

## THE CRITICS OF CURRENT CHILD ABUSE LAWS AND THE CHILD PROTECTIVE SYSTEM: A SURVEY OF THE LEADING LITERATURE

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*The author discusses the writings of several of the leading critics, both scholarly and popular, of the American child protective system in charge of enforcing child abuse laws against parents. The common thread running through all their writings and motivating their critical stance is that the system massively, without legitimate grounds, intervenes into innocent families. The vagueness of what child maltreatment is under the laws and the ease of making reports under them is what has stimulated this. The writers surveyed point to different solutions for this overreaching of the child protective system.*

### Introduction

The problem of child abuse<sup>1</sup> has received a great deal of attention in the United States since the 1970's. It has gotten much scholarly and professional attention, especially in the areas of psychology, counseling, sociology, social work, criminal justice, and law. It has been a main policy preoccupation of legislators and executive decisionmakers. It has been a major topic, in one context or another, in the mass media and a slew of popular publications. It is not an exaggeration to say that it has been a widely-held view in the U.S. that child abuse exists in epidemic proportions.

By way of a very brief history, the modern anti-child abuse movement began in the early 1960's when a small group of physicians, following from their own experience in treating children and occasional sensational stories in the press and popular publications, developed the notion that the only way to deal with abuse—most of which they said was hidden from the public in secretly abusive families—was to pass mandatory reporting laws, requiring certain categories of professionals to report to authorities suspected abuse. They convinced the U.S. Children's Bureau to draft a model statute, which within only a few years all states had enacted. It required only physicians to report and covered only cases of serious and non-accidental injuries. Then, in 1974, under the leadership of then Senator Walter F. Mondale of Minnesota, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA, also called the "Mondale Act"). CAPTA inaugurated our

current national policy on combating child abuse and neglect and shaped almost all later legislation in the individual states by making available to them funds for research and training if they passed laws establishing the following: blanket immunity from prosecution and civil suit for persons making reports (i.e., whether true or not); mandatory reporting by certain professionals of both known and suspected cases of abuse and neglect, including physical abuse, sexual abuse, physical neglect, and psychological and emotional maltreatment (without ever defining the meaning of those terms); immediate investigation of all reports; institutional and other facilities to not just investigate but also provide programs and services to deal with abuse (usually, these were lodged in state and county public social service agencies and what has been called the “child protective system” [“cps”] was born—the individual agencies went by different names in different states but generically are called “child protective agencies” [“cpa’s”]). The operatives of the cpa’s also were afforded immunity from prosecution and civil suit for their actions in investigations. In many areas, hotlines were set up to encourage people to report, and an anonymous report was all that was necessary to begin an investigation of a family.

When the early reporting laws were put in place, there were 150,000 reports of abuse nationwide. A couple of years before CAPTA, there were 610,000. Within ten years of CAPTA’s enactment, there were 1.5 million. In another seven years (1991), there were 2.7 million. Within a little less than twenty years after its passage (1993), there were 2.9 million and by 1997 three million. This was an increase of over 1800% in thirty years.<sup>2</sup> Anecdotal accounts of outrageous applications of the laws against parents and tragic accounts of children removed from their families on flimsy pretext multiplied, being brought to light by some journalists and certain scholarly and popular writers, and data compiled by the U.S. Government—as is also required by CAPTA—revealed that a startlingly large number of these reports were unfounded. This was so even while the media and cps defenders frequently confused the number of reports with the number of cases of actual abuse. So, more intensive analysis and criticisms of the cps and our regimen of child abuse laws appeared—although mostly they did not receive the attention of either the mainstream media or the pertinent parts of the professional and academic world.

We examine the issue of false child abuse allegations and the problems of the cps in this paper by doing a review of what by almost any account would have to be considered the leading critical literature. The writers to be discussed are both scholarly and popular. All have been included here because they have written a book or more than one

significant and substantial article on the subject, or devoted a part of a larger book on family questions to this issue or at least produced a noteworthy article and had a high profile for their professional activity in this area. We present the main points in the writing of each of the eleven critics discussed, try to draw some comparisons among them, and then identify common themes, problems, and facts brought out in their different writings.

*Douglas J. Besharov*

Douglas J. Besharov, Resident Scholar at the American Enterprise Institute in Washington, D.C., University of Maryland professor, and lawyer, is clearly the foremost name among the critical writers about the American cps. His critical writing, which has been substantial, dates at least from the mid-1980's. Ironically, Besharov was one of the experts who helped shape the current cps and served as first Director of the U.S. National Center on Child Abuse and Neglect, which was set up by CAPTA.

Although Besharov has become a consistent critic on many leading issues, he does not oppose the existence of the current system of specialized governmental child protective agencies (cpa's) with a therapeutic focus instead of an outright coercive one. He believes that the current system (the "basic infrastructure of laws and agencies" largely spawned by CAPTA) has saved thousands of children from death or serious injury,<sup>3</sup> and he does not want to fundamentally change it. The main focus of his criticism has been the tendency of the cps, as structured, to encourage massive over-reporting of abuse. This has been caused primarily by the vagueness of the laws and, secondarily, by a lack of consensus among professionals and cps personnel about what the terms "abuse" and "neglect" mean. The other problems he identifies are mostly consequences of over-reporting (i.e., reports of possible abuse made either by mandated reporters or the general public to cpa's). He says that, while some over-reporting is to be expected, the level "is unreasonably high,<sup>4</sup>: there is a "flood of unfounded reports."<sup>5</sup> He has a very good command of the range of data on incidence of child abuse around the country, citing various major studies. In his writing, he consistently states that close to two-thirds of reports are unsubstantiated or unfounded<sup>6</sup> (which, he reminds us, does not necessarily mean there was no abuse, but there is simply no proof of it<sup>7</sup>; for all practical purposes, however, in these cases we have to say that very likely no abuse—in any true sense of the word—occurred). He says that all the data indicates that the rate of substantiated reports has definitely

declined, even while the total number of reports keeps increasing.<sup>8</sup> Even the one-third figure of substantiated reports may be an overestimate, since many states—the raw data is compiled by state cps’s—do not separate out duplicate reports on the same child involving the same alleged incidents or conditions.<sup>9</sup> Thus, the one-third substantiation rate—which is very unimpressive in the first place—may be even lower. The number of children nationwide whom *unfounded* reports were made about in one representative year, 1997, is staggering: 2,046,000.<sup>10</sup> Even among substantiated cases, the number of cases of *serious* maltreatment of children (e.g., involving death, life-threatening situations, or serious injury) is small<sup>11</sup>; most “substantiated” cases involve “minor situations, “ such as slapping and poor housekeeping.<sup>12</sup> As far as sexual abuse cases are concerned, only a small percentage (6%) “were considered serious”<sup>13</sup>; the rest presumably involved something on the order of inappropriate touching, fondling, etc. Besharov is careful in his examination of data because he is aware of how unreliable statistics about child abuse have been.<sup>14</sup> It is clear that he makes his assertions only after considering multiple sources of data and studies that have been conducted over many years.

It is interesting that Besharov does not make a substantial legal critique of the child abuse laws that he indicates are vague and overbroad, except to note that courts have refused to find them unconstitutional for that reason<sup>15</sup> (thereby refusing to apply the overbreadth and vagueness analysis that is customary in other areas of constitutional law). He explains that it was not accidental that the laws are so vague about what parental behaviors are abusive or neglectful. The experts who pushed for CAPTA and its state legislative progeny sought laws that would be open-ended so as to supposedly make it easier to prevent child abuse. They sought “unrestricted preventive jurisdiction” to supposedly stop any possible child abuse. They shaped laws that, in effect, would enable agencies and courts not only to track down abusers, but to identify *potentially* abusive parents and to predict whether parents would become abusive toward their children. Besharov says that this is “unrealistic,” and no social worker, judge, psychologist, or clinician can predict with certainty that someone will become an abuser.<sup>16</sup> This background makes understandable the argument, made by other critics below, that the cps believes, essentially, that all parents are potential abusers. He makes a revealing point that the cps over the years has supported vague laws because more reports has meant that it receives more funds and that the social services it offers or supports can be gotten to more people.<sup>17</sup>

The open-ended laws gave cpa's no clear standards and social workers—who along with other pertinent professionals are not themselves often clear about what “abuse” and “neglect” are<sup>18</sup>—have intervened in excess. They have been further stimulated to do this by the fact that the laws and court decisions held them civilly liable or even criminally culpable for failure to intervene if a child would subsequently be harmed or killed.<sup>19</sup>

Besharov argues that few of the unfounded reports are made maliciously; most are simply due to this confusion in the minds of both experts and public about what abuse and neglect really are.<sup>20</sup>

The consequences of over-reporting and the vague and overbroad laws that spawned it have been excessive state intrusion into the family, widespread violation of parental rights, and accompanying turmoil that a family is thrown into.<sup>21</sup> In Besharov's estimation, the over-reporting also has seriously hampered the effort to combat actual abuse. This is because the cps has to deal with so many complaints that are false or deal with insignificant matters that it is often diverted from coming to the aid of children who are truly threatened.<sup>22</sup> He provides disturbing statistics about the number of children found dead from abuse and whose problems were known about by the cps.<sup>23</sup> A further complication of this is that people who know about genuine abuse cases are often reluctant to report them because they figure that the cps's response will simply not be adequate.<sup>24</sup> Children are also threatened when they are wrongly removed by the cps from their homes and placed into foster care, which can permanently damage parent-child bonds and leave the child with severe emotional, psychological, and behavioral problems.<sup>25</sup>

In his more recent writing, Besharov has made an argument that has echoed some other writers<sup>26</sup> that some alleged abuse cases—actually, “a substantial portion”—“involve situations that are more properly symptoms of poverty” and so should be addressed outside the cps.<sup>27</sup> For cpa's to try to address these cases “misdirects” them “from their proper mission” and is a further drain on their resources.<sup>28</sup>

In light of the above analysis, Besharov makes a number of policy change proposals: child abuse laws need to spell out more clearly what are forbidden behaviors and what harms are being sought to be prevented in children; the laws should authorize cpa intervention only when parents have already engaged in truly abusive or neglectful behavior, not according to some presumption of potential or possible future maltreatment; there needs to be better education of both the public and professionals about what should and should not be reported; better screening of reports is necessary (this is now required by recent amendments to CAPTA, although it is not clear that the states have so

far sufficiently implemented this mandate); cps's should communicate back to reporters to let them know if their suspicion of abuse was merited; the liability provisions of laws should be changed so as not to encourage over-reporting by required reporters for fear of legal retaliation; formal agency policies about reporting should be adopted; poverty cases should be removed from the cps; and foster care should be used more sparingly (basically only in cases where protective custody is needed against an immediate serious danger to a child or where irreparable injury is likely due to "cumulatively harmful situations").<sup>29</sup> Finally, interestingly, in his later writing Besharov sounds a hopeful note that recent legal changes indicate that over-reporting is finally being addressed.<sup>30</sup>

### *Mary Pride*

Although known primarily as an author about home schooling, Mary Pride's 1986 book *The Child Abuse Industry*<sup>31</sup> was one of the earliest and most far-reaching major critical writings about the cps. Mrs. Pride's critique focuses on several major areas: case histories of false abuse allegations, which show how outrageous the cps often is; the unreliable and, in fact, substantially inflated statistics about the true level of abuse (she calls them "marshmallow statistics"<sup>32</sup>); the views the cps typically subscribes to about children, which shapes its investigative practices, and about the problem of abuse generally (its ruling "doctrines"); an alleged anti-parent ethos in the cps (which holds that "[e]very parent is suspect"); the vague abuse laws that have led to massive over-intervention into the family; the scandalous foster care system; proposed totalitarian-like schemes for the future prescinding from current child abuse policy; and her suggestions for policy change and about how citizens can thwart the illicit overreach of the cps ("the child abuse industry").

Mrs. Pride gives some outrageous, but unfortunately common enough, accounts of false reports and cps investigations. She tells of a child being taken away from a family because her short size indicated "failure to thrive," even though people were generally short in her family; of a boy taken into cps custody because his slight injuries sustained playing baseball indicated abuse; of a girl unjustifiably taken from her parents and put into a cps facility where other children roughed her up; of a little girl taken away from her family because someone saw her opening her father's shirt buttons while sitting on his lap (apparently that indicated sexual abuse, or something like that); and numerous other episodes. Like some other writers, she discusses the child behaviors and

characteristics that the cps claims indicate abuse or neglect (many are ridiculously contradictory and hardly what most people would consider in these categories): a “neglected appearance on one hand or “overneatness” on the other; scolding or spanking on the one hand or permissiveness on the other; a parent raising his voice in anger on the one hand or failing to show emotion on the other; shyness or withdrawn behavior; a child whose parents are “critical” (which Mrs. Pride says means essentially that they correct or punish him), etc.

On statistics, Mrs. Pride makes the point that there is often confusion between a report of abuse and actual abuse and that many reported statistics are only estimates (or “somebody’s *guess*”<sup>33</sup>). The only reliable statistics, she says, are from the National Center on Child Abuse and Neglect of the federal government. She makes a number of interesting points: the number of sexual assaults of female minors is grossly over-inflated (one source’s estimates would mean that over 200% of girls will be raped by age 18); extrapolating from the typical claim that those who are abused will inevitably grow up to abuse their own children means that the number of current child abusers is double the population of the U.S. and Canada; the numbers of missing children—said to be an epidemic problem across the country—were in the mid-1980’s at most several thousand (mostly taken by non-custodial parents or runaways), not the millions many claimed; and the numbers of child deaths due to abuse by parents or guardians (counting live-in boyfriends, a situation that is more likely to result in abuse) is 1% of the total child deaths each year.<sup>34</sup>

Mrs. Pride says that the cps typically lives by certain “doctrines”: 1) underreporting—the one which we hear perhaps the most about in the media—which holds either that there is much more abuse than is being reported or that people fail to report much abuse that is occurring; 2) underinvestigation—that agencies do not have the time or resources to check out all the reports they receive (so they always need more funds); 3) the “blame-the-parents” doctrine—that “parents are always to blame for everything that happens to their children, even if it occurs without their consent”; 4) “the immaculate confession,”—that children—no matter what their age—simply do not lie or falsify, especially when it comes to their being abused regardless of how fantastic their story (there are two corollaries to this doctrine, whose contradictoriness to the basic doctrine seems lost on cps operatives: that if a child denies under questioning that he was ever abused or makes an accusation and later recants it he is not to be believed, and the “child sexual abuse accommodation syndrome” that holds that sexually abused children contradict themselves, cover up the abuse, show no emotion

after the abuse, and wait a long time to come forth); and 5) total depravity—that *every* family is abusive and so, in some sense, is deprived.<sup>35</sup> The latter, of course, helps explain why the cps views all parents suspiciously and why—so contrary to the tradition of American law—it presumes parental guilt from the outset of a case<sup>36</sup> and fails to accord parents many of the constitutional rights that people accused of crimes have (child abuse is mostly not considered a crime, but is in a category of law that is half criminal and half civil).<sup>37</sup> All this illustrates the anti-parent bias that Mrs. Pride speaks of.

Like Besharov, Mrs. Pride makes the point that abuse and neglect are undefined by the laws, so it has come to mean anything that social workers, children’s advocates, and experts of various stripes want it to mean (including such things as scolding, withholding TV privileges, and failing to provide sympathy and support). She paints a picture of almost complete legal arbitrariness, which accounts for the overwhelming amount of state intervention into the family.<sup>38</sup>

Mrs. Pride’s indictment of foster care is possibly even harsher than Besharov’s. Besides the emotional harm to children in foster care, she talks about the high rates of physical and sexual abuse and the strong tendency of children who have spent a lot of time in foster care to abuse their own children some day.<sup>39</sup>

She further tells us that some in the “child abuse industry” (the latter term encompasses social workers and other cps operatives, government bureaucrats, assorted child-rearing and family violence experts, child advocates and other activists, et al.) have come forth with far-reaching proposals for the future that would have the effect of utterly regimenting the American family and keeping it even more closely under the watchful eye of the state. These include the forced registration of each child at birth in a state-run “health care home” (which would provide forced psychological testing and reproductive services when children reach teenage years, forced sex and values clarification education, forced genetic screening of teens and seizure of their babies if they are considered high risk). Indeed, some versions of these ideas are being discussed in America today. Another scheme she points to is the regular, mandatory monitoring of all American households with children, with frequent social worker visits, and permitting only persons licensed by the state to become parents. (It should be noted that less than ten years after Mrs. Pride’s book appeared, University of Wisconsin professor Jack C. Westman published *Licensing Parents: Can We Prevent Child Abuse and Neglect?*<sup>40</sup> to strongly propose the latter.)

As far as battling against the cps and changing public policy to rectify the conditions she points to, among the things Mrs. Pride calls for

are the following: citizens must simply refuse to report anyone on an anonymous hotline; parents should stay in close contact with family and friends to form a united front against the cps if anyone is threatened; organize parental support groups to counter the “experts” who want to dictate child-rearing practices; avoid supporting hospitals and universities that buy into the thinking of the child abuse industry; avoid becoming a foster parent, since there are too many cases of spurious abuse allegations by foster children who know how to “work the system” (for that matter, she says—calling us back to an earlier era of sound communities of people looking out after each other, instead of mass culture—that foster care should simply be eliminated in preference to “clan care” where a needy child is taken care of by relatives or friends); sensible, solid definitions of “abuse” and “neglect” in law (she even gives a draft of a statute); affording parents accused of or investigated for abuse to have the full range of due process and other constitutional rights; further legal changes to ban anonymous reports, forbid removal of children from their homes except when they face “demonstrable life-threatening harm,” and to make cps operatives liable for wrongful removals instead of just for failing to remove; and a recognition that the causes of true abuse are anti-child attitudes spawned by such contemporary moral aberrations as abortion, pornography, sexual infidelity, and no-fault divorce.<sup>41</sup>

Mrs. Pride’s book lacks the sophistication and scholarly tone of Besharov’s writing (whom she quotes in different places) and she does not have his insight into the subtler forms of professional attitudes and motivations that helped shape and sustain the cps. Still, she is adept at putting the problem of false child abuse allegations into a larger picture of deteriorating social and moral conditions. Her “take-no-prisoners” bluntness is also refreshing, even if her claims about the attitudes and motives of those peopling the “child abuse industry” are somewhat sweeping and overstated. Unlike Besharov, she rejects the cps and, while proposing a model abuse statute, seems to favor child abuse being dealt with by more general criminal laws (which is what was historically the case).

### ***Brenda Scott***

Brenda Scott’s *Out of Control: Who’s Watching Our Child Protection Agencies*<sup>42</sup> was probably the second book-length critique on the cps in a non-scholarly vein, a kind of updating of Mary Pride’s work. She does not write a comprehensive work on the subject of false abuse allegations, but hits many major themes: accounts of outrageous

applications of the abuse laws<sup>43</sup>; the highly problematical statistics on abuse; the fact that a minority of the reports are “substantiated (she says about 40%),” and even a majority of these involve minor matters (such as excessive corporal punishment (“which to many social workers means any spanking”), minor physical neglect, educational neglect, or emotional maltreatment<sup>44</sup>; the open-ended definitions of “abuse” and “neglect” in the laws and the thinking of the cps;<sup>45</sup> the fact that legal immunity for reporters is a significant factor in encouraging false reports<sup>46</sup>; how federal funding arrangements supporting foster care, as opposed to in-home treatment, perhaps stimulate removing children from their homes; how the tendency to assign certain prosecutors in some places to focus just on child abuse cases and the availability of substantial government funding for therapists creates an incentive to try to find more abuse even if it isn’t there<sup>47</sup>; how few cps workers have any children of their own (which she says is “the primary qualification for dealing with families”), and do not even have requisite educational qualifications, and how they—she perhaps is guilty of overstatement here—are arrogant and overbearing in dealing with parents<sup>48</sup>; how the amount of sexual abuse is falsely inflated because of the preposterous inclusion in it sometimes of such actions as hugging too much or kissing a child on the lips, the substantial number of false allegations in child custody cases, the excessively suggestive interrogation techniques used on children to get them to falsely accuse their parents, permitting child abuse charges to be sustained even in the absence of physical evidence, and just because statistics are flung around with no basis for them<sup>49</sup>; the outrageous use—sometimes coercively—of penile plethysmography (i.e., seeing if erectile arousal occurs in a man when exposed to pornography in a controlled setting) to supposedly detect sexual abusers (she insists that this practice itself is sexual abuse)<sup>50</sup>; the stunning arbitrariness of cps social workers, which includes not only making their own determinations about what constitutes abuse but the routine promotion of personal agendas, picking therapists who will give them the answers they want, and lying to build their cases<sup>51</sup>; the serious problems of foster care—“the foster care nightmare,” she calls it—about which she presents disturbing information such as a 63% increase of children in foster care from the mid-1980’s to the mid-1990’s, 750,000 children just caught in the foster care system, and the fact that children are ten times more likely to be abused in foster care than in their own homes<sup>52</sup>; the suggestive interrogation techniques and sham therapy approaches used by the cps to get children to accuse parents of abuse<sup>53</sup>; the arbitrary manner in which people have their names placed in a state’s central child abuse registry, even if never proven to have done anything,

and the consequences people face from it<sup>54</sup>; such routine practices of the cps as presuming guilt, failing to afford due process, illegal searches of families' homes by social workers, hiding behind confidentiality laws (that are supposed to protect accused families), the trust placed in anonymous complainants whose reliability is never established, withholding of evidence, the effective use of self-incrimination when parents—often forcibly—are sent to therapists who then get them to essentially accuse themselves (on a number of these points, by the way, Mrs. Scott cites the findings of a now-famous San Diego grand jury investigation of the local cpa in the early 1990's)<sup>55</sup>; the use of the much discredited “recovered memory” therapy where children are enabled to recall supposedly sublimated memories of abuse that occurred long ago;<sup>56</sup> and new programs that feature sweeping unprecedented intervention into families, such as one in Denver that requires every first-grader in the schools to be interviewed by a social worker and one in New York State to evaluate the fitness of newly delivered mothers and follow-up home visits for those whom hospital evaluators have deemed “at risk”<sup>57</sup>; and the dangers posed by the UN Covenant on the Rights of the Child,<sup>58</sup> which the U.S. (because of concerns about the threat to the family posed by some of its provisions) still has not ratified.

Finally, like Mrs. Pride, Mrs. Scott proposes a series of changes to federal law that are necessary to stop the systemic abuses in the cps. These include stressing family preservation, reducing funding for special child abuse prosecutors, eliminating the cps's blanket immunity, and barring the use of anonymous reports alone from being the basis for a child to be removed from the home. She also calls for these other legal changes: insuring a full range of due process guarantees for parents accused of abuse, altering the confidentiality laws so that cpa's can no longer hide behind them, establishing independent review boards in each state to hear complaints against cpa's (this has been mandated in some form by the federal CAPTA amendments of 2003), the ending of cpa police powers so that after an initial screening of a complaint a case must be turned over to law enforcement, barring the removal of children from their families only if their physical safety is genuinely threatened (and if removed being placed with relatives), banning strip searches of children by social workers on initial contact, eliminating the notion of educational neglect (which has often been used against homeschoolers), and barring the entry of a parent's name into a state central child abuse registry unless the person has been found guilty.<sup>59</sup> Like Mrs. Pride, she provides practical advice to parents on how to deal with the cps, including not enrolling their children in public schools, avoiding spanking in public (since for many people now this somehow constitutes

abuse), refusing to allow a cps caseworker without a warrant into one's home, never accepting a plea bargain offer from a cps when innocent, and many suggestions about ground rules to insist on when a cps wants to interview a child.<sup>60</sup>

In short, Mrs. Scott does not call for the dismantling of the cps, but identifies many of the same conditions as the above writers and seeks sweeping but obvious legal changes. Her book is not scholarly, nor comprehensive, but it covers many aspects of the problem—with sufficient documentation and analysis—from a distinctly critical stance. It is well argued, but may share in Mrs. Pride's tendency to generalize too much about some aspects of the cps and its operatives' views and behaviors without hard data.

### *Richard Wexler*

Richard Wexler is a journalist who has done considerable writing on the false child abuse question. His central work on it is the book *Wounded Innocents* (1990).<sup>61</sup> He focuses his critique on several major areas: inflated statistics about the incidence of abuse, the incentives that cps's have to find abuse in families, how the impoverished have been particular victims of the cps, the inadequate knowledge of parenting by cps operatives, the arbitrariness about what "abuse" and "neglect" are in the law and the thinking of the cps, and the bias in the cps against family preservation as opposed to removing children and the related problems with foster care. Like the writers above—especially Mrs. Pride and Mrs. Scott—he makes no pretense of writing with what might be called "scholarly objectivity," although he documents well his assertions by citing authorities, statistics, and studies. He clearly has come to conclusions about the cps and argues them forcefully. He can in places even be a bit more hyperbolic than Mrs. Pride. For example, what she calls the "child abuse industry" he refers to as the "child protective empire."<sup>62</sup>

On statistics, Wexler says that 60% of reports are "simply false"<sup>63</sup>; it may be as high as 80%.<sup>64</sup> This is obviously consistent with the figures mentioned by the other authors, and he derives his figures mostly from studies and government data—both national and state—that he refers to. He gives some statistics in individual states: in New Jersey, more than two-thirds of "indicated" (i.e., substantiated) cases involved no actual injuries to children<sup>65</sup>; in New York State 50% of the "indicated" determinations are overturned on appeal (in spite of the fact that both the appeal proceeding and the initial finding require a low standard of proof to be considered "indicated") [he cautions, though, that few people appeal

having their names entered into the state's central registry, so this 50% may be the people with the best cases]<sup>66</sup>); during one six-month period in Florida, 92% of the indicated determinations were overturned.<sup>67</sup> Nationally, in one year in the mid-1980's, a full 55% of reports, whether indicated or not, were due to "deprivation of necessities" (i.e., poverty). Over 8% more were for "emotional maltreatment," which of course is not clearly defined.<sup>68</sup> In spite of claims by some that households are rife with sexual abuse, one study showed that only 1% of women were abused by their fathers and another discovered that only 4.5% of women claimed to have been abused by fathers or stepfathers (the latter group is where intra-family sexual abuse is probably most prevalent, if we exclude live-in boyfriends [who really cannot be considered part of a family]).<sup>69</sup> He makes the further point that one of the reasons why some of the later National Incidence Studies of child maltreatment have shown an increase is simply that the definition it has employed has gotten looser, with more and more things put into the category of that term.<sup>70</sup> Pulling the statistics together, he concludes that of every 100 reports, at least 58 are outright false (he interestingly reveals that some researchers have tried to limit the term "false" to only malicious reports, instead of to all reports lacking sufficient evidence, with the result that they inflate the number of substantiated reports). 21 are poverty cases, 6 are sexual abuse (with a wide range of behaviors included under that term), 4 are minor physical abuse, 4 are unspecified physical abuse, 3 are "emotional maltreatment" (with the open-ended definition mentioned above), 3 are "other maltreatment" (which also seems to be quite arbitrary), and 1 is major physical abuse (which, with sexual abuse along the lines of rape and incest, is probably what most people have in mind when they think of abuse).<sup>71</sup>

The latter summary illustrates clearly the way the force of the cps falls especially hard on low-income families. Wexler points out that even the crusading American Humane Association notes that poverty is often confused with neglect.<sup>72</sup>

The above also illustrates the open-endedness or vagueness that Wexler, like the other writers, observes in the child abuse laws. Expansive definitions were also seen in studies of cps workers' views about what constituted maltreatment. They list such things as singling out one child in a family for more punishment and chores and fewer rewards, not providing "security and stability" for a child (without defining these terms), and "excessive" threats and psychological punishments (without, again, ever defining what those terms mean).<sup>73</sup> The American Humane Association guide for caseworkers—Wexler does not seem to be as positive about this organization as Mrs. Pride is—

states that emotionally maltreated children are those who are “denied normal experiences that produce feelings of being loved, wanted, secure, and worthy”(these terms are almost hopelessly subjective) and says that there is similar maltreatment when “values in home conflict with society”(one wonders if this would include a situation where a family has no TV—or, perhaps, 500-channel cable—in the home).<sup>74</sup>

Like Mrs. Pride, he also addresses the “missing children” statistics, stating that the man who started that nationwide trauma into motion in the early 1980’s—whose son had been kidnapped and murdered—had to recant his initial incidence figures. The number of stranger abductions in the U.S. each year in the 1980’s, just before Wexler published his book, was only two to three hundred per year in stead of the 50,000 or more than had been claimed.<sup>75</sup>

Wexler mentions self-interested reasons why the cps is ready to find so much abuse. While it operates according to an ideology that downgrades the importance of the family and thinks that the state should play a significant role in raising children—upholding this ideology could itself be considered an imperative of self-interest—he identifies the desire of its operatives to avoid negative publicity and legal liability if a tragedy occurs because they “missed something” and to get “services” to more and more families (a substantiated case of abuse makes it easier to get state social services).<sup>76</sup> Besharov made the same points, of course.

Wexler, like Mrs. Scott, points to the lack of qualifications of cps caseworkers, both formal (having the academic background for the field they are in) and informal (not being knowledgeable about child-rearing or having children themselves). Like Mrs. Pride, he mentions that many of them are young women right out of college.<sup>77</sup>

Wexler strongly takes the cps to task for a basic bias against family preservation and notes that the financial incentives (e.g., the government money available for foster care) discourage it. He mentions specific examples of this bias. He cites how the cps and its arch-defenders—“child savers” is his general, catch-all term for them—pay little attention to the very successful Homebuilder’s Program that has worked since the 1970’s to solve the problems of families whose children are on the verge of foster care placement. He also notes how when one nationally prominent family therapist wrote to three hundred New York City agencies offering to train their staffs for free on how to work on family preservation not a single one replied. When this therapist wrote to foster care agencies, four of thirty replied. The Child Welfare League of America, made up of various organizations, retreated from endorsing the use of federal funds for family preservation instead of just

foster care because its member organizations in the area of residential treatment threatened to quit.<sup>78</sup> Things may have changed some since Wexler wrote the book, but how much is doubtful when one considers that changes in federal law in the late 1990's made it easier to terminate parental rights for children in foster care.<sup>79</sup>

There is another point of Wexler's, based squarely on his journalistic background, that is worth noting. The perspective that American political society came to embrace how child abuse is so utterly widespread—i.e., a crisis—was advanced considerably by journalists. Lacking expertise about the subject, they rushed to quote prominent experts in the field. They almost always went to experts who had a biased view—i.e., those “from the child saving camp”—because even though many of the critics he mentions have equally good academic and professional credentials, they are unknown because they lack media savviness, do not like to deal with the press, or are just not paid attention to because “their views seem at odds with conventional wisdom.”<sup>80</sup>

### ***Joseph Goldstein, Anna Freud, and Albert J. Solnit***

These authors are distinguished academics and professionals (Goldstein and Solnit are Yale professors and Freud a noted therapist). In their 1979 book, *Before the Best Interests of the Child*,<sup>81</sup> they applied principles they had set out in their previous book, *Beyond the Best Interests of the Child*<sup>82</sup> (which challenged the rising children's rights movement with their standard of “best interests of the child” as a grounds for overriding parental prerogatives), to set proposed grounds for state intervention into the family. *Before...* is not precisely a critique of the cps, but its standards for intervention stand in contrast to what the above writers show to be a strong interventionist thrust of the cps. Also, their criticisms of cps interventions in case studies cited implicitly illustrate their dissatisfaction of the present regimen. They make very clear that the principle they operate from is “the parents' right to be free of state intrusion.”<sup>83</sup> The rationale behind that principle is to give parents the uninterrupted chance to meet their children's physical and emotional needs so as to establish the “familial bonds critical to...[their] healthy growth and development,” and to safeguard the “continuing maintenance” of these ties once established.<sup>84</sup> The authors say they favor a policy of “minimum coercive intervention,” most basically because of their personal beliefs in “individual freedom and human dignity” and their “professional understanding” about how children simply need parents and families.<sup>85</sup>

Goldstein et al. do not oppose the cps per se, nor do they believe that it should not inquire into reports it receives about a particular family. When cps's go further and initiate some action against a family, however, this is a violation of family privacy. A child certainly should not be removed from a family "[e]xcept in emergencies involving the risk of serious bodily injury to the child." At no stage, even that of the initial inquiry or investigation, is any intervention or action acceptable unless "probable and sufficient cause for the coercive action has been established in accord with limits prospectively and *precisely defined* by the legislature." In other words, there has to be sufficient proof of maltreatment or some other reason for intervention for the state to proceed—and, a higher level of proof for it to proceed on to more intrusive stages of intervention. Their point about the legislature precisely defining the grounds and limits for intervention implies that what constitutes abuse or neglect would have to be clearly spelled out, as would the powers and prerogatives of the cps in addressing it. If the state does not have a means of helping the situation, it should not intervene and if it does have the means its intervention should be kept to the minimum necessary to deal with it. The good of the children themselves is the reason for the minimal coercive intervention standard: children react negatively to even a "temporary infringement of parental autonomy with anxiety, diminishing trust, loosening of emotional ties, or an increasing tendency to be out of control." Interventions may actually have the effect of stimulating parental anger toward their children and increasing family tension, the very conditions that intervention aims to stop.<sup>86</sup> Even in matters of sexual abuse, Goldstein et al. do not think that the cps should remove a child, but the criminal law with its higher evidentiary standards should deal with the case and determine whatever separation should occur.<sup>87</sup>

It is clear from the above that Goldstein et al. have almost the opposite perspective of what the other writers indicate animates the cps: parents are to be given substantial benefit of the doubt; intervention into families is not to be done routinely and is often harmful, family integrity is critical and is not blithely to be interfered with; clear standards, not unfocused or expansive ones, for what constitute parental aberration are necessary; the cps almost certainly could not interfere with a family merely on the basis of disagreements with child-rearing practices. More fundamentally, the authors—at least if we are to judge according to how the cps acts—have a much stronger belief than it does that children belong in families and that parental authority and affection is crucial.

Goldstein et al. talk specifically about three categories of abuse and neglect. One, sexual abuse, was already mentioned. What happens

to the family and children there should depend on criminal adjudication. The next is parental infliction, or attempted infliction, or repeated failure to prevent infliction, of *serious bodily injury* upon their children. Clearly, cps or other state intervention is justified here. Such actions or omissions harm a child not only physically, but also psychologically. Goldstein et al. make it clear that this standard does not justify the cps trying to stop corporal punishment, even though the authors disapprove of it (claiming it is “unenlightened” and, without providing evidence, “in general, injurious to the child’s development”).<sup>88</sup> The third category they discuss is emotional neglect, which they reject as a ground for intervention. They say that there is no way anyone can be certain that emotional problems of a child, which might be real enough, are caused by the actions or inaction of his parents. Nor could the state truly help because there is no consensus about the proper treatments for emotional disorders. So, following the principle above, it should not intervene. Similarly, the authors say that such grounds for intervention established by neglect statutes as “denial of proper care” and “psychological abuse” are illegitimate because they are too vague and basically relate to child-rearing practices that there is no societal consensus about.<sup>89</sup>

Unlike the cps, the authors wish to “err on the side of the parents” because to not do so, in light of what they say above about the needs of children, is to *harm children*. To be “overinclusive”—as seems clear is the practice of the cps and the sentiment of its defenders—is to allow the state to be arbitrary, to give its agents “too much discretion,” and to damage “family integrity.”<sup>90</sup>

### *Lawrence D. Spiegel*

Lawrence D. Spiegel is a psychology professor and practitioner. His 1986 book, *A Question of Innocence*,<sup>91</sup> is primarily an autobiographical account of his own case of facing false allegations of abuse made by his disgruntled and apparently unstable ex-wife, egged on by zealous prosecutors and cps operatives. His case was one of a small minority of abuse cases involving parents—primarily they concern alleged sexual abuse—that involved criminal charges, and an even smaller minority that go to trial. To be sure, Spiegel created his own problems for himself by immoral actions. These included a sexual relationship with the ex-wife who ultimately accused him when she was a college student of his and a kind of “shotgun marriage” before a judge when she was eight months pregnant, and a later adulterous liaison with another woman when they were having marital problems which led to the ex-wife’s deep and abiding enmity against him. In discussing his

case, however, he talks about the widespread problem of false abuse allegations and the formation of the VOCAL (Victims of Child Abuse Laws) organization of aggrieved people to try to oppose the arbitrariness of the cps. He illustrates in his own case the tendency of the cps and sympathetic prosecutors to prosecute parents and build cases against them without evidence and paints a picture of a mindless anti-child abuse frenzy that seems impervious to guilt or innocence. In the last part of the book, he briefly lists many of the problems with the cps that are seen in the writings above and gives practical advice to those falsely accused or in a situation where they could easily be falsely accused. Perhaps because of his own experience, he does not just address how to deal with the cps but also prosecutorial authorities who work with them (again, most accused parents do not have any dealings with the latter).

Spiegel identifies several causes for the substantial problem of false allegations: a changed societal attitude that holds that if one is merely accused of abuse, especially sexual abuse, he must necessarily be guilty and a related foolish view that children simply do not lie about such things; the lack of accountability of the cps (e.g., their power to remove children from their families even without a court order, the legal immunity of cps operatives, their power to withhold information [this has recently been modified by federal law to the point that parents at least have the right to be notified of the nature of a charge against them], and their protection from even legislative monitoring); the heavy caseloads of cps workers, which means that they do not have enough time to seriously assess if reports have merit; the problem of numbers (i.e., of investigations and prosecutions) being the measure of whether cps's and prosecutor's offices are being effective (this is like the number of traffic tickets written being the basis of determining if a state trooper is doing his job well—Spiegel calls it the “body count” approach); the tendency of caseworkers and therapists to be overzealous because of their desire to protect children; therapists' tendency to play into the hands of the cps with evaluations of children that may really be problematical but which dampen their motivation to do a more thorough job of investigation; well-intentioned school programs such as “Good Touch, Bad Touch” that shape a perspective in children that makes them interpret innocent occurrences as abusive; the cps's tendency to encourage over-reporting as a reaction to what he says was a failure to report much abuse in the past (i.e., essentially before CAPTA) (he gives the same 65% figure of unfounded reports that was mentioned above); and a “cover yourself” mentality within the cps (he also refers to it as “administrative paranoia”) that encourages keeping cases open that should have been closed.<sup>92</sup>

Spiegel does not oppose the existence of the cps, but proposes a number of reforms: more funding and personnel must be made available to cpa's so their caseloads can be reduced (he does not seem attuned to the danger that the cps may become stronger and even more able to be abusive if it has more resources); investigations from the beginning should be conducted by a "team" that includes mental health professionals from the start instead of just a singular social worker, and they should be trained well in how to handle sexual abuse (he does not consider that this may actually be more intrusive for an innocent family and perhaps has an overly optimistic—though understandable, since he is from the same fraternity—sense of the objectivity of therapists); new attitudes must be shaped in the cps about the dangers of false allegations to families and efforts must be undertaken to protect parental rights during investigations; anonymous reports must no longer be accepted by the cps (he makes a thoughtful distinction between anonymous and confidential reports—a cpa should have to know who a reporter is, but can insure confidentiality); the courts should only get involved after a thorough review of the case by a cpa shows that it indeed has merit (the problem here, however, may be that more judicial involvement may actually help to keep the cps honest); and hearing intra-family abuse charges (such as his own case) first in a family court before criminal proceedings are even considered.<sup>93</sup>

By way of defensive or self-protective actions, some of Spiegel's main suggestions are the following: a falsely accused person must assemble a "strong support system" around him composed of relatives, friends, professionals, and VOCAL to help him through the turmoil (the professionals retained must be experienced in child abuse cases and dealing with false allegations); the accused must reject a plea bargain (which, of course, is a way prosecutors and the cps can vindicate themselves even when they do not have a case) and any offer to waive their rights without the advice of legal counsel; parents should go to a family physician instead of an emergency room when a child has a medical problem (this is a frequent suggestion of cps critics, since hospital emergency personnel seem too ready to conclude that something is the result of abuse); people should be aware of the dangers inherent in troubled marriages or cohabitation situations when children are present or single-divorced parent households where there are teenage discipline problems (teenagers have learned that to cry abuse can achieve a custody change that they prefer); and record all events and keep all pertinent documents.<sup>94</sup>

The focus of Spiegel's book, overall, is the operation of the cps and child abuse criminal prosecutorial system; he does not discuss the

vague laws as the other writers above do. Besharov has an “Afterword” in the book in which he focuses mostly on the problem of unfounded reports and how to deal, especially, with sexual abuse allegations.<sup>95</sup>

### *Dana Mack*

Dana Mack’s 1997 book, *The Assault on Parenthood*,<sup>96</sup> is a discussion of how many different contemporary societal forces undermine the role and authority of parents and threaten the family. Part of her discussion is about the dangers of child welfare agencies generally and she addresses the cps and the false child abuse issue primarily in one chapter. Mrs. Mack talks about the massive growth in abuse reports from shortly after the passage of CAPTA to the mid-1990’s, shortly before she published the book. She echoes the two-thirds unsubstantiated number mentioned consistently above.<sup>97</sup> She also tells us that cps action has moved 250,000 children into foster care whose parents never maltreated them.<sup>98</sup> Like Besharov and Mrs. Scott, she states that most of the substantiated cases (80%) involved situations that posed no serious danger to the child and only an extremely small number (3%) involved injuries requiring medical attention.<sup>99</sup> She sounds the familiar point that the cps is so overwhelmed by unfounded reports that it is unable to adequately respond to the true cases of abuse.

Mrs. Mack speaks positively about the value of CAPTA—“[i]n just five years, national estimates of deaths from child maltreatment were reduced by half”—even while suggesting that its vague definitions of abuse—and of the laws spawned by it in all the states—has been the cause of the vast growth of false reports. Like some of the above writers, she mentions the substantial increase in “frivolous” and “capricious” reports by mandated reporters “fearful of missing a case and eventually being called to account for it.”<sup>100</sup>

In light of this explosion of false allegations, Mrs. Mack makes an observation that is unique among the writers surveyed: that today’s American parents take it for granted that the state has absolute power to monitor their families, shape their child-rearing practices, and even remove their children from them. This conclusion came from hundreds of interviews and many focus groups that she has done through the think tank she is connected with, the Institute for American Values.<sup>101</sup> The present writer found this startling, in light of his experience that very few people who have not had contact with it are aware of the facts about the cps brought out in this article. It perhaps illustrates a broader, deeply troubling reality in contemporary Western life: that most people cynically take for granted the overweening power of government to interfere with and even control their lives.

Among the other major points that Mrs. Mack addresses are: the very limited rights of parents in cps investigations (since her book appeared, there have been some changes with CAPTA now requiring that parents be informed of the nature of the charge against them and judicial decisions protecting parents from warrantless entries and searches of their homes, but her basic point still prevails); the fact that family and juvenile court procedures are normally biased against parents and in criminal abuse cases courts—this stands in contrast to what seems to be Spiegel’s greater optimism in this regard, probably in light of his vindication in court—are more likely to assume guilt than in other types of criminal cases, with the result that there is extraordinary pressure on parents to wrongly acknowledge guilt; how the cps seeks to impose its own cultural preferences about family and child-rearing on immigrant groups, even using coerced psychotherapy as the vehicle; the fact, cited by other writers above, that poor families, especially those receiving public assistance, are much more likely to be investigated for maltreatment than others; the interesting fact that one of the reasons for the pressure put on poor families is that cps caseworkers utilize checklists in making determinations of neglect that measure material instead of emotional well-being; the crisis of foster care cited by several of the other writers, including the statistics that children in foster care are ten times more likely to be maltreated than in their own homes; that the cps and associated child welfare agencies and mental health professionals have a strong financial self-interest in finding maltreatment because it opens the gates to both more governmental and private funding for the agencies and these individuals (some counties even go to the point of billing parents for the foster care costs of children they have removed even if without merit—and sometimes put this money into their general fund); like Mrs. Scott and Wexler, she points to the *striking* lack of qualifications and training of cps caseworkers in many states (even such governmental trend-setting ones as New York); and like Besharov and others, points to the cps’s failure to protect truly abused children (“truly abused children are more vulnerable than they ever were”).<sup>102</sup>

Unlike most of the writers surveyed, Mrs. Mack seems not to believe that the cps is worth maintaining. Perhaps changes could be made that would stop the huge number of false reports and protect the innocent from cps tentacles, but it still cannot be made to do what it is most fundamentally supposed to do: protect and help truly maltreated children. She insists that even apart from the financial self-interest permeating it—the “corruption”—it is “too unwieldy to function in the public interest.” The cps, due to both the legal and financial

considerations that shape it, is “bound...to be inefficient, and to invite confusion and mismanagement at all levels.”<sup>103</sup> More fundamentally, she believes that the cps’s “remediative approaches—built around counseling—are simply inadequate to deal with true abuse, as opposed to the fraudulent cases that flood it (she gives a similar statistic as Besharov that in 1993 42% of children who died of abuse or neglect were known to the cps beforehand). It is incapable of doing so even when employing the family preservation policies that authors like Wexler say it has largely resisted. While perhaps a bit too ready to countenance termination of parental rights in these genuine cases, she rightly sees the roots of the abuse problem in the disordered souls of the perpetrators and in the broader family, moral, community, and social breakdown that typifies present-day America. As such, the most effective “redemptive programs” are those such as Homebuilder’s, strongly touted by Wexler above, which “consciously set out to reorder domestic lives by providing practical help, low-skill job training, values education, and moral and social support (such as membership in community and religious organizations).”<sup>104</sup>

Contrary to Besharov, Mrs. Mack closes on a pessimistic note. Besharov, as mentioned, thinks progress is being made in changing the cps. Writing nearly at the same time as he does, Mrs. Mack contends that, especially at the state level, the appeals of advocates of reform of the laws and of the cps have made little headway as politicians are “fearful of being thought insensitive to teeming masses of suffering children” (indeed, this is not different from the response that Spiegel and VOCAL got in New Jersey twenty years ago, and the small reforms of recent years have mostly happened at the federal level). If reform is to happen, she says that first the “minds and hearts” of a “powerful elite” of therapists, government officials, and media “sold on a theory of family life that sees only pathology in [the] intimacy [of family life]” will have to be changed.<sup>105</sup> She may be right, but without realizing it, provides the seeds for hope when she also says that “[p]arents seem to sense instinctively that child abuse is not as widespread as the media makes it appear.”<sup>106</sup> Change, especially in a democratic republic like the U.S., can also come from the masses and when there is no longer widespread belief in the principles or perspectives undergirding a system, it is often a harbinger that it will not last long.

*Allan C. Carlson*

Historian Allan C. Carlson, President of the Howard Center for Family, Religion, and Society in Rockford, Illinois, is possibly America’s

leading pro-family scholar. He has published a series of books concerned with historical developments on the role of the family in society, its place in economic life, and inquiries into various contemporary family issues. His writing is heavily researched and he also edits *The Family in America*, a Howard Center periodical that features short articles on a variety of these issues that pull together and present much recent social science research on the family. One of Carlson's main writings on the cps was a chapter in his well-received 1988 book, *Family Questions*.<sup>107</sup>

Carlson gives some important statistics, like most of the other writers do, but his chapter is not a heavy recitation of statistics. Rather, it tries to explain how the current cps emerged from a history of what he—with Wexler—calls “child-saving” in America, how it was shaped by other—larger—social currents, and what current factors and perspectives are fueling the overreaching actions, discussed above, of the cps.

Legal protections for the family were always somewhat tenuous in the U.S. While the common law tradition upheld the natural rights of parents and always made a presumption on the side of the reasonableness of parental action, American law from colonial times onward recognized the power of the state to take away children “to protect the interests of the larger community.” The U.S. Constitution does not mention the family, reflecting the fact that the local community was the level of government especially concerned about the family and that family issues of public concern had to be addressed there. Over time, of course, the federal government expanded its reach into many areas, but because it had not addressed family questions for so long federal law afforded limited protections to the family even as it came under different types of attacks at more localized levels. So, the reform school movement, the use of summary justice to seize and institutionalize children (even when they had committed no crime), and the later juvenile justice and anti-child abuse movements trampled on families to varying degrees—mostly the poor and immigrants, but by the time of the child abuse crusade potentially over all families—while affording them limited legal recourse under federal constitutional law. All this has been implicitly done under the sanction of the *parens patriae* doctrine, a legal principle which initially developed to protect the estates of orphaned minors but was transformed to mean, essentially, that if parents were not deemed up to the task of raising children in the manner the community believes appropriate then the community could supplant the parents' authority and effectively become the guardians of the children (the present author thinks this is echoed in the recent claims that

“it takes a village to raise a child”). The practical application of this doctrine meant typically that the natural rights of parents readily were submerged. The child-saving efforts were less concerned with seeing that justice be done or even punishing anyone for a crime than with social control and “coercive assimilation” into prevailing cultural norms—which initially reflected the cultural outlook of a still Christian middle class but later of a secularized elite of child-saving advocates and professionals.<sup>108</sup>

While *parens patriae* was specifically repudiated by the U.S. Supreme Court in the 1960’s when it ruled that procedural due process guarantees applied to juvenile proceedings, it nevertheless formed the basis for the new anti-child abuse crusade that was simultaneously gaining momentum. He says that as this movement took shape it was influenced by the new anti-traditional family attitudes that were taking hold among social scientists and social workers and getting a hearing in the popular media. The perspective was widely taking hold that there was something constitutionally wrong with the family; child abuse was a significant part of this. Even the early mandatory reporting laws on the state level, before CAPTA, featured troubling erosions of such traditional legal protections as husband-wife and physician-patient privilege, the presumption of innocence until proven guilty, and the recourse to the civil or criminal law for those accused of false allegations. As other writers above have said, the media presented ever-increasing statistics that confused *estimates* of the number of incidents of child abuse with actual proven cases and reflected an ever-widening definition of the term. The growth in supposed cases of abuse soared from 500,000 in 1971 to 6 million less than twenty years later—with the result that the public came to believe that we indeed were experiencing a crisis.<sup>109</sup>

Carlson makes a number of other significant points: citing writings of prominent defenders of “child-saving” (i.e., of the cps), he says that (writing in the late 1980’s) almost 80% of abuse reports are unfounded; despite the impression given by the media, abuse within intact families (i.e., with both natural parents, married, present) is very uncommon—it is disproportionately high in female-headed families (especially where the father of a present illegitimate child or a live-in boyfriend are present) and where there are stepparents; a study showed that in 60% of the families monitored by cpa’s there is repeat abuse (this reiterates a point made by a number of the above writers) whereas this occurred in only half the number of families where there had been prior abuse but no cpa monitoring (he says that this shows that intervention may actually *increase* abuse); there is little attention by the cps and its

defenders to child abuse in foster care and institutionalized care—apparently because of the anti-family bias of the cps; the attack on the traditional family embodied in the cps and the child-saving mentality ignores “the growing problems of real neglect” caused by the high divorce rate and phenomenon of latch key children; the link between child abuse and the abortion rate is also ignored (he cites a noted Canadian study about this, and says that various conditions connected with abortion—“diminished restraints on rage, a devaluation of children, an increase in guilt, heightened tensions between the sexes, and ineffective bonding between mothers and subsequent children—easily spill over into future abusive behavior); and the bizarre claim of some child-savers—it could almost have come from the propaganda annals of the old U.S.S.R.—that the free market economy is a cause of child abuse because “violence” as a tool of child-rearing (spelled: corporal punishment or spanking) is a way to socialize children into a “highly competitive” society that stresses self-interest<sup>110</sup> (he also mentions generally the socialist sympathies of some leading child-savers earlier in the twentieth century<sup>111</sup>).

Carlson is not optimistic that the runaway cps will be constrained soon. The child abuse issue has been a “hysteria,” and most hysterias wane as people focus on their normal concerns and lose interest after awhile. There are two reasons for his lack of optimism: one, the social work profession that is at the center of the cps has overwhelmingly embraced anti-family, anti-middle class views since the 1960’s (here, he implicitly accepts Mrs. Mack’s thinking that the “elite” has to change first, and that the change would have to be a broader one beyond child welfare involving social perspectives in general); and two, as observed in more than one writer above, the cps and child abuse enforcement as currently constituted is lucrative for some, especially therapists.<sup>112</sup>

### ***Home School Legal Defense Association (HSLDA)***

The Home School Legal Defense Association, a public interest legal defense and educational organization providing legal assistance primarily to their member homeschooling families who may have their educational and parental rights threatened by the state, has probably been the single most prolific litigator against the cps around the country. Their bi-monthly magazine, *The Home School Court Report*, provides summaries of problematical actions of school superintendents and other officials (including cps operatives) in matters involving their members, legal and political developments regarding homeschooling across the

states, and legal cases they are actively involved in defending homeschooling and parental rights.

HSLDA's Senior Legal Counsel is Christopher Klicka, who discusses the organization's response to cps investigations of families in his book, *The Right Choice—Home Schooling*.<sup>113</sup> Obviously, many of his comments concern the cps view and treatment of homeschoolers, but his critique is really a broader one about the cps in general. He mentions that school districts sometimes use the cps to “get tough” with homeschoolers so they can get their children into the public schools.<sup>114</sup> Homeschoolers have particularly been made easy victims because of anonymous child abuse hotlines around the country,<sup>115</sup> and “[n]early every type of allegation has been raised against home schoolers” (some that he recounts are the most ridiculous that the present writer has ever heard of, even considering that the nature of many reports to cpa's generally deserve to be placed in the “ridiculous” category).<sup>116</sup> He cautions parents against spanking their children in public because, even though it is legal, it can easily lead to a cps investigation. He says that the difference between normal and excessive spanking is an arbitrary one for the individual social worker; many of them just disapprove of it entirely.<sup>117</sup> He also encourages them not to leave their young children at home alone or leave them in a parked car.<sup>118</sup> Oftentimes, homeschooling parents are reported for “educational neglect,” “lack of supervision” or “children outside during school hours” (the latter apparently may seem strange to some people because so many public schools have discontinued recess).<sup>119</sup> It is also important for parents to seek medical treatment from physicians they know personally because too many unmerited reports are made by medical people trying to cover themselves.<sup>120</sup> He also notes, as does other critical literature on the cps, that social workers will often attempt to bluff or intimidate their way into a family's home to be able to examine the children without a warrant.<sup>121</sup> The issue of warrantless entries into homes has been a crucial one for HSLDA, and it has set some important court precedents making clear that the Fourth Amendment indeed applies to cps operatives. His remarks, and accounts in the *Court Report* indicate that cpa's have increasingly targeted homeschoolers—even in states which have the most favorable homeschooling laws.<sup>122</sup> He says that many anonymous reporters, in his experience, are biased against both homeschoolers and serious Christians.<sup>123</sup>

The difference between Klicka and HSLDA's writing on this subject and the other authors surveyed is that the former speak about the cps as lawyers who have faced it in court and there are many individual cases of accused parties that they took part in defending that they can

speak about. They present an assessment of the major legal issues currently at stake, from the standpoint of experts who are routinely opposing the cps with a strategy to secure recognition for important family rights by the courts.

Klicka quotes Besharov and Wexler on statistics about the substantial number of false reports, including how three-quarters of a million children are the subjects of false reports each year and Wexler's breakdown of a typical group of 100 reports above. He also refers to his facts on "the terrible abuse children receive in foster homes and juvenile homes."<sup>124</sup> He also recounts discussions he has had with former cps caseworkers that confirm the cps's willingness to deceive, intimidate, cover up, and find guilt no matter what.<sup>125</sup> HSLDA says that in their experience 60-70% of reports of abuse are anonymous.<sup>126</sup>

Besides working to protect families from warrantless cps entries of their homes, HSLDA advocates eliminating anonymous reports as a basis for starting a cps investigation (or at least establish that such reports would not be sufficient grounds for a judge to order removal of children from their homes or grant a search warrant),<sup>127</sup> clarifying the meaning of "abuse" and "neglect" in the laws, and, of course, eliminating any suggestion that homeschooling is a form of "educational neglect." HSLDA worked successfully for changes that were made to CAPTA in 2003, requiring cps caseworkers to inform parents on first contact of the nature of the allegation against them, that caseworkers undergo training in the Fourth Amendment and other constitutional protections of parents, and that citizen advisory boards be set up to hear complaints against overly aggressive cpa operatives.<sup>128</sup> HSLDA also seeks to further in their legal efforts the principle of family privacy as a liberty interest under the Fourteenth Amendment.<sup>129</sup>

Some of the above is practical advice for parents to avoid problems with the cps. Klicka and HSLDA also give advice on how to deal with cps operatives if they are wrongly reported. Some of the main points of advice they give are the following: parents should find out the allegation from the cps social worker (which under the changes to CAPTA, social workers are now required to inform them of immediately); they should never allow a social worker into their home without a warrant; they should never allow a social worker to interview their children without a warrant; they should ignore social worker efforts at intimidation, which almost always are bluffs; and they should offer to give the operative evidence of the children's good health from their personal physician, references from people who know them, and evidence of the legality of their homeschool program (if that is in question). This presentation of practical advice was, of course, seen with

some of the other writers above, and it is not surprising in light of the particular work of HSLDA.

Like Spiegel, Klicka commends VOCAL and urges his readers to support it.<sup>130</sup>

HSLDA is essentially a Christian organization, so it makes additional reflections about this subject in a spiritual context. One is that it advises parents having a problem with a cps to have their church and Christian friends pray for them, and says that prayer has helped many serious cases of falsely accused parents. Another is to understand that since, as Klicka puts it, the “home schooling movement is primarily a Christian revival taking place through the education of our youth,” it is “something Satan has been trying to undermine” and unjustified attacks from the cps is one way he is doing it.<sup>131</sup>

### *Paul Chill*

Paul Chill is a prominent Connecticut lawyer specializing in juvenile law. He has been active in seeking reform of the state’s juvenile court system and published a treatise on *The Law of Child Abuse and Neglect in Connecticut*. He is also a clinical professor at the University of Connecticut School of Law where he directs a clinical program in which law students handle cps appeals. He published a noted article in a special issue of *Family Court Review*, a law journal, that focused on “Child Protection in the 21st Century” and focused on the question of emergency removals of children suspected of being victims of abuse within their families.<sup>132</sup>

He says that in light of prevailing constitutional law, based on U.S. Supreme Court decisions concerning due process, children are supposed to be removed only after notice and a hearing. Courts have held that only an imminent danger to a child’s life or health can justify dispensing with the requirement of a hearing. Even in these cases a prompt post-removal hearing is required. This, however, is routinely disregarded by the cps by treating most removals as “emergency” ones—either by their own determination without a court order or by an *ex parte* judicial authorization (i.e., where a sympathetic judge simply rubber-stamps their request without determining if it is merited).<sup>133</sup> This is consistent with what has been said above by writers about the blitheness by which the cps removes children from their homes. The result is that the “emergency removal” rate is double that of twenty years ago, and the number of children in foster care has just about doubled to 555,000 in 2001. He contends that the number of erroneous removals “is alarmingly large.” Of 100,000 children removed in 2001, more than a third were

later determined not at all to have been maltreated<sup>134</sup> (it must be remembered that these are just the children removed; the number does not include the many more false reports that just resulted in an investigation or CPS contact with a family and also does not address the question of whether children removed following a substantiated report were in any genuine way maltreated or in danger of harm). Chill further says that, “it can reasonably be assumed that a significant number of other children are found maltreated, and for whom perhaps some intervention—short of removal—is warranted, are nonetheless removed on an emergency basis.”<sup>135</sup>

He argues that “defensive social work”—discussed above—is an important factor in unnecessary removals. Further echoing the above writers, he says that the cps is inattentive to the harms that result from unnecessary removals: the psychological and financial harm to family members, the stresses created with families due to the intervention (which sometimes leads to their break-ups), the dangers posed to the children in the new environments they are placed in (he cites the above information about the “significantly higher” rate of abuse in foster care than in the general population), and how the cps cannot adequately deal with true abuse cases because it is overwhelmed by false ones. To these, he adds a new problem: in legal proceedings after a removal (generally in juvenile court) the cps has tilted the legal “playing field” decisively against the parents as the burden is shifted entirely to them to show that they are fit instead of on the cps to justify its continued control of the child.<sup>136</sup> Among the writers surveyed, this is a unique insight from one who has worked extensively in the juvenile court system and has written about its procedures and problems.

While the chance to reverse a cps removal are best if they happen very quickly after the event, often post-removal hearings are “shams.” This is both because it is always easier for the cps to justify an action already done than one contemplated, and judges engage in “defensive judging” (they reason that, in light of the possible consequences for a child if there really is abuse, it is better to be safe than sorry—especially when there are no legal consequences for the judges if they permit the wrong removal).<sup>137</sup> Overall, in this article, Chill briefly relates the unfair obstacles faced by parents confronting the cps in the juvenile courts.

Chill tells us that the passage of the federal Adoption and Safe Families Act of 1997 was supposedly aimed at the good purpose of giving children who had been in the unstable and perhaps dangerous foster care system for what was deemed to be too long the chance for the permanency of adoption. In practice, it has made it easier for the cps and

juvenile courts to terminate the rights of the natural parents—even if unjustifiable.<sup>138</sup>

Chill does not indicate that he favors eliminating the cps as it currently exists (though he does say that its “dual role” structure of acting coercively while supposedly helping is a “fundamental, structural” problem), nor does he address the issue of the grounds for cps investigations that do not lead to removal. He calls instead for a number of reforms that would “substantially reduce the risk” of unnecessary removal: 1) the “imminent danger” that has to be shown for an emergency removal should have to be an “imminent risk of serious physical injury or death”; 2) judicial preauthorization for removal should be required wherever possible; 3) parents should be able to present their side, in some manner, to the judge before such preauthorization can be given; 4) after a removal, a temporary custody hearing should be promptly convened with parents unable to afford legal counsel provided it free, and the cps having to show by clear and convincing evidence that the child would be in imminent danger of serious bodily harm or death if returned home in order to sustain the removal; and 5) the judge should be required to weigh the risks of non-removal as against those of removal. Beyond this, defensive social work must cease (though he does not say how to do this), the vague standards for termination of parental rights must be clarified, and the federal government must both reverse its financial incentives that encourage removals and enforce the federal requirement that “reasonable efforts” be made to check the need for removal. He also says, apart from policy and legal and procedural changes, that an educational effort is needed to make the public see the realities of the cps.<sup>139</sup>

### *Stephen M. Krason*

The present writer has been writing critically about false child abuse reporting and the cps since the late 1980’s. My primary writings have been lengthy chapters in two anthologies (which I co-edited)—*Parental Rights: The Contemporary Assault on Traditional Liberties* (1988)<sup>140</sup> and *Defending the Family: A Sourcebook* (1998)<sup>141</sup>—and a shorter article in *The Catholic Social Science Review* in 2005.<sup>142</sup> The first two of these articles attempt to provide a fairly thorough summary of the basic problem, so that the reader, who more often than not will not have heard of it or will have heard very little, can be familiarized with the many aspects of it and the reasons for the problem. The last article does this in a more limited way and tries to update statistical and other information to the present. Since it was based on a presentation to

Congressional staffers, it especially points to the influence of CAPTA on the problem. I utilized as sources a number of the above writers, as well as other information especially gleaned from newspaper reports.

I discuss the following: the falsity of at least two-thirds of the reports, and how even courts have taken note of the high percentage of false reports; the massive growth of the number of false reports in the CAPTA era; following Carlson, the history of “child-saving” and the effect of *parens patriae*; numerous examples of outrageous cases of false allegations, including a possible targeting of Christian families in some places; the vague and loose definitions of “abuse” and “neglect” in the laws; the confusion about what maltreatment is among even cps operatives and required reporters, including medical personnel; the backgrounds of typical social workers that make them either unknowledgeable about family life or hostile to the family; the outrageous “doctrines” that the cps operates by, citing Mrs. Pride; the use of hotlines, guaranteed anonymity, and other means to encourage reporting, which has helped false reporting to mushroom; the threat of criminal or civil liability to mandatory reporters, which has encouraged over-reporting as a defensive mechanism; the problem of cps legal immunity; the use of confidentiality requirements, which were set up to protect accused families, to hide the outrageous conduct of the cps; how the cps operates on the principle that parents are guilty until they can establish their innocence (and, in fact, how the cps tries essentially to “blame the parents for everything”); the fact that accused parents possess very few due process or other pertinent constitutional rights when dealing with the cps, and how this is due to the laws embracing the “therapeutic values” of the cps which views the attempt to stop abuse as a therapeutic problem to be addressed by experts who should not be hampered by legal and constitutional obstacles; the tendency to confuse sudden infant death syndrome (SIDS) deaths with the effects of child abuse; the dangers to families posed by the UN Convention on the Rights of the Child, which the U.S. so far has not ratified, which seeks to transfer family policy decisions to a small international committee and in the name of children’s rights would have the effect of interfering with parental authority in childrearing; how with the flood of false reports the cps fails to protect truly maltreated children; the greater possibility of children falling prey to abuse in foster care, how children get lost in the foster care system, and how some foster parents primarily have an economic motive;<sup>143</sup> how anti-family attitudes, which gave rise to our current cps, grew out of the sexual revolution, feminism, and the acceptance of deplorable practices like abortion; how guilt about having abortions and family abandonment through divorce has led some to look

for the “monster” of supposed child abuse by others to excuse or assuage themselves; how the cps gained strength and credibility because of the modern American tendency to “worship” experts; and how the mind-set of the cps is subtly totalitarian and how this grew out of the intolerant viewpoint of the 1960’s new left.<sup>144</sup>

My opinion about the value of the cps changed from my first major article in 1988 to my second a decade later. In the first one, I called for a number of legal and policy changes to protect innocent parents and families within the context of the current system. These included: eliminating hotlines and anonymous reporting in general, clarifying what behaviors constituted “abuse” and “neglect” under the law and being sure to avoid proscribing unpopular childrearing practices, the requirement of probable cause before an investigation can even be launched, the treatment of child abuse simply as a criminal matter to be dealt with in the regular criminal courts with accused parents receiving the full range of due process protections (neglect should be treated as a non-criminal matter, but with the accused having the same constitutional protections), the requirement that a cpa *conclusively* make the case to an impartial judge that removal was necessary before it could be done (and that in the case of an emergency removal would have to do it within twenty-four hours), the repeal of the statutory changes allowing hearsay evidence and children’s videotaped testimony in abuse cases and the institution of safeguards to insure that children not be manipulated by cps interrogators, therapists, et al. and the elimination of the legal immunity that the cps and its operatives have against liability for unmerited intrusions into families and wrongful removals.<sup>145</sup> In the second article, I stated that I had concluded that after years of study and reflection, “the best course of action...is simply to dismantle the current child protective system and scrap the child abuse and neglect laws.”<sup>146</sup> I explained my reasons there and in the third article in 2005. It would be more likely to insure that families would not be targeted for innocent or trivial actions or because others do not like their childrearing practices because police departments—who would then be in charge of stopping child maltreatment—are both more adept as investigators and less motivated by an anti-parent, anti-family, pro-therapeutic values mentality. It would also guarantee that all the usual constitutional protections would automatically apply to accused parents.<sup>147</sup> This would mean that the usual criminal statutes against murder, rape, incest, and assault would apply—with the clear exception that corporal punishment of children by their parents is not abuse (it should also be made clear in the text of domestic violence statutes—which have their own conceptual and practical problems—that they do

not apply to parental corporal punishment). It would also be possible to draft a carefully worded criminal neglect statute when this is truly necessary.

In my 2005 article, I stated what I believe to be the core problem of the cps: “[t] is a *therapeutic* system—although coercively therapeutic.” There are many implications of this. It “sees true child maltreatment too much as a condition to be remedied by treatment, instead of a moral evil and criminal act to be punished.” It seeks prevention, but is oblivious to the fact that it cannot achieve this sweepingly “without creating universal regimentation and a monstrous tyranny.” The confusion of its operatives about what the terms “abuse” and “neglect” mean “reflects their training in contemporary relativistic social science with its ever-changing notions, theories, and even definitions of words.” Also, “it is beset by the basic contradiction of providing social services and assistance on the one hand and being an enforcement arm on the other...help and coercion do not go together very well under the same institutional roof” (this is similar to Chill’s comment). Apart from the problematic therapeutic character of the cps, its efforts are hampered by its bureaucratic structure and orientation: “it is beleaguered by the rigidities, limitations, self-interestedness/self-protectiveness, and inanities of bureaucratic institutions everywhere.”<sup>148</sup> The latter seems to accord with Mrs. Mack’s sentiments.

Prescinding from the latter point, I argued that perhaps child protection—at least the cases that are not the most serious—should be dealt with in a more informal way. We certainly need to go in this direction to assure prevention, which is supposedly the central purpose of our contemporary child abuse laws and policy. We would have a much smaller problem of child abuse if traditional family and community support structures were given renewed emphasis—including churches and even family physicians and other professionals (once the strictures of mandatory reporting and the self-protective tendencies it motivates are eliminated). I said that if the American family is, in some people’s estimation, too weak to protect its own children, then it should be strengthened—not massively interfered with.<sup>149</sup> Abolishing our current child abuse laws and cps might actually help to encourage the restoration of these informal structures by “shutting down” the neighborhood busybody from spying on and reporting parents and spawning “a true neighborly spirit” of people actually “looking out for children, knowing and interacting with the family next door and down the street, and kindly and charitably assisting them and bringing problems to their attention.” If animated by a renewed understanding of the proper role and rights of parents, this would be a kind of “village” that would actually be helpful

in raising children.<sup>150</sup> In truth, however, we need to go a step further. If we really want to be successful in preventing child abuse, I wrote, we need to restore sound morality and traditional religion. It is such internal sanctions—which the child-savers seldom mention—that in the final analysis are the most reliable.<sup>151</sup>

My research is not original. I do not analyze statistical data or do interviews, though I relate some anecdotal cases of false allegations that I was personally familiar with. I quote statistics that appear from other sources, including the above writers, and make judgments about their reliability on the basis of their analysis, the respectability of the sources, and the frequency with which the statistics appear. My effort is synthetic: to try to pull together a lot of information on the subject and document it as well as possible so as to educate people about it. To the extent that there is originality—and it is not really a unique contribution—it is with my analysis of the broader social and intellectual trends that gave rise to the anti-family cps, why the cps constitutionally is a problematic tool to deal with child abuse, the value of a more informal approach, and the new international threat posed by the UN Convention on the Rights of the Child.

### **Summary and Conclusion**

The above critics of the current child abuse laws and child protective system accentuate many common points. Virtually all discuss over-reporting as a central problem, and the vague laws as a major cause. Most cite the figure of nearly two-thirds of reports being outright unfounded. Most, explicitly or implicitly, indicate that the grounds for cps intervention into families must be narrowed. Some address exaggerated claims of sexual abuse, specifically. Many speak about the numerous problems of foster care and about how the current system, despite the word “protective,” fails to protect many children who truly are in need. A number mention “defensive” social work, etc. and the one-sided liability issue concerning cps operatives and mandated reporters. Most accuse the cps of anti-parent and anti-family bias. Some of the writers mention the harm to both children and families by unwarranted intervention, and believe that the cps is largely oblivious to it. Some note that the cps itself is confused about what constitutes child maltreatment, the very thing they are supposed to be protecting against. Some argue that even many “substantiated” reports involve only minor or insignificant matters, which most reasonable people would not truly consider abuse or neglect. Some speak of the problem of anonymous reports, and would like to see them no longer be the grounds for

triggering a cps investigation. The majority point to the fact that parents accused by a cps have few due process or related rights. Several point to financial and other incentives that the cps and those connected to it have in maintaining present arrangements. Some point to the lack of qualifications and experience of cps operatives, even in the most basic matter of raising children. A few mention the suggestive and pressuring interrogation techniques used by the cps and its therapists to get children to accuse their parents. A number offer similar advice to parents on how to go about their lives to try to avoid a cps investigation or how to deal with one when it begins, and most present proposals for legal and cps reform. A few call for using informal—instead of legal or governmental—means to deal with some maltreatment and to generally prevent it. A couple of the writers call for the dismantling of the current cps and the substitution of other approaches to deal with child abuse; a few others indicate that there are fundamental, intrinsic problems with the cps.

What this paper has sought to do is to show that leading writers, both scholarly and popular, have analyzed the still largely invisible (for most people) epidemic of false allegations of child abuse and neglect against parents. It has attempted to show—at least in summary form—the nature of problem, its causes, and how it fits into the broader scheme of pro-family questions and American culture's treatment of the family in our time. It also points to solutions—which are not very complicated and quite logical, although not necessarily politically easy to achieve—to what this writer has called “a grave threat to the American family.” There has been much writing about child abuse in academic, professional, and popular publications in recent decades and it is not difficult to find surveys of literature about different facets of the subject. Interestingly, however, it is not easy to find a literature survey of the critical writing about the cps. I think that this is largely because the critics are viewed as out of the mainstream of thought and opinion on child protection. They also largely represent a view of the family foreign to many in academic and professional circles. Hopefully, this paper will be a beginning, and will encourage people to read the writers discussed above—even if the information they provide evokes initial shocked disbelief, and their analysis further confirmation of the anti-family tides that many readers of this journal already are familiar with—and help stimulate more public attention to this problem and further the crucial cause of policy change.

## Notes

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1. Unless I see a need to specifically speak about child abuse (i.e., an adult actively harming a child or engaging in sexual activity with a minor) or neglect (i.e., an adult who has custodial care of a minor depriving or failing to provide the minor with something that he needs for a decent life), I will use the term “abuse” to encompass both, or else will simply use the term “maltreatment” in the same generic manner.

2. These statistics were compiled by the U.S. Government and by certain private organization such as the American Humane Association. See: Stephen M. Krason, “A Grave Threat to the Family: American Law and Public Policy on Child Abuse and Neglect,” in Paul C. Vitz and Stephen M. Krason, eds., *Defending the Family: A Sourcebook* (Steubenville, O: Catholic Social Science Press, 1998), 239.

3. The sources of these statistics are: Douglas J. Besharov, “‘Doing Something’ about Child Abuse: The Need to Narrow the Grounds for State Intervention,” *Harvard Journal of Law & Public Policy* 8 (1985): 550; Douglas J. Besharov (with Lisa A. Laumann), “Child Abuse Reporting: The Need to Shift Priorities from More Reports to Better Reports,” in *Social Policies for Children*, ed. Irwin Garfinkel, Jennifer L. Hochschild, and Sara S. McLanahan (Wash., D.C.: Brookings Institution, 1996), 258-259.

4. “‘Doing Something...’” 556;

5. Besharov with Laumann, 263.

6. “‘Doing Something,’” 556; Douglas J. Besharov, “Child Abuse Realities: Over-Reporting and Poverty,” *Virginia Journal of Social Policy & the Law* 8 (2000): 179-180; Besharov with Laumann, 257.

7. *Ibid.*

8. “Child Abuse Realities,”179.

9. *Ibid.*, 180.

10. Ibid., calculated from the chart he provides at 182. This was a large increase in the total number of children (750,000) who were the subject of unfounded reports in 1978, which data he provides in one of his earlier articles (see “Doing Something...,” 556). The near two-thirds figure of unsubstantiated reports remained the same, however (see *ibid.*, “Child Abuse Realities,” 179-180), so there were obviously many more total reports.

11. “Child Abuse Realities,” 171-172. Most children in substantiated cases of physical abuse suffered what is called “moderate” injuries or impairments: bruises, depression, or emotional distress which persisted more than two days.

12. “Doing Something...,” 578.

13. “Child Abuse Realities,” 172.

14. *Ibid.*, 176,

15. “Doing Something...,” 570.

16. *Ibid.*, 574-575.

17. Besharov with Laumann, 270.

18. “Doing Something,” 569-571.

19. *Ibid.*, 576.

20. “Child Abuse Realities,” 190.

21. Besharov with Laumann, 262;

22. “Child Abuse Realities,” 191-192.

23. *Ibid.*, 192 (he cites National Committee to Prevent Child Abuse statistics for 1996 that showed that of 1,046 children who died from maltreatment 41% had had prior or current cps contact); Besharov with Laumann, 263-264 (the authors state that in 1993, according to the National Committee’s statistics, 42% of the 1,149 children who died from maltreatment had had their situations previously reported to the cps and say that “[t]ens of thousands of other children suffer serious injuries short of death while under child protective agency supervision”).

24. Ibid., 264.

25. “Doing Something...,” 560-561.

26. See, e.g., Richard Wexler, *Wounded Innocents* (Buffalo: Prometheus Books, 1990), 17; Brenda Scott, *Out of Control: Who’s Watching Our Child Protection Agencies?* (Lafayette, La.: Huntington House, 1994), 33; Dana Mack, *The Assault on Parenthood: How Our Culture Undermines the Family* (N.Y.: Simon & Schuster, 1997). 67-68; Candra Bullock, “Comment: Low Income Parents Victimized by Child Protective Services,” in *11 American University Journal of Gender, Social Policy, and the Law* 1023-1053 (2003).

27. “Child Abuse Realities,” 165.

28. Ibid., 200

29. “Doing Something,” 580, 584-584; “Child Abuse Realities,” 195-202.

30. “Child Abuse Realities,” 203.

31. Mary Pride, *The Child Abuse Industry: Outrageous Facts about Child Abuse and Everyday Rebellions Against a System that Threatens Every North American Family* (Westchester, Ill.: Crossway, 1986).

32. Pride, 24.

33. Ibid., 25. Emphasis is in the book.

34. Ibid., 24-29.

35. Ibid., 41-50.

36. Ibid., 54.

37. Ibid., 168-169.

38. Ibid., 30.

39. Ibid., 82-83.

40. N.Y.: Plenum Press (Insight Books), 1994.
41. *Ibid.*, 134-155.
42. Scott, *supra* (note 26).
43. *Ibid.*, chaps. 1, 2, 3, 5, 6, 8, 9, 10.
44. *Ibid.*, 29-33.
45. *Ibid.*, 43-61.
46. *Ibid.*, 35.
47. *Ibid.*, 39-42.
48. *Ibid.*, 57-59.
49. *Ibid.*, chap. 5.
50. *Ibid.*, chap. 6.
51. *Ibid.*, 104.
52. *Ibid.*, 101-102.
53. *Ibid.*, chap. 8.
54. *Ibid.*, 134-136.
55. *Ibid.*, 131-146, 150-151.
56. *Ibid.*, 147-148.
57. *Ibid.*, 174-175.
58. *Ibid.*, 176-178.
59. *Ibid.*, 179-185.
60. *Ibid.*, 187-194.

61. Wexler, *supra* (note 26).

62. *Ibid.*, 267.

63. *Ibid.*, 17.

64. *Ibid.*, 85.

65. *Ibid.*, 80.

66. *Ibid.*, 85.

67. *Ibid.*

68. *Ibid.*, 86.

69. *Ibid.*, 90.

70. *Ibid.*, 88.

71. *Ibid.*, 87, 91.

72. *Ibid.*, 86.

73. *Ibid.*, 86-87.

74. *Ibid.*, 86.

75. *Ibid.*, 94.

76. *Ibid.*, 81-84.

77. Pride, 241; Wexler, 236.

78. Wexler, 260-261.

79. This is the Adoption and Safe Families Act, P.L. 105-89 (1997). It also calls for reasonable efforts to reunite families after maltreatment, but its permitting adoption after only fifteen months in foster care and the financial incentives it gives states to achieve more adoptions makes one think that it will end up doing little to promote family preservation. The early experience with the Act seems to be bearing this out. (See,

e.g., the discussion of Paul Chill's article in this paper; Paul Anthony Wilhelm, "Permanency at What Cost? Five Years of Imprudence under the Adoption and Safe Families Act of 1997," *Notre Dame Journal of Law, Ethics, and Public Policy*, vol. 16 (2002), 617-647.)

80. *Ibid.*, 266.

81. Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Before the Best Interests of the Child* (N.Y.: Free Press, 1979).

82. Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond the Best Interests of the Child* (N.Y.: Free Press, 1973).

83. *Before...*, 9.

84. *Ibid.*, 9-10.

85. *Ibid.*, 12.

86. *Ibid.*, 25. The emphasis is in the original.

87. *Ibid.*, 64.

88. *Ibid.*, 72-74.

89. *Ibid.*, 74-77.

90. *Ibid.*, 136.

91. Lawrence D. Spiegel, *A Question of Innocence: A True Story of False Accusation* (Parsippany, N.J.: Unicorn, 1986).

92. *Ibid.*, 243-247.

93. *Ibid.*, 247-249.

94. *Ibid.*, 261-264.

95. *Ibid.*, 265-271.

96. Mack, *supra* (note 26).

97. Ibid., 31, 59. On the latter page, she mentions that the two-thirds figure came from a federal study evaluating child welfare caseworkers.

98. Ibid., 299.

99. Ibid., 31.

100. Ibid., 60.

101. Ibid., 62.

102. Ibid., 63-73.

103. Ibid., 73

104. Ibid., 73-76.

105. Ibid., 77-78.

106. Ibid., 77.

107. Allan C. Carlson, *Family Questions: Reflections on the American Social Crisis* (New Brunswick, N.J.: Transaction, 1988).

108. Ibid., 242-248.

109. Ibid., 249-251.

110. Ibid., 251-254. On the latter point, Carlson quotes David G. Gil's 1970 book, *Violence Against Children: Physical Child Abuse in the United States* (Cambridge, Mass.: Harvard), 141-142.

111. Carlson, 248.

112. Ibid., 252-253.

113. Christopher Klicka, *The Right Choice—Home Schooling* (rev. edn.; Gresham, Oreg.: Noble, 1995).

114. Ibid., 272.

115. Ibid., 272.

116. See *ibid.*, 271-284.
117. *Ibid.*, 275-276.
118. *Ibid.*
119. *Ibid.*, 274, 277.
120. *Ibid.*, 279-281.
121. See *ibid.* 276-279.
122. See *ibid.*, 271-301.
123. *Ibid.*, 281.
124. *Ibid.*, 297-299.
125. See *ibid.*, 291-293.
126. Present writer's phone conversation with HSLDA, July 30, 2004.
127. Klicka, 294; *Home School Court Report*, vol. xix, no. 4 (July-Aug. 2003), 30-34.
128. *Home School Court Report*, vol. xix, no. 4, 38.
129. *Home School Court Report*, vol. 12, no. 5 (Sept.-Oct. 1996), 6.
130. Klicka, 296.
131. *Ibid.*, 300.
132. Paul Chill, "Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings," contribution to "Special Issue: Child Protection in the 21st Century," *Family Court Review*, vol. 41 (2003), pp. 1-14, at <http://web.lexis-nexis.com/universe/document?>; Internet; accessed March 5, 2004.
133. *Ibid.*, 2.
134. *Ibid.*, 3.

135. Ibid., 3, 6.
136. Ibid., 4.
137. Ibid., 5.
138. Ibid., 6.
139. Ibid., 6-7.
140. Stephen M. Krason, "Child Abuse: Pseudo-Crisis, Dangerous Bureaucrats, Destroyed Families," in Stephen M. Krason and Robert J. D'Agostino, eds., *Parental Rights: The Contemporary Assault on Traditional Liberties* (Front Royal, Va.: Christendom College Press, 1988), 153-196.
141. Stephen M. Krason, "A Grave Threat to the Family: American Law and Public Policy on Child Abuse and Neglect," in Paul C. Vitz and Stephen M. Krason, eds., *Defending the Family: A Sourcebook* (Steubenville, O.: Catholic Social Science Press, 1998), 234-267.
142. Stephen M. Krason, "Child Abuse and Neglect: Failed Policy and Assault on Innocent Parents," *Catholic Social Science Review* 10 (2005), 215-231.
143. "A Grave Threat..." 235-259.
144. "Pseudo-Crisis..." 181-196.
145. "A Grave Threat..." 258-260, recounting in summary my proposals from the previous article.
146. Ibid., 260.
147. Ibid.
148. "Child Abuse...Failed Policy," 224.
149. "A Grave Threat..." 261.
150. "Child Abuse...Failed Policy," 225.
151. "A Grave Threat..." 261-262.