

## **A SYSTEM OUT OF BALANCE**

In 1692, twenty-two people were burned at the stake or hung for witchcraft in Salem, Massachusetts. The hysteria did not stop until the Governor's wife was finally accused.

In response to these events, the Reverend Increase Mather, President of Harvard College and the Massachusetts Bay Colony's Ambassador to England, said "It is better that ten suspected witches should escape than one innocent person should be condemned...I had rather judge a witch to be an honest woman than judge an honest woman as a witch."

Three hundred years later, we are burning witches again.

Every year in the State of California, over one-half million accusations of child sexual abuse and child physical abuse are made. Such charges result in the destruction of families, loss of children, employment, reputation, and financial security, and ultimately, can result in the loss of one's freedom. Tragically, over 60% of these accusations are false. Why does this happen? Like the suspected witches in Salem, people accused of child abuse are presumed guilty by society and must prove their innocence to people who refuse to believe them.

A charge of child abuse is easy to make but hard to disprove. Many innocent people are now serving prison sentences for acts they did not commit. Due to irresponsible reporting, inflammatory media coverage, widespread grants of immunity, and exaggerated statistics by self-serving agencies, a hysterical reaction to the issue of child abuse has created - A SYSTEM OUT OF BALANCE.

Hello, I'm Patrick Clancy. I am a Certified Criminal Law Specialist.

This is my partner, Peter Firpo.

We are here today in a typical California courtroom. This is the arena where child abuse cases are fought.

When a client who is accused of child abuse first comes to me he is in shell shock. His first question is—

Why is no one listening to me?

The police don't listen to me.

CPS doesn't listen to me.

No one listens to me.

They are surprised to find that in one day the very foundation of their life has been destroyed by a mere accusation.

They tell the police what a good reputation they have and are told - SO, that doesn't prove you are not a child abuser.

They tell the police what good work they've done in the community and are told - SO, that doesn't prove you are not a child abuser.

They tell the police about their strong religious beliefs and are told - SO, that doesn't prove you are not a child abuser.

They tell how they have had no prior criminal history - SO,

They tell that they have character witnesses - SO.

They deny abusing a child - SO.

No one is listening to what they have to say.

To understand why no one is listening we must go back to the beginning.

Historically, the issue of child abuse has been ignored by our society, but in 1973 Congress held hearings on this question. These hearings were very sensational and led to the enactment of the Child Abuses Prevention and Treatment Act, called the Mondale Act. These laws were enacted with the best of intentions; however, they have led to disastrous results.

The first law was the Mandated Reporting Law. Today, doctors, clergy, psychiatrists, teachers and other professionals are required to report suspected child abuse. And, in an effort to protect these reporters from retaliation, legislators granted civil immunity from lawsuits to anyone reporting abuse. Furthermore, they also made it a crime for failure to report. At first glance, these laws appear to be good ones. In reality they have created some real dilemmas.

For example, what would you do if you were faced with a flaky case that you did not believe was true? On one hand, if you report it, you are given total civil immunity and protected. If on the other hand you fail to report, you subject yourself to criminal prosecution. This predicament has led to the reporting and the filing of millions of false accusation cases.

To prove these millions of cases, self-proclaimed child advocates came forth from various fields in the 1970's and are part of the cast of characters who are involved in the zealous prosecution of child abuse cases. And, they are the people who sit on this side of the courtroom with the prosecution, the people you will have to face in trial. Because of their own personal biases, inadequate training, and the dogma and misinformation so widely circulated, they don't listen to the falsely accused. One of these characters is represented by the mental health professionals.

Dr. Roland Summit , a psychiatrist, wrote an article that claimed that there was no such thing as a false accusation. He had conducted no controlled research, but in the political climate of the times, his concept swept across the country and became the accepted dogma of most mental health professionals. This dogma made the prosecution of these cases simple since people began to believe that there is no such thing as a false accusation.

Another group of child advocates from the medical professions came forth at this time and played a powerful role in the conviction of those falsely accused of child abuse and here is where they will testify against you. In 1981 Dr. Woodling , a San Luis Obispo pediatrician, wrote an article about what doctors should look for in examinations of vaginas and anuses to determine if the child had been sexually molested. His article was based upon the doctor's clinical observations and was not based on a controlled study. In other words, there was no statistical documentation of what a normal anus or vagina looked like for comparison.

Other doctors also wrote about their own clinical observations. They claimed that signs of sexual molestation included a vaginal opening greater than 5 mm, a rounded hymenal edge, hymenal projections or tags, increased vascularity, increased redness of the anus or the vagina. They even considered a "wink" of the anus during examination as part of the symptoms of abuse.

If any doctor said he had found a miracle drug which cured cancer, but that he had done no controlled research on it, he would be laughed out of the profession. However, because of the political climate around child molestation, this medical misinformation swept across the country and became accepted dogma. It also made it easier to prosecute all cases because virtually every child who made an accusation of molestation had one or more of these physical signs. The medical doctor is a dangerous character in these cases because of his lack of good scientific data and research.

One of the next laws that came into effect because of the Congressional Hearings in 1973 was the funding of the special units of prosecutors to prosecute these cases. Money was made available to each district attorney's office if the office would set up a special prosecution unit for child molest. Unfortunately, the system was totally out of balance at this point because no money for special units was provided for the defense of these cases. Not only was there an imbalance in the availability of funds between the prosecution and the defense, but this new system of funding had a second adverse effect.

Traditionally, prosecutors get a variety of cases: murder, rape, robbery, child molest, dope sales, grand theft auto, and so forth. But in these special units, they were assigned to only one type of case: child molest, child molest, child molest. They ceased being just prosecuting attorneys and became cause attorneys. They see themselves as the knight in shining armor out to save the children. And this is where they sit. Although I have met some very competent and ethical attorneys, it has been my experience that many of the prosecuting attorneys going into these units over a period of time become fanaticized.

Also some of the attorneys gravitate to these positions because of personal biases or experience with child molest. They don't listen to you because of their lack of objectivity, making the system even more unbalanced.

Another in the cast of characters that you will meet is the Child Protective Services worker. Currently there is no law that requires social workers to receive police training in how to conduct investigations. However, in the Juvenile Court, CPS conducts the investigations in all child abuse cases. Remember, CPS workers are actually social workers and they have been trained in the dogma surrounding child abuse. They believe that there is no such thing as a false accusation because that is what they're taught. In the role of therapist, a social worker has also been trained that it is harmful to the child if an interviewer challenges the word of the child and indicates disbelief. I became an attorney in 1974 and I have never seen a CPS investigation that concluded that an allegation of abuse was false. CPS is too biased to conduct an independent investigation and they are not properly trained in investigative methods. That is why they don't listen to you.

Another in the cast of characters that you will meet is the police investigator. He sits here next to the D.A. If you are accused of child molestation, the best thing that can happen to you is have an crusty, old homicide detective investigate you. That is because he will investigate you, your background, the alleged victim, the alleged victim's background, all possible motives for fabricating the accusations, the family of the alleged victim, and all other facts which may shed light on your case. Tragically, this time-honored method of investigation is no longer common in these cases.

While it should be the police who teach CPS how to conduct an investigation properly, it is CPS who is telling the police how to investigate. Social Workers have convinced the police that they do not understand children and children's issues and, therefore, social workers must teach the police how to interview children and conduct investigations in abuse cases.

Of course, the first lesson taught is that there is no such thing as a false accusation. The second lesson is that it is psychologically damaging to the children if the investigator challenged their story or did not believe them.

Because of the sheer volume of cases involved and the influence of the mental health professionals' dogma, the typical police investigation involves taking the statement of the alleged victim and, of course, giving the defendant an opportunity to confess.

There is rarely any follow-up on the leads provided by the defendant and there is rarely any background check on the child and the child's family. In this type of case you are considered guilty by the police and therefore they won't listen to you.

The Judge who will hear your case sits here. In the State of California judges are elected. I have heard many of them express fear about ever turning an alleged molester loose for fear that they might molest or kill a child. I can't count the number of times I have heard a judge say "I'd rather be safe than sorry, I'd rather err on the side of the child". That is

not the law - preponderance of the evidence is the law in juvenile court and beyond a reasonable doubt in criminal cases. Have we come to the point in our judicial system where we would rather convict ten innocent people, than let one guilty one escape?

As one of the characters in this system, judges need to be educated to the fact that the damage to the child in a false accusation case is just as severe as in a true molest case. Treating a non-abused child as an abused child causes severe psychological damage. That is why it is so dangerous to take the attitude that I'd rather be safe than sorry. What is in the best interest of the child is the truth.

Over there is where the jury sits. These 12 people will either acquit you or convict you. The jurors make up the last of the cast of characters that you will encounter. For years the public has been inundated with T.V. movies, documentaries, newspaper articles, and talk shows that deal with the issue of child molest. And, like the others who won't listen to you, the originators of this media hype have been influenced by the misinformation and biases that the doctors, mental health professionals and social workers have spread throughout the country. Years of this type of sensational media coverage has created an extreme bias within juries. They, too, believe that there is no such thing as a false allegation. However, it has been my experience again and again that education can overcome this preconditioning of the jury.

The last in the cast of characters is invisible to you in the courtroom. However, their symbol is here. They are the California Legislators. Each year hundreds of knee jerk, reactionary laws are proposed on the issue of child abuse. These laws attempt to make it easier to get a conviction by such things as allowing hearsay to be used in juvenile court, allowing the use of testimony of children by remote videos, etc. These laws are eroding the defendant's ability to defend himself. In the hysteria around child abuse, laws are being passed that destroy the delicate balance concerning the rules of evidence. Worse, these laws are eroding our constitutional rights to due process, confrontation, and equal protection.

Now that I've introduced you to all of the members of the cast, you need to understand the structure of the system that you can become bogged down in. One of the biggest problems in the area of child abuse is what I call the three-ring circus. In a typical case a divorce action is filed and there is a custody dispute. One of the spouses accuses the other of child abuse in order to obtain custody for themselves. You spend your time and resources fighting this accusation in the divorce court and then, BAM, the next thing you know you have been drawn into the juvenile court. Again, you must fight the charges in the juvenile court, spending your time and resources. The next thing you know you, BAM, you are charged in the criminal court. These three courts can drain almost anyone emotionally and financially. That is why I named it the three-ring circus. Some people even have to fight in a fourth ring. Teachers, lawyers, doctors, and anyone who holds a license in the State of California can have an administrative hearing brought against them to have their license taken away. And there is even a fifth ring to the circus. If you are military, you can have administrative discharge hearings brought against you by the

military, while you are being prosecuted in the other courts. It is truly an overwhelming situation.

Faced with this system out of balance, people are overwhelmed, and make the biggest mistake of their lives. I call this mistake -catch-22. My experience has taught me that plea bargaining is usually misused in the area of child molestation. That does not mean that under no circumstances should a plea bargain be entered into, but it should be entered into with your eyes open. The typical scenario is that you are charged with a couple of felony counts of child molestation. On top of that is an enhancement that calls for mandatory state prison. You are offered a plea of guilty or no contest to one count, in return, the D.A. promises to remove the mandatory state prison allegations. The carrot is that you might possibly obtain probation from the court. The stick, or what I would call legalized blackmail, is that if you refuse to take the deal they will stack counts. This means, for example, if you have been seeing the child every other weekend for 2 years and the child says that it happened every time you visited, you can be charged with an additional 52 separate felony counts of child molest, each one punishable by up to 8 years in prison. You could murder a child and get a lesser sentence. The carrot and the stick create unbearable pressure on an innocent person and there are few people who can withstand it. Because of this pressure many people have agreed to plead no contest to one count hoping to avoid state prison.

However, before the court can grant you probation rather than send you to state prison, you must have what's called a 288.1 psychological report. A mental health professional must evaluate you to determine if you are a danger to society and if you are amenable to treatment. The district attorney, of course, has some influence on who is being selected to do this evaluation.

So, you go in for the evaluation and you explain to the evaluator that you have not committed any child molestation, but accepted the deal to avoid going to state prison. He or she then writes a report which states that you are in denial and since you are in denial you are not amenable to treatment. The court then sentences you to prison. In an attempt to try to avoid prison you have in fact taken the fast track route to prison. Do not pass go, go directly to jail. That's catch-22.

There is also a juvenile version of catch-22. In that version you are in the juvenile court and you are confronted with two accusations. The first accusation is that you sexually molested your child and the second accusation is that your child is emotionally disturbed and needs therapy. The deal offered is that they will dismiss the sexual molest allegation if you will plead no contest to the allegation that your child is emotionally disturbed. It is explained that even if your child is making up false accusations, it is obvious that the family needs therapy and all they want to do is insure that you receive therapy. You enter into the deal and the sexual molest charge is dismissed and you plead no contest to your child being emotionally disturbed and needing counseling. You then request to have visits with your child. At that time you are considered an abuser by the system and are told that until you confess there can be no visits. Further, unless you confess there can be no reunification with your child. That is catch-22, juvenile version.

I have described for you a very grim picture of a system that is grossly out of balance. However, there is hope. Cases of child abuse can be won and the bias that permeates the system can be overcome. This is done through careful investigations and education.

The first step in correcting the imbalance in the child protection system does not occur in the courtroom, it occurs outside of the courtroom with the defense investigation.

The first level of investigation is investigating the allegations themselves. Are the physical acts described impossible? Are there witnesses who can testify that you were not with the alleged victim? Is there physical evidence that exonerates you, such as notes written by the child and found in their bedroom? Are there letters or diaries written by the child that show that you are innocent? Are there little friends the accuser has talked to who have evidence that proves you are not guilty? These are some of the areas that should be explored in investigating this type of case. Rarely are these areas of investigation thoroughly explored by the police or CPS during their investigation.

The second level of investigation is to find out why the allegations were made. This requires an inquiry into the background of the child and the child's family. Have there been prior false accusations? Has the child been exposed to other adults who may have molested the child? Is the child a teenager who is trying to cover up a feared pregnancy by a boyfriend? Is there a motive of revenge or jealousy against you that caused the false accusation? Complete background checks on everyone involved are necessary in order to discover this type of information.

The third level of the investigation is to uncover evidence of psychological motivations that cause false allegations. The investigator needs to be trained in such concepts as parental alienation syndrome, Cinderella syndrome, step-parent rejection, Munchausen Syndrome by Proxy, and many other psychological factors that influence motivation. In a trial, a big question in the jury's mind is why would a child make such an accusation? A psychologist can help explain what psychological factors influence a child to make such an accusation. The investigator must gather the facts to be provided to the psychologist. An investigator who is not trained in these concepts could easily overlook very important evidence.

The fourth level of investigation is to investigate for contamination by the police, CPS, parents, therapists, and even the child's peers. Contamination is information about sexual acts that the child learned from other sources rather than from being molested. Finding sources of contamination helps answer the question - how did the child learn about these sex acts if they never occurred?

The fifth level of investigation is conducting an investigation into the programming of the child. Programming is the rehearsing or the coaching of the child so that the child will be able to tell a believable and coherent story when questioned in court. An investigator should look into the number of times the child has been rehearsed by the prosecutor, police, social workers, therapists, victim-witness coordinators, designated support people,

parents or any other persons. This coaching process occurs when the child repeats the story to the investigating agency and each time the accusation is made the child is given positive reinforcement. When the child denies an accusation, the agency gives negative reinforcement. Rehearsing is also accomplished by the use of suggestive or leading questions when getting an accusation from a child. The information contained in the question is more important than the answer. In proving that programming has happened, it is important to establish that the child has been isolated from anyone who questions the truthfulness of the accusation and is surrounded with support people who believe that there is no such thing as a false accusation. This isolation with only true believers makes it psychologically impossible for the child to recant a false accusation.

A careful investigation is the first building block in a total defense. In fact, in approximately 1/3 of our cases a thorough investigation has led to dismissal of the charges at an early stage, thereby eliminating the need for a costly trial.

The evidence gathered through the defense investigation must be presented effectively to the jurors. One way of doing this is through the use of expert witnesses. You will normally need expert witnesses to present medical and psychological testimony.

Most so-called child abuse therapists still believe that there is no such thing as a false accusation of child molest. However, hundreds of articles and studies have come out over the last ten years exploring how:

- leading questions can cause false accusations
- positive and negative reinforcement can cause false accusations
- misuse of anatomical dolls can cause false accusations
- good touch and bad touch programs can cause false accusations
- accusers use false accusations to cover up their own early sexual experiences when they think they might be pregnant
- the list goes on and on

Now, I want to talk to you about the most common cause of false accusations: parental alienation during a divorce custody fight.

Over half of all marriages today end in divorce. Years ago the mother automatically retained custody of the child and the father got visitation. The laws were changed to make it as easy for the father to obtain custody as it is for the mother. Although at first blush this looked like a progressive change in the law, it has caused innumerable problems. What has occurred is an intense competition between the parents to gain custody because now either parent has a chance for custody. This competition becomes

extremely bitter and often results in creating false accusations of physical or sexual abuse.

This phenomenon has been examined and researched and has now been given the name Parental Alienation Syndrome.

The manifestations or signs of parental alienation syndrome exist when a child has a preoccupation with denigration and criticism of one parent that is unjustified or exaggerated. It appears that the child has one loved parent and one hated parent. A layman can very easily see the manifestations of parental alienation syndrome. The child always sides with one parent against the other. What is not so easy to see is the mechanisms by which one parent, the loved parent, can alienate or turn the child against the other parent, or the hated parent.

There are four causes of parental alienation:

- brainwashing by the loved parent
- subconscious and unconscious programming by the loved parent
- contributions which come wholly from within the child
- situational factors

It would take an hour to describe in detail what is involved in those four areas. However, here is a thumbnail description.

Brainwashing is the mechanism known by most laymen. Brainwashing is the conscious programming of the child by the loved parent against the hated parent. This is done by a campaign of denigration against the hated parent by calling him an abandoner, an adulterer, or irresponsible homebreaker. The actual underlying reasons for the divorce are never talked about with the child. The child is informed that the father does not love the child, never spends money on the child, is an alcoholic, is violent, or uses drugs. In brainwashing the loved parent is fully aware that they are attempting to turn the child against the hated parent.

Another mechanism is termed the "unconscious factors". In fact, unconscious factors are far more effective than brainwashing. The loved parent or the person who is causing the alienation can profess a total innocence about what they are doing because they, in fact, do not realize the damage that they are causing. There are thousands of unconscious factors that can turn a child against one of its parents. These would include such things as:

- a frightened voice when speaking to the ex-spouse.

- frivolous reasons for missing visitations, such as a headache or purposely scheduling events during the ex-spouse's visitation times.
- adultifying children by giving them the decision on whether or not to have visits and then supporting them when they don't want to visit.
- making children feel guilty about time spent with the ex-spouse by telling them how much you will miss them if they go.
- having continuous arguments with the ex-spouse in front of the child concerning visitation or money.

A major alienating factor is moving away from the hated parent to find "better employment" when the true underlying reason for the move is to decrease the amount of time that the ex-spouse can spend with the child. A long campaign of subconscious programming is more effective than overt brainwashing. It destroys the bond between the ex-spouse and the child.

The third factor that influences a child to make false accusations is one that is not normally recognized. This involves factors within the child that are independent of the parents. A child who has a basic psychological bond with the loved parent that is stronger than that with the hated parent will do anything to maintain that bond with the loved parent. Remember, the child feels that they were once abandoned by the hated parent when the divorce occurred. The child does not want to be abandoned a second time by taking sides against the loved parent and will do anything to maintain that bond with the loved parent. One of the ways that this is done is by making complaints against the hated parent. The child then gathers support from the loved parent. The child is fearful of expressing love for the hated parent for fear that it will displease the loved parent. The complaints can start out as minor complaints. But when the child custody battle becomes ferocious, the small complaints escalate into accusations of child abuse.

Situational factors are the fourth mechanism for parental alienation. A false accusation is often made at one of two moments. One time is just prior to the hearing on child custody and another time is just prior to the wedding of the ex-spouse to another woman or man. These events can challenge the status quo of the child and precipitate a false accusation. I've always been amazed at the gullibility of people who believe that a father for 12 years with no prior molest accusation would molest his daughter a week before a child custody hearing.

In order to understand parental alienation one must understand the motivational factor of the alienating parent. It is not love for their children, but revenge against their ex-spouse. If the alienating parent really loved her children she would realize that having a healthy relationship with both parents is what is best for the child. Instead, they continue the war with the ex-spouse through the child. The obsessive love for the child is a cover for the feelings of hatred toward the ex-spouse. This parental alienation process is used to show

that there is another explanation for the accusations that have been made against the hated parent. It is a study of the factors that cause a child to falsely accuse a parent.

Now that you understand the need for qualified psychological experts to present evidence, let's talk about medical experts. People are still going to jail based upon the unscientific misinformation in articles written over 10 years ago. The conclusions in those articles are still accepted as evidence that a molest occurred.

In the mid 1980's Dr. Lee Coleman wrote an article entitled "Medical Examinations of Sexual Abuse, Have We Been Misled?" He pointed out that the earlier articles had been based upon unscientific methods. The authors had failed to conduct controlled studies to establish what was the range of norms for non-abused children. He warned against the dangers of using this unreliable information in court.

Then in 1987 Dr. Emans of Harvard Medical School published one of the first controlled medical studies. In that study she separated children into three groups - abused children, non-abused children, and non-abused children with a medical history of vaginal infections. The results of that study indicated that non-abused children who had suffered from vaginal infections had scarring in their vaginas similar to that found in abused children. Experts had been testifying that this scarring could be caused only by sexual molestation. Men have gone to prison based on this testimony. We had been misled.

Furthermore, in 1989 a medical team headed by Dr. John McCann did the first controlled studies of anuses of non-abused children. In 1989, in a separate study, Dr. McCann did the first controlled study of vaginas of non-molested prepubescent girls. The controlled studies found that:

- 41% of the children had erythema or redness
- 26% had areas that looked like scars, but were not
- 44.8% total had projections or tags on the hymenal edge
- 69.7% had thickened or rolled edges of the hymen
- 31.3% had increased vascularity
- vaginal openings varied up to 8 mm

These controlled studies have proven that this prior testimony about sexual exams is false. However, we still have three problems. The first is that there are people in prison today because of this medical misinformation. The second problem is that there are doctors still basing their testimony on this misinformation. The third problem is that medical doctors do not want to testify for the defense because they are afraid that they will be seen as pro-molest and their practice will die out. On one occasion when I needed an expert to testify about the controlled studies, I had to go through 35 doctors before I

could find one who was willing to testify about the misinformation that existed in the medical profession.

Failure to effectively rebut the misinformation about medical examinations will lead to a conviction. A medical doctor educated in the latest studies is an essential building block in the defense.

Medical experts are necessary not only to disprove sexual abuse, but physical abuse as well. In this area a relatively obscure type of expert is essential to defend cases concerning shaken baby syndrome, internal injuries, and broken bones. They are called biomechanical experts. In one of our cases, a father, while performing a one legged diaper change, heard a pop and took the child to an emergency room. The child had a spiral fracture. The expert for the government stated it would take an "extremely violent force" to create a spiral fracture of the femur. She had no studies nor any research to support her opinion. A survey of defense medical doctors also turned up no studies or research that would explain what occurred.

Our firm conducted our own worldwide computer bank research looking for studies dealing with this area. The first study we found was from a hospital in Sweden. The researchers took dog bones from euthanized animals and placed them under torsion, but without enough torque to cause the bone to break. Microphones were hooked to the bones and they were able to hear that micro-cracking was occurring. Repeated small torsions finally led to the breaking of the bone. This would be analogous to metal fatigue in an airplane. This phenomena was not known to have occurred prior to this study.

The second study was also from Sweden which showed that the ability of a child's legs to stand up to a torsion force increases dramatically during the first year of life. Therefore, the younger the child, the easier it is to break a child's leg by torsion.

A third study was located in England which was performed on the bones of euthanized rabbits. This study is believed to simulate closely the amount of torque necessary to create spiral fractures in children's legs. It was found that the amount of torque necessary to cause the breaking of the bone with one torque action is similar to the amount of torque that is generated when an adult holds a ten pound weight in his hand and rests his elbow at the end of a table. The amount of torque experienced in the elbow joint is the amount of torque it would take to break a bone with one twist.

A fourth study from Germany, had never been translated before into English. This study was actually conducted on the bones of young children who had recently died. It was able to establish the amount of force necessary to break bones. The results of the study supported the conclusion in our case that the cause of the baby's broken leg was the result of hundreds of one legged diaper changes being performed by the father. This led to micro-cracking in the bone similar to metal fatigue. The father had told the truth from the beginning and his version was scientifically supportable. The lesson learned is - do not rely on "child abuse experts". They rarely have studies that support their position because they are political positions. Instead, in cases of physical abuse you must find the

actual laboratory studies in order to support your defense and educate the jury. Political positions don't win trials, evidence wins trials.

Now, as we have shown you, evidence is the attorney's weapon in the court battle. You must block irrelevant and prejudicial evidence from being introduced against you. However, you must also insure that evidence supporting your defense is held admissible.

This is where the court clerk sits. Here is where you file your motions in limine. Motions in limine are motions that are designed to block irrelevant and prejudicial evidence from being introduced by the prosecution. Here are some actual motions in limine that are ready for filing:

- motion to exclude sex acts with other children
- motion to exclude other sex acts that are dissimilar, remote or have no good faith basis
- motion to exclude other uncharged sex acts with the same minor
- motion to exclude defendant's character for alcoholism or drug use
- motion to exclude defendant's adult sexual conduct with other adults
- motion to exclude evidence of profiles of child molesters
- motion to exclude hearsay statements of the alleged victim
- motion to exclude expert witnesses opinion that the child is a victim of sexual molest
- motion to exclude post-molest symptoms of the alleged victim
- motion to exclude testimony regarding anatomical dolls
- motion to exclude police officers, psychologists, psychiatrists, counselors, or parents opinions regarding the victims veracity concerning the alleged molest
- motion to exclude expert witnesses opinion based upon interviews with the complainant as a denial of equal protection

There are many more. Over the years we have developed motions in limine that cover every evidentiary issue that can come up in these cases.

The general public believes that the prosecution is just out to prove the truth. But in every case I have been in lately they are trying to block the introduction of the defense, especially evidence that explains why the child is making a false accusation.

The points and authorities on admissibility are documents that are filed here with the clerk. The motions give the legal grounds for why the defense evidence should be heard in the trial. Here are some typical points and authorities:

- points and authorities on constitutional right to present a defense
- points and authorities on admissibility of the defendant's character from non-deviant sexual behavior
- notice of motion and motion for introduction of evidence of sexual conduct of the complaining witness
- points and authorities on prior false accusations
- points and authorities on admissibility of parental alienation syndrome
- points and authorities on admissibility of third party culpability evidence
- points and authorities on admissibility of the defense expert's testimony and psychological factors effecting memory
- points and authorities on admissibility of the complainant's victims psychiatric records

These are but a few of the motions we file on the admissibility of evidence. Research must be conducted and motions written for each new or innovative defense. You do not want to enter into a trial without case law supporting the admissibility of your defense. As you can see, motions are a key part in building a defense that controls what evidence can be admitted in the trial and what evidence must be excluded.

Now that you have more insight into the complexities of these cases, you will want to know what it costs to defend yourself. Attorney's fees and costs vary and, without knowing the particular facts of your case, it is difficult to provide an accurate estimate. However, we can discuss some of the factors involved to help you prepare financially for trial.

Let's first talk about investigators. A thorough investigation must be the top priority if you hope to prove your innocence in court. Private investigators range in cost from \$50 to \$60 per hour. In many cases no investigation is necessary because we have access to all of the facts. In those cases the cost would be zero. However, the average case costs approximately \$2,500 in investigation time. Complex cases can cost \$5,000 or more depending upon the number of witnesses to be interviewed and the complexity of the case.

To lay the foundation for your defense and to neutralize the prosecution's witnesses you must find your own good expert witnesses. Psychologists range in price from \$100 to \$150 per hour. They are not necessary in all cases. However, in the cases in which they

are needed the average cost to prepare and testify would range between \$1,500 and \$5,000, or more.

Medical doctors are the most expensive experts. Costs range from \$250 to \$350 per hour. They are absolutely necessary for the defense when the prosecuting government agency has its own medical expert. The cost for a medical doctor to testify about the controlled studies which we have earlier discussed could range in cost from \$3,500 to \$5,000, or more.

When estimating the fees for the attorney remember that lawyers usually charge by the hour in juvenile, administrative, family law courts. The average cost per hour is approximately \$140 to \$200 per hour. It is impossible to estimate the number of hours needed to prepare a case in these courts because each case varies greatly. Further, if the case is broken at the investigation stage and there is no trial, attorney's fees can be relatively small.

However, if the case is one that has to go all the way through trial, one must be prepared for the fact that it is going to be expensive.

In criminal cases, it is easier to estimate the amount of time necessary and therefore attorneys many times will quote a flat fee rate. In the municipal court, which is where it is determined whether or not there is enough evidence to bind the case over to trial, attorneys in Northern California usually charge between \$5,000 to \$10,000, or more.

If the case is not settled and depending upon the attorney and the complexity of the case, proceedings in the superior court will cost an additional \$5,000 to \$10,000, or more. Multiple alleged victims, of course, make the case more expensive to try.

On the average, attorney's fees of \$1,500 per day of trial are normal for this area.

Now you can understand why these cases are so complex and expensive to try. Even if you win your case, you should understand that you are likely to be permanently scarred by this experience. One thing that you need to remember should your case go to trial, is that you are in for the fight of your life. You must be ready to fight it now or it will eat you alive.

We hope that you now better understand the system in which you are ensnared and know what questions to ask when selecting an attorney. If falsely accused, you must realize that there is hope and that you can affect the extent to which those charges will impact your life.

Goodbye and good luck with your case.

In the name of child protection, the fundamental rights granted under our constitution, that protect each and every one of us, are being eroded. Our system of government is based on the concept of checks and balances. That system of checks and balances has

been destroyed by the widespread granting of immunity to social workers, doctors, therapists, mandated reporters and virtually everyone involved in child care. Our society will continue to suffer from the negligent or intentional acts that lead to false accusations as long as people are not held accountable for their actions. Only the California legislature can remove this blanket of immunity and make people accountable. If you are now accused of child abuse, you cannot wait for the laws to change and for the hysteria surrounding this issue to subside. You must fight it now and you must fight it with every means available to you or it will destroy you.