

Have We Failed Our Children?: A Look at Public Policy For Abused Children

By Michelle Ressler

Child abuse has been documented in American society for many years. Until the late 1960s, however, little had been done to protect the rights of minors in part due to the widespread view that family problems are a private matter and are not the government's responsibility. This article will analyze public policy towards abused children and examine the role of the government bureaucracy in handling their cases.

Child Abuse: An Overview

Child abuse and neglect may be defined as:

[the] physical or mental injury, sexual abuse, negligent treatment, or maltreatment of any child under the age of 18 by a person who is responsible for the child's welfare under circumstances which incite the child's health or welfare is harmed or threatened thereby. (US Public Law 93-237)

The US Advisory Board on Child Abuse and Neglect has declared child abuse and neglect a national emergency. (HHS 100-294) While the number of reported incidents of child abuse and maltreatment has skyrocketed in recent years, officials believe that many cases of child abuse still remain unreported. (Field notes) According to national surveys, "in 1974, there were about 60,000 cases reported, a number that rose to 1.1 million in 1980 and more than doubled during the 1980s to 2.4 million." (HHS x) Nationally, child abuse reports have increased by 188 percent since 1980. (Newsweek 70) Whether the increase in reports is primarily the result of a change in public awareness, or whether it largely reflects actual increases in child abuse, is unknown. (HHS x)

The identification of child abuse as a national emergency has been based on three findings. First, the number of reported cases of child abuse, neglect, and abandonment has increased greatly. Second, the policy devised to protect abused children is not working. Finally, the money allocated to aid abused children is not being properly spent (HHS vii) As a result, child abuse has increased, and more children are dying.

The causes and manifestations of child abuse are complex. The myth that child abuse affects only lower-income, minority families is unfounded, although such families are over-represented in the statistics on child abuse. While in

some respects all families may be vulnerable, "it is most useful to understand child abuse and neglect as symptoms of a dysfunctional family." (Guardian 9) Although child abuse can affect any family, it is reported disproportionately within groups that are under the most stress. (HHS 17) Families at risk often experience several stress factors, including financial pressures, social isolation, a cycle of abuse in which the perpetrator of the abuse was also abused as a child, and the presence of children with special needs, such as cocaine babies. (Field notes) While the impact of economic stress remains great, the change in the family structure in recent years—from children living with two parents to children living with single parents;—has resulted in another stress which makes children more vulnerable to abuse. In many instances:

[the lack of] supported extended family increases the stress that families experience and the kinds of support available to them. It also decreases the monitoring by the family itself of potentially abusive and neglectful behaviors. (HHS 24)

A History of Legislation

The history of legislation concerning child abuse and neglect is short. While child abuse has always occurred in American society, legislative intervention did not take place until the late 1960s. The first documented case of child abuse was that of Mary Ellen Wilson, one which resulted in public outcry and the formation of the Society for the Prevention of Cruelty to Children. (Nelson 7-8) Wilson's case came to the attention of the public and the courts in 1874 when a neighbor

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of her guardians reported that the child was being abused. Because no agency existed that was willing to become involved in the case of a child over which it did not have custody, an appeal was made to Henry Bergh, the founder and president of the Society for the Prevention of Cruelty to Animals. Bergh championed Wilson's cause and persuaded his friend and counsel, Elbridge T. Gerry, to petition the court for a writ *de nomine repelgando*, an old English writ which removed a person from the custody of another. His efforts resulted in the formation of the Society for the Prevention of Cruelty to Children, which was

*the first child protection agency legitimized by the English and American legal doctrine *parens patriae*—[stating] that public courts have surrogate parental authority to protect the property rights (and now all*

rights) of children when those rights can no longer be protected by their natural parents. (Dobelstein 197)

The subsequent movement which championed the rights of children was based primarily on the efforts of private organizations which lobbied state legislatures. In contrast, strong management groups opposed the first child labor laws. [see *Hammer v. Dagenhart*, 247 US 251 (1918)]

In 1909, Theodore Roosevelt became the first President to address children's issues, and by 1912, the Children's Bureau in the US Department of Labor was established. (Dobelstein 198) The Social Security Act of 1935 helped to pave the way for modern child welfare programs by

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"[layering] federal funds over existing state level foundations." (Dobelstein 198) Nevertheless, interest in child welfare programs declined. The rediscovery of child abuse as a social problem came about with the publication of *The Battered Child Syndrome* by Dr. C. Kempe, a prominent physician. (Nelson 13) Kempe explained that "in most cases some defect of character structure is probably present; often parents may be repeating the type of child care practiced on them." (Nelson 13) Kempe's article prompted the creation of state guidelines to report child abuse and neglect, and by 1967 every state legislature had passed a mandatory reporting law. (HHS 39) The implementation of state laws also provided the standard by which professionals and private citizens could assess and report abuse.

The passage of the Federal Child Abuse Prevention and Treatment Act in January 1974 and its extension in 1978 marked a great advance for advocates of child abuse programs. (Kadushin 3) The act established a National Center on Child Abuse and Neglect (NCCAN) and provided funding and technical assistance for services to state and local governments. In 1980, however, the Congress passed a new Federal Adoption Assistance and Child Welfare Act which tied federal funding for state child welfare and foster care programs "to a requirement of reasonable efforts to prevent placements [outside the abused child's original home] and to reunify families in which placement had occurred." (HHS 39) As the debate concerning how much intervention the government should have in "private family matters" continued, "the act effectively impeded efforts to assist children who had been abused in their home.

The passage of national guidelines for reporting child abuse and the formation of the NCCAN helped to raise public awareness about the problems of child abuse. Currently, each state has laws to protect abused children, yet the dilemma of finding an effective system which can deal with the ever-

growing problems still exists. A closer look at the structure of child protection agencies together with the systems implemented to protect children at risk of harm may provide some answers to the current problems associated with protecting abused children.

The Bureaucracy

To properly evaluate policy towards abused children, it is necessary to understand the structure of the child welfare system and the process by which abuse reports are filed. The system developed to protect abused children has two branches which were created by each state's legislature and follow national guidelines: Child Protective Services (CPS) which monitors families with abused children, and Foster Care which places children in temporary, licensed foster care homes until the child is no longer in danger. (Field notes) The obvious aim of all programs which deal with abused children and their families is to do whatever is "in the best interests of the child." (Kadushin 21)

Once a report of abuse is made, an investigation is begun within 24 hours. If abuse is found, a protective service investigator will determine whether the abuse is severe enough to require the placement of the child in an emergency shelter. (*Guardian*) A detention hearing is required within 24 hours of emergency placement of the child, at which time a judge in the juvenile court system will determine if the child is to be declared dependent and a ward of the state. (*Guardian*) Otherwise, a child may be released to the custody of his parents and referred to the appropriate community resource, and voluntary supervision by Protective Services begins. (*Guardian*)

If the child remains in the custody of the state, a hearing takes place before a judge or a general magistrate. The child's case then either goes to trial if his parents contest the allegations, or the parents sign a "plan" in which they agree to meet certain stipulations to regain custody. (*Guardian*) Attorneys for the state, for the parents, and for the children, called guardians *ad litem*, attend all pre-trial motions and hearings. Most cases of child abuse are referred to the Protective Services unit of the State's Department of Social Services, which monitors the family and sees to it that the

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conditions of the plan are met. The most severe cases of abuse are directed to the Foster Care unit of the system, but the average child's stay in the system is limited by law to 18 months. At this time a review of the case takes place and a decision is made either to return the child to his home or to terminate parental rights and begin adoption procedures. Most children, however, remain in the system for years. (Kadushin 22)

The caseworker plays a central role in the system. Social workers are often the people who have the most contact with abused children and their families. Experts on child abuse Alfred Kadushin and Judith Martin explain:

As in all treatment situations, the worker attempts to develop a relationship of trust by being empathetic, accepting, and genuine. In working with an abusive client population, more emphasis is put on providing a structure of unambiguous expectations and being more than ordinarily supportive. (Kadushin 22)

The social worker attempts to prevent further abuse and tries to remedy the problems which led to the abuse. Yet, parents who are confronted by the protective service workers often resist the efforts of social workers. When parents do not keep appointments with the social workers, the workers must "accept the expectation of limited goals and small gains." (Kadushin 22)

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Employee burnout and a high job turnover rate complicate the workings of the child care system and can render public policy ineffective. Child protective workers have a higher stress level than welfare workers with clerical duties. (Nelson 89) These problems result from the large number of cases each social worker must handle. (HHS xii) Although the number of cases has increased dramatically within the past ten years, resources have not kept pace, and social workers have become increasingly overwhelmed with caseloads of two or three times the manageable level. (HHS 73) Cases are passed from one level of the bureaucracy to another, and the result is often fatal. Additionally, the skills necessary to become a caseworker in many parts of the country are minimal.

[I]n most of the country a CPS caseworker need not possess either a Master's (MSW) or a Bachelor's Degree in Social Work (BSW). Indeed, fewer than ten percent of CPS staff nationally have a BSW, and fewer than three percent have an MSW degree. Many lack even basic education in normal and abnormal child and adolescent development. (HHS 71)

As a result of the situation of the social worker, many analysts doubt the effectiveness of the current policy for abused children.

Impact of Policy

The impact of the policy for abused children is

measured by its lack of success. The most recent national study, conducted by the US Advisory Board on Child Abuse and Neglect, reports that the efforts to strengthen policy have failed. (HHS 94) Legislators are wary to intervene in what some consider to be family matters, while others insist on intervention on behalf of abused children. The change in the structure of the family:

[evokes] a polarized reaction .. liberals habitually [reach] for bureaucratic responses, even when they were counterproductive, and conservatives [reject] government programs even when they would work. (Gals ton 41)

Lawmakers have failed to enact any long-term programs which attack the issue of child abuse directly. Instead, they simply address the issue of the day and respond to immediate crises. Regrettably, the nation also seems to be turning its back on the issue of child abuse, and public opinion has turned against those who fight for the rights of abused children. John E.B. Meyers, professor of law at the University of the Pacific in Sacramento, explains that while the number of scholarly publications on the issue of child abuse has "been impressive.. [and] the number of prosecutions [of perpetrators] has skyrocketed, the backlash is already underway, and is gaining strength daily." (Meyers 38) Meyers attributes this reaction to four distinct factors:

- the "overreaction phenomenon" in which legislators react negatively to the long, mandatory prison terms claiming that children make up claims of abuse and calling for the cessation of intervention in families of abused children;
- the "knowledge gap" in which authorities, who are inadequately trained in techniques of interviewing children, use improper or suggestive interviewing techniques on children;
- the "McMartin fallout," a case in which children's testimony was deemed inconclusive, may have given the mistaken impression that child abuse cases are completely without merit;
- the idea that society has a blind spot, and American culture loses interest in social issues and emphasizes its desire that unpleasant subjects such as child abuse disappear. (Meyers 39-42)

This backlash may also be attributed to a growing conservative political climate in this country. In sum, there has been a decline in societal response to the issue of child abuse, a lack of new, stronger policy, and a decline in the enforcement of existing policy for abused children.

Tragically, the failure of the child protection system to adequately protect children at risk of abuse and to aid those who have already been abused is resulting in unnecessary

injuries and deaths. The case of Joshua DeShaney, whose plight came into the public eye when his case reached the US Supreme Court in 1989, epitomizes society's failure to protect abused children when they cannot protect themselves.

DeShaney v. Winnebago County Department of Social Services: A Case Study

Joshua DeShaney, a four year old boy, was repeatedly abused by his father. Joshua's mother and his guardian *ad litem* filed suit against Winnebago County, Wisconsin, its Department of Social Services (DSS), and various individual employees, including Joshua's caseworker and her supervisor, Cheryl Stelse. They alleged that the state, in its failure to protect Joshua, had deprived him of his liberty in violation of the due process clause of the Fourteenth Amendment. (*DeShaney* at 1001) Significantly, this case marks the first real attempt to claim that Wisconsin had a legal obligation, by the fact that it had created the DSS, to protect Joshua from the abuse by his father.

This tragedy might have been prevented had the DSS acted on its suspicions of abuse. Joshua's plight first came to the attention of Winnebago authorities in January 1982:

[when] his father's second wife complained to police, at the time of their divorce, that he had previously 'hit the boy causing marks and [was] a prime case for child abuse.' (*DeShaney* at 1001)

The DSS interviewed the father but did not pursue the matter. One year later, Joshua was admitted to the local hospital with bruises and abrasions, at which time the examining physician notified the department, and an order removing Joshua from his home into the temporary custody of the hospital was obtained. As part of the DSS, the Child Protection Team (CPT), consisting of a pediatrician, a psychologist, a police detective, the county's lawyer, DSS caseworkers, and hospital personnel, met to consider the circumstances of Joshua's case and to decide whether it was appropriate to keep Joshua in the custody of the court. The CPT decided there was insufficient evidence to keep Joshua in the custody of the court. Based on its recommendation, the juvenile court dismissed Joshua's case and returned Joshua to the custody of his father. Randy DeShaney, Joshua's father, was referred to counselling services and his girlfriend was encouraged to move out of the home (as Joshua's father had accused her of the abuse), and he voluntarily signed a performance agreement with the DSS in which he agreed to accomplish these goals. Only one month later, the caseworker who handled Joshua's case received a call from an emergency room employee that Joshua had been treated for "suspicious injuries." (*DeShaney* at 1001) The caseworker decided there was no basis for action.

Joshua's caseworker visited him monthly for the next six months. During her visits, she noted that Joshua had a number of injuries on his head, which she termed "suspicious," he had not yet been enrolled in school, and his father's girlfriend had not moved out of the home. The majority

opinion of the Supreme Court states that "the caseworker [Ms. Kemmeter] dutifully recorded these incidents in her files, along with her continuing suspicions that someone in the DeShaney household was physically abusing Joshua, but she did nothing more." (*DeShaney* at 1001) In November 1983, Ms. Kemmeter received another call from a hospital emergency room employee that Joshua had been treated for injuries which might have been caused by child abuse. During the next two home visits, Ms. Kemmeter was told that Joshua was too ill to see her. Again, the DSS took no action. Finally, in March of 1984, Mr. DeShaney beat Joshua so severely that Joshua suffered extensive brain damage and is expected to spend the rest of his life in an institution. (*DeShaney* at 1002)

Originally, Joshua's suit was filed in the US District Court for the Eastern District of Wisconsin. His attorneys claimed that Joshua had been deprived of his liberty without due process of law (a violation of the Fourteenth Amendment), because the state should have protected him from his father's

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abuse, of which the DSS should have been aware. The court granted judgment for the state of Wisconsin. The case was appealed to the Seventh Circuit Court of Appeals, which affirmed the lower court's ruling, and rejected the argument that "once a state learns that a particular child is in danger of abuse [that] a 'special relationship' arises between it and the child which imposes an affirmative constitutional duty to provide adequate protection." (*DeShaney* at 1002) Once again, the case was appealed, and the Supreme Court agreed to a review because of the inconsistent approaches taken by the lower courts in determining whether a state has an affirmative obligation to protect the rights of abused children.

The Supreme Court's role in *DeShaney* is interesting. The Justices refused to recognize that the "Constitution itself dictated a more active role" for the state. The narrow 5-4 decision demonstrates the difficulty advocates for abused children have had in defending children's rights. The implications of the *DeShaney* decision are discussed in the *Harvard Law Review*:

*Failing to acknowledge its exercise of political choice in a universe far more malleable and multifaceted than it claimed, the Court took refuge in a silence resonating with unspoken premises and **unstated** values .. Joshua's fate is the legacy not only of an abusive father, but also a derelict state protection agency that ignored multiple reports of suspected parental abuse.* (*Harvard Law Review* 108)

Experts on policy for abused children view *DeShaney* as an

example of how a dysfunctional system can undermine efforts to protect children from child abuse. (HHS 43) The majority opinion chose to interpret the Fourteenth Amendment narrowly without a demand for action by the state. Justice Blackmun rebukes this narrow interpretation in his dissent where he calls for a "sympathetic" reading of the Constitution, using the elements of "fundamental justice" combined with the realization that compassion should not be outside the jurisdiction of the Court. (DeSaaney 1012) Blackmun remarks that:

it is a sad commentary upon American life, and constitutional principles—full of . . . proclamations about 'liberty and justice for all,' that this child, Joshua DeShaney is now assigned to live out the remainder of his life profoundly retarded. Joshua and his mother, as petitioners here, deserve—but are denied by this Court.. {DeShaney at 1013}

The Supreme Court denies thousands of children, like Joshua, state protection and then fails to take responsibility for the resulting tragedies.

A Case of Missed **Opportunities**

When Ms. K Emmeter "knew the phone would ring some day and Joshua would be dead," she recognized the peril of Joshua's situation. Several opportunities existed where Ms. K Emmeter could have forcefully intervened on Joshua's behalf, but her failure to recognize these opportunities resulted in tragedy.

Legally, deprivation implies causation, meaning the state's failure to protect Joshua DeShaney from his father caused the abuse. (DeShaney F2d at 302) The state, however, argues that it was not at fault and did not cause the abuse of Joshua by his father, and therefore, the negligence of a state employee is not punishable by law. (DeShaney F2d at 302) While the Court failed to recognize a state's responsibility in protecting children, DeShaney epitomizes the problems pervading child protection services throughout the country.

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One obvious problem this case reveals is the poor level of training for caseworkers.

While the stress and the frustration experienced by social workers still remains, with adequate training, social workers should be able to foresee potentially dangerous situations and act on them. Unfortunately, many social workers choose to "dutifully record" observations rather than intervene on the child's behalf. (DeShaney at 1012) No action was taken

when Mr. DeShaney failed to fulfill his promise and enroll his son in a Head Start program, or when he failed to remove his girlfriend from the household. When the DSS ignored these warning signs, it assumed the risk that a danger existed. To the DSS workers, Joshua was just another case to file.

System **Problems**

Before improvements can be made, several problems must be addressed in the child protection system and the current policy towards abused children. One problem is the overload of cases. This has occurred because the number of child abuse cases has risen, and the process of identifying cases of child abuse has become more complex. As a result, investigations of child abuse are not kept up to date. A survey of state child protection agencies reports that approximately

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one-third of all agencies do not routinely investigate reports of abuse within the first 24 to 48 hours, as required by law. (HHS 35) These compromises to the safety of the children are harmful, but the repercussions are more disastrous when the "professionals] who serve [the] children and [the] families fail to report suspected cases of child maltreatment because they have no confidence in the capacity of CPS to respond appropriately." (HHS 35) This allows tragedies like that of Joshua DeShaney to occur.

While it is necessary at this time to expand resources to meet the increasing number of cases flooding the system, monies allocated to child protection agencies are not being appropriated. (HHS 35) Although Congress has allocated \$48 million to the agencies, only \$25.3 million has been appropriated at the authorized levels. Without funding it is impossible to adequately monitor all the cases which CPS sees annually.

The lack of basic training and education requirements for child abuse caseworkers must be addressed. The Executive Summary on Child Abuse reports that the deficiencies include an "adequate knowledge base, [an] inadequate application of knowledge, and major shortcomings in the status, recruitment, training, supervision, and caseloads of CPS caseworkers." (HHS 38) The development of standardized requirements for the education and the training of caseworkers would result in the better handling of cases within the system.

Recommendations for **the Future**

A national crisis exists for the intervention on behalf of abused children in dangerous situations. The following recommendations for the future are suggested:

- An expansion of human resources in a manner commensurate with the increasing number of cases in the system is needed. This would increase the

number of caseworkers in each department which deals with abused children. If caseworkers are presented with a manageable number of cases to monitor, it follows that the care of these children would only improve. Obviously, a caseworker with only 25 cases can give more attention to each family than a worker with 125 cases.

- Monetary resources should be expanded so that the required services for abused children are available. More money means better services for children and higher salaries for social workers, who traditionally have been poorly paid. Additionally, an increase in funds will provide services which can help in the prevention of abuse in the first place; greater funding means that families with children at risk of harm will be immediately referred to community resources which would otherwise not be available.

- National guidelines should be established to ensure proper training of caseworkers. Each worker should have either a BS W, or an Associate Degree combined with extensive on-the-job training. Each social worker should be able to pass a minimum reading and writing skills examination. They should also be recruited from areas where problems of child abuse are most prevalent, because social workers who can relate to at risk families can make clients feel at ease.

- A program should be implemented on a nationwide basis where lay persons are trained as child advocates. Attorneys, court appointed special advocates, or guardians *ad litem* should be appointed to advocate for children when their cases are heard in court. National studies have shown that lay persons are the most successful in establishing a meaningful relationship with abused children and their families, because they are better able to analyze the needs of abused children. Lay guardians deal with the children and their families from when their case enters the system until it is discharged. By implementing this program, some of the burden will be removed from caseworkers so that their efforts may be directed elsewhere.

- A national computer system needs to be established in which the names of child abusers, their aliases, their descriptions, and other vital information is stored. The availability of this information can assist employers in screening for positions which involve contact with children, such as teachers or day care workers. This on-line system will also help attorneys and prosecutors to investigate and prosecute child abusers in each state.

Conclusion

The policy for abused children and the system implemented to protect them is failing. Joshua DeShaney's case is only one of many cases with tragic results. The legislature should pass laws to protect abused children and provide appropriate funding for those programs on a federal and state level. Unfortunately, the Supreme Court decided, in *DeShaney* that the state can not be held responsible for its failure to protect the rights of children. It is crucial to realize how important happy and healthy children are. The means to achieving this end is an adequate and well funded policy to protect our children.

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