
Dealing with Parent and Child in Serious Abuse Cases

By Leonard P. Edwards and Inger Sagatun

The legal response to cases of serious intra-family child abuse presents a number of complicated and difficult issues. Among them are: Should the family be separated at the time of the discovery of the abuse and, if so, which members of the family should be removed from the home and for how long? Should the legal system be concerned with developing a plan to reunite the family? Should the offending parent be prosecuted by the criminal justice system and, if so, to what extent should the needs of the child and family be considered by the criminal courts in dealing with the offending parent?

There are conflicting legal and social goals in any attempt to resolve these questions. In some respects, the conflicting goals are reflected in the fact that a child abuse case typically is handled by two different courts, the juvenile and the criminal. In juvenile court the judge and other participants in the legal process attempt to structure a program that will be in the best interests of the child. The child is the subject matter of the proceeding, not the parents. In the criminal court, the judge, prosecutor and other participants are focusing upon the offending parent and determining the degree to which the aims of the criminal law should be applicable to him. To the extent that the best interests of the child involve continued contact with the offending

parent and the restructuring of the family, there may be a conflict between the juvenile court order and judgment by the criminal courts in sentencing the parent to long periods of incarceration.

The remainder of this paper focuses upon five propositions which we believe should be guiding principles for those persons charged with administering cases of serious child abuse. Within the discussion which follows the five propositions, we attempt to outline certain approaches to serious child abuse cases which will in part resolve the conflict inherent in dealing with the parent and child in these cases. Although the propositions may appear to be somewhat abstract, each is based upon the experience of professionals involved in the handling of child abuse cases in Santa Clara County, Calif.

A few introductory words are in order. Child abuse cases, as referred to in this paper, include only intrafamily occurrences. Those cases involving strangers who abuse children are excluded because there is no pre-existing relationship between the offender and the child. There are some abuse situations involving family friends or relatives other than parents, but whether they should be included in the category of cases will depend upon the relationship between the offender and the child and the specific needs of the minor.

Serious child abuse in this paper refers to conduct which has caused serious physical or emotional harm to a child. More specifically, serious refers to those incidents of battery and sexual molestation upon a child which are punishable as felonies in the criminal courts.

The best interest of the child in this paper means the alternative which most closely meets and satisfies the child's needs. As defined by Goldstein, Freud and Solnit in *Beyond the Best Interests of the Child* it means "the least detrimental available alternative for safeguarding the child's growth and development."¹

The Five Propositions

- (1) After discovery of an abuse, the child should be placed in as familiar a setting as possible (preferably his own home) consistent with protection from future harm.
- (2) The child's best interests are served if he is permitted to continue his family life with as little interruption as possible, even if this means reuniting him, after appropriate intervention, with the offending parent.
- (3) Before and during any reconstruction of the family, therapy is necessary for both parents, the child and often for other family members.
- (4) It is necessary to have coordination and communication between the various decision-makers in the juvenile and criminal courts concerning the disposition of child abuse cases.
- (5) Therapy must be available in each community for families involved in child abuse. There should be widespread publicity in the community that therapy programs exist, that their purpose is to rehabilitate the families involved and that the legal system is utilizing them and is supportive of them.

Discussion

- (1) *After discovery of an abuse, the child should be placed in as familiar a setting as possible (preferably his own home) consistent with his protection from future harm.*

Perhaps the most traumatic period for the child is at the time the abuse is first reported. His life is suddenly interrupted by a number of professionals including police, protective workers and probation officers. Statements are taken (often repeatedly), family members question him and may even attempt to persuade him to deny the truth of what he has reported. The family turmoil is often blamed on him.

While in many cases it is necessary for the protection of the child to remove him from the family home immediately, it is recognized that for the child, the isolation from his family often results in feelings of depression and of being punished.² One approach preferable to removal is to exclude the offending parent from the family home thus permitting the child to remain with the family. This procedure is regularly followed by police departments in Santa Clara County and particularly the San Jose Police Department working in conjunction with the juvenile probation officers in Santa Clara County.³ The offending spouse is told to leave immediately, find another place to live and avoid all contact with the family home and family members.

Critical to this approach is the ability of the police agency or probation officer to talk with the entire family and explain how such a no-contact situation will work, what the alternatives would be (incarceration for the parent, emergency foster care for the child) and receive assurances that all parties will abide by the rules set down by the investigating officers. The officers must be satisfied that if there is a violation of the rules, it will be reported immediately to the proper authorities. The police and juvenile probation officers in Santa Clara County are so skilled at dealing with these family situations that such removals are the rule rather than the exception.⁴

One of the reasons for the success of the police and other workers at this stage is the existence of the Juvenile Probation Department's Child Sexual Abuse Treatment Program (CSATP) in Santa Clara County and the related groups, Parents United and Daughters and Sons United. In sexual abuse cases, after the initial police investigation is completed, and often simultaneously with the

investigation, the officer will invariably refer the case to the CSATP or Parents United group (if, in fact, the referral did not come from one of these groups at the outset).⁵ The staff and volunteers in these programs can then begin to give the various family members the support and therapy that is so necessary at this critical time in their lives. Having contact with these groups exposes the family members to others who have been through similar situations. Members of these groups, in turn, will strengthen the notion that the no-contact arrangement should be strictly followed. They will also encourage each family member to begin therapy immediately and hopefully thereby considerably reduce the trauma for each family member.

- (2) *The child's best interests are served if he is permitted to continue his family life with as little interruption as possible, even if this means reuniting him, after appropriate intervention, with the offending parent.*

This proposition is consistent with the principles stated in *Beyond the Best Interests of the Child* and the *Standards Relating to Abuse and Neglect*.⁶ If the offending parent can be rehabilitated through therapy so that the family can be safely reunited, then that effort should be the highest priority for the legal system. The alternatives of removal of the child for foster home placement or permanent removal of the offending parent should be utilized only if rehabilitative efforts have been tried and failed.

In Santa Clara County reuniting families which have experienced serious child abuse has been accomplished in the great majority of cases. In sexual abuse cases, more than 92 percent of the children return home and more than 75 percent of the marriages remain intact.⁷ In physical abuse cases, both the number of children returning home and the number of families remaining together after therapy is more than 90 percent.⁸ Moreover, all of this has been accomplished with a remarkably low rate of reported recidivism. In the sexual abuse cases, for example, the recidivism rate is 0.6 percent for those families who have completed the program.⁹

With such a high percentage of families

being reunited successfully, even after serious abuse has occurred, any efforts by the legal system to support similar rehabilitative programs would seem to be well placed.

- (3) *Before and during any reconstruction of the family, therapy is necessary for both parents, the child and often for other family members.*

A family in which a parent has been involved in child abuse can, in most cases, be rehabilitated. However, mere separation of family members, incarceration of the offender or even individual therapy for him may not be sufficient. In most cases, the entire family must be involved in therapy.¹⁰

This point has been demonstrated by each of the two therapy groups in Santa Clara County, the CSATP (combined with Parents United and Daughters and Sons United) and the couples physical abuse therapy group directed by Judith Siegel, MSW. From the considerable experience of each of these groups, it is evident that child abuse is a family problem, the solution to which involves the entire family.

In the physical abuse cases, Siegel began experimenting with a couples group in 1967. The child was generally not a part of the therapy because in so many of these cases, the child was too young. Therapy typically lasted nine months and involved the revelation of interpersonal problems between the parents. Of the more than 75 couples whom Siegel has treated during these 14 years, there have been only two reoccurrences. Moreover, as noted above, more than 90 percent of the marriages continued after completion of the therapy.¹¹

The CSATP and related groups have received national attention and are recognized as innovative effective therapy groups utilizing creative techniques for the rehabilitation of families involved in sexual abuse. In more than 10 years, more than 3,000 families have been provided services. The recidivism rate of 0.6 percent is much lower than any figures in the literature on incest and child abuse.¹²

These programs can be duplicated in other areas of the United States. In fact, currently there are 60 areas in the country which follow the CSATP model as a result of an ongoing training project conducted by the CSATP

staff. Training and materials are available for interested communities. (Refer to the Appendix for persons and agencies to contact.)

(4) *It is necessary to have coordination and communication between the various decision-makers in the juvenile and criminal courts concerning the disposition of child abuse cases.*

In order for the goals outlined in the first three propositions to be realized, there must be communication between the decision-makers in the juvenile and criminal courts. The juvenile court may propose a program for the victim child and siblings. The parents may be involved in therapy as a part of the plan. The juvenile court judge, attorneys and social and probation workers may all be in agreement with the program. However, the actions of the judge and prosecutor in the criminal court may make much of the juvenile court program unworkable.

For the best interests of the child to be fully served, it is necessary for the decision-makers in the criminal courts to be aware of what has happened in the juvenile court so they can coordinate with that program if they believe that is appropriate. In smaller counties, it is likely that the same judge or prosecutor may be involved in both parts of an abuse case. However, the larger the county, the more difficult such coordination may be and the more likely that one court will act in a manner contrary to the goals of the other.

For example, the judge who hears the offending parent's motion for bail reduction or for release on his own recognizance should be aware of the agreements reached between the police, CPS workers, juvenile court and family regarding placement of the child pending disposition of the case. If the juvenile court is satisfied with the family placement, and if the criminal court is otherwise satisfied that release is appropriate, that court can be helpful to the entire case by releasing the parent with specific restrictions, such as a no-contact order.

The prosecutor who reviews the request for a complaint, discusses a case for possible settlement or appears at the time of sentencing should be fully apprised of what has happened in juvenile court.

The most critical stage at which communication between the two courts should be maximized is at the sentencing stage of the criminal process. This typically occurs after the juvenile court has completed its hearings. In California, the dependency process takes from three to five weeks while the felony child abuse prosecution takes from three to four months. The sentencing judge must decide what is to be done with the offending parent after the juvenile court judge has decided upon a program for the child.

At this stage, the criminal judge should have a complete report on the juvenile court proceedings including an update on the progress of any therapy programs undertaken. Without suggesting what judgment should be pronounced in these cases, we would like to make three observations. First, removal of the offending parent to a state institution (prison) generally means that he will be unable to participate in the therapy program structured by the juvenile court. Such a commitment, in most cases, is tantamount to preventing the family from being reunited.¹³ Incarceration in a local facility is generally consistent with participation in such a therapy program. In Santa Clara County, the Sheriff's Department permits furlough time for therapy programs.

Second, the fear of incarceration can be effectively used to ensure compliance with rehabilitative orders. A recent study has shown that court-ordered therapy is much more effective than therapy voluntarily undertaken.¹⁴ The reasons seem clear. Therapy involves the in-depth examination of why a particular person engaged in child abuse. It requires a great deal of time, and is often difficult and painful. Yet when undertaken and completed, its results are remarkable. Whatever else they do, the criminal courts should order therapy over a long period of probation, and thereafter monitor and review it.

Third, it may be proper, as a part of any sentence, to order the offending spouse to serve a number of uncompensated hours working for one of the therapy programs in the community. Such an order should be cleared with the particular group so that the need and supervision are identified. This

type of work may be critical to the survival of these much-needed but often underfunded programs.

(5) *Therapy must be available in each community for families involved in child abuse. There should be widespread publicity in the community that therapy programs exist, that their purpose is to rehabilitate the families involved and that the legal system is utilizing them and is supportive of them.*

The most remarkable development, after the creation of the CSATP and its related programs, was the increase in reported sexual abuse cases in Santa Clara County. The programs became widely publicized, both in the press and on television. As more people heard about them, more sexual abuse cases were reported, particularly when family members learned they would be helped by the program.

Along with the therapy that is provided to dysfunctional families, the increased reporting of sexual abuse cases is the most important result of the creation of the CSATP. It is clear that families who would have otherwise not reported sexual abuse problems in their homes did so in the hope that the program could assist them. Santa Clara County does not have more sexual abuse per capita than any other place in the United States — it has more reported sexual abuse. As a result, it offers more treatment for abused children and for abusing parents.

By utilizing child abuse therapy programs, the criminal courts do not have to indicate that there will be no punishment for child abuse. Santa Clara County judges have continued to render what they believe to be proper judgments (including jail sentences) for child abusers.¹⁵ It is also true that the judges recognize the importance of the therapy programs and often tailor their sentencing decisions to fit the program ordered by the juvenile court.

Summary

There is a great deal of serious child abuse in our society today. Adoption of the principles outlined in this paper will, we believe, result in more of these cases being reported,

more therapy being provided for all family members and a greater likelihood that the legal system will be serving the best interests of the children in these families.

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Notes

¹Goldstein, Freud, and Solnit, *Beyond the Best Interests of the Child* (New York: Free Press, 1973), p. 53.

²Henry Giarretto, "A Comprehensive Child Sexual Abuse Treatment Program," in *Sexually Abused Children and Their Families*, Mrazek and Kempe, ed. (Oxford: Pergamo Press), p. 8.

³In Santa Clara County the juvenile probation officers fill the role of child protective service worker. In other California counties these workers may come from the Department of Social Services.

⁴The San Jose Police Department, in conjunction with the juvenile probation officers and CSATP workers, are so successful in their investigations of sexual abuse situations that they have an estimated 90 percent rate of confessions from the abusing parent prior to filing of a criminal complaint. Interview with Earl McClure, San Jose Police Department, May 5, 1981. Compare this with similar sexual abuse cases in Los Angeles County where the percentage of confessions at the investigative stage is less than 5 percent. Interview with Deputy District Attorney Jean Matusinka, District Attorney's Office, 1601 Eastlake Ave., Room 131A, Los Angeles, CA 90033. Interview by telephone May 12, 1981.

⁵Forty percent of the referrals to the CSATP come from the clients directly. Giarretto, "Abuse Treatment Program," p. 8.

⁶Goldstein, Freud, and Solnit, *Beyond the Best Interests*.

Juvenile Justice Standards Project, Institute of Judicial Administration, American Bar Association, *Standards Relating to Abuse and Neglect*, Tentative Draft (Cambridge, Mass.: Ballinger Co., 1977), Part VI, Dispositions, pp. 114-135.

⁷Dr. Jerome Kroth, *Evaluation of the Child Sexual Abuse Demonstration and Treatment Project, June 30, 1978* (Sacramento, Calif.: Office of Child Abuse Prevention, California Department of Health), pp. 26-27.

⁸Interview with Judith Siegel, MSW, May 11, 1981.

⁹Henry Giarretto, "The Treatment of Father-Daughter Incest: A Psycho-Social Approach," *Children Today* 5 (July-August 1976): 4.

¹⁰Giarretto, "Abuse Treatment Program," pp. 7-9.

¹¹Siegel, see footnote 8.

¹²Kroth, *Evaluation*, p. 294.

¹³The CSATP experience has been that when the attending parent is released from prison, the family reunites without therapy and the risk of recidivism is high. (Interview with Robert Carroll, supervising probation officer, Santa Clara County, June 1981).

¹⁴Dr. Inger Sagatun, "The Effects of Court Ordered Therapy on Incest Offenders," *In Brief* 17, no. 3 (1980): 28-39.

¹⁵Kroth, *Evaluation*, pp. 125, 224 and 291.

¹⁶*Ibid.*, p. 41.

Appendix

Agencies and persons to be contacted regarding the policies and programs discussed in this paper.

- (1) San Jose Police Department
Lt. Eugene Brown or
Sgt. Earl McClure
230 West Mission
San Jose, CA 95110
(408) 277-4102

- (2) Child Sexual Abuse Treatment Program
c/o Juvenile Probation Department
840 Guadalupe Parkway
San Jose, CA 95110
(408) 299-2475
(Attn: Robert Carroll or Dorothy Ross)
Re: Reprints of Articles — Attn: Henry Giarretto

- (3) Parents United/Daughters and Sons United
P.O. Box 952
San Jose, CA 95108
(408) 280-5055
Re: Training — Attn: Chuck Juliano
Re: Legal Matters —
Elizabeth Cobey, Esq.

- (4) Judith Siegel, MSW
Guidance Unit
c/o Juvenile Probation Department
840 Guadalupe Parkway
San Jose, CA 95110
(408) 229-2680