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Recognizing Child Abuse: A Guide for the Concerned

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RECOGNIZING CHILD ABUSE: A GUIDE FOR THE CONCERNED. By *Douglas J. Besharov*. New York: The Free Press. 1990. Pp. xv, 270. Cloth, \$15.95; paper, \$9.95.

According to a 1986 survey conducted for the federal government, approximately 300,000 children are physically abused, another 140,000 are sexually abused, and 700,000 are neglected or otherwise maltreated in the United States each year.¹ The country clearly needs an effective public system to protect its children. At the same time, such a system must avoid excessive state intervention into family life. In *Recognizing Child Abuse*, Douglas J. Besharov² argues that the current system of child protection produces dangerously high rates of both underreporting and overreporting³ of maltreatment of children, which cause inappropriately low and high levels of state intervention, respectively.⁴ He concludes that more accurate reporting of abuse will alleviate these problems, and thus devotes the bulk of the book to articulating specific guidelines to assist potential reporters in making the critical decision of whether or not to report a suspicion of child abuse.

The author intends to address a wide range of audiences, including friends and relatives of children who may be subject to abuse and professionals who are in a position to report suspected maltreatment of a child. He also recommends this book to parents who are accused of abusing their own children or who fear that someone else is abusing them. In addition, by suggesting improvements in the identification and reporting processes, Besharov attempts to provide a framework for legislative and programmatic reform. He envisions the book aiding “[t]he general public, agency administrators, legislators, and other policy-makers who are concerned about the maltreatment of

1. U.S. DEPT. OF HEALTH AND HUMAN SERVICES, *STUDY OF NATIONAL INCIDENCE AND PREVALENCE OF CHILD ABUSE AND NEGLECT* (1988).

2. Douglas Besharov is an attorney and an adjunct Professor of Law at Georgetown and American Universities. He is a Resident Scholar at the American Enterprise Institute for Public Policy Research. From 1975 to 1979 he served as the first Director of the National Center on Child Abuse and Neglect. Besharov has written numerous books and articles on child abuse, including *THE VULNERABLE SOCIAL WORKER: LIABILITY FOR SERVING CHILDREN AND FAMILIES* (1985) and *PROTECTING CHILDREN FROM ABUSE AND NEGLECT: POLICY AND PRACTICE* (1988) [hereinafter *PROTECTING CHILDREN*].

3. The term “overreporting,” as used by Besharov, includes both deliberately false reports and good faith reports based on mistaken suspicions. Pp. 12-19.

4. Inadequate and ambiguous reporting procedures prevent abused children from being identified and reported to the proper authorities. The same vague procedures cause concerned observers to make inappropriate and unfounded reports. This overreporting further deters protective measures by diverting resources away from the real victims. Besharov previously made this argument in *PROTECTING CHILDREN*, *supra* note 2, ch. 2, adapted from Besharov, “*Doing Something*” *About Child Abuse: The Need to Narrow the Grounds for State Intervention*, 8 *HARV. J.L. & PUB. POLY.* 539 (1985) [hereinafter “*Doing Something*”].

children”⁵

Recognizing Child Abuse does not fully achieve its goals. By successfully summarizing the situations that should be reported and by whom, Besharov undoubtedly will help concerned friends and neighbors make correct reporting decisions. Many of Besharov's suggestions, however, will be helpful only to professionals. In several instances Besharov recognizes this limitation and specifically recommends the material to hospital employees, police officers, and other professionals.⁶ Sometimes, however, he does not identify the appropriate audience.⁷ Further, the analysis is not sufficiently comprehensive to provide legislators and other policymakers with a framework for reform. The author may have overestimated the degree to which his book will benefit its audience.

Besharov begins by observing that “[a]bused and neglected children are dying because they are not being reported to the authorities and because the wrong children are being reported.”⁸ This insight leads Besharov to conclude that “efforts to encourage more complete reporting must be joined with efforts to reduce the harmfully high rate of inappropriate and unfounded reports” (p. 7). Balance thus emerges as Besharov's main theme. Decreasing the level of “unfounded” or “inappropriate” reports is as important as increasing the level of “appropriate reporting” by professionals and private citizens. Toward this goal, Besharov identifies those people *required* to report in most states, and encourages others to make reasonable voluntary reports (pp. 8-11).

The federal Child Abuse Prevention and Treatment Act of 1974 requires states to provide for mandatory reporting of child abuse and neglect in order to receive certain grants.⁹ Unfortunately, neither the federal provision nor the resulting state statutes clearly define “child

5. P. 6. Margaret Meriwether offers a more direct proposal for legislative reform in her contribution to one of Besharov's earlier edited works. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 FAM. L.Q. 141 (1986), reprinted in PROTECTING CHILDREN, *supra* note 2, ch. 1.

6. See, e.g., p. 114 (identifying psychological maltreatment); pp. 126-27 (recognizing symptoms of parental psychosis); p. 149 (preserving evidence).

7. For example, Besharov provides guidelines for interviewing and physically examining children. Pp. 59, 92. Except for a short warning concerning intimate examinations, he does not restrict the discussion to a particular audience. Many interviews and physical examinations, however, cannot appropriately be conducted by laypersons.

8. P. 7. Throughout the book, the author stresses the danger posed to abused children by underreporting and uses numerous tragic case histories to drive the point home. He also emphasizes the harm to abused children resulting from the overburdening of child protection agencies with inappropriate reports. Besharov does not, however, sufficiently emphasize at the outset the trauma to the children and families who are the subject of an inappropriate report. While he offers one or two examples of the plight of the wrongly accused, some of his earlier works more effectively describe the seriousness of unfounded reporting. See, e.g., “*Doing Something*,” *supra* note 4, at 557-62. Adequate emphasis on this aspect of the problem would help Besharov attain his goal of improving the quality of reporting by professionals and private citizens.

9. 42 U.S.C. § 5106a(b)(1) (1988).

abuse and neglect.”¹⁰ Thus, perhaps the most valuable aspect of the book is its attempt to distinguish nonreportable “marginally inappropriate or inadequate child care” from reportable “child maltreatment” (p. 29). Chapters Seven through Twelve identify the precise types of behavior that should be reported and, if no direct evidence is available, the types of circumstantial evidence that justify reporting.

In reviewing the most common types of reportable behavior, Besharov makes clear that all forms of physical, sexual, and emotional maltreatment should be reported. He cautions, however, that while minor acts of physical contact might constitute poor judgment by the parents, these may not amount to abusive behavior.¹¹ Similarly, he warns that “reasonable” verbal castigation or punishment is not reportable emotional harm.¹² To help prevent the reporting of such behavior, Besharov summarizes the types and magnitude of physical and psychological harm likely to be considered “maltreatment” (p. 29).

Since most parents do not harm their children in public, determining whether abuse has occurred is often difficult. Besharov suggests that because the facts are not always clear, a mere “reasonable suspicion” of maltreatment justifies reporting (p. 55). Besharov would require, however, that the suspicion be based on objective circumstantial evidence, which is often hard to analyze. To encourage reporting when the potential reporter’s information is incomplete or difficult to interpret, Besharov presents “child abuse indicators,” which, in proper combinations, may form the basis for a reasonable suspicion and thereby justify reporting.¹³ To assist potential reporters in obtaining additional information, Besharov provides guidelines for interviewing suspected abuse victims (p. 59). Throughout these sections, Besharov carefully avoids endorsing sole reliance on any individual indicator that may have reasonable origins in something other than child mal-

10. Margaret Meriwether observes that reporting statutes are generally drafted in broad and ambiguous language to identify abuse victims quickly. Unfortunately, as she explains, this results in overreporting, which harms the entire child protective system. *PROTECTING CHILDREN*, *supra* note 2, at 12-14.

11. Pp. 66-67. For example, all states consider the “spanking” of children on the buttocks reasonable physical punishment. In most jurisdictions parents may use not only their bare hands, but also a hairbrush or a belt with no buckle, provided no serious welts or cuts result. P. 67.

12. P. 115. Besharov notes that withholding a child’s recreational privileges or mandating attendance at a certain school or place of religious worship is a reasonable exercise of parental discipline. In contrast, keeping an adolescent indoors for weeks or months at a time will usually be considered close confinement, a reportable form of emotional abuse. Pp. 115-16.

13. Pp. 55-65. Although rare, an important source of suspicion is firsthand observation of a parent engaging in seriously harmful behavior. A parent may also turn to other adults for help and reveal important information that should be reported. A more common source is the child’s own statement. While very young children are obviously not capable of reporting abuse, older children may seek help from trusted adults. A child’s description of being abused or neglected should be reported unless the potential reporter believes the child is lying. Prior reports of maltreatment will help determine whether a suspicion is justified. Unfortunately, the child’s physical condition is often the best indicator of maltreatment.

treatment: if the situation is ambiguous, a reporter should establish the existence of several independent indicators. These suggestions seem most appropriate for professionals who work with young children and have the opportunity to question them outside of their parents' presence.¹⁴ Concerned friends and neighbors may have neither the opportunity nor the qualifications to gather the requisite information. Thus, many of the "child abuse indicators" may hold limited value for the suspicious layperson.

To clarify his analysis of reportable maltreatment, Besharov describes specific types of physical abuse (Chapter Seven), sexual abuse (Chapter Eight), physical neglect (Chapter Nine), endangerment and abandonment (Chapter Ten), and psychological maltreatment (Chapter Eleven). In each chapter he distinguishes reportable situations from cases of poor parenting or inferior financial situations beyond the control of the suspected abusers. While these chapters may aid the layperson attempting to make the critical reporting decision, most cases are not as clear-cut as many of the examples presented.¹⁵ Besharov should warn his reader that these guidelines are not intended to be exhaustive or absolute. He should emphasize that marginal cases will remain difficult to assess, and that reading this book will not make the reader an expert in recognition and reporting.

Besharov's descriptive chapters caution concerned citizens to report only seriously harmful behavior that has already occurred. In an earlier work, Besharov stressed that while people are often concerned about *potentially* dangerous parents, there are no indicators that allow observers to predict with certainty which potentially dangerous parents will actually injure their children.¹⁶ In most circumstances, therefore, only parents who have previously engaged in harmful conduct should be reported.

Yet Besharov apparently believes in making some important exceptions to the general rule that only harmful *behavior* should be reported; he claims that observers should report certain types of *potentially dangerous* parents. Although Besharov's basic premise — that the rule has several exceptions — is correct, he fails to emphasize that most laypersons are not qualified to make the necessary determi-

14. For example, Besharov argues that behavioral indicators of the child (pp. 82-85, 96-98) and parents (pp. 141-45) should be considered in ambiguous situations. Pp. 82-85, 96-98, 141-45. Most laypersons are not qualified to make the complex behavioral analyses involved in detecting child abuse.

15. For instance, Besharov provides graphic sketches of small children with injuries shaped like common household instruments. Pp. 77, 80. These injuries clearly should be reported, but many bruises will not be as easy to identify.

16. "Doing Something," *supra* note 4, at 554-62. Some experts estimate that up to 60% of parents would be considered unfit under a "potentially dangerous" analysis. See p. 123 (citing R. HELFER, REPORT ON THE RESEARCH USING THE MICHIGAN SCREENING PROFILE OF PARENTING (1978), explained in Garbarino & Stocking, *The Social Context of Child Maltreatment*, in PROTECTING CHILDREN FROM ABUSE AND NEGLECT 7 (1980)).

nation. For example, in discussing one exception to the rule, Besharov notes that parents suffering from severe and demonstrable mental disabilities are incapable of providing adequate care for their children and should be reported (p. 123). Among such disabilities Besharov includes severe mental illness, which he defines to include overt psychosis or major depression severely impairing the parent's judgment or ability to function, severe mental retardation, severe alcohol or drug abuse, and inability to care for a newborn (p. 125). Reporting parents who exhibit such characteristics might be prudent; identifying these people, however, is difficult. Besharov himself warns that a "diagnosis of psychosis should be left to a trained professional" (p. 126). Despite this warning, he goes on to list symptoms of psychosis to help a layperson decide whether to report a parent as a potential abuser. Leaving an analysis like this to a layperson may result in exactly the type of overreporting that Besharov seeks to prevent: reporting that traumatizes all involved while simultaneously diverting resources away from truly endangered children. Similarly, severe mental retardation and inability to care for a newborn are best diagnosed by professionals.¹⁷ Also, the author's treatment of severe depression as a form of severe mental illness rings of overinclusiveness. Many new mothers suffer severe postpartum depression, which may impair their ability to care for their children. Fortunately, the condition is usually temporary and women routinely overcome it without state intervention.¹⁸ Finally, Besharov adds that parents who claim to feel themselves slipping out of control and fear they may hurt or kill someone should be reported to the proper authorities (p. 63). Few people are likely to have a difficult time deciding whether or not to report parents falling into this category, even in the absence of Besharov's advice.

For the concerned citizen who has decided in favor of reporting, Besharov describes standard reporting procedures.¹⁹ He informs potential reporters that their responsibilities may not end upon the filing of a report.²⁰ The child protective agency handling the investigation is likely to check back with the original reporter and may even request permission to disclose the reporter's name to the accused parents.

17. Besharov specifically addresses his section on care of a newborn to health care workers in maternity wards. Pp. 131-33.

18. See generally C. DIX, *THE NEW MOTHER SYNDROME* (1985).

19. Part Three covers "The Reporting Process." Pp. 149-200. Besharov notes that certain chapters in this section are directed primarily at professionals but recommends the chapters to all readers. His suggestions regarding preserving evidence (pp. 149-58) and handling emergencies (pp. 159-70), for example, are not appropriate for the average concerned citizen. Although Besharov warns nonprofessionals not to conduct intimate examinations or take pictures of suspected victims (pp. 63, 149), laypersons may misinterpret these chapters as encouraging these procedures. Such intrusive investigations may further traumatize an already frightened and possibly maltreated child and should be conducted only when absolutely necessary, and then only by trained professionals.

20. P. 155. Some agencies refuse to accept anonymous reports.

Although this information is likely to discourage some potential reporters, Besharov's candor here seems wiser than encouraging involvement without preparing the reader for what reporting entails.

Finally, Besharov adds some advice to those on the other side of the situation. He devotes Chapters Nineteen and Twenty to parents who fear that they are losing control and might abuse their child and to those who believe that their child is being abused by someone else. Besharov advises the former group of parents to seek voluntarily social and psychiatric services and to cooperate with child protective agencies in the event a report is filed against them (pp. 211-19). He points out that most reported parents will not need a lawyer, but he provides guidance on choosing one if the situation so requires.²¹ For parents in the latter category, Besharov focuses on verification of the suspicion and on protecting the child's physical and emotional health (pp. 201-10).

Although Besharov does not explicitly recommend the book to practicing attorneys,²² the utility of *Recognizing Child Abuse* to members of the legal community is twofold. First, it provides background material that lawyers who do not ordinarily handle child abuse claims may use to familiarize themselves with the field. In addition, the descriptive materials will assist lawyers in preliminary analyses of child maltreatment suits. Overall, *Recognizing Child Abuse* is an up-to-date handbook that identifies many important indicators of child abuse. While Besharov has previously contributed significantly to the scholarly literature of child protection,²³ this work does not add much new information to the field.²⁴ However, readers unfamiliar with the field of child abuse and those who have not read Besharov's other works will find in *Recognizing Child Abuse* an eye-opening compilation of much of the information currently available. Besharov adequately summarizes, in mostly plain language, the elements of child maltreatment and he gives concerned citizens not only a starting point for acting upon reasonable suspicions, but an idea of what to expect following a decision to report.²⁵ Finally, though this work may not

21. Pp. 219-23. For Besharov's argument that petitioners in child protection cases should be provided legal counsel, see Besharov, *The "Civil" Prosecution of Child Abuse and Neglect*, 6 VT. L. REV. 403 (1981). If state legislatures provided attorneys to petitioners, however, parents involved in such cases would be wise to obtain an attorney who is familiar with the law of child abuse.

22. Besharov specifically recommends the book to legislators and other policymakers. See *supra* text accompanying note 5.

23. See *supra* note 2.

24. See, e.g., *supra* notes 4, 5, 8, 10 & 16; see also Hanks, Hobbes & Wynne, *Early Signs and Recognition of Sexual Abuse in the Pre-School Child*, in *EARLY PREDICTION AND PREVENTION OF CHILD ABUSE* ch. 10 (K. Browne, C. Davies & P. Stratton eds. 1988).

25. For a deeper understanding of the intricacies of domestic violence, Besharov often refers his readers to his earlier, more comprehensive works, as well as to detailed materials written by others.

contribute much to the day-to-day lives of many readers, it is fast and interesting reading for anyone who wants to understand, and possibly prevent, some of the emotional and physical abuse that occurs in the United States every day.

— *Denise Esposito*