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We have read this dissertation
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ACCOUNTABILITY IN PUBLIC AGENCY CONTRACTING: THE CASE OF CHILD PROTECTIVE SERVICES IN EAST TENNESSEE

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ABSTRACT

In the United States, units of local, state, and federal governments have contracted out for goods and services for decades. However, in recent years there has been a growth in the provision of social services by private, not-for-profit vendors. The development of privatized public services has led to questions about the nature of accountability in public-private partnerships.

Contracting out is often government's solution to political and social pressures to cut costs and to improve services and efficiency. Not many would argue that government should buy goods and services for cheaper than it can produce them. Contracts between government and service vendors seem appropriate when the goods purchased are inanimate objects, such as bricks, cars, and bombs. However, far more questions are raised when the services purchased directly influence human lives. Indeed, despite the growing reliance upon contracting, there seems to be some reluctance to acknowledge the use of cost-benefit analysis in social services spending.

The purpose of this study is to address some of the issues of accountability inherent in public-private contract relationships. This research questions how the contractual transfer of social service provision from a public organization to a private agency impacts both citizen rights and citizen access to service. Through the use of a single-case study of a child protective services agency in East Tennessee, the methods by which the public agency fulfills its

obligations to service recipients, as well as its legal, political, and constitutional mandates, are examined. The end result is a discussion of the effect that contracting has on the accountability of public agencies. Finally, the goals of this research are to introduce accountability into the literature on contracting out and to provide a foundation for future comparative research and analysis.

PREFACE

Accountability in government is often considered an essential tenet of American democratic thought. The Framers of the U.S. Constitution purposely created a system that was often slow, deliberate, and laced with many layers of checks and balances. They also created a government that provided limited services to its citizens. The advent of the Great Depression and the introduction of FDR's New Deal resulted in a government that was slow, deliberate, constrained by checks and balances, but that also created a network of publicly funded social services. In recent years, however, Americans have urged government to be more efficient, to act more quickly, and to cut social services. The potential avenues of debate are endless.

The author of this study became interested in the issues of accountability, efficiency, and the 'proper' role of government while researching various approaches to welfare reform. In particular, the growing reliance upon the privatization of public services drew her attention. Upon learning that the majority of children's services in Tennessee are contracted out, the author decided to focus on questions of accountability in the contractual relationship between public agency and vendor. More specifically, the research described in the following pages explores the impact of the use of contracts and public-private partnerships for the provision of child protective services in some detail. In addition, the conversations held with public agency staff and vendor personnel presented the author with the opportunity to focus

on some of the theoretical questions surrounding accountability from the practitioner's point of view.

Chapter One provides a discussion of the current state of the separate literatures on government contracting and accountability. Although a great deal of attention has been paid to both subjects, there has been little focus on the accountability of public agencies in instances where primary public services are contracted out to private service vendors. In addition, the methodology of the present study is described in this chapter.

Chapter Two reviews the history of child protection and welfare in the United States. Particular attention is paid to reviewing federal legislation that addresses children's rights, safety, and welfare. The lack of legislative attention paid to contracting is also noted.

Chapter Three describes the limited role that the U.S. Supreme Court has assumed in protecting children. The responsibility of the state towards children is addressed, as are the implications for the privatization of children's services.

Chapter Four outlines the nature of child protective services agencies. In addition, this chapter begins to address a number of concerns raised regarding the contracting out of such services.

Chapter Five focuses on child protective services in Tennessee. A brief history of the state's treatment of children is provided. Furthermore, the creation of the Department of Children's Services, the state's reliance on contracted services, and specific departmental issues with accountability are all addressed.

Chapter Six discusses, describes, and analyzes interviews with DCS staff and vendor agency personnel. Themes and patterns flowing through the conversations are explored, providing an illustration of what aspects of accountability are emphasized in the contracting process.

Chapter Seven summarizes the study and provides suggestions for future avenues of research.

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CHAPTER I

INTRODUCTION

The privatization of traditionally public sector services encompasses economic, political, constitutional, and organizational questions. In particular, the growth of privatized public services leads inevitably to questions of accountability. The accountability of public organizations is tied, in many ways, to the concept of liability. Specifically, public officials may be held liable, by the courts, policy makers, and 'consumers', for the decisions that are made under the auspices of the organization. In other words, individual public officials may be asked to explain the course of action undertaken by the agency and assume responsibility for a particular decision or course of conduct. Accountability assumes that public officials are willing and able to answer for and explain their conduct. However, when a public agency cedes authority to private service providers, which organization assumes responsibility for the services supplied to recipients? Furthermore, what accountability to the general public, political forces, and its clientele does the public agency retain?

The administration of child welfare and protective services programs provides a forum for an examination of some of the questions surrounding the privatization of public services. This analysis will focus on how the decision to contract out services affects the

accountability of public agencies. In particular, the contractual responsibilities of a child protective services agency will be examined in an effort to determine how the organization fulfills its obligations to service recipients, as well as its constitutional, legal, and political mandates.

REVIEW OF THE LITERATURE

The growing trend towards privatization and contracting out of public services has heightened interest in the role and responsibility of the public organization. Indeed, the strategy of contracting out services that have been provided by government since the Great Depression has garnered its share of scholarly debate. Scholars have paid attention to differing aspects of privatization. However, until recently, few studies [e.g., Robertson and Acar, 1999; Ott and Dicke, 1999; Dicke and Ott, 1999] have attempted to assess the impact of privatization, defined in this study as contracting out, on the accountability of public agencies. Accountability is an important aspect of privatization to study for many reasons, First, there has been a crisis of legitimacy regarding government and its actions. Indeed, Ott and Dicke (1999) and Kettl (1993) note that government is widely perceived to be inept, inefficient, incompetent, and corrupt. Second, the U.S. government spends billions of dollars each year on social service programs (Ott and Dicke, 1999; Thobaben et al., 1998). Finally, the majority of service recipients [particularly children] are

poor and often powerless. In the past, lacking an emphasis on accountability, many public-private partnerships [PPPs] have neglected the poor and those in need of services (Robertson and Acar, 1999, 4).

Privatization and Contracting

Privatization, in general, refers to the transfer of government service delivery from the public sector to private vendors. Privatization is not a new phenomenon in the United States (Savas, 1982; DeHoog, 1983; Rehfuss, 1989; Motenko et al., 1995). Furthermore, many scholars believe that local, state, and federal governments will continue to develop strategies for the increased privatization of public services (Auger, 1999; Behn and Kant, 1999; Beinecke and DeFillippi, 1999; Ott and Dicke, 1999). Government units began contracting out for projects such as highway and building construction prior to World War II. Local governments began to purchase routine services, such as garbage collection and road maintenance, by the early 1960s (DeHoog, 1983; Kettl, 1993). Currently, many state and local governments have taken steps towards privatization by contracting out a variety of public services.

Distrust of government and dissatisfaction with government programs has increased dramatically within the last forty years (Savas, 1982; DeHoog, 1984; Kettl, 1993). Proponents of privatization argue that diminishing the role of government will protect democratic values, such as freedom, individual liberty, and justice (Savas, 1982), promote

the efficient production of public goods and services (Savas, 1982 and 1987; Rehfuss, 1989), and provide more flexibility, control, and innovation in service provision (Peters, 1996; Ott and Dicke, 1999). Although privatization may redefine the responsibilities of the public and private sectors, Donohue (1989), Beecher (1998), and Kettl (1993) caution that it cannot be allowed to divest public agencies of their accountability for inherently public functions, such as public safety and health. Well-established avenues of government accountability are necessary to preserve the public trust.

Contracting out is but one aspect of privatization. The term 'contracting out' "refers to the practice of having public services [those which any given government unit has decided to provide for its citizens] supplied either by other governmental jurisdictions or by private [profit or nonprofit] organizations instead of delivering the service through a government unit's own personnel" (DeHoog, 1984, 3; see also Savas, 1982; Kettl, 1993; Hanrahan, 1983; Barak-Erez, 1995). Private vendors, financed by public monies, perform the work of government.

Contracting out seems to be the public organization's response to critical exhortations to cut costs and to improve services and efficiency. This has created steady growth in the contractual and financial obligations between federal, state, and local governments and private organizations (Allen et al., 1989; Osborne and Gaebler, 1992; Kettl, 1993; Hebdon, 1995; Gormley, 1996). Contracting out is often presented in the media and by politicians as a strategy to shrink government budgets without cutting public services (Donohue, 1989). As

a result, many governments have expanded their contractual obligations into new areas, such as social services.

Contracting out public services involves state and local governments relinquishing decision-making authority and control to private contractors. Contract services means a greater role for private for-profit and not-for-profit organizations in the provision of public services. Privatization, therefore, raises fundamental questions about both the nature and the proper role of government and public sector activities.

As a greater number of public services are contracted out to private service providers, the issues of constitutional and political accountability become paramount. The essence of representative government and good administration is often defined as accountability to the public that is served (Gordon and Milakovich, 1995; Kettl, 1993; Hanrahan, 1983; Robertson and Acar, 1999). Historically, the Supreme Court has placed constitutional restraints, and therefore, the issue of accountability, solely upon public organizations. The result has been the careful insulation of contracted private service providers from claims against state action. The resultant division between public and private functions has led to the argument that privatization will potentially diminish constitutional protections (Sullivan, 1987; Gilmour and Jensen, 1998).

Contracting out has numerous proponents in Congress, as well as in state legislatures and city councils across the United States. Privatization is generally viewed pragmatically as a means to limit the scope and breadth of government (Savas, 1982 and 1987; Donohue, 1989).

Ruth Hoogland DeHoog (1984) has identified three theoretical perspectives that can also be used to advocate and/or justify the contracting out of public services: 1) public choice theory; 2) cooptation theory; and 3) decision-making theory. Public choice theorists (such as Savas, 1982 and 1987; Niskanen, 1971; Mueller, 1979; Bennett and Johnson, 1981; Ostrom and Ostrom, 1971; and Tullock, 1965) provide an economic perspective, which posits that a competitive marketplace will produce goods and services much more efficiently and responsively than a public or private monopoly can. Cooptation theory (developed in the scholarship of Selznick, 1949; Lowi, 1969; Schattschneider, 1960; McConnell, 1966; and Connolly, 1969) challenges pluralist assumptions that there is a balance of spontaneously formed interests that are represented before a neutral government. Finally, decision-making theory (which emerges from the work of Simon, 1947 and 1957; Lindblom, 1959; Lindblom and Braybrooke, 1963; and Downs, 1966) advocates an organizational decision-making approach to privatization, which focuses on the goals of the organization. Organizational goals that can be enhanced through privatization may include specialization, innovation in management, experimentation in policy making and implementation, reduction of bureaucratic structures, and the minimization of political risks. Proponents of each of these theoretical approaches tend to focus on the implicitly economic goals of privatization, such as efficiency, and not on the goal of bureaucratic accountability within a representative democracy.

As a result of the economic nature of the theoretical approaches discussed by DeHoog (1984), most of the empirical scholarship on

contracting out falls into one of two categories: 1) studies of the frequency of contracting out in local governments; or 2) studies comparing the costs between public and private provision of services (DeHoog, 1984, 7). Studies that focus on the frequency of contracting out in local government often analyze either the types of services that are purchased [e.g., Wessel, 1995] or the amount of local services that have been awarded to private contractors [e.g., Greene, 1996; Lopez de Silanes et al., 1997]. Cost comparison studies examine the argument that privately supplied services are less costly than publicly produced services (e.g., Korosec and Mead, 1996; Globerman and Vining, 1996; Goldsmith, 1997).

Many scholars approach the study of privatization and contracting out by advocating the advantages of transferring government programs to the private sector. Potential advantages of contracting out government services include: lower government costs because of competition, lowered personnel costs, and greater flexibility in the use of personnel and equipment (Savas, 1987; Rehfuss, 1989); better quality services for the price (Savas, 1987); slowed government growth (Savas, 1982 and 1987; Pack, 1987); and greater governmental control of services (Savas, 1987; Rehfuss, 1989). Other studies focus on the possible disadvantages associated with privatization and contracting out. Critics of contracting out argue that it can lead to: lucrative benefits for agencies and suppliers, but not constituents (Moe, 1987; Bilik, 1992); excessive government intervention in private industry (Chang and Jones, 1992); difficulties in the creation and implementation of public policy (DeHoog, 1984); and diminished legal

and political accountability (Moe, 1987; Sullivan, 1987; Moe and Gilmour, 1995). Furthermore, although privatization has meant a greater role for private enterprise in the welfare state (Abrahamovitz, 1986; Motenko et al., 1995; Kettl, 1993), some critics charge that privatization has led to a decline in social welfare programs by undermining the legitimacy of claims for public services (Tuominen, 1991; Starr, 1989).

Contracting out does not necessarily solve the problems of government agencies, identified as inefficiency, ineptitude, corruption, lack of accountability, and poor planning and implementation (Kettl, 1993). Contracting out does not result in the reduction of government, as posited by Savas (1982). Rather, contracting out changes the role of government (Kettl, 1993). Government ceases to be the primary producer of goods and services. Instead, government agencies assume a predominantly supervisory role towards their private vendors. As a result, the contract becomes the controlling force over public services. Critics argue that improvements in the quality and quantity of services may be difficult to make because the contract, rather than the program, is the focus of both vendor and agency (Behn and Kant, 1999; Manser, 1974; Lourie, 1979; Hanrahan, 1983; DeHoog, 1984). Behn and Kant (1999) state that "...if the contract fails to produce the desired outcome, neither the agency nor the vendor is at fault" if both have complied with the proper regulations (Behn and Kant, 1999, 472). Furthermore, citizen complaints may have very little impact because of the contract in

place, resulting in a lack of public control (Hanrahan, 1983; O'Donnell, 1992).

DeHoog (1984) notes that the contracting out and privatization literature includes a select number of public services. Empirical studies have focused on solid waste collection (Bennett and Johnson, 1979), fire protection (Ahlbrandt, 1973), utilities (DeAlessi, 1971), prisons (Wollan, 1986; Reynolds, 1984; Allen, 1989; Kyle, 1998), road construction (Chi, 1993), public housing (Linneman and Megbolugbe, 1994), school choice (Percy and Maier, 1996), and information technology (Globerman and Vining, 1996). There have also been several studies that have focused on contracting out human and social services. DeHoog (1984), for example, examined social services contracting in Michigan, while Motenko et al. (1995), focused on contract service delivery in Massachusetts. Gronbjerg, Chen, and Stagner (1995) explored child welfare contracting in Illinois and Gormley (1996) compared child care contracts in a variety of states, including Ohio, Wisconsin, Indiana, and New Jersey. DeHoog's (1984) study focused on the problems and possibilities of contracting out human services. Her questions centered around the three theoretical perspectives that she argues guide contracting out decisions. In particular, she asked to what extent are public organization's service environments characterized by competition, what expectations are realized in contracting, and how government monitors and evaluates the costs and performance of contracting out services (DeHoog 1984). The study by Motenko et al. (1995), examined client impressions of service delivery in privatized social services. The four questions that guided their

research were: 1) Would budget cutbacks and privatization of services lead to closer monitoring by external funding sources; 2) would agencies reduce costs by eliminating essential services; 3) would agencies experience an increased demand for services during this period of privatization; and 4) how would workers and clients respond to changing service delivery systems (Motenko et al. 1995)? Gronbjerg, Chen, and Stagner (1995), on the other hand, addressed the question of what type of service provider is most likely to be awarded service contracts by public agencies. Finally, Gormley (1996) addresses questions that are related to the regulatory potential of private service contractors. He focuses on whether privatization of regulatory agencies increases the number of regulated facilities while reducing regulatory compliance. Gormley notes that the "...most striking conclusion from this study is the extent to which expectations were not met" (Gormley, 1996, 258). His findings indicate that there is little evidence that privatization saves money, nor does it encourage service providers to accept regulation. On the other hand, private regulators have achieved high compliance levels without an increase in lawsuits. However, Gormley concludes by stating that if regulation of services is mandatory, rather than voluntary, public agencies must be directly involved because government cannot act authoritatively, consistently, or legitimately through a private contractor (Gormley, 1996).

Accountability

The growth of contractual obligations between various levels of government and private service providers raises the issue of accountability. Accountability is often tacitly accepted as an essential concept in democratic public administration. Comprehensive definitions of accountability are hard to find. All discussions of accountability focus, to some extent, on the use of "external controls" to compel public agencies to "account for their actions" (Gordon and Milakovich, 1995, p. 503; see also Donohue, 1989; Rehfuss, 1989; Bardach and Lesser, 1996; Dicke and Ott, 1999). Accountability, therefore, is "based on the exercise of authority as an expression of hierarchically ordered legal responsibilities" (McKinney, 1981, 144). Specifically, public officials may be held legally and politically liable for the conduct and decisions that are made by the organization. However, Robertson and Acar (1999), Dicke and Ott (1999), and Romzek and Dubnick (1994) argue that accountability in contract relationships must be more broadly defined. Specifically, discussions of accountability should encompass the distinct nature of public-private partnerships.

Even without a focus on contracting, questions of accountability in public organizations are difficult to answer for a variety of reasons. First of all, public agencies are accountable to a number of competing forces, including the U.S. Constitution, the legislature [both federal and state], the executive branch [federal, state, and local], the judiciary, politicians, its constituents, and the public at

large (see discussions in Moe and Gilmour, 1995; Wamsley et al., 1990; Sundquist, 1987; Meier, 1993; Fuerst and Petty, 1985; and Gordon and Milakovich, 1995). Secondly, bureaucratic discretion often complicates avenues of accountability. Public officials must often make sense of, and create programs from, vague, confusing legislative mandates. In the process of creating programs and delivering services, bureaucrats must often choose between competing and often conflicting values, such as equity, responsiveness, equality, fairness, and efficiency. Furthermore, in public organizations, as well as in contracting out decisions, expertise, knowledge, specialization, and professionalism are emphasized over participation. Holding public officials accountable for the actions of their agencies is considered essential to representative government (Gordon and Milakovich, 1995; McKinney, 1981; Robertson and Acar, 1999). Accountability is even more important when substantial responsibility is given to non-elected bureaucrats who are not directly answerable to the public. Therefore, the question of accountability becomes paramount when non-elected, non-governmental service providers are introduced into the equation.

In light of the questions surrounding the nature of accountability in public agencies and public agency contracting, there are a number of accountability mechanisms [or dimensions] that have been outlined in the literature. There is some disagreement on which mechanisms are traditional and which are new, alternative approaches to ensuring accountability in public-private partnerships.

Bureaucratic [or hierarchical], political, legal, and professional accountability are generally agreed to be traditional methods by which

public organizations ensure control and responsibility (Robertson and Acar, 1999; Dicke and Ott, 1999; Ott and Dicke, 1999; Romzek and Dubnick, 1994). Bureaucratic accountability focuses on the hierarchical structure of the organization to control individual actions. Therefore, accountability is enforced through rules and regulations, supervisory control, and standard operating procedures (Romzek and Dubnick, 1994; Robertson and Acar, 1999). Political accountability refers to the control of public agencies by elected officials who are charged with designing and implementing public policy (Robertson and Acar, 1999; Ott and Dicke, 1999). Professional accountability assumes that agency staff have information and expertise in the field and will, therefore, make good decisions. Professional accountability is also a result of socialization (Robertson and Acar, 1999). Finally, legal accountability is the process of judicial review which ensures that constitutional guarantees, contractual obligations, and legal responsibilities are met (Robertson and Acar, 1999; Romzek and Dubnick, 1994; Dicke and Ott, 1999). Robertson and Acar (1999) also include market accountability in their discussion of traditional control mechanisms. Market accountability presumes that efficiency is the sole criterion for assessment and that an agency is held accountable by customers who are free to choose among competing service providers (Robertson and Acar, 1999).

There are also several dimensions of accountability that may be considered more or less traditional. Jabbra and Dwivedi (1988) and Dicke and Ott (1999) place moral/ethical accountability among traditional mechanisms, while Robertson and Acar (1999) believe that

moral accountability is a newly developing facet of organizational accountability. Moral accountability presumes that public officials have a conscience and are committed to 'doing the right thing.' From this perspective, each and every agency worker should be held accountable for service outcomes (Robertson and Acar, 1999; Jabbra and Dwivedi, 1988). Finally, Robertson and Acar (1999) add community and partnership accountability to the discussion. Both of these accountability mechanisms are based on respect, trust, and communication between the community that is being served and the organizations that are acting in tandem to provide the services (Robertson and Acar, 1999).

Whether accountability is defined and enforced in a traditional manner or not, there is general agreement that public-private contract relationships present a challenge to democratic governance (see discussions in Bardach and Lesser, 1996; Robertson and Acar, 1999; Ott and Dicke, 1999; Hanrahan, 1983; Sullivan, 1987; DeHoog, 1984). As a result, some critics argue that government should not privatize core public services. Moe and Gilmour (1995), for example, suggest that the effective and accountable management of government necessitates that "inherently governmental functions and tasks be performed by officers of the United States and their government-employed subordinates" (Moe and Gilmour, 1995, 194). Furthermore, they argue that transfers of governmental authority should be made only under exceptional circumstances and only when political and legal accountability has been ensured (Moe and Gilmour, 1995). Moe (1987), in particular, is concerned about the apparent abandonment of public law in favor of

economic considerations. Donohue (1989) also argues that grants of public authority necessitate a greater burden of accountability.

Elected officials and public administrators are ultimately responsible to the citizens they serve. However, when local or state governments contract for public services, accountability is often set aside (Hanrahan, 1983; Sullivan, 1987; DeHoog, 1984). Contracting out for public services constitutes relinquishing some control and decision-making authority by government. The contract itself, rather than the agency manager or public official, becomes the controlling force over the provision of public services (Hanrahan, 1983; Gummer, 1988; Behn and Kant, 1999).

As a result, the contractual transfer of public services from the public organization to a private agency impacts both citizen rights and citizen access to public services. The Supreme Court has placed privatization and service contracting under the State Action doctrine. The State Action doctrine, as articulated by the Supreme Court, states that protections afforded by the Constitution can be invoked only against state laws or acts done under state authority. In other words, the Fourteenth Amendment applies to state actions, but not to actions by private individuals or corporations. However, an action that appears to be private may be treated as 'state action' if "there is a 'close nexus' between the state and the private actor" (Stephens and Scheb, 1993, 480). The questions that are then raised focus, to some extent, on what happens when governments choose to purchase services from private agencies and the degree to which the Constitution applies to the activities of the private actors (Sullivan, 1987; Gilmour and

Jensen, 1998; Leahy and Barnes, 1977; DeHoog 1984). The Supreme Court traditionally has not placed constitutional restrictions on the actions of private individuals and agencies. As a result, the Constitution may not apply to privatized public services. Therefore, attention must be paid to whether public agencies retain their constitutional obligations despite contracting out primary services, and the extent to which individual rights are guaranteed.

Hanrahan (1983) argues that the essence of good government is accountability, and contracting out is contrary to this principle. In a contracting system where clear, well-defined lines of authority are absent, legal and political accountability is difficult to establish and enforce. Critics argue that it is almost impossible for the public, program recipients, and politicians to hold vendors responsible for unsatisfactory service (Manser, 1974; Lourie, 1979; DeHoog, 1984; Hanrahan, 1983). The growing reliance of government upon private service providers raises serious questions about governance and accountability (Kettl, 1993). As the GAO warned in 1991, "When contracting out, agencies should not relinquish government control to contractors, as appears to have happened in some instances" (Kettl, 1993, 13). Therefore, identifying the accountability of public organizations is an important goal because government is increasingly relying on private contractors to do public work. Government, in many cases, no longer produces goods and services for the public. Subsequently, the responsibilities of the organization to the public potentially change as well.

OBJECTIVES OF THE STUDY

From the previously discussed privatization literature, there are several important questions that must be addressed to determine the nature of accountability in the contracting out process. However, theoretical guidance is limited by the dearth of research on accountability in this field. Few studies have attempted to assess the impact of contracting out on the accountability of public agencies.

This study is a preliminary attempt to assess the nature of accountability and service provision in a child protection and welfare agency and its private service vendors. This study will begin to address some of the issues surrounding accountability in instances where primary public services, in this case child protective services, are contracted out to private service vendors. The researcher will attempt to determine how public agencies define their obligations to service recipients in the contracting out process. Therefore, this study will examine, to some extent, whether public agencies abdicate their responsibilities by contracting out primary services. More specifically, this study will focus on whether public organizations attempt to fulfill their constitutional, legal, and political mandates once private service vendors are secured for the provision of services. Furthermore, the question of whether the quality of service delivery also figures into the issue of accountability will also be addressed. Therefore, this study has the following objectives:

1) to examine briefly the traditional role of government and public organizations, both generally, and specifically in the area of child protection and welfare;

2) to analyze how the decision to contract out services affects the constitutional and political accountability of public agencies. In other words, to analyze what role Congress, state legislatures, and the courts have assumed in determining the accountability of public organizations in the privatization process;

3) to analyze who/what protects citizens' interests and rights when primary agency services are contracted out to private vendors;

4) to examine whether the state of Tennessee has made provisions to apply constitutional and legal protections to the actions of private providers of public services; and whether the quality of service exceeds the legal "floor"; and

5) to determine what responsibility the public administrator has to the general public and the organization's clientele, above and beyond constitutional and political obligations.

METHODOLOGY

This dissertation will employ a qualitative case study design to analyze the nature of public agency accountability in the contracting out process. More specifically, this study will employ a one-case study in tandem with library research to examine questions of accountability in the administration of a child welfare/protective services program. The focus of this study will be on the nature of the contractual responsibilities of the agency and its private service providers in an attempt to determine both the level of organizational accountability and the quality of services delivered.

In this type of analysis, the generalizability of the results is quite limited. The goal of this research is not to produce a theory or discussion that is applicable to all public organizations, or even to

all child protection and welfare agencies. Rather, the goals of this research are to: 1) introduce accountability into the literature on contracting out; and 2) provide a foundation for future comparative research.

As previously noted, this study is a preliminary attempt to assess the nature of accountability and service provision in a child protection agency and its private service providers. The data that will be used include Supreme Court opinions, state and federal legislation, state and federal agency rules and guidelines, news accounts, Department of Children's Services data, and interviews with individuals involved in the contracting process. The data will be obtained from published materials and informal personal interviews with personnel from the child protective agency and its private service contractors. The participants for this research will include public officials and contract agents in the state of Tennessee. The public administrators are identified as state employees and are listed in state and agency literature, on web sites, and in the public record. The contract agents will be approached as a result of either their inclusion in public records, such as budget and agency reports, or by identification by the public officials interviewed.

POTENTIAL CONTRIBUTIONS OF THE STUDY

Glaser and Strauss (1967) suggest that comparative analysis allows the researcher to generate theory through the process of research. By

comparing the literature on contracting out with the experiences of public officials and vendor personnel involved in the process, this study seeks to contribute to the literature on privatization and child welfare in several ways.

First, it addresses a neglected subsection of the contracting out and privatization literature by focusing on bureaucratic accountability. Specifically, this study examines the nature of public agency accountability in the contracting out process. Second, it explores accountability by considering whether the role of the public agency is to provide a floor for service delivery or to create progressive service programs in conjunction with private service providers. Third, by focusing on an agency that contracts out protective services for children, this study provides a foundation for future comparisons. Fourth, this study focuses on the current status of child protective services in the state of Tennessee and will, at the very least, illustrate both the benefits and disadvantages of contract service provision. However, this research has the potential to help state and local government units target areas in which new and innovative programs may be developed in concert with private contractors. Finally, by focusing on the growing number of governments that are expanding the types of services that they are willing to contract out, it addresses an important public policy issue faced by legislators, administrators, and scholars.

CHAPTER II

THE ROLE OF GOVERNMENT IN CHILD PROTECTION

Throughout the early history of the United States, child welfare, protection, discipline, and care was largely considered the purview of the family. Local government involved itself in private family affairs only in cases where the father was, for whatever reason, absent from the household. The belief that state governments are responsible for the well-being of the nation's children did not emerge in American society until the mid-1800s. Furthermore, the federal government limited its role in child protection well into the early 1900s. As a result, public child protective services agencies and legislation in the United States are a relatively recent phenomenon.

Child protective and welfare services are aimed primarily at guarding children against abuse, neglect, and poverty. Although child abuse and neglect did not suddenly emerge in the twentieth century, prior to the late 1800s there was a lack of public concern regarding the scope of the problem. Indeed, neither the public nor government objected to indifferent parental care because children were considered chattel (Costin, 1979; Kamerman and Kahn, 1976). Fathers had a legal right to custody of their children, and discipline and obedience were often harshly maintained (Kamerman and Kahn, 1976; Bremner, 1970). As a result, the only children that were eligible for rudimentary social services were those who were poor, illegitimate, or orphaned. By 1890,

a growing social movement focused on protecting children from abuse, neglect, and harsh working conditions.

Today, protecting the welfare of children has become the foundation for the majority of federal, state, and local social programs (Hawes, 1991; Kamerman and Kahn, 1990b). The development of child welfare programs has been largely influenced by forces at the local and state level. To develop an understanding of the current state of child protective and welfare services, it is necessary to examine briefly the evolution of children's rights in the United States.

THE HISTORIC DEVELOPMENT OF CHILDREN'S RIGHTS

In colonial America of the 1600s, the responsibility for poor and dependent children fell to the town, settlement, or church parish. Dependent children were not placed into an institutional setting, per se. Rather, children without family support were either boarded out or indentured at infancy. The practice of indenturing children was based upon the English Poor Law of 1601 (Bremner, 1970; Costin, 1979). Children who were indentured acted as servants or apprentices until the age of twenty-one. Masters were required to educate the children in their service, and the children were protected from abuse by the contract between master and parish or town (Bremner, 1970). Indenturing children was widely advocated because of concern for the economic and spiritual well-being of the community. Indenturing

dependent children provided relief for the needy. Indenturing children also relieved the community of the costs of their care and provided a measure of social control (Bremner, 1970; Hawes, 1991).

Indenturing or apprenticing children remained the preferred method of caring for dependent children through the early 1800s. By the 1830s, almshouses and orphanages had become popular methods of discharging the public's responsibility for dependent and poor children (Bremner, 1970; Costin, 1979; Skocpol, 1995). Whether they were maintained in public almshouses or private orphanages, dependent children were still indentured at the age of eight to offset the costs of their care. Bremner (1970) notes that at this point in U.S. history, children who were wards of the community were afforded *greater protections* [italics mine] than children who remained part of a functional family unit (Bremner, 1970, 263). Parents were allowed to send their children to work in factories at six years of age, which was two years before publicly supported children had to begin work. Dependent children were guaranteed either a general education or trade instruction, and were protected from abuse by their masters. Youthful factory workers were given no such assurances (Bremner, 1970; Hawes, 1991).

By 1850, legislative committees in most states had concluded that children should not be raised in public almshouses (Bremner, 1970; Skocpol, 1995). However, little was done to remedy the situation. Although the number of private orphanages multiplied during this period, the number of children needing public support also rose sharply due to a series of epidemics and the Civil War. Orphanages, run by

philanthropists, benevolent associations, and religious, ethnic, and occupational groups, were able to serve only a fraction of the children in need (Bremner, 1970; Costin, 1979; Skocpol, 1995). The majority of dependent children were relegated to second-rate public institutions. The failure of public efforts eroded confidence in local governments' ability to promote and provide social welfare (Bremner, 1970).

Beginning in the mid-19th century, the rights of children were gradually increased under the assertion of authority by the states. Individual states began to intervene in family matters by passing laws that authorized the courts to remove children from the custody of abusive and neglectful parents (Costin, 1979; Bremner, 1971; Hawes, 1991). The new laws created a need for organizations that would 'rescue' children from their abusive parents (Costin, 1979). Voluntary societies for the protection of children developed as a seemingly natural offshoot of societies dedicated to the humane treatment of animals. For example, the New York Society for the Prevention of Cruelty to Children, which was founded in 1874, set the stage for the further development and growth of private organizations devoted exclusively to child protective services (Bremner, 1971; Kamerman and Kahn, 1976; Costin, 1979; Hawes, 1991). Children who became the responsibility of the community, whether through court action, the death of a parent, or poverty, were generally placed either in institutions or with foster families. Home placement agencies and orphanages began to compete with each other for both resources and children (Bremner, 1971).

In the early 1900s, there was a move to increase state supervision of child welfare agencies and institutions. Despite widespread opposition from public administrators, private child protective and placement agencies, and various religious organizations, a number of states began to require orphanages and placement agencies to apply for licenses and to submit to regular inspections. In 1909, President Theodore Roosevelt held the first White House Conference on Children in Washington, D.C. The conference focused national attention on the provision of relief and assistance for dependent children (Costin, 1979; Hawes, 1991). The conclusion reached by the conference participants was that private placement agencies and orphan asylums were preferable to the proliferation of public child welfare agencies and institutions (Bremner, 1971).

A number of private child protective services agencies also focused on the issues surrounding child labor. By 1900, one out of every six children was employed in a factory, in agriculture, or as a craftsman's apprentice (Bremner, 1971). Social workers, women's clubs, consumers' groups, constitutional lawyers, and even individual industrialists joined forces with children's rights advocates in an attempt to force changes in the child labor statutes. The result of their efforts was the formation of the National Labor Committee in 1904. The National Labor Committee's focus on reform was quite successful at the state level. By 1914, a majority of states had enacted laws that set a fourteen-year-old minimum age for workers, limited the length of the work day for child workers, prohibited night shifts, and appointed special inspectors to enforce the laws (Bremner,

1971, 603). However, enforcement of child labor laws was far from universal. The National Labor Committee then decided that it should lobby for federal child labor legislation (Bremner, 1971; Costin, 1979; Hawes, 1991).

The first federal child labor law, the Keating-Owen Act, was declared unconstitutional by the Supreme Court in 1918. The intent of the law was to prevent products of child labor from being shipped over seas or across state lines (Costin, 1979; Hawes, 1991). The law was challenged by the father of two young cotton mill workers in North Carolina. The Court held that Congress had exceeded its power to regulate interstate commerce (*Hammer v. Dagenhart*, 1918, 247 U.S. 251). The National Labor Committee was understandably upset by the Court's decision and began to work on drafting more child labor restrictions. The Pomerine Amendment, a section of the Revenue Act of 1918, placed a ten percent tax on all profits that were realized from goods produced through child labor (Hawes, 1991; Costin, 1979). In 1922, the Supreme Court found this law to be unconstitutional on the basis that Congress had improperly used its power of taxation. Chief Justice William Howard Taft, writing for the majority, stated that

> ...the provisions of the so called taxing act must be naturally and reasonably adapted to the collection of the tax and not solely to the achievement of some other purpose plainly within state power (*Bailey v. Drexel Furniture Co.*, 1922, 259 U.S. 20, 44).

It was not until the passage of the Fair Labor Standards Act, in 1938, that child labor reformers were successful in their attempts to keep young children out of the work place. This act set the minimum age of employment at sixteen years, and provided a minimum wage and maximum

hours standard for all employees. Although the Fair Labor Standards Act was challenged in *United States v. Darby* (1941), the Supreme Court decided that the law was constitutional (Costin, 1979; Hawes, 1991).

The fight against child labor in the United States resulted in the creation of a new federal agency. The formation of the United States Children's Bureau, in 1912, marked the first time that the federal government actively involved itself in the promotion of child welfare and protection. The legislation that created the Children's Bureau gave the agency a great deal of power, allowing the Bureau not only to provide states with research and information on the rights and welfare of children but also to administer grants-in-aid and assist in the development of public child health, labor, education, and welfare programs (Bremner, 1971; Costin, 1979; Hawes, 1991).

The Sheppard-Towner Act of 1921 marked the beginning of legislative efforts to promote child health and welfare through the use of federal funds, as well as federal legislation. The Act provided funding for public health nurses to teach women and children about health, nutrition, and sanitation. Congress repealed the Sheppard-Towner Act in 1929 under intense lobbying from the American Medical Association (Hawes, 1991).

FEDERAL PROGRAMS FOR DEPENDENT CHILDREN

In 1935, in accordance with the New Deal agenda of President Franklin Delano Roosevelt, Congress passed the Social Security Act.

Title IV of the Act provides for grants to states that establish programs designed to aid poor and dependent children. The impetus for the creation of the Social Security Act was the inability of the states to adequately fund mothers' pensions. By 1934, forty-five states had passed laws that allowed towns and municipalities to provide benefits to poor, widowed women with dependent children (Skocpol, 1995; Bremner, 1974; Hawes, 1991). Despite broad, popular support the mothers' laws were largely ineffective. Title IV of the Social Security Act attempted to provide universal coverage of mothers' pensions, as well as extend benefits to the majority of children who had been excluded from the earlier state programs (Bremner, 1974).

The Aid to Dependent Children program was intended to be administered by the states under general guidelines created by the Social Security Administration [later transferred to the Department of Health, Education, and Welfare, which was reorganized into the Department of Health and Human Services] (Bremner, 1974; Costin, 1979). The primary role of the federal government was to provide grants-in-aid to the states for the implementation of the program. The Aid to Dependent Children program has been described as "an attempt to make universally available throughout the United States certain minimum measures of public protection" (Bremner, 1974, 520). However, Skocpol (1995) argues that the Social Security Act encouraged a system that was both fragmented and limited. Furthermore, by focusing on poor women and children, the Social Security Act created a national welfare system that stigmatizes recipients without providing adequate financial support (Hawes, 1991; Mills, 1996; Murray, 1984). However, despite its

many critics, the Social Security Act has remained the primary vehicle for delivering social services to children in the United States.

Under the Social Security Act of 1935, the Children's Bureau was given responsibility for administering the grant-in-aid programs. There were three types of state services that were funded: maternal and child health programs, services for crippled children, and child welfare services (Costin, 1979). The addition of Title V of the Social Security Act, in the early 1960s, provided grants-in-aid to states for the expansion of services for neglected and abused children. Title V funds were directed toward increasing public awareness of the problem of child abuse and neglect, obtaining accurate information about its incidence, and developing effective intervention programs (Kamerman and Kahn, 1976). In an effort to encourage public action, the Children's Bureau established a model for child abuse reporting laws in 1963. By 1968, every state had adopted mandatory reporting laws that specified those persons who must, legally, report incidents of suspected child abuse and neglect. The reporting laws also provided child abuse reporters with immunity from criminal and civil charges (Paulsen, 1966; Waldfogel, 1998).

By the early 1970s, the Aid to Families with Dependent Children program was not regarded in a particularly positive light. AFDC had ballooned into the most expensive, most maligned, and most widely used welfare program in U.S. history (Bremner, 1974). Murray (1984) notes that the AFDC program had originally been the most easily accepted social program because of its emphasis on helping widows and orphans. Soon, though, the stereotypical AFDC recipient was portrayed as an

unwed black mother raising her family of six at the taxpayers' expense (Murray, 1984, 18). Furthermore, the Aid to Families with Dependent Children program has been denounced by those who argue that it: 1) encourages women to have children out of wedlock; 2) contributes to the disintegration of the family; 3) creates welfare dependence; and 4) may result in widespread fraud (Danziger and Weinberg, 1986; Thobaben et al., 1998). However, despite several efforts at amending Title IV of the Social Security Act, the AFDC program was largely left unchanged until the Personal Responsibility and Work Opportunity Reconciliation Act was passed in 1996. This Act replaced AFDC with a Temporary Employment Assistance (TEA) program of cash aid and placed a five-year limit on a family's financial assistance (Rexroat, 1998). At the end of the five-year period, however, states are still required to provide vouchers for noncash aid to children.

THE RIGHTS, WELFARE, AND SAFETY OF CHILDREN

Beginning in 1974, Congress passed a series of laws that focused on the rights, welfare, and safety of children. The Juvenile Justice and Delinquency Prevention Act of 1974 marked a significant change in the role of the federal government regarding the protection of children's rights. Prior to 1974, juvenile courts had been subject only to the laws of the states and decisions of the Supreme Court. The Act mandated the adoption of universal policies, rules, and practices in state juvenile courts (Costin, 1979). In addition, the passage of

the Child Abuse Prevention and Treatment Act [CAPTA] focused national attention on the prevalence of child abuse. CAPTA combined abuse and neglect into a single category and then defined the problem broadly. The Act also authorized an $85 million, four-year appropriation to create a national center to deal with child abuse and neglect (Kamerman and Kahn, 1976; Waldfogel, 1998). This legislation led to the development of state laws focusing on public education and treatment programs. Finally, in 1975, Congress amended the Social Security Act by adding Title XX. Title XX attempted to transfer administrative and policy-making powers from federal agencies to state and local governments. State agencies assumed responsibility for determining what programs to fund, the means of service delivery, eligibility standards, and the methods of monitoring and evaluating programs (Costin, 1979; Johnson, 1990).

In the 1980s, attention turned to the issue of accountability in child welfare and protection. There are two legislative initiatives that are of particular interest. The first was the Adoption Assistance and Child Welfare Reform Act of 1980. This Act focused on the quality of social work practices in public child protective agencies. A number of studies had determined that large numbers of children had been unnecessarily placed in foster care or had experienced multiple foster care placements, resulting in "foster care drift" (Waldfogel, 1998). Furthermore, very few state agencies were making an effort to secure permanent homes for children referred to the agency for placement (Costin, 1979). The Act mandated a series of rules to assist state agencies in the development and review of permanency plans for each

child in their care (Costin, 1979; O'Donnell, 1992; Waldfogel, 1998).[1] In addition, attention was focused on protecting and reestablishing the child's natural family in order to avoid foster care (Kamerman and Kahn, 1997; Administration for Children and Families, 1999b). The second legislative initiative amended the Child Abuse Prevention and Treatment Act of 1974. In 1984, Congress included the "withholding of medical treatment of 'medically needy' newborns" in the definition of child abuse and neglect (Waldfogel, 1998). The 'Baby Doe' amendments mandated that parents and medical personnel must take extraordinary measures to prolong the lives of severely handicapped children.

In the early to mid-1990s, spurred by concern over the growing numbers of children entering foster care, Congress passed a series of laws designed to strengthen and support the family unit. In 1993, Congress extended the range of child and family services to include family preservation and family support services through the Child Welfare Services, Foster Care, and Adoption Assistance Reform Act (Administration for Children and Families, 1999b). This legislation also mandates the use of private agencies in the delivery of social services. In order to receive federal funding, public child protective service agencies are now required to include private community agencies in planning and service provision (Waldfogel, 1998). The Multiethnic Placement Act [MEPA] of 1994 addressed concerns about the excessive

[1] A permanency plan refers to the creation of an individualized placement for each child. In Tennessee, the plan must be prepared within thirty days of when the child enters state custody. The permanency plan outlines the services that the child and his/her family will receive. The goal is to make sure that the child is guaranteed continuity and stability in his/her living arrangements, and it may result in the termination of parental rights, adoption, or emancipation (Ferguson, 1998c). Please see Costin (1979) or Kadushin (1980) for a more detailed discussion of the theories underlying permanency plans.

lengths of stay in foster care endured by minority children. This Act provides contradictory guidelines for the foster placement and adoption of minorities. On the one hand, MEPA forbids the delay or denial of a placement or adoption based solely on the race, color, or national origin of any of the parties involved. However, MEPA also mandates that states must make a "diligent effort" to recruit perspective foster and adoptive parents who reflect the racial and ethnic diversity of children who need homes (Administration for Children and Families, 1999b). In 1997, the Adoption and Safe Families Act was signed into law. The purpose of this law was to encourage states to focus on the safety of the child, the permanency of the placement, and the well-being of the child and his/her family (Waldfogel, 1998).

Although the primary responsibility for administering public child welfare and protective services programs rests upon the states and their local subdivisions, federal grants funding those programs have obviously continued to increase. Federal expenditures for public child welfare and protective services programs were modest until the mid-1960s. It has been estimated that prior to 1965, the federal government paid only ten percent of the social service costs incurred nationwide (Kamerman and Kahn, 1997). However, federal child welfare payments under the Social Security Act have grown rapidly since 1965. In 1965, federal expenditures in the area of children's services totaled $354 million (Kamerman and Kahn, 1997). In 1998, the appropriations for all Administration for Children and Families discretionary and entitlement programs totaled $37 billion, of which approximately $11 billion was spent on child care, child protective

services, child welfare, and foster care and adoption assistance (Office of Legislative Affairs and Budget, 1999).

CHANGES IN SERVICE PROVISION?

The passage of the Personal Responsibility Act of 1995 may result in widespread change in the provision of child protective and welfare services. Title II of the Personal Responsibility Act creates a block grant that, after two years, does not require states to provide matching funds for child protection and child welfare services. According to Meezan and Giovannoni (1995), the block grant also sets a child protection standard for the allocation of resources. Each state must certify that it has a law requiring "the reporting of child abuse and neglect and a program to investigate such reports promptly [*no intervention requirement is specified*]" (Meezan and Giovannoni, 1995, 570). Finally, the Act mandates that no penalties can be imposed by the federal government for any abuses in the quality of care provided to children. The Personal Responsibility Act, therefore, seems to limit the accountability of public protective services agencies. In addition, the potential implications for service provision by private vendors are disquieting.

If the Personal Responsibility Act of 1995 changes the level of implementation of child welfare and protective services required of the states, there still will be a foundation for the provision of federal statutory protection for children. The federal agency currently

charged with addressing the problems of child abuse and neglect is the Department of Health and Human Services. The Department's primary role in child welfare and protection will continue to involve setting the conditions under which states can receive federal money and the program goals which must be met within specified time limits. However, if the passage of the Personal Responsibility Act is a viable indicator, it is likely that various program goals may be significantly limited through legislation. Block grants to fund a variety of child welfare and protective services programs are also administered through the Department's subsidiary agencies (Administration for Children and Families, 1999a). Despite attempts at devolution, the federal government has continued to assume a substantial share of the financial, technical, and professional development of state child welfare and protective service programs. However, such programs are necessarily implemented at the state level. Although, all state child welfare departments that apply for matching funds are mandated to provide adoption, foster family, day care, and protective services [see Administration for Children and Families, 1999a], it would seem that the Personal Responsibility Act of 1995 limits the financial consequences of substandard care.

CONTRACTING ADDRESSED IN FEDERAL LEGISLATION

Federal legislation also addresses, to some extent, the issue of privatization of public services. The 1962 Amendments to the Social

Security Act provide for contractual agreements between public agencies, while the 1967 Amendments to the Act authorize purchase agreements for a number of agency services and activities (Wedel et al., 1979; Wedel, 1979). In addition, the 1974 Title XX Amendments to the Social Security Act permit private vendors to help fund the state's twenty-five percent matching share for federal social service grants (Wedel et al., 1979). As previously noted, the reforms of 1993 also resulted in the inclusion of private agencies both in the planning stages and in the provision of services. Through its discretionary and grant programs, the Children's Bureau has stipulated that state welfare agencies can "have agreements with other public agencies and with private agencies for provision of appropriate services" (Administration for Children and Families, 1999a). However, neither federal law nor agency rules appear to provide for political, constitutional, or organizational accountability for the privatization of public services.

In light of the limited accountability prescribed by the Personal Responsibility Act of 1995, it appears as though agencies can further limit their responsibilities to clients, the public, and policy-makers by contracting out services. Additionally, the Supreme Court has indicated that it will not, in most cases, subject private actors to constitutional limitations. As a result, a number of questions must be raised regarding the accountability of public child protective services agencies and their vendors.

CHAPTER III

THE CONSTITUTION, CHILD PROTECTION, AND PRIVATIZATION

As noted in the preceding chapter, the U.S. legal system has provided contradictory guidelines regarding the protection of children by the state. Although Congress has, over time, authored legislation focusing on the rights and welfare of children, the Supreme Court has reached contradictory decisions regarding the protection of children. The Court has also wavered on the distinction between public and private actions, which affects agencies involved in the contracting out of child protective services.

Before I discuss the Court's decisions on both child welfare and privatization, there are a couple of points to keep in mind. First of all, the Supreme Court holds that child protective and welfare services have not been traditionally nor exclusively reserved to the state. Public services do not, in the Court's estimation, fall under the heading of public function. Second, the Court addresses child welfare and protection issues solely as questions of due process. The Court simply determines whether agents of the state have violated the Fourteenth Amendment in their dealings with the child and the family.1

1 The Fourteenth Amendment to the Constitution of the United States of America was adopted in 1868. It states, in section 1, that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Using selective incorporation, the Supreme Court has used the Fourteenth Amendment to apply constitutional limitations and protections to the activities of state actors.

Finally, if the Court finds that there has been deprivation of civil rights protected by the Fourteenth Amendment, it can order relief only against individual persons who directly and personally participated in the activities that resulted in the deprivation of the right. Neither the state nor a unit of local government can be held liable for money damages under the 1871 Civil Rights Act (42 United States Code § 1983). It is for this reason that public agency personnel, not the agency itself, are held liable for actions undertaken by the organization.

THE CONSTITUTIONAL RIGHTS OF CHILDREN

Throughout U.S. history, children who entered the juvenile or family court systems were not afforded the legal safeguards that adults claimed as constitutional rights. Children were not entitled to open hearings, protection against self-incrimination, representation by counsel, or bail (Costin, 1979). However, in the mid-1960s, Supreme Court decisions that expanded the legal rights of adults [*Gideon v. Wainwright*, 1963; *Miranda v. Arizona*, 1966; *Escobedo v. Illinois*, 1964][2] helped to focus attention upon the problems facing poor children

[2] *Gideon v. Wainwright* (372 U.S. 335) applied the Sixth Amendment to the actions of the states using the Fourteenth Amendment. Any person accused of a felony and in danger of imprisonment has the right to an attorney, even if the state must assume the costs of his/her services. *Miranda. v. Arizona* (384 U.S. 436) used the Fourteenth Amendment to apply the Fifth Amendment to the actions of the states. *Miranda* protects individuals against self-incrimination and guarantees the right to counsel. *Escobedo v. Illinois* (378 U.S. 478) focused on whether the Sixth Amendment right to counsel applies during a police interrogation. The Supreme Court held that any incriminating statements made to police without an attorney present would be inadmissable in court.

who were often separated from their parents by court order (Hawes, 1991; Costin, 1979). Then, in 1966 and 1967, the Supreme Court heard two cases that solidified the rights of children in relation to the state. In *Kent v. United States* (1966), the Supreme Court found that the majority of juvenile courts did not adequately perform their responsibilities as *parens patriae* of the children remanded to their care (383 U.S. 541). Indeed, the Court found that "...the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children" (*Kent v. United States*, 1966, p. 556). The Supreme Court followed the *Kent* decision with *In re Gault* (1967), in which procedural protections for juveniles and their parents were guaranteed. Although the court stated that juvenile court proceedings did not need to conform to the requirements of a criminal trial or administrative hearing, due process, equal protection, and fair treatment must be observed (Costin, 1979; Hawes, 1991).

The Supreme Court's application of constitutional protections to children pertains only to children within the state's welfare, child protetive, or juvenile justice systems. The Court has ruled that child welfare agency workers may or may not be liable for abuse suffered by children, depending upon the circumstances of the child's placement. For example, child welfare workers who fail to remove a child from an abusive home cannot be held responsible for any injuries the child sustains (*DeShaney v. Winnebago County Social Services*, 1989). If, on the other hand, children are removed from parental custody, agency workers can be held liable for potentially negative outcomes (*Taylor By*

and Through Walker v. Ledbetter, 1989; *L.J. By and Through Darr v. Massinga*, 1989).

In *DeShaney v. Winnebago County Social Services* (1989), the Supreme Court reviewed the case in order to determine "when, if ever, the failure of a state or local governmental entity or its agents to provide an individual with adequate protective services constitutes a violation of the individual's due process rights" (489 U.S. 89). Briefly, over a period of eight months, emergency room personnel and Department of Social Service [DSS] caseworkers documented that Joshua DeShaney, age four, was sustaining suspicious cuts, bruises, and broken bones. After the initial hospital visit, the agency entered into a written agreement with Randy DeShaney, Joshua's father. The DSS caseworker assigned to the case noted that Randy was not complying with the terms of the agreement with the agency, nor was she being allowed to see Joshua during home visitations. In November of 1983, Randy DeShaney beat Joshua so badly that he must spend the remainder of his life in a institution for the profoundly brain-damaged. Joshua's mother, on his behalf, brought suit against the Winnebago County DSS for violating Joshua's Fourteenth Amendment rights by depriving him of his liberty, without due process of law. The Supreme Court decided that the 'State' has no constitutional duty to protect the life, liberty, or property of citizens against the actions of private actors. In other words, because no state is compelled to provide protective services by the Due Process Clause of the Fourteenth Amendment, the state cannot be held liable for injuries that may have been avoided had

it chosen to provide protective services (Gustavsson and Kopels, 1992; Buchanan, 1997; Kay, 1993; Garvey, 1993; Amar, 1993).

The Supreme Court has assumed a different attitude in instances where individuals are involuntarily in custody and are restricted in their ability to act on their own behalf. As a result, children who are injured in foster care, group homes, and institutional placements may be entitled to sue for damages. In *L.J. By and Through Darr v. Massinga* (1989), both the district and appellate courts held that a failure by the state to protect foster children placed in homes selected by a state agency could constitute a violation of 14th Amendment rights. The Supreme Court let the decisions of the lower courts stand (Gustavsson and Kopels 1992). In *Taylor By and Through Walker v. Ledbetter* (1989), the suit was brought on behalf of a child who had been severely beaten and abused by a foster parent. The 11th Court of Appeals decided that the complaint alleged gross negligence and deliberate indifference on the part of the public official in charge of supervising the foster care arrangement. Therefore, state officials that are deliberately indifferent to the welfare of a child in the state's care may have liability imposed upon them (Gustavsson and Kopels, 1992).

PRIVATE OR PUBLIC ACTIONS?

Furthermore, the Supreme Court, in the mid-1970s, indicated that liability may be assigned to employees in private agencies that perform

functions similar to public agency employees. If a child has been removed from the family home and placed in protective custody, the employees of the private organization may be considered in the same light as public agency employees. In such cases, the public/private distinction ceases to exist.

In *Perez v. Sugarman* (1974), Paulina Perez was hospitalized and her children were taken into custody by child welfare workers for the city of New York. The children were subsequently placed in two private institutions. When Ms. Perez was released from the hospital, she asked for the return of her children and her request was denied. After two years of trying to get her children back, she sought legal counsel and asked the New York Supreme Court to issue a writ of *habeas corpus* for the return of her children. At this point in time, the city of New York sought a court order granting custody of the children to the city. Paulina Perez filed suit in federal court against employees of the city of New York and employees of the two private institutions that housed her children. The suit charged that the constitutional rights of Perez and her children had been deprived without due process of law because there had been no parental consent given, no court order sought, and no competency hearing granted (Leahy and Barnes, 1977). In a similar case, *Burgos v. DCFS* (1976), the Circuit Court of Cook County [Illinois] found that Leopoldo and Iris Burgos had neglected their three children. The court gave custody of the children to the Illinois Department of Children and Family Services [IDCFS], which placed the children in foster homes supervised by a private, church-affiliated organization. Although the Burgos family members understood only

Spanish, neither the caseworkers assigned to their case nor any of the foster families spoke Spanish. The Burgos family and several other Spanish-speaking parents filed suit in federal court alleging that they had been discriminated against on the basis of race, color, and national origin (Leahy and Barnes, 1977).

In both cases, the private agencies and their employees sought dismissal of the charges against them on the grounds that their actions were private, and therefore were not covered by the due process clause of the Fourteenth Amendment. However, the federal courts refused to dismiss the private agency employees as defendants. Although it was clear in both cases that deprivation of Fourteenth Amendment rights had occurred as a result of state action, the courts chose to treat the actions of the private agency employees as public in nature. The federal courts, in both cases, noted that not every act of a private agency could be considered public (Leahy and Barnes, 1977). Nevertheless, the conduct of the private agencies in both cases was either intertwined with governmental policies or imbued with a governmental character. As a result, the actions of the private employees assumed the dimensions of state action. Furthermore, the courts held that even though the state may use private agencies to care for the children, the state cannot completely divest itself of the ultimate responsibility for the care of the children (Leahy and Barnes, 1977).

CONTRACT VENDORS ARE NOT PUBLIC AGENTS

With the notable exceptions of the *Perez* and *Burgos* decisions, the Supreme Court has not generally accepted the argument that private contractors should be held to the same constitutional restrictions as public service providers. The Court has not succeeded in developing a clear set of rules regarding state action and public function in conjunction with the development of privatized public services.

The Supreme Court has indicated that one of the primary issues to be considered in applying the Constitution to private organizations [i.e. contractors] is that of public function. In the opinion of the Court, an activity must be traditionally associated with sovereignty to fall under the heading of public function. In general, the Court has limited the definition of traditional public functions to eminent domain, fire and police protection, elections, and tax collection (Sullivan, 1987; Barak-Erez, 1995). Furthermore, before a private party can be bound by constitutional requirements because it exercises a public function, two things must be demonstrated. First of all, the service or power in questions must be one that has traditionally been exercised by government alone. Second, government must have relinquished total and unreviewable control over the exclusive government function to a private party (Sullivan, 1987; Gilmour and Jensen, 1998; Barak-Erez, 1995).

State action is another aspect of the public/private sphere dichotomy that the Supreme Court has focused on in cases that seek to apply the Constitution to private actors. The Court has taken a

circuitous and often unclear route in the determination of this issue. The State Action Doctrine is the principle that the laws and policies of government must respect due process, equal protection, and free speech (Schwarzschild, 1989). In other words, the Constitution, in particular the Bill of Rights and the Fourteenth Amendment, is intended to shield individuals only from government actions. Therefore, the conduct of private individuals or organizations is not included in the protected guarantees of individual rights. So, can the actions of privately owned organizations be included under the heading of state action? Theoretically, an action that appears to be private may be treated as 'state action' if "there is a 'close nexus' between the state and the private actor" (Stephens and Scheb, 1993, 480; see also Barak-Erez, 1995; Buchanan, 1997; Garvey, 1993). However, the Court has not articulated specific guidelines about what constitutes a 'close nexus'.

The concepts 'public function' and 'state action' are intended to allow the federal courts to assign liability in cases where an organization's actors do not fulfill certain constitutional responsibilities. In particular, the Supreme Court takes a dim view of racial discrimination and the suspension of due process. Historically, though, the Court has equivocated between recognizing public function and state action only in the actions of public employees and allowing private actors to be held accountable for unconstitutional practices. Through a series of cases, beginning in the late 1800s, the Court has provided contradictory guidelines for cases involving government intervention in private activities. As a result, the Supreme Court has

managed to thoroughly confuse the issue and has seemingly laid the foundation for all state actions to be considered private ones.

In 1875, Congress passed The Civil Rights Act, which prohibited private individuals from discriminating on the basis of race. Subsequently, the Supreme Court, in the *Civil Rights Cases* (1883), held this statute to be unconstitutional. The opinion of the Court indicated that state courts and legislatures, not the federal government, should protect an individual's right to nondiscriminatory treatment (Buchanan, 1997). However, the Supreme Court then heard a series of cases in which it determined that the 'state' was not adequately protecting its citizens. Indeed, the state was responsible for facilitating racially discriminatory private actions. In *Buchanan v. Warley* (1917), *Corrigan v. Buckley* (1926), and *Shelley v. Kramer* (1948), the Supreme Court found that state courts were enforcing racial covenants. In the Court's estimation, if private individuals had upheld the covenants without state intervention, they would have been well within their rights. When the state involved itself in the altercations, though, the private discrimination became public in nature and absorbed the nuances of state action. The Court followed up these decisions in 1961, with *Burton v. Wilmington Parking Authority*. In *Burton*, the Supreme Court noted that a "symbiotic relationship" between the state and the private actor may provide the basis for applying the Constitution to discriminatory private decisions (Sullivan, 1987; Buchanan, 1997).

Despite the precedent that had been set with both *Burton* and *Shelley*, the trend towards applying the Constitution towards private

actions seemed to end in the 1970s. Beginning with *Moose Lodge No. 107 v. Irvis* (1972), the Supreme Court began to separate private actions from any association with government. In *Moose Lodge*, the Court held that state licensing requirements do not involve the state in the private establishment's discriminatory practices. Following the *Moose Lodge* decision, the Court also established that a state permitted monopoly, in this case a private utility provider, does not fall under either the public function or state action doctrines (*Jackson v. Metropolitan Edison Co.*, 1974). In the majority opinion, the Court stated that there was not a close enough 'nexus' between the state and the utility to justify placing constitutional constraints upon the actions of the company. In *Flagg Brothers, Inc. v. Brooks* (1978), the Court placed the burden of exclusivity on the relationship between the state and the private actor. Before a private service provider can be held to constitutional standards because its actions constitute a public function, the state must no longer have any role in providing that service. Finally, in *Edmonson v. Leesville Concrete Co.* (1991) the Supreme Court outlined three factors that are relevant in determining whether an action may be considered governmental in character. First, the extent to which the private actor relies on governmental assistance must be determined. Second, whether the private actor is performing a traditional governmental function must be ascertained. And third, a determination must be made about whether the purported injury has been aggravated by the impact of governmental authority (see discussions in Schwarzschild, 1989; Buchanan, 1997; Barak-Erez, 1995; Kay, 1993; Sullivan, 1987). As a result, the

Constitution, as currently interpreted by the Supreme Court, "would seem to restrain a private party only if the government no longer has a role at all" in the production and provision of goods and services (Sullivan, 1987, 465).

The Supreme Court's distinction between private action and public [state] action raises questions about the future of 'public' services. In particular, if the courts conceptualize the division between public and private as absolute, privatized enterprises cannot be considered actors in the public domain. As a result, privatized social services would no longer be public in nature. In addition, if an injury is inflicted under the authority of state law, should there be a legitimate difference in policy depending on whether the wrongdoer is a public official or a private contractor? It seems apparent that the state's authority and power is transferred, in the process of contracting, to the private service provider.

This research has attempted to demonstrate that the perceived differences between the public and private spheres are, at best, ambiguous. Indeed, given the nature of the intricate relationship between government and business in the United States, it has been suggested that the distinction between the two may no longer be valid (Kay, 1993; Lessard, 1986). Furthermore, despite arguments that changes in the distinction between 'public' and 'private' action will lead to a weakened Constitution, the limitation of individual rights, and the politicization of the judiciary (Garvey, 1993; see also Strauss, 1993), there is no evidence that preserving the public/private dichotomy better serves the community.

The Supreme Court's determination that most private actions are not covered by 'public function' or the State Action Doctrine, even when they are contracted for and regulated by government, seems to leave little room for the protection of constitutional rights in the contracting out process. One solution that is intimated by the Court's decision in *Hafer v. Melo* (1991) is that the individual states must step in to protect the rights of their citizens. In *Hafer*, the Court reaffirms a section of the U.S. Code [42 U.S.C. § 1983] which provides relief for individuals who are "deprived of a right secured by the Constitution or laws of the U.S. by any 'person' acting 'under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia'" (cited in Buchanan, 1997, 670). In other words, state legislatures must take steps to ensure that statutory and regulatory limitations on private contractors are in place to guarantee that citizens will not be denied basic, fundamental, constitutional guarantees in the face of growing privatization. Furthermore, the state courts must uphold the laws and regulations that govern privatized public services and public agency employees must be willing to implement the regulations, monitor the contracts, and assume responsibility for the actions of their private service providers. The employees of the private vendor would also be held accountable for the actions undertaken in the name of the organization.

According to Harold Sullivan (1987), privatization provides public agencies with the perfect opportunity to remove themselves from the public realm. Once all primary public services are provided by private contractors, the public agency may adopt a policy of neutrality so that

it cannot be held responsible for the actions of its private agents (Kay, 1993). Indeed, if state legislatures, courts, and public agencies do not assume responsibility for placing private contractors in the public sphere, the consequences for recipients of child protective and welfare services may include a loss of essential services, discrimination in service provision, loss of basic rights, and limited due process of law. Although the state cannot completely abrogate its responsibility for children placed into its care, the public agency can choose to divest the majority of its constitutional and legal duties to private contractors. Under the current Court, privatized social services are not considered a public function or an aspect of state action. As a result, the Constitution does not apply to the actions of private service providers. Furthermore, because childrens services have not been traditionally nor exclusively reserved to the state, the privatization of these services may very well take place without sufficient legal and constitutional safeguards in place to protect the rights of children and their families.

STATE ENTITIES MAY DEFINE PUBLIC FUNCTIONS

However, if state legislatures, courts, and public agencies do take an active role in protecting citizens' rights in contractual relationships with private service providers, it is likely that the Supreme Court would not nullify the states' actions. There are several reasons why the Court would uphold state legislation that places

private contractors within the public sphere. First of all, the Supreme Court has established that the actions of private actors may truly be governmental in nature, and therefore subject to constitutional limitation (Tribe, 1978). In addition, there is no constitutional prohibition against state agencies making their contractors accountable for the actions they have taken under state authority. Furthermore, as previously noted, 42 U.S.C. § 1983 places the power to compel individual accountability for constitutional and legal transgressions squarely in the hands of the state. Finally, the Supreme Court ruled in *Screws v. United States* (1945) and *Williams v. United States* (1951), that public sector employees are state actors. Public officials are considered state actors because of the nature of the contractual relationship between employees and the state and the power that contract confers upon them. In light of this, it has been suggested that contractual relations between the state and its public service providers should be viewed the same way (Barak-Erez, 1995).

The state authority and power that is implicit in the contractual relationship between the public agency and the private contractor facilitates the contractor's ability to perform the services it offers. The state thereby conveys legitimacy upon the contractor. In addition, the state often creates a monopoly by limiting the number of contracting agents and by not providing similar services itself. Exclusivity, therefore, is a legitimate factor in determining whether private action should be labeled a public function. The more a 'private' action is uniquely governmental in nature, the more readily should it be labeled a public function (Buchanan, 1997). However, the

nature of government has changed rapidly since the 1930s. In determining whether an action is governmental, it should be understood that the responsibilities of government in the U.S. have changed since the introduction of New Deal and Great Society programs. Finally, it should be recognized that there are no truly private actions or organizations. Whether one labels conduct 'public' or 'private', it all takes place within a recognizable system of rules, laws, regulations, and prohibitions (Kay, 1993; Bozeman, 1987).

The unwillingness of the Supreme Court to place the actions of private service vendors under the rubric of state action or public function may actually have positive consequences for children needing protective services. As noted, the Court has held that child welfare workers who fail to remove an abused child from the home are not responsible for future injuries sustained by the child. However, state personnel are responsible for the welfare of children remanded to state custody, whatever their placement. As a result of these rulings and the federal statutory requirement regarding family preservation, state agency workers might hesitate to remove a child from an abusive situation. Because a private service vendor is not necessarily bound by the rules and regulations that are placed upon public agencies, the best interests of the child may be served through contracted care. Through the contract, a state agency can grant a wide spectrum of authority to its vendors. Private agencies could, in fact, assume responsibility for the provision of most protective services. In addition, the private contract agency could potentially offer innovative services without fear of political or legal repercussions.

As long as proper care was taken to preserve individual rights in the language of the contract, and through the monitoring of the services, the expansion of private service provision would be safe for the child, the family, the public, the contractor, and the state.

In the final analysis, questions regarding the accountability of public and private organizations in the contracting out process cannot be addressed simply by examining current Supreme Court doctrine regarding state action and public function. Although Court decisions provide some insight into the issue of accountability, the picture is not complete. There have been more questions raised than have been answered. Therefore, attention must be focused on the role played by the individual state and its child protective agencies.

CHAPTER IV

ACCOUNTABILITY IN CHILD PROTECTIVE SERVICES

As noted in previous chapters, the U.S. legal system has provided contradictory guidelines regarding the protection of children by the state. Indeed, historically, there has been a marked lack of concern about the rights and needs of children within the legal and political systems. Child welfare and protective services in the United States were developed in the voluntary non-profit sector during the late 1800s. Children in need of assistance were helped by charitable organizations and public funds were distributed only to those organizations that provided residential care for children. Furthermore, private child protective agencies were also developed and it was these agencies, rather than the government, that sought out and dealt with cases of neglect and abuse (Costin, 1979; Kamerman and Kahn, 1997; Skocpol, 1992).

The United States, therefore, has never had a comprehensive, nationally articulated policy regarding children or families (Gustavsson and Kopels, 1992; Kamerman and Kahn, 1997; Costin, 1979). Rather, the development of broad social policies that target the poor and include protective services for children has been largely a result of piecemeal legislation spurred by public opinion on specific cases. In addition, the contradictory guidelines developed by the Supreme Court regarding the responsibilities of public protective service

agency workers to their clientele has resulted in the incremental implementation of public policy. However, the lack of a comprehensive program has not kept Congress from compelling states, tribes, and communities to follow its lead by providing a measure of guidance on child welfare and protective services (Kamerman and Kahn, 1997; Administration for Children and Families, 1999d). Furthermore, the increase in legislation has spurred the creation of federal, state, and local public agencies to develop, implement, and administer various programs aimed at children and families.

CHILD MALTREATMENT IN THE UNITED STATES

In 1996, federal, state, local, and tribal child protective services agencies investigated the alleged mistreatment of over three million children nationwide.[1] The investigating agencies determined that over one million of those children were victims of substantiated neglect or abuse (Administration for Children and Families, 1999c). The number of reported incidences of child maltreatment has increased steadily since 1968, the first year that federal statistics on abuse and neglect were kept. In 1968, there 10,931 reports filed, representing less than one report of abuse and neglect per one thousand children. The 3,126,000 reports of alleged mistreatment in 1996 represents a rate of forty-seven reports per one thousand children (Waldfogel, 1998, 7).

[1] 1996 is the most recent reporting year for these statistics.

The Children's Bureau is the oldest federal agency that addresses the needs of children. Originally established in 1912 to research the rights and welfare of children, the scope of the Children's Bureau quickly grew as states applied for federal monies to assist with the development of public child labor, health, education, and welfare programs (Bremner, 1971; Costin, 1979; Hawes, 1991). The Children's Bureau is now located within the United States Department of Health and Human Services' Administration for Children and Families in a sub-agency dedicated to children, youth, and families. The Children's Bureau has an annual budget of over four billion dollars and administers nine state grant programs, as well as six discretionary grant programs (Administration for Children and Families, 1999a). However, the implementation of child protective and welfare services and programs is largely carried out at the state and local level.

CHILD PROTECTIVE SERVICES

The mistreatment of children is both a social and a legal problem. Child protective services encompass a "highly specialized set of laws, funding mechanisms, and agencies that together constitute the government's response to child abuse and neglect" (Waldfogel, 1998, 5). Children who are neglected, abused or at risk because of their family situation [poverty, death of a parent, substance abuse, delinquency, etc.] require specialized services from the community and its social service agencies. Therefore, in many states, child protective services

are often intertwined with both child welfare and public welfare programs, such as foster care, counseling, day care, and food, health, and cash assistance (Costin, 1979; Waldfogel, 1998). Indeed, Kamerman and Kahn (1990a and 1990b) argue that child protective services constitute the dominant public child and family service, often limiting an agency's emphasis to abuse and neglect rather than other aspects of child welfare.

Costin (1979) notes that child protective services programs are characterized by several distinct features. First of all, the manner in which agency services are initiated differs from the majority of public social services. Most public welfare recipients must apply for admittance into the designated assistance program. Child protective services, on the other hand, are generally involuntary and are activated by a person outside of the family unit. Second, the responsibility of the agency is increased due to the involuntary nature of service initiation and the vulnerability of both the child and the family unit. Third, the child protective service agency can effectively operate only with the authorization and assistance of the community. And finally, child protective service agencies are presumed to balance their legislative and administrative authority with the preservation of the rights of the child, the parent(s), and the community (Costin, 1979; see also Johnson, 1990; Waldfogel, 1998).

Child protective services are primarily aimed at securing the safety, well-being, and health of the child. Federal legislation, as previously noted, has provided guidelines and mandates regarding the types of services to be offered by every state that accepts federal

fiscal assistance. However, the implementation of child protective service programs is largely left to state agencies. Ideally, these services try to stabilize and improve the child's own home by helping parents learn to provide safe and responsible care (Costin, 1979; Administration for Children and Families, 1999d).

Child welfare and protective services policies are intended by legislators and administrators to positively impact the child and his/her family life. Therefore, the goal of child protective services is, in the long run, to preserve and improve upon the family unit. Advocates argue that the provision of protection is "as essential for children as the provision of education, for which government accepts responsibility" (Costin, 1979, 187; see also Clopper, 1920; Kamerman and Kahn, 1997; Bates et al., 1997).

Public child welfare and protective services agencies are established by state legislation. In general, the enabling statute will define the agency's responsibilities for providing services to children and their families. However, it should be noted that enabling legislation varies greatly from state to state. The purpose of the legislation, the definitions of abuse and neglect, the age limits for reportable children, the numbers and types of responsible agencies, the role the agency plays, and reporting procedures for suspected abuse are all aspects in which the states may differ from one another.

All fifty states provide child protective services, which are mandated by Title XX of the Social Security Act. Under Title XX, each state determines the allocation of its service resources (Kamerman and Kahn, 1976; Johnson, 1990). In order to receive federal grants and

matching funds, a state must establish one state agency that administers child welfare services. The state child welfare agency is statutorily responsible for the provision of social services. The state agency may operate programs directly or it may set funding and standards for local community-based agencies. If program responsibility is shared, the state child welfare agency will determine how costs will also be shared with local service agencies and service providers (Kamerman and Kahn, 1976; Johnson, 1990; Costin, 1979).

In general, there are four sets of legal provisions that authorize agency intervention into the family structure: criminal law, juvenile court legislation, child abuse reporting laws, and legislatively enacted protective services (Costin, 1979). When a child is brought to the attention of child protective services, these legal provisions structure the process of addressing the child's needs. First of all, when an allegation of abusive, neglectful, cruel, or inadequate care is made by a concerned party, the child protective services agency is notified. A decision must then be made whether the report should be investigated. If an investigation is deemed necessary, agency personnel then interview the child, the family, teachers, neighbors, and any persons who are familiar with the family to determine whether further intervention is needed. If the child is at risk of immediate harm, the agency may seek legal custody of the child. If abuse, neglect, or inadequate care is documented through the investigative process, the child protective services agency may file a petition with the court. The child's parents are notified of the petition and a hearing date is set. At the disposition hearing, the judge will

determine if the child has been abused or neglected, the placement of the child, and what treatment plan should be followed (Costin, 1979; Waldfogel, 1998). The protective services agency should not withdraw from contact with the child and his/her family until treatment is concluded and/or the child is placed in alternative care.

Child protection laws are generally designed to provide agency personnel with the authority to compel parental cooperation in improving upon the care of their children (Johnson, 1990). However, the appropriate scope of state intervention in child-rearing practices is often unclear. Some, such as Wald (1976), assert that the broad, vague language of many child abuse statutes permits unlimited state intervention into the private activities of the family unit. Proponents of this approach argue that the encroachment of the state into family affairs should be limited. Others base their arguments on the ideas articulated by Polansky and Polansky (1968). From this perspective, child abuse and neglect should be defined more broadly to allow a protective service approach that is proactive and much more intrusive. The conflict between the two approaches often results in the unintentional neglect of due process and equal treatment considerations for at-risk children and their parents (Costin, 1979).

Balancing individual rights, the child's welfare, the preservation of the home, and the well-being of society is a difficult aspect of child welfare and protective service programs. Child protective services are necessarily intrusive. The child protective services agency has the authority to intercede in family problems without a request from the affected parties. No matter how well-intentioned the

service provider, the privacy of the family is necessarily infringed upon (Costin, 1979; Kadushin, 1980). Furthermore, taken to its logical conclusion, the fulfillment of child protective services means that a child may be forcibly removed from parental custody and placed in an alternative care setting. A public child protective services agency has the legal authorization to receive reports of unacceptable child care, to investigate the allegations, and to initiate services that must be fulfilled before the agency withdraws from its interaction with the child and family.

ACCOUNTABILITY CONCERNS IN CHILD PROTECTIVE SERVICES

The literature on child protective services often provides an ideal that real agencies and agency workers are presumed to follow. Therefore, there are several different aspects of agency accountability that are addressed. However, in general, the majority of discussions on accountability are directed at the actions of the public service agency and do not address questions of accountability in the contracting out process. Indeed, many authors seem to assume the perspective that Martha Branscombe voiced, in 1953, regarding the representative nature of public agencies in the United States. Only a governmental agency, in her words,

> ...can be made accountable to the people for the coverage required to assure provision of whatever social services are needed by any child regardless of race, creed, legal or economic status, and regardless of where he lives, or any other consideration except the individual child's needs (Costin, 1979, 9).

Therefore, accountability in the child protective services agency encompasses legal, constitutional, community, organizational, and individual concerns.

Child protective services agencies have a legal obligation to investigate allegations of abuse, neglect, and deleterious care. Through federal and state legislation, the citizens of the United States have provided protective agencies with the authorization to intervene in family situations that are unhealthy and unsafe for children. In many cases, however, decisions are made at the discretion of individual agency workers because the statutes addressing abuse and neglect may be vague and open to interpretation. Therefore, it is imperative that each protective services agency develop precise standards and administrative procedures to guide the process. Clear and unambiguous rules allow the child protective services agency to justify its intervention and develop programs and resources that protect both the child and the family unit (Costin, 1979).

Public agencies are also accountable for preserving and protecting the constitutional rights of their clients and the public-at-large. This is particularly important when the agency interacts with individuals who are poor, uneducated, and politically and socially disenfranchised. Protective service agencies generally work with families of low socioeconomic status (Costin, 1979; Kronick, 1999). However, in the realm of child protective services, the protection of individual rights is often in direct conflict with protecting the rights and well-being of the child. Child protective services necessarily limit an individual's right to privacy. The goal,

therefore, is to "avoid infringing on the rights of the general parent population while simultaneously ensuring the rights of a specific child" (Kadushin, 1980, 151). At the very least, the child protective service agency should not violate the Fourteenth Amendment guarantees of due process and equal protection.

The use of public monies to provide social services has created another category of accountability for the public agency. Discussions on public agency accountability often equate accountability to the public with fiscal accountability. Specifically, the public agency must provide a clear accounting for public funds that are spent on personnel, administration, contracts, and services (Lourie, 1979; Kahn, 1979). This seems to be one aspect of accountability that most public agency administrators and personnel have developed a clear understanding of and a commitment to.

Concerns over the quality of the rules, regulations, and standards of child protective services agencies has guided the relatively recent growth in federally mandated programs. Critics argue that the overall response to the growth of reported incidences of abuse and neglect has not been adequate. They point to the escalation of problems, such as inadequate resources, ineffective case-finding mechanisms, lack of needed resources at the neighborhood level, fragmentation of service provision, unnecessary and multiple placements, and the failure of agencies to assume responsibility for intensive work with the child and his/her family (Kamerman and Kahn, 1976; O'Donnell, 1992). The response has been an attempt to structure accountability through oversight, by implementing rules and increasing layers of regulation

and reviews. However, O'Donnell (1992) notes that there is evidence that federal and state laws equate paperwork with accountability. In other words, if the paperwork is complete, the case has been properly handled and the agency's responsibility to the client has been fulfilled. She argues that accountability to the clientele should entail the assurance that their caseworkers are trained, skilled professionals who are interested in dealing with the individual, not his/her paperwork (O'Donnell, 1992).

One thing I have discovered from informal discussions with social service providers is that they believe that services are being delivered to as many of those in need as possible, given resource limitations.[2] However, many providers seem to feel that providing adequate services within a specified time frame should be only one element of the agency's responsibility to its clients. From this perspective, accountability for the public service agency begins to assume a human dimension. Accountability to the client does not begin and end with the provision of services. Rather, accountability to the

[2] It should be noted that limitations on personnel and resources often leads to the public perception that money is not being spent on services, and that citizens are, therefore, not getting a return on their investment of tax dollars. However, Murray (1984) states that the United States government has always underfunded its social welfare and social services programs. In addition, Waldfogel (1998) argues that cutbacks in welfare and related social programs, which help to fund child protective services, may increase referrals for abuse and neglect. The result, of course, would be the continuing overload of an already taxed system. McKinney (1981) and Thobaben et al., (1998) state that waste, mismanagement, and corruption are widely believed to be indemic to the public sector. Kraft and Bush (1998) note that service recipient descriptions of public agency personnel often include statements focusing on unresponsiveness, incompetence, insensitivity, and inefficiency. Clientele perceptions are then, often, communicated to the general public. Finally, O'Donnell (1992) states that the often strident criticism leveled at child welfare agencies by child advocates feeds the public perception that tax dollars are wasted on child welfare programs.

clientele may include empowering the client, giving the client a sense of ownership in the program and in the community, or simply listening and providing reassurance from their fears.[3] Providing an outlet for anxiety about their parents, their lives, and their living arrangements seems to be particularly important when dealing with children from a protective services standpoint.

Public child protective service agencies are not perfect. As in any human endeavor, mistakes can be made, services are not provided, and children may die. One only has to examine the cases of Joshua DeShaney[4], Lisa Steinberg, Elisa Izquierdo, Michelle Gray, Lance Helms, and Nadine Lockwood[5] to see that there are children and families that slip through the cracks. Nearly two-thirds of child fatalities in the United States involve neglect or physical abuse (Waldfogel, 1998). This is not to say that public child protective service agencies are not fulfilling their mission. Rather, I draw your attention to these notable cases to demonstrate that accountability is often difficult to determine and enforce - even when the only involvement in a particular

[3] Several recent studies have introduced client satisfaction into the literature on effective service delivery. Please see discussions by Osborne and Plastrik (1997), Myers and Lacey (1996), Halachmi and Bockaert (1996), and Kraft and Bush (1998).

[4] Joshua DeShaney was severly brain-damaged from repeated beating by his father. Child protective services in Wisconsin failed to remove Joshua from the home despite numerous reports by emergency room personnel.

[5] Lisa Steinberg, Eliza Izquierdo, Michelle Gray, Lance Helms, and Nadine Lockwood are all children who died as a result of abuse or neglect. Each case received a great deal of public scrutiny because the child protective services agencies in their states had been repeatedly notified and had failed to keep the child safe from their abusers. For a more detailed assessment of each case, please see Jane Waldfogel's (1998) discussion.

situation is by a state agency created to solve the problem. The focus on accountability becomes even more important, therefore, when services are provided by private vendors that are not directly answerable to the Constitution, the public, politicians, or service recipients.

CONTRACTING OUT CHILD PROTECTIVE SERVICES

It is important to remember, in regards to the accountability of public service providers, that child protective service agencies do not act alone in the provision of services. Throughout the United States, an increasing number of private service vendors share in service provision. Public agencies pay for some or all of the services through subsidies or a purchase of service contract [POSC]. The grant and funding programs administered by the Children's Bureau explicitly state that child protective services and welfare agencies can have agreements with other agencies [both public and private] for the provision of appropriate services (Administration for Children and Families, 1999a). Depending upon the state, private agencies may be used to provide placement services, support services, investigative services, and casework services (Waldfogel, 1998). Proponents of privatization argue that the use of service contracts can protect individual rights, promote efficiency in the production of goods and services, and increase accountability to the public. Advocates argue that public and private human services agencies have the same goals, but they achieve them in different ways. As a result, the potential advantages to

contracting include more flexible personnel policies, varied funding sources, more budget flexibility, and less frustration for the agency, the public, and the service recipient (Kronick, 1993). However, concerns have been raised over the role public agencies may assume in the contractual relationship. Specifically, contracting out shifts government entities from the producers of goods and services to the supervisors of private vendors. As a result, the contract, not the enabling legislation, the Constitution, the public, nor the clients, becomes the determining factor in service provision.

A purchase of service contract is a funding agreement between a government agency and another organization or individual for the purpose of delivering services or care to a specified clientele (Wedel, 1979; Wedel and Colston, 1988; Auger, 1999). Before a contractual relationship is initiated, public agency administrators should establish goals, assess community needs, identify vital services, and calculate available resources (Wedel, 1979). The contract should clearly delineate the responsibilities of the private vendor to the clientele, the public agency, and the public-at-large. After implementing the contract, the government agency must monitor and evaluate the activities of the service vendor (Kettner and Martin, 1985; Rehfuss, 1989).

Monitoring is the primary mechanism that ensures accountability in the contractual relationships between a public agency and its vendors. The contract itself must be specific, and an emphasis should be placed on ensuring due process, equal protection, and fair treatment for all clients of the agency. Kettner and Martin (1985) and Lourie (1979)

argue that there has been a lack of emphasis on contract monitoring by public agencies. They find this trend deeply disturbing because it represents the nullification of government responsibility. Lourie, in particular, notes that

> ...government has the legal obligation to protect people and to ensure that the publicly legislated mandate to improve the quality of life is carried out. While the public agency can share its direct service responsibility, it cannot relinquish [its] responsibility to the public sector (Lourie, 1979, 21).

The absence of contract monitoring, whether intentional or not, means that the public agency cannot fulfill its obligations to the people it is intending to assist.

There are several other concerns that have been voiced regarding both the use of contracts in the provision of human services and in the monitoring of those contracts. Monitoring, when it is stressed by the public agency, is intended to ensure that specific performance objectives are being met by the service vendor. The contractor is encouraged to provide services at a cost savings for both the vendor and the state. Wedel and Colston (1988) argue that the focus on performance reviews often results in an emphasis on quantity of services delivered, not the quality of services provided. Furthermore, if due process, equal protection, and fair treatment requirements appear to result in inefficient or extensive service delivery, there is concern that private vendors will either stop providing the services or will attempt to limit the numbers and types of eligible clientele (Gummer, 1988).

Performance contracting may also result in problems of public control of services. The growing number of contracts and the diversity

of services contracted for may be difficult for duly elected representatives of the people, such as the legislature or executive branch, to control. Furthermore, the greater the financial incentives for contract agencies, the more control and influence private agencies will petition for in service delivery decisions (Wedel and Colston, 1988). Gummer (1988) also notes that government agencies have been limited in their efforts to secure greater accountability. The vendors that exercise governmental authority are generally removed from public control. As a result, government accountability is often restricted because private vendors retain their autonomy and act independently of the contracting public agency (Gummer, 1988; see also Wedel and Colston, 1988; Hanrahan, 1983). Accountability may also be limited by the influence private vendors may be granted in public policy decisions and service provision (Robertson and Acar, 1999). Finally, monitoring may reduce accountability to the clients because they may be confused about which party is responsible for ensuring the delivery of "appropriate and timely" services (O'Donnell, 1992, 264).

Accountability for child protective services should, ultimately, remain the responsibility of the public agency. Even though service delivery may be undertaken by a private vendor only a public agency, controlled by elected officials, can be made to answer for the actions undertaken in the name of government. Therefore, in order to determine how [if?] public agencies ensure accountability in the process of contracting out services, we must turn our attention to child protective services in Tennessee.

CHAPTER V

CHILD PROTECTIVE SERVICES IN TENNESSEE

All fifty states have enacted legislation that targets the problems of child abuse and neglect. Each state, however, has different norms and traditions, defines the problem differently, mandates different approaches to solving the problem, and dedicates different types and amounts of resources to protective service agencies. Therefore, I am focusing on the activities, laws, regulations, and perceptions of a child protective services agency in one state - Tennessee - to illustrate the issues of accountability inherent in the provision of public social services. Specifically, I am examining how a public child protective services agency addresses issues of accountability in its own decision-making processes, as well as in its contractual relationships with service vendors. The purpose of this chapter is to outline the role and responsibilities of child protective service agencies in Tennessee. Subsequent chapters will address the methods that one regional office of the Tennessee Department of Children's Services uses to ensure accountability in contracting, focusing on what obligations agency and service vendor personnel have towards service recipients.

TENNESSEE HISTORY OF CHILDREN

Historically, Tennessee was considered rather progressive in its approach to protecting the welfare of children. When Tennessee was admitted to statehood in 1796, all county courts were charged with providing relief to the poor, particularly to women and children. By 1827, all of the counties in the state were in the process of establishing almshouses (Darnell, 1997). Beginning with the ratification of the third state constitution, in 1870, the state government assumed a greater measure of responsibility for the education, as well as the health, safety, and care, of 'its' children. Indeed, in the introduction to Child Welfare in Tennessee, W.H. Swift states that "Tennessee accepts the care of her children as a part of her policy" (Clopper, 1920, 11). The state constitution, in Article XI, Section 12, specifically provides for a free education for children. Furthermore, the state's compelling interest in the welfare of children may limit a parent's right to make decisions about their child's education and care (Morgan, 1980). The understanding that the state is ultimately responsible for its youngest citizens continues to inform public policy [if not practice] in Tennessee. The Tennessee Commission on Children and Youth (1996) recently noted that children must receive adequate care if they are going to develop into productive adults. If the care is not forthcoming at home, then the state has an obligation to provide that care.

In the early nineteenth century, Tennessee, like most other states, discharged its duty to children who were without parental

support by having them bound out [indentured] to learn a trade and to receive an education. However, unlike many other states, Tennessee forbid parents, institutions, counties, and even the state from apprenticing the child. Rather, the disposition of orphaned, illegitimate, or abandoned children was determined by county court judges. Apprenticeship was a legal relationship between the state [acting on behalf of the child] and the child's trade master. The courts provided the terms of the contract and engaged in a limited form of monitoring (Clopper, 1920).

By the early 1840s, Tennessee had begun to move away from apprenticing fatherless children. Instead, the state began to fulfill its responsibilities by providing children with room, board, and shelter. The first orphan asylum in the state of Tennessee was founded in 1841. By 1920, the state had forty institutions to provide care and education to children in need, and thirty-one of those institutions were developed and maintained by private philanthropic organizations (Clopper, 1920). The Board of State Charities was charged with inspecting and monitoring all child care institutions.

However, the state had difficulty maintaining its level of commitment to its abandoned, neglected, and troubled youth. In 1960, the Tennessee Commission on Youth Guidance stated that child protective services were deficient state-wide[1]. The Commission noted that state personnel were overworked and under-trained, that most counties were not providing adequate training for law-enforcement personnel, and that existing facilities for juveniles were deplorable (Tennessee Commission

[1] The report was issued as part of the state's preparation for the 1960 White House Conference on Children and Youth.

on Youth Guidance, 1960). Finally, by 1976, the state of Tennessee had to address the growing problems faced by children remanded to state care. Tennessee, at that time, had no systematic judicial or organizational monitoring of children in foster care or other state placements. As a result, children were getting lost in the system. In 1976, the state legislature mandated Foster Care Review Boards to monitor placements made by the Department of Human Services [DHS] (Morgan, 1980). However, the foster care review boards were often frustrated in their attempts to resolve problems with placements because of inadequate case planning, poor training, high staff turnover, widespread failure to terminate parental rights, and a lack of resources (Tennessee General Assembly, 1991).

THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES

In 1991, the state announced the development of The Children's Plan. The plan addressed the problems that continued to plague children's services programs, which included but were not limited to: increases in the number of children committed to care; increases in the number of children remaining in care; increases in the number of children receiving inappropriate placements and services; coordination problems between departments, agencies, and vendors; and complicated contracting procedures (Tennessee Commission on Children and Youth, 1994). The Children's Plan was intended to make the provision of

children's services more efficient. To this end, the plan enunciated four primary objectives:

1) Provide adequate care for children within the home whenever possible. If the child must be removed from the home, s/he must be returned to the family or have a permanency plan developed within a timely manner;

2) Increase community prevention, early intervention, and family support services;

3) Expand efforts to increase community involvement, local decision-making, and accountability for funding and services; and

4) Create an effective management and delivery system that encourages the timely and cost-effective provision of services (Tennessee Department of Children's Services, 1999a).

The Children's Plan also guided the creation of the Department of Children's Services. Today, in Tennessee, the Department of Children's Services [DCS] is the agency charged with coordinating and providing child protective services. DCS was created in April of 1996. The enabling legislation consolidated all child protective and welfare services, which had been provided through six departments, into one comprehensive agency. Prior to the creation of the DCS, a child in custodial care might be placed with the Department of Education, the Department of Human Services, the Department of Mental Health/Mental Retardation, or the Department of Youth Development. Each of the aforementioned departments had its own set of resources, many of which were duplicated (Tennessee Department of Children's Services, 1998).

The services provided by the Department of Children's Services emerge primarily from its regional units and contract service providers. Services have been regionalized in an effort to provide assistance to children and families within their own communities. In

fiscal year 1996-1997, the Department of Children's Services contracted for 70% of its services, which equalled approximately $251 million (Tennessee Department of Children's Services, 1998, 4). DCS uses performance-based contracts and outcome measures that have been developed with the input of private service vendors.

The Tennessee Department of Children's Services is responsible for a wide range of programs, including foster care, adoption, child protective services, delinquency programs, youth probation, treatment and rehabilitation programs, agency licensing, and child support. The mission statement of the department reads:

> The Tennessee Department of Children's Services, in collaboration with juvenile courts, local communities, schools, families, and other state agencies, will provide timely, appropriate and cost effective services for children in state custody and at risk of custody so these children can strive to reach their full potential as productive, competent and healthy adults (Department of Children's Services, 1999a).

The Child Protective Services division of DCS is charged with protecting the safety and well-being of children. In 1996, ninety children were reported abused or neglected each day in Tennessee. Of the 32,898 reports alleging abuse/neglect, 34 percent [11,212], were substantiated (Tennessee Department of Children's Services, 1998). In other words, every day one child in thirty-six will be maltreated. Child protective services will accept reports of child maltreatment if the allegation meets three criteria. First, the report must specify maltreatment of a child under the age of eighteen years. Second, the report must allege that the child has either been harmed or is at immediate risk of being harmed. Finally, the alleged perpetrator must be an individual who is responsible for supervising or providing care

to the child (Tennessee Department of Children's Services, 1999c). If the report is made in good faith, the reporter cannot be held liable for the information s/he provides to DCS. However, failure to either report any knowledge of abuse or to render aid to a child is a misdemeanor offense (Morgan, 1980).

Child abuse and neglect are prohibited by the *Tennessee Code*. The Department of Children's Services is charged with investigating all allegations of abuse. The investigation is undertaken at the local level, and the child, parent(s), and home are evaluated by a child protective services caseworker. The juvenile court system has exclusive jurisdiction to determine whether a child has been abused or neglected. As a result, court intervention is generally required before a child can be removed from the home (Morgan, 1980). However, if DCS caseworkers, law enforcement officers, or court officials believe that a child is in immediate danger, the child may be taken into custody without a court order.

The juvenile court system in Tennessee is intended to act as an 'advocate' for the child (Morgan, 1980). Whether or not the child is removed from the home prior to a court order, DCS must file a petition to initiate judicial proceedings. Before the department can assume custody of the child, Tennessee state law requires that a judge first determine that the child has been neglected or abused. If the judge rules that the child has been mistreated, the state of Tennessee [represented by the Department of Children's Services], as *parens patriae*, has a right to the custody of the child (see *Lokey v. Griffin*, 322 S.W. 2nd 239 {Tenn. App., 1958}; Morgan, 1980). The judge must

then make a decision about what type of placement is in the best interests of the child and what services will be necessary to reunite the child with his/her family. In conjunction with the court's decision, the Assessment, Care, and Coordination Team [ACCT] in the child's region assesses the child's needs and develops a plan of care. The plan of care is a formal document that outlines the treatments and services to be provided to the child and his/her family (Tennessee Commission on Children and Youth, 1996).

The Department of Children's Services states that it is committed to preserving the family unit, as well as protecting the child. If at all possible, DCS will provide the family with the appropriate services while maintaining the child in the home. If, however, the child is removed from the home, s/he must be placed in the least restrictive setting that best meets his/her treatment and service needs (Morgan, 1980). Generally, the least restrictive setting is foster care.

The goal of foster care is to provide temporary, full-service shelter to children who will be returned to their family homes within a finite period of time. A child in foster care is guaranteed safe, humane care by Tennessee state law, amendments to the Social Security Act of 1935, and the due process requirements outlined in the Fifth and Fourteenth Amendments to the U.S. Constitution. In the past, Tennessee has demonstrated a poor record of monitoring state foster care programs (Morgan, 1980; Tennessee General Assembly, 1991). The Tennessee General Assembly, the Tennessee Commission on Children and Youth, and the Department of Children's Services all advocate working within the family unit. Out-of-home placement, which includes room, board, and

individualized services for an average stay of six months, is expensive. However, there are more children entering state custody than are exiting (Tennessee Commission on Children and Youth, 1994).

ISSUES OF ACCOUNTABILITY IN CHILDREN'S SERVICES

As is the case with all human service agencies, the procedures followed by the Tennessee Department of Children's Services should be informed by the U.S. Constitution, federal laws, state legislation, and agency rules and regulations. Many of the programs offered by DCS are funded by federal grants. Therefore, the operation of all child protective and welfare service programs must conform to the constitutional principles of due process and equal protection.[2] However, that being said, there is a dearth of Tennessee state and U.S. federal case law that specifically addresses the growing role of contract agencies in the provision of social services. If the Supreme Court's decisions regarding other types of privatized services are any indication, it will be up to the child protective services agency to ensure that the rights of children and families are protected within the language of the contract. Furthermore, the same argument applies to state and federal legislation regarding the provision of services. The statutory language provides for the use of private service vendors, but seems to place no restrictions upon the vendors' actions. Again,

[2] See, for example, *Goldberg v. Kelley*, 397 U.S. 254 (1970); and *Duchesne v. Sugarman*, 566 F.2nd 817 (2nd Circuit, 1977).

the public organization must address a variety of potential problems within the purchase of service contract.

In light of the questions raised regarding the constitutional accountability of both the Department of Children's Services and the contracted vendor, the lack of attention to individual rights exhibited currently by the Department of Children's Services may be cause for concern. In the 1994 *Children's Plan Evaluation Report*, the Tennessee Commission on Children and Youth [TCCY] raises the issue of child and family rights. TCCY asked DCS staff, ACCT staff, and staff attorneys whether children and their families are provided adequate legal representation in judicial proceedings.[3] The commission reported that although the Department does not track the number of children and families receiving legal representation, it widely is believed that those children and families that do have legal representation are in the minority. Specifically, only about 40 percent of the staff surveyed believed that children are always apprised of their rights and approximately 25 percent felt that families were advised of their rights (Tennessee Commission on Children and Youth, 1994, 57). The implication is that the Department of Children's Services does not monitor its own personnel regarding the provision of due process, equal treatment, and legal representation for its clientele.[4] As a result,

[3] It is interesting to note that they did not ask the children or families needing representation whether or not they had been informed of their legal and constitutional rights by DCS or ACCT staff.

[4] It occurs to me that the difference between the two responses may be a result of perception regarding agency responsibility. In a child protective services agency, children are the primary clients. The role of the agency is to protect and represent the child. Therefore, the parents are often placed in an adversarial situation which means staff members probably place far less emphasis on parental rights.

the question of whether DCS mandates that its vendors observe and protect individual rights is a valid one.

There are a number of questions surrounding the accountability of the Tennessee Department of Children's Services and its vendors to those in need of services. Given the rhetoric of providing 'necessary and proper' services and the laudable Children's Plan goals, how does DCS define appropriate treatment? Is quality and type of services gauged by the number of children and families served, or is there a holistic approach to service provision? Sara A. Brown recorded the following anecdote prior to 1920:

> The president of an institution in Tennessee, mother of three children, said if she should leave her children to be cared for by strangers and the strangers did nothing more than provide food, clothing, and shelter, she would much prefer that the strangers permit them to die in childhood (Clopper, 1920, 593).

Or, to phrase it another way, Tennessee law states that all custodians of children have a "duty to provide for the care, protection, training and education, and the physical, mental, and moral welfare of the child" (Morgan, 1980, 29-10). As the *parens patriae* of the child, does the state have a duty to provide more than room, board, and health services?

Questions of accountability can also be addressed toward the training and education of children in protective services. The future of children raised in state care was highlighted in a recent newspaper article. Children remanded to state care are automatically 'discharged' on their eighteenth birthday. The article reported that over two thousand young people per year in California are automatically displaced from their foster homes or state institutional placements.

Of that two thousand [or so], only twenty percent are self-sufficient at age eighteen and one in every five ends up homeless (Peyton, 1999, G-1). In addition, forty percent of all foster children leaving the system, no matter what the state, end up on welfare (Craig, 1995). Apparently, children in foster care are not taught to cook, clean, do laundry, create a budget, fill out job applications, dress for work, or perform a variety of other tasks that would help them become productive members of the community. The problem is not endemic to California nor to public child welfare and protective services agencies. Kronick (1995) notes that both public and private children's service agencies generally lose track of the child when s/he leaves state custody. In addition, Kamerman and Kahn (1990b) argue that the vast majority of states do not offer a continuum of services to those in need. Rather than turning young people out without skills or resources, they believe that state and federal governments should begin to focus attention on community-based services, transitional housing, and training programs. By not addressing the economic futures of children placed in state care, Tennessee and other states may neglect an aspect of fiscal accountability as well as the human dimension of accountability. Fiscal accountability presumes that the state is responsible for the efficient use of financial resources. By not providing adequate training to those in state facilities, the state is most likely prolonging each young person's dependence upon social service programs, which is an inefficient use of time, resources, and personnel.

The Tennessee Commission on Youth and Children (1994) also raises questions about the decision-making process. The Commission reports

that seventy-five percent of the staff attorneys surveyed believe that there is no clear avenue of accountability for decisions that are made about children in state custody. One respondent noted, in part, that "The Children's Plan is a workable and potentially efficient concept, but only if all participants are contributing equally for the final goal of quality consumer service. *Information is needed on how each state agency is held accountable*" [italics mine] (Tennessee Commission on Youth and Children, 1994, 61). It is notable that there is no further commentary on the apparent lack of accountability mechanisms, whether fiscal or otherwise, within the Department of Children's Services. Furthermore, the Commission notes that the management change objective that establishes regional and local planning, incentives, and accountability for developing appropriate services has not been met. Again, if DCS is unable to decide which of its agencies is accountable for decisions regarding a child's welfare, how does the department guarantee accountability from its contract agents?

In Tennessee, there are strict rules and regulations governing the awarding of contracts. The contract vendor does not become a state entity. Rather, the vendor remains independent but must agree to meet state and federal laws and agency regulations. According to a confidential source, it is the agency's responsibility to ensure that its vendors know and follow the laws. The child protective services agency is supposed to ensure accountability through the contract, staff visitations, interviews, and examinations of records. The vendor also has some legal responsibility to the state, as a result of signing the contract. However, the responsibility, liability, and accountability

of the public agency are theoretically not reduced by contracting out primary services.

Finally, Hagedorn (1990) notes that working with any social services bureaucracy is far more difficult than interacting and working with gangs and their members. I am afraid that I would have to agree with him on certain aspects of that statement. Finding information about child protective and welfare services in Tennessee is difficult. The state has a good web-site with links to various departments and programs. However, most of the information provided seems to be directed at public agency personnel, both within the state and externally. For example, the Department of Children's Services home page [www.state.tn.us/youth] provides a brief summary of the mission of the department and the goals for future programs. It then provides links to several related sites, including TN KIDS, child abuse reporting on-line, and the state services index. And, if a prospective client were to click on the state services index, s/he would access a search engine that directs the user to various types of services. The site does not help the user figure out what services entail, who is eligible for these services, or who to contact in their immediate area for further information. The perception that one comes away with is that very little effort has been made to make DCS services accessible to its potential clientele.

It is also important to note that at a meeting I recently attended, the majority of Knox County social service providers present were not fully aware of all the services offered in Knox County. Information is often difficult to come by and, as a result, service

provision is fragmented. In addition, if it is difficult for highly trained social service workers and researchers to find this information, it may be virtually impossible for potential clients to access the system. If the purpose of child protective services is to assist and protect children, the information should be readily available to anyone in need, which appears not to be the case.

CHAPTER VI

CONVERSATIONS ABOUT ACCOUNTABILITY

The Department of Children's Services in Tennessee was created by an act of the state legislature in 1996. DCS is divided into regional sub-units, and the services provided by the department are largely implemented by its regional office and contract vendors. There are distinct differences between regional offices of DCS and each region has a great deal of autonomy. The purpose of this chapter is to provide some insight into accountability in public agency contracting, using the experiences of DCS and vendor staff in the Knox County region.[1] To some extent, comparisons can be made between the Knox County regional administration and the rest of the state. In addition, some discussion will be addressed towards the central DCS office in Nashville and the criticisms the system has received in the past year from various fronts. However, for the most part, this discussion is limited to one region's experiences in contracting out primary child protective services.[2]

[1] The Knox County Region is paired with the East Tennessee and Northeast Tennessee regions to make up a grand region.

[2] This study defines child protective services holistically. The services that the Department of Children's Services offers are provided to ensure the safety, well-being, and health of the child. Child protective services may also be defined narrowly as investigative services into child abuse and neglect to determine whether the child should be removed from the home. I prefer the expansive view because once the child enters state custody the state assumes responsibility for that child, acting much as a parent would. Therefore, all of the services offered are to protect and nurture that child.

METHODOLOGY

I used conversational interviews with Department of Children's Services staff and vendor personnel as the primary methodology for obtaining the information for this chapter. The use of conversation as research is premised on the idea that an interview is a conversation that has a meaning and a purpose (Kvale, 1996). Interviewing involves questioning, listening, and interacting with one's subjects. Kvale (1996) notes that conversation is the method by which people learn about the experiences of others. Therefore, the purpose underlying my use of interviews was to understand how accountability works in the contract relationship between public agency and service vendor. My goal was to move my discussion of accountability from the theoretical dimension to the practical. Indeed, the strength of the interview conversation is that it captures the subjects' views of a theme and allows the research to present a more complete description of the phenomena being studied (Kvale, 1996).

One of the potential problems with any study is verifying the information provided by the participants. A common critique of qualitative research is that information gathered from interviews is taken at face value (see discussions in Kvale, 1996; Diesing, 1971; and Glaser and Strauss, 1967). Holistic research requires trust between researcher and subject. The researcher must trust that the information given is honest and truthful. Furthermore, the themes that appeared throughout the responses given by agency and vendor personnel provide an element of reliability to each individual interview.

I interviewed ten individuals who are employed either by the Department of Children's Services or by a contract service vendor. The individuals I spoke with have diverse backgrounds and training. The Department of Children's Services was created in 1996, so it is not surprising that a number of its personnel has been drawn from other departments, such as youth development, health, human services, corrections, mental health and mental retardation, and education. The same is true for the private non-profit agencies. Some individuals had worked in the public sector before moving over to a private agency, some worked for private industry, and others have changed their affiliations from community-based agencies or other not-for-profit organizations.

Attention must be drawn to the fact that the interviews for this study were drawn from a limited pool of respondents. The subject pool for this study, as previously noted, is made up of public and private agency administrators, managers, and staff. The interviews, therefore, represent a narrow perspective on the effect of contracting on accountability and service quality. In addition, subject responses are reported in a fairly generalized manner and there are very few statements directly attributed to individual interviewees. As a result, some of the complexity of the issues that emerged in the interviews has been minimized.

The limited number of individuals interviewed occurred as a result of the nature of this research. First, this study deals with services that directly affect children and their families. Therefore, it would seemingly enhance the impact of this research to interview service

recipients about the quality of the services they receive. However, there are very strict rules governing the use of children in research projects. In addition, the population served by the Department of Children's Services and its vendors is among the most vulnerable in American society, due in some part to the stigma attached to children's services, state custody, and foster care. As a result, the ethical and legal issues attached to such interviews made the inclusion of a child's perspective not feasible. Second, in order to gain IRB [Human Subjects] exemption from the Office of Research at the University of Tennessee, as well as the DCS Research Review Committee's approval, I agreed not to tape record any of the interviews. The confidentiality of the subjects was thereby assured, leaving little or no room for potential repercussions. On the other hand, it left me facing a number of issues surrounding the use of directly quoted materials. I took handwritten notes throughout each interview. After each interview was completed I typed up my notes, taking care to transcribe the information exactly as I had originally written it. However, there was no way for me to go back and verify the exact wording used by a particular subject. Therefore, I have largely avoided attributing specific statements to individuals. Third, for a variety of reasons - most related in some way to paperwork - the time available for conducting interviews was compressed. Finally, I believe that I have been unable to fully communicate the complexity of the issues surrounding the accountability of the agencies involved in the provision of child protective services in Knox County. There are many layers of accountability that are inherent in public-private contract

relationships. This study, due to the limitations noted above, was only able to examine a small fraction of the issues involved.

However, despite the limitations of the study, there are several themes regarding accountability that run through the conversations I had with public and private children's services workers. According to Diesing (1971), the existence of themes in the participants' discussion with the researcher allows for a complex, varied picture of the subject, in this case accountability. By connecting these themes, a pattern emerges and provides an explanatory model of accountability in public agency contracting.[3] However, before I focus on those discussions, there is some background information that is essential to understanding the current atmosphere surrounding the Department of Children's Services and its vendors.

It should be noted that I purposely did not read the majority of the negative publicity aimed at the Department of Children's Services until after I completed interviewing subjects for the study. I wanted to avoid coloring my perceptions of the answers given to me by the participants. As a result, the reports of problems outlined by *The Tennessean*, the General Assembly, the Governor's office, and the Child Welfare League of America independently support, to some extent, the interviews conducted by this researcher. More importantly, perhaps, there are a number of positive and negative aspects of accountability in the provision of children's services presented in this study that have not been previously articulated by other sources. Furthermore,

[3] Please refer to Diesing's (1971) discussion of patterns of discovery and the application of holistic research and theory.

the focus on the nature of accountability between public and private sphere provides for new avenues of research, discussion, and change.

WIDELY PUBLICIZED PROBLEMS FACING DCS

The Tennessee Department of Children's Services has been the recipient of a great deal of criticism in recent months. In November of 1998, *The Tennessean* ran a series of articles detailing problems with the state's foster care system.

DCS has been accused of failing to adequately protect and nurture the children in state custody. Critics charge that: 1) there are not enough case managers and attorneys working within the system; 2) children are being placed in homes too far from their families; 3) parental rights are not being severed in a timely fashion; 4) children are not being cleared for adoption; 5) many children are not receiving mandated medical evaluations; 6) DCS administration is more concerned with paperwork than children; and 7) the judiciary is not taking its role as watchdog seriously enough (The Associated Press, 1999; Ferguson, 1998b). Indeed, a number of case workers, child advocates, community agency personnel, and administrators argue that no part of the system is functioning correctly and that federal and state laws are violated on a daily basis. Furthermore, it has been alleged that some children have been left in abusive homes, while others are allowed to languish in temporary shelters without receiving treatment, counseling, or permanency planning.

Additional complaints have been focused on the amount of paperwork required by DCS and an administrative attitude that is geared toward juvenile justice, not social services (Ferguson, 1998b). Case managers say that a high case load, coupled with a high turnover rate among staff, has contributed to the problems encountered by children and families. In *The Tennessean* interviews, case managers admitted to falsifying documents to update files because they are too busy to check on the children. The collective opinion voiced is that case workers are not visiting foster homes on a regular basis and that children are being warehoused, not nurtured (Ferguson, 1998b).

In 1998, the Department of Children's Services and the Department of Health were named in a class-action lawsuit that alleged that the state agencies were failing to provide medical services to children in their care. Following an admission by its central administration that there were indeed problems with the state foster care system, the Department of Children's Services was asked to answer its critics at a hearing before the Tennessee General Assembly. In January of 1999, the state House created a five member task force charged with studying the agency in order to make recommendations for improvement. At the same time, the Department of Children's Services contracted with the Child Welfare League of America [CWLA] for an independent review.

The reports issued by the House task force and the CWLA resulted in the introduction of legislation which was intended to provide greater accountability mechanisms for DCS. First, the legislation would require that the Department of Children's Services submit an annual report to the General Assembly for the next three years. In

that report, DCS would have to provide detailed information about the children in state custody, the case managers that work with them, and the department attorneys assigned to their cases (Ferguson, 1999c). In addition, the legislation would prevent children from spending more than thirty days in a temporary shelter. Finally, the task force recommended that the Department of Children's Services be given more funding to: hire more attorneys, case managers, and supervisors; increase and upgrade residential treatment placements; establish public-private partnerships in each of the twelve regions to encourage special-needs adoptions; and increase reunification services for children and their families (Ferguson, 1999c; De La Cruz, 1999).[4]

In early July of 1999, it was announced that the Department of Children's Services will receive an additional $23.5 million in state and federal funds for the fiscal year 1999-2000 to improve the foster care system. The funding was "slipped in quietly at the end of the session without much fanfare -- [which was] the politically expedient thing to do..." (De La Cruz, 1999). Although state officials viewed the additional funding to DCS as a way to avert future lawsuits, a number of lawmakers wondered aloud how it was determined that foster care received priority in the funding battle.

[4] For more information, including direct quotes from public and community officials, please see the series of articles by Carrie Ferguson, Dorren Klausnitzer, and Bonna de la Cruz in *The Tennesseean*.

ACCOUNTABILITY THEMES IN THE INTERVIEWS

There are a number of issues surrounding accountability, from both a theoretical and a practical perspective, that have been raised in preceding chapters. I will address a number of these topics in this chapter by highlighting some of the patterns that emerged throughout my conversations with public agency and vendor agency personnel. The patterns are interesting in that the thoughts voiced provide both common ground and amazing divergence between the public and private spheres.

To a great extent there is general agreement on the importance of accountability in the social services. However, the various methods of pursuing accountability have created an 'us' against 'them' perspective. The 'state interests' versus 'private interests' dichotomy is also demonstrated in other ways, including the current trend towards running social services like a business.

There are also some themes that bridge the public/private divide. Whatever their differences, the common denominator informing both sides of the discussion is a concern for the children in state custody. There is general agreement that state agencies need to contract with vendors if they are to provide all of the services that are needed by society. In addition, no one would argue that funding for additional services, such as prevention programs, is desperately needed. Finally, both public and private agency personnel agree that there are problems with the system. They also agree that improvements are being made and

the current level of service provision, such as it is, has proved to be much better than the alternative.

Defining Accountability

Defining accountability is always a difficult task. Each person I spoke with defined accountability a little differently. However, each one also had a clear, articulate understanding of their responsibilities as a staff member/administrator, the responsibility of the agency, and the importance of accountability for the public trust [whether the public is defined as taxpayers, society, or the children and families receiving services]. There is a general understanding among both public and private agency personnel that accountability means the 'buck stops here.' As one individual noted, an important aspect of accountability is being able to answer the question of whether you can logically defend your actions. It is important to realize that although there are rules and regulations to be followed and parameters set for behavior, there is still individual judgment involved in any decision.

Furthermore, even if an individual supervisor is unaware of a decision made under the auspices of his/her authority, that supervisor must be willing and able to take responsibility for those actions. Good management practices, in other words, can be equated with accountability. Many believe that agency personnel take on the tone of the administrative staff. Therefore, the better the administration,

the better the agency as a whole. Accountability must be systematically built into the organization. Staff members at both the Knox County regional office of DCS and vendor agencies confirmed that they can and will be held accountable for their actions and decisions.

Each individual interviewed for this study had a different perspective regarding to whom they are accountable. Some felt their responsibilities to the children in custody should determine their primary accountability. Others discussed their accountability to taxpayers, legislators, and the juvenile court system. Some focused on their accountability to the community, while others focused on bureaucratic accountability and the organizational chain of command. Each respondent also felt that their agencies, whether public or private, have some accountability to its partners in service provision.

For many interviewees, accountability also has a great deal to do with individual and organizational ethics, as well as their conscience. Service delivery, whether in a public agency or a private one, should be ethical. Therefore, it is again the responsibility of administrators and supervisors to make sure that staff understand what is and is not ethical behavior. Often, ethical behavior is equated with fair, extensive, and unbiased service provision. However, one individual indicated that there are issues of religion and morality that may be confused with ethical behavior and, upon occasion, affect service provision in East Tennessee. Sometimes staff members must be told that they cannot dress Muslim children in 'Jesus Loves Me' teeshirts, nor can they take a woman's child from her because she likes to dance. In other words, accountability for the quality of care

various agencies provide to children and their families has nothing to do with individual moral or religious standards.

There is also an element of accountability as 'covering one's rear-end' that runs through the majority of the interviews. To a large extent accountability in the Department of Children's Services is equated with paperwork. Several individuals have indicated that, prior to 1996, accountability was not in the language of public children's services organizations in Tennessee. There were no statistical reports to indicate where children were, who was being referred, where money was being spent, and how case workers were utilizing their time. In addition, vendors would bill central offices in Nashville directly and receive payment without any type of verification required. As a solution, a number of mechanisms were built into the system to enforce individual and agency responsibility. From this perspective, paperwork may not necessarily make people more accountable, but it is a 'tried and true method' for achieving a certain level of accountability.

Paperwork as Accountability

The Department of Children's Services has received a great deal of criticism for its "overreliance" on paperwork (Ferguson, 1998b). Using paperwork to approximate accountability is also one of several issues that seem to delineate an 'us' versus 'them' perspective between public agency personnel and vendors. Vendor concerns parallel those of O'Donnell (1992), who argues that paperwork can be misused as a measure

of service delivery. Instead of focusing on the nature of the services provided, paperwork may allow the public [or private] agency to substitute completed reports for quality-based outcomes. Furthermore, it has been argued that the reliance on paperwork can cause both vendors and public agency personnel to lose sight of the needs of the child.

Paperwork, however, seems to be necessary if the public agency is going to effectively monitor its contracts. The literature on public-private contract partnerships suggests that contract monitoring is one area in which public agencies often fail to uphold their responsibility to the public. The Knox County Regional Office of the Tennessee Department of Children's Services has a variety of monitoring mechanisms in place that are intended to guarantee accountability in its vendors.

The Department of Children's Services employs a fairly general purchase of service contract. The contract outlines the services to be provided, notes the laws and regulations to be followed by the vendor, outlines the rules for cancellation of the contract, and dictates that there will be no discrimination in the provision of services. DCS also provides each vendor with a provider manual, which is referenced in the contract. The provider manual is far more specific and covers everything from staffing procedures to education/expertise requirements for personnel and from specific agency regulations to the legal and constitutional rights of children and families. Given that the U.S. Supreme Court has refused to treat private contractors as public entities under the Constitution, the contract used by Tennessee's

Department of Children's Services takes an important step towards public/private accountability by holding its vendors responsible for preserving the rights of its clientele. DCS places its vendors under the constitutional restrictions governing public agency employees.

The Knox County regional office of DCS uses a variety of mechanisms to monitor its contracts.[5] The contracts between DCS and its vendors are audited each year by the Department of Finance and Administration. Finance and Administration personnel compare the vendor's records against DCS records, the contract, and the provider manual. DCS administrators and personnel also scrutinize the vendor's history, disruption rate, refusal and appeal rate, and utilization rate. In addition, vendors must file incident reports. If a 'serious' incident occurs [a child runs away; the building floods], the vendor must file a report immediately and DCS personnel may be dispatched to investigate. For less serious incidents [a child skins her knee], the vendor must file a monthly summary of such occurrences. The Department of Children's Services then examines these monthly reports for patterns that may indicate child abuse or other problems with vendor personnel.

The major criticism articulated about the accountability mechanisms currently in place is that DCS monitoring is tied primarily to money, not to the quality of services provided. One vendor stated that the introduction of paperwork as an accountability mechanism helped their not-for-profit agency increase its own measures of accountability. However, now the vendor agency has moved beyond such a

[5] This regional office contracts out for most primary protective and welfare services. However, CPS investigations are conducted in-house and are solely the responsibility of DCS personnel.

'limited' notion of accountability to include 'quality' in its determination of successful service provision.

In addition, several vendors argue that the majority of paperwork mechanisms in place focus on where and how money is being spent. A number of vendors mentioned the length of stay and utilization rate as examples of how DCS has focused on the process of service provision and not on the substantive quality of care issues. From the vendor's perspective, keeping track of how long children have been enrolled in their programs or counting how many beds are used every night seems unnecessary. The state should be more concerned about whether a child is receiving quality counseling, medical care, and education for as long as s/he needs them.

The belief that money is the most important consideration for the state may be related, in part, to the fact that incidental reports are generated monthly and are often tied to billing. Vendors are not paid until the department verifies that each individual child is indeed living and receiving services in his/her assigned facility. Furthermore, vendors are paid for a full day the day a child enters the program. The day the child exits that placement, the vendor is not paid for any time spent at the facility. The reasoning is simple: it makes billing easy and fair for both the agency and the vendor.

From the perspective of administrators at DCS, the agency cannot afford the perception that taxpayer monies are not being well spent. Of course, the department has to meet its budget and provide documentation for how, when, and where its allocated funds are used. But, the public's perception of the agency is much more important than

the reality...if the public thinks that its money is being wasted, it does not matter how well the department is run.

Department of Children's Services staff members seem to equate accountability with contract monitoring. However, accountability, through the mechanism of monitoring, may be limited by available resources. Several people, both vendors and DCS staff, noted that there are currently not enough DCS and public agency staff members to be in the field, running meetings, doing audits, and answering the phones. Therefore, it is often difficult to monitor vendors and case managers are trying to focus on fifty or sixty cases at a time. This can obviously create problems and limit accountability. One vendor stated that DCS is inept at monitoring, and so the actions of the vendor are generally not challenged. However, that does not seem to be the experience of the majority of vendor personnel interviewed. Rather, most vendors characterize the regional office's monitoring as thorough within the limits that have been set by the reliance on paperwork. Furthermore, if their actions are routinely not challenged by DCS, most vendors attribute that to good service provision and trust between agencies.

Different Understandings of Accountability

Both service vendors and the regional office of DCS struggle with each other's concept of accountability. Accountability is a mutual concern, but the focus seems to be very different depending on which

side of the public/private line one stands on. Fiscal accountability seems to be placed at odds with accountability to the clientele and the community in the minds of vendor personnel. Vendor agencies seem to stress quality services for children, no matter what the cost. Children do not know they are supposed to be 'fixed' within a particular time period. Therefore, whatever time and services are needed should be made available to them. Accountability mechanisms at the majority of vendor facilities include weekly staff training sessions, team meetings, and individualized programs reviews, as well as the development of in-house research and instrumentation to track children, staff members, and incidents in the agencies. All of the aforementioned activities focus on improving the quality of care provided to children within the program.

On the other hand, fiscal accountability is the foundation underlying accountability to clients and the public for regional DCS administration. The Department of Children's Services has a limited budget and it is the agency's responsibility to make sure that its resources are used efficiently, effectively, and wisely. There are so many children in need of assistance that sometimes individual kids are short-changed. However, a choice has to be made between serving a few children or helping as many as possible given the limitations inherent in the system. As one DCS staff member remarked, the Department of Children's Services has to consider the amount of money available to it in relation to the number of children that need to be served. As a result, DCS is not out of the warehousing business.

In addition, there is a reported problem with morale at the Department of Children's Services which affects the accountability of the agency. Both DCS staff and vendors mentioned that public agency personnel have a great deal of stress, large case loads, and enormous turnover.[6] One staff member cited a study done several years ago in which children in state custody were asked, years after, who had been the most influential person in their lives. The answer from the majority of respondents was their case worker. From this individual's perspective, that is no longer likely to be the answer because children will have several caseworkers during their stay in state custody, and will get to know none of them well. Turnover is a major problem. In addition, there is a huge amount of stress for DCS employees. In some part, that is considered part of the cost of developing a new organization. There are new deadlines to learn, larger case loads to carry, more paperwork to complete, and an incredible lack of experienced case workers. One source related to me the story of a long-time case worker who quit because he was spending all of his time doing paperwork and not on his clients. In fact, he had not seen some

[6] The low level of morale at the regional DCS office was unexpected given Kronick's (1993) report comparing public juvenile detention facilities with private institutions. Kronick's study found that public agency personnel had higher levels of morale than did their private counterparts. It seems to me that there are at least two possible explanations for the discrepancy between Kronick's findings and the experiences reported here. First, in Kronick's study, the private agency was running a facility in direct competition with those run by the public agency. In this case, there is a public-private partnership which means that public agency and vendor personnel work together in the provision of services. Second, the supervisory role assumed by DCS may result in lower staff morale. Turnover seems to be much higher at DCS than it is at vendor agencies. Vendor personnel spend more 'quality' time with the children in state custody, while DCS staff members manage fifty or sixty cases at a time. It may be that low morale and high turnover at DCS is a result, in part, of disillusionment on the part of staff.

of his kids in months! Every person interviewed agrees that the majority of DCS staff members truly care about the children in their case loads. However, not being able to provide needed services or to move kids out of the system in a timely fashion is depressing to many case workers. A couple of DCS staff members also pointed out that morale is slowly improving. From their perspective, the rise in the quality of the organization will help morale once the staff have had time to digest how well they have done.

Finally, it should be noted that not all state and vendor staff members are wedded to the concept of accountability. Or, as one of my interviewees so aptly phrased it, not everyone accepts accountability gracefully. Problems with accountability occur at both public and private agencies and are dealt with by the organization. Accountability is often viewed as a major pain, but it is also necessary to provide assurances that the organization is healthy.

Who is Accountable for Service Provision?

Depending on the source of the commentary, either the Department of Children's Services or the service vendors are more or less accountable for service provision. Both public and private agencies state that they are primarily responsible for making sure that quality services are provided in a timely fashion.

Many vendors believe that DCS is the funnel by which children get into the system. After intake, the responsibility for those children

is transferred to the individual vendors. Depending upon the nature of the placement, the vendors provide food, housing, counseling, treatment, education, and various other services. However, when children are taken into state custody, for all intents and purposes the state assumes the legal role of parent. The juvenile court and the Department of Children's Services are empowered to make decisions regarding the children in state care. In the words of one staff member, there is no way that the state could be more responsible for, nor accountable to, these kids. Therefore, DCS retains responsibility for the child even though his/her care is contracted out.

From the vendor's perspective, there should be a line of demarcation between the state and the vendor. Two vendors, in particular, noted that the state contracts out for services because vendors are experts in service provision. The state agency should not, therefore, be an active participant in [or even the director of] service provision. Rather, DCS should assume a more passive role by periodically monitoring and reviewing services. To some extent, the regional office should not determine what programs are provided by a particular vendor.

DCS staff members agree that service vendors have expertise in their program areas. Furthermore, using private vendors has allowed Tennessee to provide a much wider range of services to children, such as wilderness programs, programs for sex offenders, sex victims, and medically fragile children, and therapeutic foster care. The diversity of services means that kids are not pigeonholed in a few limited programs. However, DCS managers agree that the public and legislators

should [and do] hold DCS accountable no matter who is providing the services. Therefore, the Knox County regional office will continue to direct the decision-making process for service provision.

There seems to be a perception at the regional office of DCS that vendor agencies and their personnel are far less concerned about accountability than are public agency employees. The perspective voiced by several DCS staff member is that vendors are less concerned with following through on the contract than they are with getting paid. Given half a chance, service vendors will accept public monies without providing the agreed-upon services. Therefore, DCS personnel must spend time, energy, and resources making sure that the various vendors hold up their ends of the bargain. If the department buys ten beds, it expects to get ten beds. One individual provided the following example: If the regional DCS office contracts for 3650 bed days [ten kids for 365 days] it should expect to receive 3650 bed days from that vendor, not anything less. DCS is not in the business of supporting vendors. DCS is in the business of helping children. If the vendor is unable or unwilling to provide those beds, the contract will have to be amended and another vendor will be found. The administration of the Knox County regional office will not hesitate to pull a contract from a vendor that is not fulfilling the terms of the contract. The bottom line, from the public agency's perspective, is that there are children that must be served. For every bed that goes unused, there is a child who is waiting another day for an appropriate placement.

From the vendor's perspective, the children who need to be served are also the bottom line. From the vendor's perspective, the number of

beds available is the least of their concerns. Many vendors are more concerned that some of the accountability mechanisms in place take away from the children and the provision of services. The more staff time and money spent on paperwork, the less time and effort can be directed towards helping children. Therefore, no matter how good their utilization rate [i.e. how many DCS-purchased beds are filled], they may not be able to provide adequate, let alone quality, services to the children in residence. Furthermore, there are always more children needing placements than there are beds to fill. One vendor noted that demands for services continue to increase and service providers are doing a brisk business.

In addition, several vendors expressed concerns about the rigidity of the DCS contracts and provider manuals. A couple noted that some of the rules and guidelines in the provider manual are not practical, while others charged that DCS regulations may not be in the best interest of the child. DCS rules state that in order to medicate a child, parental or DCS consent must first be obtained. That is not a problem. However, consent must also be obtained prior to any changes in medication. This may be detrimental to the welfare of the child and put the child at risk. Many of the medications that children take can be toxic and the vendor's staff is not authorized to make immediate changes if the child's level approaches toxicity. In such cases, the vendor must choose between protecting the child and violating the contract which creates a 'catch-22' situation. On the one hand, the vendor can choose to continue to medicate the child and risk serious harm or death. On the other hand, the vendor can choose to stop

medication in violation of the contract and risk having the contract pulled and the children reassigned to other placements. As one vendor noted, it is a classic no-win situation. However, on a positive note, the state is currently considering an advisory board to deal with such problems.

According to one public agency source, the problem with accountability is that accountability mechanisms often take away from direct services. The more an agency has to rely on statistics, paperwork, and new technology, it will have to hire more staff, have more in-service training and workshops, and fill out even more paperwork. That is not to say documentation is not essential. However, sometimes new avenues of accountability occur to the detriment of the child.

Partnership Accountability

Depending upon who you talk to, the partnership between the Department of Children's Services and its vendors is either equal or it is not. The question of partnership places, to some extent, the public and private agencies back into an 'us' against 'them' perspective. The somewhat adversarial nature of the partnership between DCS and its vendors is inherent in a buyer-seller relationship. There is always an element of risk involved in contractual agreements. Furthermore, partners in service provision rarely have identical responsibilities.

However, there seems to be the perception among vendors, and some DCS personnel, that the relationship should be fair and equal.

Most vendors argue that the partnership with DCS is not necessarily equal. However, some are more happy with the structure of the relationship than are others. A couple of vendors stated that there is a great deal of interaction that takes place between the Knox County office and their agencies. Discussions on programmatic matters take place on a regular basis, and vendor personnel work closely with DCS case managers, team leaders, team coordinators, and regional administrators. The Knox County office is open to input in a broad sense, and change occurs because of coordinated needs assessment. Another notes that with effort on both sides, a good, open relationship is developing. And it is difficult to work with people and agencies if one is always wondering about their motives. Finally, for some vendors, the relationship with DCS is wonderful when compared with the contracts their agencies have with other Tennessee state agencies. According to one vendor, the burdens placed upon the service provider by agencies, such as the Department of Mental Health and Mental Retardation [MHMR], are enormous. MHMR sets very strict rules, regulations, and standards, as well as requiring licensing and accreditation for its vendors. From this vendor's perspective, less quality work is done because the agency spends all its time, energy, and resources meeting standards and not on kids' needs.

One respondent noted that there is almost a 'Big Brother-like feel' to the paperwork and monitoring employed by the Knox County regional office. However, most vendors would agree, to some extent,

that public agency scrutinization of the contract is a necessary aspect of assuring accountability in service provision. Other vendor personnel argue that vendor agencies have a great deal of responsibility, but no power in the relationship. Again, the primary argument is that vendors provide the majority of services and assume responsibility for the quality of services provided, without much say in the development of those services. Furthermore, a couple of vendors noted that their agencies have developed various programs for children before they were requested or required by DCS. However, those services have still not been 'fully' funded even though DCS has taken advantage of their availability.

On a somewhat less negative note, it is widely agreed that the regional DCS office does grant some agencies a good deal of freedom to implement programs and to monitor themselves. Some agencies have created independent living programs or maternity programs, while others have focused on new approaches to therapy. Furthermore, a couple of vendors noted that the Department of Children's Services rarely feels the need to involve itself in the development or monitoring of their programs. One vendor, however, stated that the partnership between DCS and its vendors would be stronger if there was no favoritism displayed. The perception is that some program vendors are given a great deal of freedom and resources to implement new programs [such as those mentioned above] and others have to produce and implement the programs before additional funding is considered. DCS staff, on the other hand, believe that the partnership is a fairly equal one and that all vendors are treated alike.

From yet another perspective expressed by both DCS staff members and some agency personnel, DCS provides the money so DCS gets to make the rules. At a conceptual level, this type of relationship is not a problem. However, several vendors note that it may cause problems for the individual child who cannot be moved through the system as quickly as the rules dictate. In general, children do not understand that the solution has a time-date stamp attached to it. Many children in state custody are dealing with self-esteem problems, substance abuse, sexual, physical, and emotion abuse, mental and physical disorders, and poor educational status. Depending upon the program the child is placed in, s/he will receive schooling, individual and group therapy, and/or counseling. No matter what the placement, there are no miracle cures...it is going to take some time. The question that is often faced, therefore, is how does one predetermine the amount of time necessary? However, federal standards and state regulations do set time standards that must be met on the average. As a result, some children may slip through the cracks and be discharged before they are ready.

Some of the divergence between DCS and vendor perspectives on the nature of their partnership may be, in part, a result of the creation of the Department of Children's Services. Historically, according to several DCS staff members, vendors 'ruled the roost' so to speak. For years, the terms of the contracts were dictated by the vendors. Now, the contracts are directed by DCS. The needs of the children are the focus of the contract rather than what vendors are willing to accept. At one point in time, vendors could dictate which children they would

accept and which ones they would not. Furthermore, DCS staff note that the Department of Human Services did not generally hold vendors accountable for independent case reviews. DCS, on the other hand, does hold vendors accountable in a variety of different ways. In other words, the rules of the game changed and many vendors may still be adjusting to the reorganization.

There also seems to be a perception among vendor personnel that DCS staff are critical of contracting. From their perspective, private agencies represent a threat to public agency staff. However, for the most part, the DCS staff members that I spoke to are advocates of contracting. They do not necessarily believe that private vendors can do a better job at providing social services. But, they do believe that using private vendors allows the state agency to provide a much wider range of services. The cost of providing some services would be prohibitive for the state. Through contracting, the state can provide a huge number of services, providing the state with versatility and best-case situations. Contracting allows the state to 'buy' experienced, skilled staff. It also removes the financial risk from the public agency because the state is no longer responsible for repairs, hiring, and maintenance. Furthermore, the contract, to some extent, places the liability and outcome on the vendor.

Everyone who provided input for this chapter seems to strongly believe in public-private partnerships. Their belief is that no one has all the answers. Public-private partnerships do not mean that the state agency abdicates its responsibility for programs. Rather, public and private agencies have different strengths, which provides balance

in the provision of social services. In their opinion, public-private partnerships help create a healthy community. Therefore, solutions should be community based. According to both DCS staff members and vendor personnel, everyone, including clergy, businesses, all levels of government, and community organizations, should get involved and work together to solve the problems faced by children, their families, and the community. However, with the exception of additional emphasis on communication and education, no one seems to have figured out the steps needed to improve the quality of services through such partnerships.

The Political Nature of Accountability

Several individuals note that there is a political aspect to accountability and contracting in Tennessee. The state government has multiple contracts in multiple areas, and there is variance across department, county, and regions. As a result, accountability is not evenly enforced across the state and the state administrative and legislative bodies are not always willing to take the political heat necessary to deal with inconsistencies. The poor quality of some social services contracts is often ignored by the central state offices for various reasons. First, individuals with political influence may want the contract to stay where it is. Second, the central office may not like the vendor, but the regional office is supportive. Finally, the agency may be unsure how to terminate the contract or how services will be provided if the contract is terminated.

Children and social services are not big money makers. Children who need social services are always considered someone else's responsibility. As one source stated, 'we need to convince society that it is okay to raises other people's kids.' No one, for example, wants a group home for juvenile boys established in their neighborhood. A number of people remarked that the Department of Children's Services and its vendors often face the NIMBY [Not In My Back Yard] problem. According to several interviewees, there are also only a limited number of people willing to become foster and/or adoptive parents. Money helps, though. One source notes that foster parents are paid quite well. To paraphrase the point made by this particular individual, 'We live in a capitalist society and money provides services and hooks people into getting involved.' However, all agree that without permanence and some basic relationships to build upon, the children in state custody will continue to cycle through the system.

Other than comments on the political nature of the process of accountability, there was a marked lack of references to political accountability. To some extent, from the vendor's perspective, that seems to be the result of confidence both in their relationships with the regional DCS office and in the quality of services their agencies provide. One DCS staff member noted that the agency and its personnel are accountable to the legislature, but there was no more emphasis on political accountability than on accountability to the courts, the public, and the Constitution. It is my impression, for the most part, that the DCS staff I talked with were more focused on bureaucratic accountability than on political accountability. Political

accountability is something with which only the regional administrators, commissioner, and governor need concern themselves.

Change in Focus at DCS?

The general perception by vendor personnel, as well as most DCS staff members, is that the focus of the Department of Children's Services is changing over time. The Department has moved from a social services perspective to a more business-like approach. Some view the change as positive. From their perspective, the Department of Children's Services will be able to better deliver efficient, effective services to a diverse population. Others echo the concerns articulated by Wedel and Colston (1988). The emphasis, in their view, has changed from the quality of services delivered to the quantity of services provided. Several respondents argue that the focus on cheap, easy, and quick service provision decreases the quality of service and care available. Indeed, a couple of people compared the current service

provision model, which is based on a continuum of care, to Wal-Mart©.[7] From their perspective, one-stop shopping is the key to the state's reliance on the continuum of care model. Bigger vendor agencies have the advantage because they can offer more services at a cheaper price. As one vendor noted, unless they have carved out a unique service niche, smaller vendors are unable to be competitive in service provision. As a result, the number of options available to the state and the children in custody are limited.

The impression several individuals have is that the Department of Children's Services has been compelled to provide services more efficiently because of shrinking resources, TennCare, and political pressures. Several years ago, the Tennessee state government articulated a strategy to reduce the number of service providers and they have succeeded. The reliance on fewer service providers means that the state has to spend less money and the social service system has become far more competitive and less rewarding and caring. In fact, one individual at DCS characterized the competition for contract

[7] In the continuum of care model the vendor is responsible for providing all care to the child. In addition, the vendor is responsible for making sure that the child progresses through the system. The care facility gets the child on the front end [as soon as her needs have been assessed] and stays with her throughout her stay in the system, using a step-down approach to community reintegration. Proponents argue that continuum care is a great benefit to the child because it decreases the amount of bouncing around the system and provides stability. The goal of continuum care is to help the child with her problems and to assist the family. Critics argue that the continuum model, which is a managed care approach, allows DCS to engage in cookie cutter care. Children do not understand that all their problems are supposed to be fixed in a set period of time. Their individual problems may take more time to be addressed and that time may not be available to them given the fact that certain deadlines are supposed to be met under federal law and agency regulations.

awards as 'fierce.'[8] The result has been the creation of a 'marketplace,' in which DCS can pick and choose its service delivery vehicles. Larger vendor agencies have a better ability to change with the market, moving more easily into the continuum of care model. Many smaller agencies have been unable to compete, but 'that is not the concern of the public agency.'

In the words of one vendor, the humanity has been taken out of the system. Several vendors expressed the opinion that children are being moved through the system too quickly, they are going back to problem homes before they are ready, and there is a lawsuit just waiting to happen. Although the budget is important, from their perspective, social service provision is about people and relationships. A number of the vendors interviewed believe that the budget process needs to involve a process of dialogue. Public and private agency personnel should describe and discuss the population that they serve so that legislators and the public will understand that people, not just the bottom line, are impacted by spending decisions.

There are a couple of ironies that are present in the discussion surrounding the 'business-like' nature of human services provision. First, without the national emphasis on efficiency in government and the growing focus on managing government as business, there would also be less emphasis on contracting out human services. As a result, many of the not-for-profit agencies that accept public monies for the services they provide would either be: 1) providing those services using other sources of funding; or 2) not in existence. Second, by

[8] Each year, the Department of Children's Services conducts a needs assessment to revise what to purchase during the fiscal year [July 1 - June 30].

limiting the number of providers available for service delivery the state has also probably helped to create some of the problems currently faced by the Department of Children's Services. If there are fewer providers, there are fewer residential facilities available in which children can be placed. The unintended outcome of more efficient service delivery, therefore, is that children entering the system are waiting longer for permanent placements. And the impact of that decision is that the state General Assembly had to allocate $23.5 million in state and federal funds to correct the problem in July of 1999.

Need for Prevention Services

There are approximately 11,000 children in state custody. At least 34% have been sexually abused, 25% have been physically abused, and 20% have experienced domestic violence at home (Ferguson, 1998d). More than half of the children in state custody have mental health problems and over a third have significant behavioral problems. Furthermore, over fifty percent of children in state custody have parents who are or have been in prison and sixty-three percent of parents have substance abuse issues (Ferguson, 1998d).

The number of kids coming into the system has increased greatly. Furthermore, according to a number of people, kids are coming in with more problems, their problems have increased in severity and acuteness, and they have fewer community and family resources at their disposal.

Everyone interviewed believes that the goal of social services should be to keep kids out of custody. Custody does not work for most children. In addition, it costs a great deal of money and takes the child out of the natural family. No one is arguing that children should be left in abusive homes. However, studies demonstrate that children in state custody are more problematic throughout their lives.

The key to keeping children out of custody is prevention. Children and/or their families often have to do a series of bad things before social services begins to address the problem. Several individuals argue persuasively that taxpayers should focus on the kids now, when they're young because otherwise they'll be spending the money on them as adults in the prison system. Unfortunately, there is a critical lack of resources committed to children by the state of Tennessee. Most available resources are spent on situations where the child and family are already in deep trouble.

There is no money available for preventative services. Basic education is the key to improving the lives of children. Right now, social service agencies only have the money to do some intervention and diversion. Real prevention should begin before the child is born. Prevention means reaching parents-to-be who are poor, illiterate, segregated, and powerless. It also means teaching them skills, as well as what services are available from the state and the community. There is a great deal of lip service paid to preventative services. However, both vendors and DCS personnel agree that for every dollar

spent on intervention there is a penny spent on prevention.[9] Furthermore, when there are budget woes, the first items to be cut are prevention services. Good prevention services could cut the DCS case load substantially. A couple of public agency managers stated that they would like to see more early prevention services and case workers working longer periods of time with the families to make sure that problems are ironed out. They would also like to see DCS and its vendors move towards serving all the children in a family and extend the follow up period. If a child is referred to DCS, DCS works only with that child even if there are five more like him at home. Instead, a good prevention strategy would dictate that DCS work with all the kids within the family structure and then allow more follow-up once the family is 'fixed' to make sure that everything is still working smoothly and the problems have not redeveloped.

LOOKING FORWARD TO HIGHER LEVELS OF ACCOUNTABILITY

Both vendors and DCS personnel agree that there are some serious flaws with the current system. There is not enough money to provide serious, in depth services to children and families with special needs. Play programs for medically fragile children, parenting classes for grandparents, peer programs to head off substance abuse and teen pregnancy, and drug screening have all been suggested as prevention and

9 The Department Children's Services in its Finance Presentation actually estimates that the state is spending six custody dollars for every dollar spent on children at risk of custody (Department of Children's Services, 1999b).

intervention services that sorely need funding. Programs are often limited and not individualized because there is only so much money to go around. Both public and private agencies are still working on accountability. However, despite the problems currently plaguing the Department of Children's Services, all of those interviewed agree that life is much better for children in custody since the department was formed. At the very least, children's placements are well-documented. No longer does DCS have *no* record that a child exists. That does not necessarily mean that a case worker visits regularly, but someone knows where the child lives.

Furthermore, the administration of the Knox County region has made meaningful changes in the relationships between vendor and agency, in the services provided to clients, and in the accountability mechanisms needed to protect the public's investment. Every single interviewee said, without exception, that things are much better now than they were under the old system. It seems as though, contrary to Hagedorn's (1995) thesis, that one person *can* make a difference in a public children's services organization. The administration of the Knox County region is widely cited by both its vendors and its staff members as being committed, caring, and in touch with the needs of the children, the state, the vendors, and the taxpayers. Not one of the vendors or public agency staff members would lavish such praise on the Department of Children's Services as a state-wide entity, although compliments were paid to some of the administrators based in Nashville. Despite the complaints about paperwork, unequal partnerships, and the business-like atmosphere surrounding DCS service contracting, no one

seems to blame the regional administration. Rather, they view the problems as part of the system and the positive aspects as fairly unique to the region. It was carefully noted, by vendors and agency staff alike, that the Knox County region continues to improve. Several years ago, to paraphrase one individual, the region was near the bottom of the barrel. Now, according to other staff members, the regional office is pulling ahead in some areas and is at the top in others. Furthermore, all DCS personnel agreed that the Knox County agency is held more accountable to the regional administrator than are other regions.

Again, there is a measure of irony involved in the current criticism of the Department of Children's Services. Three years ago, no one would have known that children's service agencies are struggling because the accountability mechanisms were simply not in place. Although there are numerous ways that DCS can and perhaps should improve its service provision, it has made great strides in a little over three years. The Department: 1) has set standards for the appropriate intake of children; 2) requires extensive documentation of children's placements; 3) has reduced the average number of placements per child from double digits to [approximately] six; 4) places children in the least restrictive, most appropriate placement; and 5) has emphasized thoroughly documented referrals and assessments. Overall, the vendors interviewed agreed that local DCS administration did not necessarily deserve all of the criticism that the Department of Children's Services has received in the last nine months. In fact, most of them believed that the entire system has been unfairly

criticized. Several mentioned that Tennessee's service model is new and fairly unique. As a result, there are still bugs to be worked out of the system. And, despite its problems, it is better than the alternative.

Each of the individuals I conversed with believes that the Department of Children's Services and its vendors are the best kept secret in Knoxville. One person, in particular, paraphrased a quote from the movie, 'A Few Good Men': people sleep better at night because of the services provided by DCS and its vendors. The regional office of DCS and its vendors have held themselves accountable to the citizens of the state, but too many people are not returning the favor. As a result, budgets are cut, services are slashed, and the result is a negative outcome for both the children and the community.

Finally, despite the problems currently plaguing the Department of Children's Services, both vendors and DCS personnel argue that life is much better for children in custody since the department was formed. No matter what is not done for them [in a timely fashion] in state custody, the children cannot be any worse off than they would be in the home. The majority of kids coming into state custody are physically, sexually, and emotionally abused and the vast majority of them come from homes with substance abuse issues. Furthermore, the Department of Children's Services has just implemented [June 1999] the delivery of TN KIDS software. TN KIDS is intended to be a comprehensive system that will "allow the Department to disseminate accurate, appropriate, and timely information to all staff members responsible for service delivery" (Tennessee Department of Children's Services, 1999d). The TN

Kids program will be able to track kids after they leave programs and state custody. Case managers will be able to put a child's name into the computer and if s/he has been in custody, they will know it immediately. And, when kids age out of foster care at eighteen they will have been given the tools, relationships, and skills that will allow them to fit more easily back into the community. Only time will tell if it will work, but it seems to be part of a continuing effort to provide a wider variety of services to Tennessee's children.

CHAPTER VII

CONCLUSION

The goal of this study on child protective services was to address some of the issues of accountability inherent in public-private contract relationships. In particular, this analysis has focused on how the decision to contract out primary services affects the accountability of public agencies. The contractual and organizational responsibilities of a child protective services agency in East Tennessee were examined in an effort to determine how the agency defines and fulfills its obligations to service recipients. Attention was paid to the constitutional, legal, and political responsibilities of the public organization and its vendors, as well as the quality of services provided and the nature of the contractual relationship between state and vendor.

Before I began this study, I had strong views regarding the 'proper' role of government agencies in the provision of social services. In fact, I had a definite bias against the use of private agencies, whether for-profit or not-for-profit, to provide primary protective and welfare services to children and their families. Contracts between government and service vendors seemed acceptable and even appropriate for buying pencils or garbage services or, even, nuclear warheads. However, there seemed to be a fundamental difference between buying paper clips and buying residential placements for

children. In addition, I expected to find a number of problems and issues with accountability that stemmed from the contractual relationship and the perceived differences between public and private, not-for-profit agencies.

DISCUSSION AND IMPLICATIONS

Prior to this research, a great deal had been written about the role and responsibilities of government. However, despite the growth of privatization and the implications for public services, very little attention was paid to the potential for change in government accountability. As noted in the first chapter, the literature on contracting largely focuses on the costs and benefits that government accrues through the transfer of services to the private sector. No one had addressed the question of how the accountability of the public agency is affected. In the same manner, the literature on accountability focuses on holding government agencies accountable for services rendered, money spent, and decisions made. Furthermore, it has been presumed that government agencies should, and will, remain accountable for service provision no matter who actually supplies the service. However, neither collection of literature provides a strong rationale or evidence for that assumption. Therefore, using the experience of the Knox County regional office of the Tennessee Department of Children's Services, I have attempted to answer whether

the responsibilities and accountability of government agencies change as a result of contracting out social services.

Before any determination could be made regarding the current state of children's services in Tennessee, a number of other steps had to be taken. First, because government has never provided all the services requested or required by its citizens, the historic role of the government in the lives of children had to be determined. From that discussion emerged an image of the evolving nature of state, local, and federal government social services. Prior to the early 1920s, the majority of social services were provided by private philanthropic organizations and state and local governments. Since the advent of the New Deal, the federal government has assumed financial responsibility for the development and implementation of child safety and welfare programs. With the adoption of the Personal Responsibility Act of 1995, though, state agencies have seemingly been granted leave to limit their accountability to clients, the public, policy-makers, and federal agencies by contracting out services. Therefore, the question is again raised: What is the nature of accountability when a public-private contractual relationship has been established?

The Supreme Court has clearly placed the issue of contracting out within a states' rights framework. Specifically, the Court has allowed states to: 1) limit their own liability through non-involvement; and 2) determine what services may be contracted. Furthermore, the ability of state agencies to further limit their own liability through contracts has been strengthened through a number of decisions. If a state's legislature and courts were to follow the guidance of the

Supreme Court, state agencies could feasibly divest themselves of all accountability for constitutional protections, as well as service provision. However, if the state so chooses, it can also increase its agencies' accountability by making contractors accountable for the actions that they take under state authority. In order to get a clearer picture of accountability in contracting, the focus of this study turned to child protective services in general, and in the state of Tennessee specifically.

Child maltreatment in the United States is considered to be an epidemic by some analysts. As such, it warrants specialized programs to deal with the affected children. The federal government, all fifty states, and a number of other government entities have attempted to deal with the problem through various child protective and welfare services. There are a number of accountability concerns that have addressed themselves to children's services agencies. Furthermore, many children's advocates seem to assume that only a governmental agency can adequately provide legal, constitutional, organizational, political, and societal accountability for service provision. As a result, minimal attention has been specifically paid in the literature to the growth of contracts, for beds and services, awarded to private agencies. Rather, the focus has been more widely focused on the nature of the purchase of service contract, the problem of monitoring, and the use of paperwork mechanisms to replace quality of services.

The state of Tennessee began to contract for services ostensibly because state agencies were failing to provide adequate care to children in state custody. The Department of Children's Services

contracts for approximately seventy percent of its services. As a result, the role and responsibility of regional offices is largely to supervise and monitor the service contracts. There have been a number of concerns raised about the accountability of DCS and its vendors. Specifically, questions have been raised about the quality of care provided, the protection of individual rights by both agency and vendor staff, and the fiscal accountability of the regional offices. In order to determine the nature of the accountability problems faced by DCS, a series of interviews were conducted with vendor and DCS staff members.

As outlined above, the literature in the fields of privatization, accountability, and social services led me to generate some general expectations regarding quality of services, attention to constitutional rights, and the political and legal accountability of service vendors. In particular, the literature on contracting out child protective and welfare services [or human/social services] indicated that the accountability of service vendors to the public agency, society, program recipients, and politicians is most likely minimal. The general perception seemed to be that it is nearly impossible to hold vendors responsible for unsatisfactory services. Some of the reasons presented for the lack of accountability in contract relationships between public and private agencies include poor contract monitoring, using paperwork as a substitute for more qualitative accountability mechanisms, and the focus on the process not on the outcome of the contract. Furthermore, the Supreme Court has set a precedent that private service vendors are not placed under constitutional restrictions, no matter what types of services they provide.

As I approached the interviews with public agency personnel and vendors, I kept these critiques of contracting firmly in mind. What I discovered is that the Knox County region of the Tennessee Department of Children's Services has taken steps to address some of the aforementioned problems of accountability both within the agency and in contract relations with its vendors.

The Department of Children's Services has made a number of provisions in purchase of service contracts and in the accompanying provider manuals to bind vendors to state and federal laws, as well as agency regulations. Furthermore, the contract specifies that equal protection, due process, and non-discriminatory practices must be followed by the vendor. It is the agency personnel's responsibility to ensure that the vendor knows and follows the laws. Furthermore, the state of Tennessee has created a system by which the Department of Finance and Administration audits the contract and records of each vendor, comparing the results with DCS documentation. It has been charged that the Department of Children's Services does not monitor its own staff regarding the provision of due process, equal treatment, and legal representation for agency clientele. This leads to the question of whether DCS can effectively mandate that vendors follow state and federal laws. Or perhaps, more accurately, can DCS effectively monitor whether a vendor is abiding by those laws?

In the Knox County region, the contract between agency and vendor is closely monitored through on-site observations and a variety of reporting mechanisms. In addition, there has been greater emphasis placed on training both agency and vendor personnel in the protection

of individual rights. For both public and private agencies periodic training workshops are an important accountability mechanism, and continuing education for staff members is meant to ensure that problems are caught and dealt with early.

The Tennessee Commission on Children and Youth has raised a number of questions about whether there is a clear avenue of accountability regarding decisions made about children in state custody. It is the responsibility of DCS [or the vending agency] to make arrangements for the child and to keep the parents informed, if parental custody has not been severed. A number of vendors also work with the family when the child is in state custody. In addition, although DCS personnel may not always be informed about all of the state agencies involved with a particular child, the vendor with whom the child is placed is well aware of all the organizations involved in the child's care. Therefore, in the Knox County region, the agency's vendors are well aware of what to report, when to report it, and to whom it should be reported. Almost every situation that a vendor might face with a child has some type of procedure, request, or report outlined in one of several provider manuals. As a result, however, accountability seems to be equated almost exclusively with monitoring and paperwork.

Given the tone of the literature on the subject, I expected paperwork to be the method that vendors wished to use to ensure their participation and accountability. If the paperwork is done correctly, then the vendor would have fulfilled a large proportion of its contractual obligations to the state without having to worry about the quality of services provided. Instead, it seems as though the state is

far more concerned with the use of paperwork in an effort to document that taxpayer money is being spent efficiently. Although the regional office of DCS has a variety of methods to ensure accountability, it seems to come down to who has filed what reports and when. The reliance on paperwork may have both positive and negative implications. Filing the appropriate paperwork does not let the vendor agency off the hook for service outcomes.

The Knox County region of DCS places the responsibility for the child's placement outcome squarely on the contracting vendor's shoulders. If there are problems and the child does not do well, the vendor is not compensated. The emphasis, to some extent, is on the final 'product' not on the process. However, often a 'positive' or 'satisfactory' outcome is judged by how well and how soon a child passes certain benchmarks or milestones. As a result, quality of services may be affected by both the vendor's and the agency's need to meet certain predetermined timelines. At the same time, the regional office of DCS does not abdicate its responsibility to the children in its care. From the perspective of state employees, if a child is placed in state custody then the child's needs must be met by DCS, through the use of service vendors.

Contracting seems to offer the potential for new, innovative services. The agency can step beyond the box, so to speak, and allow the contractors who are properly monitored to provide better, more aggressive services. That is, if the agency can be flexible enough in its rules and regulations to allow both itself and its vendors a measure of freedom. Many vendors, in fact, argue that the Department

of Children's Services needs to let go of the controls just a bit. On the other hand, DCS has also been criticized recently for not providing appropriate services to children in state custody. As a result, it seems to be highly unlikely that the development of new services will occur until the public, public officials, and politicians believe that DCS has cleaned up its act.

Finally, one service vendor articulated the point that may make a difference in the contracting relationships described in this study. A number of agencies that provide contract services to the Department of Children's Services in Knox County have a much longer, more involved history than does the state in child welfare and protective services. In fact, some of these agencies are over one hundred years old. These agencies provided care to children long before the state or federal government became involved in the process. As a result, these vendors have a long-standing commitment to both the children and to the community. Furthermore, as community-based organizations that have been serving the state's children for decades, some of the vendor agencies consider themselves public organizations: Public not simply because of the receipt of public monies, but also because of the ties to the community. From this perspective, contracting out services to private not-for-profit agencies does not qualify as privatization. Privatization is what would happen if social services were assumed by insurance companies. And, to paraphrase my source, that would be a very bad thing. This particular observation was made in response to

questions about negative national publicity surrounding private nursing homes and privatized mental health facilities.[1]

AVENUES FOR FUTURE RESEARCH

One of the potential weaknesses of this study is that it has limited applicability and generalizability. However, it does provide a foundation for further research into accountability and contracting, particularly in the field of child welfare and protective services. In addition, this study has provided a glimpse of the perspectives of those intimately involved in the contractual relationship between the state of Tennessee and its service vendors and, I believe, brought some issues to light. There are also some areas in which further research should be done.

First, to what degree does the political atmosphere of the contract degrade the services? This issue was raised in the research, but I was unable to answer it within the structure of this study. The political nature of contracting operates at a different level of the organization. Therefore, some attention should be paid to the impact of political forces on awarding contracts and monitoring the process, as well as the implications of poor service provision resulting from grants of political favors.

[1] Participants were asked if the recent bad publicity on televeision programs, such as Dateline and 60 Minutes, had affected their contract relationship with the state. In the past year, there have been several programs that addressed the lack of accountability and gross negligence of some private human service providers.

Second, contracting out for government services is not a new practice. Government in the United States, at any level, has never provided all services needed by it citizens. However, with the increasing use of government contracts, there are two questions that seem to emerge. First, will government [through service contracts] become a service delivery system thereby becoming the primary vehicle by which citizens receive services. Second, will the notion of the state and sovereignty change if the role of government changes?

In addition, there are issues of procedural versus substantive quality to be addressed. The focus on quality leads to wider questions of accountability. In particular, how difficult is it to amalgamate the qualitative notions of accountability with more quantitative notions of accountability? Are there other avenues by which accountability can be documented, besides paperwork and micro-managing service contracts? These questions would best be answered by comparing the voices and viewpoints of children and their families with those of agency and vendor staff [if possible].

No matter how far the regional or state entities of the Department of Children's Services have yet to travel, it may be hard to get past a procedural definition of service quality. It has been asked, and not answered, if as the *guardian ad litem* or the *parens patriae* of the child, does the state have a duty to provide more than room, board, and various health and education services to the children in its custody. The public and politicians in the state of Tennessee will need to ask themselves what services the state wants and what services the state is willing to pay for. Despite lengthy waits in temporary placements and

an overloaded system, children entering state custody are being served. Children are getting appropriate treatments and placements. They are being placed in foster care. Children are being adopted. And, children are being reunited with their families when and where appropriate. And, to be frank, if the children in state custody *are* being warehoused they are most likely better off than they were before entering the system. That does not excuse the shortcomings of the Department of Children's Services, nor should it encourage less focus on changing the system. However, some of the problems with the Department of Children's Services have resulted not because the Department is inept but because children do not have political power and many voters and politicians apparently do not value social services.

Finally, I would like to emphasize, once again, that the focus upon accountability in public agency contracting provides new and varied avenues of research. This study simply provides the basis for future studies. The issues highlighted in this investigation impact all public agencies, as well as the state and local governments that fund them. The problems, as well as the benefits, of contracting have been influenced by cultural norms and standards, political maneuvering, organizational cultures, and the nature and state of the U.S. economy. Furthermore, Congress, the Supreme Court, and the federal bureaucracy have involved themselves, to varying degrees, in defining the role that states and public agencies will assume in the contracting process. Again, this study is the beginning of a process of research and further investigation will be necessary to better understand the implications

contracting out primary social services has for the public organization, the public good, and the public trust.

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APPENDICES

APPENDIX A

CASES CITED

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APPENDIX B

[SAMPLE] INFORMED CONSENT STATEMENT

Accountability in Public Agency Contracting: The Case of Child Protective Services in East Tennessee

INTRODUCTION

Participants are invited to participate in a research study designed to address questions of accountability. The purpose of this study is to attempt to determine how public agencies define their obligations to service recipients in the contracting out process. More specifically, this study will focus on whether public organizations are able to fulfill their constitutional, legal, and political mandates and if, in the area of child welfare and protective services, the quality of service delivery also figures into the question of accountability.

PARTICIPANTS' INVOLVEMENT IN THE STUDY

Subjects for this study will be asked to participate in one-on-one interviews with the researcher, Christine Ludowise. The amount of time required of each participant per session is one (1) hour, and it is anticipated that participants will be interviewed twice. Therefore, the total possible time commitment on your part will be two (2) hours.

With your permission, hand-written notes will be taken by the researcher during the interview. Subjects will not be identified in any way in the notes. Your statements will remain anonymous and confidential, and the data from this study will be used solely by the researcher, Christine Ludowise.

RISKS

The risk faced by research participants in this study is minimal. Much of the information that will be included in this study is a matter of public record. In order to protect the privacy, confidentiality, and anonymity of the participants, the interviewer: 1) will not refer directly to participants in the study [i.e. participant responses will be described generally and credited to 'one respondent' or 'one subject']; 2) will not use job descriptions or titles that may identify the participant; and 3) will assign fictitious names to the private contract agencies, if a designation is necessary.

BENEFITS

This research has several potential benefits both to the privatization literature, in general, and to the children and public agencies in the state of Tennessee, in particular. First of all, this research will

add to the literature on contracting out. This study addresses a neglected subsection of that literature on bureaucratic accountability. Second, this study will explore the qualitative component of accountability by focusing on whether public agencies are able to create progressive service programs in conjunction with private service providers. Finally, the discussion and analysis of this research will focus attention on an important policy issue. As a result, it may provide aid to a growing number of state and local governments that are experimenting with contracting public services.

CONFIDENTIALITY

The information in the study records will be kept confidential. Data will be stored securely and will be made available only to persons conducting the study unless participants specifically give permission in writing to do otherwise. No reference will be made in oral or written reports which could link participants to the study.

Your informed consent statement will be stored securely at a University of Tennessee facility for three years following the conclusion of this study.

CONTACT INFORMATION

If you have questions at any time about the study or the procedures (or you experience adverse effects as a result of participating in this study), you may contact the researcher, Christine Ludowise, at 1001 McClung Tower at The University of Tennessee, and (423) 974-4470. If you have questions about your rights as a participant, contact the Compliance Section of the Office of Research at (423) 974-3466.

PARTICIPATION

Your participation in this study is voluntary; you may decline to participate without penalty. If you decide to participate, you may withdraw from the study at any time without penalty and without loss of benefits to which you are otherwise entitled. If you withdraw from the study before data collection is completed your data will be returned to you or destroyed.

CONSENT

I have read the above information. I have received a copy of this form. I agree to participate in this study.

Participant's signature _____Date _____

Investigator's signature _____ Date _____

VITA

Christine Ludowise was born in Manitowoc, Wisconsin on November 12, 1968. She attended schools in the public system of Cambridge, Ohio, the Guernsey County Public School System, until completion of the fourth grade. She moved with her family to Powell, Wyoming, in October of 1979, where she completed her schooling in the Park County Public School System. She graduated from Powell High School in 1987. She entered The College of Wooster, Wooster, Ohio, in August of 1987 where in May, 1991 she received the Bachelor of Arts in Political Science. From August, 1991 until August of 1995, she worked in the private sector and took courses at both The University of Akron, Akron, Ohio, and The University of Montana, Missoula, Montana. In August of 1995, she entered The University of Tennessee to pursue the Doctorate of Philosophy in Political Science. During her time at UT she also taught introductory political science courses for undergraduates. She defended her dissertation in July of 1999, and the doctoral degree was conferred December, 1999.

She is currently an assistant professor of Political Science at Georgia Southern University in Statesboro, Georgia.