

Responding to Child Sexual Abuse: The Need for a Balanced Approach

Douglas J. Besharov

Abstract

This article suggests a number of improvements in the reporting and investigation of child sexual abuse cases. The article begins with a reminder that our eagerness to protect children cannot be allowed to overcome our nation's commitment to fairness and due process. For both the alleged perpetrator and the child victim, much is at stake in these cases, and our system must strike a balance to protect the rights of both.

Currently there is a problem with both underreporting of suspicions of child abuse and overreporting of cases that are unfounded or cannot be substantiated. Several recommendations are made to make reporting more accurate. These include: clarify reporting laws, expand and improve training for reporters, develop agency policies regarding reporting, modify liability and immunity rules, improve efforts at screening reports, and provide feedback to reporters.

Finally, the article discusses the importance of interviewing children and offers some techniques for doing so properly. Issues of interpreting physical and behavioral signs of abuse are also discussed, and the importance of accurate record keeping is emphasized.

Douglas J. Besharov, J.D., LL.M., is resident scholar at the American Enterprise Institute for Public Policy Research. He was the first director of the U.S. National Center on Child Abuse and Neglect.

In recent years, much progress has been made in exposing the plight of sexually abused children and in providing them with needed protection and treatment. In 1976, about 6,000 confirmed reports of sexual abuse were made to child protective agencies. By 1985, the number had risen to about 113,000 each year.¹ And, in 1993, the number had risen to about 152,000.² Although many more reports of suspected sexual abuse are deemed "unsubstantiated" (or "unfounded") and closed after an investigation, there has nevertheless been a 25-fold increase of verified cases in fewer than 20 years.

The article by Pence and Wilson in this journal issue describes the process and key stages in the reporting and investigation of child sexual abuse. This article recommends some areas for improvement in this process. But, before discussing these recommendations, it is important to emphasize the need for balance in our efforts to protect sexually abused children.

Allegations of sexual abuse can have enormous consequences for both the accused parent and the child. There is no denying that, during good-faith efforts to protect children, innocent parents have suffered. Concern about sexual abuse must not be allowed to undermine our nation's commitment to the presumption of innocence and due process of law.

Portions of this article, prepared with the assistance of Lisa Lauermann, are revised and updated versions of material that is published in Besharov, D. Recognizing Child Abuse: A Guide for the Concerned (Free Press 1990). © Douglas J. Besharov, 1990. Printed with permission.

In ordinary criminal cases, Americans have reconciled themselves to the fact that due process protections may “get a guilty man off.” They cherish the right of every defendant, even the worst miscreant, to enjoy the presumption of innocence. But because of the tremendous sympathy that abused children arouse, some people act as if an alleged “child beater” has a lesser right to the presumption of innocence.

Laws against child abuse are an implicit recognition that family privacy must give way to the need to protect helpless children. Nevertheless, in seeking to protect children, legitimate rights of parents must be respected. As the U.S. Supreme Court held in *Stanley v. Illinois*, “It is plain that the interests of a parent in the companionship, care, custody, and management of his or her children comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements. The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one’s children have been deemed ‘essential,’ ‘Basic Civil Rights of Man,’ and ‘rights more precious . . . than property rights.’”³

The well-intentioned purpose of child protective efforts does not prevent them from being unpleasant—and sometimes counterproductive—intrusions into family life. A report alleging that a child is “abused” or “neglected” is an explicit ac-

mented the effect of such labeling on the parents: “Once an agency . . . labels a parent as abusive, other agencies tend to accept this label and treat the family accordingly.”⁵

The resulting stigma can stay with a family even if the allegations are dismissed. Worse, an adjudication of abuse or neglect may result in the parents’ placement under long-term court supervision and their being forced to submit to court or agency treatment programs, as well as the child’s removal from the home for months or, perhaps, years. It may also lead to the permanent termination of parental rights and the parent’s incarceration.

Because so much is at stake, parents have a fundamental right to contest any state deprivation of their liberty or intrusion into their private family life, no matter how benevolent its putative purpose. After all, they may be innocent. As Justice Louis Brandeis warned in a different context, “Experience should teach us to be most on guard to protect liberty when the government’s purposes are beneficent.”⁶

Even though the law requires the reporting of “suspected” child maltreatment, it must be remembered that only suspicions are being reported. The parents’ innocence should be presumed unless and until evidence establishing their guilt is obtained. Child protective workers should be attentive to reasonably available information, they should consider all relevant factors before reaching a decision, and they should adhere to the relevant legal or professional standards. Those who feel uncomfortable about respecting the presumption of innocence should ask themselves whether, if they were charged with child abuse, they would want anything but full legal protection.

Moreover, the children have a large stake in the outcome of these proceedings. An inappropriate adjudication of abuse or neglect may lead to an unnecessary and even harmful intervention into an already tenuous family situation. Long-term foster care, for example, can leave lasting psychological scars. It is an emotionally jarring experience that confuses young children and unsettles older ones. Over a long period, it can do irreparable damage to the bond of affection and commitment between parent and child. The period of separation may so completely tear the already weak family fabric that the parents have no chance of

The well-intentioned purpose of child protective efforts does not prevent them from being unpleasant—and sometimes counterproductive—intrusions into family life.

cusation of parental wrongdoing or inadequacy, which can be deeply stigmatizing. Supreme Court Justice Hugo Black described how, when a court petition is filed, the parent “is charged with conduct—failure to care properly for her children—which may be viewed as reprehensible and morally wrong by a majority of society.”⁴ Researchers have docu-

being able to cope with children when they are returned.

While in foster care, children are supposed to receive treatment services to remedy the effects of past maltreatment. Few do. Worse, children who stay in foster care for more than a short time, especially if they are older, tend to be shifted through a sequence of ill-suited foster homes, a process that denies them the consistent support and nurturing they so desperately need.^{7,8} Increasingly, many graduates of the foster care system evidence such severe emotional and behavioral problems that some thoughtful observers believe that foster care is often more harmful than the original home environment.⁹ In fact, this author is aware of instances in which children who engage in antisocial behavior caused by the traumatic conditions associated with their foster care experience are returned to their parents.

Thus, for the sake of both children and parents, parental rights must be respected. In the short run, it may be possible to ignore problems. In the long run, though, as more people realize that innocent people are having their reputations tarnished and their privacy invaded, and that some are being wrongly jailed, continued support for child protective efforts will surely erode.

Parental rights, moreover, can be protected without jeopardizing the safety and well-being of maltreated children. A vigorous defense need not make it impossible for the state to protect children adequately. If there are sound reasons for believing that abuse has occurred, the government, with sufficient planning and preparation, and with the aid of a well-functioning child protective agency, should be able to make its case in court. The array of protective workers, police, prosecutors, and so forth that the state typically musters in child protective proceedings should be sufficient to build a case against a parent. They should not need the assistance of a compliant judicial system to make their case stick.

Because so much is at risk (when sexual abuse allegations are made), for both adults and children, every effort must be made to limit reports and intervention to situations of real danger to children and to create a fair investigation and adjudication process. The following discussion

recommends some ways in which these goals might be accomplished.

Encouraging More Accurate Reporting

A balanced approach to child protection depends on accurate reporting, but reporting today is far from accurate. The following discussion reviews the progress in reporting, but then focuses on two problem areas: high levels of unreported cases and high levels of unsubstantiated reports. Among the recommendations made to address these problems are the following: clarify reporting laws, expand and improve training for reporters, de-

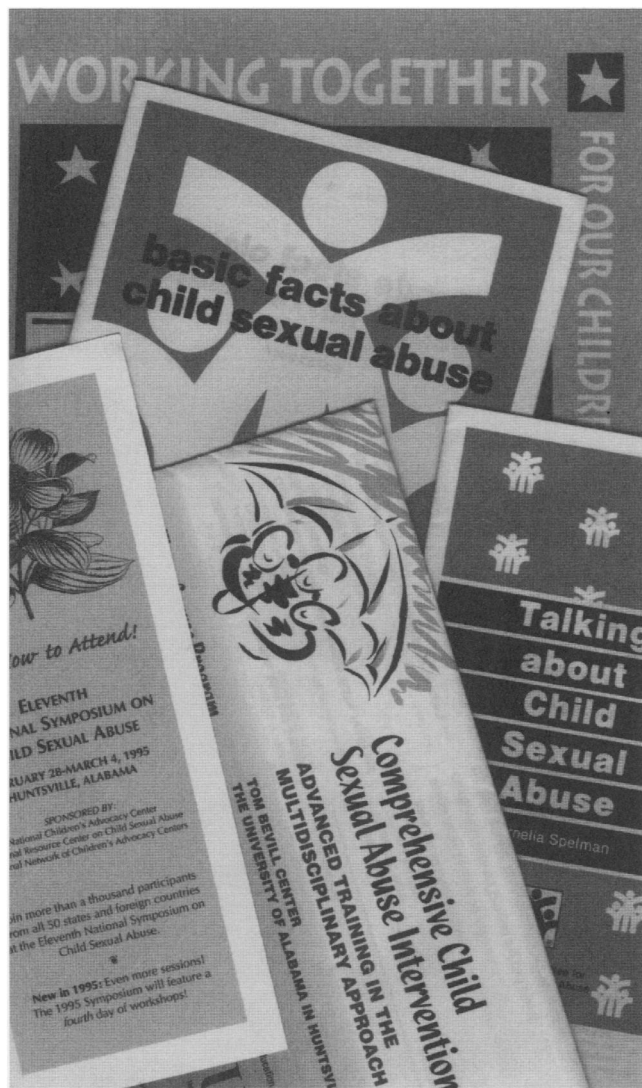
Parental rights, moreover, can be protected without jeopardizing the safety and well-being of maltreated children.

velop agency policies regarding reporting, modify liability and immunity rules, improve efforts at screening reports, and provide feedback to reporters.

History of Reporting

Reporting of suspected child abuse and neglect begins the process of protection. Adults who are attacked or otherwise wronged can go to the authorities for protection and redress of their grievances. But the victims of child abuse and neglect are usually too young or too frightened to obtain protection for themselves; they can be protected only if a concerned individual recognizes the danger and reports it to the proper authorities.

Initially, mandatory reporting laws applied only to physicians and required only reports of "serious physical injuries" or "nonaccidental injuries." In the ensuing years, though, increased public and professional attention, sparked in part by the number of abused children revealed by these reporting laws, led many states to expand their reporting laws so that, now, almost all states have laws which require the reporting of *all* forms of suspected child maltreatment, including physical abuse, physical neglect, emotional maltreatment, and, of course, sexual abuse



Public information materials and campaigns have been very effective in increasing the number of reports of child sexual abuse. To obtain more information, see the Appendix, page 247, for details regarding the following agencies:

- American Humane Association/Children's Division
- American Professional Society on the Abuse of Children
- C. Henry Kempe Center for Prevention and Treatment of Child Abuse and Neglect
- Clearinghouse of Child Abuse and Neglect Information
- National Center on Child Abuse and Neglect
- National Committee for Prevention of Child Abuse
- National Resource Center on Child Sexual Abuse
- The U.S. Advisory Board on Child Abuse and Neglect

and exploitation.¹⁰ See the discussion in the article by Pence and Wilson in this journal issue.

Under threat of civil and criminal penalties, these laws require reports from most professionals who serve children, including physicians, nurses, dentists, mental health professionals, social workers, teachers (and other school officials), child care workers, and law enforcement personnel. About 20 states require *all* citizens to report, regardless of their professional status or relationship to the child.¹¹ All states *allow* any person to report.

These reporting laws, and associated public awareness campaigns, have been strikingly effective. In 1963, about 150,000 children came to the attention of public authorities because of suspected abuse or neglect.¹² By 1976, an estimated 669,000 children were reported annually. In 1993, almost three million children were reported, more than 20 times the number reported in 1963.¹³

Many people ask whether this vastly increased reporting signals a rise in the incidence of child maltreatment. Although some observers believe that deteriorating economic and social conditions have contributed to a rise in the level of abuse and neglect, it is impossible to tell for sure. So many maltreated children previously went unreported that earlier reporting statistics do not provide a reliable baseline against which to make comparisons. Indeed, Finkelhor suggests, in his article in this journal issue, that adult retrospective surveys do not demonstrate any increase. One thing is clear, however: the great bulk of reports now received by child protective agencies would not be made but for the passage of mandatory reporting laws and the media campaigns that accompanied them.

Unreported Cases

Despite this progress, large numbers of obviously endangered children are still not reported to the authorities. Although all statistics concerning what happens in the privacy of the home must be approached with great care, the extent of nonreporting can be appreciated with the help of the National Incidence and Prevalence of Child Abuse and Neglect Study (conducted for the federal government by Westat, Inc.). The study estimated that, in 1986, selected professionals saw about 270,000 physically abused children, another 120,000 sexually abused children,

and 540,000 who were neglected or otherwise maltreated.¹⁴ According to the study, the surveyed professionals reported only about half of these children. (The study methodology, which involved asking professionals about children they had seen in their professional capacities during the study period, did not allow Westat to estimate the number of children seen by nonprofessionals, let alone their reporting rate.)

Professionals did not report almost 30% of the sexually abused children they saw. Nearly 15% of fatal or serious physical abuse cases (defined as life-threatening or requiring professional treatment to prevent long-term impairment) were not reported. And almost 40% of moderate physical abuse cases (defined by bruises, depression, emotional distress, or other symptoms lasting more than 48 hours) were not reported. The situation was even worse in neglect cases: about 67% of fatal or serious physical neglect cases were not reported, and about three-quarters of the moderate physical neglect cases were not reported.¹⁴

These statistics indicate that, in 1986, about 2,000 children with observable physical injuries severe enough to require hospitalization were not reported, more than 100,000 children with moderate physical injuries were also not reported, and over 30,000 sexually abused children went unreported.¹⁴

Unsubstantiated Reports

At the same time that many seriously abused children go unreported, an equally serious problem further undercuts efforts to prevent child maltreatment: the nation's child protective agencies are being inundated by "unsubstantiated" reports. Although rules, procedures, and even terminology vary—some states use the phrase "unsubstantiated," others "unfounded" or "not indicated" (see the article by Pence and Wilson in this journal issue)—an "unsubstantiated" report, in essence, is one that is dismissed after an investigation finds insufficient evidence upon which to proceed.

The emotionally charged desire to "do something" about child abuse, fanned by repeated and often sensational media coverage, has led, in this author's view, to an understandable but counterproductive overreaction on the part of the professionals and citizens who report suspected child abuse. Depending on the community, as

many as 65% of all reports are closed after an initial investigation reveals no evidence of maltreatment.¹⁵ This is in sharp contrast to 1975, when only about 35% of all reports were unsubstantiated.¹⁶

A few advocates have sought to quarrel with this author and others who have made estimates that the national "unsubstantiated" rate is between 60% and 65%.¹⁷ To help settle this dispute, the American Public Welfare Association (APWA) conducted a special survey of child welfare agencies in 1989. The APWA researchers found that, between Fiscal Year 1986 and Fiscal Year 1988, the weighted average for the substantiation rates in 31 states declined 6.7%, from 41.8% in Fiscal Year 1986 to 39% in Fiscal Year 1988.¹⁸ As Table 1 indicates, some states do not have a significant problem with unsubstantiated reports. But most do.

These data from APWA suggest that the unsubstantiated rate is even higher than the author's previous estimate of 65%, at least in the more populous states. The experience of New York State indicates what these statistics mean in practice. Between 1979 and 1983, as the

The great bulk of reports now received by child protective agencies would not be made but for the passage of mandatory reporting laws and the media campaigns that accompanied them.

number of reports received by the state's Department of Social Services increased by about 50% (from 51,836 to 74,120), the percentage of substantiated reports fell about 16% (from 42.8% to 35.8%). In fact, the unduplicated number of substantiated cases—a number of children were reported more than once—actually fell by about 100, from 17,633 to 17,552. Thus, almost 23,000 additional families were investigated, while fewer children received child protective help.¹⁹

The APWA report also addressed the claims of some that the National Incidence and Prevalence of Child Abuse and Neglect Study demonstrated that the substantiation rate actually rose from 43% in 1980 to 53% in 1986. However, as the

APWA report explained, in the 1986 study, "indicated" reports were counted as substantiated. "But these 'indicated' cases were, in fact, only cases whose investigations were still pending. The actual percentage of 'founded' cases was 26 percent; 43 percent were 'unfounded'; and 26 percent were still pending."²⁰ Most recently, the 35% figure was reconfirmed by the National Committee to Prevent Child Abuse's Annual Fifty-State Survey.²¹

Few unsubstantiated reports are made maliciously. Studies of sexual abuse reports, for example, suggest that, at most, from 4% to 10% of these reports are knowingly false.²² Many involve situations in which the person reporting, in a well-intentioned effort to protect a child, overreacts to a vague and often misleading possibility that the child may be mal-

Unsubstantiated rates of the current magnitude go beyond anything reasonably needed; a high rate of unsubstantiated reports should concern everyone.

treated. Others involve situations of poor child care which, though of legitimate concern, simply do not amount to child abuse or neglect. In fact, a substantial proportion of unsubstantiated cases are referred to other agencies for them to provide needed services for the family.

Moreover, an unsubstantiated report does not necessarily mean that the child was not actually abused or neglected. Evidence of child maltreatment is hard to obtain and may not be uncovered when agencies lack the time and resources to complete a thorough investigation or when inaccurate information is given to the investigator. Other cases are labeled unsubstantiated when no services are available to help the family. Some cases must be closed because the child or family cannot be located.

A certain proportion of unsubstantiated reports, therefore, is an inherent—and legitimate—aspect of reporting suspected child maltreatment and is necessary to ensure adequate child protection. Hundreds of thousands of strangers report their suspicions; they cannot all be right.

But unsubstantiated rates of the current magnitude go beyond anything reasonably needed; a high rate of unsubstantiated reports should concern everyone. Each report results in what can be an intrusive and traumatic investigation that is inherently a breach of parental and family privacy. To determine whether a particular child is in danger, caseworkers must inquire into the most intimate personal and family matters. Often, it is necessary to question friends, relatives, and neighbors, as well as school teachers, day-care personnel, doctors, clergymen, and others who know the family.

Furthermore, the current flood of unsubstantiated reports is overwhelming the limited resources of child protective agencies, endangering children who are really abused. For fear of missing even one abused child, workers perform extensive investigations of vague and apparently unsupported reports. Even repeated anonymous and unfounded reports do not prevent a further investigation. As a result, children in real danger get lost in the press of inappropriate cases. Forced to allocate a substantial portion of their limited resources to unsubstantiated reports, child protective agencies are less able to respond promptly and effectively when children are in serious danger. Some reports are left uninvestigated for a week and more after they are received. In the rush to clear cases, investigators often miss key facts; dangerous home situations receive inadequate supervision, as workers must ignore pending cases while they investigate the new reports that arrive daily on their desks. Decision making also suffers. With so many reported instances of unsubstantiated risk to children, caseworkers are desensitized to the obvious warning signals of immediate and serious danger.

These nationwide conditions help to explain why from 25% to 50% of child abuse deaths involve children previously known to the authorities.²³ In 1993, the National Committee for the Prevention of Child Abuse (NCPA) found a national average rate of 42%.²⁴ Tens of thousands of other children suffer serious injuries short of death while under child protective agency supervision.²³

Ironically, by weakening the system's ability to respond, unsubstantiated reports also discourage reporters from making appropriate reports. The sad fact is that many responsible individuals are not

Table 1

Child Abuse/Neglect Substantiation Rates in 30 States and the District of Columbia for Fiscal Years 1986, 1987, and 1988			
States	FY 86	FY 87	FY 88
Alaska	0.154	0.179	0.204
Arizona	0.268	0.262	0.235
Arkansas ^a	0.340	0.360	0.371
Colorado	0.417	0.416	0.400
Delaware	0.500	0.496	0.450
District of Columbia	0.350	0.285	0.322
Florida	0.367	0.354	0.355
Georgia	0.528	0.530	0.474
Hawaii	0.563	0.528	0.567
Illinois	0.485	0.427	0.434
Iowa	0.296	0.294	0.295
Kentucky	0.475	0.479	0.459
Maryland	0.396	0.396	0.395
Massachusetts	0.371	0.333	0.309
Mississippi	0.492	0.523	0.488
Montana	0.531	0.674	0.772
Nebraska ^a	0.588	0.558	0.542
Nevada	0.505	0.505	0.479
New Jersey	0.349	0.357	0.360
New York	0.344	0.358	0.322
North Carolina	0.360	0.353	0.340
Oregon	0.349	0.351	0.344
Pennsylvania	0.345	0.355	0.355
Rhode Island	0.461	0.471	0.462
South Carolina	0.286	0.267	0.276
South Dakota	0.456	0.429	0.407
Texas	0.536	0.529	.0430
Utah	0.281	0.281	0.436
Vermont	0.571	0.587	0.543
Virginia	0.242	0.231	0.226
Wisconsin	0.361	0.379	0.371
Mean average of rates:	0.405	0.405	0.401
Weighted average using raw state data:	0.418	0.414	0.390
^a The count of "Investigations" was used as the denominator for these states. In addition, the figures of some states were adjusted, as appropriate.			

Source: Tatara, T. *Children of substance abusing and alcoholic parents in public child welfare*. Final report prepared for the American Enterprise Institute. Washington, DC: American Public Welfare Association, December 1990, p. 19, Exhibit III.

reporting endangered children because they feel that the system's response will be so weak that reporting will do no good or

Attention must be paid to the simultaneous problems of overreporting and underreporting. Both are caused largely by the vagueness of reporting laws . . .

may even make matters worse. In 1984, a study of the impediments to reporting conducted by Jose Alfaro, Coordinator of the New York City Mayor's Task Force on Child Abuse and Neglect, concluded that: "Professionals who emphasize their professional judgment have experienced problems in dealing with the child protective agency, are more likely to doubt the efficacy of protective service intervention, and are more likely not to report in some situations, especially when they believe they can do a better job helping the family."²⁵

Attention must be paid to the simultaneous problems of overreporting and underreporting. Both are caused largely by the vagueness of reporting laws, aggravated by the failure of child protective authorities to provide realistic guidance in the form of public and professional education and training. These issues are discussed next.

Clarification of Reporting Laws

Many state laws are not as clear as they could be in establishing reporting mandates. Professionals, for example, can have difficulty in determining whether they are included among mandated reporters. Teachers in California reading their state's reporting law might conclude that they are not required to report because they are not a "child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency."²⁶ A later section of the same statute, however, defines a "child care custodian" to include, among others, teachers.²⁷

Other states have enacted broadly generalized mandates that create what can only be called a guessing game about who is mandated to report. A few jurisdictions require reports from any person "who, in the course of his employment, occupation, or practice of his profession comes in contact with children . . ."²⁸ Does this include school bus drivers? What about lunch-

room personnel? Other states use such vague phrases as any person "having responsibility for the care or treatment of children"²⁹ or any person "called upon to render aid or medical assistance."³⁰ Does the former include baby-sitters? And does the latter include a neighbor to whom a child goes for help?

Whatever the legal ambiguity of such reporting mandates, of course, individuals have a moral duty to report endangered children. And, since all states provide legal protections for any person who reports, there is no legal impediment to doing so. But the uncertainty of reporting mandates increases the chances that a wrong decision will be made. Given the problems that these unnecessary ambiguities cause, states should remove them from their laws.

More specificity in the actual definition of child sexual abuse will also lead to more appropriate reporting. At its extreme, "sexual abuse" includes sexual intercourse and "deviate sexual intercourse."³¹ Sexual intercourse may occur without orgasm and without complete penetration of the penis into the vagina. "Deviate sexual intercourse" includes "sodomy" or anal or oral intercourse, fellatio, cunnilingus, and anilingus. As a matter of statutory law, most states define the latter as any "contact between the penis and the anus, the mouth and penis, or the mouth and the vulva."³²

These acts, however, may be only the last step in a steadily worsening situation. For this reason and because of their inherent harmfulness, state laws should explicitly refer to lesser acts of sexual abuse, such as exhibitionism or improper sexual touching or contacts. They should enumerate specific acts, such as digital manipulation, rubbing or penetration of the young person's genitals or intimate parts, including the fondling of the buttocks or of a female's breast.³³ (The touching of intimate parts need not be direct; it may be done through the clothing that covers them.)

Parents and other caretakers, however, often touch the private parts of children, especially younger ones, for entirely innocent reasons—to change a diaper, for example, or to give an affectionate pat on the behind. State child abuse statutes should exclude these normal parental touchings from the ambit of their mandates by limiting reports to situations in which the touching is for the purpose of sexual

arousal or gratification (of either the adult or the child).³⁴

For an example of the level of specific detail that should be in a legal definition, see Besharov, *Recognizing Child Abuse*.³⁵

Training for Reporters

In addition to a statutory clarification about when reports should be made, mandated reporters need training about complying with these statutes. Few people fail to report because they do not care about an endangered child. Instead, they may be unaware of the danger the child faces or of the protective procedures that are available. A study of nonreporting among teachers, for example, blamed their "lack of knowledge for detecting symptoms of child abuse and neglect."³⁶ Likewise, few inappropriate or unsubstantiated reports are deliberately false statements. Most involve an honest desire to protect children coupled with confusion about what conditions are reportable.

Thus, although professional awareness of child abuse is at an all-time high, there are still major gaps in understanding and knowledge. Better education on reporting responsibilities continues to be the single most effective method of encouraging more complete and more accurate reporting. Recognizing this fact, almost half of the states have specific statutes mandating professional training and public awareness efforts.³⁷ California goes further, requiring all those entering employment as a "child care custodian [which includes teachers], health practitioner, or with a child protective agency" to sign a statement indicating an understanding of the state's mandatory reporting provisions.³⁸ Of course, legislation is not required for a state to provide public and professional education, and most do.

Training efforts should be both expanded and improved. Professional education programs should sensitize all child-serving professionals to the occurrence of child abuse and neglect, and should instruct them in how and when to report. These programs should cover all forms of child abuse and neglect, including institutional abuse and neglect, explaining that child protective procedures are not punitive in nature and that their purpose is to protect the child and rehabilitate the parents.

In 1987, a national group of 38 child protective professionals from 19 states met

for three days at Airlie House, Virginia, under the auspices of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection in association with the American Public Welfare Association and the American Enterprise Institute. The Airlie House group, as it has come to be called, developed policy guidelines for reporting and investigation decision making. One of the group's major conclusions was that there should be improved guidelines for public and professional education about what should be reported (and what should not be). "Better public and professional materials are needed to obtain more appropriate reporting."³⁹ The group recommended that "educational materials and programs should: (1) clarify the legal definitions of child abuse and neglect, (2) give general descriptions of reportable situations (including specific examples), and (3) explain what to expect when a report is made."³⁹

Professional education for potential reporters should also include training about when there is "reasonable cause to suspect" or "reasonable cause to believe" that a child is abused or neglected.⁴⁰ In all states, reporters do not have to prove that a child has been abused or neglected; they need only show a reasonable basis for their suspicions. Too often, though, this wisdom is taken to unreasonable lengths. Potential reporters are frequently told to "take no chances" and to report any child for whom they have the slightest concern. Educational materials must explain, clearly and with practical examples, the legal concept

Better education on reporting responsibilities continues to be the single most effective method of encouraging more complete and more accurate reporting.

of "reasonable cause to suspect" child maltreatment. Unfortunately, the few attempts to do so have foundered on the fear that an overly strict definition will leave some children unprotected. That an overly broad definition might do the same is often overlooked.

Professional education, of course, should also focus on the reporting process, conveying the community's reliance

on professional reporting of suspected child abuse and neglect. It should describe professional responsibilities, powers, and immunities under state reporting laws; how to identify maltreated children; and the mechanics of reporting.

Professional education should also seek to improve cooperation and coordination among all agencies serving children and families. Thus, it should explain the interrelated responsibilities of child protective agencies, law enforcement, courts, and community human service agencies. See Box 1, which lists the basic elements of any program of professional education.

Although child protective agencies have the lead responsibility for both public and professional education, all child-serving professions and agencies should

A well-received and clearly written policy can greatly upgrade an agency's response to child maltreatment. But to be effective, a policy must be known.

conduct their own training and educational programs to supplement the efforts of state and local child protective services. Professional education should start in graduate schools and proceed through in-service or continuing education programs.

Ultimately, though, all professionals, whether on their own or working in agencies, must take the responsibility to learn about child abuse and what they can do about it. This means reading professional literature, seeking and taking advantage of educational opportunities, consulting with others, and maintaining membership in professional groups and organizations.

Agency Policies on Reporting

Appropriate reporting of suspected sexual abuse requires a sophisticated knowledge of many legal, administrative, and diagnostic matters. An increasing number of public and private agencies are adopting formal agency policies about reporting to help ensure that their staffs respond properly. Some state laws mandate development and adoption of these policies.

Florida, for example, requires all hospital and public health service administrators to develop a method of informing their employees of their reporting duties.⁴¹

The primary purpose of these policies, or agency protocols, is educational; they inform staff members of their obligation to report and of the procedures to be followed. Such formal policies serve another important function: they are an implicit commitment by agency administrators to support front-line staff members who decide to report. Moreover, the very process of drafting a written document can clarify previously ambiguous or ill-conceived agency policies.

A broad cross-section of agency officers, staff, and relevant outsiders should be consulted in the drafting process. This will make the policy more effective and more acceptable to those bound by it. Great care should be taken to ensure that the policy does not ask staff to do the impossible. It should be written within the context of the agency's resources, competency, and legal mandate.

The particulars of a policy depend on the provisions of state law, the nature of available child protective services, and the type and size of the agency involved. Some generalizations can be made, though.⁴² First, the policy should clearly state legal requirements for reporting, as well as the penalties and protections established in the law. (These portions of the policy should be reviewed by an agency attorney or the appropriate child protective agency.) Second, the policy should describe where and how to report. (These provisions should also be reviewed by the child protective agency.) Third, the policy should delineate the duties and responsibilities of different types of staff members in the agency; in other words, it should describe *who* should do *what*. For example, a school's policy may require that all reports be routed through the principal's office; sometimes this is required by state law. The policy may also give the principal the responsibility for informing the child and parents about the report. In larger agencies, a specific staff member (or unit) may be made responsible for providing case consultation, for coordinating child protective activities within the agency, and for being the contact person for outside agencies. Agency policies also may have provisions concerning record keeping, confidentiality of records, ongoing staff

training, and staff participation in multidisciplinary teams and public awareness campaigns.

A well-received and clearly written policy can greatly upgrade an agency's response to child maltreatment. But to be effective, a policy must be known. Copies of the policy should be distributed to all staff members. In addition, copies or appropriate summaries should be posted in key locations, such as staff lounges or cafeterias.⁴¹ Moreover, even the most comprehensive and well-written policy must be buttressed by regular staff training on the identification and reporting of suspected child maltreatment.

Modification of Liability and Immunity Rules for Reporting

Almost all states have a specific law that makes the failure to report suspected child abuse and neglect a crime. Even in those that do not, failure to report may be a crime under general criminal laws.⁴³ The criminal penalty is usually of misdemeanor level, with the potential fine ranging from \$100 to \$1,000, imprisonment ranging from five days to one year in jail, or both. In addition, just about all states impose civil liability for the failure to report suspected child abuse and neglect.

To further encourage reporting, all states grant immunity from civil and criminal liability to persons who report. Except in two or three states, immunity applies only to reports made in good faith. (There is no protection for reports made maliciously, because of prejudice or personal bias, or because of reckless or grossly negligent decision making.) To reassure potential reporters even more, about half the states have laws that establish a presumption of good faith.

Unfortunately, this combination of penalty and immunity provisions encourages the overreporting of questionable situations. As long as persons who report are arguably acting in good faith, they face no liability for reporting, no matter how weak the evidence or reasons for doing so. On the other hand, even if they make the most careful decision not to report, they are still subject to a possible penalty. Is it any surprise, therefore, that many professionals play it safe and report when they think there is the slightest chance that they subsequently will be sued for not doing so?

The law should be changed to remove this incentive for irresponsible reporting

Box 1

Elements of Training for Potential Reporters of Sexual Abuse

- Persons who *must* report
- Persons who *may* report
- State law definitions of child abuse and neglect
- Liability for failing to report
- Protections for those who report
- Sources of information
- Indicators of child abuse and neglect
- How to handle emergencies
- Preserving evidence
- Reporting procedures
- Working with the child protective agency and other human service agencies
- Respecting parental rights and sensibilities

Source: Besharov, D. *Recognizing child abuse: A guide for the concerned*. New York: Free Press, 1990, p. 193.

decisions. No person should be subject to criminal and civil liability for making a good-faith determination that a child is not maltreated. To reduce the incentive for inappropriate reporting, six states already limit civil liability to "knowing" or "willful" failures to report.⁴⁴ All states should do so, and potential reporters should be made aware of the difference. Such legislation could read as follows: "Any person or institution required by this act to report known or suspected child abuse or neglect, or required to perform any other act, who knowingly and willfully fails to do so or who knowingly and willfully prevents another person acting reasonably from doing so shall be guilty of a misdemeanor and shall be civilly liable for the damages proximately caused thereby."

Screening of Reports

No matter how well professionals are trained and no matter how extensive public education efforts are, there will always be a tendency for persons to report cases that should not be investigated. In fact, we want people to err on the side of caution in deciding whether to call child protective agencies. But what should be phoned in to the agency is not necessarily what should

be investigated. Thus, educational efforts, if they are going to work, must be backed up with a clear—and firm—intake policy.

Persons who answer hot lines receive calls from tens of thousands of strangers; they must screen reports. Investigating all reports, regardless of their validity, would be patently improper. Workers would be immobilized by the need to investigate tens of thousands of cases where there was no apparent danger to children. It would also be a violation of family rights and would invite lawsuits. As the Airlie House experts noted, "Agencies that carefully screen calls have lower rates of unsubstantiated reports and expend fewer resources investigating inappropriate calls."⁴⁴ Thus, they have a duty to screen out reports for which an investigation would be clearly unwarranted.

Child protective agencies need more specific policies and procedures for determining whether to accept a call for investigation. Until recently, most states did not have formal policies for screening.⁴⁵ The problem of distinguishing between reports that should be accepted and those that should not is both programmatic and political.

Child protective agencies must accept *all* reports made properly to them. But child protective services should not investigate reports whose allegations fall outside the agency's definitions of "child abuse" and "child neglect," as established

quarrelsome relatives, by feuding neighbors, or even by an angry or distressed child. As a general rule, unless there are clear and convincing grounds for concluding that the report is being made in bad faith, any report that falls within the agency's legal mandate must be investigated. Reports from questionable sources are not necessarily invalid; many anonymous reports are substantiated by the investigation. Even a history of past unsubstantiated reports is not a sufficient basis, on its own, for automatically rejecting a report.

Many reports that do not amount to child abuse or child neglect nonetheless involve serious individual and family problems. (That such situations have not resulted in actual child maltreatment does not reduce the family's need for assistance.) In such cases, intake workers should be equipped to refer callers to other, more appropriate, social service agencies. All hot lines and agencies should possess this capability. Unfortunately, such referrals frequently are made without notifying the other agency of the practice and without checking to make sure that it can help the person referred. Thus, before making such referrals, intake staff members should have some assurance that these other agencies will provide the necessary services.

The key to implementing a rigorous intake policy successfully is the quality of intake staff members and the degree of support that they receive from agency administrators when exercising their professional judgment in screening cases. In many places, unfortunately, reporting hot lines are staffed by clerical personnel who record basic information about the situation and often automatically assign the case for a subsequent investigation by a caseworker. The kind of sophisticated intake decision making described above, however, cannot be performed by clerks or by untrained caseworkers.

Intake staff members should be experienced and highly trained personnel with the ability to quickly understand complex situations and the authority to make decisions. They should be able to advise potential reporters about the law and child protective procedures generally; assist in diagnosis and evaluation; consult about the necessity of photographs, x-rays, and protective custody; help reporters deal with distressed or violent parents; refer

The key to implementing a rigorous intake policy successfully is the quality of intake staff members and the degree of support that they receive from agency administrators.

by state law. They should also reject reports when the caller can give no credible reason for suspecting that the child has been abused or neglected. And, they may have to reject a report in which insufficient information is given to identify or locate the child (although the information may be kept for later use should a subsequent report about the same child be made).

The foregoing examples are relatively easy to apply. More difficult to assess are reports that appear to be falsely (and maliciously) made by an estranged spouse, by

inappropriate reports to other agencies better suited to deal with a family's problems; and provide information and assistance to parents seeking help on their own.

Feedback to Reporters

Another strategy for achieving more accuracy in reporting is to provide feedback to reporters. This very rarely happens today. Persons who report suspected child abuse or neglect naturally want to know the disposition of their reports and whether the investigation verified their suspicions. The fact that they made a report demonstrates that they care about the child. Moreover, potential reporters need to know whether reporting will accomplish anything.

If persons who report are not told what happened, they may conclude that the agency's response was ineffective or even harmful to the child; the next time they suspect that a child is maltreated, they may decide not to report. In addition, finding out whether their suspicions were valid also refines their diagnostic skills and, thus, improves the quality and accuracy of their future reports. Reporters also need such information to interpret subsequent events and to monitor the child's condition. Finally, feedback to the reporter increases the likelihood that the agency will make an accurate assessment of the child's situation because it allows the reporter to correct any misleading information obtained during the investigation.

Unfortunately, child protective agencies frequently fail to provide feedback to reporters, usually because of high case loads and a general insensitivity to the legitimate needs of those who report. Some agencies claim that they cannot provide such information because their records and investigations are confidential. But this is not true. There is no legal impediment to telling reporters about the general results of the investigation. After all, *they* made the report in the first place. Furthermore, they are under a continuing legal obligation to report subsequent abuse or neglect. To say that they cannot be told what happened is to adopt an overly legalistic interpretation of confidentiality. To override this hesitancy, a few states have enacted laws providing that the reporter is to be notified of the investigation's results, although such provisions are technically not needed.⁴⁶

Persons who have made a report should be told whether the investigation verified their suspicions and how the

agency handled the situation. In certain circumstances, the child's future safety may depend on their having this information. If the child protective agency does not provide such feedback, reporters should feel free to ask for it.

However, the right of reporters to know what happened is not absolute. In deciding what information to provide, child protective agencies must balance the family's right to privacy against the reporter's need to know. If the person reporting is a friend, a neighbor, or a relative, the information provided should be quite limited. The National Center on Child Abuse and Neglect recommends that, if the report appears to be valid, these persons should be given a supportive message such as, "We think you did the right thing to refer the family; we are staying in there."⁴⁷

Another strategy for achieving more accuracy in reporting is to provide feedback to reporters. This very rarely happens today.

For professionals who report, the information provided should give a clear indication of whether the report was valid and whether the child appears to be in any immediate danger. Only with such information can the reporter be expected to detect situations that deteriorate further. Additionally, if the reporter (or his agency) will be involved in treatment efforts, as many are, much more information must be provided. For example, a clear picture of the family's dynamics, including its strengths and weaknesses, is needed for successful treatment.

Obtaining Reliable Information from Children

The previous discussion focuses on areas for improvement in the reporting of cases. Attention should also be focused on improving methods for obtaining reliable information from children. Children's statements are crucial elements both as the basis of a decision about whether to report and as a part of an actual investigation. Consensus about how to respond to certain physical and behavioral signs in children must also be developed. Finally, more emphasis must be placed on accurate re-

cord keeping at all stages of investigating these cases. These issues are discussed next.

Interviewing Children

Children are often the best source of information concerning possible sexual abuse. They can give moving—and frequently decisive—evidence about their parents' behavior. So much importance is attached to their testimony that most states have relaxed the rules of evidence concerning corroboration, hearsay, and the testimony of very young children.⁴⁸ See also the article by Myers in this journal issue.

Much happens, however, before cases ever get to court. Diligence by adults who have contact with children, whether or not mandated reporters, is essential to our society's efforts to protect children. Older children, especially, often seek help from an adult whom they know and trust. A schoolteacher who seems concerned about the child, a social worker whom the child gets to know, a volunteer in a runaway shelter in which the child seeks refuge, a friendly neighbor, or, in fact, any approachable adult may be told about acts

Diligence by adults who have contact with children, whether or not mandated reporters, is essential to our society's efforts to protect children.

of abuse or neglect in the home. Many cases of sexual abuse, for example, come to light only after the child has told an outsider. Children who seek help should be supported and encouraged.

Even when the child does not initiate the discussion, an adult may want to question the child if there is a possibility that the child is being abused or neglected. For example, a nurse may want to ask how a child received some suspicious or ambiguous injuries, a schoolteacher may want to ask why a child's physical condition or school performance has suddenly deteriorated, or a neighbor may want to ask why a child is not in school. Often, the child will tell the questioner about being maltreated.

Even very young children should be questioned. Although what they say may

not be of sufficient reliability for use in court, their answers may shed light on the situation or provide additional leads for exploration. The only time children should not be questioned is when there is already sufficient evidence to make a report and it appears that questioning them further may expose them to added emotional trauma or to a parent's anger or even retaliation.

Potential reporters are not expected to determine the truth of a child's statements. That is the job of the child protective agency. As a general rule, therefore, all doubts should be resolved in favor of making a report. A child who describes being sexually abused should be reported unless there is clear reason to disbelieve the statement.

When should a child's statements be questioned? Basically, there are two situations, the major difference between them being the child's age. For young children, the key issue is whether a distorted version of the incident may have been fixed in the child's mind by others who questioned the child about the possibility of abuse. Has an interested party (such as a parent in a custody dispute) or a careless interviewer (who used leading or suggestive techniques) implanted a distorted or untrue idea in the child's mind?

For older children, who may know the implications of what they are saying, the primary issue is the question of motive: Is there some reason the child, usually an adolescent, may want to be out of the home? Some older children try to escape from what is, for them, an unhappy home situation by claiming to be maltreated. Thus, it is important to find out whether there has been a history of conflict between the parents and the child. A teacher or guidance counselor, for example, could review school records to see whether there are "psychological reports, behavior incidents, disciplinary reports which bear on credibility such as theft, lying, false accusations, etc., a psychiatric diagnosis with reference to fantasies, delusions, and the like."⁴⁹

Adults who talk to children also need to understand the mixed significance of retractions. Children sometimes retract their previous description of being maltreated, whether given spontaneously or in response to questioning. There are good reasons to question the validity of such retractions, however. Some retractions re-

sult from parental coaching or threats. For example, one court described how, on "at least four instances . . . caseworkers observed bruises or welts on the child's ankles, hands and on other parts of her body. Upon questioning, the now-seven-year-old child either attributed the injuries to her mother, remained silent, or remarked that 'mommy says not to tell.'"⁵⁰ Thus, it is important to know whether the parents have had access to the child.

Other children retract previous statements when, after having been placed in foster care, they decide that they want to return home to their families, friends, and accustomed environment. A manual for child protective workers explains that "a child who has fabricated sexual abuse allegations in order to punish or get even with the caretaker may be less likely to retract her statements than the child who is upset with negative repercussions of her acknowledgment and who reverses her position in an attempt to return life to normal."⁵¹

Thus, the child's retractions of an earlier statement do not necessarily mean that no report should be made. Some experts take this clinical wisdom to illogical lengths, however. They claim that a child's retractions or denials are actually a sign that the child was abused. They may describe a "Sexual Abuse Accommodation Syndrome,"⁵² in which the child "accommodates" to the abuse by denying it. Unfortunately, this theory does not leave room for bona fide recantations and, thus, is dangerously deficient.

A retraction does place a large question mark over the child's original statement, but that does not mean that it should be automatically discounted. It must be carefully evaluated. Even if one decides that the retracted statement was untrue, the family may still need help from a social service or mental health agency. The fact that a child has made an untrue allegation of sexual abuse is a sign of emotional problems in the child or of dysfunction in the family which merits further exploration.

Interviewing Techniques

Given the importance of children's statements and the need for balance in reporting and investigation, appropriate interviewing techniques are essential. In September 1993, an international group of 22 scholars met for three days in Satra Bruk, Sweden, under the joint sponsorship of the U.S. National Institute of Child Health and Human Development, the Swedish

Allmana Barnhuset Foundation, and the Social Forsknings Radet (Swedish Social Science Research Council). The group's assignment was to evaluate the current understanding of child sexual abuse and to discuss the ways in which child sexual abuse investigations should be conducted.

The group made a number of recommendations concerning the best methods for interviewing children who have allegedly been abused. One of its primary findings was that, "despite frequent claims that children are uniquely susceptible to external influence, it is clear that when children are encouraged to describe their experience without manipulation by interviewers, their accounts can be extremely informa-

A retraction does place a large question mark over the child's original statement, but that does not mean that it should be automatically discounted.

tive and accurate."⁵³ The group noted, however, that obtaining accurate information can be extremely difficult and advised that these types of interviews be conducted only by well-trained and competent interviewers.

To elicit the most accurate information from children, the group made the following recommendations: (1) Interviews should be conducted as soon after the event as possible. (2) Multiple interviews should be discouraged. (Frequent questioning by different interviewers can distort memory and lead to confusion.) (3) Leading questions should be avoided when at all possible. (The group agreed, however, that the use of leading questions did not always invalidate testimony.) (4) With older children, open-ended questions designed to elicit free narrative accounts should be used. (5) With children younger than six (who might have difficulty responding to open-ended questions), direct questions about the incident using developmentally appropriate vocabulary can be used, but only with great care. And, (6) all interviews should be videotaped in order to avoid the need for multiple interviewing and to have a record of how the interview was conducted.⁵³

The international group also addressed the issue of “anatomically explicit dolls” (which used to be called “anatomically correct” until people took a good look at the relative proportions of various anatomical parts). The international group agreed that the use of dolls can be helpful (1) early in the interviewing process to understand the child’s labels for the various body parts and (2) later in interviews to reenact events children have experienced which their vocabulary is too limited to express. These dolls are too misleading to be used for diagnostic purposes. The group advised that “courts and other potential users of investigative interviews should understand that there is no anatomically detailed doll ‘test’ yielding conclusive scores quantifying the probability that a child has been sexually abused.”⁵³ Dolls can also be used as a treatment tool, but then only after a diagnosis of sexual abuse has been made.

See Box 2, in which some guidelines for interviewing children are listed. The timing and location of the interview should be arranged to make the child feel as comfortable as the circumstances permit. Whether or not sexual abuse is the issue, it is generally advisable to have someone of the same sex interview the child, or at least be present during the interview.

The interview should be conducted in private and definitely outside the presence of the parents. Children are often afraid to say that they have been mistreated by the parents, as illustrated by what happened to Tammy Nelson. The Missouri hot line had received numerous reports that Tammy was “being sold by her mother to

ally consisted of a brief interview of Audrey Nelson and a brief interview of the children, possibly within hearing distance of Audrey. The children, as well as Audrey, denied the allegations of the callers,” but this may have been because they were interviewed in the presence of the abuser. As the federal appeals court noted: “The investigators seem not to have interviewed the children individually or apart from their mother, nor did they interview possible witnesses or request physical examinations for the children.”⁵⁴

Finally, if the interview reveals sufficient information upon which to make a report, older children should be told what will happen next. For younger children, the best guide to what they should be told can be found in the specific questions they ask. It is important to reassure children of all ages that they are not to blame for their parents’ maltreatment or for the actions taken by the authorities against their parents.

Physical Evidence

The child’s body, tragically, often provides the most telling evidence of sexual abuse. Here, too, improvements are needed in the way both reporters and investigators respond to these signs. For children too young or too frightened to tell what happened to them, unsatisfactorily explained injuries (or other physical or emotional conditions) may be the only way to discover child maltreatment, and the only way to prove it, should court action be necessary. That this is circumstantial evidence does not make it a less important basis for a report. In fact, given the problems of bias, poor perception, and faulty memory that can distort eyewitness observations, circumstantial evidence can be more trustworthy than direct evidence.

No child is too young to be sexually abused. Physical signs of sexual abuse are found even in infants. Hence, physical indications of sexual abuse should not be ignored or discounted simply because the child seems too young to be the object of someone’s sexual desires.⁵⁵ There can, however, be a good deal of ambiguity in these cases. For instance, medical symptoms such as unusual vaginal or urethral irritations or discharges, although possibly indicative of sexual activity, can also have an alternate medical explanation or they can be the result of excessive rubbing (during cleaning), poor hygiene, or self-

It is important to reassure children of all ages that they are not to blame for their parents’ maltreatment or for the actions taken by the authorities against their parents.

an older man for the purpose of having sex, and that Audrey Nelson, the children’s mother, forced her children to watch her perform sex acts with various partners and perhaps forced them to participate.” Caseworkers investigated these allegations twice over a six-month period. Unfortunately, their investigation “basic-

stimulation. And it is often impossible to tell which it is.

Signs of sexual activity, therefore, may or may not be related to sexual abuse. They are not *automatic* proof that the child was sexually abused. Whether they establish the basis for a diagnosis of sexual abuse depends on the child's age, apparent maturity, and social situation, as well as the statements of the child, the parents, and others familiar with the situation. Ambiguous or borderline situations must be judged on a case-by-case basis, taking into account this wide array of factors. (See the article by Kerns, Terman, and Larson in this journal issue for a discussion of the role of the medical profession.) In addition, certain behaviors of the child, discussed next, although not an independent basis for a report, can be helpful in assessing these borderline situations.

Behavioral Indicators

When physical and testimonial evidence is ambiguous, certain behaviors in children can be used as diagnostic tools to bolster the conclusion that abuse occurred.⁵⁶ The absence of such "behavioral indicators," however, does not prove that the child was not abused.

Using behavioral indicators is a tricky business because they have many alternative explanations that are not related to sexual abuse. A sudden decline in a child's performance at school, for example, may be a result of the stress of a divorce rather than of a parent's sexual abuse. Hence, behavioral indicators are not, in themselves, sufficient grounds for a report or for deciding that a child has been sexually abused. They should not be used, even by the most impressive expert, unless the child describes having been abused or the existence of suspicious injuries is established. Even then, alternate explanations for the child's behavior must be considered.

This does not mean that one should do nothing after observing troubled behavior. The children's behaviors can be an indication that the possibility of sexual abuse—or other emotional problems—should be explored. To medical personnel, for example, they suggest the need for a full physical examination of the child. To *any* caring individual, they suggest the need for further inquiries about the child's situation. For example, a teacher who observes a child's unwillingness to change for a gym class (or a sudden deterioration in a child's school work) should keep the

Box 2

Guidelines for Interviewing Children About Possible Sexual Abuse

Do

- Make sure the interviewer is someone the child trusts.
- Conduct the interview in private.
- Sit next to the child, not across a table or desk.
- Ask the child to clarify words/terms that are not understood.
- Be supportive; the child is likely to be frightened about telling "family secrets."
- Stress that anything that happened was not the child's fault.
- Tell the child if any future action will be required.
- Be truthful; do not make promises that cannot be kept.

Don't

- Allow the child to feel "in trouble" or "at fault."
- Criticize the child's choice of words or language.
- Probe or press for answers that the child seems unwilling to give.
- Suggest answers to the child.
- Display shock or disapproval of parents, child, or the situation.
- Force the child to remove clothing.
- Conduct the interview with a group of interviewers.
- Leave the child alone with a stranger.

Source: Besharov, D. *Recognizing child abuse: A guide for the concerned*. New York: Free Press, 1990, p. 59.

possibility of sexual abuse in mind while seeking to help the child. Discreet—and open-ended—questions (such as "How are things going?" and "Is there anything happening that you want to tell me about?") permit children to share their problems with a teacher or other reassuring adult.

Record Keeping

Finally, as information is gathered from children, particularly through interviews and examinations, careful record keeping is essential. Many months often elapse between the events in question and the initiation of a lawsuit. A written record of what transpired at the time will help refresh memories of events long past and may be used, under certain circumstances, as evidence to bolster a worker's testimony. In addition, records are a form of institutional memory that can usually be introduced into evidence if the original maker of the record is unavailable to the court. This can

be especially important for those institutions, such as public social service agencies, having high rates of staff turnover.

For example, the child's description of being abused or neglected (whether or not it was retracted) may be admissible in a subsequent court action. It certainly will help guide the child protective agency's investigation. Therefore, the child's statement, and description of the conditions under which it was given, should be written down and kept on file. Because the reliability of the child's statement may subsequently be challenged, any evidence that tends to confirm it should also be carefully recorded.

Unfortunately, few social work case records meet professional standards of thorough and timely preparation. No one familiar with record-keeping practices would deny the general applicability of the following comments about child protective records: "Experience from various program evaluations involving record review demonstrates that record keeping is a general and pervasive problem within child protective agencies. Poor record keeping can be found to be apparent in various forms: no recording, insufficient recording, inappropriate recording, too much recording and even recording which is damning. . . ."⁵⁷

The goal of appropriate record keeping is most succinctly stated in a publication of the National Association of Social

Workers: "Keep current, written records which include clear, objective statements upon which any interpretations are based. Adhere to administrative policies and procedures when actions are taken and assure a completed record, free of erasures, which would be available for legal perusal."⁵⁸

Many agencies have carefully formulated record-keeping requirements, together with forms and instructional materials. If they have not done so, they should. Social workers in private practice should develop an appropriate system of record keeping and adhere to it diligently.

Conclusion

To call for more careful reporting and investigation of suspected child sexual abuse is not to be coldly indifferent to the plight of endangered children. Rather, it is to be realistic about the limits of our ability to operate child protective systems and to recognize that inappropriate reporting is also harmful to children.

If child protective agencies are to function effectively, the simultaneous problems of over- and underreporting and over- and underintervention must be addressed. The challenge is to strike the proper balance. The effort will be politically controversial and technically difficult, but we owe it to the children to try.

1. *Protecting children*. A report issued by the American Humane Association. Denver, CO: AHA, Spring 1986, p. 3, Table 1.
2. McCurdy, K., and Daro, D. *Current trends in child abuse reporting and fatalities: The results of the 1993 fifty-state survey*. Working Paper No. 808. Prepared by the National Center on Child Abuse Prevention Research. Chicago: National Committee for Prevention of Child Abuse, April 1994, p. 5, Table 1.
3. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (citations omitted).
4. *Kaufman v. Carter*, 402 U.S. 964, 969 (1971) (Black, J., dissenting from a denial of *certiorari*).
5. Parke, R. Socialization into child abuse: A social interactional perspective. In *Law, justice, and the individual in society*. J. Tape and F. Levine, eds. New York: Rinehart and Winston, 1972, pp. 183–85.
6. *Olmstead v. U.S.*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).
7. U.S. Children's Bureau. *National study of social services to children and their families*. Washington, DC: U.S. Department of Health, Education, and Welfare, 1979, pp. 117–18, Table 5-14.
8. Children's Defense Fund. *Children without homes: An examination of public responsibility to children in out-of-home care*. Washington, DC: CDF, 1978, p. xiii.
9. Besharov, D. The misuse of foster care: When the desire to help children outruns the ability to improve parental functioning. In *Protecting children from abuse and neglect: Policy and practice*. D. Besharov, ed. Springfield, IL: Charles C. Thomas, 1988, pp. 189–94.

10. Subsequently, the requirement of the federal Child Abuse Prevention and Treatment Act fueled further state efforts to expand their reporting laws and create specialized "child protective agencies."
11. Besharov, D. *Protecting children from abuse and neglect: Policy and practice*. D. Besharov, ed. Springfield, IL: Charles C. Thomas, 1988, pp. 418–21, Appendix, Table 1.
12. U.S. Children's Bureau. *Juvenile court statistics*. Washington, DC: U.S. Department of Health, Education, and Welfare, 1966, p. 13.
13. Data for 1976 come from American Association for Protecting Children. *Highlights of official neglect and abuse reporting: 1986*. Denver, CO: American Humane Association, 1988, p. 1, Figure 1. Data for 1993 come from McCurdy and Daro; see note no. 2.
14. Sedlak, A. *Supplementary analyses of data on the national incidence of child abuse and neglect: Revised report*. Rockville, MD: Westat, 1991, pp. 3–19.
15. There are no reliable national statistics on unfounded reports. The 65% estimate is based on the author's state-by-state analysis. American Association for Protecting Children. *Highlights of official child neglect and abuse reporting*. Denver, CO: American Humane Association, 1985, p. 12, projecting, on incomplete data, a 58% rate of unfounded reports.
16. American Humane Association. *National analysis of official child neglect and abuse reporting*. A report issued by the American Humane Association. Denver, CO: AHA, 1976, p. 11.
17. Finkelhor, D. Is child abuse overreported?: The data rebut arguments for less intervention. *Public Welfare* (Winter 1990) 48,1:23–24.
18. Tatara, T. *Children of substance abusing and alcoholic parents in public child welfare*. Final report prepared for the American Enterprise Institute. Washington, DC: American Public Welfare Association, December 1990, pp. 17–21.
19. See note no. 18, Tatara, p. 19, Exhibit III.
20. Root, C. Memorandum to Sandy Berman, New York State Department of Social Services, September 14, 1984.
21. For 1991, the Fifty-State Survey estimated an average substantiation rate of 36%. For 1992, it estimated a rate of 35%, and for 1993, the average rate was estimated at 34%. See note no. 2, McCurdy and Daro, p. 5, Table 1.
22. See Thoennes, N., and Pearson, J. A difficult dilemma: Responding to sexual abuse allegations in custody and visitation disputes. In *Protecting children from abuse and neglect: Policy and practice*. D. Besharov, ed. Springfield, IL: Charles C. Thomas, 1988, p. 93; Berliner, L. Deciding whether a child has been sexually abused. In *Sexual abuse allegations in custody and visitation cases*. Chicago: American Bar Association, 1988; and Jones, D.P.H., and McGraw, J.M. Reliable and fictitious accounts of sexual abuse to children. *Journal of Interpersonal Violence* (1987) 2,1:27–45, Table 2. Table 2 estimates that 8% of sexual abuse reports are falsely made (2% by children and 6% by adults).
23. Alfaro, J.D. What can we learn from child abuse fatalities? A synthesis of nine studies. In *Protecting children from abuse and neglect: Policy and practice*. D. Besharov, ed. Springfield, IL: Charles C. Thomas, 1988, p. 219.
24. See note no. 2, McCurdy and Daro, p. 15, Table 4.
25. Alfaro, J. Impediments to mandated reporting of suspected child abuse and neglect in New York City. Report to the Mayor's Task Force on Child Abuse and Neglect. New York, 1984, p. 66.
26. Cal. Penal Code §1166(a) (West 1989).
27. Cal. Penal Code §11165.7a (West 1989).
28. See, for example, 11 Pa. Stat. Ann. §204 (a) (Purdon's Supp. 1988).
29. See, for example, Ariz. Rev. Stat. §13-3620 (A) (West Supp. 1989).
30. See, for example, Ala. Code §26-14-3 (a) (Supp. 1988); La. Rev. Stat. Ann. §14:403(C)(1) (West 1986).
31. See Bulkley, J., ed. *Child abuse and the law*. 5th ed. Chicago: American Bar Association, 1985, p. 4, n. 25.
32. N.Y. Penal Law §130.00(2) (1987).
33. Typically, state laws call them "molestation," "lewd and lascivious" acts, or "indecent liberties" with children. A common phrase is "the handling, feeling, or fondling of the genitals or intimate parts of a child." See, for example, Kan. Stat. Ann. §60-3102(c)(2) (1983) ("any lewd fondling or touching . . . with the intent to arouse"); N.M. Stat. Ann. §30-9-13 (1984) ("unlawfully and intentionally touching or applying force to the intimate parts of a

- minor"); Fla. Stat. Ann. §800-04(1) (Harrison's Supp. 1988) ("handles, fondles or makes an assault upon any child under the age of 16 years in a lewd, lascivious, or indecent manner"); Iowa Code Ann. §7098.(1) (West 1979) ("fondle or touch the pubes or genitals of a child").
34. See, for example, N.Y. Penal Law §130.00(3) (1987).
 35. Besharov, D. *Recognizing child abuse: A guide for the concerned*. New York: Free Press, 1990.
 36. Levin, P. Teachers' perceptions, attitudes, and reporting of child abuse neglect. *Child Welfare* (1983) 62: 14-19.
 37. See, for example, Fla. Stat. Ann §415.509(2) (1985).
 38. Cal. Penal Code §11166.5(a) (West Supp. 1989).
 39. Besharov, D. Child abuse and neglect reporting and investigation: Policy guidelines for decision making. Proceedings from Airlie House Consensus-Building Conference. Warrenton, VA, May 29-31, 1987. In *Protecting children from abuse and neglect: Policy and practice*. D. Besharov, ed. Springfield, IL: Charles C. Thomas, 1988, pp. 329, 346.
 40. Although there is a small, technical difference between the two phrases, most legal authorities have concluded that they are fundamentally equivalent and have the same impact on reporting decisions. See, for example, Illinois Attorney General, Opinion No. S-1298, October 6, 1977; and Massachusetts Attorney General Opinion No. 74/75-66, June 16, 1975. Because "reasonable cause to suspect" is the more common phraseology, it is adopted by this article.
 41. Fla. Stat. Ann. §395.0205 (West Supp. 1988). Florida also requires all schools to post notices informing teachers of their reporting obligations. Fla. Stat. Ann. §232.50 (West Supp. 1985), p. 196.
 42. For a discussion of some common elements of agency policies, together with sample wording, see note no. 35, Besharov, p. 196.
 43. For example, the failure to report may be misprision of a felony. Cf. *Pope v. State*, 38 Md. App. 520, 382 A.2d 880 (1978), modified, 284 Md. 309, 396 A.2d 1054 (1979), dismissed because the state's child abuse law did not apply and because there was no crime of misprision of felony in Maryland.
 44. Besharov, D. *The vulnerable social worker: Liability for serving children and families*. Silver Spring, MD: National Association of Social Workers, 1985, p. 31 and Chart 2-2.
 45. American Humane Association. National substantiation and screening practices. *National Child Protective Services Newsletter* (Fall 1983) 7,1:2. This article states that only a little more than half the states allowed their hotline workers to reject reports, and that even those that did usually limited screening to cases that are "clearly" inappropriate.
 46. Massachusetts is an example of such a state. See *Protecting children from abuse and neglect: Policy and practice*. D. Besharov, ed. Springfield, IL: Charles C. Thomas, 1988, pp. 459-61, Appendix, Table 14.
 47. U.S. National Center on Child Abuse and Neglect. *Child protective services: In-service training for supervisors and workers*. Washington, DC: NCCAN, 1982, pp. 11-24.
 48. See note no. 31, Bulkley; see also, for example, New York Family Court Act Section 1012(e) (iii) (McKinness, 1993).
 49. Heeney, T. Coping with the abuse of child abuse prosecutions. *The Champion: Journal of Trial Lawyers* (August 1985) :12-13.
 50. *In the Matter of Tonita R.*, 74 A.D.2d 830, 425 N.Y.S.2d 172 (2nd Dept., 1980).
 51. Illinois Department of Children and Family Services. *Child abuse and neglect decisions handbook*. Springfield, IL: Illinois Department of Children and Family Services, 1982, p. 6, Appendix E.
 52. See, for example, *Lantrip v. Commonwealth of Kentucky*, 713 S.W.2d 816 (1986). Note, "The unreliability of expert testimony on the typical characteristics of sexual abuse victims," 74 *Geo. L. J.* 395 (1985); Annotation, Admissibility at criminal prosecution of expert testimony on rape trauma syndrome. *American Law Reports* (1986) 42:879.
 53. Lamb, M. *The investigation of child sexual abuse: An interdisciplinary consensus statement*. Bethesda, MD: National Institute of Child Health and Human Development, January 1994, p. 9.
 54. *Nelson v. Missouri Division of Family Services*, 706 F.2d 276, 277 (8th Cir. 1983).
 55. For a full discussion of physical indicators, see note no. 35, Besharov, p. 92.
 56. For a chart listing some of these behaviors, see note no. 35, Besharov, p. 97.

57. Romero, M. The case record: A major source of liability protection for the worker. In *Malpractice and liability*. W. Holder and K. Hayes, eds. Longmont, CO: Bookmakers Guild, 1984.
58. Whiting, L., and Daniels, M. *Legal vulnerability and liability: A guide for social workers*. Silver Spring, MD: National Association of Social Workers, 1982, p. 2.