

Child Protection: Past Progress, Present Problems, and Future Directions

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Over the past twenty years, there has been a nationwide expansion of child protective efforts. In 1979, for example, over 1.1 million children were reported to the authorities as suspected victims of child abuse or neglect.¹ This is almost eight times the approximately 150,000 children reported in 1960,² and reflects the major progress that has been made.

However, grave weaknesses remain in society's response to child maltreatment. Large numbers of children suffer further abuse and neglect after their plight comes to the attention of child protective and social service agencies.³ Worse, some observers believe that the existing system is actually harmful to children and families.⁴

Most professionals in the field believe that the solution to these problems is more money for expanded child protective programs. But many outsiders believe that courts and social agencies now intervene into private family matters far beyond any reasonable need to do so, and these critics have called for sharp cutbacks in the jurisdiction of courts and child protective agencies.⁵ In the current

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1. U.S. National Center on Child Abuse and Neglect, *National Study of the Incidence and Severity of Child Abuse and Neglect*, at 11 (DHHS 1981).

2. U.S. Children's Bureau, *Juvenile Court Statistics*, at 13 (U.S. DHEW, 1966).

3. See the section entitled "Inadequate Protection," *infra* page 163.

4. See the section entitled "Foster Care 'Limbo,'" *infra* page 166.

5. See the section entitled "Cutting Back Child Protective Efforts?" *infra* page 169.

fiscal atmosphere, with social programs being curtailed in all parts of the country, this controversy threatens to undo much of the recent progress that has been made.

This article describes both the past progress that has been made, the present problems that face the system, and the possible directions of future reform.

Past Progress

Past Indifference

Child abuse and child neglect are not new phenomena. "The maltreatment of children is as old as recorded history. Infanticide, ritual sacrifice, exposure, mutilation, abandonment, brutal discipline and the near slavery of child labour have existed in all cultures at different periods and have been justified by disparate beliefs—that they were necessary to placate a god, to expel spirits, to maintain the stability of a race or simply to inculcate learnings. Practices viewed today as victimizing children were accepted for long periods in civilized communities as 'in the best interest' of society."⁶

Over the centuries, new attitudes slowly developed about the needs of children, and their right to be protected from abuse and neglect. Many of the original thirteen colonies, for example, had laws against certain forms of child maltreatment.⁷ Similarly, the first specialized "child protective agency," the New York Society for the Prevention of Cruelty to Children, was founded in 1875.⁸ By the early 1920s, most states had passed specific laws against child maltreatment, often within the context of their newly established juvenile courts.⁹ And, by the late 1930s, rudimentary networks of public and private child welfare agencies had emerged in most states.¹⁰

Nevertheless, until the 1960s, child abuse and child neglect were largely far from public view.¹¹ Few abused or neglected children

6. S. Katz, M. McGrath, and R. Howe, *Child Neglect Laws in America*, at 3 (1976). See also Radbill, *A History of Child Abuse and Infanticide*, found in *THE BATTERED CHILD* (R. Helfer, C.H. Kempe, eds., 1974).

7. See P. BRENNER, *CHILDREN AND YOUTH IN AMERICA* (1971).

8. See AN ACT FOR THE INCORPORATION OF SOCIETY'S FOR THE PREVENTION OF CRUELTY TO CHILDREN, ch. 130, 1875 Laws 114.

9. See generally H. LOU, *JUVENILE COURTS IN THE UNITED STATES*, (1927); Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

10. See generally A. KADUSHIN, *CHILD WELFARE SERVICES* (1974).

11. See the section entitled "Fragmented Investigative Responsibility," *infra* page 155.

were reported to the authorities. Even children with serious—and suspicious—injuries went unreported. A 1968 study in Rochester, New York, for example, revealed that 10 percent of all the children under five treated in a hospital emergency room fell into the “battered child syndrome” and another 10 percent were neglected. The researchers concluded that, had it not been for their study, most of these cases would not have been reported.¹² Two years later, a study in nearby Auburn, New York, determined that of 195 hospital emergency room cases, twenty-six (or approximately 13 percent) involved children with “suspicious injuries” that should have been reported. None were.¹³

Reporting was so haphazard that even many murdered children were not reported. A 1972 study by the New York City Department of Social Services, for example, found that “many children known to the Medical Examiner’s Office [as suspected child abuse fatalities] have not been reported to the [Central] Registry as neglected or abused.”¹⁴ This was not simply a problem of keeping statistics. When fatalities went unreported, the siblings of these dead children were left unprotected.

Mandatory Reporting Laws

In the early 1960s, a small group of physicians, led by Dr. C. Henry Kempe, became convinced that the only way to break this pattern of indifference was to *mandate* certain professions to report. In 1963, they persuaded the U.S. Children’s Bureau to promulgate a model law that required physicians to report children with a “serious physical injury or injuries inflicted . . . other than by accidental means.”¹⁵ The responses of states to this model law was far beyond anything expected. In the short span of four legislative years, all

12. Holter and Friedman, *Child Abuse: Early Case Finding in the Emergency Department*, 42 PEDIATRICS, No. 1 (July 1968).

13. Cited in: New York State Assembly Select Committee on Child Abuse, *Report*, at 25 (April 1972); reprinted in *THE BATTERED CHILD* (C.H. Kempe, R. Helfer, eds., 2nd Ed. 1974).

14. Initial Quarterly Progress Report to Criminal Justice Coordinating Council, Child Abuse Grant C55934 (January 1972, at 8).

15. U.S. Children’s Bureau, *The Abused Child—Principles and Suggested Language for Legislation on Reporting of the Physically Abused Child* (U.S. DHEW, 1963).

fifty states enacted reporting laws patterned after it. "In the history of the United States, few legislative proposals have been so widely adopted in so little time," according to Dean Monrad Paulsen.¹⁶

In the ensuing years, these reporting laws were steadily expanded: (1) to make more types of child maltreatment reportable, and (2) to increase the categories of professionals required to report. (In addition, ancillary provisions were added to facilitate the reporting process.) At the present time, most medical, educational, social work, child care and law enforcement professionals are required—under threat of criminal and civil penalties—to report known and suspected physical abuse, sexual abuse, physical neglect, and emotional maltreatment. These laws also have provisions which encourage all persons—including friends, neighbors, and relatives of the family—to report suspected maltreatment.¹⁷

Mandatory reporting laws, and associated public awareness campaigns, have been strikingly effective. In 1963, about 150,000 children came to the attention of public authorities because of suspected abuse or neglect.¹⁸ By 1972, an estimated 610,000 children were reported annually.¹⁹ And, as mentioned above, in 1979, more than 1.1 million children were reported.²⁰ These statistics led President Carter to say: "One of the most serious blights on the prospects for the children of our country is child abuse and the damage that results from it."²¹

Many people ask whether this vastly increased reporting signals a rise in the incidence of child maltreatment. While some observers believe that deteriorating economic and social conditions have contributed to a rise in the level of abuse and neglect, there is no way to tell for sure. So many maltreated children previously went unreported that earlier reporting statistics do not provide a reliable baseline against which to make comparisons. However, one thing is clear:

16. Paulsen, *The Legal Framework for Child Protection*, 6 COLUM. L. REV., 679, 711 (1966).

17. See generally Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 VILL. L. REV. 458 (1977-1978).

18. *Juvenile Court Statistics*, *supra* note 2, at 13.

19. S. NAGI, *CHILD MALTREATMENT IN THE UNITED STATES: A CHALLENGE TO SOCIAL INSTITUTIONS*, 35 (1977).

20. *National Study of the Incidence and Severity of Child Abuse and Neglect*, *supra* note 1, at 11.

21. Quoted in: U.S. National Center on Child Abuse and Neglect, *Working Together: A Plan to Enhance Coordination of Child Abuse and Neglect Activities* 1 (U.S. DHHS 1980).

The great bulk of reports now received by child protective agencies would not have been made but for the passage of mandatory reporting laws and the media campaigns that accompanied them.

Fragmented Investigative Responsibility

Prior to the enactment of mandatory reporting laws, reports of suspected child abuse and neglect were handled by a variety of different agencies. Reports were made to police agencies, who could investigate the reports themselves, or who could refer them to a child welfare agency or, if the family was on welfare, to a public assistance agency. Reports also were made to child welfare agencies (and to the few child protective agencies in existence), who could investigate the reports or refer them to the public assistance agency. Or, reports were made to public assistance agencies, who, again, either investigated the reports themselves or referred them to police or child welfare agencies. Finally, schools, hospitals, social service agencies, and the full range of other community service organizations—as well as friends, neighbors, and relatives—could report to *any* one of these agencies or by-pass them entirely, going directly to court where they could file a child protective petition.

Early reporting laws reflected this system of shared—and divided—authority over reports. Most laws allowed mandated persons to report to either of two specified agencies (usually the police and the local public social service agency); some gave reporters a choice between three or more agencies. And, attempting to cover all contingencies, a few laws *required* reports to two or more agencies.²²

The flood of new cases caused by mandatory reporting laws soon demonstrated that this system of blurred authority did not work. What one study called “a patchwork system of delegated responsibility, often poorly defined, often based on vague and superficial considerations”²³ prevented the development of investigative expertise and encouraged administrative breakdowns. Dr. Ray Helfer complained at the time that this Balkanization of efforts meant that no one person was responsible for protecting the child.²⁴

22. See D. BESHAROV, JUVENILE JUSTICE ADVOCACY 130-31 (1974).

23. N.Y.C. Department of Social Services, Initial Quarterly Progress Report to New York City Criminal Justice Coordinating Council, Child Abuse Grant C55734, at 10 (1972).

24. C.H. HELFER AND R. KEMPE, THE BATTERED CHILD, ed.'s note to Chapter 2 (2nd ed. 1972).

As reports were passed from agency to agency, important information about a child's condition was frequently lost—because it was not communicated to the “appropriate” agency. All too often, the result was a child's tragic death. In New York, for example, the State Assembly's Select Committee on Child Abuse found that three-quarters of the child abuse fatalities in 1971 involved children previously known to the authorities.²⁵

Even many reports that were “accepted” for investigation were, in actuality, simply ignored. Because of staff shortages and limited accountability, the protective staff in the capital city of one western state, for example, had established what it called “the bank.” Uninvestigated reports were “put in the bank.” At one point, there were 140 cases in “the bank.” Workers tried to screen cases, seeking to put aside only less serious or less urgent situations. Nevertheless, a random review of three cases revealed that two involved reports of generalized neglect and one, from a private physician, complained of a child's “severe malnutrition.” Yet, six months after this report had been made, it had not been investigated. In other communities, other euphemisms, such as “the pending case-load,” were used to describe the uninvestigated cases stacked on workers' desks.

Specialized “Child Protective Agencies”

Child protective specialists were uniformly critical of the fragmented investigative responsibility which seemed to so weaken child protective efforts.²⁶ Under the leadership of Vincent DeFrancis of the American Humane Association and Dr. Vincent J. Fontana of the New York Foundling Hospital, they called for the designation of one, single agency to receive and investigate reports. And, in keeping with their commitment to nonpunitive, therapeutic responses to child maltreatment, they urged that this centralized responsibility be vested in the child protective (or child welfare) staffs of public social services agencies.

At first, child protective specialists (and their allies from the community and other professional fields) had great difficulty convincing

25. New York State Assembly Select Committee on Child Abuse, *supra* note 13, at 1-2.

26. See, e.g., V. DeFrancis, *CHILD PROTECTIVE SERVICES: A NATIONAL SURVEY* (1967); J. Fontana, *THE MALTREATED CHILD* (1964).

states to reform their child protective programs. As late as 1974, only a handful of states had established comprehensive reporting and investigative systems—usually in the wake of a young child's tragic death and the sensational media coverage that followed it.

In New York State, for example, complacency over the plight of maltreated children came to an abrupt end in 1969, when the brutal murder of a young girl gained intensive media coverage. For more than a month, New York City newspapers ran numerous front page stories about Roxanne Felumero's death, and the agency mistakes that made it possible.²⁷ Roxanne had been removed from her drug addict parents after repeated beatings. Subsequently, in the face of clear evidence that her parents were extremely disturbed individuals, Roxanne was returned home—where the beatings resumed. Because agency follow-up was so poor, no one noticed the bruises all over Roxanne's body. Eventually, Roxanne died from these beatings, and her parents dumped her body into the East River. A subsequent investigation performed by the judicial authorities found that: "If the Family Court and the complex of public and private agencies operating within it had functioned more effectively, Roxanne Felumero would probably not have met her tragic death."²⁸ As a result of the attention that this one case received, the New York State Legislature completely revamped the state's child protective system.²⁹

Nationally, the seeds for more rapid change were planted in 1973. In that year, then-Senator Walter Mondale held a series of hearings on child abuse and neglect. These congressional hearings documented the shocking weaknesses in state and local child protective efforts and clearly moved Mondale and his colleagues. Mondale later wrote that nothing he saw in his nine years as a senator "was as disturbing or horrifying, or as compelling, as the stories and photos of children, many of them infants, who had been whipped and beaten with razor straps; burned and mutilated by cigarettes and lighters; scalded by boiling water; bruised and battered by physical

27. See, e.g., N.Y. Times, March 29, 1969, at 36, col. 3.

28. Report of the Judiciary Relations Committee of the Appellate Division of the First Department, quoted in: N.Y.L.J., June 30, 1969, at 1, col. 4.

29. See New York State Assembly Select Committee on Child Abuse, *supra* note 13, at ii-v.

assaults; and starved and neglected and malnourished.”³⁰

The hearings Mondale held served to galvanize congressional support for action to improve child protective programs. Through Mondale’s efforts, as well as those of Representatives Patricia Schroeder, John Brademas, and Mario Biaggi, the Congress passed the Child Abuse Prevention and Treatment Act of 1974.³¹

The new Child Abuse Act required the Secretary of Health, Education, and Welfare (now Health and Human Services) to establish a National Center on Child Abuse and Neglect. The National Center was to serve as a clearinghouse for the development and dissemination of information about child protective research and programs. The Center received an annual appropriation of \$18.9 million. Most of these funds were used for a wide range of research, demonstration, training, and technical assistance projects. But the Act specified that up to 20 percent of each appropriation (about \$3.7 million per year) was for special state grants.³²

This small state grant program was, in many respects, the most important aspect of the new Act. In order to obtain one of these special grants, states were required to establish comprehensive reporting and investigatory systems. But, reflecting the deep-seated weaknesses of child protective programs at the time, only three states met the eligibility requirements in 1973. What happened in the next six years was just as remarkable as the quick adoption of the first reporting laws ten years earlier. State after state passed new child protective laws and made the programmatic improvements needed to qualify for aid. By 1978, forty-three states, the District of Columbia, Puerto Rico, Guam, and American Samoa had established the comprehensive child protective systems required by the act.³³

What accounts for this rapid advance in state child protective capabilities? Certainly, it was not the actual state grant. In the years involved, the average state grant was a mere \$80,000—far less than the costs of these expanded programs. It seems more likely

30. Mondale, *Introductory Comments*, 54 CHICAGO-KENT L. REV. 635, 636 (1978).

31. Pub. L. No. 93-247, 88 Stat. 5, (1974) [codified at 42 U.S.C. §§ 5101-5106 (Supp. V, 1975)].

32. These are only approximate figures. The actual amounts appropriated and available to eligible states varied from year to year.

33. The Federal Act also led to further refinements of reporting laws. See generally Besharov, *supra* note 17.

that the state grant program, together with other national center activities, served as a catalyst for making the improvements long advocated by child protective specialists. Reformers were able to cite the eligibility requirements as a kind of congressional endorsement for the changes they proposed. (As before, though, it often took a child's tragic and well-publicized death to break legislative and bureaucratic logjams.)

The availability of supplementary funds through Title XX of the Social Security Act also facilitated the improvement of child programs. During the period of greatest expansion, most states had not yet reached the ceiling in their Title XX allotments, the major federal social service funding program, and thus were able to obtain 75 percent federal reimbursement for any increases in their child protective staffs.³⁴ As a result, federal expenditures for "child protective services" rose from a few million dollars a year in 1960 to over \$325 million in 1980.³⁵ (Unfortunately, these funds were cut back under President Reagan's budget program.³⁶)

Almost all communities now are served by specialized "child protective agencies." Usually housed within the public child welfare department, these agencies receive and investigate almost all of the 1.1 million reports of suspected child maltreatment made each year.³⁷ Even in states where the law still permits reporting to the police, most reports are made to these specialized agencies. (If the police receive a report, they usually will forward it to the child protective agency. In rare situations, they will perform a parallel or joint investigation with the child protective agency.)

Child protective agencies receive reports twenty-four hours a day via highly publicized "hotlines" and initiate investigations on the same day, or shortly thereafter.³⁸ Nationwide, less than 5 percent of

34. See, e.g., Benton, Field, and Millar, *Social Services: Federal Legislation v. State Implementation*, at 72 (The Urban Institute, Washington, D.C., 1978), stating that: "The majority of [state administrators and federal staff surveyed] agreed that Title XX had the greatest positive impact on the children's protective service category."

35. U.S. Department of Health and Human Services, *Technical Notes: Summaries and Characteristics of States' Title XX Social Services Plans for Fiscal Year 1980*, at 126 (undated report).

36. The effects of these and other budget cuts is discussed in the section entitled "Future Directions," *infra* page 168.

37. See U.S. National Center on Child Abuse and Neglect, *National Analysis of Child Neglect and Abuse Reporting* (1978) (U.S. DHEW 1979).

38. See generally U.S. General Accounting Office, *Increased Federal Efforts Needed to*

substantiated cases result in a criminal prosecution.³⁹ Generally, criminal prosecutions are pursued only in cases of severe brutality (generally homicides, serious assaults, and torture), sexual psychopathology, and forced starvation. (When the police department is involved, as happens in California, for example, it usually does so through its youth bureau or an individual officer specializing in youth or family matters.)

Based on their investigation of the home situation, child protective agencies decide what kinds of mental health and social services a family needs, and then help the family to obtain them. Many of these services, such as financial assistance, day care, respite care and crisis nurseries, or homemaker care, are concrete efforts to relieve the pressures and frustrations of parenthood. Other services, such as infant stimulation programs, parent aides, and parent education programs are designed to give parents specific guidance, role models, and support in child rearing. In addition, individual, group, and family counseling and mental health services are used to ease the tensions of personal problems and marital strife.⁴⁰

To the fullest extent possible, child protective agencies seek to obtain the parents' voluntary acceptance of such services. Only if the parents will not accept such treatment services, or if it appears that such services will not adequately protect the child, is *coercive*, that is, involuntary, treatment utilized. Less than 20 percent of all substantiated cases result in the child's placement in foster care.⁴¹ Instead, the family is placed under "home supervision," so that periodic caseworker visits can monitor the care the child is receiving while efforts are made to treat the parents.

* * *

Child protective programs still have grave weaknesses, which are discussed in the second part of this article. Nevertheless, one cannot review the present status of child protective programs without being impressed by the steady increase in their scope and quality. Nationwide, there now exists a basic infrastructure of laws and agencies to

Better Identify, Treat and Prevent Child Abuse and Neglect, ch. 3 (1980).

39. *National Analysis of Child Neglect and Abuse Reporting* (1978), *supra* note 37, at 36, Table 28.

40. See generally U.S. National Center on Child Abuse and Neglect, *Annual Analysis of Child Abuse and Neglect Programs* (DHHS 1980).

41. *National Analysis of Child Neglect and Abuse Reporting*, *supra* note 37, at 36, Table 28.

protect endangered children—and it has had made a difference. Increased reporting and specialized child protective agencies have saved many thousands of children from death and serious injury. In New York State, for example, after the passage of a comprehensive reporting law which also mandated the creation of specialized investigative staffs, there was a 50 percent reduction in child fatalities, from about 200 a year to under 100.⁴² Similarly, Ruth and Henry Kempe report that: “In Denver, the number of hospitalized abused children who die from their injuries has dropped from 20 a year (between 1960 and 1975) to less than one a year.”⁴³

Present Problems

Despite the very real progress of the past twenty years, existing child protective efforts have serious weaknesses. Growing awareness of these weaknesses threatens to undermine the public and professional support that made past progress possible.

Under- and Overreporting

Even with over 1.1 million reports made annually, there are still major problems in the reporting process. Large numbers of obviously endangered children are not reported to the authorities. According to the National Study of the Incidence and Severity of Child Abuse and Neglect, professionals—physicians, nurses, teachers, social workers, child care workers, and police officers—fail to report more than half of the maltreated children that they see. And it is not just minor cases that are not reported. According to the study, in 1979, over 50,000 children with *observable* injuries severe enough to require hospitalization were not reported.⁴⁴ One study of child fatalities described how: “In two of the cases, siblings of the victims had died previously. . . . In one family, two siblings had died mysterious deaths that were undiagnosed. In another family a twin had died previously of abuse.”⁴⁵

42. New York State Department of Social Services, *Child Protective Services in New York State: 1979 Annual Report*, Table 8 (1980).

43. R.S. Kempe and C.H. Kempe, *Child Abuse* 8 (1978).

44. *National Study of the Incidence and Severity of Child Abuse and Neglect*, *supra* note 1, at ch. 6 (1981). See especially p. 36, Table 6-3, and p. 25, Table 5-2.

45. Confidential material held by author.

Nonreporting can be fatal to children. A study in Texas, for example, revealed that, during a three-year period, over 40 percent of the approximately 270 children who died as a result of maltreatment had not been reported to the authorities—even though they were being seen by a public or private agency at the time of death or had been seen in the past year.⁴⁶

At the same time that there is serious underreporting, there is extensive overreporting. About 60 percent of all reports—involving over 600,000 children each year—are determined to be “unfounded” by the agencies that investigate them.⁴⁷

Unfortunately, this determination usually is made after an unavoidably traumatic investigation, in which the child protective agency questions friends, relatives, and neighbors, as well as school teachers, day care personnel, doctors, clergymen, and others who know the family. Besides being unfair to parents, such overreporting places a heavy burden on chronically understaffed child protective agencies. Forced to allocate a substantial portion of their limited investigative resources to these “unfounded” reports, protective agencies often are unable to respond promptly and effectively when children are in serious danger.

Until recently, it was generally assumed that this high level of overreporting was needed to identify endangered children. Few of these “unfounded” cases are made maliciously. Most involve situations of poor child care that, though of legitimate concern, are not sufficiently serious to be considered “child maltreatment.” In fact, over half of these “unfounded” cases are referred to other agencies for them to provide needed services.⁴⁸ But in discovering a simultaneously high level of underreporting—often by the very same individuals—the National Incidence Study suggests that the great number of “unfounded” reports, rather than being the necessary consequences of early casefinding, is the result of widespread confusion about what should be reported, and what should not be reported.

High rates of simultaneously over- and underreporting are unfair

46. Region VI Resource Center on Child Abuse, *Child Deaths in Texas*, p. 26 (Univ. of Texas, Graduate School of Social Work, 1981).

47. *National Analysis of Official Child Neglect and Abuse Reporting* (1978), *supra* note 37, at 18, Table 5 (1979).

48. In addition, child protective workers sometimes wrongly determine that a report is unfounded, and that they sometimes use the validation process as a means of caseload control.

to the children and parents involved, and they threaten to undo much of the progress that has been made in recent years. In the past, it was relatively easy to mount public and professional media campaigns that urged individuals to report suspected "child abuse" and "child neglect." In the future, such campaigns will have to be much clearer about what is—and *what is not*—reportable child maltreatment. The great challenge will be to encourage more complete reporting while, at the same time, reducing the high level of overreporting.

Inadequate Protection

Sadly, being reported to the authorities does not assure a maltreated child's safety. Studies in a number of states have shown that about 25 percent of all child fatalities attributed to abuse or neglect involve children *already reported* to a child protective agency.⁴⁹ One must assume that many thousands of other children suffer serious injuries short of death.

Of course, courts and child protective agencies cannot guarantee the safety of all the children reported to them. Their decisions often must be based on incomplete and ambiguous information. Even if they placed into protective custody all children who appeared to be in possible danger, some children would continue to be abused and neglected because the danger they face would go undetected—as important facts are not discovered or are forgotten, concealed, or distorted. Furthermore, in many cases, the home situation deteriorates sharply—and without warning.

Nevertheless, research studies suggest that many fatalities are preceded by obvious warning signals of immediate and serious danger, to which decision-makers should have responded more forcefully.⁵⁰ Many of these deaths are the natural consequences of large caseloads, poorly trained staff, and inadequate administrative safeguards. The expansion of child protective staffs, though substantial, has not kept pace with the rapid increase in reported cases. With more cases than they can handle, judges and caseworkers sim-

49. See, e.g., Region VI Resource Center on Child Abuse, *supra* note 46 at 26; Mayberry, Child Protective Services in New York City: An Analysis of Case Management, 109 (Welfare Research, Inc., Albany, N.Y., draft dated May 1979).

50. *Id.*

ply do not have enough time to give individual cases the attention required. In the rush to clear cases, many key facts go undiscovered—as workers are forced to perform abbreviated investigations and as judges are forced to cut short lengthy court hearings. Moreover, protective agencies are rarely able to monitor dangerous home situations with sufficient intensity and duration to insure a child's safety. The average family under home supervision receives approximately five visits over a six-month period, after which the case is referred to a community social service agency, closed, or ignored in the press of other business.⁵¹ Recent budget cuts at the federal level have aggravated these problems. Even communities that had developed strong child protective systems are having difficulty keeping up with constantly growing caseloads.

However, inadequate funding is not the sole reason for the deaths and serious injuries that occur after cases are reported to child protective agencies. Some children die because of simple bad judgment. Children are often left at home “at the risk of further damage to a defenseless child in the mistaken belief that ‘there is no such thing as a person we cannot help,’ ” according to Dr. Kempe.⁵²

No one knows how many child fatalities are the result of such administrative breakdowns and failures of judgment. But enough are reported in the press so that all communities have had their share of sensational stories about how incompetent caseworkers “allowed” a helpless child to die or suffer further. In response, some politicians have proposed a return to more punitive measures to combat child maltreatment. Some have proposed the automatic removal of abused children from the home and the death penalty for parents who kill their children.⁵³ A legislator in Maine went so far as to introduce a bill authorizing, in cases of sexual abuse, the draconian remedy of castration.⁵⁴ But such proposals have gained little support. Child maltreatment is primarily a social and psychological ill. Most Americans seem convinced that treatment and rehabilitation, and

51. See, e.g., Mayberry, *supra* note 49, at 46-47.

52. Kempe, *Some Problems Encountered by Welfare Departments in the Management of the Battered Child Syndrome*, found in: *THE BATTERED CHILD* 169, 170 (R. Helfer and C.H. Kempe, eds. 1968).

53. See generally McKenna, *A Case Study of Child Abuse: A Former Prosecutor's View*, *AM. CRIM. L. REV.* 165, 167-68 (1974).

54. Bangor Daily News, Saturday-Sunday, January 6-7, 1979, at 34.

not punishment and retribution, are the best means of protecting endangered children.⁵⁵ And yet, if evidence of the system's inability to protect endangered children continues to mount, public support for nonpunitive, child protective programs undoubtedly will erode.

No Intensive Treatment

The absence of long-term, intensive treatment services for abusive and neglectful parents is another serious problem. While there has been an enormous expansion of services,⁵⁶ the kinds of programs that have been developed are only successful with parents who are motivated to accept help, or who can easily be motivated to do so. They do not work for a hard core of parents, variously estimated to make up 20 to 40 percent of cases, who have serious and deeply ingrained personality disturbances. Many of these mothers, for example, fit into the "apathy-futility syndrome," a term coined by Norman A. Polansky, Regents' Professor of Social Work at the University of Georgia. Polansky describes them as "passive, withdrawn, lacking in expression. Upon being interviewed, they showed many schizoid features, resembling in this way a number of patients from more fortunate economic backgrounds with whom we were familiar in private psychiatric hospitals."⁵⁷

If they are to be reached at all, these "hard core parents," as child protective workers tend to call them, require intense, sustained, and skilled casework. According to Kaufman, case workers often must serve as an "auxiliary ego," to help these parents "develop modes of functioning which accommodate the impulses of the client, reality demands and community standards."⁵⁸ Based on the clinical experience of programs such as the Bowen Center in Chicago, successful treatment of such parents requires weekly casework home visits for long periods of time—often for years—coupled with an array of sophisticated and expensive supportive services.⁵⁹ In fact, an eval-

55. For a discussion of public attitudes about therapeutic intervention, see N. POLANSKY, M. CHALMERS, E. BUTTENWIESER AND D. WILLIAMS, *DAMAGED MOTHERS: AN ANATOMY OF CHILD NEGLECT*, 162 et seq. (1981).

56. See the section entitled "Specialized 'Child Protective Agencies,'" *supra* page 156.

57. N. POLANSKY, *supra* note 55, at 39.

58. Kaufman, *Psychology Aims of Protective Caseworkers*, found in *EGO-ORIENTED CASEWORK* 205 (H. Parad and R. Miller, eds., 1963).

59. M. Sullivan, M. Spasser, and G.L. Penner, *Bowen Center Project for Abused and Neglected Children* (U.S. Public Services Adm., DHEW 1977).

uation of the first round of federal child abuse demonstration projects found that, to reduce "re-incidence" at all, parents must be "in treatment for at least six months" and must be seen "on a weekly basis at least during the first six months of treatment."⁶⁰

This kind of intensive treatment is simply not available for most of those abusive or neglectful parents needing it. Child protective agencies cannot provide it, because of high caseloads and deployment patterns which stress the prompt investigation of newly reported cases. The closest they come are sporadic home visits by often inexperienced workers. Parents who need more intensive therapy are referred to other community agencies, such as mental health clinics and family service agencies. While these agencies are increasingly willing to provide counseling and family supportive treatment to maltreating parents, without additional funding, they, too, are unable to provide the level of intensive care needed by these parents.

Foster Care "Limbo"

As reporting has increased, the inability of existing treatment programs to improve the functioning of severely disturbed parents has led to a major increase in the use and duration of foster care. Although less than 20 percent of all maltreated children are placed in foster care,⁶¹ this is 20 percent of the approximately 500,000 children whose maltreatment is substantiated each year.⁶² At any one time, about 300,000 children are in foster care because their home situations were deemed abusive or neglectful.⁶³ (This is a sharp increase from 1960, when about 75,000 children were in foster care for these reasons.⁶⁴)

Many children must be placed in foster care to protect them from serious injury. But many others are removed from parental custody because of the lack of intensive treatment services for parents. And although many children benefit from foster care,⁶⁵ for a large propor-

60. U.S. DHEW, EVALUATION OF CHILD ABUSE AND NEGLECT DEMONSTRATION PROJECTS, 1974, 1977, Vols. I and II, p. 123 (1978).

61. See the text at *supra* note 41.

62. See the text at *supra* note 47.

63. In 1977, there were a total of 502,000 children in foster care, but only about 60 percent were there because of abuse or neglect. U.S. Children's Bureau, *National Study of Social Services to Children and Their Families*, at 109 and at 117, Table 5-3 (DHEW 1978).

64. Author's estimate, based on *Juvenile Court Statistics*, *supra* note 2, at 13.

65. See, e.g., D. FANSHEL AND E. SHINN, CHILDREN IN FOSTER CARE (1978).

tion of the children taken away from their parents, the conditions of foster care are a "national disgrace," in the words of Marion Wright Edelman, President of the Children's Defense Fund.⁶⁶

In theory, foster care is supposed to be a *short-term remedy*—to protect children from harm while parents have time to respond to treatment, to "get their act together," as some caseworkers put it. However, because existing treatment programs are unable to improve parental functioning in such a large proportion of cases,⁶⁷ the reality is far different. More than 50 percent of the children in foster care are in this "temporary" status for over two years; over 30 percent are away from their parents for over six years.⁶⁸ As the U.S. Supreme Court has recognized, these children are lost in the "limbo" of the foster care system.⁶⁹

Long-term foster care can leave lasting psychological scars. Foster care is an emotionally jarring experience; it confuses young children and unsettles older ones.⁷⁰ Over a long period, it can do irreparable damage to the bond of affection and commitment between parent and child. The period of separation may so completely tear the fragile family fabric that the parents have no chance of being able to cope with the child when he is returned.

While in foster care, children are supposed to receive treatment services desperately needed to remedy the effects of past maltreatment. Few do. Worse, children who stay in foster care for more than a short time (especially if they are older) tend to be shifted through a sequence of ill-suited foster homes—denying them the consistent support and nurturing that they so desperately need.⁷¹ Increasingly, the graduates of the foster care system evidence such severe emotional and behavioral problems that some thoughtful observers believe that foster care is often more harmful than the original home situation might have been.⁷²

66. Children's Defense Fund, *Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care*, xiii (1978).

67. See the section entitled "No Intensive Treatment," *supra* page 165.

68. *National Study of Social Services to Children and Their Families*, *supra* note 63, at 120.

69. *Smith v. Organization of Foster Parents*, 431 U.S. 816, 833-38 (1977).

70. See, e.g., E. WEINSTEIN, *THE SELF-IMAGE OF THE FOSTER CHILD* (1962); See also S. KATZ, *WHEN PARENTS FAIL* 90-113 (1971).

71. See, e.g., U.S. Children's Bureau, *National Study of Social Services to Children and Their Families*, at 117-18, Table 5-4 (DHEW 1978).

72. See, e.g., J. GOLDSTEIN, A. FREUD, AND A. SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* 13 (1980).

Besides being harmful to children, foster care is expensive. Depending on the community, and the child's need for special care, it costs from \$5,000 to \$15,000 per year. Six years of foster care cost between \$40,000 and \$90,000. The foster care placement of each additional child in the family costs that much more. Nationally, the annual cost for keeping abused and neglected children in foster care exceeds \$2 billion.

From both financial and humanitarian points of view, it makes more sense to free the child for adoption or make his home safe for his return than it does to keep him in prolonged foster care. Hence, in recent years, there have been nationwide efforts to reduce the number of children in foster care (through periodic case review and permanency planning programs), and to redirect the funds thus saved into in-home treatment services for children and parents. Unfortunately, even the most extensive and well-funded efforts have resulted in only a 20 percent reduction in the number of children in foster care.⁷³

Future Directions

The severe shortcomings of child protective efforts have led to proposals to expand programs further and to proposals to cut back existing programs. These two contradictory approaches are described below.

A Billion Dollars to Expand Services?

In response to the problems facing child protective programs, most professionals in the field argue for further expansions of efforts. To increase the level of reporting, they call for more extensive media campaigns to raise public and professional awareness of the responsibility to report endangered children. To increase the protective capability of public agencies, they call for the hiring of more caseworkers to investigate reports, to initiate court proceedings, to super-

73. J. Lahti *et al.*, *A Follow-Up Study of the Oregon Project: A Summary* 3, Table 1 (Regional Institute for Human Services, School of Social Work, Portland State University, 1978).

wise dangerous home situations, and to provide long-term, intensive treatment.

However, in proposing further programmatic expansions, child protective professionals underestimate the fiscal, and corresponding political, obstacles involved. Upgrading services to meet the level of need revealed by increased reporting would be enormously expensive. Consider only the costs associated with one program component: supervisory home visits for the 200,000 or so families needing intensive treatment. Increasing the number of home visits for these families from the present four to the needed forty a year (at an average cost of \$50 for each visit) would add about \$350 million to the nation's annual bill for child protective services. As one adds the costs of enriched counseling and psychiatric/psychosocial services, the additional investment needed quickly reaches over \$800 million. The full cost of making the expansions advocated by those in the field would exceed a billion dollars—almost four times present expenditures—and far more than anything yet contemplated for child protective services.

Past expansions of services were able to rely on the relative availability of federal funds.⁷⁴ Now, at all levels of government, social service programs are being cut back rather than being increased. The competition for these reduced funds (as well as for whatever funds state and local governments may make available) will be intense. There will be no winners, unless winning means losing less. Programs, like child protective services, that serve the politically powerless are in the greatest jeopardy.

Cutting Back Child Protective Efforts?

Deeply concerned about the weaknesses of existing programs, and recognizing that an enormous infusion of additional funding is unlikely, some observers have advocated a sharp cutback in child protective efforts. These critics of existing practices do not deny that state action often is needed to protect children from serious injury. But they point out that the level of state intervention into private family matters has reached unprecedented heights. At any one time, about 400,000 families are under involuntary home supervi-

74. See the section entitled "Specialized 'Child Protective Agencies,'" *supra* page 156.

sion⁷⁵ and, as mentioned above, about 300,000 children are in foster care because their home situations were deemed abusive or neglectful.⁷⁶

These critics claim that social agencies and courts, in an overzealous attempt to protect children, now intervene in many cases that simply do not amount to either child abuse or child neglect.⁷⁷ Stanford law professor Michael Wald, for example, contends that "many children are removed from home unnecessarily, sometimes because the state does not offer services that would enable their families to provide adequately without removal and sometimes where the state was wrong to believe the child was endangered in the first place."⁷⁸ The present level of overreporting⁷⁹ certainly seems to substantiate these concerns.

More reporting campaigns and enlarged child protective staffs would, in the opinion of these critics, only increase the level of unwarranted state intervention into private family matters. Besides being a major infringement on parental rights, this overintervention, they argue, floods the system with so many minor cases that it cannot protect children in real danger. If there were fewer cases in the system, they say, courts and agencies could concentrate their limited resources on situations where intervention is needed to prevent serious injury to the child. Hence, to improve the system's ability to protect children, as well as to prevent unwarranted state intervention, these critics call for sharp rollbacks in child protective efforts. For example, Goldstein, Freud, and Solnit advocate that courts and child protective agencies be divested of jurisdiction over most cases of physical neglect, emotional maltreatment, and even sexual abuse.⁸⁰

75. See, e.g., Mayberry, *supra* note 49, at 46-47; U.S. General Accounting Office, *supra* note 38, at 39-40.

76. Author's estimate, based on: U.S. National Center on Child Abuse and Neglect, *National Analysis of Official Child Abuse and Neglect Reporting (1977)*, at 55, Table 11 (U.S. DHHS 1979).

77. See, e.g., GOLDSTEIN, FREUD, AND SOLNIT, *supra* note 72.

78. Wald, *Thinking About Public Policy Toward Abuse and Neglect of Children: A Review of Before the Best Interests of the Child*, 78 MICH. L. REV. 645, at 660-61 (1980). Footnotes omitted.

79. See the text at *supra* note 47.

80. GOLDSTEIN, FREUD, AND SOLNIT, *supra* note 72. In fairness, it should be noted that neither these authors nor other critics object to government programs that provide *voluntary* treatment services for such problems. *Id.* at 64.

Until now, such proposals have not gained wide support because they are a classic, and in this context a literal, example of throwing the baby out with the bath water.⁸¹ Physical neglect, emotional maltreatment, let alone sexual abuse, can be just as harmful as actual physical battering. Adopting such proposals would exclude hundreds of thousands of endangered children from the ambit of community protection.

And yet, continuing the *status quo* also should be intolerable to all Americans. The inexorable working of reporting campaigns will make things worse, rather than better. In most communities, only one-third to one-half of all abused and neglected children are now reported; full reporting would double and triple the caseloads. Although more complete reporting is needed, increased reporting would magnify the negative as well as the positive aspects of the present system. As reporting increases, the number of children and parents being helped will increase, but so too will the number being ineffectually and harmfully processed through the system. Unless something is done to break this ironic formula, the continued pursuit of fuller reporting will be a cruel palliative—to the community as well as the children and parents involved.

These concerns take on even greater urgency in the current fiscal atmosphere. Pressures to reduce social service outlays are growing. In response to budget cuts at the federal level, officials in a number of states already have announced that they are contemplating substantial reductions of their child protective staffs. If a large proportion of currently active cases can be removed safely from the system, then, in this time of budgetary cutbacks, agency resources should be focused on children in real danger. But if, on the other hand, child protective efforts cannot be curtailed without endangering children, and if, in fact, they should be expanded further, then this, too, should be known—so that they may escape the apparent fate of other social service programs.

Conclusion

Past progress in upgrading child protective capacities was relatively easy to achieve. Mandatory reporting laws and public awareness

81. See, e.g., Wald, *supra* note 78.

campaigns were inexpensive and largely uncontroversial. Specialized child protective agencies met an obvious need for focused investigative responsibility and could be established without radically changing the organizational structures of public social service agencies. And the treatment programs that were established did not require sophisticated therapeutic techniques and could be painlessly paid for with available federal funds. But future progress, if there is any, will be much more difficult.

Should child protective efforts be expanded further? And, if so, how will the money be found to fund such an expansion? Or, is there already too much intervention, so that the jurisdiction of child protective agencies should be curtailed drastically? Or, as is most likely, is some middle ground of programmatic and jurisdictional refinement needed?

At the present time, it is not clear what direction reform will take—if it will occur at all.