Analysis and Commentary

A Suggested Framework for Forensic Consultation in Cases of Child Abuse and Neglect

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Child abuse and neglect is a central issue in several kinds of legal proceedings in which forensic psychiatry consultants may be involved. Thorough and responsive consultation in these cases calls for the consultant to be aware of a broad range of issues, some of which may not be explicitly raised in referral questions. These issues include: (1) determining the history of abuse or neglect; (2) assessing the resulting harm to the child; (3) assessing a parent's current capacity to provide for a child; and (4) predicting future risk and treatment response for children and parents. Each of these questions calls for different clinical assessment approaches and clinical expertise.

Forensic psychiatry consultation involves the application of expert psychiatric knowledge and opinion to problems in legal cases. Cases of child abuse and neglect present a wide variety of problems for which psychiatric consultation may sometimes be instructive.[1] As in all areas of forensic psychiatry, helpful consultation depends on a clear understanding of the questions posed in the legal process. Although the literature of forensic psychiatry addresses a variety of legal issues that may arise in cases of child abuse and neglect,[2,3] as well as providing recommendations for conveying expert perspective and advice to courts, to attorneys, and to agencies serving both child and family,[4–6] it does not include any overall organizing framework enabling the consultant to understand the entire range of questions that may arise in these cases.

This article presents a simple scheme for understanding that range of questions. It aims to help consultants to: (1) recognize where, within this range, questions in a specific case may lie; (2) understand that answers to questions in one area of a case often rely on answers to questions in other areas (which may not have been explicitly raised); and (3) recognize and address assumptions and uncertainties in a specific case that may not be explicit, but that may have a significant impact on developing sound information and opinions.

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Legal Contexts

Child abuse and neglect is a central issue in several different kinds of legal proceedings. Such proceedings include explicit *prosecution* of alleged abusers (and sometimes of negligent parents) in criminal proceedings; these prosecutions may be based either on violation of specific laws against abuse or neglect, or on violation of more general laws against physical or sexual assault. Prosecution may occur in a delinquency context if the alleged abuser is a juvenile. Child abuse may also be central to civil *tort* actions in which a child claims to have been abused and seeks damages from an identified abuser, or more commonly, from an agency thought to have had some responsibility for supervising the abuser and thus preventing the abuse.[7] Child protection or *dependency* proceedings are legal actions (usually beginning with police or child protection agency investigation) undertaken in response to allegations of abuse or neglect, for the purpose of protecting a child from harm.[8] These are civil proceedings, the stakes of which include custody of the child. A key issue in such cases is a parent's "fitness"; although parents are often treated as defendants in such cases, dependency cases do not generally involve criminal liability for those found to be abusive or neglectful. Sometimes child abuse issues are presented as *guardianship* cases, in a manner functionally similar to dependency proceedings, but that may involve different legal standards and procedures. Child abuse sometimes is raised as an issue in *custodial disputes* between parents.[9–12] Finally, *termination* of the parent's property rights to the child may be a final legal outcome of dependency or guardianship actions, either in a consolidated case or in a separate legal proceeding.[13, 14] It is important to appreciate that a single event of child abuse may theoretically (and sometimes in fact) become the occasion for all of these proceedings—criminal prosecution, dependency and guardianship actions, custodial dispute, termination of parental rights, and tort litigation—depending on the circumstances of the individual event.

The Four Questions of Child Abuse and Neglect

Every case of child abuse and neglect raises four distinct questions. The first of these questions concerns the *facts* of the alleged abuse or neglect. It is essential in all legal proceedings stemming from allegations of abuse or neglect to have a clear understanding of what is known about what happened and to appreciate with what degree of certainty this information is known. The second question concerns the nature and extent of *harm* that a child has suffered as a result of abuse or neglect. Because children who are alleged to have been abused or neglected may have other areas of vulnerability, it is important to be clear in characterizing a child's deficits and linking them (to the extent possible) to specific sources. The third question concerns the *parents' capacity* to provide adequate care and custody. Full understanding of a situation of child abuse or neglect requires careful characterization of parents' specific strengths and weaknesses in a wide variety of areas of function that may

be relevant to their abilities to further the various developmental needs of a specific child. The fourth question concerns *prognosis*. To the extent that deficits exist in a child or in parents, it can be critical to be clear about whether it is reasonable to expect those deficits to be remediated, and if so, over what period of time and in response to what sorts of efforts.

A simple mnemonic to help the consultant keep each of these questions in mind is to think of them as "the four H's of child abuse." What *happened*? What *harm* did it cause? What *help* can the parents provide now? and What *hope* is there for the future?

Specific Litigation Contexts and Associated Questions

Different questions tend to arise explicitly in different types of litigation. Consultants can respond more helpfully if they recognize how individual questions specific to different types of litigation relate to the entire range of questions in child abuse and neglect.

Facts The question of determining the specific facts when child abuse or neglect is alleged is most obviously critical to criminal prosecution of an alleged abuser or of seriously neglectful parents. However, clear articulation of the basis for allegations of abuse or neglect, of the reliability of reporters, of the implications of associated physical evidence, and of the apparent degree of certainty regarding the truth of allegations is at least implicitly fundamental to all other legal questions that arise stemming from abuse or neglect.

Experts in child development (sometimes including psychiatrists) have increasingly been called on, in the context of prosecution, to address specific questions concerning the capacities of a child victim or witness to take part in the legal proceedings.[15–17] These questions may include broad clinical inquiry into a child's capacity to form and to report clear and reliable memories of events.[18, 19] They may also include more specific and detailed attention to explicit forensic questions, such as whether a child 1) understands the legal obligation to tell the truth as a witness,[20–22] 2) is likely to be credible as a witness,[23] or 3) is likely to be psychologically traumatized by taking part in a legal proceeding.[24] All of these questions are technically relevant to arriving at a legal determination of the facts of the matter and substantially relevant to developing the best understanding of what really happened, independent of any legal determinations.

Harm The question of what specific harm a child may have suffered as a result of abuse or neglect is most explicitly relevant to civil tort litigation against an abuser on behalf of an alleged child victim. Successful tort claims require proof not only that a child has been abused, but also that the child has suffered specific harm directly as a result of this abuse. Other legal contexts tend to focus much less explicitly on this issue, since they do not require such explicit proof of harm. However, the issue of how much a child has actually been harmed by specific incidents of abuse or neglect—and how much a child's deficits may in fact stem from other sources—is implicitly critical to determining the stakes of any legal

proceeding in which abuse or neglect is at issue.

Parent Capacity The issue of a parent's current capacity to provide adequate care for a child is the explicit concern of child custody proceedings. The best known contexts for child custody disputes are marital separation or a custodial dispute between unmarried parents. Allegations of child abuse are sometimes important issues in these disputes. However, when child abuse is involved, the relevant custody dispute more commonly involves parents, extended family caregivers, a child welfare or child protection agency, and/or preadoptive parents.[25, 26] Although parent capacity is usually not an explicit issue in prosecution or in tort litigation, a parent's possible role in having failed to protect a child from abuse or in responding with inadequate care to a child's having been abused may become an important implicit issue in apportioning accountability for abuse itself or for a child's subsequent psychological deficits.

Prognosis The questions of spontaneous prognosis and prognosis with intervention for abused and neglected children and for their parents commonly arise more or less explicitly in all kinds of legal cases involving child abuse and neglect. Prognosis is important in tort litigation (in the context of estimating damages and the extent and cost of required treatment); in dependency proceedings (in estimating the level of risk a child may face and the reasonableness of planning for family reunification); in custodial disputes (in predicting a child's likely developmental outcome in various proposed custodial settings); in termination of parental rights (in concluding that a parent may not reasonably be expected to improve or may reasonably be expected to deteriorate in the future); and even in criminal prosecution (considering risk and amenability to treatment at disposition for an adjudicated abuser).

The Four H's as "Building Blocks"

An important feature of using these four basic questions as a way of organizing information and understanding in child abuse cases is that the questions flow in a logical sequence, each from the last. The initial, critical question in any case resting on an allegation of child abuse is whether the abuse or neglect in fact took place, and if so, in what way. If the answer to this question is that it did not, or that the circumstances are seriously ambiguous, then the case should not proceed as a child abuse action, and the other questions become moot. Some cases (such as prosecutions) may proceed solely on the basis of an allegation of abuse or neglect, without any need to show specific harm or impairments in parent capacity, but others may not. A tort case will need to show that abuse or neglect caused specific harm. A dependency case may proceed on the basis of claimed harm from abuse or neglect, but will also generally need to show current impairments in parent capacity. Conversely, a dependency action may make a strong case for parental incapacity, but if it does not also show a history of abuse or neglect with some resulting harm to a child, the action may fail. (Depending on local

law, such a case might succeed as a guardianship action.)

The value of appreciating these four issues as relevant to *any* case involving child abuse or neglect is that asking the questions directs the attention of the consultant (and the legal proceeding) to issues that may not be those explicitly presented, but that are in fact essential to the case. A consultant asked, in the context of a criminal prosecution, to interview a child regarding the child's memory of abuse by a parent will serve both the child and the legal proceeding better if he or she at least raises the issues of harm, parent capacity, and prognosis in this context, even if these issues may not be explicitly presented. Although these issues may not be strictly relevant to the issue of the child's memory or to pursuing the prosecution itself, they are very relevant to arriving at an ideal resolution to the case; the consultant may contribute to the likelihood of such a resolution by being aware of these questions.[27] A consultant asked to comment on the prognosis of a mentally ill parent for the purposes of predicting his or her future capacity as a parent will serve the child, the family, and the legal proceeding better if the consultant also attends explicitly to understanding the history of abuse and the indications of harm it may have caused; in this case, the relevant questions for the parent's capacity and prognosis include specific concern for risk of reoccurrence of past abuse or neglect; if exploration of the questions of fact and harm yield low or uncertain concern in these areas, then the entire basis of the case becomes open to question.

Clinical Approaches and Expertise

Each of the four basic questions, as well as the additional specific questions that attend them, calls for different types of expertise in the consultant and different approaches to clinical evaluation. Answering some of these questions is probably within the expertise of most psychiatrists; others require more explicit training and experience with children and families and with forensic assessment. Arguably, the answers to some of these questions are outside psychiatric expertise entirely.

Facts The question of whether abuse actually occurred, and if so, in what specific ways, is the most problematic of the four issues in terms of psychiatric expertise. The literature of child abuse has paid considerable attention in recent years to posttraumatic psychopathology[28] and to children's developmental capacities in perception, memory, and suggestibility.[29, 30] This attention has included efforts to structure the questioning of children to increase valid, spontaneous reporting and to minimize reports based on leading questions or other forms of suggestion.[31–34] It has included the articulation of various professional standards specifically addressing the question of professional assessment of children's allegations of abuse.[35, 36] It has aimed to improve the reliability of information gleaned from children for legal proceedings, and it has fostered the practice of offering expert opinion regarding that reliability.

However, these developments in the

field have not succeeded in providing psychiatrists or other experts with any legitimate basis for answering the fundamental fact question of whether abuse indeed happened. Experts are routinely pressed to offer opinions to a reasonable medical or scientific certainty on this point, but in fact the question is an "ultimate legal issue", which in a legal sense only the finder of fact can answer.[37] Psychiatrists can and should be familiar with what is known about children's perception, memory, reporting, and psychopathology; they should be prepared to help fact-finders with probabilistic statements about the relative likelihood that an individual child's report (taken together with physical evidence and other information) is consistent with the child having been abused. However, as in other basic fact areas in forensic psychiatry, it is important to maintain appropriate professional modesty about what an expert can offer in this area. Judging the credibility of a child witness is ultimately the responsibility of judge or jury, just as it is with any other fact witness offering direct observation of facts at issue.

Harm The question of whether and how much a child may have been directly harmed as a result of abuse is more specifically appropriate for expert opinion. However, answering this question requires some specific areas of expertise as well as careful attention to problems of developmental psychopathology and comorbidity.

The basic challenge to the expert in answering the question of harm is twofold. First, it involves careful diagnostic assessment, with special attention to the identification both of specific disorders and of general characteristics of a child's psychological functioning. This assessment should take special account of disorders known to follow child abuse and neglect, as well as any other areas of deficit. Second, it involves articulation of the specific likely origins of disorder and deficit in the individual child, taking account both of the apparent history of abuse or neglect and of other elements of the child's development that may have been less than ideal.

In many cases, this process involves complex analysis of differential diagnosis. A common example occurs in the diagnosis of symptoms of inattention, impulsiveness, distractibility, and hyperactivity in a child with a history of exposure to severe domestic violence. These symptoms may be manifestations of anxiety, intrusive thoughts and memories, and intermittent hyperarousal, secondary to posttraumatic stress disorder (PTSD) stemming from the terror of being exposed to repeated beatings of a loved one. However, they may also be a manifestation of a preexisting disorder of mood or of attention and impulse control, the manifestations of which have not in fact been altered by the exposure to violence. Only a careful, detailed review of a child's development, with specific attention to the time course of presenting symptoms and explicit exploration of the presence or absence of associated signs and symptoms of the possible disorders, can allow the expert to make a reasonable distinction between these possibilities.

Often, children who are abused or neglected have histories of other develop-

mental vulnerabilities. Expert opinion in this area needs to articulate those vulnerabilities and explain how the experience of being abused or neglected may have complicated the child's course. Frequently, abused or neglected children proceed after the abuse to experience many additional stresses in family, peer, school, and placement circumstances; these stresses may bring additional adverse psychological consequences that may complicate the child's reaction to the original abuse or neglect. Expert opinion needs to explain what elements of a child's current difficulties stem specifically from having been abused, what elements stem from other sources, and how the different problems have interacted with one another in the course of the child's overall development.

Parent Capacity The evaluation of parent capacity is similar to the forensic evaluation of other capacities relevant to specific legal proceedings, such as competence to stand trial or testamentary capacity. It shares with those evaluations the need to articulate a relevant legal capacity, to operationalize that legal capacity in areas of psychological functioning, to assess an individual's functioning in those areas, and to interpret the results of that functional assessment in light of the legal definition of the capacity at issue.[38] The evaluation of parental capacity is more challenging than the evaluation of most other legally relevant capacities, because the legal issue involved (usually parental "fitness"), is often not well defined in the law, and the establishment of a coherent way of describing and characterizing the many areas of emotional, cognitive, social, and behavioral functioning that go into being a good parent is a dauntingly complex task.

Individual states may provide some detailed legal standards for what constitutes parental fitness in child abuse cases. Massachusetts (for example) recently enacted legislation detailing 13 specific legal bases on which a court could find a parent to be unfit.[39] Most of these standards have nothing to do with issues amenable to psychiatric evaluation, such as whether a parent has failed to visit a child for a specified period of time or is incarcerated. Some others, however, rely very explicitly on issues in which evaluation of psychiatric disorder may be relevant. One of these standards provides that if a parent suffers from a mental disorder or substance abuse that adversely affects the ability of the parent to provide proper care for a child, and the prognosis for this disorder includes expected repeated impairments in functioning, that parent may be found unfit on that basis, even if his or her *current* functioning is unimpaired. It is obviously important that psychiatric consultants in child abuse matters be familiar with such explicit legal standards for parental fitness in the states where they practice.

Even when laws define standards of fitness, some ambiguity often remains. What constitutes, for example, "proper care and custody"? Many authors have addressed the issue of evaluating parents' capacities to provide care and custody for their children in various legal contexts.[40–43] Different authors, however, ascribe various levels of importance to different elements of parental function-

ing. The field lacks a simple consensual vision of what the important characteristics of parental functioning are.

A simple but reasonably comprehensive way to organize information in this area is to conceive of parents as having two basic responsibilities; the first is to provide appropriate advocacy and protection for children in their dealings with the outside world, and the second is to provide general socialization. Socialization, in turn, consists of teaching a child in three fundamental areas of learning: behavioral, cognitive, and emotional.[44] Parents teach children discipline primarily through behavioral learning, which includes attending to the quality of the child's behavior and responding to various elements of it with a wise balance of positive, negative, and aversive reinforcements. They foster a child's cognitive development in a variety of ways depending on the child's age and development, but generally including promotion of the child's use of language, providing appropriate stimulation for the child's general curiosity and problem-solving abilities, and supporting the child's commitment to taking advantage of more formal educational opportunities such as school. Finally, they foster a child's emotional development in how they relate with the child emotionally, including their support for appropriate attachment in infancy[45] and increasing emotional independence and autonomy as the child grows,[46] and in the general examples they set for the child in their own day to day personality functioning. Each of these areas is critical to what we generally think of as normal development in children, and most (if not all) of what various authors have considered to be important in parental functioning can be addressed within these guidelines.

A final issue in evaluating parental capacity concerns explicit attention to psychiatric disorder in a parent and its implications for a parent's ability to care for a child. Substance abuse is probably the single most important psychiatric disorder that adversely affects parents' abilities to provide the functions described above.[47–50] Depression has also been shown to be disproportionately prevalent in abusive and negligent parents.[51, 52] Parental PTSD can play an important role in adversely affecting some parental capacities,[53] and psychotic and dissociative disorders can have negative effects as well in individual cases.

Competent assessment of psychiatric diagnosis is an important part of a detailed functional assessment of parental capacity. Recognizing explicit psychiatric disorder can play a significant part in helping those involved in the legal process to understand and to know what to expect from a parent's deficits. Ordinary psychiatric expertise is both necessary and sufficient to meet this need; most psychiatrists would not find it difficult to articulate the explicit symptoms of disorder in an individual patient and the specific impact of those symptoms on the patient's functioning as a parent.

Prognosis The area of prognosis, both with and without intervention, is one that is generally familiar to psychiatric experts. As in any evaluation of amenability to treatment, the prognostic evaluation in child abuse needs to rest on a

clear assessment of diagnosis (as noted above), with specific attention to symptoms and functional implications. On this basis, the evaluation should address questions of *risk* posed to the child in the current circumstances, to consider available services that might be expected to have some impact in alleviating the risk, and to predict the likely response of a parent (and sometimes of a child as well) to those services. The prediction of response needs to take into account not only what is known generally about the effectiveness of certain treatments for psychiatric disorders, but also the likelihood that the people in question will succeed in becoming involved with available services and will respond to them individually. Of course, the evaluation needs to make explicit how the services may be expected to affect specific behaviors that contribute to an elevated risk of abuse and what the impact of these services will be on the level of risk. Because child development is at stake, it is also important that prognostic opinions be clear in predicting how much time the recommended services are likely to take to reduce risk to an acceptable level.

Structuring Forensic Evaluation Reports

Thorough forensic psychiatry consultation in any case involving child abuse will take explicit account of each of these questions. Most referrals will focus on only one or two of the questions, and will not raise the others at all. However, as the foregoing discussion indicates, trying to address one or two of these questions without at least taking note of the potential significance of the others may lead to an incomplete or misleading consultation.

The following is a suggested standard approach to formatting information and opinions in forensic consultation reports concerning child abuse. Adhering to such a standard format is a simple way for the consultant to be reminded to attend to the significance of all of the issues, even if they are not explicitly raised. This format follows the standard forensic organization,[37] beginning with the presenting question and the structure of the evaluation, followed by clinical data (history, mental status, and special consultations), and concluding with a section summarizing the clinical data and offering opinions. The opinion section is explicitly organized to address the four H's of child abuse and neglect.

Sample Report Format

Identifying Information and Referral Question This section provides whatever basic identifying information may be appropriate to the setting, and restates the question posed by the referral source for the consultant to address. This section may include a statement of the relevant legal standard (such as that regarding competence of a witness, or parental fitness) if such a standard exists and is relevant to the case.

Structure of Evaluation This section describes what the consultant did and what sources of information he or she relied on in conducting the evaluation, in whatever level of detail is appropriate to the case and setting. It should include attention to the issue of authorization for the evaluation and an account of how the

consultant has dealt with the issue of confidentiality (or lack of it) in clinical interviews.

History This section conveys general clinical history, from whatever sources have been available, for the individuals involved in the evaluation. This section may be organized by source (records, phone calls, other ancillary contacts, clinical interviews), by chronology, or by area of function, depending on the specifics of the individual case.

This section should include explicit sections presenting a focused history of the events in question. If the events are complex and involve disputed facts from multiple sources, it can be helpful to organize the information by source and to note discrepancies. This section should include specific clinical data from which it will be possible to offer opinions regarding the nature and extent of psychiatric disorder and functional deficits in children and in parents.

If an appropriate focus of the evaluation is on parental capacity, it can be helpful to organize functional data regarding parent functioning in a separate subsection. Following the scheme suggested above, such a subsection would have the following organization:

Additional History Specifically Relevant to Parent Functioning. *Understanding and Advocacy* This section provides data relevant to a parent's general provision of protection for the child from such environmental risks as infectious disease, toxins, traffic, drugs, community violence, domestic violence, and abuse; and notes the parent's recognition of a child's developmental state and any special needs calling for special parental attention or advocacy for services. It also conveys information about the parent's specific ability to master the interpersonal challenges within the community and family (such as in dealing with potentially abusive family members and with various service providers) that arise in the context of providing advocacy and protection.

Cognitive Support This section provides an account of the various specific ways in which a parent promotes cognitive development in a child, from playing games and speaking with an infant to reading to and with a child, encouraging curiosity and conversation with a child, and supporting a child's learning in school.

Behavior Control and Discipline This section details the parent's supervision and awareness of a child's behavior and describes the parent's approaches to behavior control and reinforcement. The specific relevant information will vary considerably depending on the child's age and developmental state.

Emotional Interactions, Nurturance, and Identification This section provides information about the parent's own overall emotional functioning as the parent interacts with the child and sets an example. It also includes data specifically relevant to issues of attachment, communication, and promotion of emotional comfort and self-esteem in a child.

Mental Status This section includes routine mental status observations about parents and children included in the evaluation. If the evaluation has included special diagnostic devices such as rating

scales or psychological testing, this section should include those results.

Summary and Opinions This section begins with a succinct summary of the relevant clinical data regarding parents and children, which may include overall diagnostic impressions. It then proceeds to address the four basic questions explicitly.

History of Abuse and Neglect This section reviews the available data concerning the specific allegations of abuse and/or neglect and offers opinion, if possible, regarding the history. In most cases, this will be a simple review of uncontested allegations, and this opinion will simply serve to remind the consultee of what the presenting concern was that brought the case to legal attention. In many cases of alleged sexual abuse, and in some allegations of complex physical abuse or neglect (such as in certain cases of failure to thrive or Munchausen syndrome by proxy[54]), the history may be more ambiguous. In such cases, this section will review the available information and provide an explicit account of what it may be reasonable to infer about the history of abuse, noting with what degree of certainty this inference may be made.

Harm from Abuse This section addresses areas of deficit in the child and offers opinion as to the extent to which deficits may be the direct result of abuse. If the opinion is that the deficits do not result from abuse, then this section should provide as explicit an account as possible of their likely source.

Current Parental Capacity This section reviews the available information concerning parental functioning, including a specific discussion of parental diagnosis and functional impairment. If a specific question has been raised concerning parental fitness, this section addresses the specific areas of function that are relevant to the specific legal fitness standard, but should generally avoid giving an opinion on the ultimate question of fitness itself.

Risk and Amenability to Treatment This section takes account of the foregoing discussion of history, harm, and parental capacity and offers a resulting opinion as to the risk of further abuse or neglect. It includes specific recommendations for treatment and other services to reduce risk and offers explicit opinion as to the likely success of these services, with specific comment on expected functional improvement and on the likely time course of whatever success in treatment may be expected.

Summary

Regardless of the specific circumstances of individual legal cases and explicit referral questions, attention to the four H's in any forensic consultation involving child abuse improves the consultant's ability to provide a helpful response. Although a legal consultee may be focused on a single narrow question, others involved with the case—including the child and family—will have additional concerns. Truly skillful consulting in this area includes the ability to respond explicitly to a narrow referral question, while at the same time providing perspective on questions that may not have been asked, but the answers to which may contribute to more appropriate resolution of

the variety of legal problems stemming from child abuse and neglect.

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â€” physical abuse; â€” sexual abuse; â€” emotional abuse; â€” neglect. Physical abuse of a child is defined as those acts of commission by a caregiver that cause actual physical harm or have the potential for harm. Sexual abuse is defined as those acts where a caregiver uses a child for sexual gratification. Emotional abuse includes the failure of a caregiver to provide an appropriate and supportive environment, and includes acts that have an adverse effect on the emotional health and development of a child.Â Neglect is thus distinguished from circumstances of poverty in that neglect can occur only in cases where reasonable resources are available to the family or caregiver. The manifestations of these types of abuse are further described in Box 3.1.