

Gregory Public

GARTH SMORANG Q.C.
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March 27, 2012

Dear Mr. Smorang;

You have asked me to provide you with an opinion on the potential hazards and possible benefits of exposing the identities of social workers who have been called to testify at an inquiry into the tragic death of Phoenix Sinclair. I am familiar with the basic facts of the case. My understanding is that you represent the social workers in this matter. I understand that you are applying on their behalf for a publication ban of their identities, although your clients are not opposing the publication of their testimony.

I have attached a copy of my Curriculum Vitae for your perusal. My interest and concern regarding child protection services for preschool children stems from my work over the last decade as an infant mental health clinician and consultant specializing in infant and toddler maltreatment; along with my prior experience as a child welfare investigator and supervisor.

My work has lead me to an examine of the problem of human error in judgment and reasoning that we all fall prey to but that can have disastrous consequences in the context of child protection. In particular, I have been researching cognitive and judgment errors that can impact the investigation and protection of young, preverbal children who cannot easily be interviewed regarding their condition or experiences. I have perused the literature on decision theory, cognitive reasoning errors and self-reflective practice in social work. It has lead to some insights that may be useful in answering your question. Additionally I have reviewed the Gove Report,¹ The Munro Review of Child Protection: Final Report ⁱⁱ and relevant papers on the topic of child welfare death reviews, to better understand how common human reasoning errors can play out in the context of child maltreatment.

In my private practice I have used these resources to design workshops and seminars for child protection workers, judges and family law professionals (counsel and mediators) who are involved in critical decisions about preschool children. I have delivered these lectures and workshops in Alberta, Ontario, British Columbia and in various parts of the United States. In June I will be attending the annual conference of the Association of Family and Conciliatory Courts in Chicago where a local judge and I will be drawing on this research for a presentation.

Throughout my career I have unfortunately witnessed several child welfare tragedies unfold in the public arena here in Alberta. Egregious errors resulting in tragedy are typically followed by public indignation and pressure on governments for greater oversight, individual accountability and severe consequences for individual errors. Expensive and comprehensive reforms have been implemented in a number of jurisdictions, usually with disappointing results. I am hard pressed to give an example of substantial improvements in outcomes for children that resulted from a fatality inquiry, despite the good intentions and hard work of the participants. I believe that the lessons learned from research on human error in the fields of aviation, medicine, the military, and in the financial sector help explain where we may have gone wrong in the past. This research is directly applicable to the question you have asked about the publication of individual identities.

Exposing caseworkers who may have failed in their task in some way is appealing at an emotional level and will satisfy many onlookers. This reflects our natural tendency to seek and be satisfied with the simplest explanations for tragic outcomes.ⁱⁱⁱ Our brains do not like nuance or complexity – we prefer simple cause/effect explanations. Research suggests however, that focusing on individual failures is unlikely to improve practice overall and may have some unintended negative consequences. If the real objective is to prevent future tragedies, exposing front line professionals to public censure is not the way to go about it.

The media acts as the eyes and ears of the public and so it is vitally important for members of the press to have a full accounting of exactly what happened that led to the brutal abuse and tragic loss of this helpless child. Unfortunately, the media not only has a responsibility to educate the public, it also has an interest in engaging the audience in a compelling story. This story is told from the outside and with the benefit of hindsight, often in an indignant tone. The problem with hindsight is that it is not 20/20; *“Knowing how things turned out influences the way we perceive and remember past events, giving the outcome the appearance of inevitability.”* (Hallinan, 2009, p. 64.)^{iv}

Public outrage is further fueled by our vain belief in our own superiority. When asked, most people will describe themselves as more ethical and more nobly motivated employees than the average.^v When child welfare fatalities are examined in hindsight, and stripped of nuance or context by the media, it is fairly easy for members of the public to conclude that they would have performed better than the caseworker did in the situation – even though this is probably not the case. This has a chilling effect on professionals who know better and who feel increasingly vulnerable to unreasonable public criticism; and on politicians who depend on public support. As governments react to mounting public pressure, the historical result has been wild swings in child welfare policy from a focus on family preservation to greater emphasis on intrusive intervention and back.^{vi} Over time, the result has been increasingly prescriptive policies intended to circumvent worker judgment, and increased scrutiny of worker behavior and decisions. Today, more

than half of worker and supervisory time is spent on paper work to address accountability demands instead of face-to-face contact with children and families.^{vii}

The decisions we make - especially life altering decisions made on behalf of others - are governed as much by emotions as by reason, whether we like to think so or not. Fear and regret are very powerful emotions. If we are afraid to make a mistake we prefer to err on the side of *failing* to do something because we are more likely to regret our actions than our inactions.^{viii} When frontline workers see their colleagues pilloried in the public arena, the natural instinct is to avoid taking decisive action and to defer decisions to higher levels in the bureaucracy. Permitting the public condemnation of individual caseworkers results in the entire organization from top to bottom becoming focused on avoiding mistakes instead of on serving children.

Sidney Dekker makes the point that when mistakes are made in aviation, especially tragic mistakes, indignation usually trumps explanation.^{ix} When it comes to learning from past mistakes in child welfare practice, we can take our pick, be indignant or do something meaningful. Doing something meaningful will require a patient, dispassionate and persistent exploration of caseworker reasoning and behavior, the context, the judgments and, indeed, the mistakes. The paradox of human error is that if you want to eradicate human error, you have to start by assuming it is inevitable.^x If we accept the premise that human beings are flawed, that mistakes are inevitable, and that child protection work is complicated and difficult; then it makes little sense to publish the names of individuals who may or may not have erred in this tragedy.

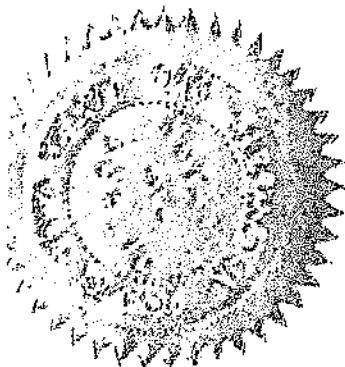
I sincerely hope that my perspective on this difficult question is of assistance to those who are trying to prevent a tragedy like this one from happening in the future.

Sincerely;

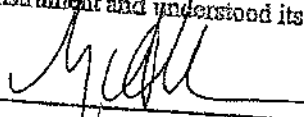


Evelyn Wotherspoon, MSW

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I HEREBY CERTIFY that the above-named Evelyn Wotherspoon appeared before me on this 13th day of April, 2012, and ~~being known to me~~ ^{being identified by} Canadian passport # QD175860, acknowledged the above signature to be ^{his/hers} and that ^{he/she} had freely and voluntarily executed this instrument and understood its contents.



Notary Public, British Virgin Islands
MY COMMISSION IS FOR LIFE.

References

- ⁱ Report of the Gove Inquiry into Child Protection in British Columbia (1995). Retrieved from the internet on March 27, 2012 from: <http://www.qp.gov.bc.ca/gove/rsource.htm>
- ⁱⁱ Munro, E. (2011). The Munro review of child protection: Final Report. Retrieved from the internet on March 27, 2011 from: (<https://www.education.gov.uk/publications/eOrderingDownload/Munro-Review.pdf>)
- ⁱⁱⁱ See for example Chapter 8: We like things tidy (pp. 118-133) in Hallinan, J. (2009). Why we make mistakes: How we look without seeing, forget things in seconds, and are all pretty sure we are way above average. Broadway Books, New York.
- ^{iv} Hallinan, J. (2009). Why we make mistakes: How we look without seeing, forget things in seconds, and are all pretty sure we are way above average. Broadway Books, New York, pp. 64.
- ^v Fine, C. (2006). A mind of its own: How your brain distorts and deceives. W.W. Norton and Co., New York.
- ^{vi} Justice Gove identified this as a problem in his report. See also, Mann, M. (2006). Child protection overload. The Canadian Bar Association. Retrieved March 29 from <http://www.cba.org/cba/national/junjul03/PrintHtml.aspx?DocId=6385>
- Also see Bala, N. (1999). Reforming the child and family services act: Is the pendulum swinging back too far? Paper presented to the Ontario Court of Justice Judge's conference, Niagara Falls, 1999. Retrieved March 29, 2012 from: http://www.casbrant.ca/files/upload/oacas/Chapter1/Reforming_the_Child_and_Family_Services_Act.pdf
- ^{vii} Munro Report.
- ^{viii} Hallinan, J. (2009), pp. 53.
- ^{ix} Dekker, S. (2006). The field guide to understanding human error. Ashgate Publishing Co. USA, pp 46-47.
- ^x Schulz, K. (2010). Being wrong: Adventures in the margin of error. Harper Collins, USA. pp. 302.