

# LAW

## VERTICAL PROSECUTION OF CHILD ABUSE

—by John E.B. Myers

Imagine yourself with a serious medical condition requiring hospitalization and surgery. Your prognosis is guarded, and your future is in the doctor's hands. But you never see the same doctor twice! At each stage of your care a new doctor appears—a medical stranger whose knowledge of your case is gleaned from a brief review of your medical chart, and who has little sensitivity to your fears and concerns. The medical care you receive may be competent, although one wonders. There is little doubt that your psychological needs are not being met. Now, contrast this splintered health care with the daily attendance of one physician who knows your case by heart, and whose constancy and support lifts your spirits and those of your family. Which would you prefer?

Change the scene. Two young sexually abused children are about to enter the bewildering world of interviews, social workers, police officers, attorneys, judges, and courtrooms. Six-year-old Mary lives in one county, six-year-old Sally in another. Sally meets prosecutor Becky Row at the initial investigative interview, shortly after the abuse is reported. Becky introduces herself to Sally and they get acquainted. Becky tells Sally a little about the legal system. Armed with the police report and her first-hand knowledge of the child, Becky decides to file criminal charges against Sally's perpetrator. After charges are filed, Sally's first appearance in court is the preliminary hearing, where she must testify in front of the person accused of abuse, and endure cross-examination. A few days prior to the preliminary hearing, Sally has a "practice visit" to the courthouse. Becky is there to greet her and conduct the tour. Sally's fear of the unknown is lowered. Becky and Sally share a soda and discuss the upcoming preliminary hearing. As Sally struggles to testify, Becky is there to lend reassurance. As

the day for trial approaches, Sally is increasingly apprehensive, but Becky—"the nice prosecutor lady"—is there, as always, to help her through. And when the big day arrives, Sally finds Becky on the courthouse steps to hold her hand on the long walk to the courtroom.

In the neighboring county, Mary does not meet a prosecutor at the initial investigative interview. The first prosecutor to become involved in the case is the one who decides whether to file criminal charges. This prosecutor does not meet Mary. Ten minutes before the preliminary hearing, a second prosecutor steps into the reception area where Mary is fidgeting nervously on her mother's lap. The prosecutor looks around the crowded room and, seeing only one child, asks, "Mary?" On the way to the courtroom, the prosecutor describes what is about to happen. As the trial approaches, a third prosecutor meets Mary a few days prior to trial for a "practice visit." This prosecutor does her best to help Mary through the trial, but it is difficult for Mary to gain much comfort from this "nice new lady." Which county would you prefer to live in if you were a sexually abused child or the parent of such a child?

The benefit of consistency is just as great in the legal context as in the medical setting. Fortunately, increasing numbers of prosecutors are providing consistency for children by practicing "vertical prosecution" (VP). With VP, "one prosecutor is assigned to handle a case at all stages of the proceedings" (Bulkley, p. 11, 1982). According to Patricia Toth, Director of the National Center for the Prosecution of Child Abuse, VP is one of the best things a prosecutor can do to increase the chances of success in child sexual abuse cases. The child is usually the most important—and uncertain—witness. With VP, the prosecutor gets to know the child early in the process, and can assess the child's strengths and weaknesses as a potential witness. At trial, the prosecutor who knows a child's developmental and linguistic levels is in a good position to ask questions the child understands. The child is

more likely to perform well on the witness stand. Whatever the outcome of the litigation, the child and her family are likely to feel that they were treated fairly and with respect.

Is there a down side to VP? From a purely economic perspective, VP may be less cost effective than assigning each stage of a case to a different prosecutor. VP is more time-consuming, therefore caseloads have to be lower and prosecutors more numerous. But even by those who have to toe the bottom line, lower caseloads should be viewed as a plus rather than a minus. Child sexual abuse is exceedingly complex. More time is required to prepare these cases than for many other crimes handled by the prosecutor's office. In addition, sex offense cases place great emotional demands on prosecutors. According to Judge Harry Elias, burnout is common with prosecutors working in this area. Lower caseloads forestall the onset of burnout, lowering the costs involved in hiring and retraining an ever-changing prosecutorial staff.

Judge Elias (himself a former prosecutor) also notes that prosecutors who specialize in child sexual abuse cases enjoy greater credibility with defense attorneys. When the defendant's attorney knows the prosecutor is an expert, the defense attorney is more likely to persuade the client that the best course of action is to plead guilty. Of course, when the defendant pleads guilty, the child is spared the ordeal of testifying at trial.

As is true with most aspects of responding to child sexual abuse, there is no one "correct" way to structure vertical prosecution, and every prosecutor's office is a little different. The key is assigning one prosecutor as early as possible. The consistency of "the nice prosecutor lady" helps children through the often difficult processes of the law.

### References

- Bulkley, J. (Ed.) (1982). *Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases* (American Bar Association. National Legal Resource Center for Child Advocacy and Protection.)  
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