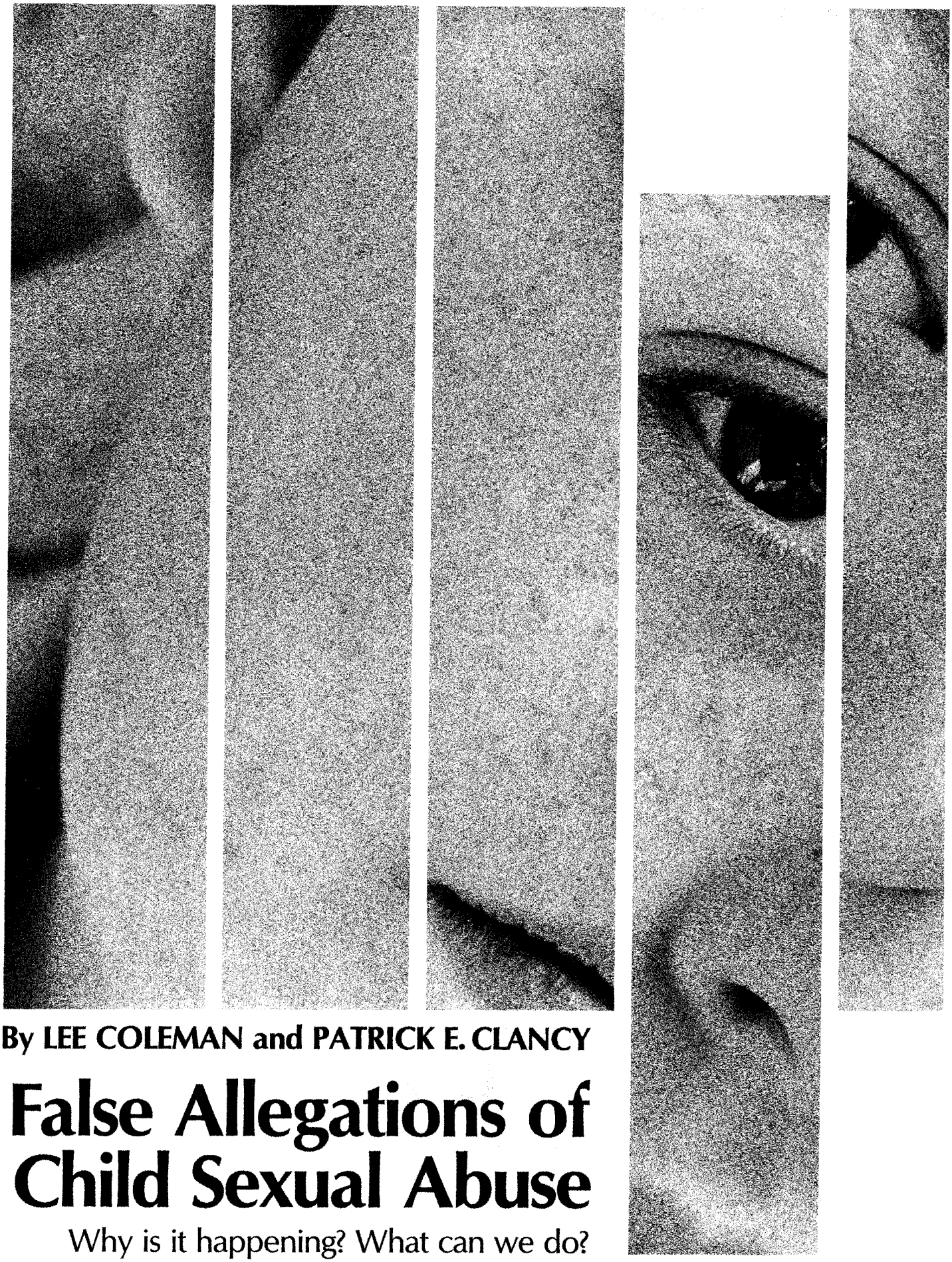
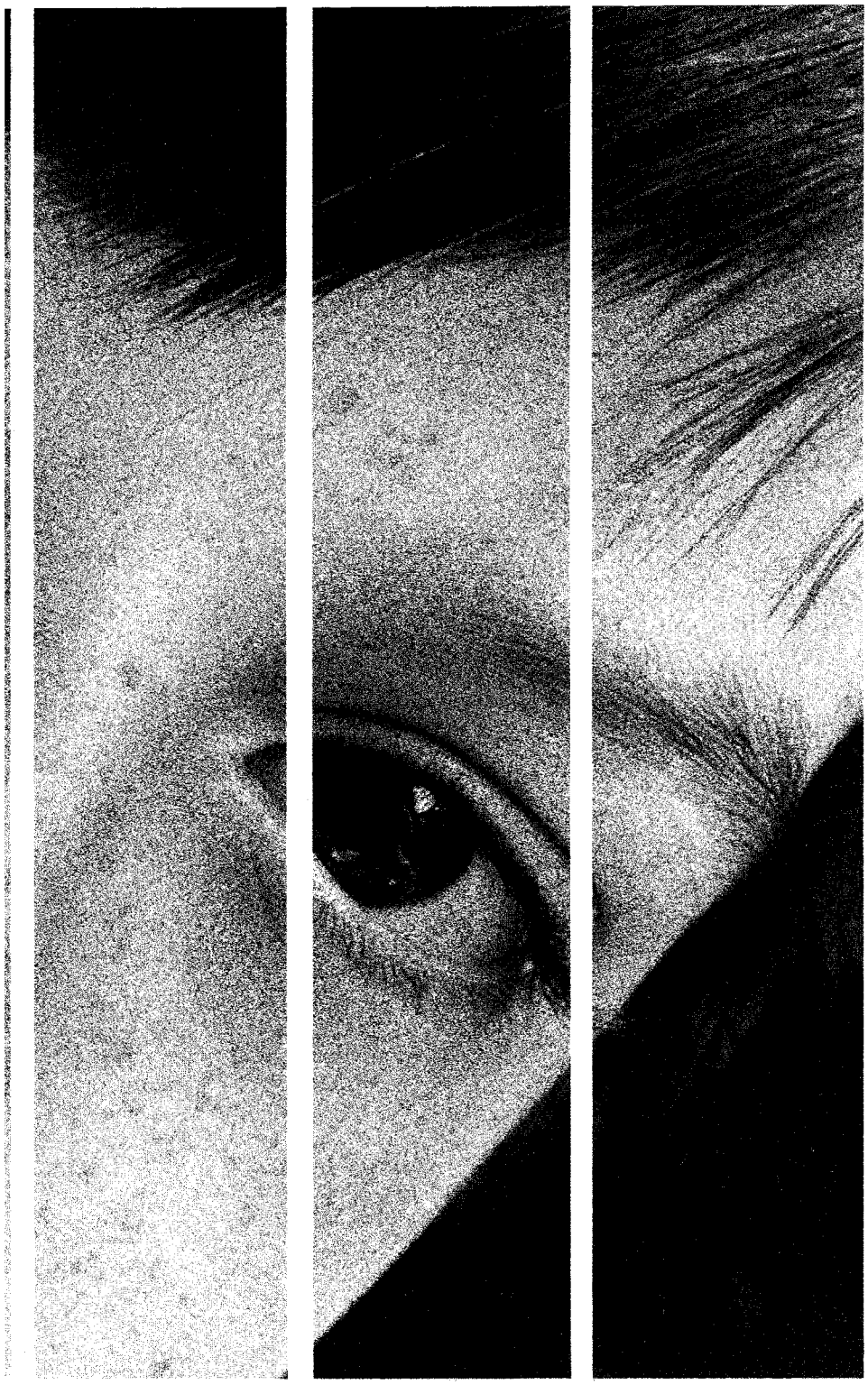


By LEE COLEMAN and PATRICK E. CLANCY

False Allegations of Child Sexual Abuse

Why is it happening? What can we do?



Just a few short years ago, neither of the authors could have anticipated that his professional life would become so heavily involved in cases of alleged child molestation. One of us, a public defender, found that only 1 or 2 percent of his clients were truly innocent of any wrongdoing. Many defendants had been overcharged, but were actually guilty of lesser crimes; many defendants were guilty, but the prosecution didn't have the proof necessary to convict. The truly innocent defendant was rare. The other author, a practicing psychiatrist and a critic of courtroom reliance on psychiatric examinations, testified regularly on behalf of the prosecution, rebutting defense experts' claims that psychiatric tools were helpful to a jury deciding *mens rea* questions.

Now something new and unprecedented has emerged, something that is having a devastating impact on the lives of thousands of persons and threatens many of the due process protections of all of us. We are speaking of the widespread occurrence of false accusations of child sexual abuse. And while informed persons may disagree on how often false accusations are made, there is no real doubt that it is happening far more often than our society can afford.

Some researchers claim that only 8 percent of cases studied are fictitious. (David P.H. Jones and J. Melbourne McCraw, *Reliable and Fictitious Accounts of Sexual Abuse of Children*, 2 J. Interpersonal Violence (March 1987).) Others stress that nationwide, only about 40 percent of all reports are substantiated. (Douglas J. Besharov, *Child Abuse and Neglect Reporting and Investigation: Policy Guidelines for Decisionmaking*, Report to American Bar Association and American Public Welfare Association, Oct 8, 1987.)

We are unimpressed by studies done in laboratories, claiming that children are not susceptible to leading questions. Such studies fail to duplicate the reality of investigative interviews in actual cases. However, it clearly would be unethical to attempt to see if a child could be trained to believe falsely that sexual abuse had taken place.

Even if the true incidence of false allegations of sexual abuse is unknown, it seems beyond question that the problem is a serious one, deserving of a careful reevaluation of current theory and practice.

To begin to understand the developments that ultimately led to innocent persons being charged with child molestation and to prosecutors relying so heavily on those whom they traditionally disdained—the mental health professionals—we may take as a starting point Senator Walter Mondale's 1973 hearings on child abuse and neglect. Those hearings led to the passage of the Child Abuse Prevention and Treatment Act of 1974, 42

USC §§ 5101–5106. Gradually, all the states were required to develop programs aimed at faster recognition and treatment of child abuse. We see no reason to doubt that thousands of children benefited, but at the same time, a disturbing trend was set in motion.

While physical abuse will leave behind physical evidence, sexual abuse may not. As a result, investigators from law enforcement and child protection agencies had the difficult job of interviewing young children who might be afraid to say what had happened to them. As they have done so often, public agencies turned to "experts" from the mental health professions, this time for lessons in how to talk to children.

It is our contention that false allegations of child sexual abuse are on the increase as a direct result of this alliance between law enforcement and mental health professionals. We want to explain this development and suggest a better way to protect children while protecting the innocent.

Investigators and therapists: two different worlds

Neutrality is the *sine qua non* of the criminal investigator. He or she advocates neither for individuals nor for political and social causes. Wherever the truth leads, the responsible investigator follows.

We believe that the root cause of the current problem of false allegations of child sexual abuse is the incompatibility between the neutrality required of investigators and a series of biases imported into the investigative process from the mental health professions.

Unlike investigators, therapists are *not* neutral. They are advocates who seek to promote the welfare of their patients. The patient (sometimes including the family) becomes the major source of information, and the therapist monitors progress by relying heavily on the reported *feelings* of the patient.

What would happen if therapists became investigators in legal cases involving their patients? Conversely, what would happen if investigators were trained to think and act like therapists, seeing themselves as *advocates* for one or more persons being investigated? This is what happened in the late 1970s and early 1980s, and while the results are all around us, little has been written to explain this history and its aftermath.

Both camps, the sexual abuse "specialists" from mental health fields and the criminal and child protection investigators, came to believe sincerely that their major task was to "believe the child" and to convince others to do the same. This was certainly not an attempt to hide the truth. It was, rather, the result of their belief that when it comes to sexual abuse, the child's statements *are* the truth.

Society had for so long ignored incest victims, some of whom never told anyone about their victimization out of fear of their abusers or out of family loyalty, that the new mental health specialists conceived the problem solely as one of helping molestation victims to disclose their abuse. The exclusive focus was on the molested child who hid the fact; they failed to recognize that under certain conditions, a child might make a false allegation. They failed to understand that their own questioning of the child, if it was based on a prior assumption that abuse had occurred, might be the very thing that could cause such an undesired result.

To illustrate the "believe the child" approach, consider the recommendations of psychiatrist Roland Summit, a major figure in the developments outlined above. In 1983, in an article describing what he termed the "child sexual abuse accommodation syndrome," Summit wrote:

- Acceptance and validation are crucial to the psychological survival of the victim. . . .
- [Summit invited] more active, more effective clinical advocacy . . . within the systems of child protection and criminal justice.
- . . . [T]he validation of the child's perception of reality, acceptance by adult caretakers and even the emotional survival of the child may all depend on the knowledge and skill of the clinical advocate. Every clinician must be capable of understanding and articulating the position of the child in the prevailing adult imbalance of credibility.
- Clinical experience and expert testimony can provide advocacy for the child. . . . [Children] need an adult clinical advocate to translate the child's world into an adult-acceptable language.
- As an advocate for the child both in therapy and in court . . . the more illogical and incredible the initiation scene might seem to adults, the more likely it is that the child's plaintive description is valid.
- The specialist must help mobilize skeptical caretakers into a position of belief, acceptance, support and protection of the child.

(Roland Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 Child Abuse & Neglect 177 (1983).)

Summit justified such a one-sided approach with a claim which is still echoed by many child abuse professionals: "*It has become a maxim among child sexual abuse intervention counselors and investigators that children never fabricate the kinds of explicit sexual manipulations they divulge in complaints or*

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interrogations." [Emphasis added.]

Such ideas had a profound impact on front-line workers from law enforcement, social work, and mental health. Workshops on sexual abuse promoted the feeling that a competent, sensitive, and up-to-date professional would believe molestation had occurred, while one who raised doubts was incompetent, insensitive, and not fit to handle such cases. Under such pressures, investigators could easily come to feel that every case labeled "substantiated" or "founded" was a sign of competence and concern for children.

The myth that children never fabricate stories about sexual abuse brought a glorious simplicity to the difficult task of investigating possible sexual abuse of a child. If molested children may be hesitant to admit what happened (something we do not dispute) and non-molested children (quoting Summit) "never fabricate explicit sexual manipulations," then *interrogators would have everything to gain and nothing to lose by using a questioning technique aimed at "encouraging" the child to disclose abuse.* Leading questions suggesting that abuse had occurred, and positive reinforcement for statements about abuse, would "help" the molested child tell the secret, while non-molested children would be resistant to such techniques.

We now know, of course, that these ideas are wrong. There is no group of human beings that is immune to suggestibility—and the idea that children are immune is especially unlikely, given their intellectual and emotional immaturity and their dependence on adults. There is considerable irony in the fact that it was the "experts" from the mental health professions who so effectively convinced police and social work investigators of these false ideas.

Thousands of children have been subjected to interviews based on these ideas. Those who have had a chance to study audio- or videotapes of these interviews do not need expert credentials to under-

stand what can happen. Here is an example from the well-publicized "Country Walk" case in Miami, which in 1985 resulted in the conviction of a couple who ran a babysitting service in their home. (*People v. Francisco Fuster*, Dade Cty, Fla, No 84-19728 A (1984); *People v. Illiana Fuster*, Dade Cty, Fla, No 84-19728 B (1984).)

Creating "memories"

"Sue," close to her fifth birthday, was interviewed at the request of prosecutors by a social worker who had a special interest in sexual abuse. Asked what happened at the babysitters', Sue replied, "They did nothing bad to me." Asked if she saw anything bad done to others, she said, "No."

After Sue said she had learned from her mother that the babysitters were bad and were in jail, she was then told by the social worker that other children claimed naked games were played. (In truth, such statements came only after highly leading and suggestive interviewing.) Sue said she didn't think this had happened, so the social worker asked her to pretend what *might* have happened. After undressing the "anatomically correct" dolls, Sue was asked what kind of games they played. "Duck, Duck, Goose," she responded.

When Sue failed to play a sexual game with the dolls, she was told that *if* the children were touched in private places, then that was wrong. Sue again repeated that "they didn't do anything bad to me," to which she was told that if she *did* have a secret to tell, "everybody would be very proud of you for telling."

Now Sue asked if bad things happened, and she was told, "some of the children said so, and I believe the children, because I don't think children make up stories like that." (Sue, of course, could not know that none of the other children talked about any sexual activities until they were subjected to techniques similar to what she was experiencing.)

When Sue next was told that even "bigger" children had said such things, she was finally convinced. "Now I found out that it was true because other children said it," she said. She was also told that "all of the parents . . . are real proud of their children if they don't keep a secret. . . ."

Despite the fact that Sue had consistently denied seeing such things and had clearly said she had now "found out" what had happened, she was next asked to demonstrate with the dolls. She complied, touching the penis of the male doll with her finger. As the session drew to a close, she was encouraged to try to "remember" even more after she went home and to try to tell her parents.

Five months later she was again interviewed, and now her "memory" was definitely improved. She talked about knives held to necks, "cut your head off" games, and now "Duck, Duck, Goose" included taking clothes off. She now "remembered" that each of her babysitters pulled on her vagina at the same time.

Encouraged by Sue's new "memories," her interviewer asked if she had seen any boys have their penises bitten, whether the children played a "pee-pee" game, whether they played with urine and feces, and whether the children had been given anything to eat or drink that made them sleepy. These were all things the social worker said the other children had claimed, but Sue said she hadn't seen any of this.

Once again, she was encouraged to try to remember more and tell her parents, because, as her interviewer said, "I kind of have a feeling that maybe there might be something else. . . ."

Eight months after this session, and over a year since the first interview, Sue was the first child witness called by the prosecution. She promised to tell the truth, which satisfied the judge that she was competent to testify, and then went on to describe the "cut your head off" game, and also said that any children who asked for a cupcake had a knife held to their throats. Everyone was naked, she said, and her private parts were pulled. She was even able to draw a picture of what happened. Sue said she didn't see anything done to other children, but later said she knew it happened to them.

Not lying and not telling the truth

The "believe the child" approach thus turns out to be more truly a "disbelieve denials but believe disclosure" approach. Children may "lie" when they deny abuse, out of fear or loyalty toward the abuser, but they never "lie" about abuse. As the preceding example shows, however, by the time Sue testified against her babysitters, she was hardly "lying." She now believed what she was saying, and was too young to understand that her beliefs came not from memories of her own experiences but from what she had *learned*.

Thus, the frequently heard debate about whether children may "lie" about sexual abuse misses the point in most cases. The real question is not whether the child believes what he or she is saying, but whether the statements are based on memories of real events or on a mental image created by suggestive questioning.

In our experience, which adds up to hundreds of allegations and about fifteen hundred hours of audio- or videotaped interviews with children being investigated for possible molestation, children quite regularly make allegations that can be factually proven not to be true. When this happens, it is rare for the child to be the true initiator of the false statements. In most cases, the child's false statements are the product of an interviewing style that leads the child gradually to construct a mental picture of abuse. This picture becomes the child's "memory." The result can be disastrous, not only for the justice process but also for the child's emotional well-being.

Separating real memories from indoctrination

Given that real molestation most certainly does occur, the courts are left to separate the wheat from the chaff. When is a child's testimony trustworthy, and when is it the product of interviews that have contaminated the child's ability to know the truth?

It seems to us that a clear record of all interviews with the child, via audio- or videotape recording, is the best way for a judge or jury to determine responsibly whether the child's testimony is coming from memory or from prior suggestive interviews. We find that in many cases, none of the interviews are taped; in many other cases interviews are taped only after many sessions have already taken place and the child is now ready to "disclose."

We think it is significant that those who like to call themselves "advocates for the child," such as police, child protective services, district attorneys, and abuse therapists, are the very ones who have resisted the use of tape recording as a standard investigative tool. In other words, those who are talking to the child in the crucial early stages of an investigation seem to be the most uncomfortable about documenting everything that is happening.

Therapists as investigators

This problem of undocumented interrogations of children, which leaves the trier of fact with inadequate evidence to evaluate the quality of the questioning process, is most severe when child therapists become part of the investigative process. It is common practice for police or child protection investigators to refer a child for therapy at the very outset of an investigation. The stated purpose is either to help the child disclose information about abuse or to help the child with the trauma secondary to abuse.

If the child is a true molestation victim, both of these purposes may be fulfilled with no harm done to the truth-seeking process. But if the child has not been abused, such therapy can have a profoundly contaminating impact. Week after week, the child is questioned about abuse and encouraged to "tell the secret." In our experience, children may "learn" in such sessions that they are in danger and may develop major fears and anxieties. They may learn to believe they were abused and gradually construct the details. They may come to believe in these inventions with all the sincerity that real events would call forth. They may, tragically, learn to hate a parent who has never harmed them.

The therapists chosen by the investigators are often handpicked from among a small group of "specialists" in child sexual abuse. These abuse specialists, trained as they are to be "advocates for the child," have no doubt that a child brought to them as a molestation victim is a true victim. In case after case we have studied, such therapists grudgingly acknowledge that false allegations do occur, but they are nonetheless sure that the case in question is a valid case.

The interviews that these therapists conduct are called "therapy" and are therefore protected, in nearly all states, by the patient-therapist privilege. But such sessions are also *investigative*, because the child is regularly asked to describe what supposedly happened. They are therefore crucial to the court's efforts to determine the truth. Nonetheless, in many jurisdictions, accused persons are unable to gain access to information that might shed light on what type of questioning is taking place. In this way, *therapists become investigators who work in secret*, depriving the judge or jury of crucial information.

Not surprisingly, therapists working for months or even years to help children deal with the aftermath of assumed abuse are not likely to change their opinions about whether abuse actually took place, regardless of evidence to the contrary. Faulty conclusions therefore go unrecognized, and we see no lessening of the use of leading questions in interviews.

Kelley-Frye rule of reliability

Despite such problems, our courts have traditionally allowed mental health professionals to offer expert opinions rather freely. In California prior to 1984, psychologists, psychiatrists, and Child Protective Services personnel testified at will that in their opinion, a certain child was the victim of molestation. Such testimony then began to be challenged under the *Kelley-Frye* rule of reliability (*Frye v. U.S.*, 293 F 1013 (1923); *People v. Kelley*, 17 Cal 3d 24 (1976)), according to which scientific evidence must be shown to be accepted as reliable by the relevant scientific community.

In 1984, in *People v. Bledsoe*, 36 Cal 3d 236, the California Supreme Court ruled that the rape trauma syndrome was not accepted as a scientific tool to determine whether a particular woman had been raped. It was then quickly recognized that if behavioral syndromes that might result from rape were not *specific* to rape, and therefore could not reliably be used as evidence of rape in a trial, the same held true for the various behaviors said to be typical of child victims of molestation. As a result, psychological opinion testimony that a child was a victim of molestation fell into disuse.

Prosecutors immediately found a way around *Bledsoe*. The same evidence was introduced to rebut what were said to be common myths about child molestation victims: that they would actively resist their abusers, would report immediately, and could during the first interview tell everything that happened. (*People v. Roscoe*, 168 Cal 3d 1093 (1985); *People v. Gray*, 187 Cal 3d 213 (1986); *People v. Sanchez*, 208 Cal 3d 721 (1989); and

People v. Stark, 213 Cal 3d 107 (1989).) The result of dispelling numerous "myths" was to create a profile of a child molestation victim that was tailored to fit the child involved in the case at hand. The appellate courts realized this subterfuge and moved to block it. (*People v. Baucher*, 203 Cal 3d 385 (1988).)

Expert opinions that rely on attempts to evaluate the accused rather than the child are also being excluded under *Kelley-Frye*. Penile plethysmographs were held to be unreliable, as were profiles of pedophiles. (*People v. John W.*, 185 Cal 3d 801 (1986).) Opinions based on children's play with sexually explicit dolls were held to be unreliable. (*U.S. v. Gillespie*, 852 F2d 475 (1988); *In re Amber B.*, 191 Cal 3d 682 (1987); *In re Christine C.*, 191 Cal 3d 676 (1987).) In response, prosecutors attempted to introduce such doll play and let the court form its own opinion. This was also barred on the grounds that a judge's opinion, if based on an unreliable method, is not a proper substitute for an expert opinion based on the same method. (*In re Christine D.*, 206 Cal 3d 469 (1988).)

The juvenile court took a short detour. In 1984, *Cheryl H.*, 153 Cal 3d 1098, held that the juvenile court worked under different rules and continued to allow opinion testimony that a child had been molested. That detour was short-lived when it was held that the *Kelley-Frye* test applied to juvenile court as much as to adult court. (*In re Sara M.*, 194 Cal 3d 585 (1987).)

The last chapter in the battle over admissibility of expert opinion is not over. The California Supreme Court recently issued its opinion in *People v. Stoll*, 49 Cal 3d 1136 (1989), holding admissible as character evidence psychological opinion testimony based upon interviews and personality tests (MMPI and MMCI) said to show that the defendant displayed no signs of "sexual deviance" or "abnormality." The court held that such opinion was *medical* opinion and not the type of scientific opinion that *Kelley-Frye* monitors.

Clearly, then, both prosecution and defense interests have been able at times to convince the courts that experts from mental health fields are able, based on examinations of the child or the accused, to assist the finders of fact. We think such reliance hinders rather than advances quality investigations and fair trials, but it is in the next area of improper investigation where vigorous application of *Kelley-Frye* is most needed.

Faulty medicine

Recognizing that true victims of molestation might be too frightened to tell about it or too young to describe their abuse, it is easy to see why investigators would be eager for clear physical indicators that molestation has occurred. In the late 1970s, when a handful of doctors claimed they knew how to interpret "subtle clues" that most doctors would miss, the law enforcement and child protection communities eagerly adopted these doctors as their own. Before looking at how such unsupported claims came to be considered reliable evidence of sexual abuse, a few clarifications are in order.

Doctors who are told of a suspicion of abuse and write this down in their reports as "history of sexual abuse" have not made a finding, but have merely repeated the allegations. Likewise, a normal examination does not help to establish that molestation occurred. Nonetheless, it is extremely common for doctors examining a child to report: 1) "history of sexual abuse," and 2) "physical examination consistent with sexual abuse." The result? An examination with no positive findings might be understood by investigators to prove molestation, with devastating impact on the subsequent handling of the case.

If investigators are misled by this improper use of language when the child's examination is normal, the problem is magnified when these same doctors interpret normal variations of anal or genital anatomy as subtle signs of prior trauma. To understand this problem, we need a bit of history.

Medical examinations for sexual abuse of children performed long after the alleged fact are a new phenomenon. All but a handful of the articles on this subject were written only within the past decade. (Lee Coleman, *Medical Examination for Sexual Abuse: Have We Been Misled?* Champion (Nov 1989).)

An early but influential article was, significantly, a collaboration of Ventura, California, family physician Bruce Woodling and local district attorney Peter Kossoris. (Bruce Woodling and Peter Kossoris, *Sexual Misuse: Rape, Molestation and Incest*, Pediatric Clinics of North America (May 1981).) They listed a number of findings as being indicative of prior sexual abuse—findings which in truth were either nonspecific or open to subjective interpretation, including erythema (redness), tightness (too much or too little) of pubic or anal muscles, anal fissures, and hymenal variations said to be "transections," or old scars.

What support did Woodling and Kossoris offer for these new interpretations? Only Woodling's "experience." Even beginning students of scientific methodology know that experience, unaccompanied by corrective feedback, is hardly a guarantee of reliable conclusions; the developing movement in child protection was too eager for validation to notice this lack.

A still small but growing number of physicians and nurses took a special interest in forensic anogenital examinations of suspected child abuse victims, usually because these professionals were members of new "sex abuse teams." They attended workshops and readily absorbed the kind of unsupported claims that a handful of physicians like Woodling promoted.

Sodomy, they were told, could be determined by seeing if the anus

(*Continued on page 43*)

privilege nor the psychiatrist-patient privilege should be used to shield psychiatrist-patient communications when the defendant's mental state is in issue (Stephen A. Saltzburg, *Privileges and Professionals: Lawyers and Psychiatrists*, 66 Va L Rev 597 (1980)); and

8. A defense-retained psychiatrist is much more than an attorney's "interpreter"; the psychiatrist's observations and conclusions—apart from the defendant's communications—constitute material knowledge relevant to the case, and such knowledge "should be treated just like the knowledge of any other witness and should be discoverable from the [psychiatrist] himself" (Jack H. Friedenthal, *Discovery and Use of an Adverse Party's Expert Information*, 14 Stan L Rev 455, 463-64 (1962).)

Therefore, given the arguments on both sides, the lack of any Supreme Court precedent, the split on the circuits, and the risks of disclosure of a defense-retained psychiatrist's "privileged" communications, as a federal litigant you should assume nothing about psychiatric confidences in the context of insanity or other diminished-capacity defenses. And you should be prepared to argue it all—and to lose it all. **CJ**

Sentence Reduction

(Continued from page 7)

ically has shown remarkable restraint when reviewing prosecutorial decision making generally. (See Bennett Gershman, *Prosecutorial Misconduct* § 4.1 (Clark Boardman 1985).) Even so, as a practical matter, reviewing prosecutorial discretion under a subjective bad-faith test is meaningless. Cases that apply a bad-faith standard to prosecutorial behavior have rarely found against the prosecutor. (See B. Gershman, supra; *United States v. Smitherman*, 889 F2d 189, 191 (8th Cir 1989): threatening to intervene if prosecutor arbitrarily and in bad faith refuses to file a 5K1.1 motion.)

Rexach is a prime example of arguably bad-faith conduct by the prosecutor. Although Rexach provided information leading to the drug arrests of three persons, the Second Circuit sustained the prosecutor's claim that the assistance was not substantial enough. Finally, the Second Circuit's confidence that institutional incentives guarantee prosecutorial good faith may be fanciful. After *Rexach*, it is probably more likely that cooperating defendants will be reluctant to enter into cooperation agreements with prosecutors without much more meaningful assurances than simple reliance on the prosecutor's good faith. **CJ**

Sexual Abuse

(Continued from page 20)

failed to contract when the skin nearby was stroked. If the anus relaxed instead, this was said to be a sign that the child had learned to anticipate penetration. Another example: Hymenal edges that were not lacy and thin were said to have been traumatized.

As these trainees went back to their communities and in turn became the trainers in more workshops, these uncorroborated "signs" became conventional wisdom. Community pediatricians usually refused to get involved, deferring to those few who claimed to be "specialists." Law enforcement and child protection workers learned to refer possible victims to the "sex abuse teams."

By now, thousands of criminal, civil, and juvenile trials have prominently featured expert testimony from these examiners, usually with devastating impact on triers of fact. A doctor's opinion that physical examination findings show clear evidence of sexual molestation is likely to convince almost anyone who is not familiar with the true state of the art. And few doctors are willing to testify in defense of alleged child molesters, even when they are aware of the scientific shortcomings of such claims.

In search of research

Clearly, there is a need to get beyond these naked claims and into the world of research findings. It is remarkable, considering the attention paid in recent years to the sexual abuse of children and the devastating consequences to all parties of good and bad investigations, how little research has been done to validate the claims so readily offered in court by the doctors who examine the children.

Only in the last three or four years has *any* research been done, and the trend is clear: The conventional wisdom is wrong. Normal children frequently show the very things said to be unmistakeable signs of molestation. Reflecting this development, the journal *Child Abuse and Neglect* recently devoted an entire issue to medical examinations for sexual abuse (v 13, no 2 (1989)). Significantly, the editor titled his introduction "The More We Learn, The Less We Know With Reasonable Medical Certainty" and acknowledged that previously held ideas about physical signs of prior molestation had been hastily drawn

and were unsupported.

Given such admissions, it is obvious that defense lawyers have been remiss in not mounting a *Kelley-Frye* challenge to a good deal of the medical testimony being offered in child molestation trials.

Confusion in the laboratory

Overinterpretation of data has not been confined to the physical examination of children. Well-intentioned but hasty efforts at child protection have also infected the laboratory. We now know, for example, that gonorrhea, especially of the throat, is sometimes misdiagnosed because of inadequate laboratory techniques.

The federal government's Center for Disease Control recently reported that of 40 specimens sent from various hospitals for confirmation of gonorrhea, 14 (35%) turned out to be something else. (See E.R. Alexander, *Misidentification of Sexually Transmitted Organisms in Children: Medicolegal Implications*, 7 Pediatric Infectious Disease Journal (Jan 1988); W.L. Whittington, et al, *Incorrect Identification of Neisseria Gonorrhoea from Infants and Children*, 7 Pediatric Infectious Disease Journal (Jan 1989).) The report also noted that ". . . these instances represent the tip of a large iceberg. . . . Many probably go unnoticed."

We can add one of our own, for in the "Country Walk" case described earlier (where Sue—like the other children—learned from her interviewer about the things she later testified were her memories), the jury also heard unrebutted testimony that the son of the babysitters had gonorrhea of the throat. What the jury didn't learn was that Miami's Jackson Memorial Hospital failed to perform (or to preserve specimens so others could perform) the very tests which the Center for Disease Control has shown are absolutely necessary to confirm gonorrhea.

Other false medical claims being offered to courts include unreliable screening tests for chlamydia, and the unsupported conclusion that genital warts are always sexually transmitted.

Learning from the *McMartin* case

After more than six years, a jury finally reached a verdict in the *McMartin* case. (*People v. Peggy McMartin Buckey and Ray Buckey*, No A750900 (Los Angeles Cty Super Ct, 1990).) And while it was unique as the longest and most costly criminal trial in U.S. history, in many important respects the case had features common to countless other cases of alleged sexual abuse. It therefore has much to teach us.

The most frequent question is: If the allegations were not true, why would the children say not only that they were sexually abused, but also that they were exposed to rituals involving animal slaughter and even murder? The answer is both simple and terrible. They were trained. Trained first by the experts whom law enforcement agencies trustingly allowed to evaluate the children, and then by handpicked therapists hired to treat them for the molestation that everyone was so sure had taken place.

What makes the *McMartin* case so instructive is that the medical and mental health professionals who set the tone of the case were not unknown but were some of the very professionals who were most influential in developing the thinking and style of the new child sexual abuse movement. In studying the *McMartin* case, we have an opportunity to see the best and the brightest in action. If they come up short in our estimation, we may be sure that their proteges, spread across the nation, are using similar methods.

Let us begin by going back to February 1986. Virtually everyone still believed the McMartin pack was guilty. Nonetheless, questions were starting to arise. Perhaps most common was the issue of how the children from the McMartin preschool had been interviewed. The videotaped interviews had been seen by only a handful of persons, but word was leaking out after the preliminary hearing. The charge was that the children had been prodded and pressured into claiming abuse.

However, the law enforcement/mental health team that handled the case had at that time far more defenders than detractors. Most influential among them was psychiatrist Roland Summit, whom we have already heard from. Summit wrote in a *Los Angeles Times* editorial that social worker Kee MacFarlane of the Children's Institute International used proper, up-to-the-minute techniques to interview the children.

"There was both reason and precedent for the methods used . . .," he wrote. The interviews represented the "state of the art . . . highly evolved, intensely specific, and largely unknown outside the fledgling specialty of child abuse diagnosis." This form of interviewing, Summit continued, was "an amalgam of several roles . . . the knowledge of a child development specialist to understand and translate toddler language, a therapist to guide and interpret interactive play, a police interrogator to develop evidentiary confirmation, and a child abuse specialist to recognize the distinctive and pathetic patterns of sexual victimization." Such techniques were needed because "specialist understanding is both unexpected and counterintuitive." (*No one invented McMartin "secret,"* L.A. Times, Feb. 5, 1990 part II, 1-2.)

Study of just how the McMartin preschool children were interviewed offers us, then, more than an opportunity to study one case. It offers us a chance to study thousands of cases, because Dr. Summit has helped train thousands of front-line investigators, and Kee MacFarlane, lead interviewer of the McMartin children, has for years been considered a model for those entering the field of child sexual abuse investigations.

We wish we could reproduce here the transcripts of all the interviews done with the *McMartin* chil-

dren. One of us (L.C.) has viewed 56 hours of videotaped interviews and can assure readers that the following excerpt is in no way exceptional.

As we come in, MacFarlane is interviewing an eight-year-old boy who had attended the McMartin preschool four years before. He has a Pac-Man puppet on his hand.

MacFarlane: Here's a hard question I don't know if you know the answer to. We'll see how smart you are, Pac-Man. Did you ever see anything come from Mr. Ray's wiener? Do you remember that?
Child: (no response)
MacFarlane: Can you remember back that far? We'll see how . . . how good your brain is working today, Pac-Man.
(Child moves puppet around.)
MacFarlane: Is that a yes?
Child: (Child nods puppet yes.)
MacFarlane: Well, you're smart. Now let's see if we can figure out what it was. I wonder if you can point to something of what color it was.
(Child tries to pick up the pointer with the puppet's mouth.)
MacFarlane: Let me get your pen here. (Puts a pointer in puppet's mouth.)
Child: It was . . .
MacFarlane: Let's see, what color is that?
(Child uses the Pac-Man's hand to point to the Pac-Man puppet.)
MacFarlane: Oh, you're pointing to yourself. That must be yellow.
(Child nods puppet yes.)
MacFarlane: You're smart to point to yourself. What did it feel like? Was it like water? Or something else?
Child: Um, what?
MacFarlane: The stuff that came out. Let me try. I'll try a different question on you. We'll try to figure out what that stuff tastes like. We're going to try and figure out if it tastes good.
Child: He never did that to [me], I don't think.
MacFarlane: Oh, well, Pac-Man, would you know what it tastes like? Would you think it tastes like candy, sort of trying. . . .
Child: I think it would taste like yucky ants.
MacFarlane: Yucky ants. Whoa. That would be kind of yucky. I don't think it would taste like . . . you don't think it would taste like strawberries or anything good?
Child: No.
MacFarlane: Oh, think it would sort . . . do you think that it would be sticky, like sticky, yucky ants?
Child: A little.

Such, then, is the "state of the art" advocated by Summit and many of his associates and being taught to front-line investigators throughout the country. This is what is happening in the little as well as the big cases, except that most often there is no tape recorder running to preserve the evidence.

Having seen similar examples over and over in the *McMartin* tapes, only one conclusion is reasonable: MacFarlane and her trainees had decided *before the first interview* that children were molested at the McMartin preschool. However they may now try to rationalize their interviewing techniques, their behavior with the children looks like an attempt to squeeze from them evidence of what the interviewers were convinced must have taken place.

After these interviews, parents were told that their children had disclosed abuse, and none of the parents demanded to watch the entire videotape. Instead, they heeded the advice to take their children to therapists who specialized in "sexual abuse trauma." As months stretched into years, and the children not only did their best to please their therapists but also exchanged information with each other at school and were repeatedly questioned by parents and investigators, the stories grew and grew. It is hardly surprising that some of the children who initially said over and over that they saw nothing happen, now insist that they were victimized.

Los Angeles County District Attorney Ira Reiner has summed it up as well as anyone. Interviewed for the "60 Minutes" television program, he said:

> The entire case was turned over by the district attorney . . . to a group of social workers. . . . Now, these people are absolutely unqualified to handle a criminal investigation. . . . They start from a premise . . . that no child is capable of fabricating stories about sexual molestation. To do so would require them to talk of a thing of which they have no understanding or knowledge, and so we can always rely upon a child talking about being sexually molested. . . . But what we had here were these social workers questioning the children, asking very leading and very suggestive questions. . . .

With the children's statements so badly contaminated, the prosecution had no choice but to lean heavily on the alleged medical evidence. Once again, however, this turned out to be a false alarm. On child after child, medical reports done by doctors specifically selected by the police concluded with: 1) "history of sexual abuse," and 2) "physical examination consistent with sexual abuse." We have already examined the linguistic trickery of such phrases. In the few examples where alleged abnormalities were described, rebuttal testimony explained that the alleged signs of "trauma" were now known to be variations of normal anatomy.

The question naturally arises: Why was the case prosecuted if the investigation was so badly botched? Reiner admitted that when the case was taken to a grand jury for indictment, the prosecutors had not bothered to view any of the videotapes of the children! Only later did prosecutors realize how the children had been bludgeoned into making accusations, and by then the political stakes were so high that the case couldn't be dropped. Charges were dismissed against five of the seven defendants one week after the close of California's longest preliminary hearing (which took

18 months), but the D.A.'s office took the remaining two defendants to trial and cost Los Angeles taxpayers $15 million.

After the jury acquitted Ray Buckey and his mother on 52 counts and deadlocked on 13 other counts, Reiner decided to retry the case, despite his frank admissions about the lack of evidence. It is difficult not to conclude that politics, not justice, was the uppermost consideration in such a decision.

How exceptional was the *McMartin* case? Its size and cost were certainly unprecedented, but its basic flaws were the same that we have seen in hundreds of other cases. In the aftermath of the jury's verdict in the *McMartin* case, a parent wrote a letter to a local newspaper, the *Daily Breeze*. His experiences are similar to those of thousands of others, but few have summarized them so well.

> My son attended a preschool in Manhattan Beach. It was not the McMartin school. After his preschool closed for unexplained reasons, my wife "concluded" that our son had been a victim of molestation.
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> She took him to see the sheriff's investigative team for an interview (twice), but nothing was turned up. Then, on the advice of a "support group," my wife took our son for a discovery session with a psychologist at a South Bay counseling center.
>
> The session with this expert produced a horrible story of physical and sexual abuse. Unfortunately, the interview was not recorded.
>
> On the way to school the next morning, I told my son that I had heard what happened and I was sorry there were such people in the world. After a short pause, he looked at me and said, "Dad, that puppet story wasn't true. It really wasn't true."
>
> When I told my wife what he had said, I was instructed that this was merely denial and that indeed the story was true.
>
> Our son was taken to individual therapy for more than three years, even though he showed no signs of emotional distress. The therapist kept my wife completely upset by alluding to "privileged" secrets that she had with our son. She also advised my wife that our son "shows a lot of anger" (which is nonsense) and that the therapy would go better if he came in twice a week.
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> The therapist could not understand when I objected to the additional counseling, because the Los Angeles County Victim's Witness Office was going to pay for it. I wrote to the Victim's Witness Program and told them they were not to pay any fees. I suspected they paid anyway, but the office refused to show me my son's file.
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> It struck me as ironic that these psychologists were chanting, "Believe the children," but that didn't apply if the child wanted to say a puppet story was untrue. Then it was "denial" that needed extensive counseling.
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> Anyone with some experience with small children knows that children will go along with a fantasy game. But to take advantage of a child's colorful imagination to implant serious accusations that are not true is a form of child abuse.
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> Some serious child abuse occurred as a direct result of very unprofessional work by some psychologists. Is there no way to hold these people accountable?

Ramifications

Most forms of child abuse are not new. While some societies do better than others, none protects its children to the degree that they deserve. We see no reason to doubt that sexual abuse of children, like other forms of abuse, may leave permanent scars.

We think it is especially tragic, however, when a society creates a new form of child abuse that is perpetrated by the very agencies mandated to prevent abuse. While we are sure that none of the individuals involved intends anything but protection for children, we are equally sure that many children are being abused by the faulty investigations of recent years.

The cases we have studied lead us to conclude that children who learn to believe they were abused, as a result of ongoing interviews by investigators and therapists, may develop the same fears as those who were real victims. Many such children are learning from their interviewers that their lives or the life of a parent is in danger. And many have had a loving relationship with a parent (usually a father) destroyed.

Not only do false accusations cause psychological damage to the child; they often destroy whole families. Even after a successful end to criminal charges, the families of the falsely accused are often left in a shambles, with life savings gone and relationships never quite the same.

We also consider the accusers in many cases to be victims. Many of the parents of the *McMartin* children, to cite just one notorious example, still believe and undoubtedly always will believe that their children were molested at the school. Their adamant point of view, however, is the result of having been told repeatedly by trusted medical and mental health experts that molestation had been proven by reliable scientific techniques. If many parents, after months or years of therapy for abuse they are assured has taken place, are unable to see how they have been misled, it is the professionals and not the parents who are responsible. These families, whom we may call the false accusers, are harmed just as surely as are those of the falsely accused.

Society also pays a heavy price for the large number of people falsely accused. Today, people are afraid to have neighborhood children in their homes. They are afraid to touch a child in a caring way for fear of being accused. Teachers, Boy Scout and Girl Scout leaders, day-care providers, and anyone else in contact with children are

drawing back. Fathers are becoming afraid to bathe their infant daughters. Such fear is certainly not going to reduce the incidence of child molestation, but it is reducing the incidence of normal, healthy contact between adults and children.

Our legal system is left to process the results of investigations done improperly, and we all pay the price. Some judges or jurors may wonder whether accusations are ever genuine. Others, inclined to confuse political agendas with courtroom fact-finding, may be determined not to let a child molester get away. The ferocity with which child molestation cases are fought leads to many ethical violations by attorneys who are bent on winning at any cost. Judges are afraid of being voted out of office because these cases are so political. Doctors are afraid to testify for fear their practices will be harmed if word gets out that they "defended a child molester."

Each year, hundreds of laws of questionable constitutionality are proposed, and many passed, as a way to make convictions easier. Politicians are afraid not to jump on the bandwagon, fearing they will be labeled "soft" on child molesters. Important elements in our legal, medical, and social systems are threatened, all in the name of protecting children.

Panic never protected anyone, and we know of no better word to summarize the developments described above. It is time to admit the mistakes we have made, muster the courage to look closely at why we made them, and start again.

Reforms

If the analysis we have presented is correct, the necessary reforms follow logically. First, police and child protection agencies must recognize the mistake of relying on a few persons from the mental health and medical fields who have set the tone for the new child sexual abuse prevention movement. Investigators must *not* think like therapists, but like investigators.

The practical ramification is that investigators must be retrained. In place of the "believe the child" approach, they must rely on neutral investigation that acknowledges the reality of both true and false accusations of child molestation.

Investigators who truly understand that finding the truth, and not assuming abuse, is the best way to protect children will be more likely to avoid leading and suggestive interviews. Their retraining must include practice in avoiding such questioning. There is no need for mental health professionals to be involved in such training.

While investigators should be required to tape record all their interviews, those with the child are especially crucial. If the child is able to tell his or her own story, even tentatively, a tape recording will document this fact, and such evidence should help convict the child molester. If, on the other hand, the child's real source of information is an overzealous interviewer, that will also be revealed by the tape recording, and such evidence will help avoid convictions of innocent persons. If the truth is our goal, we have everything to gain and nothing to lose by responsibly documenting all interviews with children.

Investigators must also learn how they have been misled by a few doctors who are confusing their desire to stop child abuse with legitimate medical science. Until these doctors reform themselves, the investigators should no longer send children to them for examinations. Ordinary pediatricians who confine themselves to describing bona fide medical findings should be encouraged to perform such examinations.

District attorneys have the power to implement many of these changes simply by letting police and child protection agencies know that cases will not be accepted for prosecution unless minimal standards are observed. A neutral investigation, fully documented, should be a minimum requirement insisted upon by all prosecutors.

The courts also must improve. Judges must do a better job of judging the competence of potential child witnesses. Children who know that a blue tie is not a red tie, and that to say otherwise is to tell a lie, have not demonstrated their competence to testify. The competent witness must also be able to base testimony on *personal recollection* or *independent recall*. In order to decide whether a child's statements are based on such recall or are instead a product of training by interviewers, judges must study the prior interviews and not just the child's statements in court.

Juvenile court judges are especially in need of a reminder that a finding that molestation has occurred, if in reality there has been no molestation, is just as harmful to a child as the failure to recognize and stop abuse that has in fact occurred. The argument that "it is better to err on the side of the child," meaning that molestation will be assumed, is an easy cop-out that may make judges feel better but does nothing to protect children.

Finally, legislators need to recognize that the flood of legislation in recent years, which is generally aimed at weakening due process protections of accused persons, should not be equated with better protection of children. The evidence that false allegations are widespread is now too strong to make such an easy assumption. In our view, efforts to encourage hearsay exceptions, to deny the right of confrontation, and to pass draconian sentences that make plea bargaining more likely than a contested trial are making convictions easier but are promoting neither justice nor child protection.

We do not expect these reforms to come easily. The law enforcement/mental health alliance is too busy defending current practices to be receptive to such changes. The only hope lies in more effective courtroom advocacy that exposes current mistakes, coupled with a growing public awareness that our child protection system needs an overhaul. **CJ**