

Child Abuse

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by Marvin A. Zuker

Is there any relationship between the tragedy of the death of infant Torontonion Debbie Ellis on 2 March 1977, and the "Son of Sam" murderer in New York? Very possibly. Research has shown that many ultimate murderers have been child abuse victims. "In those cases there was a long buildup of hostility—it wasn't just a casual happening."

Strange as it may seem, in this day of escalating intellectual enlightenment, laws have not been passed to protect innocent, harmless children from their parents and others who beat them into senselessness and often death. Both the incidence and the severity of these heinous acts continue to be alarming in our country as well as in many foreign countries.

Daily a large segment of our citizenry, the battered child, is being deprived of his right to life,

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liberty, and the pursuit of happiness. Physicians, lawyers, and other professionals must be in the forefront to diagnose the condition, treat the victims, take remedial action against the offenders, and attempt to formulate preventive measures.

Hospitalized children have been the victims of every conceivable type of trauma. And child abuse is not limited to battering. Judianne Densen-Gerber, a New York psychiatrist and lawyer, estimates that 1 out of every 20 females in America was subjected to an incestuous attack when she was a child. Densen-Gerber specializes in helping victims of this crime. She bases her estimates on an Odyssey Institute survey covering 238 runaway girls in seven States. "We found that 44 per cent of them had 'gone off the rails' because they were victims of incest in their own homes."

Mothers are statistically among the worst offenders. Others who abuse children include the father, stepfather, paramour, sibling or some other close or distant relative, babysitter, foster parent, or guest. Children as young as 6 or 8 years have been reported to have battered their infant siblings

sense of a husband or father figure in the home, illicit sex relations, and too many young or unwanted children.

The varied explanations as to the cause of injuries sustained by a child when he is presented to the hospital or physician usually seem reasonable at first. Some state it was an accident, such as falling from a bed. Often the custodian will complain about a hurt to his own body when he fell or bumped into a door while carrying the child.

The physician or history taker usually accepts these stories as fact so he can quickly get to the treatment. Thought is not readily given to the force needed to cause such injury or the length of elapsed time between the "accident" and the presentment.

The usual parent or custodian will rush his child for immediate aid; however, the abusers, often

fearful of the consequences to themselves, wait until they become truly frightened and until they have concocted their explanations.

Legal as well as medical problems surround the battered child when the courts must be used to protect his life. Most cases are often settled through conferences with the social worker. In such conferences, the social worker is able to discuss the stressful problems which activate the abuser and offer assistance to eradicate such devastating problems through staff counselling. In counselling, the mother may admit that she is pressured and requires assistance and she may even ask that her children be placed in a foster home temporarily for their own safety.

In some instances the family may be hostile and rebel at any attempts to assist or counsel them. Where there is serious injury to the child and a great likelihood of lack of parental co-operation, the only recourse available may be to bring the case before the Court. The purpose of a court hearing will be to determine whether or not the child is in such a dangerous situation that he must



for their own protection from wrongs done to them before they attain their majority.

When the solution to their problem is sought in the courtroom, very few abused children have been represented by their own lawyers. It has been considered inappropriate, and unnecessary, for counsel to appear on behalf of the child in various Juvenile Court proceedings.

Lawyers preparing an action for child abuse will be confronted with a paucity of case law in the area of child abuse. This is because most cases of child abuse are "settled" at or before the original court hearing. In that hearing, if the child does not have a dedicated guardian ad litem, or lawyer to contest an unfavourable decision, it is unlikely that an appeal to a higher court will be taken. Consequently, an appellate court review of the lower court proceedings is rare, and thus little is added to the available legal literature on this subject.

Such review could contribute immensely to filling the void of legal remedies available to the abused child. It would also yield educational advantages to those who wish to do research in this field.

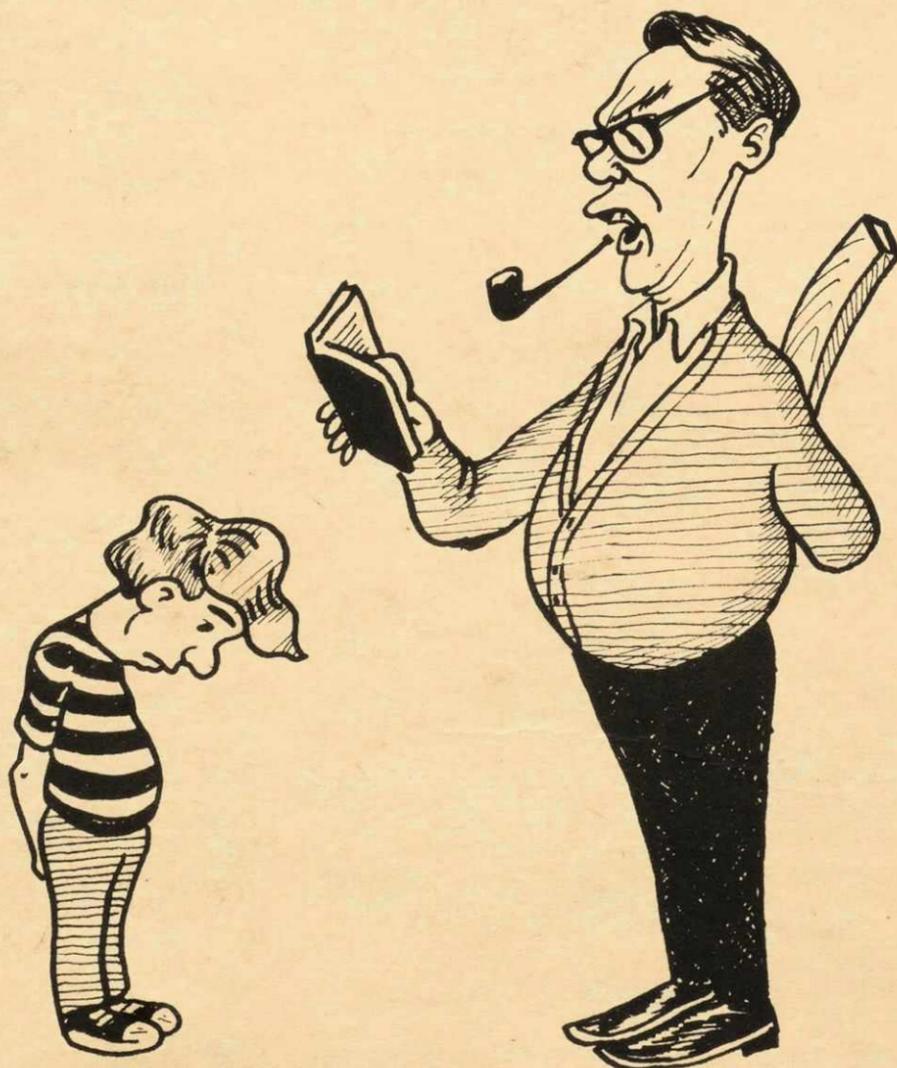
Section 41 of the Child Welfare Act of Ontario states that "Every person having information of the abandonment, desertion, physical illtreatment or need for protection of a child shall report the information to a children's aid society or Crown attorney."

One can readily see that our child abuse reporting laws are presently inadequate. The primary purpose of any reporting laws is to bring into the open and to identify children who are being abused so that they may receive required therapy and protection. A secondary purpose is that **mandatory** reporting will bring to light the true incidence of abuse and demonstrate the magnitude of the problem.

Reporting statutes are ineffective unless reported children are, in fact, protected from further injury and offered a chance of a brighter life with a foster family, should remaining at home prove impossible or unsafe.

Intervention is critical, not only because it can break the vicious cycle of children growing up to be tomorrow's child-batterers, but because in some cases it may save a child's life.

An excerpt from a paper entitled, "Controlling Child Abuse." The author is a professor of Law at Ryerson.



to death.

Offenders come from all strata of society and as a rule were apparently "normal" persons. Only a few have been overtly psychotic, mentally retarded, or have acted under the influence of alcohol or other drugs. Many were persons whose own lives were filled with stresses or frustrations. Often they themselves had been mistreated when young. Their lives have possibly been complicated by inadequate finances, insufficient assistance, ab-

be temporarily removed for his own safety. Such a hearing is usually bitterly contested.

A real problem in successfully litigating child abuse cases is the absence of adequate legal counsel to represent the rights of the child. The responsibility of the legal profession is to ensure that everyone's rights are protected. There are at the present time very few, if any, rights of children spelled out in our laws, and few procedures are available to minors to utilize such existing rights