



1976

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Friedrich, William N. and Boriskin, Jerry A. (1976) "Child Abuse and Neglect in North Dakota," *North Dakota Law Review*: Vol. 53: No. 2, Article 3.

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CHILD ABUSE AND NEGLECT IN NORTH DAKOTA

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I. PSYCHOLOGICAL ASPECTS OF CHILD ABUSE AND NEGLECT

A. INTRODUCTION

The willful abuse and neglect of children, either individually or collectively, by parents, relatives, siblings, or the policies and regulations of our society's institutions, are inexcusable affronts to human decency. Particularly within the last decade, this brutalization of children has become the subject of considerable attention in professional literature¹ and the mass media.

Various synonyms for child abuse have been proposed, for example, the battered child syndrome² and suspected child abuse and neglect (SCAN).³ Regardless of the name, child abuse is now a major cause of death and disability among children. According to Vincent J. Fontana, chairman of New York's Mayor's Task Force on Child Abuse and Neglect, "Statistics strongly suggest that child battering is probably the most common cause of death in children today, outnumbering those caused by any of the infectious diseases, leukemia, and auto accidents."⁴

It has been estimated that approximately 25 percent of all fractures seen in the first two years of life and 10 to 15 percent of all trauma seen in the first three years of life are inflicted rather than accidental.⁵ The true prevalence of abuse and neglect is difficult to determine. Estimates of the total number of actual cases each

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The authors wish to acknowledge the assistance of Jeffrey Hannig, second year law student in preparing the portion of this article on legal aspects of child abuse.

1. Kempe, Silverman, Steele, Droegemueller & Silver, *The Battered Child Syndrome*, 181 J.A.M.A. 17 (1962) [hereinafter cited as Kempe].

2. *Id.* at 17.

3. R. HELPER, *THE DIAGNOSTIC PROCESS AND TREATMENT PROGRAMS* 13 (U.S. Dept. Health, Ed. & Welfare Pub. No. 75-69, 1975).

4. Martin, *The Growing Horror of Child Abuse and the Undeniable Role of the Schools in Putting an End to It*, 160 AM. SCHOOL Bd. J. 51, 52 (1973).

5. Kempe, *The Battered Child and the Hospital*, 4 HOSPITAL PRAC. 44, 44 (1969).

year range from between 200,000 and 250,000⁶ to between 2.5 and 4.1 million cases.⁷

HEW's first nationwide analysis of child abuse indicates more than one million children are victims of physical abuse or neglect each year, and a minimum of 2,000 children die annually as a result.⁸

Before the new North Dakota Child Abuse Reporting Law⁹ went into effect on July 1, 1975, only four separate incidents were reported statewide in 1973,¹⁰ and only 159 reports were made in the state in the ten-year period from January 1, 1965, to July 1, 1975.¹¹ In North Dakota, 206 incidents involving 424 children were reported in the two-month period from July 1 to September 1, 1975.¹² At present, North Dakota social workers have found that about 37 percent of all reported cases are substantiated.¹³ The substantiation rate generally increases as caseworkers become more familiar with the detection of neglect and abuse.

Extrapolating from the 206 incidents reported in the July-September, 1975 time span, it can be predicted that there will be over 1200 reports in 1976, and approximately 400 will be substantiated. Since it is estimated that only one in ten actual incidents are reported,¹⁴ these figures may represent only a small percentage of the actual incidents.

B. DEFINITIONS OF ABUSE AND NEGLECT

Since 1963, laws mandating the reporting of child abuse have been enacted in every state of the Union.¹⁵ However, there has been

6. Zalba, *Battered Children*, 8 TRANSACTION 58, 59-60 (1971).

7. Gill & Noble, *Public Knowledge, Attitudes and Opinions about Physical Abuse in the U.S.*, in PAPERS IN SOCIAL WELFARE, No. 14, at 5 (Brandeis Univ., Waltham, Mass. 1967).

8. Am. Psych. Ass'n, *Child Abuse Called National Epidemic*, 7 MONITOR 8, 8 (1976).

9. N.D. CENT. CODE ch. 50-25.1 (Supp. 1975).

10. Conversation with Judy Mullally, Caseworker, Grand Forks County Social Services (June 1976).

11. *Id.* Child abuse reports have increased with the enactment of the new reporting law, N.D. CENT. CODE ch. 50-25.1 (Supp. 1975). Grand Forks Herald, Sept. 19, 1976, at 9.

12. SOCIAL SERV. BD. N.D., COMM. SERV. DIV., REPORT: CHILD ABUSE AND NEGLECT (Summary: July-Sept. 1975) (statewide survey on file with Social Service Board, Bismarck, N.D.).

13. Grand Forks Herald, Sept. 19, 1976, at 9.

14. Light, *Abused and Neglected Children in America: A Study of Alternative Policies*, 43 Harv. Educ. Rev. 556, 565-66 (1973).

15. The child abuse reporting statutes now in effect are: ALA. CODE tit. 27, §§ 21-25 (Cum. Supp. 1973), as amended, (Interim Supp. 1975); ALASKA STAT. tit. 47, ch. 17 (1975), as amended, (Supp. 1976); ARIZ. REV. STAT. ANN. § 13-842.01 (Supp. 1976); ARK. STAT. ANN. tit. 42, ch. 8 (Cum. supp. 1975); CAL. PENAL CODE § 11161.5 (West 1970), as amended, (West Supp. 1976); COLO. REV. STAT. ANN. §§ 19-10-101 to 115 (Cum. Supp. 1975); CONN. GEN. STAT. ANN. §§ 17-38a to 38c (1975), as amended, (Supp. 1976); DEL. CODE ANN. tit. 16, ch. 9 (1975); D.C. CODE ANN. §§ 2-161 to 166 (1973); FLA. STAT. ANN. § 827.07 (1976), as amended, (Supp. 1976); GA. CODE ANN. § 74-111 (1973), as amended, (Supp. 1976); HAWAII REV. STAT. tit. 20, ch. 350 (1968), as amended, (Supp. 1975); IDAHO CODE §§ 16-1619 to 1620 (Supp. 1976); ILL. ANN. STAT. ch. 23, § 2051-2061 (Smith-Hurd Supp. 1977); IND. ANN. STAT. §§ 12-3-4.1-1 to 4.1-6 (Burns 1973); IOWA CODE ANN. ch. 235A (Supp. 1976); KAN. STAT. ANN. §§ 38-716 to 722 (1973), as amended, (Supp. 1975), §§ 38-723 to 724 (Supp. 1975); KY. REV. STAT. ANN. § 199.335 (Baldwin 1969), as amended, (Cum. Serv. 1976); LA. REV. STAT. ANN. § 14:403 (1974), as amended,

little uniformity between the states as to the definitions or provisions contained in the laws.¹⁶

The recently enacted federal legislation entitled Child Abuse Prevention and Treatment Act¹⁷ defines the syndrome:

“[C]hild abuse and neglect” means the physical and mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of eighteen by a person who is responsible for the child’s welfare under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary.¹⁸

It should be noted that abuse and neglect are not defined in terms of intentional parental malfeasance, as was the case with many of the earlier definitions.¹⁹ Intent to abuse or neglect will often be hard to determine, and especially difficult to ascertain in people living in straitened circumstances. Abuse and neglect must be defined in terms of the probable impact on the child.²⁰

Koel has perhaps the most sensible concept of abuse and neglect.²¹ One is not considered to be worse than the other. Rather, both are considered to fall along a continuum of maltreatment to children. This means that physical abuse does not carry with it a greater onus than emotional deprivation or physical neglect. Both abuse and neglect, as well as social deprivation, emotional depriva-

(Supp. 1976); ME. REV. STAT. ANN. tit. 22, §§ 3851-3860 (Supp. 1975), as amended, (Supp. 1976); MD. CODE ANN. art. 27, § 35A (1971), as amended, (Supp. 1975); MASS. GEN. LAWS ANN. ch. 119, §§ 51A to 51G (Supp. 1976); MICH. COMP. LAWS ANN. §§ 722.571 to .575 (1968); MINN. STAT. ANN. § 626.556 (Supp. 1976); MISS. CODE ANN. § 43-21-11 (1973), as amended, (Supp. 1976); MO. STAT. ANN. §§ 210.110 to .165 (Vernon Supp. 1976); MONT. REV. CODES ANN. §§ 10-1303 to 1308 (Supp. 1975); NEB. REV. STAT. ch. 28-15 (1975); NEV. REV. STAT. §§ 200.501 to .508 (1975); N.H. REV. STAT. ANN. §§ 169:37 to :45 (Supp. 1975); N.J. STAT. ANN. §§ 9:6-8.8 to 8.20 (1976); N.M. STAT. ANN. §§ 13-14-14.1 to 14.2 (1976); N.Y. SOC. SERV. LAW §§ 411-428 (McKinney 1976), as amended, (Supp. 1976); N.C. GEN. STAT. §§ 110-115 to 122 (1975), as amended, (Supp. 1975); N.D. CENT. CODE §§ 50-25.1-01 to 14 (Supp. 1975); OHIO REV. CODE ANN. § 2151.421 (1976); OKLA. STAT. ANN. tit. 21, §§ 845-848 (Supp. 1976); ORE. REV. STAT. § 418.740 to .775 (1975); PA. STAT. ANN. tit. 11, §§ 2201-2212 (Supp. 1976); R.I. GEN. LAWS ANN. ch. 40-11 (Supp. 1976); S.C. CODE ANN. §§ 20-31.1 to .6 (Supp. 1975); S.D. COMPILED LAWS ANN. §§ 26-10-10 to 15 (1969), as amended, (Supp. 1976); TENN. CODE ANN. ch. 37-12 (Cum. Supp. 1976); TEX. FAM. CODE ANN. ch. 34 (1975), as amended, (Supp. 1976); UTAH CODE ANN. ch. 55-16 (Supp. 1975); VT. STAT. ANN. tit. 13, §§ 1351 to 1355 (1974), as amended, (Supp. 1976), § 1356 (Supp. 1976); VA. CODE ANN. § 63.1-248.1 to .17 (Cum. Supp. 1976); WASH. REV. CODE ANN. ch. 26.44 (Supp. 1975); W. VA. CODE ANN. § 49-6A-1 to 4 (1976); WIS. STAT. ANN. § 48.981 (Cum. Supp. 1976); WYO. STAT. ANN. §§ 14-28.7 to 28.13 (Cum. Supp. 1975).

16. For example, there is considerable variation from state to state in the agency designated to receive battered child reports; who is to make the reports; whether penalties are mandated for failure to report and whether a central registry is established. Frazer, *A Summary of Child-Abuse Legislation*, 1973, in *THE BATTERED CHILD* 203, 203 (R. Helfer & C. Kempe eds. 2d ed. 1974) [hereinafter cited as *THE BATTERED CHILD*].

17. 42 U.S.C. §§ 5101-5106 (Supp. V 1975).

18. *Id.* § 5102 (Supp. V 1975).

19. Gil & Noble, *supra* note 7, at 5.

20. J. GOLDBSTEIN, A. FRIED & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 105 (1973).

21. Koel, *Failure to Thrive and Fatal Injuries as a Continuum*, 118 *AM. J. DISEASES CHILDREN* 565, 566 (1969).

tion and psychological abuse, are all forms of maltreatment of children, which, when placed along a continuum, tend to flow into the other and lose their distinguishing characteristics. It is this maltreatment continuum most caseworkers are confronted with in their day to day activities. Where one form of maltreatment ends and the other begins is difficult if not impossible for them to determine.

The North Dakota Child Abuse Reporting Statute defines abuse and neglect separately. An "abused child" is any child "under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means."²² A "neglected child" is a "deprived child" who:

- a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of his parents, guardian, or other custodian;
- b. Has been placed for care or adoption in violation of law; or
- c. Has been abandoned by his parents, guardian, or other custodian.²³

C. HISTORY OF CHILD ABUSE AND NEGLECT

The 1870 case involving a cruelly battered child by the name of Mary Ellen²⁴ is reportedly the first publicized case of abuse in the United States,²⁵ but the problem of abuse and neglect had long existed,²⁶ and had often been considered to be socially acceptable conduct.

For instance, a child was once the virtual possession of its father. The *Patria Potestas* of the Romans endowed the father with the right to sell, abandon, offer in sacrifice, kill, devour, or otherwise dispose of his offspring.²⁷

Many cultures once considered infanticide as a necessary component of existence, since too many children threatened the overall

22. N.D. CENT. CODE § 50-25.1-02 (Supp. 1975).

23. *Id.*, as defined in § 27-20-02 (1974).

24. Mary Ellen was an adopted child, living in New York City, who was being maltreated by her new parents. The child was being beaten regularly and was seriously malnourished. Several church members became interested in the problem, but were unable to persuade local authorities to take legal action against the parents because at that time there was no law allowing any agency to interfere with parents disciplining their children. The church members then appealed to the Society for the Prevention of Cruelty to Animals (SPCA), which was able to have Mary Ellen removed from her parents on the grounds that she was a member of the animal kingdom and thus, her situation could be governed by the then existing laws against animal cruelty. Fontana, *The Maltreated Child*, in *THE MALTREATMENT SYNDROME IN CHILDREN* 8 (C. Thomas ed. 1964).

25. *Id.*

26. Sage, *Violence in the Children's Room*, 4 HUMAN BEHAVIOR 41, 42 (1975).

27. Radbill, *The History of Child Abuse and Infanticide*, in *THE BATTERED CHILD*, *supra* note 16, at 6.

food supply. The birth of twins was considered an evil omen and female infants were often valued less than male infants. Before 1000 A.D. English fathers were able to murder newborns and sell children under seven years of age into slavery, and as recently as the beginning of the twentieth century, parents were able to imprison their children.²⁸

As a direct result of the incident with Mary Ellen, a Society for the Prevention of Cruelty to Children was formed in New York City in 1871. Similar societies began in Philadelphia, Great Britain, and other countries.²⁹ However, even after these societies began appearing, numerous cases went undetected. A popular medical theory which persisted into the twentieth century at the time which "explained" the repeated fractures of abused children was that they were suffering from rickets.³⁰

The abuse and neglect of children seems to arouse cycles of sympathy which will then subside until a new cycle begins. The present day wave of interest is largely a result of the advent of pediatric X-rays, which caused radiologists to begin questioning the association of bruises with unexplained fractures of the long bones.

As a result of this recent interest, increased attention is being given to what many consider to be one of the most serious concerns facing our society—the plight of abused and neglected children.

D. EPIDEMIOLOGICAL STUDIES OF PHYSICAL ABUSE

There is considerable debate as to the proper role social and economic factors play in the etiology of child abuse.³¹ Furthermore, reliable data on socioeconomic differences are often difficult to obtain, because upper class persons are able to get help from private doctors who may be willing to let abuse by clients go unreported, while lower class persons must go to public hospitals, which are staffed with house physicians. Another factor is that poor people are more visible to agencies like welfare, Aid to Families with Dependent Children (AFDC), and the police, and consequently are more likely to be reported.³²

One recent study has found socioeconomic differences among abusers of children, with a preponderance of abusers being members of the lower class.³³ Another recent study indicates that social and economic factors have been overstressed as etiological factors in

28. D. Bersoff, *Developing Legal Theories in Child Advocacy* (Sept. 1, 1975) (paper presented at the American Psychological Association Convention, Chicago, Ill.).

29. Fontana, *supra* note 24, at 8-9.

30. Kempe, *supra* note 1, at 22-23.

31. Gelles, *Child Abuse as Psychopathology: A Sociological Critique and Reformulation*, 43 *AM. J. ORTHOPSYCH.* 611 (1973).

32. Caffey, *Child Battery: Seek and Save*, 13 *MED. WORLD NEWS* 23 (1972).

33. Zuckerman, Ambuel & Bandman, *Child Neglect and Abuse: A Study of Cases Evaluated at Columbus General Hospital in 1968-1969*, 68 *OHIO ST. MED. J.* 632 (1972).

cases of child abuse.³⁴ The sample of abusers in this study consisted primarily of middle-class and upper-middle-class families.³⁵ Though social and economic difficulties may have added stress to the lives of the parents, these stresses were considered to be only incidental intensifiers of personality-rooted etiological factors.³⁶

A 1967 study conducted in Pittsburgh found that the sample did not significantly differ in racial composition from the population served by the hospitals.³⁷ In a much larger study, completed in 1975, there did not appear to be a disproportionate number of minority families involved in abuse.³⁸

Many studies have also clearly pointed out that child abuse occurs in conjunction with other forms of dysfunction in the family, such as marital conflict,³⁹ and the social pressures of economic adversity and social isolation.⁴⁰ A high prevalence of divorce, separation, and unstable marriages was also found in the abusing families.⁴¹ Furthermore, a Los Angeles study indicated a general lack of family stability,⁴² since only 30 percent of the children studied lived with both parents.⁴³

It has been pointed out that child abuse is usually the result of accumulated stresses within the family and often is associated with the lower socioeconomic classes.⁴⁴ Among the factors contributing to such stress are the birth of several children over a short time period, prematurity, and special physical or emotional problems of the children. With the trend toward increasing isolation of the nuclear family from its extended family, and with the increasing number of one parent families, these stresses often result in blow-ups of one sort or another.⁴⁵

One general pattern seems to be that a particular child in the family is selected to be abused.⁴⁶ Merrill observed that once abuse

34. Steele & Pollock, *A Psychiatric Study of Parents Who Abuse Infants and Small Children*, in *THE BATTERED CHILD*, *supra* note 16, at 94.

35. *Id.*

36. *Id.*

37. E. ELMER, *CHILDREN IN JEOPARDY: A STUDY OF ABUSED MINORS AND THEIR FAMILIES* 20-21 (1967).

38. W. Friedrich, *A Survey of Reported Physical Child Abuse in Harris County, Texas* at 43 (1975) (unpublished master's thesis, University of Texas).

39. Johnson & Morse, *Injured Children and Their Parents*, 15 *CHILDREN* 150 (1968); Terr, *A Family Study of Child Abuse*, 127 *AM. J. PSYCH.* 670 (1970).

40. Brown & Daniels, *Some Observations on Abusive Parents*, 47 *CHILD WELFARE* 90 (1968).

41. Morse, Sahler & Friedman, *A Three Year Follow-Up Study of Abused and Neglected Children*, 120 *AM. J. DISEASES CHILDHOOD* 439, 443 (1970).

42. Ebbin, Gollub, Stein & Wilson, *Battered Child Syndrome at the Los Angeles County General Hospital*, 118 *AM. J. DISEASES CHILDHOOD* 660, 661 (1969).

43. *Id.*

44. Bishop, *Children at Risk*, 1 *MED. J. AUSTRALIA* 623, 625 (1971).

45. Lystad, *Violence at Home: A Review of the Literature*, 45 *AM. J. ORTHOPSYCH.* 328, 334 (1975).

46. Merrill, *Physical Abuse of Children*, in *PROTECTING THE BATTERED CHILD* 25, 25-26 (V. De Francis ed. 1962).

had begun, there was a tendency for the abuse by this parent to become repetitive toward the selected child.⁴⁷

Another pattern seen is that one parent is usually the active batterer and the other parent passively allows the battering. Although the abusers usually are the child's own parents with whom they are currently living, a study conducted by Bryant found that mothers and fathers are identified as the abusers in an equal number of cases.⁴⁸ Other reports disagree with the finding that mothers and fathers are the abusers in equal numbers of cases.⁴⁹

The average age of abused children also seems to vary from sample to sample. Young children seem to be abused more often, but it has been suggested this is due to their decreased ability to get away from the blows.⁵⁰ The sex distribution of abused children is generally agreed upon.⁵¹ Abused boys outnumber girls in every age category below twelve, but they are outnumbered by girls among the teen-aged victims of child abuse.⁵² It has been hypothesized that the over-representation of adolescent females is due to the increasingly sexual nature of physical abuse at this age level.⁵³

The role the child has in initiating abuse has also been questioned. In a 1976 review of the literature, it was noted that certain children (handicapped, retarded, multiple births, premature babies) were more likely to be victims of child abuse than normal children.⁵⁴ Often the children produce a great deal of stress in the family, and in essence, play a role in initiating abuse. Thus in a family already beset with financial or inter-personal problems, there is a high risk of abuse and neglect for these special children.

E. EPIDEMIOLOGICAL AND DEMOGRAPHIC STUDIES OF NEGLECT

It has been estimated that the ratio of neglect to abuse is at least ten to one.⁵⁵ For instance, of over 4,700 cases referred to a private child protective agency in Massachusetts in 1972, only 14 percent in-

47. *Id.* at 27.

48. Bryant, *Physical Abuse of Children in an Agency Study*, 42 *CHILD WELFARE* 127 (1963).

49. Gil found that fathers or substitutes were perpetrators of abuse in nearly two-thirds of the incidents in homes that did have a mother or mother substitute. D. GIL, *VIOLENCE AGAINST CHILDREN: PHYSICAL CHILD ABUSE IN THE UNITED STATES* 116 (1970). DeFrancis found that fathers were responsible for 38% of the injuries in the 662 cases reported, while mothers were responsible in 29% of the cases. Mothers, however, were found to inflict the most serious injuries, and were responsible for more fatalities. V. DEFRANCIS, *CHILD ABUSE—PREVIEW OF A NATIONWIDE SURVEY* 38 (1963).

50. D. Gil, *VIOLENCE AGAINST CHILDREN: PHYSICAL CHILD ABUSE IN THE UNITED STATES* 105 (1970).

51. *Id.* at 104.

52. W. Friedrich, *supra* note 38, at 44.

53. D. Gil, *supra* note 50, at 106.

54. Friedrich & Boriskin, *The Role of Child in Abuse: A Review of the Literature*, 46 *AM. J. ORTHOPSYCH.* 580, 588 (1976).

55. N. A. POLANSKY, C. HALLY & N. F. POLANSKY, *PROFILE OF NEGLECT: A SURVEY OF THE STATE OF THE KNOWLEDGE OF CHILD NEGLECT* 8 (U.S. Dep't. Health, Ed. & Welfare, 1975) [hereinafter cited as *PROFILE OF NEGLECT*].

volved abuse.⁵⁶ The Child Protective Services Report in the State of New York stated that in the 29,912 incidents involving 56,636 alleged victims received during the year to the New York State Child Abuse and Maltreatment Register, only 18 percent involved physical or sexual abuse.⁵⁷ In contrast, it was determined that in Florida, which has had for several years the most advanced central reporting system in the country for abuse and neglect, the ratio of neglect to abuse was closer to three to one.⁵⁸

In North Dakota the report of the Social Service Board states that of the 394 reports involving abuse and neglect that were received by the Area Social Services during the period July 1, 1975, to December 31, 1975, 270 reports involved neglect, 95 involved abuse, and a combination of abuse and neglect was reported in the remaining 29 cases.⁵⁹ As in Florida, this gives an approximate ratio of neglect to abuse as 3:1.

The area of child neglect has been researched much less than the area of physical abuse.⁶⁰ Very little is known about the "causes" of child neglect. Therefore, instead of positing a universal pattern underlying all instances of neglect, the authors will examine causal mechanisms for neglect in only a few areas.

Economics undoubtedly plays a large role. Kadushin determined that neglect seems to be a response to social stress.⁶¹ Often, the neglectful mother does not have a husband, has a large number of children under her care, and is living on a small income in substandard housing. In a study of women committed for child neglect to the New Jersey Reformatory, it was reported that at least half had been living in housing unfit for human occupation.⁶²

There is not a linear relationship from poverty, to stress, to neglect. The role of these forces is not simple and direct. If it were, all poor parents would also be neglectful, which certainly is not correct.

Other theorists have proposed that neglectful parents have deviant cultural values concerning child caring.⁶³ In one study of neglectful women, the subjects were all able to give socially acceptable answers to questions concerning appropriate child rearing practices,

56. Newberger, Haas & Mulford, *Child Abuse in Massachusetts*, 32 MASS. PHYSICIAN 31, 33 (1972).

57. 1974 N.Y. ANN. REP. FOR THE PROVISION OF CHILD PROTECTIVE SERVICES 17.

58. PROFILE OF NEGLECT, *supra* note 55, at 9.

59. SOCIAL SERV. BD. OF N.D., COMM. SERV. DIV., REPORT: CHILD ABUSE AND NEGLECT (Summary: July-Dec. 1975) (statewide survey on file with Social Service Board, Bismarck, N.D.).

60. PROFILE OF NEGLECT, *supra* note 55, at 3.

61. A. KADUSHIN, CHILD WELFARE SERVICES 249 (2d ed. 1974).

62. Schorr, *How the Poor are Housed*, in POVERTY IN AMERICA 349-68 (L. Ferman, J. Kornbluh & A. Haber eds. rev. ed. 1968).

63. N. POLANSKY, R. BORGMAN & C. DESAIX, ROOTS OF FUTILITY 212 (1972).

but their observed practices were completely out of line with what they professed.⁶⁴

Some theorists have even suggested that there is now more neglect in middle-class families than ever before. It is felt that this reflects an increasingly pervasive trend toward abdicating parental responsibility in favor of personal gratification.⁶⁵

Some experts look for causes of neglect in the structure of the neglectful family itself.⁶⁶ As is true with child abusers, neglectful parents are often lonely, isolated people with few friends. In addition, they seldom receive emotional and practical support from their extended families.⁶⁷

Others go further and say that the isolation of the neglectful parent is a result of mental disturbance, in some cases severe mental retardation.⁶⁸ Other mothers are alcoholic, schizophrenic, or severely phobic.⁶⁹ Several researchers question whether there may not be many people essentially normal in most respects but particularly crippled in their parenting abilities.⁷⁰

In a study of fifteen failure-to-thrive infants conducted in 1963, it was noted that the mothers of these infants, who already had self-deprecatory attitudes, perceived their new babies as threats.⁷¹ It was concluded that the mothers with such feelings were unable to meet the physical and emotional needs of their babies.

Researchers have also found that a majority of neglectful or abusive parents were neglected or abused themselves when young.

Helfer has developed a schemata of the life cycle of abusing and neglecting parents which he calls the "World of Abnormal Rearing," or the WAR cycle.⁷² According to Helfer, not every individual who enters and completes the life cycle will abuse and/or neglect his child. Other outcomes may be alcoholism, drug abuse, suicide, and other behavioral disorders.

64. *Id.*

65. PROFILE OF NEGLECT, *supra* note 55, at 14.

66. Evans, Reinhart & Succop, *Failure to Thrive: A Study of Forty-Five Children and Their Families*, 11 AM. ACAD. CHILD PSYCH. J. 448 (1972).

67. *Id.* at 449.

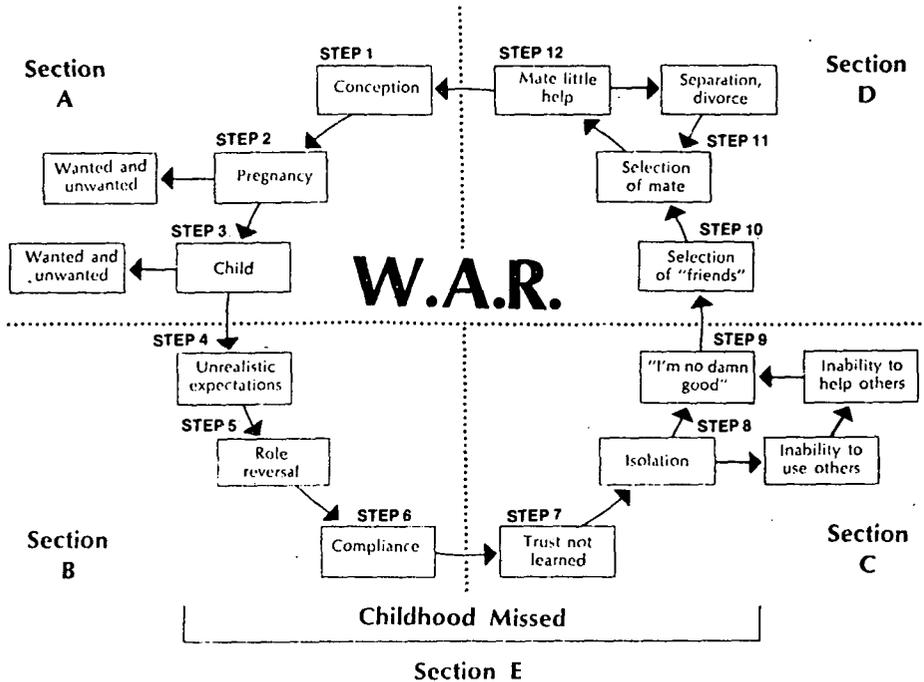
68. *Profile of Neglect*, *supra* note 55, at 15.

69. Pavenstedt, *An Intervention Program for Infants from High Risk Homes*, 63 AM. J. PUB. HEALTH 393 (1973).

70. PROFILE OF NEGLECT, *supra* note 55, at 15.

71. Barbero, Morris & Reford, *Malidentification of Mother-Baby-Father Relationship Expressed in Infant Failure to Thrive*, in THE NEGLECTED-BATTERED CHILD SYNDROME 14 (1963).

72. R. HELFER, THE DIAGNOSTIC PROCESS AND TREATMENT PROCESS 26 (U.S. Dep't. Health, Ed. & Welfare, Pub. No. (OHD) 75-69, 1975). The WAR cycle was reprinted with the permission of R. Helfer and *Pediatric Basics* in which it first appeared.



F. PSYCHOLOGICAL CHARACTERISTICS OF ABUSIVE AND NEGLECTFUL PARENTS

A perusal of the various steps of the WAR cycle will provide an introduction to the often unrewarding and unhappy lives of neglectful and abusive parents and children.

Upon conception (Step 1) the mother is faced with a pregnancy (Step 2) which can be either wanted or unwanted. Often the child is not wanted, or is illegitimate, and is looked upon as an additional burden to a financially-strained household. Sometimes the child is unwanted because the mother has to interrupt her career or considers the child a threat to her beauty.

This is not always the case. As noted in the phenomenon of role-reversal, some abusive and neglectful parents have a great deal invested in their child. Sometimes they will have a name chosen before conception. Often the child is viewed as an agent who will provide the parents with the nurturing they missed when they were children. However, tiny babies can not provide very much nurturing. In families like this, abuse or neglect will often result.

The birth of the child (Step 3) can also be wanted or unwanted. In some cases, the pregnancy was wanted because a girl felt that her pregnancy could force the father into marriage. Unfortunately, the child brings reality to bear rather quickly. More often than not,

these marriages are shaky and unstable, and if the husband leaves the scene completely, the mother will frequently attribute all of the father's bad characteristics to the child. Then, especially if it is a male baby, abuse can easily occur.⁷³

These parents, no matter how well educated, very often have unrealistic expectations (Step 4) of their child(ren). Some mothers expect the baby to eat and sleep throughout most of the first year. When the child develops colic, the mother feels she is failing as a mother and the child is rejecting her.⁷⁴

Another frequent area of unrealistic expectations is that of toilet training. Successful toilet training will generally occur in normal children by the age of eighteen months to two years. However, many severe burns on the buttocks of children aged three months to fifteen months are often due to frustration of the parent resulting from the child's failure to toilet-train.⁷⁵

Helper defines role-reversal (Step 5) as a reversal of the dependency role, in which parents turn to their infants and small children for nurturing and protection.⁷⁶ In the neglected and abused child syndrome, parents have often experienced their own parents as being unloving, cruel, and brutal. In essence, their social and parental role development has been retarded. Consequently, normal acts of dependency in their child are viewed as threatening, because of their inability to handle them, and they react in a maladaptive fashion.

The child has to learn compliance (Step 6) if it is to survive. Very tiny babies will learn not to cry and not to make demands on their parents. Toddlers will learn to nurture their parents as well as possible. Social role development is retarded in these children. They miss out on a normal childhood, and fail to learn trust (Step 7) because at any moment, they may be subject to often inexplicable acts of violence.

Because trust is not learned, the child becomes isolated (Step 8) and attempts to be as self-sufficient as possible. Self-sufficiency is difficult at any time, but is very difficult for children who never were able to garner the emotional reserves needed for independence and trust. Isolation is one of the most common characteristics of abusive parents.⁷⁷ Due to their upbringing, they have strained relations with their parents. Few, if any, have friends. These children

73. Wasserman, *The Abused Parent of the Abused Child*, 14 CHILDREN 175, 177 (1967).

74. This was the case with a young lawyer's wife that came to the attention of the senior author. Her husband had just begun his practice and was away from home for extended periods. When their baby was born, the mother felt that it would simply eat and sleep. The baby developed colic and became very frustrating to the mother. Lacking support from the husband, she began to neglect the baby. When the case came to the attention of the local child welfare agency, the child was suffering from dehydration and a detached retina caused by a blow to the head.

75. Tracy & Clark, *Treatment for Child Abusers*, 19 SOCIAL WORK 338, 339 (1974).

76. R. HELPER, *supra* note 72, at 25.

77. Evans, Reinhart & Succop, *supra* note 66, at 449.

attend few social gatherings and often will not have a telephone, even though they could afford it. An explanation of this is, "Who will I call? I don't know anyone." It is very difficult to perceive the abject loneliness in the lives of these individuals.

Isolated people have an inability to use others and to help others. In times of crisis, they will strike out at their children, rather than turn to a spouse, friend, or relative for support.⁷⁸ The isolated person's self-image gradually degenerates. A feeling of "I'm no damn good" (Step 9) permeates them.

This low self-concept tempers isolated persons' selection of friends (Step 10) and mates (Step 11). Their few friends also generally have feelings of low self-worth, as does their eventual spouse. Each is looking for nurturance from the other. But when the capacity to nurture is as completely absent as it is with these people, their quest for some emotional sustenance is for naught.

Their mates are little help (Step 12). Their mates want support as much as they do. As a result, family life with these couples is a continual process of "one-upmanship." At one point, the wife is nurturant. Eventually she tires of this and the husband is then required to provide emotional energy.

It does not take long for them to realize that having a child could be the answer to many problems. "After all," they reason, "didn't we provide the parenting in our families?" Thus, a child is conceived, and unless intervention occurs, the cycle will be perpetuated.

This overview of family interaction patterns in abusive and neglectful families is of course somewhat simplistic. The exact steps are not true of all neglectful and abusive parents. Some theorists simply feel that such parents lack knowledge of appropriate child rearing methods.⁷⁹ Such parents use corporal punishment exclusively, and are uncertain as to what stage the child may be in, and what his or her needs may be. It is true that abusive parents use corporal punishment significantly more often than nonabusive controls, but it is felt that this only contributes to the overall problem. Most of these families are "hurting" very much. Their actions scare them and they frequently will welcome any assistance.

II. LEGAL ASPECTS OF CHILD ABUSE AND NEGLECT REPORTING LAWS

Legal and social mechanisms for protecting and helping the abused child are necessarily dependent upon adequate reporting laws. The greatest problem in controlling child abuse and neglect has been

78. An example of this isolation is the 28-year-old mother who was asked "When was the last time you were helpful to someone?" After a great deal of hesitation, she said, "I think when I was fourteen." R. HELFER, *supra* note 72, at 32.

79. Tracy & Clark, *supra* note 75.

detection.⁸⁰ In the past, laymen did not often report suspected cases of child abuse and neglect because they feared civil liability in the form of a lawsuit for defamation or invasion of privacy.⁸¹ More commonly, cases of child abuse were not reported because of the prevailing belief that what others did to their children was their own business, and that the reporting of child abuse is officious intermeddling into another's family affairs.⁸² These beliefs, and others like them, have prevented laymen from reporting cases of child abuse and neglect and have made attempts to control abuse and neglect end in failure.

Before the child abuse reporting statutes, physicians, like laymen, failed to report suspected and even known cases of child abuse and neglect to the authorities.⁸³ The failure to report was due to a fear of civil liability for reporting and the confidential nature of the physician-patient relationship.⁸⁴ Many physicians also felt that it was beyond the scope of their professional responsibility to report.⁸⁵ The failure of physicians to report child abuse and neglect rendered any child abuse scheme ineffectual, since physicians, more than anyone else, are in a position to see and to recognize cases of child abuse and neglect.⁸⁶

Kempe's introduction in the early 1960's of the term "battered child syndrome"⁸⁷ generated a great deal of governmental and public concern for the welfare of the battered child.⁸⁸ It was quickly realized that if reporting of child abuse was not encouraged or required, meaningful intervention and protection of a child's right to life would never be achieved. After being offered four major legislative models⁸⁹ concerning the reporting of abuse and neglect, state

80. McCoid, *The Battered Child and Other Assaults Upon the Family*, 50 MINN. L. REV. 1, 36 (1965).

81. *Id.*

82. Paulsen, *The Legal Framework for Child Protection*, 66 COLUM. L. REV. 679, 710 (1966).

83. Kohlman, *Malpractice Liability for Failing to Report Child Abuse*, 49 CAL. ST. B.J. 118, 120 (1974).

84. See Paulsen, *supra* note 82.

85. Silver, Barten & Dublin, *Child Abuse Laws—Are They Enough?* 199 J.A.M.A. 101, 102 (1967). In this article, it was reported that in a 1967 survey of 450 physicians most likely to come in contact with abused children, one in four would not report a given case of suspected child abuse. *Id.* The same survey revealed that one physician in five rarely or never considered possible abuse when treating an injured child. *Id.* at 103. See also Kohlman, *supra* note 83.

86. See McCoid, *supra* note 80, at 27. See also Isaacson, *Child Abuse Reporting Statutes: The Case for Holding Physicians Civilly Liable for Failing to Report*, 12 SAN. DIEGO L. REV. 743, 745 (1975).

87. Kempe, *supra* note 1, at 24.

88. THE BATTERED CHILD, *supra* note 16, at x-xi.

89. See Paulsen, *supra* note 82. The legislative models were: U.S. CHILDREN'S BUR., THE ABUSED CHILD—PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD (1963); AM. HUMANE ASS'N, CHILDREN'S DIV., GUIDELINES FOR LEGISLATION TO PROTECT THE BATTERED CHILD (1963); COUN. OF STATE GOV'TS, PROGRAM OF SUGGESTED STATE LEGISLATION (1965); A.M.A., PHYSICAL ABUSE OF CHILDREN—SUGGESTED LEGISLATION (1965).

legislatures were quick to respond.⁹⁰ Within three years, forty-eight had passed new reporting statutes;⁹¹ presently every state has a reporting law.⁹² By far the most influential legislative model was the one encouraged by the United States Children's Bureau.⁹³ In general, physicians were the only professionals required or encouraged to report by the early statutes.⁹⁴ It was believed that only the physician's special skills and diagnostic abilities were sufficiently sensitive to accurately discriminate between accidental injury and parental abuse or neglect. The American Medical Association strenuously objected to delegating sole reporting responsibility to the physician. It was felt that such a system was incomplete as well as inappropriate, since visiting nurses, social workers, school personnel, lawyers, marriage counselors and others often learn of cases before medical care is sought. Consequently, the argument was made that it seemed illogical to compel only the physician to report suspected instances of child abuse.⁹⁵ This logic has had significant impact in recent state laws such as the 1975 North Dakota Reporting Law, which, in general, requires anyone likely to come into contact with children on a regular basis to report known or suspected cases of child abuse.⁹⁶

In a study of reporting patterns of abuse it was found that medically related reports account for less than fifteen percent of the total number of reports, and neighbors and school personnel accounted for the largest number. Furthermore, these latter reports were only slightly less reliable than physicians' reports.⁹⁷

90. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD*, *supra* note 16, at 158.

91. See Paulsen, *supra* note 82, at 711. By 1966, only the District of Columbia and Hawaii did not have reporting statutes. Hawaii enacted such a statute in 1967, and finally the District of Columbia in 1970.

92. See statutes cited in note 15 *supra*.

93. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD*, *supra* note 16, at 158-59.

94. North Dakota's first reporting law, ch. 327 [1965] N.D. Sess. Laws 621 (codified in N.D. CENT. CODE ch. 50-25 (1974), repealed by ch. 448, § 15 [1975] N.D. Sess. Laws 1237 (codified in N.D. CENT. CODE ch. 50-25.1 (Supp. 1975)), was representative of the early reporting statutes in that it singled out physicians, chiropractors, and public health nurses, and required them to report to the proper authorities whenever they had reasonable cause to believe they had detected a case of child abuse.

95. George, *Spare the Rod: A Survey of the Battered-Child Syndrome*, 2 *FOR. SCI.* 129, 155 (1973).

96. N.D. CENT. CODE ch. 50-25.1 (Supp. 1975).
Section 50-25.1-03 provides that:

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, school teacher or administrator, school counselor, social worker, day care center or any other child care worker, police or law enforcement officer having knowledge of or reasonable cause to suspect that a child coming before him in his official or professional capacity is abused or neglected shall report the circumstances to the division. [The division of community services of the Social Service Board of North Dakota.]

2. Any person having reasonable cause to suspect that a child is abused or neglected may report such circumstances to the division.

Other state's statutes are similar to North Dakota's in specifying the people required to report. See, e.g., ALA. CODE tit. 27, § 21 (Cum. Supp. 1973), as amended (Interim Supp. 1975); CAL. PENAL CODE § 11161.5 (West 1970), as amended, (West Supp. 1976); CONN. GEN. STAT. ANN. § 17-38a(b) (1975), as amended, (Supp. 1976).

97. W. Friedrich, *supra* note 38, at 61.

Besides broadening the class of people required to report, the later child abuse reporting statutes have also attacked the problem of the physician's and layman's fear of civil liability for reporting. Every reporting statute provides for immunity from civil liability for reporting suspected cases of child abuse, if that report is made in good faith.⁹⁸ Most statutes also abrogate the physician-patient evidentiary privilege in cases of child abuse, thus eliminating a major stumbling block to reporting by physicians.⁹⁹

It is also important to realize that the number and nature of incidents reported have changed. In North Dakota only 127 incidents of abuse were reported between 1964 and 1975.¹⁰⁰ Yet since the new law went into effect, area social services across North Dakota have investigated more than 500 cases of neglect and abuse.¹⁰¹ Since both doctors and laymen dealing with children are required to report in North Dakota or face a penalty,¹⁰² many cases are reaching the social service agencies and the courts at a much earlier, perhaps less spectacular stage.

Because of the small number of child abuse and neglect cases in North Dakota, the public and legal profession may think of abuse and neglect in terms of the more dramatic cases reaching the media and the courts. Although bruises and broken limbs may be insignificant when compared to cases involving brain damage and amputations resulting from abuse, it must be realized that child neglect and abuse is generally chronic. The abuse and neglect will continue and perhaps increase in severity, unless some environmental or personal changes can be made with the families involved. Studies have shown that a large percentage of all abused children seen in emergency rooms

98. See, e.g., ARK. STAT. ANN. § 42-814 (Cum. Supp. 1975); COLO. REV. STAT. ANN. § 19-10-110 (Cum. Supp. 1975); DEL. CODE ANN. tit. 16, § 905 (1975).

99. Statutes vary in their treatment of the physician-patient privilege. There are several statutes which make no mention whatsoever about any privilege. See, e.g., GA. CODE ANN. § 74-111 (1973), as amended, (Supp. 1976); ME. REV. STAT. ANN. tit. 22, §§ 3851-3860 (Supp. 1975), as amended, (Supp. 1976); MD. CODE ANN. art. 27, § 35A (1971), as amended, (Supp. 1975). It appears that only the husband-wife privilege is abrogated in CONN. GEN. STAT. ANN. § 17-38a(f)(3) (1975), as amended, (Supp. 1976), and that the patient-physician privilege remains intact in Connecticut. Several jurisdictions have abolished the patient-physician privilege for the purposes of the reporting statute, but have specifically retained the attorney-client privilege. See, e.g., ARK. STAT. ANN. § 42-815 (Cum. Supp. 1975); FLA. STAT. ANN. § 827.07(10) (1976), as amended, (Supp. 1976). In the District of Columbia, it is to be determined by the court in each case whether the privilege has been waived. D.C. CODE ANN. § 2-165 (1973).

It appears that in most jurisdictions, the physician-patient privilege has been abrogated for the purposes of the child abuse reporting statute.

For a general discussion of child abuse reporting statutes, see 52 N.D.L. REV. 736 (1976).

100. Conversation with Judy Mullally, Caseworker, Grand Forks County Social Services (June 1976).

101. *Id.*

102. N.D. CENT. CODE § 50-25.1-13 (Supp. 1975) makes noncompliance with the reporting statute a class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of five hundred dollars, or both, may be imposed. *Id.* § 12.1-32-01(05) (Supp. 1975).

whose families did not receive aid were abused again within a few months.¹⁰³

Thus, the new reporting law has resulted in a dramatic new opportunity for the judiciary. It can play a significant role in preventing neglect and abuse from continuing in families that come before the bench.

In at least one case, *Landeros v. Flood*,¹⁰⁴ the California Supreme Court has held that child abuse reporting statutes prescribe a physician's duty to report a case of child abuse, and an abused child may collect damages for the physician's failure to comply with the statute if the child suffers further injury at the hands of his abusers due to the failure to report. In such a situation, all the tort doctrines concerning violation of statute apply.¹⁰⁵ The *Landeros* court also ruled that a cause of action for common law malpractice may lie for failure to diagnose and properly treat the battered child syndrome.¹⁰⁶ Thus, violation of the child abuse reporting statute and com-

¹⁰³. Helfer, *The Responsibility and Role of the Physician*, in *THE BATTERED CHILD*, *supra* note 16, at 33.

¹⁰⁴. *Landeros v. Flood*, 17 Cal. 3d 399, 551 P.2d 389, 131 Cal. Rptr. 69 (1976). In this case, plaintiff, an infant child, was brought to defendant physician, and was treated for a comminuted spinal fracture of the right tibia and fibula, which gave the appearance of having been caused by a twisting force. Plaintiff also had a nondepressed lineal skull fracture. Both of these injuries appeared to have been intentionally inflicted.

Plaintiff's mother gave no explanation for the injuries and defendant apparently sought no explanation. Defendant treated plaintiff and sent her home with her mother. No report was ever made to the authorities, as required by the California Child Abuse Reporting Law, CAL. PENAL CODE § 11161.5 (West 1970), *as amended*, (West Supp. 1976):

[In] any case in which a minor is brought to a physician . . . and it appears to the physician . . . from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person . . . he shall report such fact . . . to both the local police authority . . . and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. . . .

Several months later the child was again brought to the hospital, this time with very severe injuries that were obviously intentionally inflicted. As a result, the child was taken from her mother and a guardian *ad litem* was appointed.

An action was brought by the guardian *ad litem* in plaintiff's name against defendant physician. The complaint alleged that defendant was liable to plaintiff under the California Child Abuse Reporting Law for failing to report, and under common law malpractice principles for failing to diagnose the battered child syndrome.

The trial court sustained defendant's demurrer to the complaint and plaintiff appealed. On appeal, the California Court of Appeals for the First District, Division 2, in *Landeros v. Flood*, 50 Cal. App. 3d 115, 123 Cal. Rptr. 713 (1975), held that liability for failing to report a known or suspected case of child abuse could be found under the reporting statute, but not under common law malpractice doctrines. For a discussion of the court's reasoning, see 52 N.D.L. REV. 736 (1976).

The Supreme Court of California, in *Landeros v. Flood*, 17 Cal. 3d 399, 551 P.2d 389, 131 Cal. Rptr. 69 (1976), vacated the lower court's judgment and held that recovery could be had under either the reporting statute or common law malpractice doctrines. For a discussion of the supreme court's reasoning, see note 106, *infra*.

¹⁰⁵. See generally W. PROSSER, *LAW OF TORTS* § 36 (4th ed. 1971). See also 52 N.D.L. REV. 736 (1976).

¹⁰⁶. In *Landeros v. Flood*, 17 Cal. 3d 399, 409-10, 551 P.2d 389, 393-94, 131 Cal. Rptr. 69, 73-74 (1976), the court stated that the physician is required to possess and exercise, in both diagnosis and treatment, that reasonable degree of knowledge and skill which is ordinarily possessed and exercised by other members of the profession in similar circumstances. That standard of care now requires that the physician know how to diagnose and treat the battered child syndrome.

It is not unreasonable to require a physician to be able to diagnose and treat the battered child syndrome, since the syndrome has become well known in the medical world,

mon law malpractice for failure to diagnose and treat the battered child syndrome are alternative theories of recovery for an abused child.¹⁰⁷ If the California court's position is taken by other states, compliance with the reporting statutes will be encouraged and many more cases of child abuse will be reported to the proper authorities, making efforts to deal with the child abuse problem more effective.

A. INITIAL PROCEDURES FOR NEGLECT AND ABUSE IN NORTH DAKOTA

As outlined in the 1975 North Dakota Reporting Law, the local area social service center is the designated recipient of all reports of neglect and abuse that arise in North Dakota.¹⁰⁸ Even though the report may initially go to the police or to the county welfare office, the area social service center will receive all reports.¹⁰⁹

Once a report is received, child welfare and AFDC caseworkers will investigate the report, unless the report involves a client of a social service staff member. The caseworker will visit the home until he is sure one way or the other about the validity of the report. Often, other sources, including the child's school, neighbors, etc., are contacted to provide more information. If the need arises, the caseworker will read existing files on the parent which are housed with other agencies.¹¹⁰

especially since the publication in 1962 of a leading article on this subject, Kempe, *supra* note 1. In this article, the battered child syndrome was defined as a clinical condition in young children who have received serious physical abuse, generally from parents. The syndrome should be considered in the case of any child exhibiting evidence of possible trauma or neglect, or where there is a marked discrepancy between clinical findings and historical data of the child's injuries as supplied by the parents. Some physical symptoms of the battered child syndrome are: "subdural hematoma, multiple unexplained fractures at different stages of healing, failure to thrive, . . . soft tissue swelling or skin bruising. . . ." *Id.* at 20.

Many articles on the battered child syndrome have been published since 1962. Detailed surveys of the medical literature on this subject can be found in: Grumet, *The Plaintiff Plaintiffs: Victims of the Battered Child Syndrome*, 4 FAM. L.Q. 296 (1970); McCoid, *supra* note 80, at 3-19.

There has been judicial recognition of the battered child syndrome in criminal cases for some time. In *People v. Jackson*, 18 Cal. App. 3d 504, 505-06, 95 Cal. Rptr. 919, 920-21 (1971); *People v. Henson*, 33 N.Y.2d 63, 304 N.E.2d 358, 349 N.Y.S.2d 657 (1973) and *State v. Loss*, 295 Minn. 271, 204 N.W.2d 404 (1973), expert testimony given by a physician concerning the battered child syndrome was admitted.

Because of the widespread medical knowledge of the battered child syndrome and the judicial recognition of the syndrome, it is not unreasonable to expect a physician to be able to diagnose and treat it. But before it can be determined that a physician was derelict in his failure to diagnose and treat the syndrome, it will have to be established by expert testimony that a reasonably prudent physician in the defendant's situation would have detected the battered child syndrome and would have properly treated the child. *Landeros v. Flood*, 17 Cal. 3d 399, 410, 551 P.2d 389, 394, 131 Cal. Rptr. 69, 74 (1976).

If it is determined the physician was negligent in failing to detect and treat the syndrome, then proximate causation must be shown; it must be shown that the child's further injuries were immediately caused by the physician's negligence. *Id.* at 411, 551 P.2d at 395, 131 Cal. Rptr. at 75. See also 52 N.D.L. Rev. 736 (1976).

107. *Landeros v. Flood*, 17 Cal. 3d 399, 413, 551 P.2d 389, 396, 131 Cal. Rptr. 69, 76 (1976).

108. N.D. CENT. CODE § 50-25.1-04 (Supp. 1975).

109. *Id.*

110. SOCIAL SERV. BD. OF N.D., COMM. SERV. DIV., CHILD PROTECTIVE SERVICES INVESTIGATIONS (1975) (on file with Social Service Board, Bismarck, N.D.).

Sometimes the specific report cannot be substantiated; for instance, the report might state that the child was left untended in a car for five hours. However, other evidence might exist to indicate that, given the chance, the mother or caretaker might neglect or abuse the child. Generally speaking, the more experienced caseworkers should be able to substantiate a greater percentage of the total number of reports. In North Dakota, the overall rate is approximately 37 percent.¹¹¹ Other states and agencies have rates of substantiation approaching 70 to 80 percent.¹¹²

All the reports, whether substantiated or unsubstantiated, are then sent back to the area social service center, which will send copies to the court.¹¹³

At this time, many parents will either willingly accept service from the county social service center, or will place their child under foster care. When parents voluntarily accept the advice of the county social service center, the court will not call a hearing. Some of the services that are available from the county social service center include: day care facilities; homemaker services, which consist of women who come into the home and teach the mother some needed skills about cooking, cleaning, and first aid care for children; Big Brother and Big Sister Programs, through which the child gets some needed attention from an older man or woman; and family and individual counseling,¹¹⁴ which is a very necessary service, because many of these couples have severe marital problems and are locked into the WAR Cycle.¹¹⁵ If the parents are not helped, evidence indicates that at least 33 percent of the incidents of abuse or neglect will recur within a few months.¹¹⁶

When no services are accepted, or there is obvious danger to the child(ren), a court order giving temporary custody of the child(ren) to the county social service center is necessary until the hearing takes place.¹¹⁷ Sometimes the parents will petition the court to have the child(ren) placed in the custody of the county social service. In this case, a court hearing is also held.¹¹⁸

Approximately one third of the initial reports are substantiated, and another third, although unsubstantiated, are rated as high-risk situations by the caseworkers involved.

111. Conversation with Judy Mullally, Caseworker, Grand Forks County Social Services (June 1976).

112. PROFILE OF NEGLECT, *supra* note 55, at 9.

113. SOCIAL SERV. BD. OF N.D., COMM. SERV. DIV., CHILD PROTECTIVE SERVICES INVESTIGATIONS (1975) (on file with Social Service Board, Bismarck, N.D.).

114. Conversation with Judy Mullally, Caseworker, Grand Forks County Social Services (June 1976).

115. For a discussion of the WAR Cycle, see text accompanying notes 72-79, *supra*.

116. Helfer, *The Responsibility and Role of the Physician*, in THE BATTERED CHILD, *supra* note 16, at 33.

117. Conversation with Judy Mullally, Caseworker, Grand Forks County Social Services (June 1976).

118. *Id.*

In Grand Forks County, of the 1975-1976 reports that are substantiated, about 10 percent will result in a court hearing.¹¹⁹ This percentage is exceedingly low when compared to a general figure of 30 percent of all reports eventually coming before the courts,¹²⁰ but this figure in North Dakota is expected to rise.

Caseworkers in North Dakota will examine five overlapping factors in their effort to determine the validity of the report¹²¹ in order to determine whether the parents should be brought into court. First, they will determine the consistency of the neglect or abuse. Is it a one-time incident, or does it occur continuously? Second, they will attempt to determine the duration of the neglect or abuse. If it is more than a one-time occurrence, just how long has it been occurring? Third, the pervasive nature of the problem is examined. Is only one child affected? Is the abuse and neglect always severe, or is it of a less pervasive nature? Fourth, the caseworker will attempt to determine if there is willful intent in the incident. To what extent is the neglect or abuse a result of the poverty of the family and to what extent is it a result of the inadequate parenting that is occurring? Finally, social deprivation must be ruled out. There is little sense in bringing parents to trial for being unable to feed and clothe their family adequately.

The cases are generally considered juvenile cases.¹²² Very few will go to criminal court. If custody of the child is granted to the county social service center, it cannot extend for a period longer than two years. Custody must then be reviewed before it is granted again. In the event that the parents are not making any progress, or demonstrate signs of total abdication of responsibility toward the child(ren), the county social service center can seek termination of parent-child rights.¹²³ Termination of parent-child rights would involve another hearing.¹²⁴

In termination cases, the court is often faced with a considerable dilemma. Many individuals feel that the maintenance of a parent-child relationship is essential for the emotional well-being of both the parent and the child.¹²⁵ The nature of foster homes and being shuttled from one foster home to another are cited as possible causes of emotional harm.¹²⁶ However, other evidence exists to show that a child could be more severely abused by his parents in cases where the

119. *Id.*

120. R. HELFER, *supra* note 72.

121. Conversation with Judy Mullally, Caseworker, Grand Forks County Social Services (June 1976).

122. *Id.*

123. *Id.*

124. *Id.*

125. Justice, Friedrich & Clark, *The Judge's View of Child Abuse: A Survey of Attitudes, Practices, and Experiences*, to be published in 40 PSYCH. REP. — (1977).

126. *Id.* at —.

court does not grant termination¹²⁷ because the parents feel a certain amount of vindictiveness toward the child for having brought them to court in the first place.

B. CRIMINAL COURT VS. JUVENILE COURT

As Paulsen has noted, "[M]urder, mayhem, assault and battery, even when committed by parents, are punishable crimes in every state criminal code,"¹²⁸ and North Dakota is no exception.¹²⁹ Paulsen further notes that criminal prosecution is often a clumsy, time-consuming, and difficult affair.¹³⁰ Since guilt of the defendant must be proven beyond reasonable doubt and physical injury to the child is usually inflicted in the absence of witnesses, convictions are quite difficult to obtain. There is also a problem in defining "parent." For instance, is a step-father liable as a parent?

In terms of the familial situation, criminal prosecution is a risky affair. Although it may be emotionally satisfying to "punish" abusing parents, the child is often placed in great jeopardy. Assuming parental rights are not suspended, the parent may view the child as the party responsible for his legal troubles. Hence the child, already used as a scapegoat, is often likely to physically suffer from the parents' perceived stress. Thus the public prosecutor plays a significant role in determining the child's future. He must realize that "the beginning of a prosecution is likely to be the end of a chance to improve a child's home situation."¹³¹ Although the prosecutor often feels obligated to respond to public pressure in a highly publicized case, the future welfare of the child must be considered of overwhelming importance. This does not mean the parents should never be prosecuted on criminal grounds. Certainly there are a few cases of such incredible magnitude that salvaging the family structure is unrealistic. The burden of proof, the unlikelihood of success, the effect of delays, and most importantly, the long term welfare of the child must weigh heavily in the decision to enforce criminal laws.

Although definitions of neglect may vary, all state statutory provisions give juvenile courts power over neglected children.¹³² Some

127. *Id.* at —.

128. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD*, *supra* note 16, at 154.

129. N.D. CENT. CODE § 14-09-22 (Supp. 1975), provides:

[A] parent, guardian, or other custodian of any child who shall cruelly abuse or willfully neglect or refuse to provide subsistence, education, or other necessary care . . . shall be guilty of a Class C felony.

Conviction of a class C felony can result in the imposition of a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both. *Id.* § 12.1-32-01(3) (Supp. 1975).

130. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD*, *supra* note 16, at 154.

131. *Id.*

132. *See, e.g.*, N.D. CENT. CODE § 14-14-03(c) (1971).

statutes focus on the child's environment; others emphasize parental behavior.¹³³ "Although juvenile courts in most states only require proof by a preponderance of the evidence and not proof beyond a reasonable doubt, this standard must be met by legally sufficient evidence. . . . [A]djudications of neglect can properly rest on circumstantial evidence."¹³⁴ However, statutes which focus upon parental behavior present a somewhat greater burden of proof than environmentally defined statutes. Judge Harold A. Felix, of the Family Court of the State of New York, set a particularly significant precedent by permitting circumstantial evidence to put a burden of satisfactory explanation on the child's parent.¹³⁵

Statutes defining neglect in terms of the child's environment usually require only circumstantial evidence that the environment is detrimental to the child's welfare.¹³⁶

The juvenile court judge has a great deal of power and flexibility in making dispositions. The judge may warn parents, counsel them, send parents and/or child for psychotherapy, place the child under protective custody in his own home, and, if necessary, remove the child from his parents.¹³⁷ Thus, the juvenile court offers a great deal of speed, power, and flexibility, as well as a greater likelihood of success. As such, the juvenile court affords the greatest opportunity for meaningful intervention in cases of abuse and neglect.

C. UNDERREACHING AND OVERREACHING

How does one define "meaningful intervention?" The authors of this article would not be so presumptuous as to even attempt a proper definition. However, by focusing on two undesirable extremes, we can perhaps illustrate the dangers of underreaching and overreaching, or too much and too little intervention.

Underreaching is by far the most serious and common problem faced by the juvenile court. Protection of parental civil liberties, and the tradition of a parental privilege to discipline children have resulted in a commonly held opinion that strong, definitive court action,

133. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD*, *supra* note 16, at 154.

134. *Id.* at 155.

135. George, *supra* note 95, at 155. In discussing juvenile court proceedings for child abuse and neglect, Judge Felix stated:

Therefore in this type of proceedings affecting a battered child syndrome, I am borrowing from the evidentiary law of negligence the principle of "res ipsa loquitur" 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 an infant is protective and nonabusive.

Id.

136. *Id.*

137. For a listing of the powers of the juvenile court, see N.D. CENT. CODE ch. 27-20 (1974), as amended, (Supp. 1975).

although legally sanctioned and proper, is somehow immoral. The end result is that the court often does not exercise its full potential. "The U.S. Children's Bureau has warned that protective supervision should not be allowed to degenerate into mere watchfulness but should be a purposeful activity directed toward the improvement of the child's situation through the use of established casework techniques and the utilization of other community resources."¹³⁸ In an attempt to protect the interests of the parent, we cannot ignore the welfare of the child, as well as the likelihood of new harm. The "balancing of interest" is perhaps the most difficult issue the court can face, but it must be realized that despite the fact that parents may resent legal intervention, such intervention may be to their benefit in the long run. It must be recalled that an abusing parent is quite often "hurting," and sentencing parents to psychotherapy, social services or any other community agency program may result in an improved self-concept, a better marital situation, reduced guilt and perhaps most importantly, a thriving, healthy child.

Underreaching may also involve reluctance to remove the child from the home. It must be made absolutely clear that removal is not the same as termination of parental rights. Rapid removal may literally be a matter of life and death. Accurate diagnosis of family abnormality, preferably by an interdisciplinary team of social workers, psychiatrists and psychologists, is absolutely essential. Kempe reported that ten percent of abusing parents are seriously ill—e.g., paranoid schizophrenic, aggressive psychopath, and psychopathic personalities whose sole means of communication is physical violence.¹³⁹ Kempe states, "Over 20 years, we've had tragedy after tragedy with a constant attempt to throw these children at these sick people. . . . [W]ith this group casework can only go on when the child is out of the home."¹⁴⁰

Whereas the privacy of a family, and the family situation must not be trodden upon lightly, serious threats to the child's survival warrant serious action. Removal is not as dire and permanent a situation as the word connotes; rather, in cases of abuse and/or neglect, it offers the parent a chance to prove his dedication to the child. Removal usually entails court ordered actions that the parent must take in order to regain custody. This necessitates a certain amount of parental effort, and is often useful as an indication of the desire of the parent to keep the child. Most abusing parents are quite willing to put forth a great deal of effort, and are quite amenable

138. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD*, *supra* note 16, at 156.

139. Kempe, *A Practical Approach to the Protection of the Abused Child and the Rehabilitation of the Abusing Parent*, 51 *PEDIATRICS* 804, 806 (1972).

140. *Id.*

to suggested changes during therapy. However, a certain small percentage of parents are so "far gone" that they will relinquish custody rather than simply continue to follow court ordered intervention. A personal experience of the senior author involved a couple who failed to show up for more than one counseling session. Subsequent investigation had shown they had previously abandoned two or three children in other states. These are the type of parents who will defiantly tell a judge upon receiving a termination order that "They will just make more babies."

Underreaching may also take the form of judicial myopia. It must be realized that once a child has been abused, it is essential that the juvenile court include all siblings in the initial investigations and planning.

A dramatic example of juvenile court failure in planning for the siblings occurred in the case of Jonathan, a five-year-old battered child. Jonathan had been tied up and beaten repeatedly by his step-mother, who considered him a rival for her new husband's affection. The juvenile court planned admirably for Jonathan, receiving voluntary permission from Jonathan's father for permanent termination of parental rights and arranging a fine foster home placement for Jonathan.

Beyond this, however, the court overlooked 3 sisters of Jonathan's who had been farmed out in a haphazard way to relatives. Two months after Jonathan's removal from the home, his step-mother came to the court-assigned psychiatrist complaining that she was about to murder Jonathan's two younger brothers. Both parents were unwilling to consider conjoint psychiatric treatment or casework. The juvenile court refused to intervene because the brothers had not been battered. Immediately following the juvenile court's refusal, the step-mother gave the boys away to childless strangers who had heard of the family's predicament. The new parents were unacceptable by juvenile court standards, but with legal assistance they were able to proceed toward adoption of these youngsters. After this, the juvenile court finally made permanent arrangements for the 3 "farmed out" sisters.¹⁴¹

The above case report illustrates one other potential danger; there is a great deal of risk faced by the step-child. This should be of no surprise, and is probably of common knowledge. On the other hand, many professionals attribute all the characteristics of the natural parent to the step-parent. Often the situation is much more volatile due to the lack of a bond of affection between the child

141. Terr & Watson, *The Battered Child Rebrutalized: Ten Cases of Medical-Legal Confusion*, 124 AM. J. PSYCH. 126, 129 (1968).

and the step-parent. As such, the court must be extremely wary of parental fitness in such a case.

As Kempe reported, many judges and social workers feel that anyone is capable of mothering. Although it may be disconcerting to so state, there are some parents who are incapable of loving and caring for their children.¹⁴²

Overzealousness coupled with a poor understanding of the battered child syndrome can occasionally lead to overreaching. Terr and Watson described one dramatic case where frustrated parents had battered a withdrawn retarded child.¹⁴³ The sibling, bright and attractive, thrived in the home. The juvenile court permanently terminated parental rights for both children.

It is expected that overreaching will become more common by both judges and caseworkers. As the number of cases of abuse and neglect that are reported continues to rise, the possibility of parents being prosecuted for something they never committed will increase. Although many of the bone fractures seen in children two years of age and younger are the result of abuse, this does not mean that a full investigation should not be made to rule out all other possibilities.

In most cases, with occasional dramatic exceptions, permanent termination of parental rights without at least some attempt at meaningful intervention can be construed as overreaching. Termination of parental rights, distinctly different from removal of the child, is the most extreme action available to the court. It would be a travesty to say that termination of parental rights is never warranted, but it would be equally tragic to terminate parental rights without an attempt, albeit cautious in terms of the child's physical status, to salvage the family structure. If termination of parental rights is even considered, temporary removal is probably an unquestionable necessity.

Whereas underreaching and overreaching pose serious threats to the successful and effective implementation of legal and social mechanisms designed to assist the abused child and the abusing parent, underreaching, as stated previously, is currently the most frequent judicial shortcoming. Again, there is no set formula for determining what is meaningful intervention—each case must be evaluated individually. There are no absolute rights and wrongs, but a complete history of the case, as well as some general knowledge of the battered child syndrome will maximize the court's chances for making the proper choice. This leads us to another important point: on what basis does one evaluate a child abuse case?

142. Kempe, *supra* note 139, at 804.

143. Terr & Watson, *supra* note 141, at 129-30.

D. THE ARTIFICIALITY OF THE COURTROOM

Psychologists have long been aware that there is a significant difference between subjects' behavior in an artificial situation vs. a real life situation. Many alcoholics can appear soberly angelic in a detoxification setting, but will revert to drinking once they are back in the home environment.

The judge is exposed to a highly artificial sample of familial interactions. It is often quite easy to respond to the apparent warmth of the parent in the courtroom, but it must be remembered that such behavior may merely be situational. This is particularly problematic since abusive parents, as mentioned in the earlier sections of this article, are convincing deniers. A somewhat crude and impressive term for this characteristic of neglectful or abusive parents is the "sick but slick" syndrome, which describes the tendency of battering parents to be significantly disturbed and capable of abusing their children, while being able to convince others they are neither disturbed nor capable of abuse.¹⁴⁴

In a study by Justice, Freidrich and Clark, it was found that district judges, most of whom had adjudicated at least several abuse cases, some as many as 400, were almost completely unaware of the lonely, isolated nature of these families and the concurrent inability to use the help of others.¹⁴⁵ It was hypothesized that the judges' inaccurate impressions were partially due to the fact that these parents can be remarkably adept at filling a courtroom with character witnesses, which would not give any indication as to their lonely, isolated nature.

The judge must make a valiant effort to evaluate the case on available evidence rather than artificial samples of behavior. Only in this manner can he make an objective decision which will maximize the child's chances for survival.

E. LETTER OF THE LAW VS. SPIRIT OF THE LAW

Perhaps a frequent inhibitor of the court's full function as an implementor of secondary prevention is the defense attorney. Focusing

144. Wright, *The "Sick but Slick" Syndrome as a Personality Component of Parents of Battered Children*, 32 J. CLINICAL PSYCH. 41 (1976).

145. Justice, Friedrich & Clark, *supra* note 125, at —. The study noted that judges who dealt with abuse and neglect cases were demonstrably weak in knowing what goes on in these families. *Id.* at —. A personal experience of the senior author of this article further emphasizes this deficiency. A termination hearing was in progress, and as it proceeded, the seventeen-year-old mother broke down in tears and loud sobs. Her husband offered no comfort to her. Her two-year-old girl was sitting on the caseworker's lap and when she heard the loud sobs of her mother, she jumped down and ran over to the mother, put her arms around her, and said, "Don't worry mommy, I'll take care of you." The judge was favorably impressed by this incident, thinking that it reflected an underlying love and concern in the family. He was unfamiliar with the idea of role-reversal, one of the steps in the World of Abnormal Rearing that occurs with regularity in abusive and neglectful families.

solely upon the parent's rights as clients, an attorney can often find a technicality which will result in dismissal of the case. Parents certainly have the right to competent counsel, for on occasion their rights are violated. However, everyone involved in a case of child abuse must also be constantly concerned with the welfare of the child. As stated earlier, a well-planned, well-executed intervention often results in happier parents as well as healthy children. It is the authors' opinion that any such manipulation of the letter of the law is certainly a violation of its spirit and intent. Family and juvenile court proceedings do not seek to punish parents. Rather, they are afforded the unusual opportunity to "convict" parents and children to a better existence. In this instance the defense attorney can serve not only as a defender against injustice, but also as an adjunct, arbitrator and advocate of judicial and social assistance for his client.

F. OPTIONS FOR TREATMENT AND PREVENTION

How can neglect and abuse cases be handled in a humane and judicious fashion? Are the rights of the child more important than those of the parent? Who is the legal professional to believe—the caseworker, the defending attorney, or his own visceral feelings? This is certainly no easy task. In this section the authors will discuss several options which are already being used in some states with considerable success.

The first option is the establishment of a central registry of neglectful and abusive parents. The registry would ideally be housed in the state capital and be accessible to the supervisors in the county social service centers and the area social service centers. Because many of these families are of marginal income and will move around the state in search of jobs, this central registry will facilitate the continual administration of protective services to the family, wherever they move, until it is deemed that the services are no longer necessary.

Even families that do not move will often "doctor hop," or go from one physician to another, in an effort to avoid detection of maltreatment. Thus, if a physician or hospital social worker detects evidence of neglect or abuse, they can quickly move to intervene if their suspicions are further validated by evidence in the central registry that these parents are likely to abuse.

The new child abuse reporting law in North Dakota¹⁴⁶ does not include provisions for a central registry, although such a registry is a recommended feature of reporting laws.¹⁴⁷

146. N.D. CENT. CODE ch. 50-25.1 (Supp. 1975).

147. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD*, *supra* note 16, at 170.

Possibly, legislators felt that the central registry could constitute an invasion of privacy; an infringement of the rights of these parents. Granted, if anything more than limited access is allowed to the central registry, a violation of rights could result. However, if strict precautions are taken concerning the accessibility to the central registry, with violations punishable by fine and loss of job, it is felt that it can be a valuable aid in further prevention of the problem.

Another issue discussed earlier in this article is the predicament a judge often finds himself in when weighing the merits of the case. Too often, the judge finds himself alone in this decision; this is totally unnecessary. In some states, before a hearing is called, an interdisciplinary team consisting of social workers, public health nurse, psychologist, lawyer, and if necessary, a physician will evaluate the case in the presence of the parents, and attempt to come to as amiable and sagacious decision as possible for all parties concerned.¹⁴⁸ In a situation like this, the parents can be made to feel as if they are adjuncts to the treatment of their child, and can be more easily persuaded to receive the services that are necessary for putting their own lives back in order. It prevents a situation from ever occurring in which the parents are pitted against the entire legal-medical-social team, which can only lead to further alienation among all groups concerned. In addition, when a hearing is called, the court has information from a competent and reliable source, and their adjudication can be as knowledgeable and equitable as possible.

A word also should be said about foster homes and foster placement, because this is often the immediate alternative chosen.

Foster placement has often been the only resource available to protect children who are at risk. At its best, foster placement can be an important treatment resource, but it has its disadvantages.

For children who are old enough to be aware of what is going on around them, it can be more frightening to be removed from their home and placed with a stranger than remaining in their unstable and threatening home. When children are returned to their own home after the period of foster placement, they are sometimes scolded or punished for behavior that the parents view as caused by the foster parent. The help that foster parents give these children, which is primarily the prevention of physical and nutritional injury, may not be enough to make up for the damage caused by the separation.

However, there is no reason why a foster parent cannot help abusive parents along the road to rehabilitation. By gradually involving the abusing parents in visiting their child, bathing their child, etc., and giving emotional support to the parents, foster parents can

148. R. HELFER, *supra* note 3, at 18.

greatly smooth the separation process, and provide an easier transition for the parents and child(ren).

What are the merits of court-ordered counseling for abusing-neglectful parents? Court officials and mental health professionals are increasingly diverting accused law violators into the mental health system; it has been claimed that mental health treatment is more humane, less stigmatizing, and more effective than what is offered by correction agencies.¹⁴⁹ However, this approach has critics in both the legal and mental health fields, who claim that mental health agencies may violate legal rights and may be socially discriminatory.¹⁵⁰

On the other hand, in the only published study outlining the results of abusing-neglectful parents who had been sentenced to therapy by the court, the results were favorable.¹⁵¹ The progress of the parents in therapy was closely evaluated and a large portion of parents were successfully reunited with their children. Follow-up studies have indicated the continued success of the therapy.¹⁵²

III. CONCLUSION

This article has presented considerable information on the problem of child neglect and abuse in the United States, and subsequently, in North Dakota. As a result of the new reporting law which went into effect on July 1, 1975, the number of incidents that are being reported in North Dakota is increasing rapidly. As more and more incidents are reported, the courts will see many additional cases. Research has indicated that legal professionals often lack the necessary knowledge about the syndrome of abuse and neglect.¹⁵³ Hence, they may be unable to adjudicate cases in a manner which best protects the interests of all concerned parties.

Views on the psychological aspects of child abuse and neglect, the reporting system, the juvenile court, the criminal court system, termination of parental rights, foster homes, and therapy for abusing parents were presented in an effort to help those in the legal system become aware of the current thinking in these vitally important areas.

149. R. SLOVENKO, *PSYCHIATRY AND THE LAW* (1973).

150. N. KITTRIE, *THE RIGHT TO BE DIFFERENT: DEVIANCE AND ENFORCED THERAPY* (1973).

151. B. Justice & R. Justice, *TA Work With Child Abuse*, 5 *TRANSACTIONAL ANALYSIS J.* 38-41 (1975).

152. Communication with Dr. Blair Justice, Professor of Social Psychology, University of Texas Health Science Center, Houston, Texas (May 1976).

153. Justice, Friedrich & Clark, *supra* note 125. See also note 145 *supra* and text accompanying.