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Perspectives on Child Maltreatment in the Mid '80s

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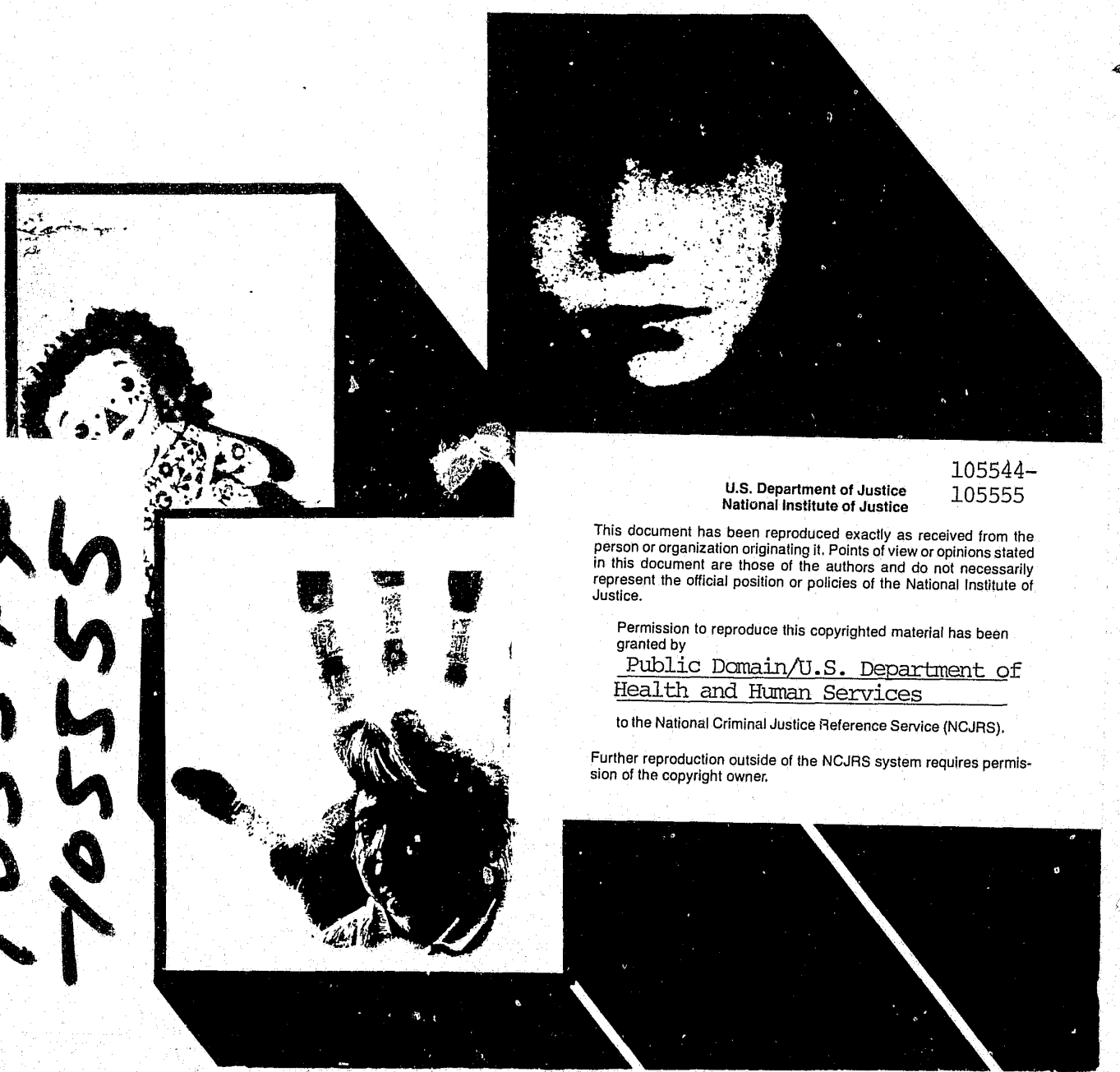

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Contents

Programs and Projects

The Revolution in Family Law: Confronting Child Abuse

by Howard A. Davidson

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In 1962 the "battered child syndrome" was first publicly identified. At about this same time, state mandatory child abuse reporting laws also first appeared, and soon every state had enacted similar statutes. Legislation since that time has resulted in a Federal child abuse act as well as comprehensive amendments to Federal child welfare laws. These developments have produced sweeping changes in the legal process of state intervention into the family.

Also in this 20-year span, juvenile and family courts and child protective statutory systems have been expanded, if not transformed. There are now about 150,000 to 200,000 abuse and neglect court cases annually—two cases for every thousand American children—according to the National Center for Juvenile Justice. At the same time, recent U.S. Supreme Court cases have affirmed the primary interest of parents in raising their children free of governmental interference. In addition, several legal scholars have criticized state involvement in child protection, which has led to significant statutory reforms and has given support to some leading judicial decisions.

But the greater demand for financial resources in the early 1980s has had a profound effect on the delivery of child protective and child welfare services. Furthermore, the number of families being assisted by public agencies has continued to increase, as has the reported incidence of child maltreatment. It has thus become more important than ever to study the impact that law has on the entire process of governmental reaction to child abuse.

Analyzing The Statistics

In 1965 the Children's Bureau, (DHEW) initiated a series of nationwide studies on child abuse, conducted within the Child Welfare Research Program of Brandeis University. Although limited to physical abuse, reports compiled in 1967 totaled about 9,500. Ten years later, reports to the American Humane Association (AHA)—of neglect and abuse combined—totaled over 500,000. Another two years later, the AHA had received over 700,000 reports of child abuse and neglect.

This increase is explained partially by the fact that in 1967 state mandatory child abuse reporting laws were still new. Few professionals listed in the laws as "mandated reporters" understood their responsibilities or how to exercise them. But during the following 10 years, state, county and local child protective service agencies developed a sophisticated ability to collect and process reports. Central registries of abuse and neglect reports and case data were promoted and widely established. In addition, the Federal Child Abuse Prevention and Treatment Act (42 U.S.C. 5801, *et seq.*) and the growing media awareness contributed to a mass consciousness-raising.

During this time, the medical community had to learn how to detect child abuse and what steps to take in abuse situations. Although reports from medical personnel have increased over the years, they still account for only 11 percent of the cases reported to child protective service agencies. The largest proportion of reports—close to 36 percent—come from friends, neighbors and other non-professionals.

In evaluating the 1979 data, the AHA found that a small proportion of the reports resulted in court action. But over twice as many cases went to court when law enforcement personnel were the source of initial reports, and more cases involving child neglect were brought to court than for child abuse. Furthermore, sexual maltreatment of children—not widely discussed before the late 1970s—was three times as likely to lead to court proceedings as compared to other cases.

Cases that resulted in court involvement also were more likely to result in the provision of short-and long-term services to the family, and especially in the child's

removal from the home, according to AHA. By contrast, mental health, homemaker, and day care services were provided less often in cases that went to court. The AHA data also showed that families in the court sample were disproportionately burdened with problems such as alcohol or drug dependency, health problems of the caretaker and child, inadequate housing, social isolation, spouse abuse and a general inability to cope with the responsibilities of parenting.

Legislative and Judicial Reform

Although most states have amended their child abuse laws within the past 20 years, many statutes still fail to clearly or correctly define and limit when the state may forcibly intrude into the family, remove children, and sever the parent-child relationship. While proposed model laws have proliferated, including many from the Federal Government, some old state laws have been virtually untouched.

This, as well as the broadening of mandatory reporting laws, has caused the numbers of protective caseloads to skyrocket, which in turn has limited the agencies ability to provide prompt investigations, services, and casework supervision. In some states, lawsuits have been filed to address the agencies' failure to protect children or to respect the rights of the family. In addition, appellate courts have struck down portions of statutes, forcing some legislatures to redraft their child protection laws.

State intervention laws should be reformed to establish more precise legal definitions of child maltreatment. Some child abuse laws are still based on vague perceptions and archaic language, such as parental "depravity," "immorality" or lack of "moral care." Rather than make do with outmoded laws, state legislatures should enact ones that are socially responsive and that reflect current divergent values and conditions. New laws that adequately protect children *can* be written without resorting to the vague language that permeates many legislative schemes. Less subjectivity is needed, and catchall phrases like "without proper care" or "injurious to the child's welfare" should be replaced with specific kinds of mistreatment and criteria for determining whether a case belongs under a given category.

The legal profession also needs to help assure that necessary services are readily available to abused and neglected children and their parents. This is particularly true if those services can avoid needlessly separating children from their families. The costs of foster care certainly exceed the costs of parent aide, homemaker, day care, or other home-based services.

The limbo of indefinite foster care also can exert a great psychological penalty on children whose needs for stability in placement and long-term care are acute. Every child, therefore, who either has been, or may be, removed from home because of abuse, neglect or the incapacity of his or her parents should be the focus of careful and timely long-range planning by the intervening child welfare agency, as well as by the court.

We also need to reexamine the state laws that govern the judicial procedures used in child abuse and neglect cases. The lack of procedural due process of law occasionally has resulted in appellate decisions that reverse earlier juvenile court actions and declare underlying statutes unconstitutional. Some of the critical legal areas are:

- in many states, the lack of a requirement for court-appointed counsel for indigent parents (which may be a constitutional violation after the recent Supreme Court case of *Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981), as well as for independent representation of children;
- the frequent lack of a requirement of adequate notice to parents before juvenile court hearings occur;
- the occasional forcing of a "settlement" on the parents and child; and
- the common failure to assure by law that full hearings are held promptly upon the emergency removal of a child from his or her home.

At child abuse trials in juvenile court, procedural protections too often are lacking. During the adjudicatory phase of these proceedings, rules of evidence sometimes are ignored. For example:

- Opinion testimony is permitted without a proper foundation.
- Case records, reports of clinical evaluations and other documentary evidence are considered by the judge without copies first being made available to counsel for the parents and child.
- The right to confrontation and cross-examination of all witnesses is denied.

- The burden of proof inappropriately is placed on the parents to persuade the court that they are fit to care for their child.
- The child's wishes are not clearly articulated to the judge.

Need for Legal Expertise

Another problem in the child protective system is that judges and lawyers need to more effectively assist child welfare agencies in carrying out their responsibilities and to become more sensitive to the needs of children and families. Social workers who handle child protective cases also require a better understanding of the law and easier access to legal consultation. The National Center on Child Abuse and Neglect, the American Bar Association (ABA) and the AHA have been leaders in efforts to educate and assist child welfare workers. But there rarely have been adequate resource allocations made within child protective and child welfare agency budgets to assure that legal consultation and training needs are met.

Today, many public social service agencies lack their own legal staff and, therefore, depend on the district attorney's, county counsel's or attorney general's office to secure legal representation of their case workers. But these lawyers often are inaccessible when workers need to discuss the possibility of intervention, prepare for court or present their case to a judge.

To rectify this situation, research is needed to gauge the scope of the problem at the state and local levels. Agencies that are successfully utilizing legal help for education and support should be studied, and demonstration projects should be created to test various ways of meeting the legal needs of social workers.

We also must not ignore the need for quality representation of people in the education, mental health, and medical professions. Very few public school systems or large municipal hospitals have full-time attorneys on their staff specifically to provide consultation to personnel on child welfare-related legal issues.

Preparing a lawyer for work in the child protection field should start in law school. Students increasingly are beginning their legal education with prior work experience in human services. Juvenile delinquency courses have been common since the 1960s, and broad family law courses are available at most schools. But few law schools offer special courses or clinical opportunities specifically related to state intervention into the family.

We need to develop a model curriculum that could be used to teach a specialized law school course in child protection litigation, which also could be adapted for graduate students of social work. In fact, universities with graduate schools of both law and social work should explore not only the possibility of joint-degree programs, but also the opportunities for cross-fertilization and sharing of ideas and backgrounds.

In addition, clinical education programs that can give law students a chance to actually handle child abuse and neglect, foster care review, or other child welfare cases must be expanded, for which models already exist at several schools. Government and foundation support should be available for law school legal assistance clinics that demonstrate effective use of students in representation of children, parents, or child protective agencies.

Continuing legal education programs also need to be prodded to devote attention to the child welfare area. The best targets are states that require mandatory continuing legal education and that search for new ideas to add to their curricula, beyond the regular criminal practice, taxation and other programs traditionally offered by CLE projects.

Judicial Improvements

Few educational programs have been provided to train judges on the practical aspects of handling child abuse and neglect cases. Where training programs have taken place, such as in New York, Massachusetts, South Carolina and Reno, they have been quite successful. Several of these programs were cosponsored by, or organized with help from, child protective agencies. Because state legislatures or county commissioners rarely allocate adequate funds for judicial education, chief administrative judges have been inhibited from developing such specialized programs. They may therefore need financial assistance from the federal government or the private sector to undertake this training.

Another important child protective reform is the consolidation of all state intervention cases and intrafamily conflict cases within one specialized court system. While cases involving children and families usually are heard in courts of general jurisdiction, they also are handled in juvenile courts, probate courts and other judicial forums. This lack of consistency in the way child abuse and termination of parental rights cases are handled from court to court causes much confusion. In addition, the court that handles a child abuse matter may be different from the court with jurisdiction over a termination proceeding, custody dispute, or adoption case.

Unfortunately, juvenile court assignments, or the hearing of juvenile cases as part of a full range of criminal and civil actions, often are considered less important within the framework of the judiciary, and these positions go to judges with the least seniority and experience. Rotating judges in and out of juvenile and family court positions is common. The result is that once the judges become familiar with the system, they must move on to other areas. Although rotation of judges often is favored over an indefinite tenure on a specialized court, most experts would oppose the 3 to 6 month rotation that is so common today. In addition, some judges are assigned to juvenile or family court without having demonstrated a special interest in the social and legal problems of children, youth and families.

The ABA House of Delegates, in approving the *Court Organization and Administration* volume of its Juvenile Justice Standards, has supported the creation of a special family court division of the highest court of general trial jurisdiction of each state. In doing so, it has joined with recommendations of the National Advisory Commission on Criminal Justice Standards and Goals and the U.S. Department of Health and Human Services to broaden the scope and increase the strength of the juvenile court by giving it jurisdiction over a wider array of family-related legal problems.

Representation of Children

Before 1967, when the Supreme Court issued its historic *In re Gault* decision, 387 U.S. 1 (1967), lawyers for children were rarely seen in juvenile courts. But that case, which held that court-appointed counsel for children in delinquency proceedings is essential as a matter of constitutional law, failed to state whether legal representation, a court-appointed advocate for the child often and neglect cases. As a result, many children who are the subjects of maltreatment or related termination of parental rights proceedings do not have a lawyer as a matter of right; it is within the discretion of the trial judge to appoint counsel.[1]

Although a growing number of states are, through statutes, court rules or judicial decisions, assuring that abused and neglected children have independent representation, a court-appointed advocate for the child often faces both resentment and hostility from others involved in the case as well as confusion over his or her proper role. But no one would question a criminal defendant's need for a lawyer or that of a corporation being sued. Yet many people believe that the child protection agency and the judge are themselves fully capable of protecting the interests of the parties in child maltreatment cases.

Whether or not the child's court-appointed advocate is a lawyer, he or she needs to clearly understand the parameters of his or her responsibilities. But only a few state laws or court rules, as well as the ABA Juvenile Justice Standards, provide any guidance. Questions continue to be raised throughout the country concerning the proper function of a child's lawyer, guardian *ad litem*, or court-appointed special advocate.

We need to create a new field of specialization for those concerned with representation of children, in order to provide a focus for the resolution of such difficult questions. We also need an acceptable code of ethics or professional conduct for those who would undertake the task of advocating for children in court. Don Bross, founder and executive director of the National Association of Counsel for Children, has suggested the creation of a legal specialization called "pediatric law," in which lawyers would be well versed in all children-related areas of the law. This organization has become a leading force in the improvement of legal skills relating to child protection.

Room for Reform

The ABA has been instrumental in creating, and pointing appropriate criticism at, the system of state intervention and has proposed elaborate remedies for many of the system's ills. The Association also has been at the forefront of legal efforts to assure the protection of children from serious abuse and neglect.[2]

But the profession also should become more involved in community-based interdisciplinary councils and other local activities related to child abuse and neglect. Special bar committees can be created to formally examine state intervention issues, explore law reform options and develop legislative proposals. We also need a concerted approach by the bar towards improving the legal repre-

sentation of parties in child maltreatment cases. Finally, the bar can monitor compliance with Federal child welfare laws, such as the Adoption Assistance of Child Welfare Act (P.L. 96-272), to assure full implementation at the state and local levels.

The protection of children through the legal system, however, only can be achieved if we aggressively pursue our responsibilities to children, parents and child protective agencies alike.

[1]For further discussion of these issues, see "The Guardian Ad Litem: An Important Approach to the Protection of Children" by Howard A. Davidson, CHILDREN TODAY, Mar.-Apr. 1981 and "Special Child Advocates: A Volunteer Court Program" by Michael Blady, CHILDREN TODAY, May-June 1981.

[2]The American Bar Association has produced a variety of publications about child abuse and neglect. A list of publications is available from the National Legal Resource Center on Child Advocacy and Protection, ABA, 1800 M St., N.W., Suite 200, Washington, D.C. 20036.

Efforts to Sensitize the Profession

Sensitizing and training lawyers and judges to help them professionally handle child abuse and neglect cases has been a major goal of the ABA's National Legal Resource Center for Child Advocacy and Protection.

Special child abuse projects involving over 40 state and local bar associations and other legal organizations have been created with modest grants—$1,500 to $4,000—from the Center. The Resource Center, a project of the ABA Young Lawyers Division, has developed three national training institutes, makes presentations at regular ABA meetings, and participates in educational programs of the National Council of Juvenile and Family Court Judges and other organizations as a means to reach large groups of legal professionals. The Resource Center also has assisted programs sponsored by social service agencies that have tried to reach lawyers and judges. While these programs have been too few in number, they have been uniformly successful.

An evaluation of ten federally funded projects providing representation to abused children has been conducted by the Center. In addition, special publications on the legal aspects of sexual abuse and exploitation of children have been developed. This is a particularly troubling form of child maltreatment.

The Military's Response to Child Abuse and Neglect

by Suzanne Nash

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The military services have made a major effort to deal with domestic violence issues, including child abuse and neglect, since the mid-1970s. Family advocacy and other health promotion programs to assist families in stress and to encourage healthy family lifestyles are manpower and operational issues. Domestic violence affects readiness and retention of trained and qualified personnel.

A number of military lifestyle factors may contribute to the incidence of child maltreatment. Mobility is a given for military families, who relocate an average of once every three years, often to overseas installations. Frequent absences of one parent can increase stress for the remaining parent. Many military families find themselves living from paycheck to paycheck or in debt, sometimes because of the excessive costs of frequent relocation. In order to make ends meet, many mothers must work, or the active duty family member may have to take a second job. Foreign-born spouses have added language and cultural differences to deal with, and young couples away from home for the first time often lack basic parenting and communication skills as well as family support.

The Tri-Service Child Advocacy Committee was established in 1975, and in 1981 Department of Defense (DoD) Directive 6400.1 expanded the committee's scope to include other forms of familial violence. The Family Advocacy Committee is made up of DoD, Army, Air Force, Marine Corps, Navy and Coast Guard representatives who oversee and coordinate family advocacy policy at the Department of Defense level and support the individual services' efforts. The directive

also sets forth a 3-pronged multidisciplinary approach to dealing with the problem of family violence in the military: a general educational effort, specific programs for high-risk families and treatment for abuser and victim. The Family Advocacy Committee has targeted the following goals: identification and resolution of jurisdictional issues between military and civilian authorities; the development of a model family advocacy program (based on installation size, needs and resources and including primary, secondary and tertiary services and identification of sources and recipients of services); development of a common data base, reporting format and terminology; and program standards and evaluation criteria.

The services are providing their own regulations to fulfill the mandates of the directive and provide their own training, command and community awareness, treatment and proactive programs. All of the services are involved in extensive training of the professionals dealing directly with families. Although the services' approaches are not identical, most provide for a family advocacy representative at each installation to coordinate case management efforts and administer the day-to-day operations of the installation's family advocacy committee. These multidisciplinary committees are made up of medical, family service, social work, law enforcement, legal and command representatives and others involved with family support and intervention (often including child care, youth activities and school personnel).

Emphasis is on care and support for the entire family unit, and rehabilitation is the option of choice, although prosecution and separation from the service are possible. Also stressed are establishment of formal working and jurisdictional agreements with local and state authorities and coordination of services with civilian communities.

The Hawaii Demonstration Project, one example of multiservice cooperation, is funded by all of the services and combines military programs and resources with those of civilian agencies. Its components are mandated treatment during duty hours for those identified as abusive; outreach to high-risk families, including prenatal care and assistance to families with children born prematurely or with birth defects; and a joint-service abused spouse shelter (with a child development specialist on its staff). In addition, an evaluation of the entire project is being conducted.

The success rate of the treatment program for active duty personnel is 80 percent, and 70 percent of those in the program choose to continue beyond the required time. Command support has been a key element, with commands stressing that abuse will not be tolerated.

The Military Family Resource Center (MFRC), funded in 1980 as a demonstration project by the National Center on Child Abuse and Neglect, has established a clearinghouse on programs, training and research on the military family (with an emphasis on family advocacy) for those dealing with policy issues, managing programs and providing direct services to military families. The MFRC has also fostered cooperation among the services and with civilian agencies and, as a result of its success, will become an agency of the Department of Defense at the beginning of fiscal year 1985.