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CHILD ABUSE: APPEARING IN COURT

CHRISTOPHER R. GODDARD
Lecturer, Department of Social Work,
Monash University, Clayton, Vic. 3168

ABSTRACT: A broader range of health and welfare workers are now expected to appear in court in child abuse and neglect cases. This article examines some of the reasons for tensions between lawyers and welfare workers. The paper is written to assist workers in preparing for court, and includes guidance on writing reports and dealing with cross-examination.

INTRODUCTION

Greater awareness and detection of child abuse has led to increased concern amongst welfare workers about appearing in court. The developing use of community supports rather than of residential institutions has brought a broader range of workers before the courts in child abuse cases: infant welfare nurses, foster care workers, foster parents, family group home houseparents, and community social workers can all expect to appear in court, occasionally at least. Many feel uncomfortable:

> "People like foster-parents, in particular may find their position rather awkward . . . This is very often not something they have bargained for as an outcome of a desire to offer some voluntary service to the community in fostering."
>
> (Dingwall and Eekelaar, 1982 p. 107)

Furthermore, Hilgendorf (1981) has noted that the welfare worker's role in court has become increasingly crucial as the courts place greater emphasis on the overall welfare of the child. Welfare workers, however, are traditionally suspicious of legal intervention and anxious about appearing in court.

This paper is designed to assist workers appearing in court in child abuse cases in particular, but many of the principles will apply to court appearances in general. Firstly, however, some of the reasons for the anxiety and tensions that exist between welfare workers and lawyers are outlined.

Tensions between Law and Social Work

Many authors have argued that there is clearly documented tension between the professions of law and social work. McClean (1975) identifies some of the reasons underlying social workers' negative attitudes towards courts of law. Among these are social workers' dislike of legal language and procedure, and the fears associated with performing "in public" in court. At a deeper level, McClean (1975, p. 12) argues that the court reflects the "dehumanising" nature of the law, and is also seen as a "symbol of failure" where social work services have failed to rectify unhappy situations.

Social workers, in turn, are not always highly regarded by the courts. According to Dinwall and Eekelaar (1982) doctors are considered by lawyers to make more impressive witnesses than social workers because, in part at least, medicine and law have similar positivist world views, acting:

> "... as if truth were simply a matter of grasping the right set of external facts."
>
> (Dingwall and Eekelaar, 1982, p. 108)

Bates (1979), however, claims that the attitude of courts towards social workers has been less destructive than that shown towards psychiatrists. Social work and legal judgements are different, however, with social work being more relativist. Social workers build up a picture of their clients gradually and continually reassess (Dingwall and Eekelaar, 1982).

Thus the lawyer likes to see his own discipline as precise and objective, and although both the lawyer and the welfare worker may be concerned with the same overall situation, they approach that situation very differently (Bates, 1979).

Sloane (1967) suggests that, above all else, it is the methods of the two disciplines of law and social work that are most in conflict, with the social worker preferring to resolve differences by consensus and case conference rather than through the adversarial system of the courts. Lau (1983), in a stimulating and provocative article, proposes that lawyers view social workers as do-gooders and bleeding hearts, whilst social workers see lawyers as actors, and aggressive actors at that, who rarely consider the longer-term interest of their clients.

Bates (1982) argues that, these differences notwithstanding, effective communication between the disciplines of social work and law is essential. Delaney (1972), himself a judge, declares forcefully that if the courts are to deal effectively with the problems of child abuse and view the abused child as more than just a legal problem, traditional legal processes including the systems of adversaries must be changed.

In all fairness, it must be noted that many lawyers also approach child abuse cases with misgivings, although Isaacs (1972) has noted, the law has strongly promoted the defence of less popular and palatable clients and causes as one of its primary responsibilities. It must be remembered that the lawyer defending the parent who has abused his or her child has what in many ways can be described as a difficult task, because the court, utilising the doctrine of *res ipsa loquitur* (or "the thing speaks for itself") will accept that the mere existence of injuries requires the parent to explain (Isaacs, 1972). Delaney (1972), in the same book, argues on the other hand that the state may be at a serious disadvantage because where children are young they cannot testify as to what happened.

Thus it can be seen that a major obstacle to lawyers and welfare workers working co-operatively is their different approach to working with people. Lawyers are more comfortable with a confrontational or adversarial system whlst whilst social workers are more at ease with conciliatory or counselling roles. Underlying and exacerbating these difficulties are concerns about the balance between children's rights and parents' rights.

In spite of thse tensions, welfare workers must learn to use the current system if they are to adequately protect abused children. Fraser (1978) argues that the decisions a Children's Court can make in a case of child abuse are dependent on five factors. These are:

> "1. Knowledge of child development.
> 2. The information it receives about the abusive incident.
> 3. How well the information is presented.
> 4. How knowledgeable the court and the other participants are concerning the rather complex issues of child abuse.
> 5. What resources are available within the community for dispositional purposes."
>
> (Fraser, 1978 p. 207)

Fraser (1978) goes on to argue that it is a mistake to see the court as existing in a vacuum, and that it can only work as well as the total system works.

Kadushin (1980) believes that the use of the courts should be constructive and should be used as a resource rather than as a last resort. Ensuring adequate care for a child may involve changes in the family's home situation, or if this fails or is impossible, removal of the child to alternative care. The courts may be used to assist, even enforce, change and they are a necessary part of providing alternative care on a longer term basis for abused children.

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It is believed that the following guidelines will assist welfare workers in using the court system to good purpose.

Appearing in Court: The Preparation(1)

A great deal depends on the worker's preparation for the court appearance. This includes attendance at case conferences before the court hearing where the workers involved with the family make the decision to use legal proceedings. Ideally, protective services' lawyers should also attend at least one pre-court conference as part of their preparation.

As Carroll (1978) argues, agencies need to develop guidelines and protocols for their workers that cover every aspect of court work. It is particularly important that court report outlines are developed by agencies in order to assist the inexperienced welfare worker who is called upon to write a report and/or appear in court. using a consistent format for court reports also greatly assists the magistrates who will become familiar with the layout of an agency's reports.

Whether guidelines exist or not, reports must be clear and concise and should include (or should have attached) a recommendation to the court about the future placement of the child. An experienced worker should review the report before it is presented to the court in order to check for anomalies and inconsistencies and to ensure clarity.

For the inexperienced worker, role plays are a particularly useful way of becoming familiar with the experience of cross-examination. Supervising workers have a responsibility to provide this vital aspect of preparation. Familiarity with the court setting itself is an advantage and assists in allaying anxiety, and a visit to the appropriate local court, prior to appearing in a specific case, is easily arranged.

Familiarity with the material in the report is essential and lends authority to evidence. It is important to have the names and ages of the children and family members fixed in your mind. One worker, in a case I was involved in, persistently called the abused child by the wrong name whilst in court, thus destroying considerable credibility.

Once the report is being prepared it is important to share the main parts of it and the recommendations with the family. On occasions workers neglect to do this, perhaps afraid of the family's anger. It is important, wherever possible to face such anger. As Jones (1982) has noted, anger can often be caused by dishonesty or a less than frank approach to families.

Certain questions are routinely asked of workers in many child abuse cases. Answers can be prepared beforehand Welfare workers are frequently asked to describe their qualifications and experience. unfortunately, given problems of staff turnover, many workers in the field of child abuse have had limited experience and, in such cases, it is important to emphasise the supervision received, the qualifications and experience of the supervising worker, the number of joint interviews, and any in-service training provided. The multi-disciplinary nature of the work and consultations with other workers and professions can also be described.

Social workers and other welfare workers are often asked what their job entails. Carroll (1978) suggests that:

> ". . . a social worker is a behavioural specialist who, through counselling and assistance, helps the family maintain minimum standards of good care and protection of their children."
>
> (Carroll, 1978 p. 95)

Whilst some workers might object to this description, the vital point is to consider a response before entering the court room. In my experience it is a question that a lawyer asks whilst allowing time to prepare the next question and he or she is probably not even listening to the content of the response. If the worker stumbles and has difficulty answering, however, it may damage the value of further evidence.

Questions may be asked about the problem of child abuse generally and how this particular family fits into the research. It is extremely useful to be able to name a text or article by title and author should the need arise. The worker's familiarity with children's developmental needs and milestones may also be questioned. This is an important facet of working in the area of child abuse as abused children frequently suffer from delayed development.

The Court Appearance

The corridors and rooms around the court itself are a hive of activity. Carroll (1978) has noted that, all too frequently, "them" and "us" camps develop with the family and their lawyer on one side and the health and welfare workers on the other. It is important to talk to the family at this stage and ask them if they have any questions about your recommendation.

In some cases "plea-bargaining" occurs outside the court. This usually involves he parent's lawyer attempting to bargain with the police prosecutor or with the protective services' lawyer to change the recommendation that will be made to the court. This "plea-bargaining" activity is one that workers must not allow the lawyers to conduct by themselves. It is vitally important that workers do not allow recommendations to be watered down in this way except in truly exceptional circumstances. Such "plea-bargaining" is potentially dangerous to the abused child. It is important to stress that the recommendation in the report - is a considered opinion and will only change in the light of major new factors.

Once in the courtroom, it is important to try to remain calm. Adequate preparation of the material beforehand assists in this. Questions do not have to be answered immediately and it is perfectly legitimate to ask for questions to be repeated if the ramifications are unclear.

It is particularly important to be totally honest in describing the family's troubles. This includes outlining positive information as well as negative evidence. Carroll (1978) insists that workers should always start with something positive before moving on to the negative aspects of the assessment.

It is essential to be able to justify the recommendation made to the court, and to present supportive information with confidence. As a general rule workers may refer to notes when giving evidence but these notes of interviews should have been written either during interviews or as soon as possible afterwards. Thus it is essential that workers keep accurate case notes with appropriate dates in all cases. It is not unheard of for lawyers to ask to see such case notes. It is also helpful to be able to refer to specific statements made by parents about the abused child, for example (Carroll, 1978), especially where central issues have been discussed, such as explanations for injuries. Different explanations for injuries can be given by parents at different times and an accurate record of these is essential.

It is a regrettable feature of child abuse cases in Australian courts that the family's barrister may attempt to focus on areas of a purely personal nature with such questions as "Do you have children?", "Are you married?" and even "Why do you wear an earring?" Such questions should be intercepted by the police prosecutor or protective services lawyer. If they are not, it is acceptable to seek the Magistrate's or Judge's assistance by declaring the questions to be personal and insisting that you are appearing in court in the capacity of a worker or professional involved in helping the child and family. Questioning in this vein is an attempt to undermine personal credibility just as attempts are made by the family's lawyer to undermine your professional credibility. Similarly, if asked your address, the address of the agency that employs you should be given. Your home address should not be disclosed.

Conclusion

Appearing in court is a necessary and vital part of working in the area of child abuse. Some children cannot be protected from further serious abuse unless they are removed from home. Other families need a court order to ensure that they co-operate with services designed to protect the child at home and assist the family.

(1) These guidelines have been developed from practice protocols developed by the author at the Royal Children's Hospital, Melbourne, and from Carroll (1973).

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However, welfare workers have traditionally been suspicious of using legal intervention and extremely anxious about appearing in court, and the adversarial nature of court proceedings makes many workers feel uncomfortable. Appearing in court need not be a traumatic experience if sufficient preparation is undertaken beforehand.

References

Bates, F. (1979) *The Australian Social Worker and the Law.* Sydney: The Law Book Company.

Bates, F. (1982) "The Social Worker as Expert Witness in Modern Australian Law" *The Australian Law Journal* 56 (7), 330-340.

Carroll, C.A. (1978) "The Social Worker's Evaluation" in Schmitt, B.D. (Ed.) *The Child Protection Team Handbook* pp. 83-108, New York: Garland STPM Press.

Delaney, J.J. (1972) "The Battered Child and the Law" in Kempe, C.H. and Helfer, R.E. (Eds.) *Helping the Battered Child and his Family.* pp. 187-207, Philadelphia: J.B. Lippincott Company.

Dingwall, R. and Eekelaar, J. (1982) *Care Proceedings: A Practical Guide for Social Workers, Health Visitors and Others.* Oxford: Basil Blackwell.

Fraser, B.G. (1978) "The Court's Role" in Schmitt, B.D. (Ed.) *The Child Protection Team Handbook* pp. 207-219, New York: Garland STPM Press.

Hilgendorf, L. (1981) *Social Workers and Solicitors in Child Care Cases* London: H.M.S.O.

Isaacs, J.L. (1972) "The Role of the Lawyer in Child Abuse Cases" in Kempe, C.M. and Helfer, R.E. (Eds.) *Helping the Battered Child and his Family.* pp. 225-241, Philadelphia: J.B. Lippincott Company.

Jones, D.N. (Ed.) (1982) *Understanding Child Abuse.* Sevenoaks, Kent: Hodder and Stoughton.

Kadushin, A. (1980) *Child Welfare Services.* New York: Macmillan, (3rd Edition).

Lau, J.A. (1983) "Lawyers vs. Social Workers: Is Cerebral Hemisphericity the Culprit?" *Child Welfare* 62 (1), 21-29

McClean, J.D. (1975) *The Legal Context of Social Work.* London: Butterworths.

Sloane, M.W. (1967) "Relationship of Law and Social Work" *Social Work* 12 (1), 86-93.

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Enquiries to:
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Telephone:
(07) 266 1311

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