

Child Health and the Law : The Vulnerable Years

*Richard Brown**

I. Introduction

IT IS time to establish in law the obligations to children and youth to insure a safe and healthy future life. Our hope is in our children. It is with this assumption that we come together as an international and interdisciplinary working body.

Our charges are clear, to define legal ways to decrease poverty and deprivation of life's essentials for our children. The goals will be to begin to establish "a firm basis in law for what has hitherto been considered largely welfare and humanitarian concerns."

Malnutrition, reproductive health, contraception, immunization programs, and care of the newborn are some of the important areas to be considered in the overall concern of the child specialist. Other persons have greater experience in these areas. The author wishes to talk about some specific groups of children and young people with whom he has worked. They include runaway; homeless; incarcerated; HIV infected; abused and neglected; and street children and youth. Also, here are summarized two areas of environmental concern for children, namely, lead poisoning and later a presentation on air pollution.

The author learned that the classical

*M.D., FAAP, Clinical Professor of Pediatrics, University of California, San Francisco, Director of Ambulatory Pediatrics Services, San Francisco General Hospital.

medical model was often inadequate and even inappropriate in serving children in need. Having been trained in hospital and clinical care of children and youth, he was frustrated that all children could not be effectively reached. Over the years, he has learned that other systems of care and support are important along with the traditional clinical model. Medical services are only a part of the overall health care support system. Community leaders, peer counselors, community advocates are all part of the health care team. Often they speak in a voice better heard by community members and young people.

The legal profession has recently come forward with creativity and vigor in helping to clarify and define the law in ways which protect all children, including those at particular risk. This meeting demonstrates that new energy.

II. The foundation of child health - prevention

The family is the basic health foundation for the protection, nurturance, and development of girls and boys as well as youth. An area of health care often ignored and/or undervalued is the fundamental necessity of the family unit to maintain and to prevent disease in that child. Preventive care of the child by the family is the cornerstone for all paediatric concerns.

For many societies of the world, the

female child is at higher risk of inadequate nurturance, education, health care, and prospectus in life than the male child. There is increased advocacy for the protection and support of female children on a variety of fronts. This is a major legal challenge in many countries. Female sexual mutilation occurs in many African countries.¹ In many countries young girls are placed into prostitution and other abusive lifestyles where the family cannot support the female child. Female children need special legal and health advocacy in many places. This is an area of enormous importance today.

Poverty, disease, and social unrest disrupt the stability, strength, and integrity of the family. From the psychosocial point of view, the very foundation of the society is threatened and the future of the family and the child is in jeopardy. Refugee and transient families are at risk of major health problems and disease. This is also an area of major concern for many of us today.

The children's health provider gives support, information, counseling, and direct clinical care for the family with its child. The psychosocial history taking includes a careful assessment of the family situation, its functioning, its strengths and weaknesses.

Preventive education, and intervention are important in preventing psychological, social, medical, and development injury to the child. Prevention needs to permeate all aspects of child health. Preventive health care includes good nutrition, immunizations, and a safe environment.

Legal and legislative mandates are required to initiate protection and preventive health care for both girls and boys. Such efforts are cost effective in preventing costly care of a damaged, disturbed, or injured child, both physically, and mentally. The

1. Asha, Mohamud, *Female Genital Mutilation: A Continuing Violation of the Human Rights of Young Women* (1992).

healthy environment is to be sought for children, including a healthy culture, community, and family. Those laws which protect and support the integrity of the family are to be sought with clarity and vigor.

III. The normal vulnerability of the child

There are many ways to view the early development needs of an infant and child. A nearly universal view that is the infant develops best in a caring and nurturant environment which will allow the infant to feel that the world is a safe place. The basis for trust is established during this first year of life. Later resilience to stress is based on the firm footing of these first years of life.

The author once visited an orphanage with a group of non-professional adults. Infants were in cribs in a large ward. As we passed through the ward, the other adults were delighted by the searching, clammering, and bright-eyed nature of the infants. He was horrified. What they saw was the hopeful and alert searching. What he saw was profoundly desperate and distressed infants looking for someone to care for and nurture them. They were searching for "mother" for the nurturant figure so essential in that first year of life.

These children were being irreparably damaged through deprivation of a nurturant parent, family, or guardian.

During the second year of life, the child begins to explore outside the immediate protection of the parental figure. The foundations for basic learning and control are initiated. The child benefits from a safe, rewarding environment which is not only nurturant but also allows for exploration and experimentation. Playing becomes the primary work of the pre-school child.

If the "outside world" is dangerous and hostile, the child's development urges are blunted and damaged. The basic character of the child is jeopardy.

After the second year, there is a great spectrum of development possibilities in each family, community, society, and culture. These developmental tasks and opportunities are better through healthy and spiritual rituals can consolidate a sense of belonging and support. Developmental damage can be prevented throughout childhood and adolescence.

IV. Children's health needs

Beyond the developmental needs of the child, disease prevention and disease intervention are essentially part of the vulnerable years. Foremost for all children are adequate nutrition, sanitation, immunizations, and education.

Recent advances in oral rehydration and infant feeding has had a major impact in infant mortality from diarrhea. As fundamentally important as these advances are, the author have chosen to present selected environmental and social condition of particular high risk for girls, boys and youth.²

V. Children and youth in "high risk situations"

Legal support is distinct for certain groups of young people, those in high risk situations.

Because of the normal vulnerability of children and youth, they especially susceptible to developmental damage, neglect, deprivation, exploitation, toxic exposure, disease exposure, and abuse. Laws must not only protect the well being of the normal child but also those at risk. At the 1989 international conference on homeless youth in San Francisco, the term, "high risk children and youth" was accepted. The thought behind the change was that children and youth are often the product and/or victim of life

2. J. Grant, *The State of the World's Children*, (1991).

situations which put them at risk rather than having become high risk on their own terms, or by their own motivations. Since then most writing in the field has used this term.

VI. Children and youth at specific risk

To protect the child, legal considerations include issues of confidentiality, informed consent for care, parental notification, and the rights of children. Laws can protect the confidential relationship in sensitive issues including sexually transmitted disease mental health, substance abuse, reproductive health issues, and HIV testing. Without some form of legal protection, the child and/or family may be unwilling to reveal their fears and concerns about sensitive and difficult issues. On the other hand, certain problems are reported and investigated. They include suicidal and homicidal ideation and behaviour, physical and sexual abuse, and neglect. It is my experience that involvement of concerned adults is necessary for suicidal and homicidal youth.

Informed consent for medical care considers for importance of the patient's understanding of the purpose, method, and outcome of the proposed procedure as well as the ability to voluntarily allow the procedure or evaluation to be carried out.

The consideration of the extent and involvement of the parent in the care of the child is of importance to the health care of children. In early childhood, parental involvement is necessary. In adolescence, however, the transfer of responsibility from the parent to the young person begins. Each locality must define its own legal parameters regarding this transfer.

(i) *Lead Poisoning (an example of environmental poisoning)*

Lead poisoning is considered one of the most common and preventable pediatric

health problems in the United States. The great majority of cases go undiagnosed and untreated, even though enough is known about the sources and causes that preventing lead exposure can be eradicated. Lead is ubiquitous in the industrialized human environment and children are particularly susceptible to its toxic effects.³

Environmental sources include lead-based paint and lead-contaminated dusts and soils. In addition, children continue to be exposed to lead through the air, water and food, as well as occupations and hobbies of parents and caretakers. Lead in gasoline is still used at very high concentrations in many countries. Improperly fired ceramicware, leaded crystal and lead-soldered cans result in lead leaching into foods. Children can be exposed to lead from batteries and pigments, from consuming canned foods such as hot peppers and fruit products, and from living in the vicinity of smelters, refineries and other industries that emit lead.⁴

"Traditional medicines" and cosmetics (for example, surma or kohl used around the eye for decorative or medicinal purpose) contain substantial quantities of lead and other metals. Molten lead, leaded glazes, artist's paints and furniture refinishing may result in lead exposure.

The results of lead poisoning are developmental toxicity, with decrease in IQ, hearing, growth, then anemia, brain and kidney damage, and finally death.

Public education and legal support are necessary to identify, treat, prevent, and control lead in the environment. Screening ser-

vices, data surveillance, primary prevention plans and coordinated prevention activities involve public health agencies. Legislative and legal backup is necessary to sustain such a comprehensive and coordinated program to protect children

(ii) *HIV (human immunodeficiency virus), Sexually transmitted disease and premature pregnancy*

It has been more than a decade since the onset of the AIDS pandemic. It was not until the late 1980s that increasing attention came to the impact of the AIDS epidemic on children and youth. It was first determined that HIV positive pregnant women could pass the virus on to their in-utero children. In the late 1980s, HIV testing was begun on older children and youth. A very significant incidence in youth who are in high risk situations has been found.

Because the HIV virus does not cause any symptoms until up to ten years after infection, many children, youth, and adults carry the virus without any knowledge of infection. About 50% of those infected with HIV become ill 8 to 10 years after infection. Meanwhile sexually active HIV positive persons who do not use "safe sex" methods are spreading HIV to their sexual partners.⁵

The implications are alarming. Limited studies have found HIV-positive levels between 2% and 15% for street youth, both male and female in the United States, Brazil, the Dominican Republic, and Mexico.

In many countries, including India, condoms are distributed to truck drivers and other sexually active adults in an attempt to thwart the steady silent spread of HIV unknowingly through the population.

In developing countries in Africa, Asia, and Latin America, the male to female infection ratio is almost equal, indicating the predominance of heterosexual transmission. A higher male to female ratio countries to

3. *Preventing Lead Poisoning in Young Children*, Advisory Committee on Childhood Lead Poisoning Prevention (1991).

4. L.A Albert F. Badillo, *Environmental lead in Mexico: Reviews of Environmental Contamination and Toxicology*, (1991).

5. Mechai Viravaidya, *AIDS in the 1990's : Meeting the Challenge* (1991).

exist in North America and western Europe, although the ratio is shifting to increased heterosexual transmission. Worldwide, two-thirds of all HIV infection are due to heterosexual transmission. It will likely increase to 75-80% by the year 2000.⁶

The implication for children and youth is that increasing numbers of children are being born infected. Also the spread occurs in sexually active heterosexual youth as well as in sexually active homosexual youth.

In addition, there are increase in other sexually transmitted diseases, premature pregnancy and clandestine abortion.

The implications in countries that have not done extensive HIV testing is grave. As new data are collected, there appears to be an ever increasing incidence in many countries.

Legal tasks include child abuse investigative and support systems, legal support for youth at risk, and legislation supporting safe sex policy, particularly the use of condoms. School and local regulations can allow and even encourage the distribution of condoms in and through school or through community agencies. Condom use and safe sex are the only present means to decrease the spread of HIV through sexual means.

(iii) Abuse and neglect

An animal protection law was used to defend abused children in the early twentieth century in the United States. Physical abuse in children was first extensively described in the literature during the 1950s.. Since then, child protection laws and systems have developed to identify, investigate, defend children, and prosecute adults involved with physical mental sexual abuse of children and adolescents.

Around the world, many children are

working at low pay and often under dangerous conditions. With extreme poverty, children work to sustain themselves and sometimes their family. The United Nations' International Labour Organization estimates 200 million working children in the world. These children are at extreme risk for injury, exploitation, and prostitution. Their labour prevents them from attending school or interferes with their school work and their developmental needs to play and "be children." Not all work is harmful. However, regulations are needed to prevent the exploitation of children and to minimize their chance of injury and disease. This requires close collaboration between the medical, police, and legal sector.

VII. The sexually exploited children and youth

Adolescence can be a difficult time, filled with uncertainties, pressure from peers, dangerous environments, and often conflicting messages from adults, the media, and the society overall. For youth who are sexually exploited or abused, the developmental tasks of adolescence can be confounding.

Incest has a profoundly detrimental effect on normal early development. When family members or friends of the family are involved, it is often a dangerous and taboo issue with that family system. The family secret is not revealed and the child is compromised. Laws and child abuse programs are necessary to bring the problem to light and to protect the child.

An example of this abuse is reported by the Bangkok-based Center for the Protection of Human Rights. They estimate that 800,000 girls under the age of 20 years work as prostitutes in Thailand. "Brothel owners buy young girls for roughly the equivalent of one year's earnings for a low income Thai farmer."⁷ Child prostitution and child sex trade is prevalent in many of the major cities of the world, both east and west.

6. M. Merson, *AIDS in the 1990s: Meeting the Challenge* (1991).

7. Kamla "A Campaign Against Child Prostitution" in *Development Foundation for Women* (1990).

The human immunodeficiency virus (HIV), (AIDS virus) is being acquired and spread through these young people. Laws are needed to investigate and outlaw such criminal exploitations and to prevent the spread of HIV and other sexually transmitted disease as a major public health concern.

(1) Incarcerated youngsters

Youngsters brought into the juvenile justice system are at higher risk for a variety of medical, emotional, and psychosocial conditions. The medical literature presents a variety of problems at a rate for incarcerated children higher than the outside population. Of particular importance is the higher incidence of violence, physical abuse, substance abuse, HIV, other sexually transmitted diseases, psychological disorders, and a variety of familial problems.⁸

Juvenile court justice requires the major leader of a judge level position to insure that the protective rights and care of children are maintained. The leader must work in collaboration with the medical, public health, and social work staff to meet the children's needs.⁹

Wards of the court are in great need of medical care. Health has been neglected in their lives. Programs caring for incarcerated and delinquent young people requires a close collaboration among the legal staff (probation), clinical health staff, and the counseling

8. J. Farrow R. Deisher R. Brown J. Kulig Kipke M. "White Paper on Health and Health Needs of Homeless and Runaway Youth", *The Society for Adolescent Medicine* (1994)

9. J. Costello, E. Jamison, "Legal and Ethical Duties of Health Care Professionals to Incarcerated Children", 8 *The Journal of Legal Medicine* 191-263 (1987).

10. G. Barker F. Knaul "Exploited Entrapreneurs: Street and Working Children in Developing Countries", *Childhope Working Paper*(1991).

staff. Disempowered youth have lacked preventive education, basic health care and screening, immunizations, and treatment of more complex problems. Previously untreated conditions include chronic diseases (parasites, tuberculosis, sexually transmitted diseases), orthopedic conditions, pregnancy, injuries, and addictive problems.

(2) Street children (homeless and runaway)

The conditions leading children to the street is often poverty, parental problems, lack of parents, and serious social conditions in the family, community, and/or society. Street life has a great appeal for young people in many cities. They find freedom, peer groups, marginal occupations many of which are illegal, and a way of life., Street workers know that the streets are addicting with their considerable appeal.¹⁰

The author began to explore ways the better understand what would serve street children. While he accompanied a social workers on the streets at night in downtown Rio de Janeiro, a pregnant young woman with abdominal cramps had been unable to be seen in an emergency room and came to the social worker for help. The solution was simple. the social worker had obtained a contract with lawyers who would take such a child to the emergency room and insure that care was provided. The author was amazed that this kind of effort was required in order to obtain essentials of health care.

This was an early experience for the author to see how important legal advocacy, protocols, and legislations are to insure essential services. Since then I have learned of other ways to insure that children are attended to and better served.

There are over 110 million street and

homeless children and youth in the world today.¹¹ Many of them live on the streets in major cities of the world. Most have regular contact with family, but a minority have little or no parental connection or knowledge. A substantial number of street children work in marginal occupations and even help to support their family. The occupations include legal activities such as delivery, scavenging, and selling small items, and include illegal activities such as drug dealing, stealing, and other risky and dangerous activities. Often these children are brought into the juvenile justice system during their childhood. This time can be seen as an opportunity for intervention and prevention.

UNICEF divides street children into two basic categories. The larger category is that of children "on" the street who work during the day and return home to their families at night. They often develop their own entrepreneurial occupations. The second category is children "of" the streets. These children may or may not have ties with their families.¹²

The young street youth is at high risk of becoming involved with survivor sex, violent robbery, and the drug trade. In many parts of the world, street girls are at particular risk for physical and sexual abuse which carries a high mortality rate. They are at risk of acquiring sexually transmitted diseases, HIV infection, and tuberculosis, as well as becoming involved in serious drug addiction, serious mental health problems including suicidal behaviour, and pregnancy. Knife and gunshot wounds are commonplace in many cities. Common ailments include infected lacerations, burns, contusions, parasites, and a variety of "sores"

11. United Nations, *Department of International Economic and Social Affairs* (1986),

12. UNICEF, *Executive Board*, 1986.

VIII. General principles for healthy children

The pediatric view of early development and the needs of children and youth have already been described. In the face of those developmental needs, few examples of major problems of children and youth have been listed. Many issues have been excluded including parasitic disease, anemia, smoking, alcohol abuse, malnutrition, diarrhea, and other major problems.

As a pediatrician list of steps toward an improved environment for child is submitted. They are:

(i) The first step is the *recognition* of the conditions and the willingness of various professionals to understand the origins of the conditions and the process by which the disease and conditions are promulgated and maintained. This meeting is open to the recognition of the problems which girls and boys face in their environments and in their personal lives. Sensitive issues include the homeless, the refugee, the abused, the HIV infected, and in injured;

(ii) The next step is to recognize that no one professional group can improve the conditions unless there is clear *professional collaboration* sharing, and mutual support among leaders. It is inherently necessary to obtain legal definitions and laws to insure that the better interest of the child is served. This forum is continuing that important tradition on an international and national level;

(iii) Next is to define ways to prevent these serious conditions, using the experience of communities and persons who have courageously embarked on solutions and *interventions*. This forum has many of those people present and will seek out more of these creative individuals;

(iv) The next step is forging out the *specific policy and legal direction* to better protect the health of children who are

presently at risk, who need preventive care and screening, who need early intervention of serious conditions, and who need care for serious and often life-threatening conditions. The list of problems is vast and the *need to prioritize* is necessary. This forum has the expertise to continue that important and historic process.

(v) As a pediatrician, it is proposed that the constant basic question is, "*Will this policy, law, or legislation benefit and promote the health, support and well being of the child and his or her future life?*" Primary preventive care and health screening are a part of maintaining the overall health of the child.

(vi) There are a multitude of specific questions relating to the law and children's health. They include age of majority for various developmental phases when the child can receive health care in a confidential manner. There are laws needed for health education and family life education at different development phases. An individual school or school district may legislate its health program. Reproductive health care and contraceptive care education is needed for young people in and out of school. There are ques-

tions about the rights to confidential care for drug abuse, mental health problems, and other sexual concerns, including HIV testing. Children and youth with disabilities are often neglected by comprehensive health systems. Policies and laws defending the health concerns of disabled children are often necessary. Other legislation is necessary for mental health, occupational health, injuries, and a variety of public health concerns.

It is difficult for us to face some of these pressing issues of our times, especially the victimization and exploitation of children. It takes courage to contend with those difficult and painful problems that afflict our children. The problems cross socio-economic, ethnic, national, and religious barriers. These problems involve us all, and the legal solutions are our challenge.

Graham Greene said that, "there is always one moment in childhood when the door opens and lets the future in."

Let us hope that what we do here can help open that door to a bright and healthy future for all children.

■ ■