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MEDICAL AND LEGAL ASPECTS OF THE BATTERED CHILD SYNDROME

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The past decade has witnessed, as evidenced by numerous reports through the mass media, an increased awareness of the problem of child abuse. In response, public reaction has culminated in numerous conferences, panel discussions, and television and radio programs on the problem of child abuse. The problem of child abuse has resulted not only in public discussion and concern within the medical and social welfare professions, but has produced significant legislation directed towards identifying the child abuse problem through the vehicle of mandatory reporting. This article will explore both the medical and legal aspects of child abuse with particular attention directed towards the problems faced by the attorney involved in proceedings concerning child abuse.

MEDICAL HISTORY OF THE BATTERED CHILD

In 1946 Dr. John Caffey[1] published an article[2] describing six children who suffered from chronic subdural hematoma.[3] Cumulatively, these six children had amassed twenty-three fractures. Dr. Caffey

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The authors express their appreciation to Richard B. Truitt, J.D. for his guidance and contributions.

1. Dr. John Caffey is visiting Professor of Radiology and Pediatrics, School of Medicine, University of Pittsburgh and Roentgenologist, Children's Hospital, Pittsburgh.

2. Caffey, *Multiple Fractures of the Long Bones of Infants Suffering from Chronic Subdural Hematoma*, 56 Am. J. Roentgenology 163 (1946).

3. Subdural hematoma: A collection of blood beneath the dura mater, the outermost protective covering of the brain.

demonstrated how X-Rays of young children revealed skeletal changes caused by trauma, although he did not interpret these findings as injuries willfully inflicted by the child's parents. Dr. Frederic N. Silverman[4] also recognized that these multiple fractures were due to trauma,[5] and Dr. Paul V. Woolley Jr.[6] was the first to denote them as purposefully inflicted trauma, rather than accidental.[7]

In 1961 Dr. Lester Adelson[8] reported forty-six child homicide cases he had examined as a pathologist over a seventeen year period. In one-half of these cases the child was less than three years of age. He reported that "frank psychosis" was the single most common factor in precipitating the fatal incident, but there were nine instances where "the attacks were triggered by frustration and aggravation." Dr. C. Henry Kempe,[9] an authority on child abuse, coined the phrase "Battered Baby" in his first report on damaged children published in 1962.[10] He and his co-workers canvassed seventy-one hospitals and received reports of 302 cases of abusive injuries to children which occurred during a one year period. Of these reported cases, thirty-three died and eighty-five were left with permanent brain damage. Dr. Kempe also conducted a survey of seventy-seven district attorneys, and amassed 445 reports of beaten children in one year, with forty-five deaths and additional cases of permanent brain damage.[11] These statistics accentuate the severity of the problem.

It is literally impossible to ascertain the true incidence of child abuse. However, currently reported estimates place the annual number of child abuse instances in the United States as high as 500,000.[12] When one considers the cases reported in the large metropolitan centers the case rates will range between 250 to 300 per million popula-

4. Dr. Frederic N. Silverman is full professor and head of the department of pediatric radiology at the University of Cincinnati Medical School. He is also head of the department of pediatric radiology at the Cincinnati Childrens Hospital.

5. Silverman, *The Roentengen Manifestations of Unrecognized Skeletal Trauma in Infants,* Am. J. Roentgenology 413 (1953).

6. Dr. Paul Vincent Woolley, Jr., is a pediatrician and Pediatrician-In-Chief, Childrens' Hospital of Michigan, Detroit.

7. Woolley & Evans, *Significance of Skeletal Lesions in Infants Resembling Those of Traumatic Origin,* 158 J.A.M.A. 539 (1955).

8. Adelson, *Slaughter of the Innocents, a Study of 46 Homicides in Which the Victims Were Children,* 264 New England J. Medicine 1345 (1961).

9. Dr. C. Henry Kempe is a pediatrician in Denver, Colorado. He was the first to work with the problem of the battered child. He has pioneered in research and proposed legislation.

10. Kempe, Silverman, Steele, Droegmueller & Silver, *The Battered Child Syndrome,* 181 J.A.M.A. 17 (1961).

11. *Id.*

12. N.Y. Times, Aug. 16, 1971, at 16, Col. 3.

tion.[13] This means that a city with a population of six million could anticipate 1500 to 1800 instances of child abuse a year. Also many foreign countries are now reporting a high incidence of such acts.[14] All manner of physical and emotional abuse, including malnutrition and neglect, in addition to the originally described beatings, are now diagnosed as child abuse.

Illinois reports many acts of child abuse, and the number appears to increase with each passing year.[15] In 1971, 716 instances were reported, and 422 of these were in Cook County;[16] and in 1972, 834 instances of child abuse were reported including 468 from Cook County.

Approximately twenty per cent of abused children are under the age of one year, and two thirds of abused children are three years of age or younger.[17] (See Table I)[18] As indicated by the ages of these abused children, clearly, most of them are too young to escape from the abuser who pursues them, or complain to others of the treatment they receive. Infants as young as two weeks of age have died as the result of injuries inflicted upon them by an abusing party.[19] Child abuse is more common in boys, with 56% incidence. (See Table II)[20] In approximately 10% of the families where abuse has occurred, more than one of the children will be abused.[21] However, in the majority of families, a particular child will be singled out as the recipient of the abuse. The child who predictably will be abused is the unwanted child, the

13. Kempe & Helfer, *Introduction to Helping the Battered Child and His Family* xiii (1972).

14. Bialestock, *Neglected Babies: A Study of 289 Babies Admitted Consecutively to a Reception Center,* 53 (II) 24 Medical J. Australia 1129-1133 (1966); R.G. Birrell & L.H. W. Birrell, *The Maltreatment Syndrome in Children,* 53 (II) 24 Medical J. Australia 1134-1138 (1966); M. Kohlhass and W. Janssen, *Kindesmisshandlung and Arztliches* Berufsgeheimnis, 63/3 Dtschzgesgerichtlmed 176-182 (1968); Le Griffiths & Moynihan, *Multiple Epiphyseal Injuries in Babies; "Battered Baby Syndrome",* 2 British Medical J. 1558-1561 (1963); N. Neimann, M. Manciaux, D. Raboville & G. Zorn, *Les Infants Victimes de Services,* 2318 Pediatrie 961-975 (1968); Schwokowski, *Severe Traumatic Destruction of Knee Joints and Facial Hematomas: Report of "Battered Child Syndrome,* 92 Zeitblatt Chirurgie 2484-2487 (1967); R. Wille, M. Staak & T. Wagner, *Kindesmisshandlungen, Psychosoziale Konstelletionen und Katamnesen,* 109/18 Münchner Medizinische Wuchenschrift 989-997 (1967).

15. From the statistics furnished by the Department of Children and Family Services, Chicago office.

16. County of Cook includes the large metropolitan area of Chicago and hence has a large proportion of the cases of the State of Illinois.

17. Brown, *The Battered Baby,* 76 Chi. Medicine No. 6 (1973). Presented at the Chicago Medical Society Midwest Clinical Conference, March 11, 1972.

18. *See* Appendix A, depicting an analysis of 444 abused children hospitalized in Cook County Childrens Hospital and observed by the author, R.H. Brown.

19. *See* note 17 *supra.*

20. *See* Appendix B.

21. *See* note 17 *supra.*

premature infant, the retarded child, the hyperactive child or the child with an irritating personality.[22]

Child abuse victims are of special medical significance because approximately 10% of those hospitalized for their injuries will die.[23] Many others may be left mentally or physically retarded as a result of their injuries, and may ultimately become charges upon our already over-crowded state and private institutions.[24] When one considers the annual cost of keeping a child in such an institution[25] the economic ramifications of child abuse are evident.

Naturally, physical findings of these battered children[26] vary with the site and severity of the injury. As a general rule the parent who beats or abuses a child may also willfully neglect it, thus resulting in a subnormal state of general health of such children. They may suffer from malnutrition or "failure to thrive". These children may even be victims of homicide by starvation, as indicated in five cases reported by Dr. Adelson where mothers purposely failed to feed their children.[27] Physically abused children may also be victims of incestuous sexual abuse. Such sexual crimes are ordinarily handled under the appropriate criminal statutes, rather than those relevant to child abuse.

Physicians have observed every conceivable type of injury in these unfortunate children. Table III[28] depicts the most common injuries sustained by 444 abused children hospitalized at Cook County Childrens Hospital in a six year period ending March 31, 1973. Table IV[29] represents an analysis of the deaths in this series.

Severely battered children are usually brought to a physician or

22. *Id.*

23. Brown, Rowine Hayes, The legal problems of the battered child, Social Pediatrics, Vol. XIII of the proceedings of the International Congress of Pediatrics. Presented by the author at the International Congress of Pediatrics, September 3, 1971 at Vienna, Austria.

24. *See* note 17 *supra.*

25. Information from Department of Children and Family Services denotes the cost at approximately $7,200 per year.

26. Additional analytical information concerning inflicted injuries can be found in V.J. Fontana, The Maltreated Child (2d ed. 1971); The medical material in this section is from analysis of the battered children observed by the author, Rowine Hayes Brown, at Cook County Childrens' Hospital. Her experience consists of abused children she has treated on her service since January 19, 1950; Stone, Rinaldo, Humphrey & Brown, *Child Abuse by Burning,* 50 Surgical Clinics of North America No. 6 (1970); R.H. Brown, *Child Abuse,* in Encyclopedia Britannica Book of the Year 455a (1972).

27. Adelson, *Homicicde by Starvation, the Nutritional Variant of The Battered Child,* 186 J.A.M.A. 458 (1963).

28. *See* Appendix C.

29. *See* Appendix D.

hospital for medical care by their parents, or custodian, even though the parent may have been the actual abuser. They become frightened when they realize the child is badly injured and needs medical care. Furthermore, they may take a child to a different physician or hospital following each episode of infliction, in an attempt to elude discovery of their repetitive acts. This frequently leads to a delay in establishing the actual diagnosis.

When the injuries the child sustained are out of proportion to the history recited to the physician, he should immediately consider the possibility of abusive treatment. He should also consider the diagnosis of child abuse whenever any child has a history of many episodes of questionable injuries, or whenever any very young child is examined for any injury. The presence of multiple scars or bruises on the child's body should also raise the possibility of this diagnosis.

X-Rays of the bones, and especially of the long bones of the arms and legs, are invaluable tools in making a diagnosis.[30] They can depict multiple fractures or bone injuries which may be in different stages of healing, and can be diagnosed by the roentgenologist as being of different ages.[31] X-rays may show free air in the chest or abdomen following trauma to internal organs. Special dye studies can demonstrate the presence of subdural hematomas. The physician must be certain to rule out the presence of any medical condition or illness which could result in similar X-Rays, such as scurvy,[32] vitamin A intoxication,[33] or osteogenesis imperfecta.[34] All X-Ray films should be interpreted by a qualified roentgenologist.

PROGNOSIS

As previously stressed, approximately 10% of hospitalized child abuse victims will die from the injuries they have sustained. Others will

30. Brown, *Medical Legal Aspects in Pediatrics,* 69 Chi. Medicine No. 18 (1966); W.E. Nelson, V.C. Vaughan and R.J. McKay, Textbook of Pediatrics 1362 (1969); Miller, *Fractures Among Children: Parental Assault as Causative Agent*: 42 Minn. Medicine 1209 (1959).

31. Bakwin, *Multiple Skeletal Lesions in Young Children Due to Trauma,* 49 J. Pediatrics 57 (1956).

32. Scurvy is a disease caused by inadequate intake of Vitamin C, and characterized by hemorrhages along the gums, into the skin and mucous membranes and along the bones.

33. Chronic vitamin poisoning is characterized by excessive intake of Vitamin A, high blood content of Vitamin A, hard swellings in the extremities and bone changes detectable by X-Ray. J. Caffey, Pediatric X-Ray Diagnosis 994 (1967).

34. Osteogenesis imperfecta: A genetic disorder characterized by fragile bones which fracture easily, blue scleras and deafness.

be physically or mentally retarded.[35] Many will grow up with emotional scarring and personality problems, to the extent that they may never mature to their full potential. And of course, they may well evolve into another generation of child abusing parents.

General Characteristics of the Child Abuser

The abuser is usually a member of the immediate family who lives in intimate association with the injured child.[36] Although the mother is most often the child abuser, there are many other cases where the abuser has been the father, stepfather, paramour, sibling, friend, baby sitter, other relative, guardian, or foster parent.[37] It should not be overlooked that in recent cases children under eight years of age have attacked and killed their infant sibling.[38]

Mothers are frequently the attackers because they are home alone with the child for prolonged periods of time. Where the male family members are unemployed or home alone with the child, attacks by them increase.[39] Mothers in the middle or upper economic spheres can insulate themselves from their children through the use of cultural and educational resources available to them.

While battered children are observed among the affluent and educated, mistreatment of children is seen primarily in poor urban areas.[40] Here the lives of the abusers are often complicated by inadequate housing and finances, insufficient assistance, ignorance, absence of a husband or father figure in the home, and the presence of too many young or unwanted children. The difference in the physician-patient relationship may also be cited as a reason for the preponderance of the reporting from the lower economic segment of the population. The physician of higher income families may be less inclined to report suspected child abuse in order to maintain his clientele.[41] Additionally, the

35. *See* note 17 *supra.*

36. Britton, Cantor, Clark, Harpole, Bensel & Tubergen, *How Physicians Can Help Prevent Child Abuse,* 7 Patient Care 131, 147 (1973).

37. *See* note 17 *supra.*

38. Adelson, *The Battering Child,* 222 J.A.M.A. 159 (1972).

39. Steele & Pollock, *A Psychiatric Study of Parents Who Abuse Infants and Small Children* in The Battered Child 103, 108 (1968); Interview with James Walsh, Child Welfare Supervisor of the Child Abuse Section of the Department of Children and Family Services in Chicago, Illinois, February 12, 1973.

40. Granger, *Child Abuse Not Just in City,* Chi. Sun-Times, March 11, 1973, at 6, Col. 1.

41. Note, *The Battered Child: Logic In Search of Law,* 8 San Diego L. Rev. 364, 374 (1971). *See, Medical Progress Has Little Effect on an Ancient Childhood Syndrome,* 222 J.A.M.A. 1605, 1609 (1972).

doctor may be the social peer of the abused child's parents. Physicians for the less affluent family will not have pressure of this nature.

A study of abusers in Colorado demonstrated that they cut across all socio-economic strata.[42] Intelligence quotient ranged from a borderline 70 to a superior rating of 130. Educational achievement varied from partial grade school through completed graduate studies. Those with higher educational levels were more steadily employed and had fewer stresses. The study found that many abusers adhered to rigid fundamental religious beliefs encompassing the principle of "an eye for an eye, a tooth for a tooth", where no crime goes unpunished.

In the Colorado study, most abusing parents were between twenty-one and thirty years of age. Approximately 50% of the child abusers were unmarried when they gave birth to their children, and a large percentage never did marry. If marriages did occur, they were often characterized by strife and violence. Many marriages ended in separation and divorce.[43] However, in a small percentage of these troubled individuals, definite illnesses were present, such as drug addiction, mental retardation, alcoholism, neurosis or psychosis. Such factors as indifference, preoccupation with other duties, promiscuity or perversions may have also been present.[44]

THE PSYCHOLOGY OF THE CHILD ABUSER

Knowledge of the abuser's psychological behavior is valuable to the lawyer in litigating child abuse cases. To protect the child properly, the court and the lawyer must know which type of abuser can be rehabilitated.[45] The opinion of the lawyer regarding the necessity of

42. The Battered Child, *supra* note 39, at 106.
43. *See* note 17 *supra*.
44. *Id.*
45. D.G. Gil, Violence Against Children, 25, 26 (1970). Classification of Abusive Parents (Zalba) Locus of Problem Parent's Ability to Control Abuse, Not Able to Control.

Classification of Abusive Parents (Zalba)

Locus of Problem	Parent's Ability to Control Abuse	
	Not able to control	Able to control
Personality System	1. Psychotic parent	
	2. Pervasively angry and abusive parent	
	3. Depressive, passive-agressive parent	4. Cold, compulsive disciplinarian parent

removing the child from parental custody is instrumental in aiding the court's decision.

Exhaustive social and psychological studies indicate that child abusers are troubled people with deep problems of their own. These studies indicate that abusers are frequently immature, dependent, impulsive, quick-tempered, self-centered people who react irrationally to stress.[46] Having low tolerance thresholds, they are unable to cope with their problems. Many were subjected to abuse or cruel treatment when they were youngsters.[47]

Psychological studies with monkeys reared in isolation may be analogized to the battered child syndrome. When these monkeys became mothers they became "destructive and often murderous, as if motherhood were an endangering imposition."[48] Their behavior is analogous to the human mother who batters her child as she engages in similar murderous rages.

In other studies researchers found that the child was unwanted and rejected prior to birth. In other cases, the mother, anticipating she would finally have someone who would love her, looked forward to the birth of her baby. When the helpless infant arrived and could only make demands upon the mother, the mother felt rejected and unloved.[49]

Some parents have an unconscious conviction that "children exist in order to satisfy parental needs."[50] When the parent's needs are not satisfied, these children, no matter how young, are often punished physically or seriously neglected. A striking lack of guilt may exist on the part of these parents regarding their punitive attacks against their infants. Psychologists denote this phenomenon as "role reversal" and state that the baby is perceived of as the parent of the abuser possessing

Family System	5. Impulsive but generally adequate parent with marital conflict
Person-Environment or Family-Environment System	6. Parent with identity/role crisis

46. McCoid, *The Battered Child and Other Assaults Upon The Family: Part One,* 50 Minn. L. Rev. 1, 11 (1965).

47. Comment, *The Battered Child—Louisiana's Response to the Cry,* 17 Loyola L. Rev. 372, 379 (1970-71).

48. American Handbook of Psychiatry, 52 (S. Arieti ed. 1966).

49. Zaban, *Battered Children* Trans-Action (July/Aug. 1971).

50. Steele, *Parental Abuse of Infants and Small Children,* in Parenthood 450 (Anthony & Benedek ed. 1970).

adult powers. The baby's cries are interpreted as rejection and a negative judgment of the parent. Feelings of rejection that were suffered by the parent when a child, in relation to his own punitive parent, may be rekindled.[51] The parent may also see the infant as his own bad self,[52] or as a hated sibling.[53] Successive generations of child abuse may be attributed to a deficiency in the mothering each abuser received as a child.[54]

An intentional murder of a child by a parent is usually committed by a psychotic person.[55] Although a child may die due to severe neglect or irrationally abusive treatment, psychologically this death is different from premeditated murder.

EARLY LEGAL HISTORY OF CHILD ABUSE

Due to the medical and psychological developments stated above, society, and in particular practitioners in the legal and medical professions and social welfare, have recently become concerned with the rights of children. However, the problem of child abuse has existed throughout history. In primitive societies, and even in early civilized communities, there was widespread infanticide,[56] with one-half to two-thirds of all infant lives snuffed out at birth.[57] This fate frequently befell the illegitimate child or those who were wards of the state. In Roman civilization, the concept of *patria potestas* existed, which gave the father absolute power over his children.[58] If these children were in their father's home, even as adults, they could be sold, tortured or killed. Children were also commonly bought and sold, exhibited in circuses, or even maimed to make them more effective as beggars.[59] The situation improved with the development of the common law. The early English common law provided the father with exclusive control of his children as a matter of legal right.[60] The father could exercise abso-

51. 17 Loyola L. Rev., *supra* note 47, at 378.
52. *See* Parenthood, *supra* note 50, at 457; Elmer, *Identification of Abused Children*, Children 183 (Sept./Oct. 1963).
53. *See* Parenthood, *supra* note 50, at 455, 468.
54. *See* Parenthood, *supra* note 50, at 459; The Battered Child, *supra* note 39, at 113, 116-119.
55. An example of this is where the mother intends to kill her children and herself. A newspaper reported a story of a mother beating her children to death with a hammer. Chi. Daily News, Feb. 27, 1973, at 34, Col. 1.
56. R.C. Helfer & C.H. Kempe, The Battered Child 8 (1968). Infanticide was practiced by the ancient Egyptians, Greeks and Romans.
57. D. Bakan, Slaughter of the Innocents, 2, 742 (1971).
58. The Battered Child, *supra* note 39, at 13.
59. The Battered Child, *supra* note 39, at 6.
60. Comment, 5 Fordham L. Rev. 460 (1936).

lute control over the child regardless of the child's welfare. Only upon death, or disappearance of the father, would control and custody vest in the mother. In the United States the doctrine developed that children could not sue their parents for a tort,[61] hence, children had no legal redress for harm actually done them. This principle protected the sanctity of the home, and allowed no interference with the parents' total discipline of their minor child. Even if discipline were excessive or brutal, the parents could not be held liable.

In American Colonial times exclusive custody of the child was traditionally given to the father who supported the child and was entitled to the childs' services.[62] In the event the child proved to be beyond disciplinary control statutes were enacted, passed down from the seventeenth century, providing for the death penalty for children over sixteen years of age who were adjudged rebellious or incorrigible.[63] Children were looked upon as assets of the parent, comparable to his livestock and other property. Thus, children were regarded as "chattels" and their "rights" were not considered.

An occasional case involving a child who was mistreated appears in the early American case law. One example is an early Massachusetts case[64] which involved a twelve year old who was beaten to death by the master to whom he was apprenticed. The master was convicted of manslaughter. In 1675 and 1678, two cases were tried which resulted in court removal of the injured child from the parents' home.[65] These were the first instances of removal by court order of children from their parents' homes for maltreatment. In the 1840 case of *Johnson v. Tennessee*,[66] a child's parents were prosecuted for excessive punishment. Their child had been beaten, switched and tied to a bedpost for hours at a time. The appellate court stated it was a question of fact for the jury to determine if the punishment had been excessive.

61. Although interspousal tort immunity stems from the English common law, the English courts did not develop the doctrine of parental immunity from tort actions by their children. *Torts—Abrogation of Parent-Child Immunity Rule*, 25 Ark. L. Rev. 368 (1971). The doctrine first emerged in the United States in the Mississippi Supreme Court decision of Hewellette v. George, 68 Miss. 703, 9 So. 885 (1891). The Court held that a mother was immune from her minor daughter's false imprisonment action where the mother had wrongfully committed the daughter to an insane asylum. The doctrine, based on public policy of preserving domestic tranquility, was followed in McKelvey v. McKelvey, 111 Tenn. 388, 77 S.W. 664 (1903).

62. 1 R. Bremner, Children and Youth in America, A Documentary History 1600-1865, 123 (1970).

63. *See* S. Glubok, Home and Child Life in Colonial Days (1962).

64. 1 Bremner, *supra* note 62, at 123.

65. *Id.*

66. Johnson v. State of Tennessee, 21 Tenn. 282 (1840).

In 1870, in New York, a child was seriously beaten by her mother, and removal from the dangerous environment was considered advisable.[67] Elbridge T. Geary, the legal adviser of the American Society for the Prevention of Cruelty to Animals brought charges against the mother under the Society's auspices. The child was termed a maltreated "animal", because laws which governed animals were more specific than those which governed the treatment of children. The necessity of resorting to this strategy is indicative of the paucity of laws then available for the protection of children.

Some progress had been made by 1891 when in *Hewellette v. George*[68] the court stated: "the State through its criminal laws, will give the minor child protection from parental violence and wrongdoing, and this is all that the child can be heard to demand." Generally, however, the courts still found that a parent's acts of discipline were reasonable, and seldom did they decide to the contrary.

In order to determine how effectively present laws protect the battered child, an analysis of relevant Illinois law is imperative. The following sections deal with Illinois case law and statutes that apply to the maltreated child.

Early Illinois Juvenile Law

In 1863, the Illinois legislature enacted a statute[69] authorizing the placement of those children, ages six to sixteen, who violated the criminal law, or who were growing up in mendicancy, ignorance, idleness or vice. By 1869, in the case of *Fletcher v. Illinois*,[70] the court refused to accept the concept that parents have unlimited discretionary power over their children, holding that "parental authority must be exercised within the bounds of reason and humanity."[71] The court found that the father's imprisonment of his blind helpless son in a cold damp basement made it "monstrous to hold that, under the pretense of sustaining authority, children must be left, without the protection of the law, at the mercy of depraved men and women, with liberty to inflict any species of barbarity short of actual taking of life."[72]

67. V. De Francis, Child Abuse Legislation in the 1970's. (The American Humane Association, Childrens' Division, Denver, 1970).
68. Hewellette v. George, 68 Miss. 703, 9 So. 885 (1891).
69. Illinois Priv. Laws ch. 14, § 8 (1863).
70. 52 Ill. 395 (1869).
71. *Id.* at 397.
72. *Id.*

The Illinois Supreme Court, in the 1870 case of *People ex rel. O'Connell v. Turner*,[73] established the standard for determining when a parent's conduct might justify state intervention and possible removal of the child from its parents. The court's standard provided that intervention was justified when there was a "gross misconduct or almost total unfitness on the part of the parent clearly proved." The legislature, in 1877, showed concern for these problems by approving "[a]n act to prevent and punish wrongs to children."[74] An 1895 case,[75] applied this statute and held that willfully exposing an eight year old boy to inclement weather by his guardian was another wrong against children.[76] Subsequently, this Act was questioned on its constitutional merits in *People v. Vandiver*,[77] a 1971 child abuse case. The court held that since its enactment in 1877, no case ever held this statute invalid. The "test of time, though not conclusive, diminishes the force of the contention that the statute is unconstitutionally vague."[78]

Two recent Illinois cases have not only terminated parental rights but also recognized a child's need for a stable environment. *In the Interest of Garman*,[79] a 1972 case, made a finding of abuse by the father, and when the parents failed to rehabilitate themselves, placed the child in temporary custody with a welfare agency. The court had prescribed the following conditions:

> that the parents not remove the children from Cass County; that the father of said children refrain from the use of alcohol; that the parents obey the statutes and ordinances of the state; that the father accept reasonable employment or attempt to find employment; that the parents refrain from all future neglect of said children; and that they adequately provide for the care, education and health needs of the children.[80]

In *People v. Hoerner*,[81] the court held that the parents have a superior right to a child only when it is in the infant's best interests. Here the child had been removed from the home for its own protection.

73. 55 Ill. 280 (1870).
74. Offenses Involving Children, Ill. Rev. Stat. ch. 23, § 2354 (1971) transferred from ch. 38, §§ 92-96 in 1961.
75. Lynam v. Illinois, 65 Ill. App. 687 (1895).
76. This case construed the statute in question to apply even when the intentionally endangered child did not sustain injury. *See* Ill. Rev. Stat. ch. 38, § 53 (1895).
77. 51 Ill. 2d 525, 283 N.E.2d 681 (1971).
78. *Id.* at 530, 283 N.E.2d at 684.
79. 4 Ill. App. 3d 391, 280 N.E.2d 19 (1972).
80. *Id.* at 393, 280 N.E.2d at 20.
81. 6 Ill. App. 3d 994, 287 N.E.2d 510 (1972).

The mother testified, when she attempted to regain custody of her children, that she attended Alcoholics Anonymous meetings regularly and had freed herself of stress. On cross examination, she admitted that the freedom from stress might be due to the fact that she no longer had her children with her.

> There was expert testimony at the hearing to the effect that removal of the children from their present homes would be severely disruptive of their personalities and mental equilibrium. The past experience of the Hoerners with their children weigh heavily against the likelihood of their ability to provide a suitable home for them. Despite their current affirmations of love and affection, and their determination to do better, it is apparent that the true prospects are at their best tenuous.[82]

In this case the court terminated the parental rights and placed the children up for adoption.

THE ILLINOIS JUVENILE COURT AND JUVENILE COURT ACT

As a public response to the problems of children, Illinois in 1899, established the first Juvenile Court in the nation.[83] While the court heard cases involving mistreated children it also furnished protective services for youngsters. These services were originally secured from private voluntary agencies dependent upon "community-fund money raising activities."[84] Subsequently, in 1964, the legislature created the Department of Children and Family Services,[85] in response to "the recommendations of the Illinois Report for the 1960 White House Conference on Children and Youth."[86] Since the creation of this Department, the Juvenile Court utilizes the protective services available through this Department.

Many years ago, Judge Edward F. Waite stated that "the crucial distinction between the traditional criminal court and the juvenile court is that one directs its efforts 'to do something *to* a child because of what he *has done*', and the other 'doing something for a child because of what he *is* and *needs*.' "[87] The juvenile justice sys-

82. *Id.* at 997-98, 287 N.E.2d at 512.

83. Ill. Rev. Stat. ch. 37, §§ 701-707 (1971).

84. Bowler, *Child Welfare Reform: the Impossible Takes Longer in Illinois*, 3 Loyola U. L.J. 49, 51 (1972).

85. Ill. Rev. Stat. ch. 37, § 705-7 (1971).

86. 3 Loyola U.L.J., *supra* note 84, at 50.

87. Handler & Rosenheim, *Privacy in Welfare Public Assistance and Juvenile Justice*, 31 Law & Contemp. Prob. 402, 403 (1966), from original source, Tappan, *Judicial and Administrative Approaches to Children With Problems*, in Justice for the Child 144 at 17-18 (Rasenheim ed. 1962).

tem is treatment oriented. It attempts to accomplish preservation and strengthening of family ties, removal of children from the family when their welfare and safety require, and provision for the child's care "as nearly as possible equivalent to that which should be given by his parents."[88] "This Act shall be administered in a spirit of humane concern, not only for the rights if the parties, but also for the fears and the limits of understanding of all who appear before the court."[89]

In contradistinction, the recent *Illinois Bar Journal* article on *Rights of Natural Parents* stated that "the lawyer should always strive to show the best interests of the child would be served by awarding the child to his client (the natural parents)."[90] Although this may be the philosophy of the criminal court, it violates the purpose of the juvenile courts. Incorporating the adversary system in child abuse cases often implies to the abuser that he is being accused of a crime.[91] Because the abusive parent and the child require the court's help and protection, the juvenile court and counsel operating in this court must assume, perhaps, greater responsibility than merely acting as impartial arbitrators.[92] They have a great potential for social change.

Within the Illinois Juvenile Court Act there is no distinction between neglected and abused children.[93] Neglected, abused, and delinquent children are all under the jurisdiction of the Juvenile Court and may all appear in the same courtroom for hearings on their problems. When any of these minors appear in court, the Act provides for a guardian ad litem.[94] The Juvenile Court Act provides for protective supervision for children for a specified time, and sets "forth reason-

88. Ill. Rev. Stat. ch. 37, § 701-2 (1971).

89. *Id.*

90. Veverka, *The Right of Natural Parents to Their Children as Against Strangers: Is The Right Absolute?* 61 Ill. B.J. 234, 239 (January 1973).

91. Interview with Morris Davids, Director of Jewish Children's Bureau in Chicago, Illinois, February 21, 1973.

92. C.H. Kempe & R.E. Helfer, *supra* note 13, at 194.

93. Ill. Rev. Stat. ch. 37, § 702-4 (1971):

(1) Those who are neglected include any minor under 18 years of age,
(a) who is neglected as to proper or necessary support, education as required by law, or as to medical or other remedial care recognized under State law or other care necessary for his wellbeing, or who is abandoned by his parents, guardian or custodian or
(b) whose environment is injurious to his welfare or whose behavior is injurious to his own welfare or that of others.
(2) This Section does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parents, guardian or custodian.

This statute has been interpreted in In Re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1971) as applying to minors presently neglected. Speculation by the courts as to future neglect or abuse is not permitted.

94. Ill. Rev. Stat. ch. 37, § 704-5 (1971).

able conditions of behavior to be observed".[95] Under the aegis of such protective supervision, the court may require an abusive parent "[t]o give proper attention to the care of the home, . . . [t]o cooperate in good faith with an agency to which custody of a minor is entrusted by the court, or with an agency or association to which the minor is referred by the court . . . ."[96] Although the establishment of the Juvenile Court has improved the quality of legal services available to children, child abuse remains a major social problem in Illinois as well as the rest of the nation. In response to the mounting incidence of child abuse cases, the American Academy of Pediatrics, in 1961, conducted a symposium concerning this problem.[97] This was followed by a 1962 conference in Washington, D.C. convened by the Childrens' Bureau of the Department of Health, Education and Welfare which led to the child abuse reporting laws.[98]

THE BATTERED CHILD REPORTING LAWS

Those in attendance at the Childrens Bureau Conference reached the conclusion that mandatory reporting of child abuse should be instituted in order that the prevalence of this condition become known. The Bureau prepared a "Principles and Suggested Language for State Legislation on Reporting the Physically Abused Child"[99] and offered this model statute to any state which wished to formulate such legislation. Sections of the Act included: "(1) purpose of the Act (to protect the health and welfare of physically abused children and to prevent further abuses by having physicians report to police authority and causing state protective services to be implemented); (2) reports by physicians and institutions (required when injuries do not appear to be caused accidentally); (3) nature and content of report and to whom made (oral report to be made immediately and written report to follow); (4) immunity from civil or criminal liability for reporting; (5) evidence not to be excluded (due to physican-patient or husband-wife privilege); and (6) a penalty (misdemeanor) for a knowing and willful violation of failure to report."[100]

95. *Id.* § 705-5 (1971).
96. *Id.*
97. *See* note 47 *supra.*
98. *See* note 46 *supra.* This conference was attended by leaders in the various social and professional disciplines concerned with children and their problems.
99. Children's Bureau, U.S. Dept. of Health, Education and Welfare, The Abused Child—Principles and Suggested Language for Legislation and Reporting of the Physically Abused Child (1963).
100. 8 San Diego L. Rev., *supra* note 41, at 389.

With unusual speed, all fifty states enacted child abuse laws between 1963 and 1967, usually following the recommended language of the model of the Children's Bureau. As a result, the fifty state statutes are remarkably similar. In forty-seven states reporting is mandatory, while in the remainder it is voluntary.[101] In all, the reporting of a child abuse case is the initial step in activating legal and societal machinery. The following review will focus on the Illinois Child Abuse Law.

ILLINOIS BATTERED CHILD LAW

1. *Age*

All injuries to children under the age of sixteen must be reported when child abuse is suspected.[102]

2. *Who Reports*

Reports are to be made by all members of the medical profession which, according to the Illinois Medical Practice Act, includes: "all physicians, surgeons, dentists, osteopaths, chiropractors, podiatrists, and Christian Science practitioners".[103] The medical profession, because of its expertise, is undoubtedly in the best position to determine whether a child's injuries fall within the category of the battered child syndrome.

3. *To Whom Reports Are Made*

In Illinois the reports are to be made to the Department of Children and Family Services.[104] As the focus is on treatment and rehabilitation it does not appear cogent to cause reports to be made to police authorities,[105] although in Illinois the reporter has the option to file a report with the local law enforcement agency if he feels such is warranted.[106] Often police are involved at the outset, because they have been called by a neighbor or relative who has heard the injured child crying, or even witnessed acts of abuse inflicted by the offender. Oftentimes, the police take the child to the nearest hospital and the abuser to the police station for questioning.

101. *See* note 67 *supra.*
102. Ill. Rev. Stat. ch. 23, § 2041 (1971).
103. *Id.* § 2042.
104. *Id.* § 2043.
105. De Francis, *Child Abuse—The Legislative Response,* 44 Denver L.J. 3 (1967).
106. Ill. Rev. Stat. ch. 23, § 2043 (1971).

4. *Method of Reporting*

Initial reports are to be made orally by telephone. Subsequent reports are to be made in person or by a written report "deposited in the U.S. mail, postage prepaid, within twenty-four hours after the examination of the child."[107]

5. *Contents of The Written Report*

The statute requires the inclusion of the following information in the report: (1) the childs name, sex, age, and address; (2) name and address of the persons having custody or responsibility for the child; (3) date and place of medical examination; (4) the nature and extent of the injuries; (5) evidence of any previous injuries; (6) any other information that the reporting medical practitioner considers helpful in establishing the cause of the injuries or the identity of the person who inflicted them.[108]

6. *Immunity Clauses*

Those who report in good faith will be immune from civil or criminal prosecution.[109] Immunity from liability is a vital consideration because without such protection those in the medical profession could be susceptible to law suits instigated by irate or vindictive parents.[110] The predictable reaction to the absence of immunity, would be a failure of medical practitioners to report child abuse cases. Without reporting, cases would not be brought to light and the social welfare machinery could not begin to operate on behalf of the child. Thus, the entire purpose of the statute would be defeated.

7. *Waiver of Privileges*

The Illinois Statute provides for a waiver of the physician-patient privilege, but not of the husband-wife privilege.[111] Usually the law recognizes and protects privileged communications between doctor and patient and husband and wife. However, without statutory waiver of these privileged communications, child abuse cases would be more difficult to prove, because disclosure of essential information would be protected.[112] In some cases, the issue of immunity may be immaterial

107. *Id.*
108. *Id.* § 2044.
109. *Id.* § 2045.
110. 44 Denver L.J., *supra* note 105, at 32.
111. Ill. Rev. Stat. ch. 23, § 2046 (1971).
112. *See* People v. Jackson, 18 Cal. App. 3d 504, 95 Cal. Rptr. 919 (1971).

in the doctor-patient relationship since many abused children are too young to relate to their physicians the events causing their injuries. If a physician does elicit statements from a child regarding the cause of the injuries, such information may be included in his report.

8. *Central Registries*

The Illinois statute requires that a registry be maintained.[113] A copy of each child abuse report which is filed is transmitted to a confidential central registry which is kept in Springfield at the main office of the Department of Children and Family Services. Reports are forwarded by the regional offices of the Department throughout the state.[114] In Illinois, physicians do not have actual access to this registry. Only social workers employed by the Department of Children and Family Services have access to the files in this registry, in order that they may initiate required investigations of reported cases. Thus, the confidentiality of the information on file is safeguarded.[115]

The reporting laws have focused on physicians as the primary source for reports.[116] However, physicians are placed in a dilemma insofar as their training has been in the diagnosis and treatment of specific injuries. Correspondingly, the actual cause of the injury may be secondary in importance.[117] The battered child syndrome encompasses not only the specific injuries of the child, but also the total condition of the child and the parents' explanation for that condition.[118] The physician may be unwilling, particularly if the parents deny any abuse or present reasonable explanations of the injuries, to bridge the gap between the treatment of the specific injuries and the determination that the child is a victim of the battered child syndrome. However, the choice of the physician as the prime reporter of abuse is logical due to the responsibility and training of the physician and the frequency of abused children arriving at hospitals or doctors' offices.

No legal liability can attach where the medical practitioner makes his report of a suspected abuse case in good faith.[119] If the physi-

113. Ill. Rev. Stat. ch. 23, § 2047 (1971).
114. Ill. Child Abuse Act: A Survey of the First Year (Dept. of Children and Family Services, Ill. 1966).
115. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 Colum. L. Rev. 1, 26-27 (Jan. 1967).
116. 50 Minn. L. Rev., *supra* note 46, at 28. Holder, *Child Abuse And The Physician*, 222 J.A.M.A. 4 (1972).
117. *See* Williams v. Alexander, 309 N.Y. 283, 129 N.E.2d 417 (1955).
118. 17 Loyola L. Rev., *supra* note 47, at 368 n.20.
119. Ill. Rev. Stat. ch. 23, § 2045 (1965).

cian does not accept his responsibility and file the required report, he must realize that in 25 percent to 50 percent of the cases the same child will be permanently injured or killed within the next several months.[120] A penalty clause for failure to report is not included in the Illinois child abuse statute.[121]

Although the California child abuse law also does not include a penalty clause, a recent unreported California case[122] is of interest. In 1972 a suit for $5,000,000 was brought in California against four doctors for failing to report attacks upon an abused child brought to them for treatment. The city where the abuse occurred and its police chief were also named in the suit for failure to investigate adequately when another doctor did make a subsequent report. A settlement was reached and a $600,000 trust fund was established to benefit the brain damaged child.

One might also anticipate that in the future a suit might be brought against the physician by the child himself for the injuries the child sustained when the physician failed to obey a statute designed to protect the child from harm.[123]

Advantages and Disadvantages of Reporting Statutes

The ultimate purpose of reporting statutes is to seek out and identify the victims, in order that attempts may be made to protect the victims from further injury. The advantages of child abuse reporting statutes are apparent. The statutes clearly delineate the duties, privileges, and immunities of physicians in reporting. The availability of central registries may aid the physician in the diagnosis of child abuse. The registries permit the aggregation of essential information, including statistics, which may be of valuable assistance in research of the problem of child abuse.[124] The reports themselves tacitly aid in dispelling any inherent socio-economic prejudices that may once have been held about child abuse by social workers, lawyers, judges,

120. The Battered Child, *supra* note 39, at 51.

121. *See* note 67 *supra*. This analysis by De Francis shows penalty clauses are present in 50% of the statutes. Fines from $25 to $500 may be assessed for failure to report. Jail sentences from 10 days to 6 months may also be assessed.

122. This case was reported in Time Magazine, November 20, 1972. Here the child was living with its mother and her A.W.O.L. boyfriend. On three occasions the child was taken to the physicians with severe injuries, from which he suffered severe and permanent brain damage. The boyfriend of the mother was sentenced to one to ten years in prison for beating the child. The father of the child instituted the suit against the defendants.

123. *See* note 115 *supra*.

124. A.R. Moritz & R.C. Morris, Handbook of Legal Medicine 66 (1970).

and physicians.[125] Their major advantage stems from the immediate aid that can be afforded an innocent battered child as soon as his case is identified by the report.

However, reporting statutes are by no means perfect and their existence may create other problems. The initial focus of the reporting statute is on the battered child, with little or no concern given to other children in the family who may be equally vulnerable to abuse.[126] Reporting statutes may fail in regard to protective care afforded to other siblings; once having been reported as a child abuser, a parent may avoid seeking required medical treatment for an injured sibling.[127]

The mandatory reporting of alleged abuse may have a dual effect within the family itself. Parents, irate over the "accusation" of abuse, may become even more abusive towards the child who was the subject of the report. Secondly, abusive parents will become aware of the possibility of a report and they may be deterred from seeking any medical treatment for the injured child because they fear reporting, subsequent investigation and perhaps criminal sanction.

Finally, in those states where reporting goes directly to law enforcement officers, the goals of social protection of the child and rehabilitation of the family are subservient to the criminal sanctions which may be immediately enforced. It is questionable, considering the psychological data now available concerning child abusers, whether the criminal law ought to involve itself with the social welfare aspects of investigating child abuse. Whether reports go directly to the police or to a social welfare agency, their vitality and usefulness in early detection of child abuse cannot be minimized. The social advantages of protection of the child and treatment of the family may only be implemented by reporting and case finding. These advantages far outweigh any disadvantages generated by the reporting statutes themselves.

The Illinois child abuse law[128] has been in effect since its enactment on July 1, 1965. It was amended August 1, 1968, to include reporting of malnutrition. It was also amended July 1, 1971, to include cases of children whose death occurs from apparent injury, neglect or malnutrition other than by accidental means. Despite its success as a reporting law, there are probably many cases of abuse that have not been reported. Failure to diagnose and temerity concerning the involve-

125. *Id.*
126. *See* note 105 *supra.*
127. *See* note 124 *supra.*
128. Ill. Rev. Stat. ch. 23, § 2354 (1971).

ments of the physician in the legal process are the major deterrents to successful reporting.

As statistics concerning abuse are coming to light, it becomes apparent that the battered child law has not "legislated out child abuse".[129] Perhaps improved results might be achieved were the law more fully utilized. Yet, one of the principal problems lies in the fact that the resources and personnel available to the Department of Children and Family Services has been inadequate.[130] This Department is also concerned with many other areas pertaining to children and families. In recent months there have been deaths of several children from child abuse which have received much publicity in the media, and one especially so, since the victim existed in a comatose state for many weeks after the injuries were inflicted. The public again became aroused, as it has periodically over the maltreatment of children, and demands were made that "something be done about it". An Illinois Senate investigating committee, chaired by Senator Philip Rock, probed into the problem and interviewed representatives from many of the disciplines concerned with the problems of child abuse. As a result, Senator Rock introduced into the 1973 session of the Illinois legislature five bills to amend the laws concerning battered children.

PROPOSED AMENDMENTS TO THE ILLINOIS CHILD ABUSE LAW—THE "ROCK AMENDMENTS"

1. *Adequate notice to the foster parent*[131]

This proposal requires adequate notice to be given to the foster parent of any hearings or proceedings to be held concerning a neglected dependent minor in their care. When a hearing will be held to determine whether or not they should be returned to their natural parents, many children will have been in a foster home situation for a prolonged period of time. It was felt that the foster parent should be present at

129. Social Pediatrics, *supra* note 23, at 201.

130. The Illinois Department of Children and Family Services, under its new director, Dr. Jerome Miller, is now giving priority to child abuse. They have set up a program aimed at protection of the child. Their program includes: a 24 hour "hot line" phone number where an abuser can call for help or where an observer of abuse can call to report a child who is in danger; "crisis teams," which will man the hot line and go to the home to offer assistance, transport children to a hospital for treatment, or place children in emergency foster home care; recruitment of a pool of volunteers to work with child abuse families; and plans to involve the community in all phases of their program. They have increased their legal personnel and thus expect better legal representation when a child is to be involved in a court proceeding.

131. Ill. H.B. 32, 78th General Assembly, 1st Sess. (1973).

the hearing to testify concerning his personal knowledge of the child. This notice section should be enlarged to include notice to social workers, physicians, and others who were involved in the original proceeding. They could contribute important information bearing upon the parents' cooperation or refusal to undergo therapeutic counselling.

2. *Specification of physical abuse in the court findings*[132]

This second provision specifies that when there is an adjudication of neglect, the court should find if such neglect were the result of physical abuse inflicted by a parent or legal guardian; that finding should appear in the court order. Custody of the minor shall not be returned until parental fitness has been determined. The practical application of this provision is that the Department of Children and Family Services or any other agency would not be able to make a unilateral decision to return a child to its own home after a neglect proceeding. The difficulty with limiting this to physical abuse is that there is no room for serious acts of omission that could be just as dangerous to the well-being of the child. It also disregards the tragic effects of psychological abuse and deprivation.

3. *Reporting to the sheriff*[133]

This bill was the most controversial, and has been deleted by the Judiciary Committee.[134] There is almost complete agreement by doctors, lawyers and social workers involved with child abuse that this section would defeat the purpose of the Act. It ignores the fact that child abuse was not intended to be a criminal action, requiring criminal prosecution as a matter of course.

4. *Time extension*[135]

This bill changes the time in which a report of child abuse is made, from the present "within twenty-four hours" after examination of the child, to "within twenty-four hours from reasonable cause to suspect child abuse" has occurred. A delay in reporting might be risky to a child who might be returned to his abusive parents. Where there are serious injuries, hospitals should continue to report before the child

132. *Id.*
133. Ill. H.B. 34, 78th General Assembly, 1st Sess. (1973).
134. Chicago Daily News, March 15, 1973, at 6, Col. 2. This bill was not approved by the Senate Judiciary Committee.
135. Ill. H.B. 34, 78th General Assembly, 1st Sess. (1973).

leaves the hospital. Delays may result if the parent removes the child from the hospital before he has received all necessary medical care. If the report is made promptly, a restraining order might be obtained to insure that the child remains in the hospital as long as necessary for therapy.

5. *Enlarge the class of people reporting*[136]

The bill would enlarge the class of persons required to make a report to include school teachers, school administrators, directors and staff assistants of nursery schools and day care centers, registered nurses and any case worker or case aide employed by the Department of Public Aid. The reason for this expansion is to identify cases of child abuse which are never seen by a physician. School personnel feel that if they are to report cases of abuse they too should be granted immunity.[137] If non-medical people who work with children are elevated to the status of medical diagnosticians, innacurate reports are apt to be filed. Doctors possess the specific medical knowledge that is necessary to make a differential diagnosis of the child's injuries, and their evidence should be of more value when presented in court.

PRACTICAL PROBLEMS IN LITIGATING CHILD ABUSE CASES

At the present time the practical problems of litigating child abuse cases remain relatively unexplored, as the majority of cases are usually settled through conferences with the social worker in attendance. Through these conferences the social worker is able to discuss the stressful problems which activate the abuser and offer assistance through staff counselling. Through counselling, the mother may admit that she is pressured and requires assistance and she may even ask that the children be placed temporarily in a foster home for their own safety. In other instances, the family may be hostile and rebel at any attempts to assist or counsel them. Where there is a lack of parental cooperation and a great likelihood of repeated injury to the child, the only recourse available to the social welfare agency is to bring the mother before the Juvenile Court where litigation problems are likely to emerge. The purpose of the court hearing will be to determine whether the child is existing in a dangerous situation, requiring tem-

136. Ill. H.B. 35, 78th General Assembly, 1st Sess. (1973).

137. Interviews with Dr. Marvin Garlich, Superintendent of Lincolnwood Schools, in Lincolnwood, Illinois, March 1, 1973, and Mr. Joseph E. Hill, Deputy Superintendent of the Evanston School District, March 1, 1973.

porary removal for his own safety. Some of these custody hearings are bitterly contested. The family, appearing with their attorney and numerous "character witnesses", testify to their purity and to the child's propensity for accidents which caused the multiple bruises and scratches which were present. When a case does come to trial other difficulties may be encountered.

A foremost problem in litigating child abuse cases successfully is the absence of adequate legal counsel to represent the child. The responsibility and obligation of the legal profession is to insure that everyones' rights are protected. There are very few specific rights of children spelled out in our laws and few procedures are available to minors to utilize for their own protection for wrongs done to them before they attain their majority. When the solution to their problem is sought in the courtroom, very few abused children have been represented by their own attorney. It has usually been considered inappropriate, if not unnecessary, for private counsel to appear on behalf of the child in Juvenile Court proceedings.[138] The state, under the theory of *parens patriae*, has a responsibility for rendering legal counsel, via the appointment of a state's attorney or guardian ad litem, for the child in the juvenile proceedings.

Presently there is only one state's attorney assigned to child abuse cases in Cook County. In addition, he has other types of neglect cases assigned to him, and at any given time he may be carrying a case load as high as 80 to 120.[139] Consequently, he is often unable to devote adequate time to interviewing of witnesses, social workers, medical staff and others who could furnish valuable information concerning the child's specific situation. Guardians ad litem are also handicapped by insufficient time and resources for the preparation of their child abuse cases.

In contrast, a large Chicago law firm,[140] which handles child abuse cases *pro bono publico* for Childrens' Memorial Hospital, estimates it takes from ten to twenty hours to prepare every case they take to trial. This includes the consultations with treating physicians, psychiatric staff, social worker staff and witnesses. Their attorneys have been appointed special assistants to the state's attorney and they appear in court on behalf of the child.

138. Forer, *Rights of Children; the Legal Vacuum*, 55 A.B.A.J. 1151-1156 (1969).

139. Address by Aaron Kramer, Child Abuse Clinic at Mercy Hospital, Chicago, Illinois, September 6, 1972.

140. Schiff, Hardin, Waite, Dorschel and Britton.

Any attorney preparing a case of child abuse for trial will be confronted with a paucity of case law in the area of child abuse. This is due to the fact that almost all cases of child abuse are "settled" at, or before, the original court hearing. In that hearing, if the child does not have a dedicated guardian ad litem or private counsel to contest an unfavorable decision, it is unlikely that an appeal to a higher court will be taken. Consequently, an appellate or supreme court review of the trial court proceedings is rare. Yet, in the opinion of the writers of this article, the infrequent appearance of appellate review in child abuse cases is most unfortunate insofar as such review could contribute immensely towards filling the void that leaves the abused child with few legal remedies. Despite the paucity of appellate case law, the attorney must still prepare the best possible case for his child-client.

Criticism of the judge is occasionally rendered when he has not ordered removal of a child from his home, because in his opinion adequate proof of abuse was not presented in court. However, the lawyer is hampered in meeting this burden of proof[141] because of the secretive nature of child abuse. Abusive acts are usually inflicted within the privacy of the home where they are either unobserved or witnessed only by a spouse who has a legal right to refuse to testify against his abusing mate.[142] Another hindrance to the lawyer is that no permanent records are available in court.[143] Records are necessary to indicate the severity of the injuries, pertinent testimony and evidence regarding child abuse cases.

EVIDENTIARY ASPECTS OF THE CHILD ABUSE CASE

The lawyer's attempt to obtain unrefutable, direct evidence in battered child cases is seriously hampered by the lack of witnesses to the acts of abuse.[144] At best, the lawyer is forced to rely on circumstantial evidence; the child has been seriously injured and the parents' explanation of the circumstances causing injury do not align with medical findings. This situation—the defendant's exclusive knowl-

141. If the criminal court has taken jurisdiction of an allegedly abusive parent, his guilt must be proved beyond a reasonable doubt. At the adjudicatory stage of juvenile court proceedings in Illinois, the State's burden of proof must be by a preponderance of the evidence.

142. Social Pediatrics, *supra* note 23, at 201.

143. Because judges and state's attorneys rotate, it is important to have complete updated records of these cases on file to aid subsequent judges and attorneys in the proper handling of these cases.

144. Chicago Tribune, *Battling The Battered Child Syndrome,* March 5, 1973, § 1A at 9, Col. 1.

edge or control of the facts causing the injury and the inability of the State to obtain the evidence—is the basis for the application of the doctrine of *res ipsa loquitor*.[145] However, in negligence cases, the courts have been reluctant to apply the doctrine "when it appears that the injury was caused by one of two causes for one of which defendant is responsible but not for the other."[146] In child abuse cases where the parents' explanation of the injury is medically plausible and attributable to a cause other than their own negligence, courts may logically proscribe the application of *res ipsa loquitor*.

Perhaps it is for this reason that no Illinois Appellate cases have applied the doctrine of *res ipsa loquitor* to child abuse cases. However, the New York courts have created a judicial trend toward utilization of the doctrine in such cases. In *In Re John Children*, the court allowed the presumption that parents who were narcotic addicts, were abusive "by reason of the abandonment caused by the addiction."[147] In a 1965 case, *In the Matter of S*, the New York Family Court held:

> [I]n this type of proceeding affecting a battered child syndrome I am borrowing from the evidentiary law of negligence the principle of "res ipsa loquitor" and accepting the proposition that the condition of the child speaks for itself, thus permitting an inference of neglect to be drawn from proof of the child's age and condition, and that the latter is such as in the ordinary course of things does not happen if the parent who has the responsibility and control of the infant is protective and non-abusive.[148]

If the lawyer handling a child abuse case attempts to utilize this doctrine, he must remember that in meeting his burden of proof, there is no difference between a case of *res ipsa loquitor* and a case of circumstantial evidence.[149] Although circumstantial evidence cannot identify the specific parental offender, it may be used to find general parental negligence.

A. Demonstrative Evidence

Since the lawyer frequently must base his proof in a child abuse case on circumstantial evidence, he needs the full cooperation of the

145. Johnson v. Foster, 202 So. 2d 520 (Miss. 1967). Jaffe, *Res Ipsa Loquitur Vindicated*, 1 Buff. L. Rev. 1 (1951).

146. Gerhart v. Southern California Gas Co., 56 Cal. App. 2d 425, 431-32, 132 P.2d 874, 877 (1942).

147. 61 Misc. 2d 347, 356, 306 N.Y.S.2d 797, 807 (Family Court, Citywide Child Abuse Term 1969).

148. 46 Misc. 2d 161, 162, 259 N.Y.S.2d 164, 164 (Family Court, King's County 1965). *See* State v. Loss, — Minn. —, 204 N.W.2d 404 (1973).

149. Sullivan v. Crabtree, 36 Tenn. App. 469, 258 S.W.2d 782 (1953).

medical profession. Through the hospital's collection of medical records, X-Rays, photographs and slides, the lawyer may establish the circumstances which infer a battered child syndrome situation. However, the preparation of such evidence in child abuse cases must begin even before pretrial preparation. If the physician suspects child abuse, at the time the child is brought to a hospital or doctor's office, he should attempt to confirm his diagnosis and take steps to document it. X-Ray studies may be demonstrative evidence; photographs will preserve the nature and extent of visible injuries, and careful questioning of the parents and the child may result in admissions. Such statements should be meticulously entered in the medical record. Later at the trial such photographs, X-Rays, medical records, skeletal or organ models, may be used as exhibits or aids to demonstrate to the court the extent of the injury.

1. *Photographs*

The admissibility of any demonstrative evidence involves a balancing between the prejudicial effect on the jury and the probative value of the evidence.[150] Both black-and-white and color photographs are admissible in evidence as long as they are relevant and material to the issues of fact in the case. Photographs of the abused child taken at the hospital may be a useful aid to the testifying physician as he elucidates the extent and nature of the child's injuries.[151]

In *Albritton v. State*,[152] the sole issue on appeal was whether the color photographs admitted into evidence in a criminal trial against the defendant were inflammatory. Stacie Phillips, a sixteen month old infant had been rushed to the emergency room of a hospital where the examining physician suspected her condition portrayed the battered child syndrome. Although she immediately underwent neurosurgery, extensive brain damage, with bruises to the brain which were "just practically innumerable", was the immediate cause of her death. Shortly after surgery, the deputy sheriff took several color photographs and two black-and-white pictures of the deceased child. These were admitted into evidence at the trial and became the issue on appeal. The

150. Shaffer, *Repulsive Evidence And The Ability to Respond*, 43 Notre Dame Lawyer 503, 505 (1968).

151. New York provides by statute that a physician "may, at the time of the initial examination or as soon as practical thereafter, take or arrange to have taken photographs of the areas of trauma visible on a child who is the subject of the report." N.Y. Session Laws, Ch. 294 (1971) amending N.Y. Social Service Law § 383-a (McKinney 1969).

152. 221 So. 2d 192 (Fla. App. 1969).

appellate court seemed to have been as aghast at the pictures as the jurors undoubtedly had been and commented upon the vivid photographs noting:

> The pictures were all in the nude and needless to say were exceedingly gruesome and forbidding. They showed intense and aggravated traumatic effects on the head, face and body of the sixteen month old infant . . . . They showed bruises, blemishes, abrasions, lacerations, contusions and discolorations of practically every segment of the little body . . . . The entire body also appears to be distinctly swollen. The color photographs are especially sickening.[153]

At trial, the defendant had testified in his own behalf, as had Stacie's mother, the defendant's common law wife. Their version of the facts indicated that Stacie was accident prone and that the injuries were relatively isolated and minor . . . *e.g.*, burns from cigarettes and a hair dryer; bruises from horseback riding and injuries resulting from falling off a bookshelf. The court, in holding the defendant's conviction valid, stated the rule as to admissibility of the photographs:

> We think the sound and logical rule for admissibility is that if the pictorial evidence is not so inflammatory or gruesome as reasonable to prejudice the minds of the jury, the evidence is admissible provided it is relevant to any issue. But if such exhibit is so inflammatory and repulsive as would reasonably produce a prejudicial and exceedingly harmful effect on an otherwise impartial mind, it would not be admissible *unless* it would throw light upon a vital issue in the case and resolve, or reasonably tend to resolve, a conflict in evidence upon such vital issue.[154]

2. *Slides*

Slides, in color and black and white, are equally admissible in evidence under the same rules as apply to photographs. Illinois has held, in *People v. Brown*,[155] that color slides taken of a dead child showing bruises and scars are admissible as evidence. The police officer who took the photographs testified that he recognized the photographs and that they accurately protrayed the scene. In the same case, the mother stated that the slides accurately depicted the condition of her child as he lay in the morgue.

In laying the foundation for the admissibility of slides or photographs, the attorney must prove they are accurate representations of the abused child and establish that the pictures or slides would be

153. *Id.* at 196.
154. *Id.* at 197.
155. 83 Ill. App. 2d 411, 228 N.E.2d 495 (1967).

vital in solving a factual issue in the case. The photographer himself need not testify.[156] In the above case, the mother who had not been present at the taking of the picture could authenticate them by testifying to the validity of the condition of the child as accurately portrayed.

3. *Medical Records*

Hospital records usually include an admission sheet, history sheet, a physical examination sheet, a vital signs chart, X-Ray and other laboratory reports, nurses notes, social service notes and progress reports. A lawyer litigating a child abuse case may utilize these records in three ways. First, he may use the records as part of his pre-trial preparations by acquainting himself with the child's medical condition and by basing his pre-trial questions to the physician on information in the records. Secondly, he may attempt to introduce the records into evidence as proof of a fact in issue in the case. Thirdly, he may use the record to refresh the memory of the testifying physician without introducing the record itself into evidence.

In 1967, Illinois adopted the rule that medical records should be excluded from the business records exception to the hearsay rule.[157] Hearsay is an out-of-court statement or written evidence offered during a court proceeding to prove the truth of the matters contained therein without the opportunity to cross-examine the out-of-court declarant.[158] By this definition, hospital records are hearsay evidence. In order to admit them into evidence as independent proof, hospital records must be categorized under one of the exceptions to the hearsay rule or stipulated by the parties to be admissible.

Since Illinois has proscribed medical records' admissibility as business records,[159] the past recollection recorded exception to the hearsay rule may gain their admission into evidence. This exception requires the lawyer to call the injured child's attending physician to the witness stand and elicit from the physician that: (1) the record is written in the physician's handwriting; (2) the physicians' memory has not been refreshed upon viewing the record; (3) the report is an accurate statement of his findings and diagnosis because accuracy is vital in hos-

156. *Id.; See* State v. Foster, 484 P.2d 1283 (N.M. App. 1971).

157. Rule 236, Illinois Supreme Court Practice Rules, Ill. Rev. Stat. ch. 110A, § 236(a) (1967).

158. *See* Wheaton, *What is Hearsay?*, 46 Iowa L. Rev. 207, 210-211 (1961).

159. For an analysis of this rule, *see* Garland, *Hospital Records: Legal Requirements of Proof*, 59 Ill. B.J. 312 (1970).

pital records and the physician would not write an inaccurate report; and (4) the record has been made as part of the physician's regular course of attendance at the hospital.[160]

In *Woolfe v. City if Chicago*,[161] the Illinois Appellate Court held that a hospital record was admissible as evidence of the recorded past recollection of the attending nurse. She had testified that she had no independent recollection of the record other than its correctness.

If the physician is available to testify and does have an independent recollection of the hospital record, the lawyer may use the record to refresh the physician's memory, if necessary. The three-tiered usefulness of the hospital record—as an aid in pre-trial conferences, as an independent proof of the matters contained therein and as a tool to refresh a physician's memory—must be kept in mind at all times by the lawyer litigating child abuse cases.

4. *X-Rays and Other Demonstrative Evidence*

X-Rays may be extremely useful in demonstrating the type of fractures or injuries to the bones of an allegedly battered child.[162] To verify X-Rays, the attorney must prove that: (1) the X-Ray is of the allegedly abused child; (2) the condition of the child when the X-Ray was made coincides with the time of the actual injury which is the subject of the litigation; (3) the apparatus used in making the X-Ray was reliable; (4) the X-Ray technician was reliable; (5) the manner in which the X-Ray was taken was accurate; and (6) the X-Ray has been interpreted by a qualified roentgenologist.[163]

Skeletal models, utilized by the testifying physician, may aid the court in understanding the location of the broken and injured bones, and the reasons why such injuries occurred.[164] In cases involving injuries to the brain, kidneys or other internal organs which are frequently damaged in battered child cases, the physician may successfuly demonstrate the injuries via models of such organs. The testimony of the witnesses who appear in court on behalf of a battered child can be even more important than the demonstrative evidence. Such witnesses

160. 6 Am. Jur. Proof of Facts 131, 140-150.
161. 78 Ill. App. 2d 337, 223 N.E.2d 231 (1966).
162. Here it is necessary to allow a reasonable time to elapse because X-ray changes may not become apparent in some injuries until ten to fourteen days following the trauma.
163. 5 A.L.R.3d 303, 310-314 (1966).
164. Keeton, Trial Tactics and Methods 305-307 (1954).

may include the physician, social worker, relatives, neighbors, teachers and others.

B. Preparing the Physician Witness

When a hearing is to be held, the physician is the key to the case and he should appear in court to testify. His presence in the courtroom and his testimony on behalf of the child can be as life saving as the medical procedures he instituted in the hospital emergency room. Depositions of medical testimony are frequently introduced in court, but they are insufficient, expensive and impossible to cross examine. Every attempt should be made to handle the physician with dispatch and priority in the courtroom. If the doctor can appear on schedule, present his testimony and depart from the courtroom promptly at the conclusion of his appearance, the reluctance of physicians to testify might be reduced substantially.

The attorney should always conduct a pre-trial conference with the physician to advise him of the questions he will be asked on behalf of all parties to the litigation. The physician may not be aware of what evidence may be admissible in court or what weight will be given to the different data he will present. The physician must be prepared to present an accurate account of the injuries sustained and an educated opinion concerning the age of these injuries. He should be able to introduce documentary and demonstrative evidence accumulated during his medical attendance on the child, such as the hospital record, photographs and X-Rays. He should also be urged to refer to full length skeletal schemes and charts to depict exact sites of multiple injuries, and to demonstrate how permanent damage could result. The physician may also be able to demonstrate a disproportionate amount of soft tissue injury, or the presence of prior fractures and bone injuries at various stages of healing, indicating prior repetitive acts of abuse.

It is important that the physician be well prepared to present his opinion concerning the causation of the injuries. He must be able to convince the court that the child could not have sustained his injuries by a mere fall, accidental means or illness. Had the child been hurt as the parent stated, the doctor should compare the results of injuries which could be anticipated therefrom with those which the child actually received.

Even though the abuser may have made an admission at the time the child was brought to the physician for medical care, it is beyond the

competence of the physician to determine who inflicted the injuries to the child. The fact that the injuries were inflicted, rather than accidental, may prompt the physician to persuade the court that the environment in which the child is living is dangerous or life threatening to the child.[165]

C. *Preparation of the Social Worker*[166]

Training in psychology and human relationships equips a social service worker to contribute valuable evidence in any proceeding on child abuse. The system itself should be altered to qualify the social worker as an expert witness. Such workers have had special training in tactful interviewing and are apt to elicit information of extreme importance for the hearing. They are also trained in the observation of people and their reactions. The social worker may readily perceive when the parent, maintaining a defensive or hostile attitude, is fabricating, and further, the social worker may have observed the attitude of the parent to the child. The social worker may also have had the opportunity to observe the parent or parents in their relationship with the injured child.

Social workers may obtain the confidence of the abuser by offering assistance with the problems that beset the abuser. Social workers feel they have a confidential relationship with the people they interview, although they do not enjoy a legal privilege of confidentiality as is often recognized in the physician-patient relationship.

Obtaining evidence from social workers in the courtroom may be hampered by their reticence to speak out in front of the parents in court. Once the parents hear the social worker testify against them, the parents may be unwilling to cooperate with the social worker in the future. They will consider the testimony of the worker as a breach of confidence which will impair any relationship between the family and the worker. Ideally, the family should not be present in court when the social worker testifies.

Pre-trial conferences with the social worker will enable the at-

165. The Illinois neglect statutes' focus on the environment surrounding the child being injurious to his welfare helps the court protect the child. Ill. Rev. Stat. ch. 37, § 702-4 (1971).

166. Interview with Rae Fischer, Director of Social Services, Michael Reese Hospital, in Chicago, February 21, 1973; Interview with Sheldon Key, Director of Social Work, Childrens' Memorial Hospital, in Chicago, March 2, 1973; Interview with Lou Penner, Executive Director, Juvenile Protection Association, in Chicago, March 7, 1973.

torney to learn first hand all the personal knowledge the social worker has gleaned about the family and the child. The attorney should obtain the social history of the family, and formulate the questions which he will ask the social worker at the trial. He will question the worker about interviews the worker had with the family and about observations the worker has made concerning the family.

D. Other Witnesses

The attorney should include in his pre-trial conferences other witnesses who may have knowledge of the particular child abuse case in litigation.[167] Such potential witnesses would include nurses, school teachers, neighbors, relatives, psychologists and any others who have had contact with the family situation. Their testimony against the allegedly abusive parent may be determinative of the decision the court will make concerning the best interest of the child. Such multi-disciplinary cooperation, which affords collective strength, also succeeds in placing the relevant facts before the judge.

RECOMMENDATIONS

Since the inception of the battered child syndrome theory, many recommendations have been put forth in an attempt to offer some guidance and direction in meeting the multi-faceted problem of the battered child. A few of these recommendations will be enunciated in this section.

A. Attorneys

Usually overworked state's attorneys represent the interest of the abused child. Their extensive case load prohibits the necessary time expenditure in case preparation for hearing in Juvenile Court. More lawyers should be assigned by the state's attorney to represent these children. Through directing child abuse cases exclusively to a single attorney or team of attorneys within the state's attorneys office, specialization in child abuse will be encouraged and increased efficiency and expertise will contribute towards the development of the most effective representation of the battered child.

Private law firms may make a major contribution by encouraging their attorneys to handle cases *pro bono publico*. A law firm could

167. Interview with Aaron Kramer, Attorney with Schiff, Hardin, Waite, Dorschel and Britton, in Chicago, February 15, 1973.

establish a one-to-one relationship with an urban hospital which receives a large number of child abuse victims. They could also establish an on-call arrangement with smaller hospitals where only an occasional victim might be admitted. The attorney for the firm would hold conferences with involved personnel, study all available records, handle all pre-trial conferences and motions and represent the child in all court proceedings. A roster of attorneys should be made available to hospitals to call in cases of emergency where an immediate temporary injunction might be necessary to remove a child from a home.

B. Judges

Judges in the child abuse division of the Juvenile Court should have a working knowledge of the psychology of abusing parents as well as a clear focus on social and legislative goals. Such specialized education could be made available through symposiums, seminars and programs sponsored by Continuing Legal Education, similar to the medical profession sessions acquainting the practicing physician with the child abuse problem.

Physicians and psychiatrists should publish informative articles directed towards the legal profession to increase their understanding of child abuse and the child abuser. Knowledgeable judges may help organize and conduct multi-professional seminars on the battered baby syndrome for the other juvenile court judges and lawyers who rotate through the courts. Judges should also encourage the American Bar Association, and state and local bar associations, to establish child abuse teams and committees and to include articles on the various aspects of child abuse in their legal publications.

> Hence, in a judicial approach to the treatment of child abuse, a massive program of community education is needed. The court must be seen, not solely as a punitive, avenging agency whose services are sought only as a last resort, but as another resource, along with the social and behaviorial scientist, the physician, legal services, the police and other community agencies concerned with prevention, detection and treatment of child abuse and neglect.[168]

C. Community Involvement

Child abuse, a major social problem, requires community awareness, support and involvement in order to effect a solution.[169] The

168. Kempe & Helfer, *supra* note 13, at 197.

169. Statement of the American Academy of Pediatrics Committee on Infant and Preschool Child Pediatrics 160 (1972).

legal profession is ideally situated to support the wide variety of community services now available. Lawyers should propose and support legislation for such services and also support referral of child abuse families to existing agencies for assistance and rehabilitation. Furthermore, the legal profession is in a position to encourage the appropriation of sufficient funding for these necessary services.

There are a number of community services already concerned with the battered child. They include community mental health centers which are dedicated to the psychological and psychiatric care of the abusing parent and of the abused child. However, the number of such centers is inadequate.

There are also centers, such as the Bowen Center[170] in Chicago, which deal with social and protective aspects of the problem and aim to provide "total care". Such centers could be established in each community if adequate funding and personnel could be obtained.

There is Parents Anonymous,[171] an organization consisting of abusing parents who meet to discuss their mutual problems and to assist each other in the solution to their problems. Aided by professional guidance, such groups may accomplish much at their own level, as has been experienced with Alcoholics Anonymous.

Although some day care centers are now in operation, their number is insufficient. An adequate number of day care centers should be present so that any mother who wishes to place her child in such a center would have one available to her. When a mother has the facilities of a day care center, she is able to "escape" from the constant care of the child. A day care center, specifically for families where child abuse is a problem, would require intensive social and phychological guidance.[172] These youngsters must be rehabilitated, along with their families, because they have learned improper responses from their adverse home situations.[173] The day care center which serves the family from which an abused child has been identified may require the expenditure of funds greater than those of a "normal" day care center in view of the increased community resources required to serve the family of the abused child.

170. The Bowen Center is operated under the auspices of the Juvenile Protective Association, a private protective agency in Chicago, Illinois. The Center was originally funded by a 5 year federal grant of $250,000 annually and is now partially supported by the State of Illinois.

171. 7 Patient Care, *supra* note 36, at 132.

172. 50 Pediatrics, *supra* note 169, at 161.

173. Interview with Elizabeth Jacob, Director of the Virginia Frank Center, in Chicago, March 2, 1973.

Attempts must be made to attain the highest possible calibre of foster homes. Many abused children are being placed in foster homes by the courts and social agencies on the presumption that such placement will be for a relatively brief time period. Yet, as often happens, the child may be left in foster home placement for a number of years. Usually this occurs during the formulative years of his life when he needs the maximum stimuli for his emotional and educational maturity. The child needs to be in a home where he is loved and intellectually stimulated. Recommendations have been made that when a child has been in foster home placement for as long as a two year period, some legal machinery should be available whereby the rights of the natural parents would be terminated.[174] The child could then be placed for adoption.

Perhaps a "Metropolitan Commission" could be set up to deal with child abuse in a supervisory capacity. If such a commission were established with sufficient funds it could supervise and participate in the following areas: (1) education of the public concerning the problem in order to elicit public support to solutions; (2) research, especially concerning the recognition of potential abusers, and a long term physical, mental and psychological evaluation of all abused children reported in Illinois since our Battered Child statute went into effect; (3) establishment of adequate day care centers; (4) maintenance of the highest possible standards in foster homes; and (5) consideration of the problem of decentralization of the Juvenile Courrt.

D. A Bill of Rights for Children

Concomitant with todays agitation to protect minority and womens' rights, there is also agitation for the promulgation of "senior class citizenship" for children. This could be initiated with the formulation and implementation of a "Bill of Rights" for children. However, such a movement is not new. One of the major recommendations that resulted from the 1930 White House Conference on Children was a "Children's Charter". Forty years later a foremost recommendation of the 1970 White House Conference for Children was a "Bill of Rights" for Children.[175] The drafters included in their proposed Bill of Rights:

174. Television interview on CBS with Dr. Jerome Miller, Director of the Department of Children and Family Services, in Chicago, Illinois, March, 1973. Interview with Leonard Goodman, Deputy Chief Probation Officer of Juvenile Court of Cook County, in Chicago, February 21, 1973.

175. White House Conference on Children, 1970 Report to the President, Wash-

1. The right to grow in a society which represents the dignity of life and is free of poverty, discrimination, and any other forms of degradation.
2. The right to be born and be healthy and wanted throughout childhood.
3. The right to grow up nurtured by affectionate parents.
4. The right to be a child during childhood, to have meaningful choices of the process of maturation and development, and to have a meaningful voice in the community.
5. The right to be educated to the limit of one's capability and through processes designed to elicit one's full potential.
6. The right to have social mechanisms to enforce the foregoing rights.

The authors of this article agree with the above recommendations and would encourage inclusion of the following "rights".

1. The right to be considered as a person, not a "chattel".
2. The right to a stable growth producing environment, whether in natural or foster home, where the child can flourish mentally, physically and emotionally.
3. The right to be safeguarded with adequate legal counsel when necessary.
4. The right to the best possible medical care.

On March 28, 1973, upon recommendation of the Illinois Commission on Children, legislation was introduced with the intent to afford better protection against child abuse and provide a clearer definition of children's rights.[176] The principal sponsor of the Bill, Representative "Giddy" Dyer, stated:

"While I respect the natural rights of parents in bringing up their children as they see fit, there are occasions and circumstances where the rights of children must be guaranteed by law." Passage of this Bill would be a milestone in the progress of children.

CONCLUSION

Today child abuse is a major, if not the major cause of injuries and deaths of our young children. Attorneys must be made aware of the threatening circumstances under which these abused children ex-

ington, D.C. (1970). The White House Conference on Children is held every ten years. Delegates and children from all states, attend. Problems of children are brought forth and attempts are made to solve them. There were approximately 3,700 delegates at the 1970 Conference.

176. Ill. H. B. 865, 78th General Assembly, 1st Sess. (1973) introduced 3/28/73 sponscored by W. Robert Blair and "Giddy" Dyer.

ist. On the statute books, Illinois Juvenile Court laws adequately provide protection for battered youngsters. However, the vortex of the problem is the implementation of these laws by the legal profession. Because children lack the capabilities of demanding legal counsel, the responsibility of recognizing their need must be transferred to the concerned and knowledgeable lawyer.

Physicians witness the pain of an abused youngster weekly. They, not the lawyers, see the fractured skulls, the every-breath of agony of multiple broken ribs and the numerous cigarette burns suffered by youngsters at the hands of their parents. The personal encounter with the tragedy of a child, damaged psychologically and physically, perhaps for life, rarely reaches the inner offices of law firms.

The two month old baby lying in the hospital emergency room, convulsing due to head trauma inflicted by his mother, requires the intervention of the best possible counselor-at-law. Remember, that if the child is not rescued and protected, the next episode of trauma may result in his death.

Appendix A

TABLE I

AGES OF VICTIMS IN SERIES OF 444 ABUSED CHILDREN HOSPITALIZED IN COOK COUNTY HOSPITAL

under 3 months	30	five years	17
3 months to 6 months	29	six years	19
6 months through 11 mos.	32	seven years	14
one year	85	eight years	16
two years	76	nine years	18
three years	53	ten years to fourteen	24
four years	31		

305 or 68.6% were three years of age or less
91 or 20.4% were under one year of age

Appendix B

TABLE II

CHILD ABUSE VICTIMS ACCORDING TO SEX COOK COUNTY HOSPITAL SERIES OF 444 CHILDREN

SEX	NUMBER	PERCENTAGE
male	250	56.3
female	194	43.7

Appendix C

TABLE III

MAJOR INJURIES ENCOUNTERED
IN SERIES OF 444 ABUSED CHILDREN HOSPITALIZED
IN COOK COUNTY HOSPITAL

WELTS, BRUISES, HEMATOMAS	329
MULTIPLE SCARS	118
FRACTURES (OFTEN MULTIPLE)	112
BURNS	102
SCRATCHES, LACERATIONS	101
MALNUTRITION	47
SUBDURAL HEMATOMAS	32
RUPTURED INTERNAL ORGANS	15

Appendix D

TABLE IV

CHILD ABUSE DEATHS
COOK COUNTY HOSPITAL SERIES OF 444 ABUSED CHILDREN

SEX

males	15
females	23

AGES		CAUSE OF DEATH	
under 3 months	5	subdural hematomas	16
3-6 months	2	ruptured internal organs	8
6-9 months	2	burns	5
9-12 months	3	malnutrition	4
1-2 years	10	skull fracture	2
2-3 years	5	gas inhalation	1
3-4 years	6	evisceration	1
4 years	1	buried in yard	1
5 years	1		
6 years	1		
7 years	2		

total deaths 38 or 8.6% of this series

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