

# Preserving Children's Protection While Enhancing Justice for Parents in Abuse and Neglect Evaluations

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Although the movement in the United States to protect children from inhumane treatment began in the 19th century, child abuse was literally defined as the death of the child until 1962. With the publication in that year of "The Battered Child Syndrome" by Kempe *et al.*,<sup>1</sup> clinicians in pediatrics, child psychiatry, and general medicine became concerned about defining, treating, and preventing child abuse and severe neglect of children. Mandatory reporting was instituted when the belief of many practitioners, teachers, social workers, and others that they could successfully work with abusive and neglectful parents safely and effectively to promote a better life for the child was found to be false. These practitioners were accustomed to correcting many other problems within their expertise without State authority or support. They believed that correcting deficits in abusive and neglectful parents could be the same. Unfortunately, few parents appreciated the intrusion of these well-meaning, helpful practitioners. Parents continued to abuse their children, with sometimes catastrophic results, and children continued to suffer. Society instituted mandatory reporting to force the practitioner to report and be accountable and also to provide leverage with recalcitrant parents by imposing state authority.

Mandatory reporting creates a process similar to involuntary psychiatric hospitalization. Because of

the presence of imminent danger, the State has the authority to remove and protect until the situation causing the danger is corrected. In both cases, the persons in need of correction (i.e., the psychotic patient or the abusive parent) often do not believe that they are doing anything wrong. Abusive and neglectful parents often assert that they know their children's needs best—that their forms of discipline are culturally acceptable in their social or religious communities. Sometimes abusive parents truly do not understand that their behavior is detrimental to their children. Such parents may simply need education and guidance. Other abusive parents, not wanting to admit to themselves that they are out of control and abusive, rationalize physical abuse as necessary to set limits and sexual abuse as caused by the child's desire for sexual contact or as necessary to prepare the child for the future. In reality, these parents lack adequate self-control and motivation to conform to reasonable standards of behavior. Physically aggressive parents may benefit from anger management programs and more sophisticated mental health treatment. Sexually abusive parents may benefit from mental health treatment. For both physically and sexually abusive parents, clear limits set by the State and enforced by a real threat to take the children away permanently and to place the offender in jail are often crucial in helping the parent to gain acceptable control of his or her behavior.

It is important to note that some parents fight to keep their children, but not because of love for the child or the belief that they can truly provide the best home for the child. Rather, similar to narcissistic divorcing parents who both want custody of the child, some abusive parents do not want to suffer the

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narcissistic injury of losing their children. Therefore, they fight to keep them.

In the intervening 39 years of heightened awareness of the problem of child abuse and neglect, dramatic strides have been made in protecting many children from the horror of abuse. Research has led to a more precise understanding of the breadth of the problem and the ways to identify, treat, and prevent abuse and neglect. A significant increase in society's knowledge of the range of acceptable parenting skills has been provided by books, magazines, and television talk shows. Nationwide, the addition of mandatory reporting for identifying and protecting children in abusive and neglectful situations, along with the creation of state and voluntary agencies to monitor and intervene in cases of abuse, has led to the protection of millions of children and improvement in the behavior of most of their parents. No reasonable person would advocate a return to the pre-1962 era.

At a symposium at Fordham University (New York, NY) in April 2001, entitled "Achieving Justice: Parents and the Child Welfare System,"<sup>2</sup> many participants were critical of the current system, believing that it was not adequately protective of parents' rights, and urged that numerous changes be made. Achieving justice for parents accused of child abuse and neglect in legal cases is an admirable and highly meritorious endeavor. It should not be undertaken, however, at the expense of the well-being of the child. Justice for one group (parents) should not be promoted by a decrease in justice for a second group (their children). In many ways, justice achieved for parents can result in justice achieved for their children. One of the rights children have is to be part of a family. Just as parents have a right to their children, so should children have the right to be treated appropriately by their parents. Promoting the rights of parents and achieving greater justice for them may well coincide with promoting justice for children. Children should have the right to corrective services that will be offered to their parents when their parents are found to be abusive or neglectful. Improvements in the quality of parenting and maintaining the family can address the needs of both children and parents.

Parental rights should never be terminated prematurely. States should take all reasonable steps to improve the quality of the home provided by biological parents so that most children who have been abused can be returned safely to their homes. Adequate re-

sources are needed to investigate cases of alleged neglect or abuse promptly and to make determinations in a reasonable time frame. During this period, parents should have extensive supervised visitation and continuing parenting time with their children, both to maintain attachment and interpersonal bonds and to provide an opportunity for assessment of the parents' maladaptive functioning and ability to learn new skills. Only in exceptional circumstances should the parents be prevented from continuing supervised parenting time with their children. Therapeutic services are necessary so that parents who are able and willing to change can become adequate parents. All of this and more is needed. Specifically, parents should have social service assistance so that they know how to access the full array of available services, including their legal rights. Additional supportive services for parents should be created and augmented when needed.

Not all parents are willing or able to correct their parenting deficits sufficiently to create a safe home environment, and some cannot improve in time for the specific child who has been taken into protective placement. It is a tragedy to take a child permanently from a home that could have been improved. It is also a tragedy to return a child to an abusive parent to be further abused and possibly even killed. No system works flawlessly. Officials charged with the well-being of children must design the best possible system, determine when it fails to function well, and continually improve and correct it.

The Family Reunification and Preservation Act of 1980<sup>3</sup> failed. It overwhelmingly focused attention on returning children to their families of origin. The law did not recognize that the damaging behavior in some families could not be corrected. Children have died as a result of this law's inadequacies. The Adoption and Safe Families Act, 1997 (ASFA)<sup>4</sup> was passed and signed into law to correct the deficiencies of the 1980 law. ASFA places the emphasis on safety and protection of children. The children's needs are paramount.

Some have voiced strong concern about the effects on the rights of parents of ASFA. ASFA placed new emphasis on permitting adoption rather than sending children back to incorrigibly abusive and neglectful biological parents. The law requires procedures for rapid termination of parental rights, thereby permitting adoption of abused and neglected children. However, states are still required first to make rea-

sonable efforts to reunify children with their biological families. The law now requires dual planning as a contingency in case it is not possible to correct the unsafe deficiencies of the biological family. Dual planning comprises simultaneous plans for both reunification with parents and termination of parental rights for a pre-adoptive placement.

ASFA's promotion of dual planning with increased speed of termination of parental rights has raised some concerns. One is that as a result of ASFA, child welfare agencies may not make reasonable efforts to reunify children and families. Child welfare practitioners may not be able to determine which parents are able to accept help and improve and which will fail to do so. Termination of parental rights may therefore seem to be an expeditious route to solve the child's problem. Moreover, others fear that the new emphasis will lead to weaker efforts at family preservation, and that family preservation will fail because of a lack of services. Fortunately, the judicial requirement for termination of parental rights still, under ASFA, requires all reasonable efforts to correct the situation before resorting to termination. Judges play the continuing and important gatekeeper's role of monitoring adherence to the law. Children and parents should have the right to an adequate trial period for therapeutic strategies before moving to termination of parental rights.

A second concern regarding ASFA is that faster termination of parental rights provides no real benefit, because the number of children freed through termination of parental rights is larger than the number of children adopted. Although this problem should be studied and researched further, it is not the concern of ASFA. The problem is to protect children, not to make them available for adoption. The children who are available for adoption but do not find families have been removed from seriously and dangerously abusive or neglectful homes. Continued placement in foster homes, although not ideal, is still preferable to continued abuse and neglect.

Despite the charges of some, ASFA is neither racist nor a violation of parents' rights. It is an attempt to provide better protection of the rights of those who are fully innocent and are the weakest—that is, the children. Professor Dorothy Roberts disagrees: "The Act's misguided emphasis on adoption ignores potential for excessive removal by state authorities, fails to require states to develop family preservation programs, and underestimates the dangers of wrongful

disruptions of families" (Ref. 5, p 4).<sup>5</sup> She notes that more than 200,000 children are placed in foster care each year and that 45 percent are black, whereas only 15 percent of the population is black. Moreover, almost all are poor. Roberts states:

Perhaps the major reason for preferring extinction of parental ties in foster care is society's centuries-old depreciation of the relationship between poor parents and their children, especially those who are black. Most Americans can grasp a white middle-class child's emotional attachment to her biological father even though she is being raised by a stepfather. . . . The public has a harder time, however, imagining a strong emotional bond between black parents and their children [Ref. 5, pp 5 and 6].

Roberts goes on to suggest that the desire of white families to adopt black children is one of the motivations for the more rapid removal of children from parental rights. In summary, her argument is that a racist child care system is inappropriately violating the rights of black parents by unjustly taking away their children, partly for lack of appreciation of how poor children can be emotionally attached to poor parents and in part so that white families can adopt black children.

There are many problems with her argument. First, only a small percentage of the estimated 900,000 children who are abused or neglected each year are actually removed from parents. Moreover, in only 1.6 percent of all cases are the allegations of abuse and neglect determined to be unfounded (i.e., no evidence of abuse or neglect).<sup>6</sup> If this 1.6 percent is an accurate statistic, it is a very small false-positive rate. The false-positive rate for surgeons performing appendectomies is approximately 15 percent. In fact, if a surgeon has significantly fewer false positives, he or she is thought to be too cautious in operating and likely to miss cases in which surgery is needed. In child abuse and neglect assessments, the goal is for the best understanding and the highest predictive value possible for whether the child can be safely returned. While we move toward the most perfect system possible, errors should not be made in the direction of leaving children unprotected and vulnerable to severest abuse and neglect. However, this should not lead to the overreaction of indiscriminate removal of all children in suspected abuse cases. Adequate safeguards for in-home monitoring should be used whenever possible and continues to be appropriate in most cases.

The U.S. Department of Health and Human Services reported that 900,000 cases of abuse and ne-

glect were substantiated in 1998. Fifty-four percent were for neglect and 35 percent for sexual or physical abuse. The report states that 1,100 children died because of maltreatment.<sup>7</sup> This demonstrates that many children are being left in abusive and neglectful homes, not that significant numbers of children are being wrongfully removed from acceptable homes. That poor families are overrepresented in the group in which children are removed does not mean that poor families are being mistreated. In part, the problem is that more abuse and neglect occurs in poor families, because poverty leads to stress, and stress is one factor that fosters child abuse.<sup>8</sup> Moreover, anecdotally it is believed that public health facilities that serve the poor are more likely to report abuse than are private doctors. This is an area meriting scientific study. The problem may not be that large numbers of poor children are inappropriately removed from acceptable homes, but that the children of parents of higher socioeconomic status may not be adequately protected by the system because their parents have the means to hide their abuse of their children. New emphasis on mandatory reporting for private practitioners may be needed.

The achievement of justice for parents should not be at the expense of children's rights. After many centuries of being no more than their parents' property, children now hold rights as human beings. Those who are the weakest and most vulnerable, that is abused and neglected children, deserve society's protection. ASFA was passed in reaction to the 1980 Family Reunification and Preservation Act<sup>3</sup> which encouraged states to replace costly and disruptive placement outside the home with preventive and reunification programs. As mentioned earlier, the law was a failure. ASFA made children's health and safety the paramount concern. ASFA came after numerous documented reports of children being killed after their return to abusive homes.

Another argument against ASFA is the assumption that significantly more abusive and neglectful homes would evolve into good ones if more services were available. Professionals who have worked with many individuals in attempts to change their family dynamics and individual behavior know that it is often very difficult for these people to change quickly, even when they want strongly to change. Treatment is generally more difficult when multiple

problems exist. Child abuse tends to occur in families with problems such as domestic violence, social isolation, parental mental illness, and parental substance abuse.<sup>9</sup> Waiting for dangerous behavior to change may take too long to justify years of interim placement for developing children. Helping the disturbed parent may not benefit a particular child whose abuse brought the parent to the attention of social agencies and to treatment. It will, however, help children that may be born to or in the care of the parent later.

It becomes much more difficult to effect change in an individual when that person is reluctant to accept treatment. Some individuals deny having a problem. Mental health professionals often find themselves in the impossible position of trying to change individuals who will not accept therapy. The reality of a time limit during which parents must gain better control of their behavior, lest they lose their children, is likely in many cases to help foster needed change, rather than to deny people the time they need. Perhaps someday, therapy and social intervention will provide the means to bring about behavioral change in people more readily. Until that day comes, many children will have a need for protection from parents who abuse and neglect them.

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