



Liability in Child Welfare

BY DOUGLAS J. BESHAROV

You are a child protection caseworker, and you closely follow agency policy on all cases. After completing an investigation of a child reported as abused, your assessment is that the child will remain at home and service will be provided to the family. While the case is open, the child dies of injuries allegedly inflicted by a family member. You are called to testify about the case before a grand jury. The next day you are arrested and charged with criminal malfeasance of your public duties.¹

Across the country, child welfare workers are being given administrative reprimands and are being fired, downgraded, or reassigned for mishandling their cases. Every day they face potential criminal and civil liability for their official conduct. Many are being charged with professional malpractice and sued for monetary damages by the children they seek to protect and by the parents they seek to treat. The accusations range from inadequately protecting a child and violating parental rights, to not providing adequate foster care services and leaving children in foster care "limbo."

In at least four instances, caseworkers have been criminally prosecuted for official malfeasance or negligent homicide. Many others are being hauled before investigating grand juries. For example, one New York grand jury issued a report finding the caseworkers guilty of "neglect or nonfeasance in public office," although no indictment resulted.

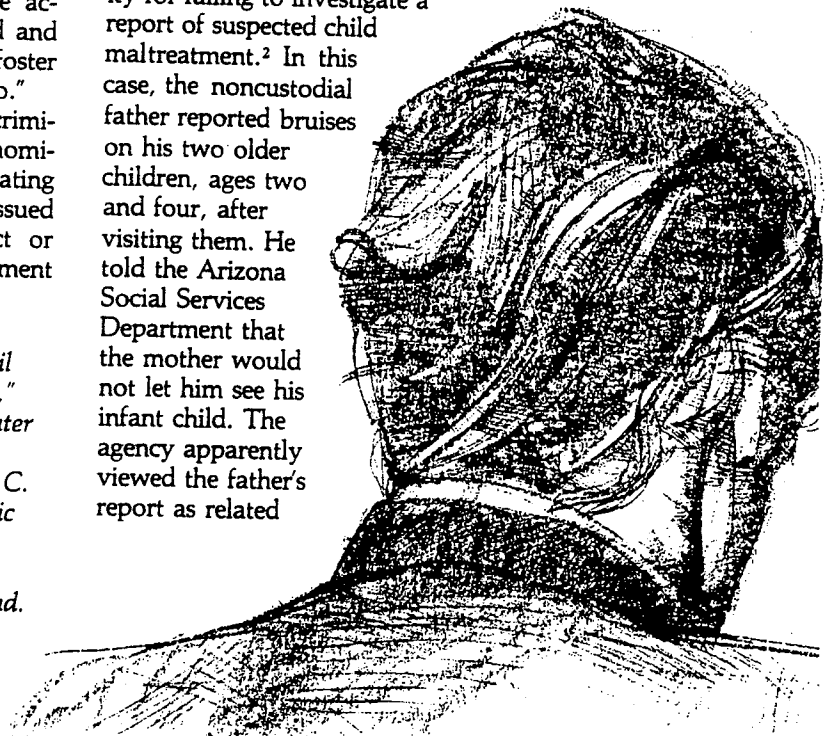
This article has been adapted from "Criminal and Civil Liability in Child Welfare Work: The Growing Trend," published in 1983 by the National Legal Resource Center for Child Advocacy and Protection, American Bar Association Young Lawyers Division, Washington, D.C. Mr. Besharov is writing a full-length book on the topic entitled, Child Welfare: Coping with Professional Liability, to be published this fall by the National Association of Social Workers, Silver Spring, Maryland.

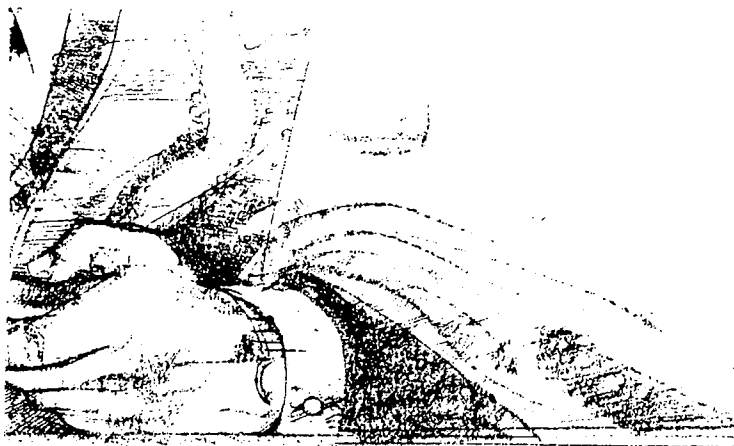
Liability for Inadequately Protecting a Child

In most states, child protective agencies are required to receive reports twenty-four hours a day via highly publicized "hot lines." Investigations must be initiated on the same day, or as soon as possible.

Failure to Accept a Report for Investigation. Child protective agencies must accept and investigate all reports made to them, rejecting a report only if an investigation would be patently unwarranted. The conditions under which a child protective agency may properly consider rejecting a report are listed in Table 1.

Mammo v. Arizona illustrates the potential agency liability for failing to investigate a report of suspected child maltreatment.² In this case, the noncustodial father reported bruises on his two older children, ages two and four, after visiting them. He told the Arizona Social Services Department that the mother would not let him see his infant child. The agency apparently viewed the father's report as related





MORE AND MORE WORKERS—AND AGENCIES—ARE FACING IT.

to a custody dispute rather than a sign of serious danger to the child and advised the father to consult his attorney. Ten days later, the child was killed. The father filed a wrongful death action; and the jury returned a verdict for \$1 million, which the trial judge reduced to \$300,000. The \$700,000 difference was for punitive damages, which, the judge held, the jury could not award. The case is now on appeal.

Failure to Investigate Adequately. Outright failures to investigate are rare. More common are claims that the agency, having been given reason to suspect that a child was at risk, failed to conduct a full or careful investigation.

In *Buege v. Iowa*, the noncustodial father reported to the Iowa Department of Social Services that his thirty-four-month-old daughter had a bruise on her buttocks and that he believed the bruise was caused by the mother's boyfriend.³ The agency investigated and substantiated the injury, although the boyfriend was not interviewed. Two days after the initial report, the agency decided not to remove the child from the mother's custody, but rather to make follow-up visits coupled with day care, counseling, and other appropriate services. No follow-up visit was ever made. Eight days later the child was hospitalized in a comatose state, with bruises, both old and new, over most of her body. The child died three days later. The mother's boyfriend was convicted of second degree murder.⁴ The father sued the agency, alleging negligent investigation and supervision of the case, failure to employ qualified employees, failure to staff the protective unit sufficiently, and failure to remove the child from the home. The case was settled for \$82,500.

In 1976, a child protective worker and her supervisor in Pueblo, Colorado, were convicted of official misconduct. They were charged with having allowed the death of a child by their failure to respond adequately to reported maltreatment. Previously, the child had been placed in foster care and then returned to her parents' custody. While the caseworker was on medical leave, the agency received new re-

ports from the child's school and school nurse of suspected abuse. In the words of the indictment against the supervisor, the reports consisted of "telephone contacts . . . wherein a report was made of cigarette burns on the child, wounds to arms of the child, bruises and scratches to a large portion of said child's back, scars from apparent large burns to child's back, and other injuries. . . ." With her physician's permission, the caseworker, who had a BSW degree and ten years

Table 1. Conditions for Rejecting Reports

Allegations clearly fall outside the agency's definitions of "child abuse" or "child neglect," as established by state law.
The caller can give no credible reason for suspecting that the child has been abused or neglected.
Insufficient information is given to identify or locate the child.
Unfounded and malicious nature of information is established by specific evidence.

Source: Douglas J. Besharov, *Reporting Child Abuse and Neglect* (in press, 1984).

of experience with the agency, returned to the office for one day to arrange a psychological evaluation of the child. Apparently, neither she nor her supervisor attempted to verify the nature or extent of the reported injuries. The child was killed shortly thereafter. The convictions of both the caseworker and her supervisor were overturned on appeal because of legal issues not related to their guilt.⁵

Failure to Place a Child in Protective Custody. Every day caseworkers must decide whether a child is in such immediate danger that protective custody is needed. The consequences of a wrong decision—either in favor of foster care when it is not needed, or against foster care when a child is in serious danger—make this the hardest decision that child protective workers must make.

In 1980, a child protective worker and the worker's supervisor in Louisville, Kentucky, were charged with official misconduct. The charges arose out of a three-year-old's death from scald burns. Hospital physicians treating the child did not make a report, but a policeman on the scene called the child protective agency because he suspected abuse. The agency had received two previous reports alleging abuse of the child's two older siblings, but had decided that the reports were not valid and planned to close its case on the family. A subsequent investigation revealed that the dead child had suffered a broken leg six months earlier, determined to be a "wringer injury" strongly suggestive of abuse. The hospital had not reported this injury either. (One physician attending the child also was indicted.) At the trial, all charges were dismissed. In dismissing the case, the judge said: "It offends my sense of fairness that these three people were chosen (for prosecution) when everyone else who came into contact with the child could have been charged as well."⁶

In the same year, a caseworker, the supervisor, and the agency's director of child welfare in El Paso, Texas, were charged with criminal negligence. The agency had become involved with a family when a hospital reported that a nine-month-old child had severe scald burns on the lower back and buttocks. The agency decided that the child could remain at home while the parents received treatment services. Ten months later, the child died of apparent asphyxiation. "Although he was unable to determine the cause of death, the medical examiner testified that the child had very small, circular bruises on the right side of her head and on her chest, abdomen, thighs, and knees. Other doctors testified . . . that she was also suffering from malnutrition." The prosecuting attorney is said to have claimed that "if the [agency] staff had been willing to admit its mistakes [in not removing the child] and cooperate in the removal of the surviving children following their sister's death, the case probably would not have been taken to the grand jury." One month before the trial was to begin, the court quashed the indictments on the ground that "no indictable offense had been charged."⁷

A civil lawsuit in the Federal District Court of Missouri claimed that a St. Louis County caseworker and the Missouri Department of Social Services negligently failed to protect a child placed under their supervision. Damages amounting to \$4 million were sought from each for the child's subsequent injuries. The complaint alleged that, in twenty-six visits over a five-month period, the caseworker "negligently failed to recognize severe and permanently damaging neglect of the child." It was alleged that the two-year-old child "failed to thrive and in fact reduced from a weight of approximately twenty-three (23) pounds to a weight of approximately thirteen (13) pounds."⁸ This lawsuit was settled. The terms included the state's agreement to provide medical and psychiatric care for the child, even past majority; to provide post-secondary school educational assistance; and to provide subsidy payments in the event of an adoption.

Sometimes protective custody is the only way to assure a child's safety. Table 2 lists the situations that suggest a need

for custody. The presence of any one of these factors is a clear indication that the child faces an imminent threat of serious injury. Unless the child's safety can be assured by some other means, the child should be placed in protective custody quickly – and kept there until the home situation is safe or parental rights are permanently terminated. (See also "Protecting CPS Clients and Workers," Summer 1983 PUBLIC WELFARE.)

Table 2. Situations Suggesting the Need for Protective Custody

The child was severely assaulted—hit, poisoned, or burned so severely that serious injury resulted or would have resulted but for the intervention of some outside force or simple good luck. For example, the parent threw an infant against a wall, but somehow no serious injury resulted.
The child has been systematically tortured. For example, the child was locked in a closet for long periods of time; forced to eat unpalatable substances; or forced to squat, stand, or perform other unreasonable acts for long periods of time.
The parent's reckless disregard for the child's safety caused serious injury, or could have done so. For example, the parent left a very young child home alone under potentially dangerous circumstances.
The physical condition of the home is so dangerous that it poses an immediate threat of serious injury. For example, there is exposed electrical wiring, upper story windows are unbarred and easily accessible to young children, or there is an extreme danger of fire.
The child has been sexually abused or sexually exploited.
The parents have purposefully or systematically withheld essential food or nourishment from the child.
The parents refuse to obtain or consent to medical or psychiatric care for the child that is needed to prevent or treat a serious injury or disease.
The parents appear to be so out of touch with reality that they cannot provide for the child's basic needs. For example, the parents are suffering from severe mental illness, mental retardation, drug abuse, or alcohol abuse.
The parents have abandoned the child. For example, the child has been left in the custody of strangers who have neither agreed to care for the child for more than a few hours nor know how to reach the parents.
There is reason to suspect that the parents may flee with the child. For example, the parents have a history of frequent moves or of hiding the child from outsiders.

NOTE: In any of the above situations, the younger the child, the greater the presumed need for protective custody.

Source: Douglas J. Besharov, *Reporting Child Abuse and Neglect* (in press, 1984).

Liability for Violating Parental Rights

Laws against child abuse and child neglect hold that parental rights are not absolute and that society, through its courts and social service agencies, should intervene in

private family matters to protect endangered children. The need to protect children from abuse or neglect, however, does not justify violating or ignoring parental rights.

Slanderous Investigation. Child protective investigations are inherently a breach of parental and family privacy. To determine whether a particular child has been abused or neglected, caseworkers must interview friends, relatives, and neighbors, as well as school teachers, day-care personnel, doctors, clergy, and others. They must inquire into the most intimate of personal and family matters.

No reported case suggests that workers should not aggressively investigate reports of suspected child maltreatment. Good faith efforts to protect a child do not lead to legal liability. But the cases do make it clear that workers cannot use the mandate to investigate as an excuse to harass, threaten, or browbeat parents or children. Furthermore, workers cannot improperly disclose a report's existence or an investigation's findings.

In *Martin v. Weld*, for example, the parents sought monetary damages for "slander, outrageous conduct, negligence, and gross negligence" arising from an investigation. The parents alleged that the agency received an anonymous report of the father's sexual abuse of his thirteen-year-old daughter. The parents charged that, during a ninety-minute interview with the girl at her school, the worker "made various allegations of sexual abuse and criminal misconduct against [the father, which the daughter] denied." Then, both parents and another family member were interviewed. Based on its investigation, the agency determined that the anonymous report was unfounded, and it closed the case. In sustaining the parents' right to sue, the court based its decision on their allegations of the "defendants' lack of good faith," stating:

First, they set out details showing that [the caseworker's] interview of the child . . . went beyond mere investigation and amounted to harassment and intentional infliction of emotional distress. Second, the [parents] alleged that defendants intentionally leaked information about the case to the county commissioners, with whom [the father], as a member of the county council, regularly met, and also to the press. . . . Third, they alleged that the defendants published statements that were slanderous *per se*. . . .⁹

Wrongful Removal of Children. When a child is removed as a result of a court order, the caseworker and the agency are protected from liability for wrongful removal unless statutory mandates or procedures have been violated. In emergency situations, however, removal must occur before court review is possible. If the removal is made in good faith and in accordance with state laws, a successful claim for damages is unlikely.¹⁰ Although the determination of good faith is subjective, the existence of one or more of the grounds listed in Table 2 is at least *prima facie* evidence of good faith.

Failure to initiate a statutorily required judicial review of an emergency removal raises potential liability.¹¹ The agency also may be liable for the wrongful failure to return the child to the home.¹²

One of the best known of these cases is *Duchesne v.*

Sugarman. The day after the mother was unexpectedly hospitalized for emotional problems, the agency took custody of her two children, one seven years old and the other six months old. The mother refused to sign a consent form authorizing the agency to continue caring for the children. The caseworker reported this to his supervisor, who advised that no consent was necessary at that point. Five days later, the mother was released from the hospital and she "immediately . . . demanded that her children be returned. However, the children were not relinquished."¹³ For the next twenty-seven months, the mother unsuccessfully sought to have the agency return her children. But the agency continued to rebuff her, and never sought a court order legalizing the situation. The court held that the absence of any prior parental consent established potential liability for monetary damages under Section 1983 of the Federal Civil Rights Act.¹⁴ The court distinguished this situation from that in which a parent originally consents to foster placement. In those cases, courts have held that it is constitutional to require the parent to file a habeas corpus petition to obtain custody.¹⁵

Malicious Prosecution. Child protective agencies seek to avoid formal court action whenever possible. Nationally, less than 20 percent of all reported cases reach court.¹⁶ The subjective considerations involved in deciding whether to initiate court action make a lawsuit for malicious prosecution unlikely, unless there are sufficient allegations of reckless action or bad faith by the agency or the worker. This was the case in *Doe v. County of Suffolk*, in which the mother sued for malicious prosecution. She charged that the worker and the agency initiated a court proceeding "knowing full well that they could not successfully prosecute the petition against said plaintiff . . . , and knowing full well that ultimately the said petition must be dismissed."¹⁷ The worker had filed a petition against both the mother and father after the mother told the police that her husband had sexually abused their child. Apparently, there was no reason to suspect that the mother had in any way been abusive or neglectful, and the county attorney withdrew the petition against her before the trial. The court allowed the mother's lawsuit to continue.

Violation of Confidentiality. Child protective agency records contain information about the most private aspects of personal and family life. Whether or not the information is true, improper disclosure can violate the sensibilities of all involved and can be deeply stigmatizing. All states have laws making these records confidential, and most treat unauthorized disclosure as a crime. Some states, such as Iowa and West Virginia, also impose civil liability for unauthorized disclosure.¹⁸

The importance of respecting the confidentiality of case records was demonstrated by a case in New York City. Administrative disciplinary proceedings were initiated against a caseworker for releasing case records to the press. The caseworker claimed that he wanted to prove that a certain child abuse death "stemmed from . . . incompetence and irresponsibility in handling clients."¹⁹ Initially, the agency sought to fire the worker. As a compromise, the worker agreed to a demotion and a reduction in salary.

Liability for Inadequate Foster Care Services

Often, children must be placed in foster care to protect them from serious harm. Many children benefit from foster care, but it has its hazards. Some children are placed in homes or institutions that cannot meet their needs for special physical or emotional care; others are lost in the limbo of foster care. Worse, some children are abused or neglected by their foster parents. Both situations have been the subject of extensive litigation.²⁰

Dangerous Foster Care Placements. Tragically, the abuse or neglect of foster children accounts for more lawsuits than any other category covered by this article. By assuming custody of a child and by making decisions about that child's care, the agency and the caseworker accept a degree of legal responsibility for the child's health, safety, and well-being.²¹ Hence, courts are all but unanimous in holding agencies and workers liable for abuse or neglect of children at the hands of foster parents.²²

To be liable, however, the agency or the worker must have been negligent in the selection of foster parents or in the supervision of the foster placement. That is, the child's abuse or neglect must have been the reasonably foreseeable result of conditions known to the agency, or conditions the agency should have known about. A number of states have passed legislation that requires agencies to screen foster parents through central child abuse registers.

Child welfare agencies must be extremely careful in selecting foster parents and in monitoring the quality of care provided by the foster parents. Agencies are obligated to supervise foster care placements and to remove children from unsuitable or dangerous environments.²³ This requires periodic home visits, including interviews with the children and periodic medical examinations of the children.²⁴ The agency must be aware of and responsive to reports or other indications of possible abuse in the foster home.²⁵

In *Bradford v. Davis*, for example, the plaintiff, a foster child, received \$90 thousand in settlement from the state of Oregon. The child alleged that the Children's Services Division negligently failed to supervise, screen, and monitor his foster placement. One of the charges was that the agency failed to investigate reports by neighbors that the child was being beaten.²⁶ Failure to follow written agency procedures for the supervision of foster placements often seems to be an important factor in the court's finding of agency or worker liability.

Failure to Meet the Child's Needs for Special Care. Children in foster care ideally should receive services to remediate the effects of past maltreatment or other special problems. Courts seem to be reluctant, however, to translate this basic need into a constitutional right. In *Sinhogar v. Parry*, for example, a New York appeals court distinguished the rights of foster children from those of juvenile delinquents who, because they are deprived of their liberty, have a right to treatment. According to this decision, foster children "do not have a constitutional right to a particular kind of care from the state and what rights they do have are limited by

the facilities and funds made available by the legislature."²⁷ Similarly, a California court dismissed a complaint that alleged an agency's mistaken and negligent diagnosis of a foster child's mental capacity, which resulted in the child's placement in classes for the mentally retarded.²⁸

Notwithstanding this hesitancy to recognize the foster child's "right to treatment," one federal court decision suggests that there may be an alternate ground for liability. In *Patton v. Dumpson*, the court dismissed claims of liability under Section 1983 of the Federal Civil Rights Act. It allowed to stand claims under Section 504 of the Federal Rehabilitation Act; however, the court explained that, under Section 504, "the plaintiff, a handicapped child, is seeking to hold public and private agencies liable for damages for discrimination against him because of his handicap. The complaint alleges that, due to the plaintiff's physical and mental handicaps, agency employees denied him the benefit of educational services [while he was in foster care]."²⁹

Liability for Children Who Remain in Foster Care "Limbo"

In theory, foster care is a short-term remedy designed to protect a child from harm while parents have time to respond to treatment or until the child can be freed for adoption. Reality is far different. More than 50 percent of the children in foster care are in this "temporary" status more than two years, and more than 30 percent are away from their parents more than six years.³⁰

To reduce the number of children in foster care, many states have initiated periodic case review and special permanency planning programs. Unfortunately, even the most extensive and well-funded efforts have resulted in only a 20 percent reduction in the number of children in foster care.³¹ Many lawsuits have been filed seeking damages for a child's prolonged stay in foster care.

Failure to Treat Parents. Lawsuits for the failure to provide adequate treatment services for parents usually are dismissed because the courts refuse to find that parents have a constitutional right to treatment.³² Judges respond differently, though, when they conclude that the failure to provide appropriate treatment services was caused by poor judgment or negligent administration rather than lack of funds. That apparently happened in *Cameron v. Montgomery County Child Welfare Services*.³³ In that case, the foster child, as plaintiff, alleged that the agency had prevented parental visitation; failed to provide any services to the mother to facilitate the child's speedy return home; transferred the child to another foster home fifty miles from the mother's residence; and had not informed the child of his right to counsel or to a placement review. After the federal court refused to dismiss the suit, the case was settled when the defendants agreed to pay \$5 thousand.

Similarly, in *Burgos v. Department of Children and Family Services*, Spanish-speaking parents, with limited ability to speak English, claimed that their constitutional rights were violated by the agency's failure to provide Spanish-

speaking caseworkers and foster parents. It is hard to see how any service could have been provided if agency personnel could not communicate with the clients. After the federal court recognized the potential validity of the parents' claim, the case was settled out of court based on a "consent order setting forth specific timeframes in which the state was to review each Hispanic case to insure that each such child's and family's rights were protected."³⁴

Failure to Arrange the Child's Adoption. Until now, at least, courts have been unwilling to hold that children in foster care have a constitutional right to be adopted.³⁵ As the following cases suggest, however, potential liability may arise if there is negligence, as defined by state law, or if there is a violation of the administrative procedures required by the Social Security Act.

In *Bradford v. Davis*, a seventeen-year-old child filed suit claiming that "the agency had failed to take reasonable actions to find [him] an adoptive home."³⁶ The child had been placed in foster care shortly before his fourth birthday, and his parents had signed adoptive release forms when he was eight. The Oregon court allowed the case to proceed to trial. Before the trial, the case was settled for \$90 thousand.

Joseph and Josephine A. v. New Mexico Department of Social Service suggests that the absence of periodic reviews and other administrative safeguards required by titles IV and XX of the Social Security Act may open another line of potential liability for failure to arrange for an adoption. The plaintiffs "alleged that the defendants have failed and refused to establish procedures to determine whether children should continue in foster care, whether the rights of the biological parents should be terminated, or whether a child should be placed for adoption. It [was] also alleged that the Department [did] not even have an accurate count of the children in their custody."³⁷ The case went to trial on the basis of a possible violation of the Social Security Act.

Unfair Criticism

Lawsuits against agencies and caseworkers may be the only way to obtain financial compensation for past wrongs. They also may be the only means of changing child welfare practices that are harmful to children and families. As Leroy Schultz, a social work professor at the University of West Virginia, has written: "For the aggrieved client, an immovable social service agency must be challenged in his 'court of last resort.' Thus, court test cases, while destructive of a worker or two, have benefit for all future children, and in some cases, for other workers as well."³⁸

Caseworkers, however, feel that they are often blamed and sued for problems they cannot control. They are especially troubled by the apparent inability or unwillingness of courts to recognize the troublesome nature of child protective decisions and the need to safeguard caseworker discretion. They are even more troubled by criminal prosecutions that seem to be attempts to find a scapegoat for a child's death or, worse, blatant attempts by prosecutors to gain publicity.

It is simply unfair to blame social workers for situations

beyond their control. Child welfare work is not easy. Workers know the consequences of a wrong decision. Failure to act may lead to a child's serious injury or death. On the other hand, intervening when a child is not in danger is damaging to the child and the parents. Holding workers responsible for unpreventable deaths raises their inherently stressful responsibility to an unattainable and destructive level of accountability.

Unjustified criticism also is deeply unfair to the children and families in the child welfare system because it leads to defensive social work. Workers feel that they will be held responsible if there is any reason, however minor, for thinking the child is in danger. Hence, there is great pressure to take no chances and to intervene whenever criticism might arise for not doing so. The dynamic is simple: negative media coverage and litigation are always a possibility if the child is subsequently killed or injured. There will be no critical publicity, however, if intervention was unneeded—and how would people know, anyway?

An analogy to this process is the defensive medicine practiced by many physicians. The ease with which patients seem to be able to win large cash judgments makes physicians fearful of malpractice lawsuits. To minimize the possibility of a lawsuit, many physicians routinely order more medical procedures, x-rays, and other tests than are reasonably needed.

No one knows exactly how much defensive social work goes on. Most observers, however, would agree with Yale law professor Peter Schuck that, "Social workers may more quickly—but prematurely—remove children from troubled families rather than risk being sued on behalf of an abused child."³⁹ In his survey of child protective workers, Leroy Schultz found at least one worker who "tries to get state custody of all suspected abused children just to protect himself from liability."⁴⁰ In another state, a program director describes what happened after he was indicted for "allowing" a child to be killed:

Upon learning of the indictments, caseworkers and their supervisors became aware of their own vulnerability. As a result, paperwork increased to account for everyone's actions and for a while more children were removed from their homes. Supervisors told me that these removals seemed unnecessary but that caseworkers were afraid.⁴¹

The challenge facing the child protective system is to build legal and operational guidelines that reflect the realities of child welfare work—and that recognize what caseworkers can and cannot do to protect children. **PW**

Readers knowing of additional lawsuits against child welfare workers or their agencies are encouraged to bring them to Mr. Besharov's attention in care of the American Enterprise Institute, 1150 Seventeenth Street, N.W., Washington, D.C. 20036.

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For "Notes and References," see back of magazine.

Liability

1. Griffin and Kalinowski, "An Approach to Liability Concerns: Standards for Practice," 1 *Family Life Developments* (April/May 1981).

2. 24 *American Trial Lawyers' Association Reporter* 76 (1981).

3. Buege v. Iowa, No. 20521 (Allamakee, Iowa, July 30, 1980). See also Fischer v. Iowa Department of Social Services, No. C1664-280 (February 18, 1980).

4. See State v. Hilleshiem, 305 N.W.2d 710 (Iowa 1981).

5. The caseworker's conviction was overturned because she had been compelled to testify (against the supervisor) before her sentencing. Steinberger v. District Court, 596 P.2d 755 (Colo. 1979). The supervisor's conviction was overturned on the ground that the official misconduct statute was "void for vagueness." People v. Beruman, 638 P.2d 789 (Colo. 1982).

6. See Gembinski, Casper, and Hutchinson, "Worker Liability: Who's Really Liable?" in *Looking Back, Looking Ahead: Selections From the Fifth National Conference on Child Abuse and Neglect* 116, ed. C. Washburne (University of Wisconsin School of Social Work, 1982).

7. Spearly, "Caseworker Indictments - A Closer Look," 3 *National Child Protective Services* newsletter, American Humane Association (Winter 1981).

8. Complaint, Maupin v. Maupin, et al., U.S. Dist. Ct. (E.D. Mo., 1979).

9. Martin v. Weid, 598, P.2d 532 (Colo. 1979).

10. See, e.g., Brooks v. Richardson, 478 F. Supp. 793 (S.D.N.Y. 1979); Anthony v. White, 376 F. Supp. 567 (D. Del. 1974); Griffin v. Pate, No. 70 Colo. Ct. App. 1168; 11 *Colorado Lawyer* 152 (January 1982); Wayne S. v. County of Nassau, 83 A.D.2d 628, 441 N.Y.S.2d 536 (2d Dept. 1981).

11. Cf. White v. Minter, 330 F. Supp. 1194 (D. Mass. 1971), holding that failure to initiate a judicial review hearing, whether or not required by statute, is a violation of parental rights that creates a cause of action for damages.

12. McEntee v. N.Y. Foundling Hospital, 194 N.Y.S.2d 269 (Sup. Ct., Kings Co. 1959).

13. Duchesne v. Sugarman, 566 F.2d 817 (2nd Cir. 1977); Perez v. Sugarman, 499 F.2d 761 (2nd Cir. 1974), an earlier decision in the same litigation.

14. The same considerations seem to have been involved in Thorn v. New York City Department of Social Services, 523 F. Supp. 1193 (S.D. N.Y. 1981), in which the defendants removed a child from the mother without her consent, after they had returned the child to her following three years of voluntary foster care. Cf. Hartfield v. William, 376 F. Supp. 212 (N.D. Iowa 1974), uncounseled.

15. See, e.g., Boone v. Wyman, 295 F. Supp. 1143 (S.D. N.Y. 1969).

16. See U.S. National Center on Child Abuse and Neglect, *National Analysis of Official Child Neglect and Abuse Reporting* 38, (1980).

17. Doe v. County of Suffolk, 494 F. Supp. 179, 180, n.1 (E.D. N.Y. 1980).

18. See U.S. National Center on Child Abuse and Neglect, *Child Abuse and Neglect: State Reporting Laws* 22 (1980).

19. Quoted in "Legal Defense Fund Aids in Test Case in Confidentiality," 27 *NASW News* (June 1982):22.

20. Although beyond the scope of this paper, it should be noted that foster parents may sue the agency and/or caseworker if a dangerous child is placed in their care and they are not warned of his known violent tendencies. See, e.g., Snyder v. Mouser, 149 Ind. App. 334, 272 N.E.2d 627 (1971); Johnson v. State, 69 Cal.2d 782, 73 Cal. Rptr. 240, 447 P.2d 352 (1968); Seavy v. State, 21 A.D.2d 445, 250 N.Y.S.2d 877, *aff'd* 17 N.Y.2d 675, 269 N.Y.S.2d 455, 216 N.E.2d 613 (1964). See also Vaugh v. North Carolina Department of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979), finding liability for placing a child with cytomegalovirus (likely to cause birth defects) in the home of a woman knowing that the woman intended to become pregnant where the ensuing pregnancy was aborted due to the woman's contraction of the virus.

21. Even the arrest of the parents may raise the possibility of liability for inadequate placement of the child. See, e.g., White v. Rockford, 592 F.2d 381 (7th Cir. 1979), allowing a lawsuit against police officers who, upon arresting the children's uncle, allegedly left the children without adult protection in an automobile on the side of the road on a cold evening.

22. See, e.g., Doe v. New York City Department of Social Services, 649 F.2d 134 (2nd Cir. 1981); Brooks v. Richardson, 478 F. Supp. 793 (S.D.N.Y. 1979); National Bank of South Dakota v. Leir, 9 *Family Law Reporter* 2105 (South Dakota Sup. Ct., 1982); Andrews v. Court of Ostego, 446 N.Y.S.2d 169 (Sup. Ct. Ostego Co. 1982); Bradford v. Davis, 290 Or. 855, 629 P.2d 1376 (1981); Bartels v. County of Westchester, 76 A.D.2d 517, 429 N.Y.S.2d 906 (2nd Dept. 1980); Koepf v. County of York, 198 Neb. 67, 251 N.W.2d 866 (1977); Vonner v. State, 273 So.2d 252 (La. 1973); Hanson v. Rowe, 18 Ariz. App. 131, 500 P.2d 916 (1972); Elton v. County of Orange, 3 Cal. App.3d 1053, 84 Cal. Rptr. 27 (1970); Fox v. Destitute

Children, 202 Misc. 478, 119 N.Y.S.2d 14 (Sup. Ct. Dept. 1952); cf. Parker v. St. Christopher's Home, 77 A.D.2d 921, 432 N.Y.S.2d 110 (2nd Dept. 1980); Pickett v. Washington County, 31 Or. App. 1263, 572 P.2d 1070 (1977). See generally annotation, "Government Tort Liability for Social Service Agency's Negligence in Placement, or Supervision After Placement, of Children," 90 *American Law Reports* 3d 1314 (1979).

23. See, e.g., Gill v. Smith, 86 Misc. 2d 428, 382 N.Y.S.2d 626 (Sup. Ct. New York Co. 1976); *In re* Adoption of Doe, 444 P.2d 800 (Wash. 1968).

24. See, e.g., Vonner v. State, *supra* n. 22.

25. See, e.g., Doe v. New York City Department of Social Services, *supra* n. 22.

26. For a review of this case see National Center for Youth Law, 2 *Youth Law News* (1982):6-5 and 15; *Clearinghouse Review* 288 (July 1981).

27. Sinhogar v. Parry, 74 A.D.2d 204, 427 N.Y.S.2d 216 (1st Dept. 1980), *aff'd* 53 N.Y.S.2d 424, 442 N.Y.S.2d 423, 425 N.E.2d 826 (1981).

28. Smith v. Alameda County Social Services Agency, 90 Cal. Ap. 3rd 929, 153 Cal. Rptr. 712, 718 (1st Dist. Ct. of App. 1979).

29. Patton v. Dumpson, 498 F. Supp. 933 (S.D.N.Y. 1980).

30. U.S. Childrens Bureau, *National Study of Social Services to Children and Their Families*, 120 (DHEW 1978).

31. Lahti, et al, *A Follow Up Study of the Oregon Project: A Summary* 3, Table 1 (Regional Institute for Human Services, School of Social Work, Portland State University, 1978).

32. See, e.g., Black v. Beame, 419 F. Supp. 599 (S.D.N.Y. 1976). *But see* McTeague v. Sosnowski, 617 F.2d 1016 (3rd Cir. 1980).

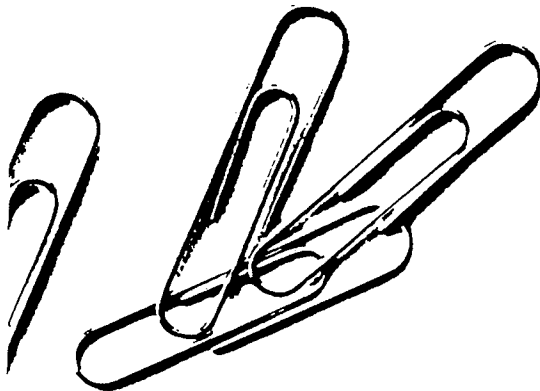
33. Cameron v. Montgomery County Child Welfare Services, 471 F. Supp. 761 (E.D. Pa. 1979).

34. Burgos v. Department of Children and Family Services described in Leahy and Barnes, "Private Social Welfare Agencies: Legal Liabilities Facing Employees," 35 *Public Welfare* (Fall 1977):42-46.

35. See, e.g., Child v. Beame, 412 F. Supp. 593 (S.D. N.Y. 1976).

36. Bradford v. Davis, 290 Or. 855, 626 P.2d 1376, 1378 (1981).

37. Joseph and Josephine A. v. New Mexico Department of Social Services, 8 *Fam. L. Rep.*



APWA CONFERENCES

1984

Southwest Region. May 20 - 23. Excelsior Hotel, Little Rock, Arkansas. Contact Richard Howell, Office of the Director, Arkansas Department of Human Services, Donaghey Building, Suite 1300, Seventh and Main Streets, Little Rock, AR 72201. Telephone: (501) 371-1001.

Northeast Region. September 16 - 19. Biltmore Plaza Hotel, Providence, Rhode Island. Contact Thomas A. McDonough, Rhode Island Department of Social and Rehabilitative Services, 600 New London Avenue, Cranston, RI 02920. Telephone: (401) 464-2371.

Mountain States Region. September 27 - 29. Cheyenne Holiday Inn, Cheyenne, Wyoming. Contact Guy Noë, Platte

County, D-PASS, 965 Gilchrist Avenue, Wheatland, WY 82201. Telephone: (307) 322-3790.

Central States Region. September 30 - October 3. St. Paul Radisson, St. Paul, Minnesota. Contact Dr. Deborah Bachrach, Office of the Commissioner, Minnesota Department of Public Welfare, Centennial Office Building, Fourth Floor, St. Paul, MN 55155. Telephone: (612) 296-1551.

Southeast Region. October 23 - 26. River-view Plaza Hotel, Mobile, Alabama. Contact Gethryn Giles, Alabama Department of Pensions and Security, 64 North Union Street, Montgomery, AL 36130. Telephone: (205) 261-5705.

NOTES & REFERENCES

2188, 2190, (U.S. Dist. Ct. N.M. 1982).

38. Schultz, *Malpractice and Liability in West Virginia's Child Protective Services: A Social Policy Analysis* (West Virginia University School of Social Work 1981) at Preface.

39. Schuck, *Suing Government* (Yale University Press, 1983):75.

40. Schultz, *supra* n. 38, at 10.

41. Gembinski, Casper, and Hutchinson, *supra* n. 6, at 118.

Chapter 809 of the 1979 statutes, now codified as California Civil Code Section 224a (1982).

5. This provision is codified in the West Virginia Code Sections 48-1-2 and 48-1-3 (Supplement 1983).

6. The Council of State Governments, *1981 Suggested State Legislation*, vol. 40 (Lexington, Ky.: The Council of State Governments, 1981):10-13.

Burnout

1. Raymond Fox, "Beyond Burnout: Strategies for Organizational Renewal: Part I," *Charities USA* 10, no. 4 (April 1983): 10-11.

2. Christina Maslach, *Burnout: The Cost of Caring* (Engelwood Cliffs, N.J.: Prentice-Hall, 1982):132.

3. Pauline C. Zischka, "The Effect of Burnout on Permanency Planning and the Middle Management Supervisor in Child Welfare Agencies," *Child Welfare* LX, no. 9 (November 1981):613.

4. Martha A. Mattingly, "Sources of Stress and Burn-Out in Professional Child Care Work," *Child Care Quarterly* 6, no. 2 (Summer 1977):130.

What State Is He From?

Certainly everybody in the world knows what state Walter Mondale represented in the U.S. Senate. Even we on the staff of PUBLIC WELFARE know. But we suffered some kind of lapse as we put together the copy for page 11 of the Winter 1984 issue. All future issues of PUBLIC WELFARE will be perfect.

BOOK NOTES

(Continued from page 47)

Recidivism in Foster Care

By Norman M. Block and Arlene S. Libowitz. New York: Child Welfare League of America, 1983. 93 pp. \$10.95.

Describes the nature, extent, and causes of recidivism in foster care.

Re-educating Troubled Youth: Environments for Teaching and Treatments

By Larry K. Brendtro and Arlin E. Ness. Hawthorne, N.Y.: Aldine Publishing, 1983. 288 pp. \$29.95; \$16.95 paper.

Describes experiences in training professionals and developing programs to serve emotionally disturbed and behaviorally disordered children and adolescents at the Starr Commonwealth Schools.

The State and the Poor in the 1980s

Edited by Manuel Carballo and Mary Jo Bane. Boston: Auburn House, 1984. 328 pp. \$22.95; \$13.95 paper.

A comprehensive examination of the poor and the policies that affect them.

Two Sisters for Social Justice: A Biography of Grace and Edith Abbott

By Lela B. Costin. Champaign, Ill.: University of Illinois Press, 1983. 315 pp. \$18.50.

A biography of the sisters who never received the popular following or scholarly attention accorded their mentor, Jane Addams.

When Bonding Fails: Clinical Assessment of High-Risk Families

By Frank G. Bolton, Jr. Beverly Hills, Calif.: Sage Publications, 1983. 223 pp. \$28.00; \$14.00 paper.

Practical guide suggests methods for easy identification of the high-risk family and ways of screening out families not likely to benefit from known interventions.

Adoption

1. The five state legislatures that did not address this issue during the period under consideration were: Arizona, Hawaii, Rhode Island, South Dakota, and Wyoming.

2. The new registry law in Colorado-replaces a registry that had been in operation under Colorado Department of Health's administrative regulations since October 1, 1982. The registry laws passed in New York, Oregon, and Texas also contain procedures for the compilation and release of nonidentifying medical and genetic data. The Texas law also allows adult siblings to join the registry.

3. The pertinent portion of Idaho's records statute provides that the seal on the court adoption record "shall not be broken except upon the motion of petitioners or the person adopted." (Idaho Code, Section 16-1511 [1979]). There is insufficient information on the exact operation and interpretation of this statute in the various courts of the state.

4. The issue of Native American adoptee tribal rights had also been addressed earlier by the U.S. Congress when it enacted Sections 107 and 301 of the Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069, (1978). In 1970, California also acted to preserve tribal rights of Native American adoptees when it enacted

