of being so dependent on the man she is staying with. It's a whole new set of family dynamics that people aren't used to looking at. It think that's part of the education.

This just came out in the Baltimore Sun on Sunday, the 26th of February, 1989, and it's called, "Courts Unable to Deal with Sexual Abuse." It refers back to the AFCC study. They also report a survey of family court lawyers in New York and New Jersey that WWOR did, where 42% of these lawyers said they have seen cases where they believed the mother would have been justified to defy a court order and flee to protect her child from sexual

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<sup>20</sup>Department of Child Psychiatry, Massachusetts General Hospital, Boston, MA.

abuse. We are talking about a large problem here. Forty-two percent of the lawyers in the area had seen something like that. I think the press is getting the story and maybe this little thing could be part of a media packet. One thing I've learned in dealing with the press for three years is that if they have seen it published one place, then that has credibility for them. I'm really encouraged that there is none of the "50% of the false allegations" in this little box that maybe even a year ago would have been the only statistic published. The press is getting a story that's a little more reliable.

The third thing that appalls me about the findings in this study is what Jo was talking about. That is, they talked about final court action in cases where it was perceived by people who really knew the case and were neutral, that the abuse was likely. In those cases, 29% of the time those kids were seeing that abuser in unsupervised situations. So it's not just the validity issue. It's an issue also of do we take sexual abuse seriously. Almost 30% of the time they are sending the child back to be with somebody that most people think is an abuser.

MS. BULKLEY: But it's supervised.

DR. FRONING: No, unsupervised, and this is in cases where there is likely abuse. Eleven % were totally unsupervised and 18% unsupervised along with therapy. So that's 29% of the time they are alone with this perpetrator. The number of unsubstantiated cases in which there was supervised visitation was quite high, 50%. Even when it could not be determined whether there was sexual abuse, there seemed to be some unease about letting the child go to the parent. So eventually they had to have some kind of supervised visitation, even where there was not a finding of abuse.

DR. SALTER: Linda, I just wanted to raise the question about one of the recommendations that you made. I get very concerned when people talk about accreditation for experts, and the reason is that I think most of the national people who "ride circuit" and testify 100% of the time against children could pass any type of accreditation criteria that you would set up, in terms of training, in terms of degrees, and in terms of the number of cases seen. So, if we tried to screen these people out, you would be accused of screening them out ideologically and you wouldn't be able to hold it up. On the other hand, the local expertise that we need to develop might well get screened out instead. These people would come in under the seal of accreditation, and other people who might know the case much better and would be fair might very well be screened out in this process.

DR. BUNK: That brings us back to the issue of validation. There are validation criteria that are established and, of course, they need some additional work and refinement. What are

the additional things that we need to consider, say, for very young children versus adolescents? We should establish criteria and publish them so that the public knows what we are relying upon in order to make our decision. Again, I think that also brings us back in a different way to the education of the legal system, of the judges, of the attorneys, who are involved on both sides of the fence.

DR. CORWIN: I agree with what you are saying. The development of valid, scientifically proven, consensually approved, validation criteria is something I have been working for since 1985. Of course, we must acknowledge that even with each criteria, a certain percentage of sexually abused children will not meet those criteria. The courts need to be aware that there are many "unsubstantiated" cases that are, in fact, bona fide. We must be careful to explain this fact when we talk about such criteria. Even though a particular case may not meet the criteria it may still be a true case. It may be that we didn't get the relevant data in our evaluation. I also think that we need to look for discriminating criteria for misperceived and fabricated cases. I don't believe that an expert should render the opinion that he or she thinks this child has been brainwashed unless the expert has a valid basis for that opinion. The way it has been going too often during this backlash is that if a case is not proven it is assumed to be the product of brainwashing or indoctrination. Unfortunately, some very influential mental health professionals have contributed to this flawed thinking. During my comments this afternoon I will talk about the evolution of that error and cite some references.

Two other quick comments. Linda, I just want to clarify a problem that you spoke about, that is the, sexism that is involved here, and I believe you are referring to the bias against women in these proceedings.

MS. LOWRANCE: Yes.

DR. CORWIN: The bias is to believe that most mothers raising these concerns are being vindictive.

MS. LOWRANCE: That's what I said, too.

DR. CORWIN: For example one influential professional was quoted in the lay media, as saying that mothers had to come up with something more vicious since charges of adultery no longer swayed courts. Such overstated and reckless comments precipitate headlines, such as those that appeared in the New York Times in January of 1987, explaining that fathers are falsely accused of child sexual abuse in custody disputes.

Regarding Jo's comment on expert testimony, that's a very difficult call. One way to eliminate some of the abuse is just

to keep most of it out. A few appellate courts appear to favor this approach. I think that's a mistake. The same argument could have been raised about the battered child's syndrome in 1970 or 1972, before the professional consensus had formed. We are in an early evolutionary stage in our work with child sexual abuse. We have recently raised a threshold in research and developing consensus, so that now many of the most erroneous articles, papers, and opinions are now quite vulnerable to more credible rebuttal. If we close the door on expert testimony, we will be closing the door of being able to help the youngest, and the most vulnerable victims of child sexual abuse.

MR. POHL: The only question I have, is the judicial response. I don't know if anybody else is going to talk about this today. As far as bias, we are going to have to do a lot of research. I think one of the key things that David said was that we have determined that they are not all substantiated or false. There is a large percentage which can be proven. Unfortunately, the judicial system, both criminal and civil, and also the family services system, and every system that is going to be -- the only system that is going to make these legal decisions is not based only on what can be proven. Even if we never got to the issue of being unsubstantiated, we know there is a large percentage that occur, but further proof is needed.

In other words, not going to the issue of false allegation, not going to the issue of unsubstantiation, the issue is what can be proven. We have to look towards somewhere in this entire system, the entire structure, of all the research being done, all the reports that have been issued, to find out what can be done for that large percentage, and it is going to be a large percentage, of the cases that cannot be proven.

The judicial system probably is never going to respond, and I don't think I am overstating that, to allegations that cannot be proven. I do not anticipate the criminal justice system convicting people in situations where evidence cannot exist, or does not exist. There has to be a serious training of our judges. I get calls on a daily basis from civil court judges and juvenile court judges saying to me, "I want you to investigate this. I want you to get back to me and I want you to tell me what happened." I'm not in that position. All I can say is there is proof beyond a reasonable doubt, or there isn't proof beyond a reasonable doubt. Hopefully that will be left in someone's "competent" (??) hands -- I will put that in question marks and quotes -- to make those decisions. Where does the system go to protect all the children, where we know the court system can't, won't, and possibly never will under the legal constraints set up by society.

MS. BULKLEY: I agree with you, but I also think that some of what we have been doing in terms of legal reform over the last

ten years may have not gone far enough. In these particular cases -- again, with domestic relations judges, they are really far from knowing what has been going on. The Morgan case in the Fourth Circuit is a perfect example, but it took the Fourth Circuit of Appeals to know that there are ways of getting evidence in that aren't traditional. There are still a lot of changes that need to be made in the legal system. Hopefully, we will get more changes in the criminal system, as well as well as the civil system.

A comment to David Corwin: I do think there is a difference between the battered child syndrome and sexual abuse of children. You are talking about a medical expert, a doctor, who can testify as to physical injuries or medical findings. Whether we like it or not, if you look at the literature on the use of mental health experts in general, you are talking about speculative, imprecise psychological theories that aren't based on scientific knowledge. I think that is quite different, particularly when you have no physical evidence. But the use of the battered child's syndrome finally gaining acceptance think, in part, was really because there was recognized physical evidence.

MR. DUCOTE: Just briefly, when we talk about the concept of proof, proof is the function of the quality of the factfinder. Whether the fact-finder is going to be receptive to what is proved. It's also the function of the quality of the person presenting the evidence. We need to get to the point where we have quality fact-finders who are trained and educated and understand what this evidence is. For example, I don't do tax work because I don't know anything about taxes, and I couldn't adjudicate a tax case. Does that mean if a tax case is brought to me it's not proven if I find it to be true?

I think it's reasonable to assume that the cases that lack evidence, but that are valid cases, are not as serious as cases that have evidence, or have more evidence, because symptoms, physical findings, psychological findings, the behavioral findings, I think are a function of the degree of the abused. It is certainly not something that solves the problem, because there are so many difficulties in getting the serious cases where there is proof, a lot of proof, and those kids aren't being protected, I think if we concentrate on fixing the system in those circumstances the envelope of protection will expand to those other cases as the kids become protected where there is no proof.

Again, we are going to have kids who are molested to a lesser extent, and those kids aren't going to be protected in the judicial system, and that's unfortunate. I think we get lost if we just kind of look at it -- "Well, it can't be proved" -- we just don't make a distinction and we get frustrated.

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MR. CRAMER: Anna and then David, and then that's it until after the break.

DR. SALTER: I have a concern about that one piece you said. Often when there is no proof what it means is that you have a more critical, more advanced situation. There are pamphlets on how to molest kids without leaving medical evidence, and without disturbing the child enough so that they will show behavioral symptoms. I have also had pedophiles who say to me, "Yes, I know that my age preference is six to eleven, but those kids make too good witnesses in court. So I moved down to the two or three-year range." I would really seriously question the notion that the cases in which there is no "proof," or less medical evidence, are less serious cases. They may be more credible, and we may have many, many more victims.

MR. DUCOTE: Again, I think to some extent that is a function of investigation, because if you have a pedophile who is operating like that, it's a matter of getting the evidence from his end if that's what he's doing. Obviously, you are going to learn about it through something. You are going to learn about it through something happening, and I think a lot of it is just investigation. The proof is there if you know how to uncover it.

DR. CORWIN: First, to Jo. The battered child's syndrome is over-mystified. A medical diagnosis is a combination of history, physical and other relevant findings. There is more uncertainty in the case of physical findings than many lay persons are aware of. It's over-mystified. It is possible to delineate the effects of child sexual victimization in a restrictive enough way that is even more specific to identifying victims of child sexual abuse than the battered child's syndrome is in identifying physically abused children. There are enough comparative studies that now show that you can discriminate groups of sexually-abused, physically-abused, and emotionally-disturbed on the basis of psychological and behavioral changes. I think this will become even more clear in time.

Number two, what do we do with these unresolved cases? Unresolved is the terminology that CAPSAC's task force chose for that category. I think there are ways for courts to act in unresolved cases that protect children from psychological and other possible harm, but at the same time are measured and respectful of the rights of parents to ongoing with contact with their children. These moderate approaches also respect the rights of the parents and the moral imperative to act upon reasonable concerns for the protection of their children. It is possible. I have seen it work. I have seen cases stabilized and held for a sufficient period of time to resolve the problem.

MR. DUCOTE: I think we know this, that when kids are abused two things have to happen. One, the abuse has to stop. Two, that they have got to get treatment.

MS. KING: And, third, the offender has to be stopped.

MR. DUCOTE: If that can be done with a non-adversarial approach, fine, but stopping the abuser and stopping abuse requires the cutting off of rights.

DR. CORWIN: -- Which triggers due process and the constitution, and you can't do that in a completely non-adversarial mode. You can, however, do things that approach, or make changes in the direction, that you are talking about. One popular approach is for the court to appoint an expert who is working for neither side, but for the court or the child. I have done many such evaluations as an expert. I have also reviewed many such evaluations. When it works, it works well. Going into a case, that is what I ask for. I want to be court-appointed with everybody agreeing to me.

There are, however, several problems with this approach. If I am wrong, then it is going to be much more difficult for an adversarial expert to correct the error. Also, there is no such thing as a totally impartial expert opinion. We are all influenced by our experiences, our attitudes, and our beliefs. I have seen the greatest travesties of justice committed in cases where court-appointed, respected, and honest, experts did their best, but made serious mistakes. The judges give them so much credibility. They are often familiar with these professionals.

It is difficult to justly balance this advantage. If the court wishes to appoint an expert, perhaps the child's attorney should pick the expert to evaluate the child for the court, and then the court can review it and decide whether it is acceptable. Each side has to have the right to bring in a reviewer, and the court should not be automatically biased against those other reviewers, because they are the safeguard against incompetent or otherwise misleading evaluations by court-appointed experts.

Another phenomenon is the selection process where evaluators balance their recommendations 50-50 and thereby maintain their rapport with both sides. This is fine if the cases are 50-50. But if the cases are 90-10, then the 50-50 experts are selling out 40% for the purpose of maintaining their marketability.

DR. SALTER: The other problem with moving away from the adversary model, as attractive as it is, is a lot of these men have molested outside the home. Some recent research suggests that as many as 44% of those that they have been able to study have molested female children outside the home. Another 11% molested male children outside the home. So this implies a

criminal proceeding, which is of necessity an adversarial process, and which would of necessity raise all of these issues again of coaching, and so forth. You can't really stop it.

MS. BROGNA: In addition to molesting their birth children?

DR. SALTER: Yes. There are incest offenders. They have molested outside the home Fifty-nine percent, I believe, had the onset of their deviate arousal pattern in adolescence, long before they were ever in this family.

MS. KING: If we are going to accomplish anything, we have to focus on the fact that these are custody and visitation cases where sexual abuse allegations have been brought forward. Those are so difficult, getting the proof, getting the experts and their testimony admitted into court while protecting the child from further abuse. That issue alone goes back to what Richard was saying, if we could just get some protocol developed to get these things worked through the system, which I agree with you is an adversary position, we could help many children.

We have hundreds and hundreds of protective parents call us. Their first reaction is that of shock to find out that their child has been abused. It's not vindictiveness, it's shock, that the protective parents must work through in the beginning. They aren't really angry with the perpetrator at this point because they are in shock themselves, and they feel guilt for not having protected the child. The anger comes from dealing with the system. I think a lot of it is because they are thrust into in an adversarial position when all they want is to be protective, not thrust into a legal battle. So I think that's a very valid point; if there could be some way to move outside the adversarial position we would be doing the child and both parents a great service.

MR. CRAMER: We'll have a presentation now by Anna Salter.

DR. SALTER: I would also like to take advantage of Bud's flexibility and not simply react.

I really have some trepidation about raising this whole issue, because I am fearful that it will violate the medical dictum, first -- "Do no harm." I had some concerns and we discussed this last night, about what would happen to these transcripts, .. because I have fantasies of half-baked ideas ending up in a monograph somewhere that I would someday see in court, to my chagrin. So let me be clear that what I am saying is provocative and in no sense intended in any way to be definitive, but it's simply a discussion.

The concern that I have is that coaching has become the magic word, and that all people really have to do is say that the child has been coached without demonstrating it in any way whatsoever in order to change the tone of the case, and also in order to change what the prosecution has to prove.

To see how strange this is, think about a murder case. If you were defending a client it just isn't sufficient to say that the client has been framed. You have to do more than that. You have to introduce some kind of evidence that your client has been framed. You have to construct an alternative theory of the case that will hold up, something that people will buy, cast a reasonable doubt.

You really don't have to do that in child custody cases. Instead of focusing all of the attention on validating the child's interview and whether the child is or is not reporting abuse accurately, why aren't we spending some of our energy on developing criteria for investigating allegations of fictitious reports? Before a report should even be considered, or before an allegation of coaching should be considered, shouldn't it have to meet some criteria?

For example, I have seen a number of cases in which the charge was that the child had been coached by a vindictive parent in a custody case. In fact, there really was no custody issue prior to disclosure. It is routine for the divorce to have occurred several years ago. It is routine in many of these cases for the parent never to have interfered with visitation prior to disclosure, not to have been involved in a legal action, and not to have been seeking any change of visitation at the time of the disclosure, and yet somehow the charge of coaching holds up under those circumstances.

We have no criteria which we can apply to the allegation of coaching to discriminate between fictitious allegations of coaching and non-fictitious allegations of coaching. Why are we putting all the burden on the child and on the child's testimony? It's as though we immediately buy what they are saying. Once again, we are going to put the child on trial. Shouldn't we put the allegation of a fictitious report on trial before we put the child on trial?

Let's explore that a minute. I hope people will pick up on which of the ones I suggest might have merit, which do not, and others that you might suggest.

I think that those charging coaching should have to demonstrate that there is a custody issue at stake or a visitation issue at stake prior to disclosure. If they are going to claim that this is the act of a vindictive mom who wants something, they should have to demonstrate that something was at stake, that

there was a court action going on, that the parent had sought a change of visitation, that there was a custody dispute in process at the time, and that the parent has something to lose.

In an ordinary custody dispute what the parents are arguing over, as I have seen, is whether the child is coming four days to one house and three days to the other, or five days in one house and every other weekend in the other house. The parents aren't really going to lose custody. They are arguing over the arrangements and how it is going to flow. I am not sure that should be given a whole lot of weight in terms of whether that kind of dispute is sufficient to produce an allegation of a fictitious report. That's the first point.

The second one is that the person claiming coaching really should have to establish evidence of hostility between the parents prior to disclosure. People are angry when their children tell them that somebody has abused them. This is entirely appropriate. If you are going to claim that this is a vindictive parent, you should have to establish evidence of vindictiveness before the disclosure can be quite logically attributed to the idea that someone has been abusing this child.

Next, the person claiming coaching should have to establish evidence of prior vindictive acts. Why are we so quick to say that people who never in their life had used a third party to get at their spouse would suddenly do so? This would be their first vindictive act. Why would a parent go forward, put the child on trial, put the child through all of this, when he/she has no history of prior vindictive acts toward the other parent at all? Could you not do an analysis of the court case that is established through witnesses that the parent had no history of any other crazy accusations or prior vindictive acts in the case?

I think it is relevant whom the report emanates from. In the Jones and McGraw study<sup>21</sup>, in the same issue of the Journal of Interpersonal Violence that David's very nice article was in, they found a few fictitious cases. According to their methodology, they found about 8%. In two separate studies 6% came from parents, and 2% came from children. Now, that has been my experience in fictitious cases also, and I have seen some. It is often that one parent is claiming abuse and the kid isn't claiming much of anything, or seems coerced into saying something minor, but the parent is quite convinced. In some of these cases the child has never said it to anyone else.

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<sup>21</sup>Jones, D. P. H and McGraw, J. M. *Reliable and Fictitious Accounts of Sexual Abuse to Children*. Journal of Interpersonal Violence 2:1, pp. 27-45 (1987).

So isn't it relevant whether or not the report came from the child, and whether it even came to the parent in the first place? If it's a coached vindictive parent case we could reasonably expect, I think, that the report would come from the parent, that it would be the parent who raises the report, or we would have a parental report in the absence of a verbal disclosure by the child. If the child has told four other people, and maybe the parent was not the first person to be told, should that not cast suspicion on an allegation of a fictitious report?

There should be evidence as to whether this parent has ever triangulated this child before in her disagreements or his disagreements with the spouse. In other words, if you want to say that this is a vindictive parent who despises this man, can't we reasonably expect that she would denigrate him in front of the child, that she would have interfered with custody, with visitation, that she would have in some way asked the child to spy on the other parent? We would have seen evidence that she is unable to separate out her own issues of hostility toward the other parent from the child's needs, and that there was other independent evidence that she has sacrificed this child's needs for the sake of her anger towards this spouse, in fact, that she is in a rage with this guy and cannot see the world from the child's point of view, or meet the child's needs, independently of her own anger. In some cases you do see evidence of that.

We have plenty of cases where the non-abusive parent has never denigrated the parent in front of the child, and in fact, has made a point of saying, "I can't stand the SOB, but I have never said that to my daughter." ("I have always said, 'He is your father and whatever our problems are, they don't have anything to do with you, Honey.'" Or, "He drives me crazy when he doesn't show up, but I always say, 'Well, you know, your father is very busy.'" ) Or where she has supported visitation in the past and has never interfered with visitation, where you could establish a long track record of the parent having allowed the child to go on visitations, having been supportive of that, and having been angry at him when he did not show up for visitation. Why wouldn't that be relevant, that the person had her own issues with the ex-spouse, but that in a number of ways she was still able to separate the child's relationship with the spouse from her own? In the present situation, they didn't ever even have to establish that the parent has triangulated the child previously.

It seems to me relevant whether the parent had previous suspicions of abuse before the child's disclosure or not. Is this a parent who has always believed the child was abused by this guy and the child finally said she was, or is it a parent who is in shock? Do you have evidence of the parent reacting with dismay, with alarm, with shock, with fear, and aren't these relevant as to whether or not this is a vindictive spouse who is trying to get this child unconsciously or consciously to say that this oth-

er spouse had been abuse? In my experience, the non-abusive spouse frequently never suspects the other spouse would do such a thing. How often do we hear, "I really hate his guts, but it never really crossed my mind that he would abuse my child. I had no previous indication." When you are doing evaluations you go back and look for other hints of pedophilia, involvement with children on the spouse's part, suspicious reports, et cetera, and the non-abusive spouse will often say nothing ever came up. "It never even crossed my mind."

We also have plenty of cases where the parent does not report it initially, and that is often used against them. It seems to me that if you have a criteria-focused analysis, it could very well be used for them. Here is a parent who acted reluctantly in the presence of a disclosure, or who waited a period of time, or who needed more evidence, because she was so unconvinced that this was possible. Why isn't all of that relevant?

Shouldn't we apply the type of criteria that David is developing? Let's take a look at the reliability of the child's report, but only as one small part of a larger analysis of the reliability of the accusation or allegation of a fictitious report. In these cases, I think it really is true that you can have a child who says, "Daddy did nasty things to me," and you say, "Can you tell me about it?" and nothing ever comes. It's the same daddy who did nasty things to me, but the child seems unclear as to what those things are. They may not have a wealth of detail. They may have a rote report that doesn't change. It's too consistent for comfort. It just seems to be memorized. There is no evidence of processing or working through.

For instance, in one child sexual abuse case a child said to me, "It hurt. I said, 'Daddy, stop,' 'cept 'he didn't." Who can coach that? Who can coach a kid to have that kind of affective response and spontaneous comment on the abusive process and how it affected her? Those things should be relevant. I really do balk at putting all of the burden on the child and the child's mother and the prosecution to disprove an alternative theory of the case that was never proved in the first place.

And, finally, could we not ask them to supply a plausible method of transmission? For instance, I have seen cases where the defense has not argued the initial disclosure of what the parent said it consisted of. It may have been a very minor sort of statement, interaction between the parent and the child. They don't demonstrate any lengthy questioning. They don't even really argue that there has been a lengthy questioning, but they are arguing on the basis of the mother saying, "Did Daddy do anything to you," the child then produces an incredibly long, detailed, graphic description of sexual abuse which she will hold to over a year's period, in the face of abandonment, essentially by her father, and constant negative pressure. They don't demon-

strate a plausible method of transmission that is in keeping with anything we know about suggestion in children's memory. Why are we not asking them to demonstrate a plausible method of transmission? Could we not have someone that comes in and, for once, doesn't do an analysis of the child, but does an analysis of the credibility of the allegation according to a set of criteria that we could establish?

Now, if that sounds at least worth exploring, let me raise the issue of why I am worried about it. I am worried about it for the same reason David is worried about validating cases. I think that this would be helpful in an enormous number of cases, because I think in a number of cases the allegations of the fictitious report wouldn't stand up to any of these criteria. The allegation that the report is fictitious could be demonstrated fairly methodically to make no logical sense, in a way that a judge could accept. But there will be cases which do not meet this criteria and in which the report is valid.

For instance, there is a saying in medicine that being a hysteric doesn't protect you from having a tumor. I worked on a pediatric ward for five years, so I am speaking from that perspective. As the consultant psychologist and Director of the Child Psychiatry Inpatient Consultation at Dartmouth I saw cases in which -- not so frequently, but occasionally -- in fact the patient was hysterical, or the parent was hysterical, the symptoms were vague and were extremely difficult to diagnose, and, nonetheless, there was a physical problem. What does hysteria do with a real tumor being embellished? You can embellish it to the point where you can't separate out the true symptoms from the crazy symptoms. So you are left with a group of symptoms, some of which are truly indicative of a medical disorder and some of which are not indicative of that disorder at all.

So what I am saying is you could have cases where the parent was extremely vindictive, where she suspected that the other group had abused the child, in the absence of any evidence, where she tried to coach this child, and when, in fact, nonetheless, he still abused this child.

That's what I am afraid of. I am afraid of even raising this issue because some day I may end up in court with some lawyer saying, "Dr. Salter, according to the monograph published by the ..., isn't it a fact that this case does not meet a single one of these criteria for your fictitious allegations?" So I offer it with the greatest of trepidation, but yet I am not sure how else we can go. What we are left with, if we don't do an analysis is the magic word "coaching." What we are left with, then, is no analysis. Say it's so; say it isn't so, and you get two people on the stand and basically what they are saying is. "Look, I have great credentials and I say this child has been

coached." Now, that's all it comes down to. There is no analysis whatsoever.

A sub-issue of this are the cases in which there are leading and suggestive questions. This is one subset of that larger issue, because in courts the leading defense today is leading and suggestive questions, in non-custody cases as well. When it doesn't focus on the mother, it focuses on the therapist, and focuses on the police officer and social worker. Now, some of the "experts" have come on with videotaped analyses -- you may be aware of this -- of interviews. One in particular will produce a statement at the end of the analysis that this interview is "72% error-inducing, for example, and, therefore, should be thrown out. Now, our response to that in the past has been to object to the methodology, to simply say that's not right. That's not good enough. We are going to have to produce a better methodology which would demonstrate, quantitatively why that is inappropriate.

If you look at the methodology that is currently used it's kind of vulnerable. For example, being used one of the people who does this repeatedly codes paraphrases, and specific questions as leading questions. So if the child says, "He didn't do it," and the interviewer says, "He didn't do it," that's considered leading and suggestive. That's considered error-inducing and it will be characterized as a leading and suggestive question. The expert will not separate out the part of the interview that had to do with sexual abuse. So if an interviewer says, "What street do you live on? Do you live in Hillside," that is considered a specific question and it goes in the category of error-inducing questions. Now, this is pseudo-science at its worst.

Before anybody says, "Well, forget that. That's ridiculous," remember that this is winning cases and kids are going back with people alleged to have abused them. Let's just hope it has enough to recommend it to make it reasonable.

What I did was to go through and put every single comment that the interviewer made into a category. Then you can establish whether, for instance, a phrase is used differentially or non-differentially. We can look at specific questions which introduce new information. For instance, if he said, "Did your hand get wet when you touched his penis," that will automatically be classified in the other system as a leading question. My point is, you have to look at the child's response. You have to do it sequentially so that you see whether the child agreed or disagreed.

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In the analysis that I am working on now, when new information was introduced the child in one case disagreed with it 53% of the time. So I think you can say from the analysis is that

you cannot make the claim that this was suggestive to the child, because she was highly discriminatory on what she agreed and disagreed with. That interview and the other videotape analysis would come out with an extremely high number of error-inducing statements according to some experts, even though the last part of the analysis that I did was to take very piece of evidence that was introduced in the interview and separate it out according to whether it came from pre-recall from general questioning or from an answer to a specific question. In that case you can throw out every single thing the child said in response to a specific question and still demonstrate that she volunteers enough to convict him. What she said in free-recall in response to general questions, even if you discredit everything else, showed he broke the law, that is, he did enough to meet the criteria for a criminal act.

There is a larger part of this analysis and I won't go into the whole thing. Those are just two things that I wanted to mention as an example of the direction that I think we have to take. We have to meet fire with fire, so to speak. If they conduct a pseudo-analysis, we have to do a better analysis. If they want to put the child on trial as to whether she was coached or not, I think we should first ask them to demonstrate that coaching was even a legal possibility in this situation before we defend it.

MR. POHL: You started out with the hypothetical of a homicide case and what has to be proven or not proven. The only problem with that is that with very, very rare exceptions the defense has to prove nothing in a homicide case, or any other criminal case. Often all they have to do is assert the defense and then effectively the burden flips back to the prosecution to disprove. Even on something like an insanity defense, all they have to do is raise the issue and that flips over in many states -- every state is different -- to the prosecution to prove beyond a reasonable doubt that the defendant was sane at the time of the act. Analyzing to this, you are saying that what we should do is make the defendant prove it in an adversarial situation, whether a mother or father -- it doesn't make any difference -- is the non-moving party. In other words, if the mother is moving to terminate parental rights because the allegation is that the father is an abuser, make the father prove the coaching allegation.

DR. SALTER: Well, realistically I am not saying that I really expect that they will do that. What I am saying is we can take an analysis that puts the pressure on what they are saying. We can do it. The prosecution can do it. It depends on what your analysis going to focus on. Is it going to focus exclusively on the child, or can you disprove the allegation by focusing on the credibility of the allegation?

MR. POHL: I think the points are excellent to allow the prosecutor to walk in and question on these issues, to be able to say to the judge and argue -- you know, "Look, Judge, there is no evidence of prior hostility. There is no evidence of this, that, or the other. Therefore, you should not believe the allegation of coaching." I don't know that realistically we will ever get to a point where we can literally push the burden over on the non-moving party to say, "You now must prove this to some level before we have to respond."

MS. PENCE: Looking at the validation issue, I really like it from the investigative standpoint. We get involved in these things when usually they have gone beyond redemption. In addressing our earlier comments on the validation criteria the broader based our criteria are in going beyond those elements in the child's statement that we are looking at to validate the case, the better off we are going to be. I have seen real problems in cases with people who focused exclusively on the contents of the child's statement without investigating the elements beyond that. I think your criteria would be very helpful in taking that proof.

In looking at the idea of expert review, I would like to see that because we have some judges in our courts that have basically said if an allegation of sexual abuse arises in a custody dispute, they don't believe it. They don't want to hear it and, in fact, the moving party might as well forget any further action in their particular court. I have seen some problems with some judges who, in what they perceived to be in the best interest of the case, have chosen experts to assist them in evaluating decisions, and I know of at least one or two cases where the expert has interviewed the whole family, as you suggested, and basically decided they didn't like anybody in the family. There was not one credible person and, basically, the custody decision was the lesser of two evils. In other words, "I am going to give custody in this case to the father because there is an uncle who lives next door, and of all the people involved I like the uncle best. So I am going to put the uncle in a supervisory position to watch what the father does."

When you bring out the use of an expert -- who is an expert, what makes him an expert -- that is going back to the qualifications that we are looking at. Who are these people and where does the word "expert" come from? What is their ability to review these and what amount of credibility should judges, or anybody else, give them?

MR. PLUM: I like the idea about a panel of court-appointed experts to decide, but who does society decide or choose to be the decision maker? Do they change the judge, or do they have any input in choosing the panel? I think that is an issue that we have to resolve.

We talked about an adversarial system. Despite its drawbacks, there are some benefits. I think there has to be a testing process any time anyone makes a report or gives a recommendation. If that panel is composed of mental health experts, medical experts, social services, attorneys, or other professionals there must be a method for identifying any biases. I don't know who is most qualified to do this. Maybe non-lawyers could represent parents to test opinions and conclusions offered to the panel. Someone must ask the question, "Why did you come to that conclusion?" That's the only way we are going to get, supposedly, the truth, whatever that truth is. I would just raise that.

MS. BROGNA: I think actually that there are three systems, and that may be the answer. There are rights that are considered by society. The rights of your children to the courts should not be trashed. It is my opinion in looking at what has been going on that these cases need to be in the juvenile court, youth court, whatever it is called, which is mandated, at least, (it doesn't come in practice always), to regard the best interest of the child. I think that's probably where we can get rid of that "win or lose" concept. At least, you know, move to the idea that the Department of Social Services, or whoever, will go forward with some evidence of concern to society, on behalf of society, for this child. Mom has something to say about it; Dad has something to say about it, all kinds of people have something to say about it. It isn't just between the two parents.

There are a couple of other reasons for thinking that these cases belong in the juvenile court (although I am one of its sharpest critics), and that is that the family courts are intended to be, they like to be, mediators, conciliators. They want to get compromises. They want to make arrangements that satisfy everyone, or at least keep them quiet, divide the property. So you shouldn't put a child in there, like, "You get the Chevy and I'll take the girl." We can't do that. The most important thing is that when there is an allegation of serious abuse or neglect, there is a third person involved, that is, a victim. In almost every case the children do not have standing in family courts. In my jurisdiction they might get a guardian ad litem who might or might not be a lawyer, who might or might not be trained, or who might or might not be mandated to take an independent position. The juvenile court at least is set up to have some investigatory skills. Whatever it is called in the various states. They also have the police power. They have the power to order treatment. They have the power to impose conditions of visitation. The Juvenile Courts have a lot of power.

MR. DUCOTE: To order cooperation, to order evaluation of adults.

MS. BROGNA: Yes -- police protection, "stay away" orders. In many of the cases they can do all kinds of things. And they often have -- although, they say they don't -- access to funds, which at least in California the family courts do not have. Family courts say, "I can't order an independent evaluation because I can't pay for it. I can't order a supervised visit because I can't pay for it."

DR. CORWIN: I want to applaud Dr. Salter for taking us to another level of evolution and refinement in this business. I think what she is talking about is badly needed in terms of the science. We have to study these issues. We have to look at proposals on how to refine professional decision-making. We need to look at all the different data sets, the child, the parents, the accused. I also believe that in looking at the accused there are variables and facts that contribute to a probability assessment of whether this looks like it is, or it looks like it isn't, a valid case. All of those data sets contribute something, at least when we're looking at the best interest of the child. Many of the data sets, like looking at the accused, are too unreliable to use in a criminal case. So, I agree that that kind of evidence is not relevant to criminal proceedings.

MR. DUCOTE: I think one important point is there are kids every day in this country who are protected by sensitive, competent, family courts and juvenile courts. So I don't think you have to throw out the baby with the bath water.

A couple of months ago I accidentally ran across an unpublished appellate court decision in Louisiana that was the type of case we are talking about. The mother came in. Here's the physical evidence, here's the behavioral evidence, here's what happened during visitation. Here's the expert testimony. The Court applied a statute that we have in Louisiana that says if sexual abuse is proved, visitation is terminated. That was upheld by the appellate court, but it wasn't published. So I wrote to them. I talked about this book and all the controversy, and they decided to publish it as any other opinion. The only reason that that happened was because we had a judge who did what he was supposed to do and we had an appellate court that did what it was supposed to do. I think as we develop -- there are a number of appellate decisions now that are going to be coming out and hopefully they will be favorable -- I think we can build a body of case law that will allow the Court to work the way it's supposed to work.

MS. BULKLEY: I really think your ideas are great. I think they should be published. I know the fear you are speaking about, but I think, once again, it gets down to the issue of experts; that somehow this will be used in court, that you will be in court, and this will be brought out and other experts will be on the other side. This is what I found interesting about the

Braga's film<sup>22</sup>; I don't know if people saw it or know about it. It's quite good. Without the use of an expert, with the testimony of the mother and the children, you have got the same criteria. You have got those issues. What we need is this information you are presenting to get to the attorneys who are handling these cases, who can put the mom on the stand and say, "Now, isn't it true that you didn't have any prior problems with visitation," so that the same information comes through the mouths of the witnesses in the case. You don't have the battle of the experts. The judge can hear how ridiculous the allegation is, and it doesn't put the burden of proof on the defense, so to speak, or the father's attorney. So you aren't talking just about custody cases here. I think that's the problem, the information isn't out there to be used in the case.

MS. PENCE: I know a lot of times we are talking about the lack of CPS and law enforcement involvement in these cases. Most of them are very reluctant. Indeed it lowers the credibility of everything when this comes out in a divorce or custody situation. We need to give them these concrete types of things that they can look for early on and see the absence of all these indicators of coaching. Really, it strengthens the fact that we will probably get a more thorough investigation because very early on that bias -- "Oh, God, it's a vindictive mother type thing!" -- they screen that out.

MS. BULKLEY: I think this needs to be published with a caveat. It's just sort of like the article, "*Child Sexual Abuse and Custody Disorders: No Easy Answers.*" Nobody is saying that we have it all right, either. We know we have cases where the mother wasn't vindictive before, but is now. Nothing is absolute.

MR. BERG: I want to jump on Donna's point because I think it's really important, and also point out something that Linda said earlier. You said that we need to begin to look at these cases not in the context of a custody battle, but that these are sexual abuse cases. The charge and the burden for the initial aspect of these cases go to the police, and they need to have this information. Police officers come to me all the time saying, "What do I do in these cases when I've got allegations? I don't want to touch them because I don't know what I'm doing." This information could become a part of their validation and investigation process. I hate to put the burden on the police investigators, but I think it is their responsibility, and they need this type information.

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<sup>22</sup>"When Children Are Witnesses," written and produced by Drs. Laurie and Joseph Braga. Available from Guilford Publications, New York.

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DR. SALTER: Ultimately the answer on where this should go is to be researched. We are suggesting something because we don't have the research. But what you should do is take these and test whether they do or don't discriminate between cases that turn out to be fictitious and those cases with merit.

DR. CORWIN: There are two things here. We are blurring them. There is a legal determination, a legal issue, and there is a fact issue. I agree with Jo. Look at the evidence in the most direct manner possible. That's the legal determination. That's the best basis. There is a fact issue that science can contribute to, and we have got to stop blocking the science because of the ideological position that we don't want to be misused. We have just got to be careful and try to minimize its misuse. But we need to encourage the science. We need better work on the fact part of it.

MR. CRAMER: Henry Plum will make a presentation.

MR. PLUM: I want to raise a preliminary but critical question. It's not intended as a criticism, but I believe we are missing a very important component in this meeting. We have spent three hours talking about how to impact on decision-makers, but why aren't the judges in this session? They should be present and listen to what is being said. I know they are in other sessions but they should be at this one. I believe we must seriously review how judicial decisions are reached. What do judges consider and why? So in my suggestions and solutions my focus will address our method for choosing judges, the shortcomings of that process, because I believe the system is flawed.

I will attempt to provide you with a structure in which we can put all of our suggestions. We should address the problem in terms of the effect of parents and the system on children. My bias as a former prosecutor and now as a private practitioner is in behalf of the child. We don't focus in on children often enough. The system's starting point or focal point must be on the child rather than the reverse. This is the most critical point; the parents' protests should be secondary. The focus should not be parental rights, but rather parental duties. It's the duty of a parent to protect the child. It's the parent's duty to provide food, care and clothing. It's the parent's duty to visit. When the parent violates any of these duties that's when the state steps in and either terminates parental rights or transfers custody.

So let's focus in on the system's duty to the child. Let's examine the family court and identify its duty to children. The children cannot protect themselves. I have seen the effects of the allegations on kids as a prosecutor when I was dealing with abuse and neglect, I presently handle a lot of custody caps now as a guardian ad litem representing children. I generally choose

not to represent parents in custody fights. That's just my own bias and that's my own decision.

I think the effect on the child is both physical and emotional. There are several problems. Many of them have been mentioned; for example: 1) courts view children as too young to be competent in many of these cases because a child has limited skills. 2) Children under school age may be perceived as being more suggestible. 3) Medical evidence is very often inconclusive. 4) Children may be exhibiting behavioral indicators of stress that may be due to the breakup rather than the sexual abuse, and there is sometimes no way to differentiate that. That's been mentioned already. 5) There are no hard line behavioral indicators. 6) There is no litmus test that we can look to. 7) Children in this area are subjected to more interviews, by therapists, relatives, parents, guardians ad litem, than they are in the juvenile or criminal system. I really think in terms of exploitation, the divorce area is much worse. 8) Although the parents' motivations may be genuine, an attempt to validate the allegation by going from person to person is often done at the expense of the child who has to repeat the same story. For example, in one of my own cases involving a 5 year old named Katie, whenever I go out to talk or meet with her, it's the parent that always wants me to talk to Katie about a particular item, that particular one event. It's never Katie initiating it.

Another problem which I have seen in this area is that the child is not allowed to move beyond the abuse. It's the parent that pushes the kid back. In the case on which I represent the child still talking about what happened last May, the child is moving forward and her mother is not. That's sometimes typical in some of these cases.

I also think the parent's anger is transferred to the child, verbally or non-verbally. The mother may not be saying to the child, you want to hate your father, but her behavior conveys the message. Children are very perceptive and they know and they see everything that is going on. An example is in this custody case when the court ordered no visitation and the child was in therapy. The mother described behavior which the child was allegedly exhibiting. The mother alleged whenever the father was discussed the child would exhibit regressive behavior. This reaction was never produced in any therapy session. It was decided by the therapist and myself that we would do a session in which I would interview the father in the therapist's office and the therapist would be in the other room with Katie observing the father. She would observe the father and the therapist would determine if there was a problem, if there was anxiety, et cetera. In this way, the therapist could deal with the problem. We weren't getting anywhere in therapy. During the interviews with the father, Katie initiated contact by knocking on the window of the Observation Room. She obviously has a relationship with him. Now, lat-

er on when we switched roles and the father stayed in that same room and I came and talked to Katie, she asked me, "Do you think Mommy will be mad at me if I went and talked to Dad?" She was already caught between her mom and dad. I think this is one of the binds children are placed in which is really tough.

Often the parent's motivation is suspect, whether it's done legitimately, inadvertently, or maliciously. It's one of those realities we must acknowledge that is present and part of the system.

Another frustrating part for the parent that has a negative effect is that the child may only make disclosure to the parent and no one else. This frustrates the parent, in terms of trying to find someone else who will believe them. The parent feels personally violated and angry, and legitimately so. In addition, that parent may be asked to participate in therapy. This may also make the parent angry because -- the parent says, "Wait a minute. Am I responsible or am I at fault? It's that guy. He abused the kid. He should go into treatment. I shouldn't."

Another problem is that the parents may have been sexually abused themselves, and they believe in good faith that there is evidence of abuse which the other professionals don't see. Sometimes the victimized parents have not worked through their own abuse. There is a risk that they will project their own issues on the child. That's a difficult thing to identify.

Parents also faced with tremendous financial costs. We know that in terms of litigation. They have to pay for the work-up evaluations, therapy, lawyers, guardian ad litem, et cetera. They also experience frustration from the system, in terms of multiple hearings, or not being able to get an early court date because the court calendars are so clogged up.

Some parents violate the law and go underground. My concern in receiving the materials that were made available for this think tank is that in the process of trying to protect the child from sexual abuse the parent may inadvertently subject the child to emotional maltreatment. I don't know how beneficial it is to a child to be on the run for a year or two, moving from pillar to post, motel to house, and being told that if mommy is found by the police, she is going to jail. This emotionally-charged environment will have a long-term negative effect on the child. Running away from the problem isn't the solution. I know what you are saying: what about the judges that make bad decisions? I think we will always have some cases in which there are bad decisions. We have other professionals that make bad decisions, too, but that doesn't mean we write off the entire profession. I don't believe the underground system is the solution. I am really concerned about the effects of such a system on the child over a long-term basis.

The focus in the juvenile system on abuse and neglect is treatment and reunification. One of the problems which the juvenile system attempts to address is underlying causation. That's where I think we miss it in the divorce and family court area. In the family court arena when an assessment is conducted there is little attempt to find the underlying causation for the abuse. This is an essential element to resolving issues. We must begin to focus on this. For example, Katie is four and a half. She has only one father, whether he is an abuser or not. That fact will not change. He will have to deal with that issue as well. Now, I can get visitation stopped for a period of time, but I don't know if I am going to get visitation stopped for the next 14 years, and certainly not once she is an adult. The issue of abuse has to be dealt with. I think our system is ignoring that. Maybe we have to take some message from the juvenile court process and say, "Let's find out the underlying cause and let's start treating that if we can."

The other effect on the parent is that the parent will feel guilty for delay. He or she may have delayed in the past in order to try to save the marriage. On the other hand, the parent may not have wanted to believe it. Now when it comes out this misbelief is held against him or her, and that's a problem. It frustrates the system. It frustrates judges and it frustrates lawyers.

What about the judicial response? Judges are frustrated for multiple reasons, including the rules of evidence. Another problem is the inexperience of judges who deal with these issues. Judges are lawyers that either have been elected or appointed. One doesn't go to law school and study "Child Abuse" or "Child Development 101." That doesn't exist. A judge comes to the bench basing his or her decisions on him or her own experience and knowledge. Often this is not legally founded, nor even professionally founded. It may be based on their own morality and perception of the law.

Another problem area is the frustration judges experience with the tendency for both sides to exaggerate their claims of the other parent's unfitness. When a judge sees this happening, he or she has to separate the chaff from the wheat. When sexual abuse is introduced, it becomes another allegation that goes in the hopper. Now, think about it. If you are a judge hearing that day in and day out, after a while you begin to not believe anybody. Where do you draw the line and say, "Wait a minute. We have a child who needs some protection?" I think that's the frustrating part.

Another fact is that experts disagree. It is not difficult to go out and hire an expert on either side of the fence. They will be credible, they will be believable and they will be expen-

sive; but it can be done. That's a reality. That's something that the judge has to deal with.

With a lot of sexual abuse there isn't any physical evidence. How do you prove fondling or touching? There is no physical evidence. A colposcope will not show this. You have to look at other indicia, and the experts may have disagreed as to these indicators.

Finally, the judges make decisions on a value system. How that value system is developed is the most crucial. I asked at lunch today whether the National Council of Juvenile and Family Court Judges has run any training programs to have judges evaluate how they reach decisions, how they make decisions, and what they look at. As far as I could determine, there was no such program. This is a suggestion for the panel that such a program be developed. In other words, look at not only a judge's conclusion is, but how he/she got there. That's crucial in arriving at any kind of a truth or rational decision.

There is a confusion of roles concerning social services. Some jurisdictions deal with CPS as being attached to the divorce court, but most of them don't. CPS views its function totally in the non-divorce arena. Usually if CPS does get involved there is no follow-up. They will do the study and that's it, they get out. There is no provision for therapy, there is no provision for family services, there is no provision for real monitoring, and there is no money to do it. Parents go through the same scrutiny with CPS as with judges because of their potential bias. There are turf battles between CPS and family conciliation, or whether you want to call it: who does what and when. My jurisdiction went through that same process. Both agencies said that child abuse is the other's responsibility, and what happens is that nothing gets done. There was no investigation, or it would be initiated long after all the information was lost.

Sometimes law enforcement will not investigate even if it gets a report. Law enforcement is reticent to pick up the case as soon as it is identified as a family domestic problem. That's reality.

Typically the appointment of a guardian ad litem for the child occurs well after the fact. In Katie's case I was appointed in September and the abuse occurred in May. Now, what am I supposed to do with the time lapse in terms of trying to get fresh information? If there was tainting, if there was coaching, if there was lost evidence, there is no way that I can recapture that information. We need to set up a mechanism to appoint legal advocates for the child early on especially if the legal system is used to impact on the child. We need someone that will be a legal advocate for the child, someone with the ability to file motions, to get discovery, to do all of the things necessary in

order to speak for that kid. I don't think we can rely on either parent. We have to have someone independent.

The problem with guardians ad litem is that very often they are young, inexperienced, and untrained. Usually appointments are made by the judge to new law school graduates. These new lawyers, although well intentioned, are usually ill-equipped to deal with these kinds of issues.

Another problem was identified during the session I did on guardians ad litem yesterday. In one jurisdiction I was advised that a panel of volunteer guardians ad litem was being established. These would be attorneys who would volunteer to handle these cases. Now, how many of you can identify lawyers who do tax work on an ongoing basis as volunteers, who do corporate law as volunteers? It seems that when we come to children somehow the services which they need from professionals -- not only from lawyers, but from pediatricians, social workers, -- are simply supposed to be donated. I have no problem with volunteerism but when it becomes the rule rather than the exception I think there is a problem, because it says something about a value system: kids are not important. We have to change that. If we pay our people, our professionals, to work with kids, then I think we can demand a level of expertise that they need.

There are very few litmus tests to establish sexual abuse. With respect to the comments that David made this morning, the difference between the sexual abuse accommodation syndrome as I read the law and the battered child syndrome, is that the battered child syndrome was developed as a diagnostic tool to diagnose abuse, and the sexual abuse accommodation syndrome was developed as a therapeutic tool.

DR. CORWIN: I wasn't referring to the accommodation syndrome. I was referring to a diagnostic device.

MR. PLUM: Let me propose some statutes to these problem areas.

We need to change the way we choose judges. There is a need for specialization. The election process for choosing judges is skewed. The manner in which we chose judges has to be different and better. Judicial education should not be viewed as two weeks in Reno on a gambling junket. It has to be on a regular ongoing basis. Being a professional implies continual education. Maybe we should choose by appointment, certification, and demonstration of ability.

Let's face it. All this time is spent on impacting upon decision-makers. For the last three hours we have talked about decisions of judges. Those are the people we have to impact upon. But how are we choosing them? We have to examine their

value system. Without a well-founded knowledge base on which to make decisions -- we end up with decisions based on a visceral response, and that gut response is not valid. That's not the way to do it.

There was a suggestion made this morning concerning the creation of a professional board as a decision maker. We did that in our state in medical malpractice. Before one files suit one has to go before this medical malpractice board, which is made up of various professions. A hearing is held in front of this board. They make a recommendation. A hearing was held in front of this board. If you aren't satisfied, you can go to the judge. We would have to modify this for the family court, but I see that with professionals who know what they are doing, maybe that kind of administrative system might work as a solution. It's certainly better than what we have now.

We have to change the involvement of social services. What is needed is a good risk assessment tool that not only assesses safety of the child and screens out for false allegations, but also that addresses causation. It is important to identify why this person is abusing, so that a change can be achieved. Stopping the abuse from occurring is important, but identifying what has to change is also important. Otherwise, when you get a new judge and this new judge has different standards, visitation could be reinstated without resolution of the problem. So we need good a assessment tool of getting at causation and laying out what has to happen for reinstatement of visitation, some measurable objectives, and some criteria for review. Take part of the juvenile court model and put it into the family court system. Yes, it's expensive; I understand that. But the benefit of protecting children is with the investment.

Law enforcement should be included through the multi-disciplinary approach. The referral system has to kick in law enforcement. Parents have to call police to screen out whether criminal prosecution is appropriate or not.

With lawyers, I think we need mandatory requirements in terms of payment and in terms of education. If you expect people to do the kind of job you want, then you have to lay those expectations out and you have to say, "This is important for you." I don't have any problem with young lawyers serving as guardians ad litem, but what I don't want is someone who doesn't know what he or she is doing deciding on a child's future. That's almost malpractice. It probably is.

The last recommendation is for medical and mental health. We need some way of identifying those who have a strong bias. I don't know if there is an answer. We need some way of identifying who can be used as a reliable resource. I like the idea of either court-appointed experts, and those experts then by agree-

ment will not be hired by either side. There are financial considerations for the professional. I don't know if they would be willing to do this. Another alternative is to develop a pool of experts that will only be appointed by the court who are willing to limit their practice and take a position that, "As a result of my appointment here, I will not represent either side, either mother or father." This would help eliminate that bias. But the financial considerations may be prohibitive.

MR. CRAMER            Richard Ducote will respond.

MR. DUCOTE:        I have a couple of questions for you, Henry. First of all, you said you choose not to represent parents in custody battles. I believe, that seems to imply that the parents, or the attorneys who are representing the parents, in cases where you are appointed as guardian ad litem, that there were allegations of sexual abuse in custody battles. Do you ever represent parents who are not in the midst of custody battles, but protecting their children once custody has already been established, from sexual abuse in visitation?

MR. PLUM:            No, I don't.

MR. DUCOTE:        The second question I have is, in cases where you are serving as guardian ad litem and it is determined that the child has been sexually abused, what is your proposed disposition as it relates to visitation and treatment?

MR. PLUM:            Number one, I look at the safety of the child primarily. I don't want the child traumatized again. Number two, I recognize that in many cases the child has a relationship with that parent, a psychological and emotional bonding with that parent. So my focus is to identify the causation. Not just the maltreatment, but the causation behind it. Then offer the alternative to the parent or the abuser, saying, "Look, if you want to change, this is the way you can do it, but you need a good assessment." Number three, one must track the progress of the child at the same time. Number four, the other parent must be included in the treatment because that non-abusive parent is the real key ingredient to that mix -- They will have to be convinced that the child will be safe if there is visitation.

MR. DUCOTE:        If the abuser refuses to go to treatment, as guardian ad litem, what do you recommend for the Court as being a proper disposition in visitation?

MR. PLUM:            I would either recommend no visitation or visitation that is going to be non-traumatic. It depends totally on where the child is.

MR. DUCOTE:        Who makes that determination?

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MR. PLUM: I am going to rely on the input of the treating therapist to give me a good idea of what is going on.

MR. DUCOTE: And what is untraumatic, safe visitation with an abusive parent, where the parent denies the abuse, or refuses to accept responsibility, refuses to remove the guilt of the abuse on behalf of the child?

MR. PLUM: Safe visitation. In some cases in which the parent is denying, we have done visitation with the therapist present. This includes working with the parent through the process of the denial, and the therapist also brings in the child at key points. I have to rely on the input of the mental health professional to identify the dynamics that are operating and reintroducing the child to the parent, based on the child's progress, as well as the parent's progress. The key focus must be on the child. It's the child's right to visit the parents, not the right of the parent. It's the right of the child to associate with the parent. I use that as a measure, and I use the therapist as a conduit to tell me when it's appropriate and how this benefits the child.

MR. DUCOTE: I thought I detected some implication in your presentation that there are cases where children have been sexually abused by a parent and because the mother reacts with anger, and the mother reacts to protect the children, that the reaction of the mother is often as bad or worse than the sexual abuse. Is that correct?

MR. PLUM: Only when the reaction of the parent becomes a pattern of emotional abuse, yes. I think that can happen.

MR. DUCOTE: Having those answers to my questions, I will make my comments. First of all, I think we need to operate from some concrete anchors in cases of child sexual abuse. It seems to me that the clinical literature is clear that children who are sexually abused need to have the sexual abuse stopped. They need treatment. They need an adult ally to stand by them who will protect them, and who will give them the assurance that they will be protected, that they are believed.

I think, second of all, that there seems to be enough of a state of the art or consensus among knowledgeable professionals who treat sexually abused children and perpetrators in a couple of respects. First of all, the children blame themselves for the abuse in that they are ambivalent about their relationship with the perpetrator. These are the two things that psychologically contribute to the money wrench in their psyche. Even if we start off with supervised visitation -- I know of circumstances where the parents deny committing the abuse, don't accept responsibility and when it continues they somehow blame the mothers for their reaction. We do not fully hold the perpetrators accountable, not

only for accountability's sake, but as an integral part of the treatment to insure the child's recovery. We give the mothers every reason to do what they are doing.

It amazes me that courts and attorneys do what is tantamount to a case of a broken arm to say, "Don't put a cast on it. I just don't believe in casts. You can't play football with a cast on your arm, and kids should be able to play football." That's what we do. Clinicians tell me -- I am not a clinician, but I get this from people I trust and from what I read -- that there is a treatment model and courts should adopt the treatment model. This is no different than putting a cast on your arm.

My other concern is that there is the implication that the mother isn't letting the child go past the abuse. She keeps going back to an incident in May, and often directs the child in conversation with you to talk about it and there is the suggestion that that is something improper on the mother's part because the child should just go ahead and initiate that conversation. I don't think that's valid. Particularly when a child is not being protected and the court is still ambivalent -- I think we are starting off with the presumption in that case that the child was abused.

It's perfectly appropriate for mothers generically in their role as functioning adult allies to make sure that the people who are responsible for protecting children focus on the things that are most important. When children are being sexually abused and not being protected there is no assurance. I think mothers in this country, if the fathers are sexually abusing children, have every reason to be concerned about whether their kids will be protected.

I think the state of affairs now is such that no parent can go into any family court in this country with any amount of evidence, physical, psychological, or even an admission on the part of the perpetrator, and have assurance that the child will be protected. They can't rely on the District Attorney to protect their children. They can't rely on child protective services to protect their child. They can't rely on the court to protect their child.

The responsibility for protecting the children is ultimately on the parent. We know that because children hold their parents accountable for their own protection. Anybody who has treated adult survivors will tell you that very often parents who did not protect the child often receive the brunt of the child's anger, even oftentimes more so than the abusive parent.

Our experience with serial killers -- I think this is especially enlightening. Very often serial killers are people who were physically and sexually abused by their fathers and saw

their mothers as being passive and weak and did not protect them, and often the first person the serial killer kills is his own mother.

It amazes me that, given all the power that the courts have to put people in jail for years, to prohibit people from driving, for requiring house arrest, for requiring people to be fried in the electric chair, somehow they feel uneasy and that they are doing something bad by terminating visitation of parents who have molested their child. Even when the clinical treatment program says this, the court system says at the same time they want to do what is best for the child. We have a problem with attorneys wanting to be psychiatrists, with psychiatrists wanting to be attorneys, judges wanting to be psychologists and psychiatrists, and everybody wanting to do something other than the role which he/he is supposed to do.

There are courts, and there is a case law around this country, that have terminated visitation and the kids function very well.

The typical situation of these mothers who are in the underground, and these typical situations where the system has backfired on the parent, these are fathers who were terribly brutal through the marriage and the mothers finally get out of the situation and trust that the fathers will not abuse the children and so they allow visitation. The fathers don't have the mothers to abuse any more, and they want to punish these mothers for leaving them. That's when these guys are most dangerous, and they want to make sure that these little girls don't grow up to be constant bitches like their mothers, and the way to do that is to "start them off right." What these guys unfortunately desire is to have the courts condemn the mothers as paranoid, put the mothers in jail and give them the kids so they can continue to molest the kids. That should be a frightening prospect for the mothers and it should be a frightening prospect for the attorneys involved in the case. Attorneys should be aggressive, parents should be aggressive, in preventing that from happening.

I think there are several solutions. Dr. Dennis Harrison and I put together what we call the "Sexually Abused Children's Bill of Rights" back in 1987. This has been endorsed by the Louisiana Senate. I referred earlier to a law in Louisiana. Civil Code Article 147 says when a court finds by a preponderance of the evidence that the child has been severely physically abused or sexually abused, the court shall prevent visitation until such time that the parent who has abused the child proves that visitation would not be harmful for the child. It shifts that burden. It also requires the abuser to pay all costs.

MR. CRAMER: How old is that piece of legislation?

MR. DUCOTE: It was enacted in 1986. The way that got passed is that I was looking at one of these cases and I said, "I'm sick of this. I'm absolutely sick of this." So I took a looseleaf piece of paper, scrawled out that law. I was in Baton Rouge. I went to a friend of mine who is in the Senate and I also gave it to a friend of mine in the House and I said, "Call me when you need the testimony." I never heard any more. I got busy doing other things. Then, lo and behold, I read in the paper that it had passed. It passed unanimously. It starts off from the prospect that the court has found the abuse, which gives you some threshold. We have cases in this country where parents are convicted of abuse, but we still have people saying, "Gee, I still think the child has a right to visitation. You know, I don't know that that conviction is true." Anyway, the "Sexually Abused Children's Bill of Rights" is being considered this year by the Washington legislature, the Utah legislature, and I think the Montana legislature.

This "Sexually Abused Children's Bill of Rights" has ten things that I think go a long way toward solving this thing. It says that every sexually abused child has the following rights: First of all, no forced contact with his or her abuser. When the court determines that a child has been sexually abused by a parent all visitation between the parent and the child shall be prohibited until the abusive parent has successfully completed a treatment program for such molesters and the child is emotionally ready to have contact with that parent.

Now, going back to mothers we can look at Sarah for purposes of this. She is the typical mother in this situation, you know, the "vindictive bitch." Now what we have here is a father who has physically abused her, who sexually abused the children. She spent years and years to try to get the court of two states to protect her children. She is being threatened with contempt. She is spending tons of money. She is scared to death, and making crucial decisions every day. Now, at the point that that's finally resolved, you know, for her energy to be used to remediate and to start to heal her kids, how much of it then should have to be devoted to her then having to worry about the father's rehabilitation? When children are abused seriously then damage is done to the relationship and the kids have to start to heal, and all of this -- what is often the equivalent of simply misinformed interference in families at that point by everybody trying to fix a bad situation and fix the wrong end of it -- takes the time and the energy away that the good parent has to heal the child.

The second point is a non-punitive custody determination. The custody of a child shall never be changed solely to punish the custodial parent for lack of cooperation with the court.

Third, there shall be an educated and trained judiciary. All judges have to be trained in the diagnosis and treatment of sexual abuse.

Fourth, there shall be consideration of all relevant evidence in all juvenile and family court proceedings concerning sexual abuse of one child. Evidence that the parent in question has sexually abused another child will always be admissible. You will think well, gee, that's true. California has that by statute. Other states refuse to do that, this is some sort of magic or deep philosophical question. I think that's common sense and that's usually done by statute.

Five. There shall be an open-minded and unbiased judiciary, despite the fact that a court has previously determined allegations of sexual abuse of a child were not proven. The court shall always consider any competent new evidence of sexual abuse brought to court, without prejudice. There are cases where it's just starting and the evidence is there. The parents go to court. It's not proved now, but then more evidence develops because the abuse escalates. Many times courts will say, "We already determined that issue wasn't true. So shut up." So this would eliminate that.

Number six, competent expert testimony that a child suffers the "sexual abuse syndrome" shall always be admissible in any court proceeding concerning the child's welfare.

We are not talking about the sexual abuse accommodation syndrome. We were anticipating Dr. Corwin's good work in actually defining what collectively has been known among real experts in this field, that there is a syndrome, which is a collection of syndromes, that indicate that the child has been sexually abused. We always talk about bed-wetting and those kind of non-specific indicators, but the real specific indicator is the sexual play, the kids' recreating the abuse with their toys, recreating the abuse on their own bodies, inserting things into their openings, excessive masturbation, sexualized kissing, sexual fondling, vaginal and anal stimulation, sexual knowledge beyond their years. For example, a case just came into the office and the child said, "Mother, Daddy made glue," describing, obviously, ejaculation, in the context of other details about daddy being naked, et cetera. With that kind of thing, if you look at people who really know sexual abuse it's pretty conclusive.

Seven, minimization of courtroom time. Videotape, and other evidence that falls within the exceptions to the hearsay rule should be admitted.

Eight. There shall be financial empowerment of protective parents. This is one that amazes me. When a father abuses his child he is always required to pay Henry's fee, or do we still

assess that against the mother? Half and half? Well, let's be just, half and half. Can you imagine that? Most of these parents go through their life savings, they go their parents' life savings, they sell their property, and they get nowhere, despite the fact that there are vaginal scars, hymens missing, and these parents are told to stay and work out the system. But the parent, the abuser, should pay all of the costs, all of the mother's attorney's fee, and all the costs of therapy. That should be given. There shouldn't be any leeway there.

Nine, judicial support of protecting parents. No parent shall be punished for contempt of court for failure to comply with the court order for visitation, where the parent in good faith has reasonable grounds based upon competent expert opinion to believe that the other parent has sexually abused a child. That's certainly not any radical communist idea.

Finally, there shall be public scrutiny of attempts to punish a protective parent. Any parent charged with contempt of court for failing to comply with court ordered visitation shall be entitled to a full public hearing. You know, we have secret trials. We have parents who are gagged. They are told not to speak or they will go to jail. That's just un-American, folks.

For example, Elizabeth Morgan is in jail under secret court proceeding, secret transcripts.<sup>23</sup> I almost went to jail in that case for giving out what was determined to be secret transcripts. However, there were 20 minutes when the case was in the appellate court before the appellate court sealed the record where it was public record. Fortunately, for those 20 minutes I had about 50 sets of the record to hand out to the media. And, thanks to a snowstorm in Washington, D.C., on the day of my trial, court was-n't held and I never heard from them again.

The stuff really rises to the level of absolute foolishness and I think we need to take some concrete stand legislatively. The problem is not the law as such. The problem is those individuals who because of their attitudes and their ignorance interpret the law poorly. The only things I think we need to do with the law are to tie the hands of the judges, not to give them discretion, in these instances. I think that would go a long way toward solving the problem.

DR. SALTER: That's all very nice stuff. My only comment.

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<sup>23</sup>[Ed. note: Dr. Morgan was later freed by the application of Section 5 of Public Law 101-97, which limits the term of incarceration for civil contempt in any proceeding for custody of a minor child in D. C. Superior Court. This was enacted under the Constitution's grant to Congress of power over the District of Columbia court system.]

on that is where can I get a copy?<sup>24</sup> That's wonderful.

I want to make one more comment on something you said. A couple of people have said that we need to change things so experts are employed by the court. There is no law that says mental health has to work for one side or the other. We don't need experts employed by the court for mental health to make a decision. They will not work on one side or the other of these kinds of cases. Most people that I know will not do that. I have never worked for either side in a case involving the welfare of a child, and I am not alone. This is not at all unusual. The stance that I take is that whether the court appoints me, or both sides agree and sign a stipulation in advance, I will have access to all information, and that the reports not be suppressed by either side. Most people know better than to get in the stance of working for the defense, so that if they don't like your report they then suppress it and it never sees the light of day. If they do like it, it comes out. Therefore, you are being seen as working on that side. I think that is an unconscious bias if that occurs when you work for one side. There is an internal thing that mental health needs to do, which is to take a stand against being "hired guns." It is within our power to take a stand on that, to declare that unethical, and refuse to do that. We have never done that.

MR. PLUM: When someone comes to you, a parent, either one or the other, and tells you that he or she is involved in a custody dispute, do you say, "Before I get involved I want the other party's agreement that I can evaluate you," and so forth?

DR. SALTER: Absolutely, or the court can appoint me over the other parent's objection.

MR. PLUM: My experience hasn't always been that. When I've come into cases, a lot of times it's after the fact and therapists have been lined up by both sides already. I agree with your stand that maybe that's another way to resolve it.

DR. SALTER: My point is that I'm not credible anyway if I'm partisan. If you hire me on your side and I come out for you, what's the good in that? Nobody is going to believe me anyway, because you hired me and I'm working on your side. So you have to come in as an independent evaluator to have any credibility in the case in the first place.

DR. CORWIN: I would much rather participate in that man-

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<sup>24</sup>Copies are available from the Children's Forensic Institute, 650 Poydras Street, Suite 2030, New Orleans, LA 70130.

ner; however, I found out several years ago that if I took that stand and stuck to it, I would be abandoning cases that needed my expertise.

Professionals who review cases for one side or the other are not necessarily hired guns. The difference between a hired gun and an ethical expert who agrees to work for one side or the other has to do with honesty versus dishonesty. There is literature regarding this, but many people don't understand that distinction.

DR. SALTER: I think that as people get to know your work better, the court will appoint you over the objections of the other side. But I will tell you something that has surprised me, and that is I do get invited to come in, and I'll bet you that my substantiation rate is higher than 65%, appropriately or inappropriately. The last two cases have been offenders who have called me. I have no idea why, because I came out against them in both cases. It has not been my experience that you can't get an agreement.

MR. DUCOTE: I agree and don't agree with that. What typically happens when those are the ground rules and both parties have to agree is you get somebody who is unqualified, or the court appoints somebody out of the phone book, or he appoints a good psychologist at Mental Health who has been there 40 years who has never read a book. When I go into court to cross-examine an expert on sexual abuse, I have about 30 books on sexual abuse in my bag. Now, invariably nobody has ever read any. Nobody can define any terms. They don't know what they are talking about, but they have been at the Mental Health clinic for 40 years. One psychologist in Wyoming -- I said, "Have you ever had any training whatsoever in the field of child sexual abuse?" He said, "Of course not." Now, he is the guy that the court has based all of its decisions on.

Again, the hired gun is somebody who has no training and expertise, or does, but doesn't base his or her conclusion on that training and expertise, which is the field. You know, they come up from left field.

For example, there is a case that I am involved in Florida where the parents were supposed to agree on a therapist. Well, the mother went and named every competent sexual abuse specialist in Dade County. The father wouldn't agree. So the next thing we see is a petition filed in juvenile court against the mother for not getting the child treated because she won't agree to a therapist. Well, you know, that's a bit odd. It shouldn't work like that. You don't have orthopedists, you don't have oncologists, you don't have pediatricians, attack the way they are attacking these cases because they are specialists. The skill, really, of the attorney representing the offender, makes the very fact that

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one specializes in sexual abuse become viewed as some sort of impropriety. You know, I think we just have to have some guts about that and do what makes sense. If you have a Volvo to fix, if you want to know what is wrong with your Volvo carburetor, you don't take it to Joe's Service Station down the street because he happens to be there.

MS. BROGNA: What you do is eliminate the best experts for us in taking that stand: that "unless you can get the consensus and have me appointed, I'm not available to you." Also, that stance is not mandated by your profession and so when you take yourself out you can't take the opposing national expert with you. That leaves Joe Schmoe, the local trying-to-do-it guy up against the so-called national expert, and that's not fair.

DR. SALTER: Well, obviously, what I would like to see is for that to be an adopted standard so that we do get to take the opposing expert out with us.

I would also like some way to reduce the financial incentive because the criteria that people talk about, whether someone is honest or not, is extremely difficult to prove in court. The people that I come in contact with on the other side will pass any of your accreditation standards.

MR. DUCOTE: But they won't pass my cross-examination.

DR. SALTER: Well, they might not.

DR. BUNK: It often seems that your profession is on trial when you are being cross-examined. It would make common sense for the judge or jury to know that a person who has spent 12 years in professional education is just not going to throw his or her professional integrity down the tube for this one case.

DR. SALTER: What are you talking about? We have people who have thrown their professional integrity down the tube 200 cases ago!

DR. BUNK: But it's unfair to say that solely because the mother hired you, you'll lie, or that you'll do whatever you need to do to get the conclusions you need. With education, regarding sexual abuse, at least some judges might say, "I don't think she will sell out for quite that low a price."

DR. SALTER: I think there ought to be some standard fees established, because some experts are making hundreds of thousands of dollars, and I am cynical enough to believe that if they were not making hundreds of thousands of dollars a year doing this, they might have less interest in doing it. I wish there was some standard court-appointed fees established.

DR. FRONING: Gary Melton has written something that is going to be in the American Psychologist soon, as I understand it, guidelines for psychologists' being expert witnesses in child sexual abuse cases.<sup>25</sup> I have some problems with some of them. They apparently have already passed some board of the APA, so we might have to fight some of them. They are interesting in that they address some of the issues. If we get some kind of dialogue going on within psychology, this is a better way to deal with these experts in terms of them going beyond their data, misrepresenting data, and so forth. To say that this is an unethical protocol and you are violating it, and then trying to police it by reducing fees -- I agree with David -- I don't think it would be very helpful.

MR. DUCOTE: One more comment. There is a psychologist who devised what he calls a "SAID syndrome," "sexual allegations in divorce," and got it published in the same journal of the Association of Family and Conciliation Courts,<sup>26</sup> that publishes the studies that everybody relies on as being important. He testified in a case that I was in. He has never treated survivors, has never treated kids, has never treated offenders. He doesn't believe psychologists or social workers. He only believes law enforcement. Then he says that the way you tell a false allegation is if the mother also claims there is physical abuse in the marriage.

The way to expose the credentials of an expert is to cross-examine him. You know, he has never read anything. When he said he only believed law enforcement I just happened to have Ken Lanning's book<sup>27</sup> about the morally indiscriminate offender who beats up his wife and kids, and that kind of shot down his theory. Even the judge who heard the case said, "Gee, I'm amazed. I always thought this guy was impressive. He comes to conferences." That's because of that process, and that's where the adversarial system really weeds these people out.

DR. BUNK: Two things are clear to me from this discussion. One which has been alluded to, but not really talked about a lot is that sexual offenders against children are much more able and willing to acknowledge and put their child's best inter-

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<sup>25</sup>Melton, G. B. and Limber, S. "Psychologists' Involvement in Cases of Child Maltreatment: Limits of Role and Expertise, American Psychologist, 44:9, pp. 1225-1233. (1989).

<sup>26</sup>Blush, G. and Ross, K. Sexual Allegations in Divorce: The SAID Syndrome. The Conciliation Courts Review, 22, pp. 1-11 (1987).

<sup>27</sup>Lanning, K. U. Child Molesters: A Behavioral Analysis for Law-Enforcement Officers Investigating Cases of Child Sexual Exploitation. Arlington, VA: National Center for Missing and Exploited Children, 1986.

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est in front of their own when they are talking with someone who obviously gives them the idea that they can be helped.

I am not naive enough to think that all sexual offenders against children will respond to a caring treatment provider who says to them, "Yes, I can believe you did this, and that you carried it this far, and that you can be helped," all of these things together. However, I think there are many who will. And I would guess that your rate of having offenders come to you, Anna, being somewhat higher than David's is a result of your being known for having a treatment offender program in place and really being involved in the forefront of offender treatment.

A second thing that is clear to me is that in allegations in custody situations, more than any other area, we must combine the fields of mental health and the legal proceedings in a way that really has not been done before. It is my understanding, that there are training centers developing around the country which are jointly training and teaching psychologists and attorneys to work together around mediation issues in custody proceedings. One area that we as a multi-disciplinary profession should look at is involving sexual abuse treatment and litigation in those kinds of training centers. Richard, I know you do this. But that should happen more often, where the attorney and the psychologist, mental health professionals, who are all trained in sexual abuse would then be appointed by the Court, or be in the public eye such that a judge or an attorney could say to the client, "This is the place we need to go in order for you to get the fairest shot."

MR. CRAMER: Sarah King will present now.

MS. KING: Almost everything I have in my prepared remarks has already been discussed. I am just going to sort of ad lib on what I have heard today.

One of the things I am so thrilled to see is that so many people are interested in what is happening to sexually abused children in the judicial system, and that they are willing to come to conferences and talk about it. I think this is my fourth year. What I am terrified of is that I see so many territorial wars going on. It's almost as if every profession is dealing with sexually abused children, whether it be the legal profession, psychologists, the medical profession, or social workers. There are so many wars being fought inter-professionally and intra-professionally that I don't know how long it is going to take before these children are helped. Everybody has addressed the issue of children in court, which of course is the major issue, the best interest of these children. Now, a need to focus on teamwork is imperative if those best interests are to be served.

What I would like to talk about are the "vindictive witches" that are in jail around the country, which I don't really intend to dwell on. In order to change that label, one of the first things we have to do is look at terminology. Forget the psychology and the legal issue and look at the terminology that we are using. The title of this workshop is "Abuse Allegations in Custody and Visitation Situations." We are adding to the victimization of these children by some of our own terminology. I don't know about all your professional experience, obviously. Mine is just as a support group for protective parents learning about the system. I have been searching my brain since Linda discussed this earlier, trying to think of a case that didn't develop in the following way.

In all the cases I'm working with, the protective parent had custody; custody was never an issue, visitation was never an issue. Everything seemed fine and then sexual abuse comes out in the child's disclosure and/or behavior. The mother usually goes into shock and thinks, "How can this be?" or "Why didn't I see this before?" But what happens is that she goes through -- Do I re-report this? Do I hope it goes away? Who do I call? How do I protect my child? When she reports it, it gets into another terminology cloud, a terminology mistake that people have to correct. Once she reports it is when it becomes a "custody issue" in almost every single case. The defense immediately files for custody. The original allegation somehow becomes diffused and now we have a custody battle on our hands.

We have to separate custody and visitation battles from sexual abuse. These are two different issues. If you have a sexual abuse case where the offender is not in the family or not in a divorce situation, you just have a sexual abuse case. This should be treated the same way. Just because the two parents happen to have been married at one time, once sexual abuse is alleged, that's what it is, a sexual abuse case.

Somehow the courts have to be able to separate those two issues also. I don't know if you could add that to your Bill of Rights or not, Richard, maybe as No. 11, that once sexual abuse is raised "custody" does not become an issue until after "sexual abuse" is dealt with in the courts. You should focus on that in the legal system, if the issue is going to remain there. Then later down the road if it turns out to be a false allegation, then custody can become the issue. But just to confuse the issue by bringing the custody issue in, is hurting a lot of kids, and.. for us to label them in the same program, I don't think is correct. I think it adds to the victimization of both the child and the protective parent.

The next time our terminology victimizes them is in quoting the source of the allegation. After I talk to a protective parent I often call the psychologist or the attorney involved in the

case to see what I can do to help. They state, "The mother's allegation is" She has told me what the child told her and she told me what the child told the psychologist. I see that the mother or a teacher has reported the child's allegations, but the child's allegation is the child's allegation, whether it be the behavioral indicators or whether it be what the child has verbally said. It is the child's allegation.

"Dr. Morgan's allegation" is a well known example. I think Richard pointed that out, too. It's just amazing how these cases can go against good common sense.

Until we get down to the child's allegation and get it off the protective parent's allegation we are just giving the defense attorney and the perpetrator wonderful ammunition to go in and say, "Well, okay, it's another one of these vindictive cases."

Another issue on terminology is the difference between reporting and disclosure, which almost goes into the same bailiwick as the one of whose allegation it is. I think it is really important to differentiate between the disclosure of the child and the reporting of the adult. If you always say the disclosure on both terms, which some people do -- the mother has just disclosed to DSS -- somehow later on down the road it gets confused. Again it's the protective parent, mother or father, in the predicament.

A couple of years ago I used to think, and I used to say, that everyone who worked in this field should live with a sexually abused child for two months to see what the protective parent goes through. It's real simple to say she or he added to the emotional abuse of this child. We are asking the protective parent to be above super-human, and we allow the defense to use anything less than the protective parents absolute protection against the protective parent in court, which is being done consistently. First of all, a protective parent goes through the shock of finding out. The next thing you know you are thrown into a system where you have to retain an attorney. You spend most of your time in a psychologist's office, in a lawyer's office or in a courtroom, and you are saying, "Wait a minute. All I did was love this child. Then I find out what has been happening to her, or him, and now I spend all of my time, all of my resources, all of my energy, here trying to take care of this person." It gets to be a very tense situation.

The protective parent, in order to be a fully functioning adult ally, is going to have to have some more support in the system. Otherwise, these children aren't going to survive. We need to get some really empowered parents -- and this is not a time when you are very empowered because you are devastated. You have damaged goods. You have to repair. And at the same time you are trying to repair those damaged goods, you are going through a system where all of a sudden you are like the rape

victim years ago, the protective parent and the child are on trial.

I think there is enough evidence, if we can unseal or ungag some of these horrendous cases. I wish we could walk through the legal and psychological and medical evidence and put some professionals who have never been through these cases in the place of the protective parent -- that's something that really has to be done. You have to think, what would I do if this were my child and I had all of this, when a judge looks at it and says, "Well, the only abuse I see here is that this parent took the child for all this testing and evaluation, and I think that's abusive."? Well, all that testing and all that evaluation shows that here is definite sexual abuse, and the judge doesn't want to hear that, or doesn't believe in it. So he doesn't listen to it. Then all of a sudden the protective parent is again in the role of, "I've done something wrong." How can this parent continue functioning well for the child's sake?

You wonder where the system is -- you know the system is not working. There is an attempt, but it is not working. In lot of these cases it isn't working. The Morgan-Foretich case isn't working. You have Elizabeth Morgan, who was in jail for a year and a half<sup>28</sup>, trying to protect her child. Then you look at Dr. Foretich's second wife's history and her legal success and the fact that he has not been able to see that child for three years. Why does it work in one courtroom where this mother and this child is okay, and the other mother not only cannot protect her child, but she has been in prison longer than any other inmate but one for civil contempt in the history of this country? There is something wrong with a system like this. Where are the scales of justice? They are obviously way off balance.

There has to be something done immediately within the legal profession to standardize the rules of evidence. Why is it that, when someone is accused of murder, he or she is not asked if he or she would like to take a lie detector test and that's the end of the case? Why is it that in some of these sexual abuse cases the parent takes a lie detector test and walks away? That's the end of it. A number of people outside the system don't understand this logic. Again, it goes back to common sense. Why is he telling the truth if he can pass a lie detector test on sexual abuse, but he is not telling the truth in a murder case? It doesn't equate.

It goes right back to the basic issue of the small child, small crime. No matter how much we talk about their best interests we are not treating their best interests. We are taking that most critical minority group -- and saddest part about the

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<sup>28</sup>[Ed. note: Dr. Morgan was incarcerated for a total of 25 months.]

minority group of children is that they are so defenseless -- and using their powerlessness against them in courts every day.

MR. CRAMER: David Corwin will respond.

DR. CORWIN: I agree with what Sarah said about our terminology. I think it's loaded with bias. When we call these things, as we did in the title of our article, "Child Sexual Abuse and Custody Disputes," we are already communicating a negative impression. A more neutral way to describe this is better. The original title of my article was much better. It was something like "Suspected Child Sexual Abuse in the Context of Separated or Divorced Parents," but of course that's too long for the title of an article. We should consider how we use our words. Perhaps that's something that can come out of a group like this. We need to start looking at this in a more scientific way, and if possible, in a more dispassionate and neutral manner.

In my experience it is not always mothers against fathers. I have seen fathers who have sought to protect their children, against abuse by mothers or mother's boyfriends and other family members as well. Sadly, they have often been treated as badly as some of the mothers who the court doesn't believe.

Although it is true that most of these cases that have broken into the media out of the secrecy of these family law courts are mothers against fathers, there are a lot of fathers who have also sought to protect their children.

It's unusual for me to work on a case where the accused person hasn't "passed" a polygraph. When I come upon a case where the accused has failed the polygraph I'm concerned that he may be innocent, because it seems that many child molesters can lie quite convincingly -- if there is one trait that is probably most core to child molestation it's deception, the ability to lie effectively. One of the things that I go after with my magnifying glass and archeological approach in looking at these cases which by the time they reach me are often measured in feet of documents -- I look for deception in sexual developmental histories and other areas. That is something that I believe has some validity in trying to identify people who are guilty of these crimes.

The chapter I wrote called "Early Diagnosis of Child Sexual Abuse: Diminishing the Lasting Effects,"<sup>29</sup> has both the proposed diagnostic category, which I think ought to be critized, modified, tested and refined, as needed. The chapter also contains a brief history on the development of APSAC and the field. It has some consensually derived lists of signs and symptoms that

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<sup>29</sup>In Wyatt, G. E. and Powell, G. J. (eds.) Lasting Effects of Child Sexual Abuse. Newbury Park, CA: Sage Publications (1988) pp. 251-269.

are divided up by the degrees to which they discriminate for sexual abuse and by three age groups. I have a few of those copies up here for people who are interested.

I would like to take just a few minutes to talk about what I think has happened in the evolution of our awareness about child sexual abuse in general and specifically those cases between separated and divorced parents. The issue of child sexual abuse re-emerged for the fourth time in the last 140 years in the late 1970's. In a sense, 1978 is the watershed year. At that point in time a number of professionals had the attitude that if a young child says it happened, it happened, which was probably right 99% of the time. But things changed over time. Some degree of overzealousness probably resulted in a significant number of innocent people being unfairly maligned or restricted, and perhaps even convicted, although in my experience most of these cases don't reach the criminal courts.

The field of child sexual abuse is an interdisciplinary field made up of professionals who are concerned about the problem who focus their work on the problem. It is not the possession of any one discipline. As a scientific discovery, child sexual abuse is deeply humiliating to some previously pre-eminent professionals, some of whom were doing the custody evaluations and the forensic evaluations for the court prior to the emergence of this problem. So it is to those individuals that attorneys would take some of these cases that they thought were questionable, that may have been false, and a few of those people who are especially visible began to develop very biased samples -- because they were already screened, not first line referrals -- that had a significant percentage of very questionable cases which they called "unsubstantiated" in a way that sounded as if they felt they were false. They used things like -- well, they saw the child talking to the parent about having told the doctor about what happened and used that as proof of brainwashing or indoctrination. They made some systematic errors, logical errors, about the meaning of a null finding in a data set.

If you look at the checklists that have been developed and published by Green<sup>30</sup> and Benedek and Schetky,<sup>31</sup> mostly in the psychiatric literature, they have in their column for confirmation of cases things which most of us would agree are consensual-

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<sup>30</sup>Green, A. *True and False Allegations of Sexual Abuse in Child Custody Disputes*. Journal of the American Academy of Child Psychiatry 25:4, pp. 449-456 (1986).

<sup>31</sup>Benedek, E. and Schetky, D. "Allegations of Sexual Abuse in Child Custody and Visitation Disputes," In E. Benedek E. D. Schetky (eds.) Emerging Issues in Child Psychiatry and the Law. pp. 145-156. New York: Brunner/Mazel (1988).

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ly derived. There is little controversy about the things in the confirmation column.

What there is controversy about is the use of things like a hysterical mother to rule out or to use as evidence of a false allegation, with undue emphasis on it. Many parents are hysterical when they are caught in a bind where they can't do anything, when they are powerless and they see their child threatened and in danger of being destroyed.

These checklists use things such as a lack of physical findings to decrease the child's credibility. The child has said something, but there is no physical finding, and so that decreases the credibility. That's absolutely scientifically invalid, but yet these tables were published in some of the most prestigious journals in these fields and were read by large numbers of mental health practitioners and given some credibility.

If one of these publicized cases was completely in the public domain so that we could dissect it and review all of the evidence, we might learn a great deal.

If you look closely at the methodology and criteria for looking at these particular kinds of cases, the disagreements among most experts are really fairly small, but they are significant. One of them is the utility of the conjoint interview, as a litmus test for sexual abuse. This is where the evaluator puts the child who has said he/she was abused in the same room with the person whom the child may have said abused them to see what happens. We know that some sexually abused children love the parent who molested them. This may not be a reliable or safe procedure.

Another area of disagreement is these criteria for disconfirmation. I think that's really the area to focus attention -- to identifying what are reliable criteria for disproving or excluding abuse.

Dr. Salter raised the point of what does it take to really prove indoctrination, or what kind of evidence. It shouldn't just be proven by the fact that the allegation didn't have enough evidence to support it, or that there is suspicion that you don't have enough evidence.

I think probably the most significant question and the thing we have to look at, is what do we do with cases that are in the middle. We would probably not have difficulty agreeing upon the definite cases. There are cases that I have seen that strongly appear as if they were the result of manipulation or some kind of training.

The real question comes in this range. What the CAPSAC task force recommended, which was similar to what David Jones published in the ABA book, was that we improve our terminology to more accurately reflect the reality of our practice. If we believe there is enough clinical evidence to prove a case we should call it "clinically substantiated."

Now, it still may not be true. It is just that it appears that it is probably true. The category below that is not quite strong enough to be clinically reliably substantiated, and we can call that "unresolved." Jones called it "uncertain." That carries with it the connotation that we don't know. It is in that range that it may be warranted for judges to protect children and at the same time preserve rights of both parents as much as possible.

Then at the far side here there are those small, relatively small, percentages of cases that are believed to be fabricated, and another group roughly the same size using the data from the AFCC/ABA study, 19%, where there was misperception. We need to study those. We need to learn more about how to identify and screen these out. All of these children are in need of our protection and assistance to try to resolve these situations and prevent them from becoming the kind of holocaust that some of these cases have grown into.

I think there probably is a role in some of these cases for innovative techniques of arbitration, and mediation, which would include the power to bring in some kind of supervision. For example, I was asked by the attorneys on both sides in a case to come in and review the case for purposes of helping to resolve the problem. There was an agreement that my evaluation would never be used in the legal context, would not go into court. I did my regular evaluation, and it was my opinion that in some ways the case looked valid. The father had many of the characteristics of fathers that I have seen whom I believe have molested children. He was narcissistic, impulsive, somewhat sociopathic, sadomasochistic, and looked like he might have some affective disorder. He also had a lot of severe stresses that he was under and may well have been regressing or dissociating.

On the other hand, the child was two and a half years old. When I questioned the child on a couple of occasions carefully around the issues, there was no indication of any discomfort in terms of sexual anatomy. I asked direct questions that many sexually abused children, in my opinion, show some kind of reaction to. He had absolutely nothing that I could base any opinion on or that I could see on the videotapes of my interviews. Despite the fact that the history was suggestive, what I said to the mother was, "If you try to take this into court in the present climate, you will probably lose and there is a significant chance that your husband will be awarded custody, and if you believe

that your husband will be awarded custody, and if you believe that he may have molested them, as you appear to, then that may not be the best course."

What I said to him was, "From my evaluation it looks to me like you may have done it, but I don't think it's provable, and I can't give an opinion that I think it is, but you have got to realize that she thinks you did it and that that's the problem. She loves your children and it's her job to try to protect them. "And this father, despite his difficulties and his psychopathology was able at some level to understand that and was able to agree to a system in which there was a designated person who came with the children on all of the visitations. That case has gone for a year and a half in a reasonably safe mode. Those boys are doing better than some of the children in cases that have been fought in an adversarial way.

There may be another way of trying to handle some of these cases. With very young children it is often helpful to protect them until they are old enough to talk. By the time a child is four or five and they can be taught what are the rules, and they can provide a more detailed description of what is going on in their lives, then they are more easy to protect.

My next concern is about the effect of the secrecy of these proceedings and the fact that we can't talk about them for fear of being sued, and we can't see what goes on in the court in some of them because the records are sealed and the experts' testimony is hidden from review. I think this secrecy is an impediment to our being able to examine and improve the process. If we can't study it, how can we decide what should be done differently or better to correct the problems?

I am also concerned about the lock step legal progression of these cases. This process can also occur in science. If a misleading article is published and not refuted then others can build up that flawed foundation. You can have castles that are built on foundations of sand. In the legal process it can happen at an early point in a legal proceeding. The trial judge makes a factual determination, and then that is forever used to close the door to further review. The subsequent hearings do not view the full picture, and in some of these cases you can't see the patterns that evolve until you can get it all together for a series of months or years. I can't tell you how many times in court I have heard judges say, "I'm not going to relitigate or retry that questions." However, I am told by Judge Edwards from the Santa Clara County Juvenile Court that at least in California they have the discretion to open up and look at all of the evidence, and that there is some acknowledgement in law that in some of these proceedings all of the evidence has to be reviewed. I think that's another thing that we need to look at in terms of recommendations.

I'm concerned about the role of confirmation bias. We are all vulnerable to this kind of problem in decision-making. Judges are, too. A judge who has heard a case and has decided not to protect a child, when presented evidence six months later that that child has been abused and molested, is in a difficult position -- it takes a terribly courageous, intellectually honest person to reverse himself and acknowledge that he made a mistake and because of his mistake this child has been harmed. What to do about the problem? This is another riddle that should be addressed.

Finally, in conclusion, I would like to address the issue of expert witnesses. In 1959, a forensic psychiatrist, Bernard Diamond, wrote an article entitled, "The Fallacy of the Impartial Expert." Dr. Diamond describes how even the expert who is retained by both sides, once he or she has come to an opinion the he or she is no longer impartial. Experts do have to defend their opinions. It's a natural thing. People cannot completely free themselves from their experiences and their philosophies, their values and their learning. So all experts are in some manner not impartial.

There is also a difference between the honest advocate who discloses what he has done, who he has talked to, who is paying him, and what he did to help the side prepare, and the hired gun who deceives. There is a difference, and there are things that could be done to clean up that whole area so that the testimony that is provided to courts is more reliable.

In an article that is not yet in publication entitled, "The Psychiatric Expert Witness, Honest Advocate or Hired Gun," Dr. Diamond draws on over 30 years of watching this process. He makes a number of recommendations. I would just like to quickly go over those because I think they are important.

Number one -- I am going to reframe this so it will not be about forensic psychiatry, and am going to make this about experts on child abuse, the interdisciplinary field -- there needs to be a clear expression by the organized experts about the boundaries of legitimate expertise in that area. If an expert tries to testify beyond that scope, then the *Frye* test or the scientific relevancy analysis should be used to exclude that testimony.

Number two, the courts should adopt more rigorous standards for the qualifications of experts. In California the definition is that the expert should be qualified by special knowledge and/or skill and/or experience. Special knowledge, skill, experience, training or education: any one of them is sufficient. He suggested that courts ought to require all of those. In order to testify as an expert in court the professional should be knowl-

edgeable and skillful and experienced and trained. Any one deficiency would disqualify him or her.

Third, the expert ought to be knowledgeable about the relevant scientific literature, the subject at hand, and that the attorneys should be free to bring in the literature to confront the expert. The rule that says, if you didn't rely upon this to form your opinion, then you can't be cross-examined should be relaxed in order to demonstrate that the person is not knowledgeable of the current literature.

Fourth, the expert should be allowed considerable leeway in the presentation of his or her testimony. Science is not best communicated in yes or no answers. The ability to testify by dissertation and with visual aides that are necessary to demonstrate and to inform is in the interest of truth and better communication and understanding.

Fifth, there should not be a simple reliance on the battle of the experts to expose unscientific, irrational, dishonest, or foolish expert testimony. Trial judges must exercise more responsibility in determining when an expert is not meeting the standard, and if that happens they should stop it, kick the person out, and strike his testimony from the record.

Sixth, the law has to give up its quest for certainty from science. Scientific knowledge is always appropriate, tentative, and subject to revision as knowledge grows. Experts are never justified in expressing their opinions with 100% certainty; there is a level of doubt about every scientific conclusion, called the "level of competence" in scientific parlance.

Seventh, the role of the expert in the adversary process should be fully revealed to the trier of facts -- full disclosure -- how the person came into the case, who is paying him, who she has talked to, and how the expert prepared the side that he or she is working for, if the expert is working for a side.

For those of you who are familiar with it, the U.S. Supreme Court has ruled that mental health experts, psychiatrists, should be advocates, should help the sides prepare their case. In fact, it just makes sense that, unless you are going to require the attorneys to be experts on the topic, they need to rely upon experts to guide them in what is relevant, what is salient, what needs to be brought out in order to fit and to bring in the literature on the science that it pertains to, what it expects from the other side, and how to cross-examine and refute the other side's argument.

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MR. CRAMER: Have you got that citation?

DR. CORWIN: Yes. It's *Ake vs. Oklahoma*, 470 US 68, (1985).

Finally, what Dr. Diamond recommended was that professional organizations have to take more responsibility in monitoring and doing something about unethical conduct by the experts who are testifying in their areas.

DR. SALTER: I want to throw one other thing into the concerns about expert witnesses and the dilemmas that they present. When you work in a region you get known for your work, and it's either good or it isn't good. The problem with these national experts is that they move around. They do get discredited in their own areas, and they often get discredited in many areas, but they don't learn from experience. There is a saying in medicine that you learn from failures. It doesn't make you feel any better if the patient hears you say that, but that is what doctors believe and it is true.

These guys aren't learning from experience. Sometimes you will have a wonderful attorney who will pick up on what somebody did somewhere else and you will use that material, but for every time that happens there are ten cases in which the information does not get transmitted. There is a case in Phoenix or Georgia or Oregon or somewhere where the guy has gone and said and done the same thing and got destroyed for it. In New Orleans you, Richard, got away with it. Half the time or more people win in situations like that, and they will keep running the same act, saying the same outrageous things, even though they have been thoroughly shot down somewhere. I don't know how to deal with that. They are nomadic experts. It's a new breed of nomad where their reputation in general doesn't catch up with them enough of the time to make a difference for children.

MR. BERG: I think one thing that has happened is that the National Center for the Prosecution of Child Abuse<sup>32</sup> is beginning to track some of these folks, track some of their testimony so that prosecutors from around the country can call in and say, "This is what I'm up against. Give me an idea of what he has done and what he has said, what his testimony has been." So there is some recourse being developed, but it's minuscule.

DR. FRONING: One of the things I learned by this terrible experience of the *Morgan* case is that the evaluation process and the therapeutic process should be separated.

You were talking about that you couldn't go in unbiased if you were the therapist for the kid. I resounded off that because

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<sup>32</sup>American Prosecutors Research Institute, National District Attorneys Association, 1033 N. Fairfax St., Suite 200, Alexandria, VA 22314-1504.

once you see that child's pain over a two-year period of time, you can no longer go in and be dispassionate in the courtroom, unless you are made of ice. I really think that this ought to be part of whatever guidelines we come up with, the recommendation that evaluation be separate from the therapy process. It could be the same person, but you would need to end the evaluation process, write a report and have that be the only thing that you testify about if you are going to talk about whether the allegations are true or not.

MR. DUCOTE: But I don't think there is anything wrong, once we have determined our position, saying that the child has been sexually abused, not to be dispassionate.

DR. FRONING: But then have the child go in for therapy. That's fine. They just don't go to the person who evaluated them.

DR. CORWIN: No, for evaluators. As a matter of fact, the expert who goes in and is monotone, neutral, appears totally dispassionate about their opinions, is not doing a very effective job. There is nothing unethical about speaking strongly for your opinion.

MR. DUCOTE: Especially in these sorts of situations, if it is your opinion that a piece of land is worth \$4,000 instead of \$3,500, you can do it with, I guess, with great blandness. If you work with a child that has been sexually abused on visits, and you have to pick up the pieces afterwards, I think that certainly --

DR. SALTER: I have seen it used against people.

MR. DUCOTE: Oh, sure. But, again, it is the role of the attorney to explain that and to convince the court that that's not inappropriate. Some people start to second-guess everybody else and say, "Well, gee, I'm supposed to say this and I'm supposed to be like this." It's like the problem where psychiatrists would recommend no visitation, but they say, "Well, the court won't go along with that. So I'll recommend supervised visitation." Then the court orders supervised visitation and the judge goes home that night and says, "You know, I would have thought no visitation, but nobody recommended that." So if everybody stays in the role and does it the way he or she is supposed to do it and does a good job, this system will work.

Another thing is this issue of proof and all of its difficulty. There are many, many appellate court decisions where parents have been convicted and sentenced to jail -- and that has been upheld or affirmed by the appellate courts -- been convicted on the same evidence that the family court views as foolishness. Very often in appeals -- and with trial courts -- we often argue

its similarity to the criminal case and say, "Look, this evidence has been sufficient to convince them and it certainly is sufficient here."

MS. KING: One of the things I had crossed off -- that I think Richard and Anna both probably discussed it better than I can, is "brainwashing," "hysteria." That which the protective parent has been accused of. The latest one is "media and fame." When a person is bankrupt, and has spent hundreds of thousands of dollars and years in court, and nothing is working and the press gets involved, you think, now everything will be okay. Nobody is focusing on the tremendous injustices that are going on. The only thing left is the healthy protective parent to try to find some remedy and say, "Wait. Something is going to work." I think that has happened a lot, such as in the Elizabeth Morgan case.

DR. CORWIN: But the media often doesn't help the individual. It sometimes hurts the individual. Maybe one day it will help the children.

MR. PLUM: I have encountered proceedings where the therapist dealing with both the mom and dad said, "Look, I will work with these people, but what I don't want to do is come into court and testify as to what has been said. That's going to impede the therapeutic process." One way we have addressed that issue is by having an evaluator on the front end and on the back end, and possibly communicate with the therapist. The understanding is that the therapist will not be called as a witness. How do you feel about that? Do you have any suggestions?

DR. CORWIN: Well, I have mixed feelings about it. I think one of the good reasons for having separate evaluations and therapists is to protect confidentiality of the child and that of some of the people involved, but I think that privilege, confidentiality, should not be protected in spite of the welfare of the child. So if information comes out that is critical to the safety of the child, I would feel ambivalent about the failure to disclose that kind of information.

MR. PLUM: There are still obviously the reporting laws and things like that that are applicable. But what I have found on the front end is that the therapist says, "These are the ground rules under which I will accept the case and if we can't agree on that, find somebody else."

MR. BERG: But how do you find out what that therapist is doing? I think generally when I hear that, quite honestly, that that approach is a lot of crap, and if the person is not dealing with sexual abuse issues we will never know it.

DR. SALTER: You deal with offenders; that is the point of view of people who deal with offenders. I think more and more

offender treatment people require that in order to get into treatment, you have to sign a waiver of confidentiality that says that the therapist can talk to anybody she needs to talk to. Now, of course, this was discussed in conjunction with criminal court proceedings, where your alternative is to get into some treatment program or go to jail. The treatment contract that you sign will be very long and very involved, and it will allow me to communicate with the probation officer, with the child protection agency, with the mother's therapist, with the child's therapist, so that I can get collateral information about your behavior as the abuser. If the therapist doesn't have the collateral information you are at the mercy of what a sexual abuser tells you about his behavior. That is not a good position to be in.

DR. CORWIN: I am much more concerned with the child's therapist having confidentiality and for it not to be indoctrination or programming of the child, hammering in what they are going to say in court, that it be on their feelings, their emotions about what they have already said, not to be an interrogation.

DR. SALTER: With the proviso that the grooming behavior of the offenders needs to be reported. If evidence comes up --

DR. CORWIN: Through the child?

DR. SALTER: If evidence from the child comes up that the abuser is hanging around her room, you know, or being inappropriate on visitation, that has to be reported.

MR. PLUM: I don't think the problem is with the therapist getting information from other sources. The therapist's problem is in having to repeat it in a court process. You know, "Do I have to come to court and testify?" It's not the sharing of information from their end collecting it. It's from coming into court and saying this is what the mother told me or this is what the father told me during a therapy session. Therapists are telling me that this is impeding their ability to do therapy with the client down the road.

DR. SALTER: I think what you are saying is the difference in the sex offender's specialized treatment and family therapy. For myself I would say that the consensus that is building with sex offender treatment people is that we must change that model. When a sex offender says to you, "Don't you trust me?" a family oriented therapist, without specialized training in sex offenders would say, "Well, of course, because trust is necessary for rapport and I couldn't go behind your back." A sex offender therapist would say, "Of course not, and you would be crazy to trust yourself. That's the least favor I could do for you. That's the most harmful thing I could do, to trust you, and if you are telling me you trust yourself, you are in a lot of trouble." It's a different orientation.

DR. CORWIN: At UCLA we provided for confidentiality in the treatment program. One of our fathers in the treatment session described how he was beginning to have sexual fantasies about his child again and he was going in and masturbating over her bed at night. We made a report, but we were told that that was confidential, and he hadn't committed any crimes.

MS. BROGNA: I would like to say one thing about that. In my experience most of the therapists that have said that have made the decision that they don't want to give up the time that it takes to prepare and go to court.

MR. BERG: Or don't want to put the energy into holding somebody accountable.

MS. BROGNA: Right, they have got their own thing and they want to keep their practice. They don't want to have to cancel all of their appointments and go down to the courthouse.

I'm not sure this is with your point about transmission, but I am disturbed at the fact that somehow the false allegation is also arising there because the child has first disclosed to her mom, presuming mom is the custodial parent -- first to mom or only to mom. The child won't tell anybody else. So the mom is the conduit and the mother is there saying, "Sweetheart, you have to tell somebody else. Now that you have told me, please go and tell Dr. Jones." Then later on we are hearing, "Did your mother tell you what to say?" "Yes." Then when you get to court that's not bad enough, but then the mother who may still have custody of the child and while the proceedings are underway is being told, "Don't discuss the proceedings with your child. Don't discuss the assault with your child."

You put the mother in a position now of this kid crumbling at 1 o'clock in the morning, "Let's talk about Teddy Ruxpin," and it's so unfair, and it's used against them. It's just awful. The judges don't seem to have any conflict at all about issuing those kinds of orders and expecting that kind of behavior. It really upsets me a lot. I think we ought to do something about that.

With respect to what do we do with the cases in the middle, you know, the unresolved ones, I think the criteria need to be that the child is safe. I think that society should tell our judges that we want them to err on the side of the child. I'm really sorry if one wrongly accused dad has lost out on his Saturdays at the zoo, but we need to do that, particularly with those little kids. We can say, "I'm sorry if for two years you are not going to visit, or that you are going to have very restrictive visits, we need to wait until this child is old enough to tell me what is going on, old enough to deal with what is going on, take karate, and all of those things." I think it's a

small price to pay. That's what I think needs to be going on in this middle ground, absolutely, and that's what I don't see going on.

In almost all of the cases that I have seen, the protective parent -- that's the easy term here -- will agree to have the child live somewhere else, will agree to all kinds of creative possibilities to buy a safe place for their child. It's the courts and the social workers and the people who are supposed to be giving the courts ideas about what to do with this mess that need to work on being more creative in those recommendations. Parents have said to me, "She can go live with her grandmother, or she can go live in the hospital, or anywhere but with dad, or with the offender or whoever." That's a hard choice for them to make, but in my experience they are generally willing to make it. I think the courts can be more creative.

The other side of that is that to take a child who discloses and put him or her in a strange foster home is punishment, it almost guarantees a recantation. You could have spent a little bit more time finding out that the kid loves to go to Aunt Edna's every summer. So as a special treat we could just say that she can go and stay with Aunt Edna for a while. It can be done in a much better way and you don't have to guarantee that your witness is going to recant.

We are close to the point where we should be able to make some very concrete suggestions about changes in law. I agree that we should abolish the confidentiality of the juvenile court and family court proceedings. I think it's an attractive old saw that is being used, in effect, to cover up a lot of things, a lot of mischief.

I think the children are survivors and we should listen and act on the recommendations of survivor groups. They are telling us, "I would much rather have been safe than to have had my records sealed." We need to get that whole issue of privacy out. The courts are saying they are concerned about the privacy of the child. Maybe not just protecting the expert, but protecting mom and dad. Dad can't lose his job and all that stuff. But it's also being used to hurt the children, I think.

MS. PENCE: One issue that Henry mentioned a few minutes ago in his presentation that we haven't really gone into is the turf battle about what court has jurisdiction. I know one of the big problems we have seen is that a court will be handling the divorce matters, or will have handled the divorce matter years ago, and when the allegation of sexual abuse comes up it goes back into that court because at one point in time somewhere in the system that court had jurisdiction. We have had judges who refuse to relinquish jurisdiction to the juvenile courts who generally have a higher level of expertise and training in these

matters. Henry's response was well, maybe the judges need to be involved in our decision making process on how we get them to know when they have reached beyond the level of their competence.

DR. SAUNDERS: I want to ask the attorneys in the crowd a question. There has been a lot of discussion about the need for mental health professionals and expert witnesses to follow all these guidelines, and the need for mental health organizations to police those activities and censor people when they need to. I haven't heard anything about, what, from the attorney's perspective, the ethics of calling a witness who the lawyer knows is not an expert in the field, or knows the expert to be somebody who would either lie on the stand or misstate the facts.

Of course, this is done in the context that I have got to present the most vigorous case for my client. That's wonderful. But what is the responsibility of an attorney in that situation? What is the responsibility of the bar on that situation? Why is it that the mental health people are the only folks charged with cleaning up their act? I would like to hear from any of the attorneys about that, in the spirit of professional competition, as I think Sarah noted.

MR. DUCOTE: Well, you are absolutely right. I am looking for a case, and I think conceivably there is a case, where an attorney for a perpetrator actually may have liability for the continued abuse of a child through those tactics. I'm looking for the right case to test that. I'm going after a County Counsel in the State of California, hoping to have his license revoked for attacking his own witness on the stand who had recommended that the child be returned to the protective mother. The County Counsel argued that the court should not listen to his own client because she had obviously been intimidated by the hot shot attorney from Louisiana. She got up and cried in the courtroom saying, "That's not true. That's not what happened. The child needs to go back to her mother." In those kinds of things I think the attorney should be disciplined.

DR. CORWIN: Having kept the child with the father through a number of proceedings, the judge was very willing to follow that advice.

DR. SALTER: Let me ask you this: Do you believe that the lawyers actually know who is legitimate in these fields?

MR. DUCOTE: I believe that there are certain hired experts that have a large enough reputation in the country at this point in time that people find out about these people in some way. It would be my opinion that if they don't know they have a responsibility to find out whether they are hiring somebody to be an expert witness who is actually not an expert. It seems to me that the attorney does have some responsibility. I think there

are cases where they know that this man will say this and know that he is misrepresenting scientific literature. Yes, I believe that.

DR. SALTER: Let me ask it this way: I was at a conference where a nationally known defense expert was speaking to the defense bar. They asked him, "How are you thought of in the field?" You could have heard a pin drop. At the time I was really surprised because of all the questions that had been asked and answered in a two-day period this was the one in which everybody in the room stopped moving. I was also interested in his answer. He said, "Well (name) says I am one of the most pre-eminent experts in the country on child sexual abuse." I said, "(Name of person) is not an expert in child sexual abuse," at which point I was told by him not to interrupt. He called a woman across the room who said, "(Name of person) is not an expert in child sexual abuse." I think they genuinely believed that they were bringing in one of the pre-eminent experts in the country, and he definitely presents himself that way in the literature. We talk here as if we all know who knows this field and who doesn't. We are dealing with a different profession that doesn't know who we think are the real experts, while hired guns present themselves with their degrees and as if they have the amount of experience required in order to claim this distinction.

DR. SAUNDERS: Well, let me give you an example. There was an attorney in my city who brought in an expert with a certain name. Most of the psychologists and the mental health professionals around probably recognize this name. I don't know what his discipline is, I think he may be a psychologist and a religious type of guy. The guy they brought in was indeed named the same, but he was not the one who wrote the book in question. Very clearly the attorney knew this. It was very clear when you read the transcript of this examination that he asked questions in a special way. The guy did happen to have written a couple of monographs published. To me it was a very clear attempt to misrepresent something. Yet when I ask people about the attorney's responsibility, what I get back is, "Well, it's the attorney's job to present the most forceful case he can." It's written off that it's okay.

MR. POHL: I think you have to realize that in any part of the criminal justice system there are two different roles. The prosecutor is supposed to be honest, to seek justice and the truth. The prosecutor is certainly never supposed to put a witness on unless the D.A. can vouch for the witness' credibility. Any time a prosecutor puts anybody on the stand, he or she is effectively vouching for the witness' credibility.

Defense attorneys have totally a separate role. Defense attorneys are paid by their clients to get their clients off. Defense attorneys do not, technically, to the best of my knowledge

-- I am not a legal expert in ethics -- have to vouch for the witness' credibility. They can't put on perjured testimony knowing that it is perjured testimony. If they hire people who represent themselves as experts and they want to put that testimony before a jury, it is the prosecutors' duty to be fully prepared, and to make the expert look like non-experts if they are not qualified. The prosecutor should be able to cross examine, should be able to impeach, and if he or she does a good job it, an unqualified expert look will foolish in front of the jury.

Every state has different standards for expert testimony, what is considered to be expert testimony, and what gets before the jury. I have heard California's standard, which is far higher than Florida's standard. The Florida standard basically says that if the person giving testimony has expertise, is deemed by the judge to be an expert, and that testimony will render assistance to the jury in an area that they don't have common knowledge about, then the expert is permitted to render an expert opinion. So what you typically have is a standard of an expert coming in and saying -- I don't care who the expert is -- "I have written ten books, two articles, been educated in the field, and have an expert opinion," and the opinion is allowed if it is about some area other than the witness's credibility and truthfulness, because that a jury must decide.

As a prosecutor, you ask the jury, "Do you know the intimate details" -- or the judge could ask the jury -- "do you know the intimate details of the child abuse syndrome?" Juries will often give you a blank stare. The minute the judge has the perception, that there will be issues of all the syndromes and all of the accompanying characteristics, behavioral patterns, theories, and everything else that goes in the area, you will have somebody that walks in and claimed to have additional knowledge in that area that would assist the trier of the facts, the jury, the making a decision. That person is going to come in and give expert testimony. It's up to the prosecutors to know what is coming in, and be able to show everybody that the person is not an expert, then follow that up with somebody who is an expert in a prosecutor's mind, hopefully a legitimate expert, to go ahead and counter that testimony.

DR. SAUNDERS: I take it the answer is no, then.

MR. POHL: In terms of ethics? Prosecutors I know have ethics, and I will just leave it like that.

MS. BROGNA: This is only in the criminal field, and I am not sure if that's the only place. It sounds like maybe the person in Ben's case was in a criminal case. That caper is clearly illegal. Attorneys have an obligation as officers of the court. It sounds like the lawyer overstepped it in that case. The harder one is if you suggest to your client the father, that, given

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his finances, Dr. X would be a good person to go into therapy with. That I think is much harder. There the lawyer for the mother has some obligation to get the best experts that can stand muster for her side. The court needs to have some mechanism, have some check on that by someone who doesn't have the obligation to present the best case for the -- I won't say "party" because I believe the child should be a party -- well, for the "other party."

MR. PLUM: To repeat what has been said, number one, attorneys are officers of the court and they do have an ethical obligation. Whether it's the defense counsel or the prosecutor, they can't put someone on who is going to lie. My experience has been more as a prosecutor.

With respect to experts, the reality is it's whoever the judge accepts, even given the California standards.

MR. POHL: Everybody is an expert.

DR. SAUNDERS: You are talking about the court proceedings. I'm not talking about that. What Anna has talked about is the need for the profession to police itself, and you are talking about what is acceptable in a judicial proceeding. I certainly agree with everything that you said. What I am asking is, does the ABA, American Trial Lawyers Association, National Association of Criminal Defense Lawyers or National District Attorneys Association, or local groups of them, do they have a responsibility in this area in terms of keeping this type of false testimony out of the courtroom? Not in a judicial sense, but in a professional ethical sense.

MS. BROGNA: As long as you call it false; bias is difficult. That's what I was trying to say.

DR. SAUNDERS: Well, someone testified that the unsubstantiation rate or the false report rate was 65%, but as per David Finkelhor's presentation yesterday, that is clearly not only misleading but it's just flat false. Yet the defense experts are willing to testify to that. Does the trial lawyers association have a responsibility to its members to say, beware of this guy because he will tell you that this is true, but it's really not? So you need to watch yourself because you will be putting false testimony on.

MR. POHL: The problem with that is you are asking the trial lawyers association, because of information that they may or may not have, to condemn one person's research project, however the methodology was conducted, whether it's legitimate or not. That's no different than saying there is somebody else in the same organization who doesn't like David Corwin or another qualified expert, who thinks his opinions are garbage, and,

therefore, we shouldn't admit his testimony. That's an expert opinion in the legal sense of the word. How good or bad an expert is something that is going to be decided in front of a jury. It is up to the attorneys through cross-examination to show that the expert's figures are absolutely fallacious, they are based on poor methodology, they are improperly calculated, and he or she doesn't have all of the statistics.

MR. PLUM: If you are looking for the professionals to censor somebody, the only way that will happen is to have their license pulled or lifted. Now, each profession has its own policing mechanism, some of them being more effective than others. That's the only way you will achieve your goals.. I don't think the lawyers association or the prosecutors association will censor a particular doctor, unless that person has been censored by his own profession.

DR. CORWIN: This is my last point on the issue of using a single evaluator in these cases. The field has not progressed to the point where it is scientific enough to rely upon one evaluator. It is still open to honest differences with respect to an opinion. What is needed in terms of legal reform is to present the range of viewpoints and information, so that informed judges or juries can then decide.

MR. CRAMER: Do you have a comment? State your name, please.

MS. KINNEY: Nina Kinney. I just have one quick comment on judicial qualifications which Henry Plum mentioned and which no one followed up on. About 15 years ago in Texas there was a judge who was elected. He had the same name as someone who was very well respected as an attorney. He was not that person, but he got elected because people thought he was this well known and respected person.

In Alaska judges are appointed by the Governor, but they are selected from a pool that is approved by the Alaska Judicial Council. Four years later when they come up for re-election that Judicial Council asks attorneys from the general bar, prosecutors and law enforcement to rate how effective they think the judges have been in those categories. The Judicial Council recommends either continuing their appointment or not, and then the voters vote on them. That is another method that is a little cleaner than just a general election.

MR. CRAMER: On behalf of the National Resource Center on Child Sexual Abuse, I want to thank you all and commend you all for this discussion. I think we have all found it to be thought-provoking and to be helpful in pointing future directions for the field.

## APPENDIX A

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## The National Resource Center on Child Sexual Abuse

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

### APPENDIX B

#### THE NATIONAL RESOURCE CENTER ON CHILD SEXUAL ABUSE

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

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

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

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

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- Think Tanks, dynamic forums for experienced practitioners and researchers to explore current knowledge of critical issues and point directions for future work. (Reports of the proceedings may be purchased.)
- Targeted Assistance to foster culturally based competence in addressing the ethnic and cultural needs of children and families in the context of child sexual victimization, and to foster increased participation of minority professionals in the field.

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**GOALS OF  
THE NATIONAL RESOURCE CENTER ON CHILD SEXUAL ABUSE**

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

To help bridge research and practice

To serve as a model of interagency and multidisciplinary cooperation

To identify successful and newly developing treatment models

To support the professional and the field

To become a center of leadership and excellence in the field