



What We Don't Talk About When We Talk About Mandated Reporting

By Vanessa Levine-Smith



We learn that we have a legal duty to report child abuse and neglect. We learn about ethical responsibility. We learn to go to our supervisors if we have even the smallest suspicion. We learn our licenses could be revoked if we don't make the call, and that children could die. We learn that Child Protective Services will take care of it. But most of us fail to learn what that call might mean for the family. Most importantly, we fail to learn that the decision whether or not to report is always fraught, and that it should always remain a problem for us.

Take, for example, a mom I know. She has two daughters, and works six full days per week so that she can feed and house her small family. Between her job at the car factory and her freelance work as a hairdresser, she brings her baby to the hospital for a regular follow-up appointment. The doctor tells mom that baby might have a hearing problem. "Bring her back in a month," he says. Mom takes the baby home, and within a week, baby is very obviously responding to all kinds of noises. Mom is relieved. She calls the hospital a few times, leaving them messages that baby can definitely hear and there is no need for another follow-up. The hospital calls back and leaves a message saying they

still want her to come in, for protocol's sake. But mom does not have time or energy for a needless trip to the hospital. After a few rounds of phone tag, she starts ignoring their calls. She does not get their letters. The hospital reports mom to Child Protective Services (CPS) for neglect.

Does it matter? This time, no. The CPS investigator comes by and can see that mom is taking good care of her kids. The case is closed. The problem occurs several years later, when mom gets into a screaming match with someone close to her. To get revenge, that person calls Child Protective Services and makes several accusations. The assigned CPS investigator looks at the case file, and sees that there was a previous report of neglect. Although it was resolved, the past report lends credence to the current report. She calls mom, but mom's phone has broken and she does not get the message. To the investigator, mom's lack of response is further proof of neglect. The investigator decides the children's safety is in clear and imminent danger; she fast-tracks the case, and instead of taking the normal 30 days for a complete investigation, the children are removed from mom's home within 48 hours of the report.

Mom gets poor advice from her defense lawyer who barely knows her case. The lawyer tells her to plead guilty to the false allegations. Mom has no idea what the timeline is, or what the court process is going to look like; it's all foreign to her and she cannot get her bearings. Her own past trauma is re-triggered, and it is hard to contain. The court and her caseworker note that she yells too much. They think she needs "to take responsibility" for the neglect. They mandate mom to perform weekly random drugs screens, which means that during the greatest heartbreak of her life, she cannot have a drink without it working against her. At first she does not even understand that she is being tested for alcohol; as soon as she understands, she stops drinking completely. She still has to go to Alcoholics Anonymous Meetings multiple times per week as a kind of performance for the court. She quits her job because she cannot go to all her case



mandated appointments while holding down a work schedule. With no money coming in, she moves out of her apartment and into her mother's home. In sum, the mechanics of the system force her into the role of a neglectful, alcoholic, poor mother while simultaneously upending her life.

Interlocked poverty, trauma and an enormously flawed system create a domino effect; the daughters are placed outside of the home for two full years. During this time, one of those daughters is sexually assaulted by a member of her foster care family.

The Parents

If CPS only protected children from hopelessly abusive parents, the brokenness of the system might not be cause for much concern. Yet the data suggest that about 75% of all cases are due to neglect rather than abuse (U.S. Department of Health & Human Services, 2016), and “neglect” is so intertwined with poverty that it becomes challenging to tell the two apart. For example, most states define neglect to include a parent who knowingly allows a child to be deprived of food, clothing, shelter or care. Poverty is also defined in terms of inadequate food, clothing and shelter (Duva & Metzger, 2011). Research consistently finds that children from low-income families are overrepresented among maltreated children at a ratio of 3:1 or higher, and housing is one of the biggest barriers for parent/child reunification (Johnson-Reid et al, 2013).

The experience of getting investigated by CPS is not just logistical; it increases the felt sense of surveillance, control and hierarchy that characterizes mass incarceration, in addition to race and class relations across the United States. The actual process of a family court case is also debilitating. In the opening panel at the University of Michigan's 2016 Innocent Until Proven Poor conference, Professor Vivek Sankaran observed that parents feel powerless, alone and overwhelmed



by the legal maze in which they suddenly find themselves. His concerns are grounded in his extensive experience as a family court lawyer, scholar and supervising attorney at University of Michigan's Child Advocacy Law Clinic. Compounding the problem further, parents often find that caseworkers are disrespectful towards them, and that they have little influence in creating the mandated service plans that are supposed to help them make their homes safe enough for their children to return (Dale, 2004; Kapp & Propp, 2002).

The court process itself is often problematic. Despite some new and promising structural interventions, inadequate legal representation is a well-known issue for poor parents (Sankaran, 2013-2014). Once in court, parents are held to ever-rising standards. In the PBS documentary, *Tough Love*, legal advocate Alena Ciecko describes the lawyer's need to routinely focus the court: “We're often in the position of trying to pull the court back to the baseline of what the system is supposed to be about. It's about safety. Not about perfection. As we get going on analyzing these parents and these families, [they start asking] wouldn't it be nice if these parents could get along in every situation? Wouldn't it be nice if these parents had every possible parenting skill and discipline skill? It's just not realistic. It doesn't exist in my life. It doesn't exist in most parents' lives.”





The Children

While the child welfare system regularly diagnoses and treats children's PTSD, complex trauma often goes unaddressed or misdiagnosed (Jim Casey Issue Brief, 2012; Kisiel et al, 2013). This is problematic because the vast majority of children and youth in foster care have been exposed to adverse events that cause complex trauma—such as physical abuse, sexual abuse, emotional abuse, neglect and/or domestic violence (Greeson et al, 2011). On the individual level, the cumulative effects of these experiences are likely to disrupt neurological, emotional, behavioral, interpersonal, physiological and cognitive development (for a review, see Kisiel et al, 2013).

Such disruptions impact a child's life trajectory with a bio-psycho-social constellation of obstacles. To begin with, foster youth who have experienced "adverse event exposure" are much more likely to struggle with post traumatic stress and to receive subsequent clinical diagnoses (Greeson et al, 2011). As foster youth age, they often display an increasing amount of trauma and mental health symptoms (Jim Casey Issue Brief, 2012), which suggests that core needs are not being met. The effects last well into adulthood. The highly-cited Adverse Childhood Experiences (ACE) Study has shown consistently strong correlations between traumatic childhood events and later substance abuse, depression, anxiety and chronic obstructive pulmonary disease. Other studies confirm that youth in the foster care system are at high risk for a range of emotional, cognitive and behavioral issues that negatively impact their adult lives and their families (for a review, see Pecora et al, 2009).

Lacking a trauma-based framework, the child welfare system treats children and youth for their problematic symptoms, but not the underlying complex trauma. This approach not only neglects the psychological needs of a vulnerable population; it also reifies the stigma that foster kids are bad

THE MARYLAND HOME FOR FRIENDLESS COL. CHILDREN.



"PURE Religion and undefiled before God and the Father, is this To visit the Fatherless and Widows, in their affliction, and to keep himself unspotted from the world."— ST. JAMES. i. 27.

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kids. Foster parents can become frustrated while foster youth experience alienation from the community, become more likely to withdraw, drop out of school, go through multiple foster placements, and face juvenile court (Greeson et al, 2011). Every single one of these consequences is re-traumatizing and deepens maladaptive responses to complex trauma (Conradi et al, 2011). Simultaneously, the social stigma grows stronger in a crescendoing vicious cycle: according to the Casey Foundation, one in five foster alum will become homeless after the age of 18; 71% of young women will be pregnant by age 21; and one in four foster youth will be involved with the justice system within two years of leaving the foster care system (Courtney et al, 2005).

Social Injustice

The connection between the foster care and prison system is a particularly important one. In this age of mass incarceration that disproportionately imprisons poor African American citizens, our penal system perpetuates a long American tradition of racist structural violence (Muhammed, 2011). The foster care system has a similar demographic profile; African Americans are disproportionately represented (Crane & Ellis, 2004). When African American children are reported to CPS, they more frequently come from poorer communities than their Caucasian counterparts, and allegations are more frequently made for neglect





than abuse, which signals poverty (Johnson-Reid et al., 2013). In hospitals, black families are also significantly more likely than white families to get CPS report, even when children show the exact same marks of abuse (Lane et al, 2002). Given the correlation between a foster care placement and eventual incarceration, we can see that instead of providing adequate intervention and support, the foster care system sets back a population that is already beset by severe social disparities.

This system falls dangerously short of the ideal to make a collective, integrated effort to strengthen families. Rather, the systematic disempowerment and marginalization of poor families is powerfully enacted and routinized in the child welfare system. Dorothy E. Roberts, a scholar, social justice advocate, public intellectual and professor at University of Pennsylvania, sums it up: “If an outsider looked at the American child welfare system, she would likely conclude that this is not a system designed to promote the welfare of America’s children. Rather, it is a system designed to regulate, monitor, and punish poor families, especially poor Black families” (Roberts, 1999, p. 64).

The Tension in Child Protection

It is never simple. Abuse and neglect are

real threats that remain under-reported (Sharples, 2008). According to the Child Welfare Information Gateway (2015), approximately 1,484 children officially died from neglect or abuse in 2013. The real number is expected to be higher. Sometimes CPS caseworkers go out on a limb to help families. Sometimes the families get useful services through CPS involvement. Sometimes CPS is the only answer. Even if the system is staggering along, it can save children who need saving.

So, what should we do when faced with a situation that is clearly about poverty and not apathy? For example, if a family’s electricity has been turned off because the bill has not been paid and there are children in the house, we are supposed to make a report to CPS. There is no getting around the fact that making the call to CPS makes us complicit in wider injustice. We also put the family in the hands of an unreliable system; if they get the wrong investigator, things can go terribly awry, just as they did for that mom I know. Or, the investigation might save children from freezing on a winter night.

Because mandated reporting can be such a black hole for us, it becomes easy to impulsively veer in one of two directions. On the one hand, we can become trigger-happy with mandated reports, imagining that it is better to be safe than sorry. On the other hand, we can ignore real danger because we want to protect the family from state intrusion (Pietrantonio et al, 2013). These conflicting impulses—protect children vs. preserve families—is not just a personal problem for the mandated reporter. They characterized the central tension in child welfare policy. It is called the pendulum.

The literature on child protection policy regularly invokes this pendulum image to illustrate a longstanding debate. Legislation and public opinion have continually veered towards family preservation, then back towards protecting children. In short, we have been trying and failing to get child protection right for a very long time. It is worth taking a closer look at where we stand now, at the policy level, because every mandated report takes place within the context of the pendulum’s swing.





Policy Pendulum

In the late 1970s, there was a growing concern that overzealous Child Protective Services case managers were placing children in foster care without providing adequate support for parents (Crossley, 2002-2003). The Adoption Assistance and Child Welfare Act of 1980 aimed to preserve families by requiring states to make “reasonable efforts” to keep them together with case plans and social services.

Over the next 15 years, the number of children in foster care placements increased by 89% (Selye, 1997). By 1997, the pendulum was swinging in the other direction. Instead of the problematic caseworkers, the concern was now that parents were not being responsive to the state’s “reasonable efforts,” and cases were lasting too long. Around the same time, several high-profile child deaths unnerved the public (Crossley, 2002-2003). When the proposal for the Adoptions and Safe Families Act of 1997 (ASFA) came to the Congress floor, graphic photos of child victims were passed around, and tragic stories of reunification cases gone awry were highlighted (Roberts, 2012). The need to protect children appeared to be both urgent and extreme. In addition, leading psychologists theorized that children will easily and naturally bond with their “psychological parents” when separated from their biological parents. The theories gained popularity both in and out of Congress (Roberts, 2002). Thus without actual evidence, the parent-child bond was diminished in the same moment that parental apathy and threat gained prominence in child welfare legislation.

So what did ASFA do? ASFA’s solution intended to stem the rising tide of foster care children, while increasing children’s wellbeing, health and safety through adoption. The law used speed as its method. States were allowed to “fast track” certain cases, and required to expedite the foster care process across the board; if a child had spent 15 of the past 22 months in foster care, the

caseworker was mandated to file a petition to terminate parental rights. Concurrently, ASFA and additional programming provided states with monetary incentives to increase adoption rates. In the three short years following the passage of ASFA, adoption rates increased by 57% (United States General Accounting Office, 2002).

It is important to take into account that ASFA came on the heels of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which restructured and rescinded the financial and social support for families. Thus the federal government mandated that states protect children from abuse and neglect, but diminished the benefits to provide basic economic support for poor families. This put children at far greater risk. As Clinton’s one-time appointee, Peter Edelman, said in his 1997 editorial, PRWORA “does not promote work effectively, and it will hurt millions of poor children by the time it is fully implemented.” It is problematic when parents are forced to hold the blame for a destructive system.

Social Workers and the Pendulum

The NASW Code of Ethics states that our “primary goal is to help people in need and to address social problems,” yet these priorities come into conflict when we are faced with our obligation as mandated reporters. Before making the report, it is vitally important to think through all the factors, so that we do not become swayed by the reactive pendulum. This does not mean we should dilute our social activism or lessen our protective ardor with a dry approach. Rather, it means we must hold both priorities, and respond to the inherent fear, panic, ambiguity and injustice in child welfare from a place of real awareness.

For those of us interested in programmatic interventions, the “reasonable efforts” provision of the 1980 bill remains an opportunity, suspended in the backdrop of federal legislation. States, courts, caseworkers, lawyers and social workers have the latitude to bring “reasonable efforts” back to the fore and redefine it with creative and inclusive initiatives that prioritize flexibility, integration, balance and family





support. The pendulum will continue to swing, but perhaps its arc will taper as we discover the places where preservation and protection meet.

Additional Information

When considering making a report to CPS, these questions can serve as a jumping off point for a conversation with your supervisor:

- Is my assessment as thorough as possible?*
- Is the abuse or neglect chronic, or is it a one-time crisis?*
- Can I collaborate with other social service providers to solve the problem, without involving CPS?*
- How do I define neglect and abuse in this situation?*
- How is that definition culturally informed?*
- How would the parents describe their actions? Would they disagree with my assessment?*
- If the parents were wealthy or Caucasian, would I be less likely to make a report?*
- If the parents were poor, Black or Hispanic, would I be more likely to make a report?*
- How might intergenerational trauma be playing out in this situation?*
- How is poverty playing out in this situation?*
- Am I being complicit in parental abuse or in systemic injustice?*
- If I must make the report, what are the pros and cons of notifying the parent before making the report?*
- If I must make the report, how will I word it so that the least amount harm is done?*

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