SPECIAL ARTICLE

LANDMARK DECISION IN CHILD ABUSE COURT CASE

Lynn Holford, Francois de Villiers

Physical abuse of children is common. In the UK 4% of children under 12 years of age are brought to the attention of the authorities because of suspected abuse each year, and mortality is conservatively estimated to be 1 in every 100 000. In the USA homicide accounts for more than 4 000 deaths each year in children under 6. From 1993 to 1996, 1 481 assaults against children under 18, ranging from common assault to murder, were reported to the Pretoria Child Protection Unit.

Doctors who have to deal with abused children tend to respond with ambivalence, dismay, frustration and a sense of helplessness. All too often this results in poor management of the abuse. Factors contributing to this negative approach include heavy workloads, the amount of time involved in proper management of abuse cases, and difficulty in detection because the indicators of abuse are often inconclusive and parents conceal abuse by lying and going to many different doctors. Understandably doctors are often hesitant to take action. Should they do so and should the case be brought to court, the court proceedings can be intimidating and time-consuming.

A conviction was obtained in a recent South African case, the State versus S A Willers and A M Willers (No. 14/5829/95), in which case it was found that the couple had severely abused four out of five children. This conviction was possible despite the fact that none of the injuries or acts of abuse were witnessed.

The case presented in the following way. The eldest boy died aged 26 months, having been physically and emotionally tortured for the duration of his short life. He first presented at 6 weeks of age with a traumatic ulceration in his throat. This was followed by a bruised scrotum at $2^1/_2$ months, and 1 week later a fracture of the right humerus. Meningitis was suspected because of drowsiness, irritability and crying at 3 months. It later transpired that shaken baby syndrome was a feature in this family.[1,2]

At 8 months he presented with a life-threatening extradural haematoma and stellate fracture of the right parietal bone.[3,4] At the same time an old fracture of the 8th rib was noted on chest radiography. After surgery and recovery he was seen several times for bruises, especially on the head and face. He died from a sudden blow to the abdomen that ruptured his liver and caused a waterhammer effect, with rupture of his right atrium, haemopericardium, cardiac tamponade and cardiac arrest. He had been seen by doctors more than 40 times. His death is an indictment of our child protection services.

His sister was born prematurely shortly after his death. She spent only a few days in the care of her parents and had several admissions for vomiting blood, petechiae, convulsions and irritability. No haematemesis or convulsions were ever observed by anyone other than the parents. She was removed at 6 weeks of age when a large unexplained bruise was found on her thorax.

The third child, a boy, was brought in at 6 weeks of age for crying, restlessness, sleepiness and a query of fits. At 2 months old he presented again and was found to be stuporous. A chest radiograph unexpectedly revealed healing fractures of ribs 3, 8, 9 and 10, at which point he was removed from his parents.

The fourth child remained with the couple during the court case and presented with developmental delay by the time of sentencing, probably the long-term sequela of having been shaken.

After the court case involving the death of the first child and injuries to the second and third children the mother received a 10-year sentence, as a result of which the fifth child was removed at 6 weeks of age. The father committed suicide while in jail for an unrelated offence. He had been found guilty on all charges in this case and would have received a long sentence.

The couple were charged with murder, assault with intent and child abuse. Both parents were found guilty of those injuries where both had apparently been present. Failure to protect the children, failure to remove them from the abusing parent, and collusion in hiding the real nature of the injuries from medical personnel all contributed to the culpability of the non-abusing parent.

The importance of this case lies in the following:

1. Not one of these injuries was witnessed by anyone other than the accused.

2. After being in court for nearly 8 weeks and having listened to the testimony of many doctors and others, there was no clarity as to how any one of the injuries had occurred. The couple lied consistently and for most of the injuries it was not clear which of the pair had assaulted the children. Under cross-examination it seemed that the parents either had not noticed the injury, or could give no plausible, coherent account of how the injury had occurred. They often presented more than one possibility. For example, the skull fracture was ascribed to the child either having fallen off the back seat of the car when the father braked suddenly, or to his having fallen off the bed the following morning.[5-8]

Child and Family Unit, Transvaal Memorial Institute for Child Health and Development, Johannesburg
Lynn Holford, MB BCh, MMed (Psych)
Department of Paediatrics and Child Health, Medical University of Southern Africa, PO Medunsa, 0204
Francois de Villiers, MB ChB, MMed (Paed), PhD, MFGP, DCH

3. The long-term pattern of repeated injuries, all compatible with non-accidental injury and incompatible with any medical condition, was important in finding the parents guilty.

4. The rarity of finding large bruises or fractures of long bones or ribs in very small infants who are non-mobile was accepted by the court as being indicative of non-accidental injury.

This case illustrates that it is worth taking such cases to court. Abuse continued even when these parents were under investigation, as well as during the court case. It is clear that removal of children is mandatory where chronic abuse is suspected.

Interestingly, one of the witnesses whose evidence was accorded most credit by the court was a mechanical engineer and not a doctor. He discussed height of falls, force of impact, possible mechanisms of landing, impact needed to break bones and so on, and was able to discredit the parents' explanations for the injuries entirely. This evidence was more easily understood than medical evidence.

Several important points emerged from the case that are essential for doctors working with children.

1. It is clear that doctors need to have a higher level of suspicion with regard to the possibility of abuse. The Child Care Act of 1978 (amended by the Child Care Amendment Act 86 of 1991) does not require proof of abuse, only a reasonable suspicion. If the report is made in good faith the reporter is immune from civil and criminal liability regarding its content. Failure to report is an offence.

2. Taking a careful history is crucial, no matter how time-consuming.

3. Adequate, clear clinical notes are essential. The parents in this case were intelligent, well-spoken people; they contested the doctors' evidence and claimed that notes were taken in a hurry, were incomplete or were inaccurate.

4. It is particularly necessary to determine whether there is a valid explanation for the presenting injury. As such, previous notes are crucial.

5. Any delays in presentation or any shopping around for medical care must be noted.

6. Parental attitudes must be noted, in particular lack of concern about the injury and lack of normal parental enquiry as to outcome and future prevention, as should contradictory explanations by the two parents.

What was most notable in the presentations of the doctors called to act as expert witnesses was that those doctors who had acted proactively when they suspected abuse were able to give clear explanations to the court and were impressive witnesses.

In contrast, those doctors (even when their medical care had been first class) who had failed to observe the necessary discipline of history-taking, or who had not made clear notes or had not had a high index of suspicion regarding possible abuse, fared less well as medical witnesses. One doctor had no notes at all and looked very foolish, which was no credit to the profession.

All legal aspects of the case were meticulously handled; the case may serve as a useful point of reference for anyone taking a case of child abuse to court. It is hoped that it will help to illustrate the necessity of disciplined clinical management, as well as the crucial role doctors can play in preventing child abuse. Finally, it also shows that court proceedings need not be daunting provided that testimony is medically sound and clear.

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