

cial workers and adequate foster placements are in short supply. The result can be to impose additional burdens on the family with no compensatory added resources.

3. *While child abuse is a serious problem, there is also a great potential for abuse of reporting laws.* This issue has hardly been touched on in discussions of mandatory reporting. In nearly all versions of such acts, the informant is permitted to remain anonymous and is indemnified against civil action for the reporting. Although malicious intent can nullify such immunity, it is well known that malice is extremely difficult to establish in court, all the more so when the identity of the informant is protected by the law. In the interest of protecting the rights of innocent children, the rights of innocent adults may thereby be abridged.

This ought to be of grave concern for human service professionals, who know well that interventions by the state into the lives of families tend to discriminate against "deviants," minority groups, and the poor. These groups are more likely to be intruded upon and to receive poorer treatment at the hands of legal and social service agencies.

Even more than the reporting laws themselves, it is the immunity they grant which seriously abridges the legal and constitutional rights of all "accused" families. They cannot confront their accusers and are denied due process concerning both the mandated invasion of their home and the recovery of damages for "wrongful" reporting. Families who are wrongly reported are, at a minimum, subject to substantial inconvenience and unjustified invasion of privacy. In smaller communities, they may be ostracized or become the target of harassment. By the time the true situation is demonstrated, the damage may already be done. In one case, the medical practice of a person, later proved completely innocent, was destroyed by a report of suspected sexual abuse. There is no legal recourse or remedy in such cases.

Gravest of all is the danger that mandatory reporting, like other unenforceable and unpoliceable laws, can be used selectively against "dissidents" whose unconventional views, values, or life-styles make them a target. The outcome can hinge on whether a family's life-style dovetails sufficiently with

the stereotypes and expectations of the junior social worker who investigates the home situation. Family nudity, discipline considered too lax or too strict, a home not meeting community standards of neatness or privacy—anything can add to an unfavorable impression. Even where no action is taken, a family has wrongly been placed in the difficult position of having to prove its fitness.

Such cases have already occurred and, with the growing militancy of conservatism, can be expected to increase. No one is immune. Even professionals could find themselves the victims, especially if their views on children and child rearing are misrepresented or misunderstood. All that is required is an anonymous call by a well-meaning but misguided colleague, or a report of suspected abuse by an angered ex-client.

Larry L. Constantine
Family Therapist
Acton, Mass.

REFERENCES

1. KENNEDY, M. 1982. Incest: the victim no one believes. Society for Family Therapy and Research, Newsletter (Feb.)

The author replies:

Mr. Constantine's remarks will be addressed in seriatim:

1. The concern here appears to be that mandatory reporting requirements in the context of "family treatment" are problematic since they fail to treat the child as a party to treatment and further, that reporting requirements might "bias" the therapists through the labeling of one person as "perpetrator." Yet it would seem that removing the family therapist from the onerous task of arbitrating between the competing interests of parent and child by removing the *choice* of reporting leaves the therapist free to deal with clinical issues without having to choose whether or not to call for state intervention on behalf of the child. As for the "labeling" problem it appears that bias against a "perpetrator" in the therapist's mind would arise from the therapist's observation of the patient's behavior rather than the therapist's subsequent report of that behavior. Bias against a patient might arise from what the

patient does, it should not result from what the therapist does in response.

2. I am sympathetic with Mr. Constantine's concerns as to the staff and funding problems in state agencies called upon to offer services in difficult cases in a time of diminishing resources. However, it has been my experience that when families are fortunate enough to be receiving private clinical services, the protective service agencies encourage the continuation of such treatment. Rather than intervene, they act to insure that private treatment continues. In the bulk of child abuse/neglect cases, however, there simply is no "original therapist" to whom decision-making prerogatives may be delegated. In the preponderance of abuse/neglect cases the *only* services available to children and their families are provided by state and county agencies. This fact would seem to argue for strengthening those agencies rather than eliminating them on the optimistic presumption that therapists in the private sector are generally available to provide assessment and intervention services. Overburdened agency workers generally encourage the continuation of private services to those relatively few families who both seek and can afford it.

3. The concern expressed here by Mr. Constantine is not one I would lightly dismiss. Certainly there is the risk of harm to individuals resulting from false and malicious child abuse/neglect reports. Yet I fail to see how these laws being mandatory as against voluntary would in any way alleviate this risk. Those who wish to make trouble for others needn't rely upon the mandatory nature of reporting laws to initiate false reports. And no one would suggest dealing with the problem of false and malicious reports by precluding the filing of reports of suspected child abuse/neglect.

The questions as to constitutional rights raised here are substantial ones. Child abuse/neglect statutes deal with situations in which rights of children, parents, and the state are in conflict. Enacted statutes represent a particular societal trade-off among these competing interests. The risk of increased "false positives" resulting from laws which encourage over-reporting must be weighted against the harm to children arising out of "false negatives" (unreported cases of

actual abuse/neglect) which would be encouraged by lenient reporting laws. That a line must be drawn is obvious, precisely where it is to be drawn is not. I concur with Mr. Constantine's belief that affording anonymity to those who report, and requiring a showing of the reporter's malicious intent, rather than, say, his reckless negligence, in seeking redress for a false report draws the line too far from the constitutional rights of those reported.

I agree also that the reporting of abuse/neglect too frequently is confounded by cultural values, the stigmatization of "deviant" subgroups and the unconventional. Again, however, these groups remain at risk of intrusive state intervention regardless of whether child abuse/neglect statutes are mandatory or voluntary. Fortunately, the trend of appellate law shows a recognition of the risk of overzealous state intervention, as evidenced by the recent Supreme Court case, *Santosky v. Kramer*, — U.S. —, (1982), 102 S.Ct. 1388, where it was held that in termination of parental rights hearings the state must meet at least a "clear and convincing" evidentiary standard of proof of parental unfitness.

Melvin J. Guyer, Ph.D., J.D.
Director, Family and Law Program
Department of Psychiatry
University of Michigan
Ann Arbor, Mich.

Perinatal Grief Work

TO THE EDITOR

The article by Elizabeth Kirkley-Best and Kenneth R. Kellner, in the July 1982 issue of the *Journal* ("The Forgotten Grief: A Review of the Psychology of Stillbirth"), adds significantly to the literature on the perinatal grief process and perinatal grief work. Particularly significant is an understanding of the stages of the grief process and the necessary interventions involved.^{1, 3, 4} Perinatal social workers, pastoral counselors and other health care professionals in the medical setting enact a significant mental health role with families experiencing loss as a result of stillbirth. In addition to the in-hospital interventions described in the article, in-hospital memorial services, certifi-