Incest and Intrafamilial Child Abuse: Fatal Attractions or Forced and Dangerous Liaisons?

George P. Smith II

*The Catholic University of America, Columbus School of Law*

Follow this and additional works at: [https://scholarship.law.edu/scholar](https://scholarship.law.edu/scholar)

Part of the [Family Law Commons](https://scholarship.law.edu/scholar)

**Recommended Citation**


This Article is brought to you for free and open access by the Faculty Scholarship at CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.
INCEST AND INTRAFAMILIAL CHILD ABUSE: FATAL ATTRACTIONS OR FORCED AND DANGEROUS LIAISONS?

George P. Smith, II*

I. INTRODUCTION

Incest may be defined as an "illicit sexual relationship between persons in degrees of consanguinity excluded from such relationship by socially determined regulation." It occurs within three basic dyads: mother-son, father-daughter and full siblings. Incest, not cannibalism,

* B.S. and J.D., Indiana University; LL.M., Columbia University. Professor of Law, The Catholic University of America.

My ideas for this essay and the preliminary research for it began in July 1981, when I was a Visiting Scholar at The Kinsey Institute for Research in Sex, Gender and Reproduction at Indiana University, Bloomington, Indiana. Subsequent writing projects and far too much procrastination intervened, and I was unable to continue my research until July 1988, when I was a Visiting Fellow at the McGill University Center for Medicine, Ethics and Law in Montreal, Canada. I acknowledge with gratitude the resources made available to me there and I thank sincerely the director of the Center, Professor Margaret Somerville, for her many kindnesses and support.

During the Easter term 1989, I was the visiting fellow in Law and Medicine at Hughes Hall, Cambridge University, and a visiting member of the faculty of Law where I continued my research and writing of this essay. I thank most sincerely Keith J.A. McVeigh, Esquire, S.R. Pirrie, Esquire, and F.G. Dawson, Esquire, fellows at Hughes Hall, for their innumerable kindnesses. Additionally, Mr. McVeigh, as librarian of the Squire Law Library, showed himself, as always, to be a most efficient and professional ally. Dr. Basil M. Herbertson, then the president of Hughes Hall, was also exceptionally gracious and supportive of my research, personal well-being and professional goals, and I thank him as well.

Finally, in July 1989, I was a visiting scholar at the Biblioteca Apostolica Vaticana in Rome where I concluded my research. I acknowledge with appreciation the assistance of Fr. Leonard Boyle, director of the Biblioteca.


Anthropologist Margaret Mead defined incest as "the infraction of the taboo upon sexual relations between any two members of the nuclear family except husband and wife, that is, between parents and children or any sibling pair." She further noted that sexual relations between relatives or categories of kin whose relationship ties may be biological, affinal, classificatory or fictive will be treated as incest.

was universally recognized as the world's first taboo. Because of this, it has been suggested that incest may well "have been built into the human mechanism from the very beginning . . . ." Thus, in its most basic form, incest is regarded as inbreeding.

Professor Edward O. Wilson of Harvard University, regarded as the modern father of sociobiology, has cautioned that inbreeding at either the brother-sister level or parent-child level increases drastically the incidence of homozygosity and genetic defects. Therefore, if any psychological barriers to incest exist or any inborn propensity that directs mating beyond the circle of closest relatives is recognized, a net reproductive biological advantage will occur. Accordingly, if all other things remain equal, those individuals either having or expressing a genetic propensity to avoid incest—by whatever means—will contribute more healthy offspring to the next generation than those either lacking the propensity or failing to express it. Natural selection will then remain the rule rather than the exception, and the opportunity for genetic stability will be enhanced.

Studies of African baboons reveal a breeding system that virtually rules out the possibility of incest. Other apes and monkeys have also demonstrated a built-in incest taboo, though on a lesser scale. Macaque monkey mothers, for example, avoid mating with their sons, and it is believed that chimpanzees do likewise. But, interestingly, gibbons are not equally self-constrained; a gibbon father deprived of his wife will mate with his daughter and a widowed mother with her son. It is far beyond the scope of this article to probe the Freud-Westermarck debate regarding whether people's desire to commit incest requires it to be prohibited, or whether it is an improper act that is naturally inhibited. Instead, what is important to a contemporary study of the issue is

---

4 R. TANNAHILL, supra note 3, at 28.
5 Id. See also A. ELLIS, THE ORIGIN AND DEVELOPMENT OF THE INCEST TABOO (1964).
7 J. SHEPHER, supra note 2, at xi. See generally Herrnstein, IQ and Falling Birth Rates, ATLANTIC MONTHLY 73 (May 1989).
8 R. TANNAHILL, supra note 3, at 29.
an appreciation of the two central methodological problems inherent in any examination of incest: the heretofore limited opportunities for empirical research and the coordinate universality of the basic variables at work.\textsuperscript{10} Because of these inherent weaknesses in any study of the subject, it will be impossible for some to accept the time-honored premise that incest is indeed disruptive, if not ruinous, to the whole of society. Such individuals will be content to show that there are already significant amounts of consensual incest activity that may well be beneficial and supportive of family cohesion,\textsuperscript{11} and that one can, over time, adapt to the initial trauma normally associated with it.\textsuperscript{12} These individuals advocating relaxation of incest prohibitions argue that society unwisely and unnecessarily imposes social guilt and stigma on the innocent victims of the act. "The shame they suffer is not natural guilt, but rather the effects of social banishment."\textsuperscript{13}

Regardless of this perspective, the underlying dynamics of incest clearly illustrate that the female participant is always the victim and never the partner. Incest is child abuse and rape.\textsuperscript{14} Parent-child incest inherently involves a "fundamental betrayal of trust,"\textsuperscript{15} which no amount of social-psychological theorizing can explain away or render acceptable through tolerance. Simply stated, to condone or accept an abolition or relaxation of the social and legal prohibitions against incest is to invite the slow but sure dissolution of the family as the foundation of the social fiber of America, the nation’s \textit{elan vital}. While consanguineous—or same-blood—relations found in the three basic incest dyads should not be tolerated, marriages between collateral relatives of affinity (those having a relational status only by marriage) could be allowed because, as such, they are outside the bounds of the nuclear family and accordingly pose no threat to its continuation nor threaten to significantly pollute the gene pool.

To varying extents, child sexual abuse has been a part of every culture and, indeed, every generation.\textsuperscript{16} Only within the last decade has

\textsuperscript{10} J. Shepher, supra note 2, at 4.
\textsuperscript{11} J. Twitchell, \textit{Forbidden Partners: The Incest Taboo in Modern Culture} 15 (1987).
\textsuperscript{12} Id. at 16.
\textsuperscript{13} Id.
\textsuperscript{14} Id. at 17.
\textsuperscript{15} Id. at 18.
\textsuperscript{16} M. De Young, \textit{The Sexual Victimization of Children} (1982); J. Boswell, \textit{Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the
public attention been focused on it, however.\textsuperscript{17} Aided in no small part by investigative print and broadcast media, the degenerate and pathetic realities of some family life patterns have been publicized and found shocking.

Researchers must undertake a more sophisticated study to determine the etiology of child abuse and thereby attack the inherent reasons for its alarming development. Definitional precision must be utilized in refining existing legislation in this area and, when necessary, in drafting new remedial plans. Legal practitioners must seek to develop closer professional ties with mental health care professionals and learn to better utilize their skills and expertise when coping with the aftermath of child abuse litigation.

As observed, there is an inextricable relationship between incest and child abuse. The combined continuance of incest and intrafamilial child abuse presages the imperilment, if not collapse, of the bulwark of the social order—the family. Individuals simply must be made to understand that incest and child abuse are intolerable. Society must impose severe punishment for offenses of this nature. Of course, where possible, rehabilitation must be sought as well; if there is no effort to educate and retrain, the venomous cycle of repetition will recur. The abused, over time, become abusers themselves.

Incest as a social phenomenon can be best studied and analyzed at different cross-cultural levels. These include biological, psychological and sociological perspectives,\textsuperscript{18} as well as literary, canonical and legal ones. Especially important is the literary perspective, for it is the popu-

\textsuperscript{17} M. De Young, \textit{supra} note 16; F. Rush, \textit{supra} note 16.

\textsuperscript{18} See J. Twitchell, \textit{supra} note 11, at 243, Appendix: A Synopsis of the Biological, Psychological and Sociological Approaches to Incest. References are made to these three particular levels throughout the essay rather than in one specific section. Because of the structural limitation of this essay, these references cannot be taken as in-depth analyses. Therefore, reference has been
lar literature of the day (in all its permutations) that perhaps best chronicles contemporary culture.

II. CROSS-CULTURAL PERSPECTIVES

A. Historical

While study of the origins and ends of the incest taboo is the central focus of anthropology, psychology prefers to deal with clinical studies of actual incest offenders. History takes yet a broader focus and studies the incidence of incest set within the context of world events, especially humanity's efforts to evade, ignore, challenge and manipulate the taboo. Although history shows that the incest taboo has been abrogated and sanctioned from time to time (usually very narrowly and under ascribed circumstances), such an occurrence is the exception rather than the rule.

Incestuous marriages in ancient times were permitted within the royal families of several Eastern countries—notably Egypt in the fourth dynasty, 2700-2650 B.C., and Persia and Caria in the third and fourth centuries B.C., as well as Japan and Korea. After the initial introduction of consanguineous marriages in the fourth dynasty in Egypt, they emerged again in the eighteenth or sixteenth century B.C. In fact, for a period of three hundred years under the reign of the Ptolemies, royal incest was practiced with considerable fervor. It was not until Cleopatra's death (herself a wife to two full brothers) that the tradition was broken. Under subsequent Roman rule, however, the custom of sibling marriage was passed to the common people where it continued until abolished by the Emperor Diocletian in 295 A.D.

In the Western world, only the Incas and the Hawaiians sanctioned incest. When disclosed, incidents of incest occurring from time to time in Greece and Rome could easily "wreck a career or destroy a dynasty." Prohibitions against incest became more strongly entrenched in the West with the end of the Greek and Roman empires.
This was due to both the Christianization of the Western world and the Judeo-Christian faith's abhorrence of incest.\(^4\)

Interestingly, in certain biblical accounts, incest was not only tolerated but actually condoned. Notable here was the union of Adam and Eve, the marriages of their children, Lot's incest with his daughters, Tamar's incest with her father-in-law, Judah, and Abraham's marriage to his half-sister, Sarah.\(^5\) These early biblical accounts of incest were justified on the grounds that they were necessary for the survival of the race.\(^6\) With the introduction of the Mosaic laws, incest—for Jews and Christians alike—was condemned unequivocally.\(^7\) Not only were past incidents of incest in the Old and New Testaments censured, but Leviticus and Deuteronomy defined its parameters narrowly and forbade its practice.\(^8\)

**B. Titillating Secrets and Advertising Ploys**

Whether subtly or directly, the advertising industry has exploited the popular curiosity about incest. Wide use within the industry and subsequent public acceptance point clearly to the fact that "we are drawn to contemplate, for reasons ranging from titillation to revulsion, sexual acts in fiction which we would abhor, or at least avoid, or profess to avoid, in reality."\(^9\) All too often, however, the heretofore separate

\(^4\) See supra note 19, at 6.

\(^5\) See Gen. 2:22-25; Gen. 17:26; Gen. 37; Gen. 19:30-38. See also Davis, Incest in the Bible, 7 NEW CATHOLIC ENCYCLOPEDIA 419 (1967).

\(^6\) See supra note 19, at 6.

\(^7\) Id.

\(^8\) The following incestuous unions were prohibited: those of son and mother; of a man with the wife of his father (Lev. 18:8; Deut. 27:20), with the mother of his wife (Deut. 27:23), with his granddaughter or his wife's daughter or granddaughter (Lev. 28:10, 17), with his sister or half-sister (Lev. 28:9; Deut. 17:22; but see Gen. 20:12); of a nephew with his aunt (Lev. 18:12-14; Exod. 6:20); and of a man with his daughter-in-law or his sister-in-law (Lev. 18:15-16; 20:21). Penalties for incest were death (Lev. 20:11-17), excommunication (Lev. 18:29) and being cursed (Deut. 27:20, 22-23), e.g., by being childless (Lev. 20:21). In both the Old and New Testaments, instances of incest are noted and condemned: Amnon's rape of Tamar, his sister; Absalom's incest with his father's concubines; the marriages of Herod Antipas to his niece and to his sister-in-law; and the incest condemned by Paul of a man with his stepmother. See 2 Sam. 13:1-32; 2 Sam. 16:21-22; Mark 6:17-18; 1 Cor. 5:1-12.

\(^9\) J. TWITCHELL, supra note 11, at 31. Perhaps the most sensational recent advertisement that adverts to incest is a Pepsi Cola commercial showing two teenage girls preparing themselves in their bedroom for a date. The girls appear to be sisters and compete with each other for mirror space as they apply their make-up. It is obvious that they are competing to see who can be the sexier as a camera focuses on various of their body parts while a can of Pepsi passes by slowly. At last, the doorbell rings and the sisters hurriedly put their hair brushes, powders, lipsticks and Pepsi down on a table and rush downstairs to greet their date—Daddy! Id. at 30, 31.
What we imagine in fiction has a tendency to become what we must confront in reality. But knowledge works both ways. The impact of simply hearing a terrible secret often enough makes it first less terrible, and then less of a secret. As long as incest is hidden by the mantle of secrecy, as long as it is an unspeakable subject, it will continue to have potency far in excess of what may be necessary for the general welfare.

C. The Literary Focus—Past and Current

Literature presents a frozen cultural time zone. Current social problems are presented and explicated. In a sense, literature incorporates the three previous approaches—anthropological, psychological and historical—used in the study of incest. The critical difference in approach is to be found "in the writer's interest in incest not only as a reality, but also as a symbol, his concern with the multitude of directions in which incest points."

Historically, incest abounds in Western literature. It first appeared in Homer's works, then in those of Aeschylus, and subsequently it constituted a dominant theme in *Oedipus the King* by Sophocles. The same consequence always attended its practice: disaster.

While the literature of the Middle Ages paid scant attention to incest as a theme, the Renaissance revitalized it as a literary focus. The Neoclassical period found incest an occasional source of exposition, but the theme was always muted. The Gothic works of drama and literature of the late eighteenth and early nineteenth centuries revived the

Other prominent advertisements have been presented ambiguously for use of Old Grand-Dad Bourbon and Braemer Sweaters, the latter of which by-passed implication in favor of direct statement. Thus, "[i]f Mommy, who is the more likely reader of the ad than Eunice, wants to make sure she keeps Daddy for herself and far from Eunice (even though Eunice will clearly get the job and stay by Daddy's side), she had best buy the sweater." *Id.* at 28.

*Id.* at 31.

*Id.* at 32.

*Id.* at 8.

*Id.*

*Id.*

*Id.* at 9.

*Id.* Shakespeare's overwhelming attention in his drama fixates on the relationship of fathers to their daughters, and at precisely the moment when the daughters cease to be within the exclusive possession of their fathers. Some eight basic variations or categories of such relationships are found in 21 of the bard's plays. His actual life spanned the period from 1564 to 1616. M. TAYLOR, *SHAKESPEARE'S DARKER PURPOSE: A QUESTION OF INCEST* (1982).
theme of incestuous relationships and focused on the unconscious way in which they were consummated and the swift punishment that ensued.\textsuperscript{37}

The literature of the Romantic period saw a continuation of incest as a literary theme. Incest often was idealized even when it was committed consciously and when it signified not only alienation and isolation, but also narcissism.\textsuperscript{38} Now, near the close of the twentieth century, it is quite obvious in retrospect that the theme of incest has thrived throughout literary history and will probably continue to thrive in the future. In some current works, the act of incest is "committed knowingly and deliberately by a couple fully aware of their blood relationship."\textsuperscript{39}

\textbf{D. American Themes—Faulkner's Paradigm}

Incest as a literary theme pervades American literature.\textsuperscript{40} William Faulkner realized and developed the theme in a number of his works: Absalom, Absalom; Flags in the Desert; The Sound and the Fury; The Wild Palms; Knights Gambit; Pylon; The Unvanquished; Go Down, Moses; Sanctuary; As I Lay Dying; and Mosquitoes. Faulkner's pervasive use of incest in these works is as a metaphor for "the original evil . . . the Fall of man."\textsuperscript{41} Faulkner associated incest with countless disasters—alcoholism, promiscuous behavior, catastrophic marriages, dismal and sterile lives, fratricide, exile and suicide.\textsuperscript{42} Although he drew from studies of incest in anthropology, psychology and history, Faulkner appears to have gained his most important insights from literature, especially Somerset Maugham and Lord Byron in Flags in the Dust,

\textsuperscript{37} \textit{Id. at} 10, 195. The pre-romantic treatment of incest could be characterized as "reflexively condemnatory"; and the most popular or basic incest scenarios were to be found in Milton's \textit{Paradise Lost}. \textit{Id. at} 80.

\textsuperscript{38} \textit{Id. at} 10. The "poeticization" of sibling incest reached a high point of discovery and elucidation in the works of Percy Bysshe Shelley, 1792-1822. He, in addition to William Blake, 1757-1827, became recognized as the commentator of his day on the quintessential modern family problems of inbreeding. His views of sexuality were taken as not only radical but shocking. J. Twitchell, \textit{supra} note 11, at 97. In most of Charles Dickens' (1812-1870) novels where child relationships are in focus, incest is more often implied than stated. M. Taylor. \textit{supra} note 36, at 162.

\textsuperscript{39} C. Hall, \textit{supra} note 19, at 11 (referring to, among others, Somerset Maugham's \textit{The Book Bag}; Iris Murdoch's \textit{The Severed Head}; Robert Jeffers' \textit{Tamar}; and Thomas Mann's \textit{The Book of the Walsungs}).

\textsuperscript{40} J. Twitchell, \textit{supra} note 11, at 195.

\textsuperscript{41} C. Hall, \textit{supra} note 19, at 89.

\textsuperscript{42} \textit{Id. at} 90.
Sherwood Anderson in *The Sound and the Fury* and Oscar Wilde in *Sanctuary.* Thomas Mann and Milton were also strong sources of inspiration; "Faulkner owes much to *Paradise Lost* and its concept of incest as a metaphor for the original sin."

E. Contemporary Sub-Plots

When literature is viewed as an expression of the "external communal psyche," contemporary society remains much as it was in the nineteenth century vis-a-vis the incest problem. While art and its sister media have been "energized by incest," the social sciences are not of one posture in placing and evaluating it within modern society. In this regard, interdisciplinary study holds great promise for continued investigation and analysis.

Current literature also shows decisively that the family, as a structured unit, is becoming less and less structured. As for the issue of incest, deep-seated anxieties and conflicts exist and are being examined in greater depth. This study can only be of positive value, for it raises to a conscious level of discourse what has heretofore been both voluntarily and, depending on the social strictures of the day, involuntarily muted.

F. Language, Popular Culture and Fairy Tales

In phrases of popular language and jokes, aversions to forbidden behavior patterns show clearly the popular distaste that the incest taboo holds. For example, unconscious linguistic triggers of revulsion are to be found in the phrase, "He's old enough to be her father." While at first blush innocuous, this observation is pejorative in that it evokes the father-daughter paradigm.

A multitude of folk, popular and country-western songs address "baby" or "daddy" and lament the emotional heartache of displaced fathers and daughters. Jokes also embody popular cultural attitudes toward incest. In *Mountain Mother,* the line goes, "My, Billy, your prick is bigger than Dad's!" Billy: "Yes, that's what sister always

---

43 Id. at 91.
44 Id.
45 Id. at 239. See also J. TWITCHELL, supra note 11, Ch. 4.
46 C. HALL, supra note 19, Ch. 14.
47 J. TWITCHELL, supra note 11, at 53.
48 Id.
In addition, the mountain definition of a virgin is “[a] girl who can run faster than her brother; or, a girl who has no brother.”

Mother-son incest incurs the “linguistic wrath” of “the most obscene and ferocious curse” in the English language (and a good number of other languages as well) with the assertion that one is a “mother-fucker.” In this characterization, social and familial outrage are combined at fever pitch. This is one “of the first curses learned, so potent that its occurrence can change any movie to an ‘X’ rating, so ferocious that no artist has ever softened it in art, and yet, it is also profoundly paradoxical.”

G. The Saga of Little Red Riding Hood

Even within the range of popular children’s stories there are overtones of dominant forbidden relationships. In “Little Red Riding Hood,” for example, father-daughter incest is suggested.

One morning Little Red Riding Hood sets off from her mother’s house to take her grandmother some cakes and wine. When she gets to the woods, she meets a wolf who asks where she’s going and she tells him. She is not frightened by the wolf, in fact, at most she is maybe a little uncomfortable. The wolf tells her to linger a while and pick some flowers for grandmother and, even though she had been told earlier by her mother not to dally, she does. Meanwhile the wolf goes to the grandmother’s, swallows her whole, and waits between the sheets for the next morsel—the granddaughter. She comes; they perform the famous litany about large ears, eyes, hands, and mouth, and Little Red Riding Hood is soon gobbled up. Just happening by is the good woodman; he finds the wolf in a post-prandial snooze, breaches the wolf’s intumescent stomach, and safely delivers both Little Red Riding Hood and her grandmother. The connections with giving birth are clear and reinforce the sexual allegory. They fill the wolf’s stomach with stones, and when he awakens he falls over and dies.

Bettelheim argues that the reason this fairy tale has remained so popular over the years is, quite simply, because “it addresses the problems of a young girl’s sexual initiation.”

---

49 Id.
50 Id.
51 Id. at 54.
52 Id.
53 Id.
54 Id. at 54, 55.
55 Id. at 55 (citing B. BETTELHEIM, THE USES OF ENCHANTMENT (1975)).
The fact that the girl-child must travel from mother’s house (there is no mention of father) past a wolf to whom she is attracted (surely his questions belabor the obvious, for he knows the way to grandmother’s house, and if he had only wanted to eat Little Red Riding Hood he could have consumed her then) until she comes to her destination (“grand” mother’s bed, complete with that wolf).\footnote{Id.}

Bettelheim notes that while the wolf is not the seducer (even though he does eat Little Red Riding Hood) she, herself, is “profoundly implicated,” for, “she gives the wolf directions, then dallies sufficiently for him to be abed before she arrives, and certainly she can’t be that ingenuous about grandmother’s lupine appearance.”\footnote{Id.}

The implied moral from this story is that Little Red Riding Hood had best be careful not to lose her ‘little red cap,’ her ‘girdle,’ her ‘cestus,’ to the first man she meets, because we all know who that first man will be. She should work together with her (grand) mother to make sure this particular wolf is kept from the door, or, more appropriately, from the bed.\footnote{Id.}

The mother and daughter do not work together in this fairy tale, for the wolf dispatches “the surrogate mother before the (grand) daughter can be his.”\footnote{Id. at 55-56.} Since the major parties have unconsciously colluded with the wolf, the woodsman or “good father” so to speak, heretofore missing from the family, intercedes. “Rife with associations of pregnancy and birth, the wolf’s stomach is cut open,” and a rebirth of mother and child occurs.\footnote{Id.}

According to the popular version of the story, to ensure the wolf will not revive, the woodsman fills his belly with rocks. In other, unsanitized versions, however, the bad little girl must be punished.\footnote{Id. at 56-57.}

But the good woodsman belongs in the tale, for he reminds us what Little Red Riding Hood has done may be wrong, yes, but not immoral or even unexpected. Little Red Riding Hood has followed bad advice; her trust has been violated; she has not been vigilant. She will not let such careless seduction happen again.\footnote{Id. at 56-57. Another corollary to Little Red Riding Hood is the fable of Beauty and the Beast. Id. at 57-59. Bettelheim interprets the moral of this story to be}
It has been suggested that much of what appears in the twentieth century as horrific, poetic, literary and artistic familial imagery was formulated initially by Francisco de Goya, 1746-1828, a Spanish artist regarded as “the master of the modern macabre.”63 His paintings, especially Los Caprichos and Saturn Devouring Man, were regarded as archetypes of horror and bizarre family romance.64 Edvard Munch, 1863-1944, a Norwegian painter, drew upon de Goya’s themes that in turn were of significance to existential philosophy.

His series of lamias, female vampires, whose bodies literally enwrap and twine around their male victims while their mouths hungrily suck the life-force from the victim, are on the surface a conscious reiteration of the “la belle dame sans merci” theme of romanticism. Lurking under this theme is a displacement of forbidden sexual passion.65

The predominant question then, as always, is: does art merely imitate life and mirror its anxieties, frustrations and titillations, or does life imitate art?

I. Movies

From the 1920s to the 1950s, films dealing directly with incest were few indeed.66 This revealed a sensitivity to the message of the cultural history of that period that could best be described as: “Incest is un-American.”67 However, from the 1960s to 1981, however, more than one hundred movies explored every aspect of incest in the historical setting, from Caligula to Blame It on Rio.68 First as a book in

that sex must be experienced by the child as disgusting as long as sexual longings are attached to the parent, because only through such a negative attitude toward sex can the incest taboo, and with it the stability of the human family, remain secure. But once detached from the parent and directed to a partner of a more suitable age, in normal development, sexual longings no longer seem beastly—to the contrary, they are experienced as beautiful.

Id. at 58 (quoting from B. BETTELHEIM, THE USES OF ENCHANTMENT (1975)).

Interestingly, the vampire myth of Count Dracula also presents one of the most enduring caveats against incest. Id. at 67-76.

63 J. TWITCHELL, supra note 11, at 50.
64 Id. at 51.
65 Id.
66 Id. at 24.
67 Id. at 236.
68 Id. at 24-26. Other movies of this genre were: Candy, Pretty Boy, Paper Moon, Obsession, Chinatown and Luna. While Luna dealt with mother-son incest, Blame It on Rio took up the
1955, and later as a movie, Vladimir Nabokov's *Lolita* opened pathways that had been closed for over a century. Sibling incest was discarded for an in-depth analysis of father-daughter incest. In *Lolita*, innocence is demythologized and sexual indulgence becomes the watchword. "Lolita has become an eponym for the sexually manipulative child, not because this was her role in the novel or film . . . but because that is the role we seem to want her to perform."71

The themes of popular culture, particularly fascination with family instability, have appeared repeatedly in sub-plots of television programs such as *Dynasty*, *Falcon Crest* and *Dallas*. These programs complement incest taboos explored previously in afternoon "soap operas" appearing on the major television networks.72 In 1983, NBC adapted the bestselling novel *Princess Daisy* into a television movie that explored the repercussions of the molestation by a "sour-faced Englishman" of his American half-sister.73 In 1984, ABC demystified father-daughter incest when it aired *Something About Amelia*.74

Given the continued public fascination with vicariously exploring social and legal taboos such as incest, future television programming is expected to pander to such interests by delivering more and more shock-oriented themes exploring these and other dark and fascinating subjects (e.g., homosexuality, lesbianism, paedophilia).

**J. Canon Law**

Nineteenth century English religion codified, in the 1761 Book of Common Prayer, thirty types of people with whom one could not engage in sex. Although purporting to track what the scriptures forbade, the Book was in reality theologically questionable, for biblical injunctions and prohibitions were indeed nothing if not irregular and inconsistent. Of those individuals listed, almost fifty percent have no genetic linkage to the individual. Consequently, the list makes little biologic
sense. Equally interesting is the fact that there is no mention made of first and second cousins.\textsuperscript{76}

**K. Civil Law: The English Heritage**

Only after 1908 did incest become recognizable as a crime in England and punishable by the civil authorities.\textsuperscript{78} Up to this time, while

\textsuperscript{76} \textit{Id.} at 129. \textit{A Table of Kindred and Affinity}, wherein whosoever are related, are forbidden in Scripture and our Laws, to marry together.

\begin{tabular}{l}
\textit{A man may not marry his} & \textit{A woman may not marry her} \\
1. GRANDMOTHER & 1. GRANDFATHER \\
2. Grandfather’s Wife & 2. Grandmother’s Husband \\
3. Wife’s Grandmother & 3. Husband’s Grandfather \\
4. Father’s Sister & 4. Father’s Brother \\
5. Mother’s Sister & 5. Mother’s Brother \\
6. Father’s Brother’s Wife & 6. Father’s Sister’s Husband \\
7. Mother’s Brother’s Wife & 7. Mother’s Sister’s Husband \\
8. Wife’s Father’s Sister & 8. Husband’s Father’s Brother \\
9. Wife’s Mother’s Sister & 9. Husband’s Mother’s Brother \\
10. Mother & 10. Father \\
11. Step-Mother & 11. Step-Father \\
12. Wife’s Mother & 12. Husband’s Father \\
15. Son’s Wife & 15. Daughter’s Husband \\
17. Wife’s Sister & 17. Husband’s Brother \\
19. Son’s Daughter & 19. Son’s Son \\
20. Daughter’s Daughter & 20. Daughter’s Son \\
21. Son’s Son’s Wife & 21. Son’s Daughter’s Husband \\
22. Daughter’s Son’s Wife & 22. Daughter’s Daughter’s Husband \\
23. Wife’s Son’s Daughter & 23. Husband’s Son’s Son \\
24. Wife’s Daughter’s Daughter & 24. Husband’s Daughter’s Son \\
25. Brother’s Daughter & 25. Brother’s Son \\
26. Sister’s Son’s Wife & 26. Sister’s Son \\
27. Brother’s Son’s Wife & 27. Brother’s Daughter’s Husband \\
28. Sister’s Son’s Wife & 28. Sister’s Daughter’s Husband \\
29. Wife’s Brother’s Daughter & 29. Husband’s Brother’s Son \\
30. Wife’s Sister’s Daughter & 30. Husband’s Sister’s Son
\end{tabular}

\textit{Id.} at 129. \textit{See also} J. \textsc{Goody}, \textit{The Development of the Family and Marriage in Europe} (1983) (Chapter 4 and Appendix 3).

\textsuperscript{78} Punishment of Incest Act, 165 \textit{Engl. Rep.} 451, 8 Edw. 7, c. 45 (1908). For carnal knowledge of a female, whom he knows to be his granddaughter, daughter, sister or mother, a man’s punishment is imprisonment for not more than seven years. If an allegation in the indictment proves the female was under 13 years of age, the imprisonment may be for life or any shorter term. 11 (1) \textit{Halsbury’s Laws of England} § 510 (1990). \textit{See also}, A. \textsc{Diamond}, \textit{The Evolution of Law and Order} 21 (1951).

Under the Criminal Justice Act of 1988, which came into force in February 1989, in those cases where the Attorney General is of the opinion that the original sentence given a defendant is
accusations of incest were, if credible, sufficient to yield social ostracism for its participants, the charge of homosexuality was far more serious. Though sinful in the eyes of the Church, incest was not unspeakable and even had a fascinating vogue in the literature of the day.\textsuperscript{77} Lady Annabella Byron's divorce action against her husband, Lord Byron, was based upon allegations of Byron's homosexuality and incest with his half-sister, Augusta.\textsuperscript{78} And Henry VIII's famous divorce from Anne Boleyn was tied to charges of treason, adultery and her alleged incest with her brother, George, Viscount Rochford.\textsuperscript{79}

While the penalty for conviction of homosexuality was the gallows, incest was an issue of family strife. When it was presented to the courts, they deferred to "the feeble coercion of the spiritual (i.e. eccle-

\textsuperscript{77} L. CROMPTON, BYRON AND GREEK LOVE: HOMOPHOBIA IN 19TH CENTURY ENGLAND 223 (1985).

\textsuperscript{78} Id.

\textsuperscript{79} J. TWITCHELL, supra note 11, at 130-31. Before Anne was Henry's wife Catherine of Aragon, who had been married to Henry's brother, Arthur. Despite a papal dispensation granted by Clement VII for Henry's marriage to the widow Catherine, with time it was convenient to Henry's purpose to have Thomas Cranmer, Archbishop of Canterbury, declare this marriage against the divine law as being incestuous. J. RIDLEY, ELIZABETH I: THE SHREWDNESS OF VIRTUE, 19-27 (1987).
siastical) court,” consistent with Canon Law. In 1813, the sentencing power of the ecclesiastical courts was limited by Parliament to six months of imprisonment.

III. THE AMERICAN LEGAL POSITION

A. Civil

With the exception of Alabama, every American jurisdiction has enacted civil prohibitions against consanguineous marriages. These statutes fall broadly into one of two categories: those restricting marriage between persons related within the fourth degree of consanguinity (thereby prohibiting marriages by first cousins), and those prohibiting marriage in any degree of lineal consanguinity. Since, however, union “between lineal relatives that is not covered under a general prohibition against marriage between persons with the third degree of consanguinity is not likely to occur, the unlimited nature of such statutory prohibitions is of little practical significance.” Although subject to wide criticism as to the justification of restrictions on marriages by first cousins, such statutory prohibitions still exist in more than half of the states. There has been a rather significant modern trend to abolish affinity restrictions. Some sixteen states restrict union between certain individuals who are related only by affinity. Generally, these statutes prevent marriage of the spouse of certain lineal kin of one’s spouse. Nowhere in the nation, however, do there remain any prohibitions against marrying the spouse of one’s nonlineal kin (e.g., the spouse of one’s brother or sister). Uncle-niece and aunt-nephew marriages are prohibited in eighteen states, with no explicit distinction between uncles or aunts by marriage and those by blood.

80 W. BLACKSTONE, 4 COMMENTARIES OF THE LAWS OF ENGLAND 64 (1769).
81 23 STAT. 297, 53 GEORGE III, c. 127 (1814). Under Scottish law, theoretically, incest was punishable by hanging until 1887. L. CROMPTON, supra note 77, at 223 n.55.
83 id.
84 id. at § 2:07.
85 id. at § 2:09.
86 id.
87 id.
88 id. at § 2:10.
INTRAFAMILIAL CHILD ABUSE

B. Criminal Incest

In many states, incorporation by reference is the means through which respective criminal codes absorb civil consanguinity and affinity marriage prohibitions. In this way, sexual relations between parties to a void marriage are a criminal as well as a civil offense. Forty-eight states have enacted legislation criminalizing either sexual intercourse or cohabitations between a man and a woman who are related, within certain degrees, to each other. And in forty-six of the states, incest is a felony.

Those marriages entered into in violation of affinity or consanguinity restrictions are generally regarded as void. In six states, the marriages are regarded as voidable, and in another six states, they will be taken as void or voidable. Most states have tempered the consequences of nullifying a marriage by legitimizing the offspring and empowering the courts of jurisdiction to grant alimony. Significant deterrents still do exist but are beyond the scope of this article.

While it has been recommended that the law distinguish "between siblings and lineal relatives, on the one hand, and collateral relatives, on the other, in deciding whether the defect renders the marriage void or voidable," a more simplified approach would be to "prohibit entirely all marriages between lineal relations and siblings and to permit all marriages between collateral relations." Since such an arrangement would threaten neither the cohesiveness of the nuclear family nor the integrity of the gene pool, collateral relation marriages should be allowed.

---

89 Id. at § 2:12.
91 L. Wardle, C. Blakesley & J. Parker, supra note 82, at § 2:13.
92 Id.
93 Id.
95 Id.
IV. THE GENERAL PSYCHOPATHOLOGIES OF INCEST AND CHILD ABUSE

A. Child Abuse—The Statistical Toll

Researchers estimate that in 1963, 150,000 children were victims of child abuse and neglect in the United States. In 1989, more than 2.4 million were suspected victims of abuse and neglect and were reported to state authorities. Nonetheless, many apparently maltreated children seen by teachers, social workers and police are not in fact reported. An estimated 50,000 children with severe, observable injuries requiring a form of hospitalization go unreported. In fact, a 1981 study conducted by the United States Department of Health and Human Services found “most abused and neglected children are not now being identified and helped.” Lack of substantiated evidentiary proof of the abuse and concerns of unwarranted intrusions into familial privacy generally are acknowledged as the reasons for failure to report incidents of alleged abuse or neglect.

In West Yorkshire, England, the police reported that in the span of just two months in 1989, more than six hundred cases of alleged

---

96 Rich, Child-Abuse Cases Total 2.4 Million, Wash. Post, July 21, 1990, at A6, col. 1; Besharov, Introduction, PROTECTING CHILDREN FROM ABUSE AND NEGLECT: POLICY AND PRACTICE 3 (D. Besharov ed. 1988) [hereinafter PROTECTING CHILDREN]. In 1985, the figures were set at 1.9 million. Besharov, supra.

97 Meriwether, Child Abuse Reporting Laws: Time for a Change, PROTECTING CHILDREN, supra note 96, at 9 n.2 (referring to NATIONAL STUDY OF THE INCIDENCE AND SEVERITY OF CHILD ABUSE AND NEGLECT: STUDY FINDINGS, U.S. DEPT. OF HEALTH & HUMAN SERVICES Pub. No. (OHDS0 81-3025) at 34 (1981)).

98 Id. at 10. See generally R. Geiser, Hidden Victims: The Sexual Abuse of Children (1979). In a review conducted by the Denver, Colorado Department of Social Services, of all cases of child sexual abuse processed in 1983—576 in all—it found 47%, or 267 cases, were classified as unsubstantiated. Of these unsubstantiated reports, 51% yielded insufficient evidence for the case workers to make a determination whether in fact incidents of child abuse had occurred. While it was found that 36% of other allegations were actually made in good faith and without malice, subsequent investigations concluded abuse had more than likely not occurred. In 10% of the cases, or 26 out of 267, a parental report of abuse appeared to have been made either as a consequence of serious psychiatric disturbances or out of pure maliciousness. In 3% of the total cases, 8 numerically, cases reported by children themselves were found to be false reports. Yet, with but one exception, “these children had been victims of sexual abuse at some point prior to the current fictitious report.” Thoennes & Pearson, A Difficult Dilemma: Responding to Sexual Abuse Allegations in Custody and Visitation Disputes, PROTECTING CHILDREN, supra note 96, at 93.

See also Jones, Reliable and Fictitious Accounts of Sexual Abuse to Children, 2 J. INTERPERSONAL VIOLENCE 27-45 (1987).
child abuse—half of which were sexual—had been referred to them and their newly formed domestic violence and child abuse unit. The statistics, which were acknowledged to be perhaps "the tip of the iceberg," did not reveal the actual number of the cases of alleged abuse that resulted in children being removed from their parents' care.

B. Scope of Abuse

Seriously harmful parental behaviors include not only sexual abuse (e.g., vaginal, anal and oral intercourse) and sexual exploitation (e.g., child prostitution and pornography) but physical battering, endangerment and neglect, medical neglect, emotional abuse, developmental neglect, improper ethical supervision, educational neglect and abandonment. A less common, but equally serious, form of child abuse is asphyxia. Of the approximately two thousand cases of sudden infant death syndrome reported in Britain each year, between two and ten percent of these babies are thought to have died as a direct result of asphyxia or, in other words, being smothered by a parent.

For the health care professional, child sexual abuse is defined as "the exposure of a child to sexual stimulation inappropriate for the child's age, level of psychosexual development, or role in the family." Child abuse statutes broadly define abuse as including not only physical and sexual assault, but also physical neglect and psychological abuse. As will be seen, structural or definitional problems plague efforts to efficiently enforce state statutes regulating the reporting of suspected incidents of child abuse.

No doubt one of the truly frightening aspects of the new-found or newly surfaced interest in intrafamilial sex abuse is the revelation, as

---

100 Id.
101 Besharov, The Need to Narrow the Grounds for State Intervention, Protecting Children, supra note 96, at 90.
103 Id. In addition to smothering, a less common form of asphyxia involves the mother pressing her child's face against her chest, placing the infant's head in a plastic bag or by strangulation involving pressure to her child's neck. Id.
106 See Thoennes & Pearson, supra note 98, and infra notes 169-95.
more statistical information becomes available about its practice, that the incidence of incest is increasing exponentially. Oddly, this phenomenon is occurring just at the time when both considerable interest exists to maintain the laws against incest and contrary forces are building to subvert the social and legal taboo. Thus, the central questions to be posited are, “Is this because our methods of discovery are revealing what has always been present? Or is it because once we start to learn about such behavior, we start to accept it while denying it? Could increased incidence be both the cause and the effect of curiosity?”

It remains to be discovered whether or not there is a correlation between what is done and what is purportedly done, and what in fact is prohibited and what is claimed to be prohibited. It is distressing to be reminded that but a few generations ago adultery was punishable by death because it was regarded to be so disruptive to the social fabric of the day that to ignore or condone it would bring about the collapse of society itself. History, of course, has shown that adultery has grown in popularity. It is no longer punishable by death, and society still flourishes in spite of it.

Whether modern incest follows along the social pathway of toleration or acceptance set by adultery remains to be determined. That determination will depend on the basic acceptance of the traditional values associated with the family, nature, sex roles, society and self. It can only be hoped that the wise, humane and sophisticated majority of Americans will safeguard the fundamental integrity of the family unit and, indeed, preserve it through the continued enforcement of the laws against incest.

C. Incest—The Alarming Statistics

The growing frequency of incest is alarming. With father-daughter incest constituting two-thirds of all reported cases, traditional estimates of the crime place the range from one to two cases per million population. More recent studies place the figures as high as five thousand cases per million per year. One current study found the incidence of incest jumped from one case per million in the early part of the twenti-

107 J. TWITCHELL, supra note 11, at 39.
108 Id. at 40.
109 Id.
110 Id.
eth century to one case per twenty today. It has been estimated that familial and non-familial sexual abuse affects anywhere from between ten to thirty percent of the total population.

What these reports appear to be charting is not only a more accurate form of reporting, but also an increase in the frequency of incest as well as more generalized forms of intrafamilial sexual abuse. In turn, what these two conclusions indicate is an apparent lessening of the vigor of the incest taboo.

D. The General Effects of Incest

Given that the nuclear family is the bulwark of the social order, incest taboos seek to preserve that unit from social disruption and, indeed, destruction. Unrestricted sexual impulses are of such a nature that if unabated they would be "socially disruptive" to the very fundamental bonds of kinship (within the nuclear family) on which all social development is built. Accordingly, if incest were allowed, not only would the family unit collapse, but so too would the kinship system and thereafter the entire social order.

It is a part of human nature to find sexual attractiveness within the family. Indeed, Freud's basic assumption was that this sexual attraction between males and females is "omnipresent" and, if not held in check, totally destructive. Thus, "if incest is not prohibited, it will be the rule." In a recent popular television program on incest and intrafamilial sexual abuse, social commentator Phil Donahue acknowledged that the natural, sexual "feelings" (or primal force of love) that exist among parents and children must be lived with and repressed; otherwise, incest occurs.
Even though a good number of adults may well have occasional erotic thoughts involving their children under the age of eighteen years, current research reveals that only from one to five percent fulfill those urges.\textsuperscript{118} Currently, although ninety percent of those offenders are men, it is thought that the number of female perpetrators, when discovered, will be quite high as well—principally because females traditionally have far greater and closer access to children than males.\textsuperscript{120}

Initially, most incidents of sex abuse are confined to "fondling and undressing."\textsuperscript{121} Over time, however, these incidents may escalate. While at first "a father may turn to his daughter one night for affection, and find himself with his hand on her panties, over time he may have intercourse with her, her sisters, and other children."\textsuperscript{122} Recently, an Atlanta-based psychiatrist released a controversial study of approximately six hundred offenders and found that the average number of hands-on offenses committed against boys was 281 times outside the home, plus another 78 times inside the home. The median number of offenses, however, was 10.1 outside plus 5.2 inside; some of his sample had committed phenomenal numbers of offenses.\textsuperscript{123}

\textbf{E. Maternal-Neonatal Incest}

Although overt sexual abuse of newborn infants is rarely reported and the etiology incidence is thus unavailable for evaluation,\textsuperscript{124} the Perinatal Center for Chemical Dependence of the Northwestern Memorial Hospital of Northwestern University's Medical School in Chicago, Illinois, in an effort to provide a comprehensive care program for chemically addicted women and their infants, has discovered both interesting and alarming data about this current area of concern.\textsuperscript{125}

From group therapy sessions with twenty-five women in its first program conducted in 1983, the Center found that incestuous maternal-neonatal activity was motivated primarily by either loneliness, re-

\textsuperscript{118} Churchman, \textit{supra} note 112.
\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{125} Id.
recent alienation from sexual partners, or long-term isolation from peers and family, along with a chemically dependent "borderline" personality. The cases studied in depth reveal that the definitive factors predisposing a woman to abuse her child sexually remain unknown or inconclusive at best. However, three particular case studies "seem to indicate that social alienation and isolation of the mothers, common characteristics of substance abusers in general, were significant facts in the molestation of their newborn infants."127

An abstract of these three principal or paradigmatic cases provides a clear and distressing insight into the manner and scope of typical incestuous conduct by a mother with her neonate as well as the psychodynamics of this relationship.

**CASE I**

This boy was the second child delivered to a Caucasian, unmarried, 31-year-old mother who had used illicitly obtained Darvon N for three years prior to pregnancy. The woman joined the Perinatal Center program at six weeks gestation and was placed on methadone. She remained free of any further illicit drug use and had no history or evidence of alcohol use. Diagnostic interview performed by a program social worker in consultation with a psychiatrist resulted in a diagnosis of opioid abuse in remission.

The infant was term, breast fed, and the infant-mother pair lived alone with no other family members. The mother continued on her methadone maintenance with negative urines. The mother had had no history of childhood incestuous exposure but at 19 years of age had been exclusively heterosexual in her relationships, she did express some homosexual ideation. Mother and son had slept together since the child's birth. When the child was 18 months old, the mother revealed that within the first two weeks after birth she had begun to fondle and stimulate the child's genitals and had continued in her sexual interaction with him, performing fellatio on the child and using him for masturbation by rubbing him against her genitals through 18 months of age. At the time these events came to light, the child had been having marked behavior problems and demonstrated significant delays in language and social development. The child, now three years of age continues to be physically aggressive and difficult to manage with little speech development despite intensive intervention programs. Sexual acting out, whereby the child reached under other children's clothing and attempted to fondle their genitals, was reported in his interactions with peers at preschool program. His most current Stanford Binet IQ score was 110 at three years chronological age.128

126 Id. at 579.
127 Id. See also, Egeland & Vaughn, *Failure of 'Bond Formation' as a Cause of Abuse, Neglect and Maltreatment*, 51 AM. J. ORTHOPSYCHIATRY 78 (1981).
128 Chasnoff, *supra* note 124, at 577-78.
CASE II

This boy was the first child of a 30-year-old Caucasian, unmarried, self-reported lesbian woman who had an alcohol abuse history of more than ten years. The woman entered treatment early in the first trimester of her pregnancy and she remained alcohol-free throughout the remainder of her pregnancy. Diagnostic interview performed in consultation with a psychiatrist resulted in a diagnosis of alcohol abuse in remission.

The infant was term, breast fed, and lived alone with his mother in a one-room apartment. The mother admitted to isolating herself postnaturally, avoiding contact with friends. The woman had no sexual relationships after delivery. She resumed alcohol use four months postnataally, requiring hospitalization for one month, and the infant son was cared for by friends. Following discharge from a second hospitalization at seven months postnataally, she revealed that her initial alcohol relapse had been triggered by sexual contacts (genital stimulation, fellatio, and masturbation) with her son which had begun at less than one month of age and continued until her first hospitalization.

Currently, the child is 30 months old and exhibits no known behavioral difficulties. On developmental evaluation, motor and language development are within normal limits.

CASE III

This boy was the second child delivered to a 36-year-old, Caucasian, unmarried female. At the time of admission, the woman had a 15-year history of polydrug and alcohol addiction, was one month pregnant, and had been drug and alcohol-free for six months. Diagnostic interview performed in consultation with a psychiatrist resulted in a diagnosis of alcohol abuse in remission.

The child was delivered at term and was breast fed through 15 months of age. The mother and son lived alone, with no family members available to the mother. The mother reported no history of childhood incestuous exposure but had been raped at 22 years of age by a stranger. The mother's sexual orientation was bisexual. From the date of conception, the mother had had no sexual partners. Mother and son slept in the same bed. When the child was 19 months of age, the mother revealed that, beginning in the first week after birth, she had fondled her newborn son's genitals. As the child grew older, the mother would masturbate while stimulating the child. This sexual activity ceased at nine months of age. And shortly thereafter the mother reinitiated sexual activity with adult males. The child, now 25 months old exhibits behavioral difficulties with sexual aggressiveness, pulling off other children's clothing and acting out in his relationships with other children in his day care center.

129 Id. at 578.

130 Id.
Disturbing as these acts are in and of themselves, the more devastating effect in later childhood may well mean that today's molested child could easily be predisposed to become tomorrow's molester and remain psychologically damaged for life.

F. Behavioral Modifications

The psychopathology of the victims of child abuse includes pain of all dimensions: depression, suicidal tendencies and actual attempts, eating disorders, drug and alcohol dependencies, prostitution, multiple personalities and a host of other problems and disorders. For the child who has been assaulted only once, his or her behavioral changes parallel to a large degree those arising from other psychic trauma. There is increased parental clinging, withdrawal from social activities, refusal to leave the home, crying, disturbances in sleep and school phobias.

Long-term chronic molestation produces a different symptomology and is the most prevalent type of incest. In such cases, the child must develop coping strategies since his or her daily survival will oftentimes depend upon this very mechanism. What is thus seen is "a greater tendency to identify with the aggressor, and to internalize the type of behavior of which the child has been a victim." The child's symptoms will include depression, precocious sexual knowledge, pseudomaturity, sexual advances toward adults and other children, role-reversal with adults and acting-out behaviors. As indicated, this symptomology is most commonly found in cases of incest where tender and innocent-

---

131 Id. at 579.
132 Henderson, supra note 111, at 36-37; Sloane & Karpinski, Effects of Incest on the Participants, 12 AM. J. ORTHOPSYCHIATRY 666 (1942). At a recent conference on juvenile sex offenders held in Keystone, Colorado, The National Center for Juvenile Justice reported that between 1976 and 1986 the arrest rate for 13- and 14-year-old children accused of rape doubled from 20 to 40 per 100,000 children. The cycle of abuse and sexual molestation was shown to have started when the child-rapists, as children, were victimized themselves. The circular nature of abuse was shown clearly in a reported case in New Jersey in which a nine-year-old boy, abused repeatedly by his stepfather, began, when he reached 12 years of age, to do the same things to his younger brother. The younger brother then in turn conducted similar assaults on a five-year-old neighbor. Laurence, Teenage Sex Crimes Soar in America, The Daily Telegraph, May 31, 1989, at 9, col. 2.
135 Id. at 566.
appearing gestures of affection precede greater degrees of intimacy and subsequent digital or coital intrusion.\textsuperscript{136}

Research regarding the long-term harmfulness of incest remains inconsistent. Some studies show the individual consequences to victimized daughters or sons to be serious, producing long-term psychosexual consequences to their life-time development.\textsuperscript{137} Others reach the conclusion that not all incestuous relationships are traumatic to the participating children,\textsuperscript{138} and furthermore, that they may be more stabilizing to some familial relationships than disruptive of them.\textsuperscript{139}

G. Genetic Repercussions

When consummated with issue, consanguineous relationships also raise a problem as to the genetic integrity of the offspring.\textsuperscript{140} It is recognized generally that parents who are related closely, genetically, and have inherited a pair of mutual recessive genes associated either with congenital abnormalities or malformations or even lesser mental and physical fitness, are more likely than unrelated parents to pass those negative genes on to their children. Indeed, as a group, the offspring of incestuous relationships more often than not find themselves placed within a group that is physically or mentally handicapped.\textsuperscript{141}

No doubt the most striking observable consequence of inbreeding is the reduction of both reproductive capacity and physiological effi-

\textsuperscript{136} Id.
\textsuperscript{137} C. Coutois, \textit{supra} note 133; Henderson, \textit{supra} note 111; Browning & Boatman, \textit{Incest: Children at Risk}, 134 Am. J. Psychiatry 69 (1977); Ferenzi, \textit{Confusion of Tongues between Adults and the Child}, 30 Int'l J. Psychoanalysis 225, 228 (1949); Sloane & Karpinski, \textit{supra} note 132.
\textsuperscript{138} A Massachusetts psychologist, Nicholas Groth, having tested more than three thousand sex offenders over a 22 year period, has concluded that not all incidents of sexual abuse are traumatic for the child participant. Churchman, \textit{supra} note 112.
\textsuperscript{139} Henderson, \textit{supra} note 111; Yorokoglu & Kemph, \textit{Children Not Severely Damaged by Incest with a Parent}, 5 J. Am. Acad. Child Psychiatry 111 (1966). One research study found in families where incestuous relationships persisted over an extended period of time that incest was not disrupting the family at all, but instead was "sustaining some kind of stable neurotic equilibrium." When incest was terminated in cases of this nature, usually because of external pressures, a frequent result was the "psychological decompensation of one or more family members and an increase in family discord." Weimer, \textit{A Clinical Perspective on Incest}, 132 Am. J. Dis. Child 123 (1978).
ciency, a phenomenon termed "inbreeding depression." This phenomenon has been investigated in several animals using different variables of reproductive capacity as well as physiological efficiency. Results from these studies have shown that in cattle, there is a 3.2% decrease in milk yield per 10% increase in the coefficient of inbreeding; in pigs, a 4.6% decrease in the litter size together with a 2.7% decrease in weight; in sheep, a 5.5% decrease in fleece weight and a body weight decrease of 3.7%; in poultry, a 6.2% decrease in egg production and a 6.4% decrease in hatchability; and in mice, an 8% decrease in the litter size per 10% increase in the inbreeding coefficient. From this information, the conclusion emerges that, since inbreeding has a tendency to reduce fitness, "natural selection is likely to oppose the inbreeding process by favoring the least homozygous individuals."\textsuperscript{142} It has also been shown that "if a trait (e.g., size, intelligence, or motor skill) possesses a degree of heritability, then inbreeding will cause a decline of the trait in the population."\textsuperscript{143} Accordingly, the conclusion to be drawn here is that incest inescapably harms higher organisms.

Studies of inbreeding in humans point decisively to the deleterious effect incest has upon the gene pool by the introduction and propagation of detrimental mutations into it.\textsuperscript{144} Mental retardation and other severe disabilities (e.g., seizure disorders, cerebral palsy) together with high child mortality percentages, have been common for the progeny of incestuous relationships.\textsuperscript{145}

For all of these disadvantages accruing from incest, certain advantages are recognized by biologists and anthropologists. Perhaps the primary one is that with inbreeding, more of the parental genes (assuming for the strength of the gene pool they are positive) will be transmitted to the offspring. Secondly, kinship altruism will be promoted within the social "family" unit. From relatedness comes a familiarity that, in the animal kingdom, allows for "assortative mating," whereby the animal preference for familiar partners for mating is given validity. Thus, the genetic gamble of mating with a stranger is lessened.\textsuperscript{146} Finally, because inbreeding reduces competition among siblings and relatives for

\textsuperscript{142} J. Shepher, supra note 114, at 90.

\textsuperscript{143} Id.

\textsuperscript{144} Id. See C. Lumsden & E. Wilson, Prometheus Fire (1983). See also Herrnstein, supra note 7.

\textsuperscript{145} J. Shepher, supra note 2, at 92. See also Bashi, Effects of Inbreeding on Cognitive Performance, 266 Nature 440 (1977); R. Alexander, Darwinism and Human Affairs (1979).

\textsuperscript{146} J. Shepher, supra note 114, at 93-98.
mates, this is regarded as another positive effect of incestuous relations.\textsuperscript{147}

Yet, even with these advantages, recent research has confirmed convincingly that in most, if not all, of the animal species, incest is either avoided or prevented.\textsuperscript{148} The reason for this avoidance by most plants and animals alike is that such inbreeding increases homozygosity that, in itself, runs counter to Mendelian laws of heredity and plays havoc with the maintenance of genetic diversity.\textsuperscript{149} For humans, perhaps the simplest reason for maintaining the social and legal prohibitions against incest is that they in turn preserve the family unit, the coordinate kinship system and, indeed, the whole of society.\textsuperscript{150}

**H. The Free Sex Movement and Unorthodox Permissiveness**

Children are thought by some to be innately sexual. A commonly held belief arising from that position is that repression of such an interest, or of sexuality itself, later breeds psychological damage, producing neurotic and malfunctioning adults.\textsuperscript{151} The distressing condonation of these and other excessively liberal ideas by a formalized group that propounds them first appeared in the United States with the founding of the Rene Guyon Society in 1962.\textsuperscript{152} This group advocates child-child and child-adult bisexuality starting at age four, five or six, provided protected sex is available and used through contraceptives. Their appalling slogan is, "Sex before eight before it's too late."\textsuperscript{153}

A similar organization in America is the Childhood Sensuality Circle whose central focus is to work for acceptance of a child's sexual bill of rights. This bill of rights would stress the child's right to privacy and personal exploration, a coordinate right not only to accurate sexual information but also to "sensual pleasure and choice of sex partner; the

\textsuperscript{147} Id. at 98.
\textsuperscript{148} Id. at 104.
\textsuperscript{149} Id. at xii, 132.
\textsuperscript{150} Id. at 140; B. Malinowski, \textit{The Sexual Life of Savages in North-Western Melanesia} (1929).
\textsuperscript{152} Plummer, \textit{supra} note 151.
\textsuperscript{153} Id.
right to learn the act of love and grow mentally, spiritually and emotionally and physically as a free uncrippled happy person . . . ."\textsuperscript{104}

The type of unorthodox permissiveness advocated by these two groups, even in a democratic society, must be held in check and monitored carefully. The undercurrents of their messages promote a licentiousness that, if accepted, could not only lead to the total destruction of any type of cohesive family unit but also to irreparable social and psychological harm to its participants. Incest, pedophilia and intrafamilial sexual abuse would become the hallmarks of all "familial" relationships and social order would be destroyed. Simply stated, fatal attractions and dangerous, forced liaisons of this nature spell total disaster.

What types of empirical proof must be given to substantiate the consequences of these perverted relationships and the proven fears and concerns to which they give rise?\textsuperscript{105} A distracting smoke screen is constructed when it is suggested that the real question is a moral one and posits whether "meaningful consent can be obtained from a child."\textsuperscript{106} This question's foundation derives from thin research suggesting that: (1) children are not always appalled by sex;\textsuperscript{107} (2) they are sometimes in fact seductive and not deserving of "the cloak of innocence";\textsuperscript{108} (3) a number are "highly sexed" and need "a continuous sexual outlet"; and (4) they are not always the manipulated party in adult sex.\textsuperscript{109}

The uncertainties in any research of this nature, however, even when based upon limited actual observations, far outweigh the validity of the sweeping conclusions sought to be drawn from them about the morality of actual or implied consent. The law simply does not recog-
nize a child of tender years as having the reasoned capacity to give consent to an act legally considered to be (self) abusive. Thus, until the laws are changed on this point—and a safe and informed opinion is that they will not in the foreseeable future be altered—society must initiate methods to identify, counsel, rehabilitate to the degree possible, and, when necessary, punish child abusers. Programs designed to "educate" the public to the positive values of intrafamilial sex simply smack of a "space cadet" mentality and are surely light years away from ever being taken seriously and supported.¹⁶⁰

Since the acute and long-term psycho-noxious effects of child sexual abuse and specifically incest remain the focus of much debate,¹⁶¹ what is needed to assess their effects are controlled studies of the behavior and history of children involved in such relationships and an assessment of these sexually abused individuals as they have matured into adulthood.¹⁶² Child abuse studies and evaluations need to be specifically tied more to actual clinical assessments and less to empirical ones meshed in hypotheticals. Careful, retrospective reviews of records from the hospital, the mental health care center or the court are of value but must not be prioritized over the actual clinical observations.¹⁶³

Given the state of flux in the research regarding incest and child abuse, it is apparent that no sweeping conclusions can or should be made about either the need to lessen the acceptance of incest or the preferred treatment modalities for child abusers. What is certain, however, is that both of these issues present very serious challenges to the social fabric of contemporary society.

V. A Profile of the Child Abuser

Although there are a number of different causes for the maltreatment of children, four factors are most frequently associated with abusing parents. First and foremost is the aberrant nature of the parents' own childhoods.¹⁶⁴ Research studies conclude that those parents who,

¹⁶⁰ See supra note 154 discussing the "education" programs in the United Kingdom.
¹⁶² Henderson, supra note 111, at 38.

The child molester more than likely was raised in a traumatic environment where sexual behavior was seen either as being dirty and secretive or, to the contrary, whose boundaries were
during their own childhoods, were nurtured aberrantly "are more likely to abuse or neglect their children than individuals who receive normal, appropriate care." Secondly, prior to maltreatment, early attachment problems between mother and child are likely to have existed. Well-functioning families develop a pattern of interaction that promotes a child's growth and development, thereby building a parental relationship. The abusing parent, however, did not as a child participate in such a familial environment.

The third character trait exhibited among abusing parents is a tendency toward aggression in social relationships. Although little conclusive understanding exists to explain why some people are prone to violence, it may well be related to aberrant child-rearing. Several studies conclude that those individuals who have developed a history of adult violence "are more likely to abuse young children than are people without such a history."

Finally, the typical abusing parent is under significant levels of stress stemming from a plethora of such everyday life problems as finances, health, marriage, employment, difficult or ill children, poor family interaction and social isolation. When any number of these factors combine rather spontaneously, a connection between the level and intensity of stress and maltreatment occurs. Generally, "stress seems to increase the risk of maltreatment among individuals whom we might already consider to be at risk based on personal history, or personality traits."

---

165 Wald & Cohen, supra note 164, at 299.

166 Id. Although there is no simple profile of a child molester, men responsible for molesting their children were found to demonstrate certain shared or common characteristics: they had impulse control problems; demonstrated difficulty in monitoring or directing emotional reactions; were excessively self-centered; had strong dependency needs; and exhibited poor judgment. Bresee, supra note 134, at 563.

167 Wald & Cohen, supra note 164, at 300 n.13 (citing Altemeier, O'Connor, Vietze, Sandler & Sherrod, Antecedents of Child Abuse, 100 J. PEDIATRICS 823 (1982)).

168 Wald & Cohen, supra note 164, at 301. Other research has found two essential aspects of parent-child sexual abuse are a reversal of the parent-child roles and a failure to control sexual impulses toward the child. Summit & Kryso, Sexual Abuse of Children: A Clinical Spectrum, 48 AM. J. ORTHOPSYCHIATRY 237 (1978).
VI. PROGRAMMATIC FAILURES OF CHILD ABUSE PREVENTION PROGRAMS

A. The Four Major Causes

Little concrete action has been undertaken by federal and state governments to develop and implement child abuse prevention programs. Those treatment programs that have been structured for known abusing or neglecting families have also been less than successful. The four major problems confronting the development of such successful prevention programs are tied to society's inability to agree upon definitions of abuse or neglect. This is an especially difficult first obstacle to overcome with regard to neglect, since the term and the concept are generally left undefined by state legislative programs. Physical abuse is also problematic in that it may be defined either in terms of the extent of injury, the manner of its occurrence, the intent of the person causing the injury, the likely prospect of future injury or even some combination of all these elements.

We allow parents, and others, to hit children. Abuse is "inappropriate" hitting. However, there is great variation in the types of situations considered inappropriate by people involved in the child protection system. Without a clear-cut definition of abuse, we do not know what it is that we are trying to prevent and we do not have a means of adequately assessing the effectiveness of prevention programs.

Even with an acceptable definition of abuse in place, a second obstacle to an effective child abuse prevention program remains. This is a failure to develop a consensus theory of the causes of physical abuse. No simple cause can be cited verifiably as the reason for maltreatment. Regrettably, there remains little understanding of the real reasons why a particular set of parents abuse their children. Absent a validated causal theory, no strong basis appears for choosing a particular set of strategies for intervention.

169 Wald & Cohen, supra note 164, at 295.
170 Id. at 296.
171 Id.
172 Id.
173 Id. at 297.
174 Id.
175 Id.
176 Id. at 296.
The third difficulty encountered in the development of a strategy is targeting the at-risk population that may have the "disease." While a considerable amount of research has been undertaken to identify the actual factors that can predict those parents most likely to abuse their children, these research instruments also identify a large number of at-risk parents who never do become abusers. It therefore becomes necessary "to either abandon targeting efforts or accept the costs of mislabeling a large number of parents."

Finally, the strategist who seeks to shape and coordinate a prevention program is handicapped by a "paucity of evaluative research regarding past and current prevention programs." The strategist is also faced with the inescapable reality that "there is very little adequate research that shows a reduction in child abuse or neglect as the result of any prevention program."

B. The Changing Standard of Veracity for the Accuser

Over the years, the veracity of a child's allegation of sexual abuse was routinely disputed. Today, however, a complete shift to the opposite extreme position has occurred. The acceptance of all child allegations of abuse as prima facie evidence of an act of abuse itself appears to be the reality of practice. All too often, explosive, non-verifiable allegations of this nature are placed within an atmosphere reminiscent of the Salem witch hunts and the McCarthy anti-communist hearings.

Sexual misconduct or abuse allegations made by a child, especially one between the ages of two and seven, normally lack clarity, celerity, certainty and consistency. Simply stated, children of this age group, classified in the preoperational period of development, do not have

177 Id. at 297.
178 Id.
179 Id.
180 Id. [Emphasis added].
mental structures adequate for logical or abstract thought.\textsuperscript{184} Even with these weaknesses, a child's allegations should nonetheless be taken seriously to the extent that they form a starting point from which further and more elaborate details of the alleged misconduct may be elicited.\textsuperscript{185}

VII. CONSTITUTIONAL PROTECTIONS

The federal government and each of the fifty states have laws that shield social agency case files on child abuse from disclosure.\textsuperscript{186} The crucial constitutional issue here is, when does an investigation into an allegation of child sexual abuse become a criminal prosecution? When does a criminal defendant's right to disclosure of witnesses and evidence by the prosecution arise under either the due process clause of the fourteenth amendment or under the compulsory process clause? Writing for a divided majority of the Supreme Court, Justice Lewis Powell in \textit{Pennsylvania v. Ritchie} endeavored to strike a balance between the public's valid interest in confidentiality and the rights of


For a tragic account of another incident of sexual abuse, see Cochrane, \textit{Abused by the Experts}, NEW STATESMAN & SOCIETY 28 (June 2, 1989). The authors recount the story of a nearly three-year-old female abused by her paternal grandfather—she was forced to view pornography and her grandfather's acts of masturbation and listen to his threats "to put his 'thing' in her 'fanny'" and make her do "love-you." This essay is particularly disturbing because it also details how an overly cautious social network can become too responsive once a case of this nature has been closed and the victim has gone through a protracted period of re-adjustment and counseling.

During a routine school physical examination, the same child, now six years old, who had occasionally suffered from cystitis, as did her mother, was found to be carrying "a tiny, scarcely visible nick on the inner labia." In young girls, cystitis can result not only from sexual abuse but as easily from scratching or a full and sudden sports trauma to the pelvis area (e.g., a football being kicked there).

Understandably, realizing that "abused children are four times more likely to be re-abused," social workers, of necessity, are very cautious. \textit{Id.} at 31. This case essay details the lengths to which the child's mother had to go to suppress a re-investigation of the three-year-old primary incident which she feared, supported by sound medical counsel, would trigger the child's re-awareness of the original abuse.

An especially disturbing symptomatic outcome of sexual abuse is that children become precociously "sexualized." Those unaware of the child's tragic background can easily misinterpret the child's perceived acts of flirtation. The distressed mother in this particular case observed that, "[e]ven when I kissed her she stuck her tongue down my throat and thrust her hand between her legs. This was behavior she had been taught..." \textit{Id.} at 30. See supra notes 133-36.

criminal suspects to know the evidentiary facts of the case against them. The Court held that the trial judge will review *in camera* any confidential records that the defendant requests and release any material evidence he or she finds necessary to meet the defendant’s right to be fully informed.  

In 1988, writing for a 6-2 majority of the high Court, Justice Antonin Scalia ruled in *Coy v. Iowa* that a state statute’s generalized presumption that a child victim of sexual abuse will suffer trauma as a result of testifying in the presence of the accused does not outweigh the right of the criminal defendant to a direct confrontation under the sixth amendment. This right of confrontation was declared to be a “literal” or “core” right. Yet, the right of a defendant to cross-examine witnesses in order to exclude statements made out of court was described as but an implied right. Although she joined the majority in holding that exceptions to this core right of confrontation exist only on case-specific findings of necessity in order to advance an important public policy, Justice Sandra O’Connor insisted that a broad exception should be recognized in order to “shield a child witness from the trauma of courtroom testimony.”

While eight Justices agreed on the existence of sixth amendment guarantees of witness confrontation at trial by a defendant in *Coy*, they differed on the scope of this encounter right. Thus it remains unclear whether the *Coy* rule, as a rule of procedure duly designed to maintain the very adversary nature of the criminal proceeding, guarantees in the first instance a right to have witnesses testify at trial and, additionally, whether it applies uniformly to all testifying witnesses or instead only to some. Since the Court was unwilling to grant an absolute right of face-to-face confrontation, the states may continue to fashion legislative exceptions that can accommodate the perceived needs of children in cases of sexual abuse. To this end, exceptions to *Coy* should be guided by *Globe Newspaper Co. v. Superior Court* where the Court held “the minor victim’s age, psychological maturity and understand-

---

187 Ritchie, 480 U.S. at 61.
189 Id. at 1017.
190 Id. at 1020 (citing Ohio v. Roberts, 448 U.S. 56, 63-65 (1980)).
ing, the nature of the crime, the desires for the victim and the interests of the parents and relatives’ were factors of central importance in deciding the constitutional validity of protective legislation in this area. In light of Coy, pre-existing legislation permitting a child’s testimony to be taken in a separate room and either transmitted to the courtroom via closed circuit television or be videotaped for subsequent viewing by the jury, should be reconsidered with a view to its constitutional correctness.

In a 5-4 opinion delivered June 27, 1990, in the case of Maryland v. Craig, a majority of the Supreme Court held through Justice O'Connor that the face-to-face confrontation requirement of the sixth amendment may be dispensed with, consistent with the Globe Newspaper standard, when such action would protect the victims of alleged child abuse from trauma and the witness’s testimony is otherwise assured. The confrontational denial must be conditioned on the finding of necessity that such a confrontation would threaten the child accuser’s welfare, that the child would be traumatized by testifying in the defendant’s presence and, furthermore, that the trauma suffered by the child witness if he or she testified be more than de minimis. Thus, a Maryland statutory scheme allowing a child witness to testify outside the courtroom via closed circuit television was sustained. In a strong dissent, Justice Scalia criticized the “interest balancing” test of the majority and instead adhered to the conviction that face-to-face confrontation with witnesses appearing at trial is an indispensable element of the sixth amendment’s guarantee of the right to confront one’s accusers.

The state of Virginia recently enacted legislation that, consistent with eight other states, extends the statute of limitations for initiat-

---

198 Id.
199 Id. at 3171, 3173. On remand, the Court of Appeals in Maryland found that the trial court judge failed to make particularized determinations that were necessary to warrant issuance of an order allowing the allegedly abused six-year-old child in question to give her testimony through closed circuit television. Craig v. State, 588 A.2d 328 (Md. 1991).
ing civil actions against incest and childhood sexual abuse offenders.\textsuperscript{201} Under prior Virginia law, such actions had to be initiated before the victim reached twenty years of age.\textsuperscript{202} One proposal would have extended the deadline to age twenty-eight.\textsuperscript{203} There is no statute of limitations on felony criminal charges, however.\textsuperscript{204} California recently enacted similar legislation that took effect January 1, 1991, that extends the statute of limitations in abuse cases from age nineteen to age twenty-six and in certain cases allows victims to file a civil suit at whatever age the discovery of injury is made. Accordingly, this type of suit may be filed up to three years after an adult is able to establish a connection between his or her current psychological, physical or emotional problems and the earlier molestation.\textsuperscript{205}

The central question confronting legislative extensions of this statute is whether allowing the statute of limitations to be recalculated in order to allow incest and child abuse survivors to sue anywhere from ten to thirty years after the fact promotes justice for the survivors or injustice for the accused.\textsuperscript{206} The director of the National Center for Child Abuse in Virginia argues that the chances of maintaining criminal charges against offenders a number of years after the primary offense occurred are negligible. "[P]ersuading a jury to consider an old claim . . . is easier when money, rather than jail time is at stake."\textsuperscript{207}


\textsuperscript{202} Under previous Virginia law, a personal injury action was to be brought within two years after the cause accrued, with minors permitted to disregard the time during which they were within the age of minority as any part of the statute of limitations. Va. Code Ann. § 8.01-243 (Supp. 1990).

\textsuperscript{203} Baker, \textit{supra} note 201, at B10.

\textsuperscript{204} \textit{Id.}

\textsuperscript{205} Id.

\textsuperscript{206} CAL. CIV. PROC. CODE § 340.1 (West 1990).

\textsuperscript{207} Mithers, \textit{supra} note 200, at 44.
In modern society, perhaps it is correct that “money is the way people are held accountable.”

Since survivors of incestuous relationships may experience severe and complicated mental (and even physical) problems later in life, it seems only equitable to allow them to seek redress for their injuries when those injuries manifest themselves. Consequently, in this regard, these state efforts at procedural extensions of the statute of limitations are to be commended as yet another strong weapon in the arsenal against incest and child abuse.

VIII. GOALS AND TREATMENT STRATEGIES

Restoration of a functional family unit as a treatment goal is not a realistic one to pursue in cases where a more disturbed family is evidenced. Rather, more successful management goals are directed toward not only preserving the present capacity for mental growth of the incestuous daughter, but also toward developing future opportunities for sustained growth. To promote these goals, successful treatment pursues steps that seek a resolution by the daughter of her conflicts over her initial disclosure of the incestuous relation and the subsequent separation of her father from the family unit. These steps include adapting to a new environment structured outside the incestuous daughter’s heretofore nuclear family setting, reestablishing peer relationships for her, and improving academic performance records in school.

A. Treatment Procedure

What is the course of treatment for the individual sexually attracted to children? Dr. Martin Malin, a sexologist in Bethesda, Maryland, who is also associated with the Johns Hopkins University Sex Disorder’s Clinic, tells his patients that their treatment is like learning to speak a foreign language. “Years of therapy and drugs will never rid you of your native language. However, you can learn to speak another language—but you’ll speak it with an accent.” Sadly, Dr. Malin observes that the first choice of sex for the pedophile will always be chil-

---

208 Id.
209 See Baker, supra note 201, at B10.
dren. Largely because of this phenomenon, it has been suggested that as to abusive mothers, sterilization be considered as a remedy for child abuse.

Most psychotherapists require special training in treating sex offenders, for it is a skill most simply do not have. Individual therapy, the goal of which is to assist the patient in understanding what precipitated his aberrant behavior, may be combined with a group setting where, with other sexual offenders, a child abuser may more fully explore the full degree and consequences of individual actions. During initial attempts to structure a program of therapy, the chronic compulsive molester may be confined for three to four weeks and, if having a high testosterone level, medicated with the drug DepoProvera, which lowers the sexual drive to a level equivalent to pre-pubescence.

Therapy may continue for one to four years or until the therapist thinks the offender is ready to be released. Because incest is a family disorder, therapy is given not only to the offender, but is offered as well to the victim, the non-offending spouse and other siblings. Generally, the offender is removed from the home and reunited with his family if and when the other members of the family are comfortable with his return. Family support groups, such as Parents United based in California, serve as helpful adjuncts to a sound program of therapy.

While sexual abuse treatment centers set their success rate at eighty to eighty-five percent (and ninety-six percent for incest), some have questioned the accuracy of the figures. A member of the Federal Bureau of Investigation has observed that the patient success or failure rate is based either on self-reporting by patients or their simply getting caught. Accordingly, some re-offend without ever getting caught. For the sake of argument, even assuming a fifty percent success rate, is there any real consolation for society in knowing that half
of the individuals receiving treatment will theoretically molest children again?

First-order solutions would appear to be deceptively simple, yet present a vexatious conundrum: society can choose either to continue an obviously weak program of therapy (yet hope to strengthen it) and teach the abusers how to control themselves, or incarcerate the offenders in a prison system ill-prepared to offer hope of rehabilitation. Both of these solutions appear to be negatively focused, accepting and passive. Surely there must be another approach.

B. A New Working Partnership—Law and Mental Health

It has been suggested that a well-qualified and experienced mental health professional can assist greatly in the legal process while also aiding the child-victim. For the health professionals to be effective, however, significant control must be ceded to them over both the investigatory and the therapeutic phases of the case. The health worker must have a broader mandate than being used as a “detective.” Indeed, the therapist must determine “beyond a mere finding that the alleged abuse is verified or not.” Even if there is no verification, the mere existence of an allegation of sexual molestation is sufficient evidence in and of itself to signal an at-risk child and verify the need for counseling either for the family as a group or the individual members within it. Therapy is thought to be more effective when two therapists work as a team—one for the child and one for the parents. They, in turn, will consult with each other and, when appropriate, with other professionals such as teachers and counselors of the child. After the attorneys reach a formal agreement with the therapists that memorializes the conditions of their employment and use by the lawyers, the initial task for the health professionals is to undertake a preliminary assessment of the allegations of abuse and make a recommendation regarding interim visitation.

The second phase of the therapeutic assessment brings the team of therapists and family court service professionals together in a collabo-

---

221 Bressee, supra note 134, at 561.
222 Id.
223 See Appendix to this Article for a Model Agreement.
224 Bressee, supra note 134, at 568.
intrathe comesth of the child’s interests, an “ordinary” custody evaluation can take at least several months to complete. If protective measures are in place for the child, there is no real need to rush the investigation.225

The third phase brings the expertise of the therapists together with that of the legal profession in formulating recommendations for the disposition of the case at bar consistent with all pertinent statutory guidelines. It is at this stage that, if a determination is made that the child should have his or her own legal advocate, one is appointed. The court may, in turn, conduct hearings as to the scope of the child’s interests and the best way to assure their continuance, with the therapists testifying only as court appointed experts or on behalf of the child.226

After the development and presentation of a comprehensive plan, together with an advocacy of the child’s best interests, the final disposition must provide for a subsequent review hearing within six months or less and, if needed, a continuing jurisdiction by the court, with the assistance of the child’s therapist, “for a sufficiently safe period of time.”227 In safeguarding the needs of a sexually abused child, the therapists must nevertheless be ever mindful that, especially as to incest, a mother may be overreacting to marginal evidence of its occurrence and displaying reactions of over-protectiveness of her child or excessive suspicion and vengeance toward the separated or divorced father.228

225 Id. A battery of psychological tests, together with an analysis of behavioral signs observed both at home and at school, can be utilized as an effective complement to reaching a therapeutic assessment. But see, Tuerkheimer, supra note 184.

Tests for three- to six-year-old children would include: the Conger Children’s Sentence Completion Test, the Children’s Apperception Test and the Rorschach and Structured Play Interview. For the 6 to 12 year old, additional tests might include: the revised Children’s Manifest Anxiety Scale, the Piers-Harris Children’s Self-Concept Test and the Roberts Apperception Test. De Young, supra note 163, at 564, 656.

226 Bresee, supra note 134, at 568. See Comment, The Admissability of Expert Testimony in Intrafamily Child Sexual Abuse Cases, 34 U.C.L.A. L. Rev. 175 (1986). For a British case dealing with an incident of parental child abuse and direct efforts by overly zealous social workers to omit material facts that would have disclosed no maladjustments of a five-year-old daughter to charges of sexual abuse by her father and thus justified initially an order allowing him supervised visitations to her, see L v. L, 2 Fam. 16 (1989).

227 Bresee, supra note 134, at 568.

228 Id. at 563. See also L v. L, 2 Fam. at 226.
IX. CONCLUSIONS

The media and expressive arts, as barometers of the communal psyche, show clearly that, by many measures, family stability is under increasing stress and challenge. The fascination with and study of incest reveal deep-seated anxieties regarding the unity and integrity of the family structure and the sexual links within it. Fascination should prompt serious further study of the dynamics or vectors of force at work in this area. Critical self-examination of the strengths and the weaknesses of the nuclear family is much preferred to its total destruction and the resulting lawlessness and disorder that would arise in its perilous aftermath. With the family comes a kinship system and the whole of social order.

The social stigmas and legal prohibitions against incest must continue so long as the self-examination continues. New, enforced laws against intrafamilial child abuse should go hand in hand with the continuing study of incest. Consistent with the constitutional principles of freedom of association and of contract, civil and criminal sanctions probably should be modified to allow marriages between collateral relatives. Such marital relationships present no undue threat to the cohesiveness of the nuclear family or to the genetic balance and integrity of the societal gene pool. But consanguineous marriages between lineals, especially in the three dyads of father-daughter, mother-son and full siblings, must be condemned, disallowed and punished. These clearly incestuous acts of inbreeding would destroy the basic foundation of the family unit and contribute significantly to weakening society's genetic profile.

Endeavoring to correct the societal problems that give rise to and promote child abuse will take more time, greater professional commitment and renewal by the legal and health care professions. To ensure success, local and state governments must create a greater financial base from which to draw. Until these three components are placed in equilibrium, corrective or implemental actions through the present system must continue. Old laws must be re-analyzed and new ones proposed to correct existing weaknesses. Definitional precision must be sought in delineating child and physical abuse and the circumstances and evidentiary proofs that will sustain convictions thereunder. Child
INTRAFAMILIAL CHILD ABUSE

protective systems can be only as efficient as the laws that structure them.\textsuperscript{229}

Uppermost in any ongoing examination of child abuse should be the sad reality that abused children will be left with profound psychosocial maladjustments throughout their lives and may very well develop in later life into child abusers themselves.\textsuperscript{230} To prevent this end, researchers must conduct more sophisticated clinical research and less empirical study to probe the etiology of child abuse and develop effective programs to combat it.

Severe punishments must be continued for wrongdoing involving child abuse. At the same time, the criminal justice system should seek to fine tune the balance of protections afforded the public's interest in safeguarding the privacy of children who have been abused already, and prevent further trauma to them while protecting the accused's right to a fair standard of procedural due process when he or she is prosecuted for child abuse or incest. Indeed, one study has proven clearly that the greater the likelihood that incest offenders will be brought to trial, the greater the deterrent effect on potential violation.\textsuperscript{231}

When punishment is in fact meted out, to the extent possible, it must be fair and embody plans for rehabilitation (if such can be hoped for realistically). Allowing greater ease in recovery of civil damages for incest and child abuse would also be a positive step. This would act as a reinforcing social benefit to both present and potential victimized plaintiffs by inviting a public reconsideration, and thus a heightened awareness, of the real plight and horror of the victims and also of where the real blame is to be fixed in tragic cases of this nature.\textsuperscript{232}

\textsuperscript{229} See supra notes 169-87. In Washington, D.C., a tragic increase in the use of and addiction to crack-cocaine has resulted in an unprecedented surge in the number of children being not only sexually abused, but neglected and mistreated. Greene, Abuse, Neglect Rising in D.C.: Drugs Ravage Home Life, Wash. Post, Sept. 10, 1989, at 1, col. 2.

\textsuperscript{230} See supra notes 131, 132, 165, 167, 211.


\textsuperscript{232} See Note, Statutes of Limitations in Civil Incest Suits: Preserving the Victims' Remedy, 7 Harv. Women's L.J. 189 (1984). Few cases are reported where damages have been allowed. Reagon v. Rider, 70 Md. App. 503, 521 A.2d 1246 (1987), allowed damages for a daughter who suffered incestuous abuse under a theory of intentional infliction of emotional distress. In Elkington, as Guardian Ad Litem for C. v. Foust, 618 P.2d 37 (Utah 1980), the Supreme Court of Utah allowed a judgment of $12,000.00 in compensatory damages and $30,000.00 for punitive
Society cannot be held totally liable for the potential or subsequent acts of child abuse because of its failure to teach lower socio-economic and under-educated mothers to bond with their newborns.\textsuperscript{333} Individual values and responsibilities have to be taught and assumed in the total maturational process. The first to teach such values and responsibilities is the family, second are the schools, and third are formalized religious or ethics instructors. It is rather simpleminded, indeed, to blame society for the total breakdown in those values conducive to and promotive of child abuse. In the final analysis, it should be remembered always that individuals comprise society, and \textit{they} must be held accountable for their \textit{own} actions.

\textbf{APPENDIX}

\textit{CHILD-FOCUSED CUSTODY AND VISITATION EVALUATION AGREEMENT*}

The undersigned parties recognize that the best interests of \underline{(Child)} are of paramount concern, and in order to define and effect those interests, agree as follows:

1. Therapist will without exception report any alleged or reasonably suspected physical, sexual or emotional abuse of the child to Children's Protective Services as required throughout the evaluation process. When it appears to the therapist that the child’s interests require it, therapist will advocate for the assumption of jurisdiction by the Juvenile Court as the preferred legal forum for protection of the child.

2. Therapist will employ as the method of choice, a team model—one therapist primarily responsible for evaluation of the child and one primarily responsible for evaluation of the parents; the parties hereto agree to waive any applicable privileges and confidentially to the extent necessary to allow for full consultation between the team therapist.

3. Therapist will evaluate the allegations of abuse through ongoing treatment of the child, rather than on a limited forensic basis, and the parties shall make child available for sessions as scheduled by therapist.

\textsuperscript{333} See Comment, \textit{Sterilization, supra} note 212. \textit{See also} Egeland & Vaughn, \textit{supra} note 127.
4. The parties shall not take the child to other mental health or medical professionals for any diagnosis or treatment in any way related to the allegations of abuse; if the child needs further diagnosis or treatment, the parties shall take the child to health care professional to whom the child is referred by therapist.

5. The parties agree that the therapy team is engaged not only to determine the accurateness of the allegations of abuse, but also to develop a comprehensive and permanent custody/visitation plan; therefore, the parties agree not to interrupt or delay the evaluation process.

6. The parties understand and acknowledge that neither member of the therapy team is an advocate or expert witness for either of the parties, and that both team members are impartial and responsible only to the child and the Court for the development and recommendation of a plan to secure the child's best interests. Neither team member will testify on behalf of a party, but only as the child's or the Court's expert.

7. The therapist will monitor the effect on the child of any legal proceedings and of the conduct of the parties, and will recommend to the Court that an attorney for the child be appointed if necessary to protect the child's interest.

8. Therapist will seek appointment as the Court's mediator and evaluator in order to ensure the communications between therapists, as well as the evaluation process itself, are as confidential and legally privileged as permissible under applicable law. Under no circumstances, however, will any claim of privilege or confidentiality by one of the parties compromise therapists' duty or ability to report allegations, findings or opinion, on behalf of the child, to Child Protective Services, Family Court Services, Juvenile Court or Family Court. Unless it is clearly in the child's best interests for the therapist to testify at hearing in a criminal prosecution based on the alleged abuse, therapist will claim all applicable privileges and decline to disclose records or information.

9. The parties shall be responsible for prompt payment as billed of all fees and expenses of the therapy team, based on the normal rate of $_______ per hour. Upon execution of this agreement, the parties shall pay an advance of $_______ . In event of non-payment of fees and expenses, therapists may, as appropriate, seek direct appointment by the Court as the Court's expert and an order for payment of fees.
This form was provided to the author by Patricia Bresee, Commissioner, Superior County, County of San Mateo, California, July 21, 1988.