

CHAPTER ONE

AN AMERICAN STORY

This Is How It Began

January 22, 1983

In emergency rooms, the week has a rhythm as predictable as the ocean's tides. On Friday night a wave begins to wash in: the knife wounds, the busted noses, the fractured ribs. And then around three a.m., Saturday morning, the tide recedes as the bars close, the parties end, and the bruised but not broken make their way home. But by Saturday night a stronger, more furious tide sweeps in and crests in the hours around midnight with the gunshot wounds, the slashed faces, the mangled limbs, and the cracked skulls. And then, again, the tide recedes as Saturday night turns into Sunday morning and the kitchen fights end, the barroom brawlers pass out, and the drunk drivers reach home, jail, the hospital, or the morgue. By Monday, the wreckage has swept through the emergency room to other wards, and a relative calm returns. The weekend's carpeted battlefield gives way to the single body in distress. The crowded waiting room gives way to the huddled relatives waiting in fearful silence to hear news of the heart attack victim, the breadwinner monstrosly injured on the job, the badly damaged child.

Marie DeShaney brought the three-year-old into the Theda Clark Medical Center emergency room early Saturday afternoon during a lull in the weekend's drama. He had been playing, she claimed, and had accidentally been struck across the forehead with a metal truck by a two-year-old playmate. His name was Joshua DeShaney and she was his caretaker. His father was away ice fishing. The three-inch-long bruise on the boy's forehead was clearly evident to the doctor, Robert Gehringer, but there was also a blue bruise on Joshua's right cheek, an abrasion on the back of his head, and a bruise the size of a half dollar on the left side of his scalp.

As Gehringer moved to examine Joshua further, there might have been pause, a gesture, something suggesting hesitation on Marie's part, but the nurses moved swiftly to remove the boy's clothing. There were bruises on his spine and on his arms, several with dotted, textured patterns. There were also bruises across his buttocks, his thighs, his ankles, and his heels.¹

An emergency room nurse placed a call to Thomas Hoare, a medical social worker on duty that afternoon. Unlikely accidents, unexplained injuries, the scars and bruises of old injuries on children brought in for treatment triggered suspicion. The parent or the guardian always had an innocent explanation, but the law mandated that inquiry be made. The nurse ". . . indicated to me that they had a child there who was approximately three years old and they suspected that the child had been physically abused," Hoare later recounted; ". . . there were a number of bruises on the child and the child was brought in by an aunt."

He went down to the emergency room, and after taking a look at Joshua spoke with Gehringer and with Marie. The doctor's view was unequivocal. The boy had multiple contusions and there was no satisfactory explanation. He believed that this might be a case of child abuse and recommended that Joshua be admitted to the hospital.²

Hoare's craft often took him into the netherworld of an uncertain reality. At first glance, the evidence of abuse was rarely unequivocal. The unlikely injury could have an innocent explanation. Bizarre accidents do occur. But, on the other hand, the law demanded that the uncertainties attending possible abuse be resolved, that the authorities make an effort to determine where responsibility lay when confronted with an injured child and an improbable story, or no story at all. He was no stranger to this shadow world. He had taken in-service training courses on child abuse and child neglect detection and had come face-to-face over the years with the grim realities of child abuse. He had also given talks on the matter, seeking to increase public awareness of a problem that played out behind closed doors, away from witnesses, with victims seldom able to give voice to their hurt.

Ordinarily, an adult bringing a child to an emergency room has a right to take the child home following treatment, except for those occasions when emergency room medical staff become concerned that returning home might not be in the child's best interest. Joshua had recent injuries and showed signs of possible past abuse. It was not clear, however, that Marie could be compelled to leave the boy in the hospital's custody. The hospital would need a court order granting it temporary custody to admit him, or the permission of the parent, but the boy's father was not

available to give permission. If Joshua were to remain in the hospital, the machinery necessary to turn suspicion into intervention had to be quickly put in motion.

Hoare left the emergency room and set about translating concern into action. It was the weekend. Offices were closed. The mechanics of seeking-custody would be more complicated. He made two calls: one to the police department, the other to Ann Kemmeter, a social worker at the Winnebago County Department of Social Services. Although a social worker himself, Hoare knew that County Social Services should play a role in the unfolding case from the outset, given questions about the source of the boy's injuries and the possibility of foster care placement should one of his caretakers be found to have caused them.

The police dispatcher contacted Keith Nelson, the officer on duty that afternoon. If there was abuse rising to the level of criminal assault, there would have to be an investigation, suspects would have to be questioned, evidence gathered, and the district attorney would have to become involved. Nelson would spearhead the immediate inquiry to determine how far suspicion moved in the direction of certainty.

Nelson arrived at the hospital just before four in the afternoon and went to the emergency room to get a firsthand look at the injured boy. Having children of his own, he believed he knew what normal childhood scrapes and bruises looked like. In his view, whatever had happened to Joshua was beyond the likelihood of run-of-the-mill bumps and falls. The circumstances demanded investigation and the gathering of evidence for the two agencies that would have ultimate responsibility for deciding Joshua's fate: the District Attorney's Office and the Winnebago County, Wisconsin, Department of Social Services.³

Had it not been the weekend and had she not lived in Neenah, Ann Kemmeter might never have become involved in the case. But, it was the weekend, and the Department of Social Services did not have anyone on call. The police or the hospital could have gone through Helpline, a crisis intervention service that would have provided assistance, but because she lived not that far from the hospital, from time to time they called her in for cases like this.⁴

Sometime toward late afternoon, an hour and a half or so after Marie had brought Joshua to the emergency room, Hoare reached Kemmeter by phone. Could she come to the Medical Center immediately? The Social Service Department might have to become involved in the case, should it be necessary to seek a court order transferring custody of Joshua to the hospital. If he were the victim of abuse, the department would have to find

placement for him outside the home. If an investigation determined that there was no abuse, the department might still wish to monitor the home situation and offer a range of services to his caretakers to help them cope with child-rearing problems.

Kemmeter arrived at the hospital in late afternoon and, along with Keith Nelson, was apprised of the situation by Hoare. He asked her to contact Juvenile Court Intake in order to secure formal authorization for Theda Clark Medical Center to assume temporary custody of Joshua DeShaney, pending an effort to determine the origin of the immediate injury that brought him to the emergency room on a cold winter afternoon and the other injuries the examination revealed. "I did not have a history as to what really happened to this child," he would explain later, ". . . and the father was not available to . . . get a history."

Hoare went up to the pediatric unit and spoke to the staff. Given that this was a case of possible child abuse, it was his feeling that Joshua was going to be admitted to the protective custody of the hospital. They were to be particularly sensitive to the interaction between Joshua and any adults coming to see him.

Outside a light snow had fallen, leaving a shimmering silver mist on the ground. The trees in Riverside Park shivered in the brisk wind sweeping in off the lake. The early evening streets were rapidly becoming deserted, save for the few souls compelled by duty or driven by need to face the looming night away from home: here and there a shopkeeper waited for the last customer, the policeman on lonely patrol passed through darkening streets, the traveler huddled against the cold in the dim glow of a streetlight, and the child in distress, newly admitted to the hospital, lay still, comforted by the warmth of strangers.

At 4:15 p.m., just under three hours after Joshua DeShaney had been brought into the emergency room, Dan Venne, intake worker with the Winnebago County Circuit Court, acting on a request by the County Department of Social Services, granted temporary custody ". . . pending a complete investigation of the numerous and unexplained bruises that appeared on Joshua's body." The County Department of Social Services was alleging that Joshua was a child, ". . . in need of protection . . . who has been the victim of physical abuse . . . inflicted by another." His father and Marie were to be queried, as well as anyone else who might have information about what had happened to him.

Randy DeShaney, Joshua's father, arrived at Theda Clarke while the social worker and the policeman were still there. With Ann Kemmeter present, Keith Nelson questioned Randy and Marie regarding the circum-

stances that brought the four of them together at the hospital late on a winter day in January. They were very cooperative. They denied abusing Joshua and expressed concern regarding the bruises he had. Given that the bruises did not seem to be healing, they intended, they said, to make an appointment to bring him to the Nicolet Clinic that coming Monday for a full, head-to-toe examination. They were in accord with regard to their expectations of Joshua and their methods of disciplining him.

As evening passed into night, the interrogation broke off. The couple agreed to make itself available for further questioning if necessary. Nelson intended, in any event, to pursue the investigation the next day, and the next, if need be. Randy and Marie lived nearby. Neenah was a small town. There were neighbors to be queried as to what they had seen or heard. What remained out of sight could not long be hidden.

The settlers who founded the community had named it Neenah, the Indian word for water. It lay fifteen miles north of Oshkosh, which in turn lay 70 miles north of Milwaukee. The train from Chicago stopped in Milwaukee, but did not run to Oshkosh. The bus from Milwaukee stopped in Oshkosh, but did not run to Neenah.

Nestled on the edge of the Wisconsin North Country, Neenah was the sunlit, small town of the American imagination, shaped in its early decades by American dreams and American passions. The American dream of owning a small business and being one's own boss was reflected in Elwer's Drugstore, old Fred inside behind the counter, serving customers who had been coming in since the place opened, while American passion, the quest for fair treatment and a decent life, echoed in repeated strikes by Neenah Boot and Shoe company workers seeking better working conditions, their struggle inspired by the fierce rhetoric of William Jennings Bryan, the nineteenth-century populist who railed against the malefactors of great wealth, and for whom the town bridge across the Fox River was named.

But the region had also been shaped by great wealth concentrated in a small number of hands. From the time of its founding in 1872, the Kimberly-Clark Corporation, manufacturer of paper products, had dominated the area. Symbols of the sway of the founding families marked the local landscape: a village to the north named Kimberly, land given to Neenah, called Kimberly Point Park, and in 1909 a hospital named Theda Clark Medical Center.⁵

The hospital's beginning lay in tragedy, and it had been founded to prevent future tragedy. Theda Clark Peters, ". . . a bright princess . . . of wealth and refinement," died at home in childbirth in 1903. She had been devoted to good works during her life, hence her family, following her

death, financed the building of a hospital in her memory so that future mothers in crisis and children in danger would have a place to which they could be brought for care and comfort.

The hospital's very location spoke of haven and refuge. There were parks and gracious green spaces nearby—Wilderness, Doty, Riverside—offering peace and solitude to the husband, the father, the anxious mother waiting to learn the fate of a loved one. It sat on a point of land overlooking the Fox River, at once distant from the tragedies that brought the distressed to its doors, yet near enough for them to swiftly find shelter. Marie had been able to rush Joshua quickly from whatever world yielded his injuries to Theda Clark Peter's sanctuary.

At some point, as afternoon became evening and events became more complicated, Hoare found time to sit down and begin assembling his notes, "putting everything in chronological order." There was no telling where the unfolding situation would take the increasing number of professionals charged with addressing it. At some point it might be vital to know where they had been.

On Monday, January 25, Randy came to the hospital again to see his son, as did Marie and his ex-wife, Christine. All three were interviewed by Kemmeter and Thomas Hoare and, again, were very cooperative, conveying information freely and easily. Christine had been Randy's second wife. His first wife, Melody, was Joshua's mother. She lived in another state and he had custody of his son. He and Marie had lived together since the breakup of his marriage to Christine. In addition to taking care of Joshua, Marie looked after her own son, Rusty, a year younger than Joshua.

As the conversation progressed, Kemmeter began to form the impression that Randy and Marie lacked parenting skills. Perhaps they failed to provide adequate supervision for Joshua while at the same time having unrealistic expectations of him. They felt that Joshua's behavior had deteriorated in recent weeks. They reported that he was wetting his bed, playing rougher with other kids, and biting and pinching himself. Randy seemed to want to do the right thing as a father, but neither he nor Marie exhibited knowledge of what the right thing might be. Their behavior did not suggest the bad conscience and fumbling fabrications of abusers. But, on the other hand, a three-year-old lay in a nearby hospital bed with multiple, unexplained bruises and abrasions.⁶

About a decade earlier federal funds had been used in schools around the state to support a series of pilot programs intended to increase awareness of the growing problem of child abuse. Randy would have been in high school at the time they were being offered and may or may not have participated.

But whatever his exposure or Marie's to prior guidance on the challenges of child rearing, the basic fact remained that parents did not "own" their children to do with as they pleased, but it was also true that the state could not take a child away from a parent without just cause established by fair procedures. There was evidence that Joshua had been abused, but at that point, no clear evidence that either his parent or his guardian had abused him. Randy and Marie left Theda Clarke, crossed over the bridge and returned to their Wright Avenue apartment, two miles and a few minutes away, far enough away to yield respite, yet near enough to respond quickly if summoned. There was nothing to do but await the decision of those who would determine whether Joshua would remain in the custody of caring strangers or leave the hospital with his father and Marie.

Randy was in his early twenties. He was part of a vast army that occupied no territory in the American imagination: young white men with no particular skills, no advantages of name or money. A high school graduate, he had a spotty job history. He had been briefly in the military. He had two failed marriages. And he was not yet twenty-six. The American imagination did not celebrate his style: neither the music, nor the mode of dress, nor the way of walking and talking. He had no personal accomplishments that thrust him into American consciousness. He could not hit a baseball with uncommon power. He could not throw a football with force and accuracy. He could not sing or dance in a manner attracting the adoring attention of an enraptured public. Even the misdeeds of his class lacked glamour: the barroom brawls on Saturday night, the "disorderly conduct" episodes with law enforcement, the police called by neighbors to pull a warring couple apart, merchants seeking payment for small amounts still owed, landlords demanding overdue rent.

If the Kimberlys and the Clarkes were the shining mountains above, Randy and his brethren were the shrub below, trying to survive in barren soil, seldom enjoying the warmth of the sun, often bent by driving rain.

The law mandated a prompt hearing to determine Joshua's immediate fate. It fell to Thomas Hoare to convene a meeting of a Child Protection Team to sort through the evidence and make a decision as to whether to keep Joshua in state protection or return him to the custody of his father. The team was, in Hoare's words, ". . . a conglomerate of people that are called together to help determine if we feel that we have a child abuse situation and to determine if it's safe for the child to return home . . ." And if the child were to return home they made recommendations ". . . as to what can be done to . . . improve the family situation."

The team would include hospital staff and others who had been involved with Joshua or with the adults responsible for his care, perhaps

a dozen or so people. The County Social Service Department would be represented, and legal counsel would be present to advise the team as to whether the situation justified retaining custody of Joshua beyond his stay in the hospital.

The law set forth criteria for reaching a decision, but that language—seemingly precise and directive—masked a contradiction in two long-term trends regarding child protection. Evidence of possible child abuse—the bruises, the broken bones—yielded a strong rationale for removing a child from a potentially harmful home environment, the error to be guarded against by childcare professionals being leaving a children in dangerous homes too long, subjecting them to their abusers malevolent caprice, with inevitably tragic consequences.

On the other hand, the profession encouraged preservation of the family by keeping a child in a problematic home while providing services to help the family cope with its problems: mandated classes in parenting, regular clinic visits for the child, periodic home visits by childcare professionals. The error to be guarded against was taking a child from a home too quickly, subjecting a child not in danger to the trauma of being wrenched from the only shelter that child has known and placed with strangers.

This contradiction hung in the air, as Hoare made phone calls, searching for a time when all of the parties could meet and decide where Joshua would be taken when he left the hospital. On the one hand, the dilemma posed by the ambiguous evidence of abuse might be resolved by removing him from Randy's home; on the other hand, the uncertain evidence might support an argument favoring family preservation, returning him to Randy's care while providing help to Randy in meeting the challenges of parenthood.

These conflicting considerations informed the team's debate as it struggled to decide what was in Joshua's best interest. A grasp of the evolution of these opposing options is crucial to understanding the Child Protection Team's ultimate decision about Joshua, and the decision other teams, similarly situated, make about other Joshuas.