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# Child Sexual Abuse Prosecutions: The Current State of the Art

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## Child Sexual Abuse Prosecutions: The Current State of the Art

### Foreword

MICHAEL H. GRAHAM\*

This symposium on child sexual abuse prosecutions has its roots in the outstanding work of the National Legal Resources Center for Child Advocacy and Protection, a program of the Young Lawyers Division of the American Bar Association. Financed by a grant from the National Center on Child Abuse and Neglect, the Child Sexual Abuse Law Reform Project of the National Legal Resource Center for Child Advocacy and Protection, in March of 1985, sponsored a National Policy Conference on Legal Reforms in Child Sexual Abuse Cases. The conference was held for one and one-half days in the American Bar Association's offices in Washington, D.C.

A select group of experts, representing several disciplines, gathered at the conference. As part of their professional activities, each participant had been for some time actively involved with the investigation and prosecution of child sexual abuse cases, the counseling of child victims, and/or research into psychological or legal issues directly related to child sexual abuse prosecutions. From personal experience, I can assure you that the conference was informative, thoughtful, creative, and lively. Papers presented at the conference were published in the late spring of 1985 in a bound volume by the National Legal Resource Center for Child Advocacy and Protection.

Articles for this symposium were selected from the papers presented at the conference on the basis of subject matter and po-

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tential usefulness to concerned individuals and groups. Space limitations alone prevented the inclusion of many fine papers. The authors whose papers were selected for publication kindly consented to incorporate worthwhile suggestions that arose during the conference into their articles, provide additional references, and include updated materials to make the symposium as timely as possible.

The goal of this symposium is to provide to a diverse audience throughout the country, concerned with the recent revelations of widespread incidence of child sexual abuse, a series of articles setting forth the current state of the art of prosecution. The articles analyze continuing areas of concern and recent innovations in the legal system's handling of child sexual abuse prosecutions from both a practical and theoretical perspective. In addition, the authors present suggested approaches and proposals for further reform. Each participant treats the particular subject matter being discussed from a hands-on perspective. Consistent with the objective of presenting state of the art information, the articles contain fewer footnotes per printed page than normally seen in law review articles.

The symposium commences with an introductory article by Josephine Bulkley, providing a comprehensive overview of the child sexual abuse law reforms currently being considered. Both legislative and nonlegislative reforms are discussed. Her description of the subject matter of the articles that follow convincingly demonstrates that the whole is in fact much greater than the sum of its parts. Josephine Bulkley, Esquire, is the Project Director of the Child Sexual Abuse Law Reform Project of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection headquartered in Washington D.C. Prior to becoming Project Director, Josephine Bulkley was a staff attorney with the House of Representatives Select Committee on Children, Youth and Families. She has also been professionally involved with problems of the elderly and with the guardian ad litem program.

My contribution describes and analyzes legislative reforms creating special hearsay exceptions applicable in child sexual abuse prosecutions, as well as legislative reforms permitting the use of closed circuit television and introduction into evidence of videotaped statements and depositions of the child victim in place of viva voce testimony. The reforms are described and analyzed against the background of the confrontation clause. I am a Professor of Law at the University of Miami, specializing in the field of evidence.

Next, Rebecca J. Roe, Esquire successfully examines the critical question of the use of expert witness testimony by the prosecution in child sexual abuse cases. Roe is Senior Deputy Prosecuting Attorney and Supervisor of the Special Assault Unit in King County (Seattle), Washington. The Special Assault Unit, containing ten deputies, is responsible for filing, trial, and deposition of all child physical and sexual assault, rape, and domestic violence cases in King County.

Professor Wallace J. Mylniec, Professor of Law and Director of the Georgetown Law Center Juvenile Justice Center, and Michelle Dally, a student at Georgetown University Law Center and Editor of the *American Criminal Law Review*, address two constitutional rights of the accused seldom explained in the context of reform of child sexual abuse prosecutions: the defendant's right to be present during all phases of his trial and his right to compel the production and testimony of witnesses on his behalf. In addition, Mylniec and Dally consider the right of the defendant to pro se representation, guaranteed by the sixth amendment, in the context of the use of videotaped depositions and closed circuit television as alternatives to viva voce testimony of the child victim.

Kee MacFarlane, M.S.W., critically analyzes the important question of the use of videotape interviews of child sexual abuse victims for diagnostic evaluation and in criminal prosecutions. MacFarlane serves as Director of the Child Sexual Abuse Diagnostic Center Children's Institute International in Los Angeles, California. She is the author of many books and articles and has delivered more than four hundred presentations, speeches, and workshops on the subject of child sexual abuse and family violence at professional conferences for attorneys, psychotherapists, physicians, and social service personnel.

Community awareness of the special needs of children as witnesses has led to important modifications in the manner in which children are approached throughout their contact with the criminal justice system. These issues are examined by Lucy Berliner, M.S.W., in the next article in the symposium. Berliner is actively engaged in psychological intervention and advocacy with child sexual abuse victims at the Sexual Assault Center of Harborview, Medical Center, University of Washington, Seattle, Washington. She also taught as a clinical instructor at the School of Social Work of the University of Washington.

Professor Gail Goodman, Director of the Dual Degree Program in Psychology and Law at the University of Denver, has written

extensively on children as witnesses and jurors' reactions to children's testimony. Dr. Goodman has received an award from the American Bar Association for her work. Her article, written with Vicki Helgeson, a doctoral student in social psychology at the University of Denver, concerns the vital issue of the memory of children, in comparison to adults, as it relates to the competency and credibility of testimony of a child witness.

The final professional article is a compelling description of how a district attorney can mobilize a community to respond to the problem of child sexual abuse. The author, Robert Cramer, Jr., District Attorney of Madison County (Huntsville), Alabama, describes the nationally recognized prosecution-based child sexual abuse intervention program he designed and implemented.

Two student comments complete the symposium. The first comment explores the admissibility of evidence of other crimes, wrongs, or acts in child sexual abuse prosecutions. The second comment discusses competency requirements imposed upon child victims of sexual abuse. Both comments address important areas of current concern. Considered together with the professional articles, the following symposium on child sexual abuse prosecutions fairly and accurately presents the current state of the art.

A special thanks to Josephine Bulkley, whose contributions, cooperation, and energetic support made this symposium possible.