LEGAL ISSUES IN THE USE OF CPS RISK ASSESSMENT INSTRUMENTS

—by Thomas F. Curran

Historically, risk assessment has been conducted informally by child protective services (CPS) workers who have relied on general policy and practice guidelines and, ultimately, on subjective judgment. In the absence of formal, scientifically tested assessment methods, decision making by "gut" reaction has been common in CPS practice. Within the past ten years, however, partially in response to an increase in CPS reports (resulting in larger caseloads), an increase in the complexity and severity of child maltreatment cases, and diminished resources at every level of intervention (Wiese & Daro, 1995; American Humane Association, 1995), structured risk assessment instruments (RAIs) have been developed.

At least 42 states now use some form of RAI as part of their customary CPS practice (Tatara, 1995). In fact, as will be examined later, several states have mandated the use of some form of risk assessment in their CPS statutes (e.g., Pennsylvania, Florida and Washington). Despite the growth and popularity of RAIs, there is a clear lack of consensus about almost all issues related to CPS risk assessment (Starr, DePanfilis & Hyde, 1994). Recognizing the limits of any legal analysis, particularly of controversial and still developing phenomena, this article nevertheless attempts to offer a legal perspective on the current state of RAIs in CPS practice. This discussion focuses on certain legal benefits and immunities, and areas where CPS agencies and caseworkers using RAIs are potentially vulnerable to liability. As of this writing the author is aware of only two cases[1] in which liability or disposition rested to any degree on the use of an RAI. Thus, much of the legal analysis here concerning liability that RAIs could create or to which they could contribute is largely theoretical.

While the majority of abusive adults were abused as children, only a minority of those who were abused ever become abusers.

Current issues and problems

Assessing the risk or potential risk of future maltreatment to children is certainly not a new concept in CPS practice. What is new, and what is arguably even having a detrimental effect on continuing research efforts and the implementation of various models, is the ever-increasing elasticity being imposed on the concept.

Vitally important questions relating to risk assessment in CPS remain without clear answers: What potential risk factors warrant inclusion in an RAI? What criteria should determine the selection of key terms such as risk and harm (Tatara, 1995)? How should such terms be defined? In addition, legitimate and serious concerns about the quality of all RAI research have been widely acknowledged for years (Plotkin et al, 1981; Leventhal, 1982; Howing et al, 1989; Hutchison, 1990; Besharov, 1981; McDonald & Marks, 1991; Gelles, 1991; Wald & Woolverton, 1990; Pecora, 1991; DePanfilis & Scannapieco, 1994; Doueck et al., 1993; Doueck, Levine & Bronson, 1993; Reid, 1993; Murphy-Berman, 1994; National Resource Center on Child Abuse and Neglect, 1994; Milner, 1994; Milner, 1995; Gelles, in press). Still, no instrument has passed both statistical validity and reliability, nor has a consensus been reached regarding even what level of reliability would be sufficient (Kern, 1995). Although most RAIs derive their criteria from consensus about research on children who have been maltreated and/or placed in out-of-home care, most models still have not been subjected to rigorous field evaluation (DePanfilis & Scannapieco, 1994). While some instruments have produced high interrater reliability within the controlled neutrality of scientific settings, they have not done so in actual practice, where proper implementation of all RAIs has been documented to be very problematic (DePanfilis, 1995).

Even a cursory review of the risk assessment research will show that current instruments vary in terms of the type, content, and scope of information used (Murphy-Berman, 1994). Nearly all of the research that has been conducted to identify risk factors is descriptive, consisting largely of surveys, summaries, case record reviews, and case studies (Pecora, 1991).

In addition, because nearly all of the RAI research has been retrospective, it has lacked the ability to follow a cohort of families over time to assess any changes in maltreatment rates. Studying child maltreatment only retrospectively can produce dangerously misleading results. Retrospective studies, for example, find that as many as 90% of identified perpetrators of maltreatment were abused as children (Egeland, 1993; Kaufman & Zigler, 1993). Examining child maltreatment prospectively, however, reveals that only about 30% of those who were abused grow up to be abusive caregivers. Thus, while the majority of abusive adults were abused as children, only a minority of those who were abused ever become abusers. "History of abuse as a child," therefore, is actually a weak predictive factor (Gelles, in press). Nevertheless, nearly all RAIs, especially the matrix approach, place great weight on this variable.

Such problems with the RAI research have produced implementation, or practice-related, problems as well. Improper implementation, for example, of even the most scientifically sound RAI (Doueck, Levine & Bronson, 1993), has been well documented throughout the literature (American Humane Association [AHA] & American Bar Association [ABA], 1993; DePanfilis [in press]; DePanfilis & Scannapieco, 1994; English & Pecora,

[1] See, *Wendy H. v Philadelphia*, 849 F. Supp. 367 (E.D. Pa. 1994). In re: *Stephanie F.* (all other identifying information is being withheld because this is a Juvenile Dependency court matter that is still open).

continued on next page

Use of CPS Risk Assessment Instruments

continued from page 15

1994; National Resource Center on Child Abuse and Neglect, 1994). In addition, the most commonly reported and substantiated type of maltreatment—neglect (Wiese & Daro, 1995)—may be minimized (Pecora, 1991). There is also strong evidence that using an RAI has little influence on the effectiveness, nature, or quality of CPS investigators' work (AHA & ABA, 1993).

Perhaps the greatest concern about RAIs is that some of the instruments currently in use, even if implemented precisely according to design, may simply have no practice or scientific value. Matrix models, for example, are actually single-dimension scales that identify a certain number of factors presumably associated with child maltreatment. Ratings of these factors are then added up and overall severity and risk are scored at two points in time. As is the case with many models, use of this type of model is entirely subjective, fails to measure stress, and does not provide for measuring behavior change. Too often, compliance with service plans is a CPS worker's only measure of change in abusive behavior—even if a parent, according to all the evidence, clearly abused his or her child but continues to deny any abuse or neglect (Gelles, in press). Few RAIs have proven the ability to effectively measure or conceptualize behavior change. The example identified in this issue (Holder & Lund) presents a narrow exception.

Perhaps the greatest concern about RAIs is that some of the instruments currently in use, even if implemented precisely according to design, may simply have no practice or scientific value.

Unfortunately, risk assessment instruments are frequently presented as necessary in virtually all decisions and issues involved in child maltreatment cases—a role that no single instrument could possibly fill. By continuing to expand the uses and practice expectations of instruments that have generated so much disagreement and, concomitantly, so little empirical support, the child protective community is jeopardizing any lasting contributions RAIs might make to child protection. In addition, such efforts may serve only to place CPS workers in an increasingly uncertain and legally vulnerable position.

The four most popular RAIs being used (discussed in greater detail elsewhere in this issue)—the matrix approach, a derivative of the Illinois Department of Social Services CANTS 17B (1995/1996 [a] and [b]); the empirical predictors approach (Baird, 1988; Johnson & L'Esperance, 1984; Leventhal, 1982); family assessment scales (e.g., the Child Well-Being Scales; Magura & Moses, 1986), and the Child at Risk Field (CARF) (Holder & Corey, 1986)—are based on more than 30 years of child abuse and neglect research literature. The child protection field, however, cannot even reach consensus on how to define risk assessment. National child welfare organizations and those whose focus is specifically maltreatment provide distressingly little help or guidance on this or other risk assessment-related problems. The National Association of Public Child Welfare Administrators' (1988) guidelines for model CPS delivery, for instance, note that protective services are provided "to strengthen families, to enable children to remain safe in their homes, and to temporarily remove from parental custody those children who are at imminent risk from abuse." Yet they never mention risk assessment or define imminent risk. The Child Welfare League's (CWLA, 1989) *Standards for Service to Abused and Neglected Children and their Families* devote less than one full page to risk assessment, and offer no specific direction for what factors place a child at risk for maltreatment or how to assess such risk. Other organizations, such as APSAC, the National Committee to Prevent Child Abuse, and the International Society for the Prevention of Child Abuse and Neglect do not even have general policies or standards relating to RAIs. To an attorney representing a parent whose child was found to be abused and subsequently placed based on the use of a RAI, such omissions and lack of consensus could have great impact, particularly in Juvenile or dependency court proceedings.

Seemingly structured risk assessment instruments understandably have tremendous appeal to overworked, poorly trained social workers whose job it is to make difficult, emotionally charged decisions about the safety and well-being of children. In the present social and political context of ever-increasing demands on and ever-decreasing supplies of human service resources, the function of CPS decision making has been to allocate services and resources to children based on their individual risk of maltreatment. Thus, reliable and valid decision making represents the linchpin of current child protection systems (Lindsey, 1994).

The critical question, then, from a legal and service delivery perspective, is whether CPS workers possess the training and the tools to conduct investigations that result in accurate and reliable assessments that adequately protect children. The available data suggest that the answer is no (Lindsey, 1994). Professionals in CPS, particularly those in the RAI community, would be wise to revisit Wald and Woolverton's (1990) cautionary assessment of RAIs. With the tremendous increase in public child welfare liability cases throughout the country, instead of resting comfortably under the presumed ubiquitous blanket of the U.S. Supreme Court's 1989 decision in *DeShaney v. Winnebago County Department of Social Services* (1989), CPS supervisors, administrators, and attorneys should also consider Reid's (1993) more recent comment on RAIs that "if we cannot specify the parameters of risk and the empirical evidence for their viability, CPS has no objective, scientifically based rational foundation for its decisions" (p. 88). The potential

continued on next page

Use of CPS Risk Assessment Instruments

continued from page 16

legal significance of statements like this as well as the National Resource Center on Child Abuse and Neglect's (1994) acknowledgement, after reviewing all the available RAI research, that "to date, the promise of risk assessment to improve decision-making has not been realized" (p. 7) can no longer be minimized.

Legal issues involving RAIs

The examination presented here of some of the controversies and problems currently surrounding risk assessment in CPS, and specifically the use of RAIs, is essential to any discussion of the potential legal implications or liability that RAIs might present. To date, relatively little has been written specifically about the legal implications of using RAIs (Davidson, 1992; Doueck, Nokejl & Levine, 1991; DePanfilis & Jones, 1990; Plum, 1994; Wald & Woolverton, 1990). As RAIs become more materially involved in litigation at all levels, this will surely change. This section briefly discusses some legal issues related to the practical applications of RAIs, including some areas in which the use of RAIs potentially presents special liability concerns for CPS workers and agencies.

All child welfare practice, especially protective services, has become heavily regulated at every level of government. There are laws, case decisions, regulations, policies, procedures, and operations manuals to address virtually every practice, including the use of RAIs. This increased regulation obviously creates an increased likelihood that CPS workers, their supervisors and agencies, and even the local municipality, will be held accountable—not just for their actions and decisions, but for the means by which those actions and decisions are made.

An RAI that is written into a practice manual could easily be regarded by a court as a legal standard of practice set by the county and result in the imposition of a legal duty on the worker.

Perhaps in no area of law has this increased regulation opened the door to more lawsuits than in federal court claims brought under the Civil Rights Act (42 U.S.C. §1983), commonly referred to as "Section 1983" actions. Section 1983 allows a person to recover for the deprivation of any constitutional right or violation of federal law "by a *person* acting under color of state law" (*Parratt v. Taylor*, 1981, emphasis added). The phrase "under the color of state law" is now so broad that it means the same thing as "state action" or "an action undertaken by a government employee" at any level (*Latisha A.*, 1994). All county child welfare workers fall under this definition, and are therefore potentially vulnerable to Section 1983 liability. It is significant to note that the duties of most government child welfare workers are discretionary in nature and, as such, provide them with either absolute, or, more likely, qualified immunity for their actions (*Nation v. Colla*, 1992; *S.L.D. v. Kranz*, 1983; *Chayo v. Kaladjian*, 1994; *Fanning v. Montgomery County CYS*, 1988, *Wendy H. v. Philadelphia*, 1994; *Olson v. Ramsey County*, 1993; *Harlow v. Fitzgerald*, 1982; *In Re City of Philadelphia Litigation*, 1995), provided they are not grossly negligent, unreasonable, willful, or wanton (*Wendy H.*, 1994).

In addition, state tort claims acts generally provide immunity from liability for the duties performed by CPS, provided they are discretionary. A CPS professional is strongly advised to consult his or her county attorney regarding how the county agency is using the RAI, and to determine whether its implementation is discretionary or could be classified as a ministerial function. Ministerial duties would receive far less statutory protection, and possibly even none. A CPS professional should also determine whether his or her state's tort claims act or its exceptions, if any, and the state child protective services law provide immunity against liability in their official and individual capacities. Several states do not shield a worker from liability in his or her individual capacity (*Wendy H.*, 1994).

It is both conceivable and likely that, depending on how a county CPS agency uses an RAI, a worker could lose protected discretionary status and be exposed to liability. When, for example, the use of an RAI is written into a county operations manual and workers are required to implement and rely on the RAI for case decision making, the discretionary nature of their duties is replaced by mandated policy, practice, and custom.

An RAI that is written into a practice manual could easily be regarded by a court as a legal standard of practice set by the county and result in the imposition of a legal duty on the worker. The violation of such a standard or duty could trigger an action in negligence against the county worker. The more formalized and mandatory the use of an RAI becomes, the more workers will have their protective shield of discretion removed from them and be exposed to various theories of liability.

In *DeShaney v. Winnebago County DSS* (1989), the U.S. Supreme Court held that a county CPS agency had no constitutional duty to protect children living at home from abuse perpetrated by a parent or caregiver. As support for this, the Court ruled that the U.S. Constitution imposes no legal duty on government officials to protect citizens against private violence or acts not perpetrated by the state. The *DeShaney* Court acknowledged a very narrow "custodial" exception, but more significant for the use of RAIs, it also noted but did not address whether the Wisconsin child protection statute gave Joshua DeShaney a legal "entitlement" to receive protective services from the government (*DeShaney*, n. 2). Although *DeShaney* has no application to children placed in out-of-home care, the door is now wide open, especially in light of the D.C. Court of Appeals ruling in *LaShawn A. v. Kelly* (1993),[2] to

continued on next page

Use of CPS Risk Assessment Instruments

continued from page 17

present the argument that the mandatory and expanding use of RAIs, either by agency policy or by state statute, creates for children a legal "entitlement" to protective services from the government. This issue will become increasingly more significant, particularly in states like Florida, Washington, and Pennsylvania, which have the use of RAIs expressly written into their CPS laws.

In addition to addressing the questions of when the use of RAIs ceases to be a discretionary function, and whether county CPS policies or statutes create an "entitlement theory" of government protection, the actual implementation of RAIs will soon assume a new and legally very significant role. Several federal courts, for instance, have already recognized that *DeShaney* did not preclude the imposition of a legal duty to protect where the state, through the actions of its agents, creates a dangerous situation or renders an individual more vulnerable to danger (*Pinder v. Johnson*, 1994; *Dwares v. City of New York*, 1993; *Wood v. Ostrander*, 1989).

In light of the well-documented disagreement and imprecision in the literature over the various risk factors that appear in RAIs, explaining to a court precisely how the final assessments or scores were decided could be a most unenviable task for a caseworker under cross-examination by any attorney.

Perhaps nowhere will risk assessment and the use of RAIs have greater impact than in everyday county Juvenile or family court proceedings.[3] Increasingly, as attorneys become more educated about RAIs and the risk assessment research, the many uses, the validity, and the reliability (for purposes of admitting them into evidence) of RAIs will be challenged. The earlier discussion of some models' substantial imprecisions, obvious shortcomings, and inherent flaws could easily be exposed by a knowledgeable expert witness in a dependency proceeding. County administrators and their attorneys would be wise to reassess their particular RAI, how it is being implemented, the empirical research support for the use or uses of that instrument, and the training CPS workers are provided on risk assessment generally.

Each of these areas potentially contains a wealth of information that could be used to impeach a CPS worker's testimony about his or her decisions or the basis for them. Those in the risk assessment community in particular, and child advocates generally, are focusing far too much attention on the presumed protection that *DeShaney* provides for the use of RAIs, and are ignoring the obvious, practical problems RAIs could present in Juvenile or dependency court.

An RAI score, for example, cannot determine whether or not CPS should remove a child from his or her home. In every state, that decision is determined by a statute and defined by the state's appellate case law. An RAI could aid a worker in examining certain factors that, taken together, might satisfy the legal standard to remove a child, but overreliance on an RAI, even in the states where it is written into the CPS law, would be a mistake with potentially far-reaching ramifications.

The same cautionary argument could be made for every decision CPS makes in an individual case. The more any single instrument is used to support decisions, the more vulnerable to attack that instrument will be in court, and the greater the chances of incurring liability. From initial referral to case closure, no single instrument can adequately address the myriad decisions that must be made. This, again, will become increasingly clear as attorneys and judges in Juvenile court become more familiar with RAIs and their research base.

Any examination of the legal issues involving RAIs would be indefensibly incomplete without mentioning the importance of training, not just in RAI implementation, but in investigatory interviewing as well. In light of the well-documented disagreement and imprecision in the literature over the various risk factors that appear in RAIs, explaining to a court precisely how the final assessments or scores were decided could be a most unenviable task for a caseworker under cross-examination by any attorney. CPS workers should be prepared to explain not only how they made their various assessment decisions, but also how their questioning or interviewing contributed to those decisions. With the growing popularity of RAIs, if attorneys cannot attack the actual instrument in court, they can be expected to focus their impeachment efforts on how the information and conclusions that appear on the instruments were obtained. Even the most scientifically valid RAI will not help a worker who either used inappropriate questioning to obtain information or who cannot demonstrate a knowledge of proper interviewing techniques. Caseworkers who

continued on next page

[2] In *LaShawn A. v. Kelly*, 990 F.2d 1319 (D.C. Cir. 1993), the U.S. Court of Appeals for the D.C. Circuit affirmed the District Court's finding (see, LaShawn A. v. Dixon, 762 F. Supp. 959 (D.D.C. 1991) that the District of Columbia's Prevention of Child Abuse and Neglect Act (D.C. Code Ann. §§2-1351 to-1357, §§16-2351 to 2365) created a private right of action under Section 1983 for children in foster care *and* for children reported to have been abused but not yet in the District's custody. The express wording of the District of Columbia's child abuse statute created a "special relationship" between the District and children who were only the subject of a CPS investigation. This special relationship imposed a legal "duty" on the District to take certain statutorily prescribed steps for the protection of those children still at home but being investigated. See also, Turner v. District of Columbia, 532 A.2d 662 (D.C. App. 1987).

[3] They have different names. In some large jurisdictions, for example, they are referred to as the Dependency courts, which are a subdivision of the county's Family or Juvenile Court division. In smaller jurisdictions, they are simply the County Court. Regardless of the name given the court, when it hears a civil child abuse matter brought by the county child welfare agency, the case is heard under state laws written expressly to address how each particular state will define and adjudicate petitions filed on behalf of children alleged to be abused or neglected.

Use of CPS Risk Assessment Instruments

continued from page 18

use RAIs should also be prepared to demonstrate knowledge of basic child development theories and concepts and their application to sound interviewing principles. County CPS agencies that use any RAI without providing their workers with extensive training on child development and its effect on investigative interviews, sound interviewing techniques, and child maltreatment in general, are toying with certain disaster.

Unquestionably, the use of formalized risk assessment systems in CPS practice presents an opportunity to improve service delivery. That opportunity, however, clearly has yet to be realized. Key issues, such as consensus on definitions of risk, clarification of goals, improved validity and reliability of all RAIs currently being implemented, realistic expectations of their uses, and increased training must be addressed. The CPS risk assessment community would be wise to get its disorganized and divided house in order, or in the very near future the courts surely will impose that order on it.

References

American Humane Association. (1995). *Twenty years after CAPTA: A portrait of the child protective services system*. Englewood, CO: Author.

American Humane Association and American Bar Association Center on Children and the Law. (July 9, 1993). *Evaluation of the Pennsylvania Approach to Risk Assessment: Executive Summary of the Results for Project Objectives 1, 2, and 4*. Englewood, CO: Author.

Baird, C. (1988). Development of risk assessment indices for the Alaska Department of Health and Social Services. In T. Tatara (Ed.) *Validation Research in CPS Risk Assessment: Three Recent Studies*. Washington, DC: American Public Welfare Association.

Besharov, D. (1981). Towards better research on child abuse and neglect: Making definitional issues an explicit methodological concern. *Child Abuse and Neglect, 5*. 383-390.

Child Welfare League of America. (1989). *Standards for services for abused and neglected children and their families*. Washington, DC: Author.

Davidson, H. (1992). CPS risk assessment and the law: Unsettled issues. In Tatara (Ed.) *Fifth National Roundtable on CPS Risk Assessment: Summary of Highlights*. Washington, DC: American Public Welfare Association.

DePanfilis, D. (in press). *Implementing child maltreatment risk assessment systems: Lessons from theory*. Administration in Social Work.

DePanfilis, D. (May 19, 1995 personal communication). Diane DePanfilis, MSW, is a Co-Principal Investigator, Study of Child Maltreatment Recurrences. School of Social Work, University of Maryland at Baltimore.

DePanfilis, D., & Jones, W.G. (November 1-3, 1990). *Interpreting and applying agency risk assessment models in the courtroom: A social work and a legal perspective*. Paper presented at the Fifth National Conference on Children and the Law. ABA Center on Children and the Law. Arlington, VA. (Nov. 1-3, 1990).

DePanfilis, D., & Scannapieco, M. (1994). Assessing the safety of children at risk of maltreatment: Decision-making models. *Child Welfare, 73*. 229-243.

Doueck, H.J., English, D.J., DePanfilis, D., & Moote, G.T. (1993). Decision-making in child protective services: A comparison of selected risk-assessment systems. *Child Welfare, 72*. 441-452.

Doueck, H.J., Levine, M., & Bronson, D. (1993). Risk assessment in child protective service: An evaluation of the Child at Risk Field. *Journal of Interpersonal Violence, 8*. 446-467.

Doueck, H.J., Nokejl, C.A., & Levine, M. (1993). CPS risk assessment implementation and legal liability. In T. Tatara (Ed.) *Sixth National Roundtable on CPS Risk Assessment: Summary of Highlights*. (pp. 169-194). Washington, D.C.: American Public Welfare Association.

Egeland, B. (1993). A history of abuse is a major risk factor for abusing the next generation. In R. Gelles and D. Loseke (Eds.) *Current Controversies on Family Violence*. (pp. 197-208). Newbury Park, CA: Sage Publications.

Gelles, R.J. (1991). Physical abuse, child abuse and child homicide. *Human Nature*. 59-72.

Gelles, R.J. (in press). Risk assessment. In R.J. Gelles. *Out of Harm's Way: Protecting Children from Dangerous Parents*. (Chapter 3). New York: Basic Books.

Holder, W., & Corey, M. (1986). *Child protective services risk management: A decision-making handbook*. Charlotte, NC: ACTION for Child Protection.

Howing, P.T., Wodarski, J.S., Kurtz, P.D., & Gaudin, J.M. (1989). Methodological issues in child maltreatment research. *Social Work Research and Abstracts, 25*. 3-7.

Hutchison, E.D. (1990). Child maltreatment: Can it be defined? *Social Service Review, 64*. 60-78.

Illinois Department of Social Services. (1985-1986a). *Child abuse and neglect investigation decisions handbook*. Springfield, IL: Author.

Illinois Department of Social Services. (1985-1986b). *Child welfare services practices handbook*. Springfield, IL: Author.

Johnson, W., & L. Esperance, J. (1984). Predicting the recurrence of child abuse. *Social Work Research and Abstracts, 20*.

Kaufman, J., & Zigler, E. (1993). The intergenerational transmission of abuse is overstated. in R. Gelles and D. Loseke (Eds.) *Current Controversies on Family Violence* (pp. 209-221). Newbury Park, CA: Sage Publications.

Kern, H. (May 15, 1995 personal communication). Dr. Homer Kern is Program Specialist with the Texas Department of Protective and Regulatory Services in Austin, TX.

Leventhal, J.M. (1982). Research strategies and methodological standards in studies of risk factors for child abuse. *Child Abuse and Neglect, 6*. 113-123.

Lindsey, D. (1994). *The Welfare of Children*. New York: Oxford University Press (p. 128).

McDonald, T., & Marks, J. (1991). A review of risk factors in child protective services. *Social Service Review, 65*(1), 112-132.

Magura, S., & Moses, B. (1986). *Outcome Measurers for Child Welfare Services: Theory and Applications*. Washington, DC: Child Welfare League of America.

Milner, J.S. (1995). Physical child abuse assessment: Perpetrator evaluation. In J.C. Campbell (Ed.) *Assessing Dangerousness*. (pp. 41-67). Thousand Oaks, CA: Sage Publications.

Milner, J.S. (1995). Assessing physical child abuse risk: The child abuse potential inventory. *Clinical Psychology Review, 14*. 547-583.

Murphy-Berman, V. (1994). A conceptual framework for thinking about risk assessment and case management in CPS. *Child Abuse and Neglect, 18*. 193-201.

National Association of Public Child Welfare Administrators. (1988). *Guidelines for a Model System of Protective Services for Abused and Neglected Children and Their Families*. Washington, D.C: American Public Welfare Association.

National Resource Center on Child Abuse and Neglect (1994). *Risk Assessment Technical Brief*. Englewood, CO: The American Humane Association.

Pecora, P.J. (1991). Investigating allegations of child maltreatment: The strength and limitations of current risk assessment systems. *Children and Youth Services, 15*. 73-92.

Plotkin, R.C., Azar, S., Twentyman, C.T., & Perri, M.G. (1981). A critical evaluation of the research methodology employed in the investigation of causative factors of child abuse and neglect. *Child Abuse and Neglect, 5*. 449-455.

Plum, H.J. (1994). Risk Assessment: Is it compatible with the Wisconsin Children's Code? In M. Ventrell (Ed.) *Excellence in Children's Law*. (Children's Law Manual Series, 1994 Edition) (pp. 269-282). Denver, CO: National Association of Counsel for Children.

Reid, G. (1993). Risk assessment research: Some problems in application and interpretation. In T. Tatara (Ed.) *Seventh National Roundtable on CPS Risk Assessment: Summary of Highlights* (pp. 85-93). Washington, D.C: American Public Welfare Association.

continued on next page

Use of CPS Risk Assessment Instruments

continued from page 19

Sprague, M., & Horowitz, R M. (Eds.) (1991) *Liability in Child Welfare and Protection Work: Risk Management Strategies* Washington, D C: ABA Center on Children and the Law.

Starr, R H., DePanfilis, D., & Hyde, M. (1994). Current issues in risk assessment. In T Tatara (Ed.), *Seventh National Roundtable on CPS Risk Assessment: Summary of Highlights* (pp. 185-198). Washington D C: American Public Welfare Association.

Tatara, I (May 12, 1995 personal communication). Dr. Tatara is the Director of the CPS Risk Assessment Project, American Public Welfare Association, Washington, D C

Wald, M S., & Woolverton, M. (1990). Risk assessment: The Emperor's new clothes? *Child Welfare, 69*, 483-511.

Wiese, D., & Daro, D. (1995, April) *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1994 Annual Fifty State Survey* (Working paper 808). Chicago, IL: The National Committee to Prevent Child Abuse

Legal Authority—References

Chayo v. Kaladjian, 844 F. Supp. 163 (1994)

Dwares v. City of New York, 985 F 2d 94 (2d Cir. 1993)

Fanning v. Montgomery County Children and Youth Services, 702 F Supp. 1184 (1988).

Harlow v. Fitzgerald, 457 U S. 800 (1982)

In Re City of Philadelphia Litigation, 49 F 3d 945 (3rd Cir. 1995)

Latisha A. v. Morgan, 855 F. Supp. 943, 947, n. 5 (N.D. Ill. 1994) (quoting *Thomas v. Pearl*, 988 F.2d 447, 450 (7th Cir. 1993).

Nation v. Colla, 173 Ariz. App. 245 (1992).

Olson v. Ramsey County, 509 N W 2d 368 (Minn 1993)

Parratt v. Taylor, 451 U.S. 527 (1981)

Pinder v. Johnson, 33 F 3d 368 (4th Cir. 1994).

S.L.D. v. Kranz, 498 N W 2d 47 (Minn. App. 1993).

United States v. Salerno, 481 U S. 739 (1987).

Wendy H. v. Philadelphia, 849 F. Supp. 367 (1994).

Wildauer v. Frederick County, 993 F 2d 369 (4th Cir. 1993)

Winston v. Children and Youth Services of Delaware County, 948 F. 2d 1380 (3d Cir. 1991).

Wood v. Ostrander, 879 F 2d 583 (9th Cir. 1989).

DeShaney v. Winnebago County DSS, 489 U S. 189 (1989).

23 PA. C S A. §6301 et seq. (Amended 5/1/95, P L. 1292, No. 151).

West's F.S.A. §415.505 (FL, Title 14B).

West's R.C.W.A. §26.44.030(13) (WA, Title 26)

Youngberg v. Romeo, 457 U S. 307 (1982)

Thomas F. Curran, LMSW, JD, is a staff attorney in the Child Advocacy Unit of the Defender Association of Philadelphia, Philadelphia, PA

TRANSLATING RISKS TO POSITIVE OUTCOMES:

Outcome-oriented Case Management from Risk Assessment Information

—by Wayne Holder and Therese Roe Lund

The connection of a risk assessment to client outcomes provides direction and clarity to child protective services (CPS) casework practice and case management. In simple terms, it involves matching a negative behavior or problematic family condition with a positive expected result. Working toward this desirable result provides the structure for setting case goals, planning treatment, and measuring progress.

Although defining and evaluating outcomes are not new concepts to child welfare and human service agencies (Barth & Berry, 1987; Courtney, 1993; Magura & Moses, 1986; McDonald et al., 1989; Youth et al., 1994), the field has not sufficiently developed the potential benefits of linking risk assessments to client outcomes as a method for targeting and evaluating client change and measuring risk reduction. Risk assessment, now available in more than 42 states (Berkowitz, 1991), has been applied primarily to determining which families should be served, but has not influenced how families can be served (Cicchinelli & Keller, 1990; Wald & Woolverton, 1991).

Client outcomes are positive changes in a client's behavior; mental, physical, or emotional functioning; motives; knowledge; or resources that, when achieved, reduce the risk of maltreatment.

Courtney (1993) suggests that three levels of outcomes have relevance to child welfare agencies: 1) program structural characteristics, including variables such as numbers of staff or caseload size; 2) program process characteristics, such as timely investigation of reports or development of case plans within the required amount of time; and 3) case outcomes, which measure meaningful change in the clients being served by a given program. Magura and Moses (1986) further suggest three levels of case outcomes: 1) case status outcomes that target changes in a client's service status, such as reunification; 2) client status outcomes, which are used to measure changes in a client's behavior, mental state, physical functioning, emotional functioning, motives, knowledge, or resources; and 3) client satisfaction outcomes, used to assess how well services have fulfilled the client's subjective needs, expectations, or wishes.

Currently, over 20 states are involved in planning a redesign of their child welfare systems around outcome measures. (American Humane Association and the National Association of Public Child Welfare Administrators, 1995). However, the focus of this activity is primarily agency planning and evaluation as well as measurement of case status outcomes; less attention has been paid to client status outcomes.

Defining risk assessment and client outcomes

Risk assessment is a judgment about the likelihood that a family will maltreat its children in the future. The assessment is typically based on the identification and analysis of family conditions or risk influences/risk factors associated with families who maltreat their children. The risk assessment shapes the decision regarding who will be served. Further, it is the reduction of risk influences that leads a CPS agency to disengage services. Because risk assessment instruments are far from perfect measures of the likelihood of future maltreatment, however, determining that a case can be closed should be based on more than a second risk assessment. It should be based on clear documentation of changes in the behaviors and conditions that could lead to potential maltreatment.

Client outcomes are positive changes in a client's behavior; mental, physical, or emotional functioning; motives; knowledge; or resources (Magura & Moses, 1986) that, when achieved, reduce the risk of maltreatment. To achieve risk

continued on next page