Role Perceptions of Attorneys and Caseworkers in Child Abuse Cases In Juvenile Court

ROBIN RUSSEL

A four-county Indiana survey of the vast majority (approximately 90%) of the attorneys and public agency caseworkers involved in court actions on child abuse cases revealed considerable conflict over each other's role. The survey replicated the method used in previous research, which had yielded distinctly positive and negative results. The author discusses particularities of the four-county area and suggest ways to clarify roles and ameliorate the problem.

Child welfare practice during the past two decades has been altered by a growing recognition of the legal rights of children and their biological and foster parents. This recognition has led to attorneys becoming more regular participants in court cases involving child abuse and neglect. Traditionally, children appearing in juvenile court in these cases have been unrepresented by counsel. Public or private social service agencies purported to represent the interest of the child [Gabinet-Morgenstem 1981]. The Child Abuse Prevention and Treatment Act, enacted by Congress in 1974, requires that for states to qualify for federal assistance, state statutes must "provide that in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings" [42 U.S.C. S5103(b)(2)(G)]. The act does not require the

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guardian ad litem to be an attorney. Yet, the act has had a tremendous impact on state legislation by mandating representation in court proceedings for neglected and abused children. An increasing number of states have required legal representation to be provided for these children [Kelly and Ramsey 1983].

Like it or not, child welfare caseworkers and lawyers have had to work with each other on a more frequent and extended basis in child maltreatment cases. As contact between the two groups has increased, so has the likelihood of conflict between them. One potential area of conflict is related to the differing concepts each group has of its role in the handling of child abuse and neglect cases. A number of studies have observed that frequently social workers and attorneys dealing with similar types of cases feel that members of the other occupation are overstepping their professional boundaries and performing tasks that would be better and more appropriately performed by their own occupational group [Brennan and Khinduka 1971; Fogelson 1970; Sloane 1967].

Brennan and Khinduka studied lawyers' and social workers' role perceptions in delinquency cases in juvenile court by means of a questionnaire mailed to a sample of juvenile court probation officers and a sample of attorneys [Brennan and Khinduka 1971: 192] The questionnaire included a list of 21 tasks performed in juvenile court delinquency cases. Respondents were asked to indicate whether social workers, lawyers, or members of some other occupation should assume primary responsibility for each of the tasks [192]. This study found "a considerable amount of actual role disagreement" between members of the two occupations [198]. This conflict was most apparent in the tasks performed in the pre- and post-adjudication phases of juvenile court cases [195–196].

Weil [1982] reported a 1977–1978 research project examining the role perceptions and attitudes of attorneys and social workers who interacted with each other in dependency and adoption court cases in Los Angeles. Using an instrument similar to that used by Brennan and Khinduka, the Los Angeles study found "far more agreement regarding ideal assignment of functions" in court cases than did the previous study [398].

Research Design

The purpose of the study described in this article was to examine whether interprofessional role conflict existed among caseworkers and attorneys who interact with each other in child abuse and neglect cases in four Indiana counties. The study used a survey methodology. A written, short-answer instrument was administered to both attorneys and caseworkers in 1984.
The caseworkers surveyed were those employed by the county departments of public welfare to provide services in child abuse and neglect cases. The attorneys studied included those who represented the county departments of public welfare; attorneys appointed to represent the children involved or serve as a guardian ad litem; and attorneys who represent the children's parents. The researcher attempted to survey every child welfare caseworker employed by the four county departments of public welfare and every attorney in each of the four counties who had appeared in two or more child maltreatment cases in juvenile court. Ninety-eight caseworkers out of a possible 109 participated in the study, a response rate of 90%. Sixty-nine attorneys out of a possible 76 participated in the study, a response rate of 91%.

The instrument used in this study was similar in format to that used by Brennan and Khinduka [1971] and Weil [1982]. The questionnaire listed 28 tasks likely to be performed by attorneys or caseworkers in the various stages of neglect and abuse cases in juvenile court. Respondents were asked to indicate who they felt should assume primary responsibility for each of the enumerated tasks. The response categories were “Caseworkers,” “Lawyers,” and “Others.” The instrument also solicited information about demographic variables. Two open-ended questions were placed at the end of the instrument: Is there anything you would like to see done to improve the relationship between lawyers and caseworkers? Is there anything else you think we should know about the interaction of lawyers and caseworkers?

Findings

Responses to the 28 tasks listed were cross-tabulated by occupational group (attorney or caseworker) and by county. The greatest differences in responses were related to whether the respondent was a caseworker or an attorney. Of the 28 tasks enumerated in the instrument, chi-square tests indicated that differences between responses of the two occupational groups were significant in 18 instances. Thus, for almost two-thirds of the tasks listed, lawyers and caseworkers had significantly different opinions about who should be taking primary responsibility.

When responses were analyzed on the basis of the county of the respondent’s employment, the chi-square test indicated that differences in responses were significant at the .05 level of probability in only two instances. Table 1 lists the items in which significant differences in responses were found, first by occupation, and then by county.

Although significant differences in opinions between caseworkers and lawyers existed for 18 out of 28 tasks, some of these differences arose for tasks
## TABLE 1 Significant Differences in Role Perceptions Based on Occupation and County of Employment

<table>
<thead>
<tr>
<th>Item</th>
<th>Task</th>
<th>Occupation</th>
<th>County</th>
<th>( \chi^2 )</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Decision regarding emergency custody</td>
<td>24.49189</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Informing parents of rights when child taken into emergency custody</td>
<td>7.22461</td>
<td>.0270</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Requesting authorization to file petition</td>
<td>8.55445*</td>
<td>.0034</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Referring case for criminal prosecution</td>
<td>6.09496</td>
<td>.0475</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Filing petitions with court</td>
<td>19.27463*</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Deciding on allegations in CHINS petition</td>
<td>52.22401*</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Discussing allegations with police</td>
<td>14.56653*</td>
<td>.0001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Explaining reasons for hearing to parents</td>
<td>28.61511*</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Selection of witnesses</td>
<td>27.54414*</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Deciding whether child should testify</td>
<td>74.52385</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Oral argument</td>
<td>6.63665</td>
<td>.0100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Entering agreements with parent or their attorney</td>
<td>31.06970</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Out-of-court discussion with judge</td>
<td>42.31410</td>
<td>.0000</td>
<td></td>
<td></td>
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<tr>
<td>15</td>
<td>Recommending psychological evaluations</td>
<td>10.33129</td>
<td>.0057</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Recommending dispositions to the court</td>
<td>11.19346*</td>
<td>.0008</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Interpreting court order to child</td>
<td>47.40245</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Interpreting court order to parents</td>
<td>30.33467</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Warning parents about violating court order</td>
<td>11.60964</td>
<td>.0030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Referring case for criminal prosecution</td>
<td>19.81934</td>
<td>.0030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Presenting information about allegations in court</td>
<td>23.27593*</td>
<td>.0000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Based on 2 x 2 table, treating 7 "other" responses as missing data; with Yates correction for discontinuity

*Based on 2 x 4 table, treating 4 "other" responses as missing
for which the majority of members of both occupations agreed as to who should assume responsibility for the particular task. The significant differences were with regard to the number of respondents within the occupational group who shared the opinion as to the role function, not with regard to the direction of the majority opinion within the group.

Role consensus exists when a majority of caseworkers and lawyers agree on which occupational group should have primary responsibility for a particular task. Data from this study indicated that role consensus existed for more than half the tasks listed in the survey instruments. Agreement was found between the two groups concerning 17 tasks. Both a majority of caseworkers and lawyers agreed that caseworkers should assume the primary responsibility for nine tasks: deciding which cases should be informally disposed of; preliminary investigation of facts to substantiate allegations; discussing allegations with medical practitioners who may have treated the child; discussing allegations with police officers who may have been involved in the case; presentation of social history information to the court; recommending psychological or psychiatric evaluations to the court; informing the court of community resources for treatment or rehabilitation; determining a service plan for the child and family; and monitoring the implementation of the court’s order. A majority of caseworkers and lawyers agreed that lawyers should assume the primary responsibility for eight tasks: filing petitions with the court; deciding which witnesses should testify at court hearings; requesting witnesses to testify at court hearings; prehearing sharing of information concerning a case with counsel for the child or the child’s parents; presenting information about allegations in court; explaining to the court, without testifying as a witness, why a child should be adjudicated or taken into custody; informal discussion of a case with the judge, at some time other than that of the court hearing; and informing the parties of the consequences of violating the court’s order.

Role disagreement exists when a majority of both groups want responsibility for the same task. Role disagreement also exists when either lawyers or caseworkers want major responsibility for certain tasks and the other profession wants themselves or “others” to assume that responsibility. Significant role disagreements were found for 11 tasks. A majority of both lawyers and caseworkers each wanted to assume primary responsibility for seven tasks: requesting authorization from the court to file a petition alleging that a child is a “Child in Need of Services”; deciding what allegations to make in a “Child in Need of Services” petition; explaining reasons for court hearings to parents; deciding whether a child should testify at court hearings; entering into agreements with parents or their representative regarding the disposition
of a case; recommending a particular disposition to the court; and interpreting to the child's parents the court's order and the reasons for it. For three tasks, a majority of caseworkers wanted to assume primary responsibility, but a majority of lawyers thought that either lawyers or "others" should assume the primary responsibility: deciding in which cases the emergent taking into custody of a child is necessary; informing parents of their rights when a child is taken into custody; and interpreting to the child the court's order and the reasons for it. For one task, the majority of lawyers thought they should assume primary responsibility, while caseworkers felt that either caseworkers or "others" should assume that role: referring a case for criminal prosecution. The findings here, similar to those of Brennan and Khinduka, show a considerable amount of role disagreement between caseworkers and lawyers [Brennan and Khinduka 1971: 198]. Brennan and Khinduka found the conflict to be centered on tasks performed during the pre- and post-adjudication phases of juvenile court cases [195–96]. The tasks that generated the most conflict in the current study, however, were spread throughout all the stages of juvenile court cases.

**Tasks Generating Role Conflict**

One controversial task was "Deciding what allegations to make in a Child in Need of Services petition." Sixty-nine percent of all caseworkers felt that they should perform this task, while 88% of all the lawyer respondents thought that primary responsibility for this task should be theirs. Lawyers clearly viewed decisions about the content of legal pleadings as within their sphere of expertise. Performance of this task by a non-attorney was probably viewed as the "unauthorized practice of law." Yet caseworkers felt they had the ability and expertise to make these decisions. (In many locations, due to a scarcity of attorney time, this task is actually performed by caseworkers. Initial pleadings, for example, were commonly drafted by caseworkers in one of the counties studied.)

Seventy-two percent of all caseworkers surveyed felt that they should have control over "Deciding whether a child should testify at court hearings," while 78% of all lawyer respondents thought that primary responsibility for this task should be theirs. Interestingly, the majority of both professional groups agreed that lawyers should decide which witnesses should testify at court hearings. Caseworkers obviously saw the task in a different light when the witness might be the child who is the subject of the proceeding, probably because of the trauma usually associated with having to testify and being subject to cross-examination in a court case. If caseworkers see their duty as protecting children, it is not surprising that they should want to control the
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decision of whether or not a child will be subject to additional stress in the courtroom by being called to the witness stand.

"Entering into agreements with parents or their representative regarding the disposition of a case" also produced a major conflict in caseworker and attorney opinions. This task is similar to "plea bargaining" in a criminal case. In a child maltreatment case, a child welfare agency could agree to a specialized foster placement with a friend or relative of the child's family in lieu of the parents admitting the allegations in the Child in Need of Services petition. Sixty percent of all caseworkers surveyed felt that they should have primary responsibility for this task, while 84% of the lawyer respondents thought that they should control any agreements entered into with parents or their attorneys. Agreements of this nature can determine the outcome of a case, something that both professions seemed to want to control.

"Recommending a particular disposition to the court" also sparked controversy between the members of the two occupational groups surveyed. Sixty-five percent of the caseworkers thought they should have primary responsibility for this task, while 59% of the lawyers thought they should have this responsibility. Caseworkers evidently felt that offering the court guidance on questions of dispositional choices falls within their sphere of expertise. In all likelihood, they have been the ones who have become familiar with the child and family and investigated appropriate dispositional alternatives. Attorneys could have felt, however, that recommending a dispositional alternative involves pleading to the court for a particular resolution of a case.

One other item resulted in a sharp contrast in attorney and caseworker responses: "Interpreting to the child's parents the court's order and the reasons for it." Sixty-six percent of the caseworker respondents thought they should have primary responsibility for this task, while 65% of the lawyers claimed it. Attorneys probably reasoned that explaining court decisions is a form of legal advisement, something lawyers should do in a child maltreatment case in juvenile court. Even though caseworkers often make protestations to the contrary, parents and caseworkers are adverse parties in these legal actions. From a legal vantage point, it would be inappropriate, and possibly even unethical, for a caseworker to provide legal advice to an adverse party. In Indiana it is most common for parents not to be represented in child maltreatment cases in juvenile court. Much has been written about how parents find juvenile court proceedings to be a confusing and alienating experience [see, for example, Paulsen 1966]. If after a court hearing, there is no attorney available to explain to parents what happened, caseworkers may feel an obligation to do so.

**Lawyer and Caseworker Suggestions**

Twenty-eight of the 110 persons who answered "yes" to the open-ended
question "Is there anything you would like to see done to improve the relationship between lawyers and caseworkers?" suggested that attorney and caseworker roles in juvenile court cases were in need of clarification. Many said there is a need to educate both groups as to the role of each occupation.

Others were more pointed in their comments. One attorney, for example, replied, "Caseworkers should stop trying to perform the function of attorneys in directing these cases through juvenile court." Another attorney responded, "Don't allow caseworkers to give legal opinions. Don't try to run the judge or the juvenile courts." A similar comment came from an attorney who suggested, "Teach caseworkers to do their job and not try to be an attorney or judge." A welfare department attorney argued that someone should "limit (the) caseworker role—let attorneys function as attorneys, using independent professional judgment." And another welfare department attorney suggested that "Welfare Administration should recognize the authority and discretion the Juvenile Code gives to Welfare Attorneys."

Caseworkers also had definite suggestions about dealing with their role conflicts with attorneys. One caseworker stated, "We know what lawyers do, but they don't know what we do. Therefore, training of lawyers to casework responsibilities would be helpful." Another commented, "Let attorneys handle the legal aspects of a case—only—an agency attorney should back up the caseworker." A number of caseworkers in one county had particular complaints about tasks they thought their attorneys should assume, but weren't. For example, one worker expressed a need for "Attorneys who spend time with caseworkers in preparation—attorneys who contact witnesses and speak with them prior to hearings." These and other responses to open-ended questions supported these findings of conflict between lawyers' and caseworkers' role perceptions in juvenile court cases.

Interpretation of Findings

Sources of Role Conflict

These findings differ from those reported by Weil, who, as noted earlier, found little conflict between the two groups. Perhaps Indiana caseworkers are different from those in Los Angeles, particularly with regard to professional training. Also, regular participation of attorneys in child maltreatment cases in Indiana is relatively new. When caseworkers have traditionally assumed responsibility for tasks of a quasi-legal nature, one might expect that once attorneys became involved in cases the transitional period would involve disagreement and confusion about respective roles in these court cases.

Indiana caseworkers, the majority of whom do not have professional social work training, have undoubtedly been socialized on the job as to proper
behaviors in the enactment of their roles. New caseworkers are told, informally or through inservice training, about how tasks have been handled in child maltreatment cases in their county. Because regular attorney participation in child maltreatment cases is a recent development in Indiana, caseworkers probably traditionally performed many "legal" tasks. If this is so, the performance of these legal tasks is part of the caseworker occupational role into which they have been socialized.

Lawyers have been socialized on the job in a similar fashion. Lawyers are also instructed in law school as to their role, particularly in courses with titles like "Professional Responsibility" or "The Legal Profession." Law students are drilled on the American Bar Association Code of Professional Responsibility which lays out the duties of the attorney. They are informed that lay persons performing legal tasks for others are engaging in "the unauthorized practice of law," which lawyers have an obligation to "assist in preventing" [A.B.A. 1971]. An attorney socialized in this manner might easily interpret caseworkers' performance of legal tasks in juvenile court cases as the unauthorized practice of law and therefore inappropriate.

Disagreements between interacting occupational groups about who should be legitimately performing which tasks can generate heated conflicts that can carry over into other aspects of the relationship between the two groups. These types of disagreements are referred to in sociological literature as "jurisdictional disputes" and are not uncommon because "it is rarely possible for a professional group to delineate a neat territory" [Moore 1970]. Yet, these jurisdictional disputes can have negative implications for interoccupational relationships. "It is a common sociological observation that when rival claims issue in conflict, each side is likely to develop stereotypes and misconceptions about the other, especially in formal contexts." [Goode 1960].

Need for Role Clarification

Sociologists studying relationships between different occupational groups have suggested various activities that might be useful in overcoming obstacles to interprofessional collaboration. In the early stages of collaborative activities, orientation of both occupational groups as to the skills and role of the other group could lead to more realistic expectations about their relationship. Members of both groups should be educated about the "professional subcultural values, ideologies, technologies and language" of the other group [Cottrell and Sheldon 1966]. Clarification of each occupation's roles in the collaborative effort is important.

Many of the caseworkers and lawyers, in answering the open-ended questions, suggested that professional roles in child maltreatment cases could be clarified for members of both occupations through formal educational efforts. This might help reduce role conflict if the persons educating caseworkers and
lawyers, either in separate or joint training sessions, could agree themselves as to each occupation’s appropriate role. Training sessions aimed at role clarification would be most effective if provided when caseworkers and lawyers first enter the field of child welfare practice. It is more difficult to alter people’s perceptions of their roles after they have been socialized into them and have become set in their ways. The judiciary, either at the state or county level, could also issue policy guidelines to specify the role of each occupation with regard to the tasks in a juvenile court case; the guidelines would have a better chance of producing role consensus if both caseworkers and lawyers could contribute to their development.

Conflicts Between Caseworkers and Agency Attorneys

Many of the particular tasks generating conflict of opinion were those that would involve the welfare department’s own attorney. For instance, both lawyers and caseworkers felt that members of their own occupational group should control decisions regarding the initiation of court proceedings, allegations to be made in court petitions, whether the child should testify, agreements with adverse parties, and the recommendation of case dispositions to the court. Answers to open-ended questions indicated that this was indeed a source of conflict between caseworkers and the attorneys hired to represent their agencies. Agency administrators and lead attorneys should meet together to develop policies that outline the precise responsibilities of caseworkers and attorneys, and that specify who should control particular decisions that have to be made in child maltreatment cases. Attorneys should be consulted in the development of these policies to ensure that their professional ethical guidelines are not being violated. Lawyers should be advised of these agency policies before being retained as welfare department attorneys. Caseworkers, during their initial training, also should be educated as to agency policy on their appropriate role in court cases.

The consequences of lawyer-caseworker conflicts can be even more serious when the conflict exists between caseworkers and the lawyers employed to represent the welfare department. Answers to the open-ended questions and informal discussions with respondents indicated a substantial level of hostility between caseworkers and welfare department attorneys in one large urban county. Caseworkers, in particular, had many strong criticisms of the lack of dedication, high-handed attitudes, insensitivity, and ineffectiveness of their own lawyers. Many caseworkers alleged that welfare department attorneys didn’t take the time to prepare cases adequately for court. Within a child welfare agency, cooperation and clear lines of communication are important if child protection cases are going to be effectively presented in court.
Administrators of child welfare agencies must take steps to ensure cooperation between their lawyers and their caseworkers. Part of the problem may be in the way agencies employ attorneys. Many attorneys get their jobs as welfare department attorneys because of their social and political connections rather than any dedication to the child protection field. Salaries and benefits are attractive, particularly to new, relatively inexperienced attorneys or to those having a hard time making it in private practice. Many welfare departments employ attorneys on a part-time basis who receive a set salary and county benefits regardless of the number of hours they spend providing legal services to the department. No limits are placed on the amount of time these attorneys can spend on other private fee-generating cases, a practice that can have adverse consequences for the amount and quality of agency services provided.

Inadequate lawyer preparation is a problem for many child welfare agencies [Hardin 1985]. Agencies need to develop and implement policies to ensure that they are being competently represented by their attorneys. For instance, agency policy should require that department attorneys consult with caseworkers about upcoming cases a specified number of days before contested court hearings. Similarly, attorneys should be required to meet with and prepare other agency witnesses before the court date.

The American Bar Association's National Legal Resource Center for Child Advocacy and Protection has recently developed a self-assessment instrument for child welfare agencies to use in evaluating their legal representation. The instrument, which is completed by agency attorneys and administrators, helps to pinpoint problems related to legal representation and facilitate discussion of these problems.*

The problematic and antagonistic nature of the caseworker-lawyer relationship in child maltreatment cases has implications for both occupational groups, child welfare agencies, public interest law offices that represent parties in child abuse and neglect actions, and the children and families who are the subjects of these actions. For lawyers and caseworkers alike, conflicts with people with whom they must regularly interact probably take their toll in the form of additional job-related stress. Both occupations are stressful enough without this additional source of tension. Interprofessional conflict also affects the quality of the services both occupations provide. It hinders effective communication between the two groups, which can negatively affect both casework and legal services to mistreated children and their families.

*Copies of the self-assessment instrument can be obtained by writing the A.B.A., National Legal Resource Center for Child Advocacy and Protection, 1800 M Street NW, Washington, DC.
Continued research in interprofessional collaboration in child abuse and neglect cases could shed additional light on the conflicts uncovered by this study and suggest solutions to help remedy existing problems. The quality of lawyer-caseworker relationships and the services that both groups provide to children and families could be improved by these efforts.

References


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