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The Mondale Act and Its Aftermath: An Overview of Forty Years of American Law, Public Policy, and Governmental Response to Child Abuse and Neglect

By Stephen M. Krason

The Background of Current Law on Child Abuse and Neglect and the Child Protection System

Public policy in the United States on child abuse and neglect and the formation of what we now call the child protective system (CPS)—which this article argues has been deeply troublesome—was shaped by a landmark piece of legislation passed by Congress and signed into law by President Richard M. Nixon in 1974 called the Child Abuse Prevention and Treatment Act (CAPTA), or the “Mondale Act” (after its prime sponsor, Senator and later Vice President Walter F. Mondale). The Act made federal funds available to the states for child abuse prevention and research programs on the condition that they passed laws which mandated the following: reporting by certain professionals (such as physicians) of even *suspected* cases of child abuse and neglect; the setting up of specialized child protective agencies, usually housed within state and corresponding county public social service or child welfare

agencies, to deal with abuse and neglect; the granting of complete immunity from criminal prosecution or civil liability for the mandated reporters and CPS investigators regardless of their actions and even if the allegations are grossly erroneous; the insuring of confidentiality of records and proceedings in each case; and the providing for appointment of a guardian *ad litem* in judicial proceedings for children alleged to have been abused or neglected.¹ Effectively, CAPTA transformed public policy with respect to child abuse and neglect by means of a new federal grant-in-aid program to the states, the way in which public policy in so many different areas from the early twentieth century onward has been reshaped.² CAPTA's mandates encompassed all kinds of known and suspected child maltreatment, including physical abuse, sexual abuse, physical neglect, and psychological and emotional maltreatment. CAPTA never defined these terms, however, and there has not been and is not today any widely accepted definition of them even among professionals working in the field.³ (As we shall also see, the problem of definition has been a major reason for an ongoing explosion of false abuse/neglect reports.) CAPTA further required the U.S. Secretary of Health, Education, and Welfare (later Health and Human Services) to establish a National Center on Child Abuse and Neglect to act as “a clearinghouse for the development of information and dissemination of information about child protective research and programs.” The center, initially headed by noted child abuse expert Douglas J. Besharov (later, as we shall see, he became a major critic of current child abuse/neglect policies), used most of its funding for research and training grants to individuals and for special grants to the states. Although the latter comprised only about 20% of the available funds, it emerged as the most important part of the statute for the future of child abuse/neglect enforcement in the U.S.⁴

As is stated below, the states had adopted some of the above sorts of changes even before being stimulated to do so by CAPTA. These were the ideas that were being pushed by professionals in the child protective and social welfare communities and their legislative allies throughout the country, and whenever a particularly gruesome child abuse case was picked up by the media it tended to stimulate a legislative response (which is something we have continued to see with the aftermath of the Casey Anthony trial in 2011 and ex-Penn State coach Jerry Sandusky sex abuse cases). Some states even went beyond what the federal statute required by, for example, mandating *every citizen* to report known or suspected abuse/neglect and providing both criminal and civil immunity for false reporting even if willful (actually, the establishment of hotlines and the practice of accepting anonymous reports have meant that the

reporter's name may never be known in many cases anyhow). The Sandusky case prompted Senators Robert Casey and Barbara Boxer to propose amending CAPTA to require the states receiving federal funds under the Act to mandate that every adult report suspected child abuse or neglect.⁵ This almost certainly would mean that, as with the mandated professional reporters currently, any person could face civil or criminal liability if he failed to report.

The Earlier History of Child Protection in America

The effort that culminated in the Mondale Act and the formation of the current CPS emerged from a long history in the U.S. of efforts to utilize law and government to combat actual or perceived family and youth problems. The common law recognized that parents had to have discretion in disciplining their children in the home, and held a presumption in favor of the reasonableness of any such parental action. If there was severe abuse the criminal law could intervene, but a parent could not be held civilly liable for excessive punishment.⁶ In spite of this, the law in both England and early America permitted courts, on a local level, to intervene in families and even to take away children if they found parents unfit or children not being raised in such a way as to further the good of the community.⁷

What some have called the “child-saving movement” began in earnest in the 1820s with the opening of the New York House of Refuge. This institution sought to “save” children from what was believed to be a sure life of crime stimulated by their being abused, neglected, poor, or delinquent. A pattern was set in state laws for the next hundred years of viewing any of these categories as being a valid rationale for state intervention and removal from the family home.⁸

Later in the nineteenth century came the reform school movement. Laws influenced by this movement sought to remove delinquent or “ill-treated” children from their families and put them into reform schools in the countryside, away from what was viewed as the corrupting atmosphere of the cities. Typically, an “ill-treated” child would be one whose parents were alcoholics, criminals, or guilty of scandalous behavior. The children targeted by these efforts were usually from poor and immigrant families. The behavioral standards that society sought to shape in the children were those of an upright, productive Christian. The perspective of the relationship of the family and the state was one that

continued the pattern set down by the early Puritans, and the state was viewed as an appropriate tool to regiment family life for the social good.⁹

Celebrated cases like the “Mary Ellen” case of 1875, in which a young girl was physically abused when apprenticed to her illegitimate father, led to the forming of numerous Societies for the Prevention of Cruelty to Children. These societies began as sort of quasi-governmental bodies, and the law gave them broad police powers of investigation and arrest.¹⁰

Dr. Allan C. Carlson, President of the Howard Center (a think tank devoting much attention to family questions), writes that the “child-savers” of the nineteenth century were “a well-funded and highly educated elite, enjoying the economic backing of private philanthropists.”¹¹ Most of the funding and effort in the child welfare area today comes from government, although such philanthropic involvement continues.¹² Reflecting the perspective about the role of government and the private-public relationship then in place, the nineteenth-century effort was carried out by local government (primarily through the courts) and by private organizations like the Societies for the Prevention of Cruelty to Children. In the latter part of that century a shift seems to have taken place in how the private effort was carried out. Whereas previously it had been done informally, with people in communities simply helping maltreated children by “taking them in” and in other ways—as seen perhaps in Mark Twain’s *Huckleberry Finn* where the widow lady and others protect Huck from his abusive, alcoholic father—it began, especially in urban areas, to be dealt with formally and institutionally, and to a greater degree with the involvement of the law.

The private and local “child-saving” efforts of the nineteenth century were strongly buttressed by the shaping of a new doctrine called *parens patriae*, which was taken from English equity where it had been used to justify the state’s acting as a sort of parent to protect the estates of orphaned minors. The doctrine was recast, starting with the important Pennsylvania Supreme Court decision of *Ex parte Crouse* (1838),¹³ to justify removing children from the custody of their parents “when [the parents were] unequal to the task of education or unworthy of it” and committing them to the “common guardianship of the community.”¹⁴ Almost as significantly, the court also ruled that such removal to reformatories did not require any kind of due process proceeding.¹⁵

According to Carlson, the doctrine of *parens patriae* has been the underlying legal basis for state intervention into the family in the name of promoting child welfare, fighting child abuse and neglect, and so on, until the present day. He argues that the absence of any *specific* constitutional protection for the family in the U.S.—in spite of the fact

that the older common law tradition underlying the Constitution¹⁶ did provide such protection, as we saw above—made the triumph of *parens patriae* possible.¹⁷

In the late nineteenth century the juvenile justice movement began, providing what Carlson calls “the first overt linkage of social science and social work to the law.” This movement was responsible for stimulating the organization of the juvenile courts in the states. This movement also spurred on the practice of seeking to identify “probable delinquents” who would be removed from their families and their supposedly unfit parents—mostly in the immigrant, poor, and various minority communities. With this new movement came some measure of a shift from the practice of simply separating children from their “unfit” parents; now, natural parents and their children were both “to be treated as clients and given therapeutic services, with ‘the best interests of the child’ at heart.”¹⁸ Nevertheless, it was a coercive system, which sought to reshape the lives of these “clients” along the lines of the modern American vision of ideal family life held by the social workers and juvenile court judges who were its main enforcers.¹⁹

In the early twentieth century, some child welfare experts began to move their thinking away from a focus on the problems of poor, fringe, and immigrant groups toward an increasing suspicion of parents in general. The deficiencies they pointed to in parents no longer concerned traditional morality or Christian conduct and demeanor, but behavior which was seen as an obstacle to a child’s psychological well-being. Even while child-saving from early on in American history was often footloose with the natural rights of parents,²⁰ it typically had been done in the name of religious and moral reasons. In the twentieth century it increasingly came to be done for non-religious humanistic ends. Carlson quotes one prominent book of the 1920s—and this was not an atypical position among professionals in the family field at the time—as saying that parents could no longer “shield themselves behind natural rights” and that it was “only a question of time before the parent’s psychological handling of the child” would be subjected to the scrutiny of the state.²¹ Quotations such as these make it clear that the outrageous ideas that have been circulated by some experts and activists of recent years, such as licensing parents, are nothing novel.²²

Even though we have seen the soft spots historically in American law’s protection of the family, such a radical undercutting of family rights as was advocated by some early twentieth-century experts was not readily embraced by courts. For example, in the famous parental educational rights case of 1925, *Pierce v. Society of Sisters*, the U.S. Supreme Court said that, “The child is not the mere creature of the State;

those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”²³

The juvenile justice movement continued as the twentieth century wore on, and succeeded in transforming the way the law dealt with troubled minors state by state. Juvenile courts and the practices of the juvenile justice system became deeply implanted. A certain idealism about the system’s reparative and reforming capabilities remained, but the reality was often very different. Conditions in juvenile facilities were often harsh. Carlson says, “the system became known for its procedural nightmares, arbitrariness, and cruelty.”²⁴ The juvenile justice movement seemed to grind to a screeching halt in the throes of the “due process revolution” of the 1960s.²⁵ In its 1966 *Kent v. U.S.* decision,²⁶ the U.S. Supreme Court took note of the problems of the juvenile courts. Then, in 1967, the Court’s *In re Gault* decision²⁷ held that juveniles had the same due process rights as adults, including the right to a notice of charges against them, the right to a public hearing, the right to counsel, the right to confront witnesses against them, and protection against self-incrimination. Additionally, the Court’s majority attacked the doctrine of *parens patriae*, which it spoke of as having a vague meaning and a doubtful basis in common law history.²⁸

Interestingly, however, even as the long-running juvenile justice movement was running out of steam, child-saving was finding a new purpose for its efforts: the “newly discovered” child abuse and neglect problem. The 1960s were a period of considerable attention to this matter both in scholarly and professional journals and in popular publications. There was a general willingness to pay attention to such articles because the decade was a time in which, as Carlson puts it, there “was a general attack on the American middle-class family model.” Literature in the fields of sociology and social work was particularly noted for its critical stance toward traditional family life and celebrating of various “alternative lifestyles.”²⁹

This new attention on child abuse and neglect naturally created the impression of the existence of a serious problem, and fueled the movement for legal change. In the early 1960s, a small group of physicians, led by Dr. C. Henry Kempe, developed the conviction that the only way to deal with child abuse/neglect was to pass laws requiring certain categories of professionals to report suspected cases. In 1963, they convinced the U.S. Children’s Bureau to draft a model statute that required physicians to file reports to designated authorities about children with serious physical injuries that had been inflicted by other than accidental means. Within only four years all the states passed such laws. These were what Besharov called the “first generation” of

reporting laws. They were directed solely at physicians and required the reporting only of “serious physical injuries” or “non-accidental injuries.” A number of states then expanded their reporting laws to make it mandatory to report other types of child maltreatment and to add other categories of professionals besides physicians to the list of required reporters.³⁰

The Explosion of Reports (Mostly False) of Child Abuse and Neglect since CAPTA’s Passage

In 1963, at the time that the first generation of (limited) reporting laws were being put into place, there were 150,000 reports of abuse and neglect nationwide. By 1972, just prior to the passage of CAPTA, there were 610,000. In 1982, there were 1.3 million.³¹ In 1984, ten years after passage, the number had climbed to 1.5 million.³² By 1991, the number was 2.7 million reports annually,³³ by 1993 it was 2,936,000,³⁴ and by 1997 it rose to three million.³⁵ The trend continued in the first decade of the twenty-first century. In 2009 it was 3.3 million.³⁶ This meant that there was an astounding increase in reports of 2438% in the over 45 years since the first reporting laws! It must be kept in mind that these figures merely tell us about the increase in reports; they do *not* verify that an expanding epidemic of actual child abuse and neglect occurred over this time, as they are often cited to supposedly prove.

Most states have central registries on which they enter names of people who supposedly have been child abusers or neglecters.³⁷ In 2006, the federal Adam Walsh Child Protection and Safety Act became law, which established a centralized database—i.e., a national registry—of persons who (supposedly) have been “substantiated” as child abusers.³⁸ While the experience with this national registry is so far limited, if the state registries are any indication it is entirely unclear that the only names appearing on it will be of genuine child abusers or neglecters, or even that most names will not be of people only accused but never proven to have done anything. What is not usually realized is that people’s names can be entered into such registries—and frequently are—if they have not been convicted, or even accused, of any crime—or even if it has never been shown that they have abused or neglected any children. In Ohio in 1994, the state Department of Human Services, under pressure from the American Civil Liberties Union and other organizations, purged 471,000 names—mostly of parents—from its Central Registry on Child Abuse primarily because the allegations were unsubstantiated.³⁹ This was an

astonishing 78.5% of the names in the registry! Things were not much different twenty years later. A federal court in Illinois noted early in the last decade that upon neutral review 74.5% of indicated findings of abuse or neglect in that state were reversed. In the same decade in Pennsylvania the substantiation rate kept steadily dropping, from 18% in 2006, to 17% in 2007, to 16% in 2008, to 15.5% in 2009, to 14.8% in 2010.⁴⁰ Such figures do not appear to be substantially out of line with the national situation. We are able to put the statistical picture in focus by considering federal government data, studies, and the assessments of noted authorities over the past three decades or so. One study in the late 1970s, by which time our current policies were in high gear, showed that nationally 65% of allegations—which involved 750,000 children—were “unfounded.”⁴¹ Another in the mid-1980s concluded the same about 80% of child sexual abuse complaints,⁴² and yet another at that time showed that 60% of abuse complaints in general were unfounded.⁴³ Besharov, who played an important role in shaping our current national policy, wrote in the mid-1980s that 65% of abuse/neglect reports nationwide “prove[d] to be unfounded” and that “over 500,000 families [annually] are put through investigations of unfounded reports.”⁴⁴ By 2000, he wrote that the percentage of false reports was still in the 65-66% range and the number of innocent families investigated annually had increased to about 700,000.⁴⁵ He said that in one representative year (1997), unfounded reports involved 2,046,000 children.⁴⁶ 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;⁴⁷ actually, most “substantiated” cases of abuse or neglect involve “minor situations,” such as slapping and poor housekeeping.⁴⁸ As far as sexual abuse cases are concerned, only a small percentage (6%) “were considered serious”;⁴⁹ the rest presumably involved something on the order of inappropriate touching, fondling, etc.⁵⁰ He concludes that “the high level of unwarranted [state] intervention” has led to a condition in which the child-protective “system is overburdened with cases of insubstantial or unproven risk.”⁵¹ In 1986, even employing very loose standards of what abuse and neglect are (see below), child protective agencies (cpa’s) themselves concluded that only around 40% of reports were valid.⁵² In 1994, the U.S. Department of Health and Human Services published a study that said that in 1992 alone there were 1,227,223 false reports of child abuse.⁵³ The Second U.S. Circuit Court of Appeals in 1994 overturned New York State’s procedures for entering people’s names in their registry because the “standard of evidence used...posed an unacceptably high risk of error.” The Court said that in spite of “the grave seriousness of the problems of child abuse and

neglect...we find the current system unacceptable.”⁵⁴ A 1993 *Reader’s Digest* article on the subject quotes New York University law professor Martin Guggenheim as saying that “[h]undreds of children each week are needlessly removed from families” due to false abuse and neglect allegations.⁵⁵ When discussing the rise of child abuse in his periodical *The Index of Leading Cultural Indicators*, former U.S. Education Secretary William J. Bennett noted the view of certain authorities that a “child abuse establishment” of professionals “actually encourages false charges of child abuse.”⁵⁶ Abigail Van Buren (“Dear Abby”), who was long one of the leaders in the charge against child abuse, admitted in the 1990s after running a letter about a parent facing a false abuse report that she was startled at how many other parents wrote to say they had had the same experience.⁵⁷ According to Department of Health and Human Services data (NCANDS - the National Child Abuse and Neglect Data System), of the 3.3 million reports in 2009 only 14.4% were substantiated.⁵⁸ This means that while for more than three decades the number of unfounded reports apparently was between three-fifths and two-thirds, now it has shot up to well over 80%.

By the way, the term “substantiated” in the CPS lexicon generally means that it is established that child maltreatment occurred—though, as mentioned and further discussed below, it is questionable that many of the parental behaviors that fit the CPS categories of “abuse” or “neglect” really constitute that in the minds of the average person—whereas the term “indicated” means that there is no proof that maltreatment occurred, but “there is reason to suspect” that it did, or even that it “could happen.” This seems like a bit of a verbal slight-of-hand and it is not clear what it means. Sometimes an “indicated” determination of abuse is simply treated as if it occurred and, in fact, some states really do not distinguish between the terms. This can easily, of course, have the effect of inflating the supposed number of cases of actual abuse.⁵⁹

What the above means is that throughout almost the entire time that the Mondale Act has been in existence, much more than a majority of child maltreatment reports around the country have been unfounded, and recently there is no question that the percentage has spiked upward even further. We now have a situation where a massive state bureaucracy with sweeping coercive power is having millions upon millions of dollars being poured into it each year even though perhaps 85% of its actions are completely unnecessary.

A question might be asked about why in recent years we have seen the apparent jump of three-fifths or two-thirds to four-fifths or higher of false reports. The answer to this is unclear. Perhaps the limited demands regarding respecting parental rights put on the CPS by the 2003 CAPTA

amendments and court decisions upholding the Fourth Amendment rights of parents in CPS investigations—both discussed below—have motivated at least some cpa’s to screen reports better. Maybe the criticism the CPS has received from some authorities about how chasing so many trivial or non-existent problems has caused it to miss the true cases of abuse and also the celebrated cases of children who died from maltreatment even after the CPS knew about a problem—these topics are also discussed below—have also motivated more screening and a concern by some cpa’s to investigate more selectively. Or maybe, alternatively, the CPS is becoming even more aggressive in investigating everything that is reported, and thus they find that more and more of the complaints are false. Also, in an era where people are hearing on daytime television and the like about the ever expanding number of behaviors that supposedly constitute child abuse and Homeland Security is telling everyone to keep a sharp eye out for suspicious activity, it would not be surprising that there would be an even further increase in the number of false reports. Or, possibly, the three-fifths or two-thirds figure for some time was too low. The bottom line, however, is that the “epidemic” of child abuse—*real* child abuse—that the American public heard so much about in the 1960s, 1970s, and 1980s is just not there, and probably never was.

The experience of facing false charges—perhaps it is better to call it an ordeal—can happen to any parent merely by a stranger picking up the telephone and anonymously calling a well-publicized hotline number or the local children’s services or child-welfare agency to say, without any evidence, that a parent maltreated his or her child. (It is clear from the above statistics that this involves a massive number of children and families each year.) The result of this can be a disruption of family life, legal troubles and financial difficulties growing out of parents having to defend themselves, and the forced separation of children from their parents that can go on for months or years. While parents can do things to protect their children and families from many of the threats the current culture poses to them (e.g., controlling their associations with bad playmates or peers, limiting television use or putting screening software on computers to stop the invasion of immoral influences, homeschooling them to circumvent the negative influences of public or other institutional schools), it is almost impossible to fully insulate one’s family from the threat of a system that on very little pretense can simply reach into the home and take away one’s offspring. The massive incidence of false abuse/neglect allegations shows that current law and public policy on child abuse and neglect and the routine actions of the CPS are a major threat to the American family today.

Examples of Outrageous Applications of the Child Abuse and Neglect Laws

Sometimes—although all too seldom—CPS officials will acknowledge that a family has been falsely accused of abuse or neglect. They typically say that such episodes are exceptions and unfortunate, uncommon events (and often attribute them to insufficient training for their personnel due to inadequate funding). The statistics cited indicate, on the contrary, that they are *clearly the rule and not the exception*. An article on the problem of false reporting in *Reader's Digest* in 1993 spoke about “systemic abuse.”⁶⁰

The cases we now recount would most likely be so responded to by CPS spokesmen, or else they would say that despite what seems to have happened there really may have been abuse or neglect but it just was not found. There is probably no better place to start than the Jordan, Minnesota, case in 1983-84, which gained significant national attention and late in 1994 was the subject of an extensive ten-year retrospective report on National Public Radio. This ugly story in the annals of American “child-saving” began when a previously convicted child molester, James Rud, who had been charged with molesting two children he babysat, falsely told police in the small town that he was part of a child sex ring which included mostly parents. Eventually, twenty-four adults, mostly parents, faced criminal charges and their children were all taken from them. What followed was a series of despicable prosecutorial tactics and intimidation of both parents and children by state social welfare agencies and hired psychologists. There was no physical evidence that showed any physical or sexual abuse had taken place, except by Rud. Under extraordinary pressure and by means of suggestive techniques in therapy and promises of reunion with their families if they cooperated, many of the children began to claim their parents had abused them. With skimpy cases, the politically ambitious prosecutor tried to plea-bargain with the accused parents to get them to confess to something in exchange for the return of their children. Some parents were asked to make perjured testimony against others, and even offered money. One couple refused and demanded a trial. The entire case against all the parents unraveled when at the trial Rud, who had struck a plea bargain to testify against the other parties who were his supposed co-conspirators, was unable to identify the couple in the courtroom. He later

confessed in a jailhouse radio interview that he had made the whole thing up, and the children later recanted.⁶¹

Even after the whole case collapsed, the children were not returned to their parents for months. In the years following, many of the children suffered psychological and drug problems. There were cases of attempted suicide among the children and divorce among the parents. A civil suit by the parents against Scott County, Minnesota, was dismissed because the Minnesota courts held that state agencies were absolutely immune from liability. Even though the attorney general of Minnesota had to intervene in the case, the prosecutor, in spite of tactics involving both doubtful ethicality and legality, only received a minor reprimand and continued to practice law.⁶²

In many, many cases that we have gathered information about, the same situation comes up as in the Jordan case: a) that authorities seem to work from the premise that the parents are guilty and they have to prove themselves innocent; b) that when it becomes apparent that authorities realize that no abuse or neglect has occurred they still persist to try to find something; c) that in spite of legal strictures they keep cases and investigations open, and efforts are made by authorities to coerce false confessions of guilt or (if a criminal investigation) to plea-bargain with the threat that children will not be returned otherwise;⁶³ d) that parents have long struggles getting their children back even after they are exonerated; and e) that after their sometimes nightmarish battles with the agencies are over they find they have no legal recourse because of the state's immunity.

The statistics showing the multitude of false child abuse and neglect allegations in the U.S. suggest that there are repetitions, in varying degrees, of the Jordan Case all across the country. Only a few, of course, find their way into the media and popular or professional publications. Some of these which have come to our attention illustrate how child protective agencies and even regular law enforcement agencies treat almost anything as abuse or neglect, how parents are viewed with much suspicion and those who come to the agencies' attention regarded almost automatically as guilty, and how the system is—to use the title of a book on the subject—“out of control.”⁶⁴

For several years, San Diego County, California, got some bad press attention for the antics of its cpa. In a case that began in 1989, a Navy man stationed there was accused of sexually abusing his eight-year-old daughter, even though a roving stranger had assaulted five other little girls, some in the same neighborhood, using the same apparent *modus operandi*. Nevertheless, the father was arrested for the act and his daughter taken by the agency. After over a year under the control of the

agency and in enforced separation from her family—and, it was later learned, after repeated agency attempts to get her to implicate her father—the daughter accused him. The case was later dismissed and the father’s arrest record expunged when DNA evidence indicated he could not have been the assailant. This, however, was only after endless interrogations, forced therapy, resulting psychological problems of the mother (which led to a suicide attempt), and well over \$100,000 in legal fees. When the girl was finally returned to the family, her behavior had markedly changed as a result of the episode.⁶⁵

Another celebrated San Diego case dragged on for over five years. It involved a physically deformed man who was alleged to have committed all sorts of bizarre acts when watching children with his wife at a local church. The man was kept in jail awaiting trial for over two years, charged with an assortment of acts of physical, sexual, and ritual abuse. There was absolutely no physical evidence in the case and no sign of the children having been assaulted. The three- and four-year-old children denied being abused until undergoing therapy. When some later testified, they contended that among other things the man had stabbed a giraffe and an elephant, had taken them to a house and placed them on a bed coated with black oil, and had drowned rabbits in a church baptismal font. The prosecutors thought all this was credible.⁶⁶

In light of episodes such as these, a grand jury charged that San Diego County’s child protective agencies and their network of contracted therapists were out of control and were operating without checks and balances. The California Juvenile Justice Commission suggested a possible criminal conspiracy among the county’s child protection workers.⁶⁷ Still, I know of no indictments or other legal action subsequently taken against them.

Two books on the subject, Mary Pride’s *The Child Abuse Industry* and Brenda Scott’s *Out of Control*, detail many, many outrageous cases of false abuse and neglect allegations. Some examples are the following. Two children were summarily taken from their parents after the one, a boy, went to school with a mark on his nose and eye after being hit by a tennis ball while playing catch. Both children were returned to their parents only after months in state custody, during which time they were abused and neglected. The parents were financially drained by the legal bills from the case.⁶⁸ A father was reported, apparently by a neighbor, after the latter watched his two-year-old daughter sitting in his lap trying to undo his shirt buttons. Presumably, the neighbor saw this as a sign of likely sexual abuse or some such thing. The police initially investigated and dismissed the matter, but then came back at the behest of child protective workers who seized the child. She remained in foster care for

weeks. The family got her back only after a legal fight whose costs resulted in their losing their home.⁶⁹ Another family was repeatedly investigated and monitored for four years and at one point lost their infant daughter for nine months because an agency alleged that her small size indicated she was “failing to thrive.” This notion has been taken uncritically from medical literature by psychologists—and then picked up by child protective workers—and applied to the physical and mental development of children. Promoters of this notion often claim that such insufficient development is a sign of “psychological abuse,” a term that, in turn, is never clearly defined. In the case in question, the agency never seemed interested in the fact that both the girl’s mother and maternal grandmother were below five feet tall, and so genetics was probably the reason. The child protective workers were convinced it *had* to be abuse.⁷⁰ Another mother was “substantiated” in an agency’s files as a sexual abuser because she washed her seven-year-old son’s foreskin in the bathtub due to the fact that he was so sloppy about doing it—as probably many boys at that age are.⁷¹ A little girl was removed from her parents’ custody after she slightly fractured her leg when stepping on a pencil. The agency “bargained” with the parents, as in the Jordan case: they would get their daughter back if they admitted guilt and told them they then would only have to attend a few parenting classes.⁷² Another set of parents brought their baby to the emergency room of St. Louis’s Cardinal Glennon Hospital upon the recommendation of their physician to find out why the infant was spitting up so much. After the hospital found no physical problem, they accused the parents of emotional neglect (which the hospital personnel admitted they could not define). Child protective authorities regularly monitored the family as suspected abusers after that. The late, famous investigative reporter Jack Anderson brought this case to light on his radio program.⁷³

Medical matters and hospital emergency rooms like the latter are a fruitful source of false abuse complaints. Often, for example, parents bring a child to an emergency room with a certain type of rash and attending medical personnel, not usually specialists in dermatology, conclude it is a burn that *must* have been inflicted by the parents. In Dayton, Ohio, parents took their baby daughter to their long-time pediatrician when she developed a rash. Usually, parents are likely to be treated more reasonably and with more respect by their own physicians than emergency room doctors, but in this case the pediatrician thought that the problem was caused by the child being repeatedly shaken. Further tests showed that the child had fractured three ribs and maybe a leg. A specialist later discovered that other physical signs showed the presence of a rare bone disease called osteogenesis imperfecta. This and

not abuse was the cause of the symptoms. The pediatrician, however, had reported the parents to the county Children's Services Bureau, which despite the final medical findings was sure the child was abused and took custody of her. The agency requested a police investigation, but that turned up nothing. After a year and a half of repeated agency investigations and medical examinations of the child, great financial drain on the family, and increasing evidence of the disease, the agency dropped the case.⁷⁴

In Jefferson County, Ohio, three solid Christian couples connected with Franciscan University of Steubenville (where I am on the faculty) got in trouble with the Children's Services agency after home births, which are legal in the state. In one of the cases, the couple were "indicated" as neglecters and apparently entered into the state child abuse registry because at the midwife's direction they provided the initial treatment for a common condition babies get after birth before bringing him to a hospital emergency room. The agency said there was neglect because the parents had failed to seek medical treatment within a ten-hour period, even though such a specific requirement does not exist anywhere in the pertinent state statute or regulations of the state's Division of Social Services and it is doubtful that either of these gave the county cpa the authority to fashion it on its own. Further, the couple was left to believe that their name would be permanently kept in the registry, even though the state regulations expressly stated that "indicated" parties shall have their names removed within five years of the disposition of the case.⁷⁵

Another of these cases involved a couple whose baby was only in the "low normal" category in weight gain several weeks after birth, as it turned out because he had trouble learning to nurse properly. Their pediatrician, who they had chosen mostly because their HMO left them few choices, reported them after they resisted giving feeding supplements. He said that the baby risked brain damage otherwise—even though other physicians and a lactation specialist who were consulted were satisfied with the baby's progress. Carlson indicates that legal complications from home birthing, which is enjoying a resurgence of popularity in the U.S. but is strongly disliked by the medical profession, are not unknown elsewhere.⁷⁶ This case shows that parents are sometimes investigated as abusers or neglecters because they are caught up in disputes between physicians about the type of medical care for their children.

In Michigan in 2011, there was an egregious example of the extreme to which the CPS and prosecutorial authorities will go to back medical practitioners against parents in making health care judgments for their

children. Physicians at DeVos Children's Hospital in Grand Rapids began an aggressive chemotherapy regimen on a young boy with Ewing's sarcoma, a serious form of bone cancer, which as time went on caused him to become gravely ill because of side-effects. Certain of the drugs used had not been approved by the Food and Drug Administration for use in children, and it was known that they could cause them serious side-effects. Even though a PET scan had revealed that the boy was now cancer-free, the attending physicians refused to discontinue the aggressive treatment, saying that there could still be cancer cells in his body. The parents took their son from the hospital, began a nutrition regimen for him at home, and arranged to have their family physician do regular PET scans to check about any recurrence of the cancer. Without the intensive chemotherapy, he quickly got better. The physicians at the hospital, pursuant to their stated understanding of the requirements of state law, reported the parents to the CPS for medical neglect. The local CPS and prosecutor concluded no neglect had occurred, but the hospital's physicians were not satisfied. They prodded state CPS officials to go after the parents until the former appointed a special prosecutor who charged the parents with medical neglect. The prosecutor lined up physicians who were supposed experts in child abuse to testify, even though they had never seen the boy. The lead physician from the hospital insisted in her testimony that it should always be medical professionals and never parents who should balance the risks and make the decision about continued treatment for a child. Ultimately, the judge dismissed the charges, but the case is continuing because the special prosecutor appealed the decision.⁷⁷

Pride lists a number of other things that agencies in various cases she has record of have threatened to remove children from their parents for: scolding and spanking, or on the other hand permissiveness; withholding TV-watching privileges, or on the other hand supposedly neglecting children by using the TV as a babysitter; parents raising their voices in anger, or on the other hand failing to show proper emotion toward their children; and parents failing to exercise 24-hour supervision over their children, or on the other hand "repressing" their children by exercising 24-hour supervision.⁷⁸ *As this makes clear, the child protective system often puts parents in a "catch-22" situation; they are literally "damned if they do and damned if they don't."*

Scott tells how in Arizona children have been taken away from their parents because of "sexual abuse" for such reasons as the children accidentally have seen their parents unclothed; the parents have bathed a four-year-old; and fathers were seen kissing their young daughters on the mouth.⁷⁹ Without specifying the state, Scott additionally says that

caseworkers have found child “maltreatment” when a parent has been late picking up his or her children from school or placed too high an expectation on a child. They further have found what they have called “passive abuse” for such things as the parents not having a testamentary will and their working too much.⁸⁰

The media gave much attention to a Georgia story in 1994 when a woman was reported to police for slapping her unruly nine-year-old son in a supermarket. She wound up in jail, and her husband had to cash in his IRA to bail her out. It was only after a fusillade of negative public reaction to the arrest and also after intrusive investigations into the family by child protective authorities that the local prosecutor decided not to press charges. Actually, there are many cases of parents being accused of child abuse for simple spanking, even though this is not forbidden by any state’s law and, in fact, many state statutes, such as Ohio’s (my state), expressly say this is *not* child abuse.

In Aurora, Colorado, a father was criminally charged for a mild act of corporal punishment toward his rebellious seventeen-year-old son. A nationally syndicated columnist described James Kelley as “exasperated” with the son who had left home to cohabit with his girlfriend and “was neglecting his health and education.” When the son denied stealing a stereo from his father’s car, Kelley slapped him. For this act of “non-sparing of the rod,” Kelley was arrested and charged by local authorities with battery. The jury hearing the case acquitted him.⁸¹

A mother in Virginia was found guilty of neglect by a county social service agency for the following: she did not want to rouse her sleeping three-year-old in her car in front of her house while she ran a ten-minute errand next door and the child awoke in the meantime and wandered into a neighbor’s house, and she also allowed her nine-year-old son to watch his younger sisters for 25 minutes as a way of developing responsibility. The agency established age limits for babysitting even though state law was silent about it. A neighborhood busybody apparently reported the mother, even though she and her husband were upright and well-respected parents. That reports for such flimsy reasons are not uncommon in Virginia was illustrated by the mother’s telling the press, “Every time I tell this story, someone says, ‘Well you should hear what happened to so-and-so.’”⁸²

Scott recounts a similar “neglect” case against a single mother, a category of persons especially vulnerable to agency assault. She left her eleven-year-old daughter—note that she was eleven, not, say, two—home to watch TV while she ran to the store. In the meantime, a neighbor turned her in and when she got home the child was gone, taken into the custody of the authorities. The girl was placed in foster care for three

months until her twelfth birthday when, in the estimation of the agency, she magically became mature enough to be left home alone.⁸³ In a similar case, a Christian couple took an early morning newspaper route so they could raise the money to send their children to a Christian school. They figured there would be no problem leaving the children at home asleep while they delivered the papers, since the oldest was almost twelve. They got home one day to find out that, after an anonymous tip, the children had been taken by the police due to “lack of supervision.” The oldest was incarcerated in a juvenile detention center for two days and the younger two children put in foster homes for those days until the parents agreed that one would always stay at home with them until the oldest turned twelve. That was *two weeks* later.⁸⁴ A case such as this makes people especially realize the inanity of the “child protective” system.

We have mentioned Christian families being targeted. Although those cases probably did not develop because of the parents’ religious preference, there are other occasions when this seemingly has been the reason. Pride speaks about a Missouri family doing homeschooling in connection with a satellite evangelical Christian school program. Even though the school district raised little question about the academic quality of the program, the child welfare bureaucracy—upon the urging of local public school officials—accused the parents of educational neglect because the program was too “religiously centered” and so their child’s “behavior or associations...were injurious to his welfare.”⁸⁵ The New York State Council of Family and Child Caring Agencies, a professional group comprised of child welfare agencies, says that parents who display an “over involvement in religion” are to be suspected as possible abusers.⁸⁶ Scott writes about the case of a Christian mother who the local cpa ordered to undergo psychiatric evaluation after her daughter was removed by the agency from school and put into a foster home because the mother had allegedly spanked her. The psychiatrist told her that certain religious beliefs “prejudiced” a person against being a good parent and insisted she was unfit if she believed the Bible taught that God wanted children to grow up with loving discipline.⁸⁷

Perhaps more outrageous than any of the above cases, even the Jordan one, was the case in Wenatchee, Washington, in 1994-1996. The local police department, spearheaded by its Chief Sex Crimes Investigator, Detective Robert Perez, and the county cpa claimed that a child sex abuse ring had been operating in the city of 24,000 in which somewhere around one hundred people were singled out as supposed child abusers. Over forty were arrested, nearly thirty sent to prison (on the basis of confessions secured from the accused and their allegedly abused children under pressure), and around fifty children taken away from their parents

by the cpa. The case witnessed threats and pressure tactics against people, including those in the media, who threatened to expose the abuses of the authorities or to provide exonerating evidence about the accused to an extent almost unimaginable for the United States of America.⁸⁸

The case began after the local cpa was told by state officials to clean up apparent corruption, which seems to have involved payments to at least one of its employees from a local adoption agency for supplying the agency with children.⁸⁹ Most of the charges in the case stemmed from allegations by Detective Perez's foster daughter, a disturbed eleven-year-old who Perez later had committed to a psychiatric facility in another state after she went on a rampage in his house. In unrecorded conversations with Perez and on a driving tour of the town, she accused much of the population of abuse and identified twenty-three places where incidents supposedly took place. An astounding 3,200 charges of child abuse were filed against one woman. *Time* magazine reported that "Perez...recruited several other children to corroborate...[the girl's] charges."⁹⁰ *Time* also said that "[i]t is a wonder Perez got the investigator's job in the first place, since he has a history of petty crimes and domestic strife, and a dismal 1989 police-department evaluation described him as having a 'pompous, arrogant approach' and said he appeared 'to pick out people and target them.'"⁹¹

In any event, after the foster daughter's initial allegations—which her older sister, who also came to live in the Perez home, later added to—the case proceeded to the round-up and happenings indicated above. One woman said she confessed only after hours of interrogation, enforced sleeplessness, and threats. A ten-year-old girl hauled out of her school classes signed a statement accusing her mother and other adults of sex orgies after four hours of interrogation and the threat that her mother would be arrested if she did not sign and the promise that she could go home if she did. Mormon parents who had unwisely gone to the cpa for help when they feared their troubled eldest son had molested their youngest daughter found themselves caught up in the investigation, accused of abuse, and sent to prison for eleven years. Their five children were subjected to "repressed memory" therapy (see below) to supposedly "recover" their knowledge of sexual abuse. All later recanted their accusations against their parents, which were made in the wake of this therapy. The eldest daughter, age sixteen, objected and was taken away forcibly to a secured facility in Idaho to help her overcome her "denial" of her parents' behavior and her "psychological loyalty" to her family. She later ran away and went into hiding. A businessman who ran a group foster home, and was commended by the cpa for his efforts, was accused

by Perez's foster daughter—who he had had removed from his home for unruly behavior. The man later found most of the charges dropped when he hired a private lawyer—as opposed to the public defenders who represented most of the accused, who were low-income people—but legal bills cost him his house and put him deeply in debt. Perhaps most outrageous were the charges brought against several people connected with the Pentecostal Church of God House of Prayer. Perez's daughter, and later other children, made outrageous claims of orgies in the church. The claim was made that if any child was too exhausted after these Sunday episodes to go to school on Monday, he or she could get a note from the pastor. After one Sunday school teacher was acquitted—again, after hiring private counsel—a juror told the local press that there was no evidence but just a seeming witch-hunt. After the church pastor, Reverend Bob Roberson, objected to the attacks on the church, he and his wife were arrested for abuse and had their young daughter taken from them. They were jailed for over four months with bail set at \$1 million, allegedly to keep them from continuing their public opposition. They were later acquitted. One defense investigator was refused the opportunity to interview some of the children because the cpa suddenly alleged there were reports that he was wanted for abuse. The authorities claimed they were going to investigate the reporter for the Spokane television station who carried out what *The Wall Street Journal* called a “relenting, generally remarkable exposé of the Wenatchee prosecutions.” One CPS caseworker who tried to intervene in one of the cases after one of the children told him she had lied was criminally charged with witness-tampering and fired. He later fled with his family to Canada to avoid false child abuse charges. An extensive report on the investigation by public defender Kathryn Lyon detailed the miscarriage of justice and charged that Perez “abused the children in order to persecute the adults.”⁹²

The town's civilian and police officials strongly supported Perez's investigation and actions and initially state officials did too. In the fall of 1995, however, Washington Governor Mike Lowry and the state's House Speaker wrote to the federal Justice Department requesting a civil rights investigation of the authorities. Early in 1996, Attorney General Janet Reno—whose prosecutorial reputation had been enhanced by child abuse cases, certain of which had involved highly questionable tactics and obliviousness to false charges⁹³—turned them down, claiming that federal law did not apply.⁹⁴

Issue after issue of *The Home School Court Report*, the publication of the Home School Legal Defense Association (HSLDA), recounts cases from around the country of the CPS going after homeschooling

families—even though homeschooling is legal in every state, with a varying range of notification and reporting requirements for parents to meet—for everything from “educational neglect,” to failing to fill out the proper forms or missing filing deadlines, to failure to meet requirements not mandated by law, to withdrawing their “special needs” children from public schools to teach them at home, to bogus claims of neglect following anonymous hotline complaints by someone who does not like the fact that they are homeschooling, to medical neglect allegations following a “botched” diagnosis of a child in an emergency room. One of the most outrageous cases in recent years happened in upstate New York in 2009, where a farm family (the Cressys) found themselves running afoul of both the local CPS and law enforcement because of confusion about what the homeschool notification requirements were. After this got straightened out and the local school superintendent commended them on how good their curriculum looked, the CPS still came after them with the assistance of the county sheriff. On different occasions, a CPS operative and a sheriff’s investigator demanded numerous documents and entered the family’s home—all this was done without a warrant or court order—and threatened the parents and harangued them about how their homeschooling would damage their children. They were “invited” to a meeting at the sheriff’s office where they were unexpectedly arrested for child endangerment—“all for failing to file homeschool paperwork with the local school district.” This was a novel interpretation of the child endangerment law, to say the least, and was even more irregular since New York does not even have a criminal truancy statute and the matter had already been cleared up by the school district. The sheriff’s department in league with the CPS arbitrarily decided to go after the parents, and the local prosecutor readily went along. The CPS piled on with a parallel action in family court, which state law permits in the case of criminal abuse or neglect charges (which there never should have been in this case). The case garnered much publicity (even nationally) and the local media demanded that the charges be dropped. The prosecutor persisted, however, until finally with HSDLA spearheading the defense the case was entirely shifted to family court, the charge dropped, and the family’s ordeal spanning several months was over. It was clear that the earlier days of arresting parents for homeschooling, which with the expansion of the practice around the country had become very infrequent, were not over.⁹⁵

Then there was the case in February 2012 where a North Carolina father, responding to his teenage daughter’s Facebook rant against him for expecting normal obedience and respect and the carrying out of usual age-appropriate household chores and after his successive efforts to

“ground” her failed, made a You-Tube video of himself shooting apart the laptop computer he had bought her and upgraded, and arguably since she was a minor he has full control over (he previously had tried to deny her its use for a time). While this was supposed to teach her a lesson about abusing her computer and the local police commended him for it, the local cpa nevertheless investigated him after some people watching the video—or the daughter’s friends?—contacted it. One wonders two things: Is the CPS in the business of undercutting the norms of parental obedience and respect, and of insuring that unruly teens will be restrained? By springing into action upon getting calls about this, does the CPS respond to the mob—or to justice? Indeed, the latter does not seem out-of-line with how the CPS has worked for some time. I remember the former head of the cpa in Jefferson County, Ohio, where I live—who went on to a job with the child welfare bureaucracy at the state level—saying how his agency would respond differently to some parental action in a more rural part of the County than in its largest city, Steubenville. What he meant was that it would respond as the popular sentiment indicated.

When we see cases such as the above—duplicated (except for every part of the most outrageous ones) many thousands of times each year in the United States—we can understand Professor Guggenheim’s statement that those in the system “separate children [from their parents] for petty reasons and for no reason all the time.”⁹⁶ The San Diego County grand jury mentioned above alleged that possibly the majority of the children removed from their homes by the county’s cpa and put in foster homes should have been left alone.⁹⁷ We can also understand Richard Wexler’s analysis of the breakdown of child abuse/neglect reports. Wexler is a journalist who has written and produced numerous reports about the false reporting problem and authored the book *Wounded Innocents* about it. He is now the Executive Director of the National Coalition for Child Protection Reform. He estimates that for every 100 reports of abuse or neglect, “at least 58 are false [outright]; 21 are mostly poverty cases (deprivation of necessities); 6 are sexual abuse; 4 are minor physical abuse; 3 are emotional maltreatment; 3 are ‘other maltreatment’; 1 is major physical abuse.”⁹⁸ Gary B. Melton, who was the lead author of the 1993 report of the U.S. Advisory Board on Child Abuse and Neglect and has written extensively on the subject, says that in his consultations with physicians on child protection teams at major medical centers around the U.S. “all have said that they very rarely encounter [cases of] severe battering.”⁹⁹ The latter and sexual abuse along the lines of rape, incest, and intense sexual touching or groping, is probably what most people have in mind when they think of abuse. As we have seen and note further

below, what constitutes “sexual abuse” and “minor physical abuse” is often a subject of controversy and many of these cases probably involve actions that most people would not tend to think of as abuse.¹⁰⁰ Pride writes that only 2 to 5% of the reports of abuse and neglect each year actually involve what under the law would be crimes against children.¹⁰¹ Analyzing NCANDS and NIS-4 data—NIS-4 is the most recent of the periodic Congressional-mandated studies of child abuse data around the country—David Finkelhor, Lisa Jones, and Anne Shattuck of the Crimes Against Children Center at the University of New Hampshire assert—even in the context of the prevailing loose definition of terms, both in law and in CPS understanding (as discussed below)—that in the period 1992-2009 sexual abuse against children declined by 61% and physical abuse declined 55%.¹⁰²

Why Are So Many Innocent Parents Being Accused Under the Current Child Protective Apparatus?

The Problem of Definition: The Child Abuse/Neglect Statutes

The first serious problem about the current abuse and neglect statutes is that they in no way provide a precise definition of what constitutes the offense. This is summed up by an oft-quoted passage from Jeanne M. Giovannoni and Rosina M. Becerra’s book, *Defining Child Abuse*: “Many assume that since child abuse and neglect are against the law, somewhere there are statutes that make clear distinctions between what is and what is not child abuse and neglect, but this is not the case. Nowhere are there clear-cut definitions of what is encompassed by the terms.”¹⁰³ This has not changed much since they wrote in the late 1970s. Writing in 2000, Besharov states, “[c]onfusion about reporting is largely caused by the vagueness of reporting laws.” Such laws are “often vague and overbroad.”¹⁰⁴ Along these lines, Armbrister’s 1993 *Readers’ Digest* article especially singled out “the broad category of ‘neglect,’” which accounts for almost half of reports, as causing agency abuse.¹⁰⁵ As indicated above, this problem of lack of clarity of definition traces itself back to the second generation of reporting laws and the Mondale Act. Lawyers and legislators are well aware of the need for statutes to meet the basic, traditional constitutional tests of vagueness and overbreadth. The former holds that a statute or regulation cannot impose penalties without giving a clear idea of the sort of conduct that is prohibited; the latter says that activity cannot be proscribed or restricted which is beyond the legitimate reach of government, and that government cannot

forbid or inhibit conduct which is constitutionally protected, and it cannot reach beyond conduct that is illegal to restrain conduct that is legal.¹⁰⁶ In fact, it is an ancient principle of the Anglo-American legal tradition that a law has to make clear what it demands. One is prompted to think that if this were any other area of law than child abuse/neglect, many of the statutes long since would have been struck down, in whole or in part, as unconstitutionally vague or overbroad. Efforts to declare state statutes in the child abuse/neglect area unconstitutional on these grounds have achieved little success, and we know of no federal court that has intervened on these grounds.¹⁰⁷

The definitional problems of typical child abuse/neglect statutes is illustrated by the one in my state of Ohio. Under the Ohio statute, an “abused child” is one who “[i]s the victim of sexual activity” as defined under the criminal code of Ohio, or “[i]s endangered” as defined by Ohio law, or “[e]xhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it.” A child who has received corporal punishment “or other physical disciplinary measure” by a parent, guardian, et al., however, “is not an abused child.”¹⁰⁸ In some respects, the definition of “abuse” here may be less vague than the statute’s definition of a “neglected” and “dependent” child below (all three of these can result in the removal of a child from his home). Also the fact that the provision regarding sexual abuse refers to the provisions of the Ohio criminal code means that a substantial amount of case law is available which has clarified what actions are encompassed. Still, there can be problems even with the latter. Some of the definitions given under the “Sex Offenses” section of the Ohio Criminal Code (Section 2907.01) could be construed to apply to innocent acts.¹⁰⁹

The term “endangered child” above in the Ohio statute is similarly troublesome. The Ohio Code elsewhere defines—or *attempts* to define—child endangerment (Chapter 2919.22); it is a term, however, which is possibly inherently undefinable. The following provision illustrates this. “No person, who is the parent [et al.]...of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.”¹¹⁰ It is clear that this definition could be construed—and often will be, in light of the very critical view held of parents by the child protective system—to regard the parents as responsible for many normal situations a child might get into (e.g., mishaps occurring while doing reasonable household chores, accidents he might have).

The term “injury” in the above statutory definition of child abuse is fraught with danger because it is actually never defined. The term draws no distinction between injuries of any degree, so that a temporary red mark left from a slap is treated the same as a broken bone or a crushed skull (and, in fact, parents have been held to be abusers and lost their children because of the former). Further, what is a “mental injury”? This is a subject that is, to say the least, highly imprecise. How does one “exhibit evidence” of a mental injury? Children may exhibit all kinds of psychological or psychiatric symptoms that, true, could be the result of maltreatment by parents, but could also be the result of many other factors (some of which are not or are only dimly understood, since man knows surprisingly little about the human mind). Indeed, there are too many cases in which medical authorities, social workers, counselors, and others conclude that certain odd behavior or psychological tendencies just *had* to have been the result of child abuse, even though they are unable to say how and have no clear evidence to support such a conclusion. Nor is it altogether reasonable to conclude that a child is abused just because of an injury “which is at variance with the history given of it.” As some of the above case studies demonstrate, medical authorities make mistakes or sometimes simply do not know enough about certain particular areas of medicine to make correct judgments. Also, consider that parents who might be aware of the problem of false abuse allegations and so are wary of saying something that could result in their facing unmerited charges, might inadvertently make inconsistent statements, etc. simply because they are being overly careful. For example, in the current anti-parent climate, they might fear that a hospital emergency room, etc. will not believe how an unusual accidental injury or something on that order occurred.

Even though the Ohio child abuse statute specifically states that “a child exhibiting evidence of corporal or other physical disciplinary measure by a parent, guardian, custodian, [et al.]...is not an abused child,”¹¹¹ the child endangerment provision in Chapter 2919.22, casts such parental immunity in doubt. That provision does not permit parents, guardians, et al. to “Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of physical harm to the child;” [or] “[r]epeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child’s mental health or development.”¹¹²

As the above discussion of case histories makes apparent, and the following section on social worker and professional attitudes reinforces, almost any parental physical disciplinary measure can—and often will—be interpreted to fall within the prohibitions of this provision. There is no set or necessarily reasonable standard that will be used to determine if a punishment is “excessive under the circumstances and creates a substantial risk.” What constitutes “physical harm”? The statute does not say. With the general animus toward any kind of corporal punishment on the part of psychologists and other child welfare “experts,”¹¹³ one can expect that for some even the slightest pain or a very temporary red mark caused by a mild spanking will be viewed as serious. What is a “cruel manner”? In these days of the relativization of terminology, unreasonable sensitivities, extreme political opportunism, and the zealous promotion of ideological agendas, many things are called “cruel” or “mean-spirited” that are not. What are “unwarranted disciplinary measures,” and what does “repeatedly” mean? The statute is silent about this. Who decides what is “unwarranted”? Can strangers in a government agency make a better judgment about what is needed discipline for a child than his parents who are with him day in and day out? How does one judge whether chosen disciplinary measures will “seriously impair” “mental health” or “development”? The latter are nebulous notions, with no fixed or clear definition. Psychiatrists and psychologists would have serious conflicting opinions about these things and, as the view of these disciplines about the matter of homosexuality indicates, their thinking often is shaped by political pressures and the desire to conform to mainstream thinking for professional advancement.¹¹⁴ Moreover, general rules about the development of children are hard to come by. Individuals are very different, and it is those who are closest to them—and have a unique parental affection for them and naturally desire the best for them¹¹⁵—who will generally have the best insight into this.

Under the Ohio statute, a “neglected child” is defined, *inter alia*, as one “[w]ho lacks proper care because of the faults or habits of his parents, guardian, or custodian,” or “[w]hose parents [et al.] neglect or refuse to provide him with proper or necessary subsistence, education, medical or surgical care, or other care necessary for the child’s health, morals or well-being” or “[w]hose parents [et al.] neglect or refuse to provide the special care made necessary by the child’s mental condition.”¹¹⁶ There are two other sections of the Ohio child abuse/neglect statute that deal with a “dependent child” and a “child without proper parental care” (these are additional dimensions of the matter of neglect). A dependent child is defined, *inter alia*, as one who is “homeless or destitute,” or one “[w]ho lacks adequate parental care by

reason of the mental or physical condition of the child's parents [et al.],” or one “[w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship.”¹¹⁷ A “child without proper parental care” is defined as one “whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, abused, or delinquent; whose parents [et al.], when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or...fail to subject such child to necessary discipline.”¹¹⁸

These provisions present many questions. What is “proper” parental care? What is meant by “faults or habits” of the parents, et al.? Could these include behavior that while traditionally thought virtuous might now in the minds of some be viewed as unacceptable? Are parents' faults or habits, in any event, enough to deprive them of their offspring? What is “proper or necessary subsistence”? Too much sugar in the child's diet? Too little? Would designer jeans have to be bought for the child? We saw above the problem with trying to say what is appropriate medical care. It often becomes the subject of one physician's opinion, or viewpoint, about what may be harmful to a child. Often this involves mere speculative harm, or else may be a point that physicians or other medical authorities may disagree about.¹¹⁹ What is “proper or necessary education”? Does it exclude homeschooling, since this is outside the academic norm and disliked by educational professionals even while homeschooled pupils are on average excelling academically and even outstripping many pupils in institutionalized schools?¹²⁰ What is included under neglecting to provide a child special care necessitated because of his mental condition? One problem is that there is much, much disagreement about what constitutes a “mental condition.” For example, the eagerness to push children into some kind of medical or psychological treatment for hyperactivity, attention deficit disorder, and the like is very controversial. Are parents who balk at this neglectful? Would taking a “special needs” child out of a public school to teach him at home because he didn't make progress and the school failed to protect him from bullies—as happened in a case in Virginia—constitute neglect under the Ohio statute, as Virginia authorities intimated it was in that state?¹²¹

Under the “dependent child” provision, what is meant by “proper care or support”? Nice clothes (designer jeans, again)? Does a view about childrearing that an agency does not approve of constitute improper care? There is plenty of evidence to indicate that agencies around the country intervene frequently into families for that very reason, as in the cases in which parents choose spanking as a means of discipline. Agencies and

juvenile court judges would probably hold that “proper support” includes emotional support. What is emotional support? What is an unsatisfactory physical or mental condition of a parent? The statute never says. Who is to determine it? What is included under the terms “condition or environment”? There is no definition given of this extremely broad phrase. What is a “filthy and unsanitary” home? Obviously, this is substantially a matter of opinion. For some, it would be utter squalor, for others a little dust on the coffee table. Social workers have held children to be abused or neglected because they have found clothes and papers laying around, sometimes even when the clothes have been neatly folded.¹²² What is “necessary discipline”? Will not agencies be the determiners of it? Will it even be possible for parents to attempt to administer discipline if agencies are to say, essentially out of the blue and without warning, that a particular childrearing practice is unacceptable?

The above analysis of Ohio’s statute, which is typical of child abuse and neglect statutes around the country, shows well the great definitional problems with the current statutes. It also suggests how difficult it is to draft a statute on the subject that even spells out clearly what the forbidden behavior is.

The Problem of Definition: Agencies, Social Workers, and Experts; Attitudes of the Child Protective System

If the statutes are vague as to what child abuse and neglect are, the agencies charged with enforcing them are no better. As Besharov states, “Existing standards set no limits on intervention and provide no guidelines for decision-making.”¹²³ It is up to the social workers to decide what is meant by “abuse” and “neglect.” Exactly how relative is their understanding of these terms is illustrated by the above case studies. It is also seen in statements and standards set out by the CPS itself. Pride, for example, cites two publications put out by the State of Missouri—viewed as one of the leaders in the fight against child abuse/neglect—one of which was partially funded by the U.S. Department of Health and Human Services. They speak of the following as reasons for state intervention into the family and/or reasons why parents have been deprived of their children: a child’s neglected appearance, overneatness, disruptive behavior, passive or withdrawn behavior; parents’ being critical of their child; isolated families who don’t take part in community or school activities; inadequate parenting skills; emotional neglect; unspecified neglect (which evidently is something other than non-provision of shelter, nutrition, medical care, or education); lack of

supervision; and emotional abuse or neglect.¹²⁴ We have already spoken about the indefiniteness and lack of agreement about the meaning of many of these terms. It is clear that some are so broad that almost any behavior or action can fit into them, no matter how innocent. No doubt there *have* been genuine cases of abuse or neglect where conditions or phenomena such as these have existed, but they are obviously present in normal situations (e.g., some parents just want their children to be very, very neat; all kinds of children can be disruptive for an array of reasons or no clear reason at all; some children are by nature withdrawn, etc.).

In a very similar vein, Scott lists the following expanded list that the National Committee for the Prevention of Child Abuse specifies as signs of abuse: The child has a chronically unkempt appearance; the child is overly neat or a girl is dressed in an overly feminine way; the child is too loud or too talkative; the child exhibits shyness; low-self esteem is apparent from the child's actions or words; the child uses aggressive or passive behavior; there is a reluctance to participate in sports; there are noticeable signs of fractures, burns, bruises, cuts, welts, or bite marks; the child has sexual knowledge inappropriate for his/her age or acts out above maturity level; the child complains of pain or itching, or there is unusual bleeding or bruises are noticed in or around the genital area; the child seems constantly hungry or fatigued; there is a noticeable lack of supervision; there is delayed physical, emotional, or intellectual behavior; the parent is chronically late for meetings, picking up the child, etc; the child exhibits chronic health problems; the parent fails to promptly repair the child's broken eyeglasses; there is a noticeable need for dental work; the loss of a parent due to death or illness (the remaining parent may become physically or sexually abusive as a result of the stress); the presence in the home of a stepfather; the child lives in an untidy home; the child is pulled out of school to be taught at home; the parent appears to suffer depression, apathy, or hopelessness; and there are reports from the child about occasionally sleeping in a parent's bed.¹²⁵

In fact, Pride and Besharov both cite studies that show that social workers and others employed in child protective agencies do not agree among themselves about what is or is not child abuse or neglect.¹²⁶

In spite of the uncertainty of agency personnel themselves about what is abuse and neglect, the above case studies and many other examples that one could cite give a rather clear impression that agencies interpret these vague and unclear laws decisively against parents, that parents are often not given the least benefit of the doubt.

The above case studies, the very fact of the existence of such vague and unclear laws (which have been so substantially shaped by

childrearing “experts” and those working in the child protection field), and the application of these laws in such an anti-parent fashion in so many cases betrays in the CPS an attitude of hostility to the family—or at least one showing a complete lack of awareness of what it really means to be a parent or what family life really involves. Pride speaks about how so many social workers are either older, Caucasian females who have had a poor personal home life (divorced, etc.) and carry with them all the related emotional “baggage,” or are young, Caucasian, middle- or upper-middle-class females, never married, and fresh out of college, with no experience or significant training in dealing with children.¹²⁷ Scott, writing a half decade later, concurs with this, and indicates that one additional group, which has not been known lately for its affection for the family, is now increasingly represented among agency social workers: homosexuals.¹²⁸ She points out further that a number of states do not even require caseworkers to possess college degrees in social work or a related field (in a certain sense that may actually not be bad since, as noted above, sociology and social work programs are notorious for their critical stance toward the family) and that the training, workshops, etc. that most caseworkers have to get on the job are sharply slanted against the family and parents (seeing all as actual or potential abusers, etc., as noted below).¹²⁹

Apart from the question of hostility to the family, just how ignorant agencies often are to the complexities and dynamics of family life and the nature of children—indeed, the naiveté with which they often approach these matters—is seen in the very generalizations they are so well known for making. To be sure, this was observed above in the whole, unrealistic range of supposed conditions and “symptoms” that they believe indicate maltreatment—which, as we have said, are more typically seen in perfectly normal situations. It also is seen in their use of such “tools of the trade” as risk assessment forms, in which caseworkers give numerical rankings to how well parents measure up in various categories on the forms and then add up the total to supposedly determine how great a risk a child faces in the home.¹³⁰ Besides being completely subjective (Scott relates that while some agencies have guidelines of what conditions render a child “at risk,” the assessments basically are left to the discretion of the individual caseworker¹³¹), it should not have to be pointed out that family life, with its uncertainties, difficulties, and burdens, is not something that can be easily and instantaneously reduced to a number on a sheet. Such an attempt to quantify a difficult problem that is not so intrinsically subject to quantification is a typical bureaucratic-type procedure. It is probably supposed to act as a kind of check on agency discretion or a means of

helping to insure competent judgment and accountability by the bureaucracy. In fact, it creates surrealism about the entire subject of abuse/neglect and easily leads to false and unjust conclusions.

The agencies' naiveté in their understanding of children is further seen in some of the leading "doctrines" that they shape their policies and actions around. These include what Pride calls "the doctrine of the immaculate confession." This holds that children simply do not lie, especially when relating incidents of child abuse.¹³² Anyone who has been around children much knows that they indeed do lie and they often relate things that never happened. Young children, especially, are well known for the stories and fantasies they relate. On the subject of children not lying specifically about abuse, the Institute for Psychological Therapies says bluntly, "There is no empirical evidence to support this claim. There have been no controlled studies to test it."¹³³

An interesting, seemingly contradictory, corollary to this doctrine of the immaculate confession is that if a child, in spite of suggestions from interrogators, denies he was ever abused, or if he makes an accusation and later recants it, his denials and recantations are supposed to be rejected. This corollary has even sometimes been enshrined into the law.¹³⁴

Another corollary of the immaculate confession doctrine, which also seems to contradict it, is the "Child Sexual Abuse Accommodation Syndrome." This syndrome holds the following: 1) sexually abused children tend to contradict themselves; 2) sexually abused children cover up the incident; 3) sexually abused children often show no emotion after the event; and 4) sexually abused children often wait a long time before making their accusations. As Pride puts it, according to this syndrome "all the evidence typically used to show no sexual abuse occurred...has now been captured to prove the very opposite."¹³⁵

Another doctrine is what Pride calls "the doctrine of total depravity," which holds that all parents are actual or potential abusers, and that all home environments are abusive. Thus, all state interventions are justifiable. This doctrine corresponds with the changes that Carlson says (above) have occurred in the thinking of child savers over the past century. In actuality, it is not *all* parents who are the likely abusers. Abuse—*genuine* abuse—is uncommon in intact families, especially in the absence of such factors as alcohol or drug abuse. Abuse disproportionately occurs in cases of single parentage, foster parentage, "live-in" boyfriends, and the like.¹³⁶ It is also much more likely to occur in poor families than those that are better off economically.¹³⁷

One can understand, when considering such guiding beliefs of the child protective system, why the especially outrageous cases mentioned above were taken so seriously by it.

The same confusion about what abuse and neglect are that we have said characterizes social workers in the agencies is shared by physicians—as perhaps some of the above case histories indicate—and judges. The same study involving social workers cited by Besharov above showed that an even higher percentage of physicians than the former were unclear about what constituted “child maltreatment.”¹³⁸ Besharov also notes that the same survey, as well as a review of various court opinions, leads to the same conclusion about judges. They seem to decide cases of abuse and neglect that come before them on the basis of the context of the circumstances. Besharov says that they “are saying that, although they cannot define child maltreatment, they know it when they see it.”¹³⁹

The Ease of Reporting, the Mandatory Reporting Requirements, the Veil of Secrecy, and the Immunity Problem

Three other factors that contribute substantially to the great number of false abuse/neglect allegations and the ensuing agency intrusion into families are the ease of making reports to agencies; the legal pressures placed on various professionals and other occupational groups that encourage them to report in doubtful cases to protect themselves; and the blanket legal immunity given to the agencies and their personnel.

Regarding the ease of making reports, hotlines have been set up in many communities to take reports. These are well publicized in the local and national media, with the phone numbers frequently given. People are encouraged to report any suspected cases of abuse (without, of course, being provided a definition provided of what it is). If there is no hotline in a particular area, the local cps’s number is readily available, and reports are encouraged. Reports can be made anonymously, and on hotlines generally are. All that is usually needed to trigger an agency investigation is an anonymous report. Hotline calls may or may not be screened and no attempt necessarily needs to be made to determine if there is any validity to a report, nor is any threshold of probable cause clearly required by law before an investigation is undertaken or even (generally) additional action taken, including removal of children. The result is that, in effect, anonymous reporters—not even cps’s themselves—are often deciding what the vague laws on child abuse/neglect actually mean. If their reports automatically give rise to investigations and cps interventions into families, they essentially

become the arbiters of child protection policy.¹⁴⁰ Most state statutes or the regulations issued pursuant to them mandate the investigation of all reports of even *suspected* abuse or neglect (though there may be some screening). Children in schools are taught about child abuse and the child protective system, and through different programs or types of courses, indirectly encouraged to be aware of anyone possibly abusing them, even family members, and to report them. Various community, professional, senior citizen, and other groups are specifically encouraged to be attuned to the possibility of child abuse and neglect, and to report their suspicions. For example, New York State mandated special child abuse training for physicians, nurses, and an entire range of medical professionals and other occupational groups some years ago as a condition for retaining their licenses. This writer was told that some training programs were strikingly anti-family. Speakers go around to different groups to talk about the subject, usually presenting the skewed and even bizarre perspectives of the child protective establishment discussed in this paper. One senior citizen group in Illinois, for example, was told to keep their eyes open for parents who *hugged and kissed* their children because they might be practitioners of incest.¹⁴¹ Since the passage of the Mondale Act, there have been large-scale media and outreach campaigns, carried on by the CPS, law enforcement agencies, and different organizations, to “educate” the public about child abuse. These campaigns have sought to convince people of the “epidemic” of abuse and about the need to look out for and report it, but have done little to *truly* educate the public about what it is (which, as we have said, the CPS, judges, professionals, and lawmakers are not sure of themselves).

The laws respecting mandated reporters (we discussed above the legislative background to mandated reporting) encourage false allegations because they typically state that if such reporters fail to report even suspected abuse/neglect, they can be criminally prosecuted. In Ohio, for example, failure to make such a report is a fourth-degree misdemeanor.¹⁴² The laws, then, have created a system driven to a certain extent by fear, much as we see in totalitarian regimes. Physicians, teachers, day care center workers and other mandated reporters make reports—often on the slightest pretext—because they figure that it is better to speak up than not speak up for the sake of self-protection. Some, it is true, probably do so because they share the suspicious stance vis-à-vis the family that permeates much of the child protective apparatus, but many do so simply to cover themselves. Probably as long as there are penalties for non-reporting, or at least penalties for non-reporting of something less than there is substantial certainty about, or the lack of a corresponding possibility of a penalty for making a false report (the

mandatory reporters generally are given a statutory blanket immunity from suit for making false or even malicious reports), the problem of substantial numbers of baseless reports will continue.¹⁴³

It should be noted that in addition to motivating untrue reports to official agencies against parents—which can have the effect of destroying their families—the legal pressure to report that is imposed on physicians, dentists, psychiatrists, psychologists, and other health care professionals has the obvious tendency to disrupt the relationship between practitioner and patient or client. This is a relationship that must be based on trust, and the legal mandates, arguably, sow suspicion. Moreover, this may discourage parents who need help in dealing with a difficult family situation from seeking help for fear that they will be accused. It may also discourage parents from seeking help, say, from psychologists or psychiatrists for their troubled children who they believe may need it for fear that the latter's problems will be blamed on them and they will be reported. The latter seems to be a reasonable fear in a time when abuse has become the ready explanation for so many things.¹⁴⁴

Another factor that contributes mightily, in my judgment, to the abuses spawned by the statutes is the fact that all investigations and proceedings are kept confidential—even the names of the children and parents (except in the uncommon situation of criminal charges). Proceedings generally are closed to the public and reports of cases are not issued. This is because the area of law in question is mostly treated in the manner of American juvenile law generally. The view of recent decades in American juvenile law has been that matters should be kept out of the public view because then the children involved (i.e., juvenile offenders) will not be stigmatized, and so it will be easier for them to reform and go on to be upright and productive citizens. Numerous commentators on the problems of the child protective system have argued that this confidentiality—this veil of secrecy—encourages outrageous and even illegal conduct on the part of the agencies because they are protected from public scrutiny and accountability.¹⁴⁵ Along with the agencies and (usually) the juvenile courts not releasing information about non-criminal abuse/neglect cases, the parents involved similarly will seldom take their plight to the public. This in most cases either will be because of lack of access to journalistic organs or, more typically, fear that such action will spark a reaction from the authorities that will result in their losing their children. As Armbrister writes in *Reader's Digest*, “Confidentiality laws are supposed to protect kids; instead they shield bureaucrats.”¹⁴⁶ We might add that they were supposed to protect families, too; instead, they provide a basis for assaulting them.

If the secrecy of the child protective system has helped prompt its abusive practices, the immunity its institutions and agents possess from either criminal prosecution or civil liability has made it ever more likely (this is in addition to the immunity which mandated reporters possess). This is typically a blanket statutory immunity, even when the agents have acted in bad faith or maliciously. Again, we note Armbrister's comment: "Police can be charged with crimes and hauled into court. Child-protective agencies should not be treated differently."¹⁴⁷

Another incentive for the CPS to intrude upon parental rights is what Mary Pride calls the "one-sided liability" of the child abuse laws. Social workers and/or state agencies can be sued or even criminally prosecuted for *not* removing a child from his home who afterwards is harmed or killed, but generally are immune from suit when they wrongly remove a child, even without grounds and regardless of how much damage is done to the child or the parent-child relationship. So, they err on the side of excessive caution to protect themselves.

Regarding the juvenile courts, they are not a significant check upon the CPS. First, most CPS contacts with a family do not end up in juvenile court.¹⁴⁸ Second, as Professor Paul Chill of the University of Connecticut Law School has written, there are substantial obstacles faced by parents when confronting the CPS in juvenile court. He writes that 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.¹⁴⁹ Like the CPS operatives covering themselves, juvenile court judges often engage in a kind of "defensive judging." For example, they will issue an order to permit a child to be removed from a home or will uphold an "emergency" removal on the basis of weak evidence with the thought that it is better to err in the direction of excessive intervention because to do otherwise is more likely "to come back to haunt them."¹⁵⁰ As judicial officers, they are not subject to legal liability for a bad decision, but may face media attacks and defeat at the polls when they seek reelection. Chill tells us that the passage of the federal Adoption and Safe Families Act of 1997, while supposedly aimed at the good purpose of giving children who have been in the unstable and even dangerous (see below) foster care system for extended periods the chance for the permanency of adoption, has in practice made it easier for the CPS and juvenile courts to terminate the rights of the natural parents—even if unjustifiable. The Act created an incentive to do that because to qualify for federal funds the states are generally required to seek a termination of parental rights for any child who remains in foster care for 15 out of 22 consecutive

months.¹⁵¹ Thus, there is now a financial incentive for the child welfare system to secure adoptions for children in foster care—even if wrongfully there—just as there has been a financial incentive to put them in foster care in the first place, since programs to keep families intact generally cannot qualify for the same amount of federal funding as foster-care programs do.¹⁵²

The Inattention to the Rights of Accused Parents Under the Current Laws, Dangerous Recent Legal Developments, and the New International Threat

Throughout our discussion, we have dealt with the implicit theme of parental rights. Numerous U.S. Supreme Court decisions in our history have acknowledged such rights,¹⁵³ and as we noted they are rooted in our common law background—which in turn was shaped by the Western natural law tradition and Christianity. We here ask about another dimension of rights that obviously presents itself when considering false reports: the legal rights of the accused. In a lengthy article published in 1988, relying upon data cited in Pride's book,¹⁵⁴ I related the following about how few constitutional rights of the accused apply in child abuse/neglect cases handled exclusively by agencies or by juvenile courts. We summarize that information here. Pride compiled data about the civil rights of those accused of child abuse in each of the fifty states. She considered which states guarantee five basic due process rights generally given in criminal cases: the right to be informed of the charge while under investigation, the right to trial by jury, the right to access to records being kept about a person, the right to have an unsubstantiated record removed or not to have a record kept on file until after a hearing, and the right to challenge information kept on file about a person. Persons accused of non-criminal child abuse or neglect—most of whom are parents—had none of these rights in thirty-one states. Some states guaranteed one or more of these rights; none protected all of them. None of the fifty states required that the accused be told of the charges. Only one permitted a person to request a jury trial. Sixteen permitted access to records under at least some conditions, while fourteen protected against unsubstantiated records being kept in the file at least as a general rule, and fourteen permitted challenges to the record.¹⁵⁵ Another aspect of due process that also is not found in child abuse proceedings is the right to appeal, provided in state statutes for both criminal and civil matters.¹⁵⁶ As Pride writes, even if on paper one has a right to appeal civil matters such as decisions in child abuse proceedings, he may not be able to effectively

pursue that appeal. Appellate courts seldom make their own findings of fact; normally they accept the facts as determined at a trial court or hearing (in child abuse/neglect matters, it is usually a civil hearing) and will just consider questions of law. The rub here is that in child abuse/neglect proceedings one has no right to review the record in most states, as has been noted, and in fact, no evidence upon which to base an appeal may even have been presented at the hearing. Recall that state agencies really do not need evidence to conclude that abuse or neglect has occurred or to take away children or impose other sanctions, and hearing judges are generally not required to solicit it.¹⁵⁷

A further fact about the constitutional rights of those accused of non-criminal child abuse or neglect was the view of the CPS and even law enforcement officials that the guarantee of the Fourth Amendment against unreasonable searches and seizures did not necessarily apply. We have already seen the wide latitude social workers have in removing children from their homes even without evidence of abuse or neglect; this in itself is a “search and seizure.” In some states, when accompanied by a police officer, social workers have been able to force entry into a private dwelling. Often, however, social workers secure entry even when not entitled to by threats or deception (i.e., saying they have a right to enter without a warrant when they do not) or simply because parents do not know that they have a right to refuse. Also, once let into a home, a social worker has virtually *carte blanche* to look around for anything to build a case against parents. They can even do a strip search of a child to find evidence of sexual abuse.¹⁵⁸ The statutes do not require a warrant for any of this. They also usually permit authorities to circumvent judicial approval for their actions or for taking custody of a child if they believe the child to be imminently in danger (generally, without defining what this means)—and Chill says that this seldom happens except when such a situation supposedly exists.¹⁵⁹ We see below that, after not being willing to do so previously, courts in recent years have begun to respond positively to Fourth Amendment challenges to warrantless CPS entries into the homes of families.¹⁶⁰

A new study of all fifty state statutes and pertinent agency regulations, of course, would be a major, extended undertaking and could not have been attempted in the course of preparing the present article. Still, I am not aware of any significant trend within state legislatures to extend such procedural guarantees and there has been only limited federal action in this area. I am also unaware of any judicial trend requiring greater protections, except (to some degree) in the area of search and seizure. Works after *Pride’s*, such as *Scott’s*, indicate that the above constitutional deficiencies still exist, by and large. She even

discusses these other basic procedural rights, not included in Pride's above analysis but indicated by the case studies that she cites (some noted above), which are denied to accused parents: the right to confront accusers and to cross-examine the complainants, the right to use case law as a defense, the protection against double jeopardy, the right to be regarded as innocent until proven guilty, and the right to examine the evidence.¹⁶¹ I might add that one is not protected against the use of hearsay evidence in these proceedings, statute of limitations protections have been eroded, and there is absolutely no sense that, in an era in which the constitutional right of privacy has been so strongly promoted (especially in other intimate matters), courts view it as having any application to what happens within the confines of the family.

While some of these protections that Scott contends are denied to parents accused by the CPS are self-explanatory or have been previously discussed, it is necessary to comment here on other ones. The right to confront is denied, first of all, by the fact that so many complaints are made anonymously, so the identity of the complainants is not even known. If the complainant is, say, a child's physician and the parents thus know his identity they are still not generally afforded the right to confront him in a legal proceeding. Indeed, even in criminal child abuse cases, the law has been changed in some states to remove the right of the accused to confront a child witness in court for fear of the child being traumatized. The U.S. Supreme Court, after some initial hesitancy, has held that this is not in violation of the Sixth Amendment. Other legal innovations, which have changed traditional criminal law practices, have involved the abolition of both minimum age provisions in the law below which children are presumed incompetent to testify and the need for corroboration for a child's testimony to stand, and the greater willingness to allow hearsay testimony to be introduced in court. The latter includes not just out-of-courtroom testimony (i.e., videotaped testimony by children-victims), but also by third parties to whom children supposedly confided tales of their abuse.¹⁶²

Scott speaks about double jeopardy because even if parents are exonerated by a criminal court, agency actions and proceedings against them in juvenile and civil courts often may still go ahead. Also, as noted above, criminal exoneration is no guarantee they will get their children back if they have been taken away. It is true that American law has traditionally permitted this, and not considered it double jeopardy. Still, it gives one pause to wonder if this legal interpretation does not promote injustice, and so such a traditional approach to double jeopardy should perhaps be reevaluated. On the question of being innocent until guilt is proven, the above case histories have demonstrated that regarding the

parents as guilty as soon as an accusation is made, even without any evidence, and then expecting them to bear the (sometimes overwhelming) burden of proving themselves innocent, is one of the major injustices in the operation of the child protective system.¹⁶³ It is true, again, that American law has provided the means for this to occur because it does not seek to apply the standards of criminal courts to juvenile matters. Nevertheless, once again, the injustice of this is evident from the many cases of false accusation like those above. The elimination of statute of limitations protection—wherein if one is to be charged, it must be done within a stated period of time, usually a few years, after the alleged offense occurred—has resulted in people being threatened with both criminal and non-criminal charges indefinitely. A cpa, for example, can commence an investigation and take action against parents, in many cases, for alleged acts happening years ago. Civil suits and criminal charges can be filed against parents or others for alleged abuse occurring decades before. Recent attention to the latter fact has come about as a result of the so-called “repressed memory syndrome,” in which putative acts of abuse committed years ago and repressed by the person because of their dreadful nature are supposedly brought back into a person’s consciousness with the help of therapy, hypnosis, and so on. The validity of the entire matter of repressed memory syndrome has come under considerable criticism from within the discipline of psychology itself.¹⁶⁴

As indicated, there has been progress since Pride’s 1986 book in establishing clear legal precedents that Fourth Amendment search and seizure requirements apply, and slight movement regarding other rights. HSLDA and such figures as constitutional lawyer Dr. Edwin Vieira, Jr. played a crucial role in securing these Fourth Amendment precedents. In the 1990s, HSLDA won major cases in Alabama and New York and Vieira did so in Maryland. These cases have essentially held that agency social workers cannot enter a home without permission unless they have been issued a warrant by a judge, and that an anonymous abuse/neglect report is not sufficient grounds to justify issuing the warrant.¹⁶⁵ A watershed case was *Calabretta v. Floyd* in the Ninth U.S. Circuit of Appeals (West Coast) in 1999, where HSLDA successfully sued for damages on behalf of one of their member families for a Fourth Amendment violation by social workers. Since then, HSLDA reports that federal courts have increasingly upheld Fourth Amendment restraints on cpa’s.¹⁶⁶ James R. Mason III’s paper in this volume discusses many of these cases.

There has been slight movement in the courts even on the related, but broader, probable cause question that anonymous complaints are

insufficient justification to begin an investigation. One of the most notable examples is the 2003 *Cleveland County v. Stumbo* case in North Carolina, even though it happened also in the context of a search and seizure question.¹⁶⁷ Another case, melding together aspects of probable cause and search-and-seizure questions, occurred in 2009. Brooklyn Family Court in New York City held that an anonymous complaint was insufficient to establish probable cause to grant a court order to require a family to admit a CPS operative into their home as part of an investigation. The court did not apply a probable cause standard to the question of whether the cpa could commence the investigation in the first place.¹⁶⁸ In 2004, HSLDA stated that only sixteen states specified any standard in their child welfare laws that “comes even close to the constitutional requirement for ‘probable cause.’”¹⁶⁹

Also, the CAPTA amendments of 2003 require social workers to tell parents of the nature of the accusations against them on first contact.¹⁷⁰ These amendments also require that CPS operatives be trained about the constitutional and other legal rights of families.¹⁷¹ States have not necessarily moved quickly in implementing these CAPTA amendments. By 2007, only 22 states had implemented these changes in some form.¹⁷² Even some of these may not have completely or adequately implemented them.

Another area—not exactly on point, but related—where we have witnessed some measure of judicial vindication of parental rights has been in the aftermath of unwarranted removals of children from their family homes and placement in foster care. In 2007, the U.S. Circuit Court of Appeals for the Ninth Circuit held that parents may sustain a federal civil rights action for damages against a cpa for such a removal in the absence of a court order. In that same year, the U.S. Supreme Court refused to reversal a similar damage judgment in another case.¹⁷³

The question is, why have we had this denial of basic constitutional guarantees? The answer is substantially found in the fact that child abuse/neglect matters usually do not find their way into the criminal justice system (this would most likely happen with sexual abuse cases, but then, if parents or other permanent caretakers are involved, it would be carried out simultaneously with non-criminal proceedings). As mentioned, they are treated under a state’s juvenile law, or in a manner closely connected with it. In other words, they are civil matters but civil matters of a special type. As indicated above, juvenile court procedures have been set up to be less formal than normal court proceedings and the usual legal rules and guarantees do not always apply.¹⁷⁴ We have previously mentioned how courts are not usually responsive to overbreadth and vagueness challenges to child abuse/neglect statutes;

here we see the disregarding of an assortment of Bill of Rights protections. Why have American legislators, judges, and citizens permitted this to happen? The simple answer is that the child abuse issue—the entire matter of child maltreatment—has been one which in recent decades has whipped the country into a frenzy, that has caused people to throw reasonableness, good judgment, and basic fairness to the wind. Children are being harmed, so the response has been that we must *do something*. What has been done has occurred without careful reflection and without a judicious concern for the likely consequences—or even a willingness to take another look at the nature of the supposed solution once the consequences have occurred. In my 1988 article, I mentioned the following reasons as to why I thought this frenzy has occurred: social workers and state bureaucrats were trained in a university and professional context that is morally relativistic, anti-family, pro-statist, and pro-permissive parenting; the numbers of social workers with the background of divorce and poor personal home life and all the emotional “baggage” that goes with it (mentioned above) is at an all-time high; it followed on the momentum of the sexual revolution, which had helped to undermine the family in different ways and parental authority in particular by promoting permissive sexual practices and reproductive choices among minors without parental approval, and from that the step to more sweepingly undermining parental authority was not so great; the widespread practices of contraception and abortion, which were also part of this revolution, gave rise to anti-child and then resulting anti-family attitudes; readily available and resorted-to abortion and even sometimes infanticide—the ultimate violence against children—was bound to have been a kind of perverse example for some who were already “on the edge” (maybe due to alcohol or drugs) to stimulate them to engage in child abuse or neglect, even more so with the explosion of cohabitation and “blended family” arrangements when they are living with someone else’s children who they have no personal attachment to—with the result that more actual child maltreatment occurred and led people to believe there was a veritable explosion of it; the subliminal guilt that many felt about having or taking part in abortion led some to look for an excuse and a cause (i.e., having an abortion is not as bad as hurting an actually born child, atoning for what one had done by aggressively protecting others’ children); the same was seen with some who had allowed their own families to be fractured by divorce—which was now abundantly resorted-to—and their children to suffer for it (they reasoned that they at least had not *abused* them); the anti-natalist ethic that had taken hold meant that many fewer people had experience raising children or had only raised one or two long ago so they easily developed

misconceptions that perfectly innocently parental behaviors were abusive or neglectful; and the anti-family influence of contemporary feminism, which emerged at roughly the same time as the movement for the current child abuse laws.¹⁷⁵ One must quickly add that, by the very nature of things, whenever someone hears about a child being hurt or not adequately taken care of, emotions overcome reason. Often people do not even take the time to determine if what they hear is true; they just want action taken. We, of course, live in a time of instantaneous electronic media and sound-bite reporting, which spreads such accounts far and wide to many millions, without bothering even to look a little further into the story.

American law has adopted what criminal justice professor Philip Jenkins of Penn State University calls “therapeutic values.”¹⁷⁶ Such values have their roots in the thinking of the social work, counseling, and other “helping” professions, and of sociologists, psychologists, and other social scientists (social scientists have been increasingly influential in shaping public policy); their assumptions and understanding about human nature and society, however, are very problematic.¹⁷⁷ Jenkins says that therapeutic values, as respects the law, hold “that courts are in the business of enforcing social hygiene rather than imposing punishment.” The current laws about child abuse and neglect were substantially shaped by categories of people who abide by such therapeutic values: “academics [in the fields mentioned], feminist theorists, therapists, pediatricians, children’s rights advocates, and lawyers [who are working especially in this area].” He explains how those holding therapeutic values approach the role of law. Their views are contrary to the assumptions of the adversarial system of justice, which permit the accused to probe and try to disprove the testimony of an accuser in a public setting and hold that witnesses are to be believed only about specifics if they impress a judge and a jury with their credibility. These upholders of therapeutic values believe that the courts really “have no business regulating the actions of objective professionals such as social workers or medical authorities seeking to protect children.” They think that they can correctly judge, from their professional understanding of the subject, that when a child or someone else has alleged that abuse occurred that it in fact did. To put obstacles—such as legal restraints—in the path of acting quickly to protect the child is to fail in their task to help him, to alleviate his suffering. One would not demand constitutional rights when visiting his physician, who can only have his interests at heart. How, then, should rights matter in something like child abuse, where the only concern must be therapeutic—to heal the situation, treat

the victim, and separate him from the perpetrator until therapy can correct the problems of each?¹⁷⁸

When we realize the nature of therapeutic values, we can understand why proposals have been made for such things as licensing parents, coercive “child abuse prevention” programs from a child’s birth (in which “potentially abusive parents” are identified at that point and placed in “parenting programs”), and the creation of a national corps of “health visitors” to regularly go to each child’s home until he starts school to check up on his parents.¹⁷⁹ It goes without saying that the devoted advocate of therapeutic values has little or no sense of the natural rights of parents.

While all of these legal problems are caused by the nature of both our federal and state laws, a new threat to the family has loomed on the international horizon which, if not approached properly by the U.S. Government, may render fruitless any efforts to correct our own laws—and may have the effect of extending the threat to families throughout the world. This is the United Nations Convention on the Rights of the Child, which was motivated by the thinking of, and drafted by, Western and Western-oriented “child-savers” and has now been widely ratified by nations around the world, some with reservations, although the U.S. Senate has not yet done so. A detailed discussion of the convention is not possible here. I will merely quote from a letter the Society of Catholic Social Scientists sent to all the members of the Senate in 1995, urging a vote not to ratify. The letter was primarily drafted by political scientist and journalist Dr. Thomas A. Droleskey and contributed to by this writer.

It is clear that the Convention on the Rights of the Child seeks to subject parents to close bureaucratic supervision. Parents who do not educate or raise their children according to the dictates of the prevailing cultural trends will be subject to all kinds of civil and criminal penalties, if not the seizure of their children. This is a form of ideological totalitarianism.

Article 12 of the Convention states that children have the “right” to express their own views freely in all matters. All matters? Child-rearing? Discipline? The fact there are some self-appointed child advocates, such as Hillary Clinton, who believe that children as young as *seven* years of age can assert legal rights indicates that it would be possible under the Convention for grammar school students to sue their parents in order to express their views. This is absurd. Children are children. They need to *learn* about life. They need to *respect* their parents. They need to understand the virtues of humility and obedience, of submission to lawful authority. Also, of course, they will not be able to sue or otherwise oppose their parents on their

own. The state will do it for them, with “child advocates” supplanting parents and deciding what is best for children.

Article 13 asserts that children have the right to receive all kinds of information through the “media of the child’s choice.” Parents concerned about protecting the purity and innocence of their children would be legally barred from censoring the television watched in the home, the movies their children choose to watch, and the books they choose to read. And those parents who do not have a television in their homes might be forced to secure one in order to respect their children’s “right” to receive information. Is it overkill to point out that child pornography laws would be invalidated by this article of the Convention? Article 17 extends this “right” to national and international sources in the media.

Article 14 discusses the right of each child to freedom of religion. This appears, at first glance, to be praiseworthy. The article, however, contains an implicit threat to the rights of parents to raise their children. Can a child who does not want to receive religious education sue his parents for abuse because the parents refuse to honor the child’s wishes? Can parents who tell their children to engage in family prayers be judged guilty of not respecting a child’s freedom *from* religion? This is an attempt on the part of the secularists to free children from the influence of parents who desire to pass along transcendent truths to their children.

Article 16 immunizes children from any degree of parental censorship insofar as correspondence is concerned. While confidentiality is an important part of correspondence, parents nevertheless have to monitor the activities of their children, particularly those in the adolescent years. Can one seriously suggest that a parent has no right to determine if his child is being solicited by a pornographer or child molester? Does a parent have no right to determine if his child is receiving contraband drugs through the mail? This is absurd.

Article 18 seems likely to encourage the displacement of parents in raising their children by the state as it calls for the expansion in the state role in providing facilities to care for children.

Article 19 provides the basis for the establishment of dangerous, coercive state structures to track and pressure parents who violate the Convention’s notion of their children’s “rights.” In fact, Article 43 establishes perhaps the ultimate in distant, arrogant bureaucratic structures—an international committee of ten “experts” to oversee the progress of the Convention’s implementation. In other words, ten individuals will dictate to the hundreds of millions of parents in the world how to raise their children.

It appears as though Article 30, which guarantees a child the right to use his own language, might sanction the use of profanity. A parent would be powerless to tell his child to speak clearly and nobly, never

using any vile language. And Article 31, giving children the “right to rest and leisure,” would make it difficult for parents to command their children to do anything. All a child would have to do to avoid chores or assignments is to say that he is entitled to rest and leisure.¹⁸⁰

The U.S. is one of a few countries that still has not adopted the Convention. If it does, this is a serious matter because under the U.S. Constitution (Article VI) a treaty (which is what the Convention is) becomes the “supreme Law of the Land.” The constitutions and laws of every American state have to conform to and/or give way to a treaty.¹⁸¹ The laws of each state on child welfare matters would have to be reshaped according to the Convention. As the above makes clear, the powers of the state to intervene into the family and matters of childrearing would be even more sweeping than they currently are. Since international law now is seen as concerning individuals directly—and not just a means of ordering relations among nations—the “rights” specified by the Convention could be effectuated by children directly against their parents. Children would seem to be guaranteed a right to sue their parents if they do not like the way they are raising them—or, more precisely (as the above letter suggests), parents would be sued by any number of “child advocacy” organizations that would rise up in greater numbers even than now to help “vindicate” children’s internationally-guaranteed rights. There is a great danger, even in the absence of the U.S. Senate’s continued unwillingness to consent to the Convention’s ratification, that the Convention may be thrust on the U.S. by judicial action as part of the growing movement in international law circles in support of “customary international law.” The latter holds that “when the vast majority of nations agree on a principle of law” it is binding on all nations—“even without their consent.” Customary international law supposedly can also be fashioned by international law experts, such as those from the International Law Association who work closely with the UN. Since it has been ratified by most nations, the Convention would seem to qualify as customary international law. In fact, one federal district court already has held that on that basis it is binding on the U.S.¹⁸²

In Catholic circles, some have claimed that the Convention cannot be problematical since the Holy See was one of its early ratifiers. The context of the Holy See’s support must be looked at more closely, however. In my online column, “Neither Left nor Right but Catholic” in 2011, I pointed out that what the Holy See ratified was a document that it saw as protecting the true dignity of children—both born and unborn—not the anti-parent, anti-family manifesto it has turned out to be. In some

respects, what has happened with the Convention has been like what happened after Vatican Council II in the Western world: false interpretation and faulty implementation replaced the true meaning of the Council and its actions. In both cases, too, the distortion was/has been ideologically-driven and often orchestrated. Not long ago, Pope Benedict XVI called for a “correct application” of the Convention. As it was, when the Holy See ratified the document, it included a number of reservations, or clarifications about how it understands and interprets the Convention. Most critically, the Holy See said that it interpreted it in a way that “safeguards the primary and inalienable rights of parents.” It also interpreted such a provision as that calling for family planning and education services for children as only those that are morally acceptable (e.g., natural family planning), and viewed the Convention as a means of protecting the rights of the unborn child. If the Holy See had foreseen the troublesome interpretations of the Convention and how some on the international scene have used it as a wedge to justify a wholesale subversion of parental rights and regimentation of the family, one wonders if it would have ratified at all.¹⁸³

Children and Families Harmed by the Current Child Protective System

There are some who contend, usually denying the scope of the problem of false allegations, that the abuses of the child protective system—even the damage done to families—are the price we must pay to protect children from harm and lifelong damage. It is *also* evil, however, when even one person is falsely accused when something could have been done about *that*—to say nothing about a massive number of people. Only a committed utilitarian (“subject one person to injustice so that the community as a whole can benefit”¹⁸⁴) would think otherwise. Be that as it may, the question is this: Does the current system succeed in protecting children? It is worth considering Besharov’s comment:

Th[e] high level of state intervention might be acceptable if it were necessary to enable child protective agencies to fulfill their basic mission of protecting endangered children. Unfortunately, it does just the opposite; children in real danger of serious maltreatment get lost in the press of the minor cases flooding the system.¹⁸⁵

In other words, as Pride puts it, “If *all* parents are guilty, or could be guilty” (which, as we have said, seems to be the upshot of the current child abuse laws and agency attitudes) “then resources end up spread

thinly. There is no way to separate the criminals from the average Joes....A system that fails to distinguish crimes from unfashionable child-rearing practices cannot protect children.”¹⁸⁶ After all, state agencies have only so many personnel—they frequently complain that they are understaffed and overworked, even while justifying more and more intervention into families—and funds do not flow so freely in a period of governmental belt tightening. The unprecedented high level of intervention into families has not produced particularly impressive results in protecting children. In 2000, Besharov cited studies revealing that in the then roughly 25 years since the enactment of CAPTA 30-55% of deaths due to abuse or neglect involved children known about by a child protective agency.¹⁸⁷

Another way in which current practices threaten children is by consigning them in ever-larger numbers to the troubled foster care system—sometimes after taking them from their parents without good cause.¹⁸⁸ As with intervention into the family in the first place, Besharov writes that “there are no legal standards governing the foster care decision” and often no time limits as to how long children remain in what is supposed to be a “short term remedy.”¹⁸⁹ The result is that children frequently are away from their parents for years, shifted from foster home to foster home. This by itself is one way that children can be harmed by foster care. As Besharov states, “Long term foster care can leave lasting psychological scars...it can do irreparable damage to the bond of affection and commitment between parent and child.”¹⁹⁰

A more obvious way that children are harmed by foster care is when they are placed in undesirable foster homes with potentially abusive and neglectful foster parents. Pride discusses cases of children being assaulted, neglected, and even dying in foster care and gives the startling statistic that the death rate for children placed in foster care in Florida is more than double that of children in the general population.¹⁹¹ Pride also says that so-called “emergency shelters,” run by state agencies for children to be placed in immediately after removal from their homes, have also been responsible for abuse.¹⁹² In some places, allegedly abused and neglected children are actually placed in jail or a detention center while social workers try to arrange a foster placement. There, they are faced with real danger from juvenile or adult offenders.¹⁹³

Scott, writing in the mid-1990s, gives some additional startling statistics: in Massachusetts, 60% of the state’s criminals came from backgrounds of foster care or state children’s institutions; in California, it is 69%.¹⁹⁴ Surveys conducted in 1986 and 1990 by the National Foster Care Education Project found that foster children were *10 times* more likely to be abused than children in the general public.¹⁹⁵ Studies cited by

Wexler's National Coalition for Child Protection Reform give a further disturbing picture about the treatment of children in foster care and institutional care. One in Baltimore showed that the number of "substantiated" cases of sexual abuse of children in foster care was four times higher than in the general population. An Indiana study revealed that there was more than 10 times the rate of physical abuse and more than 28 times the rate of sexual abuse of children in group homes than in the general population. A Georgia study found that 34% of children in foster care had experienced abuse, neglect, or other harmful conditions.¹⁹⁶ There are ongoing accounts of abuse in both the foster care and state group home situations.¹⁹⁷ While there are many decent and upright foster parents,¹⁹⁸ it is clear that some people become foster parents for an economic motive. How much the latter truly care about the children they take in or desire to provide adequately for them is questionable; they know foster parentage can be lucrative and they seek to exploit the system.¹⁹⁹ Not all the abuse in foster care is by foster parents, however. Some is perpetrated by other foster children in the foster home.²⁰⁰

As mentioned above, it is not just the unscrupulous or opportunistic foster parent who brings a financial motive to the foster care system. It is also in many cases the cps's, since foster-care programs bring in more funds than in-home programs do.

Another way that children are harmed by the system, even if they are not taken away from their parents or are taken away only for a short period of time, is by the psychological and physical effects and damage done to their relationship with their parents. This is intensified in the face of their sometimes undergoing long, repeated interrogations by social workers—and the outright intimidation that sometimes accompanies them—forced physical and sexual examinations in some cases to determine if they have been sexually abused, and (essentially) forced therapy by psychologists, counselors and the like. The Jordan, Minnesota, case related above is a vivid and extreme example of this, but it is all too typical in the annals of child abuse law enforcement.²⁰¹ Incidentally, the Society of Catholic Social Scientists' *amicus curiae* brief to the U.S. Supreme Court in *Camreta v. Greene/Alford v. Greene* (2011), which was drafted by the present author, argued that such interrogations could be considered torture under prevailing international human rights law and should also be banned under U.S. constitutional law precedent.²⁰² Even short of that, a CPS investigation of an innocent family—perhaps triggered by an anonymous report—can lead to emotional strain, anxiety, fear, insecurity to children and their parents, and an increasing tendency of children to be out of control. The children can

become distrustful of outsiders, neighbors, and those in authority. They can have their ability to form attachments compromised and suffer psychological consequences. Strains can also develop between the parents. Parental anger toward their children can result (the very kind of thing the CPS claims it wants to stop). The orderly flow of a family's life can be disrupted, and this is often not easily overcome (especially if it is facing ongoing CPS monitoring). Children are also obviously hurt by the financial harm that can occur to their families from extended legal battles with agencies. Sometimes, the strains on parents by unwarranted, ongoing CPS intrusion into the family lead to marital break-ups with the obvious harm that causes to children.²⁰³

A Generation of Criticism of Current Policy and the CPS, but Little Change

In an article I published in 2007, I surveyed the writings of the leading critics of the American laws on child abuse and the CPS.²⁰⁴ Most of these writers have either published books on the subject or have published several noteworthy scholarly articles in law reviews or other journals. I discussed ten writers—some of whom have been referred to in this article—besides myself (the present article essentially presents my work on the subject): Douglas J. Besharov, a lawyer and one of the architects of CAPTA who later became by all accounts the leading critic of the CPS; Mary Pride, a noted Christian homeschooling author who wrote the first critical book-length study of the laws and the CPS in the mid-1980s; Brenda Scott, a journalist who wrote what may have been the second overarching critical book on the CPS a decade later; Richard Wexler, previously mentioned, has written extensively (including a book) on the topic and has for many years been involved in trying to reform child protection; Joseph Goldstein, Anna Freud, and Albert J. Solnit, distinguished scholars and professionals in the field of family studies who teamed up on two well-known books in the 1970s; Lawrence D. Spiegel, a psychologist who wrote a 1980s book exposing the CPS after being personally victimized by it; Dana Mack, whose book-length study in the late 1990s addressing various societal forces undermining parents and the family, was devoted partly to a critique of the false child abuse/neglect issue and the CPS; Allan C. Carlson, a historian of the family and culture who is certainly one of the leading pro-family scholars in the U.S. and who (as seen above) put the CPS into the broader context of the history of child-saving in America; HSLDA has both published numerous pieces about the threat from the CPS and has

played a major role (as mentioned above) in litigation against the CPS around the country; and Paul Chill, a specialist in juvenile law who has written especially on the CPS's readiness to remove children from their homes and the lack of due process for parents.

These writers or sources came to a number of common conclusions and broadly agreed about certain matters or themes. Some stressed certain points and some others, and in spite of their common criticism of the current arrangements to prevent and address putative child maltreatment they disagreed about the value of the current CPS. 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 (although some suggested that the figure could be at the higher levels that we have seen that more recent data has indicated). 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 explain how the current CPS, despite the word "protective," fails to protect many children who truly are in need. Some also speak about the problems of foster care. 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 the confusion of the CPS itself about what constitutes child maltreatment, the very thing that it is supposed to be protecting against. Some speak about the problem of how even many "substantiated" reports involve only minor or insignificant matters, which most reasonable people would not consider truly to constitute 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 cpa have few due process or related rights. Several point to financial and other incentives that the CPS and those connected with 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. I highlight below the particularly noteworthy points of each of these different writers.

The godfather of critics of the current child protective regimen, Besharov, does not oppose the existence of the current system of specialized governmental cpa's with their therapeutic, instead of outright coercive, focus. 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,²⁰⁵ 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 and neglect. The root of this problem, he believes, has been two prominent themes I have talked about: the vagueness of the laws and a lack of consensus among professionals and CPS personnel about what the terms “abuse” and “neglect” mean. In spite of this criticism, Besharov does not make a substantial legal critique of the child abuse/neglect laws. He does suggest that it is problematical that courts have refused to apply overbreadth and vagueness analysis to them.²⁰⁶ He also says, revealingly (and there is not much doubt that he is correct here, since he was right there helping to fashion them), that it was not accidental that the laws are so vague about which 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, in their minds, make it easier to prevent child abuse and neglect. They sought “unrestricted preventive jurisdiction” to supposedly stop any *possible* child abuse. The laws, in effect, were set up to enable agencies and courts not only to track down abusers, but to supposedly 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.²⁰⁷ Even though he does not want to dispense with the CPS or perhaps even fundamentally change it, he gives the impression of an ineffectual and even counterproductive system. He mentions how reports keep increasing as substantiated cases keep decreasing,²⁰⁸ how even most of the minority of cases in which abuse or neglect is “substantiated” involve minor matters (such as slapping and poor housekeeping).²⁰⁹ Another significant point he makes was noted above: the disturbingly high number of children found dead from abuse whose situations were already known about by the CPS.²¹⁰

Mary Pride was one of the first major authors to call attention to the distorted statistical information concerning child abuse, which this paper

has discussed. She said that many statistics that are put out by organizations or reported in the media are only estimates or, as she puts it, “somebody’s *guess*.”²¹¹ If anyone examined them carefully enough, he would have realized how outrageous some of the statistical claims have been: One source’s estimates would have meant that over 200% of girls will be raped by age 18. The upshot of another source, which extrapolated from the typical claim that those who are abused will inevitably grow up to abuse their own children, is that the number of current child abusers would have been double the population of the U.S. and Canada at the time that she writes in the 1980s.²¹² She identified the “doctrines” that I said above the CPS operates on.²¹³ She sees the arbitrariness caused by the uncertain legal standards and CPS confusion about what constitutes child maltreatment as being the basis of the problem of the massive number of false reports.²¹⁴ She points to a couple of the most extreme proposals that have come forth from some authorities as a way to deal with the presumed epidemic of child abuse: the registration from birth of all children in a health-care “home” and then the regular, mandatory monitoring of all households with children by various professionals, and permitting only persons licensed by the state to become parents.²¹⁵ She calls for an end to hotlines and to foster care as we know it, with a notion of “clan care”—where a needy child is taken care of by relatives or friends, as these situations were addressed earlier in American history—to take its place. She identifies as the causes of true abuse the anti-child attitudes spawned by such contemporary moral and legal developments as abortion, pornography, sexual infidelity, and no-fault divorce.²¹⁶

Brenda Scott says that the hysteria created by the media, the mandated reporter laws, and the legal immunity of reporters have primarily been responsible for the over-reporting problem.²¹⁷ She also speaks about how the federal funding arrangements supporting foster care, as opposed to in-home treatment, stimulate the removal of children from their homes (she is also one of the writers who discusses the much greater likelihood of children being abused in foster care than in their own homes), and how the tendency in some places to assign certain prosecutors 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 is not there.²¹⁸ She accuses the CPS of systemic abusive behavior, including: the arrogant and overbearing treatment of parents by CPS operatives,²¹⁹ the suggestive interrogation techniques to get children to accuse parents of abuse,²²⁰ illegal searches of families’ homes by operatives, hiding behind confidentiality laws, and the effective use of self-incrimination when parents—often forcibly—are

sent to therapists who then get them to essentially accuse themselves.²²¹ She raises the possibility—now confirmed, as we have seen—that the number of false reports could have been as high as 80%.²²² To be sure, it is possible that both Mary Pride and Brenda Scott generalize too much about some aspects of the CPS and its operatives' actions without presenting hard data, even while they point to practices and abuses that have been frequently seen and pointed to by other writers and critics.

I previously mentioned how Richard Wexler saw the statistics on child abuse reports breaking down, with only perhaps under ten of every 100 reports constituting genuine abuse. Anticipating the growth of the percentage of false reports to the apparent levels of very recent years, he like Scott said in the early 1990s that their number could be as high as 80%.²²³ He gives such startling, hard statistics as how in one six-month period in Florida, 92% of the indicated determinations were overturned.²²⁴ He believes that the reason some of the earlier National Incidence Studies showed an increase in child maltreatment was simply because they used a looser definition of the term and put more and more things into the realm of what it encompassed.²²⁵ He is extremely skeptical of categories of maltreatment such as “emotional abuse,” which the influential American Humane Association defines as children being “denied normal experiences that produce feelings of being loved, wanted, secure, and worthy”—a hopelessly subjective standard.²²⁶ He, too, speaks about the structural bias of the CPS against family preservation, which is caused by 1) an ideology that downgrades the importance of the family and thinks that the state should play a significant role in raising children and 2) perverse financial incentives (i.e., the more abuse an agency finds, the more state money it gets to provide services).²²⁷ Wexler, a journalist by profession, comments as Scott does that the media have aided in the disinformation about child abuse/neglect. They played a significant role in making the public think that there was a crisis by their tendency to rush to the supposed experts in the field, who usually had an anti-family bias and had developed media savviness.²²⁸

Goldstein, Freud, and Solnit wrote their most important material on this subject in the 1970s. They were early academic opponents of the children's rights movement and called for a respect for parental rights and a restrained approach to state intervention into the family. They called for a standard of non-intervention into the family unless “probable and sufficient cause for the coercive action has been established in accord with limits prospectively and *precisely defined* by the legislature.” This would apply before even an initial inquiry or investigation could commence. Effectively, they called for the probable cause standard of the

criminal law to apply in CPS investigations. A yet higher level of proof would be necessary for the CPS to proceed on to more intrusive stages of intervention. 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. They recognized early on that children would be harmed by any infringement of “parental autonomy” and could create the very familial conditions that an intervention supposedly sought to stop.²²⁹ Effectively, they understood the wisdom of the ages about such a matter. They seemed to have a preference for what I call for below: instead of the twilight area of the law that child abuse now occupies, genuine child abuse should be handled under the criminal law with its higher evidentiary standards. They also made clear that they would limit the definition of child maltreatment under the law to parents inflicting serious bodily injury upon a child or sexual abuse (something like corporal punishment would not qualify, nor would such vague notions as “psychological abuse” or “denial of proper care”).²³⁰ If Goldstein, Freud, and Solnit’s standards would have been embraced by the early CPS in the decade the Mondale Act was first being put into effect, it is likely that the systemic abuses we witness today would not have emerged and child protection in the U.S. would have pursued a more reasonable course. When one considers the utopian-like ambitions of those pushing the Mondale Act, however, it is very unlikely that they would not have accepted this.

Spiegel, like Scott, extends his critique beyond the CPS to prosecutors who work with them (even while, as mentioned, most accused parents never face criminal charges so prosecutors never become involved). He raises the other problem mentioned above that has helped to fuel false reporting: a societal attitude that has taken hold that believes that if one is merely accused of child abuse—especially sexual abuse—he necessarily must be guilty. There is also an attitudinal structure within the CPS itself that encourages over-reporting because of the belief of their operatives—which has taken on almost an ideological character within the CPS, but may not be true—that abuse routinely was not reported in the past. He emphasizes the lack of public and even legislative accountability of the CPS. He sees how the very structure of incentives in the CPS and associated prosecutorial authorities encourages an attitude of finding child maltreatment even if none is there: the more investigations done and the more prosecutions undertaken—even if unmerited—is the indicia of effectiveness. It is a “numbers game,” much like those police departments that evaluate officers on the basis of how many arrests they make or traffic tickets they write. He does not speak of the one-sided liability of CPS operatives, but simply says that the

agencies' fear of being seen as incompetent if they do not find abuse in a case motivates them to continue to investigate and keep it open for a prolonged period. They are more concerned about "covering themselves" than protecting children (as previously mentioned). He also mentions the overzealousness of CPS operatives and therapists, and also—he makes this evaluation as a psychologist himself—how therapists often do an inadequate job of assessing children so as to provide the CPS with conclusions they want.²³¹ As with a few other of these writers, he gives advice about what an innocent person should do if confronted with a CPS investigation. As part of this, he mentions that certain situations are especially ripe for false charges—as he found out personally—such as 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).²³²

Dana Mack's 1997 book, *The Assault on Parenthood*,²³³ is a discussion of how many different contemporary societal forces undermine the role and authority of parents and threaten the family. While she sees CAPTA as valuable and seems to think that it has helped reduce child abuse—though she does not forge a precise cause-effect relationship—she indicates that the vague laws that it spawned have been the reason for the large number of false allegations.²³⁴ Like Besharov and Wexler, she says that a very small percentage of actual cases of abuse involve serious danger to a child.²³⁵ She also echoes Besharov's claim about the counterproductivity of the CPS; it is so deluged by false reports that it cannot adequately respond to the real cases of abuse. The one-sided liability of mandatory reporters is partially responsible for this.²³⁶ The most striking fact she presents came out of hundreds of interviews and focus groups with parents done by the Institute for American Values, the think tank that she is connected with. Today's American parents take it for granted that the state has absolute power to monitor their families, shape their childrearing practices, and even remove their children from them.²³⁷ She makes the point that advocates of reform of the child abuse laws and the CPS have not made much headway with politicians who are fearful of appearing to be oblivious to "teeming masses of suffering children," and says that change will not come until the "powerful elite" of therapists, government officials, and the media develop a more positive view of the family. Still, I believe that the fact that she says that the same parents who take state intervention for granted "seem to sense instinctively that child abuse is not as widespread as the media makes it appear"²³⁸ offers hope for change in the future. After all, those parents are voters.

The social historian Carlson explains (as we saw above) 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 it. Child-saving efforts in America went back to colonial times, and later on were seen in such efforts as the reform school movement, the use of summary justice to seize and institutionalize children (even when they had committed no crime), the juvenile justice movement, and finally the anti-child abuse movement. Most of this was done at the local level until the federal government began to expand its reach into more and more areas of American life (on child abuse/neglect, of course, it did so with the Mondale Act). The Constitution does not mention the family, and for a long time federal constitutional law afforded no significant protections to the family from the threats posed to it by the child-savers (until some significant Supreme Court cases in the twentieth century). As mentioned, he says that child-saving was done historically under the sanction of the transformed legal doctrine of *parens patriae*. Carlson says that the crusade against child abuse 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 (he is thus one more writer who speaks about the role of the media in all this). The perspective developed that there was something constitutionally wrong with the family, and child abuse was said to be a significant part of this. In light of this, the state laws that began to be changed before the Mondale Act (mentioned above) featured troubling erosions of such traditional legal protections as husband-wife and physician-patient privilege, the presumption of innocence until proven guilty, and precluding a recourse to the civil or criminal law for those falsely accused.²³⁹ Contrary to the claim of the contemporary child-savers that abuse is a universal phenomenon, Carlson makes the point that within intact families (i.e., with both natural parents, married, present) it is very uncommon. It is disproportionately high in female-headed families (especially where the father of an illegitimate child from a current union or a live-in boyfriend are present) and where there are stepparents. We noted this above, and it is mentioned by Pride and some of these other writers. Carlson is also another of the writers who anticipates the most recent data when he writes, in the late 1980s, that almost 80% of abuse reports are unfounded. He also points out that there are a number of realities that are ignored by the CPS and other child-savers because they do not fit their ideologically-fashioned paradigm: the abuse mentioned above in foster care and institutional settings, “the growing problems of real neglect” caused by the high divorce rate and phenomenon of latch key children,

and the link between child abuse and the abortion rate. He cites a noted Canadian study about the latter, 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. He suggests that the views of the “main players” in this area—the social work profession—have to change before there can be a change in policy and practice (his view here is similar to Mack’s: the attitudes of an elite element concerned with this subject have to change before policy can change). He does not seem sanguine about this, however, as he says that since the 1960s the social work profession has overwhelmingly embraced anti-family, anti-middle class views.²⁴⁰ I might just observe that the latter may seem a bit paradoxical, since it has sometimes been said that the CPS wants to impose middle class norms on the often lower-income families with which it deals.

HSLDA has been involved in much litigation against the CPS, especially growing out of contacts that their member homeschooling families sometimes have with it. They have especially been involved in critical Fourth Amendment litigation concerning the warrantless entry of CPS operatives into private homes pursuant to (often anonymous) complaints. That is the topic of James R. Mason III’s paper in this volume. Homeschoolers have particularly been easy victims because of anonymous child abuse hotlines around the country,²⁴¹ and they have faced a range of (often ridiculous) allegations.²⁴² HSLDA advocates eliminating anonymous reports as a basis for starting a CPS investigation (or at least establishing that such reports should not be sufficient grounds for a judge to order removal of children from their homes or grant a search warrant),²⁴³ clarifying the meaning of “abuse” and “neglect” in the laws, and, of course, eliminating any suggestion that homeschooling is a form of “educational neglect.”²⁴⁴ HSLDA worked successfully for the changes that were made to CAPTA in 2003 that require CPS operatives to inform parents on first contact of the nature of the allegation against them, that they 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 CPS operatives.²⁴⁵ Like a number of the writers, HSLDA provides practical advice to parents about what to do when a CPS operative shows up at their door, urging them to stand up for their Fourth Amendment rights and alerting them about the best ways to cooperate without allowing the operative access to their homes and children.²⁴⁶

Paul Chill's writing focuses especially on the CPS's removing of children from their homes in the face of allegations of abuse. He echoes some of the other writers in saying that the CPS is not sufficiently attentive to the harm done to children and families by unnecessary removal (including the dangers of foster care).²⁴⁷ He also gives a unique insight into three different topics (which have been discussed above, referring to his writing): 1) how in legal proceedings in juvenile court following a removal parents are at a considerable disadvantage regardless of their innocence;²⁴⁸ 2) just as there is routine "defensive social work" with the CPS erring against parents because of the incentives discussed, there is routine "defensive judging" in juvenile court with judges mostly siding with the CPS;²⁴⁹ and 3) how the Adoption and Safe Families Act of 1997, as noted, has had the effect of making it easier for the state to terminate parental rights even when not merited.²⁵⁰

Proposals for Legal and Policy Change

In my 1988 article, I called for the enactment of a number of legal reforms that would protect innocent parents from the abuses of the CPS. They were as follows. First, the anonymous hotlines, which have been an open door to false reporting, should be eliminated. Secondly, I said that the laws should be altered so they spell out more specifically what "child abuse" and "child neglect" are. I called for the elimination of provisions that infringe or could be interpreted to infringe upon the parent's right to choose the childrearing practices he or she wishes, including reasonable corporal punishment. Thirdly, child abuse and neglect should be treated as criminal matters to be dealt with in regular courts, where accused persons have the full range of due process and other constitutional rights. I said that due process guarantees should be established by statute for persons involved in any related matters that are indeed more appropriately dealt with in juvenile court. For example, non-criminal neglect should perhaps receive a hybrid status under the law—not a criminal matter, but no longer treated as a civil matter—but with the accused person's constitutional rights fully protected. I insisted that part of the reform in this area should include permitting accused persons to waive confidentiality in child abuse proceedings; sometimes the very thing needed to protect rights and guard against state abuse is the watchful eye of the public. Also, strict requirements should have to be met before state agencies can remove children from their homes. Children should not be removed, even temporarily, unless authorities can

conclusively prove in a proceeding before an impartial judge that they are in danger. In the case of emergency removals, authorities should have to supply this proof to a judge within twenty-four hours, or automatically be required to return the child. Actually, I said, perhaps Pride made an even more preferable proposal: simply removing the *perpetrator*, as would be done with any criminal offense. I also said that government agencies should not be allowed to retain records of unsubstantiated or false complaints. The statutory changes of recent decades that have permitted the admission into court of hearsay evidence and videotaped testimony (and generally give the child the overwhelming benefit of the doubt against the accused) should be repealed; child abuse should be dealt with like any other crime. Next, I called for safeguards to be put in place to insure against manipulation of children by prosecutorial authorities, psychologists, and other interrogators. I said that perhaps besides providing free legal counsel for needy accused persons in child abuse cases,²⁵¹ the state should also provide free psychologists and psychiatrists to counter the ones that the CPS brings in.²⁵²

I also said that the laws should be changed to outright discourage and even make it risky for people to file false and malicious child abuse complaints. The laws squarely should require something like probable cause be established before an agency has the authority *even to commence an investigation*. This seemed reasonable because, after all, we are dealing with the natural rights of parents and with an intrusion into the most basic human institution, the family, and one of the most intimate of human relationships, that between parent and child. If someone makes a malicious or intentionally false complaint, I said that he should be liable to suit in tort by the accused party. If a person has to face a trial, or even perhaps other legal proceedings, as a result of a knowingly false or malicious charge of child abuse and is exonerated, reversal of attorney's fees should be permitted. Generally, American law does not permit this, but exceptions have been made when a person is the victim of some particularly outrageous conduct.²⁵³

Finally, I insisted on reversing the "one-sided liability" discussed. Social workers and agencies should not be subject to suit or prosecution for non-removal unless their conduct is clearly outrageous and/or in bad faith. I said that they *should* be subject to suits by parents and legal guardians for wrongful removal, but only if they violate legal provisions—presuming the laws would have been tightened up to prevent the easy removals which are now occurring—or act recklessly or maliciously. Local or state prosecutorial authorities should also be subject to suit if they act in such a manner.²⁵⁴

It should be noted that so far no significant trends have emerged to promote the adoption of any of these changes (I mentioned some very limited movement in the probable cause area). The increasing search and seizure protections are encouraging, and the 2003 CAPTA amendments helpful but (as mentioned) limited. Another positive development in certain states has been the enactment of statutory changes which subject to criminal prosecution anyone who knowingly makes a false child abuse/neglect report.²⁵⁵ The latter probably resulted from the substantial number of false abuse allegations that were being made in child custody battles connected to divorces.²⁵⁶

In Scott's book, she lists the following additional sound proposals for change: the required videotaping of all interrogations of children by authorities and the making of these immediately available to the accused; the presence of a friendly adult advocate to be with the child (presumably someone of the parents' choosing) when being questioned; the setting up of independent review boards to hear complaints of the accused (this in some form was done by the 2003 CAPTA amendments); insuring that relatives receive the first consideration in a foster care placement if children are removed from their home, that parents be allowed daily phone calls and visits to children removed, and that if more than one child is removed from a home they be kept together; the elimination of the routine practice of some agencies of forcing children in every case taken up by the agency to undergo therapy; and the elimination of intrusive searches and physical examinations of alleged child-victims.²⁵⁷

All of the above ideas are worth pursuing; they would certainly go some distance toward ending the grave abuses and injustices of the system. I came to the conclusion, however, after a decade more of observation and reflection following my 1988 article, that the best course of action—and one that I believe is attainable given the deepening suspicion of government and the heightened attention to this whole problem—is simply to dismantle the current CPS and scrap the child abuse and neglect laws that are now forty or more years old. Specialized cps's have not proven that they are needed; there is no evidence that the problem of child maltreatment would be dealt with any less effectively in other ways.

In an article I wrote in 2005 (which grew out of a paper I presented at a Society of Catholic Social Scientists seminar on Capitol Hill in Washington, D.C.), I elaborated on why I think that the CPS is conceptually and structurally incapable of carrying out what it claims its purpose is. I said that its basic problem is that it is a *therapeutic* system--although coercively therapeutic. Its structuring and the very nature of that kind of system suggests the following drawbacks: 1) 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; 2) while it commendably believes in prevention, it wrongly believes that state action can universally bring that about without also creating universal regimentation and a monstrous tyranny; 3) it is routinely manned by people whose education and training has not made them particularly sympathetic to the family or aware of its basic, natural, and irreplaceable value; 4) the confusion among CPS operatives about what constitutes child maltreatment also reflects their training in contemporary relativistic social science with its ever-changing notions, theories, and even definitions for words (so, even with more precise legal definitions of abuse and neglect, we could expect cps's would still find grounds to infringe on legitimate parental actions); 5) it is beleaguered by the rigidities, limitations, self-interestedness/self-protectiveness, and inanities of bureaucratic institutions everywhere; 6) 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—and not only are social workers not trained for the latter, but help and coercion do not readily go together under the same institutional roof; and 7) a specialized agency, with a particular focus, often goes to an extreme in carrying out its mission. It tends to see problems where they do not exist, and overemphasizes the significance of those that it finds. It easily loses its sense of balance, and that tendency is not moderated by additional perspectives or factors that otherwise would come into play.

In short, what I have shown about the CPS is that it does not know clearly what it is supposed to stop, a big percentage of what it investigates is nothing that needs to be investigated in the first place, it ends up hurting children with its interventions supposedly on their behalf and even sometimes fails to stop true cases of maltreatment, is inattentive to parental rights, its failures have been ongoing and consistent, and its attempt to monitor and control vast numbers of people in the minutest of details about how they conduct their lives and raise their children is more than a touch of totalitarianism. It is difficult to conclude that such a system should be continued.

In my judgment, the entire matter simply ought to be turned over to the criminal law—in spite of the police and prosecutorial abuses detailed above in the Jordan and Wenatchee cases, and more recently the Cressy case—and dealt with by current or expanded statutes concerning murder, assault, rape, statutory rape, incest and the like. Carefully drafted criminal child neglect statutes—spelling out *clearly and unambiguously* what the proscribed offenses are, and not including anything resulting from poverty or disadvantage or concerning reasonable parental

educational choices—ought to be added to address this aspect of the problem. It must be remembered that this is the primary way the law dealt with child maltreatment for most of American history, and there has been no showing that it was not adequate. Moreover, besides their stronger investigative skills, law enforcement personnel tend not to have been schooled in the intellectual environment of academic social work and related fields that is laced with an anti-parental authority and anti-traditional family ideology and the ethos of “we ‘experts’ know better.” Also, some of the abuses by law enforcement agencies would likely be eliminated if their personnel were no longer trained in this area by the CPS and if there were not cooperative inter-agency arrangements such as those seen in the current child advocacy center movement through which the “CPS perspective” is disseminated.²⁵⁸

Ending the current laws and system would also largely overcome the vagueness about what abuse and neglect and all related categories are and help insure that the law would only treat as abuse or neglect actions or omissions which the community—and common sense—widely regard as such. It would also, correspondingly, guarantee that families not be targeted for innocent or trivial actions. It would, additionally, get the state out of the business—for which it has no competency—of dictating to parents preferred methods of childrearing. Further, all of the usual constitutional protections would also almost automatically attach. It would also insure that the *truly* guilty would be punished, as most people think they should be, instead of given therapy (as too often happens).²⁵⁹

As I have indicated, an epidemic of abuse and neglect did not exist before the introduction of the current laws. While almost certainly there is not an epidemic today either, there *is* probably more child maltreatment than there was, say, seventy-five or a hundred years ago (this has occurred *despite* the existence of the current laws and child protective apparatus). This is for the same reason—as some scholars, professionals, and politicians and the general public are slowly coming to realize—that there is more illegitimacy, divorce, abortion and the like: the social, moral, and spiritual decay which has occurred in America and the general decline of the family that is part of it.

There is one *fundamental* legal change in the states that would also help protect parental and family rights. This involves the movement for parental rights constitutional amendments that has been witnessed in some state legislatures in recent decades.²⁶⁰ Even though the generally broad language of constitutional amendments does not afford the specific protections of statutes, and this kind of amendment would probably be most geared to protecting the educational rights of parents, it would give a renewed emphasis to the old common law preference for parental

rights. It would also afford a fundamental legal principle that could be appealed to in courts to at least help ameliorate especially serious threats to parental rights, and help to re-insulate the family from the excessive reach of the state. There is now also a movement underway on the national level for a similar amendment to the U.S. Constitution, which would likely help to eliminate the blind spot regarding the family which Carlson argues is found in federal constitutional law. The movement has been fueled by the specter of the Convention on the Rights of the Child (discussed above) and the position of Justice Antonin Scalia in *Troxel v. Granville* (2000) that parental rights cannot be constitutionally enforced because they are not specifically provided for in the document.²⁶¹ Curiously, such an amendment has at least the potential to gain broad support. General constitutional language in support of parental rights might be hard politically for lawmakers to refuse to support, especially when it would not be clear about all the specific areas to which it might apply.

On the international level, in light of the above analysis, it goes without saying that the U.S. Senate should not ratify the U.N. Convention on the Rights of the Child (it was pushed by the Clinton Administration, but not by George W. Bush's and now under the Obama administration there has been a renewed effort to get it ratified). If approved, as a treaty it would become the supreme law of the land, and unless specific reservations were made to it would supersede American domestic law that, at least in certain cases, would seem to afford more protection to parental rights. Even if American judges would not be ready to embrace some of its more extreme principles, it is likely that its overall effect would be to further erode parental rights.²⁶²

While legal change would surely eliminate a major part of the threat posed to the family in this matter, it would be a delusion to believe that it would entirely eliminate it. There will still be false abuse and neglect reports made to the police (who would then become the major enforcers) and in response to public pressure other public policies would probably be enacted, as they have been throughout American history, which will tread on the legitimate, natural law prerogatives of the family. Thus, there must be a reevaluation of the nagging traditional attitudes of Americans that make them think that they are justified in telling their neighbor that they know better than him about how to raise his children. Being "thy brother's keeper" does not mean interfering with his legitimate childrearing efforts—even if monitoring families and regimenting, excessively, the lives of individuals both have a long history in the U.S.²⁶³ People must remember that they "should remove the plank from their own eye" before insisting that their brother "remove

the speck” from his. Indeed, the CPS is very much an extension of this flawed attitude: the *main thing* it winds up doing is not fighting child abuse and neglect in any true sense of the word, but imposing its views about childrearing practices. The entire problem of false child abuse/neglect allegations and the animating attitudes of the CPS indicate a need to reinvigorate a spirit of liberty that has long since ebbed in the U.S., and that will not be easy.

The monitoring and regimenting of families’ childrearing practices has to be put into the context of the expanded, intensified attempts by different levels of government in recent decades to monitor and manage many aspects of people’s lives generally. This confirms Alexis de Tocqueville’s expectation that as time went on the citizens of democratic republics would continue to be free in big things—e.g., they would continue to elect their leaders—but in the everyday things of life they would become increasingly regimented by government.²⁶⁴ With the issue of child abuse/neglect and the CPS, that regimentation occurs to a massive extent on one of the most intimate aspect of life. Other recent trends are also manifested in this issue. One is the view, going back to the Progressive Era, that holds that technical experts of some sort simply know better, and so should be the ones to manage our politics, society, and lives.²⁶⁵ So, if one has a social work or counseling or human services degree, he or she almost by definition is seen as more qualified even than parents to say how a child should be raised—irrespective of: 1) the fact that technical knowledge is not by its nature so pertinent to something like childrearing; 2) the unique affection, noted above, that a parent has for one of his or her own and the connatural knowing that a parent gains for one in his or her care, so as to know best how to address the needs of that particular child; and 3) whether he or she has any direct experience in childrearing.²⁶⁶ Finally, this issue exemplifies the trend of government in recent history to give people help but only with a *quid pro quo*. So, since most of these cases may actually be poverty cases, government gives financial assistance or social services but says that, “we think you are being neglectful, so we have to manage your childrearing or even take your children away and raise them ourselves.”

I am inclined to agree with Mary Pride and Dana Mack that when parents need to seek assistance with childrearing and when our political society wants to address what has gone into this big grab-bag of “child abuse,” “child neglect,” “child dependency” and the like (at least when they are not truly serious and criminal acts), informal, traditional “family and community support structures,” instead of government agencies, should be turned to.²⁶⁷ These would include the extended family and friends, but also churches and clergymen, voluntary associations (it

should be within this context that social workers do their main work, non-coercively, to assist families in need), family physicians and certain other professionals (once they have had the legal strictures removed from them that encourage them to over-report abuse and neglect). If the argument is made that the family cannot often be relied on because it is too weak, then efforts should be undertaken to strengthen it (and probably there is little that can be done effectively by government—in contrast to these other entities—in this regard). If the reliance were to be mostly upon informal mechanisms, there is no evidence that the abuse/neglect problem—where it genuinely *does* exist—would get worse, and we would gain the enormous advantage of greater parental and family freedom. At least good parents would then not be stymied and threatened in the name of alleged “child protection.” The last paragraph of the article I wrote in 2005 on false abuse/neglect and the CPS makes this point vividly: “If child protection laws that encourage the neighborhood busybody to spy on and report parents were eliminated, maybe we would begin to see the restoration of a true neighborly spirit of 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. A kindly but firm Widow Douglas and Miss Watson taking care of an abused Huck Finn is much preferable to a cold, impersonal, distant government agency. It perhaps *does* take a village to raise a child, but not in the sense Hillary Clinton and others mean. Rather, it means community respect and support for the family, helping parents—while fully aware of their prior natural rights *as parents*—in their difficult God-given task of childrearing instead of interfering with and undermining them.”²⁶⁸

I am not sanguine about change in this area being brought about easily. As Richard Wexler wrote me in a personal communication, most people know what needs to be done in the field of child welfare “but decline to face up to it or to act on it.”²⁶⁹ As Mack suggests, legislators and other public officeholders are afraid to make changes in the child abuse laws or the CPS because they are afraid of appearing to the voting public to be “soft on child abusers.” This means an even more intensive educational effort by the Wexlers and Scotts and HSLDA, et al. to help the public to see that the image created by the media and ideologically-driven professionals and academics is not the correct one. With so many parents now attuned—as Mack says—to the fact that the state is trying to regiment them, their efforts may bear more fruit in the future than they might expect. It also means ongoing—even accelerated—efforts by the HSLDAs, the Family Defense Centers,²⁷⁰ etc. to further parental rights and legally limit the sweeping, arbitrary powers of the CPS. It also

means a consideration of completely legal mass public action to convince public decisionmakers that the CPS needs to be changed or, preferably, eliminated in its current form. Besides more citizen communication and lobbying with their legislators to secure legal change and media criticism of the current laws and CPS (e.g., in “letters to the editor” columns in newspapers), anti-CPS rallies in state capitals and in Washington would call broader attention to a systemically abusive system.

Finally, I must drive home the point again that whenever religious and moral sanctions decline, as has happened overwhelmingly in America in the last few generations, moral problems such as child abuse and neglect almost inevitably become greater. The positive law then tries to pick up the slack. Government becomes bigger, more active, and more intrusive in trying to solve the problems—and usually creates an entirely new set of problems and abuses. The most reliable, long-term guarantee for protecting parents from false abuse/neglect charges and similar threats—and to protect children too—is to simply have very little actual child maltreatment and very little desire among individuals in the population to do it. This will involve men’s renewing the effort that classical antiquity and the world’s great religious traditions have all told us was central, but which democratic man by his nature finds difficult and the liberalism which has completely subsumed the American tradition has little time for: to put the soul in right order. As Plato, Aristotle and other great political thinkers observed, law will always be needed, but a community of good men will need relatively few laws. We can put the current American condition, illustrated by the problems of child maltreatment and the mountain of false accusations, in perspective when we look back to the words of the greatest commentator on the American democratic republic, Tocqueville: “Religion is...needed...in democratic republics most of all. How could society escape destruction if, when political ties are relaxed, moral ties are not tightened? And what can be done with a people master of itself if it is not subject to God?”²⁷¹

Notes

¹ See Douglas J. Besharov, “‘Doing Something’ About Child Abuse: The Need to Narrow the Grounds for State Intervention,” *Harvard Journal of Law and Public Policy*, vol. 8 (Summer 1985), 543-544, quoting 42 U.S.C. §§5101-5106 (Supp. V 1975) (CAPTA). CAPTA has subsequently been amended—there were some significant amendments in 2003—but its basic features remain largely unchanged.

² On the latter point, see Stephen M. Krason, *The Transformation of the American Democratic Republic* (Piscataway, N.J.: Transaction Publishers, 2012), 418.

³ Besharov “‘Doing Something’ . . .,” 545; 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), 167-173.

⁴ Besharov, “‘Doing Something’ . . .,” 543.

⁵ Sophie Quinton, “Senators Ask Whether All Adults Should Be Required to Report Child Abuse,” *National Journal* (Dec. 13, 2011), <http://www.nationaljournal.com/healthcare/senators-ask-whether-all-adults-should-be-re-quired-to-report-child-abuse-20111213>; Internet (accessed Dec. 28, 2011).

⁶ Allan C. Carlson, *Family Questions: Reflections on the American Social Crisis* (New Brunswick, N.J.: Transaction Publishers, 1988), 242. This position of the common law reflected its strong endorsement of parental rights, which it viewed as “fundamental” (see Bruce Hafen, “Children’s Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their Parents,” *Brigham Young University Law Review* [1976], 605), “sacred” (see *In re Hudson*, 126 P.2d 765, 771 [Wash., 1942]), and “natural” (see *People ex rel Portnoy v. Strasser*, 104 N.E.2d 895, 896 [N.Y., 1952] and *Lacher v. Venus*, 188 N.W. 613, 617 [Wis., 1922]).

⁷ Carlson, 242.

⁸ *Ibid.*, 243.

⁹ *Ibid.*, 244-245.

¹⁰ *Ibid.*, 244.

¹¹ *Ibid.*

¹² For example, one thinks of the Doris Duke Charitable Foundation and the Child Abuse Prevention Foundation in Southern California. Some of the efforts of the latter, which was founded by restaurant magnate Jackson W. Goodall, were much criticized for creating undue hysteria (see *The Washington Times*, Nov. 7, 1993, A1, A10).

¹³ 4 Wharton Pa. 9, cited in Carlson 254.

¹⁴ *Ibid.*, quoted in Carlson 245.

¹⁵ Carlson, 245.

¹⁶ For a discussion of the grounding of the U.S. Constitution in the English common law background, see Russell Kirk, *The Roots of American Order* (Malibu, Calif.: Pepperdine Univ. Press, 1974), 187, 191-192, 368-374.

¹⁷ Carlson, 242-243, 245.

¹⁸ *Ibid.*, 247.

¹⁹ *Ibid.*, 248.

²⁰ For a good defense of the notion of the natural rights of parents to exercise authority over their children grounded on commonsensical and philosophical argumentation, see Raphael T. Waters, “The Basis for the Traditional Rights and Responsibilities of Parents,” in Krason and D’Agostino, 13-38.

²¹ Carlson, 248, quoting Miriam Van Waters in her book *Parents on Probation* (N.Y.: New Republic, 1927).

²² On such licensing proposals, see, e.g., Jeane Westin, *The Coming Parent Revolution* (Chicago: Rand McNally, 1981), 46 (noting such a proposal by psychologist Jerry Bergman of Bowling Green State University); Waters, in Krason and D’Agostino, 35 (noting the proposal by Eddie Bernice Johnson, a high-ranking official in the Department of Health, Education, and Welfare in the Carter Administration and later a Congresswoman from Texas); and Don Feder’s syndicated column which appeared in *The Washington Times*, Oct. 18, 1994, A15 (noting the position taken by Dr. Jack C. Westman, psychiatry professor at the University of Wisconsin, in his book, *Licensing*

Parents: Can We Prevent Child Abuse and Neglect? [N.Y.: Plenum Press, Insight Books, 1994]).

²³ 268 U.S. 510, 535.

²⁴ Carlson, 249.

²⁵ That was the term given to the Warren Court's expansion of procedural due process guarantees, especially in criminal justice cases, by CBS journalist and lawyer Fred Graham. See Fred P. Graham, *The Due Process Revolution: The Warren Court's Impact on Criminal Law* (originally entitled *The Self-Inflicted Wound*; N.Y.: Hayden, 1970).

²⁶ 383 U.S. 541.

²⁷ 387 U.S. 1.

²⁸ Carlson, 249.

²⁹ *Ibid.*, 250.

³⁰ Besharov, "'Doing Something' . . .", 542.

³¹ *Ibid.*, 545.

³² Douglas J. Besharov, "Unfounded Allegations—A New Child Abuse Problem," *Public Interest*, vol. 83 (1986); 19.

³³ Trevor Armbrister, "When Parents Become Victims," *Reader's Digest* (April 1993), 101.

³⁴ Brenda Scott, *Out of Control: Who's Watching Our Child Protection Agencies?* (Lafayette, La.: Huntington House Publishers, 1994), 29, citing statistics compiled by the American Humane Association.

³⁵ Douglas J. Besharov, "Symposium: Violence in the Family: Child Abuse Realities: Over-Reporting and Poverty," *Virginia Journal of Social Policy and the Law*, vol. 8 (Fall 2000), 176.

³⁶ "Childhelp," <http://www.childhelp.org/pages/statistics>; Internet (accessed Dec. 28, 2011).

³⁷ *The Washington Times*, June 4, 1993, A6.

³⁸ "President Bush Signs National Child Abuse Registry into Law,"

<http://www.childhelp.org/press-releases/entry/president-bush-signs-national-child-abuse-registry-into-law>; Internet (accessed Feb. 7, 2012).

³⁹ *The Washington Times*, June 4, 1993, A6.

⁴⁰ *The Family Defender* (no. 5, Winter 2012), p. 12. For Illinois, the article cites *Dupuy v. McDonald*, 141 F. Supp. 2d 1090 (N. D. Ill. 2001), *aff'd* in relevant part, 397 F. 3d 493 (7th Cir. 2005); for Pennsylvania, the citation is: <http://datacenter.kidscount.org/data/bystate/Trend.aspx?state=PA&order=a&loc=40&ind=5088&dtm=11521&ch=1108&tf=15%2c16%2c17%2c18%2c35%2c38%2c133>; Internet (accessed March 20, 2012).

⁴¹ Besharov, "'Doing Something' . . .", 556, citing U.S. National Center on Child Abuse and Neglect, *National Analysis of Child Neglect and Abuse Reporting* (1978), 36.

⁴² William D. Slicker, "Child Sex Abuse: The Innocent Accused," *Case and Comment*, vol. 91, no. 6 (1986), 14, citing Scott Kraft, *The Kansas City Times*, Feb. 11, 1985.

⁴³ Slicker, citing a *Wall Street Journal* article (Oct. 10, 1985), which reported on a paper given by Dr. Diana Schetsky and Howard Boverman at the 1985 Annual Meeting of the American Academy of Psychiatry and the Law.

⁴⁴ Douglas J. Besharov, "Afterword," in Lawrence D. Spiegel, *A Question of Innocence: A True Story of False Accusation* (Parsippany, N.J.: Unicorn Publishing House, 1986), 265, 268.

⁴⁵ Besharov, "Child Abuse Realities," 176, 179, 190.

⁴⁶ 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 Besharov, “‘Doing Something...,’” 556). The near two-thirds figure of unsubstantiated reports, in his estimation, remained the same (see *ibid.*, “Child Abuse Realities,” 179-180), so there were obviously many more total reports. This does not mean that there were more *actual cases* of abuse and neglect, however, since the CPS could have been using looser criteria for what is “substantiated,” or the number of unsubstantiated complaints could already have been much higher than two-thirds (which clearly was the case within a decade).

⁴⁷ Besharov, “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.

⁴⁸ Besharov, “‘Doing Something...,’” 578.

⁴⁹ Besharov, “Child Abuse Realities,” 172.

⁵⁰ Ibid., 176,

⁵¹ Besharov, “‘Doing Something...,’” 540.

⁵² Michael P. Farris, “Protecting Our Children from the Statistics,” *The Home School Court Report*, vol. viii, no. 5 (Sept.-Oct. 1992), 3.

⁵³ Cited in Paul Craig Roberts, “Parents in the Pillory?” *The Washington Times*, April 29, 1996, A20.

⁵⁴ *The Washington Times*, March 6, 1994, A16. In the second quotation, the article quotes the opinion.

⁵⁵ Trevor Armbrister, “When Parents Become Victims,” 106.

⁵⁶ William J. Bennett, *The Index of Leading Cultural Indicators*, vol. 1 (1993), 12, citing Richard Gardner, clinical professor of child psychiatry at Columbia University.

⁵⁷ “Dear Abby” column, *The Washington Times*, July 11, 1993, D6.

⁵⁸ *The Family Defender* (no. 5, Winter 2012), p. 12, citing the HHS data that appears at: <http://www.acf.hhs.gov/programs/cb/pubs/cm09/pdf>.

⁵⁹ Prevent Child Abuse America, “Frequently Asked Questions,” http://www.preventchildabuse.org/about_us/faqs.shtml#indicated. See also: National Exchange Club Foundation, “About Child Abuse: Frequently Asked Questions,” <http://preventchildabuse.com/abuse.shtml>. Both Internet (accessed Feb. 8, 2012). It should be noted that some people also try to draw a distinction between “false” or “unfounded” and “unsubstantiated” reports. I think that there is no true distinction. If we are to be true to our eminently sensible tradition of Anglo-American law that holds that one is innocent until proven guilty, and that there has to be some evidence to find a person guilty, I do not see how a distinction between these terms is valid. I believe that some who have made the distinction—and are also ready to distinguish “substantiated” from “indicated” cases—are just unwilling to accept the fact that the incidence of child abuse/neglect is not as great as the conventional wisdom—which has never been based on hard facts, anyhow—holds.

⁶⁰ Armbrister, “When Parents Become Victims,” 106.

⁶¹ See Carlson, 241-242; E. Michael Jones, “Abuse Abuse: The Therapeutic State Terrorizes Parents in Jordan, Minnesota,” *Fidelity* 4 (Feb. 1985), 28-33.

⁶² National Public Radio report, Dec. 17, 1994.

⁶³ See 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), 94-95. Pride is a well-known author on religious, educational, and family questions.

⁶⁴ This, of course, is the title of Scott's book above. Scott is an investigative and religious writer, with a background in the fields of criminology and domestic abuse.

⁶⁵ *The Intelligencer* (Wheeling, W.Va.), March 9, 1992, 8. The suicide attempt is mentioned in David Gorgan, "A Time for Healing," *People*, vol. 38, no. 14 (Oct. 5, 1992), 133; <http://www.people.com/people/archive/article/0,,20108755,00.html>; Internet (accessed March 17, 2012).

⁶⁶ *The Washington Times*, Nov. 7, 1993, A1, A10.

⁶⁷ *The Intelligencer*, March 9, 1992, 8; *The Washington Times*, Nov. 7, 1993, A10.

⁶⁸ *Pride*, 19-20.

⁶⁹ *Ibid.*, 18-19.

⁷⁰ *Ibid.*, 15-16.

⁷¹ *Ibid.*, 37.

⁷² *Ibid.*, 95.

⁷³ *Ibid.*, 233. It is embarrassing that this incident happened at a Catholic hospital, which should have taken more seriously the Church's teaching about the natural rights of parents. For example, in the encyclical *Rerum Novarum*, Pope Leo XIII states that "[t]he contention...that the civil government should at its option intrude into and exercise intimate control over the family and the household is a great and pernicious error...[I]f within the precincts of the household there occur grave disturbance of mutual rights, public authority should intervene to force each party to yield to the other its proper due...[b]ut the rulers of the commonwealth must go no further" (*Rerum Novarum*, 14). In the Holy See's *Charter of the Rights of the Family* (1983), the following is stated: "The activities of public authorities and private organizations which attempt in any way to limit the freedom of couples in deciding about their children constitute a grave offense against human dignity and justice" (Art. 3) and "Public authorities must respect and foster the dignity, lawful independence, privacy, integrity, and stability of every family" (Art. 6).

⁷⁴ Armbrister, "When Parents Become Victims," 103-104.

⁷⁵ Ohio Administrative Code, Chap. 5101: 2-35-19 (3) (a) (Division of Social Services Regulations).

⁷⁶ Personal communication from Dr. Carlson to this author.

⁷⁷ Michael P. Farris, "Do Parental Rights Stop at the Door?" *Home School Court Report*, vol. xxviii, no. 2 (Spring 2012), 9-11.

⁷⁸ *Pride*, 14.

⁷⁹ *Scott*, 32.

⁸⁰ *Ibid.*, 45-46.

⁸¹ Edward Grimsley, "Courage Beyond the Call to Jury Duty," *The Washington Times*, Feb. 3, 1996, C3.

⁸² *The Washington Times*, Aug. 4, 1993, B1, B2.

⁸³ *Scott*, 48.

⁸⁴ *Ibid.*, 48-49.

⁸⁵ *Pride*, 232, apparently citing statements of the authorities as quoted in the *St. Louis Globe-Democrat*, March 16-17, 1985, 1.

⁸⁶ *Scott*, 170, citing Richard Wexler, *Wounded Innocents* (Buffalo: Prometheus Books, 1990), 100.

⁸⁷ *Scott*, 170-171.

⁸⁸ Paul Craig Roberts, "Justice Under Siege in Sex Frenzy?" *The Washington Times*, Oct. 10, 1995, A16; *The Wall Street Journal*, Sept. 29, 1995.

⁸⁹ Roberts, *ibid.*

⁹⁰ *Time*, Nov. 13, 1995, 89.

⁹¹ Ibid.

⁹² Ibid., 89-90; *The Wall Street Journal*, Sept. 29, 1995 and Oct. 13, 1995; Roberts column, *Washington Times*, Oct. 10, 1995, A16.

⁹³ See Trevor Armbrister, "Justice Gone Crazy," *Reader's Digest* (Jan. 1994), 33-40.

⁹⁴ *The Washington Times*, Feb. 3, 1996, A2.

⁹⁵ "Arrested for Homeschooling," *The Home School Court Report*, vol. xxvii, no. 2 (Mar.-Apr. 2011), 7-9, 32-33. The quotes are from 8.

⁹⁶ Guggenheim, quoted in Richard Wexler, "Invasion of the Child Savers," *The Progressive* (Sept. 1985), 19.

⁹⁷ Scott, 19.

⁹⁸ Scott 33, quoting Wexler, *Wounded Innocents*, 17. Besharov concurs with Wexler, saying that a substantial number of the "confirmed" cases (involving about 800,000 children and 470,000 families each year in 2000, when he writes) are really poverty cases (Besharov, "Child Abuse Realities," 181-182).

⁹⁹ Gary B. Melton, "Mandated Reporting: A Policy without Reason," *Child Abuse and Neglect*, vol. 29 (2005), 11.

¹⁰⁰ Even when there is genuine sexual abuse—which, as we have said, is a small minority of abuse/neglect cases overall—there are indications that the abuse in many such cases does not involve something on the order, say, of rape or incest. For example, in 1984 in New Jersey almost half of the sexual abuse cases were classified by the Division of Family and Youth Services as "mild fondling" (Pride, 238, citing Nancy Hass, "Other Victims in Child-Abuse Cases: Parents," *North Jersey News*, Jan. 13, 1986).

¹⁰¹ Pride, 26.

¹⁰² David Finkelhor, Lisa Jones, and Anne Shattuck, "Updated Trends in Child Maltreatment, 2009," short publication of the Crimes Against Children Research Center, 2. They say that there is "no consensus in the child maltreatment field about why sexual abuse and physical abuse have declined so substantially over the longer term" (3). They also note that from 1992-2009 child neglect declined much less, only 10% (2). If most of the neglect cases are really poverty cases as Wexler says this much lesser increase is not surprising. This publication is available at www.unh.edu/ccrc/pdf.

¹⁰³ Jeanne M. Giovannoni and Rosina M. Becerra, *Defining Child Abuse* (N.Y.: Macmillan [Free Press], 1979), 2.

¹⁰⁴ Besharov, "Child Abuse Realities," 195, 196.

¹⁰⁵ Armbrister, "When Parents Become Victims," 106.

¹⁰⁶ Craig R. Ducat and Harold W. Chase, eds., *Constitutional Interpretation* (5th edn.; St. Paul, Minn.: West, 1992), G10, G6; Steven H. Gifis, *Law Dictionary* (Woodbury, N.Y.: Barron's Educational Series, 1975), 145.

¹⁰⁷ We can note a number of state judicial decisions that rejected such vagueness and/or overbreadth claims: In 1989, the Minnesota Supreme Court held that state's child abuse/neglect statute, which subjects certain professionals to criminal misdemeanor liability if they fail to file a report, is *not* unconstitutionally vague or overbroad (*State v. Grover*, 437 N.W. 2d 60 [1989]). In 2002, the Florida Supreme Court held that the provision of that state's criminal child abuse statute referring to "mental injury" was not unconstitutionally vague (*DuFresne v. State*, 826 So.2d 272). In 2008, the Massachusetts Supreme Judicial Court brushed aside a challenge to that state's child endangerment statute on vagueness grounds (*Commonwealth v. Hendricks*, 452 Mass. 97). In 2011, the North Dakota Supreme Court held that that state's child abuse statute was not unconstitutionally vague (*Simons v. State*, 803 N.W.2d 587). A lower-level appellate court in Virginia did declare a portion of that state's child endangerment law unconstitutional vague in 1995 (*Commonwealth v. Carter*, 462 S.E.2d 582).

¹⁰⁸ Ohio Rev. Code Annotated, Sec. 2151.03.

¹⁰⁹ For example, Sec. 2907.01 (B) says that “[s]exual contact means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.” If an agency or a prosecutor wants to ignore or downplay the latter phrase, they might be able to make a case against a parent for wholly innocent touches of a child, say, for hygienic purposes or to express normal affection (i.e., patting a baby on his bottom). 2907.01 (H) defines “[n]udity” as “the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple.” This possibly could be interpreted to include the innocent taking of a picture of a baby or small child in a bathtub. In fact, there have been cases like this in which parents have been accused of child abuse (see Donna Whitfield, “Tyranny Masquerades as Charity: Who Are the Real Child Abusers?” *Fidelity* 4, No. 3 [Feb. 1985], 26).

¹¹⁰ Ohio Rev. Code Annotated, Sec. 2919.22 (A).

¹¹¹ *Ibid.*, Sec. 2151.031.

¹¹² *Ibid.*, Sec. 2919.22 (B) (3), (4).

¹¹³ See the discussion in Richard W. Cross, “The Problem of Spanking: The Vexing Question of Childhood Discipline in the Development of Conscience,” in Paul C. Vitz and Stephen M. Krason, eds., *Defending the Family: A Sourcebook* (Steubenville, O.: Catholic Social Science Press, 1998), 195-235.

¹¹⁴ For example, for a good, brief discussion of the “political” nature of the American Psychiatric Association’s famous 1973 decision to declare that homosexuality was no longer to be viewed as abnormal, see Judith A. Reisman and Edward W. Eichel, *Kinsey, Sex, and Fraud: The Indoctrination of a People* (Lafayette, La.: Huntington House, 1990), 141-145.

¹¹⁵ See Waters, in Krason and D’Agostino, 26-28.

¹¹⁶ Ohio Rev. Code Annotated, Sec. 2151.03.

¹¹⁷ *Ibid.*, Sec. 2151.04.

¹¹⁸ *Ibid.*, Sec. 2151.05.

¹¹⁹ See Stephen M. Krason, “Parental Rights and Minor Children’s Health Care Decisions,” *Ethics and Medics*, 19, no. 7 (July 1994), 3-4.

¹²⁰ On the academic excellence of homeschooled pupils, see the reports about standardized test results in the following issues of *The Home School Court Report*: vol. viii, no. 6 (Nov.-Dec. 1992), 19, 26; vol. x, no. 4 (Jul.-Aug. 1994), 11-12; vol. x, no. 5 (Sept.-Oct. 1994), 17; vol. x, no. 6 (Winter 1994-1995). Vol. x, no. 5 (18) also reports on a study of learning-disabled pupils which showed that those who were being homeschooled were progressing better than those in public schools.

¹²¹ Joseph Sobran, “Reminding Parents Who’s in Charge,” *The Washington Times* (Feb. 4, 1995), A13.

¹²² See: Armbrister, “When Parents Become Victims,” 105; *The Home School Court Report*, vol. ix, no. 5 (Sept.-Oct. 1993), 5.

¹²³ Besharov, “‘Doing Something’ . . .,” 570.

¹²⁴ Pride, 60-61, 68-69. The publications Pride refers to are *What Everyone Should Know About Child Abuse* (Jefferson City, Mo.: Missouri Division of Family Services, 1976, 1980) and *Foster Family Care in Missouri: An Assessment*, published by the Missouri Coalition on Foster Care under grants from the Missouri Division of Family Services and the U.S. Department of Health and Human Services.

¹²⁵ Scott, 52-53.

¹²⁶ Pride, 230; Besharov, “‘Doing Something’ . . .,” 569-570.

¹²⁷ Pride, 241.

¹²⁸ Scott, 58.

¹²⁹ *Ibid.*, 59-60.

¹³⁰ Armbrister, “When Parents Become Victims,” 105.

¹³¹ Scott, 55. She writes that on one of the standard risk assessment forms used by many agencies, produced by Norman Polansky and associates, the items range from the trivial—e.g., whether meals have courses that “go together”—to those embodying ideological preferences—e.g., whether the toys in the home have a traditional gender orientation (e.g., dolls for girls, trucks for boys). Apparently, on the latter if the parents have not had their consciousness sufficiently raised by feminism to break away from such traditional practices their children will be concluded to be “at risk.”

¹³² Pride, 44, 48.

¹³³ Hollida Wakefield and Ralph Underwager, unpublished manuscript on the child witness and sexual abuse, Institute for Psychological Therapies, quoted in Slicker, 18.

¹³⁴ Pride, 44.

¹³⁵ *Ibid.*, 46.

¹³⁶ Pride, 11, 33, 236 (one of her sources is a study reported in the *St. Louis Post-Dispatch* [Oct. 30, 1985]; another is Pamela D. Mayhall and Katherine Eastlack Norgard, *Child Abuse and Neglect: Sharing Responsibility* [N.Y.: John Wiley & Sons, 1983], 11).

¹³⁷ Wexler, “Invasion of the Child Savers,” 22.

¹³⁸ Besharov, “‘Doing Something’ . . .,” 570, citing R. Nagi, “Child Abuse and Neglect Programs: A National Overview,” *Children Today* 13, 17 (1975). A study reported by United Press International in January 1994, which had been conducted by Ohio State University at Children’s Hospital in Columbus, Ohio, and published in the *Journal of Child Abuse and Neglect*, likewise discovered a great deal of disagreement among physicians about what medical neglect is and when it should be reported to authorities. The study also reported that there were no guidelines for physicians to follow in determining what is neglect (*The Home School Court Report*, x, no. 1 [Jan.-Feb. 1994], 21, 23).

¹³⁹ Besharov, “‘Doing Something’ . . .,” 568-569. The court cases that he cites as examples of this view being expressed are the following: *In re Stillely*, 363 N.E.2d 873 (Ill., 1977); *In Interest of Nitz*, 368 N.E.2d 1111 (Ill., 1977).

¹⁴⁰ There is some dispute about the actual percentage of reports that are anonymous. The Home School Legal Defense Association (HSLDA), which does much litigating on false abuse/neglect reports, told this writer that they believe that 60-70% of reports are from anonymous sources, though they acknowledge that this figure is not based on a systematic study but from anecdotal information such as the experiences of their members and others who they have defended and discussions with social workers (phone conversation with HSLDA, July 30, 2004). The Children’s Bureau of HHS claims that about 10% are anonymous (see Children’s Bureau, U.S. Dept. of Health and Human Services, *Child Maltreatment 2002* (Wash., D.C.: U.S. Government Printing Office, 2004), 6. One of my former university colleagues who worked in a cpa in Ohio for a time found that perhaps 50% of the reports to his county agency were anonymous, although one cannot know if this is typical. My own years of research and gathering of anecdotal information indicate to me that the HHS figure is definitely much too low. There is some problem with duplicate reporting, and it is also likely that the organization of their data puts what are essentially anonymous reports into other categories of sources of reports based, perhaps, only on the reporter’s stating some relationship to or association with the

person he is accusing without actually identifying himself (which is rather typically done when reporters contact cpa's). Thus, in its 2002 report HHS says 8% of reports are from another relative other than a parent (the latter would probably mostly be non-custodial parents during custody disputes) and about 6% are from friends or neighbors. Among "nonprofessional sources" of reports, HHS lists almost another 18% in the category of "other" or "unknown or missing." Thus, if we assumed that virtually all of the reports in these additional categories came from people who did not specifically identify themselves (my knowledge of the issue suggests to me that this is a reasonable assumption), this would be 42%. It is also fair to assume that there are a not insignificant number of reports made from two of the categories of "professional sources" listed—educational personnel and medical personnel (which together make up 32% of the overall number of reports)—without the person specifically identifying himself (e.g., a nurse simply calls a local cpa saying she is a staff member at the emergency room of hospital X). Let's assume it is 5%, which is probably low. This would bring the overall total of, effectively, anonymous reports to 47%, which is close to the percentage mentioned by my colleague. It is at least reasonable to conclude that a sizable minority of reports are anonymous. Actually, the percentage of anonymous reports is almost certainly higher than even 50%. The HHS data indicates that the categorization of referrals is compiled only from referrals that have not been "screened out." HHS's numbers show that fully 32% were screened out. It is very likely that the screened out reports were overwhelmingly from nonprofessional sources and also quite likely that most of these were anonymous (which according to any rational screening procedure would make reports less reliable).

¹⁴¹ Whitfield, 25.

¹⁴² See: Ohio Rev. Code Annotated, Secs. 2151.99 (A) and 2151.421 (A).

¹⁴³ The Ohio statutory provision cited (ORC Sec. 2151.421) specifies that a "reasonableness" standard should apply regarding the mandatory reporting of child abuse/neglect (i.e., if there is "reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect..."). My observation for a quarter of a century and much anecdotal evidence, however, indicates that the "reasonableness" standard is not typically operative. Mandatory reporters make reports irrespective of this standard, apparently believing that they should report if there is any possibility—no matter how unlikely—that there could be abuse or neglect. Thus, the standard becomes arbitrary or open-ended; this is, no standard at all. The same applies to the attitudes and practices of the CPS when receiving reports, as this article makes clear.

¹⁴⁴ On these points, see also: Melton, 14.

¹⁴⁵ Armbrister, "When Parents Become Victims," 106; Scott, 142-143 (Scott notes, *inter alia*, that this curtain of confidentiality was even the grounds for the San Diego County agency's refusing to cooperate with the investigating grand jury referred to above).

¹⁴⁶ Armbrister, "When Parents Become Victims," 106.

¹⁴⁷ *Ibid.*

¹⁴⁸ Even fewer involve criminal charges, where parents allegedly run afoul of criminal child maltreatment laws.

¹⁴⁹ See Paul Chill, "Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings," *Family Court Review*, vol. 41 (Oct. 2003), at <http://web.lexis-nexis.com/universe/document?>; Internet (accessed March 5, 2012), 459.

¹⁵⁰ *Ibid.*, 461.

¹⁵¹ *Ibid.*, 463.

¹⁵² Armbrister, "When Parents Become Victims," 106.

¹⁵³ See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Prince v. Massachusetts*, 321 U.S. 158, 166, 168 (1944); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972), and *Troxel v. Granville*, 530 U.S. 57, 66 (2000). The first three of these cases are cited in Robert J. D’Agostino, “State Intervention in the Family and Parental Rights: A Legal Assessment,” in Krason and D’Agostino, 149. The current writer was co-author of an *amicus curiae* brief, on behalf of the Society of Catholic Social Scientists, on the side of the parent in *Troxel*. This is reprinted in *The Catholic Social Science Review* V (2000), 349-369.

¹⁵⁴ This data is from the mid-1980s.

¹⁵⁵ Pride, 169.

¹⁵⁶ We are aware that state statutes do not necessarily guarantee the right to appeal—or at least not the right to have an appeal taken up—but they establish the procedures and mechanics for it. In criminal matters, at least, there is a liberal view about allowing appeals to be filed and even heard.

¹⁵⁷ Pride, 229.

¹⁵⁸ *Ibid.*, 160-161, 228-229.

¹⁵⁹ Chill, 458.

¹⁶⁰ For example, in 1985, a U.S. district court decision in Illinois held that searches of a family’s home without a warrant by that state’s Department of Children and Family Services did not violate the Fourth Amendment (Pride, 228, citing Stephen Chapman’s op-ed column in the *St. Louis Post-Dispatch* and the *Jefferson City [Mo.] Post-Tribune*, March 28, 1985, and April 5, 1985, respectively). We see contrary later rulings following in the text.

¹⁶¹ Scott, chap. 9.

¹⁶² In *White v. Illinois*, 502 U.S. 346 (1992), the Supreme Court upheld the admission of hearsay testimony from third parties in child abuse trials. On the subject of admitting hearsay evidence, Armbrister discusses one Washington State case in which a Christian husband and wife were convicted of sexually abusing their three-year-old daughter. The child and her friend supposedly confided the story of her abuse to a day-care worker. The day-care worker and her supervisor became the chief witnesses against the parents. There was no corroboration of any kind of the two day-care center employees’ testimony, nor was any physical evidence entered into the record that showed that any sexual molestation had, in fact, occurred. A physical examination after the trial showed that almost certainly the child could not have been raped (this is what the parents were alleged to have done; they were convicted of statutory rape). The cpa suppressed the examination. The day-care worker who first came forth with the allegations claimed in a post-trial interview that she had been herself abused for over twenty years, saying that almost anyone who came near her abused her. She also said that most people were “sex perverts” and that every other house in her neighborhood had abuse going on inside it. She said she had on numerous other occasions tried to turn in supposed sex offenders, and hated men. Besides such seeming paranoia, she admitted that she was a daily drug user. The trial judge refused to permit any effort to impeach this witness’s character. Harvard Law School evidence professor, Charles Nesson, examined the case and later filed an *amicus curiae* brief in the appeal to the Ninth U.S. Circuit Court of Appeals in support of the parents in which he wrote that the case was “the most extreme example of erosion of the confrontation clause of which I am aware” (Armbrister, “When Parents Become Victims,” 101-103). Nevertheless, the Ninth Circuit sustained the convictions (*Swan v. Peterson*, 6 F.3d 1373 [1993]).

¹⁶³ The grand jury in San Diego County specifically charged that its CPS had shifted the burden of proof in sexual abuse cases from the state to the alleged perpetrator (Scott, 84).

¹⁶⁴ See, for example, Elizabeth Loftus and Katherine Ketcham, *The Myth of Repressed Memory: False Memories and Allegations of Sexual Abuse* (N.Y.: St. Martin's Press, 1994). More recently, the tide seems to have turned in the courts, with people who have borne the brunt of allegations of abuse, supposedly turned up in repressed memory therapy, winning damage judgments after convincing juries that the therapists actually manufactured the "memories" by the suggestive character of their therapy (see *The Washington Times*, Dec. 17, 1994, A1, A14).

¹⁶⁵ The Alabama case is discussed in *The Home School Court Report*, vol. viii, no. 5 (Sept.-Oct. 1992), 1, 4 and ix, no. 2 (Mar.-Apr. 1993), 1, 24. The New York case is discussed in *The Home School Court Report*, x, no. 6 (Winter 1994-1995), 1. The Maryland case was discussed in *The Home School Court Report*, vol. ix, no. 5 (Sept.-Oct. 1993), 5. This writer received further information about the latter case from constitutional lawyer Vieira by personal communication.

¹⁶⁶ *The Home School Court Report*, xx, no. 4 (July-Aug. 2004), 7.

¹⁶⁷ See "The *Stumbo* Decision: Turning the Tide," *Home School Court Report*, vol. xix, no. 4 (July/Aug. 2003), 33.

¹⁶⁸ The case was *Matter of Smith Children*, NN-22728-32/09 (2009), discussed in Mark Fass, "Judge Rejects Home Visit in Child Welfare Investigation" (Dec. 17, 2009), <http://nccr.info>; Internet (accessed Feb. 14, 2012). The New York statute that was involved had been amended in 2006, however, to make it easier for the CPS to carry out an investigation when parents will not cooperate with them, so it does not seem that this decision represented some kind of trend in the state to protect parental rights.

¹⁶⁹ *The Home School*, xx, no. 4 (July-Aug. 2004), 10.

¹⁷⁰ "President Bush Signs Keeping Children and Families Safe Act of 2003," *Home School Court Report*, vol. xix, no. 4 (July-Aug. 2003), 38.

¹⁷¹ "Congressional Breakthroughs in CAPTA Reform," *Home School Court Report*, vol. xviii, no. 5 (Sept.-Oct. 2002), 24.

¹⁷² See "Mississippi: CAPTA Legislation Enacted," Home School Legal Defense Association website, May 2, 2007; <http://www.hslda.org/hs/state/ms/200705020.asp>; Internet (accessed March 15, 2012).

¹⁷³ "Foster Care," http://en.wikipedia.org/wiki/Foster_father#cite_note-22; Internet (accessed March 4, 2012). The first case was *Rogers v. County of San Joaquin*, No. 05-16071; the second was *Fogarty-Hardwick v. County of Orange, et al.*, United State Supreme Court, Docket # 10-857.

¹⁷⁴ Pride, 229.

¹⁷⁵ See Krason, in Krason and D'Agostino, 186-190. The extent of such an emotional, unreasoned response to this was seen by the fact that one major newspaper poll—taken at the height of the national hysteria about the child abuse "epidemic"—found that nearly half of the respondents indicated they were willing to either throw people off buildings or lynch them if they were merely *accused* of child abuse (see *Minneapolis Star and Tribune*, May 19, 1985, cited in Farris, "Protecting Our Children from the Statistics").

¹⁷⁶ Philip Jenkins, "Believe the Children? Child Abuse and the American Legal System," *Chronicles* (Jan. 1993), 22.

¹⁷⁷ On the point about the assumptions and outlook of contemporary social scientists, see Stephen M. Krason, "What the Catholic Finds Wrong About Secular Social Science," *Social Justice Review*, vol. 84, no. 1 (Jan.-Feb. 1993), 5-11.

¹⁷⁸ Jenkins, 22.

¹⁷⁹ Pride, 252-253. Programs seeking to identify “potentially abusive parents” when they have babies and force them to undergo parenting training have already been put into effect in different parts of the country (Pride, 253; Scott, 175).

¹⁸⁰ Society of Catholic Social Scientists’ letter to members of the U.S. Senate on the United Nations Convention on the Rights of the Child, April, 1995.

¹⁸¹ Jean E. Smith, *The Constitution and American Foreign Policy* (St. Paul, Minn.: West Publishing Co., 1989), 107.

¹⁸² Michael P. Farris, “A Deeper Understanding of the Threat of International Law,” *The Home School Court Report*, vol. xxiii, no. 6 (Nov.-Dec. 2007), 5-9. The quotations are from 6.

¹⁸³ See Stephen M. Krason, “The Church and the UN Convention on the Rights of the Child” (“Neither Left nor Right but Catholic” column, September 1, 2011); <http://skrason.wordpress.com/>; Internet; accessed Feb. 14, 2012. The quotations are from a telegram by Pope Benedict XVI in June 2009 (see “Pope’s Promo for UN Child Rights Convention Must Be Read in Context of Vatican Reservations: Vatican,” by LifeSiteNews.com (John-Henry Westen), June 12, 2009; <http://www.lifesitenews.com/news/archive/ldn/2009/jun/09061210>; Internet [accessed March 15, 2012]).

¹⁸⁴ Daniel J. Sullivan, *An Introduction to Philosophy* (rev. edn.; Milwaukee: Bruce, 1964), 168.

¹⁸⁵ Besharov, ““Doing Something’...,” 562.

¹⁸⁶ Pride, 55. It should be noted that it has *not* been accidental that the child protective system investigates parents for all sorts of actions, so many of which are completely innocuous. Besharov tells us that the experts who pushed for CAPTA and its state legislative progeny wanted “unrestrictive preventive jurisdiction,” which would supposedly enable them to identify even *potentially* abusive parents to predict whether parents would become abusive toward their children. They wanted to stop any *possible* abuse. This in spite of the fact that, as Besharov makes clear, no clinician, psychologist, or other expert can predict with certainty that someone will become a child abuser (Besharov ““Doing Something’...,” 574-575).

¹⁸⁷ Besharov, “Child Abuse Realities,” 192. See the article for his citations.

¹⁸⁸ Although there are some indications that the number of children in foster care in the U.S. has dropped just in the last few years, a report on ABC’s “Prime Time” in 2006 stated 800,000 children per year come into contact with the foster care system (apparently about 520,000 of these because of abuse and neglect allegations). The latter was double the number in the early 1980s (which would be consistent with the sharp rise in child abuse reports nationally). In 2004, a record number of 304,000 children entered the system (this increase was thought to be due to parental drug abuse problems) (ABC “Prime Time” [May 30, 2006], <http://abcnews.go.com/Primetime/FosterCare/story?id=2017991&page=1#.Tzb2OuBw9e4>; Internet [accessed Feb. 11, 2012]).

¹⁸⁹ Besharov, ““Doing Something’...,” 584, 560.

¹⁹⁰ *Ibid.*, 560. Even with the Adoption and Safe Families Act of 1997, the Department of HHS reported that as of July 2010 children stay in the foster care system for an average of 31 months. Nearly 20% are in the system for five or more years (cited in: “Foster Hope, Foster a Child,” <http://www.achildshopeintl.org/FosterCare.html>; Internet [accessed March 17, 2012]).

¹⁹¹ Pride, 77-79, 81.

¹⁹² *Ibid.*, 20-21. See also Whitfield, 26.

¹⁹³ Pride, 81-83.

¹⁹⁴ Scott, 101.

¹⁹⁵ Timothy W. Maier, “Suffer the Children,” *Insight on the News* (Nov. 24, 1997), 11, cited in “A Critical Look at the Foster Care System: How Widespread a Problem?” <http://www.liftingtheveil.org/foster04.htm>; Internet (accessed March 17, 2012).

¹⁹⁶ See National Coalition for Child Protection Reform, “Foster Care vs. Family Preservation: The Track Record on Safety and Well-Being” (Issue Paper 1 – Jan. 3, 2011). The studies are cited in the Paper, and are apparently from the 1980s and early 1990s. Chill contends that the number of “emergency removals” of children from families in the U.S.—i.e., they are removed supposedly because they are threatened with harm from their parents—doubled to 555,000 over the twenty years just prior to when he was writing in 2003. He says that the number of erroneous removals “is alarmingly large”; in 2001, for example, of 100,000 children removed, more than a third were later determined not to have been maltreated (Chill, 458).

¹⁹⁷ See “Foster Care.” This article shows that the problems of child abuse in the foster care and institutional care systems continue. An Internet search of the subject of child abuse in foster care also shows many recent cases.

¹⁹⁸ Sometimes these decent people wind up becoming victims of the system themselves. Children who have bounced around the foster care system for years and have come to learn how to use it to their advantage have sometimes falsely accused such decent foster parents of abuse, and gotten them unjustly into trouble (e.g., Pride, 21, 232-233; personal communication of this author with a Franklin County, Ohio, family who experienced this).

¹⁹⁹ See: Pride, 111; Scott, 106-106. Scott mentions that the San Diego County grand jury mentioned above in the text concluded this same thing about many foster parents.

²⁰⁰ See National Coalition for Child Protection Reform, “The Most Common Lie in Child Welfare (It’s the One About the Rate of Abuse in Foster Care)” (May 24, 2010), <http://www.nccprblog.org/2010/05/most-common-lie-in-american-child.html>; Internet (accessed March 15, 2012).

²⁰¹ See, e.g. Whitfield, 25, 26; Scott, chap. six; Besharov, ““Doing Something’ . . .,” 557.

²⁰² See *amicus curiae* brief of Society of Catholic Social Scientists in *Camreta v. Greene/Alford v. Greene*, 16-17.

²⁰³ On these points, see: Joseph Goldstein, Anna Freud, and Albert Solnit, *Beyond the Best Interests of the Child* (N.Y.: Free Press, 1973), 25, 72-74; Besharov, ““Doing Something . . .,” 586; Chill, 457, 462.

²⁰⁴ Stephen M. Krason, “The Critics of the Current Child Abuse Laws and the Child Protective System: A Survey of the Leading Literature,” *The Catholic Social Science Review* XII (2007), 307-350.

²⁰⁵ See: Besharov, ““Doing Something’ . . .,” 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.

²⁰⁶ Besharov, ““Doing Something’ . . .,” 570.

²⁰⁷ *Ibid.*, 574-575. This is pointed out in note 185 above.

²⁰⁸ Besharov, “Child Abuse Realities,” 179.

²⁰⁹ Besharov, ““Doing Something’ . . .,” 578.

²¹⁰ Besharov, “Child Abuse Realities,” 192.

²¹¹ Pride, 25. Emphasis is in the book.

²¹² *Ibid.*, 24-25, 28.

²¹³ *Ibid.*, 41-50.

- ²¹⁴ Ibid., 14, 30.
- ²¹⁵ Ibid., 113-117, 120.
- ²¹⁶ Ibid., 140-143, 152.
- ²¹⁷ Scott, 33-35.
- ²¹⁸ Ibid., 39-42.
- ²¹⁹ Ibid., 57-59.
- ²²⁰ Ibid., chap. 8.
- ²²¹ Ibid., 137-141, 142-143, 145-146.
- ²²² Ibid., 45.
- ²²³ Wexler, *Wounded Innocents*, 85.
- ²²⁴ Ibid.
- ²²⁵ Ibid., 88.
- ²²⁶ Ibid., 86.
- ²²⁷ Ibid., 81-84.
- ²²⁸ Ibid., 266.
- ²²⁹ Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Before the Best Interests of the Child* (N.Y.: Free Press, 1979), 25. Emphasis is in the book.
- ²³⁰ Ibid., 72-74.
- ²³¹ Spiegel, 243-247.
- ²³² Ibid., 261-264.
- ²³³ Dana Mack, *The Assault on Parenthood: How Our Culture Undermines the Family* (N.Y.: Simon and Schuster, 1997).
- ²³⁴ Ibid., 60.
- ²³⁵ Ibid., 31.
- ²³⁶ Ibid., 60.
- ²³⁷ Ibid., 62.
- ²³⁸ Ibid., 77-78.
- ²³⁹ Carlson, 250.
- ²⁴⁰ Ibid., 251-254.
- ²⁴¹ Christopher Klicka, *The Right Choice—Homeschooling* (rev. edn.; Gresham, Ore.: Noble, 1995), 272.
- ²⁴² See *ibid.*, 271-284.
- ²⁴³ Klicka, 294; see also: “The *Stumbo* Decision: Turning the Tide,” *Home School Court Report*, vol. xix, no. 4 (July-Aug. 2003), 30-34.
- ²⁴⁴ These positions of HSLDA are apparent when going through back issues of its publication, *The Home School Court Report*, and checking its website.
- ²⁴⁵ Stephen McGarvey, “President Bush Signs Keeping Children & Families Safe Act of 2003,” *Home School Court Report*, vol. xix, no. 4, 38.
- ²⁴⁶ See the HSLDA website and various issues of *The Home School Court Report*.
- ²⁴⁷ Chill, 457-459, 462, 463, 468.
- ²⁴⁸ Ibid., 459.
- ²⁴⁹ Ibid., 462.
- ²⁵⁰ Ibid., 463.
- ²⁵¹ This was not meant just to include the poor but many middle-class people who simply cannot bear the massive cost of a legal defense in one of these cases.
- ²⁵² The proposals recounted in this paragraph were in Krason, in Krason and D’Agostino, 192-194.
- ²⁵³ Ibid., 194.
- ²⁵⁴ Ibid., 194-195.

²⁵⁵ See, e.g., Ohio Rev. Code Annotated, Sec. 2921.14, enacted in 1991. This makes the knowing filing of a false abuse/neglect report a first-degree misdemeanor. It apparently does not apply to mandated reporters.

²⁵⁶ For a discussion of how serious this problem had become, see Pride, 54, 239; Slicker, 16; *U.S. News and World Report*, Vol. 98 (April 1, 1985), 66. Prior to the adoption of Sec. 2921.14 (see note 254 above), the Ohio courts had held that if an ex-spouse made a false report, even knowingly and in bad faith, there was no legal recourse for the accused (*Hartley v. Hartley*, 537 N.E. 2d 706 [1988]).

²⁵⁷ Scott, 183-184.

²⁵⁸ Child advocacy centers began in the mid-1980s. What they seek to do is to better coordinate the efforts of the CPS, the law enforcement and criminal justice community, and medical and mental health professionals to deal with child abuse. The National Children's Advocacy Center (NCAC) in Alabama trains professionals from around the U.S. and other countries to, it says, learn "how to recognize and support endangered children" (see National Children's Advocacy Center website, <http://www.nationalcac.org/history/history.html>; Internet [accessed March 8, 2012]). Various local communities around the country have these centers, which provide such training on a localized level and say they aim to help children who allegedly have been abused to not be also "victimized" by the system investigating and dealing with abuse (e.g., by having children interrogated by a cpa, and then law enforcement, and then health care providers in intimidating surroundings, etc.) and also making easier a coordinated agency response to the alleged abuse and facilitating the provision of various therapeutic and other services to the children. Some of the subjects that the CACs are concerned about—as judged, say, from the NCAC's spring 2012 National Symposium on Child Abuse (see *ibid.*)—indicate a focus on some legitimate traditional moral questions that indeed involve or can lead to child maltreatment, such as child pornography and pornography generally, sex trafficking, sex tourism, sexual experimentation among children, and illicit drug use. The dominance of child welfare professionals and child abuse prosecutors and the absence of parental rights advocates among the speakers and the NCAC's seeming ready acceptance of such problematical legal developments as permitting young child witnesses in cases—which, as noted, contravened traditional criminal law practices—makes one think that the CACs, however, essentially espouse the mind-set of the CPS. This is further reinforced when one goes to the websites of various local CACs, which feature some of the typical CPS claims that this article has shown are questionable or false (e.g., intra-family sexual abuse crosses—and implicitly is equally prevalent within—all socio-economic groupings; one in three females and one in four males experience sexual abuse before age eighteen; that spanking is bad for children; that genuine physical abuse of children is common; that children rarely lie about abuse; that aggressive or disruptive behavior, or passive, withdrawn, or emotionless behavior, or frequent urinary tract or yeast infections are signs of abuse (of course, they are more typically signs of things that have nothing to do with abuse) (see, e.g., the websites of CAC of Springfield, Mo., <http://www.childadvocacycenter.org/about-child-abuse.php>; Athens County, Ohio CAC, <http://www.athenscac.org/>; Dallas Children's Advocacy Center, <http://www.dcac.org/reportingchildabuse.aspx>; all Internet and accessed March 8, 2012). The website of the National Children's Alliance, which accredits CACs, claims that in 2009 763,000 American children were determined to be victims of abuse or neglect. That would be a substantiation rate of 23%, whereas as we have seen HHS data indicates that it is only 14%. It correctly says that most of the substantiated cases were for neglect, but says nothing about how most of these were actually poverty matters. It also claims that many

entirely innocent child behaviors are signs of abuse. (See website of National Children's Alliance, <http://www.nationalchildrensalliance.org/>; Internet [accessed March 8, 2012].)

²⁵⁹ Pride cites sources and studies that show that therapy has a very questionable record of effectiveness in deterring genuine child abusers from further abusive actions (see Pride, 256-257).

²⁶⁰ See Thomas Sowell's syndicated column in *The Washington Times*, Nov. 6, 1994, B1.

²⁶¹ See "Parental Rights: Why Now is the Time to Act," *Home School Court Report*, vol. xxii, no. 2 (Mar.-Apr. 2006), 8.

²⁶² The present author is on the Board of Directors of ParentalRights.org, an organization set up by Michael Farris (the founder of HSLDA) and others whose main objectives are to work to stop ratification of the Convention on the Rights of the Child by the U.S. Senate and to build up support for a draft Parental Rights Amendment to the U.S. Constitution. Further information and a petition to support the amendment can be found at the organization's website: <http://parentalrights.org/>.

²⁶³ About this latter point, see Krason, *The Transformation of the American Democratic Republic*, 16.

²⁶⁴ Alexis de Tocqueville, *Democracy in America* (ed. J.P. Mayer; Garden City, N.Y.: Doubleday [Anchor], 1969), vol. II, pt. iv, 692-694.

²⁶⁵ See Krason, *The Transformation of the American Democratic Republic*, 147, 154, 180, 194, 217.

²⁶⁶ See Waters, in Krason and D'Agostino, 26-28.

²⁶⁷ See: Pride, 61-62; Mack, 73-76.

²⁶⁸ Stephen M. Krason, "Child Abuse and Neglect: Failed Policy and Assault on Innocent Parents," *The Catholic Social Science Review* X (2005), 225.

²⁶⁹ Email from Richard Wexler, March 22, 2011.

²⁷⁰ The Family Defense Center, based in Chicago, says its mission is to advocate for justice for families in the child welfare system, especially families threatened with losing their children to foster care. It says further that it is "a legal advocacy organization that provides high level systemic advocacy and grass-roots activities for families treated unfairly by state child protection agencies, and defends children who can be safely raised in their own families and helps families preserve their right to raise their own children" (Family Defense Center website, <http://www.familydefensecenter.net/>; Internet; accessed Feb. 14, 2012).

²⁷¹ Tocqueville, vol. I, pt. ii, 294.