

**Special Issue—
Protecting Children from Abuse and Neglect:
Where Are We Now?**

Introduction

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The last two years have seen an extraordinary increase in the level of general media attention paid to child abuse and to child protection generally. In part, this greater media attention reflects ten years of change in law, agency practice, and court procedure that has made child maltreatment easier to detect and prove.

Beyond the media hype, however, many seasoned observers feel that the field is in danger of a catastrophic loss of direction and morale—as the mismatch between expectations and ability becomes increasingly apparent. It is time to step back and take stock of what has been accomplished, what has not been accomplished, and what new problems have been created.

I made a preliminary attempt to address these issues in a 1983 article in the *Family Law Quarterly*. The subject's importance, and the public and professional interest it generates, led the *Family Law Quarterly* to plan this special issue on: "Protecting Children From Abuse and Neglect: Where Are We Now?"

The papers in this issue, as a group, remind us that protecting children from abuse and neglect is a complicated, value-laden endeavor—that sometimes does more harm than good. They also help chart the direction of needed reform.

In the first paper, Margaret Meriwether examines child abuse reporting laws. She describes how, in a well-intentioned effort to protect as many children as possible, these laws use "broad, ambiguous language" to mandate what must be reported. Building on earlier theoretical writings on the same subject, she uses developing research evidence on reporting patterns to show the actual effects of this approach. She finds evidence that confirms some earlier concerns but that dispels others. According to the research she cites, broad reporting mandates have not

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prevented large numbers of maltreated children (as many as 68 percent) from not being reported, while the number of unfounded reports continues to climb (depending on the study, from 56 to 65 percent). On the other hand, she finds only limited evidence that class and race are significant factors in reporting decisions.

Two papers add another dimension to the question of reporting mandates. Jessica Silver describes the federal response to the infamous Baby Doe case. She traces the federal government's efforts to prevent the withholding of life-saving medical treatment and nourishment for handicapped infants through section 504 of the Rehabilitation Act of 1973 and the Child Abuse Prevention and Treatment Act. She concludes that neither approach seems to provide these children with the level of protection apparently contemplated by Congress.

In the Baby Doe situation, there was a political consensus that some action was necessary to protect newborns. Jeffrey Parness describes how the absence of such a political consensus has left the unborn without protection. After carefully distinguishing child protection from abortion, he asks why states have not used their residual authority under *Roe v. Wade* to protect the unborn from assaults and abuse. The absence of constitutional constraint forces the conclusion that the failure to protect these children stems from a lack of public understanding, agency leadership and political will.

In the next paper, I argue that foster care is misused in cases of emotional neglect. I describe how the desire to protect children from the long-term, *developmental* harm of inadequate parental care outruns the ability of existing services to improve parental functioning and that, as a result, many children are inappropriately placed in foster care. I explain why these children are the ones most likely to be trapped in foster care limbo and most likely to develop the emotional and behavioral problems that we associate with foster care.

Margaret Beyer and Wallace Mlyniec review the effects of past efforts to encourage permanency planning for children in foster care. They describe what can happen when a jurisdiction facilitates the termination of parental rights. Walking the reader through a typical case scenario, they show how little attorneys can do to prevent termination when social services agencies label parents as "untreatable" or "hopeless." They are especially concerned when the termination is not accompanied by a well thought out—and realistic—plan for the child's long-term care; too often, the limbo of foster care is replaced by no prospect for adoption or by a failed adoption that consigns the child to a permanent limbo with no ties, whatsoever, to the biological family. Their paper provides an important cautionary note to efforts to remove children from foster care.

Marcia Lowry reviews efforts to improve child welfare programs through impact litigation. First, she describes early cases and why they were often dismissed. Next, she describes recent cases, many of which are

not being dismissed—and which are resulting in settlements and court-ordered change. She then examines the “impact of impact litigation.” In other words, does impact litigation make a difference, and is it a difference for the better? She concludes that the answer is a qualified “yes,” but only if the plaintiff is prepared to participate in a long, complex, and subtle process of monitoring, facilitating and, when necessary, enforcing compliance. Successful impact litigation, thus, requires the plaintiff to have substantial knowledge about the system and substantial financial resources.

Michael Wald and Sophia Cohen describe what we know about preventing child abuse, and how many unanswered practical and policy questions remain. They focus on *primary* prevention programs, that is, programs that seek to minimize the likelihood that physical abuse will ever occur. They conclude that research on prevention, with all its limitations, suggests that only one service (or intervention) shows any real potential for preventing child maltreatment: a home visitor program and other support services for a minimum of one year following the birth of a child. But to be effective, such a program would be very expensive because of its components and the large number of parents that would have to be served. Simply as a means of preventing child maltreatment, such a program might not be justified, because the vast majority of its clients would never become abusive. But if viewed as a way to improve dismally poor child rearing across a wide swath of the community, such a program, though expensive, seems justified. The question then becomes whether we can reasonably expect such a comprehensive prevention program to be instituted. In the era of Gramm-Rudman, prospects are, at best, poor. This should not prevent professionals from advocating such a program, but it does mean that they should be careful in how they approach the promise of prevention, which, too often, diverts attention from the need to reform the existing system.

Pearson, Thoennes, Mayer and Golten report on early efforts to use mediation in custody and child protection cases. For this symposium, their paper is important because it raises the question of whether trained mediators can assist parents and caseworkers to negotiate their differences in how cases should be resolved. Although initial findings are mixed, their paper points in the direction of one needed reform—the greater involvement and empowerment of parents—through a modest change in existing practices.

James Cameron summarizes, from a child protective worker’s vantage point, the problems caused by our overambitious expectations for child protective agencies. As he describes, the child protective “mission” has, over the years, become blurred as it has been expanded to include many problems beyond what has been traditionally considered “child abuse” and “child neglect.” His essay provides an appropriate conclusion to this special issue.