Psychiatric Consultation to Attorneys for Abused and Neglected Children

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Precis

This paper summarizes the experiences and findings of a child psychiatrist as consultant to attorneys who represent abused and neglected children in court proceedings. The impact of psychiatric consultation on the attorney's legal representation of the child client are discussed. Subjects of the psychiatric consultations were 40 families containing 63 children. The attorney's representation of the child was modified in all 40 families (cases), and the initial legal representation custody plans were changed following psychiatric consultation in 21 of the 40 families.

Introduction

Psychiatrists, as consultants to attorneys who represent abused and neglected children, can make important contributions in those cases involved in court proceedings. By assessing these children and their families, the psychiatrist can: 1. Help clarify facts of abuse or neglect; 2. Define individual psychopathology, family dynamics and the developmental states of the child; 3. Identify the parental attachment (psychological parent) of the child; 4. Recommend necessary treatment required for rehabilitation of families and 5. Make custodial recommendations if placement is contemplated. The attorney can then use this data to formulate a legal position.

Children alleged to be abused or neglected are subjected to many legal considerations. All states have reporting laws. In approximately 20% of reported cases, children alleged to be abused or neglected will become involved in court proceedings. The purpose of the court proceedings is to determine: 1. If abuse or neglect occurred; 2. The services required for family rehabilitation and; 3. Custodial disposition plans for these children.[1]

The court-appointed attorney for an abused/neglected child is called a law guardian and his/her role in Family Court Child Protection Proceedings is to be an advocate for the rights of the child client and the desires of that child.[2,3] The duty of the law guardian is to permit inclusion of all relevant evidence and argument on behalf of the child client.[4] The importance of

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independent counsel to represent children in Family Court matters has been recognized.[5–10]

This paper is based upon the author's experience as a consultant (1977-78) to the Juvenile Rights Division of the Legal Aid Society of Manhattan, NY. This Division of the Legal Aid Society provides attorneys for abused and neglected children in New York City Family Court proceedings (NYFA, Part 4, 249).

Consultation Population

The subjects for consultation were 40 families seen from July, 1977-June, 1978, named in child abuse and/or neglect petitions filed in Manhattan Family Court. These families included 63 children named in the abuse and/or neglect petitions. Table 1 contains further details about these children. All children and parents and other family members seen by the consultant were given psychiatric evaluations and DSM II diagnoses.

The ages of the children assessed varied between eight months and 16 years. The average age of the neglected child subjects of the consultations was 6.9 years at the time of the consultations. The average age of the abused children was 7.4 years.

In 31 of the 40 neglect and abuse families, parents were unemployed and receiving public assistance; 24 of the 40 cases were single parent families.

Psychiatric evaluations of the children and adults were performed in the homes, in the foster care agencies or, as was usually the case, in the offices of the Manhattan Legal Aid Society. In all cases, attempts were made to evaluate all adults with whom the child lived, and all adults named on the abuse/neglect petition.

Psychopathology of Subjects

In 21 of the 40 cases, this was the first psychiatric evaluation of any

Table 1: Child Subjects of Consultations

	Total # of children on petition	Sexes of children on petitions		Races of children on petition				Total # of children evaluated by author
		(M)	(F)	Caucasian	Black	Hispanic	Oriental	
Children named in legal petitions								
Abuse (Battering)	9	4	5	1	6	1	1(mixed)	8
Neglect	39	19	20	13	19	7		26
Abuse and Neglect	10	6	4		7	3		10
Sexual Abuse Allegations	3	1	2		2	1		3
Sex abuse and battering	2	1*	1**			2		2

*battered **sexually abused

family member. In 25 of the 40 cases, children had never before been assessed by a psychiatrist. As a result of these consultations, 30 of the 63 abused or neglected children were diagnosed as having previously unrecognized psychopathology (See Table 2).

Seventeen of the 25 examined adult caretakers of abused and neglected children were given previously unrecognized diagnoses of psychopathology. (See Table 3).

Case Illustrations

The child's attorney makes recommendations to the court at all stages in the legal proceedings. The stage at which the child psychiatric consultation occurred was determined by the time of referral by the attorney. Once begun, the consultation continued, when requested, into all subsequent court stages.

Consultation During Preparation for Temporary Removal Hearing

At this stage of court proceedings, the court must decide if a child must

Table 2: Psychopathology of Child Consultation Subjects Nomenclature Used: Diagnostic and Statistical Manual of the American Psychiatric Association, (1968), Second Edition (DSM II)

	Physically Abused (Battered) Children	Sexually Abused Children	Neglected Children
Total # of Children Evaluated:	14	4	26
Diagnoses:			
Hyperkinetic Reaction Of Children	1*		2(1*)
Learning Disturbance with Minimal Cerebral Dysfunction But Without Hyperkinesis:			2*
Speech Disturbance: (delayed)	1		1*
Mental Retardation with Microcephaly:	1*		1
Psychosis with Folie á Trois Phenomenon:			1*
Depressive Neurosis:			2(1*)
Adjustment Reaction of Childhood (Total):	5*	3(2*)	9*
(A) With Overaggressive Features	2		
(B) With Depressive Features	1		5
(C) With Anxious Features	2	3	4
Overanxious Reactions of Childhood with Severe Separation Anxiety:		1*	2*
Withdrawing Reaction of Childhood:	2*		1*

*Diagnosis unrecognized prior to consultation

be removed immediately from his/her home because of risk of physical danger. The attorney's request during psychiatric consultations at this time was for clarification of likelihood of physical risk to the child. This required that the consultation define any caretaker and child psychopathology, family dynamics, environmental supports, attachments of children and custodial wishes of children.

Case 1

Mr. and Mrs. R. immigrated from a Far Eastern country with their four children who ranged in age from 2 to 12. Child neglect reports were made by neighbors, the neighborhood school and by a sponsoring immigrant support organization. The school alleged that the R.s refused to permit their school-age children to attend school, and that they had said, "The children will be killed by the enemy if they go to school." Neighbors claimed that the parents and children spent February evenings outside, wrapped in blankets and shivering in the snow, while yelling at neighbors to turn off television sets. The R.s said that the televisions emitted rays that harmed the children.

The attorney for the R. children requested that psychiatric consultation attempt to clarify the risk of danger to the children. Psychiatric interviews were conducted in the R. apartment, on the sidewalk while walking with Mr.

Table 3: Diagnoses of Psychopathology of Adults (DSM II)

	Physically Abusive Adult	Spouse/Paramour of Identified Abusive Adult	Sexually Abusive Adult	Neglectful Parent
Alcoholic Addiction:	2	2		5
Drug Dependency:	3			6
Antisocial Personality:	1			
Hysterical Personality:				1*
Inadequate Personality:		1*		1*
Paranoid Personality:	2*			
Passive-Aggressive Personality:		4*	1* **	
Mental Retardation:				2(1*)
Depressive Neurosis:			1*	1*
Schizophrenia, Paranoid:	2(1*)		1	5
Schizophrenia, Chronic-Undifferentiated:				1
Manic Depressive Illness:			1	3*

*Diagnoses unrecognized prior to consultation
**Mother of sexually abusive brother

R. and in a church residence to which the family moved. Interested clergy, the immigrant agency homemaker and neighbors joined the family during these sessions.

Both parents were diagnosed as having paranoid schizophrenia and their oldest child as having a *Folie á Trois* Psychosis. All shared delusions of persecution requiring that the R. children spend as much time as possible outdoors in order to avoid "dangerous rays."

The attorney's plan prior to the psychiatric evaluations was to have Mr. R. care for the children while mother received psychiatric inpatient care. As a result of the consultation, the law guardian recognized the paternal psychosis, and he formulated a plan with the author whereby clergy would supervise the children while both parents and children received court-ordered outpatient psychiatric services. If the parents would fail to comply with this plan, the attorney would request child placement outside the home. Parents did not comply with treatment and the children had to be removed.

Consultation During Preparation for Fact-Finding Hearing

At this stage, the attorney requested that the consultant clarify if child abuse and/or neglect occurred and, if so, under what circumstances. At this legal stage, the court must decide if the facts presented confirm child abuse or neglect.

By interviewing children who had been unresponsive during interviews with their attorneys, it was possible in some instances to provide some clarification of the facts of the alleged child abuse or neglect and to identify for the attorney the possible identities of previously unknown abusers of these children. Without this information, the lawyer would have been severely handicapped in his/her presentation on behalf of the abused child.

Case 2

Ed, a six-year-old cachectic black child, was admitted to a New York City hospital with belt and chain skin marks, cigarette burns and multiple fractures. His mother blamed his malnutrition on his refusal to eat, and his fractures and skin lesions on his 11-year-old sister.

The consultations occurred at Ed's bedside where drawing, puppets and car and ambulance play were used as vehicles during the evaluation. Ed revealed that his mother had a live-in "boyfriend" who took needles, chained, burned and beat Ed, and would not let Ed's mother feed him. He also said that this man threw Ed's 11-month-old stepbrother across the room and forced Ed's sister to steal food for the family from local grocery stores. The mother's paramour's existence in the home was unknown to the law guardian prior to the psychiatric interview with Ed. Psychiatric evaluation of the mother revealed her to be a passive-aggressive person.

Before the psychiatric evaluation, the law guardian's legal representation plan had been to recommend foster placement for Ed, but to permit his

siblings to remain at home. Due to the revelation of the identity of the boyfriend as the possible abuser, the attorney changed the legal representation to include foster placement of the infant brother, and the court appointment of independent counsel for the older sister, who expressed the wish to stay at home.

At this time, the psychiatric evaluation may also be used to explain for the attorney how psychopathology and developmental lags in the child clients might have made them high risks for child abuse.[11]

Consultation During Preparation for Disposition Hearing

At this stage, the issue for the court, the attorneys and the consultant was to formulate a custodial plan for the child by clarifying, if present, parental and child psychopathology and by defining the parental attachments of the child. Required rehabilitation services for the family also had to be defined.

Case 3

M., a nine-year-old Hispanic female, had been abandoned in Manhattan by her heroin addict prostitute mother and placed in the custody of her maternal grandmother by the Child Protective Services. Three months prior to the psychiatric consultation, M. had begun psychotherapy because of excessively aggressive classroom and peer behavior. M. also had three-year lags in reading and mathematic achievement tests. M.'s mother had only permitted her to attend school for six months prior to her abandonment.

Because aggressive behavior persisted despite three months of group therapy, the mental health clinic treating M. had recommended residential placement for her. Overaggressive behavior was confirmed during the consultation; however, the maternal grandmother presented as willing to participate in psychotherapy with M. A positive attachment between M. and her grandmother was evident. M.'s therapist was contacted during the consultation and she agreed to provide family therapy for M. and her grandmother. The attorney then recommended these services as well as continued custody of M. by her grandmother. One year later, M. and her grandmother remain together and M.'s overaggressive behavior ceased.

Consultation During Preparation for Post-Disposition Hearing

This stage in court proceedings consists of 12-month (or less if requested) review of child placements and adequacy of and compliance with court orders for visitation and family rehabilitation, (Family Court Act 1970, 1041-49).

At this time in the legal process, the issues that confront the law guardian and the psychiatric consultant are: (1) Should the child remain in foster home care or in residential placement? (2) Should the child be returned to the biological parents or remain with them? (3) Should parental rights be terminated, thereby legally freeing the child for adoption or for permanent

foster placement? To resolve these questions, the attorney require information from the consultant about the adequacy of ongoing services, any additionally required services for rehabilitation of the child and his/her family, the extent of rehabilitation to date and the parental attachments of the children.

At this stage, consultation often had to take place in foster homes, residential placement facilities of children and foster care agencies where visitation between biological parents and placed children were and are usually held.

Requests by children for changes of placement locations were also interpreted for the attorneys.

Case 4

S., a 14-year-old male from Harlem, was visited in his suburban residential center. He had been in placement for nine years because his heroin-abusing mother had abandoned him when he was five. His mother still used heroin at the time of the consultation. S. was requesting that his attorney have him transferred to a group home in his mother's Manhattan neighborhood. Psychiatric evaluation revealed that S. had a depression as well as a learning disability with visual perceptual difficulties. S. fantasized that he would move to Manhattan and eventually return to a "normal mother." He spoke of wanting his dormitory counselor and roommates to accompany him to a group home, saying, "They are like my brothers." When reminded of his mother's continued heroin use, of which he knew, he cried and spoke of wanting "A normal mother and a normal home," but also of wanting to remain in his residential placement until he became 18.

Prior to the evaluation, the law guardian was going to request that the court move S. to a group home. After the consultation, the attorney did not request this move. Instead, he and the author formulated a new legal and treatment plan for S. that included intensive individual psychotherapy.

Discussion

Attorneys for abused and neglected children seek to define the rights of clients within the legal framework and to act in an adversary role to defend the child client's wishes and rights.

A difficulty for the attorney representing the abused or neglected child is finding the legal position which represents the best interest of the child client. Data about the child-client that had not previously been apparent to the attorney, and which will enhance the attorney's case for the child, can be provided by effective psychiatric consultation.

The psychiatrist utilizes the medical model which seeks to formulate diagnoses and to recommend treatment and custodial plans after understanding the development of the child, the motivations of the child and the parents, characteristics of individual and family functioning and the circumstances of the alleged violent or neglectful event. Both the psychiatrist and

the attorney share the common goal of advocating the best interest of the abused or neglected child.

Although attorneys often seek psychiatric consultation to bolster already conceived legal positions, effective psychiatric consultation to law guardians can result in changes in the attorneys' plans.

A close relationship based on trust must be established between the psychiatric consultant and the attorneys for the abused or neglected children. In the author's experience, this was facilitated when the attorneys taught her the legal issues surrounding child abuse and neglect, and when most consultations were performed each week in the attorney's offices. The consultant became known personally to them, and came to be seen by them as **their** consultant for **their** clients. Flexibility in terms of willingness to travel to homes, hospitals and foster care agencies in order to see children and all possible parties involved with the children helped in the formation of a consultation alliance. In return, the author was permitted to determine, within limits of court dates, the length of time necessary for consultations.

Although child abuse and neglect cases seen in court had been known to child protective services and multiple agencies long before going to court, the author was, in fact, the only psychiatrist to have examined any child in 25 of the 40 families of the described consultations. She was also the first psychiatrist to examine any adult in 21 of the 40 families. This lack of previous psychiatric contact with abused and neglected children had occurred despite much well-known information that abused and neglected children frequently have serious developmental and behavioral disturbances.[13–19] Also, the lack of previous psychiatric contact with the parents of these children had been allowed despite the widespread knowledge of the occurrence of behavioral disturbances in adults who abuse or neglect children[12,18–23] and the importance of diagnosing parental psychopathology in determining the necessity to terminate parental rights.[24]

The attorney's representation was modified in all 40 cases evaluated to include services required for rehabilitation of children and parents as these were identified. The clarification through psychiatric consultation, of the children's wishes and parental attachments, and the increased recognition of dangerous situations, led to changes in initial legal child custody plans in 21 of these 40 cases.

Family Court Child Protective Hearings are critical events in the lives of abused and neglected children. Custodial recommendations by the court may remove children from their families and may return them to or permit them to remain in dangerous environments. Psychiatrists should be involved as consultants to attorneys representing these children because at this critical time the psychiatrist can provide information about these children which would not otherwise be available to those who must decide their futures.

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