By Daniel Pollack

May a Foster Child Sue a Biological Parent for Sexual Abuse?

Photo illustration by Chris Campbell

Removed from their biological parents, the children were placed in foster care. The court and all the professionals held out hope that the children would one day be reunified. Toward that end, under court order, unsupervised visits were gradually introduced. Unfortunately, those unsupervised visits were occasions for the biological father to molest his own children in plain sight of the mother.

Eventually, the children sought to sue their mother. May they? Aside from the practical aspect of the mother having insignificant assets, what is the legal answer? The mother was present when the children were being abused. She saw their plight in time to act so the children could avoid being harmed, and she knew, or should have known, that a legal duty existed to protect them. In such a circumstance, when a child suffers an injury resulting from a parent's failure to adequately protect, should there be an actionable tort against the biological parent?

The doctrine of parental immunity can be traced back to 1891 to a Mississippi Supreme Court case, *Hewellette v. George* (9 So. 885 (Miss. 1891)), holding that a minor child may not maintain a negligence action for personal injuries against his or her parent. The court noted that "so long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid and comfort and obey, no such action as this can be maintained (p. 887)." The court further explained: "The peace of society, and of the families composing society, and a sound public policy, designed to subserve the repose of families and the best interests of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent. The state, through its criminal laws, will give the minor child protection from parental violence and wrong-doing, and this is all the child can be heard to demand (p. 887)."

Eventually, a number of states decided to completely abrogate the parental immunity doctrine. Today, some states still hold by a limited parent–child tort immunity rule for intentional torts, and some recognize an actionable tort for negligent parental supervision. But our case is different. Legal custody of the children was held by the state; physical custody was with the foster parents; but, the parental rights of the biological parents had not been terminated.

Some courts have strongly condemned applying the parental immunity doctrine to defeat an intentional sexual abuse claim. For example, in *Hurst v. Capitell* (539 So. 2d 264 (Ala. 1989)), a minor sued her stepfather and natural mother for damages based on sexual abuse. The court held: "[T]o leave children who are victims

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share success stories, we must paint the full picture. Frames that include the environmental and community context up front in our narrative are far more effective. Whole family or multigenerational approaches that bridge sectors are particularly helpful frames for showing what works across the lifecycle of a family in the community in which they live, work, and play. Consider the connected systems at play, for example, in shaping the trajectory of young parents who find initial support in a TANF program (human services system) that provides them with new job skills (workforce system) that lead to a quality job (employer), and where child care subsidies (early learning and care) mean Dad or Mom can take that job and simultaneously assure quality early learning and care for their children.

Another way to apply this metaphor is to flip the lens completely to tell the story of how the human services system is a fundamental building block for healthy human development and well-being. When we show how education, health, employment, and other sectors are naturally connected to human services, we turn the focus to how human services can prevent unnecessary reliance on government supports, positively impact population health and well-being, and reduce downstream costs.

Second, we need to use numbers more effectively.

We are bombarded with news stories involving large numbers. Especially related to government or charities, we hear about billions of dollars spent on services or the historic number of people served in a program. These frames evoke an unproductive response and almost always result in default thinking about government waste or ineffective use of charitable dollars.

We have to get better at showing the full landscape. This means when we share success stories, we must paint the full picture. Frames that include the environmental and community context up front in our narrative are far more effective.

There are two keys to remember when using numbers to illustrate your point. First, it is important to provide the "why" up front. Numbers alone don't tell the story and won't move people to a more productive frame. This is true even when you're making a compelling case for a program's return on investment to a community. Before you introduce how effective a service is, you need to first show what is at stake and why it matters. For example, building on Frameworks research in human services, we know that the shared American value of human potential is an effective means of connecting people to the idea that all of us should have the opportunity to live to our full potential and that well-being is not something we are born with but is built by the environment around us. Once we have set that stage, we can use numbers to help explain the issue and what the policy opportunities are to prevent or resolve the problem.

"Social math" is the practice of translating statistics and other data so that they are meaningful to an audience and helpful in advancing public policy. Comparisons to familiar things can be helpful; for example, comparing the cost benefit of making investments in a school over a prison—both well-known institutions.

Using numbers this way is a part of effective framing. When it is done well, social math disrupts old mindsets and can open up new ways of seeing the issue and the solution(s).

All of this takes practice. At APHSA, we have developed training curricula, tools, and technical assistance supports on framing tailored for health and human services. If you are interested in exploring these services, please contact me or Emily Campbell, who leads our Organizational Effectiveness practice, at *ecampbell@aphsa.org*.

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of such wrongful, intentional, heinous acts [sexual abuse acts] without a right to redress those wrongs in a civil action is unconscionable, especially where the harm to the family fabric has already occurred through that abuse (p. 266)." In similar fashion, the Connecticut Supreme Court, in *Henderson v. Woolley* (230 Conn. 472 (1994)), held that the common law parental immunity doctrine did not bar a civil lawsuit for damages by a minor child against his or her parent for personal injuries arising out of sexual abuse, sexual assault, or sexual exploitation.

If a child living with his or her biological parents is permitted to bring a legal action against a biological parent for sexual abuse, is it not compelling that, all the more so, a child living in foster care can also bring a similar action? It is time for all states to embrace the idea that, to whatever extent it retains a parental immunity doctrine, such doctrine should not bar an action by a minor child against a biological parent for damages arising from sexual abuse when the child is in foster care. A parental immunity doctrine should not be a shield for parental moral depravity.

Daniel Pollack *is a professor at Yeshiva University's School of Social Work in New York City. He can be reached at dpollack@yu.edu; (212) 960-0836.*