

Intervention in Child Abuse Cases

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As recently as the latter part of the 19th century, no laws protected children from abuse. Yet, child abuse was and still is a serious problem. A nationwide survey¹ indicates, "Knowledge of the problem is universal," with 6617 cases reported in 1968. Ninety per cent of these incidents occurred in the children's homes, and 35.6% were of sufficient severity to warrant hospitalization. Children may suffer from permanent neurological dysfunction and mental retardation as a consequence of abuse.² If left in the home without intervention, their mortality risk may be as high as fifty per cent.

Although the phenomenon of child abuse is by no means new, the status of the phenomenon in relation to accepted legal and moral sanctions has undergone much change. Legal processes were first invoked for the protection of an abused child in New York in 1874.³ The child's name was Mary Ellen. Church workers had become aware that she was beaten severely and regularly by her adoptive parents, and she was also seriously neglected in other aspects of life. The Church persuaded legal authorities to intervene, but no statutes existed for such a purpose. Therefore, a bold appeal was made to the Society for Prevention of Cruelty to Animals. Mary Ellen was removed from her adoptive family as "A member of the animal kingdom under the laws of animal cruelty."⁴

Societies for the Prevention of Cruelty to Children began to appear across the states. The actions of these organizations were supported by a previously unrecognized 1838 Pennsylvania decision:

The Supreme Court ruled that under certain circumstances natural parents could be superseded by the *parens patriae*, a common guardian of the community, thus establishing another legal precedent for removing children from the danger of incompetent parents.⁵

The basis for intervention broadened to the federal level in 1909 with the formation of the Children's Bureau. The Bureau constructed a "Children's Charter, which . . . promised every child a home with love and security, plus full time public welfare services for protection from abuse, neglect, exploitation or moral hazard."⁶

Finally,

By June of 1967, every state in the United States had adopted laws

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which require, or recommend, to physicians and certain others to report suspected cases of child abuse to the appropriate law enforcement or welfare authorities, and which free reporting persons from civil and criminal liability for doing so.⁷

Child protection legislation in most states is similar because many of the state acts are modified versions of the model proposed by the Children's Bureau. Generally, the purpose of child abuse legislation is to

provide protection from further abuse, and provide rehabilitative services for children and parents so as to ensure the child's well being and to preserve and stabilize family life wherever appropriate.⁸

Intervention may be allowed in cases of suspected physical abuse or serious physical neglect, as well as cases of "mental injury" and sexual abuse.⁹ Persons who suspect a child has been abused are encouraged and/or mandated to report such suspicions to the appropriate social service or law enforcement agency. Subsequent judicial involvement in abuse cases may invoke either civil or criminal sanctions, depending upon the recipient of the report.

The Criminal Law

The disposition of a perpetrator need not involve new legislation. Present sanctions against homicide, manslaughter, and aggravated assault may be applied in the interest of the juvenile as well as the adult. However, application of criminal law to child abuse is unique in several ways. Evidence is difficult to collect because, as noted previously, child abuse occurs in the home 90% of the time. Prosecution may result in hostility and resentment on the part of the parents, forever ending the hope of changing the home situation in any constructive way. Bail may allow abuse of the child to continue while the perpetrator awaits trial. Legally acceptable postponements or appeals may further such jeopardy. Acquittal may be likely, due to the intricacies of the nature of evidence, and may actually reinforce the behavior of the perpetrator while teaching him to be more cautious.¹⁰ Conversely, a conviction may lead to a sentence ranging from 30 days to 15 years, or it may result in probation. What will happen to the child during this probation, or upon release of the perpetrator? The criminal prosecution of an abusive parent is a rather inadequate method of protecting the child.

The Civil Law

Disposition of child abuse cases through civil law, particularly the juvenile justice system, benefits from greater procedural and dispositional flexibility. Generally, the system's goals involve immediate protection of the child, treatment rather than punishment of the perpetrator, and, it is hoped, return of the child to a newly adequate home. Intervention may be justified not only in cases of suspected physical abuse but also for inadequacies of parenting itself, such as withholding love and affection, indifference, inconsistent discipline, and failure to provide adequate nutrition.¹¹ The

standard of evidence is unique in its direct relationship to the expected disposition. Thus, if court supervision and parental treatment are the desired outcomes, the evidentiary standard of *res ipsa loquitur* (the condition of the child speaks for itself) may be observed.¹² If termination of parental rights is a possible outcome, proof beyond a reasonable doubt may be required. The flexibility of this system allows intervention in a greater number of cases. It may also allow wrongful abrogation of parental rights in a larger number of cases. The benefits of flexibility may occasionally be overshadowed by the discrepancies that such flexibility allows.

Standards for Intervention

A basic problem still exists in child protection legislation; standards for intervention, including temporary removal or permanent termination of parental rights, are lacking. The use of objective standards for the disposition of child abuse cases will eliminate many of the discrepancies allowed by the civil law system.

Professional Judgment. Disposition through the juvenile court system is usually largely dependent upon information provided by the social services caseworker. In most cases, the presiding judge has little or no expertise concerning the development of children and how to maximize benefits for their development. The judge must rely on the opinions and professional judgment of the caseworker, although this judgment may often be inadequate. Several state supreme courts have remanded or reversed juvenile court decisions because of irresponsibility on the part of the caseworkers and agencies. In the case *In re Overton*,¹³ the court opinion recognized that the social worker took no initiative in the case, discouraged visitation, and actively sought termination. Similarly, in *HGR v. Smith*,¹⁴ the social worker stated: "We did not make contact because we were expecting to terminate." Thus, a precedent has been set that requires "clear, cogent, and convincing evidence"¹⁵ to effectuate a petition for termination. Furthermore, the seriousness of child custody proceedings has indicated the need for greater procedural continuity. Faber concludes:

The functioning of the family, the basic unit of our society, is under direct scrutiny when a court seeks to determine if a child is being neglected. For this reason, when the state uses its judicial machinery to disrupt the family relationship, by separating a child from his parents, all the safeguards of procedural due process should be observed.¹⁶

The court, *in re Gault*,¹⁷ recognized the need to insure several rights to the parents of juveniles in delinquency proceedings. Broadly applying the decision to abuse-custody cases results in guaranteeing parents the rights of notice of charges, counsel, cross-examination, confrontation, privilege from self-incrimination, transcript and appellate review. Procedural safeguards underscoring rights of the parents in custody termination proceedings have been supported by these decisions. However, those decisions have not really strengthened the children's rights despite some comments to the contrary, such as the following.

For nearly half a century the established rule in this jurisdiction has

been that the rights of the parent to the child are secondary to the welfare of the child. Its well being as we have said time and again, is the paramount consideration. Hence it is that, in all cases such as this, what is best for the child, rather than the natural right of the parent, is the controlling factor.¹⁸

The philosophy of the "best interest of the child," however, is useless unless implemented. Indeed, parental interests and protective services interests may be divergent in their views of the best interests of the child; what is best for the child may not be represented by either of the two other parties.

Interpretation in the Court. The appointment of a *Guardian Ad Litem*, independent counsel to represent the child, should safeguard the procedural rights of the child and also should represent the child's best interests. However, standards for determination of such "best interests" are still inadequate. Quite often, the best interest is solely represented through a sort of judicial-psychological intuition. In the case *in re Gould*,¹⁹ such a situation led to denial of a petition for change of custody. The court stated:

Not only do the interest and affection they have shown, and the care and support they have given him, entitle them to some consideration as against a prospect, but they give assurances for the future. What they have done tends to show what they are willing to do.

The case of *Painter v. Bannister*²⁰ is similar. In fact, both cases deal with custody disputes between family members. Custody was retained by the grandparents in both, but the cases differ in how such a decision was reached. Judicial intuition is the standard in *Gould*, while in *Painter*, the opinions of a child psychologist served as the basis for the decision. The court reported:

Mark has established a father-son relationship with Mr. Bannister, which he apparently never had with his natural father. He is happy, well adjusted, and progressing nicely in his development. We do not believe it is for Mark's best interest to take him out of this stable environment in the face of warnings of dire consequences from an eminent child psychologist We do not believe we have a moral right to gamble with the child's future.

Although the dispositions involved were identical, and both courts supported the child's best interest as paramount, the standards for determining these interests were quite different.

Psychological Standards. The courts have often turned to professionals in the fields of psychiatry and psychology for advice concerning the benefits and detriments of separation, whether temporary or permanent. Although professional literature abounds with information concerning this subject, there is no single opinion. In foundling home children, Spitz²¹ reported a syndrome of anaclitic depression or hospitalism due to separation. The syndrome was characterized by severe emotional withdrawal, retardation of

motor activity, developmental retardation, and food refusal. The syndrome disappeared relatively quickly when the mother returned, but serious consequences were reported if the deprivation continued. Foundling home youngsters were noted to have a greater susceptibility to illness as well as a higher mortality rate. In addition, the children showed severe developmental retardation, general anxiety, stereotypic body movements and lack of communicative language. Spitz concluded that the damage seemed to be irreversible if it occurred during the first year of life. Taylor²² supports this view on the basis of research with institutionalized children.

The crucial age period during which maternal deprivation wreaks its greatest damage on intellectual development is the latter half of the first year of life. The continuation of deprivation beyond 18 months to 2 years results in irreversible intellectual retardation.

However, the psychological consequences of abuse may be more severe than those of separation. Malone²³ studied a group of severely neglected and deprived children from Skid Row families. By the age of 3½ there were distinct developmental deviations, including retarded language acquisition, delayed cognitive development and anxiety in social situations.

The crux of the matter is stated quite plainly by Bowlby:

The attachment of children to parents who, by all ordinary standards, are bad is a never ceasing course of wonder to those who seek to help them. Efforts made to save the child from his bad surroundings and give him new standards are commonly to no avail, since it is his own parents whom, for good or ill, he values and with whom he is identified. These sentiments are not surprising when it is remembered that despite much neglect, one or the other parent has almost always and in countless ways been kind to him from the day of his birth onward, and, however much the outsider seeks to criticize, the child sees much to be grateful for.²⁴

While this suggests a goal of keeping the home intact, it does not preclude the responsibility of trying to improve that same home. It also does not preclude the necessity to protect the child from imminent danger. Bowlby's extensive work concerning parent-child relationships suggests how such interventions should be made. He reports a sequence of behaviors in separation where the child is grief-stricken at first, then shows anger and hostility, and finally detaches himself from all previous social attachment. He adds, "After a very prolonged or repeated separation during the first three years of life, detachment can persist indefinitely."²⁵ In application to custody disposition cases, the court must consider at "What point a separation that started as temporary becomes permanent — or at least becomes conceived by the victim and others to be so."²⁶

The child, placed through agencies and often institutionalized, experiences detachment and accompanying uneasiness in new relationships. This "anxious attachment,"²⁷ as Bowlby terms it, is an indication that the child has no confidence that his attachment figures will be accessible. In addition,

follow-up studies with older children have indicated that "Whatever pattern of attachment behavior had become established during the first five years of life tended to persist whether it was secure attachment, anxious attachment, or some degree of detachment."²⁸

In summary, the literature concerning the consequences of both separation and abuse leaves several questions unanswered. We know that separation of a child from his parents may have a detrimental effect on the child's development. However, these detriments may be circumvented depending upon the age of the child, the stability of the parent-child relationship, and the intervention methods used to allow the child to establish new attachments. We know that abuse may cause both physical and psychological damage. These detriments may also be circumvented if we are able to intervene in a way that minimizes potentials for further abuse while enhancing the existing parent-child relationship.

Recommendations

Great care must be taken in dealing with child abuse. The first line of intervention should be in the home. Quite often, the courts remove children without making an adequate effort to protect them in their homes. Intense, innovative, in-home intervention is required in most cases. However, physical abuse is unique in that it may require around-the-clock supervision to protect the child completely. At the Philadelphia Child Guidance Clinic, apartments are used to hospitalize the entire family for treatment.²⁹

Temporary separation may be necessary if the child's safety in the home cannot be guaranteed. If so, such separation must occur in a manner most suited to the child's needs. This means a single placement rather than multiple. It means involving the non-abusing parent, and possibly the perpetrator as well, in making a placement, thus maintaining some continuity in the existing parent-child relationship. Furthermore, immediate, intensive work with both the perpetrator and the family as a whole is necessary. Time constraints are placed on such temporary separations. If no progress is made in a therapy situation, a permanent termination of parental rights must be made. Time limitations must consider the age of the child and his ability to maintain an attachment through a period of separation. Indeed, Goldstein suggests

for children under 5 years of age an absence over two months is beyond comprehension, for the school age child an absence of more than 6 months to one year is maximum.³⁰

If temporary separation and intense family intervention do not succeed to the point of insuring the child minimum safety in the home, permanent termination must occur. Such termination must be truly final and must be followed by permanent placement.

Regardless of whether the child is returned to his home or placed with another family, the case is not closed. The social services caseworker must help the family to handle the many problems that may result as the child and the family adapt to a changing situation. In essence, intervention must be continuous.

Conclusions

The responsibility for solving the problems of child abuse should not rest solely with the Department of Public Welfare and the social worker. Psychiatric theorists, research psychologists, and mass media educators are needed to approach the problem from their own perspectives. For years we have dealt subjectively with the phenomenon of brutal abuse. It is time to turn our resources toward truly assessing the objective criteria of the phenomenon and attempting prevention. This calls for much painstaking work. If we find objective criteria for differential diagnosis of child abuse perpetrators, or for assessing environmental influences on the incidence of abuse, we then will be able to implement a standard for intervention. We then will know where punishment is proper, as opposed to help. Such a standard is possible only with multi-disciplinary input.

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