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PROTECT THE CHILD, PRESERVE THE FAMILY

Report No. 13



A Report by the
1992-93 San Diego County Grand Jury
June 29, 1993

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AREA OF CONCERN

As a result of national publicity, more than 2,300 copies of selected 1991-92 San Diego County Grand Jury reports¹ dealing with child protection issues have been mailed across the country to news media, social services agencies, academic institutions, private individuals, lawyers and legislators. These '91-'92 reports have been the subject of network television programs as well as newspaper and magazine articles. Defense Attorneys have attempted to use these reports in courtrooms. Complaints received, however, by the 1992-93 Grand Jury, have been critical of changes in San Diego's child dependency system. Some of these changes appear to have occurred as a result the prior year's reports. Additionally, in responding to the '91-'92 reports, agencies criticized in those reports provided documentation which rendered persuasive arguments refuting many of those criticisms.

The 1992-93 Grand Jury became concerned that some of the recommendations contained in the '91-'92 reports were not in the best interests of threatened children. The Jury decided to investigate the situation, and found that "dependency filings" (a primary indicator of the numbers of children removed from abusive or neglectful environments) during 1992 and early 1993 declined dramatically in San Diego County, and that similar declines did not take place in other California counties. The 1992-93 Grand Jury determined, therefore, to conduct a series of interviews with people representing a cross-section of juvenile dependency system interests. Those interviewed included judges, attorneys, administrative personnel from county departments, social workers and their supervisors, national experts on child abuse issues, physicians, psychologists, law enforcement representatives, children's advocates, foster parents and representatives of parents advocacy groups.

BACKGROUND

Complaints were received by the 1992-93 Grand Jury, early in its term, from Department of Social Services (DSS) employees, attorneys and foster parents, about the negative impact of the changes that had been made at DSS and the new direction the Department appeared to be taking. Because of the significant

¹Report #2, Families in Crisis; Report #6, The Case of Alicia W.; Report #7, Crisis in Foster Care; Report #8, Child Sexual Abuse, Assault and Molest.

management changes that had taken place within DSS during the year preceding its term, the Grand Jury had decided to allow the altered situation there to resolve itself without any immediate investigative interference. The volume and nature of the complaints, however, forced the Jury to initiate an examination of the conditions at DSS, and subsequently to review the reasons for those conditions having come into existence.

The Jury found that the level of Juvenile Dependency filings for San Diego County was lower in FY'92 than it had been during FY'91. According to reference data from the Judicial Council of California, dependency filings for FY'92 in San Diego County were only 72% of the level they had been in FY'91. Meanwhile, filings in other major counties had increased, Alameda County by 6%, Los Angeles County by 2%, Orange County by 12%, Riverside County by 79%, and San Bernardino County by 4%. Data from the DSS's Children's Services Bureau show that dependency filings in the county are averaging 183 per month for the current fiscal year, down from 239 per month for FY'92, and far below the 277 per month average for FY'91.

Of even greater concern was the preliminary evidence that the numbers of infant's and children's deaths caused by abuse and neglect were increasing. While it is difficult to make a meaningful statistical analysis of this trend (the numbers are small for statistical purposes), it is clear that several children known to DSS and Child Protection have died at the hands of their parents/care-givers.

The Jury was approached by social workers and supervisors who felt anxious and concerned that the the new department philosophy of "family preservation" was taking precedence over the need to protect children. Judges, familiar with the Juvenile System, told the Jury of their concerns over trends in local child protection practices which appeared to have been caused by the '91-'92 reports. Meetings with attorneys currently assigned to, or with prior experience in, various sectors of the Juvenile Justice system (County Counsel, Public Defender, Alternate Public Defender and the District Attorney's office), confirmed a broad dissatisfaction with the way the '91-'92 reports had been interpreted and acted upon by the front line social workers who had been heavily criticized.

Based on comments and information drawn from these diverse sources, the 1992-93 Grand Jury felt compelled to review the reports prepared by last year's Grand Jury, and the DSS cases upon which they appeared to be based.

FACTS AND FINDINGS

The 1991-92 Grand Jury reports on the juvenile dependency system of San Diego County have had immense impact, both beneficial and adverse, within and without the system. Beneficial effects

include bringing attention to the need for management and administrative change at DSS, and an increased public awareness of concerns in child protection. There were many adverse effects of the Grand Jury's reports, often affecting individuals who are participants in the system, impugning their competence, character and motivation. The principal effect of these reports, ultimately, was to create an environment in which many front line social workers had the perception that they must carry out a "family reunification at all costs" policy, with the result that a child's welfare could be subordinated to that perceived policy.

BASIC FACTS ABOUT CHILD ABUSE AND CURRENT LAW

But that is not at all what the 91-92 reports were saying should be done.

Federal Statutes

Six federal programs which serve maltreated children are relevant to San Diego County:

Child Welfare Services. The federal government provides administrative funds to state child welfare services under Title IV-B of the Social Security Act (42 U.S.C. Sections 671-673). This money is in turn allocated to county child welfare agencies, including child protective services, to cover administrative expenses, including staff training. It is a "closed-end appropriation," meaning Congress allocates a finite amount of money each year. California receives approximately \$24 million in federal funds under this program.

Foster Care/Adoption Assistance. The federal government subsidizes the costs of foster care for children who are eligible for Aid to Families with Dependent Children (AFDC) and adoption aid for children with special needs who are eligible for AFDC and Supplemental Security Income (SSI) under Title IV-E of the Social Security Act (42 U.S.C. Sections 671-673). This money is an "open-ended entitlement" for eligible children administered by the State Department of Social Services (SDSS).

In order to be eligible for funds from the Child Welfare, Foster Care and Adoption Assistance programs, states must demonstrate that "reasonable efforts" were made to maintain or reunify families before removing the child to foster care (see, e.g., 42 U.S.C. Section 671(a)(15)). This leverage has prompted California to enact "reasonable efforts" language in state statutes (see, e.g., Welf. & Inst. Code Section 319, which requires that reasonable efforts to preserve the family be made before a child is initially removed from the home). The quest for "reasonable efforts" is a primary goal of child protective agencies.

Child Abuse/Neglect Treatment and Prevention. Federal funds are available for states to fund child abuse prevention and treatment efforts under P.L. 93-247, the Child Abuse Prevention and Treatment Act (42 U.S.C. Sections 5101 and following).

Training Grants. The federal government provides training funds to schools of social work at universities under Section 426 of the Social Security Act, including funds received by the School of Social Work at San Diego State University.

Independent Living. The federal government funds programs for children who are aging out of the foster care system through the Independent Living Program, Title IV-E of the Social Security Act. These programs do not serve to maintain children in independent settings, but aid in the transition to independent living.

Runaway/Homeless Youth. The federal government provides competitive grants to 39 agencies in California under this program in Title III of the Juvenile Justice Act. Several service programs in San Diego County, including the YMCA, Social Advocates for Youth, and others, receive annual grants on 3-year cycles from this program.

California State Regulations

Child Welfare Services. State law (Welfare and Institutions Code Section 16500) mandates that a "child welfare services" agency exist in each county. In San Diego County this program is the Children's Services Bureau (CSB), which is a part of the County Department of Social Services.

Among the many goals of child welfare services specified in Welfare and Institutions Code Section 16501 are the protection and promotion of "the welfare of all children" and "preventing, remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children." In accomplishing these goals, child welfare services agencies may provide many services, including, but not limited to, "case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, out-of-home respite care, teaching and demonstration homemakers, parenting training, and transportation."

Welfare and Institutions Code Sections 16501.1-16501.3 describe specific programs which CSB must provide; the Emergency Response Program, Family Maintenance Program, Family Reunification Program, and Permanent Placement Program. The Emergency Response Program is "a response system which provides in-person response, 24 hours a day, seven days a week to reports of abuse, neglect or exploitation, for the purpose of providing initial intake services and crisis intervention to maintain the child safely in his or her own home or to protect the safety of the child" (Section 16501.1(a)).

The Family Maintenance Program is "designed to provide time-limited protective services to prevent or remedy neglect, abuse or

exploitation, for the purposes of preventing separation of children from their families" (Section 16501.1(b)). A family may voluntarily seek "family maintenance" services, or they may be ordered to do so by the court in lieu of the removal of a child. Sometimes, "Emergency Response" or intake information to CSB will lead to "diversion," or leaving the child in the home while intense maintenance measures are attempted under "family preservation." If this intervention is successful, no petition is filed to give the juvenile court jurisdiction over the child. The Family Maintenance and Emergency Response Programs together provide most of the services that are the subject of this report; intake services, immediate response services, initial services, and voluntary family maintenance.

The Family Reunification program is triggered by the removal and detention of the child and a formal petition for juvenile court jurisdiction. It is designed to provide "time-limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely be allowed to remain at home, and needs temporary foster care, while services are provided to reunify the family" (Section 16501.2).

The Permanent Placement program is implemented where reunification is inappropriate (i.e. severe life threatening abuse unlikely to be remediated), or fails. It is designed to provide "an alternate permanent family structure for children who, because of abuse, neglect, or exploitation cannot safely remain at home and who are unlikely to ever remain at home" (Section 16501.3). Eligibility for both the Family Reunification and Permanent Placement Programs is often predicated on the assertion of jurisdiction over the child by the Juvenile Court under Welfare and Institutions Code Section 300 or through other court proceedings (Sections 16507, 16508).

San Diego County Functions

Children's Services Bureau (CSB) is designed roughly along the lines of these state programs. The Bureau is directed by a Deputy Director of the County Department of Social Services. Assistant Deputy Directors head the various divisions within the Bureau:

Countywide Services, which includes two components of the Emergency Response Program (intake and immediate response), emergency shelter care, and residential placement;

Diversion Services, which provides non-urgent investigation as authorized by the Emergency Response Program, voluntary Family Maintenance services, and a Dependency Diversion program where families may be diverted from dependency proceedings and possible removal of the child and provided time-limited intensive family preservation services;

67-77

Court Investigation Services, which prepares petitions for dependency under Welfare and Institutions Code Section 300;

Family Services, which provides the bulk of Family Maintenance and Family Reunification Program services for Juvenile Court dependents;

North County Services, which provides many of the above services (with the exception of intake) for North San Diego County; and,

Child Resource/Support Services, which provides budgetary, planning and administrative support to the other units and direction to the Bureau as a whole.

CONCERNS ABOUT THE '91-'92 REPORTS

Interviews: The "Families in Crisis" report stated that the Chief Deputy County Counsel pressured the screening deputies to file petitions in questionable cases. The Chief Deputy told us she had overruled her screening deputies on only four occasions, and that all four petitions were sustained in court.

The Director of the Center for Child Protection told us he had never made the statement, "I don't think I'm as good as some doctors at maintaining an objective outlook, but I do the best I can", attributed to him in the "Families in Crisis" report. Rather, he determined the source of the statement to be a misquote from a newspaper article. He felt that in some respects the direction the former Grand Jury took was beneficial, because the report sensitized the medical profession to the premise that it had become solely reactive to the problems of child abuse, rather than assuming a proactive, preventive role. The Director emphasized, however, that "non-intervention" mistakes outnumber "intervention" mistakes. The Director said the ongoing harm of the report was that it made it appear that the system was incompetent, and that Child Protective Services had a predisposition to look for in-home abuse rather than investigate the possibility of out-of-home causes.

It's true the reports said the system was incompetent, not true that it said CPS had predisposition to in-home abuse.

In a quote attributed to a judicial officer, the '91-'92 report stated that "20-60% of the children do not need to be in the system. If the system could identify these children and return them home, it would dramatically reduce the stress on the social workers, the courts and foster care." The judge who made that statement told us that his meaning was that if there were family services available to prevent abuse from happening, the children wouldn't have to be taken into the system.

Factual Errors: The current Grand Jury made an effort to review the cases cited in last year's reports. Although it was difficult in some instances to identify these cases, we were able to do so and

asked both DSS and the District Attorney to pull their files on them. Many of these files have also been reviewed by the Juvenile Justice Commission and the San Diego Community Child Abuse Coordination Council. The latter said in its report of December 9, 1992:

"The committee also found that the cases described bore so little resemblance to the cases we had heard presented, in terms of the thoroughness with which they were investigated and the concern for all involved in how the cases were handled, that either these cases, rather than being representative, were rare exceptions, or the descriptions themselves contained inaccuracies and gross distortions."

Since there were newspaper reports of less than harmonious relations between the 1991-92 Grand Jury and the District Attorney, the 1992-93 Grand Jury decided to investigate the District Attorney's handling of the cases cited in the reports. This investigation was hampered by missing 1991-92 Grand Jury files, which had been removed from the Grand Jury offices. Fourteen files were returned on June 15, 1993, following a court hearing. After an exhaustive review of these files (three of which deal with the following citations), and records obtained from both the District Attorney and DSS, we found that the District Attorney's version of the facts, as stated in his response to the Grand Jury report, dated October 30, 1992, was accurate.

Three citations from the 1991-92 Grand Jury Report #8, Child Sexual Abuse, Assault and Molest, are given here, along with comments based on information the 1992-93 Grand Jury developed in reviewing the pertinent files:

1991-92 Grand Jury Report

"[A] school teacher was tried for child abuse after pushing a child. A jury found her not guilty. It was acknowledged by the supervising Deputy D.A. that this was a weak case, prosecuted "to teach a lesson, test the parameter of the law, educate the public."

Review Findings

In a complete reading of 1991-92 Report #8, there was nothing like this. A search for "teacher" and for "push" does not bring up any case like this in 1991-92 Reports #2, 2supp, 7, or 8.

The 1992-93 Grand Jury found there were seven victims. The defendant was not charged on all due to technical reasons (Statute of Limitations and lack of witness availability). One child had been lifted by one arm and thrown into his desk, another was slapped hard on the head. She also had her hair pulled. A third child was slapped twice on the head and a fourth was hit on top of the head during a school assembly.

The children said that the defendant called them such names as "stupid" or "idiot." This teacher's personnel file showed that she had received ten notices complaining about her inappropriate use of physical discipline on 8-year-old children. One of them suggested termination.

Can the next two paragraphs be talking about the same case? The 1992 report #8 said the alleged victim was ten years old, not twelve. And this report claims that weapons and medical evidence were presented, and that there's no record of lying. Whom to believe?

1991-92 Grand Jury Report

1991-92 Report #8
Section "Do
Children Lie ...?"
paraphrased.

"A teenager was prosecuted for felony child molest upon an allegation by a foster child in his mother's home. There was no physical evidence. The D.A.'s office prosecuted despite its awareness that this child's DSS file contained references to previous unfounded allegations as well as psychological evaluations of the child as a pathological liar."

Review Findings

The case was based on a report by a 12-year-old boy to his social worker. He said that the defendant had molested him numerous times during a two-year period by oral copulation, sodomy and masturbation/fondling. The abuse began about one month after the victim was placed in foster care at the defendant's mother's house. The victim described weapons that the defendant had either used or threatened to use, including a whip, a knife, brass knuckles and a rifle. These weapons were found in a subsequent police search of the defendant's living quarters. The examining physician detailed physical findings which supported the victim's claim of having been sodomized. The victim was borderline retarded, had sociopathic behaviors, and psychological problems, but no reference to a report that the victim was a pathological liar was found. The defendant pled guilty to Penal Code § 647.6 (Child Molest). The '91-'92 report makes additional comments about this case a few pages farther along in the report, and alleges that the District Attorney's ". . . decision to prosecute was based solely on the child's allegation." The files that were reviewed contained references to far more physical evidence, and in a civil suit brought by the victim against the County of San Diego, an award of over \$1,000,000. was made. This fact is a positive indication that the County felt that the case was valid, and that the victim was truly a victim.

1991-92 Grand Jury Report

"A step-grandfather was prosecuted for the felony child molest of his 11-year-old granddaughter. He and the family adamantly denied the allegations. Again, DSS files available to the D.A. contained contradictory information and evaluations of the child as a pathological liar. There was also a child molest report involving the natural father and the child. None of this information was revealed to the defense. The child

In a complete reading of 1991-92 Report #8, there was nothing like this. A search for "grandf", "grandd", "grand-f", "grand-d", and "adamant" does not bring up any case like this in 1991-92 Reports #2, 2supp, 7, or 8.

testified at the preliminary hearing but was not cross-examined. At the time of the trial, the D.A. stated that the child could not be located. The preliminary hearing testimony of the child was entered. The step-grandfather was convicted. Between conviction and sentencing, the defense became aware that the child's whereabouts (sic) was known, and had been known, by the D.A. The defense asked for a re-trial; it has been granted."

Review Findings

This case involves the molest of a 9-year-old girl by the boyfriend of the girl's grandmother. After trial, he was convicted of eight counts of violating Penal Code §288(a) and he was sentenced to six years in state prison. His motion for a new trial was denied. No reference in the DSS reports contained in the dependency file contained any reference to the victim as a "pathological liar." The girl's grandmother did accuse the girl of being a pathological liar. No police report was ever made regarding a molest of the victim by her father, after a report by the brother of an ex-landlord who said that he once saw some "messing around" between the father and the victim, but the incident was written up by the San Diego Police Department and referred to CPS. The statement that the victim was not cross-examined at the preliminary hearing is untrue, and the preliminary hearing transcript shows such cross-examination. The prosecution found out where the victim was after the trial, when the victim's grandmother told the deputy where she was. Prior to this time, the prosecution had no information on the whereabouts of the girl. The defense did ask for a new trial, but the motion was denied and the defendant was sentenced to prison.

Case Review: Data provided by CSB for the period of July 1991 through February 1992 shows that of total petitions filed, 32% were for physical abuse, 25% were for general neglect, 22% were for sexual abuse, 10% were for caretaker absence/incapacitated, 7% were for emotional abuse, and 4% were for severe neglect. Almost all of the cases cited in the 1991-92 Grand Jury reports had to do with sexual abuse of children.

Use of Experts and Review of Literature: Last year's Grand Jury Report #8 states:

"Psychological experts testified that children lie about these issues. Recent literature reflecting studies conducted by the American Psychological Association not surprisingly concluded that some children lie and others don't. Studies also indicated that young children can be very easily contaminated to believe that things happened which, in fact, did not occur."

The S. D. County Child Abuse Coordinating Council response to Grand Jury report #8, dated December 9, 1992 said:

"The members of this committee found that much of the 'information' contained in Grand Jury Report #8 was contrary to the finding of the best research done in the field, specifically in the areas of repression of traumatic childhood memories and suggestibility of children."

The 1992-93 Grand Jury found the following excerpt from the April 16, 1993 report from the County Commission on Children and Youth:

"Research by Goodman (1986; 1989) and Saywitz (1989) on children's memory and on the reliability of children's allegations of sexual abuse tend to demonstrate the following;

- 1) It is uncommon for children to make false allegations about being molested;
- 2) Children's memories are relatively good when compared to adult's memories;
- 3) Errors by children in the recall of events are usually those of omission, rather than commission;
- 4) While children may be more suggestible with respect to their memory of peripheral details, their recall of significant events that they have experienced, rather than things they have merely observed, cannot be easily changed or manipulated."

See page 17 for possible references these mean.

This (espy #4) does not seem to correctly reflect the "best research done in the field," even as of 1993.

The Case of Alicia W.: As has been acknowledged publicly by nearly all involved in the Case of Alicia W., errors were made in its handling. The 1992-93 Grand Jury feels compelled to discuss the facts of the Alicia W. case in some detail.

Albert Carder was charged with child molests involving Angelica K, Wendy R., Jennifer A., and Crystal D. in July 1989. The Deputy District Attorney assigned to the case filed charges against Carder alleging molestations of these children. Carder pled guilty just before his preliminary hearing. Although the Deputy D.A. had heard of the incident involving Alicia, which had occurred in May, 1989, no evidence had been presented to her requesting additional charges against Carder since no evidence was known to the police connecting Carder to that case at that time.

In the case involving the four victims mentioned above, the Deputy D.A. learned that Carder knew the victims or their mothers. The attacks did not result in serious injury as they did with

Alicia. She also knew that Carder had entered Angelica's home through a window on one occasion, but also knew that he had not molested her at that time.

In May 1989, the Deputy D.A. had been contacted by the detective in the Nicole S. case. Nicole had identified Carder as her attacker. At the detective's request, the Deputy D.A. prepared a declaration for blood drawing from Carder. The (then) Chief of the D.A.'s Child Abuse Unit (now a Municipal Court Judge) handled the Nicole S. case because it involved molest by a stranger. After consulting with her chief, the Deputy D.A. put information regarding the Alicia W. case in the declaration because Carder was a potential suspect. She was tasked to do the order because she was assigned to the four-victim Carder case.

At the time the Deputy D.A. transferred to the Office of the County Counsel in December 1989, no new criminal case involving Carder existed. The only case against him was the four-victim case, which had already been resolved.

The Deputy D.A., after becoming a Deputy County Counsel, was (by coincidence) assigned the Alicia W. dependency case in early 1990, but took no action on it until May when the first court hearing was scheduled. In June 1990, Alicia told her foster mother that her father had molested her. Although trial and disposition had already occurred in the dependency case, the parents contested this allegation and the matter was set for trial. The trial began in July but was not completed until November 1990. The criminal case against Alicia's father was not filed until December 1990. Final DNA testing was not complete for nearly another year. Given the facts as known from June 1990 until the DNA test results were confirmed, the actions taken in the criminal and dependency cases do not appear to be unusual. Alicia made statements between June and October 1990 that her father had molested her. She appeared credible and said her father told her to tell the story about being taken out the window. Alicia was seriously injured, while Carder's other victims were not hurt. The explanation given by Alicia's parents for her injuries was odd. Mr. W. told police that if he had done it, he did not recall it. The detective assigned to the case had received a report that Mrs. W. had told another person that her husband had committed the molest.

The Grand Jury report on Alicia W. unleashed an attack on the former Deputy District Attorney/current Deputy County Counsel, accusing her of ethical violations. She was threatened with criminal prosecution. This harmed her professionally, socially, and emotionally. This attack was unjustified, based on sworn testimony given before the 1992-93 Grand Jury.

COMMENTS ON SELECTED CSB PROGRAMS

Intensive Family Preservation Program (IFPP)

This is a recently instituted program, designed to provide support to families whose children risk abuse, to help them function adequately.

The following statement is from the San Diego County Intensive Family Preservation Goals, by J. Steidle:

"The intensive Family Preservation Program of San Diego County is conducting an innovative approach to providing intensive, comprehensive services designed to eliminate the need to remove children from their homes and to expedite the return of foster children to their own homes. These services are provided through a multi-cultural, multi-disciplinary team approach. The team consists of protective service workers, public health nurses, probation officers, psychiatric social workers, peer support staff and a clinical psychologist consultant. They provide frequent and intensive services to families in order to maintain children in their homes or expedite return of the child(ren) to their homes. These families receive intensive services (in-home counseling, parent education, etc.) intended to alter behavior(s) and reduce the risk of maltreatment to the children."

The families served by IFPP are hand-selected by the IFPP team. Due to the high risk nature of the cases, workers carry a case load of no more than 4 families.

Although the up-front cost of this program is high, the family-centered model has shown success in "Protecting the Child . . . and Preserving the Family," while saving taxpayer money in the long run. In the months that IFPP has been in place, families with a total of 805 children have been selected for the program. Of these children, 191 have been maintained at home (prevented from being taken out of the home), 161 remained at home, and 413 were returned home after temporary stays away. The cases involving another 40 children had an unsatisfactory outcome, that is, they were transferred to the dependency system.

Voluntary Diversion

There has been a great deal of attention placed on voluntary diversion (family agrees to CSB contract terms in return for having children left at home) in the last few months. The family of Tiffany C. was offered a voluntary contract, which the father signed, agreeing that he would move out of the house, attend anger management classes, and never be alone with the children (Tiffany and her sibling). Two months after the contract was signed, Tiffany was dead of injuries sustained in her home. The father awaits trial.

Natasha B.'s mother has borne six children. The youngest, and the only one still in the mother's custody is Natasha, now 6 months old. When Natasha was 11 days old, her mother signed a voluntary services case plan. On two separate occasions since, Natasha has suffered head injuries inflicted during her parents domestic disputes.

Voluntary diversion may be appropriate in many cases. It can be cost effective and is certainly less disruptive in most cases than pulling the children out of the home. The guidelines for voluntary services, as described in the Children's Services soon to be issued "Family Centered Handbook", are clear as to which types of cases are not appropriate:

"Due to high risk, the following cases are not usually appropriate for Voluntary Services. These cases most often require a petition and therapeutic intervention for the family.

- Bruising in infants; bruising to the head, face or torso in children three years of age or younger, and multiple and/or healing fractures.

- Cases in which the parent states a desire to relinquish and the children are age five and under.

- Any of the following situations where the minor is under 5 years old: physical trauma if untreated would cause permanent physical disfigurement, permanent physical disability, or death; any act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; and repeated acts of physical abuse which cause bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

- Families where the caretaker is extremely low functioning and there are no positive family support systems available and, the parent is not capable of learning to care for a child.

- Children with severe internal injuries, e.g. subdural hematoma, perforated bowel, ruptured liver, etc.

- Burns that are of a punitive nature;

- Failure to thrive;

- Non-accidental poisoning;

- Families in which one or both caretakers are actively psychotic, and/or are a danger to themselves or others, or cases where the parent has psychotic delusions that involve his/her child;
- Cases of sadistic abuse;
- Families in which abuse resulted in the death of a child;
- Munchausen's Syndrome by Proxy;"

GENERAL CONCERNS WITH THE SYSTEM

Of the current annual level of 68,000 plus² calls entering the San Diego child protection system, most are closed without action, many result in children being referred to "diversion" or left at home relying on "family preservation" programs, with only 1,500 (at current rates) resulting in removal of the child and dependency court petitions, less than half the number three years ago.³ An important question to be asked by those reviewing and evaluating this system must be, "under what circumstances will we learn of error or abuse of various kinds?" Others are: "Where are more errors likely to be made, in the 64,400 cases where the child is left at home and the matter closed? In the 2,000 cases where children are left at home for "family preservation"? Among the 6,000 children remaining in what experts call "foster care drift", shifted from family to family or institution to institution without bonding or resolution? Or, among the 400 where a permanent decision to place a child with a new family is made? In comparing the 64,400 cases of reports without removal, with the 400 cases of permanent removal, where will complaints most likely originate? In the latter case, complaints are likely, and understandable, whether the removal of the child is fully warranted or not. Complaints may be expected from adults who feel deeply offended, regardless of the merits of the removal from the viewpoint of the best interests of the child. The adults may be articulate, or at least have articulate counsel. Adults can organize politically, contribute to campaigns, issue press releases, grant interviews to the media, testify before the legislature, and attempt to persuade the grand jury. In fact, adults have done so - particularly those accused of sexual abuse of their children.

The troubling question is, who speaks for the errors made among the 64,400 in which no action takes place? Here, there is no articulate spokesperson. Even where there is counsel for the

²From CSB Statistical Data

³Diversions in FY'89 were 3943, in FY'90 were 3774, in FY'91 were 3329, in FY'92 were 2870, and in FY'93 (to date) 1465.

child, that counsel is circumscribed by rules of confidentiality, meant to protect the child. In addition, no civil remedy for the child exists where the state fails to remove - even where failure to do so is gross negligence by the state - since immunity from civil liability exists under the recent case of DeShaney v. Winnebago Cty. Soc. Servs. Dept. 489 U.S. 189 (1988). Hence, even if the child were to somehow obtain independent counsel able to bring an action on his or her behalf, such action is barred. And as a practical matter, the child is not in a position to represent himself or herself, to report, testify, or otherwise raise the issue of unwarranted return to an abusive, dangerous home. The children who are erroneously returned suffer in silence, and unless they are affirmatively sought out, no one will learn of their plight.

The gravity of an error made in returning a child to an abusive home is momentous, as is the gravity of removing a child from a home which is not sufficiently abusive to warrant removal. Both are horrors. Where we judge and evaluate the system, we must be keenly aware that the errors among the 400 are much more likely to come before us than are the errors among the 64,400.

Nevertheless, there are a number of serious indications that recent events within San Diego County have created an atmosphere where errors are more likely to be made in the failure to remove children than in their inappropriate removal. These indications derive from indirect statistics, interviews with officials setting relevant policy and those making removal decisions, and counsel representing the respective parties in juvenile court. Moreover, the current imbalance may be the result of the '91-'92 reports and attendant news stories. The 1992-93 Grand Jury has concerns that the current state of the dependency system in San Diego may endanger the health and safety of abused or neglected children.

During 1990-91, the Children's Advocacy Institute (CAI), a respected academic center and advocacy group representing the interests of children, conducted an inquiry of the child protective services system of San Diego County. The Institute is a part of the University of San Diego School of Law, and includes experts in child abuse law and procedure. The Institute does not represent child abuse service providers or officials. The County cooperated with the inquiry, and allowed extensive interviews of scores of officials, from hotline phone operators to judges and counsel. The Institute did not publish its study, but used it internally as a guide to formulate statewide legislative proposals likely to impact beneficially child abuse protection. However, it made available to the 1992-93 Grand Jury much of its data and provided useful background information.

The significance of the CAI critique rests partly with its contention that the most significant flaws in the system rested in failures to adequately investigate and intervene where there is an

indication of serious child abuse, lack of resources applied to inquiries, etc. Their findings did not preclude the possibility of abuses in the other direction. In fact, there was some indication that the system was susceptible to the error of precipitous child removal. But the study made it clear that such concern must be accompanied by a sensitivity to their over-all conclusion: the nature of the system can lead to substantial numbers of errors in failure to remove, failure to intervene, failure to treat - and that many of children can be condemned to years of suffering when these failures occur.

The first paragraph below lists several positive aspects and effects of the reports. Why only mentioned in the conclusion, and not in the body of this report to balance the negative arguments?

CONCLUSIONS

How did the general criticism of the 91-92 reports in this report, without specific counter-recommendations, affect those positive changes?

While it is difficult to accurately assess the long term effect of the 1991-92 Grand Jury reports, some things are clear. There have been positive reactions to the reports from many quarters. Advocates of "family preservation" believe that the report has aided their cause. The reports' conclusions on allegations of child abuse which are associated with divorcing parents are, we feel, accurate and valid. Some of the changes which took place within the Department of Social Services as a result of the reports were clearly beneficial. One attorney told us he felt the most significant result of the report was that it caused the system to look hard at itself and get into balance. We also agree with the jury's findings on the difficulty in complying with family reunification plans. And, we find that the report was correct in stating that there were problems with a few individual social workers at Children's Services Bureau.

There were, on the other hand, several troubling results which may be attributable to these reports. Children's Services Bureau employees were caused unneeded difficulty in performing their jobs, and morale there was seriously affected. Individuals named (by job title) in the reports, and accused of misconduct, or worse, have suffered greatly. And, because of the prestige associated with the imprimatur of the Grand Jury, the reports are now held up as authoritative proof of a malaise in child protection services generally, and by implication, those associated with the process.

The 1992-93 Grand Jury has the duty to assure that accuracy and balance is maintained in describing the system that exists in San Diego County. The essential point is that the existence of a balanced program by Children's Services Bureau is indispensable in assuring the protection of children as required by State and Federal statute. Further, the details of this program must be made clear to the front line social workers and their supervisors to assure its being carried out properly.

The following quote comes from last year's Grand Jury report:

"Services to neglected and abused children and their families must ultimately be judged on how well they

remediate or prevent the presence or consequences of intentional or unintentional maltreatment."

The 1992-93 Grand Jury agrees with this statement. Services provided to neglected and abused children must be based upon an appropriate and comprehensive determination of their needs. One size does not fit all. If the family environment can be modified successfully by providing support services, or if it is possible to resettle the abused child(ren) with a caring relative or member of the extended family, that solution serves the child best. If, however, the child is best served by removal from a hostile environment, then that is the action that should be taken.

The Grand Jury is in general concert with the "family centered practice" which forms the basis for CSB's child protection program. We believe that the Department's policies and procedures are appropriate to the requirements of law and the welfare of the citizens of the County. The instruments for bringing about balance in the Children's Services Bureau already exist.

We believe that the time has come for the Department to put the problems of the past year behind it and focus on its stated goal, "PROTECT THE CHILD, PRESERVE THE FAMILY."

RECOMMENDATION

The 1992-93 Grand Jury recommends that the

BOARD OF SUPERVISORS:

#93/55: Direct the Department of Social Services Children's Services Bureau reemphasize the commitment to its mission statement "Protect the child, preserve the family," and accelerate its total integration in the work force.

Possible references referred to on page 10 as Goodman (1986, 1989) and Saywitz (1989):

Goodman, G. S., Hepps, D., & Reed, R. S. (1986). The child victim's testimony. In A. Haralambie (Ed.),
New issues for child advocates (pp. 167-177). Phoenix: Arizona Council of Attorneys for Children.

Goodman, G. S., & Reed, R. (1986). Age differences in eyewitness testimony. *La:w and Human Beha.vi.m*;
10,317-332.

Goodman, G. S., Wilson, M. E., Hazan, C., & Reed, R. S. (1989). Children's testimony nearly four years after an
event. Paper presented at Annual Meeting of the Eastern Psychological Association, Boston, MA.

Saywitz, K. (1989). Children's conceptions of the legal system: Court is place to play basketball. In S.
Ceci, M. Toglia, & D. Ross (Eds.), *Perspectives an children's testimony* (pp. 131-157). New York:
Springer-Verlag.

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