

Working with AOD families

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programs. These are some of the steps by which we can assist families in which addiction and child maltreatment occur together—perhaps the most daunting challenge facing CPS workers today.

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LAW Thoughts on How Prosecutors Can Inform Judges on Child Abuse and Neglect Issues

—by Paul Stern

They are stories of frustration for professionals.

A child sees a therapist for behavioral problems. After a thorough evaluation, the therapist is convinced the child has suffered long term abuse by a parent. The child will likely continue to be abused and needs to be removed from the home, the professional concludes. But the judge refuses the request, not wanting to disrupt the family.

A 12-year-old is testifying about the many times her father entered her room late at night and molested her. When the judge hears that she had a lock on her bedroom door, but never used it, that she waited three years to make her disclosures, and that the disclosures were not made until her mother began divorce proceedings, the judge rules that the child can't be credible, and dismisses the case.

A jury has convicted a defendant for sexually molesting three of his grandchildren. His own children come forward and report that he abused them when they were younger. The defendant denies all the abuse allegations. The judge, whose father is the same age as the defendant, can't bear to send him to prison. Even though the defendant is still in denial, the judge orders him to sexual deviancy treatment.

Many of the most important decisions affecting the lives and safety of abused children are made by judges. These decisions are informed by what the particular judge believes to be true about child abuse. And those beliefs are significantly shaped by the amount and quality of the knowledge the judge has acquired about the subject. Most child abuse professionals acknowledge that, by and large, judges

do an outstanding job dealing with these complex issues. Unfortunately, even the best-educated and most well-intentioned judges may have little accurate knowledge of child sexual abuse.

Until recently, little formal training about sexual abuse was available for judges. The National Judicial College did not offer a specific program dealing exclusively with child abuse issues until May, 1993. Specific judicial training in this area remains limited.

Many child abuse professionals might question the difficult decisions made by judges, examples of which opened this article. Professionals have an obligation to do more than question judicial decisions and walk away, however: they have an obligation to help judges reach decisions that are as well informed and accurate as possible. Prosecutors are in a particularly good position to bring relevant information to judges' attention.

Below are seven principles for prosecutors who wish to credibly, ethically, and effectively inform the bench.

Try self-examination before criticism.

A prosecutor who thinks a judge has made a terrible decision should not react in anger, but as a professional. Examine critically whether the judge really was wrong. Just because the decision went against you doesn't mean it was wrong.

If you are convinced the judge is in error, review why your arguments were not accepted.

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How prosecutors can inform judges

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Perhaps the failure is not as much with the decision made as with your argument. Did you explain the reasons for the relief you sought? Did you throw literature at the judge without explaining the significance of it? Did you make assumptions without clearly spelling out the logic of your position? An effective advocate should provide counsel and information. Teaching others requires that you first learn and be able to articulate the material.

Before casting blame, look within. Only then should the next steps be explored.

Recognize that education is a long term project.

The child abuse community has been battling myths about child abuse for years. As soon as the myths die down, the backlash begins. A cycle of information and misinformation will always sweep across this field.

To inform and change attitudes takes time. When we talk about child abuse, we are generally discussing acts that no one wants to believe humans are capable of committing. Don't expect judges to become child abuse experts overnight. One article or argument, no matter how persuasive, is unlikely to effect a permanent

transformation in the judge's thinking. Time, leadership, and consistent, high-quality information will be required.

Do literature briefs.

If you want a judge to have particular information, put it in a brief. If you want a judge to read a specific article, attach it to a brief.

Whenever a significant article is published that you think would be of value to a judge, make a motion which touches on the subject. Then write a very short (1-2 page) brief which asks for something in reliance upon the article. Attach two copies of the article to the brief. The judge will read the article; most likely the second copy of the article will find its way into the judge's files. Even if you do not get the relief you sought in your motion, you have at least introduced the judge to the latest research.

In a later case, when a similar issue is raised by another lawyer, the judge will probably recall your brief and article. The judge is likely to find your papers and read them again. Although your client might not receive immediate benefit from your motion, the next child who comes before the judge might gain.

When you file the motion, supply a copy of the brief and article to the judge's law clerk. If the judge doesn't read the article, the law clerk will—and the clerk, hopefully, has the judge's ear. If the judge learns from the law clerk, you have achieved your aim.

If you can afford it, use experts.

The courtroom is as good a place as any for an expert to provide a presentation on a specific issue regarding child abuse. The expert gets to answer just about any question you can think of, either before the jury or before the judge during the making of an offer of proof.

Remember, if the goal is educating judges you are not primarily concerned about the short term. You want the judge to develop a gradual but consistent understanding of the field, the dynamics of child abuse, the nuances, ethical issues and vocabulary. What a judge learns today might be incorporated into a decision made a year from now.

There are, of course, fiscal restraints in using experts. And there are tactical concerns as well. The wisdom of the State's using expert witnesses in its case in chief is subject to reasonable debate (APRI, 1993). Arguments against the use of experts include the "battle of the experts," and a refocusing of the trial away from the child and onto these competing professionals. Those concerns are valid. Caution and careful trial strategy is vital in making the determination of whether to use an expert. In seeking to achieve the long term goal of educating judges, there may be no better way than to bring the experts to them; however, for the instant case, the use of experts might do more harm than good.

Share resources.

You come back from a child abuse conference, laden with a conference notebook three inches thick, chock full of articles and outlines that you know you won't look at again until a specific issue arises. Instead of filing it away, share it.

Find a reason to talk to a judge before whom you have no cases pending. Mention that you are back from a conference. Suggest that the information you heard, especially from the judge who spoke at the conference, was very interesting (if this is true), and that you would be willing to let the judge borrow the program material. Even if the judge did not want it at that precise moment, he or she is unlikely to decline your invitation to provide information. Then deliver the entire notebook. Sometime, perhaps when a trial settles early, or while two lawyers are painstakingly picking a jury, the judge will browse through the material.

The judge might not read the material carefully at first, but will at least be aware that it is there, available for his or her closer examination when a relevant issue arises.

Invite the judge to lecture, to moderate, to attend, to write.

There is always child abuse training going on in or around your community (if there isn't, start some!). A judge might feel it inappropriate to go as an attendee, concerned that attending a conference

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put on by prosecutors will violate the judicial obligation to maintain neutrality.

But if the judge is a speaker or a program moderator or delivering the keynote, then he or she is arguably in a different ethical position. (Inviting judges to speak is particularly effective in states where judges run for election.) Having agreed to give a presentation, the judge will be eager to learn more about child abuse. Provide resources on the presentation topic: literature briefs, articles and conference materials reflecting the most advanced knowledge of the issues.

If possible, ensure that the judge arrives at the conference early enough to listen to other speakers. If the judge is willing to stay for lunch, be sure he or she is seated at a table with those prepared to summarize their conference presentations.

Be credible yourself.

"What we choose to believe depends on whom we rely on as teachers," wrote Dr. Roland Summit (1992). If we want judges to believe the literature we put before them, we must be certain they can rely on us as teachers.

Be credible. Be ethical. Be honest. Be informed. If the judge cannot trust you, the judge cannot trust the material you present.

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ANNOUNCEMENTS

Child Fatalities Report to be Released

The U.S. Advisory Board on Child Abuse and Neglect will release its report on child fatalities on April 25 at a major news conference in Washington, DC. For press releases and Public Service announcements related to the Board's public awareness campaign, contact Deanne Tilton-Durfee at 818-575-4362 or Conrad Kenley at 301-490-1693.

Resolution on Facilitated Communication Issued

The Board of Directors of the American Psychological Association (APA) recently endorsed a resolution on facilitated communication. The Council of the APA adopted the position that facilitated communication is a controversial and unproven communication procedure with no scientifically demonstrated support for its efficacy. The resolution states, "Studies have repeatedly demonstrated that facilitated communication is

not a scientifically valid technique for individuals with autism or mental retardation. In particular, information obtained via facilitated communication should not be used to confirm or deny allegations of abuse or to make diagnostic or treatment decisions." To receive a copy of the resolution and its references, call the APA at 202-336-5500.

Awards Nominations Sought

The National Council of Juvenile and Family Court Judges is calling for nominations for its 58th Awards Program. The awards recognize outstanding projects and persons in the juvenile and family law system. For more information, contact Marie Mildon at 702-784-6686.

Resources Available

The Dallas Children's Advocacy Center is offering copies of its 1994 Crimes Against Children Seminar Book for \$30.00 each. Contact Jessie Shelburne at 214-818-2600 for more information.

CALL FOR PAPERS

Child Maltreatment, APSAC's new journal, will be publishing a special section in Volume 1 on "Child Interviewing." We are especially interested in receiving research and practice manuscripts relating to interviewing special populations of children (e.g. adolescents, children with disabilities, children belonging to specific cultural groups). To be considered for the special section, submissions should be received by August 30, 1995.

Articles should be no more than 30 typewritten, double spaced pages; reviews of literature should be no more than 50 typewritten, double-spaced pages. Include an abstract of approximately 150 words, with footnotes, references, tables, and figures on separate pages. Author's name and affiliation should appear on a separate cover page for anonymous review. For style, follow the *Publication Manual of the American Psychological Association* (4th Edition). Submission to *Child Maltreatment* implies that the manuscript has not been published elsewhere, nor is under consideration by another journal.

Please send five copies of the manuscript to the attention of Kathleen Coulbourn Faller, PhD, ACSW, and Mark Everson, PhD, Special Section Editors, APSAC, 407 South Dearborn, Suite 1300, Chicago, IL 60605.