

ALASKA LEGISLATURE COMMITTEES 1905-1900 00/2

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To help sex offenders gain empathy for others, victims of sex crimes tell them what it's like (right), and the offenders, often shaken, reply (below).



pist presents slides or taped scenarios selected to be particularly arousing to the client. When the plethysmograph shows that sexual arousal is just beginning, we repeatedly present an unpleasant stimulus (such as ammonia vapors or a mild shock to the leg) until arousal is gone.

We also use "minimum arousal conditioning," a technique that combines both aversive and boredom tactics. Through this self-administered therapy, offenders learn to recognize and control low levels of arousal elicited by their deviant fantasies. They give themselves whiffs of an unpleasant-smelling liquid whenever they sense

they are beginning to be aroused.

An even more powerful technique is "aversive behavior rehearsal," in which a client, using a mannequin, acts out his most recent sexual crime before a videocamera, knowing that the film will be shown later to others, such as members of his therapy group, other treatment staff, possibly friends and family. The client is first asked to talk in detail about his deviant sexual behavior and then to act it out with the mannequin, showing exactly how he "groomed," or manipulated, then sexually assaulted, his victim. He is also asked to describe his thoughts while role-playing so that the distorted

## SESSIONS WITH VICTIMS MAY HELP ALTER SEX OFFENDERS' BELIEF THAT VICTIMS ENJOY THE EXPERIENCE.

thinking that led to his sexual offending can be aired.

When the offender views his deviant behavior on tape a few weeks later in the company of his peers, professionals and possibly those most important to him, he may be profoundly shaken in ways that can dramatically alter interest and excitement levels in that behavior. We often keep the videotapes as part of the person's records and may use them in later therapy as well.

In addition to behavior therapies, we sometimes use the drug Depo-Provera (medroxyprogesterone acetate), a powerful antiandrogen that can reduce a man's testosterone production to prepubertal levels. However, since this therapy has many side effects, it is used sparingly and only if other behavioral therapies fail to reduce deviant sexual arousal or if deviant fantasies are so intrusive that they interfere with therapy.

Large doses of the drug can inhibit sexual functioning to some degree, but more often it is given in moderate weekly doses to quiet clients' sexual fantasizing and daydreaming. Some clients, even in the first week of use, report a marked decrease in all fantasies, including sexual ones. Others, however, may take up to a year or more to respond fully.

The lessening of offenders' sexual thoughts and fantasies helps in therapy and in conditioning processes, especially for those who are very sexually compulsive. The more that sexuality—rather than anger or aggression—motivates a client's sexual offenses, the more useful Depo-Provera appears to be.

Most of our treatments are designed to reduce deviant sexual arousal and interest. But all adults—including sex

offenders—need some sexual outlets, and we believe that sex offenders are less likely to reoffend if they can develop more satisfactory sexual relationships with appropriate partners.

Many of our clients, in addition to their deviant arousal and behavior, have normal heterosexual arousal and relationships, and some are married. Others, however, who are barely aroused by normal sexual stimuli, may not have had normal sexual experience or may find appropriate sexual behavior very difficult. With them we function like sex therapists, using a variety of behavioral and cognitive techniques to enhance normal arousal and help clients overcome some of the psychological barriers to normal sexuality.

As sex offenders progress through our therapy program, we periodically reassess their deviant and nondeviant

sex offenders treated at our hospital reportedly had committed an estimated 25,757 sexual crimes, including rape, child molestation, exhibitionism, voyeurism, obscene phone calls and frottage (rubbing up against people). Psychiatrist Gene Abel of Emory University, who has accumulated data on more than 500 sexual offenders, also reports that the average number of sex crimes committed by an adult offender is usually in the hundreds (see "Discovering and dealing with deviant sex," *Psychology Today*, April 1985).

Most untreated sex offenders released from prison go on to commit more offenses—indeed, as many as 80 percent do. By contrast, the recidivism rate for sex offenders who have completed state-run treatment programs is estimated by the programs at between 10 and 25 percent. Of those who

patterns and can substantially appreciate how their behavior affects others, they are likely to revert to their deviant patterns.

The most challenging clients for our treatment program—and the ones most likely to reoffend—are those who are the most antisocial and sociopathic, whose deviant fantasies and behavior have dominated most of their lives and who have had the most frequent offenses. "Fixated pedophiles" such as Fred, men obsessed since early adolescence with the fantasy and reality of sex with children, are particularly difficult to treat successfully. Although Fred's deviant arousal has lessened somewhat during several years of treatment, he still clings to the delusion that if he found the "perfect" child, one who really enjoyed sex, that relationship would be legitimate. Some rapists, particularly those who are very antisocial and are highly aroused by deviant stimuli such as sadistic rape, are also likely to respond poorly to treatment or to drop out and reoffend.

Given the current limitations of our young field, we simply cannot guarantee absolute change in behavior or complete rehabilitation of sex offenders, any more than we can predict with certainty whether an individual is likely to commit another offense or become dangerous again. However, we are working to improve in all these critical areas.

Many state-sponsored treatment programs now exist tenuously, viewed with ambivalence by a public uncertain that sex offenders "deserve" more than the punishment of prison, concerned about the expense of treatment (which may be greater than the cost of imprisonment without treatment) and shocked that some of our clients, despite our best efforts, nonetheless commit further sexual offenses. The public and policymakers will have to decide whether the benefits—an appreciable reduction in recidivism and in potential victims who may later become victimizers themselves—outweigh these costs. □

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## MOST UNTREATED SEX OFFENDERS GO ON TO COMMIT MORE OFFENSES— INDEED, AS MANY AS 80 PERCENT DO.

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arousal patterns using the plethysmograph. We recommend that before offenders leave the inpatient program, their levels of deviant sexual arousal should be appreciably lower than their levels of nondeviant arousal. If this is accomplished, and if other areas of treatment have been successfully completed, the offender can be discharged from our inpatient program, paroled and followed for another 18 months in our outpatient aftercare therapy program.

How well do such treatment programs work? We can begin to answer this question by looking at untreated sex offenders. Our data show that, beginning in adolescence or even earlier and continuing into adulthood, many sex offenders had committed sexual crimes for 15 years or longer before their first arrest and conviction. Without intervention—whether incarceration or treatment or both—they would, in all probability, continue to create new victims indefinitely. A total of 53

have completed all three phases of our treatment program, fewer than 10 percent have reoffended sexually. However, this figure does not take into account our dropout rate of more than 50 percent.

We believe that the dramatic difference in recidivism rates between treated and untreated offenders attests, in part, to the success of our collective efforts, even allowing for the fact that those who participate in voluntary programs such as ours may be somewhat more motivated to change than the average sex offender.

No responsible professional in our field would claim that sexual deviancy can now be cured. We can give sex offenders skills and methods for controlling their deviant behavior, but it seldom can be eliminated. They must be motivated and willing to use what they've been taught for life. Sex offenders may adapt their behavior superficially, but unless they develop noncriminal, even empathic, thinking

PUBLIC SECTOR

Views of child molesters

"I thought sex was a good thing, the more of it the better," says Jim, a child molester with more than 40 victims, many of whom were sons and daughters of friends. His and other men's sexual abuses of children are discussed in the April 16 PBS Frontline documentary *Men Who Molest*.

terial. One wife listens to her husband describe how he molested their 3-year-old daughter; an offender is confronted in prison by his 7-year-old niece, whom he raped when she was 4; the same 7-year-old, during a therapy session, graphically reenacts her rape using dolls.

Despite the potential for exploitation, the show, to its credit, covers the topic with sensitivity and balance, and debunks some myths about of-

the program, prison sentences for child molesters average less than one year), and even those in therapy may reoffend.

"He wants to help himself," says a woman whose brother is in prison for raping her daughter. "But I'm wondering how much of it he's doing because he knows he can get through the prison system quicker if he's cooperative."

The film's focus is on effects and treatment. It doesn't spend much time probing the psychological or biological reasons for why these men are attracted to children in the first place. Still, *Men Who Molest* raises questions about a disturbing issue. At the very least it may increase public awareness of the problem, alert people to protect their children and possibly encourage victims and offenders to seek help.

*Men Who Molest* was directed by Bobbie Birleffi, and produced by Rachel Lyons.

—Elizabeth Stark



Lang Taylor, a therapist at Northwest Treatment Associates in Seattle, leads a group session for child molesters.

The program focuses on offenders who have been caught and prosecuted for their crimes and are receiving mandatory therapy—from behavior modification to group therapy—at Northwest Treatment Associates in Seattle, the nation's largest community treatment program for child molesters.

The sex offenders range in severity from Jim, who therapists admit may be untreatable, to Wayne, who molested his teenage daughter, but is now doing well in treatment and has begun to rebuild his relationship with her. The two are reunited on camera for the first time since the revelation of the sexual abuse—one of many emotional moments in a program that contains a great deal of powerful ma-

terial. They are not strange men in raincoats hanging out on street corners; molesters usually know their victims. And because offenders often seem so normal, people "try to find some other explanation than that the offender is turned on by children," says Lucy Berliner, a social worker who works with victims and their families at the Sexual Assault Center at Harborview Medical Center in Seattle.

A cross-section of experts—from a judge who tries and sentences child molesters, to therapists at Northwest—all address the dilemma of what to do with offenders. Should they be treated or locked up? Those sent to prison will be back on the street sooner or later (according to

Discovering and dealing with deviant sex

"Flashers" may expose their private parts, but they and other sex offenders are loath to reveal their private sex lives. Many either cannot or will not cooperate fully with the usual type of clinical interview. Further, those in jail typically conceal the full nature and extent of their sexual offenses for fear of new charges and lessened chances for parole.

Perhaps for these reasons, the traditional view among therapists and the police is that each sex offender typically has only one type of deviant arousal. But a recent study of outpatient sex offenders has come up with some disturbing data suggesting that multiple types of deviant arousal are common in this group, and the number of deviant sex acts committed by the average sex offender is far greater than had generally been believed.

In an 11-year period, a research

team studied men who were in outpatient programs for sex offenders at medical centers in Mississippi, Tennessee and New York. The men participated under a Federal Certificate of Confidentiality, which encouraged their candor.

During the assessment, the researchers fitted each man studied with a "circumferential transducer" that measured penile changes while he was exposed to movies or tapes of various types of sexual behavior such as rape, sex between consenting heterosexuals and sex with children. When confronted with recordings of penile arousal that contradicted what they had said at an initial clinical interview, more than half of the patients (62 percent) admitted to hitherto concealed sexual interests and behaviors. Nearly half reported engaging in more than one type of deviant sexual behavior, with the average offender engaging in three to four. For example, among 159 men who reported incest with girls and women, numerous additional offenses were reported: Forty-nine percent had molested young girls and 12 percent young boys outside the home; 6 percent were frotteurs (rubbing against people); 7 percent were voyeurs (peeking at people); 20 percent were exhibitionists; 19 percent were rapists of female adults; and 12 percent had committed homosexual incest at home.

The study revealed, as well, that the number of deviant sex acts committed by the average sex offender is far greater than had generally been believed. In the research sample, the average individual had committed 520 deviant sex acts by the time he was studied. On average, 12 years had elapsed between the first stirrings of interest and treatment.

The study also revealed differences in the ages at which various types of deviant arousal began. For half or more, voyeurism began before age 15, homosexual sex with children before age 16, frottage before age 17 and exhibitionism before age 18.

(Most had developed deviant sexual interests and fantasies by age 12 or 13, before committing any sex crimes.) The age of onset is particularly important because it is related to treatment responses: Generally, the earlier the arousal starts, the more difficult it is to treat effectively.

The same research team has also conducted a study evaluating the efficacy of three different treatment "packages" that were used with 192 child molesters. Two treatment packages consisted of social-skills training plus assertiveness training, and a crash course in sex education combined with training to deal with cognitive distortions related to sexual involvement with children. A third treatment package—consisting of "covert sensitization plus satiation"—was designed to break the association between deviant fantasies, deviant arousal and orgasm. The researchers trained patients to pair their deviant arousal with images of unpleasant events and to pair their aberrant fantasies with the unarousable state after orgasm.

Preliminary results suggest that the third treatment package is the most effective, judging by self-reported behavior after treatment. Of the 65 percent of the patients who stayed in treatment, incest offenders had the best treatment response at a 12-month follow-up: Ninety-six percent had stopped their deviant behavior. Least responsive were those who molested children 14 and older, having only a 75 percent response rate.

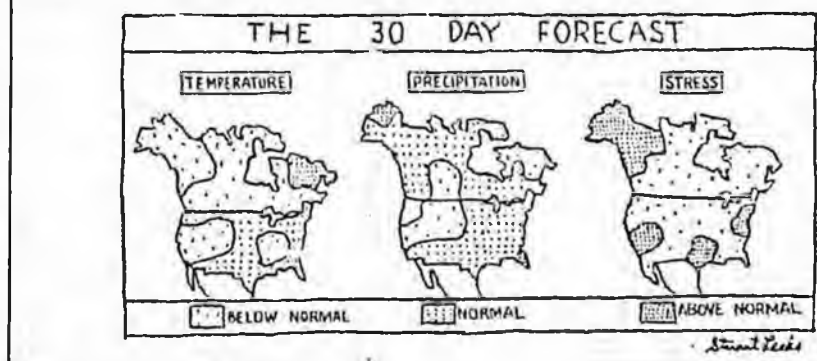
Among those who reported having committed offenses after treatment, only 11 percent targeted girls; the rest targeted boys.

The researchers believe, on the basis of patients' self-reports, that deviant sexual behavior, which begins with deviant sexual fantasies, develops when the fantasies become linked with masturbation and are "rewarded" through orgasm. It is not yet known what triggers overt deviant sexual behavior, or whether there are people who, despite deviant arousal patterns, do not act on them with other people.

The investigators suggest that primary prevention efforts should focus on adolescents who develop deviant sexual arousal patterns at an early age. Help is needed well before age 18, before the adolescents become involved in single or repeated sex crimes. Most of these youngsters know their arousal patterns are unusual, but don't know what they mean and usually do not discuss their concerns with their parents. Thus, the researchers stress the importance of finding ways to provide children with information that can help them to understand the significance of what they are experiencing as well as their need for mental-health treatment.

The studies were conducted by psychiatrist Gene Abel, psychologist Judith Becker and epidemiologist Mary Mittelman at the Research Foundation for Mental Hygiene in New York, N.Y. Abel is now at Emory University in Atlanta, Ga.

—Anne H. Rosenfeld



3/21/1984

S-321

1. consistent success rate  
- 100%

# THE TREATMENT OF CHILD MOLESTERS

Gene G. Abel, M. D.

Judith V. Becker, Ph.D.

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Measure success  
Measure

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## Chapter I: Introduction

### Treating Child Molesters

Child molestation is an exceedingly common sexual crime that affects one in four females in the United States. A variety of programs have been established to deal with the aftermath of child molestation, but few programs are focused on preventing child molestation by treating the child molester himself. If the incidence of child molestation is to be decreased, greater efforts need to be focused on treatment methods which will help the molester gain control over his deviant behavior.

This treatment manual has evolved from grant MH 36347 "The Treatment of Child Molesters," funded by NIMH: Center for Studies of Antisocial and Violent Behavior. This clinical treatment-research project is investigating the relative effectiveness of various treatment elements for child molesters (the details regarding the research design can be obtained by requesting the original grant application from the Center for Studies of Antisocial and Violent Behavior, Alcohol, Drug Abuse and Mental Health, Room 7-103, 5600 Fishers Lane, Rockville, Maryland 20852).

### Demographics

The demographic characteristics of the subjects treated with this multicomponent treatment program are important because they identify who the treatment has been effective with, and therefore, the likelihood of generalization of this treatment package to other offender populations. The demographic characteristics can be found in Tables 1, 2, and 3. For purposes of human investigation and the ability to give consent, this project requires all participants to be 15 years of age but there was no upper age limit on participants. Ages ranged from 18 to 76, with a mean of 34.4 years and a mode of 18 years.

Recruitment of participants was broad-based and involved notices in local papers, radio and television show interviews and presentations of the program to the courts and mental health groups. A severe limitation on the acceptance of subjects into the program was that they not be coerced into treatment. This requirement made subject recruitment more difficult since motivation for many sex offenders, especially those just released from prison, is poor. Given these limitations, Table 1 shows that 27.8% of referrals were from therapists, 19.6% from lawyers (involving cases in which conviction was not possible), 13.4% from parole (where it was not required that the parolee attend treatment in our specific program), 8.2% from other social services, and the remaining referrals came from a variety of other agencies.

The ethnic background of participants closely approximated the New York City census, with 60% of subjects being Caucasian, 20% Black, 15% Hispanic and the remaining groups from smaller ethnic minorities. The social class of participants was predominantly classes 3, 4, and 5 as determined by the Hollingshead socio-economic status rating. However, 9% of participants came from class 2 and 3% from class 1, demonstrating that problems of sexual deviation cut across all classes and ethnic backgrounds.

The majority of participants were single (47%), 29% were married and 13% were divorced or separated (frequently as a result of their past deviant behavior leading to disruption of the family in cases of incest, or a decision by the spouse that she could not tolerate the subject's deviant pedophilic behavior and wanted to separate).

Table 2 shows the educational background of participants to be relatively high, with 32% having at least one year of college (or completing) and 9% completing graduate school. The majority of participants were employed, with only 12% unemployed for less than a month.

Participants' religious preferences crossed all religions, with 34% Roman Catholic, 12% Baptist and a variety of other religious preferences as outlined in Table 2.

Table 3 indicates the motivational forces behind the participant seeking treatment, with 34% indicating that self-motivation was the key factor; 18% reported lawyers/legal aid were motivating, 15% said doctors/social workers were motivating, 12% said probation/parole motivated them and the remainder indicated various other reasons. Table 3 also indicates that 48% participated totally voluntarily, 25% through slight pressure from others, 14% through moderate pressure from others, 10% heavy pressure from others and 2% extreme pressure.

In conclusion, the demographic characteristics of our population confirmed that participants were drawn primarily from a younger population and through various referral routes. Participants were from all social classes and their ethnic backgrounds reflected that of New York City. Almost half of our participants were single, the majority were fully or part-time employed and they were well educated. They were self-motivated and participated voluntarily in the majority of cases.

#### Treatment Evaluation

Of major concern to any treatment project is the effectiveness of the treatment. This is a difficult problem for any treatment outcome study since there are multiple ways of evaluating treatment effectiveness. It is an especially difficult problem when treating sex offenders because their deviant sexual behavior is usually unknown to others. It is estimated conservatively that only 1 in 60 sexual crimes actually leads to arrest. Therefore, arrest records are very poor criteria for evaluating treatment outcome.

An alternate method is to develop a system that extensively protects the confidentiality of the subjects' records. We have taken this approach. Subjects were each given an identification number and all information pertaining to their deviant behavior was coded by number so that no names existed in the charts. Secondly, extensive consent forms were used which clarified that the participants were not to identify the specifics of any sex crime. Without the specifics of any sex crimes being recorded, the information in participants' charts is of minimal value to others and, therefore, is easier to protect. Thirdly, the project had a Certificate of Confidentiality from the Secretary of H.E.W. This certificate (an actual federal law) makes it illegal for any city, county, state or federal agency or agent to obtain information pertaining to the participants. Fourthly, the code system that linked the participant's name with his identification number was held outside the United States by an individual not paid by the agency funding the treatment project. This allowed the holder of the identification number-names to operate independently of the treatment program and not to fear legal attempts to obtain the number-name link. Finally, interviewers and therapists acted as a filter system for data that should not enter the records. For example, if a participant inadvertently identified specifics of his sexual crime, these specifics were not written down in his chart.

The effectiveness of this confidentiality system is apparent since throughout the course of the project (and during the 18 years the investigators have worked with sexual offenders) there has been no breach of confidentiality and no one has gained information from our files.

Given all of the above steps to protect confidentiality, participants have entrusted the interviewers and therapists with extensive information regarding offenses and reoffenses. The large number of crimes and reoffenses revealed by participants demonstrates that participants felt free to report crimes previously unknown to others and certainly unknown to the criminal justice system.

#### Success Rates

To evaluate treatment success rates requires that participants complete the 30 week treatment program and sufficient time must pass for them to be evaluated 6 and 12 months after treatment is completed. As of this writing, data is available on 87 participants completing treatment (see Table 4) and as of the 31st week after treatment began (a 1-week follow-up), 86 of 87 offenders had stopped their deviant sexual behavior (98.9% success).

Six months following completion of treatment, 44 subjects have been reevaluated. Thirty-nine of 44 such individuals had stopped molesting children, a success rate of 88.6%. Twenty-four individuals have completed the 12 month reevaluation and 19 of 24 have stopped

molesting children during the 6 month interval, beginning 6 months after treatment and ending 12 months after treatment. The success rate during this interval was 79.2%.

Table 4 shows the specific details of these outcome results. To evaluate the impact of treatment on participants, the number of child molestations (primary diagnosis) were computed for the 6 month interval before treatment began. The 87 participants had committed 2,019 child molestations, for an average of 23.21 child molestations per offender in the six month interval just prior to treatment. During the 31st week after treatment began 2 molestations had been committed by 1 subject, 5 of the 44 participants reaching the post 6 month point had reoffended (the 5 had committed 73 child molestations between then). During the interval from 6 to 12 months post treatment, 5 of 24 participants reoffended, (the 5 had committed a total of 116 child molestations, however; 1 subject had committed 67 of those crimes).

The effectiveness of the program is highlighted by examining the average number of child molestations (by primary diagnosis) in the 6 month period prior to treatment (23.21 molestations per offender), the number of molestations committed one week after completion of treatment (.02 molestations per offender), the number of molestations occurring in the 6 month interval immediately after treatment (1.66 molestations per offender) and the number committed during the 6 month interval from 6 to 12 months post treatment (4.83 molestations per offender).

The effectiveness of treatment is even more startling when one looks at the therapist hours needed per offender to complete the treatment. Less than 6.6 hours (per offender) of therapist time were needed to produce the above treatment effectiveness (see Table 5). Even with therapist time at \$100 per hour, the total expense per offender amounts to less than \$700. The current cost of incarceration ranges from \$15,000 to \$40,000 per offender per year in most states. The cost effectiveness of outpatient treatment is obvious.

#### Organization of Treatment

This manual describes six specific treatment elements that were used to treat child molesters on an outpatient basis. The treatment elements are equally applicable for any type of sexual deviation, not just child molestation. Each of the six elements is completed during five one and one-half hour treatment sessions.

The first two elements are those that assist the offender in decreasing his sexual arousal to young children, Covert Sensitization and Satiation. Satiation reduces arousal by satiating or boring the sex offender with his own deviant sexual fantasies. Covert Sensitization teaches the offender to disrupt fantasies of young children by replacing them with aversive images.

The next two elements involve Cognitive Restructuring and Sex Education. Many child molesters have faulty attitudes or beliefs

Table 4

Number of Completed Deviant Acts and Success Rates Post Treatment

	<u>N</u>	<u>Subjects</u>	<u>Average</u>
All completions committed before entering treatment	40,991	87	471.16
Completions, primary diagnosis 6 months pre-treatment	2,019	87	23.21
Completions, primary diagnosis 1 wk post treatment	2	87	.02
Completions, primary diagnosis 6 months post treatment	73	44	1.66
Completions, primary diagnosis 6-12 months post treatment	116*	24	4.83

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	<u>Did Not Molest</u>	<u>Total N</u>	<u>Success Rate</u>
1) Number who did not molest (primary dx) 1 wk post treatment	86	87	(98.9%)
2) Number who did not molest (primary dx) 6 months post treatment	39	44	(88.6%)
3) Number who did not molest (primary dx) 6-12 months post treatment	19	24	(79.2%)

\* Note: At post 12, 1 subject committed 67 crimes.

As of 3/21/84

Significant numbers of sexual offenders are teenagers. Studies of incarcerated offenders reveal a majority began to have problems in adolescence. Although not all teenagers who commit sexual offenses will become adult offenders, identification and intervention at an early age is very important. Teenage offenders may commit violent assaults on peers or adults, or, more commonly, may sexually molest a younger child. About one-third of known adolescent sex offenders molest young children in their own family, and two-thirds abuse children outside their family units.

Any sexual activity which is forced on another person, either by violence or threat, or in which there is a significant age difference between the two people involved, should be considered a sexual assault. It is not normal or healthy for a teenager to be sexual with a preadolescent child, and a professional evaluation should be done to ascertain the nature of the teenager's problem. When the sexual activity is between consenting peers (e.g., two five year olds playing doctor, or mutual masturbation between two twelve year olds) it is probably normal sexual experimentation.

The teenage *rapist* usually uses force or a weapon, and may injure the victim. He is dangerous and violent and must usually be removed from the community. Many of these boys appear quite appropriate in many ways, and may not have other problems in school, family or peer adjustment.

The teenage *child molester* is usually a boy, although a girl can be an offender, too. The victim is usually a boy or girl related to or known by the offender. Frequently, the assault occurs in a babysitting situation, but it may also happen during playtime, as part of "initiation" into a group, or as "sex education." Although usually this type of abuse is not physically violent, sometimes there is physical harm to the child victim or threat of violence to ensure cooperation. Other kinds of pressure may be used, such as bribes or trading favors in exchange for the sexual activity. In addition, children may be frightened by statements and actions which would not seem as serious to adults.

The teenage child molester can have other problems as well as the sexual problems. Adolescence itself is a hard time for many kids. Some of the common problems seen in teenage offenders are poor social development, like being shy or alienated from peers, or acting immature for his age. H/She may have little impulse control and be aggressive toward others. H/She often has developmental delays in school performance. There is almost always a

ISSUES IN THE EVALUATION OF THE SEX OFFENDER

A Presentation At  
The Washington State Psychological Association Meetings  
May, 1982

SP 302

1982

by  
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Prior to the past few years, the evaluation of the sex offender has not been an area of assessment which has demanded much professional attention. There are several reasons why it has now become so prominent. The ubiquitousness of the offense has finally demanded much public attention. There also has been a growing attention in the community to the issues of sexual abuse. Increasingly, the Criminal Justice System has placed an importance on formal psychological assessment in deciding case disposition where there has been a sexual offense.

There is an increasing likelihood that many psychologists will be called upon to do this type of evaluation. Some of you have been asked to do assessments of this kind. Those who have conducted such evaluations, but have not yet established specialized credentials in this realm, may be aware that your reports are looked at, by some, with suspicion. You may have had your credentials carefully reviewed and, possibly, had your reports rejected as a basis for decision making. The evaluation of the sex offender has, by necessity, become a speciality area. Knowledgeable people who work within the Criminal Justice System have begun to place much emphasis on evaluators who have specialized training or a background of experience with this narrow population. It has become reasonably evident that competent mental health professionals without this specialized expertise are more prone to errors such as undercalling risk; inattention to, or over-simplification of the variables that are relevant; and making unrealistic and/or dangerous recommendations. My experience leads me to believe that this trend towards specialization is appropriate and necessary.

I would like to look with you today at what makes the assessment of the sex offender so different from the process of evaluating individuals who present with the more customary mental health problems. In that most sex offenders who are apprehended are males, we will be discussing this population. One major difference in evaluating the sex offender is the referral questions asked. Although usually some general assessment is required, the referral questions about the sex offender are frequently focused on specific issues: a) legal diagnosis, b) dangerousness, c) seriousness or relevancy of the offending behavior, d) treatment amenability, and e) specific recommendations for case disposition.

A second difference is that the sex offender is typically not a voluntary client. This person has not voluntarily sought assistance, nor have they defined their own problems or needs. Almost all are seeking help (and evaluation) because they are in trouble. A third party (police, Children's Protective Services, etc.) is most often leveraging the person to obtain a formal assessment. The client is on an adversarial footing with the authorities and, to some degree, agrees with the examiner. Lying and deception

problem in the ability to form close relationships and communicate with others. Most have had little or no sex education, so h/she might have incorrect ideas about acceptable sexual development and behavior. Family relationships are often marked by poor communication. And many of the offenders have themselves been victims of emotional, physical or sexual abuse.

Most children are afraid to tell, especially if there has been some threat, so it may not come out right away. Sometimes the child doesn't tell at all, but something is noticed or changes occur in her/his behavior. Once the child(ren) tell of the abuse, it may be hard to believe that a teenager could be an offender. Initially, the offender's parents often cannot or will not believe that their child is a sexual offender. This denial often makes it difficult for the boy or girl to admit to the abuse because h/she fears his/her parents' reaction. In many cases the parents of the victim and the parents of the offender are acquaintances, friends or relatives. This can put a great strain on a relationship.

Since it is known that a teenage offender can become an adult sex offender if h/she is not helped, the importance of reporting cannot be overemphasized. Like the adult offender, the adolescent offender will not go to counseling without outside pressure. It is almost always necessary to have court monitoring of the treatment.

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on the part of the client are typical. Compared to other circumstances, the context of a sexual offender examination is somewhat unique.

A third issue is that the sexual offense and sexual deviancy is defined legally; it is not defined by the person's subjective discomfort. It is nearly always a given, that at least to some degree, the behavior in question is ego-syntonic for the client. The hallmark of the sex offender is defensiveness. The offender's presentation of information is self-serving and often lacks objectivity and logic. Much of the individual's energy at the time of the evaluation is directed toward self-protection rather than designed to provide clarification. Although sexual offending is often a chronic behavior problem (even if the offense has been committed only against a single victim), the sexual offender is an extremely poor predictor of his future sexual behavior and a poor behavioral manager in that sphere of his life. Statements about future behavior (such as non-offending) cannot be viewed as reliable indicators, despite seeming honesty and sincerity. In explaining his behavior, sexual offenders often lean on social or religious biases and beliefs which have a ring of truth. Sex offenders are often otherwise law abiding citizens. It is very easy for that, alone, to color the examiner's assessment of risk about an offender. Our own biases about sexual abuse and deviant sexual behavior are strong, complex, and often contradictory. Working with the sex offender is an area of professional functioning where one's biases can easily intrude into one's decision making.

In almost all cases of sexual offending, there is an enormous amount at stake for the client; the client's family, the community at large, etc. There is also considerable at stake for the examiner, whose work moves into a public arena. The professional's responsibilities are multifaceted. They often seem contradictory and difficult to resolve. There are always enormous pressures on the examiner by individuals with a vested interest in the case.

Basically, what we as practitioners have generally learned in terms of working with a mental health population, does not serve us realistically with a sex offender or criminal population. With a mental health population, we are taught to rely on the patient's self-report, encourage the person to define his/her own problems, depend on his/her subjective discomfort as a motivator for treatment, and to have the person's future intentions and wishes guide us. In contrast, it can be all too easy to believe a sexual offender who states: 1) He feels very badly about molesting his daughter. 2) He only did it because of marital problems they were experiencing. 3) He had already stopped offending before being caught. 4) He had been, himself, on the verge of seeking assistance.

All of this takes on a different perspective when your experience demonstrates that: 1) Most offenders go through a cycle of being sexually attracted to offend: offending - feeling regret - promising themselves they will not reoffend - feeling confident that they are under control - feeling attracted to a deviant sexual choice - reoffending. 2) Marital troubles do not appear to cause sexual offending. In fact, many couples have marital problems and no offense occurs. 3) It is rare that sexual offending of this kind is transient; the problem typically becomes chronic.

Mental health practitioners are trained to adopt a helping, accepting, and caring posture. They are discouraged from taking an authoritative and controlling stance. The mental health approach emphasizes client support; one attempts to trust and believe one's client and have confidence in him. Although not completely so, this posture is the antithesis of the authority-based treatment approach one takes with a sex offender. Effective assessment and treatment of the offender requires a degree of skepticism and cynicism on the part of the professional. I tell my clients that I do not operate on a trust basis. Trust is what is abusable. I communicate to them that I have no intention of feeling confident in them. Feeling confident about them can be dangerous.

There are some additional things you need to know to do a good assessment of a sex offender. You must have an appreciation of the limits of risk prediction. For example, you must know that we are unable to identify sex offenders by any means in an open population. That is, there is no evidence that you can, in the absence of a finding of guilt or an admission of guilt, accurately identify those people in the community who are sex offenders. What we can do, is make refined predictions about an offender who we already know is a risk because of a demonstrated record of sexual deviance. To make adequate statements about risk you must define the specific risks involved and the situation to which you are predicting. Dangerousness is very much situationally determined. A man may be a very high risk to molest a child if he is living with youngsters, and a very nominal risk to offend against a child if he is living in an adults' only environment. One must also fully understand the importance of past behavior in risk prediction. There can be little question that the strongest predictor of future sexual offenses is past sexual offenses.

The practitioner must be knowledgeable about the controlling statutes in their jurisdiction regarding sex offenders. In the State of Washington, that that means understanding: 1) the sexual psychopathy statutes, 2) the child abuse statutes, and 3) the statutes regarding establishing dependency for minors. Similarly, the psychologist needs to have an understanding of the Criminal Justice System and its operation. We are not dealing with a true system; the justice system can be quite unpredictable, inconsistent, and arbitrary; it is an adversarial arena where there are competing parties and lobbies.

You must know something about the base rate for the offenses with which you are dealing and the offending patterns for specific offense categories. Again, one must stress an appreciation for the predictive power of both past offending behavior and past apprehensions for those offenses. There is a very strong relationship between the number of past apprehensions and likely recidivism.

There is a need to appreciate the chronicity and dangerousness of this population, the damage that is done by their offenses, and have some knowledge about victims and victimology. For example, there must be an appreciation for the fact that people infrequently make allegations about someone's sexual conduct without there being some basis for this. Children very rarely will make this allegation about parents for secondary gains.

The examiner should be knowledgeable about resources available to serve the offending population and the importance of this availability in assessing risk and making good dispositional recommendations. A man may be a reasonable risk for community treatment in Seattle, Washington where there are fairly extensive, specialized treatment resources for the sex offender, while he may be very dangerous in Juneau, Alaska, where no such services exist.

To better understand the sex offender, one should also be aware of the following:

1. After the sex offender is apprehended, there is often a "suppression effect". That is, the offender appears to lose interest in offending. That is a transitory effect and should not be confused with a substantive change in behavior.
2. The population which commits sexual offenses is extremely heterogeneous. There is no succinct profile that describes a sex offender. The offenders cut across traditional diagnostic categories and vary across demographic variables.
3. One can work effectively with the sex offender by viewing his sexually deviant behavior as a highly habituated sexual preference -- a habit not very dissimilar than alcohol abuse. One must view the offender as vulnerable to his deviant sexual preference indefinitely; he will fall prey to reoffense if he does not respect this vulnerability and ceases to manage his life in the ways necessary to prevent reoffense. Such a vulnerability model emphasizes that there is no cure, but rather relative mastery of a serious behavioral problems. It also focuses on the problems inherent in long term maintenance and the risk of later relapse.
4. The phenomena of sexually deviant behavior and sexual offending is extremely complex. There are always multiple causes for this problem. It is erroneous to think of a singular cause, such as alcohol use, family dysfunction, or marital discord.
5. One central factor in sexual offending is that the person has learned a deviant sexual preference, which leads them to seek sexual satisfaction in illegal ways. Although that may seem all too simple, it is a variable which goes frequently unaddressed.
6. Most of the useful concepts and effective interventions for dealing with the sexual offender come from cognitive-behavior theory. However, there is relatively little written that helps prepare you with the practical problems in assessment and treatment.

7. Sexual offenders can be treated successfully if treatment selection is careful. I stress selectively to emphasize that certain, but not all, offenders can be effectively treated. Useful treatment must address the person's deviant sexual preference and help him develop and enhance more appropriate sexual preferences and skills. Therapy must also address restructuring of the personality style, attitudes, and the belief system permits the offending behavior, as well as helping the person learn better behavioral management skills. Treatment must stress the importance of the individual managing his situational environment if he is to avoid reoffending. Again, sexual deviancy is a complex problem and effective treatment requires a complex treatment package.

The complexity of these problems and the context in which assessment is conducted dictates that caution is used in selecting cases for evaluation and that thoroughness be a priority. It would contend that the evaluation of the sex offender is best done by collecting as broad a data base as possible. This includes obtaining as much collateral information as is available, e.g. police reports, victim reports, information from family members, etc. Interview material without collateral verification can be very misleading. Extensive interviewing is a necessity. Although this paper is too limited for dealing with the parameters of the interview, I would like to stress the importance of obtaining as much information about the instant offense as is possible. Psychological testing is another means on which one can broaden the data base and obtain another type of cross referencing. There is an increasing use of physiologic monitoring as a means of better assessing arousal patterns in offenders. Although this is mainly used in research settings, there is some use in treatment environments. Overall, good assessment is time consuming and costly.

In conducting the evaluation, itself, the examiner must be concerned that the client has a full understanding of the purpose of the assessment process, the implications of the reporting process, and who will be receiving the information. The client must understand the role of the examiner as an objective evaluation and reporter -- a person who is not part of the adversary system and no-one's advocate. The offender needs an awareness of not only the importance of honesty and cooperativeness but the implications of dishonesty and a noncooperative stance. The client need know that you will not be conned; that you are skeptical and doubting.

The posture and personal style of the examiner is an important variable. In my experience, one needs to take an authority-based position, staying in control of the assessment process and freely utilizing his or her knowledgeability about this type of problem. A direct, focused approach to the offense and other relevant issues. The examiner must be willing to be confrontative and challenging. Although we are often taught to focus on why behavior has occurred, your assessment will be more effective if you focus on what has happened. The tough minded approach outlined here requires concern about the offender and empathy for his situation to strike an even balance.

Whenever evaluation is involved, professionals want to know the relevant variables to consider. The effective evaluation of risk and treatability requires assessing a broad spectrum of information and variables. I would recommend the following parameters for your consideration:

1. Offender Characteristics
  - A. Demographic considerations, such as age, education, employment, and marital status
  - B. Previous criminal history
  - C. The degree of preoccupation with deviant sexual behavior or the compulsive qualities of it
  - D. The responsibility the offender takes for his offense
  - E. Derisiveness and cognitive style demonstrated by the client
  - F. Client's perspective on their victims or potential victims
  - G. The degree to which they seem to have other sexual and social alternatives in their behavioral repertoire
  - H. The degree to which there is evidence of an ability to manage and control one's behavior.
2. Offense Characteristics
  - A. The type of offense, itself
  - B. The base rates and pattern for that offense
  - C. The amount of violence demonstrated
  - D. The number of apprehensions for the offense
  - E. Amount of risk taken
  - F. Whether the offense seemed predatory, explosive, or opportunistic
  - G. The use of disinhibitors, such as alcohol and drugs
3. Situational Considerations
  - A. Access to victims
  - B. How much there is at stake for the offender
  - C. The legal hold over the offender
  - D. The number of anchor points and natural monitors in his life, such as family, jobs, schooling
  - E. The social and sexual alternatives readily available in his situation
  - F. The attitudes of importance of people around him
  - G. The amount of adversity in his life situation
4. His Victims
  - A. Age of victim
  - B. Vulnerability of victims
  - C. The role the victims have played in discovery of the offender
5. Initiated Change
6. The Helping Resources Available
  - Appropriate resources available for treatment and appropriate case management

- 1 -

In summary, my goal is to alert you to the uniqueness, complexity, and difficulty in doing comprehensive evaluations of sex offenders. I would like to see psychologists more involved in this type of work, but I am persuaded that it would be a mistake to believe that your generic skills are sufficient to do the job. They are necessary, but not sufficient. I hope I have helped direct you to the additional knowledge base necessary to do this work and the assistance you will require to do an effective job. If you are doing this kind of work, learn to be selective of the cases you accept for evaluation. Do not try to answer the unanswerable. Do not be a fourth or fifth opinion. Be aware of the inherent conflict of interest involved in your being the potential treating person when you are recommending treatment. Be conservative on the side of respecting risk. Let the past behavior of the client speak loudly. Attempt to answer the addressable questions directly and thoroughly, but do not make assertions that cannot be reasonably justified and substantiated. Do not make statements such as:

"I know he will never do it again."

"I'm sure this man could not have committed the alleged offenses."

"I'm sure he has learned his lesson."

"This man does not resemble the usual profile of sex offenders."

"This is certainly the only time he has committed this type of offense."

Do not be reluctant to admit when no answer is available and remember that a conservative approach in assessment and decision making with the sex offender protects the client and the community.

TOTAL NUMBER OF FEMALE VICTIMS.....	457
TOTAL NUMBER OF MALE VICTIMS.....	31
TOTAL NUMBER OF FEMALE SIGNIFICANT OTHERS.....	350
TOTAL NUMBER OF MALE SIGNIFICANT OTHERS.....	120
TOTAL NUMBER OF CLIENTS.....	958

VICTIM'S AGE

5 years and under.....	8%
6-11.....	12%
12-18.....	20%
19-25.....	24%
26-30.....	23%
31-39.....	8%
40-49.....	3%
50-59.....	1%
60-69.....	0%
Over 70.....	0%
UNKNOWN.....	1%

ASSAILANT'S AGE

5 years and under.....	1%
6-11.....	1%
12-18.....	10%
19-25.....	12%
26-30.....	18%
31-39.....	9%
40-49.....	11%
50-59.....	5%
60-69.....	7%
Over 70.....	0%
UNKNOWN.....	31%

REPORTING TIME

0-3 days.....	30%
4 days-1 week.....	3%
1 week - 1 month.....	11%
1 month - 6 months.....	9%
6 months - 1 year.....	3%
Over 1 year.....	4%
Over 2 years.....	3%
Over 3 years.....	2%
Over 4 years.....	3%
5-10 years.....	6%
10-15 years.....	5%
Over 15 years.....	9%
UNKNOWN.....	12%

VICTIM'S RACE

Asian.....	1%
Black.....	5%
Caucasian.....	66%
Hispanic.....	1%
Indian (American).....	1%
Native.....	18%
Other.....	1%
UNKNOWN.....	7%

ASSAILANT'S RACE

Asian.....	0%
Black.....	9%
Caucasian.....	47%
Hispanic.....	1%
Indian (American).....	0%
Native.....	7%
Other.....	0%
UNKNOWN.....	34%

ASSAILANT'S RELATIONSHIP TO VICTIM

Stranger.....	16%
Acquaintance.....	20%
Friend.....	9%
Co-worker.....	0%
Supervisor/Boss.....	1%
Partner/Lover.....	1%
Spouse.....	2%
Ex-Spouse.....	1%
Father.....	14%
Step-Father.....	4%
Other Relative.....	14%
Other.....	10%
UNKNOWN.....	8%

Patricia M. Francis  
815 Brown Deer Rd.  
Ketchikan, Ak. 99901  
907-225-5827

House Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Ak. 99811

March 26, 1986

Dear Sirs:

Thank you for your timely response to my letter concerning House Bill No. 554.

I agree completely with you that this is a very difficult and controversial subject we are dealing with. However, each one of you declined to tell me exactly where you stand on this bill, which I am very interested in knowing. Also, I would be very interested in hearing why you feel the way you do about it.

Additionally I would like to address a few items in the bill that I am very concerned about.

First, I hope it is safe to say that every one of us knows that anyone who commits any type of sexual crime, be it incest, sexual abuse of a minor or rape, causes terrible and irreparable mental and sometimes physical injury to the victim. This being understood, I will not dwell on that aspect of your bill.

Of most concern to me are several items in section 7 of the bill which I would like to address individually.

- #17 - Sexual crimes are very devastating to the victims irregardless of whether the defendant is 17 or 65 so an age limit of 25 makes no sense.
- #18 - This sounds reasonable in theory, but only if it can be guaranteed and proven that rehabilitation is effective. This has not been the case in the past.
- #19 - In most every case of sexual assault and in all cases of incest, the defendant has repeatedly committed the crime against his victim without being caught and may consequently have no prior record.
- #20 - This stipulation astounds me! I cannot believe you do not realize how easy it is to demonstrate total remorse if it means less time spent in jail!

# CORRECTION

THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY

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Father .....	14%
Step-Father .....	4%
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Other.....	10%
UNKNOWN .....	8%

LOCATION OF ASSAULT

Victim's Home .....	13%
Assailant's Home .....	14%
Mutual Home .....	25%
Friend's Home.....	2%
Relative's Home.....	1%
Place of Work.....	1%
Public Place.....	8%
Victim's Vehicle.....	2%
Assailant's Vehicle.....	8%
Mutual Vehicle.....	0%
Other .....	8%
UNKNOWN.....	18%

TITLE OF FORCE USED

Witness to violence.....	1%
Implied Threat.....	15%
Verbal Threat.....	20%
Threat of Hurting Others.....	2%
Deprivation (Food, Medicine,etc.)....	0%
Other Mental.....	1%
Destruction of Property/Pets.....	0%
Physical Force Used .....	30%
Use of Weapon/Object.....	8%
Other Physical.....	1%
Other.....	0%
UNKNOWN .....	22%

REPORTED TO POLICE

Yes.....	59%
No.....	29%
UNKNOWN.....	12%

PLEASE NOTE: Percentages are based on total number of victims.

Patricia M. Francis  
815 Brown Deer Rd.  
Ketchikan, Ak. 99901  
907-224-5827

House Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Ak. 99811

March 26, 1986

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- #20 - This stipulation astounds me! I cannot believe you do not realize how easy it is to demonstrate total remorse if it means less time spent in jail!

- #21 - Although it is very often hard to show, due to the large amount of humiliation and embarrassment to the victims, most all sexual assaults are not isolated and are often premeditated.
- #22 - If a person of diminished capacity kills or injures another person on our highways, he is tried in our courts and being drunk or high on drugs is absolutely no excuse. A double standard for diminished capacity would lend a prejudice to victims of a crime just as incapacitating at times as death.
- #23 - This stipulation weighs heaviest of all. As with my case for an example; my father had himself committed to a mental institution for his "problem", the result of this was that he spent 15 days in a hospital and I was taken away from my family and placed in a foster home for a year. I felt then and still do that I was the one punished. At the time of his arrest, he was trying to have himself committed again, this time in the V.A. Hospital-Mental Ward. If this amendment were in affect then, he most likely would have spent even less time in jail.

The last item I wish to address is Section 11: Anyone who commits such a horrendous act against another person obviously has no regard for any rules unless it is to their advantage to do so. I feel strongly that any person who so intrudes themselves upon another in such a demoralizing and degrading manner, effects that, for the victim last a lifetime, do not deserved to be released on parole to hurt other innocent people.

The victims themselves need to know that these "defendants" are going to be punished for their crimes.

I ask again that you leave the Presumptive Sentencing Law just as it is now.

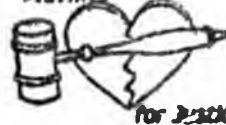
Thank you for your time and once again I very much want to know how you stand on this Bill and why.

Sincerely,

*Patricia M Francis*

PATRICIA M. FRANCIS

VICTIMS



3100 Mountain View Drive  
Anchorage, Alaska 99501

Dear Legislators,

I am sorry to see some of you want to change the presumptive sentencing. I seriously questions whether the prosecutors or police agencies would support this bill. A bill that makes it hard to get a dangerous person contained for serious crimes if he is a first offender.

Mr. Clocksin's philosophy that crowded prisons are due to presumptive sentencing does not coincide with many other people's philosophies.

Many people feel that the overcrowding of prisons occur when a person first chooses, or is influenced through peer pressure, to a life of crime. This person, through experience, if under 18 discovers that he does not have to pay any consequences for doing criminal activity. The first time he does something he may get his hands slapped and can continue doing what he or his friends wish. Each repeat performance ingrains a better way to persue this life style and makes it easier to do criminal acts. Then if under 18 he gets the opportunity to be contained. This person discovers that there are really nice facilities and caring people. He also associates with peers who are more experienced and learns better ways of conducting his criminal activities. This person has a lot of free time to think and to talk and to learn his "rights". (somehow the people who fight so hard for the criminals rights forget what these people have done to the victim. The victim pays his taxes and supports the system but has less rights than the criminal).

I know in the adult prisons that offenders have a lot of free time and if an offender has trouble with sex, violence etc., the things this persons chooses to put into his mind are sex, violence, etc. Our prison system allows cable T.V. which cost the tax payers. The prisoner is allowed to feed on sex and violence as well as read it. When they get out most offenders can then act out what they have put into their minds.

Why cannot our prisons be a place to help build up positive self images. I feel there should be a time of hard work and controlled input. An athlete works hard and taxes his body by putting it through great physical stress. The rewards are great. Why should we not allow these people to experience the opportunity to work and experience its physical gratification. We should also let them see another way of life, that of positive input, movies that are non-violent, and music that soothes.

We must remember that people who get into a jail situation have hurt other people or taken their property. Instead of supporting the criminal we should consider protecting the

tax supporting citizen. By treating the criminal as a criminal, by giving him some new experiences of positive and moral input while contained in an institution will do more for his chance of rehabilitation than our constant "rights issue". When someone takes away a persons rights their should also be taken away. They are lucky to live in a country who has such a regard of human life.

Alaska has statistically more young people than most states. It is strange that we do not have a juvenile prison. If we put this as a priority and started "nipping crime when it first begins our adult prisons would not be so full. I also feel that if we have this prison, and put a juvenile who commits a repeated offence into an institution that works them hard for part of the day, and keeps their time so filled that there is not time for the mind games that create more serious problems. A juvenile who spends one week in an institution that treats them like they are a prisoner instead of a poor deprived child will do more to re-habilitate; this in time will diminish the crowded prisons!

It is too late to solve the problems of criminals after the fact. Lets nip crime in the bud!

*Janice Lunkert*

# ALASKA PEACE OFFICERS ASSOCIATION

DDC Coordinator  
P.O. Box 103520  
Anchorage, Ak.  
99510-3520  
(907) 376-9177



State APOA Office  
P.O. Box 103520  
Anchorage, Ak.  
99510-3520  
(907) 376-9177

March 4, 1986

Honorable M. Mike Miller  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Mr. Miller:

The Alaska Peace Officers Association, representing 898 peace officers statewide, would like to make the following comments on House Bill 554.

1. Persons sentenced to presumptive sentences should not be eligible for parole.
2. At a time when the public feels that juveniles should be held accountable for their actions, the age of the defendant should hardly be a mitigating circumstance.
3. Most prisoners do demonstrate potential for rehabilitation when faced with jail time. However, they also faced jail time before they committed the offense, but the offense was still committed. Thus what are the real probability of rehabilitation.


"After 20 years on the bench, I have concluded that many defendants find God while in jail, thus God must live in jail, thus go back to jail."

Ralph Moody  
Superior Court Judge

Page 2  
March 4, 1986

In closing, I would note that there is contained in this proposed legislation 21 "IF's". Is this legislation going to instill faith in our judicial process?

Sincerely,



Rollie A. Port  
President  
Alaska Peace Officers Assn.

P.S. Steve Kalwara is our local contact in Juneau. If further input is requested, please contact Sgt. Kalwara at the Juneau Police Dept. The phone number is 586-5211.

cc: file  
Governor's Office  
chapter presidents  
Attorney General Hal Brown  
Dep. Commissioner Vaden  
Steve Kalwara



## Women In Safe Homes

*A Safe Alternative to  
Family Violence*

P.O. Box 6552  
Ketchikan, Alaska 99901  
(907) 225-9474

March 17, 1986

House Judiciary Committee  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Re: HB 554

Dear Members,

I am writing as a follow up to my teleconference testimony given on March 10, 1986. First, let me state that I recognize both the value and need for the rehabilitation of all who offend. I feel the Alaska Correctional System is well run and I support your continued effort to fund this system as it has come a long way. I would ask that if you are interested in reducing the cost of the system as a method to avoid greater expenditures, you might give some consideration to private enterprise both running a facility and/or building new ones. It is being done in other states at a considerable cost saving.

As to the sexual offender let me begin by stating that there is no real first offender, only that they have been caught for the first time. The study I referred to by Gene Abel in New York clearly reflects that even incest offenders commit upwards of 1 to 200 offenses other than those they are prosecuted for at the time. These offenders have long standing problems which means the patterns are there for years and are difficult to change - not impossible, but difficult. Both Gene Abel, Finkelhor and Northwest Associates out of Seattle clearly support the premise that it is a pattern and some offenders are changeable. They all agree it is a criminal act that must be sanctioned heavily by society, along with treatment while incarcerated as well as, follow up treatment and supervision.

I feel HB 554 would not only put offenders back on the streets but since there really is little if any treatment available in Alaska, many would have either poor counseling, or those that could not afford private treatment, none at all. I think it is important for you all to know that treating the sex offender is not well developed as a science. Part of the reason is that we know so little about the cause of this behavior as it is

just now being recognized as a problem. The other reason is that little money has been spent on research and the development of a treatment program because public support and/or outcry only reach a peak some 4 years ago. It wasn't long ago that many states had numerous programs designed to rehabilitate offenders of all kinds. Then the pendulum began to swing as these programs weren't successful enough in the public eye, so the public said lock them up. This movement in the lower 48 was pushed along because money was tight so, if cuts had to occur it was rehabilitation. California in the late 70's was a prime example of this swing. We now are seeing the move back to more rehabilitation programs.

The other issue here is that crimes committed against family members have always tended to be viewed differently by law makers. To allow flexibility in sentencing on incest or first offenders would be more of a crime than the one the offender committed.

If first degree rape in your view is a serious crime, what is penal or digital penetration by a father with his daughter? We either believe that sexual violation of a female is serious or we don't. We must also remember the one thing we know about sexual offenders is that, it is a pattern much like an addiction that can not be broken with the normal therapy offered for other problems. I would refer you to the work being done in Oregon reported in Psychology Today, March 1986. The subtitle to the article is "Can sex offenders ever alter their ways? Special treatment programs provide some hope."

I also sense some form of backlash on the whole problem of sexual abuse of children in this proposed legislation. I know that as defense attorneys you have seen poor investigation work done, families broken up, and at times you have felt your clients were innocent of charges. We in the field of sexual abuse are also learning. Last year you passed legislation with dollars attached to train various entities in the investigation, intervention, and treatment of child sexual assault victims. The first of these trainings took place in Juneau and a good representation of players who deal with this problem were there. Give that training some time to work. Finally, as the Attorney General of the State indicated, dollars will be necessary to stamp this problem out on both ends of the issue- Victims and offenders.

I hope on my trip to Juneau in early April, I can discuss this issue with some of you personally. If I or the Alaska Network on Domestic Violence and Sexual Assault can be of any help on your obtaining information on this subject, please call on us.

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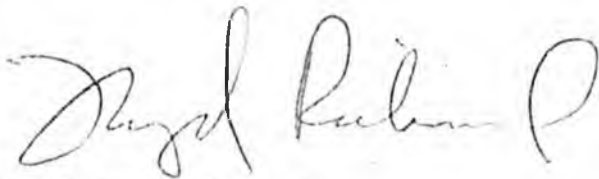
House Judiciary Committee

Re: HB 554

Page 3

Thank you for taking the time to read this, and your effort to be informed in all the ramifications of this proposed legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Floyd H. Richmond".

Floyd H. Richmond  
Executive Director

FHR/va

March 17, 1986

House Judiciary Committee  
Chairman Mike M. Miller  
P. O. Box V  
Juneau, AK 99811

Dear Chairman Miller:

As a survivor of child abuse and a mother of two victims, I am addressing you, the Legislature and those that possess the power to structure our criminal justice system; you that have actively campaigned for the chance to serve the State and its people.

HB 554 is unacceptable. This law, if passed, will either credit or discredit those involved and could quite possibly cause a few to regret their decision for the change, if HB 554 is passed.

There are hundreds of innocent children in Anchorage that are being preyed upon daily behind open and closed doors. Some trust enough to tell, most others too afraid to say, too young and too confused, not understanding why they are subjected to this horrible and ugly punishment, and above all, their belief in adults becomes shattered.

Sex offenders are basically everyday, "average" people, often successful and highly accepted in the community. They are doctors, lawyers, priests, judges, law enforcement personnel, scout leaders, coaches, uncles, dads, friends, and in general, mostly citizens that have been placed in a position where our young will learn to trust. The average sex offender is and has been known to be "the NICEST" and most caring individual on the earth, only because they are laying the foundation that leads to trust and belief from a child's eye. Then, once they have that total and complete trust, they proceed to carry out their perverted sexual fantasies, inflicting pain and anguish upon an innocent child. THESE CHILDREN ARE NOT AWARE, NOR DO THEY HAVE THE EXPERIENCE TO KNOW, THAT THEY ARE VICTIMS OF AN INDIVIDUAL WHO WILL BE SEXUALLY AROUSED BY THEM.

The first incident is indented forever in a child's mind to such an extent that he or she may never be able to forget. On the average, a child is subjected to repeated assaults. Each assault creates ugly and hurtful memories that may stay with the child for a lifetime.

As a citizen, a victim, and a mother, I cannot believe that reasons for restructuring this presumptive law, HB 554, is only based on "overcrowded" prisons, financial strain upon the family and increased welfare assistance. We must do anything, other than return the offender to our community to again prey upon our young, even though undergoing treatment.

Letter to House Judicial Committee  
Chairman Mike M. Miller  
March 17, 1986  
Page 2

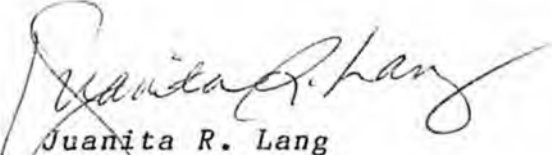
The Child Sexual Assault Treatment Program, in some very remote cases may work, however, the majority of those that have participated in this program have only learned how to respond to questions without incriminating themselves. I know, I've lived through this! My father was part of this program. He continued to molest my brother and I BEFORE, DURING and AFTER "treatment". He, to this day, is still an offender.

Current research on all types of sexual offenders, including first time offenders which comprise approximately 50% of the studied group, on the average attempted 581 crimes, completed 533 crimes, and had 336 victims. The average number of victims per child molester was 75. For incestuous offenders, the average number of crimes were 83.

HB 554 introduced by House Majority Leader Representative Clocksin, may, indeed, save the State of Alaska \$48 million, and this is admirable. However, CAN YOU GUARANTEE THE SAFETY OF PROSPECTIVE VICTIMS OF THE FIRST TIME SEXUAL OFFENDERS???

The strict sentencing guidelines that are in effect now may have led to some of the overcrowded prisons, however, I am thankful that these offenders are incarcerated and away from our children!

HB 554 may be the answer to overcrowded prisons, but it is NOT the answer to the dilemma our children face. Our children rely on us to find a solution that will protect them and give them a chance to see that the justice system will work, if only they trust us enough to come forward. WE MUST FOCUS ON THE TRAUMA THE CHILD FACES AS A RESULT OF THIS SEXUAL OFFENSE AND NOT ON OVERCROWDED PRISONS!!



Juanita R. Lang  
6900 Royal Court  
Anchorage, AK 99503  
279-6617

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: TERRY VRABEC  
BOX 4251  
SOLDOTNA  
262-2557

99669

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

HONORABLE SENATORS AND REPRESENTATIVES:  
AS A PEACE OFFICE, CITIZEN AND VOTER IN THE STATE OF ALASKA, I AM  
DEEPLY DISTURBED ABOUT THIS BILL. BY TAKING AWAY PRESUMPTIVE  
SENTENCING, THE DETERRENCE EFFECT OF THE LAW IS REDUCED. I SAY,  
LET THOSE WHO CHOOSE TO BREAK THE LAW, SERVE THE PENALTY.

DATE: 03/26/86 TIME: 08:55:38 SENT BY: SOLDOTNA LIO

COPIES TO: HOUSE MEMBERS  
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: MARCIE CLARK  
2814 ALDER DRIVE  
ANCHORAGE 99508  
279-7179

BILL NO: HB 554

SUBJECT: CHANGING PRESUMPTIVE SENTENCING LAWS

MESSAGE:

WE CAN NOT TOLERATE PRESUMPTIVE SENTENCING IN ALASKA.  
WE NEED TO BUILD MORE JAILS AND NOT LET THE CRIMINALS  
THINK THEY CAN GET AWAY WITH THERE CRIMES. PLEASE  
OPPOSE HB 554.

DATE: 03/26/86 TIME: 12:01:18 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS  
SENATE MEMBERS

Patricia Francis  
815 Brown Deer Rd.  
Ketchikan, Ak. 99901

M. Mike Miller  
House Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Ak. 99811

February 21, 1986  
3:15 P.M.

Dear Sirs,

Today I attended a teleconference on Sexual Abuse and a proposed change in the Presumptive Sentencing laws. I was at that conference to testify as a victim. Attached you will find a copy of the statement I had intended to make.

I now feel compelled to add to that statement. At this time I am so consumed with anger that it is unexplainable.

I listened to the testimony that was taken and all I basically heard was the great concern for the money that would be saved if the current law was changed and how unfair the law is to the criminals.

The overwhelming concern for these men who commit rape and incest was, to say the least astounding. Accordingly, it is unfair of us to ask them to sit in jail for any great length of time for their crimes are not violent, they use no weapons, so go easy on them! Rehabilitate them and they will do just fine.

I want to tell you that this is wrong. So wrong in fact that you will be doing an injustice to every woman and child who walks the face of the earth.

Imagine if you can, a young girl of 4 years being raped and sodomized on a regular basis of 2 nights per week. This by a person who she has been taught to trust and obey. Children are raised to respect and obey their father and mother. By the time they are old enough to know that something is not right, years of humiliation and fear keep them quite silent.

Imagine a young girl being forced to watch as her father blows the hind end of a pet off with a shotgun or watching him beat in the head of a calf with a sledgehammer and then turn to that child and say "that is what will happen to your mother if you tell!" Can you feel the terror that that child is suffering?

Imagine a 16 year old girl being put on a witness stand to "Do the right thing" and then have someone tell her she is a tramp and a whore. That she herself is to blame, that actually she had been seducing the man for years. Now, because she is tired of him, this is the fastest way to get rid of him. Can you feel the humiliation and degradation she is feeling?

These are a few of the problems I have lived with for the last 30 years of my life. Never a day goes by that someone or something doesn't cause the memories to resurface.

Every woman and child who has been a victim of incest suffer from similar experiences and deal with reoccurring problems.

Now, imagine that this person suffering is someone you know or a person close to you. Do you like what you see? Can you live with what you see?

Think about it! Do you want these men loose on our streets without the proper and by the way proven rehabilitation. I know I don't and I can not, in all honesty think of one person, given the facts, who would.

Sincerely,

*Patricia M. Francis*

PATRICIA FRANCIS

Attatchments

From the age of 4yrs. to 16yrs. I was repeatedly raped and sodomized by my father. At age 16, someone stepped in and stopped him. But that did not stop the fear, guilt and mistrust that I had learned to live with every day of my life. At the time of his trial, the first ever in Oregon, I was called every name in the book, including a whore and a deceitful liar, just unhappy with life at home. Reporters were allowed to run wild with the story as well.

For the last 30 years, I have survived terrors and nightmares that, to say the least are unspeakable. So bad at times that I feared I would not survive, at other times I wished I wouldn't, so much so that at one point I attempted to take my own life. At another time I attempted to take my fathers life!

I was robbed of so much in my life because of incest. I had no childhood at all, I have had problems with sexual relations with my husband, I have no trust in father/daughter relationships at all. It has also affected my children. I'm very overprotective of my boys. I have always wanted to have a daughter, but was terrified that if I did, the same thing would happen to her. I knew if it did I would kill.

I can't even walk down the street and be safe from my fear, all it takes is to hear a child cry a certain way and all memories and terrors come flooding back as if it were only yesterday. When I see a father hold his daughter or kiss her or touch her, instantly, I am on my guard and very mistrusting.

All these feelings I live with every day of my life. For this, my father served 1 year in jail. He was released because his life was in danger. He has been remarried twice since then and in fact has molested his 6 stepdaughters and still he is free.

I beg you, please realize that the act of incest is a life long sentence for the victims of it and is so devastating that some of us do not survive. Do not change the law, don't let them get by with a slap on the hand for their crimes.

We victims need to know that at last, we are the victims and not the criminals.

Thank you.

REPORTS

+

ARTICLES

PAROLE ELIGIBILITY

DISCRETIONARY PAROLE ELIGIBILITY

MANDATORY PAROLE ELIGIBILITY

Offense

A felonies  
Repeat B & C felonies  
Sexual Assault 1°  
Sexual Abuse of Minor 1°

not eligible  
AS 33.16.090 (b)

1st Offenders  
B&C Felonies  
misdemeanants with  
over 180 days

eligible after 1/4 of term  
AS 33.16.100 (c)

Murder 1 & 2, Kidnapping,  
Misconduct involving a  
controlled substance 1°

eligible after 1/3 of term or  
mandatory minimum whichever is  
greater  
AS 33.16.100 (d)

Aggravated  
A felonies,  
repeat B & C offenders  
Sexual Assault 1°  
Sexual Abuse of Minor 1°

not eligible during initial pre-  
sumptive term, but eligible after  
1/4 of aggravated portion of  
sentence  
AS 33.16.090 (b)  
AS 33.16.100 (c)

Consecutive  
A felonies  
repeat B & C felonies  
Sexual Assault 1°  
Sexual Abuse of Minor 1°

not eligible during initial pre-  
sumptive term, but eligible after  
1/4 of subsequent term.

If offender is sentenced to serve mor  
than 180 days, then upon release from  
incarceration offender is on mandator  
parole for period of good time earned  
in prison.

If offender is sentenced to serve les  
than 181 days, then upon release offe  
der is unconditionally discharged.

AS 33.20.040 (a)

\* Sentencing Judge may further restrict discretionary parole eligibility.  
AS 12.55.115

Class A Felonies

Manslaughter	43
Assault 1°	51
Robbery 1°	101
Arson 1°	2
Escape 1°	3
Misconduct Involving Controlled Substance 2°	7

Class B Felonies

	<u>Nonpresumptive</u>	<u>Presumptive</u>
Assault 2°	23	12
Sexual Assault 2°	20	2
Sexual Abuse of Minor 2°	*	*
Unlawful Exploitation of Minor	3	0
Robbery 2°	13	5
Theft 1°	6	0
Burglary 1°	34	32
Arson 2°	5	J
Forgery 1°	2	2
Bribery	1	0
Escape 2°	5	13
Misconduct Involving Controlled Substance 3°	25	9

Class C Felonies

Criminally Negligent Homicide	5	0
Assault 3°	20	9
Sexual Abuse of Minor 3°	*	*
Incest	4	0
Coercion	1	0
Theft 2°	20	18
Burglary 2°	26	25
Criminal Mischief 2°	2	2
Forgery 2°	4	6
Escape 3°	1	0
Misconduct involving weapon 1°	2	5
Misconduct Involving Controlled Substance 4°	4	1

\* Sexual Abuse of Minor in 2° and 3° was a combined statistic with:

<u>nonpresumptive</u>	<u>presumptive</u>
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37

10

\*\* Nonpresumptive offenders may be parole eligible, but statistics do not reflect further restrictions on parole eligibility which may have been imposed by sentencing court under AS 33.15.230.

# Introduction

## History of the CSATP Training Project

### The Child Sexual Abuse Treatment Program

In 1971, members of the Juvenile Probation Department (JPD) of Santa Clara County, California, decided that the case management of sexually abused children and their families needed to be drastically improved. The department's consulting psychiatrist asked a family counselor to volunteer his services for a pilot effort of eighty hours spread over ten weeks. Clients were counseled on-site at the JPD, and a close collaboration ensued between the counselor and the probation officers. Counseling was based on the principles and methods of humanistic psychology, emphasizing treatment for the victim and the mother. But it was soon discovered, particularly in father-daughter incest cases, that the victims' interests were best served if the mother, father, and the rest of the family were included in the counseling plan.

The pilot effort proved successful and in time developed into what is now known as the Child Sexual Abuse Treatment Program (CSATP). The CSATP has grown substantially over the years: the referral rate has jumped from thirty families in 1971 to over seven hundred families in 1980; the program is known nationwide for its success in resocializing sexually abusive families and in training other communities to set up similar programs.

The success of a CSATP depends on the effective interaction of its professional,

volunteer, and self-help components. However, it is the self-help component, Parents United and Daughters and Sons United (PU/DSU), that assumes the pivotal position in a CSATP and contributes most heavily to the resocialization of clients.

## California State Assembly Bill 2288.\*

In May 1975, California Assemblyman John Vasconcellos introduced a bill requiring the state Department of Health to establish a demonstration and training center for the prevention of the sexual abuse of children. Many of the goals and functions stated in the proposed bill were modeled on the original goals and functions of the CSATP in Santa Clara County:

1. To provide counseling and practical assistance by on-site professionals to sexually abused children and their families, particularly to victims of incest;
2. To hasten, where in the interests of the child, the process of reconstitution of the family and marriage;
3. To marshal and coordinate the services of all agencies responsible for the sexually abused child and his or her family, as well as other resources to ensure comprehensive, systematic case management;
4. To employ a model that fosters self-managed growth (rather than a medical model based on curing disease) and avoids static theories and methods;
5. to respond to individual physical, emotional, and social needs of clients so that supportive services are individually tailored and applied as long as necessary;
6. to facilitate the expansion and autonomy of self-help groups and to provide training to the members in such areas as co-counseling.

\*California Legislature, 1975-76 Regular Session, Assembly Bill 2288, Sacramento, CA.

## INTRODUCTION

self-management, intrafamily communication techniques, and locating community resources; and

7. to inform the public at large and professional agencies about the existence and supportive approach of the program with the aim of encouraging victims and offenders to seek the services of the program voluntarily.

Assembly Bill 2288 also proposed that this center should go beyond serving the needs of its own immediate community. The bill provided that the center should motivate and train other communities in the state to start similar programs of their own. The bill directed the center to develop "informational and training materials and seminars to enable emulation or adaptation of the program by other communities, emphasizing the program's stress on cooperation and coordination with all appropriate elements of the criminal justice system and law enforcement system."

AB 2288 was passed on the Assembly floor by a vote of sixty-six to one. It was approved unanimously by the state Senate and was signed into law by Governor Jerry Brown at the end of the session, October 1975. The designation "Demonstration and Training Center" was awarded to the Child Sexual Abuse Treatment Program in Santa Clara County.

## 2. History of the CSATP

In mid-1971, a pilot project was started to offer counseling to sexually abused children and their families in Santa Clara County. Most of the child sexual abuse cases referred to the project were cases of intrafamily sexual molestation—usually father-daughter incest. Because of the relatively large number of such cases (around thirty a year during the early 1970s) and because there was no other coordinated system of case management, the pilot project was continued and eventually grew into what is now known as the Child Sexual Abuse Treatment Program (CSATP). To understand the origin of this innovative resource, it is necessary first to look at the situation as it existed just before the project was formed.

### The Problem

The population of Santa Clara County, California, in 1970 was approximately one million (322,870 households). The median educational level was quite high: 12.6 years. The population was 76.8 percent white, 17.5 percent hispanic, 4 percent oriental, 1.7 percent black and 1 percent other races. The county's economy before the Second World War had been primarily agricultural; by 1970, it was strongly based in the electronics, aerospace, research-and-development, and data-processing industries.

Along with this meteoric rise in industry had come a similar rise in population, and much of the county that had once been farmland and orchards was now given over to middle-income housing developments. The average household in Santa Clara County earned over thirteen thousand dollars a year, the highest median income of any metropolitan community in California. The county's main population center was and is the city of San Jose (population: 561,382).

No reliable statistics exist on the incidence of incest or of child abuse in general in Santa Clara County before 1971. Although the county was receiving around thirty referrals a year of cases involving sexual abuse of children, this figure did not include other cases in the juvenile justice system such as the so-called "beyond control" girls, many of whom, as it turned out, also were victims of incest. Despite the fact that the thirty reported cases a year in no way reflected the true number of ongoing cases, it was considered quite high in relation to the generally accepted estimate of one or two cases per million. (S. Kirson Weinberg had arrived at this estimate in 1955, citing 203 court cases over the period 1907-1938.<sup>1</sup> Other studies had substantiated Weinberg's figure, and it was regarded as the best statistic available.)

The reason that the CSATP was formed, however, was not so much the high number of child sexual abuse cases. More immediately pressing was the problem of how these cases were being handled by the criminal justice system at that time. Most often, the traditional tactics of law enforcement further aggravated the family's already deeply troubled state. The criminal justice system relied primarily on two devices: separation and punishment. It seemed that the courts' primary interest in the child had to do with what testimony she could give toward the conviction of the alleged perpetrator. In incest cases particularly, the whole family became entangled in the process of retribution. The damage to the family and the marriage was often irreparable.

In short, traditional community intervention added to the child-victim's fear, shame, guilt, and confusion, often ruined the father's career as well as his self-respect, and usually led to

<sup>1</sup>S. Kirson Weinberg, *Incest Behavior* (New York: Citadel Press, 1955), p. 36.

the break-up of the entire family. With these alarming consequences to be expected, it is no wonder that most families would not risk the danger of reporting their incestuous situation and did not receive the help and therapy they desperately needed.

In Santa Clara County, the Juvenile Probation Department (JPD) is the mandated reporting agency for child abuse cases; Child Protective Services is the agency usually responsible for this function elsewhere. The help the JPD offered was fragmented and complicated by bureaucracy, with the result that the already dysfunctional family dynamics were subjected to additional trauma.

The victim and her family were referred to one of the counseling agencies scattered over the county. Many clients resisted treatment because it was made so difficult for them. There were complicated eligibility requirements and long waiting lists. A counselor usually was assigned to a case on the basis of availability, rather than on the basis of training and skill. In fact, rather than receiving counseling, the client was often subjected to many diagnostic tests that would later be used in court.

Even when counseling was provided, there was little cooperation between mental health workers and probation officers. The supervising probation officer usually lacked the information, resources, and authority for proper case management. This poor management of reported cases of incest and child sexual abuse was not unique to Santa Clara County. In fact, it is a situation that still prevails in most communities throughout the United States.

## The CSATP Is Started

In 1971, Eunice Peterson, supervisor of the Dependent/Placement section of the Juvenile Probation Department, and Robert S. Spitzer, M.D., the consulting psychiatrist for the JPD, contacted Hank Giarretto concerning the establishment of a pilot effort. Giarretto, a licensed marriage and family counselor, would provide counseling to sexually abused children and their families for a trial period of eighty hours spread over eight weeks. At the end of this period, the pilot program would be evaluated by Spitzer, Giarretto, and Peterson to determine if it should be continued. The initial ground rules of the pilot program were: the clients would be counseled on-site at the

Juvenile Probation Department; the program would emphasize conjoint family therapy as developed by Virginia Satir; and the therapeutic approach would follow a growth model predicated on humanistic psychology.

## Early Objectives

**To provide immediate on-site counseling.** The first objective of the pilot program was to provide counseling to sexually abused children and their families as soon as possible after their referral to the JPD. Consequently it was decided that clients would be counseled at the JPD, where the counselor could be readily available to them, rather than at his private office. It also was hoped that having the counselor there would help destigmatize the JPD, so that it could be regarded as an agency where people could get help rather than punitive treatment. It was anticipated that having the counselor on hand would facilitate communication and coordination among all those persons responsible for the cases.

By the time the pilot program had completed its eight weeks, Giarretto found that he was inextricably involved with many clients. It was apparent that each client required far more time than the traditional weekly hour. In addition to the hour devoted to counseling, for example, Giarretto had to spend an equal or greater amount of time consulting with juvenile and adult probation officers, police, lawyers, school teachers, and rehabilitation officers. All of this work could not be handled by Giarretto alone, especially since he had to continue his practice to supplement his income. Most of the clients could not afford to pay for the counseling, even when the fee was based on a sliding scale. They had already suffered sudden financial setbacks as a result of exposure (bail bonds, legal fees, separate housing for the father, and juvenile hall fees, for example). It was clear that the program had to be expanded in order to be fully effective.

**To marshal and coordinate available services.** It also became apparent during the pilot program that counseling alone was not enough; the family required a great deal of practical assistance to help them through this troubled period. They needed help in locating community resources for such pressing needs as housing, employment, financial advice, and legal assistance. This effort required close

collaboration between the counselor and the juvenile probation officer responsible for the case—another advantage of the counselor's working on-site at the JPD.

To hasten reconstitution of the family. It was decided at the outset that the counseling program would emphasize conjoint family therapy since incest was a family problem. However, it soon became clear that conjoint family therapy was inappropriate for the early stages of the incestuous family's crisis. The families were badly fragmented as a result of the incest and the dysfunctional family dynamics that preceded it; they were further fragmented by the trauma that accompanied the disclosure of their secret to civil authorities. If a daughter reported an incestuous situation with her father without consulting her mother, she usually was not ready to face her mother, or her father, nor was the wife ready to confront her child or her

husband. Thus, it was decided that the child, father, and mother had to be treated separately before family therapy would work.

The pilot program of eight weeks had already proved effective with the families involved, and Spitzer, Giarretto, and Peterson had no difficulty in deciding that it should be continued and expanded. In time it became known as the Child Sexual Abuse Treatment Program. It soon captured the attention of the criminal justice system, the media, and the general public. The CSATP helped awaken these groups to the realities of child sexual abuse in our society. The program's growing reputation was based on several factors: it was the first program of its kind; it was providing counseling and support to more incestuous families than any other public agency in the country; it was winning the cooperation of both public and private agencies; and it was becoming an effective resource for the criminal justice system.

# 4. The Integrated Psychosocial Approach

The fundamental aim of the CSATP is to resocialize the families that come to the program. This is done by teaching the members of the family how to develop the attitudes and skills for personal growth both within the context of the family and within society as a whole. The CSATP relies on three complementary components to achieve that objective: the professional staff of administrators and counselors; plus professional people from the various official agencies; the volunteer workers; and the self-help groups, known as Parents United and Daughters and Sons United. Together the three components create the regenerative human ecology in which the process of resocialization takes place.

The CSATP described in this chapter is that of Santa Clara County, California. At this writing, 65 other CSATPs throughout the country are in various stages of development.

The client population of the CSATP is made up of the following: children molested by fathers and a smaller number of children molested by grandparents, older siblings, and extrafamilial individuals; adults molested as children; and a few carefully screened individuals who molested children not related to them; and adolescents who molest much younger children.

## The Professionals

**Administrators.** The administrative functions of the CSATP are performed by the program administrator, who supervises the personnel and activities of the CSATP. The program administrator is responsible for selection of personnel, defining staff functions, screening volunteers, coordinating the program with the criminal justice and human service agencies, guiding the development of Parents United and Daughters and Sons United, and ensuring that the program is compatible with the requirements, laws, and mandates of the federal, state, and local agencies. S/he works closely with the program coordinator, who screens all the referrals, assigns cases to the counselors, and coordinates cases with criminal justice and human services personnel. In most counties the CSATP's administrative and coordinating functions are performed by one person.

**Counselors.** The counselors design treatment plans based on their evaluation of the clients' needs as individuals and as members of the family. The counselors maintain the clients' treatment records and confer regularly with the program staff concerning the clients' needs. They make appropriate referrals to supportive services both within and outside the program. All professional counselors have master's degrees

in counseling or psychology, licenses in marriage, family, and child counseling or in clinical psychology, and at least three years' experience in counseling children and their families.

**Interagency Cooperation.** Client families are involved with a host of professional people in the criminal justice system and in human service agencies. Therefore, the professional component of the CSATP also includes all those members of the community who are responsible for the official processing of the troubled family: police, social workers, probation and rehabilitation officers, defense and prosecution attorneys, and judges.

To be effective, the CSATP must convince official interveners to agree on a consistent, humane approach typically aimed at returning the child-victim to a safe and nurturing family environment. In addition to counseling and support during the crisis period, family members usually need help with pressing practical problems: legal requirements, financial aid, food and clothing, housing, employment, job skill training, etc. The CSATP makes sure these services are provided to clients when they need them.

The need for interagency cooperation among professionals was apparent right from the beginning of the counseling effort. In fact, it was only after some measure of cooperation existed among the probation officers, police, and the courts, and only after the self-help component started (in other words, when clients were receiving more than traditional counseling) that it was decided to name the approach the Child Sexual Abuse Treatment Program.

## Volunteers

Much of the staff of the CSATP is made up of volunteers. Some of the intern volunteers are graduate and postgraduate students working for their licenses in marriage and family counseling, some are undergraduates at local colleges and universities, and some are seasoned members of Parents United. There are usually between thirty and forty intern volunteers at any one time in the CSATP.

One of the major benefits of having such a volunteer program is that it draws on the community for much of the services. Thus, the

community becomes closely involved with the program not only by receiving its services but also by providing helpers. The volunteer program has also proved a valuable and effective way of educating the community about the problem of incest and of the existence of the program.

Several of the volunteers in the Child Sexual Abuse Treatment Program are seasoned members of Parents United and Daughters and Sons United whose dedication exceeds that of the average member. They are often among the most valuable and effective members of the volunteer staff, providing countless hours of intense companionship to new clients and performing many tasks for the program. Those who have demonstrated in the individual and group sessions that they have grasped the basics of good communication and have shown leadership abilities can go into training to become group co-counselors and peer counselors. These members receive additional training in group facilitation and in the techniques needed to be an effective peer counselor. If their work or school schedules allow, PU/DSU volunteers also participate in the first three days of the training program, attend intern-staff meetings, and have a representative present at the professional staff meeting.

The special classes for Parents United volunteers cover such areas as parent effectiveness, human sexuality, transactional analysis, role-playing and role reversal, communications skills, and Gestalt techniques. This introduction to humanistic psychology gives the member a better understanding of the partnership between the professional staff and the self-help component and enables him or her to serve as a volunteer counselor with greater competence.

Trained members of Parents United/Daughters and Sons United become invaluable to the CSATP. As sponsors for new members, they make the initial telephone contacts with the new members, invite them to the Wednesday night meetings of Parents United/Daughters and Sons United, and facilitate their initiation to the organization. The trained members serve as models to the initiates who know that these veterans have undergone the same terrible experiences, yet seem not only to have survived but to be coping very well with their lives.

# The Self-Help Component

To a large degree, the success of the CSATP is due to the special regenerative climate that has developed in the program over the years. Everyone connected with the CSATP contributes to this climate, which in effect provides clients the opportunity to learn the attitudes and skills needed for leading productive lives in society. Certainly the most important aspect of this resocialization process is made up by the clients themselves; the unique energy provided by the members of the organizations called Parents United and Daughters and Sons United is essential both to the healthy growth of the individual family members and to the effectiveness of the CSATP.

The group process provides clients an opportunity to compare their view of reality with that of their peers, since all the people in the group share a highly stigmatized problem. This peer situation also has the effect of emphasizing increased self-direction and personal responsibility instead of reliance on authority figures who will "cure" them. The group milieu prepares members for positive social attitudes and more confidence in their ability to cope with social problems.

**Parents United.** Parents United is a nonprofit and nonsectarian volunteer organization open to all who have experienced intrafamilial and child sexual molestation. Formally launched in 1972, it incorporated in June 1975. To celebrate, its three charter mother-members wrote the following creed:

To extend the hand of friendship, understanding, and compassion, *not* to judge or condemn.

To better our understanding of ourselves and our children through the aid of the other members and professional guidance.

To reconstruct and channel our anger and frustrations in other directions, *not* on or at our children.

To realize that we *are* human and do have angers and frustrations; they are normal.

To recognize that we do need help, we are all in the same boat, we have all been there many times.

To remember that there is no miracle answer or rapid change; it has taken years for us to get this way.

To have patience with ourselves, again and again and again, taking each day as it comes.

To start each day with a feeling of promise, for we take only one day at a time.

To remember that we *are* human, we will backslide at times. To remember that there is always someone willing to listen and help.

To become the *loving, constructive* and *giving* parents or persons that we wish to be.

The PU board of directors includes several Parents United Members, some representatives of other chapters, a member of Daughters and Sons United, two lawyers, three psychiatrists, two members of the San Jose Police Department, and two community leaders.

The Santa Clara County chapter of Parents United has grown rapidly. The chapter now has over 200 members with an average attendance of 125 members at the weekly meetings. Meetings begin with a group centering exercise, followed by a brief conference to discuss progress in growth and effectiveness. The membership then breaks up into smaller groups jointly led by a staff member and a trained member of Parents United.

The number and focus of the small groups change periodically according to the needs expressed by the membership. The groups are started at the same time and run for eight sessions, after which the members are encouraged to join other groups.

### General Description of PU/DSU Groups.

The facilitators usually let the group start itself after each person says his or her first name aloud. Often there's a long silence until a member chooses to speak. Any member can begin by saying anything that comes to mind—a personal or affective statement or question, perhaps. Another member usually responds to the first member. Two members can have a dialogue for awhile. Or many members can enter in and express themselves in turn. The facilitators often intervene if people are interrupting each other or if more than one person is speaking at a time.

In most groups, the facilitators will note that only a few people speak. To involve all members, it is a good idea occasionally for one of the facilitators to start the discussion by saying, "I'd like each of you to say something about what's been happening to you this past week. Jane [pointing to the co-leader] will start." Later the first facilitator also takes a turn.

The emphasis in the groups is always on personal viewpoints and personal responses. Facilitators continually but gently remind the group members to make "I statements" rather than generalizations that shift responsibility for their own perceptions to others ("we know," "you should," "the experts say," etc.).

Sometimes one member will talk at length with no other members responding: a new member relating personal experiences in detail, for example. If the facilitators decide this monologue is productive for the group and/or for the person speaking, they don't shift attention from that member. When appropriate and productive for the group, the facilitators sometimes decide to intervene with an open or closed question, a paraphrase, or a reflection of feeling. Sometimes a facilitator will initiate an exercise, such as listening dyads or role playing.

One of the members usually will interrupt a member whom s/he feels has been talking too long. Even if one member talks for a long time, however, other members may be learning from, identifying with, or reacting to what is being said. A monologue can motivate the group process, even if it has a negative tone. For example, men in the group may tire of one member's constant lament and feel themselves getting annoyed. The facilitator may help them become aware of their own feelings and it will occur to some of them that this is how they probably sound to their

families. They may think, "So this is how I've been sounding. No wonder my wife gets irritated."

Whether a session becomes volatile or emotionally charged depends on what mood the members create and what problems they bring to the group that evening. It must be remembered that groups differ and that the sessions relate to the unique "personality" and pace of the group. The group process should not be forced but encouraged to unfold at its own pace and inherent potential. Group leaders should keep an eye on each other to guard against one of them using the group as a means for displaying expertise as a group leader. The most effective CSATP group facilitators are those who participate in the group process and "facilitate" it unobtrusively and only when necessary.

**The Sponsorship Program.** Clients of the CSATP had a form of sponsorship right from the program's inception. The original three mothers, who eventually started Parents United, knew one another as sponsors before they met together as a group. As new mothers came into the program, the original three were able to offer their caring and support to help them through the initial days of their crises. Today's sponsors are seasoned members of Parents United, most of whom have been trained in peer counseling techniques and have learned the skills and attitudes needed to assume the role of peer counselor. Many of these veteran members are also co-facilitators of the groups which meet weekly.

The sponsor plays a key role when the new families enter the program. Often a sponsor is the first contact the new mother or father has with the program. When the police refer the family to Parents United (often the same day as the investigation), a sponsor meets and befriends the mother or father. The sponsor listens empathically and caringly to the concerns and fears of the new client, often spending hours during the first week with that person or other members of the family. Because the nature of the family problem has tended to isolate them, the new members find comfort in being able to share their feelings and perceptions with someone who has had the same problem. Because the sponsors appear to have coped successfully with their

problem, they offer motivation and hope to the newcomers that they can do the same. Because the sponsors and the new members share a unique problem, the sponsors can relate sensitively to the feelings of the new members, and are able to attend to them with a depth of caring that comes from shared experiences.

If face-to-face contact with the newcomer is not possible immediately, sponsors telephone parents who have been referred and invite them to Parents United. When new members arrive for their first meeting, the sponsor makes a point of greeting them and helping them feel welcome in the group. The sponsors introduce the new members to the Parents United hostess for the evening, who gives them tags (with their first names) to pin on their upper garments like the other members do.

A workshop led by a veteran sponsor is held each month for new sponsors in the Santa Clara County chapter and other nearby chapters to teach the basic skills needed to be an effective sponsor. Some of the subjects covered in the workshop are: empathetic listening; the right things to say to new members, and what to avoid saying; the importance of avoiding direct questioning of new members (particularly that which hints of curiosity-seeking); learning how to support the new members in their moments of crisis; making no promises as to what the program will do; checking to ascertain that each family has a counselor; making sure the offender is represented by counsel and, if not, recommending one of the competent attorneys checked out by Parents United; and assisting the family with special needs such as housing, financial aid, and transportation.

Sponsors check frequently with their families during the crisis period, expressing continued interest in them and encouraging them to call their sponsors when they feel like talking. A sponsor also gives the family the number of another sponsor to call if the assigned sponsor is unavailable. Sponsors keep records of new families they contact and submit the records to the head sponsor at the end of each month. If a sponsor contacts a family that has not been referred by the head sponsor, it is the sponsor's responsibility to inform the head sponsor. Every new family is listed in the sponsorship files.

Sponsors often accompany victims and/or others when they go to the police station for the investigation. At times a sponsor will be

called on to be with a mother at the juvenile probation department when she learns for the first time about the molestation. Usually, the shock is so great and the anxieties, fears, humiliation, and guilt so overwhelming that riding it out with the mother becomes a total commitment often lasting two or three days. At times, a male and female sponsor will team up to help a couple in crisis. Many an hour has been spent in the PU kitchen or at members' homes drinking coffee and lending support to the newcomers. Nowhere does the healing power of caring manifest itself so clearly as in the relationship between the new member and the sponsor.

**Preorientation Group.** The Preorientation Group is composed of members on their first visit to Parents United. Formerly, new members went directly to the Orientation Group, but this group grew to a size that was often overwhelming to the new members. The Preorientation Group is smaller and more relevant to their present crisis and allows them to become acclimated to the program. The group leaders, aided by other veteran members, explain the philosophy of Parents United and the services available to the new members.

The new members often think of themselves as social lepers forever banished from society. It is immensely reassuring to them to be able to witness for themselves in this group that others have survived these same feelings of despair. The new members become even more hopeful as they learn from the older members that what is likely to happen to the family is much less damaging than they had anticipated. The new members are usually ready for the Orientation Group after about three meetings.

**Orientation Group.** The Orientation Group, the largest of the groups, is composed of newly arrived members, members who are not ready to move on to other groups, and members who return to the group to help the newer members. The group is composed of offenders, their nonoffending spouses, adults molested as children and their mates, siblings and other relatives of molested children, visitors, and the group facilitators. New members must attend the Orientation Group for at least one eight-week cycle before moving on to the more specialized types of groups. Adults molested as children who believe that the group will continue to be helpful to them may stay longer.

The group deals primarily with problems stemming from the exposure of the incestuous situation to the authorities. The facilitators and members answer questions from the offenders regarding the criminal justice system. Many have catastrophic expectations and are relieved to hear from the members whose cases have already been settled that they are likely to receive constructive treatment from the system. Many of the wives coming to the group indicate that they intend to divorce their husbands. They have come to this decision mainly through pressure by relatives and friends. But as they see that other couples are resolving their problems, they, too, soon seem more willing to work on their marriage either in trying to renew the relationship or ending it on amicable terms.

When an eight-week cycle ends, the group facilitators will encourage members who are ready to move on to other groups to make room for incoming members. A few members are reluctant to move from their "home base" since they have found a sense of security from building relationships with other members and the facilitators. A facilitator may consult with a member's individual counselor as to whether that member is ready to move from Orientation to the more specialized growth work. Some members return to the Orientation Group after attending several of the other groups but mainly to act as models for the new members.

**Spanish-Speaking Group.** Led by Spanish-speaking facilitators, this group relieves the added pressure a language barrier puts on those members of Spanish descent. The group can feel comfortable expressing themselves in language most familiar to them. It can be a discouraging impediment to a person trying to express deep feelings and receive messages from others if he cannot use his native language.

The hope is that with this burden removed members can gain more insight into themselves at a faster pace. At a time when they are feeling isolated and alienated from society, they can at least identify with their heritage and be nurtured by having their ethnic background acknowledged in a positive way.

The group concentrates on constructive help and understanding and gives members a chance to get their bearings and to get centered and grounded before attending the English-speaking groups. The facilitators serve as models to the group by teaching and demonstrating the methods and results of effective communication.

With the distraction of a language barrier removed, members relax and find a secure place for themselves in the organization. They concentrate more fully on working on themselves because they are less preoccupied with "editing" and rephrasing their sentences. They are able to listen to other members better and gain a deeper understanding of the Parents United philosophy.

**Open Groups.** Adults who have completed the Orientation Group sessions are eligible for the Open Group. Members learn to expand their points of view as they are introduced to new ways of thinking by members whose lifestyles, occupations, value systems, ages, and roles differ from their own. The group includes single men and women and people temporarily separated from their spouses. The members also discuss subjects not directly tied to child molestation. They discover that no matter how different other members appear externally, they share many common fears, problems, hopes, solutions, strengths, and experiences. The more varied the cross-section of people in the group, the more each member benefits, since the discussions cover a broad range of roles, opinions, feelings, etc.

As in all the groups, effective communication is also stressed. Many of the members begin to see clearly that at the core of their difficulties with their former or present marital partners was their inability to communicate honestly and openly.

**Women's Group.** This group is composed of mothers whose children were molested, usually by their mates. The group provides a supportive atmosphere in which the members can discuss their concerns as individuals, mothers, and wives. The Women's Group offers some of the members their first experience in working with other women for mutual self-betterment. By practicing effective communications, they begin to see themselves and the roles they play more clearly. They learn how they are perceived by other people by getting feedback from members who may observe, for example, that they are annoyingly submissive or domineering. By understanding what motivates them and what barriers they set up for themselves, they can begin to change their behavior and to reshape their lives. The women find that they are able to bring up and discuss problems which they would not be able to introduce if their husbands were present.

In early group sessions the women are encouraged to express their outrage at their husbands and at the criminal justice system. The prominent grievances and issues brought up by the group are:

- the betrayal of their husbands
- their inability to stop the molestation
- the uncertainty of their futures and the anger they feel from being put in the position of keeping their family from falling apart
- the tendency to blame the victims for seductive behavior or not reporting the situation to them
- feelings of jealousy toward the victims
- the inclination to blame themselves for their husband's behavior
- whether to salvage or end their relationships, and the negative and positive consequences they can expect from either course of action
- fears about seeking jobs especially if they feel they are inadequately qualified
- whether they should pursue potential careers and training plans if they stay married.

The facilitator emphasizes that the reforming of the family nucleus with their children should be their primary objective. The father cannot rejoin his family successfully if the victim, in particular, feels unsure about her relationship with her mother. The child will resist the father's efforts to reestablish his paternal position in the family unless she feels totally supported by her mother.

The group is concerned with practical considerations as well as the psychological aspects of motherhood and wifehood. By the end of the eight-week session, many members begin to understand the objectives of the CSATP in the treatment of their family and what they must do personally to achieve those objectives. The women in the group often form lasting bonds of friendship with each other.

**Men's Group.** The typical Men's Group member is a father-offender, but the group often includes a small number of out-of-home offenders. During their first meetings the men are inclined to spend the time complaining about their mistreatment by the criminal justice system. The facilitator allows them to express their feelings knowing that the men do so, unconsciously, to alleviate the terrible guilt they feel for betraying their roles as fathers and husbands. The facilitator also knows that they will not discuss their disgust and loathing of themselves until they learn to trust one another. The men often have been physically or sexually abused or neglected by their own parents during childhood, and the facilitator may help them trace their current anger toward authoritative figures to the reactions they had toward their parents or other people holding authoritative positions over them during childhood.

The group is likely to have at least one member whose burden of shame is so great that he cannot wait until he can trust the group. When he relieves himself of it, his despair over his actions and his vulnerability will usually elicit spontaneous support and comfort from other members. It also encourages them to disclose their own feelings of self-hatred over their abusive behavior.

Not all of the members will quickly fall in line to accomplish the primary objective of the group, which is to have each offender admit unequivocally, with no reservations at all, that they were totally responsible for their exploitive behavior, must face the consequences, and must see to it that the behavior will never be repeated. Recalcitrant members are dealt with patiently but firmly by the others. Since they share a common problem, they talk to one another with rugged honesty, yet avoiding judgmental accusations. Many offenders have been loners and the group interaction is new to them. They will do little talking out of habit, not necessarily because they wish to avoid participating in the exchanges.

Often a father will fervently declare that he would like to talk to the child he molested, to explain face-to-face how terribly sorry he is for his exploitive behavior, and to say that he intends to spend the rest of his life making up for it. The fathers usually cannot communicate with their children because they were specifically ordered not to do so by the courts.

In the latter part of the eight-week cycle, the facilitator often invites a member of Daughters and Sons United who is not related to the fathers, but who wishes to talk to them so that s/he can come to some understanding of what motivated the fathers to abuse their children. The fathers willingly try to answer this person's questions and in turn a father may be allowed to apologize to the child and to express his deep anguish over his behavior as if s/he were his own child.

**Couples Groups.** Since the Santa Clara County chapter of Parents United has over 250 members, several Couples Groups are required. The groups are limited to five couples so that facilitators and members can give each couple more concentrated attention. The focus is more on the relationship between the two mates and less on each person as an individual. Usually, the group members will have already received individual attention for themselves through previous participation in the men's or women's groups.

The couples are married or unmarried and may or may not be living together. Most of the couples are the parents of children who were molested by their fathers. Since a healthy, mutually-nourishing marital relationship precludes incestuous activity between parent and child, the Couples Groups are perhaps the most important of the groups conducted by Parents United.

The objectives of this group are to teach the couples to:

- relate more productively with one another and to dispense with obscure verbal messages, game-playing, or other forms of manipulation
- state their needs and wishes directly
- revise unrealistic expectations of themselves and their mates
- keep the channels of communication open and clear between each other, i.e., to listen more attentively and to respond more honestly than they have heretofore
- discuss topics in the group that have formerly been "off limits," especially those regarding their sexual relationship
- acknowledge the positive aspects of their partnership and not to dwell continually on the negative aspects
- be capable of a better balanced relationship, i.e., neither of the partners needs to take on the role of the tyrant or slave
- become more sensitive to the nuances of voice tone, phrasing, and body stances, and how these affect their relationship
- fight fair, i.e., in accordance to rules they both agree to.

When the group members begin to trust one another, they begin to explore the conditions in their individual and marital histories that led to the incestuous behavior. Listening to other couples talk to each other allows members to see that they often behave the same way. A wife may comment aloud, for example, after listening to another member speak, "I never realized it, but I sound just that shrill when I complain to my husband that he is too easy on the children."

The couples groups contribute importantly to one of the major goals of the CSATP: to teach the members to become better spouses and parents.

**Human Sexuality Class.** This class is offered by a local college and is led by a licensed sex therapist. It is organized specifically for members of Parents United and the professional staff. The class meets for eight weeks on an evening other than Wednesday so that members do not have to miss attending the weekly meeting of Parents United.

The leader guides intensive, in-depth discussions on sex. All aspects of human sexuality are appropriate for discussion. Both men and women attend so that more information can be exchanged than in a single-gender class. The members discuss sexuality in general and sexuality related to their own personal and marital problems. The leader uses visual aids (photos, films, crayons, and paper) and group exercises.

Members become more comfortable acknowledging that all humans are sexual and do not need to deny or be embarrassed about that part of themselves. Time is devoted to improving sexual communication between partners. The leader also assigns homework that allows them to express their sexuality without exploiting their partners.

**Parenting Group.** This group is open to all parents: natural, step, foster, custodial or noncustodial parents. The purpose of the group is to improve parenting attitudes and skills so that mutually satisfying relationships can be achieved with children. It is hoped that as a result of this group experience the members will be better able to:

- rechannel their anger, frustration, and dependency so that it is not directed at their children
- recognize and stop selfish, manipulative behavior
- respect their children's needs and rights
- be patient about their progress as parents as well as the developmental progress of their children.

Of importance is that group members learn that their effectiveness as parents depends on how well they satisfy their other personal needs as individuals and their relationships with spouses, co-workers, relatives, and other key people.

**Adults Molested as Children Group.** This group is for adults who were molested as children by a family member. Usually the offenders were their fathers, but some of the members were molested by older siblings, the spouses of siblings, or grandparents. Only an extremely small number of the offenders were females. Also, this group is usually composed entirely of female victims and the following discussion is based on this typical victim.

Commonly, a group member is in her late twenties. The incestuous situation had not been reported to the authorities and she has not been able to resolve the experience either with her mother or offending father to her satisfaction. Both parents avoid or frustrate her attempts to confront them. Ever since her adolescence, the victim has abused herself unmercifully: by promiscuity often degenerating to prostitution, by substance abuse, and/or by sabotaging or not fulfilling the potential of intimate relationships. She comes to the group angry, guilty, self-pitying, fearful of authoritative figures, and apprehensive over her sexuality and her sexual identity.

It is crucial to involve adults molested as children in a mutual support group, because it is often the only way they will learn to trust and/or to become trustworthy themselves. Many have never received any counseling or other support for this problem. Almost all have "acted out" their sadness and anger in ways they deeply regret and need to discuss. Their painful feelings have festered for years and many have carried the burden completely alone through many stages of emotional and physical and social development. Their emotional development is likely to have been arrested at the stage and age of the incidents, so they often need to go through the stages of development they have not yet experienced, almost like giving themselves a second childhood.

Most of the groups have resisted attempts to involve male facilitators in the group. Although male offenders have been used successfully in the adolescent female groups of Daughters and Sons United, this has not been the case with groups for women molested as children. The women usually must spend at least two eight-week sessions in the group before feeling ready to form the Recontact Group (described later) which includes current offending parents as well as nonoffending parents.

During the early phases of the group, the facilitator encourages the women to voice and to act out, largely through bioenergetic exercises, their suppressed anger at their offending and nonoffending parents. This is often difficult to accomplish with women who are in withdrawn states. However, most of the women gradually are able to discharge at least some of their long-suppressed rage at their parents. The facilitator is aware that the women have different ways of avoiding this necessary first step. Some use intellectual explanations, some hide behind shyness, some feign anger, and some block out all overtures by group members. Eventually, most of the members are won over as participants in the group process.

The self-help group and the unique advantages won by bringing together people with alike problems are dramatically demonstrated in this group. It must be remembered that the incestuous experience left each of the members with unattended emotional wounds. The feelings of shame, guilt, and anger resulting from an experience, which they assumed was rare and could be due only to some unique aberrations in themselves

and their families, prevented them from fully facing and resolving the experience. This has been true even for those members who had been given long-term psychotherapy. The group provides them the first real opportunity to deal with the experience and its characteristic aftermath, self-sabotaging behavior.

Most of the group members leave this group feeling greatly relieved. Some go on to the Recontact Group to prepare themselves for confrontation with their real parents. Others may join the Orientation Group for less intense interactions with incoming offending and nonoffending parents, but most adults molested as children are urged to attend the Recontact Group as soon as they feel ready to do so.

**Recontact Group.** The Recontact Group is composed of offending and nonoffending parents, and adults molested as children. Most of the adult victims have already attended the Adults Molested as Children Group. "Recontact" refers to group members becoming aware of and resolving repressed feelings, especially those originating from sexual exploitation during childhood. Recontact is accomplished by individualized personal awareness exercises (usually of the Gestalt variety) and by role-playing exercises between the victims and the parents.

The parents in the group usually are not related to the victims in the group. In the role-playing exercises the victims confront surrogate offending parents to vent their rage at their real parents for sexually abusing them. Similarly, they discharge their anger toward their nonoffending parents for their inability to protect them.

The group does not confine itself to the catharsis of anger. Members work toward attaining congruence and inner peace of mind. They begin to develop inner resources that will enable them to satisfy their needs in socially responsible ways. They strive toward depending less on others. They complete unfinished transactions with themselves and others. Members try to provide a safe, supportive atmosphere for each other not only to give credence to the anguish they experienced, but to validate fellow members evolving persons.

Victims form bonds with parents in the group and realize in doing so that these are worthwhile people. That opens the door for victims to relearn loving and feeling close to their own parents and seeing them with new eyes. Once they experience fulfilling, trusting, nonhierarchical communication with these parent figures and receive appropriate affection and attention from them, they are on the way to reestablishing the same kind of relationship with their own parents. They learn to interact with authority and parental figures from a firm position of strength in lieu of their former helpless, dominated position.

Victims who operated formerly from an aggressive, hostile position with their parents can learn to be strong in self-esteem and assertiveness and yet be soft, vulnerable, and nondefensive. The group works on refraining from blaming others and on feeling empathy for the people they had been blaming. As the members experience catharsis from letting out their secrets and their pain, they feel more control over their lives and more distant from the former pain. Some of them at this point choose to begin working toward contacting family members with whom they have severed contact or with whom they have had mostly painful contact.

The members practice recontacting their family members by doing role plays with other members. The role play could be a mother or father practicing what they hope to say to their own daughter or son. Or it could be a molested daughter or son practicing what he or she would like to say to parents or other family members. They say to the members what they hope to express to their own families in the future. This is their opportunity to talk to people who feel much the same as their own family members. Members of the group give them feedback about how their words might be interpreted by their own family members.

The role-playing strongly affects both the participants and the members who are watching. Since most members have never expressed themselves in this fashion before, they are very emotional and even incoherent and therefore must rehearse what they need to say several times before they can communicate clearly. Members do many role plays in succeeding sessions and modify and rephrase their messages to make them more precise and to feel more comfortable saying what they want to say.

Once members have actually confronted their own family members, they can begin to assume responsibility for the other facets of their lives. Adults molested as children often say, "If I could master this, I can master just about any difficulty that comes my way."

Members who cannot recontact relatives because they have died or the damage to their relationship is irreparable still gain much benefit from the group. They have a chance to express their anger, realize they are not alone in their suffering, and develop close relationships with surrogate family members in the group.

Parents in the Recontact Group learn to understand the victim's point of view and complaints that victims received confusing double messages from parents. An example is that the parent who punished the victim for dressing immodestly in front of family friends or peers demanded that she undress completely for him. It is often easier for parents to listen with a more objective ear to a daughter who is not their own, since there is less emotional investment.

The molested members who have felt unfinished, stuck, and unheard finally feel they have been listened to sufficiently. The parents finally have a chance to ask questions of women molested as children that they have not been able to get answered. The molested women remind the parents of how their own molested daughters will think, feel, and behave if they do not receive sufficient counseling and other support. The molested members express anger, guilt, defenselessness, shame, loneliness, and hate of their own and/or others' bodies and minds. From hearing this, the parent members usually begin understanding their own child's position more fully. Parents who have wondered how well their own daughter can come out of this experience are greatly comforted when one of the molested members successfully recontacts her own family and is able to put the pain and anger behind her.

**Alcoholic Problems Group.** This group is for people who do or used to drink excessively. It also includes members who do not have alcoholic problems but who have important relationships with people who do have such problems. The group carries on extensive discussions directly related to alcoholism. Their goals are to become self-managing and to overcome the need to drink uncontrollably. They strive to gain insight into the physical and emotional problems that led to the drinking and aggravated the problems.

Members discuss in personal terms how drinking affects their lives, how the dependency immobilizes them, and the individual behavioral patterns that result. They begin to recognize that they make the choice to drink even though the choice is largely unconscious, and that others are not to blame. They take responsibility for the problem and support each other in many of the same ways Alcoholics Anonymous members do. But the group deals more with the fundamental emotional problems than with the symptoms of alcoholism so that the members can learn to attend to these problems personally. Group members relate how the drinking may have facilitated the molestations, but they also acknowledge that their drunken state does not excuse the molestations.

Printed material, films, and other visual aids are employed liberally. The group is facilitated by two people who also have drinking problems. The facilitators model the behavior they hope the members in this group will emulate, and they inspire the members to realize that each of them can clean up his life and serve as a model to the next person with a similar problem who enters the program.

**Making Life Happen Your Way.** This group is offered to young men and women in Parents United/Daughters and Sons United and held only if at least five individuals apply. The group deals with the experiences unique to people eighteen to twenty-five years old. They discuss how to cope with stress, interact effectively with others, and sort out and resolve conflicts. They help each other identify self-realizing vocations and what each must do to qualify for and attain that vocation. Practical skills are also taught: analysis of the job market; the writing of resumes; training opportunities; how to prepare for and to present themselves in job interviews; etc.

**Daughters and Sons United.** This organization, an adjunct of Parents United, is composed of children five to eighteen years of age, the majority of whom are girls who were molested by fathers. DSU also includes siblings of the victims and adolescent perpetrators. The two organizations work together and share many similarities.

Giarretto formed the first groups for children in 1972, one a play therapy group for children up to the latency period and the other for adolescent girls. Both were co-led by juvenile probation officers. Because the children's groups require much more attention and professional guidance than the adult groups and because of the press of an increasing caseload on a small staff, the children's groups did not grow as rapidly as Parents United. In late 1977, a young administrative intern, Cindy DeNoyer, was assigned the task of coordinating and expanding Daughters and Sons United. Since that time, the membership has grown to over 150 members, of which about three-fourths are active while the balance attend the meetings irregularly.

The self-expressed goals of Daughters and Sons United are:

1. To alleviate trauma experienced by the victim through intensive emotional support during the initial crisis;
2. To facilitate victim and/or sibling awareness of his or her individual feelings;
3. To promote personal growth and communication skills;
4. To alleviate any guilt the child may be feeling as a result of the sexual abuse;
5. To prevent subsequent destructive behavior such as running away, heavy drug abuse, suicide, prostitution, and promiscuity;
6. To prevent repeats of the offenses by increasing victims' independence, assertiveness, and self-esteem;
7. To prevent subsequent dysfunction of emotional and sexual relationships; and
8. To break the multigenerational abusive and dysfunctional pattern which is evident in many of these families.

Daughters and Sons United's decision-making body is the Task Force Committee. The committee is presently composed of six members who meet weekly with a Parents United representative and the Daughters and Sons United coordinator. The committee establishes goals, objectives, and projects geared to enhance the development, organization, and unity of the DSU program. The DSU coordinator and interns selected for this purpose implement the Task Force Committee's decisions.

The Task Force Committee assesses all new group formats and ensures that members who act as group facilitators with the professional group leaders are carefully selected and trained. DSU helps to organize and conduct a variety of groups. Basic groups are: adolescent girls' orientation group, adolescent groups, preadolescent groups, play-therapy groups, a transitional group (to adulthood) for young people, an adolescent offenders group, and a human sexuality group.

DSU participates in the following services:

1. A *Children's Shelter Liaison* makes initial contact with a child within one or two days after admission in order to provide crisis intervention, introduce the children to DSU groups, and provide continual support and counseling throughout protective custody.
2. A *Juvenile Hall Liaison* performs the same function for children in Juvenile Hall.
3. A *Home Liaison* makes initial contact during the crisis period with those children who remain in the home.
4. In the *Sponsorship Program*, seasoned members make telephone contacts and facilitate new members' entry into the group.
5. A *Time-Out Corner* provides DSU members access to resources and reading materials that increase the children's knowledge in such areas as drug abuse, birth control, and communications skills.
6. A *support system* for police and juvenile investigations, medical exams, and court hearings means that interns accompany children through the various steps in the criminal justice system process.
7. In a *Big Sister/Big Brother unit*, interns enter into one-to-one friend relationships with children requiring sustained support.
8. A *Transportation unit* provides transportation for children to weekly groups and counseling sessions; over 115 children are transported each month.

The DSU Task Force also organizes fund-raising activities and administers the money collected. To build morale and esprit de corps, birthdays are celebrated and visits are arranged to entertainment and cultural centers.

Members of Daughters and Sons United participate in a ten-week communication workshop; they receive a certificate and high school credits upon completion. The older members also receive co-counseling training. The members are extremely supportive of one another, especially through the crisis periods.

Like Parents United, DSU is interested in social action—in making the community aware of the problems of incest and of the existence of the program. Qualified members are selected and trained to give presentations with Parents United members to schools and various organizations and to make appearances on radio and television. Assisted by a volunteer, the group has created its own pamphlet on Daughters and Sons United and arranged to have the pamphlets distributed at junior high and high schools.

Members are becoming increasingly assertive in defense of children's rights in general; and they often come to the adult groups to argue for their specific rights within the CSATP. DSU does not regard itself as the lesser half of the self-help component but as a full partner in the aims and purposes of the CSATP. It is anticipated that DSU will soon develop into a national organization based on the concept of "children helping children."

## The Private Counseling Sessions

As its title clearly specifies, the Child Sexual Abuse Treatment Program was started and developed for the welfare of the victims, and all actions by the staff are done with that purpose in mind. This primary objective is restated because the attention paid by the CSATP to fathers who have sexually exploited their daughters has been misconstrued by a few critics as being "too soft" on the offenders. However, it is important to remember that the offender is regarded by his daughter more as a father than as an offender—father of the family to which the typical victim wishes to return.

To provide for the child's emotional needs as well as her overall welfare, the CSATP must ensure that she is returned to a safe and nurturing home. Therefore, both the child and her parents must be treated. Although the treatment plan concentrates on the child, her mother, and their relationship, the father also is usually seen soon after his arrest and included in the treatment plan for the family. Again, the ultimate purpose of the attention paid to the offender is to teach him to become a caring and effective father and husband.

Since it became clearly evident that the typical victim of father-daughter incest wanted to go back to her own family rather than a surrogate family, the CSATP developed a family reconstruction strategy. This strategy has been applied to the majority of the families who have been treated over the past nine years. At this writing, over 90 percent of the children have been returned to their mothers; and over 80 percent of the children have been returned to both parents.

The private counseling sessions contribute to the family reconstruction strategy. The counselor prepares a treatment plan designed around the unique requirements of each child and her family and sees to it that the clients adhere to the plan. The counselor is not a therapist in the usual sense of the word, but rather a friend and teacher who joins the other members of the CSATP in facilitating the reconstitution of the family. As part of the treatment system, the counselor and the system become more effective as the professional, self-help, and volunteer components of the CSATP become more refined and integrated.

**Initial Sessions.** A supportive, optimistic climate must be established by the counselor before successful counseling can take place. This climate is especially vital in the treatment of families in which father-daughter incest has occurred and been exposed to the authorities. In the initial sessions, fear is the overriding emotion in the daughter, mother, and father. They are fearful of the unknown reactions of the criminal justice system: will the child and mother be separated? will the father be sentenced to a long prison term? The counselor listens intently to their fears and allows the clients full time to express them. After giving them ample time to do so, the counselor directly addresses the principal fears and informs them that it is extremely unlikely the child will be separated from her mother, if the father remains out of the home until the court permits him to return, or that the father will be sentenced to a long prison term. In the typical case, these predictions can be made at a high level of confidence.

The clients must be given hope and reassured that their situation is not as singular or as disabling as they believe. They are told that hundreds of families with similar experiences have been helped by the CSATP. They will meet some of the family members at meetings of Parents United and Daughters and Sons United and will see for themselves that many are now managing very well. Usually the child, mother, and father are already in contact with members of the self-help groups who serve as sponsors to incoming families, and this reinforces the encouraging remarks of the counselor.

Families troubled by incest often are socially isolated and therefore distrust outsiders, especially those in positions of authority. At first the CSATP counselor may be lumped with these potentially threatening outsiders. To allay this fear, the counselor must win their confidence and firmly tell them that s/he should be regarded as their friend and can be trusted with all disclosures. No information acquired during counseling sessions will be passed on to the authorities. The client-therapist confidentiality rule will hold fast unless new incidences of molestation are reported.

The counselors are usually able to quiet the clients' fears after one or two sessions, especially if the clients are in communication with members of the self-help groups and are attending the weekly meetings. When the clients are able to listen rationally, the counselor clearly outlines the services they can expect from the CSATP. The parents are informed that families fare best if they become involved in all aspects of the CSATP: the individual, couple, and family counseling as well as the group counseling and public relations effort of PU/DSU.

The counselor advises the father and mother that the CSATP will do its part if they do theirs. For instance, the father must attend all the private and group sessions prescribed by the counselor. If not, the progress report the counselor writes for the judge during sentencing will have a negative impact on the disposition of his case.

The father is informed that if he is charged with a felony, the judge may still order him to serve a few months at the local rehabilitation center. However, the rehabilitation officer will place him on work furlough and allow him to continue with his counseling program. Whether or not he receives a jail sentence, it is certain that he will be placed on probation for two or three years.

The father is told that he must persist in his counseling program if he wishes the CSATP to influence in his favor other decisions by the court such as permission to see his daughter and eventually to return to his family, reduction of the probationary period, and expungement of his name from the criminal records when the probation ends.

Thus, the counselor not only listens to their fears sympathetically but informs the clients of the most likely developments during the period of the family's involvement with the criminal justice system and what parents, and the father in particular, must do to help themselves.

There is a tendency in some families to slip away from the counseling plan or to pursue it less diligently after the prosecution period passes. This behavior is more likely to occur in those cases where the offenses were less severe and settled at the misdemeanor level. To forestall this, the counselor has the parents sign a contract in which they agree to continue with the counseling plan until the counselor decides to terminate it. The counselor answers all questions posed by the parents regarding the contract and why the terms are necessary.

It is important for the clients to leave this session with the understanding that the services of the counselor and the CSATP are not provided solely for the purpose of tiding the family through the court process but largely for the purpose of teaching the members of the family—the parents in particular—the skills needed for forming a healthy family unit.

**Family Reconstruction Strategy.** The reconstitution of the family starts with the effort to cement and enhance the mother-child bond. This step is taken for the sufficient reason that the child and mother usually wish to live together. But for those who require a theoretical rationale, there are sound genetic and social evolutionary reasons for this step. The survival of the human species is dependent on the family unit and the ability of the parents to provide for their offspring until they are able to fend for themselves. Beyond enabling their children to survive, effective parents teach their children to become self-realized, socially responsible human beings. The mother is the bearer and traditionally the principal caretaker/teacher of her children. Typically, children find it extremely difficult to attain their full potential as adults without a long-term committed relationship with their mothers.

Of course, the father has an important role in the rearing of well-balanced children, but the mother remains the essential and primary parent. If the victim of father-daughter incest and her mother want their father/husband back in the home, the CSATP bends every effort to satisfy this need. But the father cannot assume his dual role as father/husband successfully if the child doesn't want him back, and she will defeat his attempts to reestablish his function in the family if she feels insecure about her relationship with her mother.

This viewpoint is confirmed repeatedly as the staff of the CSATP monitors the progress of client families. The victims (and the families) who fare best are those whose mothers give principal support to their daughters rather than their husbands. The connection between the child and mother is strengthened when the mother tells the child that she believes her story and backs this up by choosing to keep the child in the home instead of her husband.

The decision to decide between the two is often forced on the mother by the investigating officer or the court to ensure the safety of the child. In the majority of the CSATP cases, the fathers leave the home voluntarily. Some fathers hesitate in doing so, however, and rationalize this position with excuses such as that the family cannot afford separate quarters for him, that the other children need him, or that he must remain in the home so that he and his wife can work on their marital problems. Whatever his excuses, his wife will act not only in the best interests of her child but of those of the marriage and family as well if she asserts herself first as a mother who must protect her children and backs this up by insisting that he—not the child—must leave the home.

In those instances where the father denies his daughter's accusations, the mother must accept the child's word and, above all, tell her that she is not to blame for the situation. Children rarely lie when they accuse their fathers of molesting them. A few may embellish the details but fully contrived accusations are extremely rare. Of the more than three thousand children referred to the CSATP, less than one percent fabricated their stories. Even if the mother has some doubts regarding the child's statements, she must give her the benefit of the doubt. If the child indeed is lying, it is unlikely that she will continue to lie to her trusting mother, and the mother will then discover why the child was forced to lie in the first place.

When the mother assumes her primary responsibility, she begins to feel much better about herself and is able to improve not only the relationship with her daughter but the relationships with her other siblings, relatives, and friends. She will also discover, often to her surprise, that she has strengthened her marital relationship. She has won her husband's respect and helped him to clarify for himself his own role as father.

**Emotional States of Clients.** To begin the process of reuniting the child and her mother and from that point to reconstitute the entire family, the counselor must listen to, identify, and understand the emotions being experienced by the child, mother, and father.

These emotions vary in intensity and sequence depending on variables such as the age of the child when the abuses began; the frequency and extent of the acts; duration of the incestuous period; the age of the child when the molestation stopped; the overall quality of the relationships among the child, mother, and father; and perhaps most important of all, variables such as the reactions of relatives, friends, and official interveners.

**The Child.** The clients are usually seen separately before being counseled as dyads. The child whose feelings are typified here is a girl about thirteen years old who is not living at home. She reported that she was being abused and, although her mother is fairly supportive, the child is uncertain as to when she will be allowed to return home or even if she wishes to return.

It must be remembered that the child took a desperate leap into an unknown world when she reported the situation. As mentioned previously, fear is her dominant emotion. She is fearful of what might happen to her family as a result of the court process and may also feel despair over the thought that she may be disowned by her mother and family. This fearful state is likely to deepen and persist if her mother rejects her or is vague about her support or if the child cannot trust her counselor and the other interveners.

The ministrations of the counselors and members of DSU are extremely important. When the child begins to accept them as friends, her fears are allayed. But the greatest calming effect is produced by her mother's solid support, and this must be strongly encouraged by members of Parents United and the staff.

As the fear begins to abate, guilt takes over as the dominating emotional state. The guilty feelings are seldom acknowledged during this transitional phase since they stem from unconscious or subconscious messages from her superego accusing her of complicity in the incestuous relationship: she seduced her father or encouraged him; she derived pleasure from the sexual acts or would have resisted him; she was jealous of her mother; she enjoyed the secret trysts and even helped to arrange them—if not, she would have disclosed the situation to her mother; she is responsible for ruining her mother's marriage and for the demise of her family. The guilty feelings are especially strong if the offender is a stepfather, and even more so if he is a younger man with whom she had related more as a lover than as a paternal figure.

The guilty feelings are manifested indirectly in various ways. If the child has some ego strength and self-esteem, she may resort to defensive devices such as declarations of anger ranging from contempt to outrage toward the authorities for their harsh and insensitive handling of the situation; toward her father for exploiting her; and toward her mother for not protecting her. The deep, uncontrollable anger may also fuel outrageous but essentially self-punishing behavior: hostile acting-out at home and at school; promiscuity; and engaging in dangerous, often law-breaking activities with rebellious groups.

A much more serious emotional problem is one that develops in a child with very low self-regard and whose chronic feelings of guilt drive her into a withdrawal state. She cannot communicate with the counselor, avoids eye contact, and may occasionally mutter a barely audible, "I don't know." The child is lost in deep anguish and remorse because she has convinced herself that she is entirely to blame for the circumstances which led to the family's hopeless condition.

In checking the backgrounds of children who retreat into this state of despair, it is often found that they had taken on many of the responsibilities of the mother/wife. In attempting to keep the family from falling apart, they had given in to their father's sexual advances to stop him from deserting the family. Such children could not depend on their parents as parents and felt forced to assume their mother's role. They blame themselves for failing in this role, and whatever anger they feel is directed inward. To

sedate their painful emotional states, the children often become heavily dependent on drugs.

A counselor must be very patient with a child in a severe withdrawal state. Only by creating a reassuring, accepting climate during the sessions will the counselor be able to win the trust of the child. The trust becomes tangible when the child begins to communicate. Gradually, the counselor must convince the child that she is not to blame for the family's situation; that she was the victim of her father and not his accomplice; that she should have been protected by her mother instead of the other way around; that she has the right to be angry toward both of them.

The child's anger must be directed outward and the counselor must help the child discharge her justifiable anger toward her parents. The controlled environment of the individual and group counseling sessions provides the child the opportunity to expel her anger safely and without the repercussions that come from self-punishing acts or hostile behavior in the community.

**The Mother.** When the mother begins to adapt to the situation with the help of Parents United members, she too will experience guilt as the principal emotion. The mother may not always be aware of the sources of her guilty state, but in time she usually will admit to strong wrenches of guilt for not fulfilling her role as mother and wife. If she had ministered to the needs of her family instead of her own selfish wants, the incestuous events would not have occurred; had she met her husband's emotional and sexual needs, he would not have turned to her daughter for satisfying them; had she kept her ears and eyes open, she would have caught the situation and been able to protect her daughter. The guilty feelings are compounded in the mother who was aware of the sexual activities and allowed them to continue, or who suspects that she was jealous of her daughter and that this contaminated their relationship.

Reflecting their levels of self-esteem, mothers will manifest their guilty states in various ways. At one end of the continuum of possible reactions are mothers who will be in a rage against their husbands and other tormentors; at the other end are mothers who will withdraw into states of hopeless despair. Counselors facing clients in this latter category will often find that the mothers have taken on total responsibility for the survival of their families. Such mothers are parents to their husbands as well as their children. Since they assume the entire responsibility for the welfare of their families, they assume the entire blame for the present derelict states of the families. The mothers had been aware of the gradual erosion of the family's structure and were unable to stop the process. Now they have given up, feel completely defeated, and are often suicidal.

This family member, also, must be treated with extreme patience by the counselor. As the mother emerges from her mental and emotional paralysis and begins to communicate with the counselor, the latter slowly helps her to become aware of the suppressed rage she harbors against her husband in particular, and often her daughter as well, for conniving to betray her while she was absorbed in the task of keeping the family together.

The counselor must provide an opportunity for all family members to vent their anger freely in a controlled therapeutic setting. This should be a major objective especially during the early stages of counseling. It must be remembered that the mother, father, and daughter were all the unconscious victims of a dysfunctional system; they all would have preferred to be fully aware members of a healthy, well-functioning family. The counselor must help them clear their heads of the immobilizing anger, analyze rationally the parts they played in the dysfunctional family system, and then learn what each must do to contribute to a productive system.

**The Father.** Typically, the most difficult client for the counselor is the father. Acute dread of the reactions of the criminal justice system and of the unknown, long-term consequences of his acts to his daughter, wife, and family will persist in the father, particularly through the duration of the prosecution period but often for many months beyond. He is convinced that by breaking the incest taboo he has lost his place in society. The counselor must remember that this man is literally struggling for his survival and that his struggles are often ugly to behold. The father's fear is amplified by guilt, and this state may be revealed through declarations and behavior ranging from strong protestations of innocence or mitigating explanations for his behavior to severe disorientation and withdrawal.

The counselor will be hard put not to react with revulsion to the father who defends himself aggressively and who states that it was his wife's fault because she did not take care of him sexually; that his daughter seduced him or participated willingly; or that he did it because his daughter needed sexual education. If the counselor responds judgmentally, the client will not disclose his underlying feelings and the counseling will not be productive. The foundation for effective counseling is built as the counselor observes the client from the viewpoint that all his evasive reactions stem from fear and guilt.

The client will begin to interact with the counselor honestly when he realizes that the counselor is empathizing with him as a person in distress and fully intends to help him and his family. As the relationship strengthens, the counselor clearly explains his own position and intentions to the client:

1. Incestuous behavior cannot be condoned or rationalized.
2. The client, as father and guide, must assume the full responsibility for the incestuous situation.
3. The client must acknowledge that he had and still may have the problem of not being able to control his incestuous impulses.
4. Compulsive behavior originates from a self-punishing part of him, and client and counselor will work together to identify that part and to redirect its energy toward positive ends.

A father who sinks into a withdrawal state may pose an even more knotty problem to the counselor than a mother or daughter in a similar state. The counselor must guard against suicidal tendencies and/or substance abuse in the father. Gaining the withdrawn client's trust will usually be harder than with an aggressive father. The anger in withdrawn clients is deep-rooted and difficult to activate because it usually stems from repressed childhood experiences of parental abuse, neglect, and emotional deprivation. Nonetheless, the counselor must persevere toward the breakthrough that occurs when the father is enabled to discharge his long-held anger toward his abusive parents.

The ability to view the father as the victim of childhood abuse or deprivation is not easy to come by, despite the logical strength of the assumption that a father who abuses his child is driven by the self-hatred of the child within himself. A substantial clinical analogy exists between the behavior of an abusive parent and the behavior of an unloved child who destroys his or her most precious toys.

## Methods

The methods used by the counselors are based on the humanistic principles discussed previously. Some of the techniques are adaptations of those commonly employed in Gestalt therapy, psychosynthesis, transactional analysis, and bioenergetics. Others have been invented by the staff to accommodate the special requirements of sexually abused children and their families.

Of all the CSATP counselor's techniques, however, it must be stressed that humanistic empathy is the key. More than a technique, it is an attitude that must be continually cultivated. During each session, the counselor must listen actively and be aware of not only the content but the underlying affect in the client's statements and body language; at the same time, the counselor must listen to his or her own thoughts and feelings as the counseling transactions proceed.

After the initial efforts to bring about a good working relationship, the counselor follows an iterative strategy in guiding the client through the concepts and processes of humanistic psychology. The phases are developed more in parallel than in serial fashion. A variety of techniques are used to implement the therapeutic model. None is used for its own sake or on a "let's try it and see" basis; instead, the counselor tries to respond to the client and the situation and to apply a fitting technique.

In most instances, experiential learning techniques are used to elicit affective responses; however, cognitive and spiritual needs are not neglected. To avoid professional distancing, the counselor discusses the strategy and progress of the counseling and answers questions from the client. Certain clients who begin to internalize and practice the techniques at home report profound self-enlightening experiences. These clients are given special exercises to help them to expand and integrate the breakthroughs.

**Self-Assessment and Confrontation.** Once a working relationship has been established and the highly charged emotional climate subsides, clients are usually ready to become aware of and begin to accept their current emotions in order to move on to the next phase of the treatment.

At this point, clients begin by taking an inventory of personal and family characteristics. Initially, during this "know thyself" exploration, the counselor underscores the positive traits. What does the victim, for example, like about herself? What does she appreciate in other family members and the family as a whole? Before she can be motivated to work actively for personal and family growth, she must believe that she and the family are worth the effort.

From this positive stance, the clients can then proceed to identify weaknesses and maladaptive habits that need to be improved or eliminated. These might include uncontrolled use of drugs, food, alcohol, and cigarettes; hostile, aggressive behavior that interferes with the progress in family, school, and work relations; inconsistent study and work habits; and, typically, the inability to communicate effectively, especially with important persons in their lives.

As the clients gain confidence in their search for self-knowledge, they begin to probe the painful areas connected with the incest. In what may be termed a confrontation-assimilation process, the counselor encourages the child, father, mother, and other family members to face and express the feelings associated with the incestuous experiences. Buried feelings such as fear, guilt, shame, and anger cannot be denied; somehow they will have their effect. If not confronted, those feelings will persist in repressed forms and will continue to harass them. With some clients, the pain-provoking memories can be dealt with fairly early in the therapy; with others the counselor finds it prudent to proceed more slowly.

In the treatment of the offender, care must be taken to avoid moralizing, no matter how subtle. From early childhood this client has had a full measure of accusations and preachments. He already feels like an outcast, and if this self-image is reinforced, the negative self-esteem that drove him to or could not control the incestuous behavior will persevere.

Moreover, a judgmental counselor may inadvertently provide an escape route to the offender if his guilt becomes intolerable. For example, he may retreat into superstition and believe he is cursed and was driven to the incestuous behavior by mysterious forces. Or the offender may convince himself that he suffers from an exotic mental disease and must rely on the doctors to cure him. The counselor's task is to guide the client to the simple fact that incest is one of the many types of dysfunctional behavior; he can learn to control this, as well as the other types, if he sets his mind to it.

It must be repeated that while listening with compassion and understanding to the father's feelings, the counselor in no manner condones the incestuous conduct or rationalization of it by the father. Sooner or later, most CSATP clients will admit to the counselor and to investigating officers that they performed the acts and were completely responsible for them. However, it must also be repeated that offenders are likely to admit to the charges only if they are convinced that the CSATP and the criminal justice system will help them and their families. If the offender and his wife anticipate destructive retribution from the court they will, of course, be inclined to deny the accusations.

Traditional counseling without a CSATP support system will seldom be effective in the treatment of incestuous families. The clients will be very guarded in revealing the details of the situation to the counselor, especially if they know that the counselor is mandated to report all child abuse cases to the police and may be subpoenaed by the court to provide incriminating evidence against them. This illustrates once again the interdependent relationship between the counselor and the criminal justice system and why it is important for the CSATP to be recognized by the system as an effective alternative to the usual devices of separation and incarceration.

The major objectives of the early stages of the counseling are to help the family through its crisis and to foster a trusting rapport with the counselor. In subsequent stages, the rapport is strengthened and the counselor facilitates awareness in the clients of personality traits and usually unconscious drives that have been negatively affecting their lives. The father, in particular, is induced to identify and control the parts in himself that have been sabotaging him and which impelled

the incestuous behavior. In a more positive vein, the clients are coached in the techniques of self-awareness so that each can develop independently the ability to observe and direct his or her own growth process. The counselor employs techniques that are best described as combined methods of Gestalt awareness and transactional analysis. Certain clients are encouraged to read and to practice the exercises provided in introductory books on self-awareness.<sup>1</sup>

**Self-Identification.** The self, conceptualized as the control center of the personality, is more than the physical, emotional, and intellectual components of an individual which are continuously in states of flux. John Lilly has an excellent metaphor for the self: "the center of the cyclone" (which he also used as the title of a book).<sup>2</sup> It can be demonstrated that the self as a unique entity can observe the operations of the id, ego, and superego (or the child, adult, and parent, the analogous states employed in transactional analysis).<sup>3</sup> A technique for self-identification used with some clients in advanced stages of counseling involves a series of Gestalt-type exercises in which the client is asked to play out conversations between the parent and child, the adult and child, and the adult and parent while visualizing the self as observing and kindly analyzing the transactions. If the client is able to identify the self, the counselor may elaborate on this line of thought by pointing out that the self as a wise observer is not ensnared by the roles he or she may play as daughter, wife, husband, student, or worker.

<sup>1</sup>Muriel James and Dorothy Jongeward, *Born to Win: Transactional Analysis with Gestalt Experiments* (Reading, MA: Addison-Wesley, 1971); and Dorothy Jongeward and Dru Scott, *Women as Winners* (Reading, MA: Addison-Wesley, 1976).

<sup>2</sup>John Lilly, *Center of the Cyclone* (New York: Julian Press, 1972).

<sup>3</sup>Eric Berne, *Transactional Analysis in Psychotherapy* (New York: Grove Press, 1961).

**Self-Management.** Once the self is identified and distinguished from the changing elements of personality, the concept of self-management is introduced. The assumption is that everyone can learn to control the way s/he behaves and, ultimately, the course his or her life will take. Each person in the family can learn the attitudes and skills for leading self-actualizing lives. The marriage and family can also be given purposeful direction. A major milestone is reached when the client realizes that all past and current experiences can be assimilated for personal growth.

It must be noted that not all the clients are interested in these advanced concepts. Most of the clients learn intuitively some of the basic ideas but are not able to verbalize them. If the extremely low recidivism rate can be used as a reliable indicator, it appears that the majority of the fathers have learned how to control potential sexual impulses toward their children. It appears also that most of the clients have improved their marital relationships as well as their effectivity as parents.

## Defending the accused child molester

by John M. Murtagh



## Convicting the accused child molester

by Elizabeth H. Siskey

Betsy: Well, I guess it's better to talk to you about this case than it is to deal with that no good mother who doesn't want to have to sell their horse and live on welfare, or those squealing brats who think they want their father at home.

John: My basic purpose is to see if we can talk about this particular family as individuals and see if any of the impacts on people other than the offender are very important.

Betsy: It's out and dried. If it happened while mom was in the home and she didn't know about it, she is no damn good, so I don't care what she says. If she did know about it and paid attention to what her 15 year old daughter said and what her father said and didn't want to have him in prison until after Anchorage gets the Olympics, then she's still no damn good.

John: I had thought the fact that the father tried to commit suicide and has finally shaken off years of alcohol dependency, as validated by the experts... suggested, was something we could consider in determining how to treat this family.

Betsy: What do you mean, treat? The only person I know who doesn't think they should get just eight years other than you, is some guy in Juneau by the name of H.B. What does he know about these things?

John: Well, Betsy, I've got to talk to my client and explain what roughly you have in mind.

Betsy: Well, he's got ten digits and a penis, and a tongue, and she has at least two orifices that he's violated, so that's 24 counts... 24 times 8 equals 192... I'll round it down to the nearest century by letting you mitigate one count. Be sure to tell your client if he doesn't plead to one count that encompasses all his sleazy rapes over the last ten years that he's going to get between 100 and 192.

John: Betsy, what about the Andrews decision where the court suggested that there is to be no objective price for asserting one's constitutional rights?

Betsy: They're as messed up as H.B. John: On a different subject, I saw S.M.'s kid last week and things aren't going very well for them. They are having real trouble getting the hang of the welfare system and there doesn't seem to be much in vocational opportunities for mom.

Betsy: S.M.? S.M.? S.M.? Who's that?

John: That's the kid you were so nice to during the pretrial phase and indicated you were

so concerned about at sentencing.

Betsy: Oh, then? That's the dingbat that still thinks he loves his father and wishes he and his mom lived in that nice house now that dad's stopped drinking?

John: That's the family. Besides, in the case that we've been talking about, the daughter told the grand jury that she knew that the incident took place over Christmas vacation here... orange because all the trees were in bloom and they were playing softball on the parking lot. It seems to me you are having some problems with the dates.

Betsy: Well, didn't you read the indictment, it says on or about sometime during the life of the victim, this conduct took place. I figure half the jurors will know when Christmas is and the other half will know when the trees bloom. That's 12 jurors right there and that's all I need.

John: But, didn't you see that in *Cavington*, we have to have some notice for the periods of time we can defend against? After all, my guy was in an iron lung at least five months every year since the kid was born.

Betsy: Yeah, but I know what he was thinking about when he was in it.

John: Isn't it important that the therapist for the mother, the therapist for the daughter and the therapist for the father have been arranging group therapy under approved settings?

Betsy: By whom? What neanderthal would permit these people to get together again just because they think they love each other and want to work through a problem?

John: The Department of Law (Attorney General's office)

Betsy: More do-gooders.

John: Well, my basic principle is that as advocates we probably have very little neutral information and very few neutral opinions on the subject. My suggestion is that since in his complete, candid, remorseful, post-suicide effort confession to everyone he could find, he acknowledged some conduct back in the pre-presumptive days. What about just pleading him to open sentencing on lewd and lascivious conduct, statutory rape, and anything else you can find back in there?

Betsy: What? And give a judge the authority to decide what this man's sentence will be? Never! I'll see you in court.

A dialogue between Betsy, prosecutor of child molesters, and John, a defense attorney who is one of the few people who can talk faster than Betsy. No name changes necessary. Neither one of them is an innocent.

John: I'm here to persuade you to give some consideration to my client.

Betsy: Is this the one who's been doing his teenage daughter since she was three? Or is this the one who can't seem to keep his hands off the church Boy Scout troop?

John: The former, of course. The Boy Scout leader has decided that he could get all the unnatural sex he wanted in jail. Besides, the victim's parents apparently have forgotten their deeply held religious beliefs and are ready to do a live production of Fox's *Book of Martyrs* with him as the star attraction.

Betsy: I see, we're here for the pitch on why are you prosecuting this nice man with no prior criminal record who just has this small sexual problem? Whine away.

John: The way I see it, prosecution just punishes the victim. She doesn't want to see him go to jail.

Betsy: Funny, I talked to her the other day. Told her about the eight year prison term. She says, "Good. He can't get to my little sister now."

John: We're not quarreling with the need for criminal conviction. It's the jail term that's the problem. My man is willing to accept responsibility. But eight years is tough. Obviously a legislative oversight brought to you by the people who, in a fit of madness, brought you presumptive sentencing.

Betsy: Not likely! Seems to me they view your incest defendant the same way we do—a leech, pedophile? By the way, did I tell you the jury's reaction when I told them your man could get an eight-year prison term? They said, "Is that all?"

John: Neanderthals. Why listen to the rabble? Your obligation is to do justice. Just look at this psych report. My man's not a pedophile. He just does this because of marital stress.

Betsy: Is this the shrink who says all these guys screw kids because of stress? Kind of ignores the sexual gratification angle, don't you think?

John: Incidental. I assure you. See where he says here that this "is an isolated incident and not a product of any mental illness."

Betsy: Isolated? Guess someone neglected to tell him about the two daughters he did from the prior marriage.

John: Sorry. My oversight. Must have been marital stress fogging my brain. Listen. Here's the bottom line. This family wants to reunite eventually. The shrink says he is treatable. The children's court or probation officer will monitor the situation. Give it a chance.

Betsy: Who is your guy? Executive director of the Morris B. Chapter of the William Seymour Fan Club? You expect the social worker or P.O. to live with this guy? The mother's been there and she hasn't been able to stop it. Besides, name one study that even says these guys can be treated at all. Could be they just like having sex with kids.

John: Parents United claims a 98% success rate—only 2% reoffend.

Betsy: My favorite study. Based on rearrest rates for a crime that is more underreported than any other. How did they get a figure like that? Ask the victims if dad is still at it? Fat chance the kid will report a molest. It didn't help her to tell the first time and she knows the breadwinner goes bye-bye now if she does. Maybe you're relying on his lovely slightly obese wife to report a molest? The lady who was in my office yesterday begging me not to prosecute her husband because she was going to lose her house because of the lies told by her runaway drug-addicted promiscuous daughter?

John: Okay. You win. My guy is willing to have no contact with children. Just let him work and get treatment.

Betsy: We could arrange a work release. How about a job at the Public Defender Day Care Center? He'll get treatment anyway. He will just get it in jail—where he can trade "how to" stories with his fellow kiddie rapist and get his weekly "peter meter" check to make sure he's controlling those unwholesome thoughts.

John: But look at all these letters from his friends and family. They all say, he's real sorry for what he did. They all say, "There is nothing to be gained by putting him in jail with a bunch of criminals."

Betsy: Last time I heard, there aren't any kids in jail. So we get eight years of no new victims from this guy and he gets to catch up on his reading.

John: There you go again. Being overzealous and cynical. You never trust these experts or your own social workers... How about reduction to attempted first? Five years out of my man's life is enough, isn't it?

### FOOTNOTES

<sup>1</sup>The best report came from retired Judge Ralph Moody, "Counselor everyone has a sexual problem. The problem is how he handled it."

<sup>2</sup>In 1983 the legislature did a major revision of the child sexual abuse laws. They decided to retain the classifications in the prior law which treat serious incest offenders the same as people who molest children outside their family. The legislature also significantly increased the penalties for sexual contact within the family. Rumor has it that some poor soul who had the nerve to propose decreasing the eight year presumptive term to five years was laughed out of the House Judiciary Committee.

<sup>3</sup>A phrase coined by social worker Lucy Bertram of the Harborview Sexual Assault Center in Seattle. Ms. Bertram and others at Harborview believe it is not fair to treat the incest offenders more leniently than the man who seduces his victims outside the home, especially since all the literature says that the average incest offender causes more damage to the victim. See D. Finkelhor, *Sexually Victimized Children* at 97-108 (1979).

<sup>4</sup>Child molesters are very prolific fellows. According to Dr. Nicholas Groth in his study of incarcerated offenders in Connecticut, the average age when offenders start committing sexual offenses is 16. A New York study a few years ago of incarcerated sex offenders shows an average of 68.3 years can be expected in a study of a prison population, but counselors of offenders who are not incarcerated also find that their clients have multiple victims. Steve Wolf, who treats child molesters as outpatients at Northwest Treatment Associates in Seattle, says in his years of practice he has yet to see someone who has molested only one child, although they may have been convicted for only one child. He estimates the offenders he sees average five to six victims each.

<sup>5</sup>Morris B. is an Anchorage incest offender who was not prosecuted for years of fondling his daughter back in the old days before prosecution of these cases is on over the court system to wit, 1980. He was handled through the children's court system which returned him to the home because of the recommendation of his psychologist and that he would not reoffend. Within days of the reunification, he started having sex with his daughter—every night, for two years before she reported it. William Seymour of Fairbanks was prosecuted but given an SIS and no jail time so that the family could reunite since he was considered cured. He kept having sex with the same daughter following the reunification, who unfortunately did not report it until after Seymour "successfully" completed his probation. Seymour v. State, 665 P.2d 786 (Alaska App. 1983).

<sup>6</sup>Only between 6 to 10% of child sexual abuse crimes are reported to the police. D. Finkelhor, *Sexually Victimized Children* at 137 (1979).

<sup>7</sup>The only study which claims any significant success in treating sexual offenders was one done by Henry Garratt, who was removing his own Parents United program which he found "id." The 98% figure comes from his book *Improving Treatment of Child Sexual Abuse* (1982).

<sup>8</sup>The surest test of a defense attorney's commitment to his client is whether he or she would take the client into his or her own home. It is best was aptly illustrated by a Bloom County cartoon from last year. Defense attorney Steve Dallas was arguing ardently for the bail release of his elderly, ex-murdering client and he won. The judge released the old lady to Steve Dallas with the final paring, "Good luck, Mr. Dallas. Or should I say—good bye!" as the old woman swings her as at her new custodian.

<sup>9</sup>John M. Murtagh, Popular Anchorage Defense Counsel.

**CLE WINTER SCHEDULE**

January 11	Off the Record (Federal)
January 18	IRVING YOUNGER on Credibility and Cross-Examination and Jury Selection
February 11	Anticipating Proof Problems (Evidence Mini-Seminar, "Breakfast" Series)
February 17	Natural Resources and the Public Trust Doctrine
March 3-10	Trial Techniques and Tactics (Hawaii)
March 25	How to Get Documents Into Evidence (Evidence Mini-Seminar, "Breakfast" Series)

# The Alaska Court of Appeals

## The Lights Are On But Is Anyone Home?

by Walter Share

Arguing before Alaska's Court of Appeals reminds me of running rapids in a kayak after you've dropped your paddle. The Court of Appeals is unique and invigorating. You may not like the results of their opinions but one thing is clear: The lights are on and the Court of Appeals is alive and kicking. The Alaska Court of Appeals has written many an opinion over the last years with which I definitely disagree. However, it's clear that the Court of Appeals is a young court, still enthusiastic, well prepared, and in the process of maturing. Much like criminal law in Alaska, the court is still relatively wide open, and unsettled. When you add in the relative newness of the Alaska Criminal Code and Alaska law, arguing before the Court of Appeals can be anybody's guess and is often like a shooting match.

often. They are not likely to find "plain error" and not likely to fill in the blanks for errors made in the trial court below. If there is a way they can affirm a conviction they will do it.

It used to be, in the 70's, that the State Supreme Court was always more liberal than the federal court. If you lost in the Alaska Supreme Court you could hang up your spurs and go home because generally you weren't going to get anything out of the Federal District Court of Ninth Circuit. Now the above is not always true. The relative trade-offs between state and federal courts have changed. The Federal District Court judges these days are growing more liberal and are listening to federal constitutional claims. The Ninth Circuit is now the most reversed circuit in the country. If you pull a liberal panel in the ninth circuit you might

relatively new and open court. (2) they are not a defendants' or prosecution court on appeal. While like most courts they tend to affirm, the status quo, all other things being equal, they are capable of understanding and following the constitution. (3) the law is still very undefined in Alaska and we are still litigating the new and foolishly drafted criminal code which was drafted, in my opinion, with a reckless mental state as defined in A.S. 11.81.900(a) and. (4) there are still some judges on the Superior Court and District Court in Alaska who think that the term "constitution" is limited to their digestive tracts. While I could rant and rave about particular decisions, the Court of Appeals is a valuable alternative which many attorneys are not taking seriously enough.

### Your Guess Is as Good as Mine

Based on the above statistics, I'm constantly unable to predict the outcome of my case. My clients always want to know, "Are we going to win?" "What are my chances on appeal?" That's when I take out the Ouija board. To this I am usually incapable of giving answers. I'd rather bet on when the ice will break in the Nenana Ice Classic than how the Court of Appeals is going to rule on most issues. I have never been in an oral argument where I haven't been asked numerous questions that I've never dreamed the court would think of no matter how much I prepared. I've never come out of oral argument with any better idea of how the Court of Appeals is going to rule than when I went in. I've seen the Court of Appeals completely obliterate one side (often myself) only to turn around and rule for that side. I've seen them turn around and argue inconsistently right in the middle of argument. Those people who seem to have pegged the Court of Appeals as a liberal court or a conservative court seem to know something I don't know. I spend 90 percent of my time doing only appellate work, and on many cases, your guess is as good as mine.

### Are Three Heads Better Than One?

The other intriguing matter is that when you argue to our appellate court you're not arguing to one court. You've got three distinctive judges who are fully capable of disagreeing and coming to different views.

"the court is open to finding error if properly preserved and good issues are raised."

None of the three judges can be termed either "liberal" or "conservative" and all of them are capable of changing their minds in a flash. They are feisty, and as a general rule, their confrontive and argumentative nature is not to be taken personally. They just like to argue.

### Link to Old England

As you look at the bench, on your left is Judge James K. Singleton. He is neither liberal nor conservative. He lives for the world of concepts and legal constructs, well removed from the mundane directives of mere politics. He is highly intellectual and very historical. He is rarely concerned with what century we are in when he asks questions. Of the three judges on the bench he is definitely the most academic.

In one oral argument, the issue turned on the fact that the trial court had a secretary gather some evidence outside the presence of counsel and outside of court. This, it was suggested, was rather adversarial role for a judge. Defense counsel was in the midst of expressing a most compelling display of disdain, shock, horror, chagrin and constitutional repugnance when Judge Singleton noted, "Of course counsel, judicial gathering of evidence is only contrary to the Anglo-American tradition. In the accusatorial system (i.e., France and no doubt Cambodia and Iran) judges

often take an investigative role." There was a small silence in the courtroom. Indeed it was hard to respond to that point. Counsel regained composure in time to ask Judge Singleton to take judicial notice that Alaska is no longer Russian... it now falls within the jurisdiction of AMERICA, and to volunteer supplemental briefing since neither side had researched that issue.

Judge Singleton is also the master of the reference to the undiscovered law review articles, cases or statutes which nobody in their right mind could find but Judge Singleton. You often see him in the law library doing his own research, probably because he likes it. Usually he's reading those books which crumble in your hands if handled without great care. The ones with yellow pages and broken bindings. I recall the middle of one argument, where the dialogue went almost as follows:

**JUDGE SINGLETON:** Excuse me counsel, what do you think about the tentative draft of the 1947 model penal code which was adopted by the Michigan State Senate, but rejected by the Michigan State House? Does this legislative history help at all in defining the legislative intent in our criminal code? Does this provide a clue for why the drafter of our model penal code chose not to put an criminal mental state into this provision of Alaska statutes?

**COUNSEL:** Had I read the first draft (which neither side cited in their briefs) I might be in a position to argue from that. Judge Singleton... does it support the defense on appeal?

**JUDGE SINGLETON:** Basically it could be construed to assist your argument.

**COUNSEL:** Then I think it controls.

Judge Singleton, as noted above, is also the master of the five-minute question, oft times more of a speech with a slight rise in inflection at the end than actually a question. Oft times counsel is left helpless watching valuable time tick away as Judge Singleton's questions take us back to 18th Century England. Judge Singleton is not shy. He'll jump right into the middle of an argument and let you know exactly what the concerns are. His historical and academic approach to the law does add a necessary balance to the court. This necessary "balance" is great if it helps your side. It's difficult, however, explaining to your client that you just lost the

"... in the last fiscal year, 40% to 50% of the cases that came before the Court of Appeals were either reversed, vacated or remanded for further findings."

### The Court of Controversy

If you don't like controversy, then arguing before the Court of Appeals is an unsettling experience. The Court of Appeals is one of the most active and articulate courts in oral argument that I have been before. I have yet to see them unprepared on the facts or the law (I can't wait). They also have the cutting edge. They specialize purely in criminal law and write 90 percent of the criminal decisions. They certainly ought to know what they're doing. It's impossible to match their vast wealth of knowledge.

There are three judges of the Court of Appeals who are young, active and compulsive. Each judge has two law clerks, fresh out of law school and eager to prove their abilities by finding errors in counsel's cases and briefs. The court also has three full-time staff attorneys if the above isn't enough. If you are the type of attorney who likes to keep control of things and direct the flow of argument, don't go before the Court of Appeals. It's clear that you won't be steering the bus from the moment you walk into the room. The Court of Appeals is not predictable. You can't guess which issues the judges will choose to discuss or which arguments they might buy. You have to be prepared on every issue which has been raised.

### Who Are These Guys Anyway?

It's impossible to "peg" the Court of Appeals. They are not as "liberal" as the Alaska Supreme Court used to be in the 1970's. I think I came here in part because in the 1970's the Alaska Supreme Court was well known and respected. Given a smaller caseload, there were law journal type decisions, usually on the liberal and cutting edge of the law. The court that brought us *Ravin v. State* (marijuana is constitutional), protected in the house) and repeatedly held that Alaska's constitution granted more protection than the state's protections afforded by the federal constitution, was certainly one of the more liberal courts in the country.

Those days are no longer here, one must concede. But the Alaska Court of Appeals is still a "liberal" and open court by comparison to America. Compared to the courts outside, they still listen and can think, even if they don't always get the time to do so. They are a more technical court than the Alaska Supreme Court used to be. You can win or lose based on more analytical and rational arguments than ever before.

The old Supreme Court was more of an equity court by my memory, fully capable of finding "plain error" or reversing on an issue which neither side on appeal saw or raised. The new appellate court is more technical in that you have to dot your "i's" and cross your "t's" and play ball according to the rules more

do much better than the Alaska Court of Appeals. If you pull an average or conservative panel on the ninth circuit, our appellate court looks brilliant and liberal, by comparison. While the Court of Appeals is on the more liberal, intelligent, and well prepared side of the spectrum, the time has come when they have become a "court system" and where the federal system might offer alternatives.

### Can't Get No Satisfaction? Who Needs the Court of Appeals?

I must concede I am tired of attorneys saying "Why raise issues on appeal?" I have heard numerous attorneys scream, "You don't get anything from the Court of Appeals anyway." Gail Frates (who has urged me to write this article for the last six months), finally blackmailed me by threatening to premise his readers that in the next issue I would come up with an article titled "The Court of Appeals: Who Needs Them Anyway?" He threatened to tell readers that my article would be titled "Arguing Before Alaska's New Court: The Three Stooges" if I didn't come through for this month's publication. The fact is that lots of people need the Court of Appeals. Especially defendants and apparently those superior court judges who never took criminal or constitutional law in law school. To those who claim that you just don't get anything from the Court of Appeals anyway, I've got some news for you. You're wrong. If you look at the statistics, they show that in the last fiscal year, 40% to 50% of the cases that came before the Court of Appeals were either reversed, vacated or remanded for further findings. I doubt if you can find another court in the country where defendants do so well (with the exception of a tennis court where about 50% of the people win).

Statistics from the annual report for fiscal year 1985 show there were 103 published opinions. Of those 103, 51 were affirmed. Thirty-eight were reversed, remanded or vacated, and the remaining 8 to 14 were affirmed in part or reversed in part. In other words, approximately half of written opinions the court granted some relief to an appellant. This is not a court that is afraid to act.

The Court of Appeals also decided 238 memorandum opinions and judgments (MO & J). Of these 238, 164 were affirmed (approximately two-thirds). Combine all of the above, and of the 341 cases resolved on the merits about 40% were reversed or remanded. Two weeks ago the Court of Appeals reversed four of five. This week they reversed nine of 10, (albeit one was reversed for the state). Justice Berger and crew don't ever do that. Few courts do.

The above statistics reflect several things that are still true in Alaska. (1) the court is open to finding error if properly preserved and good issues are raised. They are still a

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# Inside the Appeals Court . . . Continued from p. 7

Judge Bryner just like Judge Singleton tends to zero in on his major concerns and while you can never guess what his vote will be at least you know from his questions the major issues he believes will turn the case one way or the other. You had better figure out in advance what issue you have to concede on. If you are forced to argue an illogical or absurd position, Judge Bryner isn't going to let you go far with it, and can make a paper shredder look tame. He can be both caustic and logical, which is great if you've got a strong issue. Look out if you don't, I wouldn't try selling Judge Bryner a used car hoping he won't look under the hood. Again, it's impossible to suggest that Judge Bryner is a liberal or conservative. I've seen him come down with decisions that amazed me on both ends of the spectrum.

### The Judge of Few Words

Judge Robert C. Coats is once again a different question. He appears to believe that he should give counsel a chance to speak their mind and tends to listen more and question counsel less than the other judges. Perhaps this is because he never needs to ask questions since both Judge Singleton and Judge Bryner are usually busy grilling counsel. In any event, Judge Coats tends to sit there with a cheshire grin and just listen. It's impossible to tell his concern sometimes since he is equally polite to both sides (as opposed to Judge Singleton and Judge Bryner who are equally confrontive to both sides). One might think from his silence that Judge Coats is unprepared. But he is not. At least once per argument he will ask a question that's so on the money that you realize he is right on top of both the facts and the law. Perhaps it's better I don't always know what he's thinking. He is neither liberal nor conservative, and tends to respond more to the practical than the academic.

I usually try to split my time, 20 minutes in opening and 10 minutes for rebuttal. The argument is the last thing the Court of Appeals is going to hear before they conference and make a tentative vote. The argument can impact the decision. The Court of Appeals is extremely well prepared and always appears to have read all of the briefs. Nevertheless, that oral argument can sometimes make the difference. If you make the mistake of using all 30 minutes in opening, you can be in big trouble if the State gets up and misrepresents the facts while you sit there silently burning. In the first 20 minutes, the object appears to be to quickly frame the facts (if the Court of Appeals doesn't stop you) and then jump on my strongest issue to find out if or where there are problems in the court's mind. I'm always prepared for a full 20 minutes of silence, but I'm always interrupted in the first few minutes. One has to be prepared to swap issues, jump out of order, and attempt to direct the court's attention on the issues you feel are the strongest.

The 10-minute rebuttal is usually saved to correct the State's representations or to counter their arguments. To the extent that's not required, it's time to hammer home your strongest pitch, and throw in the American flag. Problems always arise, however, when nearing the end of the 20 minutes of opening, one of the judges asks a five-minute question which you have to ask him to repeat. "This time please use commas and punctuation." If a three-minute debate follows, you have approximately one minute for rebuttal. Once I remember talking Judge Bryner into two extra minutes, based on the above problem, but it was not an easy task (in fact it took me two minutes of argument to get him to agree). The biggest challenge of arguing before the Court of Appeals is getting their attention onto your issues and where you think you have the best chance, without offending anybody.

In law school, an "MO & J" might issue if the three judges can't agree that the law should be binding or an unsettled and do not want to give the case precedential value. I've seen 35 page MO & J's (hardly a "short" decision) on questions of first impression where all three judges disagree on the reasoning of the case. It is becoming a quick ticket to resolving a case without any form of judicial accountability.

As you can tell, I disagree with the concept of the MO & J. I think all decisions should be published, and courts should be publicly accountable for the actions. I don't think a criminal case should be decided without that form of accountability and I don't think that important issues should be resolved and "swept under the mat" without publication.

mean the Court of Appeals obviously has no choice but to allocate its resources in a reasonable and limited fashion. They simply can't write a law review on every let alone mist cases.

From the point of view of litigants the lesson is simple. Stick to the basics, focus on your strongest claims, and to the extent your client will let you, weed out the losers. Overlength briefs are a thing of the past. I've had overlength briefs rejected by the court under circumstances where in the past they would have welcomed the help. If you can, stick to the 50-page limit for openings and 20 pages for reply. If the issue can't be fully explained in 70 pages, you're probably in deep trouble to begin with. When you think about the fact that the State also gets 50 pages, if you take

**" . . . all decisions should be published, and courts should be publicly accountable for the actions."**

By the same token I take objection to the one- and two-page decisions which are per-*curiam* and assure counsel that the court has "reviewed the record" and the case is affirmed. I think if the court has indeed "reviewed the record" as it suggests, and has reasons, it can't be that much of a burden to put the reasons down on paper so that my client can understand why he's on his way to Lemmon Creek. Such statements as "We have carefully reviewed the record and find there is sufficient evidence to sustain a conviction" is not in my mind judicious unless supported by an opinion indicating what evidence is sufficient. Even my dumbest clients complain that if the court has indeed "carefully reviewed the record" and there are reasons, why not put them on paper? A good question.

Sometimes I think the Court of Appeals is caught in the assembly line of justice and seems to forget that attorneys have clients who are real people and deserve reasons. Incorrect reasons or poor reasons are even better than none. One of the functions of the court system is to assure the litigants that they've had their days in court. Even if they lose, it assures them that three judges have reviewed the matter and have reasons for affirming a conviction. And while it is true that some arguments may not deserve the time of day, still, a litigant, especially one who is on his way to jail, deserves to be told why. That function is sadly lacking in some of the decisions that come down, and leaves litigants with the wrong impression that the lights are on but nobody's really home.

### Keep It Simple and Brief

Although the above is beyond a doubt my strongest complaint, the problem results from a burgeoning caseload. The complaint I have lodged above, while not excusable, nevertheless reflects the fact that the caseload before the Court of Appeals has jumped significantly over the last years. If you want to get your case across, you've got to stay simple and brief on most cases.

Cases take from six months to 1 1/2 years to decide after argument. In fiscal year 1985, the recent annual report reflects 103 published opinions and 238 MO & J's for a total of 341 opinions. The Court of Appeals also disposed of 120 cases by petition for review. That's a total of 461 cases per year. The Court of Appeals must resolve 461 cases and actually write 341 opinions. That's almost one written opinion a day (if you count weekends) and well over that if you consider cases denied without opinions. The above statistics

mean the Court of Appeals obviously has no choice but to allocate its resources in a reasonable and limited fashion. They simply can't write a law review on every let alone mist cases.

### Humoring the Court

The Alaska Court of Appeals, while an open court has become a "court system." Due to the increase in the caseload, you should try and stand out to the extent you can and make your case notable. Be it by humor, juggling, standing on your head, screaming or emphasizing the more intriguing parts of your gruesome criminal facts, you've got to catch the Court of Appeals attention, or you could fall between the cracks.

My favorite example was in argument for *Arnold v. State*. Jeff Feldman, counsel for the defense was arguing ineffective assistance of counsel, mandated reversal. The court asked Mr. Feldman if they should write a "short unpublished decision" or if ineffective assistance of counsel was widespread enough to merit a full opinion. The dialogue went:

THE COURT: Do you think the issue of ineffective assistance of counsel is so widespread as to merit a broad prophylactic ruling?

MR. FELDMAN: Well, it's kind of like AIDS. It's not a common one, but when it hits it's lethal to a lot of people.

When the room stopped laughing and the argument was over, that case no doubt stood out above the others. And while Mr. Feldman's AIDS analogy was not adopted in the full decision, I'm sure the Court of Appeals was wearing gloves when they authored the opinion.

### The Gateway to the Ninth Circuit

From the point of view of defense counsel, it's true, you do lose a lot of cases in the Court of Appeals (about half). But the attorney who writes off the Court of Appeals as a half fruitless asset and fails to properly raise or think about the appellate record, is doing a client a great injustice and possibly pitching away an important chance at getting a fair trial. To the extent that criticism of the Court of Appeals holds true, I have a simple suggestion. Make your objections in the trial court be based on state and federal grounds. That way if the Court of Appeals doesn't give you what you want, you can always go to the Ninth Circuit. The restaurants in Seattle and San Francisco are far superior to Alaska, if not the quality of law.

**"One has to be prepared to swap issues, jump out of order, and attempt to direct the court's attention . . ."**

### There Are No Time Outs in Argument

The biggest problem I have with the Court of Appeals is the inflexible time limitations. Judge Bryner runs the clock with little mercy since there are usually other cases to follow. Unlike football, you can't call time out following tough questions and run to the sideline for consultations. Judge Bryner won't even stop the clock for injuries.

Opening counsel gets 30 minutes as the appellant. The appellee then gets 30 minutes. The appellant gets to split time between opening and rebuttal. Unlike trial work, the defendant on appeal is usually the moving party. We get to organize the issues, set the time, frame the arguments, and attempt to make the facts compelling and crystal clear. The State by contrast usually plays the more traditional role of the defense attorney by trying to confuse and obfuscate the facts, and convince the court "Come on . . . it's not so bad."

### The Opinions: Assembly Line Justice

The opinion-writing stage is a different question. There is an enormous diversity in the quality of the opinions that are rendered. Sometimes we get the Cadillac: a 40-page opinion which is well documented and footnoted. Sometimes we get the economy class, a one-page short decision or "Memorandum, Order & Judgment."

Under the rules, the court may write a short memorandum order and judgment "MO & J" (which really refers to "Maybe our judgment") where the issue is one that's already been resolved and there is no new or novel issue before the court. The practice, however, goes well beyond the intent of that rule. The Court of Appeals as noted above is issuing a substantial amount of "MO & J's." These decisions are not published and the Court of Appeals appears to feel less accountable for these decisions since their grandchildren won't be reading them when they go

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"You do what you can do. I might worry, afterwards, if I've done all I could, but in no way am I a perfectionist. I'm realistic. I do the best I can."

Dana Fabe

and to argue with Dana Fabe, but nobody disputes Alaska's public defender when she says she does her best. From the student lawyer who interned at Fabe's agency to the prosecutor who opposed her in court, Fabe is known as the fast-thinking, fair-minded lawyer who likes a good fight.

Born and raised in Cincinnati, Ohio, Fabe, 34, is the oldest of five children, the daughter of a real estate developer. She went to private schools before entering Cornell University in Ithaca, N.Y. She played piano and harpsichord, and studied art and

## Public defender battles odds

Continued from page B-1

music history.

Fabe graduated from Cornell nine months early and decided to enter law school, more to enhance her career choices than because she always wanted to be a lawyer.

She chose Northeastern University, a Boston law school known for requiring student lawyers to intern before graduating. By the time she graduated in 1976, she had worked in Boston, Montana, Hawaii and Kentucky. And she knew she wanted to be a criminal defense attorney.

She is a new mother, a former public radio volunteer, a decent boss, a party-giver, a dog-lover. So how can she defend the drunks, molesters and murderers who are the public defenders' clients? And how is it possible not to grow discouraged when the jury seldom acquits?

"I know," she says, from her office above the Tiki Cove, "the question always is, 'If you're so people-oriented, how can you defend these guys?' But it's no more a moral dilemma to me than representing a corporation in, say, the Dalkon Shield case. Both parties are entitled to their defense.

"In fact, for me, it's a much easier thing to represent a criminal defendant than a corporation that negligently or recklessly lets a defective product on the market."

Juries seldom agree with the public defenders. But it's also true, Fabe says, that the deck is simply stacked.

"The prosecution's got the police working for them, the money to fly in experts," she says. "And juries aren't neutral — they come in ready to convict this guy because they think he wouldn't be here if he hadn't done something wrong."

Since it's hard not to lose, Fabe adjusts what it means to win. "Sometimes," she says, "a win means getting your client into some treatment program, or conviction on a lesser included offense."

Fabe came to Alaska in 1976 when state Supreme Court Justice Edmond Burke hired her as

his law clerk. "She had common sense," says Burke, who has since listened to his former clerk argue before the state's highest court. "I wanted a damn good lawyer, and that's what I got."

From Burke's office, she went to the public defender's agency. In four years, she advanced from a staff attorney to head of the 12-office agency, which last year handled 13,500 cases at an average cost of \$383 each. Appointed by Gov. Jay Hammond, she is the fourth person in her job and the first woman.

"This is a true rubber band operation," she said. "Our caseload from 1984 to 1985 jumped by 30 percent. We're seven-and-a-half attorney's short. The ABA (American Bar Association) says attorneys can handle something like 200 felonies a year. We've never met that. We're always over."

As she prepares to meet the 1986 legislature, the challenge on Fabe's mind is keeping up with cases, within budget and without reducing her staff to cinders. Courthouse talk is that lawyers like working for Dana Fabe — and she works to keep them happy. At eye-level over her desk is a sign: A Sufficient Measure of Civilization is the Influence of a Good Woman. Civilizing her agency meant seeing that every lawyer got an office window and introducing job-sharing, a flexible plan in which two attorneys split one job.

Fabe is the administrator with a heart, the expert who likes to be consulted, the public official who enjoys explaining the system. For instance, at least twice in the past six months, she has spoken out against efforts to automatically send youths into adult court for certain violent crime. This idea, she said, coupled with Alaska's presumptive sentencing laws, will strip judges of discretion. She says judgment will go, unchecked, to prosecutors because deciding on a charge will simultaneously determine how a defendant is tried and the length of imprisonment.

Presumptive sentencing means jail terms for some crimes are fixed by the legislature, not the judge. It is intended to protect the public by

sending convicts away for certain terms. In Fabe's opinion, hasn't worked.

"There's no parole or probation (under presumptive sentencing), so when these people get out there's no carrot-and-stick keep them from offending again. And there's nothing to gain if not going to trial. You get the same amount of time if you plead. I'm sure that's why we have so many more cases."

Assistant District Attorney Julie Werner-Simon wanted to know all she could about Dana Fabe. It was October, 1985, and Werner-Simon was about to prosecute Abidin Zeciri, an Albania immigrant accused of killing his wife. Fabe was his lawyer.

"Normally, you do all the homework you can on your opponent," Werner-Simon said recently. "We all knew she ran a good office, but she hardly takes cases any more. No one knew what she was like in court."

Werner-Simon learned. "The same things that make Dana a good administrator make her an excellent trial lawyer," she said. "She's organized, logical, intelligent, obviously concerned about her client."

"And it was interesting to try that case against another woman. Here we were, prosecuting or defending a man who was accused of killing a woman. I remember asking her what she was going to wear for closing argument. We have a similar suit. We didn't want to look the same."

If bringing in the unknown Fabe was defense strategy, it failed. Zeciri was convicted of first degree murder. He is sentencing next month.

Fabe's best friend, and former colleague from her clerking days, is District Court Judge Elaine Andrews, who says Fabe herself would make a good judge. But Fabe says she hasn't yet looked past 1988 when her public defender appointment expires.

"I like my job," she said. "It's diverse enough to keep me challenged. When it's not challenging any more, I'll think again. But right now, I'm doing what can be done. And I'm doing my best."

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## "SEXUAL PSYCHOPATHY" AND CHILD MOLESTERS: THE EXPERIMENT FAILS

BY IRVING PRAGER\*

### INTRODUCTION

The idea that mental disease is the wellspring of much serious criminality has intrigued reformers throughout the twentieth century and has provided the theoretical basis for "sexual psychopath" statutes in the United States. Hospitalization of sex offenders in lieu of imprisonment, it was thought, would be humane, therapeutic and safe. The sexual psychopath experiment would be the first step toward a future in which all criminals would be cured rather than punished.

At the time, it seemed to make sense to implement the first substantial societal experiment with psychiatric criminology in the area of sex crimes, particularly the area of sex crimes against children. After all, what class of criminals was more obviously sick than those men who subjected young children to sexual relations?<sup>1</sup> The idea that we could take these men out of society and cure them in hospitals appealed to citizens who feared these offenders and to psychiatrists who wanted to change them. Consequently, beginning in the 1930's, legislatures enacted statutes allowing convicted sex offenders, particularly child molesters, to receive mental treatment at state hospitals and to remain at

\* Assistant Professor of Law, University of La Verne College of Law. J.D. Georgetown University Law Center 1968.

Prior to 1981, the author was Deputy District Attorney, Ventura County, California in charge of the sex crimes and career criminal sections and personally prosecuted the case of Theodore Frank, discussed *infra*.

After successfully prosecuting Frank, Mr. Prager helped form S.L.A.M. (Concerned Citizens for Stronger Legislation Against Child Molesters) and is currently Vice President of that organization. After extensive study and research of the problem, Mr. Prager led the successful effort to abolish California's MDSO hospitalization program, institute mandatory imprisonment of convicted molesters and provide assistance for victims of child molestation. He is currently working with the California Legislature on these subjects as well as assisting groups in other states which are seeking to revise laws relating to sex crimes.

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Although some commentators may consider California's abandonment of the philosophy on which the MDSO system was based as a regressive surrender to the unenlightened will of the public, such criticism overlooks the logic of a realistic new approach to dealing with criminals convicted of sexual offenses against children. This approach is based on the realization that there is no substantial evidence that child molesters commit their crimes due to mental disease, that the mental conditions of molesters can be cured, or that mental health professionals can accurately predict that sex offenders will not reoffend in the future. Thus, selecting this group of criminals for treatment and relatively less incarceration was, at best, illogical. If, as substantial evidence indicates, most child molesters and rapists are less susceptible to treatment, more likely to repeat their crimes and more dangerous than many other criminals, the MDSO system was not only illogical, it was bizarre.

#### I. SEXUAL PSYCHOPATH STATUTES AND THE CALIFORNIA EXPERIMENT

A majority of states have enacted sexual psychopath legislation.<sup>9</sup> These statutes first appeared in the 1930's and 1940's and were based on general assumptions that the type of behavior classified as sexually psychopathic was curable and that, until cured, the offender was too dangerous to be released.

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7. *Id.*

8. *Id.*

9. See generally, Swanson, *Sexual Psychopath Statutes: Summary and Analysis*, 51 *U. W. L.J.* 215 (1960); Annot., 24 *A.L.R.2d* 350, 351 (1952).

# **CORRECTION**

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the hospitals until no longer dangerous to themselves or others. The sex criminal avoided prison, but, because his dangerous propensities would be eliminated, society avoided the recurrence of his criminal behavior.

The sexual psychopath<sup>2</sup> experiment has failed. In September, 1981, the California Legislature acknowledged this failure by overwhelmingly voting to abolish the "Mentally Disordered Sex Offender" (MDSO) program.<sup>3</sup> Citizen outrage at what was seen as leniency shown to child molesters, the main beneficiaries of the MDSO statutes, and effective criticism of the program by some psychiatrists and psychologists were funneled into an organized statewide campaign against these laws by a grass roots citizen's group, S.L.A.M.,<sup>4</sup> which convinced the Legislature to act. After an eighteen-month campaign by S.L.A.M., the Legislature agreed to replace the MDSO statutory framework with laws which made relatively long terms of imprisonment mandatory for a large percentage of convicted child molesters and only allowed hospitalization during these prison terms.<sup>5</sup>

In California, hospitalization of a convicted sex offender is no longer a potential short cut to freedom. Convicted child molesters and rapists may be hospitalized only after the offender is sent to prison rather than as an alternative to a prison sentence.<sup>6</sup> The imprisoned sex

2. The term "sexual psychopath" is used advisedly. Most psychiatrists agree that it has no useful medical meaning. See discussion *infra*.

3. Cal. S.B. 278 (Rains) (effective Jan. 1, 1982) Stat. 1981 Ch. 928 § 2. See also CAL. WELF. & INST. CODE § 6300-6330 (West 1981).

4. Concerned Citizens for Stronger Legislation Against Child Molesters.

5. Cal. S.B. 586 (Roberti-Imbrecht-Rains-Goggin Child Sexual Abuse Prevention Act) (Amending CAL. PENAL CODE § 238 and § 1203.065, adding § 667.51 and § 1203.066) and Cal. S.B. 776 (Ellis) (Amending CAL. PENAL CODE § 266h, 266i, 311.4 and 1203.065, adding § 266j). See, note 59, *infra* for a detailed description of this legislation. The Penal Code still defines child molestation as "willfully and lewdly committing any lewd or lascivious act . . . upon or with . . . any part of the body of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust of passions or sexual desires . . . of the perpetrator or such child." CAL. PENAL CODE § 238 (West 1976).

6. CAL. PENAL CODE § 1364 (Deering 1982) now provides, in pertinent part, "when any person is convicted of a sex offense against a person under the age of 14 years or of a sex offense accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person there shall be no hearing to determine whether the person is a mentally disordered sex offender.

"The Court, after imposing sentence for such a conviction, shall order the delivery of the convicted person to the Department of Corrections. The Department of Corrections shall inform such convicted persons of the state hospital program established pursuant to this section.

"If the convicted person has no more than two prior felony convictions for a non-sex crime, consents to evaluation, and has a sentence of three or more years, the Department of Corrections, at the beginning of the third year prior to release shall transfer the person to an appropriate state hospital for an evaluation of up to thirty (30) days duration. At any time

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8. *Id.*

9. See generally, Swanson, *Sexual Psychopath Statutes: Summary and Analysis*, 51 *U.W. L.J.* 215 (1960); Annot., 24 *A.L.R.2d* 350, 351 (1952).

one who lacks control over his sexual desires or the commission of sex offenses. Some add that, in order to be hospitalized, the offender must be a physical threat to others. Most require a criminal conviction as prerequisite to hospitalization. All of the statutes either require or allow psychiatric evaluation prior to commitment and provide for a court hearing to decide whether or not the offender should be hospitalized. Once the offender is hospitalized, his case must be reviewed periodically by hospital officials and he must be provided periodic opportunities to secure his release, either on out-patient basis or outright.<sup>10</sup>

California first enacted sexual psychopath legislation in 1939, limiting the ambit of these statutes to child molesters.<sup>11</sup> Although a criminal conviction was not originally a statutory prerequisite to hospitalization (a pending criminal charge sufficed), it was made so by a 1949 amendment.<sup>12</sup> This amendment also expanded the scope of the statutes to include persons convicted of all other types of crimes involving sexual activity. In 1963, the Legislature changed the medically incomprehensible designation sexual psychopath to the somewhat less incomprehensible designation, "mentally disordered sex offender" (MDSO), which was defined as ". . . any person, who by reason of mental defect, disease or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others."<sup>13</sup>

Although incarceration of dangerous sex criminals in order to protect society was one of the goals underlying the California MDSO statutes, the Legislature placed great emphasis on the therapeutic purpose of these laws, declaring that MDSOs were to "be treated not as criminals, but as sick persons."<sup>14</sup> Under this general guideline, more child molesters were hospitalized in California than were imprisoned and the California program became "the most extensively utilized program in the United States."<sup>15</sup> MDSO treatment was rendered to 1,000 offenders yearly (since 1949) mainly at Atascadero State Hospital where, by 1982, it cost approximately \$35,000 per year for each of these offenders.<sup>16</sup>

Early criticism of the MDSO program did not involve protests that

10. *Id.*

11. CAL. WELF. & INST. CODE § 5000 et. seq. (West 1969).

12. 1949 Cal. Stat. Ch. 1325 § 1.

13. CAL. WELF. & INST. CODE § 6309 (West 1972).

14. CAL. WELF. & INST. CODE § 6250 (West 1972).

15. Dix, *Differential Processing of Abnormal Sex Offenders*, 67 J. CRIM. L. & CRIMINOLOGY, 233 (1976).

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hospitalized sex offenders were incarcerated for a shorter period of time than comparable prisoners or that the hospital staff was effecting the release of individuals who remained dangerous. Instead, the program was criticized by civil libertarians who, when it appeared to them that hospitalized offenders could possibly spend more time incarcerated pursuant to MDSO procedures than comparable imprisoned offenders, protested this potential disparity as prohibited incarceration for status and a violation of equal protection guarantees.<sup>17</sup> They also strongly criticized the denomination of MDSO procedures as "civil" resulting in fewer procedural rights than in criminal proceedings and pointed out the anomaly inherent in keeping some molesters in custody as dangerous mentally disordered sex offenders although they had been deemed unamenable to treatment.<sup>18</sup> Joined by many psychiatrists and psychologists, they contended that mental health professionals in the state hospital system could unfairly increase hospitalization time by erroneously predicting that molesters were dangerous when in fact it was impossible to accurately make this prediction.<sup>19</sup>

Although civil libertarian legal attacks on the MDSO system were initially unsuccessful,<sup>20</sup> courts eventually became more receptive to arguments that the MDSO system deprived sex offenders of important constitutional rights. In a case raising issues somewhat analogous to the issues raised by indeterminate confinement of hospitalized sex offenders, the California Supreme Court ruled that it was cruel and unusual punishment to impose a potential life prison sentence on a

17. See, e.g., Comment, *Toward a Less Benevolent Despotism: The Case for Abolition of California's MDSO Laws*, 13 SANTA CLARA LAW. § 79, 592-593, 608-610, (1973). Cf. *Robinson v. California*, 370 U.S. 660 (1961) (prohibiting punishment for status). See also, *Baxstrom v. Herold*, 383 U.S. 107 (1966) (hospital commitment and Equal Protection).

18. See generally, Comment, *Evolution of a Procedural Hybrid: The Sexual Sociopath Statutes and Judicial Response*, 13 CAL. WEST L. REV. 90, 97 (1976); see also Santa Clara Law, *supra* note 17; Hacker and Frym, *The Sexual Psychopath Act in Practice: A Critical Discussion*, 43 CAL. L. REV. 766 (1955).

19. See, e.g., Diamond, *The Psychiatric Prediction of Dangerousness*, 123 U. PA. L. REV. 439 (1975); Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CAL. L. REV. 693 (1974).

20. Courts rejected claims that indeterminate confinement of sex offenders who were deemed dangerous was cruel and unusual punishment. See, e.g., *People v. Rancier*, 240 Cal. App. 2d 579, 49 Cal. Rptr. 876 (1966). Procedural disparity relative to criminal proceedings was upheld on the ground that MDSO proceedings were civil, not criminal in nature. See *People v. Succop*, 67 Cal.2d 785, 433 P.2d 473 (1967); *People v. O'Lea*, 17 Cal. App. 3d 834, 95 Cal. Rptr. 287 (1971). The courts initially seemed to recognize that the primary justification for MDSO statutes was protection of society and that rehabilitation through hospitalization was only a secondary purpose of the statutes. See, e.g., *In re Beville*, 68 Cal. 2d 854, 858, 442 P.2d 679, 681, 69 Cal. Rptr. 599, 601 (1968); *People v. Resendez*, 260 Cal. App. 2d 1, 66 Cal. Rptr. 818 (1968); *People v. Schalezke*, 239 Cal. App. 2d 881, 49 Cal. Rptr. 275 (1966)

defendant upon his second conviction of indecent exposure.<sup>21</sup> This ruling had potential ramifications for the MDSO system despite the classification of these proceedings as civil; the Court previously had concluded that when liberty is at issue, fundamental rights could not be denied by labelling the proceedings "civil" in nature.<sup>22</sup> Subsequently, the sex offender was given the right to a jury trial, rather than merely a court hearing, on the question of whether or not he was a mentally disordered sex offender.<sup>23</sup> Moreover, in 1975, the California Supreme Court declared that the standard of proof at this jury trial must be "beyond a reasonable doubt."<sup>24</sup>

In 1975, two California Supreme Court rulings, *People v. Burnick*,<sup>25</sup> and *People v. Feagley*,<sup>26</sup> not only made clear that the full panoply of due process rights afforded in criminal cases applied to MDSO cases,<sup>27</sup> but also "cast substantial doubt"<sup>28</sup> on the continued legal efficacy of indeterminate MDSO commitments. *Burnick*, which granted procedural rights to MDSOs, also indicated that, in the court's view, the MDSO system embodied a punitive rather than a rehabilitative approach to dealing with child molesters. *Feagley* held that a molester could not be confined in a prison setting (a treatment facility on prison grounds), and the court noted that "adequate . . . medical treatment" was the "sole constitutional justification" of MDSO incarceration.<sup>29</sup> The majority in *Feagley* also severely criticized MDSO confinement of "dangerous" offenders, observing that the evidence was overwhelming that mental health professionals could not accurately determine that an offender would be dangerous if released.<sup>30</sup>

Legislative response to judicial criticism of the MDSO system soon followed. In 1976, the Legislature limited potential MDSO confinement to the length of time which could be imposed in a prison sentence.<sup>31</sup> As a result, the only way that a convicted sex offender could spend more time in the hospital than he would have spent in prison was by virtue of a cumbersome and, ultimately, rarely used extension procedure.<sup>32</sup>

21. *In re Lynch*, 8 Cal.3d 417, 503 P.2d 921, 105 Cal. Rptr. 217 (1972).

22. *In re Gary W.*, 5 Cal.3d 296, 486 P.2d 1201 (1971), 96 Cal. Rptr. 171 (1971).

23. *See, People v. Allen*, 29 Cal. App. 3d 932, 106 Cal. Rptr. 43 (1973).

24. *People v. Bonneville*, 14 Cal. 3d 384, 535 P.2d 404, 121 Cal. Rptr. 540 (1975).

25. 14 Cal.3d 306, 535 P.2d 352, 121 Cal. Rptr. 488 (1975).

26. 14 Cal.3d 338, 535 P.2d 373, 121 Cal. Rptr. 509 (1975).

27. *Cf. Specht v. Patterson*, 386 U.S. 605 (1967).

28. *In re Moye*, 22 Cal.2d 457, 584 P.2d 1097, 149 Cal. Rptr. 491 (1978).

29. *People v. Feagley*, 14 Cal.3d at 359.

30. *People v. Feagley*, 14 Cal.3d at 338.

31. CAL. WELF. & INST. CODE § 6316 (West 1970).

32. CAL. WELF. & INST. CODE § 6316.2, amended Cal. Stat. Ch. 988, 1f, at a full-fledged

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