



The House of the Innocents

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Evil events are rarely committed to paper. The history of child abuse inherently involves pain inflicted in the dark and behind closed doors, providing us with only the barest of facts. We know that royal children were poisoned and murdered for convenience or for their crowns and that the ancient Greeks disposed of handicapped children at birth. We hear words like "beaten," "burned," "raped," and "exploited," but these do little to reveal the enormous tragedies for which they are mere codes.

Today, there is a vast infrastructure of child protective services (CPS) in America. It is funded by billions of federal and state tax dollars. History has been turned on its head. Instead of children being 'seen and not heard,' or having no right of survival at birth, children are now revered as precious, as our modern day mocking birds. The entire 'village' is involved in their protection and welfare.

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House of the Innocents terra cotta and glazed medallion: *A child symbolically seeks the charity of Florence's rich in this medallion by Andrea della Robbia. From 1463-66, Robbia made 10 such medallions to decorate the arches of the House of the Innocents, (Ospedale degli Innocenti), built by Brunelleschi and funded by the Medici family as a refuge for newborns who were abandoned there in lieu of being killed.*

reform from the ultimate act of child abuse: murder.

But this type of Renaissance humanitarian idealism was slow to spread. Infanticide and other forms of physical, sexual and emotional abuse had been going on since the advent of Man. No laws or programs would or will ever put an end to this. The ancient Egyptians used to punish mothers who murdered their newborns by making them hug the corpse for 72 hours. In 1917, of 5,000 illegitimate children born in Chicago, 1,000 disappeared without a trace. The Victorians stuffed their babies down sewers, clogging the city's system. Today, the news of war and conflict is punctuated by stories of dead babies left in public toilets, garbage cans and dumpsters.

The lessons of history are used in child maltreatment books as case studies of what to look for today. Wrote the editors of one such text:

"The historical perspective allows us

to stand back from the everyday experience of confronting the battered or neglected child and to reflect on the wider issues of what has been presented to us as a single incident in time."¹

We rejoin history at the work-houses of Victorian England. These were a perversion of institutions like the House of the Innocents. Orphaned children were sent to these Hell holes. Moved by the stories of children who were starved and beaten in these places, Charles Dickens created a storm of indignation and outrage when, based on the lives of real boys, he wrote stories like "Oliver Twist." Orphaned at birth, Twist was put into a work-house with other boys where he was forced to work. Meals consisted of one small bowl of gruel, and no more.

The emaciated boys began to plot a rebellion of sorts and drew straws for who would ask for more at the next meal. The short straw fell to Oliver and so, the next

day, he approached the work-house master and uttered what is perhaps the most famous of Dickens' lines: "Please, sir, I want some more!"

Oliver was severely beaten, cast out and sold by the work-house to a local undertaker for five English pounds. Beatings and starvation continued there until, one night, Oliver stole into the darkness—only to fall into the hands of the Artful Dodger. (You'll have to read the book to find out what becomes of Oliver.)

Dickens' stories were milestones in raising social consciousness about child mal-

treatment. A loyal champion of all boys, his descriptions of maltreated children stemmed from a desire to remedy evils that he had found in London and its suburbs. Dickens' gave these victims of tyranny and oppression a voice in his novels. On hearing this voice, Londoners were deeply affected and were stirred to a storm of indignation and protest. Schools, work-houses, and other public institutions were subjected to rigorous examination, resulting in several closings and tremendous improvements. Although Dickens' goal was partly accomplished, the war against child abuse had a long road ahead.

Meanwhile, across the Atlantic, thousands of homeless children scraped out grim existences and often died on the streets of New York and other cities. By 1850, in New York City, alone, there were an estimated 30,000 orphans on the streets. In response in 1853 Charles Loring Brace, a young, Yale-educated theologian, formed the Children's Aid Society (CAS). In what was to become the beginning of the modern-day foster movement in the U.S., the CAS shipped some 120,000 children out of the city on "Orphan Trains," initially to farming families in the Midwest and West and, as the Orphan Train Movement grew, to 45 states, Canada and Mexico. Even so, America's homeless orphans and abused children remained mostly voiceless and



Oliver Twist: "Please, sir, I want some more!" *This is perhaps the most famous of Charles Dickens' lines. The author's descriptions of boy life in Victorian England caused a wave of protest against, and reform of the miserable conditions in which young children were forced to live.*

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largely ignored by mainstream, middle-class America for the next two decades.

Fast-forward to 1874 when child abuse issues briefly took center stage in the American media. The plight of Mary Ellen Wilson, a crusade-inspiring case in New York City, sparked the creation of the early child protection movement in the United States.

Mary Ellen, a nine-year-old orphan, was regularly beaten and berated by her foster mother. A charity worker who was boarding in the same house wanted to help Mary Ellen escape her misery, but there were no government agencies to intervene. The charity worker turned to the American Society for the Prevention of Cruelty to Animals (ASPCA) which, based on the premise that a child was part of the animal kingdom, sought and obtained a writ of habeas corpus removing Mary Ellen from the abuser's home. Mary Ellen's foster mother was convicted of assault and battery and sentenced to one year of hard labor.

Outrage over Mary Ellen's case resulted in the organization of the New York Society for the Prevention of Cruelty to Children in 1874. In 1875, the New York state legislature enacted a statute that "authorized cruelty societies to file complaints for the violation of any laws affecting children and required law enforcement and court officials to aid agents of the societies in the enforcement of these laws." In doing so, that state legislature created the first statutory child protective services system in the United States.

By 1905, there were more than 400 private charitable societies to prevent cruelty to children (SPCC's). The SPCC's assumed the primary role in handling child-abuse complaints that, if founded, they referred to the courts for action.

The Great Depression brought with it a shift in child-welfare priorities from preventing physical abuse to providing food, clothing and shelter for poor and fatherless children. Supplying these necessities became the hot issue under the Social Security Act of 1935. Through this statute, Congress attempted to create a social welfare system for "the protection and care of homeless, dependent and neg-



Orphan Trains: *In 1850, there were some 30,000 orphaned, homeless and hungry children on the streets of New York City. This emergency sparked the creation of the Children's Aid Society (CAS) in 1853. Over the next few years, the CAS shipped some 120,000 of these children on 'Orphan Trains' to farming families in the Midwest, the West and to places as far away as Canada. Today, descendants of the Orphan Train movement keep in touch by e-mail and the Internet.*

lected children in danger of becoming delinquent." Stomping out physical abuse was to take second place behind the need to fill bellies. As it did so, the role of the SPCC's gradually diminished.

THE SPECTER OF INVISIBLE ABUSE: FROM MISSION TO MONSTER

Historically, the signs of physical cruelty to children were perceived as visible, only: bruises, burns, obviously broken bones, or 'pattern injuries,' such as, belt buckles and whip welts. But in 1956, radiologist John Caffey, M.D., believed he had discovered a new form of 'invisible abuse': whiplash shaking, later to be called "shaken baby syndrome" (SBS).² It was in that year that a nursemaid, Virginia Jaspers, confessed to shaking some of the babies for whom she had cared.

Jaspers' story made *Newsweek* and other national media. Jaspers' victims had intracranial bleeding, that is, bleeding between the skull and the brain. This type of bleeding could only be seen with

newly-developing X-ray technology. The distinction between visible and invisible injuries had been created in the field of child abuse.

It is part of the alarming history of medicine that Caffey assumed, without reliable-scientific proof of causation, that Jaspers' confession to shaking the babies in her care was all that was needed to "prove" that the intracranial bleeding they had was, in fact, caused by shaking, alone. Neither the medical examiners nor Caffey excluded the possibility of impact or other possible causes of the bleeding in the Jaspers' baby cases.

Although it was to be shown in 1987, and again in 2003, that shaking, alone, could not cause intracranial injuries, the SBS diagnosis slowly became more prevalent over the next three decades.³

The diagnosis received a lot of publicity from C. Henry Kempe, M.D., who in 1962 published an article, "The Battered Child Syndrome," in the *Journal of the American Medical Association (JAMA)*. That article contributed to changing the

entire landscape of child protection. Harnessing the increasing institutional power of the American medical establishment, Kempe called for physicians to look for and to report to child protection authorities the parents of “battered children”—those with intracranial bleeding and retinal hemorrhages—in order to protect them from further injury. The scientifically-unreliable theory was that if bleeding could be seen on an X-ray, the cause—violent shaking—could be identified. (This is like saying that a psychiatrist who views the skull on an X-ray, or the brain on CT, MRI or PET scans, can determine the cause of mental illness even in the absence of organic brain disease.)

Recognition of so-called SBS was—and still is—part of the declared war against child abuse prevention. Kempe and Caffey theorized that when a child had intracranial bleeding and bleeding behind the eyes in the layers of the retina (retinal hemorrhages), this meant only one thing: they had been violently and intentionally shaken. Their legacy persists. Fast forward to a July 2004 TV news story, typical of scores like it. The TV news reporter led:

Physical child abuse is hard to look at. But what if a baby has no marks? What if they look perfectly healthy, but come into the doctor’s office, clinic or emergency room vomiting? Dr. Rachel Berger, Children’s Hospital of Pittsburgh....

It could be that they have reflux, it could be that they have the flu, but it could be that they have a brain injury If you return a child to an environment where he or she was injured, there’s a high likelihood that the child will come back and be re-injured or be killed.⁴

Recognizing “shaken baby syndrome” and preventing it was the major focus of the child abuse protection community developed in response to the writings of Caffey and Kempe. Beginning in 1962, several groups drafted model child-abuse-reporting statutes that mandated health care workers who see or suspect physical abuse, such as so-called SBS, to report it to the authorities. By 1967, every state had a statute.

In the following years, mandatory reporting statutes cast their net far beyond

those who worked in the health care and child protection fields. Other categories of professionals who regularly came into contact with children—clergy, teachers, school nurses, dentists and more—became mandated reporters.

Shaking, alone, as a cause of child brain injury was not scientifically challenged until 1987. It was shown to be a false hypothesis.⁵ But, in the climate of the early 1970’s, many physicians eager to serve the legitimate cause of child abuse prevention, diagnosed scores of so-called SBS cases.



Mary Ellen Wilson (before and after). *As related by the New York City Museum, “The startling child abuse case of Mary Ellen Wilson spawned the formation of the New York Society for the Prevention of Cruelty to Children (NYSPCC). Hearing of the plight of a child living in the Hell’s Kitchen area of Manhattan, social worker Etta Angell Wheeler enlisted the assistance of Henry Bergh (of the American Society for the Prevention of Cruelty to Animals -- NYSPCA), who acted in the belief that children should be afforded the same protection as animals.” The NYSPCA obtained a writ of habeas corpus to rescue Mary Ellen from her cruel stepmother who was later sentenced to one year of jail and hard labor. (Photo from NYSPCC.)*

Public awareness of intentionally inflicted child head injury continued to increase as Kempe, Caffey and others beat the drums of this newly-discovered form of ‘invisible’ child abuse. Even so, between the 1960’s and early 1970’s, SBS was still a comparatively rare diagnosis. That was about to change.

AN EMPIRE IS BORN

In 1974, the federal government took a leadership position in child abuse when Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA).⁶

Under CAPTA, “the term ‘child abuse and neglect’ means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”⁷ That broad definition pulls many within its net.

The statute was designed to raise awareness about child abuse and to create a nationwide child protective services system on a state-by-state basis. In the past 30 years, Congress has used CAPTA as the main funding vehicle to pump billions of dollars annually into state coffers to build a child-protection-services infrastructure. It is now a mighty force with which to be reckoned.

THE MONSTER UNDER THE BED: MANDATORY REPORTING

In order to drink at CAPTA’s trough, states had a number of obligations, including a requirement that they enact tougher mandatory reporting statutes. With all that money at the end of the carrot, they did. All 50 states now have statutes that not only increase the states’ power to intervene in cases where child abuse is suspected and remove children on an emergency basis, but which further broaden the net of those who are mandated to report and provide a broader definition of child abuse.

In some states, mandated reporters who fail to report their suspicions of abuse may be criminally prosecuted. Mandatory reporting statutes in some states, such as Alabama and California, authorize fines of up to \$1,000 and up to

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six months in jail for those who fail to report. Failure to report may also subject a mandated reporter to civil liability.

Predictably, with a larger number of people now mandated to report, a broader definition of child abuse, large amounts of funding at stake, coupled in some states with the fear of criminal prosecution and/or civil liability, reports of child abuse have more than quadrupled since 1974.

MANDATORY REPORTING MEETS JUNK SCIENCE

Almost three million reports of suspected child abuse were made in 1999. Of those, 1.8 million were investigated and of those less than half were substantiated.⁸ While the protection of those unfortunate children who had been abused or neglected was necessary, the flip side of those numbers tell another sorry story. A good portion of more than half of the people investigated for child abuse and/or neglect were falsely or mistakenly accused. With a population of about 280 million, this means that in 1999, alone, as many as one in 300 people in America may have been the victim of false accusations of child abuse and/or neglect.

It is one of those modern facts of Orwellian life that mandatory reporting of 'invisible' abuse still occurs even though that form of alleged abuse—SBS without spinal cord injury—has been scientifically refuted.

It is another fact of Orwellian life that the right hand of the government does not know what the left hand is doing.⁹ For example, the National Institutes of Health (NIH), under HHS, defines "shaken baby syndrome" as resulting specifically in "TBI [Traumatic brain injury] *and spinal cord injury*."¹⁰ Even though a scientific experiment has proved SDH's cannot be caused by shaking, alone, and even though NIH's official position is that real cases of SBS include spinal cord injuries, those who are trained and paid by the government to find SBS cases, and those who are under the gun to report it, are not taking any chances. The majority of SBS cases reported in the medical literature or currently being prosecuted do not involve spinal cord injury. In the absence of spinal cord injury or

any other physical evidence of shaking, most of the 5,000 to 6,000 people charged with causing SBS every year must surely be in the group of those who are falsely accused.¹¹

THE VILLAGE

The oldest federal agency dedicated to fighting child abuse is the Children's Bureau. It is part of the Department of Health and Human Services (HHS), under the Administration for Children and Families, Administration on Children, Youth and Families.

The Children's Bureau budget for Fiscal Year (FY) 2004 was \$6.7 billion. Of that, a whopping \$2.5 billion was funneled to the states in grants for various child abuse programs for protection and prevention, which includes recognition. Many, many millions of that go directly to a vast bureaucracy of programs focused on one target: finding child abuse. In 2002, for example, in just one genre of grants, some \$81 million was awarded to states for child abuse "recognition." And, we haven't even begun to talk about the mandated state matching requirements.

As has been the pattern over the last 30 years, many of the federally funded state and local programs organized to recognize child abuse heavily emphasize finding cases of so-called SBS.¹²

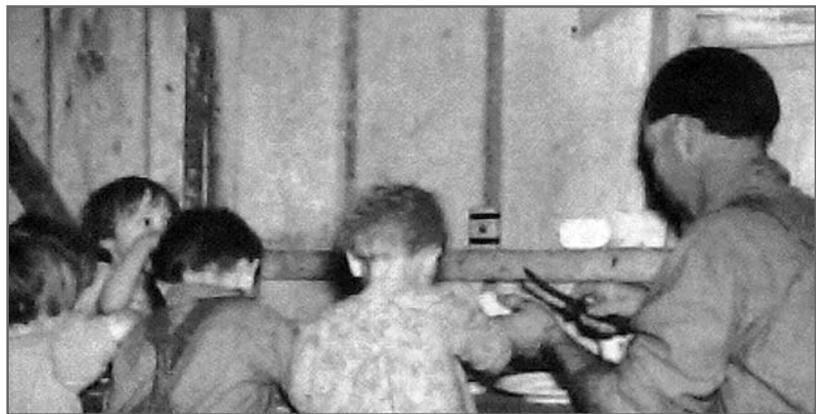
Every year, each state matches multi-million-dollar federal funding in partnership budgets for preventive and primary care of children. For example, in FY 2002,

Alabama spent more than \$65 m (\$12 m in federal dollars). California spent \$1.3 billion (\$42 m federal). Florida spent \$329 m (\$19 m federal). Massachusetts spent more than \$101 m (\$11 m federal). Wyoming spent almost \$4 m (\$1.3 m federal).

The Children's Bureau also awards grants on behalf of the Department of Justice (DOJ) that administers the Children's Justice Act. The awards are made, for example, not only for research to recognize child abuse, but also to state and county prosecutors for the training of assistant attorneys general and district attorneys in how to effectively prosecute accused child abusers, including cases of alleged SBS. Funding is also awarded to hire expert witnesses to testify against the accused, including SBS experts.

The National Clearing House on Child Abuse and Neglect which along with the Children's Bureau is under the HHS' Administration for Children and Families, provides guides on how to get grant money to CPS and medical professionals, "community-based organizations" "public and non-profit agencies," "universities," "service providers," "trainers" and "researchers helping to protect children."

Regularly announcements are made in the *Federal Register* that the Children's Bureau is seeking grant proposals from public or private agencies to study how to recognize child abuse. Grants are available to departments within state CPS



Children During Great Depression: *Feeding, clothing and sheltering children were at the top of the child abuse agenda during the Great Depression. Child abuse issues were mostly put on the back burner until the 1960's.*

agencies, to private child advocacy organizations, or to individuals studying for their doctorates. The types of grants available and the organizations to which they are awarded are limited only by the imagination—and the Children’s Bureau’s stated “research agenda.”

In any given case of so-called SBS, it’s important to get as much information as possible about the background of the State’s medical and child protective services witnesses, especially those who played a role in the evolution of the medical case into a criminal case.

Naturally, physicians and child protective services professionals testifying in criminal child abuse cases are dedicated to stomping out child abuse. But, if these witnesses have been involved in training and/or research that manifests a clear bias in favor of the existence of SBS (without spinal cord injury) as a real diagnosis, and if they also failed to seek to study or understand any of the known mechanisms of head injury, then it’s important to get that information for cross-examination to demonstrate the bias that may be the only reason your client is in the dock. This is where research on the Internet and requests under state and federal freedom of information acts can help you find facts that you can use for cross-examination. ⑧

Next Issue: Every year the federal, state and local governments pump billions of dollars into programs designed to help an army of social workers and doctors find child abuse. Inasmuch as the prospect of money may encourage some physicians and some who work in the child-abuse-prevention community to find what they are looking for to justify continued funding or to study the area to obtain initial funding, it is useful to supplement criminal or civil discovery with information obtained under the federal and/or state freedom of information acts (FOIA) and the Internet to get a fuller picture of witnesses’ backgrounds and likely orientations. Knowing where to send FOIA requests and what to ask for requires an understanding of the basic federal, state and local funding trees and the types of grants and awards that are available. The sequel to this article will cover that topic.

ENDNOTES

- 1 Hobbs, CJ, Hanks, HGI, Wynne, JM, *Child Abuse and Neglect, A Clinician’s Handbook*, Churchill-Livingstone, Harcourt Brace, 1991 (2nd ed).
- 2 Caffey first wrote about some cases of children who had intracranial bleeding and broken bones in 1947. He continued to study and write about the topic throughout the 1950’s and 1970’s.
- 3 In 1987, that assumption was proved false when a biomechanician experienced in the science of traumatic brain injury (TBI) together with neurosurgeons created a model baby, put an accelerometer on its neck, and had some burly Penn State football players shake the model as hard as they could. The result was that the ‘shakers’ were unable to create the forces needed to cause intracranial bleeding. The experiment also showed that to cause intracranial bleeding, or what is medically termed, “subdural hematomas” (SDH’s) and “subarachnoid hemorrhages” (SAH’s), there had to be impact. Impact forces were found to be 50 times greater than those a human being could generate by shaking the model. For a fuller discussion of this study, see “The Elephant on the Moon,” Part I of the three-part series published in *The Warrior*. Virtually the same experiment was repeated and validated again in 2003, and in the March 2004 issue of the *Journal of Neurosurgery*, the lead neurosurgery experimenter from the 1987 model-baby-shaking experiment, agreed that because the evidence for shaking is not complete, that the term should not be used to describe the cause of intracranial injuries in babies. *J Neurosurg.* 100:574-75, March 2004, “Neurosurgical Forum,” “Letters to the Editor,” regarding, “Rotational Injury,” Prange, MT, Coats, B, Duhaime AC, et al, “Anthropomorphic simulations of falls, shakes and inflicted impacts in infants,” *J Neurosurg.*, 99:143-150, July 2003.
- 4 Medical Reporter Marilyn Brooks,



Penetrating X-rays Were Used to Find ‘Invisible Abuse’: *The scientifically-unreliable claim made by Caffey, Kempe and others was that if intracranial bleeding was seen with an X-ray, the cause of this bleeding – violent shaking – could be identified. This is like saying that if a psychiatrist views a patient’s skull on an X-ray, or the brain on CT, MRI or PET scans, they can determine the cause of mental illness or insanity.*
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Money Matters: Expert witnesses testify in 2003 before a Congressional subcommittee to sustain and increase the huge federal budget for child abuse protection and prevention. The Children's Bureau is the main federal agency that signs the checks to the states and to a long list of private child protective services organizations under the amended 1974 Child Abuse Prevention and Protection Act (CAPTA). The annual budget of the agency was \$6.7 billion in 2004.

Over the past 30 years, and to date, a significant portion of that has gone and still goes to programs to train and encourage child protective services and medical professionals to recognize child abuse, including so-called "shaken baby syndrome" (SBS). This creates the risk that SBS may sometimes be diagnosed not because it is probable, but because it is profitable. Some people believe that this financial incentive compounds the problems already caused by mandatory reporting of suspected child abuse by contributing to the more than one million unsubstantiated child abuse reports and the large number of false child abuse accusations every year.

The Pittsburgh Channel, Action News, "Healthcast," WTAE-TV, Channel 4, July 22, 2004, 5 PM. The news story also discusses the development of a blood test to detect brain injury.

5 Fn 4, *Id.*

6 42 USC § 5102, *et seq.*, as amended.

7 42 USC § 5106g(B)(2).

8 Opening Statement of Rep. Peter Hoekstra (D-Mich), Chairman of the Subcommittee on Select Education, before the U.S. House of Representatives, Committee on Education and the Workforce, Subcommittee on Select Education, "CAPTA: Successes and Failures at Preventing Child Abuse and Neglect," August 2, 2001.

9 Over reporting and over-zealous investigations are only half of the story. The flip side is that some cases of alleged reported child abuse are not properly investigated or followed up. Children who are in danger slip through the cracks and suffer terribly as a result. The Keystone Kids in Chicago were victims of the failure of the Illinois Department of Children and Family Services (DCFS). In that case, Chicago police officers entered an apartment at 219 North Keystone

Avenue to investigate a tip that the people there were dealing drugs. They did not find any drugs, but they did find nineteen children, most under five years old, all huddled on bare mattresses. The children were wearing little but soiled diapers and dirty underwear, and two of them shared meat off a bone with a dog. DCFS had received several complaints about the plight of the Keystone Kids and had failed to investigate. One might say the Keystone Kids were "lucky" After all, some children die as a result of CPS failures to investigate. Doctors and CPS professionals are all too aware of these kinds of cases. Cases like these create a systemic and, often, an individual tension. Physicians and CPS workers are concerned not to falsely accuse anyone and, in doing that, risk tearing apart families they would rather help to preserve.

10 NIH Consensus Statements for the Rehabilitation of Persons with Traumatic Brain Injuries, 1998, Oct. 26-28; 16(1): 1-41, NIH Consensus Development Panel.

11 Given the magnitude of the problem of false accusations of child abuse, CAPTA amendments in the past decade require states to have in place

a procedure for speedy expungement of records of those who were accused but found to be without fault. But, once accused of SBS, because physicians and CPS workers believe it is a real diagnosis, there is no hope of expungement for that segment of the population of the falsely accused. Although CAPTA's amendments reflect sensitivity to the colossal problem of false accusations of child abuse, there are no corresponding grants for criminal defendants accused of SBS (or any other form of child abuse). So much for one of CAPTA's stated purposes—to keep families together.

12 Also high on the list are cases of sexual abuse and Munchausen Syndrome by Proxy. In this claimed "factitious" disorder, parents are said to make their children sick to get attention for themselves.

Thanks is due to Susan Kelly, author of "The Boston Stranglers," for her incredibly aggressive and thorough research which helped me get started on the funding trail, to Jan E. Leestma, M.D., for his balanced view of child abuse prevention culture and its problems of under-reporting and over-reporting, and most of all to Ayub K. Ommaya, M.D., for first inspiring me to write about the topic of SBS.