Preserving Balance in Forensic Psychiatry

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There was a time when people believed that children's claims of sexual abuse were always fantasy. I spent a considerable amount of effort in the first 10 years of my career in child and adolescent forensic psychiatry trying to convince pediatricians that they should take seriously the sexual abuse allegations made by children. As the pendulum of public opinion has swung in the other direction, I find myself trying to convince these same pediatricians, and also prosecutors, that not all claims by children are valid. It seems that the myth of fantasy has been supplanted by the myth that children never lie or make false allegations. Any child psychiatrist and certainly most parents know this is not true. Unfortunately, sexual abuse validators and prosecutors do not seem to understand this. Or they do not want to. The legal system has moved from pursuit of justice to a system in which the adversarial system reigns supreme in a very distorted form. It has always been clear that defense attorneys try to defend their clients vigorously and that prosecutors can be counted on to behave similarly. However, there has been the belief that the prosecutors have a slightly broader responsibility and that is to achieve justice, not just a conviction.

I have been pleased to work with fine prosecutors who have the legal grounds for criminal prosecutions and possibly for long prison sentences, but who have not pursued such ends because, with a psychiatric understanding of the defendant, they have concluded that a long prison term would not be truly justified. There are fewer instances of this in the realm of sexual abuse charges. Perhaps this is because it is such a heinous crime to abuse a child sexually, especially if the perpetrator parent has the responsibility of nurturing and caring for the developing child.

However, we should especially maintain perspective and balance when the crimes are so emotionally charged. I have witnessed what I believe was a travesty of justice when a grandfather, urologically incapable of achieving a penile erection, was convicted of criminal sexual abuse (including penile penetration) of his granddaughter on allegations arising during the time that she was psychotic and hospitalized in a psychiatric facility. Another instance occurred when a father took over the daily feeding and hygiene needs of his two preschool daughters. At the time, his wife was hospitalized, undergoing surgery and rehabilitation. Allegations of inappropriate touching were made, and it seemed obvious that the miscommunications arose from his inexperienced bathing techniques. The prosecutor, however, isolated these children in foster placement and kept both parents from them while the children were prepared for court. The potential for contaminated memory in rehearsing testimony was so great in these young children that their testimony should have been precluded. I questioned whether the alleged sexual abuse was worse than the separation of the children from their mother for nearly a year at such a tender age. Metaphorically, we certainly should not kill a fly that has landed on our foot with a shotgun blast. Similarly, we should maintain perspective in our treatment of differing degrees of abuse. Our solutions, both temporary and permanent, must be tempered by the severity of the causative abusive actions.

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The world is not perfect and neither is our science. We must learn to accept some ambiguity and uncertainty. For example, we cannot expect an autistic child who cannot remember what she had for breakfast to recall accurately whether she was sexually molested by her father. Yet I have seen social welfare workers attempt to have autistic children testify under oath. In cases of minor abuse, do we really want to have overkill in our protection of the child? It simply is not appropriate to take an otherwise well-adjusted, happy autistic child from her lifelong home and nuclear family when she may have been the victim of, at most, minor sexual abuse. This is particularly true, given the nature of autistic children's sexual behaviors when the abuse is most likely self-inflicted or caused by a pubescent male sibling, rather than the father (who was the focus of the investigation). We must have balance in our weighing of the competitive traumas: the disorder versus the cure. Oncologists do this daily, but we are not yet so experienced.

We yearn to have answers and to have solutions. We want to prosecute the wrongdoers and protect the innocent. Children need us to be vigilant in identifying and correcting abusive environments. But the children also need us to be mature and to use judgment and balance in our assessments and in our recommendations for corrective actions.