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CHILD ABUSE: PUBLIC WELFARE AGENCY -

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JUVENILE COURT RELATIONSHIPS*

by

ACQUISITIONS

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Historically, the purpose of the juvenile court has been to act in the place of the parent with the goal of extending to the child adequate care, custody, and discipline should the child become a ward of the state. Theoretically, the goal has been to view the child not as a criminal. The child was not to be subjected to the harsh realities of the legal system. As such, juvenile court proceedings were divested of almost all the features attached to criminal proceedings. Such terms as "complaint, social investigation, petition, informal hearing, adjudication, and case disposition" were substituted for the terms characteristic of criminal proceedings, i.e., "arrest by warrant, examination by a magistrate, bail, indictment, trial by jury, sentence."

There are two major functions of the juvenile court: (1) adjudication--the function of assessing the facts to determine if the State should intervene on behalf of the child; and (2) disposition--the function of determining the most appropriate action the State should take. Prior to the recent emphasis on the legal rights of individuals--in this instance, parent(s) and/or other adults, the children, the petitioning agency--both functions of the juvenile court have been informally undertaken and executed primarily at the discretion of the presiding judge. The current emphasis on "due process of law" and the right to counsel, however, indicates that the juvenile court system will necessarily undergo radical change. Just where the courts are going and what modifications will be made are not presently determinable.

Certainly, the courts themselves are unsure of their present role, especially in child abuse cases. What is abundantly clear, under present procedures, is the need for a well coordinated and cooperative relationship between the public welfare agency and the juvenile court. In cases warranting court adjudication, the public welfare agency, has primary responsibility for gathering facts, i.e., making a social investigation.**

It is not my purpose in this paper to evaluate and/or determine what modifications need to be made in the juvenile court system, nor is it my intention to assess the degree to which present ways of proceeding do or do not protect

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*The laws in more than two-thirds of the fifty states designate the public welfare agency to receive reports of child abuse and to investigate and take appropriate action to the end of protecting abused children. See Vincent De Francis, Child Abuse Legislation in the 1970's (Denver, Colorado: The American Humane Association, 1970).

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the concept of "due process of law." Rather, I prefer to comment on matters where I see interagency problems.

The Study

Data on which ideas for this paper are based were collected in a study of child abuse in the eight Southeastern States in Region IV--Alabama, Florida, Georgia, Kentucky, Mississippi, North and South Carolina and Tennessee.

Data were gathered from two major sources--two mailed-out schedules and personal interviews with child protective service personnel at the state level. Schedule A focused on the provisions of child abuse legislation and reporting systems. Schedule B was geared to an assessment of the states' staff, programs, and service availability and content. The data from Schedule A were used in conjunction with a current copy of each State's child abuse statutes. To supplement data incorporated in Schedule B, personal interviews with child protective service personnel were conducted in on-site visits to each state's department of public welfare.*

The following discussion involves some of the findings from Schedule B and the personal interviews.

The Findings: Agency-Court Relationships

The relationship between the public welfare agency and the juvenile court varies between the states. In some states the juvenile court is actively involved from the point of reporting; while in others, the court becomes actively involved only when the agency invokes its powers to: (1) implement casework plans, e.g., require parent to seek professional services, (2) remove the child from the home when the parent(s) will not consent.

All of the states in Region IV indicate the following activities in relation to the juvenile court: (1) filing petitions, (2) serving as witnesses, (3) assisting witnesses in getting to court, and (4) making recommendations and specifying alternatives based on their investigation. Additionally, six of the eight states indicated that, in varying degrees, they were responsible for preparing summaries and/or presenting cases in court.

The following discussion will not deal with all of the above activities involved in the agency-court relationship. Rather, I shall deal with some of the major problem areas in court adjudication and disposition.

Adjudication--The function of adjudication involves a search for the truth by

*We did not visit the State office in South Carolina. Child abuse central registries, in which we had great concern, are maintained at the county level.

assessing the facts. In this instance, the facts are generally gathered, prepared, and presented by protective service workers to the juvenile court.

One of the major problem areas in the agency-court relationship in the process of adjudication stems from a lack of legal resources. Beyond the need for legal assistance for the parent(s) or other adults and the child in the case (to which I shall not address myself within the context of this paper), protective service workers seeking judicial consideration of child abuse cases should have legal counsel available to them in case preparation, presentation, and thereafter. This is not the situation in Region IV.

In one state where legal services are not available for child abuse cases, the following was indicated: "Because of limited legal assistance, caseworkers assume primary responsibility for preparing and presenting cases in court." In two other states in which no legal services are available for child abuse cases, it was indicated that public welfare agency personnel supply the investigative material for the court. Along the same line, one state indicated that protective service "staff does the total work up of cases." And in another, "staff prepares court summaries."

In view of the apparent lack of enough lawyers to meet the growing demand, there appears to be no ready solution to the above problem beyond the measures now being employed by the states. This problem and the apparent solution, however, imply that either through formal education or in-service training programs, child protective service workers must now be prepared in the intricacies of legal representation. Even though this may be the best practical solution to the problem, this recourse may have serious consequences for the efficacy of caseworkers being both "lawyer" in defense of the child, and subsequently being a social service "therapist" to the parents. Undoubtedly, parents would have less confidence in the rehabilitative function of the agency, if indeed, agency personnel must be actively involved in the case deliberation.

Another problem area in the agency-court relationship in relation to the adjudicative function, emanates from a lack of well defined criteria for defining abuse. This often leads to conflict between the agency's determination of case status and that of the juvenile court. Subsequent court dispositional decision depends, in large measure, on the determination of case status. Two such examples explicating this problem area are cited below:*

After supper father continually threw rope around boy's neck and pulled child to him--child frightened, began to cry. Father called three-year old son to him; child refused. Father hit child causing him to fall hitting his head on a chair. The first son, continuing to cry, was hit by the father in the face with his fist. This resulted in the child falling to the floor and

*These examples are from actual cases on which data were gathered for a subsequent report on the nature, incidence, and characteristics of child abuse in the Region.

hitting his head and ear. Father had previously been in court three months earlier for assault on a minor. He received a suspended sentence.

Agency's determination--confirmed abuse
Court's determination--abuse ruled out

A nine month old child was taken to the hospital with head, eye and leg injuries. X-rays indicated no broken bones. However, the child's grandmother said she heard the child's father beating the child. The parents told conflicting versions regarding the origin of the injuries.

Agency's determination--confirmed abuse
Court's determination--abuse ruled out

Consequence--within two weeks, child DOA at hospital.

Presently, this gap in agency-court relationship stimulates questions rather than ready solutions. What criteria do judges have to employ in defining and determining the status of a child abuse case? What should be the court's main focal point? The parent(s) interests and problems? The public welfare agency's assessment and recommendations? The needs of the child? Perhaps a wise decision based on all the above? If so, to what degree and in what kinds of situations should one or the other be the decisive factor? These are indeed relevant questions to the issue of the adjudication process in child abuse cases. Yet, not one state in Region IV records data on their child abuse form which would allow for the study and analysis of the relationship between the agency and courts in matters related to adjudicational decisions. There are no existing programs geared to establishing a more compatible and coordinated relationship between the agency and the court.

Disposition--Another major problem in the agency-court relationship involves conflict between agency's and court's disposition of some cases. Historically, juvenile court judges have had a wide range of powers and a high degree of flexibility for making dispositional decisions. At a judge's discretion, he may warn parents or counsel them. He may order professional treatment, medical and/or psychiatric for the parents and/or the child. Protective supervision of the child in his own home is an option. Or the judge may remove the child from the custody of his parent(s) should he deem it necessary.

This flexibility and discretion of the juvenile court judges pose a problem for the agency-court relationship. Subsequent to the investigation, the agency presents its findings and recommendations to the court; the court reportedly, often disregards the recommendations. And regardless of the court's final dispositional decision, the agency generally has primary responsibility for follow-up, if services are indicated.

I cannot document the degree to which conflict exist between the agency

and court in dispositional matters in Region IV; however, throughout the Region, this is generally considered a problem area of major consequence in child abuse cases. In one state it was indicated that this was "a serious problem." Personnel in another state indicated that this problem has had serious consequences for the department of public welfare. In one state, it was said that they were. . . "hard put to know what to do about the situation. Some judges go contrary to workers' recommendations; others go along with almost anything." One kind of situation is just as bad as the other.

In many cases involving conflict between agency's and court's disposition, the issue is that of placement. Should or should not a child be removed from his parents' custody? One such a case follows:

An eleven month old male child was found to have suspicious bruises by hospital physician. Child withdrew from human contact and cried when held. Also diagnosed as "failure to thrive." A sister, three years older, was developing normally.

Agency's disposition and recommendation--confirmed abuse and placement.

Court's disposition--abuse ruled out and return child to parents' custody.

Consequence--child later died under unusual circumstances.

Here, as in the agency-court relationship centered around matters of adjudication, the gap in the relationship stimulates questions rather than ready solutions. Do we know enough about characteristics of abusing parents to return children to their custody? What policy guidelines need to be developed and/or clarified to assist judges in the decision of placement? What kinds of services are implicated for abusing parents or parents suspected to be abusers when children are returned to their custody? What legal or social courses can the public social service workers take in behalf of a child when a given case is not defined as abuse by the court, but, in which instance, evidence indicates the need for services to both the child and the parent(s)? Indeed, these questions demand answers. Given the nature, the diverse causes, the seriousness, the possible legal complexities, and the scope of the problem of child abuse, a more coordinated agency-court relationship is indicated.

Concluding Remarks

This paper has been addressed to some of the problem areas in the public welfare agency-juvenile court relationship in judicial proceedings of child abuse cases. The problems have been approached and analyzed from the perspective of the public welfare agency, more specifically, child protective services. As such the paper may appear to be a direct indictment against the juvenile

court. This is not the intent of the paper. For indeed, had we considered the problems from the juvenile court's position, undoubtedly, there would be a shift in the tone of the problems. But the fact that the problems exist, regardless to the perspective taken, indicates that there are gaps in knowledge as well as policy.

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