

Conclusion

No Substitute for Case Preparation

As this monograph has described, the Family Court Act and various court decisions have modified or amplified the rules of evidence to facilitate the proof of child abuse. But these special rules are only a partial solution to the problems inherent in trying to prove, or disprove, child maltreatment. While they do much to alleviate the difficulties of introducing important evidence, they do nothing to aid in its discovery. Without effective investigations and careful pre-trial preparation, court decisions must be based on incomplete and potentially misleading information – as crucial facts are undiscovered, misinterpreted, or not presented.

The two avenues of proving child abuse, direct evidence and circumstantial evidence, were separately described in this monograph to facilitate discussion, not to suggest that they are mutually exclusive. In fact, the proof of most cases of child abuse often involves both types of proof. Therefore, in preparing and assessing court cases, both avenues of proof must be considered. Chart #11 provides a checklist for considering the elements of court proof of child abuse.

Consultation with Other Professionals

It would be inappropriate to end a discussion of child abuse without mentioning the importance of interdisciplinary cooperation. As this monograph illustrates, a court adjudication often entails a complex weighing of medical, social work, child development, and legal considerations. Decision-making becomes easier – and more accurate – when it is made in consultation with other professionals whose skills and experience help assess the situation.

To establish circumstantial proof of child abuse, it is often necessary to seek out specially trained or experienced medical witnesses. Dr. Norman Ellerstein of Buffalo Children's Hospital warns:

The presentation of cases may be severely weakened by the physician's ignorance of the facts of "mechanical" injury or what is needed to cause certain injuries. In my experience, many physicians do not know much about the differentiation of inflicted vs. accidental trauma. The "expert" medical witness is frequently misinformed and does not base his opinion on the best available medical literature. Therefore, lawyers presenting the case as well as

Chart #11

CHECKLIST FOR COURT PROOF OF CHILD ABUSE

Direct Proof

- *Is there an eyewitness to the parents' alleged abuse? Is there any reason why the witness should not testify?*
- *Can the child testify about the alleged abuse?*
- *Is there a prior statement by the child that should be introduced? And, can it be corroborated?*
- *Did the parents make an inculpatory statement?*

Circumstantial Proof of Physical Abuse

- *Did the child have apparently inflicted injuries?*
- *Was the child in the parents' general custody during the relevant time?*
- *Did the parents fail to explain how the child received the injuries? Or, was the explanation illogical, contradictory, or at variance with the child's injuries?*
- *Does the behavior of the child or of the parents provide support for a finding that the injuries were inflicted?*

Circumstantial Proof of Sexual Abuse

- *Did the child's body show signs of a violent sexual assault?*
- *Is there circumstantial evidence of sexual activity? If so, does the totality of the circumstances make it unlikely that the child was engaged in voluntary sexual activity with a peer?*
- *Was the child in the parents' general custody during the relevant time?*
- *Did the parents fail to provide a satisfactory explanation of the child's condition?*
- *Does the behavior of the child or of the parents suggest parental involvement in the child's apparent sexual activity?*

child protective agencies should not necessarily rely on the first opinion they get; they should seek out the most knowledgeable physicians they can find. (The best source is a Multidisciplinary Team or a medical school.) They should not worry

about offending the local physician; he will welcome someone with more experience.¹

Lawyers as well as child protective workers should seek out qualified individuals from other professions who can help them analyze and synthesize the information before them. These professionals can provide crucial insights about the significance of particular facts. Frequently, their testimony is indispensable to a favorable court decision.

Interdisciplinary cooperation can be accomplished informally, on a one-to-one basis with other professionals. Whenever possible, though, it should be institutionalized through the more formal mechanism of a "Multidisciplinary Team" (sometimes called a "Suspected Child Abuse and Neglect" or "SCAN" Team). These teams, based on the original Denver model,² focus the collective expertise of relevant professionals on the identification and treatment of child maltreatment. Depending on the community and circumstances of individual cases, such teams include representatives of the relevant medical, mental health, law enforcement, and social service agencies. (Most teams also include a representative of the local child protective agency, in recognition of its legal mandate to investigate reports and to provide needed therapeutic services.) Although their primary purpose is to provide diagnostic and case planning consultations, many teams also help manage treatment efforts and perform a variety of coordinating and educational functions.³

1. Personal communication with the author, Oct. 20, 1983.

2. See Schmidt, B., ed., *The Child Protection Team Handbook: A Multidisciplinary Approach to Managing Child Abuse and Neglect* (1978).

3. See National Center on Child Abuse and Neglect, *A Community Approach: The Child Protection Coordinating Committee* (U.S. DHEW 1979).

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