

11-20-1987

Investigating Child Molestation Cases

Assembly Committee on Public Safety

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ASSEMBLY COMMITTEE
ON
PUBLIC SAFETY

LARRY STIRLING, CHAIR

INVESTIGATING CHILD MOLESTATION CASES

INTERIM HEARING
November 20, 1987



Committee on Public Safety
1100 J Street, Suite 404
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DeeDee D'Adamo, Counsel

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88-3-152

Committee on Public Safety

1100 J STREET
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(916) 445-3268

February 10, 1988

Speaker Willie L. Brown, Jr.
State Capitol, Room 219
Sacramento, California 95814

Dear Mr. Speaker:

At the request of Assemblymember Steve Peace, the Assembly Committee on Public Safety conducted an Interim Hearing on the Investigation of Child Molestation Cases on November 20, 1987. Law enforcement, victims groups, prosecutors, and social workers from throughout the state who specialize in child molest cases testified at the hearing and provided this Committee with their recommendations for reform in this area. The attached documents represent their testimony presented to the Committee along with a summary of relevant provisions of current law.

I would like to encourage you and your staff to review this transcript, as their testimony provides us with the unique opportunity to consider policy changes in this area which would lessen the trauma which child victims oftentimes must undergo.

Sincerely,

Larry Stirling
LARRY STIRLING
Chair

LS:DD:g11

Enclosures

LARRY STIRLING
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ASSEMBLY COMMITTEE ON PUBLIC SAFETY

ASSEMBLYMAN LARRY STIRLING
Chair

FRIDAY, NOVEMBER 20, 1987
1:00 p.m. - 5:00 p.m.
Room 310, County Administration Center
San Diego, California
INTERIM HEARING

SUBJECT: INVESTIGATING CHILD MOLESTATION CASES

AGENDA

Larry Kapiloff
Judge, San Diego County
Superior Court

The Need to Create a Standard Protocol
for the Investigation of Sex
Crimes Against Children

Don Beauchamp
Commission on Peace Officers'
Standards and Training

POST Guidelines and Training Programs

Dennis Burns
California Peace Officers
Association

Law Enforcement Policies and Practices
for Investigating Child Molestation

Jane Blissert
Los Angeles County
District Attorney

The Inflexibility of a Standard Protocol
for Child Molest Investigations

Greg Mooney
Children's Legislative
Organization United by Trauma

Psychotherapist - Patient Privilege
Hearsay Evidence

Esther Gillis
Child Sex Abuse Crisis Center
UCLA

Harry Elias
California District Attorney's
Association

Lana Willingham
Child Protective Services

Susan Mooney
National Action Against Rape

Robert Hickman
Marriage and Family Counselor

Skip Daum
California Association of
Children's Homes

California School Nurses
Organization

Gale Kaneshiro
State Social Services Advisory
Board

Judy Conard
City Attorney's Office
San Diego

Dr. David Chadwick
California Children's Lobby

Independent Diagnostic Evaluations as a
Resource

Pre-emption of Law Enforcement and
Prosecution Investigatory Units

Evidentiary Examinations

Composition of the Commission and
Task Forces

A Parent's Perspective

Protection of Providers

The Role of School Nurses in Reporting
Child Molest Cases

The Creation of a Commission: Not in
In the Best Interests of the Child

Misdemeanor Child Molest Prosecutions

Medical and Psychological Care of
the Sexually Abused Child

INVESTIGATING CHILD MOLEST CASES

November 20, 1987

Assembly Committee on Public Safety
Larry Stirling, Chairman

CHAIRMAN LARRY STIRLING: AB 326, Ms. D'Adamo is the counsel to the Committee and she will give us a brief introduction of why we are here and what we hope to accomplish and then we will call on our witnesses in order -- the first one being Judge Larry Kapiloff. Ms. D'Adamo.

MS. DEEDEE D'ADAMO: Thank you Mr. Stirling. AB 326 is a bill which creates three commissions, so to speak. One statewide commission on child molestation, local task forces on the same issue and then in turn those local task forces would set up a special investigatory team for each county. The investigatory team would have the exclusive jurisdiction to conduct the investigation of child molest cases. AB 326 was before the Assembly Public Safety Committee this last session, and I believe its hearing was in May of this last year. When the bill was up for a hearing, Assemblyman Steve Peace asked that the bill be put over for a special interim hearing for study on this issue because of the significant impact that this bill would have on local counties in investigating child molest cases. What we've done today is ask experts to come to testify from throughout the state. We've got law enforcement, prosecutors, social workers, victims groups and first to testify will be Judge Larry Kapiloff, who actually wrote the bill. He's from San Diego Superior Court.

THE HONORABLE LARRY KAPILOFF: Thank you Mr. Chairman.

I appreciate this opportunity. I want to start out by giving you somewhat of a background, so that the people who might be either opposed or in favor of this bill, understand that this is not an ego undertaking on my part, I've had -- I've been a member of the legislature for ten years, I've had 178 bills signed by two Governors - 57 of them by the gentleman whose picture is behind you. I have four of those bills tombstoning -- my name on them -- and I think that's enough for any individual, perhaps someone would say too much. So, it's not an ego trip. What I've attempted to do, because now I have five years on the bench, is to translate some of my experiences into resolution of a problem which I think is not only an ongoing problem, but a growing problem in this state, indeed if not this country.

It's directed, primarily at that area of child abuse involving a sexual molest -- but obviously it does not have to restrict itself. I would prefer if the committee, the people who are here to testify today, would consider this merely an offer, a blueprint to generate discussion, in the hopes that the various conflicting views and parties might come to at least the agreement that there is a problem and perhaps subsequent to that, some resolution, some unanimity as to what the resolution might be. I've had two years -- almost two years, as a judge of the juvenile court where I had to deal with child molest on literally a daily basis. I've been involved in, unfortunately, more than one criminal action where I was the judge, the allegations were child molest. In a number of those cases involving domestic

actions, I was the judge and numerous others where the allegations of child molest were really secondary to the question of disposition of the unfortunate victim because there was -- in so many of these cases -- and there is -- no criminal action, simply because the evidence is not sufficient or the evidence has been destroyed.

Now what I've attempted to do is to provide a method, and I must candidly admit this up front, Mr. Chairman, a method of getting from the state, sufficient resources so that local agencies can properly handle this question. And I know that means members of the legislature, once again, are going to be put to the hard task of prioritizing. My feeling is, and strongly, that we ought to put our children on at least a parity with the medfly. You were there and I was there at the time that we had this terrible problem that didn't turn out to be as terrible at all, involving the medfly where we threw about a billion dollars at it. I happen to believe that child molest is a much more serious problem and it seems to me that we should spend some modicum of state monies in order to protect our children and that should be a first priority.

I make no bones about the fact that this bill could not be implemented and will not implemented until and unless the state is willing to recognize that it has an overriding obligation to take care of our children and is willing to give the money to the local units who then will have the expertise and the ability to deal with the problem effectively. I say that as a former member of Ways and Means; Revenue and Tax, and Rules --

all of the primary fiscal committees of the Assembly and I understand what it means to prioritize. It's painful. But what's happening to these children is a lot more painful. And what's happening many times, and I say many times, to unfortunate individuals who are falsely accused of this horrible heinous crime is tragic. We've got to deal with the problem.

I see that among others today, we have representatives from the District Attorney of Los Angeles here, where they had the unfortunate experience, as I recall, the McMartin case. Which heightens the problem. It points to the fact that there is a problem. What is the problem, from my prospective as a judge, frankly the problem is preserving evidence, insuring that the child is protected on the one hand, where there is an allegation of molest, but insuring that what we get from that child is valid, truthful and will withstand the test down the line when put in a court action where we are attempting to bring the molester to justice, or at least attempting to deal with that molester's problems.

And frankly, I've had cases, more than one, where it just wouldn't hold up. The reason it wouldn't hold up is because people who are unqualified to deal with that child, to question the child, to kind of coach the truth out of the child, dealt with the child and destroyed the credibility of the evidence. So what I've attempted to do is not to set my rules, but to establish a task force which is into the disciplinary in makeup which includes district attorneys, prosecutors, defense attorneys, the judiciary, pediatricians, psychologists, child

psychologists and psychiatrists, just everyone I could think of, who would then be able to sit down and work together to come up with a protocol for examining these children.

It would seem to me as basic, that what we'd want to do would be to take the child as soon as possible and question that child, examine the child physically, if that were appropriate, and then have it all recorded so that we knew, someone, some judge, very often is put to the task of reading a transcript and sometimes not even that. As a matter of fact, I've had to make decisions on whether to allow evidence in to cases on the basis of some scratchy, and almost unintelligible tapes, between a psychologist and a child. I've had to do that on more than one occasion. It's extremely difficult.

If we had the means whereby we could take the child in a setting that was not threatening or at least less threatening as possible -- interview the child in that appropriate setting and have a one-way mirror and a tape recorder running, that is a videotape, we could preserve the whole interview. It would be before that judge, or someone, to determine whether it was fair. Whether suggestions were put in the mind of the child or as a matter of fact, it seems to me if you really wanted to get quick convictions by way of a plea of guilty, that would be the way to do it. It would be quick, and it would save a child some very agonizing experiences in court.

Secondly, it seems to me that the protocol, the way we go about questioning a child, should be established by this group of experts -- certainly not me, and frankly not any one of the

group involved today, but by a consensus of that group working together.

Third, it seems to me that, and again, I'm not trying to take anything away from law enforcement. A good portion of the time you don't even need the testimony of the child. The fact is the child is necessary perhaps, but there is so much other evidence that the district attorney can go about and put on a preliminary case without ever dealing with the child. In some cases however, that's necessary. I suggest to you that, if that is the case, there ought to be a time out, during a period of time when the experts can, very carefully, sort out the evidence and come to a conclusion and then present that at the appropriate time, to the court and to the prosecution. And then let the prosecution go forward. Because if we're going to have to preserve the testimony of a child, if we're going to have to subsequently perhaps put that child on the stand, it would be so much better if we had some contemporary new statements of the child at some earlier point and time so that people could judge the accuracy, the validity of the statements on whether the child was coaxed or not.

Beyond that, it seems to me, that law enforcement ought to go about the business, as it always has, who unfortunately sometimes are understaffed, certainly never with enough money to collect the evidence and proceed to trial. I am not trying to interfere with that at all. What I am trying to do is to establish certain rules as to how we deal with the child with this alone. Most of the time the District Attorney can proceed.

Where it is a question of the validity of a child, where even the experts are having some problems perhaps, in ascertaining exactly what happened, we ought to then take the time, with the experts in a non-threatening environment, without advocates for one side or the other. But people who are interested in the objective truth, to examine the child, come to some conclusions, present it to the court and then the District Attorney. Once again, the prosecution, and the defense would be free to do whatever they feel is necessary. The one -- because there are things in place now to protect children witnesses. I would like to add to that and would like to give the judge some discretion on the number of times, a victim, an alleged victim at least, can be examined by either side, can be subjected to this continual pounding, when in one instance, I had a child say to me "I don't want to talk about that anymore, ask them" because he had just been beaten down to the point where he couldn't face it anymore.

I think that's tragic -- I think the trauma is enough, that is the trauma of what happened to the child, is enough and it seems to me that we ought to then be protecting the child from any additional trauma. The allegations have been made that "well, what do we do?" this isn't directed at rehabilitation, you know we have a lot of things in place right now where we can attempt to rehabilitate. We have, as a matter of fact, today in discussing a case where there's going to be a plea of one of the conditions I indicated -- I would give for a plea, would be that the parent, or the perpetrator, go to 'Parents United' and be required to sit down with the victims, if the victims were

willing, in a setting to resolve some of the ongoing emotional problems that everyone had. This was a case that where not even the victims wanted the person sent to prison. They did, however, want help for the perpetrator, which happened a long time ago. So we can do all of that now. But what I'm more interested in is preserving the evidence at the earliest possible stage by some independent agency that has the expertise and the funds available to them to protect the child and also protect the rights of the accused. Thank you, Mr. Chairman.

CHAIRMAN STIRLING: Thank you, your honor. One question. In your judgement, does the court have the authority to order such an approach even if it was judicial council level? Is there explicit authority in the Supreme Court to ...

JUDGE KAPILOFF: To require what kind of approach?

CHAIRMAN STIRLING: Well to amend the process of evidence gathering and cross-examination under the unique conditions of a child.

JUDGE KAPILOFF: Not really, what we can do is to ascertain, which I've done, the ability of the child to testify in open court as an example. To determine whether the child does have the ability under the circumstances to render truthful evidence. To determine whether the child should go forward and testify in open court or in another setting. I have the right to consider what is an exception to the hearsay rule and that is contemporary statements of the victim. And whether or not that's reliable. I would have the right to put the child out for an independent review. The problem with that is that it's always after the case is brought close to trial or at trial.

CHAIRMAN STIRLING: All the damage is done.

JUDGE KAPILOFF: All the damage is done, I would like to do it up front.

CHAIRMAN STIRLING: I got it. Thank you, your honor, we appreciate it very much and now I see why you got so many bills signed. All right, our next witness is Mr. Don Beauchamp, Commission on Peace Officers' Standards and Training.

MR. DON BEAUCHAMP: Yes. Mr. Chairman, as you know today, we're here at the request of the Committee to give you a little background on where the Commission on Peace Officers' Standards and Training stands on this. I will try to be very brief so that you have time to ask some questions on this. What I'll do is kind of brief you as to how we got to where we're at now and then to ask Tom Hood of our staff who was involved in the child abuse guidelines development some time ago to fill you in how we went about developing those guidelines.

First of all, statutory history behind our involvement in this thing, started back in 1978 when we were given the first assignment to develop some guidelines and training relating to child abuse-neglect issues. 1981 we were given some additional assignments by the Legislature on child abuse and child exploitation topics to amend the guidelines. 1985 we were given some additional assignments relating to interviewing children to be included in the guidelines. 1986, again, by the Legislature to include the rights of the accused and the victim in the guidelines and as late as last year, 1987, in this last year's session to include procedures for interviewing minor witnesses in

the guidelines. So we've had, essentially, five legislative mandates as it related to child abuse. Post actions to date, follow closely along with that -- 1979 we established the first guidelines, 1982 we modified those and ...

CHAIRMAN STIRLING: Mr. Beauchamp I think that what Judge Kapiloff would be asking is what are the police officers taught in terms of gathering the data and protecting the child and protecting the accused? How does that actually interpret in the field?

MR. BEAUCHAMP: Well what I was trying to do is give you a little background as to what we have at this time and then probably have Mr. Hood tell you about what's happening now as it relates to guideline development and training courses.

CHAIRMAN STIRLING: We appreciate the fact that you have to go through the process, but what we would like to know is when the rubber hits the road, how does it look?

MR. BEAUCHAMP: Do you want to talk about training or the guidelines?

CHAIRMAN STIRLING: Well how does the...

MR. BEAUCHAMP: The guidelines relate to the procedures...

CHAIRMAN STIRLING: ...POST standards...

MR. BEAUCHAMP: ...for investigating these kinds of crimes.

CHAIRMAN STIRLING: Okay, could you characterize, that if a California investigator has met POST standards, how would the investigation go?

MR. BEAUCHAMP: Okay, then, you're asking to comment on the guidelines. I would like Mr. Hood to comment on those.

CHAIRMAN STIRLING: He knows more than you do?

MR. BEAUCHAMP: Mr. Chairman, he was the one assigned to this project, worked on it for quite some time.

CHAIRMAN STIRLING: I'm shocked! Go ahead sir.

MR. TOM HOOD: Thank you Mr. Chairman. As Mr. Beauchamp said, I was the manager of a project in late 1985, early 1986 to develop guidelines and the end product of that exercise was this document that POST puts out which contains a number of guidelines that are a sequential event, or sequential stage of events, that an investigator would go through, either as the initial investigating officer such as the beat officer if that is who takes the initial report...

CHAIRMAN STIRLING: Are those current POST standards now?

MR. HOOD: Well they're POST guidelines. Yes they are.

CHAIRMAN STIRLING: Does the California police officer have to abide by those guidelines?

MR. HOOD: No they don't sir. They are not mandatory.

CHAIRMAN STIRLING: Does the Academy training have to abide by those guidelines?

MR. HOOD: No they don't. As I said this is just voluntary for law enforcement use if they see fit. If they want to.

CHAIRMAN STIRLING: Should it be mandatory?

MR. HOOD: It has always been POST responsibility to respond to mandates from the Legislature and the mandate was for us to develop investigative guidelines and have them available for law enforcement...

CHAIRMAN STIRLING: I understand. In your professional judgment, should there be mandated guidelines on how to do the investigation when children are involved?

MR. HOOD: I don't think it's POST's responsibility to mandate local prerogatives...

CHAIRMAN STIRLING: I understand that, but from your investigation, your personal judgment, I'm not asking of POST's position, from your personal judgment do we need some changes in the way children, crime and child molest is investigated?

MR. HOOD: I'm sure there's room for improvement but on the whole, no. I think that the guidelines that we have set forth here are adequate.

CHAIRMAN STIRLING: (laughing) What Assembly District do you live in? If a police officer carried out the investigation according to the guidelines you developed, how would the investigation go?

MR. HOOD: Short of going by a step-by-step scenario...

CHAIRMAN STIRLING: No, just characterize it.

MR. HOOD: Primarily, the responsibility of the initial officer responding to the call would be first to establish the fact that there is in fact a crime,...

CHAIRMAN STIRLING: How does he do that without a medical examination?

MR. HOOD: There are a number of things you can look for, for evidence; look at any trauma to the child; sometimes there's obvious injuries; interviewing the person who called; and interviewing the possible witnesses. Possibly at that point, interviewing the child, it's hard to say...

CHAIRMAN STIRLING: So there's no step now where we put the child in a special condition and take them to an interview room and have special people interview them -- it's the responding officer who does the interview?

MR. HOOD: Not necessarily. It could be, but the guidelines recommended very strongly to departments that there should be a coordinated response, but a lot of times when the officer is sent to an incident, when he's in a radio car, we're not sure whether in fact there is a crime until the officer arrives at the scene.

CHAIRMAN STIRLING: Okay, so what happens then is that the patrol officer shows up and makes a preliminary investigation. He or she thinks there's something wrong so they'll call a sergeant. Sergeant's going to ask the same questions they think something's wrong so they're going to call in a detective the next day -- the detective's going to ask all the same questions to decide (inaudible), right? And then prosecution and the defense are going to ask the same questions.

MR. HOOD: That may very well happen. But what we stress in this document...

CHAIRMAN STIRLING: Your honor, would I be wrong if I said that is what happens?

MR. HOOD: A lot of times yes, you're absolutely right. But what we tried to stress in this document was that there be a coordinated response between the District Attorneys' office, the police department, department of social services, child welfare people so that when the initial interview was done, there would be proper representation from all of these disciplines so that the child would be interviewed once, maybe twice.

CHAIRMAN STIRLING: How is the evidence then preserved?

MR. HOOD: The interview evidence?

CHAIRMAN STIRLING: Yes.

MR. HOOD: At this time I would venture to guess most departments -- it's just a matter of writing it down and probably...

CHAIRMAN STIRLING: Do you recommend in the guidelines that they develop video booths, video tape booths...

MR. HOOD: Yes we did.

CHAIRMAN STIRLING: One-way mirror?

MR. HOOD: Yes we did.

CHAIRMAN STIRLING: To your knowledge, have any of the departments done that?

MR. HOOD: I don't know, sir.

CHAIRMAN STIRLING: Could you find out and let us know?

MR. HOOD: Sure.

CHAIRMAN STIRLING: I appreciate it. Thank you so much sir, we're grateful for your time. Mr. Dennis Burns, California Peace Officers Association (CPOA). Mr. Burns.

MR. DENNIS BURNS: My name is Dennis Burns. I represent CPOA and I'm a Sergeant with the Los Angeles County Sheriffs Department. We are opposed to the bill in that in our county, L.A. County, ...

CHAIRMAN STIRLING: Sergeant Burns, your duty at LAPD includes this area or not?

MR. BURNS: No it does not. I'm the sheriff's legislative advocate in the county. In our department we have thirty investigators that are specifically trained according to POST guidelines. In addition, they receive four months of in-house training and to date we have 40% of those people who, at county expense, or through grants, get a six-week course at the Delinquency Control Institute at USC.

CHAIRMAN STIRLING: Did you have a chance to hear the judge's testimony?

MR. BURNS: Yes I did.

CHAIRMAN STIRLING: What do you think about his point of having an interview booth and having one interview by experts rather than allowing the patrol officer, then the detective and then everybody else...

MR. BURNS: In our department we do not use the patrol officer to (inaudible) the interview. It's done by one of the specially trained investigators...

CHAIRMAN STIRLING: Yes, but the patrol officer has to do some preliminary analysis to call in the special investigator don't they?

MR. BURNS: That's true. But, you have witnesses, perhaps a short statement from the victim, plus any evidence that may be child molest trauma.

CHAIRMAN STIRLING: So the minute the patrol, the patrol officer knows the minute they believe that it's a child molest trauma, back off and bring in the special team?

MR. BURNS: We have 24-hour people that can come down if it's needed right then, that would drive there, conduct the interview, take over the investigation.

CHAIRMAN STIRLING: Now the reason the POA's opposition to the bill is expense or what?

MR. BURNS: Well, we feel that the money would be better spent if there are areas in the state that have deficiencies to enhance training for the police officer, the person who's going to have to do the investigation anyway, carry the entire case to the District Attorney. Rather than bringing in outside agencies. If it's better, or if it's cheaper, well cheaper's not correct -- if it's more efficient to have lesser number of people involved interviewing the child, if the policeman could do it, because he's specially trained and that's all he does...

CHAIRMAN STIRLING: From your experience are most of the alleged child abuses actual...child abuses?

MR. BURNS: I have never...the ones that I have done personally when I was a patrol officer and turned over were. They were prosecuted. I went to court and testified.

CHAIRMAN STIRLING: Okay. In Nebraska they did a thorough study and found that only 50% of them were warranted.

That the other 50% were marital squabbles where one of the spouses was using this allegation as an intimidation type thing.

MR. BURNS: I never personally ran across that. Now for child abuse going to school to talk to a school nurse, I would agree 50-75% were never founded.

CHAIRMAN STIRLING: In the POA's judgment the POST guidelines are adequate?

MR. BURNS: Barely. We would support enhanced training, especially outside training from, like the Delinquency Control Institute, at USC.

CHAIRMAN STIRLING: Above and beyond the guidelines?

MR. BURNS: Yes sir.

CHAIRMAN STIRLING: Doesn't LAPD or POA have a representative on the POST Commission?

MR. BURNS: The Sheriff's does, yes.

CHAIRMAN STIRLING: It would be a good idea for them to upgrade their guidelines.

MR. BURNS: True.

CHAIRMAN STIRLING: Anything else you'd like to cover?

MR. BURNS: No sir.

CHAIRMAN STIRLING: We're real grateful for your time. Ms. Jane Blissert, Los Angeles County District Attorney's office. Did you have other testimony you wanted to...

UNIDENTIFIED VOICE: No sir, a sergeant from the San Diego Police Department, one from the Sheriff's office is here that can specifically answer your questions about how they conduct their investigations, they are child abuse investigators.

CHAIRMAN STIRLING: Well I'd be interested in their presentations to the extent that they vary with POA and if you have any answers to the question we brought up...the cumulative testimony of the child, whether there's a video booth, those sorts of things, if you've got any testimony on that I'd welcome it.

SERGEANT GREG DRILLING: Mr. Chairman, I'm Greg Drilling of the San Diego Police Department.

CHAIRMAN STIRLING: You sure are sir, good to see you.

MR. DRILLING: San Diego Police Department, we do have video booths, we have a contract with Children's...

CHAIRMAN STIRLING: Mr. Drilling hasn't changed a bit, but fifteen years ago when we worked together -- I looked a lot younger!

MR. DRILLING: We have a contract with Children's Hospital, sir, and our basic philosophy is the sensitivity of the investigations and we have qualified people. I would say 80% of our sexual molest that we investigate, that we assign, we have video taped at Children's Hospital. We have a two-way mirror. Those video tapes are used for the District Attorney to review in hopes that the District Attorney does not have to reinterview the child.

CHAIRMAN STIRLING: Let's start again then. San Diego Police Department gets a call of an alleged child molest, is a patrol officer sent?

MR. DRILLING: Yes sir.

CHAIRMAN STIRLING: And what does the patrol officer do?

MR. DRILLING: The instructions and the training they receive is that they will only establish that the elements of a crime were committed, not to go into an in-depth interview with the victim.

CHAIRMAN STIRLING: Okay and then at that point departmental instructions require what to happen?

MR. DRILLING: If they feel that a crime has occurred they will make a crime report, they will contact the child abuse unit, 24 hours a day.

CHAIRMAN STIRLING: They don't back off -- the patrol officer makes the crime report.

MR. DRILLING: Yes sir, on minimal information. They contact the child abuse unit, 24 hours a day, that's basically myself, I'm on call, I determine what the next steps will be and basically the next steps would be to immediately take the child to Children's Hospital for a medical exam.

CHAIRMAN STIRLING: The next day, or on call or...?

MR. DRILLING: That's on call, sir. Anytime during the day. A mental report has been done, evidence has been gathered and...

CHAIRMAN STIRLING: We have two officers for a million people?

MR. DRILLING: I'm sorry sir?

CHAIRMAN STIRLING: You have two officers that do that?

MR. DRILLING: No, we have, in our child abuse unit -- we have fourteen detectives, two sergeants.

CHAIRMAN STIRLING: Okay.

MR. DRILLING: There are two detectives and sergeants on call twenty four hours a day. After the report has been taken, evidence has been gathered, the next day we would set up a video exam at Children's Hospital with a qualified social worker that would do an interview and it would be video taped at that time.

CHAIRMAN STIRLING: When does the defense attorney get their ability to object to the testimony and the questions and that sort of thing?

MR. DRILLING: Not until we go to trial.

CHAIRMAN STIRLING: And the video tape is admissible at trial under California law right now?

MR. DRILLING: I believe it is, yes sir. Basically what we use it for...

CHAIRMAN STIRLING: Judge, the video taken at Children's Hospital is admissible?

(ANSWER IS INAUDIBLE)

CHAIRMAN STIRLING: I see. So we need changes in the evidence code to allow this preliminary video tape to be admissible. All right, go ahead sir.

MR. DRILLING: Any other questions Mr. Stirling? I have a recommendation that we would strongly like to make.

CHAIRMAN STIRLING: Let's hear it.

MR. DRILLING: Two of them would be to the upgrade of the training for police officers. We do meet POST standards, however, for those that are specifically assigned to child abuse unit we feel oftentimes, because of fiscal budgets we can't send our officers to extremely qualified schools. We feel that if

there were a fund where money would come through where we could send our officers for additional training, we would highly recommend that.

And number two, I think the court setting -- we have a recommendation for the court setting in that a movable court trial be arranged where you could remove a podium, you could bring in children's furniture where children could sit and feel comfortable in the setting versus this real aura effect type thing when they are in there to try to minimize their trauma while they're testifying.

CHAIRMAN STIRLING: Is it really true that the indices of office are traumatic to children?

MR. DRILLING: We think it is. We think it is, Mr. Stirling. And also at one time we really would like to see where we understand the accused has the right to face the accuser, but on closed circuit T.V. I think would be a tremendous reduction in trauma for children if they could be in the Judge's chamber and be monitored by the accuser and the defense attorney and there's a closed circuit T.V. where they don't actually have to face the accuser.

CHAIRMAN STIRLING: Well we authorize that under the McMartin cleanup legislation.

MR. DRILLING: Not being done.

CHAIRMAN STIRLING: Not implementing in San Diego county?

MR. DRILLING: Not that I know of.

CHAIRMAN STIRLING: All right. Any other comments?

MR. DRILLING: That's it.

CHAIRMAN STIRLING: Thank you Sergeant Drilling, we appreciate it very much. Sheriff's office?

MR. RON COTTINGHAM: I'm Ron Cottingham, Sergeant with the San Diego Sheriff's Child Abuse Unit. Greg and I meet on a continual basis. Our fields of endeavors seem to overlap. Some of the things that are done in San Diego regarding child abuse with the Sheriff's department is still the same as Drilling pointed out for the San Diego Police Department. What we have done within our own agencies in San Diego County has: one, tried to prepare the field deputy, the patrol officers so that they are going to be the first responders. No agency in the State of California that I know of has enough assigned investigators that can be the first responders to the first radio call of a possibly molested child or a suspected child molest.

CHAIRMAN STIRLING: We had a hearing after the McMartin fiasco started in which the child psychiatrist argued that children tend to, if they'd been broken to authority, tend to relate to authority and so depending on how the questions are asked, they will attempt to answer the questions so that it pleases the authority. Are the officers taught to ask the questions in a neutral manner so that it neutralizes that response?

MR. COTTINGHAM: Our officers are taught first to establish a rapport with the child. Don't ask any questions relating to the specific reason why they are there. Just let them know that you are there to help them and be friendly and

open with the child. The children that we deal with, especially when we go into the schools, the young children I think that when they are told that an officer, or law enforcement person is going to come and talk to them they expect a uniformed person. Myself from working in the field as an investigator, I do know that sometimes I would go into the school and see the child that has had a problem and they would be somewhat disappointed because I was in a coat, jacket and a tie and didn't have on the shiny badge and the gun. But the officers are taught to establish this rapport with the child. Be nonthreatening, nonleading and not intervening. Just get some basic information, just to know that the child was touched or fondled in an inappropriate manner and then make a decision based on those statements and any statements the child may have made to somebody else.

As to whether protective custody is needed and you need to go further with calling your child abuse unit as experts or you need to go further with actually making an actual crime report as opposed to an information report, that may be checked out later. A lot of times when an officer in San Diego County responds to the first call he may be met at the location by a worker from Children's Services Bureau in San Diego, and that person a lot of times can help the officer or the deputy get through that first interview. But our whole thrust in the beginning interview is not to traumatize the child; not to try and bring too much out of the child that would later on become distorted because we know a child's memory sometimes is not as strong as an adult's or an older person's.

CHAIRMAN STIRLING: So the patrol officer is just trying to make his or her best judgment on whether a crime has occurred?

MR. COTTINGHAM: Correct. And then they will call in the experts and we will take over. It will not be the scenario as was proposed here where an officer will go out, he will try to make a decision, he will call his Sergeant who will then interview the child, who will call an investigator, who will then interview a child. Then they will go to a therapist and a doctor who may do interviews again and then you have the defense and the prosecution. All the things we have done in California in the last few years to advance the investigation of child abuse and make it less threatening to the child, has been thrust at law enforcement and prosecutors.

You ask if it is threatening for a child to enter a courtroom. A child, mostly the children we deal with on a daily basis are under 12 years old. They range from 1 year old to 12 year olds. We do have several victims in the other categories. I think you yourself -- I believe you've had some experience as a police officer?

CHAIRMAN STIRLING: Administrative Analyst for the police.

MR. COTTINGHAM: Did you ever have the experience of, as a police analyst, going into a courtroom or board meeting to testify?

CHAIRMAN STIRLING: Well I know it terrifies the adults, I just was wondering...

MR. COTTINGHAM: The children feel that way and sometimes more so.

CHAIRMAN STIRLING: Well that's just a tough job to deal with. That's understandable.

MR. COTTINGHAM: Well some of the things that can be done, as Sergeant Drilling pointed out, is we do need courtrooms that can adapt to the child. Even in our juvenile courts, Superior Division in San Diego, those courtrooms are set up just the same way that our adult courtrooms are set up. Everything is adult size. We need some furniture in there that is movable, lowerable, we need Judges that are willing to get down off the bench, take off their intimidating black robes and maybe sit next to the child or look and talk to the child from the jury box. Some judges in San Diego have done that, a lot of judges won't because they feel that that is demeaning to their character. We need a willingness in those judges to accept training and accept that a child victim is going to testify differently than an adult victim. That a child is not going to use the same words and terminology.

CHAIRMAN STIRLING: I think, for both you and Sergeant Drilling, these concerns that you have should be reflected to the bill's author, Mr. Peace and Judge Kapiloff the bill's sponsor. I think that whatever else is done, some of these things can be fixed on the way. So if you get a chance, this is Mr. Peace's Administrative Assistant here, you might have a chance to meet with Mr. Peace and pass on a lot of these things and I think they will be able to incorporate those in the bill.

MR. COTTINGHAM: Yes sir. The only other thing that I would add is advanced training. The POST mandates for training for sexual assault and child abuse investigators only address preliminary training. I think there is a gap when you come to more advance training when the people have been in the field for a certain amount of time, they need to advance...

CHAIRMAN STIRLING: So there's not advance training requirement?

MR. COTTINGHAM: No. The advance training that is usually offered to departments, to law enforcements, usually come from a source outside of POST and is not refundable or reimbursable to the department. Most departments under their current budget restraints cannot afford to send detectives or officers to these other specialized schools. Some of them run anywhere from \$100 a day to several hundred dollars for two or three days of training. But they are put on by experts in the field from around the United States and are very beneficial to advance training. So it boils down to if you don't have the bucks, you can't go.

CHAIRMAN STIRLING: One thing you could consider is the county -- the sheriffs and the police departments could get together and start their own schools and invite other people here and charge them \$100 a day. Thank you very much for your time and effort. We appreciate the good work you are doing with the children and if you could talk to Mr. Peace's staff there and incorporate some of your recommendations, I'm sure they would be very interested in it. Okay Ms. Blissert, I am sorry to have

interrupted you there. Jane Blissert, Los Angeles County District Attorney's office. Thank you for coming down today.

MS. JANE BLISSERT: I'm going to ask if I can preempt myself with someone else who is later on the list.

CHAIRMAN STIRLING: Okay.

MS. BLISSERT: In conversation with Robert Hickman he tells me that he does have something he has to get to later on this afternoon, could he go ahead of me?

CHAIRMAN STIRLING: Well you see the problem is that I wanted the good feeling of letting him go ahead! (laughter) Go ahead sir. Once you do that there's about 40 people that would rather leave.

DR. ROBERT HICKMAN: Thanks for allowing me to do this. I'm a Marriage and Family Therapist in private practice here in San Diego. I'm not an expert in child sexual abuse, but I have worked with over 75 families involved in the juvenile court. I'm aware of the problems that are associated with the court process and the problems it creates for families. I was wanting to testify regarding the issue, should there be a state commission? I answer that affirmatively, but I also believe that since there are -- that the parent's rights and issues are involved in this that a parent's, a person representing a parent's perspective other than a defense attorney be represented on the commission and the task force. I've worked with several cases that involve, that appear to involve, malicious reports or false reports and I'm aware, painfully aware, of the psychological devastation that's involved. The burden of proof in the juvenile court is

placed on the parent to prove his innocence. It's next to impossible. I think that any and all efforts to ensure that the rights of the perpetrator, the alleged perpetrator, but also the nonabusing spouse, need to be assured.

CHAIRMAN STIRLING: You have some specific proposals? We'd love to have them.

DR. HICKMAN: Well I think that, as Judge Kapiloff was saying, that it's really important that some guidelines be established, particularly in the area of evidentiary exam, the social work interview and the social worker's investigation and evaluation.

CHAIRMAN STIRLING: Do you have some recommendations?

DR. HICKMAN: Excuse me?

CHAIRMAN STIRLING: Do you have some recommendations?

DR. HICKMAN: Well what I would like to see happen is, I would like to see the investigatory team that is a part of the task force, to evaluate cases where the evidence is not clear cut. Where there are unanswered questions. I would like them to be able to read all the court documents, interview all the parties that are involved, including police and social workers, therapists, parents and children, to be able to make a decision regarding case disposition and family reunification. What I have found that's happened in juvenile court, is that a family, even though there are questions, serious questions about the allegations, because they cannot rule out that the alleged perpetrator didn't do it, that they're often made to go through one or two years of therapy before they can even get supervised visits or to reunify with their family.

CHAIRMAN STIRLING: Okay. Have you got that in writing?

DR. HICKMAN: Yes.

CHAIRMAN STIRLING: Thank you very much Doctor. We appreciate your taking the time. Ms. Blissert, any more charity today? (jokingly)

MS. BLISSERT: No, I'm here to talk now. I believe this bill is very well intentioned and I very much agree with the goals that it sets for us. Of course I agree with aiding criminal prosecution in these cases and I have been a District Attorney in the child abuse unit in Los Angeles County doing solely this type of case for the last 2½ years. So of course I have a lot of sympathy for the children and agree thoroughly with the goal of trying to reduce their trauma in this situation. However, we are opposed to this particular bill for a couple of reasons. First of all, I believe we are at a stage in this area right now where we are not yet prepared to mandate protocol in how to handle these particular cases. We are dealing with individual cases, we are dealing with individual unique children. Every case has its own unique set of facts and to try and mandate a protocol at this point in time that is to be rigidly followed in each case...

CHAIRMAN STIRLING: Well let me just kind of rearticulate Judge Kapiloff's concern. From your experience have you found that the initial police practices have tainted the cases?

MS. BLISSERT: I won't make that generalization. I do believe that cases where the responding patrol officer has

minimal contact, has minimal interview, and where the main interview is conducted by a trained investigator, we have better success.

CHAIRMAN STIRLING: Have you found, through the current policies, that people that were accused, were innocent?

MS. BLISSERT: That's a difficult question for me to answer because you have to understand the cases that come across my desk have already been screened.

CHAIRMAN STIRLING: That they are pretty ripe cases by the time you get them.

MS. BLISSERT: Yes. That cases where it looks as though the person is innocent or there is clearly insufficient evidence to prove a person legally guilty as opposed to morally guilty and I do make that distinction, won't even reach my desk.

CHAIRMAN STIRLING: As I pointed out, the Nebraska -- they did an intensive analysis of it and found that they were 50-50. That one half of the allegations were 'spite' allegations. And the problem becomes of course, a child molest allegation for a school teacher or a principal or anybody in a sense of position is almost unsustainable for their career and once you ring that bell there's no way to unring it. You're just ruined for ever. The Judge's concern and so was the previous witness', that you were nice enough to let in, he also gets \$150 an hour (laughing), the concern is that there are a lot of false accusations and we're wondering how good the evidence, the evidentiary process is to avoid the false allegations.

MS. BLISSERT: Well my focus, my focus as far as evidence is concerned is of course going to be what I can present in court and how I can present it. I think we have to recognize, in evidence gathering with children, there's a reality that children will not just, even if it's a child accommodated room with little furniture and toys around, children will not necessarily immediately disclose everything to a particular investigatory team.

CHAIRMAN STIRLING: Yeah, why should they, the adults don't.

MS. BLISSERT: Pardon me?

CHAIRMAN STIRLING: Why should they, the adults don't.

MS. BLISSERT: Exactly. However, I have found with children, you have a gradual disclosure, you usually have a disclosure of the most minor incidents first and more major, substantial sexual conduct later on. With children you also have to realize that they are going to respond to different people. I have one case that I was able to file because of multiple interviews. I think limiting interviews is the ideal because I do think that they traumatize the child and many children do say -- they throw up their hands and say "enough!, I've told this enough times, I don't want to say this again", but I have a child who, in response to a lecture given at school, wrote a note saying that she was being molested. Very vague, certainly didn't provide enough information for us file a case. She gave a very vague statement to a social worker. Again, not enough information, not enough detail for us to file a case. She didn't

want to talk about it anymore. She didn't want to go into detail. We gave her some time, she was interviewed by a male District Attorney and didn't want to talk to him. We gave her some more time, she had been in therapy, she had started her relationship with her mother during this period of time. When I finally interviewed her, she was ready to talk about it, she was willing to talk about it. I don't know if it was because I was a female and the first District Attorney had been a male, I don't know if that entered into it or not, but that was a situation where multiple interviews made it able for us to file a case and if we had a mandatory protocol limiting us to one team interview for the investigation, I think a lot of cases would slip through the cracks. As far as the video taping of these interviews are concerned, again I am looking towards what's going to happen in a courtroom. And because of the fact that we usually have a gradual disclosure by children, a piece by piece disclosure by children, I think video taping sounds great at first blush because you think we have here in living color, a spontaneous statement from the child. We'll see that the child wasn't led into these answers, that it was a neutral type interview.

However, if the child doesn't completely disclose at that first interview, and discloses more or more substantial conduct in subsequent interviews which either are or are not taped then what you end up with at trial is the taped interview being exalted above all else. Maybe even more important than the live testimony at trial because we are such a media culture. Trial attorneys...

CHAIRMAN STIRLING: Presumably it would be a one time comprehensive interview, no? I'm presuming wrong, go ahead.

MS. BLISSERT: I don't think that recognizes the reality of how children do report these things and that's why I think to mandate a specific protocol you run into a lot of difficulties because each child is unique. Each case has to be dealt with on a case-by-case basis.

CHAIRMAN STIRLING: Well the criticism -- remember the criticism by the Los Angeles District Attorney when he dismissed the, a lot of the McMartin charges was that the company that was hired by the -- whoever hired them -- to interview the McMartin perspective victims did all sorts of leading testimony -- were those children all subsequently reinterviewed by the whole panoply of people?

MS. BLISSERT: I am not on the McMartin Team...

CHAIRMAN STIRLING: It was on 60 Minutes, my prime source of information!

MS. BLISSERT: That's really my prime source of information since I'm not on the team too. But, of course they were interviewed at some point in time by the District Attorney and police officers, I would assume. I don't know exactly when that occurred. I believe their first contact was with a group of therapists.

CHAIRMAN STIRLING: I guess I don't understand the purpose of the video tape -- the video taping if it's not to do a one time 'let's get it all done in a gentle, loving, humane, but comprehensive way before we arrest anybody or accuse anybody or

go any further' so the child does not have to be harassed repeatedly by interviews.

JUDGE KAPLOFF: First of all, I think the witness' point is well taken if in fact I was intending on interviewing. It seems to me (and of course when you write a bill you cannot write a perfect bill ever), it seems to me what we ought to be doing is leaving it to the discretion of the experts because they're the ones that are most likely able to tell us whether we're going to have to coax the truth out of the child and allow them a certain time to do that before we turn the child over to anyone else. Sometimes it is going to take several -- I would suggest at least, if in fact they need 30 days to prepare a report then give them 30 days.

CHAIRMAN STIRLING: Your thesis is that rather than have the current institutional plaintiff or the prosecutor defense interviews that the commission bring together the skill in people until such time as they are able to conduct the number of interviews that they wish because they're the ones that can judge the fatigue of a child, whether an interview should be terminated at a certain point and continued later. And if we give the professionals that kind of flexibility while protecting the child from, what a really -- by that time attacks of people who have antagonistic points of view, I think we will not run into the types of problems we had in the McMartin case. That's all.

MS. BLISSERT: The judge mentioned something that I also wanted to make one other point about. We are dealing with professionals here. We're dealing with professional police

officers, professional social workers, attorneys, therapists, people who have training, probably need more training in this area because it is a developing area. I know that even after being in the child abuse unit for 2½ years every seminar that I go to I walk away with something new. I'm always learning something because it's a developing area. Really since McMartin I think the public attention has been focused on it. Were we to take this team approach with every report, I think we would find ourselves with a very burdensome, cumbersome system.

The professionals who have the initial contact with the child should have some discretion to get rid of those 50% if that's what the Kansas study said, of cases that just don't pan out without calling in this whole team.

Just to give you some figures, I made a phone call to LAPD yesterday so I could come down with a few numbers for you. As you know, in Los Angeles County we have Los Angeles Police Department which just covers the City of Los Angeles. We have L.A. County Sheriff, and then we have approximately 40 other police departments for smaller areas. LAPD alone has 70 to 80 investigators, detectives who are child abuse investigators. They are overtaxed, they work tremendously long hours. They exercise their professional judgment and discretion and get rid of some of the cases right at the front without calling in a whole team. I am sure you can extrapolate out and imagine the numbers of people we'd have to add and the kind of expense that would be to have a team called in for every single report. Of the cases that are reported, only a percentage have any kind of

action taken on them at all; a percentage only going to dependency court with no criminal charges filed, and a smaller percentage end up in the District Attorney's office. There is some professional discretion exercise right at the front end of these cases and to immediately call in a team at the very very outset, I believe is unnecessarily cumbersome and burdensome.

I would like to tell you about something that we are trying and I agree with the goals that the judge is trying to reach here and I think that we do need to take an interdisciplinary approach and we do need to experiment with this idea. Because it isn't something that is routinely being done. We are currently in the process in Los Angeles County of working on a project called Stewart House which would have an interdisciplinary approach. The initial interview of the child by the police investigator would be accompanied by a District Attorney and there would be a two-way mirror and other interested parties, a social worker and depending on the case...

CHAIRMAN STIRLING: That interview is before you decide whether to issue on the case or not?

MS. BLISSERT: Pardon me?

CHAIRMAN STIRLING: Before you decide to issue on the case or not?

MS. BLISSERT: Deciding whether to file or not?

CHAIRMAN STIRLING: Yes.

MS. BLISSERT: Yes. This would be the initial interview with the child with the goal exactly as the judge stated of reducing the trauma of reducing the number of interviews.

However, what I want to point out is this particular project has been in a long time in the planning already. It's a very small scale project. It's an experimental project and I believe that this is the stage that we're at right now in the investigation of child abuse cases. Sexual molestation burst on the scene several years ago and we've been trying to find our way -- all these different professionals ever since. Our suggestion would be that if we wanted to start channeling monies in this direction, perhaps appropriate the funds for more programs like this Stewart House across the state which are small scale, which are experimental, which aren't rigid, which have the flexibility of rolling with the punches and dealing with each unique child and each unique case. And then I'm always very much in favor of additional training too.

CHAIRMAN STIRLING: All right thank you. The District Attorney's position on the bill is what?

MS. BLISSERT: Opposed.

CHAIRMAN STIRLING: Opposed. Okay, thank you very much. I understand that Judge McConnell is in the room.

UNIDENTIFIED VOICE: She had to go to a meeting across the hall. She told me to indicate that the Judges Association is not taking position on the bill. And that she would be available at some time certain.

CHAIRMAN STIRLING: Whenever she steps in she will be more than welcome to take the microphone. Okay Dr. Mooney, Dr. Greg Mooney, Children's Legislative Organization United by Trauma (CLOUT).

DR. GREG MOONEY: We have had the pleasure before, Mr. Chairman of having some of our pieces of legislation sponsored by various members of your committee, namely Mr. Margolin and Mr. Friedman and I would like to make some general comments and then raise some specific points about the Judges' proposal.

First of all, I agree wholeheartedly that children, in terms of resources ought to have a higher priority than the Medfly. I think that's an exact analogy made by the Judge and I'd like to underscore it.

CHAIRMAN STIRLING: Ask him about acid rain though!
(laughter).

DR. MOONEY: The first substantive point that I would like to make is that I think the bill is premature in the sense that this committee last session, or sessions ago, I think that it was established or passed on the so called 'Petris Bill' establishing the Child/victim Witness Advisory Committee which is scheduled to make its report in October of 1988. I had the privilege of testifying before that commission, I know they've had hearings both public and private in Los Angeles and San Francisco, I don't know if they've had them yet in San Diego. If they have not, someone should insist that they do. I think that that committee which is composed of an interdisciplinary approach, disciplinary membership rather that sounds very much like the proposed membership of the Judges' Commission is already considering many of the items that are the form of the subject of this bill.

And I think that the appropriate form at this point in time for the concept of this bill would be before that committee which is scheduled to report to the Legislature in October of 1988 and perhaps fashion legislation from that for the next session of the Legislature.

The second point that I would like to make involves the psychotherapist-patient privilege. The staff analysis that I read of this bill raises the issue of the psychotherapist-patient privilege and I would like to comment on it in two respects. First, I think whatever protocols eventually are established must clearly make the distinction between investigation or forensic interviews and treatment interviews. There ought to be a very clear wall between the two in which we say, on this side of the wall, namely the investigation side, the information is not covered by the psychotherapist-patient privilege, but on the other side of this wall, namely the treatment side, it is covered by the psychotherapist-patient privilege.

CHAIRMAN STIRLING: What's current law?

DR. MOONEY: Current law is very confused. In fact there's a recent case that came out of the Superior Court in San Diego, the Judge might be familiar with it, came out of the Court of Appeals in San Diego, called People vs Kaplan which came out in July and all of us professionals in this field are now trying to digest it. It speaks to the issue of the psychotherapist privilege in the context of a therapist who reports, as they are required to do under law, suspected child abuse. And under what circumstances of the material might be privileged and might not.

It's a very controversial case and other districts remain to be seen, whether they choose to follow it, but that is an area that is very unclear at the moment and the boundaries between investigation and treatment are blurred at best.

CHAIRMAN STIRLING: You have the cite on the Kaplan case?

DR. MOONEY: I will give it to you before I leave. I have it with me, but I will give it to your staff before I leave. An example of the lack of boundaries, or definite boundaries if you will, are the fact that of course the law enforcement officers are always eager to obtain information from whatever source is available. So very often they put pressure on a psychotherapist who is treating a child to supply information to law enforcement.

And so in that arena I think, not only do we need to have clear boundaries, but we need to have training of law enforcement so that they are sensitive to the issue of the psychotherapist privilege. With respect to the Judge's proposal I think that that would surface in this video taped interview where care would need to be taken if there was such a protocol that the questions asked do not intrude upon the psychotherapist privilege. For example, I think it would be inappropriate for the investigating officer to ask the child "what have you told your therapist?" They can ask the child what happened to them, what did the alleged perpetrator do to you or not do to you, but it's inappropriate to ask the question 'What have you told your therapist' because that's on the other side in my view, of what

ought to be a clear dividing line between investigation and treatment between privileged material and unprivileged material.

The next point that I would like...

CHAIRMAN STIRLING: Have you looked at the POST guidelines?

DR. MOONEY: No, I have not.

CHAIRMAN STIRLING: How about looking at those and send us any written comments you might have, see whether they address that.

DR. MOONEY: I'd be happy to.

The next issue that I would like to focus on is -- and it's been touched upon by the Judge is the hearsay rule. CLOUT is in favor of exceptions to the hearsay rule to permit evidence into court in the absence of the child. So I want to make that clear. But I also want to make clear that creating exceptions to the hearsay rule are important steps that the Legislature takes. That's what I call a big issue. A controversial issue, an important issue. I think that to the extent that the video tape interview as envisioned by the judge is admissible as evidence, I think there needs to be a clear recognition that if we go this route, we are creating an exception to the hearsay rule and we shouldn't attempt to ignore that very clear fact and that is in itself for sure among the defense bar, a very controversial point of view.

The final points that I would like to make is not implicated in the Judge's proposal, but one of the police officers made comment on it and that is closed circuit

television. And is of course, closed circuit testimony by children. Of course you are familiar, Mr. Chairman, with what was in SB 46 it is now Penal Code 1347 which was that this committee fashioned; permitting close circuit testimony...

CHAIRMAN STIRLING: What side is CLOUT on?

DR. MOONEY: CLOUT was in favor of that proposal.

CHAIRMAN STIRLING: What's the origin of your organization?

DR. MOONEY: The origin of our organization are various parents from various schools, not restricted to McMartin, who felt the need to advance child protective legislation. The point that I want to make on closed circuit -- the police officer from San Diego made the point that it is not being used and that is in fact the case. I think one of the reasons that it is not being used is that as currently written, only the prosecutors may bring a motion for a closed circuit testimony. I believe that it should be therefore amended so that an attorney for the child can bring such a motion for whatever reasons. I've had various discussions with prosecutors. They are reluctant to make the motion, it's either for any number of reasons. I think the option should be available for the parents of the child to retain counsel to bring such a motion should they feel that it's necessary.

CHAIRMAN STIRLING: Why did we limited it unilaterally? I don't remember that being a point of contention.

DR. MOONEY: It was not a point of contention and it was not a point of contention because there were so many other larger

points of contention at the time, frankly, Mr. Chairman, that as it's worked out I had the privilege of being involved and I think one of the few times that closed circuit television has in fact been used and that brings me to my second point.

It is unclear in the closed circuit statute to what extent a psychotherapist may testify in order to qualify for closed circuit testimony -- now prosecutors must make certain showings of threats and other things like that. Very often the only way that that can be done is through a psychotherapist. So the question becomes, does that then constitute a waiver of the psychotherapist-privilege? I think that's another reason it is being reluctant to be used because the prosecutors are not willing to use therapists because they are sensitive to the psychotherapist issue and know that if they put a therapist on the witness stand to justify closed circuit television that may constitute a waiver of the psychotherapist privilege.

CHAIRMAN STIRLING: Do you know if the California Psychiatric Association or Medical Association or Marriage and Family Counselors or any of the professional groups are sponsoring legislation to clarify it?

DR. MOONEY: I'm not aware of any.

CHAIRMAN STIRLING: Are you going to?

DR. MOONEY: We may very well this next time.

CHAIRMAN STIRLING: Look forward to talking to you about it.

DR. MOONEY: Thank you. That concludes my statement.

CHAIRMAN STIRLING: All right Doctor thank you, we appreciate it. Ms. Esther Gillis, child...

MS. CATHY STEVENSON: Excuse me, I'm sorry Mr. Chairman I'm Cathy Stevenson with the San Diego District Attorney's Office. I'm next in order to speak with Harry Elias...

CHAIRMAN STIRLING: Next...wait, wait first of all I can't hear you, this is a weird room, you have to talk into that microphone. And next on my list is...

MS. STEVENSON: Esther Gillis is next on your list. I'm next after that. I'm with the San Diego District Attorney's office and I'm in the middle of a preliminary hearing...

CHAIRMAN STIRLING: Did you talk her into letting you go next?

MS. STEVENSON: I appreciate that...

CHAIRMAN STIRLING: Your next ticket is for free!
(laughter)

MS. STEVENSON: It is a child molest preliminary and I do need to be back by 2:30. I'm here on behalf of Harry Elias who is the Chief of the Child Abuse Unit in the District Attorney's office in San Diego. I have reviewed the legislation and it is the position of the San Diego District Attorney's office that we are opposing the proposed legislation. I agree with the prosecutor from Los Angeles who indicated that the spirit of the legislation is well intentioned. But the specific parts of the legislation I think unduly hamper counties such as San Diego which already have in place very skilled, and very efficient multi-disciplinary teams that are handling these cases.

CHAIRMAN STIRLING: Well I don't see how it hampers it. I mean, it seems to me that legislation provides the institutional arrangement to foster and evaluate. Am I wrong?

MS. STEVENSON: It certainly does, but the way I have read and understood the legislation as it is proposed, it would by its measures tie the hands of professionals within counties such as San Diego. For example, as a prosecutor, my position is that a successful prosecution of a child molest case depends, in large part, upon the ability to establish good rapport with the child victim. That is why in San Diego as in many other counties our unit is a vertical prosecution. I become involved in the case from its inception, during the investigatory stage, I make the decision whether to issue, I interview a child before issuing, I take that case all the way through the preliminary hearing and trial and sentencing. The only part of that that I don't handle is the appeal. The legislation as I read it, indicates that the local investigatory team which is set up by the county task force has exclusive jurisdiction over the interviews that are conducted for the child. Technically, therefore...

CHAIRMAN STIRLING: Okay, I got you. Judges, did you intend that?

JUDGE KAPILOFF: I think that that's a very well taken criticism. I think that I would prefer to have a situation where the team would take the child, and once it makes its findings, recommendation and then allow the District Attorney to go forward and have free access to that child and establish the rapport

that's necessary. I agree, I think that rapport is necessary, I just want to preserve the evidence to begin with and then allow the District Attorney to step in.

CHAIRMAN STIRLING: All right.

MS. STEVENSON: I understand and appreciate the Judge's comments and I agree with him because a lot of times after the case is filed we have many impromptu sessions with the kids. Just to make them feel better about testifying. Just to talk to them about anything that is bothering them. And establish that rapport so that they feel comfortable. I was speaking with a Superior Court Judge just yesterday who handles a lot of these kinds of cases and has indicated that since the inception of the child abuse unit in San Diego county, he's noticed a marked change in the ability of the children to feel more comfortable while testifying. It was his opinion that before we instigated vertical prosecution, truly vertical prosecution in San Diego on these kinds of cases, that we in effect are creating more emotional harm to the children by being introduced to prosecutors that they were unfamiliar with.

CHAIRMAN STIRLING: Now do the prosecutors have little desks and little...

MS. STEVENSON: No, not at all. We don't have little things, we have big things.

CHAIRMAN STIRLING: Next point.

MS. STEVENSON: The next point is, again this is a very literal interpretation of the bill as proposed, but as I read the bill, it mandates that not only the evidentiary interview shall

be video taped, but the physical examination shall be video taped as well.

CHAIRMAN STIRLING: Mr. (inaudible) is that the intention?

(INAUDIBLE)

CHAIRMAN STIRLING: Okay, we'll look at it.

MS. STEVENSON: Clearly our position is that that's too intrusive, but...

CHAIRMAN STIRLING: Right now the vote's two to one against you, but we'll look at it closely.

MS. STEVENSON: Okay. In addition, we have a problem in that there is specificity in the bill as to who is to be on the local investigating team and what expertise they need and that's critical because they are the people who are going to have that -- the one-on-one contact with the kids and they need to have that expertise. In addition, at the initial phases of the investigation because the legislation is indicating that the investigatory team shall have exclusive control over the initial interviews, that precludes peace officers or in our cases in our county, most often the officer who arrives on the scene is a detective from the child abuse or the sex crimes unit in the enforcement jurisdiction. That would preclude that peace officer from taking a brief interview at the scene and perhaps collecting evidence at the scene. Because many of our cases involve perpetrators who are still in the home. And we're removing the child from the home, but the perpetrator stays. And evidence which is there may be lost if we don't collect it right away --

semen which is on bedspreads, pubic hair which is on sheets, that kind of evidence is going to be lost if we have to wait for an investigatory team, and then go out and get a search warrant. We won't have it any more. In terms of the use of the video tapes, I do take a different position from the position taken by the District Attorney from Los Angeles and that is, in San Diego county I think our county uses video tapes more extensively than any other county in the state. Almost all of our investigations include a video taped interview at Children's Hospital. In fact, we are of the position that except in unusual circumstances and except when the child declines to be interviewed on video tape, we require that before a case is brought to us for consideration, that we see the video tape.

CHAIRMAN STIRLING: Forgive me if I'm a little slow here, but if the purpose of the video taping process is not to give the child a one time interview, what is the purpose?

MS. STEVENSON: There are two main purposes, and I've used -- these purposes have been more now than in many of the trials that I have done. The first one is one that is often overlooked. And that is the fact that many of our cases are plea bargained. Their disposition reached before the preliminary hearing and before the child ever goes on to the stand to testify. One tool that is often extremely helpful in securing a disposition before preliminary hearing is to allow the defense attorney to observe that video tape interview with -- obviously with the protective order accompanied by that viewing and to observe the demeanor of the child. To understand that the kid

wasn't led into those responses. That these are for the most part, very natural and very spontaneous responses. In viewing that, they often times in many instances, bridge that gap and jump the hurdle so that we don't go into a preliminary hearing because they know what they're going to face. The other way in which video tape is helpful is that as an exception to the hearsay rule, not creating a new exception, but in terms of exceptions that were already in place, in the evidence code, the video tape can serve as a verbatim record in order to either impeach the victim with inconsistent statements, or to rehabilitate the victim with consistent statements. I am at a loss to think of a trial I have yet conducted when I haven't, at some point, on some matter, whether minor or major had to impeach the victim. Because the victim is either minimizing by the time they get to trial or they simply, due to the passage of time, have forgotten some of the details. I've had to go back to the verbatim closer in time interview at Children's Hospital. That I, in trial even used video tapes where the child denied any sexual activity and we've still been successful in our prosecutions because the jury wants to know the tenor and the tone of those interviews and once they are convinced that the child is not being led or brainwashed, they feel very comfortable with the process.

As I've indicated, the spirit of the legislation is laudable, but the language does not help us in attempting to make standard procedures within the state. I think counties such as San Diego and Los Angeles who have teams in effect and systems

which are working very well together tend to tie the hands and put a damper on those processes. So we are opposed to the bill, your honor.

CHAIRMAN STIRLING: All right. You said your name so quickly that I didn't get it.

MS. STEVENSON: It's Catherine Stevenson.

CHAIRMAN STIRLING: Ms. Stevenson would you please contact Mr. Peace's office with either written or oral communication, allowing them to ask you some questions?

MS. STEVENSON: Certainly.

CHAIRMAN STIRLING: Appreciate it. Ms. Gillis. Child Sex Abuse Crisis Center University of California at Los Angeles.

MS. ESTHER GILLIS: Yes, my purpose for being here today is...

CHAIRMAN STIRLING: Now it won't work if you oppose this bill! (laughter)

MS. GILLIS: My purpose for being here today is to describe an already working model that exists in Los Angeles County in the South Bay Area. What I would like to comment on is how we came about, why this model was established, how it is currently working and what the components of it are and then summarize briefly how we feel it is working at this time. And I do have a copy to share with you when I leave today.

CHAIRMAN STIRLING: Great.

MS. GILLIS: Basically in Los Angeles County in 1984 we have some very serious issues that were raised throughout the county about the molestation cases of our very young children.

Our Supervisor, Dean Dana, called for a preschool safety task force to look at what is the problem, why is all of this happening and concluded many of things that I am hearing here today. That we had fragmented resources. We had no resources in some areas, resources in other areas, what resources were there were often invisible, not clearly identified and we had a dramatic lack of adequate training among the professionals who responded to child sexual abuse. So out of that study that we concluded in 1984, 1985 there was a recommendation that the county develop a center...

CHAIRMAN STIRLING: I'm sorry, the county paid UCLA to do it?

MS. GILLIS: No, UCLA -- I'm at Harbor UCLA Medical Center. But I am paid staff by the Department of Children Services, I'm a paid staff member of L.A. County. And the center we are talking about is a county funded center. But it's a unique funding. In order to pull the center together one of the first things of course to be avoided was a lot of extra expense. I'm not sure if I'm in favor of that, because I think too, our kids need to come first. But the model was established by drawing on existing resources from three major departments. The Department of Health Services that did the medical examinations, the Department of Mental Health that had the psychologists and clinical social workers, and the Department of Children Services that provided the child protective services response to sexual abuse. Each department contributed professional staff members to to run this center and then we were able to secure from the State

of California an innovative grant to assist us in pulling together the physical plant, so that what we have as of August of 1986 is a single unit, an identified unit for -- it's called the Child Center, all that we deal with are allegations of child sexual abuse. We are supported by the three major departments and we are located at Harbor UCLA Medical Center on the grounds of the hospital facility, but we're not in the hospital. We are testing a lot of theories all at one time. One that children don't need to go through the trauma of going through an emergency room, or have the sense that this is a terrible traumatic thing that they must see a doctor in the emergency room and go through that trauma too. So, we're a self-contained unit on a little plot of grass, we actually found a plot that had green grass and trees growing that was still located on the campus...

CHAIRMAN STIRLING: (jokingly) Were they little trees?

MS. GILLIS: (laughing) No, they're big trees! But it's a little center and when the children do come in parking is readily available so nobody is overheated and upset about not being able to get to the site. All we have is one to two families at one time so there's not the chaos and confusion of millions of little children running around. All we do is the child sexual abuse evaluation. Our team consists of a pediatrician who is specialized in child sexual abuse evaluations and examinations and has testified in court and her testimony is accepted in court. Another advantage of our center: we are very well aware that part of our task is not only to provide the primary service to the child, and make that a non-traumatic

nurturing supportive experience, but that we must also be available to the systems that rely on us for that information at a later time. So we are well aware and we do appear in court as witnesses either in criminal court or in the juvenile dependency court. Our pediatrician is trained in doing child sexual abuse medical examination. We currently have on staff with her, a physician's assistant who is equally trained in doing these examinations. We have a licensed clinical psychologist, a licensed clinical social worker, and the two children's services workers.

What we provide to the child and family in the space of about three hours is a psychological evaluation of the child, a psychosocial assessment of the family situation, and a medical examination and we put that together as a package. It comes out as a 15 page report that gives all of this information, and the result of the interview. Essentially, we've calculated it to be about 12 hours of professional time because we do it as a team. It's compressed for the family into about a 3 hour period. But our goal is to provide that information to the systems before a juvenile court detention hearing. We're the up-front system. Our referrals come to us from parents who say, "help, I think there's something wrong, will you see my child". Our referrals come from police directly, they either escort the child to our center or they refer a family to the center -- call the center, have them do the evaluation then get back to us. We see children where the allegations are interfamilial sexual abuse, extrafamilial abuse, and we do take custody cases although we set some rigid time

lines so we're not exploited and used as a tool for a battle that has nothing to do with sexual abuse.

But our focus and our purpose is to be visible in the community, to be available to the child who is in the crisis of disclosure; to gather that information, make it available in a clean manner so that it enters the system in a way that it can be effectively utilized to protect and later to prosecute.

CHAIRMAN STIRLING: Has defense counsel ever tried to impeach on the basis of who recruited you to handle the family?

MS. GILLIS: No. That may come...

CHAIRMAN STIRLING: Has the center been impeached on any basis at all?

MS. GILLIS: No. Not at this time. We have actively been engaged in this current process for about 6 months and I think there are many things that we are going to be challenged on. Currently, no we have not been.

CHAIRMAN STIRLING: Do you know any of the defense bar people? Have you cleared your performance with them?

MS. GILLIS: We've had our medical people who have testified in court who have been -- their testimony has been accepted in convictions. I don't know of any defense attorneys who visited the center who -- or who have offered their friendship to us. But I would have to say, though, that when -- there are many situations -- and I shouldn't say many -- but I would say up to 10% of our cases, never go anywhere. If we do not feel that there's evidence of abuse, we're not going to call police, we're not going to call CPS. We will make a mandated

report where there is suspicion, but we also focus our energies on the community services or resolution of problems that may be attributed to something other than sexual abuse.

CHAIRMAN STIRLING: Have you had any patient/doctor privacy issues?

MS. GILLIS: No. And that is because we do not do any treatment. We are strictly a diagnostic evaluation center and where we can, we see the child once. Once in a while there is a need -- and this -- I would have to be supportive of those who are asking for flexibility. There are times where our process of approach has to -- I would say it's modified in every case -- every case is individual. But what we have is a perimeter at a range of accepted practice for us. We operate within that range and on occasion, we do have a child come back. It's often in the area of medical attention. The doctors prescribed a medication, there's some inflammation and there's a follow-up for that. Sometimes it's a second interview with a child for whatever reason the psychologist has determined. But we are definitely and clearly an identified diagnostic evaluation center, we do not do treatment.

CHAIRMAN STIRLING: Terrific. If you would leave your statement with Ms. Ronnback, I'd be most grateful. Ms. Lana Willingham, Child Protective Services. Ms. Willingham.

MS. LANA WILLINGHAM: I do have some written testimony to leave with you. I'm pleased though that I am following the District Attorney as well as the lady from Los Angeles County because we have been placed in San Diego County a similar program

at the Center for Child Protection which is privately operated as part of the Children's Hospital. We share the concerns of the District Attorney's office and share with you that this bill, while well intended, would serve to impede, as it is presently drafted, the investigation and our ability to safely protect the children.

CHAIRMAN STIRLING: Do you have recommendations that would procure the bill?

MS. WILLINGHAM: We have not only recommendations, but we have an additional area which is what I wanted to focus on. The areas that I think need to be clarified in the bill and Judge Kapiloff has been more than gracious in terms of realizing that this bill is a vehicle really for discussion -- have really been covered by the District Attorney's office. We're very concerned that two investigatory teams in San Diego County would be burdensome and we would not be able to get the kinds of investigations that we needed. And the information we needed to complete our analysis of whether the child needs to remain out of the home in a 48 hour period. We have difficulties enough when we have the number of officers currently available to assist us in that process. But on behalf of the County Board of Supervisors I wish to really go into a secondary problem which is written out in detail in this. We had discussed this previously with Assemblymember Peace's office when he met with an interagency on child abuse which we have in San Diego County. This interagency on child abuse is composed of all representatives of all the law enforcement jurisdictions, as well

as the Child Protective Services, the District Attorney's office. It's one method that we have for remedying any problems that we have in investigatory practice in the area of child sexual abuse. We meet monthly. We discuss issues about the law enforcement involvement in child sexual abuse as well as child protective services, as well as the district attorney, who is located in juvenile court and screens and files our petitions for dependency actions and the criminal district attorney who has the vertical prosecution unit. So we try as much as possible to address these issues.

The area that we feel needs to be seriously looked at and hopefully included in this bill -- an additional area that does require some remedies in addition to a stronger protocol and additional training which we clearly support -- is the problem that we currently have about who is responsible for authorizing and paying the cost of evidentiary examinations and video tape testimony. Right now our practice is to take a child into custody whenever there is a reasonable probable cause that he or she has been sexually molested and to have the video taped interview and the evidentiary exam. However, the decision whether to authorize the examination is influenced often by the budget constraints of the individual police jurisdiction particularly as those agencies get near the end of their budgeting cycle.

CHAIRMAN STIRLING: I don't understand. Doesn't the bench have the authority to order the -- how can you order millions of dollars for defense and nothing for examinations?

MS. WILLINGHAM: Well these cases, sir, have not been before a judge at this point. These are at the point where we're taking a child into custody or we are investigating it prior to the detention hearing. And we need the examination from a child protective services viewpoint in order to decide whether or not the child should remain out of home.

CHAIRMAN STIRLING: We'll fix it. What's next?

MS. WILLINGHAM: Well to suggest the area that -- really it's a more detailed problem than a "quick fix" because the current legislation talks about evidentiary as being something the victim does not pay for if it's for the purpose of prosecution.

CHAIRMAN STIRLING: I will fix it. It's easy to fix when you're in the Legislature.

MS. WILLINGHAM: Oh, All right. All right then I'll just leave you with my written testimony.

CHAIRMAN STIRLING: I'm not meaning to close you off, we'll take care of that particular point for you. You have some more?

MS. WILLINGHAM: Well the other areas I think have been covered by the District Attorney, and they are documented again in this testimony as the areas that of the investigatory teams and who they are, what levels of training as the PDs put out that they would be involved in. That there be sufficient investigatory teams that they would not impede the area of investigation within that 48 hour time period. And that is included already in the testimony.

CHAIRMAN STIRLING: All right, thank you so much. We appreciate it. Ms. Ronnback, if Mr. Peace doesn't want to deal with it we will put that and any other loose issues in a committee bill in cooperation with the Assemblyman. Ladies and gentlemen I would like to introduce Dr. Teresa Hughes, Assembly Member. She is also the Chair of the most important committee in the State Assembly which is the Education Committee, which spends more than half of the State Budget -- so welcome Dr. Hughes, both to the committee and to San Diego. You enrich our community. Okay Ms. Susan Mooney, National Action Against Rape. Ms. Mooney.

MS. SUSAN MOONEY: Hi, my name is Susan Mooney and I'm representing National Action Against Rape and I'm going to speak from a totally different perspective from everybody that you've heard today. I'm not an MFCC, I'm not an attorney, I'm not a DA. What I am is representing a grassroots organization that has about 30,000 members in California. What we do full-time is look at sexual assault and how the criminal justice system is working. I want to, first of all, attempt not to be redundant, but I want to bring up a couple of issues. One is that we are concerned about who constitute the Task Forces and the Commissions. It's not enough to say you want a psychiatrist who is experienced in dealing with children, it has to be professionals who are experienced in dealing specifically with sexual assault. Those issues are very different for these children than many other interfamilial issues that most MFCCs deal with. So that would be one strong recommendation that we would make.

Also, we are concerned about the development of a model protocol. Our experience, particularly with the issue of adult rape, has been that these things that are well intended tend to backfire. There has been good work across the country, for instance in Florida they have a statewide protocol for children that seems to be working very well. So I would encourage, as these things happen, that all possible avenues are explored, not just county by county recommendations.

The third issue is a rather large one for us and one that we're adamant about. We're very opposed to the language that's used in this bill and also tends to appear in a lot of legislation. Terms such as "a child suspected of being molested", children are not under suspicion. The perpetrators are. Language like that perpetuates that attitude that children lie about this. Children don't lie about this. I have a study that was published in March of this year that I would be happy to provide copies to you for. You're right that about 53% of cases are proved to be unfounded. But what's important to look at is the fact that of the cases that are proven to be unfounded, only 1% of those are where the child made it up, supposedly. And in most of those cases the specific instance that the child was talking about is what is unfounded -- most often they find that the child has been abused previously and that's connected to that report. Only 5% of the unfounded reports were vicious by the opposing parent, for instance. The rest of them never went to trial. Never was anybody accused, they were concerned citizens, school nurses, next door neighbors that reported to CPS that they

were afraid something was going on and it was found that nothing was going on. So we're very strong on the point that because child sexual abuse has come out of the closet in the last 5 years particularly, we're feeling a tremendous backlash that children aren't telling the truth and we believe that that is not true. Children tell the truth about their abuse, and they need to be believed. We support the spirit of AB 326, I don't mean to sound like everybody else that's come up here and said it's well intended but not very well written. When the bill was first introduced we expressed our concerns both to the Judge and Mr. Peace, so they have in writing our concerns about the legislation. The last thing that I would like to say is that, as an organization that participates in the legislative process quite a bit, we're not willing to support anything that sacrifices the needs of victims of sexual assault in order to streamline the criminal justice system. That's not a price that we think -- that this society should be willing to pay.

CHAIRMAN STIRLING: Dr. Hughes.

ASSEMBLYWOMAN TERESA HUGHES: How do you think that this bill sidesteps it -- or are you accusing this bill of doing that?

MS. MOONEY: My reference, primarily, is to the language that's used in this bill, as I said, children "suspected" of being molested.

ASSEMBLYWOMAN HUGHES: What would you substitute as acceptable language?

MS. MOONEY: I would say that those things could be worked very easily -- you could -- in cases where there is a

suspicion of the case of child molestation where it takes it out of the realm of the child being under suspicion. Also there is another problem in the bill in that it doesn't appear, and as I said I'm not an attorney so I don't know all the ramifications, but it doesn't appear to provide for an advocate for the children. When it talks about the non-offending parent being able to be transported with the child -- but the parent, non-offending parent not being able to discuss the abuse at that time or at any time until the investigation is over. That's very harmful to children.

Most instances when children are abused, it's by someone who is telling them "you can't tell anybody, you can't let anybody know what's happening." A lot of times it's under threats that something awful is going to happen to them or a family member. This just continues that cycle of children having to be silenced about the abuse that happens to them. And I realize that the goal here is to provide for very clear evidence for prosecution and we support that effort, but you have to waive the needs of the child because when it comes down to the bottom line what we're talking about is children's lives being destroyed. Whether a perpetrator is prosecuted or not, the children needs the help that they deserve.

CHAIRMAN STIRLING: Thank you Doctor. Ms. Mooney your testimony has been excellent and I really appreciate it. I would also be interested, as Chairman of the Committee, on any recommendations you have on the protocol on adult crimes, so, you don't have to do it now, but if you would direct that to Ms. D'Adamo I would be very grateful.

MS. MOONEY: As a matter of fact we're working on an entire package that came out of interim hearings that happened in Oakland so we'll keep your office informed of how that develops.

CHAIRMAN STIRLING: Whose interim hearings?

MS. MOONEY: Senator Lockyer's Judiciary hearings in Oakland.

CHAIRMAN STIRLING: Well, we're the other House so...

MS. MOONEY: Right, but I think we all have to work together...

CHAIRMAN STIRLING: If you can kind of bring us along we'd be really grateful.

MS. MOONEY: We're going to try to do that, thank you.

CHAIRMAN STIRLING: Thank you Ms. Mooney. Mr. Skip Daum, California Association of Children's Home and California School Nurses Organization. Mr. Daum. Are you Mr. Daum?

MS. NITA HALISEY: No, but I'm representing the California School Nurses Organization.

CHAIRMAN STIRLING: Okay, your name please.

MS. HALISEY: My name is Nita Halisey and I am a member of the California Nurses Organization. I'm currently on leave from the city school system and working for the Center for Child Protection here in San Diego.

CHAIRMAN STIRLING: I just need to ask you this for sure. Are you authorized today to represent them?

MS. HALISEY: Yes.

CHAIRMAN STIRLING: Okay.

MS. HALISEY: They phoned me yesterday and asked me to come -- I just have a couple of comments -- just last minute input to you about this bill. One thing in looking over the bill that we notice is that a very important segment of the population that serves kids is left out when we're talking about setting up commissions and task forces. This group of people that I am referring to spend almost as much time with the kids as do their parents and their television sets and this is people involved in the school system. I'm spending time particularly here for California School Nurses who, by the way, in looking over statistics during the past year, are the number reporters of the child abuse reports to CPS from the school system. I'm looking at a couple of months last year in March of 1987 just in the San Diego Unified School District which is a large district, but there are still many other districts within our county.

UNIDENTIFIED VOICE: 55 to be exact.

MS. HALISEY: 206 reports were filed within the month of March. 92 of those by school nurses and the others by counselors, principals, teachers and other personnel. In the following month which was April, there were 146 reports and that was a short month because of the school break -- it was a 3 week month. Again, the majority of reports were filed by school nurses and so the point I want to make is that, especially on the local level in developing a task force, in dealing with -- the intent of the bill, again, I repeat what everyone has said, the spirit is wonderful, the intent is good, I have some concerns about the makeup of the local task force and I really suggest an

inclusion of some member of school health -- that group to be involved in putting together pieces that would meet the needs of children.

CHAIRMAN STIRLING: I think that we can assure you that it will be in there.

MS. HALISEY: Good. Okay. The point I want to make just before leaving the business about the school system is that oftentimes the school is the only safe place for a child. The only source of help and solace. Real important group. The other thing in speaking about Section 14026 of that bill, there are a couple of quotes. One was transporting to the investigatory team would be done by a person that would make it comfortable for the child and then it spoke about the parent. Well, sometimes the most appropriate person might be someone from the school -- the school nurse or the person to whom the child has disclosed to. Oftentimes the child has disclosed after a long period of time of not being able to tell anyone just because of rapport has been established and I think that rapport needs to be used to benefit the child, not cut off because there's a protocol that says that this person can no longer speak to the child once a story has come out.

ASSEMBLYWOMAN HUGHES: Would you have an objection to school guidance counselors also being included because some of these abused children might never make it to your office.

MS. HALISEY: No, I wouldn't have an objection. The second most frequent reporter is the school guidance counselor. Unfortunately the way our educational budget has gone in our

state, our schools have very few counselors and many days there may be a nurse there or a counselor, but hardly ever are there both. Some days there are neither. But one of those two people. I'm specifically interested in the nurses because they seem to be the ones with the most expertise.

ASSEMBLYWOMAN HUGHES: I understand.

MS. HALISEY: The thing about protocols -- I think it's important that we have something. Guidance is really needed in this area. But protocols also, if they're followed too rigidly, do damage. So I'm suggesting also that the bill somehow be a little bit more flexible and reminding this hearing that cases have got to be treated individually. Just a real strong request for that. And also here to let you know that the school nurse -- the professional school nurse organization in this state is very interested in becoming involved and would be willing to assist in any amendments to this kind of legislation. I will leave a paper here with my statements and addresses that would be helpful.

CHAIRMAN STIRLING: Okay, thank you Ms. Halisey, we appreciate it very much. Has Skip Daum arrived yet? My favorite prosecutor, Gale Kaneshiro.

MS. GALE KANESHIRO: Good afternoon Mr. Chairman. My pleasure to be here. And Dr. Hughes. I have submitted a written testimony for this afternoon's hearing, but I'd like to deviate from that based upon things that I've heard coming up today. First of all I would like to indicate that I am here to represent the Committee on Child Abuse Prevention State Social Services Advisory Board. This is a statewide organization board that

advises the health and welfare agency, department of social services, also child abuse prevention and the Governor in child abuse matters.

I am here at the direction of the committee which met on Monday, which firmly took a stand against AB 326. I would like to indicate that we must allocate our state resources protecting all abused children, not only those that have been sexually molested. Yes, children who have been sexually molested are traumatized. But are they any more traumatized than that 5 year old boy whose leg was twisted and broken by his mother's boyfriend? Or that 11 year old boy whose father shot "BB" pellets into his buttocks?

I'm here to indicate that we have to protect all of our abused children, not only those sexually molested. There is a great need for increased funding in the area of child abuse prevention and delivery of services. The money that would have to be allocated to implement AB 326 could be better put to use and spent by providing training for all professionals. These are social workers, police officers, prosecutors, judges, what have you, involved on issues relating to child abuse prevention. We also need more delivery of services for the treatment and services of children in our system. We have found that in the last 5 years there has been increased reporting, but not enough funds for treatment and services. The increased reporting is due to increase awareness, the school base programs and primary prevention programs. So we desperately need money. I believe the money would be better spent on providing training and on delivery of services. There are major problems with AB 326.

First of all as proposed presently, the bill establishes a commission with responsibility to none. We have an Attorney General, we have the Department of Social Services, we have appointments by the Governor, by the Senate Rules Committee and the Assembly Speaker. But the Commission is not responsible to anyone of these individuals. It appears to be another, perhaps, little Hoover Commission. If there are in fact protocols needed, I would like to suggest that the Assembly establish a task force. In 1984, Assemblywoman Sunny Mojonnier established a Task Force on Child Victim Witnesses and the Judicial System. I believe the task force met for about 6 months -- meeting about every 6 weeks. It was a very effective task force because for one, I was a member of that task force and out of the task force came several pieces of legislation. I believe a task force of a specific derivation which incumbences people from different disciplines could produce and put together protocols. Other mandated responsibilities of the commission as proposed in AB 326 are duplicative of existing efforts such as that referred to earlier about the Petris bill.

Secondly I'd like to indicate that the creation of the special multi-disciplinary investigatory teams to reduce victim trauma is very laudable. However, it is that exclusive jurisdiction which, I know Cathy Stevenson talked about, that is in fact objectionable. It is not in the best interest of the child. The best interest of the child very often is to talk about the trauma he or she has gone through. The best interest of the child is to be able to establish rapport with those he or

she is working with. The best interest of the child is to insure that the perpetrator has been convicted, is going through the criminal justice system. And sometimes that means the victim will have to talk and tell his or her story to many different people. I have found that on occasion there have been some minors who desperately want to be in court. They desperately want to tell their story. And they don't mind telling their story over and over again. It is rather cathartic. And it helps them get over the trauma of the molest or the physical abuse. So basically it is the exclusive jurisdiction which the committee finds very objectionable. Rather than mandating teams we should rather encourage counties to establish these disciplinary teams. We could encourage these teams by the allocation of appropriations possibly to be administered by OCJP.

Third, the bill creates a separate investigatory system which does not really account for their child welfare service responsibilities mandated by law. Some of these are raised by Lana Willingham.

Fourth, the use of the video tapes. From what I heard this afternoon, it appears that many of the individuals speaking are mixing apples and oranges. They are talking about the use of video tapes in judicial proceedings. But they are not separating the criminal proceedings through civil proceedings. In the criminal proceedings we have a defendant accused of sexual molest child abuse. That defendant has a constitutional right -- the sixth amendment -- the right to confront and cross-examine his accusers. That right does not exist in civil proceedings, more

specifically the dependency proceeding in juvenile court. We will run into problems in using video tape testimony unless it comes within a hearsay objection in criminal matters. But I see no reason why the legislature should not work on studying to implement the use of video tapes in civil matters. More particularly dependency proceedings at the jurisdictional phase. I think that might be feasible and I think that should be looked into. And so in summary Mr. Chairman and Dr. Hughes, the Committee on Child Abuse Prevention State Social Services Advisory Board at this time opposes AB 326 as presently drafted.

CHAIRMAN STIRLING: Thank you Ms. Kaneshiro, I appreciate your time. Judy Conard, City Attorney's Office, City of San Diego. Ms. Conard. Welcome.

MS. JUDY CONARD: Good afternoon Mr. Chairman, Dr. Hughes. My name is Judy Conard and I am a representative of John Witt who is the City Attorney here in San Diego. The City Attorney is responsible for all misdemeanor prosecutions in the city limits of San Diego and in the City of Poway. As such our criminal jurisdiction is limited and the way this bill would impact our office is also limited.

I would like to emphasize what the last speaker said that there are many kinds of child abuse, not just sexual abuse. Our office handles, by far, more cases of physical abuse. The sexual abuse, however, that we are responsible for prosecuting falls under 647a. In a case where the child that we're talking about is perhaps over the age of 14 the assault happens not through an act of violence, but rather through

coercion or with a child under the age of 14 a kind of sexual assault that isn't -- just doesn't rise to a level of a felony, but it is serious. It's an inappropriate touching, a sexual touching. Oftentimes not by a family member. By somebody that the child comes in contact with in another arena. Sometimes it's strangers stopping to pick up the child on her way home from school, a small child. Our office for the last 2½ years has dedicated itself to committing more and more resources to vertical prosecution as Cathy Stevenson from the District Attorney's office spoke to you about. We feel that vertical prosecution is imperative in order to develop a kind of rapport with these children prior to their having to testify.

I am responsible for a child abuse case from issuing, through the trial, sentencing, any probation actions that take place, but unlike Ms. Stevenson, I also do the appeals work. Vertical prosecution, we feel, and perhaps it was already answered, our concern about the bill, is the impact that it would have on the concept in vertical prosecution and our being allowed to have the ability to develop and maintain the rapport with that child. As has been stated also, earlier, oftentimes children don't disclose all at once and it comes out after several interviews or after several discussions. When a child feels more secure with you, sees you as not a condemning person, not someone that she has to please, but just rather an accepting human being who really wants to know the truth. And in time, more and more details come out. we are concerned about the fact, as the last speaker said, that there would be exclusive jurisdiction. We see

that as limiting our access to the child and in the criminal arena, that child is going to have to testify because of the sixth amendment, because of the state of the evidentiary rules and the hearsay exceptions. If we don't have a way to get that tape in, through a hearsay exception, we're not going to be able to get that into evidence. The child is going to have to testify. It is unfair to put that child in a position of being questioned by yet another stranger in that very foreign and frightening situation. Even for older children -- 14 to 16 year olds who have already been violated are very reluctant to come in and tell the story in front of the perpetrator, in the first place. When I've already got this rapport and this relationship with her it would be, I think, impossible if we are precluded from developing that kind of rapport. So where are -- our place in the criminal justice system is perhaps not -- we have this little area that we're concerned with in the city, but we are, nonetheless, responsible for that prosecution and in that respect in the way that this bill would impact that, our office would also have to be opposed as it is presently written.

CHAIRMAN STIRLING: All right, thank you Ms. Conard I recognize that I mispronounced your name and I apologize for that. Okay, Dr. David Chadwick, leading light in this field and we're glad to have you here.

DR. DAVID CHADWICK: Thank you for those words Mr. Chairman. We have had some experience at the Children's Hospital. We examine about a thousand victims a year and interview most of those. We've been doing that for over 7 years.

We have about 5,000 records on child sexual abuse victims. We examine almost as many physical abuse victims and I really want to emphasize what the two prior speakers emphasized that given all forms of child abuse, a pretty common system is a wise thing to do, both from the standpoint of health, criminal justice and the social services. This bill is a very well intentioned piece of legislation. It addresses a major need, it's a major problem, we're a long way from home with it. It isn't that we have figured out all the right things to do because we've really just sort of discovered the problem over the last 5 years. However, it is a need of a lot of technical work. It is that I am speaking for the California Children's Lobby.

I'm also representing the American Academy of Pediatrics and I chair the Child Abuse Committee for the California Medical Association who I think will back up the remarks that I am making. It needs an enormous amount of work if it's going to be an effective bill and if it's going to be acceptable and do the job that needs to be done. First of all it's worth mentioning that there is a protocol out there now. Other people have probably mentioned this, but the Office of Criminal Justice Planning spent 2 years developing protocols for the evaluation of rape and of child sexual assault. These are now out there and in place and I was at a very stormy hearing in Los Angeles a week ago in which the affects of that standard enhancement process that they went through on the hospitals in Los Angeles was discussed all day with great criticisms because the standards were raised the hospitals went out of the work and now everyone's

unhappy because they can't find the service. This in one reason to bring the health sector into the planning process as we do these kinds of things.

CHAIRMAN STIRLING: Dr. Chadwick the protocols were OCJP's protocols?

DR. CHADWICK: Yes, the Office of Criminal Justice Planning worked for 2 years in committee meetings involving health people, involving a lot of criminal justice people, attorneys of all sorts.

CHAIRMAN STIRLING: And the protocols apply to whom?

DR. CHADWICK: They apply for rape and for child sexual assault. There's one for each and there's sets of forms on which health institutions, hospitals that operate emergency rooms are required to report their evaluations.

CHAIRMAN STIRLING: But those protocols don't apply to the police officers.

DR. CHADWICK: No, they apply to health institutions, and they were administered through the Department of Health Services -- the licensing branch. And in order to maintain a license you have to meet these standards or you have to get out of that line of work. So I find it from the vantage point of the organizations that I represent, impossible to oppose a bill that is as well intentioned as this. That's trying to do what it's trying to do and still it's a long way from home in terms of serving the purpose for which it's designed.

And I agree with Gale Kaneshiro with the suggestion that if it is to be kept alive, and if it is to move forward, I really

think the development of a task force with multi-disciplinary representation from the health sector, from criminal justice, from social services has got to be done and should have some frontline people in there that see these children, that know what's going on -- it should have people from that sort in the task force if it's to accomplish its goal. I would like to see legislation of this sort, but not in its present form. We are in a "watch" position.

CHAIRMAN STIRLING: All right Dr. Chadwick. We very much appreciate that. Dr. Hughes has a question.

ASSEMBLYWOMAN HUGHES: Do you think that a task force that would be short-term would be more efficient than a commission? Or -- how do you react to that concept?

DR. CHADWICK: There is a definable task for which I think -- then you say task force. The definable task is to develop a protocol and a procedure on a statewide basis for the regionalization of the services that apply to the evaluation of child abuse victims. Whether it be -- or for any form of child abuse maltreatment. Whether it be physical abuse, severe neglect or sexual abuse. I think that that is a finite task, that it can be accomplished in a year or two. Thereafter there may well be a need for a commission. And one of the findings of the task force might be the development of a commission to supervise child abuse and child maltreatment and to be looking after that on an ongoing basis. Again, I see no sense in restricting its concerns just to child sexual abuse as opposed to all forms of child maltreatment.

CHAIRMAN STIRLING: All right thank you Dr. Chadwick, we appreciate it. Judge McConnell.

THE HONORABLE JUDITH MCCONNELL: I'm Judith McConnell from the Juvenile Court in San Diego and I was just asked by the California Judges' Association to appear here if you have any questions. The California Judges' Association has not reviewed this legislation. We have spent all of our time on SB 243 this year and so we have not taken a position on the bill at all. I would defer to the experts who've had an opportunity to study it in-depth, but I am happy to answer any questions you might have since...

CHAIRMAN STIRLING: We just have one your Honor.

JUDGE MCCONNELL: Okay.

CHAIRMAN STIRLING: Apparently there's some legislation that authorizes the bench to establish a courtroom where the judges could be more informal and have different kind of furniture for juvenile hearings. And that's not being done in San Diego County we were informed, so I thought I'd pose that question to you.

JUDGE MCCONNELL: Our courtrooms in San Diego County are just like every other -- in juvenile court, in my opinion, are formal, intimidating environments not conducive to the well-being of children. While we have a project to try to develop courtrooms that are more sensitive to the needs of children, so that the children don't go in and face a raised bench and all of the other trappings of a courtroom, we don't have any money to build those courtrooms at this time.

CHAIRMAN STIRLING: But the judge presiding would welcome the money and support the setting up of at least one room like that?

JUDGE MCCONNELL: Absolutely. In fact we do, as a matter fact, often take kids into chambers as you know which is a more informal setting. We have a little grassy area outside the courtroom which we occasionally take kids out to and take their testimony out there -- sitting on the grass by a picnic table. But we don't have any institutionalized childlike setting. But if you have any questions -- I'm right across the hall cheering the Commission on Children and Youth Services so I'm happy to...

CHAIRMAN STIRLING: They have little furniture in there? (laughing).

JUDGE MCCONNELL: (laughing) No.

CHAIRMAN STIRLING: Thank you your Honor for your time. Dr. Hughes, Mrs. Allen. May I introduce Assemblymember Doris Allen, a very distinguished member of the Assembly, welcome to San Diego. She works real hard to get us all water! Anybody else that would like to testify? Move to the microphone, state your name and take about 5 minutes. Anybody else?

MS. GLADYS HAMETT: I'm Gladys Hamett and I'm here for my son. I'm a little nervous...

CHAIRMAN STIRLING: Don't be.

MS. HAMETT: I know the people are trying to get all these child abusers put in jail, but what about the innocent ones, such as my son? What had happened, to make a long story short, he found -- his wife found out that a neighbor lady went

to the valley with him and 2 days later after he got back, which he was gone for 6 weeks, she hollered molestation. And then my son sends a letter home to me that she had talked to him saying that -- she said "you probably think that just because you're in prison that your responsibility as a dad is over, but that's wrong. These kids still cry for you and wonder -- I'm sorry (crying)..."

CHAIRMAN STIRLING: Don't worry about it. Take your time.

MS. HAMETT: ...when you are going to write to them." But the attorney has instructed my son not to write to them because it could be a possibility -- because we're in for an appeal -- that if he told them that he loved them that that might be made dirty. The word "love" dirty, so he can't do that. She says "because they want to know why you haven't written to them or why you didn't let them know where you are being relocated". They do not know their dad is in prison right now at this time.

She says "I have two things to say about your letter and that how can I really can get you out legally. I have asked and I don't see how. I really don't believe you belong in prison." And the few little things that I have here -- it says that the wife called the DA and the detective to drop the charges against our son, but they told her that it was out of her hands. And she tried to do this twice and they would not let her do it. To drop the charges. Because she's a very jealous person and getting back to the videos. As far as the videos are concerned with me we saw the video of our granddaughter. During the interview on

the tape the worker asked my granddaughter a question. The worker would shake her head either yes or no as to how she wanted my granddaughter to answer the question. When the social worker didn't know the answer, my granddaughter would look to the side of the room and we found out at the end of the tape that her mother was in the room giving her answers.

A 7 year old child during the trial when we were there, they taught her to use words such as "oral copulation, intercourse and semen", and at this time she was only 7, had barely just turned 7. The doctors examined our granddaughter on the 24th and our son did not see -- the last time he saw the children was July 9th. The hymens of the girls are still intact to this day. The jury -- it was a two week trial -- the jury deliberated for 20 minutes and came down with the guilty verdict. There's a 15 year old child -- I deal a lot with local -- that has to do with all these false allegations. And there's a letter here from a young man who is incarcerated right now and briefly tell you I keep in contact with him, he says "Well I just adjusted to the situation very fast. Sometimes I break down and cry and when I do break down and cry it's under my blankets and it's just to let it all come out. Then I feel brand new the next day." So it just keeps on and on and on with innocent fathers and innocent 15 year olds. Parents hollering "molestation" because they are angry or jealous. And this child is still incarcerated.

CHAIRMAN STIRLING: Thank you. Ms. Allen.

ASSEMBLYWOMAN DORIS ALLEN: My question would be, since you've had experience with this, what would you say needs to be done or a little better protection of people who may be victims themselves of false accusations? Is there something in the law currently that is too easy, what would you suggest -- having dealt with this?

MS. HAMETT: Well I really can't answer that because we've never been involved with the law before, because we are law abiding citizens and we've raised our children to be also. When my son went down to talk to the DA, the detective kept telling my son to admit that he did it and he said that he was one of the top 5 in the 10 years that he had been a detective that my son was guilty. So we called an attorney which handled a civil case for me and we did not know that there was a difference in attorneys and we needed a criminal attorney instead of a civil attorney. So you know that's like going to a G.P. for a gall bladder surgery or something.

ASSEMBLYWOMAN ALLEN: Did the investigations of the children -- you said that they came out without showing any sexual molestation, why didn't that work in court?

MS. HAMETT: The only thing I can say is because we had the wrong attorney and the judge would not let him cross examine the mother or cross examine the child again. It's just -- it's really a messy whole thing, deal and I don't -- I've tried everything in my power, I went up to Sacramento and I've talked to Susan and to her to see what I could do to get things like this at least turned over. California right now has 75,000

members of VOCAL from false allegations and Colorado is coming up second.

ASSEMBLYWOMAN ALLEN: And out of your group, that many people -- have they tried to put together proposals of what the law did not allow them an opportunity to prove their case. Have they come up with anything that they could come forward with to us as legislators and say "this is where the law broke down for me, this is what happened -- I don't feel I had a fair shake because..." Do they have anything like that at all?

MS. HAMETT: Yes ma'am, I have another whole folder like this literature and stuff in it that I have -- they have sent to me and I have gathered. And I have talked to Carol Marks who is in charge of VOCAL in Sacramento and to Ron Sherman who has appeared on "60 Minutes" because the same thing has happened to him.

ASSEMBLYWOMAN ALLEN: Has this been turned over to the Chair of the Committee?

CHAIRMAN STIRLING: Not yet, but it will be.

ASSEMBLYWOMAN ALLEN: Hopefully you will get that to him so that there could be a review of some of those and we don't want to make laws in a vacuum. We want to know that what we're doing is protecting the innocent, but also we can convict the guilty. And if you have some information like that, I'm sure that the Committee, and I'm sure I would be happy to see it once you had it. I would like to review some of those cases where they feel they have been erroneously charged and convicted.

MS. HAMETT: Well I work with children all day long -- about 540 of them as a matter of fact, and yes there are child molesters out there. You know and I know as well too. My son is not one and he helped me raise his 3 sisters because my husband served 20 years in the Navy protecting this so called free country during the Vietnam crisis. My girls were not molested by him and have not been molested by my son. My son is 6'4 and if he penetrated my granddaughter just a small bit, I mean the hymen would be broke. She's a small child.

CHAIRMAN STIRLING: Okay, thank you very much Mrs. Allen. Judge Kapiloff:

JUDGE KAPILOFF: Mr. Chairman, first of all I would like to say hello to my former and best seat mate, Ms. Hughes. Ms. Allen I don't think I've had the privilege but I do know that you know my son. He talks very highly of you. Couple of comments. First of all it would seem that in one instance we're being accused of -- the bill -- of going too far, but not going far enough. And both sides are probably right. I am honored that Dr. Chadwick could be here because I know that he has been a pioneer in attempting to establish the very type of procedure that I am trying to encourage statewide. And it's because of his work and the work of his very excellent team at Children's Hospital that San Diego, I believe, is so far ahead of most parts of this state.

The problem, and I think that Dr. Chadwick would agree with this, is first of all the incredible cost to local government. In one month I do know when I was down in Juvey,

1985 I believe, the San Diego Police Department spent \$80,000 just on these types of investigations because someone has to pay for them. Local agencies don't have the money to really, at least most of them, to do the kind of job that is necessary to protect our children. It was interesting -- I made a couple of comments to the Deputy District Attorney here from downtown. Now I sit in North County. I've been sitting there for about 2½ years. North County does not have the same procedures. The District Attorney does not have the same procedures up there because very often -- it's not their fault -- they cannot get the child down to Children's Hospital for a workup or an investigation because, for example, the City of Oceanside will not pay for the expense of doing it. We have the City of Carlsbad, City of San Carlos, City of Escondido and every one of them treat these kinds of cases somewhat differently. If they all treated them like the City of San Diego and like the County of San Diego, there would not be the problem statewide that I suggest there is and I think most of the other people testifying here today feel that there is.

The question is how do we resolve it? I think that most of the comments today, whether they're for or opposed to my bill, are very well taken. I think they've shed light on an issue, on a question. And I think they've justifiably pointed out severe, serious errors to the bill I propose. Because I am not the expert. I don't pretend to be. I think I have more to do with child abuse questions than most others in this state, but I'm not an expert. I appreciate the experts being here and telling me

what's wrong and I hope, Mr. Chairman, that you undertake from your position, listening to these people and perhaps taking some of my suggestions and the suggestions of the judiciary and putting together a workable alternative. Now there is nothing more heinous than can happen to a child than to be sexually abused. I really believe that. There is nothing more heinous of which a person can be accused than of child abuse and once that bell is rung it can't be unrung. And we better be very very careful. I can tell you from my experience as a judge in the domestic department that you will find that allegations of child abuse go up just before Thanksgiving, just before Christmas, just before the break before Easter, and just before the break during the summer. Now isn't that a strange coincidence? And it's because many times, not the child, but a parent of a child is trying to control a situation and have access to a child they would not otherwise have access to during that period of time. Now something has to be done about false reports, something has to be done to preserve evidence. Not just for the child, but for the person that is being accused as well.

I do hope you will direct your attention to these very many problems. I could not think of a better person that you could use as a resource person than Dr. Chadwick. I do hope you will also use the services of Judy McConnell, Judge Judy McConnell. And others from Judiciary, throughout this state they could give you their perspective. There are very very fine children representatives.

And by the way, I would take seriously, and I would hope that you would in implementing that bill, provisions to allow a court, even in criminal instances, to appoint an attorney for the child. That's a very good suggestion. I believe that you should have on that Task Force, people who represent the accused. As well as people who represent the victims. Putting that all together, I think you could come up with a model proposal for the Task Force because I think Dr. Chadwick is correct, perhaps we don't need a Commission. I called it a Commission, I intended it to do the work of a Task Force and go out of business as you'll see in the bill, after they've done their job, I don't care what you call it. Let that work be done. Put it in place and for goodness sake once again, and Teresa, and Ms. Allen you weren't here, my comment was see 'we remember the Medfly, we spent a billion dollars for the Medfly.' My position is that children, our children are a greater resource. They deserve at least as much attention and respect as the Medfly. And we ought to be putting some money in to protect these children statewide. That is the responsibility of the Legislature. The Legislature statewide. Because they are the resources of all the state, not just local agencies. We ought not to burden local agencies with this kind of expense. It is expensive, but my goodness just because it's expensive doesn't mean that we ought not spend the money. Just let's stop spending it somewhere else and spend it where it's truly needed. Thank you Mr. Chairman.

CHAIRMAN STIRLING: Thank you your Honor.

ASSEMBLYWOMAN HUGHES: Do you think the proposal that you were suggesting by having a Task Force or Commission or something with the advocates of the accused, also on it would solve some of the problems or give some insight into the kind of case that the previous witness presented and -- and how could we -- what do you think there is in the law that is so flawed that a person who, like this lady says is innocent in her opinion, I'd think my child was innocent too, and so would you -- what is there in the law presently that does not protect the accused? Or in this law that you are now proposing that wouldn't protect the accused?

JUDGE KAPILOFF: Well first of all, that's a much more difficult question to answer than you could imagine. I do believe that if the child is conditioned before hand, somebody said children don't lie, well frankly, I want to let you know long ago about someone that the judiciary brought down who was a leading expert nationally in this area and he said that's nonsense, children lie all the time. The question is what they lie about and what they consider to be a lie. Children want to please us. They want to please authority figures. We can lead them. As you know and I'd be willing to bet you -- you go back and tell me 5 years ago how you voted on a bill. Everybody has a memory that's hazy. Children have a different concept of time. And over a period of time, one can convince a child that something really did happen. It doesn't take all that much. It's the experts who have to sort it out. Of course, if there was a trauma, I'm not suggesting children lie in situation like

this, what I'm saying is there is a chance for children to be led. And if they are led -- it's not even a question of them being molested -- the real question isn't sometimes whether they were molested or not, the real question is who molested them? And sometimes we can get the wrong party accused and convicted if, in fact, we're not careful in the way we interview a child. Because sometimes a child wants to protect someone close to them and does not understand the implications of perhaps blaming Uncle Charley or somebody two steps removed. That is a very serious question. Only an interrogation -- people object to the term interrogation -- I don't know what else to call it -- an examination by experts who can take their time to draw this child out, can really get at the problem and that is, I think the major weak link that we have today in the system.

CHAIRMAN STIRLING: All right thank you your Honor. Ms. Ronnback any comments on behalf of Mr. Peace?

MS. RONNBACK: I would just like to thank the committee for conducting this hearing and the attendance of Dr. Hughes and Assemblywoman Allen and I would like to thank all the people who came here to testify, I think we all learned a lot today and that the main theme seems to be that AB 326 is well intentioned, but it needs a lot of work and we're willing to work with all of you in coming up with something that will be in the best interests of those involved in the subject area. Thank you.

CHAIRMAN STIRLING: Thank you ladies and gentlemen for taking the time to come testify for the legislative committee. There is no further business, we are adjourned.

RELEVANT STATUTORY PROVISIONS WHICH APPLY TO CHILD WITNESSES

IN SEXUAL MOLESTATION CASES

Support Persons - Prosecuting witnesses in specified sex crimes who are 16 years of age and under are entitled to the attendance of up to two family members for support during the proceedings (Penal Code §868.5).

Waiting Rooms - Counties are encouraged to provide a special waiting room for child witnesses who are under 16. Upon remodeling its courthouse, counties are required to provide such a room (Penal Code §868.6).

Closed Hearings - Courts have the discretion, upon a motion by the prosecution, to close the hearing to the public during the examination of a minor who is a prosecuting witness in a sex case (Penal Code §868.7).

Courtroom Environment - Courts are required to take special precautions to provide comfort and support of child victims under 11 during their testimony, such as allowing for recesses during the child's testimony, removing his or her robes, relocating the parties and courtroom personnel, limiting the child's testimony to the hours during which the child would normally be in school (Penal Code §868.6).

Prosecution of Child Abuse - The Office of Criminal Justice Planning is required to administer grants to "child abuser prosecution units" whose efforts include vertical prosecution, the assignment of highly qualified investigators, a reduction in caseload, and coordination with local child abuse and victims' services programs with respect to child abuse cases (Penal Code §999q - 999y).

Cooperative Investigations - Law enforcement agencies are required to report to county welfare departments within 36 hours after starting an investigation as the result of receiving a child abuse report (Penal Code §11166.3).

Judicial Practices - The Judicial Council is required to establish a judicial training program relating to the handling of child sexual abuse cases. The Judicial Council is required to report to the Legislature by January 1, 1988 regarding such programs (Penal Code §§13828-13828.2).

Also, the California Child Victim Witness Judicial Advisory Committee is required to make recommendations to the Legislature by October 1, 1988 to improve judicial practices with regard to child victims and witnesses (Penal Code §§14150-14158).

Child's Representative - Counties are authorized to establish a pilot program whereby child victims under 14 who have allegedly been abused by a family member with whom they reside may have a court appointed representative to represent the child's interests in the proceeding (Penal Code §1348.5).

Videotaped Testimony - Courts are authorized to admit into evidence at trial the videotaped preliminary hearing testimony of a 15 year old or under who is the prosecuting witness in a sex crime where the minor is found to be unavailable for trial. Courts are also authorized to allow courtroom testimony of a 10 year old or under witness to be taken via two-way closed circuit television under certain limited circumstances (Penal Code §§1346-1347).

Jury Instructions - Courts are required to instruct the jury to consider all of the factors surrounding a child's testimony who is 10 years or under, including the age of the child and the child's level of cognitive development (Penal Code §1127f).

Victim's Right to a "Speedy Trial" - Cases involving a minor as a victim or a material witness and cases involving an allegation of a sex crime committed by force must be given priority above all other criminal trials (Penal Code §1048).

Investigative Procedures - The Commission on Peace Officers' Standards and Training is required to develop guidelines for standard procedures which can be used in the investigation of child sexual assault cases (Penal Code §§13516-13517).

Also, the California Child Victim Witness Judicial Advisory Committee is required to report to the Legislature by October 1, 1988 regarding recommendations to improve investigation practices in child abuse and molestation cases (Penal Code §§14150-14158).

Law Enforcement Training - The Commission on Peace Officers' Standards and Training is required to establish a course for the training of specialists in the investigation of sexual assault cases (Penal Code §§13516-13517).

According to the California Department of Justice the number of cases of suspected child abuse reported and investigated in California has steadily increased over the years as a result of the Child Abuse Reporting Law and the increased attention paid to the problem by professionals and the public.

INCIDENCE OF CHILD ABUSE IN CALIFORNIA
CASES INVESTIGATED

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
- Physical	14,870	20,838	21,343	29,362	29,704
- Sexual	11,351	13,214	16,624	23,663	22,054
- Neglect	6,907	9,486	8,227	8,712	2,919
- Mental	1,147	2,006	1,643	2,620	2,380
- Death	56	36	23	18	42
- Other	<u>1,921</u>	<u>2,305</u>	<u>1,586</u>	<u>1,781</u>	<u>1,838</u>
TOTAL	32,650	43,985	45,515	60,627	56,811

