SUFFER THE LITTLE CHILDREN: CHILD MALTREATMENT IN THE MILITARY COMMUNITY

A Thesis

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The opinions and conclusions expressed herein are those of the individual student author and do not necessarily represent the views of either The Judge Advocate General's School, U.S. Army, or any other governmental agency. References to this study should include the foregoing statement.

by

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SCOPE

This paper examines child maltreatment in an historical context and traces the evolution of civilian laws designed to protect maltreated children. The existence of child maltreatment in military families is documented and an analysis made of the existing methods for dealing with the problem within the military. The problems peculiar to administration of a child welfare system by the military, including jurisdiction and available resources, are examined in depth. Recommendations are advanced for improving the handling of child maltreatment in the military environment.

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I. INTRODUCTION

A parent has

> ... a right to punish a child within the bounds of motivation and reason, so long as he does it for the welfare of the child; but that if he exceeds due moderation, he becomes criminally liable.[1]

This time-honored view of parental discipline holds a parent to an "external standard" of what is reasonable under the circumstances[2] and imposes liability for willfully, wrongfully, unlawfully, knowingly, recklessly, or negligently using excessive force on a child.[3] Although the principle that a parent may discipline his child by physical punishment is based on a common law heritage,[4] this right is limited by certain interests of the State under the doctrine of parens patriae. This doctrine, adopted from English chancery law, justifies the State's assumption of a protective parental role in instances wherein the welfare of the child is jeopardized by actions of the natural caretakers. This protective role has been reevaluated during the past two decades and a product of that reevaluation is the development of so-called "protective services". This development has, in turn, forced a modification in the thought behind the last two words of the above quote, "criminally liable".

It is to the problems created by the abused, neglected, or maltreated child[5] and possible solutions thereto within the

military that this paper will be addressed. Specifically, an analysis will be made of the "battered child syndrome"[1] within American society and an evaluation made of laws and theories of protection for the child victim as well as possible assistance to the abusing parent. The "syndrome" and the present day means of dealing with the situation, including a discussion of the problems created in identifying, investigating and assisting the individuals involved in a maltreated child situation, will be examined within the military environment. Current methods utilized to deal with those individuals will be examined and recommendations for improving the methods of assistance within the military will be submitted.

II. HISTORICAL OVERVIEW

Cruelty to children, in one form or another, is not a product of our "modern-day", highly pressurized society. As psychologist, David Bakan, has observed:

> Terrible as the thought is to entertain, child abuse may be a repression to a characteristic which comes very close to being "natural" to the human condition.[7]

Child abuse and the maltreatment of children are practices deeply rooted in our cultural and religious history. Over the centuries infantcide, ritual sacrifice, harsh discipline, and mutilation have been condoned as legitimate means of exercising control over and punishing children.[8] Not only have these various forms of maltreatment been permitted, but they have also been emulated in the fairy tale stories of Hansel and Gretal, Rock-a-Bye Baby, Cinderella, and others.[9] Whether viewed as a means of population control[10] or as an inherent right of parents and others[11] to correct, discipline, and deal with their children as they deem necessary, abused children existed in history as they do in modern times.

The traditional principles of family government and society's interest were adequately summarized by James Kent:

> The rights of parents result from their duties. As they are bound to maintain and educate their children, the law has given them a right to such authority; and in the support of that authority, a

> right to the exercise of such disciplines as may be requisite for the discharge of their sacred trust. This is the true foundation of parental power.[12]

In colonial America father ruled both his wife and his family, with discipline over his off-spring effected in a severe and harsh manner. The constant guide of these colonial families, the Bible, gave parents, teachers and ministers the support they needed to administer their corrective measures in a strict manner. This group of authorities was given the right to punish children in a reasonable manner, and the concept of "reasonableness" in the seventeenth and eighteenth centuries could be equated to "harshness".[13] Even though the colonial courts did have the right to inquire into the discipline of children, that inquiry was rarely made.[14]

A. Evolution of Protective Services

It was not until the early nineteenth century that various groups began taking steps to protect children who were considered victims of overly zealous parental discipline or victims of simple neglectful conduct by parents or others responsible for the care of children. These steps were "institutional" in nature and consisted of committing neglected, destitute, abandoned or generally maltreated children to institutions originally designed for the

child offender. These attempts at placement of the abused or neglected child in so-called lodging houses, almshouses or orphan and infant asylums were generally unsuccessful and unsatisfactory means of dealing with the problems of the maltreated child. The cause of this failure was the fact that no adequate legal basis existed for either the courts or the Societies to deal with the situation. Assault and battery statutes were the only legal means of insuring punishment for the offender, but these laws provided little protection to the child victim.[15]

1. Societies

The celebrated case of Mary Ellen[16] in 1877 sparked public interest in child maltreatment and from the ensuing combustion grew the first of what became known as "specialized cruelty societies".[17] The New York Society for the Prevention of Cruelty to Children (NYSPCC) was probably the first. Its founder, Elbridge T. Gerry, observed that there were a number of agencies which served dependent and orphened children, but no agency with the specific purpose of seeking and rescuing abused or neglected children.[18] The NYSPCC acquired police powers and was later incorporated under legislation that authorized cruelty societies to file complaints against violators of laws under which children were protected. This society is still operative today, although its burden in the protective services is alleviated by the Public Welfare Services units within New York City.[19]

Between 1875 and 1900, other cities across the country began establishing similar societies.[20] The societies differed in their approach to the problem as some endorsed the application of punitive measures on the offenders by courts while others sought to prevent the problem from arising through education. Other societies pursued remedial and economic efforts designed to strengthen the home. Generally, the child's best interests were of paramount concern, though several different techniques were used to achieve that common goal.[21]

Presently, child protective services,[22] as a specialized area of the welfare services available to the public, seek to prevent neglect, abuse, and exploitation of children by reaching out with social services to stabilize family life. The preservation of the family unit through the strengthening of parental capacity to deal with unresolved problems is a common goal of all child protective service programs.[23] An integral component of this program, however, is an acceptance, by the agency offering the service, of the responsibility in appropriate situations to initiate legal proceedings for the protection of their clients.[24]

2. Juvenile Courts

Juvenile courts, established at the turn of the nineteenth century, are generally vested with jurisdiction in such legal proceedings and have a tremendous impact on the operations of

child protective agencies. Operating under the parens patrie theory, the State, acting through the juvenile courts, seeks to provide protection for the juvenile by removing the child from the disruptive home situation and placing him in the temporary custody of either welfare institutions or foster homes. In this capacity, the court is acting in place of the parent and, it has been presumed, will insure that the interests of all concerned are adequately protected.[25] This presumption's validity has been recently questioned and is currently one of the most important and developing areas in juvenile court law.

The basic constitutional requirements of the Fourteenth Amendment which provide in part that no State shall "deprive any person of life, liberty, or property, without due process of law" are being seriously scrutinized in light of two recent Supreme Court decisions.[26] Although there is no clear-cut solution to the problems social workers, lawyers and the courts must address in order to insure the existence of the protective services program, it is apparent that all concerned must work together to provide adequate solutions.[27]

B. Evolution of Reporting Laws

The history of child protection in the United States indicates that public interest in children is cyclical, recurring between periods of relative

> indifference. The decade of the 1960's was the first time in the century that wide public interest was attracted by the complex and emotional problems related to protecting children from physical maltreatment by their own parents. The problem had been repressed from public consciousness.[28]

A 1956 study[29] found that the "child protective services" offered by public welfare agencies were the least developed services available to the public. Two problems were noted. One was in the area of identification -- which individuals or families should be aided under a child protection program? The other was the physical ability, because of monetary limitations, of the social welfare agency to set up a specific child protective service.

Although a number of states, prior to the early 1960's, had reporting statutes which required physicians to report to police authorities cases of gunshot or knife wounds, injuries or wounds resulting from apparently criminal conduct or inflicted by other means of violence, no statutes existed which specifically required the reporting of children who appeared to be victims of maltreatment.[30]

1. Identification

In 1963, the Children's Bureau, a division of the United States Department of Health, Education and Welfare, proposed a model child-abuse reporting law which addresses the first problem -- identification. The model legislation required physicians to report cases to police authorities when they "had reasonable cause

to suspect that a child within the age of juvenile court jurisdiction had suffered serious physical injury from a parent or caretaker by other than accidental means". Immunity was given to good faith reporters and a misdemeanor punishment was recommended for any physician who failed to report. The traditional privileges of physician-patient and husband-wife were waived under the provisions of the model statute.[31]

By 1971, forty-seven states had adopted some form of this mandatory child-abuse reporting model law while the remaining three states adopted at least a voluntary reporting statute.[32] Significant is the fact that within a period of less than ten years, swift action was taken by legislators and a concerned public to help reduce the effects of a problem which had been with society for several centuries.

What is the basic purpose of these statutes? What needs do they fulfill? As noted previously, punishment of the offenders via the various assault and battery, murder or manslaughter statutes embodied in the criminal code of each state was the primary means of dealing with the maltreated child before the evolution of the reporting laws. Little thought was given to declaring the conduct a "sickness", thereby invoking various medical and rehabilitative services of the State. Likewise, little thought was given to the "maintenance of the family unit"

with specific assistance to the child and his caretaker to improve the environmental conditions within the home which may have precipitated the maltreatment.

The basic purpose of reporting laws is adequately reflected in the "purpose" clauses included in twenty-seven[33] state statutes, which generally express attitudes of the medical profession developed in the early 1960's. Iowa's statute is typical of some seventeen states which declare that protection of the child is the sole purpose of the legislation:

> It is the policy of this state to provide protection for children who have been physically injured as a result of abuse or willful neglect and who may be in danger of further injury. This Chapter shall be administered and interpreted to provide the greatest possible protection as promptly as possible for such children.[34]

A broader purpose clause is incorporated in ten other states'[35] statutes of which the state of Maine's is representative:

> ... to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection.... It is intended that the mandatory reporting of such cases by physicians and institutions to the appropriate authority will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever possible.[36]

As with any legislation which attempts to regulate the conduct of individuals within a society, punishment for conduct which is deemed unacceptable to that society is an essential part of the discussion. In other words, the "purposes" noted *supra* could not be effectively accomplished without some State pressure in the nature of criminal "punishment". As one writer has observed:

> This is one case where punishment does not serve as a deterrent to others in society; rather, it is a means by which the assailant, once discovered, can be forced to seek and accept help for his problem.[37]

It can be concluded, then, that the reporting laws have three distinct purposes to justify their need:

1. To insure that protection is given the child at the identification stage and is continued throughout the handling of the case.
2. To permit the family group to remain intact throughout the rehabilitative process conducted, with social welfare assistance, for the benefit of the assailant.
3. To provide punishment of the assailant as a means of insuring the accomplishment of purposes 1. and 2. above.

2. Welfare Agency Capabilities

The second problem -- the physical ability of the welfare agency to provide the protective service -- was alleviated in 1962. Action by Congress in the Social Security Act's amendments [3] in that year greatly broadened the term "child welfare services" which served to increase federal funding for the purpose of developing and increasing the "child protective services" in state welfare agencies. The past few years have seen the gradual decline of voluntary, private action in this area with a greatly expanded role developed for the public welfare work in this area.

This funding and the identification procedure recommended in the model reporting law, have given states the ability to institute and maintain an effective child welfare program. With the avowed overall purpose of the reporting statutes "to make available the protective social services to prevent further abuse, safeguard and enhance the welfare of such children and to preserve the family life wherever possible" it is logical that state reporting statutes would seek to involve the immediate services of the social agency charged with that special function.[39]

It is important to recognize that the reporting laws are not an effort by the state to replace parents, rather to strengthen the home through state resources and services to parents so that removal of the child will not be necessary for

effective child protection.[40] Thusly, a strong emphasis is placed on a rehabilitative approach to the problem of child abuse rather than a retributive one. Although the abusing parent and abused child is a well-recognized phenomena in today's society, the interests of the state in protecting its junior members are served best by keeping the family a viable unit. Criminal liability is not a functional part of this plan.

Further, it is argued that the criminal sanctions imposed upon the abusing parent may, and probably will, have a detrimental effect upon the family unit. Resentment is likely to be created toward the child, placing him in an even greater danger than when he was "simply" abused.[41]

III. THE BATTERED CHILD SYNDROME

> So much has been written about the "battered child syndrome" that an observer might conclude that nothing is being done about it or that everything that can be done has been done. Unfortunately, social problems are seldom subject to such oversimplification. The law in this area is still in its genesis, regardless of the volume of words written on the subject.[42]

Although written over ten years ago, this quotation is still a valid reflection today. The maltreated child is a pervasive area of today's social problems and continuous efforts in the fields of medicine, law, and social work continue to develop new techniques of dealing with the subject.[43]

The "battered child syndrome"[44] grew out of a series of studies, lectures, and papers which began in 1946 when a pediatric radiologist first called attention to an association of subdural hematomas[45] and abnormal fractures of the long bones in infants.[46] The "syndrome" has been variously defined since it was first described in 1962:

> ... a term used to characterize a clinical condition in young children who have received serious physical abuse... . It is a significant cause of childhood disability and death.[47]

Though not part of the original definition, physical neglect of the child is considered as a significant factor in determining

the possible existence of the syndrome. Clinical manifestation of the syndrome can range from trauma or neglect to a marked discrepancy between the clinical findings and historical data supplied by the parents. X-rays are a reasonably accurate means of confirming an initial diagnosis of the battered child syndrome, but even this means cannot be considered to be totally reliable.[48] Since most of the abusive acts upon children by their own parents or by others as substitute parents take place within the privacy of the home, the sole witnesses are members of the family. As society's standards do not condone the act of child abuse, the abusers will not readily admit to their practices. Therefore certain objective criteria should be available to assist the professional in making his judgment concerning the existence of actual abuse from clinical criteria.[49] To this end psychological and socio-economic patterns have been established to assist the doctor and other professionals in attempting to diagnose the "battered child". These characteristics will now be discussed.

A. The Child Abusers

One of the most comprehensive studies of the abusive family was accomplished by Elizabeth Elmer, Director, Fifty Families Study, Children's Hospital of Pittsburgh, Pennsylvania. Subjects

of the study were the parents and family members of fifty former patients -- all young children. These children were selected for the study based upon their clinical manifestation of multiple bone injuries at the time of admission to the hospital. Even though later investigations proved that not all of the original children selected for the study were, in fact, victims of child abuse, definite social, psychological and demographic attributes were recognized as a result of the study.[50]

Problems such as marital difficulties, financial, alcoholism and neurotic or psychotic characteristics are commonly recognized traits of the abusive family.[51] Ms. Elmer concluded that "a pile-up of environmental pressures" caused by various stress factors was the single-most distinguishing characteristic of the abusing families in the study.[52] Stress factors included a variety of circumstances such as illness or death of a parent, inadequate housing, an unwanted pregnancy, and a sick child.[53] As those stress factors built in the parent, the frustrations were vented on the child. One writer has described the abusing parent as:

> immature, impulsive, self-centered, hypersensitive, and quick to react with poorly controlled agressions... In most cases some defect in character structure is probably present; often parents may be repeating the type of child care practiced on them in their childhood.[54]

Another in-depth examination of the family and environmental characteristics of the child abuser was conducted by Dr. DeFrancis, Director of the Children's Division of the American Humane Association. He concluded that the battered child was not peculiar to any single economic or social group. Abuse and neglect were found by him in slum areas as well as country-club districts, in both culturally deprived families and those in higher business and professional groups. Age grouping of abusive mothers showed two-thirds of them to be between 20 and 30 years of age while one-half of the fathers were between 20 and 35. Emotional immaturity of the parent was probably the greatest single cause for destructive parental behavior while a significant number exhibited underlying mental illness. Where the father was the abuser, an immediate emotional explosion caused the abuse as when an attempt at discipline got out of control. With the mothers, the abusive actions were influenced by deeper psychological pressures and somewhat more disturbed, imbalanced and irrational thinking.[55]

Four personality types have been identified among those who physically abuse their children. One type, characteristic of males only, is identified by the existence of a physical disability which seems to cause a frustration requiring the father to maintain rigid discipline with severe punishment. Another type, characteristic of both sexes, exhibits a passive-dependent,

immature outlook on the surrounding environment. A third type exhibits a hostile and aggressive personality which leads to physical expressions of violence on the child. The last type is composed of parents who are compulsive, rigid, and lacking in warmth toward their children.[56]

Families involved in child beating tend to be lacking in group and community integration.[57] Additionally, these families appear to have few outside interests and are socially restrictive in association with other people. Often, the youngest child in the family, perhaps because he was an unwanted addition, tends to be the sole recipient of the abuse in the family.[58]

An extensive study[59] of three-hundred cases of child abuse arrived at the following statistics on the families involved:

90% had financial problems
80% lived in substandard housing
40% of the wage earners had a record of less than two (2) years on one job
71% of the wage earners were unskilled laborers
62% were severe chronic drinkers
35% were diagnosed psychotic
5% were mentally retarded
38% had been divorced at least once
52% had been abused or neglected by their own parents.

B. Reporting Child Maltreatment

Clearly, based upon the previously mentioned studies, certain "types" of individuals can be readily identified as "potential"

child abusers. Yet, who is to make that determination? Reflecting upon the reporting laws, we find a myraid of individuals, professions, and institutions who are required to make a determination as to the existence of maltreatment in a child.

Members of the medical profession, including physicians, surgeons, interns, dentists, nurses, and osteopaths are generally singled out in most states as the primary group which will be required to report maltreatment. Educators, social workers, clergy and law enforcement personnel are also charged with the responsibility of reporting under the various state laws.[60]

The standard for reporting in most states is that of "reasonable suspicion" or "reasonable belief" that an abusive incident may have occurred. Arizona's statute defines the requirement most succinctly:

> evidence of injury or physical neglect is not explained by the available medical history as being accidental in nature.[61]

An immunity provision is included for good faith reporting in all state reporting statutes except Idaho's.[62]

The maltreatment of children is not new to the American society nor has it significantly increased within the past few years. Efforts at all levels of government, in particular the community's interest, have "focused" on the problem within the past decade, giving the impression that maltreated children are

increasing in number. In fact, concerted efforts in many areas are helping individuals understand the nature of the problem and thereby reducing its impact upon the child.

As has been pointed out, maltreated children occur in all facets of our society, regardless of wealth, profession, or education. Behaviorial and personality characteristics appear to be the greatest determinative factor which provides a common basis for predicting and identifying maltreatment of children. With this in mind, the conclusion drawn by many individuals that "the military families abuse or neglect their children more than any other segment of our society"[63] because of family disruptions, frequent moves, the authoritarian nature of the military, etc., will be explored. Maltreated children do exist within the military; not because of the factors mentioned above, but because of the behaviorial characteristics identified herein which are generally determinative of the maltreating parent in any class of our society.

IV. THE EXISTENCE OF CHILD MALTREATMENT IN THE MILITARY COMMUNITY

> Any institution is a reflection of the individuals comprising it, and the problems experienced within our Armed Forces are manifestations of difficulties throughout our country.[64]

LTC John Miller, Chief of the Social Work Service and coordinator of the Infant and Child Protection Center (ICPC) at William Beaumont General Hospital, Fort Bliss, Texas, appears to have compiled the only definitive study[65] of abused children and familial characteristics at an Army installation. A correlation can be drawn between his study results and those compiled in the civilian community indicating a similar incidence rate of child maltreatment incidents in both the military and civilian sectors. A discussion of the results of his study and the results of studies compiled in the civilian community will demonstrate the correlation of not only an incidence rate, but also the various familial characteristics which have been alluded to previously.

The data upon which LTC Miller based his survey was compiled over a 4½ year period beginning in 1967. As he points out:

> ... The military community offers the researcher far better limits of otherwise uncontrolled variables than that found in most civilian settings. We have a known number of cases coming

> from a known population and being seen in primarily one health care system by a single staff. We have no ultra rich, we have no unemployed, we do not elect our city government, and... we have no welfare department.[66]

LTC Miller observes that the ICPC at William Beaumont General Hospital is not a child abuse council. The data from which his study was taken was based upon case records maintained for clinical purposes and not for research purposes. The parameters by which LTC Miller's program is guided are those which fall within the following definitional aspects of child abuse and neglect:

> 1. A neglected child is one who is denied the resources necessary to meet his basic physical, material, and emotional needs.
>
> 2. An abused child is one who has received an insult to his body, the nature of the insult being such that it represents either an immediate or potential threat to his health.[67]

The basis for the study was a total of 250 cases referred to the ICPC for evaluation. These referrals came from around thirty different sources in the following manner:[68]

REFERRAL SOURCES OF 229 ICPC CASES
CLOSED BETWEEN 19 SEPTEMBER 1967 AND 30 JUNE 1972

REFERRAL SOURCE	NUMBER	PERCENT
Neighbors or friends	44	19.2
Pediatrics Ward, WBGH	33	14.4
Child Welfare Department	26	11.4
Pediatrics Clinic	22	9.6
Psychiatry, WBGH (all services)	18	8.0
General Medicine & Emergency Clinics	15	6.6
Self or family	12	5.2
ACS, AER, ARC	12	5.2
Schools	9	4.0
Army Health Nurse	8	3.5
Other civilian agencies	6	2.6
Hospital Wards (except Peds)	5	2.2
Clergy	4	1.7
Other Army Posts	4	1.7
Specialty Clinics, WBGH	3	1.3
Command	3	1.3
Judge Advocate	1	0.4
Other & Unrecorded	4	1.7
	229	100

Significant, I think, is the fact that over 55% of the referrals came from sources outside the hospital. Since reporting laws of most states rely heavily upon reports from medical sources, an expansion of the class of persons required to report suspected abuse or neglect cases might be in order. The military community should have little trouble reacting to this observation.

LTC Miller arrived at an incidence rate of maltreatment based upon recorded statistics by taking a one year sample for 1971.[69] Based upon a military population of 21,000, a rate of 24.2 cases per 10,000 families per year was established.[70] Utilizing this same figure and projecting it onto the Army community, LTC Miller

concludes that we would have about 1200 maltreating families during a year.[71]

Considering other studies compiled by researchers in the civilian community, LTC Miller's findings at Fort Bliss and his projections would appear to be low. Serapio Zalba has estimated that between 200,000 to 250,000 children require protective services each year in the United States.[72] Dr. DeFrancis, in addressing a National Symposium on Child Abuse held in October, 1971, estimated that there must be a half million children in the 50 states who each year are neglected or abused.[73] Actual rates of maltreatment are difficult to establish for the civilian community in light of the varying State reporting procedures, maintenance of registry files and the fact that a percentage of actual maltreatment never comes to the attention of those responsible for handling the cases.

Severe battering or abuse cases in the Fort Bliss study number only 24 of the 258 referred cases representing only 10.5% of the total case-load. Projected on a nation-wide scale, it would indicate 13,500 families are physically battering and abusing their children.[74] The American Humane Association estimates that there are some 10,000 cases per year of severe abuse throughout the country.[75]

This correlation indicates LTC Miller's rate of incidence of child abuse for the military community is reasonably accurate and

can be considered reliable. It means that at least 1200 families throughout the military community are severely battering and abusing their children, with little visible action being taken to alleviate the situation.

Also of interest is the rank distribution of the military child abusers. As can be seen by the following data from LTC Miller's study, child abuse occurs in all strata of the military rank structure supporting Dr. DeFrancis' conclusion that the battered child is not peculiar to any single economic or social group.[76]

MILITARY RANK OF SPONSOR IN 229 ICPC CASES, WBGH CLOSED BETWEEN 17 SEPTEMBER 1967 & 30 JUNE 1972

RANK	[illegible]	[illegible]
E1 - E4	49	21.4
E5 - E7	133	58.0
E8 - E9	4	2.0
W - 03	12	5.2
04 - up	7	3.0
No Record	24	10.4
	229	100.0

Child abuse does exist in the military to the same extent it does in the civilian community. As has been previously explored, action has been taken in the civilian community to deal with the

problem, yet the maltreated child within the military has always been an enigma. As LTC Miller has reflected:

> ... while much of the civilian social system, such as fire, police, and health care functions, has been duplicated in the Army, we have never seen it necessary to establish a public or child welfare department. Instead our "relief" operations are fragmented between Red Cross, Army Emergency Relief, Army Community Service, and smaller special activities. Our child welfare programs seem to be concentrated in youth activities, Boy Scouts, Little League Sports, Well Baby Clinic, preschool physicals, immunizations, and the Handicapped Program of CHAMPUS. These programs may work well for many, but they offer little for the child who is the victim of maltreatment.[7]

V. HANDLING CHILD MALTREATMENT CASES IN THE MILITARY AT THE PRESENT TIME

Recognition of the problem of child abuse and the understanding of the concept of "protective services" within the military community has been an arduous task. It is difficult to assess the extent of services available at each military installation since each installation perceives the issues in a different manner. The situation can be compared to that existing in the fifty separate state jurisdictions before the evolution of the reporting laws.

> Problems in the recognition and management of the child protection matter in the military service have paralleled that of the civilian community. Programs vary from non-existent to comprehensive...[78]

There are no standardized procedural or policy guidelines from either the Department of the Army or the Office of the Surgeon General.[79] Opinions from the Judge Advocate General do elaborate on a policy goal which speaks to the role of the Commanding Officer of the installation.

> The goal of the Commanding General... where the circumstances warrant, is to seek to establish and preserve an emotionally healthy, nonabusive family, rather to press for prosecution of one or both parents with the risk of destruction of the family unit.[80]

Thus, the interest within the military in the problems of child maltreatment would appear to be closely analogous to that

of the civilian community. The approach by the military, of necessity, has been considerably different.

In 1970, CPT Benito M. Arellano, Professional Services Office at Fort Leonard Wood, Missouri, conducted a survey of 38 CONUS Army installations. The purpose of his study was generally to determine the extent of development of protective services at the installations surveyed and to provide information to build a program at Fort Leonard Wood. The results of the study were enlightening when it was found that 24 of the 38 installations polled did have some type of regulation pertaining to the general area of child maltreatment. Not so encouraging, however, were the findings that some posts were not aware of the existence of either mandatory or permissive reporting laws, could not agree, within states, with respect to the intent of the reporting laws, and some posts exhibited a total lack of awareness of the problems surrounding child maltreatment.[81]

What is the real difficulty in dealing with child protection within the confines of the military establishment? How does the military setting operate to either negate, nullify, or circumvent State regulatory attempts at dealing with the situation? These questions and others will now be discussed. An examination of the nature of the military installation is a necessary first step.

A. Jurisdiction

In determining the nature of the law to be applied in any situation involving a criminal or civil offense committed on a Federal installation, a basic question is which law, Federal or State, will apply. Generally, the only essential determination is whether the act occurred on a reservation under Federal "jurisdiction". The following discussion will aid in that determination.[82]

There are at least four generally recognized "types" of jurisdiction common to a Federal-State jurisdictional issue. They are (1) exclusive, (2) concurrent, (3) partial, and (4) proprietary interest only. These are based upon either the language of the deeds of cession executed by the State and Federal Government at the time of the transfer of the lands, or agreements entered into by Federal and State authorities in a procedure of "retroceding" certain aspects of the exercise of jurisdiction back to the surrounding State.[83]

Clearly in the first type of jurisdiction, State legislative enactments are not enforceable by State or Federal authorities when the violation occurs on the military installation. Neither a military member nor a dependent could be subjected to control for prosecutorial or rehabilitative purposes by the State for violation of a State statute legislating in the child maltreatment

area where the act occurs within an exclusive Federal jurisdiction. In the other types[84] the State has either reserved to itself the right to exercise its exclusive authority over the area in question or the Federal Government exercises legislative control concurrently with the State.[85]

Thus, problems created in an exclusive jurisdictional area arise because reporting laws of the surrounding State are not applicable to events occurring on the Federal installation:

1. Medical personnel or others having knowledge of a maltreatment situation are not obligated to report incidents to State authorities.
2. State welfare agencies or juvenile courts cannot sua sponte actively exercise their ability to provide prompt and meaningful assistance to the parents or the child.
3. Military courts cannot exercise criminal jurisdiction over the dependent, if punitive measures were deemed warranted.[86]
4. State courts do not have jurisdiction to arrest and prosecute the individuals involved.
5. Federal District Courts will generally accept only the most flagrant of cases[87] since Congress has not legislated in the specific area of child maltreatment.[88]

Generally, the military member who is involved in child maltreatment will be dealt with under applicable provisions of the Uniform Code of Military Justice.[89] Termination of assignment to on post quarters[90] and the resulting move into the civilian community is the logical step when the dependent wife appears to be responsible for the maltreatment. Civilian welfare facilities can then assume their role in assisting the family.

In the meantime, what has happened to the child? The answer, of course, is obvious and represents a sad conclusion to a deplorable situation. Several alternate solutions, however, are available and will be discussed infra, Chapter VI.

B. Federal Crimes and Assimilative Crimes Act

The act of physically abusing or battering a child within the bounds of a military installation constitutes a chargeable crime under Federal law at the present time. The offense could be classified as murder,[91] manslaughter,[92] assault,[93] or maiming.[94] Additionally, under the Assimilative Crimes Act,[95] the substantive criminal law of a state is made part of the Federal Criminal Code and thus applicable to Federal installations.

The Supreme Court of the United States in the case of Johnson v. Yellow Cab Co.,[96] set forth three questions which must be answered in the affirmative before a particular state law or

statute can be assimilated as a Federal crime. The questions are:

> 1. Is the particular State law not in conflict with Federal policies as expressed by other acts of Congress or valid administrative regulations which have the force of law?
>
> 2. Is the particular State statute or law so designed that it could be adopted under the act?
>
> 3. Does such law make penal the transaction alleged to have taken place?[91]

Before utilizing this Act in dealing with child maltreatment, a very basic inquiry must be made into the nature of the State reporting law. Each reporting law must be carefully examined to see if it satisfies all of the above preliminary tests. A closer examination of these questions will be helpful.

As to the first, the answer must be in the affirmative. At the present time, there is no Federal law or policy dealing specifically with child maltreatment. Also, as noted supra p. 27 neither the Surgeon General nor the Department of the Army have issued specific guidance and as writer Andrew Schneider learned in an interview with a spokesman for the Assistant Secretary of Defense for Health and Environment, there is no Department of Defense policy or guidance on the handling of child maltreatment within the military community.[93]

The second and third questions must necessarily be discussed together, as a basic determination must first be made concerning

the reporting statute of the particular State. Eleven states[99] which have a reporting statute regard it as exclusively "penal" in nature. Twenty-two states[100] require the reporting to both civil and criminal agencies and all other states regard the situation as a civil matter with a penalty for the non-reporting of maltreatment by the applicable class of people.

Indeed, the basic purpose of all child maltreatment statutes which have purpose clauses is to protect the "battered child", not to punish the "batterer". Protection of the family unit is, of course, the correlative purpose of the reporting laws.[101]

Therefore, in answer to both questions 2. and 3. most State statutes do not lend themselves to adoption as Federal law because of the nature and purpose of the statutes and the fact that most of them do not make penal the act of abusing a child. Of those states which do have abuse statutes which incorporate penal sanctions or are criminal in nature, proper assimilation might be effected. It would be difficult, however, under present-day conditions to believe that Federal courts would make themselves available for the prosecution of "child beating" cases under the Assimilative Crimes Act or to any great extent, under existing specific Federal criminal provisions.[102] As an Army pamphlet points out:

> Where violation of only Federal law is involved, the post commander is likely to experience considerable difficulty in obtaining the assistance of Federal law enforcement officials

with respect to any but the most serious crimes.[103]

Of course, criminal prosecution is not the modern-day approach to the problem, as has been explored previously.

C. Freedom of Information Act

A very real and related problem to the issue of compliance with State reporting laws is the restriction imposed upon military physicians and medical personnel under the Freedom of Information Act,[104] and the Army implementation[105] of the Act. Under the former, information which cannot be released includes:

> 6. personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy
>
> 7. investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.[106]

Army Regulation 40-2 amplifies the above statutory provision stating:

> ... medical records generated within the Army are the property of the United States... They contain much information which is of concern only to an individual and his physician... Because of their private status, medical records are subject to limited access. Within the Department of the Army, information from such records or the records themselves will be made available only for treatment and other official purposes.[107]

The release of information from medical records generated within the military to civilian welfare or judicial agencies with or without the individuals consent might violate the basic statutory and regulatory provisions referred to above. Notable is the fact that State regulatory agencies and judicial bodies are not mentioned in the Regulation, where certain exceptions to the basic disclosure requirements are permitted and are specifically enumerated.[108]

Clearly if the avowed policy of the military is to provide treatment and rehabilitative measures for the persons involved in a maltreated child situation or if the State reporting law is applicable to the military installation, then provisions exist in the last sentence of the above quote[109] to enable social workers as well as judicial authorities freedom to inspect and utilize the records as required to promote the goals of the reporting statute. In my opinion, this cannot be legitimately accomplished in the absence of specific guidance from at least the Department of the Army in the form of a Regulation. At the present time any release of information contained in medical files without a properly executed release consent form would be prohibited.

D. Federal Magistrates Act

The Federal Magistrates Act[110] provides for prosecution by a Federal judicial officer of individuals who commit "minor offenses"

within the bounds of a Federal jurisdiction. The term "minor offenses" is defined as:

> ... misdemeanors punishable under the laws of the United States, the penalty of which does not exceed imprisonment for a period of one year, or a fine of not more than $1,000, or both...[111]

No statutes exist in the Federal realm which would declare "child abuse" a minor offense and certainly those Federal statutes which could apply[112] have far more harsh sentences and cannot be termed "minor". In the absence of specific Federal legislation, no prosecution would lie within the bounds of the Federal Magistrates Act for the prosecution of maltreatment cases occurring on a Federal reservation.

E. Posse Comitatus Act

The Posse Comitatus Act[113] generally prohibits military authorities from enforcing either State or Federal law, regardless of the nature of the law sought to be enforced or of the location of the attempted enforcement. Essentially the requirement for the existence of a military purpose is the key to the utilization of military personnel to enforce the laws and no violation of the Act occurs even if civil law enforcement is incidentally affected, so long as the requirement is present.[114]

Therefore, military personnel, to avoid the proscription imposed by the Act, must insure that a requisite military purpose is present before complying with State reporting laws. This can be accomplished by permitting the commander to exercise his authority as described infra Chapter VI. B. 4.

F. Uniform Code of Military Justice

Prosecution under the Uniform Code of Military Justice of the military member involved in a child-maltreatment situation is subject to strict scrutiny in light of the O'Callahan[115] decision wherein the Supreme Court stated that crimes prosecuted by the military must be "service-connected" to preclude a member of the Armed Services being deprived of the right to indictment by a grand jury or trial by a jury of his peers.[116]

Eight of the tests[117] which the court enumerated to assist in determining "service-connection" are:

> 1. Whether the accused was away from his base with proper authority.
>
> 2. Whether he was dressed in civilian clothes.
>
> 3. Whether there was a connection between his military duty and the crime.
>
> 4. Whether the crime was committed on a military post.
>
> 5. Whether the victim was "performing any duties relating to the military".

6. Whether the crime involved the "flaunting of military authority".

7. Whether the act compromised the "security of a military post".

8. Whether the act affected "the integrity of military property".

Clearly, the act of physically battering a child constitutes an offense against the person of another and would be properly chargeable under the assault and battery provisions of State, Federal or UCMJ Criminal Code provisions. If the act by a serviceman occurred on a military reservation, there is little doubt that that prosecution would lie in either the Federal Courts under the provisions of the United States Code noted supra p. 31, or under the provisions of the UCMJ, Articles 118,[118] 119,[119] 124,[120] and 128.[121] When the crime occurs off-post, even though it involves military dependents as victims, cases hold that no "service-connection" exists.[122]

Though the Court Martial Reports are not replete with cases involving child battering, three deal specifically with the subject.[123] One might surmise from the above that there is little problem with "battered children" within the military were it not for LTC Miller's study.[124] A more accurate interpretation is that prosecution for child beating is simply a too distasteful exercise for the military structure. Adverse publicity, the connotation that "commanders" are not effective leaders, and the effect such

a charge has upon the military career of the accused are all factors which militate against the prospects of prosecution for "overly zealous parental discipline" within the military. Additionally, as pointed out supra p. 27, the "desire to maintain the family unit" would reduce the impetus to prosecute most such cases.

C. Jurisdictions Outside the United States

The problems presented by child maltreatment occurring overseas, outside the jurisdiction of a state boundary, are in one sense complex yet in another quite simple. Absent a state reporting law, the military is left to its own resources in determining a means of dealing with the problem.

In those countries with which the United States has a Status of Forces Agreement, that Agreement would contain the controlling conditions for any action by the military vis-a-vis action by the "receiving" or Foreign State against a dependent accompanying the military,[125] or against persons subject to the military law of the Sending State (United States). Since the bulk of the United States troop-with-dependent population is located in Germany, I will use that country as an example.

Under Article VII[126] of the NATO SOFA, the German authorities would retain primary jurisdiction over both civilians (dependents) and military personnel located within Germany suspected of child

maltreatment. As a practical matter, however, the Germans would probably not exercise the right to prosecute particularly where a military member is the accused.

A recent study concerning maltreated children within Germany indicates that the problems of these children are largely ignored. Reports indicate that 95 per cent of child abuse cases never reach the court. This statistic coupled with the observation that Germans rarely report incidents of child abuse to the police because they believe that such matters should remain exclusively within the family indicate that German authorities would not be overly enthusiastic in retaining exclusive jurisdiction and prosecuting military parents identified as child maltreaters.[127]

Thus, the commander of a military unit overseas has the greatest opportunity to effect masterful change in the current handling of the child maltreatment problem within the military. Not being cloaked with the real or supposed responsibility of adhering to state reporting laws and without having available resources such as state welfare agencies or juvenile services, the overseas commander could, in effect, become the "mayor" of his community. He could, within his resources and applicable regulations, establish his own welfare agency system. This would be true not only in the child protective services area, but also in the myriad of other responsibilities ranging from control of drugs, through juvenile and youth orientation facilities, to

alcohol rehabilitation programs. Of course, since the military commander has little control over dependents, any services provided would be on a strictly voluntary basis for that class of persons.[128]

VI. RECOMMENDATIONS

Throughout this discussion, it appears that no workable, satisfactory means is available to assist victims of the "battered-child syndrome" when the cloak of the military status surrounds the family. The observation is erroneous to the extent that some action is being taken to assist maltreated children but it is not incorrect to observe that no one really knows the "best" or most effective means to solve the problem within the military.

A. Jurisdiction

Embodied in the family welfare laws of several states are provisions which generally read as follows:

> Upon receipt of a report filed by a law enforcement agency, by an employee of a public or private school, or by a medical doctor... or from any person (emphasis added) other than those specified... indicating that a child has suffered abuse... and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.[129]

The impact of a provision such as this is to provide for the immediate removal of the child from the environment in which the abuse or maltreatment occurs by appointing a guardian ad litem or authorizing temporary placement in a welfare foster home. But for

the ever-present jurisdictional problem, this solution would be a viable one for the military community.

The local State courts do not have the ability to accept the petition so long as the maltreating incident takes place on an exclusive Federal jurisdiction installation. It is conceivable, however, that courts could permit the action initially and, if the parties waived the jurisdictional issue, be allowed to remove the child from the maltreating environment.

Another solution deals with statutory changes to Federal law. On 11 August 1956, after a study[130] of the jurisdiction within Federal enclaves was completed, a bill was introduced in the 84th Congress to require that the Federal Government retain only that jurisdiction over Federal lands necessary for proper performance of such of its functions as are essential for effective operation. A bill similar to the one proposed was passed into law on 26 October 1970. This bill provides, in part, that:

> ... t he Secretary of a military department may, whenever he considers it desirable, relinquish to a State all or part of the legislative jurisdiction of the United States over lands or interests under his control in the State.[131]

Additionally, current Department of the Army policy clearly indicates that "unnecessary Federal legislative jurisdiction" should be retroceded to the State concerned.[132]

Since statutory authority exists, there is no logical reason why legislative jurisdiction in the child maltreatment area could not be retroceded to the surrounding State. The reporting laws of each State would then be made applicable to exclusive Federal jurisdictions, thereby nullifying some of the problems noted supra p. 30.

B. Protective Service Program

As noted previously,[133] various programs have been established at military installations in the United States, and many appear to be operating efficiently and effectively. The "protective services" approach appears to be the common basis in all of the effective programs investigated by the author. It is not my purpose to criticize or praise one specific program. My goal is to arrive at a method which could be used as a basis for standardizing assistance to the maltreated child at all military installations. Hence, my specific recommendations for establishing a protective service program within the military.

1. Social Work Service

Identification of the individuals within the military who are best qualified to handle the problem is an essential first step. Although a multi-discipline group will be required for operation of the program, I feel that members of the Social Work Service, Office of the Surgeon General, are the logical individuals

within the military staff to perform the function of "organizing" and "administering". The program must be medically oriented, incorporating modern approaches, and not seeking punitive measures against persons identified as child maltreaters.

Social workers at the installation level are involved in a vast number of the areas which the maltreated child touches. Their work ranges from coordination within hospitals between pediatric wards, clinics, and Army Health Nurse activities to cooperation with the post Judge Advocate General, Post Chaplin, Provost Marshal, schools and assistance to the Army Community Service and Red Cross organizations. The already established lines of communication between social workers and other on-post agencies would be most beneficial in assuring the initial success of an endeavor in this area and an obtaining of long-range benefits for the individuals assisted. Additionally, social workers have specific training in child psychology, parental behavior, and child maltreatment and would require little or no additional training.

2. Council

The next step is that of establishing an organization or body of persons to assist social workers in handling cases of maltreated children. Obviously a council of some type is the logical vehicle to effect the desired results. As LTC Miller has observed, "To a very large extent the council represents a supportive group to the staff working with the families".[134]

He perceives at least four reasons for the establishment of a council:

> 1. Battering parents are angry, difficult, demanding, and recalcitrant people who drain one staff member in a matter of hours. Naturally, the case worker would like to close the case as quickly as possible due to the unpleasantness, which is what the family would like. Council members can act as a checks and balances system on each other, as well as a supporting group when the going gets rough.
>
> 2. A multi-disciplinary group is capable of rendering an opinion by looking at a problem in a more objective sense than an individual. A common meeting ground can be established among the staff members instead of each attempting to deal with the problem according to its own discipline.
>
> 3. Families involved in the "battering" are often known to several members of the council. These families do not work well with the traditional case-work and medical procedures approach. The intake followed by a series of evaluations by pediatricians, psychologists and psychiatrists is simply too cumbersome.
>
> 4. The council serves as a central clearing center and referral point for the community. Personnel within the community know that a single referral point is in existence to which a problem can be referred with concrete results effected.[135]

Members of the council might include a representative from the Department of Pediatrics, a representative from the Department of Psychiatry familiar with both child and adult behavioral patterns, a representative from the Social Work Service, particularly the individual working with the specific case, and a representative from the Army Community Service unit at the installation. Intentionally, I have left out the traditional representatives from the Office of the Staff Judge Advocate and Office of the Chaplain. I feel, as do other writers in this field, that the "protective service" approach is primarily a medico-social problem and, as such, should be administered and controlled by the medical-social work individuals at the installation. Of course, the other disciplines must remain receptive to the needs of the council and be prepared to assist when legal action is deemed necessary or when the counselling service offered by a chaplain would be beneficial.[136]

An additional member of this council must be a representative from the local civilian welfare agency charged with "protective service" for the civilian community. This representative's purpose would be two-fold. The individual could serve as a technical representative to the council with unbiased recommendations for improvements, changes or methods of handling the problem based upon a broader experience in the "protective service" field. Secondly, the individual would serve as the liason between the civilian community's resources and the military "protective service"

program. Referrals would have to be made on a voluntary basis if the jurisdictional problems noted earlier prevented the active participation of the State welfare agency.[137]

I propose that the military council handle all cases of maltreated children, including dependents and service members residing off-post. I submit that this proposal is valid for at least three reasons:

1. Military facilities have the resources, personnel, and sufficient expertise to establish a mini-welfare setup within the military community itself.

2. The jurisdictional issues raised by the on-post occurrence of maltreatment are such that they probably will not be resolved for the issue of maltreatment alone.

3. The consequences of avoiding jurisdictional problems by moving the on-post family to an off-post location are unacceptable in light of the modern-day approach of "protective service" to keep the family a viable unit.

3. Parenting-aides

In conjunction with the establishment of a council, another group of individuals might also be organized. Parenting-aides,[138] the term utilized by one Army installation, are individuals who

participate in the protective service program as an adjunct to the treatment of cases by the Social case-workers. These "aides" are individuals within the community, generally other military families, who work with families involved in a maltreatment situation.[139]

The program is based upon the premise that the best way to remove the danger of maltreatment to a child at home is to substitute this "parenting aide" as an always-available source of counsel to the maltreating parents. Experience has found that the maltreating parent, once he knows that the outside assistance offered by the "aide" does not have attached to it the stigma of a "social worker visit" or "psychiatric consultation", is able to overcome the inadequacies, fears, or frustrations[140] that precipitated the maltreatment situation. He is then on the road to a successful solution to the problem. CPT Thomas Fiorello, Family Counseling Officer, at Fort Carson, views the program at that installation as a success.[141]

4. Authority

Authority to establish a protective service program would not necessarily have to be granted by a new Army Regulation. Authority already exists in Army Regulation 600-30[142] entitled "Human Self Development Program"; the Program:

> ... is designed to assist the commander in the exercise of his civic, ethical,

> and professional responsibility to promote healthy mental, moral, and social attitudes in the personnel of his command. By this program, the Army endeavors to be socially creative and to maintain the wholesome influence of family, home, community, and culture from which stem our espirit and strength as a free nation.[143]

The commander is charged with providing a vehicle whereby he can address today's challenging problems of racial tensions, drug abuse, poverty, dissent, and moral behavior. The problems of the maltreated child can easily be included in this specific guidance, based upon the general guidelines.

The core of the Program is what has been labelled a "planning unit". These planning units are composed of experts in an area of concern to the military community. The unit should contain individuals with not only thorough knowledge, but also the imagination and communication skills so essential to any work in the field of human relations.[144]

A planning unit established under the authority of this regulation for the child maltreatment problem would contain those individuals I have previously mentioned as members of a "council". Even though these individuals would be operating as a separate unit, they would still be guided by command perogatives in the matter. With this in mind, it would be essential to issue specific and detailed guidance to commanders concerning the purpose, goals, and make-up of the planning unit dealing with the maltreatment of children.[145]

5. Voluntary Treatment

The success of any protective service program maintained by the military depends not only upon the energy and expertise of professionals operating the program, but also upon the desire of parents and family members to participate in it. At the present time, there is no procedure whereby the military authorities can compel a civilian dependent to submit to medical care or to participate in a protective service program. Additionally, no civilian commitment orders can be issued because of the jurisdictional problems, except in unusual circumstances.[146]

6. Education

As alluded to previously, much has been written about the maltreatment of children within the civilian community. Numerous articles by lawyers, social workers and medical personnel have explained the nature of the problem, its causes, and some reasonable solutions. I have, as concisely as possible, attempted to reflect the more salient of these thoughts throughout this paper. The military population itself must now be <u>educated</u> in the matter of maltreatment of children. It is essential that all within the military be made aware of the nature of child maltreatment and the methods by which assistance can be given to those involved in a maltreatment situation. The intricacies and problems with each case would be insurmountable without first understanding the nature of the problem.[147]

VII. CONCLUSION

Where has this discussion brought us? Can the military effectively assist the estimated 1200 families within the military community who are involved in the maltreatment problem?

Child maltreatment has been documented within the military just as in the civilian community at all educational levels, all income levels, and all ethnic groups. The primary problem in dealing with the situation within the military jurisdiction can be alleviated by acting in accordance with the previously mentioned statute[148] and retroceding jurisdiction to the States in the specific field of child maltreatment. Guidance in the establishment of a protective service program, utilizing present structures within the military, should be disseminated to all military installations.

Just as alcoholism and drug abuse have been declared "diseases" and rehabilitative, not punitive efforts, emphasized in their treatment, so should the problem of the "child maltreater" be declared a sickness. Rehabilitative measures and not punitive ones should be taken to assist those involved.

Undoubtedly, the most shocking cases will continue to be treated in a punitive manner due, in large part to cries from the public for justice. All too often, those maltreated children who do not make the headlines are simply forgotten.

> Admittedly it is rare when lower commands eagerly seek guidance from higher headquarters, but many feel this is the only way proper management of the child abuse problem can be obtained.[149]

There is no legitimate reason that a standardizing procedure cannot be established and specialized assistance given to those who so dreadfully need it -- the maltreated child within the military community.

FOOTNOTES

1. Carpenter v. Commonwealth, 186 Va. 851, 861, 44 S.E. 2d 419, 423 (1947).

2. W. PROSSER, THE LAW OF TORTS 140 (3d ed. 1964).

3. State v. Hunt, 2 Ariz. App. 6, 406 P. 2d 208, 222 (1965).

4. Note, The Battered Child: Logic in Search of Law, 8 SAN DIEGO L. REV. 376 (1971).

5. These terms are explained and defined infra, note 18. The term "maltreatment" will be used throughout to refer to both child abuse and neglect.

6. Kempe, Silverman, Steele, Droegemueller, and Silver, The Battered Child Syndrome, 181 J.A.M.A. 17, 42 (1962). [hereinafter cited as Kempe].

7. D. BAKAN, SLAUGHTER OF THE INNOCENTS, 56 (1971). [hereinafter cited as BAKAN].

8. Radbill, A History of Child Abuse and Infanticide in THE BATTERED CHILD, 3 (1968).

9. BAKAN, 57-77.

10. Id. 107, 112-14

11. In the place of a parent or instead of a parent. Another person acting with the parent's rights and duties. BLACK'S LAW DICTIONARY 896 (4th ed. 1951).

12. J. KENT, COMMENTARIES ON AMERICAN LAW, 203-07 (14th ed. 1896).

13. EARLE, CHILD LIFE IN COLONIAL DAYS, 191 (1926). Connecticut and Massachusetts had seventeenth century statutes prescribing the death penalty for rebellious children.

14. J. KENT, supra n. 12; W. TIFFANY, HANDBOOK ON THE LAW OF PERSONS AND DOMESTIC RELATIONS §§ 123-24 (3d ed. 1921).

15. Thomas, Child Abuse and Neglect: Historical Overview, Legal Matrix, and Social Perspective, 50 NO. CAROLINA L. REV. 306 (1972).

16. Mary Ellen Wilson, about 10 years old, was a victim of both abuse and neglect of a shocking nature at the hands of a foster mother. Eldridge Gerry, Attorney for the New York Society for the Prevention of Cruelty to Animals, was successful in having the child removed from the foster home and committed to an orphan asylum. The foster mother was prosecuted, found guilty under assault and battery statutes, and sentenced to one year in prison. (This case appears to have no official citation but is referred to in any historical summary of child maltreatment. See supra n. 15.)

17. ARIES, CENTURIES OF CHILDHOOD. A SOCIAL HISTORY OF FAMILY LIFE, 223 (1962). [hereinafter cited as ARIES].

18. Neglect can consist of either physical or emotional factors. Improper supervision, abandonment, improper or insufficient clothing, verminous conditions, malnourishment, or needed medical care can be classified as "neglect" problems. Abuse is manifest by severe beatings, tying up, burning, any other sadistic mutilation, molesting and generally physically harming the child. Maltreatment is a term applied to the combined or individual effects of neglect and abuse.

19. ARIES, supra n. 17 at 237.

20. PLATT, THE CHILD SAVERS, 108-09 (1969).

21. KADUSHEN, CHILD WELFARE SERVICES, 30-36 (1967).

22. Typically, the social agency will initiate contact with the parents whose children are thought to be victims of maltreatment. Case-work and other supportive services are then provided to the family in an effort to make it a more stable social unit.

23. CHILDREN'S DIVISION THE AMERICAN HUMANE ASS'N., CHILD PROTECTIVE SERVICES - 1967, 1 (1967).

24. CHILDREN'S DIVISION, THE AMERICAN HUMANE ASS'N., SELECTED READINGS ON CHILD PROTECTIVE SERVICES, 31 (1970). The question of "who is the client?" is a viable one at this point. Both the child and the parents can be considered clients of the protective service workers. The relationship is at different levels, however, with the child being the primary client as his needs must be considered first. The parents are secondary clients as their needs and welfare are vital to their relationship with the child. A phrase used by social workers to describe their program is "Child Protective Services are child centered and family focused".

25. CHILDREN'S DIVISION, THE AMERICAN HUMANE ASS'N., CHILD PROTECTIVE SERVICES AND THE LAW, 5 (1970).

26. Kent v. U.S. 383 U.S. 541 (1966); In re Gault 387 U.S. 1 (1967); "while there can be no doubt of the laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarentees applicable to adults. There is much evidence that some juvenile courts... lack the personnel, facilities, and techniques to perform adequately as representatives of the State in a parens patrie capacity, at least with respect to children charged with law violation. There is evidence, in fact, ... that the child receives the worst of both worlds: that he gets neither the protections afforded to adults nor the solicitous care and regenerative treatment postulated for children." Justice Fortas at 383 U.S. 555-56.

27. CHILDREN'S DIVISION, supra n. 25, at 19.

28. Thomas, supra n. 15 at 328.

29. V. DEFRANCIS, CHILD PROTECTIVE SERVICES IN THE UNITED STATES, 3 (1956).

30. McCoid, The Battered Child and Other Assaults Upon the Family: Part One, 50 MINN. L. REV. 19 (1965).

31. CHILDRENS BUREAU, U.S. DEPT. OF HOUSING, EDUCATION, AND WELFARE. THE ABUSED CHILD - PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD (1963).

32. V. DEFRANCIS, CHILD ABUSE LEGISLATION IN THE 1970'S, 5-6 (1971); These states are: New Mexico, North Carolina and Washington.

33. Alaska, Arkansas, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.

34. IOWA CODE ANN. ch. 235 A.

35. District of Columbia, Florida, Georgia, Idaho, Maine, New Mexico, Pennsylvania, Rhode Island, Texas, and Utah.

36. MAINE REV. STAT. ANN. ch. 22, §3851.

37. Parks, Child Abuse Statutes: A Survey and Appraisal, December 15, 1972. (unpublished paper prepared for Law and Psychiatry course at U. of Virginia Law School) at 3. This work proved to be extremely helpful throughout Chapter II. B. 1. and has contributed to many of the ideas in the section.

38. 42 U.S.C. §602 (1962), as amended, 42 U.S.C. §625 (Supp. IV, 1968).

39. V. DEFRANCIS, THE STATUS OF CHILD PROTECTION - A NATIONAL DILEMMA, 14 (1971).

40. Thomas, supra n. 15 at 348.

41. Daly, Willful Child Abuse and State Reporting Statutes, 23 U. MIAMI L. REV. 203, 207 (1969).

42. Hansen, Child Abuse Legislation and the Interdisciplinary Approach, 52 A.B.A.J. 734 (1966).

43. E. THOMSON, et. al., CHILD ABUSE: A COMMUNITY CHALLENGE (1972); This work contains specific guidance for the social worker, medical doctor, attorney, and all other individuals involved in the abuse/neglect problem. It is extremely detailed, accurate and current.

44. Kempe, supra n. 6 at 17.

45. Blood clots around the brain and base of skull resulting from blows to the head.

46. Caffey, Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma, 56 AM. J. ROENTGENOLOGY 163 (1946).

47. Kempe, supra n. 6 at 17.

48. Id. at 24.

49. Elmer, Identification of Abused Children, 10 CHILDREN 18 (1963).

50. Id. at 181.

51. Kempe, supra n. 6 at 18.

52. Grumet, The Plaintive Plaintiffs: Victims of the Battered Child Syndrome, 4 FAM. L. Q. 301 (1970).

53. Id. at 302.

54. Kempe, supra n. 6 at 18.

55. McCoid, supra n. 30 at 16.

56. Delsordo, Protective Casework for Abused Children, 10 CHILDREN 213-218 (1963).

57. Kempe, supra n. 6 at 18.

58. Cameron, Johnson and Camps, The Battered Child Syndrome, 6 MED., SCI. AND L. 14 (1966).

59. Grumet, supra n. 52 at 302.

60. DEFRANCIS, supra n. 32 at 6-11.

61. ARIZ. REV. STAT. ANN. ch. 3 §13-842.01.

62. IDAHO CODE ch. 16, §16-1641.

63. During the course of writing this paper, individuals who have inquired about my topic, both civilian and military, have invariably expressed the opinion that child maltreatment must be more extensive in the military environment for the variety of reasons as noted.

64. 117 CONG. REC. 22728 (1971). (remarks of Senator Hatfield).

65. Miller, The Maltreatment Syndrome in the Military Community, August 11-12, 1972, (unpublished paper presented to Current Trends in Army Social Work Course, San Antonio, Texas).

66. Id. at 5.

67. Id. at 7.

68. Id. at 12.

69. Id. at 8.

70. Id.; "During that year we had 21,000 families in our area who were eligible for medical care at our facility. It was composed of the following family groupings: 37% active duty on post, 38% active duty off post, 24% retired off post, 7% waiting wives off post and 4% foreign troops off post... During FY71 we received 53 case referrals for maltreatment from this total community population of 21,000... A maltreatment rate of 24.2 maltreating families per 10,000 families annually was established in the following manner:

$$\frac{53 \text{ new cases referred}}{21{,}000 \text{ population}} \times 10{,}000 = 24.2 \text{ cases per } 10{,}000 \text{ per year.}"$$

71. Id. at 9; This figure is based upon a married troops and retired population of 470,000. LTC Miller observes: "Twenty-four families out of 10,000 may not be a particularly high incidence rate. If, however, it were projected for the United States there would be about 130,000 families who are in some way neglecting or abusing their children. Considering that our military population does not generally represent the problems of a large city ghetto life, of severe poverty, and that often more than one child is involved in a maltreating family situation..."

72. Id.; Zalba, The Abused Child: Part I - A Survey of the Problem. 1 SOCIAL WORK 4 (1966).

73. DEFRANCIS, PROTECTING THE ABUSED CHILD - A COORDINATED APPROACH, 12 (1972). Projecting LTC Miller's incidence rate on a nation-wide scale would indicate nearly 484,000 children require assistance in the form of the protective service.

74. Miller, supra n. 65 at 7.

75. Hearings on the Rights of Children, 1972 Before the Subcommittee on Children and Youth of the Committee on Labor and Public Welfare United States Senate, 92d Cong., 2d Sess., pt. 2, at 540 (1972). This compilation contains one of the most complete bibliographies and the most concise summary of the area of child maltreatment that I have encountered.

76. Miller, supra n. 65 at 12.

77. Id. at 13.

78. Id. at 4.

79. Schneider, Battered Babies: Pity the Parents Too, Army Times, December 6, 1972 (Family) at 10.

80. DAJA-AL 1972/4336, 6 July 1972; DAJA-AL 1972/4706, 15 August 1972; DAJA-AL 1972/4773, 28 August 1972.

81. Arellano, Systems of Handling Child Abuse/Neglect, Child Protective Services: A Survey of Selected CONUS Installations - 1970, November 30, 1970 (unpublished paper for use in building a child protective services program at Fort Leonard Wood, Missouri).

82. U.S. CONST. Art. I, §8, cl. 17. "Congress shall... exercise exclusive legislation... over all places purchased by the consent of the Legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;" Clearly, a primary purpose of this clause was the protection of Federal sovereignty. As used throughout this paper, the terms "Federal jurisdiction", "exclusive legislation", and "authority to legislate" will have the same meaning. See, generally, Franks, Prosecutions in Civil Courts of Minor Offenses Committed on Military Reservations, 51 MIL. L. REV. 95 (1971).

83. Oliver, The Administration of Military Installations: Some Aspects of the Commander's Regulatory Authority with Regard to the Conduct and Property of Civilians and Military Personnel, 10 (1958), a thesis presented to the Judge Advocate General's School by Wiley E. Oliver, Jr., Captain, JAGC.

84. See, generally, n. 85, infra. Lands Division, Office of the Judge Advocate General maintains a current listing of each installation's jurisdictional status.

85. See, generally, U.S. DEPT. OF ARMY PAM. NO. 27-164, MILITARY RESERVATIONS, Chapter IV (1965); In a concurrent jurisdictional area, either State legislative enactments or Federal statutes, if the Congress has legislated in the specific field, will be applicable to events occurring on the installation. In a proprietorial type of jurisdiction in which the Federal Government has only a possessory interest in the land, State laws apply exclusively. In a partial jurisdictional area, a "mixture" of law will be applicable to the land in question. Generally, criminal laws will be applied as if the area were an exclusive jurisdiction while civil laws will be applied as if it were a concurrent jurisdiction.

86. UNIFORM CODE OF MILITARY JUSTICE art. 2 [hereinafter cited as UCMJ].

87. See p. 31, infra for discussion of Federal crimes.

88. See, generally, p. 27, supra; see Chapter V B. infra.

89. See p. 38, infra for discussion of applicable UCMJ provisions.

90. Army Regulation 210-50, par. 10-28 (6 January 1971).

91. 18 U.S.C. §1111 (1948).

92. 18 U.S.C. §1112 (1948).

93. 18 U.S.C. § 113 (1948).

94. 18 U.S.C. § 114 (1949).

95. Assimilative Crimes Act, 18 U.S.C. §13 (1948).

96. 321 U.S. 383, 389 (1944).

97. Comment, Assimilative Crimes Act, 2 MIL. L. REV. 107 (1958).

98. Schneider, supra n. 79.

99. Arizona, Colorado, Connecticut , District of Columbia, Montana, Nebraska, Nevada, New Mexico, Oregon, Pennsylvania, Ohio.

100. Alabama, Arkansas, California, Georgia, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, New Jersey, North Dakota, Rhode Island, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin.

101. Parks, supra n. 37 at 2.

102. See, generally, p. 31 supra.

103. U.S. DEPT. OF ARMY PAMPHLET No. 27-164, MILITARY RESERVATIONS 64 (1965).

104. Freedom of Information Act, 5 U.S.C. §552 (1967). [hereinafter cited as "Act"].

105. Army Regulation 345-20, Freedom of Information Act (1967). [hereinafter cited as AR 345-20].

106. Act, supra n. 104.

107. Army Regulation 40-2, par. 78 (17 June 1965). [hereinafter cited as AR 40-2].

108. AR 345-20, supra n. 105 at par. 7c.(1). This paragraph deals generally with the release of information for specific purposes and to specific individuals. State regulatory agencies or law enforcement authorities are not specifically mentioned.

109. AR 40-2, supra n. 107; other official purposes (emphasis added).

110. Federal Magistrates Act, 18 U.S.C. §3401 (1968).

111. Id.

112. See, generally, p. 31, supra.

113. Posse Comitatus Act, 18 U.S.C. §1385 (1958). "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws, shall be fined not more than $10,000 or imprisoned not more than two years or both".

114. See, generally, U.S. DEPT. OF ARMY PAMPHLET No. 27-164, MILITARY RESERVATIONS par. 11.1, 11.2 (1965).

115. 395 U.S. 258 (1969).

116. Id. at 272: "We have concluded that the crime to be under military jurisdiction must be Service connected, lest 'cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger' as used in the Fifth Amendment, be expanded to deprive every member of the armed services of the benefits of an indictment by a grand jury and a jury of his peers." quoting Justice Douglas.

117. Id. at 273-74.

118. UCMJ art. 118; Murder.

119. UCMJ art. 119; Manslaughter.

120. UCMJ art. 124; Maiming.

121. UCMJ art. 128; Assault.

122. U.S. v. Borys, 18 U.S.C.M.A. 547, 40 C.M.R. 259 (1969), military dependents victims of off-post acts of sodomy, rape, and robbery); U.S. v. McConigal 19 U.S.C.M.A. 94, 41 C.M.R. 94 (1969) (dependent daughter of serviceman victim of sodomy and indecent liberties, off-post); U.S. v. Snyder, 20 U.S.C.M.A. 102, 42 C.M.R. 294 (1970), (Service member charged with manslaughter and assault after dependent son died, in military hospital, from a beating administered in an off-post community).

123. U.S. v. Spivey, 23 C.M.R. 518 (1957). "...punishment inflicted by the accused upon the child exceeded the bounds of reasonable punishment which a parent is entitled to impose to correct his child." at 520; U.S. v. Schneider 28 C.M.R. 417 (1959). "... The amount of that discipline may or may not be right." at 421; U.S. v. Moore 12 U.S.C.M.A. 696, 31 C.M.R. 282 (1962). "...although the right of parents to chastise their disobedient children is well recognized, the law prescribes bounds beyond which this parental right shall not be carried and a parent becomes criminally liable if in chastising his child he exceeds due moderation." at 287.

124. See, generally, Chapter IV.

125. Article I. l.c., Agreement Between the Parties to the North Atlantic Treaty Regarding the States of Their Forces. June 19, 1951. [1953] 4 U.S.T. 1792, T.I.A.S. No. 2846. [hereinafter cited NATO SOFA]; dependent is defined as "the spouse of a member of a force or of a civilian component, or a child of such member depending on him or her for support."

126. Id. at Article VII. 2.(b); "The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offenses, including offenses relating to the security of that State, punishable by its law but not by the law of the sending State."; The German Criminal Code of May 15, 1871 in the version promulgated on June 25, 1968, lists at least two codal provisions dealing specifically with children: Chapter XII, Section 170d (Child Neglect) and

Chapter XVI, Section 221 (Exposure or Abandonment of Children and Sick or Helpless Persons). Additionally, the Code contains the traditional crime provisions of murder, manslaughter, and assault. U.S. Army Europe Pam. 550-156, The German Criminal Code, (November 14, 1969). Therefore, since there is no United States Statutory law which would apply and since there are no UCMJ provisions in the area of child maltreatment, German authorities would retain the right of primary jurisdiction.

127. The Washington Post, Nov. 9, 1972, at H2, col. 1.

128. See, also, Chapter VI.B.5. for general discussion of voluntary aspects of all treatment in the protective service area.

129. COLO. REV. STAT. ANN. Ch. 22-3-1 (1963), as amended, (Supp. 1967; HB 1038, 1972); The utility of this would be that any person on the military staff with knowledge of the maltreatment could file the petition, thereby providing immediate assistance to the child. Traditionally, the Staff Judge Advocate has the necessary rapport with the local judicial system and would be the obvious one to initiate the petition.

130. U.S. Att'y. Gen., Report of the Intergovernmental Committee for the Study of Jurisdiction over Federal Areas within the States. (Part I, 1956).

131. 10 U.S.C. §2683 (1970).

132. Army Reg. No. 405-20, para. 4. (28 June 1968).

133. See, generally, p. 28, infra.

134. Memorandum by LTC John K. Miller explaining the "William Beaumont Infant and Child Protection Council" on file in the Social Work Service office at Fort Bliss, Texas.

135. Id. at 13.

136. See, generally, Miller, supra, n. 65, Fiorella, infra n. 138.

137. See, generally, Chapter V.A, supra; See, Chapter VI.B.5. infra.

138. Fiorello, An Overview of Child Abuse and Treatment Programs, May 1972, (unpublished paper prepared for the Army Community Service Workshop of the National Conference on Social Welfare, Chicago, Illinois), at 19.

139. Id., at 19-20. Patterned after a program initiated in Denver, Coloredo known as the Denver Child Abuse Lay-Therapist Program, the Fort Carson, Colorado Army Community Service initiated its Parenting-aide program, paying the lay parenting-aides from an ACS Sundry Fund.

140. See, generally, Chapter III A, for the type of personality characteristics of the maltreaters.

141. Fiorella, supra n. 138 at 21.

142. Army Reg. No. 600-30, Human Self Development Program, (19 October 1971).

143. Id. at par. 1.

144. Id. at par. 2.

145. The idea of utilizing AR 600-30 in this manner is not original with this author. The Office of the Staff Chaplain, Fitzsimons General Hospital, Denver, Coloredo, originally organized a planning unit utilizing the referenced regulation.

146. JAGA 1963/3645, 28 February 1963; In Shea v. Gehan, 70 Ga. App. 229, 28 S.E. 2d 181 (1963), it was held that a county court had jurisdiction to commit a person to a veterans hospital as insane, although the hospital was located on land under exclusive Federal jurisdiction and the person was a patient in the hospital and not a resident of Georgia. However, the cession Statute (Ga. Code §15-502) provided that "The State retains its civil and criminal jurisdiction over persons and citizens in the said ceded territory, as over other persons and citizens in this State." Although exclusive jurisdiction had been ceded, a close reading of the particular Statute indicates the State still retained the necessary jurisdiction.

147. Army Times, March 28, 1973, at 33, col. 2.

148. See, generally, p. 43.

149. Schneider, supra n. 79.

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