

Foundations OF CHILD Advocacy

Edited
by Donald C. Bross
& Laura Freeman Michaels

FOUNDATIONS OF CHILD ADVOCACY

Legal Representation
of the Maltreated Child

Edited by
Donald C. Bross and Laura Freeman Michaels
The National Association of Counsel for Children

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PREFACE

It is nearly 300 years since publication of what may be the first English book on law relating to children (*The Infants Lawyer; or Law, both Ancient and Modern Relating to Infants*, 1697). For nearly all of the intervening period the few subsequent books that appeared on the subject focused on legal doctrines that had developed concerning, not so much children themselves, as children's property and the rights of adults to some interest in the property or to the custody or guardianship of children. As courts and legislatures produced more law relating to children, especially regarding juvenile crime and child abuse, the legal literature at first failed to reflect the law's increased attention to childhood. Since the tradition of this literature was to expound doctrine, the paucity of legal rules in these new laws provided little of substance to be analyzed, debated or published. Delinquency law that arose during the nineteenth century, first concerned with juvenile corrections and later with juvenile courts, emphasized official discretion rather than rules of law in looking after the welfare of young offenders. Action was to be individualized rather than responsive to the demands of doctrine.

The law of child abuse and neglect, with which this volume is engaged, has similar roots. The rescue of maltreated children was not to follow mechanically from any legislative constella-

tion of rules, but was rather an enterprise entrusted to the sound judgment of those with child protection responsibilities. Like delinquency law, the centrality of discretion in child protection law produced but little legal dogma and, consequently, a dearth of legal literature. Unlike delinquency law, which is currently experiencing a rapid growth of rules to replace discretion, however, child protection law remains largely driven and structured by the discretion of judges and workers. Definitions of child abuse and neglect, for example, continue as elusive concepts unrefined by a jurisprudence such as that which has developed about the definitions of criminal offenses.

While there has been much speculation over why lawyers have been drawn into this child protection process, it is clear that the demands placed on their professional skills extend well beyond incisive analysis of doctrine which is itself so largely undeveloped. Especially as advocates for children, members of the bar find themselves in a position to influence the judgments of other participants in the process, parents and social workers, as much as judges. To meet this responsibility Dr. Bross and Ms. Freeman have put together a book that responds to the question, what do lawyers need to know when there isn't a great deal of law to know? The essays in this volume provide the kind of guidance, insight and extra-legal knowledge that is highly valuable for anyone involved in child protection, lawyer and non-lawyer alike. As a needed addition to the legal literature, it is much welcomed.

Sanford J. Fox
Newton, MA
June 1986

INTRODUCTION

Since its inception, the goal of the National Association of Counsel for Children (NACC) has been to establish a better foundation for the independent representation of children involved in court proceedings. The activities of training, publishing, proposing standards and accepting friend-of-the-court positions in special cases contribute to the objective of establishing a strong base of national and international member practitioners who work with the children affected by legal proceedings. The NACC encourages child advocates from varied backgrounds to study issues, compare methods, share resources and referrals, and support children in need of protection.

Foundations of Child Advocacy incorporates themes and practice recommendations which have been accumulated at NACC conferences and in publications since 1977. Some of the materials appear essentially in their original forms with some modifications and updates by the editors. Other chapters were written specifically for this book.

Because of the various complications and issues arising when children become entangled in legal proceedings, many of the authors have focused on the cases in which a determination has been made that the child is not safe to remain in the home. The examination of this stage of the case, however, is done with

the understanding that the Adoption Assistance and Child Welfare Act of 1980 (P.A. 96-272) and many state statutes require that state agencies make reasonable efforts to prevent removing a child from the home.

To assist the child representative, Part I offers a working knowledge about the basic business of childhood, health and pathology in children. Insights are provided by professionals from the perspectives of their varied disciplines. Ed Goldson helps us understand the basic parameters of child development as these relate to abuse and neglect. He reminds us of the importance of the social, emotional and psychological impact of child maltreatment, as well as the physical traumas. David Kerns discusses the pediatrician's role, helping us understand what might be expected of physicians, and the range of harms which might be diagnosed. Judith White offers us the social worker's perspective, explaining the special relationship that the worker must maintain to assist and treat children and their families. Definitions of abuse and neglect from a legal perspective are analyzed by Donald Bross.

Part II of *Foundations of Child Advocacy* covers some of the basic legal aspects of child representation. Following Donald Bross's chapter on the importance of child advocacy in court, Laura Freeman Michaels discusses the evidentiary issues likely to be encountered by the child's representative. In turn, Donald Bross examines the different ways a case is handled when the child is a court witness or when the decision is made not to have the child testify. Underlining the importance of expert testimony, Ann Haralambie gives many practical hints on working with expert witnesses. In her chapter on child representation in divorce custody cases, Carol Higley Lane recognizes that children in need of protection can enter the courts through different avenues, and some aspects of child representation can be generalized for varied legal settings. In addition, Donald Bross points out liability considerations for those serving children and emphasizes the need for accountability in the child's representation.

Practical advocacy aids, standardized guidelines and forms are included in Part III.

In the past, members of the National Association of Counsel for Children and speakers at NACC conferences have made many fine contributions to furthering the rights of children and the role of the child's representative. To those un-named advocates who have lent their time, suggestions and support, we are indeed grateful. We regret that all of these could not appear in this single volume. Nevertheless, *Foundations of Child Advocacy* must stand for the many who have contributed their time, energy, and caring to the representation of children.

Donald C. Bross
Laura Freeman Michaels

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———— PART I ————

Knowledge About Childhood

CHILD DEVELOPMENT AND THE RESPONSE TO MALTREATMENT

Edward Goldson, M.D.

During the last fifteen years the legal profession has paid increasing attention to child abuse. There has also been an increased concern by child-care providers and advocates as to the possible effects that abuse itself and the legal process may have on the child. The most pressing question that must be addressed is how those in the legal profession can best meet the needs of the abused child. In order to meet those needs, some understanding of normal child development is necessary.

BASIC ASSUMPTIONS

There are numerous schools of thought dealing with child development. It is not the purpose of this discussion to elaborate all of these theories. Instead, some of the developmental processes children undergo and the issues children must address are briefly reviewed. In addition, the implications these aspects of childhood may have for lawyers representing maltreated children are noted.

It has long been recognized that all children follow general patterns of motor, cognitive and emotional development.