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When the Rehabilitation Ideal Fails: A Study of Parental Rights Termination

Esther Wattenberg, Meghan Kelley, and Hyungmo Kim

This study explored the circumstances of parents whose extreme neglect and abuse of their young children justified the drastic state action of termination of their parental rights. Records of 97 children age 6 and under whose parental rights were terminated between 1991 and 1997 in Minnesota were reviewed. Profiles of parents and children were drawn from these data, and a “risk pool” of parents whose children became wards of the state was identified. Guidelines are drawn from this “risk pool” that may help alert practitioners to those parents who are unlikely to safely maintain their children. Questions and implications for policy and practice are highlighted.

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Termination of parental rights (TPR) is an extreme action initiated by the state to irrevocably sever the legal bond between parent and child (Mnookin, 1975; Hewett, 1983; Katz, 1971; Rose, 1980; Garrison, 1983). The decision to legally sever the relationship between a child and parent requires a high standard of proof: "clear and convincing" evidence (Minn. Stat. § 260.241, 1998). Because of the serious consequence of TPR, it has been described as equivalent to the death penalty in its finality and gravity (Hewett, 1983). In delivering the U.S. Supreme Court's opinion in a case involving TPR, Justice Ruth Bader Ginsberg called the "destruction of family bonds" a "devastatingly adverse action (M.L.P. v. S.L.J., 1996, p. 18).

Historically, TPR has been invoked hesitantly and sparingly. The child welfare system has instead focused its efforts on the rehabilitation of families, with the goal of reunifying maltreated children with their birthparents following out-of-home placement. This so-called "rehabilitation ideal" has shaped practice and policy since passage of the Adoption Assistance and Child Welfare Act (AACWA) of 1980. AACWA emphasized "reasonable efforts" toward reunifying families as a guiding principle (Seaberg, 1986).

When an abused or neglected child is removed from the home after a finding of maltreatment, the child welfare agency provides family reunification services: working with maltreating parents to make the home safe for the child's return. Family preservation has been recognized as the primary goal of child welfare services, with intensive home-based services serving as the vehicle for the delivery of reunification services (Fraser, Pecora, & Haapala, 1991; Nelson, Emlen, Landsman, & Hutchinson, 1988).

The authors gratefully acknowledge the assistance of Robert DeNardo, Department of Human Services, and his staff, in providing access to state files. The authors also thank Robert DeNardo, Inta Sellars, and Yvonne Pearson for their comments on earlier versions of this article, and Mary Kaye LaPointe and Lara Rubelke for their support services.
In the proliferation of studies evaluating family-based services that has emerged since AACWA's passage, a subtext has developed among a few studies: circumstances have been identified in which rehabilitation efforts are not likely to be successful (e.g., Nelson et al., 1988; Maluccio, Fein, & Davis, 1994; Barth & Berry, 1987; Frankel, 1988; Pelton, 1994; Rzepnicki, 1994; Littell, 1997). As data emerged in the 1990s documenting the rise of placements and long stays in out-of-home care without a permanency plan, more serious questions have been raised about the value of prolonged attempts at rehabilitation (Barth, Berrick, & Gilbert, 1994).

In 1997, substantial shifts in the historic hesitancy to invoke TPR occurred with the passage of the Adoption and Safe Families Act (ASFA) (P.L. 105-89). ASFA encourages decisions on permanency within an expedited timeframe. It stresses the health and safety of the child as a “paramount concern,” and to this end, provides both mandatory and optional directives to the states for expediting TPR. Several aspects of ASFA are designed to curtail the length of time a child can “drift” in out-of-home care without a plan for a permanent home (Hardin, 1999). First, ASFA allows states to bypass “reasonable efforts” to preserve and reunify the families if: parents subject children to “aggravated circumstance” or commit certain violent crimes against children (e.g., murder, assault); or if the parental rights to a sibling of the child have previously been terminated involuntarily. Second, ASFA obligates states to begin termination proceedings when a child has been in out-of-home care for 15 of the last 22 months, an infant has been abandoned, or a parent commits certain violent crimes against a child. Third, ASFA allows “concurrent planning,” in which efforts at family reunification proceed simultaneously with attempts to achieve alternative permanency, such as adoption or legal guardianship. Finally, ASFA shortens the deadline for decisions about permanency from 18 to 12 months.

States have initiated legislation to reflect the federal mandates.
In Minnesota, special attention has focused on young children entering the child protection system (Minn. Stat. Chapter 260, 1998). Effective July 1, 1999, Minnesota reduced the time allowed until permanency from 12 to six months for children under age 8 (Minn. Stat. § 260.191, 1998).

ASFA’s mandates have focused attention on the process that leads to TPR. Expedited timelines assume there are circumstances in which no amount of social services can remedy the parents’ incapacity to care for a child in the foreseeable future. Further, clear and convincing evidence can be mustered to demonstrate that the child cannot survive with his or her birthfamily and that an option exists that will create a better life for the child.

Rationale for the Study

This study was initiated to discover the circumstances and characteristics of families in which the Minnesota courts found “clear and convincing evidence” that parental rights should be terminated, in large part based on child protection assessments. From these data, the study identified indicators that can alert the practice field to a “risk pool” of families who appear to have a low probability of being able to maintain their children.

Describing the life circumstances of families who have experienced termination of parental rights may assist the practice field in at least two ways. First, in light of recent legislation in concurrent planning, it is crucial for courts and child welfare workers to identify families early in the process who are unlikely to be reunited with their children, as a means of preventing prevent foster care “drift.” Early identification of these families can help courts and practitioners focus resources most effectively, attending to reunification as always, but also directing resources up front to developing alternative permanency options. Second, identifying families who have not responded to rehabilitation efforts can help researchers and practitioners redress shortcomings in current approaches to child welfare services.
Literature Review

Much of the scholarly literature pertaining to termination of parental rights rests in the legal sphere or in psychiatry journals regarding concerns that arise from expert witness testimony. Despite the fact that social work is the profession most intimately involved in child abuse and neglect issues (Jimenez, 1990), case study and practice research in the area have been somewhat limited. A few researchers from various disciplines have attempted case reviews to help expose underlying issues of particular concern in termination of parental rights cases.

Schetky, Angell, Morrison, and Sack (1979) reviewed 51 cases of termination of parental rights in Oregon. Borgman (1981) reviewed the records of 29 children whose parental rights had been terminated. Jellinek, Murphy, Poitrast, Quinn, Bishop, and Goshko (1992) reviewed 206 cases of serious child mistreatment in Massachusetts, providing a snapshot of the typical family brought to court for the purpose of transferring legal and physical custody, the “at-risk pool” from which TPR may be consummated.³

The parents in the Schetky et al. (1979) sample were nearly all Caucasian (99 out of 102 parents). The average age of the mothers was 29.7; the fathers, 32.2 years; and the children, 5.4 years. Borgman’s (1981) sample comprised 13 boys and 16 girls. Borgman provides no additional demographic data. In the Jellinek et al. (1992) study, the children averaged 4.2 years of age; 67% of the children were minorities. Equal numbers of Jellinek’s sample were male and female.

Both Schetky et al. (1979) and Jellinek et al. (1992) found that parents involved in TPR face myriad challenges, including mental illness, substance abuse, limited intellectual functioning, and involvement with the criminal justice system. Parents had scant formal education and suffered high rates of unemployment and poverty (Schetky et al., 1979; Jellinek et al., 1992; Borgman, 1981). In addition, the parents had frequently experienced abuse or out-of-home placement as children (Schetky et al., 1979). As adults,
these parents were also commonly involved with child protective services due to reports of maltreatment against their own children (Jellinek et al., 1992). As parents, these individuals tended to be chronically neglecting rather than physically or sexually abusive (Schetky et al., 1979).

The children in these families were typically very young, had lived in poverty, and when placed in out-of-home care, experienced extended periods of time in the system (Schetky et al., 1979; Jellinek et al., 1992; Borgman, 1981). In one of the studies, the mean time lapsed from initial maltreatment report to final placement was 4.9 years (Jellinek et al., 1992). Not surprisingly, at least in the short run, these children manifested their turbulent life experience with a variety of identified disorders (Schetky et al., 1979; Jellinek et al., 1992; Borgman, 1981). For example, a substantial number of children in Borgman’s (1981) study presented special needs, including “gross behavioral deviations” and below average IQs.

In sum, the few studies available in the literature show that interlocking problems (including mental illness, substance abuse, limited intellectual functioning, and involvement in the criminal justice system), economic stressors, and extended drift in the child welfare system characterize families who have experienced termination of parental rights. Children’s outcomes from prolonged periods in care are poor.

Methods

The data for this study were drawn from 97 files of children age 6 and younger who experienced TPR in Minnesota from 1991 to 1997. During those years, 1,313 children aged 6 and younger were wards of the state. Of these, 103 children had a worker-identified history of abuse, neglect, or multiple placements. Social workers identified these children with having a “special need,” which is a category that denotes a condition that requires special attention.
for placement and supervision. This identification indicates children who had experienced prolonged maltreatment that eventually led to TPR (Minnesota Department of Human Services Administrative Data, 1991-1997). Of the 103 case files slated for review, two lacked sufficient information for data analysis, and four were duplicated (i.e., the sibling of the child, and thus, the family's life circumstances, had already been reported in the sample), bringing the total number of cases reviewed to 97.

These children represent 7.4% of the total ward population age 6 and younger in the years studied. The demographic characteristics of the sample data were not significantly different from the remaining ward population except in two instances. The racial composition of the sample data was chiefly Caucasian (47.47%), followed by African American children (34%). For the larger ward population, the racial composition was reversed, with the major population being African American (almost 47%), followed by Caucasian children. Some difference in age groups also appeared. Fewer children less than 1 year of age were in the sample (3.1%) compared to the remaining wards (9.2%). Older children (≥ 6 years of age) were more highly represented in the sample (almost 22%) compared to remaining wards (15.4%).

Information was gathered from the records of state wards with the use of an extracting protocol, a 16-page instrument modeled after the work of Tracy, Green, & Bremseth (1993). The protocol comprised six main sections: (1) demographic information about the child, mother, and father; (2) important dates in the course of the case, such as date of first contact and TPR; (3) information about the conditions leading to the termination of parental rights; (4) grounds for termination (to permit identification of the legal rationale for the termination decision); (5) services provided by the agency to reunify the family; and (6) case summary, which outlined the chief events of the case.

Two raters were assigned to retrieve information from the file. After final revisions to the analysis instrument, interrater reli-
ability was more than 90% on each trial. After these initial tests, each rater reviewed files independently. Both raters, however, read every tenth record to assure continued consistency. In these subsequent tests, interrater reliability remained as high as in previous trials.

Some evidence confirms the use of administrative and case record data as sound and accurate data sources for child welfare studies (e.g., Borgman, 1981; Ferleger, Glenwick, Gaines, and Green, 1988; Jellinek et al., 1992; Schetky et al., 1979; Shireman, Grossnickle, Hinsey, & White, 1990). Other studies have questioned both the reliability and validity of administrative and case record data. The variables present in these sources are necessarily limited in scope and complexity and are susceptible to underreporting and errors in reporting (Courtney, 1995). Further, as Chaffin, Kelleher, and Hollenberg (1996) have observed, such data may be biased in a number of different ways, since such samples involve only officially reported cases, and since the variables are necessarily retrospective. Perhaps the most serious criticism is that information on the reliability and validity of such measures is simply unavailable (McMillen & Tucker, 1999). In spite of these methodological limitations, researchers continue to use such sources because they provide rich information that would otherwise be unavailable.

In light of the concerns about administrative data, a few qualifications are necessary with regard to the data sources used in this study. It should be noted that the records reviewed for this study consist of data given or communicated by county social service departments to the state of Minnesota. An unknown degree of omission and error is possible due to any number of factors, including recording errors by the rater(s), recording or detection errors by the original case worker(s), and data entry or reporting errors at the state or county level. The high degree of interrater reliability achieved, however, limits these concerns to some degree.
Findings

The following section reviews in detail the mothers’ characteristics (demographics, social history, conditions leading to termination); fathers’ characteristics; children’s characteristics (demographics, presenting conditions, and placement status); permanency plans at TPR; and services provided by the agency.

Mothers’ Characteristics

Demographics. Almost 64% of mothers in the sample were Caucasian, almost 21% were African American, and 9.3% were American Indian. The remaining 5.7% were multiracial, "other," or "unknown."

More than half of the mothers (54.7%) had their first child when they were 18 years or younger. The median age of the mothers at the birth of their first child was 18 years, but almost 12% of mothers had their first child when they were 15 years or younger. The median age of the mothers at termination was 26 years. During the years from first birth to TPR, children were born at regular intervals for a sizeable number of mothers.

Historical Characteristics. Mothers in the sample presented a social history of multiple problems and high-risk behaviors (see table 1). More than 80% of the mothers had dual or multiple disorders, including a substance abuse problem now or at some time in the past (57.7%); disabilities such as serious and persistent mental illness (i.e., depression, bipolar disorder, schizophrenia, or personality disorders) (47.5%); developmental disabilities (12%); and other disabilities (3.1%). Almost one-third (30.9%) had a history of childhood maltreatment or placement. More than one-quarter (26.8%) were involved with the correctional system, including some for drug-related incidents and prostitution. More than one-fifth (22.7%) had experienced one or more relationships in which domestic violence was present.
TABLE 1
Mothers’ Historical Characteristics (N = 97)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substance Abuse</td>
<td>56</td>
<td>57.7</td>
</tr>
<tr>
<td>Disabilities (Including Serious and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Persistent Mental Illness)</td>
<td>46</td>
<td>47.5</td>
</tr>
<tr>
<td>Abused and/or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Placed as a Child</td>
<td>30</td>
<td>30.9</td>
</tr>
<tr>
<td>Crime or Prostitution</td>
<td>26</td>
<td>26.8</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>22</td>
<td>22.7</td>
</tr>
</tbody>
</table>

* Percentages do not equal 100% because many mothers experienced multiple conditions.

Current Characteristics: Conditions Immediately Preceding TPR. Substance abuse, present in more than half of the cases (55.7%), was the chief problem that led to the TPR judgment (see table 2). Almost 30% of the mothers refused substance abuse treatment at some point during the life of their cases. Substance abuse was frequently associated with other conditions. Abusive domestic relationships occurred in 36.1% of cases, active mental illness in 35.1% of cases, and an inability to maintain a household with stability sufficient to raise children in 30.9% of cases. A lack of adequate intellectual functioning serious enough to severely impair parenting capacity was present in 17.5% of the cases. Finally, 9.3% of the mothers were incarcerated at the time of TPR. In sum, 80% of the case data recorded multiple and overlapping conditions. Reported throughout the data were references to the mothers’ turbulent, chaotic lifestyles and uncertain relationships.

Father Characteristics

Forty-one case records did not have any information about the father of the child; only the remaining 56 case records were used for the data analysis for the father. As a result, descriptive statistics regarding the fathers in the sample must be regarded as incomplete.
TABLE 2
Mothers’ Conditions Precipitating TPR* (N = 97)

<table>
<thead>
<tr>
<th>Condition</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unresolved Chemical Dependency</td>
<td>54</td>
<td>55.7</td>
</tr>
<tr>
<td>Abusive Domestic Relationship(s)</td>
<td>35</td>
<td>36.1</td>
</tr>
<tr>
<td>Active Mental Illness</td>
<td>34</td>
<td>35.1</td>
</tr>
<tr>
<td>Inability to Maintain Stable Housing</td>
<td>30</td>
<td>30.9</td>
</tr>
<tr>
<td>Inadequate Intellectual Functioning</td>
<td>17</td>
<td>17.5</td>
</tr>
<tr>
<td>Incarceration</td>
<td>9</td>
<td>9.3</td>
</tr>
</tbody>
</table>

* Circumstances that immediately preceded the decision to terminate parental rights, as noted in the record. Percentages add up to more than 100% because many mothers experienced multiple conditions.

More than 60% of the 56 fathers had multiple problems. More than one-third (35.7%) had a current or past substance abuse problem; 25% had a criminal record; almost 20% had a domestic violence problem with their partners; almost 15% had experienced abuse or placement as a child; and 14% were incarcerated at the time of the termination proceeding.

Children’s Characteristics

Demographics. Children of color were strikingly overrepresented in the sample compared to statewide population percentages. According to Kids Count Data Book (Annie E. Casey Foundation, 1996), Caucasian children make up nearly 90% of the population in Minnesota under age 18, but accounted for just over half (57.7%) of the children in the sample. African American children make up about 3.5% of the child population in the state, but accounted for more than one-quarter of the cases (25.8%), more than seven times their presence in the statewide child population. Likewise, American Indian children represented 13.4% of the sample, but only 1.8% of the child population in Minnesota, also seven times their population presence. Latinos/Chicanos were more evenly represented, at 2.1% in both the sample and the statewide child population. Conversely, Asian Americans make up about 3.3%
of children in the state, but only about 1.0% of the sample. Almost 20% of children were identified as biracial.

The mean age for children at the time of TPR was 3 years. Nearly two-thirds of the children (63.7%) were 3 years of age or younger. Girls (54.6%) slightly outnumbered boys (45.4%) in the sample.

Children from the Minneapolis-St. Paul metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties) were overrepresented in the sample (59.8% versus 40.2% in other areas of the state). Minnesota's most populous county, Hennepin, accounted for more than 40% of the cases in the sample. Twelve out of 87 counties in Minnesota (13.7%) did not have any state wards, due to the lack of any terminations of parental rights in the years 1991 through 1997.

More than three-quarters of the children in the sample were members of sibling groups. More than one-third had three or more siblings. About 17 had one or more siblings whose parental rights had been terminated previously. Thirty-one percent had one or more siblings whose parental rights were terminated simultaneously with the child's. Despite the recent nationwide interest in kinship foster care, nearly 80% of the children were living in or had most recently lived in nonrelative family foster homes.

Presenting Conditions. Slightly more than one-third of the children (34%) were taken into emergency custody at some point in the history of their case. Minnesota statutes allow officials to take children into immediate custody "when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger the child's health or welfare" (Minn. Stat. § 260.165, 1998).

Almost 60% of these very young children already had identified disabilities (see table 3): emotional disturbance (26.8%) was most common, followed by physical disability (9.3%), developmental disability (7.2%), learning disability (5.2%), and other conditions (11.4%). Evidence of sexual abuse existed in 18.5% of the
TABLE 3
Children's Presenting Conditions (N = 97)

<table>
<thead>
<tr>
<th>Condition</th>
<th>Frequency</th>
<th>Percentage*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug/Alcohol Exposed in Utero</td>
<td>25</td>
<td>25.8</td>
</tr>
<tr>
<td>Emotional Disturbance</td>
<td>26</td>
<td>26.6</td>
</tr>
<tr>
<td>Physical Disability</td>
<td>9</td>
<td>9.3</td>
</tr>
<tr>
<td>Developmental Disability</td>
<td>7</td>
<td>7.2</td>
</tr>
<tr>
<td>Learning Disability</td>
<td>5</td>
<td>5.2</td>
</tr>
<tr>
<td>Other Conditions</td>
<td>11</td>
<td>11.4</td>
</tr>
</tbody>
</table>

* Some percentages add up to more than 100% because children experienced multiple conditions.

cases. More than a quarter of children had been born either drug or alcohol exposed. More than four out of five of the children met the qualifications for AFDC benefits and were thus eligible for Title IV-E foster care reimbursement.

Permanency Planning at TPR

At least four permanency options are commonly available when reunification fails: kinship adoption; nonrelative adoption; long-term family foster care (an ongoing placement in a family foster home generally reserved for older children who are not perceived as "adoptable"); or transfer of legal custody/legal guardianship, in which a related or unrelated adult takes legal custody of the child, but does not adopt (Minn. Stat. § 260.191, 1998).

Of the children in the study, almost 63% had no permanent placement plan at the time of termination. Adoption (kinship and nonrelative) was being arranged for 35% of the children. Only two were to be maintained in long-term family foster care.

For more than two-thirds of these young children, three years or more elapsed before a TPR action was initiated. Eight children had “drifted” in the system for six years or more. For almost a third of the children, two years elapsed between the time of their first contact with the agency and the TPR action.
Services Provided

Prior to termination, county social service agencies are required to provide "reasonable efforts" at reunification (services to promote preservation of the family). The most frequently provided services were counseling (52.6%), substance abuse treatment (48.5%), and parenting classes (47.4%). Mental health assessments were recorded in 36.1% of the cases and chemical dependency assessments in 29.9%. Other services included medical care (22.7%), parenting assessment (21.6%), home-based services (18.6%), transportation (16.5%), and domestic violence treatment (14.4%). Services provided directly to children were special education (20.6%), followed by therapy (15.5%), and developmental and psychological assessment (13.4%). For a majority of children, no services were recorded.

Discussion

This study provided an opportunity to identify characteristics and conditions of high-risk families in which the rehabilitative intent of "reasonable efforts" has been unsuccessful. In the 97 cases of children age 6 and younger in which the court terminated parental rights, a somewhat consistent pattern emerged.

More than half of the mothers began childbearing when they were 18 years or younger and continued a pattern of frequent childbearing, often with different fathers, a condition found earlier by Zuravin (1991). Eighty percent of the mothers in the sample suffered from dual and frequently triple diagnoses of chemical dependency, mental illness, and intellectual deficiencies. The family environments in the TPR cases were characterized by chaotic living arrangements. More than one-third of the children had suffered emergency placement, which generally signified abandonment or a police action, and at the time of termination, more than 9% of the mothers were incarcerated, chiefly for illegal drug incidents and associated prostitution and theft.
The turbulent family environments were aggravated by unstable and troubled partners. The information on the fathers, although limited (only 60% of the records had information on the fathers) revealed multiple problems. Incidents of domestic violence were often compounded by a criminal history. More than 14% of the fathers on whom information was available were incarcerated at the time of TPR.

Social histories revealed a long and persistent pattern of repetitive interactions with child protection. In one-third of the records, the mother had a history of being maltreated as a child and had been placed out of the home. In more than half of the cases, one or more children had previously or concurrently had a sibling whose parental rights had been terminated.

The study paints a picture of severe deprivation for the children involved in the TPR process. The condition of these young children, more than 60% of whom suffered from disabilities ranging from emotional disturbance to developmental delays, underscores once again the cumulative harm of chronic neglect (Foster & Furstenberg, 1998). The phenomenon of the consequences of persistent and continuous neglect and abuse has been documented for more than two decades (Mackner, Starr, & Black, 1997; Polansky, Chalmers, Buttenwieser, & Williams, 1981). The severe damage to these very young children (more than half were age 3 and younger at the time of termination) stands in marked contrast to the paucity of services provided for them. Less than 14% are recorded as having assessments of their developmental status. Therapeutic responses to behavioral disturbances were limited to 16% of these infants and toddlers.

The profile that emerges from these data is one of caregivers and their partners suffering from multiple interlocking problems. The question inevitably arises as to whether this is a profile of parents with an intractable constellation of problems or a chronicle of families that the system does not serve well.

A definitive response to this question is beyond the scope of this article. This study is descriptive rather than experimental,
that is, it describes the population of parents for whom reunification efforts were not successful. This study, however, did not include a comparison group and so cannot indicate whether more effective services might have been provided to a similar group of families who were ultimately successful at reunification. Nevertheless, findings from descriptive studies have a certain legitimacy and value (Rubin & Babbie, 1997).

One notes, however, that in the 97 cases reviewed in which the outcome was TPR, the courts, using the standard of “clear and convincing evidence,” were satisfied that the “reasonable efforts” requirement had been met. The court’s version of “reasonable efforts” is explicated in a stream of decisions. Length of time services are offered and attempts to assist the parents to comply with case plans are expected to be documented. Illustratively, an appeals case reads,

To measure the adequacy of services, it is necessary to learn whether the services go beyond mere matters of form, such as the scheduling of appointments, or whether they include genuine help to see all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child. (In re the Welfare of D.F. and C.F., 1997.)

Nevertheless, it must be acknowledged that it is difficult to determine whether families were well-served because there are no clearly defined measures for “reasonable efforts.” As Dore and Lee explain, the routine of “offering” services for improving parenting skills is seriously limited if it is not accompanied by factors that may encourage or inhibit the learning of new patterns of parenting (Dore & Lee, 1999).

The landmark legislation that required “reasonable efforts” toward reunification (AACWA) failed to include any language that could be captured as a workable guideline. State statutes such as those in Minnesota provide general guidelines that these are
services which are "available and accessible," and "realistic under the circumstances" (Minn. Stat. § 260.015(c), 1996). Nor does the social work literature provide measures of quality and effectiveness of social service efforts. The "rules of engagement" in establishing an involuntary relationship with parents, a primary consideration for compliance with a case plan, are not uniformly applied (Rooney, 1999; Rooney & Bibus, 1996; O'Hare, 1996), and empirical evidence to measure effective practice is sparse (Jones, Magura, & Shyne, 1981).

A critical analysis of how effectively the social service system serves the "risk pool" under discussion has not yet emerged. It is the court that presently assumes this task.

Although the findings in this article may be generalized, there are several limitations. First, Minnesota is one of only a handful of states that operates a state-supervised, county-administered child welfare system. Therefore, the results of this study may be somewhat less generalizable to state-administered systems. Second, Minnesota’s child welfare system has been subject to shorter permanency timelines than other states. For example, ASFA shortens the deadline for child welfare permanency planning from 18 to 12 months. In Minnesota, the timeline was already 12 months and was shortened to six months for children ages 8 and younger (Minn. Stat. § 260C.201, subd. 11(a), 1998). Additionally, Minnesota, with a total minority population of 8.4%, is somewhat less ethnically diverse than the rest of the nation. Inasmuch as race is a relevant variable in child welfare matters, this study may be less applicable to states with different population compositions. (At the same time, it should be noted that previous case studies showed similar characteristics among Caucasian parents and parents of color who experienced TPR (Jellinek et al., 1992).) Finally, without a stronger statistical comparison to the larger pool of all cases (these data were not available to us at the time), it is not possible to precisely define the difference between these families and other families with children placed in out-of-home care.
On the other hand, Minnesota's grounds for TPR are those that are common to most states (National Clearinghouse on Child Abuse and Neglect Information, 1999). Sixty-two percent of the states are similar to Minnesota in that they offer a broad range of grounds for TPR. Almost all states (48 out of 50) specify the deterioration of the parent-child relationship as one of the grounds, and in the records reported in the above study, extreme parental disinterest was a preeminent factor in the TPR decision.

The findings from this study regarding the damage children suffer confirm the importance of limiting the time a child remains in out-of-home care without steps being taken to secure permanency, a principle stressed in recent legislation (ASFA, 1997). More than two-thirds of these young children had been in placement for more than two years before TPR and the permanency plan were effected. It is interesting to note that many of this studies' pre-ASFA cases would have been affected by ASFA mandates, primarily by the expedited time frame provision rather than the egregious harm provision. Under ASFA's obligation to begin termination proceedings when a child has been in out-of-home care for 15 out of the last 22 months, many of the cases in this study would presumably have been moved more quickly toward permanency. Factors in the delay were not delineated. The records in this study, however, are replete with persistent attempts to provide "reasonable efforts," which consisted generally of a trio of services: counseling, chemical dependency treatment, and parenting classes.

Finally, this study raises the issue of "legal orphans." The assumption underlying TPR is that this action will lead to a more secure and appropriate home for the child. In this study, however, in almost 63% of the cases, a plausible plan for permanency had not been submitted at the time of TPR. It is not known how much longer—or even if—permanency was achieved.

In Minnesota, as in most other states, the statute governing termination of parental rights (Minn. Stat. § 260.221, 1998) does not require the court to make findings regarding a child's adopt-
ability as part of its determination that TPR is in the best interests of the child. In several appeal cases, parents have contended that it is not in children's best interest to lose their birthparents and live in a state of limbo as a "legal orphan," a ward of the state, with no adoption plans pending. The state supreme court, however, has noted that delaying the TPR decision until an adoption plan is in hand may doom the child to long-term out-of-home care, which is not in a child's best interest (In re the Welfare of J.M., 1998). Statutory reference (Minn. Stat. § 260.191, subd. 3b(a)(3), 1998) notes that long-term foster care is a "disfavored" permanent option for children age 12 and under.

**Recommendations**

This case review study of young children in Minnesota whose parental rights were terminated adds weight to the scant literature that identifies the characteristics of parents for whom rehabilitation efforts were unpromising. This study confirms that the characteristics are an interlocking constellation of problems that include substance abuse, mental illness, cognitive deficiency, maladaptive parenting behavior originating in the caregivers' childhood deficiencies, early and frequent childbearing, and criminal justice incidents. Social service agencies have a meager prospect of effecting change in maltreating families that exhibit this group of characteristics.

In fact, identifying these multiproblem families as a risk pool whose members appear to have a lower probability of reunification raises ethical and moral dilemmas. This identity may tempt service providers to view families as untreatable and thus invest less energy in these families. It must be stressed that TPR for these families be treated as child welfare has historically treated TPR, that is, with reluctance. As no one can predict with any certainty which families will respond positively to services, families must be given the same intensive, good-faith efforts to support reunification regardless of whether they fit the description of the risk
pool category (unless "egregious harm" situations designated in ASFA are present). The only difference in treatment for these families should be early efforts at concurrent planning, so that if reunification efforts fail, a permanency option may be in place. The federally mandated shift of attention to the "health and safety" of the child, however, requires an acknowledgment that a small portion of families cannot assume the obligation of providing even the most basic human needs for survival of a child.

Although distinctive characteristics of the interaction of state and local child welfare and judicial systems may limit the generalizability of the findings from this study, the fact that Minnesota shares common grounds for TPR with most states allows several implications to be drawn from this study that are relevant to the practice and research communities alike.

Child welfare must attend to the serious and interlocking web of conditions facing families embroiled in child protection services, rather than merely considering single indicators, or using a checklist-type approach. Researchers and practitioners must refocus on the interactive nature of the conditions faced by "multiproblem families" (Geismar, 1964). An understanding is needed of the precise nature of the interactive factors of substance abuse, emotional disturbance, domestic abuse, cognitive disabilities, and poverty. The chain of events that many families face in their tangled involvement in welfare, the criminal courts, juvenile courts, and the multiple programs addressing family and children's services is not easily discerned.

Courts and agencies must pay greater attention to the service needs of children and their progress toward the goals not only of safety and permanency, but of well-being. The accumulated harm to young children suffering from the parents' failure to remedy conditions is now of paramount interest to practitioners. The mental health of infants, failure to thrive symptoms, and toddler disabilities will require case planning and detailed progress reports so that the termination or reunification decision is, in fact, in the best interests of the child.
Further study is needed to assess both the adequacy and cultural competence of service delivery to at-risk families. Clarity on this issue has not yet emerged (Azar & Benjet, 1994; Julian, McKenry, & McKevey, 1994). Assuring language translations, exploring the “full disclosure” principle for case plans, and providing services that meet an understanding of ethnic nuances are routinely required in court reviews. Whether these are sufficient for “cultural competency” is not widely accepted.

Training should be required for practitioners in assessing the parent-child relationship (Waters et al., in press). For the court, a central feature in determining the decision to terminate parental rights rests on the clinically observed phenomenon of extreme parental disinterest and a prolonged deterioration of the parent-child relationship. The court requires clear and convincing evidence that the risk factors are, in the words of one judge, so “terrible and prolonged” that the risk of harm to the child is too great to offer parents further time for rehabilitation. The court also requires that evidence provided by professional experts assert that the parents’ condition is such that for the “foreseeable future” no change in behavior can be expected. These factors will satisfy the court that a continuation of “reasonable efforts” is futile and therefore unreasonable (In re the Welfare of S.Z., 1996).

Training and supervision in assessing nuances in compliance issues is indispensable. For instance, courts are closely scrutinizing visitation compliance and reasonable efforts to eliminate obstacles to visitation. Issues in visitation compliance have become more complicated: reconciling visiting arrangements with job requirements under TANF is a case in point. Efforts in arranging transportation, a neutral meeting place, and convenient times should be documented. Extreme parental disinterest, as demonstrated by abandonment or a total lack of effort to maintain contact with the child, will have to pass the test of “clear and convincing evidence.”

Evaluation studies are needed on the impact of concurrent planning, with its deadlines for a permanency decision.
The fate of children in the "legal orphan" category requires scrutiny. Clearly, termination of parental rights with no adoption plan in hand is a debatable issue (Wattenberg & Kelley, 1999). Statutes, regulations, and practice have encouraged a systematic follow-up on all children in TPR cases to monitor the progress of adoption plans. Further, "open adoptions" are now a matter of policy for several states to provide birthparent visitation rights. The extent to which "open adoptions" provide an opportunity for the child to form a realistic relationship with birthparents, and thus contribute to the stability and permanency of a new family adoption, is yet to be studied (Garrison, 1983).

Reduced timelines for permanency decisions highlight the importance of safeguarding the due process rights of parents. The right to an attorney and time to consult with the attorney is crucial. As experts in child law practice point out, the attorney may have to act in a counseling, as well as an advocacy role in families involved in the concurrent planning procedures (Laver, 1999).

Conclusion

The child welfare system now has the onerous task of distinguishing between families who are likely to benefit from social services and maintain their children from those who are likely to fail the rehabilitation plan, and thereby allow the state to intervene so that their children can be nurtured and cared for in another family. These distinctions must be made within a shortened time frame. Accepting limits to the rehabilitation ideal may be the most difficult challenge for social workers.

Notes

1. As a result of the Indian Child Welfare Act (1978), the legal standard is even higher for American Indian children: "beyond a reasonable doubt."
2. Known in Minnesota as egregious harm, defined in Minn. Stat. § 260.015, subd. 29 (1998).

3. Jellinek et al. (1992) do not indicate precisely how many of the children in their sample experienced TPR. It is safe to assume, however, that at least two-thirds did. Ten percent of the children were adopted, 39% were awaiting permanent placement, and 15% were in placement with another parent or relative. Most, if not all, of these children are likely to have experienced termination of the rights of at least one parent.

4. TPR occurs in only a small percentage of child protection cases. For example, for the five-year period 1993–1997, the average number of (unduplicated) children in Minnesota who experienced out-of-home placement each year was 18,538. For the same years, an average of 527 TPRs occurred each year. Thus, 2.8% of the out-of-home placement population experiencing TPR in a given year during 1993–1997 (Minnesota Department of Human Services Administrative Data, 1993–1997).

5. Three sources of data combine to create a state ward’s file: court documents, forms from the county social service agency, and follow-up paperwork created by the state. Court documentation includes: (1) a copy of the legal decision; (2) a copy of the legal findings; (3) a copy of the court order transferring custody to the State Commissioner of Human Services; and (4) if applicable, a copy of the petition to adopt and decree of adoption. Forms submitted by each county agency include: (1) the “Neglected and Dependent Report” (DHS 616), which provides child-specific information and data about the child’s parents; (2) if applicable, the “Report of Placement” (DHS 178), when the child is placed for adoption; (3) if applicable, a copy of the adoptive placement agreement; (4) if applicable, a written request documenting separation of a sibling group. The state provides: (1) a certified copy of the child’s birth certificate; and (2) if applicable, written Commissioner consent for separation of siblings and/or adoption.


7. According to the NCCAN citation, the 16 grounds are: abandonment or extreme parental disinterest; abuse/neglect; mental illness or deficiency; alcohol or drug-induced incapacity; felony conviction/incarceration; failure of reasonable efforts; sexual abuse; abuse/neglect or loss of rights of another child; failure to maintain contact; failure to provide support; failure to establish paternity; child judged in need of services/dependent; child’s best interest; child in care 15 of 22 months (or less); felony assault of child or sibling; or murder/manslaughter of sibling child.
References


*Minnesota Statutes* §260C.201, subd. 11(a), 1998.


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