

CHAPTER 9

A GRAVE THREAT TO THE FAMILY: AMERICAN LAW AND PUBLIC POLICY ON CHILD ABUSE AND NEGLECT

I. Introduction: A Massive Problem Which Is Just a Phone Call Away from Damaging or Destroying Every American Family

The title of this chapter may seem startling to many readers. There are many threats to the American family which are talked about by politicians, commentators and in ordinary conversation every day and this isn't one of them. In a nation with unprecedented rates of illegitimacy, (especially among teens), runaway divorce rates, trivialization of sex, condom distribution in schools, drugs reaching into grade schools, violence in the streets and the home, massive numbers of abortions, not to mention the great problem of child abuse itself, how can one possibly say that the law and public policy set up to *stop* child abuse can be the gravest threat to the family?

To begin, a few statistics and important quotes from authorities are in order. Most states have central registries on which they enter names of people who supposedly have been child abusers or neglecters.¹ What is not usually realized is that people's names can be entered into such

registries 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 my state of 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.² This was an astonishing 78.5% of the names in the Registry! Such figures do not appear to be wildly out of line with the national situation. Even though the usual government agencies apparently do not regularly compile statistics on the number of false child abuse/neglect reports,³ nor is there any organization or clearing house which routinely attempts to compile such data, we are able to put the picture in focus by bits and pieces gathered from different authorities. One study in the late 1970's, by which time our current policies were in high gear, showed that 65% of allegations involving 750,000 children--were "unfounded."⁴ Another in the mid-1980's concluded the same about 80% of child sexual abuse complaints,⁵ and yet another at that time showed that 60% of abuse complaints in general were unfounded.⁶ Noted child abuse/neglect authority Douglas J. Besharov of the American Enterprise Institute, who played an important role in shaping our current national policy, wrote in the mid-1980's 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."⁷ 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."⁸ In 1986, even employing very loose and liberal standards of what abuse and neglect are (see below), child protective agencies themselves concluded that only around 40% of reports were valid.⁹ In 1994, the U.S. Department of Health and Human Services published a study which said that in 1992 alone there were 1, 227, 223 false reports of child abuse.¹⁰ 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."¹¹ 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.¹² When discussing the rise of child abuse in his periodical *The Index of Leading Cultural Indicators*, former Education Secretary William J. Bennett has noted the view of certain authorities that a "child abuse establishment" of professionals "actually encourages false charges of child abuse."¹³ Abigail Van Buren ("Dear Abby"), who has long been one of the leaders in the charge against child abuse, admitted a couple of years ago 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.¹⁴

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 the parent maltreated his or her child. The result of this can be a disruption of family life, legal troubles and financial difficulties growing out of them, and the forced separation of children from their parents that can go on for months or years. Parents can often sidestep, to a substantial degree at least, most of the threats mentioned above to their children--e.g., by putting them in private schools or homeschooling, by keeping them away from pornography and bad playmates or peers, by raising them so that they will never think of submitting to an abortionist's scalpel--but 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. That is why, along with the massive incidence of false abuse/neglect allegations seen in the above and later in this paper, that I believe this is the major threat to the American family today.

II. The Historical Background and Evolution of American Law and Public Policy on Child Abuse and Neglect

The serious problem of false child abuse/neglect allegations developed directly from legal and public policy changes which occurred in the U.S. a little more than twenty years ago. Those

changes did not happen in a vacuum, however. They represented the culmination of years of public, private, and professional efforts to bring attention to what many saw as a deepening epidemic of abuse and neglect and to change the way our society addresses these problems. This movement and its perspectives, in turn, emerged from a longer history of efforts to utilize law and government to combat actual or perceived family and youth problems. It is thus worth examining this history.

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.¹⁵ In spite of this, the law in both England and early America permitted courts, on a local level, to intervene in families and to even 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.¹⁶

What some have called the "child-saving movement" began in earnest in the 1820's 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.¹⁷

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 sought to be shaped in the children were those of an upright, productive Christian. The perspective of the relationship of the family and the state was one which 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.¹⁸

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, given by law broad police powers of investigation and arrest.¹⁹

Dr. Allan C. Carlson, President of the Rockford Institute (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."²⁰ Most of the funding and effort in the child welfare area today comes from government, although such philanthropic involvement continues.²¹ 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 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),²² 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."²³ Almost as significantly, the court also ruled that such removal to reformatories did not require any kind of due process proceeding.²⁴

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, etc. 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 Constitution²⁵ did provide such protection, as we saw above--made the triumph of *parens patriae* possible.²⁶

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; 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."²⁷ 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.²⁸

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 involved 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,²⁹ 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 1920's--and this was not a deviant 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.³⁰ 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.³¹

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."³²

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, and Carlson writes that "the system became known for its procedural nightmares, arbitrariness, and cruelty."³³ The juvenile justice movement seemed to grind to a screeching halt in the throes of the "due process revolution" of the 1960's. In its 1966 *Kent v. U.S.* decision,³⁴ the U.S. Supreme Court took note of the problems of the juvenile courts. Then, in 1967, the Court's *In re Gault* decision³⁵ 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.³⁶

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 1960's 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 its celebrating of various "alternative lifestyles."³⁷

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 1960's, 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 cases of suspected abuse. In 1963, they convinced the U.S. Children's Bureau to draft a model statute which 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.³⁸

The real stimulus to expanding the reach and scope of reporting laws, however, came with the passage by Congress of the Child Abuse Prevention and Treatment Act of 1974. The Act, whose main Congressional sponsor was then-Senator Walter F. Mondale, shaped the course of almost all future legislation in the individual states.³⁹ It marked the start of a significant new phase of the American tradition of using a coercive-therapeutic approach to dealing with youth and family problems, which continues to the present. The Act 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 Douglas Besharov, 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. To get these grants, a state had to pass new reporting and protective laws which, *inter alia*, required: blanket immunity from prosecution for persons making reports; the reporting and prompt investigation of both "known and suspected" cases of child abuse and neglect; that the state have "such institutional and other facilities...and...programs and services as may be necessary or appropriate to assure that the State will deal effectively with child abuse and neglect cases..." (this was the basis for the formation of specialized child protective agencies, which came to be generally housed in the state and corresponding county public social services or child welfare bureaucracy); the insuring of confidentiality of records and proceedings in each case; and providing for appointment of a guardian *ad litem* in judicial proceedings for children alleged to have been abused or neglected.⁴⁰

In some cases, states adopted the above sorts of changes even without the stimulus of the federal government. 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. 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).

The 1974 act also required that for states to get grants they had to mandate the reporting of all kinds of known and suspected child maltreatment, which meant physical abuse, sexual abuse, physical neglect, and psychological and emotional maltreatment.⁴¹ It never defined these terms, however, and in fact there is no clear and widely accepted definition of these terms even among

professionals in the field (as we see below).⁴² As we shall also see, the problem of definition has been a major reason for the explosion of false abuse/neglect reports.

In 1963, at the time that the first generation of (limited) reporting laws were being put into place, there were 150,000 reports nationwide. By 1972, just prior to the passage of the federal statute, there were 610,000. In 1982, there were 1.3 million.⁴³ In 1984, ten years after the federal statute, the number had climbed to 1.5 million.⁴⁴ By 1991, the number was 2.7 million reports annually,⁴⁵ and by 1993 it was a whopping 2,936,000!⁴⁶ This meant that there was an astounding increase in reports of 1857% in the nearly thirty 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.

III. Examples of Outrageous Applications of the Child Abuse/Neglect Laws

Sometimes--although all too seldom even in this case--child protective agency 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--which is highly respected for its investigative reporting--spoke about "systemic abuse."⁴⁷

The cases we now recount would most likely be so responded to by agency 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 jail house radio interview that he had made the whole thing up, and the children later recanted.⁴⁸

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 is still practicing law.⁴⁹

In many, many cases 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 plea-bargain with the threat that children will not be returned

otherwise;⁵⁰ 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 across the country suggests 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 my attention illustrate how child protective agencies and even regular law enforcement agencies treat almost anything as abuse and 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."⁵¹

In the last several years, San Diego County, California has gotten some bad press attention for the antics of its child protective system. In a case that began in 1989, a Navy man stationed there was accused of sexually abusing his 8-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 in the mother, 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.⁵²

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.⁵³

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.⁵⁴ 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. Their parents were financially drained by legal bills.⁵⁵ A father was hotlined apparently by a neighbor after the latter watched his two-year-old daughter sitting in his lap trying to undo his shirt buttons. The neighbor apparently 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.⁵⁶ 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 which, 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 both below five feet tall, and so genetics was probably the reason. The child protective workers were convinced it *had* to be abuse.⁵⁷ 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 because he was so sloppy about doing it--as probably many boys at that age are.⁵⁸ *This gives one the sense that even many supposedly "substantiated" complaints--remember that we have seen that upwards of 60-65% are not even considered substantiated--do not involve anything that any sensible person would call abuse or neglect.*

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.⁵⁹ Another set of parents brought their baby to the emergency room of St. Louis' 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). The family was thereafter regularly monitored by child protective authorities as suspected abusers. Jack Anderson brought this case to light on his radio program.⁶⁰

Medical matters and hospital emergency rooms 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.⁶¹

In Jefferson County, Ohio, three solid Christian couples connected with my University 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 gives the county agency 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 state that "indicated" parties shall have their names removed within five years of the disposition of the case.⁶²

Another of these cases involved a couple whose baby was only in the "low normal" category in weight gain several weeks after birth, 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.⁶³ This case shows that parents are

sometimes investigated as abusers or neglecters because they are caught up in disputes between doctors about the type of medical care for their children.

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.⁶⁴ *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 due to "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.⁶⁵ 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 of 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.⁶⁶

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 of his rebellious 17-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. Form this act of "nonsparing of the rod," Kelley was arrested and charged by local authorities with battery. The jury hearing the case acquitted him.⁶⁷

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 3-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 9-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 is silent about it. A neighborhood busybody apparently reported the mother, who with her husband are 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.'"⁶⁸

Scott recounts a similar "neglect" case against a single mother, a category of persons especially vulnerable to agency assault. She left her 11-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.⁶⁹ 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.⁷⁰ 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."⁷¹ 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.⁷² Scott writes about the case of a Christian mother who the local child protection agency 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.⁷³

Perhaps more outrageous than any of the above cases, even the Jordan one, is 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 Child Protective Services (CPS) agency claimed that a child sex abuse ring has been operating in the town 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 CPS. 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.⁷⁴

The case began after the local CPA agency was told by state officials to clean up apparent corruption, which seems to have involved payments to at least one employee of the agency from a local adoption agency for supplying the agency with children.⁷⁵ Most of the charges in the case stemmed from allegations by Detective Perez's foster daughter, a disturbed 11-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 23 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."⁷⁶ *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.'"⁷⁷

In any event, after the foster daughter's initial allegations--which were later added to by her older sister who also came to live in the Perez home--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 10-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 didn't sign and the promise that she could go home if she did. Mormon parents who had unwisely gone to CPS 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 16, 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 CPS 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 most of the accused, who were low-income people, had--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 then 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 CPS suddenly alleged there were reports 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 expose 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."⁷⁸

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 an obliviousness to false charges⁷⁹--turned them down, claiming that federal law did not apply.⁸⁰

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."⁸¹ The San Diego County grand jury mentioned above alleged that possibly the majority of the children removed from their homes by the County's child protective agency and put in foster homes should have been left alone.⁸² We can also understand Richard Wexler's analysis of the breakdown of child abuse/neglect reports. Wexler, a journalist who has written and produced numerous reports about the false reporting problem and authored the book *Wounded Innocents* about it, estimates that for every 100 reports of abuse or neglect, "at least 58 are false [outrightly]; 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."⁸³ 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.⁸⁴ As we have seen and will note further below, what constitutes "sexual abuse" and "minor physical abuse" are often a subject of controversy and many of these cases probably involve actions that most people would not tend to think of as abuse.⁸⁵

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

A. The Problem of Definition: The Child Abuse/Neglect Statutes

The first serious problem about the current abuse/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."⁸⁶ Along these lines, Armbrister's *Readers' Digest* article especially singled out "the broad category of 'neglect'," which accounts for almost half of reports, as causing agency abuse.⁸⁷ As indicated above, this problem of lack of clarity of definition traces itself back to the second generation of reporting laws and the 1974 federal statute. 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 which is illegal to restrain conduct which is legal.⁸⁸ 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 any other area of law were concerned besides 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 any state statutes in the child abuse/neglect area unconstitutional on these grounds have achieved little success, and we know of no federal court which has intervened on these grounds.⁸⁹

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."⁹⁰ 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 which 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.⁹¹

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."⁹² It is clear that this definition could be construed--and often will be, in light of the very critical light within which the child protective system holds parents today--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, etc. 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 other evidence. 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 great problems of false abuse allegations and wary of saying something that could get them charged with something they are innocent of, 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,"⁹³ 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 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] "Repeatedly 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."⁹⁴

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 used will be "excessive under the circumstances and creates a substantial risk." What constitutes "physical harm"? The statute no where says. With the general animus toward any kind of corporal punishment on the part of psychologists and other child welfare "experts,"⁹⁵ 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, extreme political opportunism, and the zealous promotion of ideological agendas many things are called "cruel" or "mean-spirited" that hardly are. 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.⁹⁶ 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 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 his health, morals or well-being" or "[w]hose parents [et al.] neglect or refuse to provide the special care made necessary by his mental condition."⁹⁷ There are two other sections of the Ohio child abuse/neglect statute which 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 proper care or support by reason of the mental or physical condition of his parents [et al.]," or one "[w]hose condition or environment is such as to warrant the state, in the interest of the child, in assuming his guardianship."⁹⁸ 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...[him] to necessary discipline."⁹⁹

Many questions immediately are presented by these provisions. 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 different physicians or other medical authorities may disagree about.¹⁰⁰ What is "proper or necessary education"? Does it exclude homeschooling, since this is outside the academic norm and disliked by the educational professionals even while homeschooled pupils are on average excelling academically and even outstripping many pupils in institutionalized schools?¹⁰¹ 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--as is the very existence of these conditions. 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?

Under the "dependent child" provision, what is meant by "proper care or support"? Nice clothes (designer jeans, again)? Does a view about child-rearing 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. Insufficient support probably would be held by an agency and, maybe, a juvenile court judge to include emotional support. What is that? 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 the child's "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.¹⁰² 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/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 which even spells out clearly what the forbidden behavior is.

B. 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." 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 child protection system 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 nonprovision of shelter, nutrition, medical care, or education); lack of supervision; and emotional abuse or neglect.¹⁰³ 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 present--one is commonsensically inclined to say, more typically--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; 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.¹⁰⁴

In fact, Pride and Besharov both cite studies which 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.¹⁰⁵

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 they are often not given the least benefit of the doubt.

The above case studies, the very fact of the existence of 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 child protective system 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.¹⁰⁶ Scott, writing a half a decade later, concurs with this, and indicates that one additional group is now increasingly represented among agency social workers which has not been known lately for its affection for the family: homosexuals.¹⁰⁷ 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.; see below).¹⁰⁸

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. This was seen above in the whole, unrealistic range of supposed conditions and "symptoms" they believe indicate maltreatment--which, as we have said, are more typically seen in perfectly normal situations. It is seen also 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.¹⁰⁹ Besides being completely subjective (Scott relates that while some agencies have guidelines of what conditions render a child "at risk," the assessments are left to the discretion of the individual caseworker¹¹⁰), it should not have to be pointed out that family life, with its 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 be some kind of check or means of helping to insure competent judgment and accountability by the bureaucracy. In fact, it creates a 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.¹¹¹ 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."¹¹²

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.¹¹³

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."¹¹⁴

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 in this 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.¹¹⁵ It is also much more likely to occur in poor families than those which are better off economically.¹¹⁶

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."¹¹⁷ 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."¹¹⁸

C. 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 immunity given to the agencies and their personnel.

Regarding the ease of making reports, hot-lines have been set up in many communities to take reports. These are well publicized in the local and national media, with the numbers frequently given. People are encouraged to report any suspected cases of abuse (without, of course, providing any definition of what it is). If there is no hot-line in a particular area, the local child protective agency's number is readily available, and reports are encouraged. Reports can be made anonymously, and on hot-lines generally are, and usually no effort is made to screen calls. All that is usually needed to trigger an agency investigation is an anonymous report. No attempt needs to be made to determine if there is any validity to a report, nor is any threshold of probable cause needed before an investigation is undertaken or even (generally) additional action taken, including removal of children. In fact, most state statutes or the regulations issued pursuant to them mandate the investigation of all reports of even *suspected* abuse or neglect. 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, etc. 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 a few years ago as a condition of 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 perspective of the child protective establishment as 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.¹¹⁹

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.¹²⁰ The laws, then, have created a system driven to a certain extent by fear, much as we have seen in this century happening in totalitarian political orders. Physicians, teachers, day care center workers and other mandated reporters make reports--often on the slightest pretext--because to protect themselves they figure it is better to speak up than not to do so. 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.

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.

Another factor which contributes mightily, in our judgment, to the abuses spawned by the statutes is the fact that all investigations and proceedings--even the names of the children and parents (except in the uncommon situation of criminal charges)--are kept confidential. Proceedings generally are closed to the public and reports of cases are not issued. This is because this area of the law is mostly treated in the manner of American juvenile law generally. The view for the last few 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 then 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.¹²¹ 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 which 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."¹²² 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."¹²³

V. The Inattention to the Rights of the Accused Under the Current Laws, Dangerous Recent Legal Developments, and the Rising 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,¹²⁴ 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 which obviously presents itself when considering false reports: the legal rights of the accused. In a lengthy article published in 1988, relying upon data now a decade old and cited in Pride's book, this writer 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/neglect--most of whom are parents--had none of these right 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.¹²⁵ Another aspect of due process which is not found in child abuse proceedings is the right to appeal, provided in state statues for both criminal and civil matters.¹²⁶ 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 fact findings; normally they accept the facts as determined at a trial court or hearing (in child abuse matters, it is usually a civil hearing) and will just consider questions of law. The rub here is that in child abuse 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 has occurred or to take away children or impose other sanctions, and hearing judges are generally not required to solicit it.¹²⁷

A further fact about the constitutional rights of those accused of non-criminal child abuse/neglect is that the guarantee of the Fourth Amendment against unreasonable searches and seizures does 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 policeman, a social worker can 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 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 strip a child and do a body cavity search to find evidence of sexual abuse.¹²⁸ The statutes do not require 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 (without usually defining what this means).¹²⁹

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 chapter. Still, we are not aware of any significant trend within state legislatures to extend such procedural guarantees and there has been no federal action which would have prompted it. In fact, it can be argued that legal changes in the past decade, especially regarding criminal abuse and neglect proceedings, have further restricted the rights of the accused. We are also unaware of any judicial trend requiring greater protections. Later works such as Scott's indicate that the

above constitutional deficiencies still exist, by and large. She even discusses other basic procedural rights, not included in Pride's above analysis but indicated by the case studies which she cites (some noted above), which are denied to accused parents such as: 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.¹³⁰ We 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), it has 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 agencies 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--as noted above--many complaints are made anonymously, so the identity of the complainants is not even known. If the complainant is, say, a child's doctor and the parents thus know his identity they are still not generally afforded the right to confront him 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 hesitancy, has most recently 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 (i.e., videotaped testimony by children-victims), but also by third parties to whom children supposedly confided tales of their abuse.¹³¹

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.¹³² 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 noncriminal charges indefinitely. An agency, 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, etc. The validity of the entire matter of repressed memory syndrome has come under considerable criticism from within the discipline of psychology itself.¹³³

The one area of constitutional protection where there has been some definite, albeit not widespread, progress since Pride's 1986 book has been in establishing clear legal precedents that Fourth Amendment search and seizure requirements apply. The Home School Legal Defense Association (HSLDA) and constitutional lawyer Dr. Edwin Vieira, Jr. have played a crucial role

here. HSLDA in the past few years has 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.¹³⁴

The question is, why do we have 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). 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.¹³⁵ We have previously mentioned overbreadth and vagueness problems not being considered in the area of child abuse/neglect law; now 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 the last decade and a half or so 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 our article several years ago we discussed why we believe this frenzy about child abuse is taking place in late twentieth century America, and will not repeat that here.¹³⁶

In effect, what American law has done is to have adopted what criminal justice professor Philip Jenkins of Penn State University calls "therapeutic values."¹³⁷ Such values, which have their roots in the thinking of the social work, counseling, and other "helping" professions, and sociologists, psychologists, and other social scientists (social scientists have been increasingly

influential in shaping public policy)--even if their assumptions and understanding about human nature and society are very problematic.¹³⁸ 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. They 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?¹³⁹

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.¹⁴⁰ 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 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. We will merely quote from a letter the Society of Catholic Social Scientists sent to all the members of the Senate, 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.¹⁴¹

VI. Children Not Protected and Even Threatened 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. One can understand the evil done when, say, even one child is killed or seriously harmed. 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 ("it is good to sacrifice one innocent man for the many") would think otherwise. Be that as it may, the question is: Does the current system succeed in protecting children? It is worth considering Douglas J. 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.¹⁴²

In other words, as Pride puts it, "If *all* parents are guilty, or could be guilty" (which 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."¹⁴³ 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 unprecedentedly high level of intervention into families has not produced particularly impressive results in protecting children. Wexler wrote in 1985 that, "Of all the children believed to have died of child abuse or neglect [in the U.S.], an estimated 25 percent were known to child protective agencies at the time of their death."¹⁴⁴

Scott, writing almost ten years later, says that "[a]t least 50 percent of all children who died from abuse [nationally] were already known to CPS [child protective services]."¹⁴⁵

Another way in which current practices threaten children is by consigning them in ever greater numbers to the troubled foster care system--sometimes after taking them from their parents without good cause. 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."¹⁴⁶ The result is that children frequently are away from their parents for years, shifted from one foster home to another. This by itself is one way that children can be harmed by foster care. As Besharov states,

"[L]ong term foster care can leave lasting psychological scars...it can do irreparable damage to the bond of affection and commitment between parent and child."¹⁴⁷

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.¹⁴⁸ She 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.¹⁴⁹ 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.¹⁵⁰

Scott 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%.¹⁵¹ A 1986 survey conducted 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. While there are many decent and upright foster parents,¹⁵² it is clear that some people become foster parents for an economic motive. How much this element 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.¹⁵³

Actually, 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 child protective agencies. Armbrister, indicating that this is part of the reason why so many children are unnecessarily placed in foster care, says the following: "Under current law, social workers have an incentive to put children in federally funded foster-care programs because the programs that keep families intact don't get anywhere near the same financial support."¹⁵⁴ He quotes Wexler as insisting that "[t]he key is to reverse the financial incentives."¹⁵⁵

Another way in which 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.¹⁵⁶

VII. Proposals for Legal and Policy Change

In our article in 1988, we called for a number of legal reforms whose enactment we sought to protect innocent parents from the abuses of the child protective bureaucracy. They were as follows. First, the anonymous hotlines, which have been an open door to false reporting, should be eliminated. Secondly, the laws should be altered so they spell out more specifically what "child abuse" and "child neglect" are. We called for the elimination of provisions which 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/neglect should be treated as a criminal matter to be dealt with in regular courts, where accused persons have the full range of due process and other constitutional rights. We said that due process guarantees should be established by statute for persons involved in any related matters which 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. We insisted that part of the reform in this area should include permitting accused persons to waive secrecy 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, perhaps Pride made an even more preferable proposal: simply removing the *perpetrator*, as would be done with any criminal offense. We also said that records of unsubstantiated or false complaints should not be allowed to be retained by authorities. The statutory changes of the recent years which 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, we called for safeguards to be put in place to insure against manipulation of children by prosecutorial authorities, psychologists, and other interrogators. We said that perhaps besides providing free legal counsel for needy accused persons in child abuse cases,¹⁵⁷ we should also provide free psychologists and psychiatrists to counter the ones brought in by the state.¹⁵⁸

We also said that the laws should be changed to outrightly discourage and even make it risky for people to file false and malicious child abuse complaints. The laws should require something like "probable cause"--at least some threshold evidentiary requirements that seriously raised the likelihood that genuine abuse has occurred--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, we 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.¹⁵⁹

Finally, we insisted on reversing what Pride calls the "one-sided liability" of the child abuse laws in which 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. Social workers and agencies should not be subject to suit or prosecution for nonremoval unless their conduct is clearly outrageous and/or in bad faith. We 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.¹⁶⁰

It should be noted that so far no trends have emerged to promote the adoption of any of these changes. A 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.¹⁶¹ It is our judgment that this has resulted primarily from the substantial number of false abuse allegations which were being made in child custody battles connected to divorces.¹⁶²

In Scott's book, she lists a number of additional sound proposals for change, such as: 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 he is questioned; the setting up of independent review boards to hear complaints of the accused (Ohio has review committees, but they do not serve as the sort of appeal boards she envisions); 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.¹⁶³

All of the above ideas are worth pursuing; they would certainly go a ways toward ending the grave abuses and injustices of the system. We have now come to the conclusion, however, after

several years more of observation and reflection after our previous article, that the best course of action--and one that we believe is attainable given the deepening suspicion of government and the heightened attention to this whole problem--is simply to dismantle the current child protective system and scrap the child abuse and neglect laws that are now at least a generation old. Specialized child protective agencies have not proven that they are needed; there is no evidence that the problem of child maltreatment will be dealt with any less effectively in other ways. Most specifically, in our judgment and as we suggested in a more limited way in the previous article, the entire matter simply ought to be turned over to the criminal law--in spite of the police and prosecutorial abuses we detailed above in the Jordan and Wenatchee cases--and dealt with by current or expanded statutes concerning murder, assault, rape, statutory rape, incest and the like. Carefully drafted criminal neglect statutes ought to be added to address that particular problem when this is truly necessary. 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. As we have indicated, an epidemic of abuse and neglect did not exist before the introduction of the current laws. There is probably not an epidemic today either, but there *is* probably more child maltreatment. (this has occurred *despite* the existence of the current laws and child protective apparatus). This is for the same reason--as scholars, professionals, 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 which is part of it.

The solution we propose of ending the current laws and system would 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. Child

maltreatment would then: 1) be handled by police departments, who are both more adept at investigation of wrongdoing than social workers and less animated by an anti-family, anti-parent, pro-statist ideology, and also less characterized by bureaucratic arrogance and "therapeutic values"; and 2) the truly guilty would be punished, as most people think they should be, instead of given therapy as too often happens.¹⁶⁴

There is one *fundamental* legal change in the states which would also help protect parental and family rights. This involves the movement for parental rights constitutional amendments now beginning to gain momentum in some state legislatures.¹⁶⁵ 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 reinsulate the family from the excessive reach of the state. It might be good to start a movement 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. Curiously, such an amendment might 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 to which specific areas it might apply.

On the international level, in light of the above analysis, it goes without saying that the U.N. Convention on the Rights of the Child should be rejected by the U.S. Senate. 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 which, 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.

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 and in response to public pressure other public policies will 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 which 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. People must remember that they "should remove the plank from their own eye" before insisting that their brother "remove the speck" from his.

Indeed, one is led to wonder if Mary Pride is not correct in suggesting 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.¹⁶⁶ These would include not only the extended family and friends, but also churches and clergymen, voluntary associations, family doctors and even certain other professionals (once they have had the legal strictures removed from them that encourage them to overreport 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 this regard). If this reliance is made upon informal mechanisms, there is no evidence, again, that the abuse and neglect problem--where it genuinely *does* exist--would get worse, and we would gain the enormous advantage of greater parent and family freedom. At least good parents would then not be stymied and threatened in the name of alleged "child protection." How we can made these internal structures work is the subject for another extensive article, and cannot be dealt with here. It is perhaps worth thinking about this, however, in a time when the role of government in peoples' lives is being widely reevaluated.

Finally, people should realize that whenever religious and moral sanctions decline, as they have done precipitantly in America in the past generation or so, moral problems such as child abuse and neglect almost inevitably become greater and the positive law 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 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 anyone 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 that greatest commentator on American democracy, Alexis de 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?"¹⁶⁷

NOTES

¹ *The Washington Times*, June 4, 1993, A6.

² *Ibid.*

³ While some people have tried to draw a distinction between "false" and "unsubstantiated" reports, I treat the two terms synonymously. 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 are just unwilling to accept the fact that the incidence of child abuse/neglect is not as great as the conventional wisdom has held--which has never been based on hard facts--and that the alleged party is not necessarily guilty in these cases (which the conventional wisdom, especially among people working professionally in the child abuse/neglect field, has also often claimed).

⁴ 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), 556, citing U.S. National Center on Child Abuse and Neglect, *National Analysis of Child Neglect and Abuse Reporting* (1978), 36.

⁵ 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.

⁶ *Ibid.*, citing a *Wall Street Journal* article (Oct. 10, 1985), reporting 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.

⁷ Douglas J. Besharov, "Afterword," in Lawrence D. Spiegel, *A Question of Innocence* (Parsippany, N.J.: Unicorn Publishing House, 1986), 265, 268.

⁸ Besharov, "'Doing Something'....," 540.

⁹ Michael P. Farris, "Protecting Our Children from the Statistics," *The Home School Court Report*, vol. 8, no. 5 (Sept.-Oct. 1992), 3. This publication is put out by the Home School Legal Defense Association (HSLDA).

¹⁰ Cited in Paul Craig Roberts, "Parents in the Pillory?" *The Washington Times*, April 29, 1996, A20.

¹¹ *The Washington Times*, March 6, 1994, A16. In the second quotation, the article quotes the opinion.

¹² Trevor Armbrister, "When Parents Become Victims," *Reader's Digest* (April 1993), 106.

¹³ William J. Bennett, *The Index of Leading Cultural Indicators* 1 (1993), 12, citing Richard Gardner, clinical professor of child psychiatry at Columbia University.

¹⁴ "Dear Abby" column, *The Washington Times*, July 11, 1993, D6.

¹⁵ Allan C. Carlson, *Family Questions: Reflections on the American Social Crisis* (New Brunswick, N.J.: Transaction Books, 1988), 242. This position of the common law reflected its strong endorsement of parental rights, which it viewed as "fundamental" (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" (*In re Hudson*, 126 P2d 765, 771 [Wash., 1942]), and "natural" (*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]).

¹⁶ Carlson, 242.

¹⁷ *Ibid.*, 243.

¹⁸ *Ibid.*, 244-245.

¹⁹ *Ibid.*, 244. In some states these Societies continue to operate, and some in recent years have attracted notice for having abused their powers in various ways (see *The New York Times*, Feb. 7, 1989, B1).

²⁰ *Ibid.*, 244.

²¹ For example, one thinks of the Child Abuse Prevention Foundation in Southern California, founded by restaurant magnate Jackson W. Goodall, some of whose efforts, incidentally, have been much criticized for creating undue hysteria (see *The Washington Times*, Nov. 7, 1993, A1, A10).

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

²³ *Ibid.*, quoted in Carlson 245.

²⁴ Carlson, 245.

²⁵ For a defense of the point that the U.S. Constitution is rooted in English common law background, see Russell Kirk, *The Roots of American Order* (Malibu, Calif.: Pepperdine Univ. Press, 1974), 187, 191-192, 368-374.

²⁶ Carlson, 242-243, 245.

²⁷ *Ibid.*, 247.

²⁸ *Ibid.*, 248.

²⁹ 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 Stephen M. Krason and Robert J. D'Agostino, eds., *Parental Rights: The Contemporary Assault on Traditional Liberties* (Front Royal, Va.: Christendom College Press, 1988), 13-38.

³⁰ Carlson, 248, quoting Miriam Van Waters in her book *Parents on Probation* (N.Y.: New Republic, 1927).

³¹ 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, *op. cit.*, 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 now 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].

³² 268 U.S. 510, 535.

³³ Carlson, 249.

³⁴ 383 U.S. 541.

³⁵ 387 U.S. 1.

³⁶ Carlson, 249.

³⁷ *Ibid.*, 250.

³⁸ Besharov, "Doing Something? ...," 542.

³⁹ *Ibid.*, 542-543.

⁴⁰ *Ibid.*, 543-544, n. 19.

⁴¹ *Ibid.*, 545.

⁴² See Stephen M. Krason, "Child Abuse: Pseudo-Crisis, Dangerous Bureaucrats, Destroyed Families," in Krason and D'Agostino, 167-173.

⁴³ Besharov, "Doing Something? ...," 545.

⁴⁴ Douglas J. Besharov, "Unfounded Allegations--A New Child Abuse Problem," *Public Interest*, vol. 83 (1986); 19.

⁴⁵ Armbrister, "When Parents...," 101.

⁴⁶ 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.

⁴⁷ Armbrister, "When Parents...," 106.

⁴⁸ See Carlson, 241-242; E. Michael Jones, "Abuse Abuse: The Therapeutic State Terrorizes Parents in Jordan, Minnesota," *Fidelity* 4 (Feb. 1985), 28-33.

⁴⁹ National Public Radio report, Dec. 17, 1994.

⁵⁰ 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.

⁵¹ This, of course, is the title of Scott's book, *supra*. Scott is an investigative and religious writer, with a background in the fields of criminology and domestic abuse.

⁵² *The Intelligencer* (Wheeling, W.Va.), March 9, 1992, 8.

⁵³ *The Washington Times*, Nov. 7, 1993, A1, A10.

⁵⁴ *The Intelligencer*, March 9, 1992, 8; *The Washington Times*, Nov. 7, 1993, A10.

⁵⁵ Pride, 19-20.

⁵⁶ *Ibid.*, 18-19.

⁵⁷ *Ibid.*, 15-16.

⁵⁸ *Ibid.*, 37.

⁵⁹ *Ibid.*, 95.

⁶⁰ *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).

⁶¹ Armbrister, "When Parents...", 103-104.

⁶² Ohio Administrative Code, Chap. 5101: 2-35-19 (3) (a) (Division of Social Services Regulations).

⁶³ Personal communication from Dr. Carlson to this author.

⁶⁴ Pride, 14.

⁶⁵ Scott, 32.

⁶⁶ *Ibid.*, 45-46.

⁶⁷ Edward Grimsley, "Courage Beyond the Call to Jury Duty," *The Washington Times*, Feb. 3, 1996, C3.

⁶⁸ *The Washington Times*, Aug. 4, 1993, B1, B2.

⁶⁹ Scott, 48.

⁷⁰ *Ibid.*, 48-49.

⁷¹ Pride, 232, apparently citing statements of the authorities as quoted in the *St. Louis Globe-Democrat*, March 16-17, 1985, 1.

⁷² Scott, 170, citing Richard Wexler, *Wounded Innocents* (Buffalo: Prometheus Books, 1990), 100.

⁷³ Scott, 170-171.

⁷⁴ Paul Craig Roberts, "Justice Under Siege in Sex Frenzy?" *The Washington Times*, Oct. 10, 1995, A16; *The Wall Street Journal*, Sept. 29, 1995.

⁷⁵ Roberts, *ibid.*

⁷⁶ *Time*, Nov. 13, 1995, 89.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, 89-90; *The Wall Street Journal*, Sept. 29, 1995 and Oct. 13, 1995; Roberts column.

⁷⁹ See Trevor Armbrister, "Justice Gone Crazy," *Reader's Digest* (Jan. 1994), 33-40.

⁸⁰ *The Washington Times*, Feb. 3, 1996, A2.

⁸¹ Guggenheim, quoted in Richard Wexler, "Invasion of the Child Savers," *The Progressive* (Sept. 1985), 19.

⁸² Scott, 19.

⁸³ Scott 33, quoting Richard Wexler, *Wounded Innocents* (Buffalo: Prometheus Books, 1990), 17.

⁸⁴ Pride, 26.

⁸⁵ 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).

⁸⁶ Giovannoni, Jeanne M. and Becerra, Rosina M., *Defining Child Abuse* (N.Y.: Macmillan [Free Press], 1979), 2.

⁸⁷ Armbrister, "When Parents...", 106.

⁸⁸ 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.

⁸⁹ 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]).

⁹⁰ *Page's Ohio Rev. Code Annotated*, Sec. 2151.03.

⁹¹ 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 expressing 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.

⁹² *Page's Ohio Rev. Code Annotated*, Sec. 2919.22 (A).

⁹³ *Ibid.*, Sec. 2151.031.

⁹⁴ *Ibid.*, Sec. 2919.22 (B) (3), (4).

⁹⁵ See 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), 195-234.

⁹⁶ 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.

⁹⁷ *Ibid.*, Sec. 2151.03.

⁹⁸ *Ibid.*, Sec. 2151.04.

⁹⁹ *Ibid.*, Sec. 2151.05.

¹⁰⁰ See Stephen M. Krason, "Parental Rights and Minor Children's Health Care Decisions," *Ethics and Medics*, 19, no. 7 (July 1994), 3-4 (this article is reprinted as Chapter 26 in this book).

¹⁰¹ 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. 8, no. 6 (Nov.-Dec. 1992), 19, 26; 10, no. 4 (Jul.-Aug. 1994), 11-12; 10, no. 5 (Sept.-Oct. 1994), 17; 10, no. 6 (Winter 1994-1995), vol. 10, 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.

¹⁰² Armbrister, "When Parents....," 105; *The Home School Court Report*, vol. 9, no. 5 (Sept. Oct. 1993), 5.

¹⁰³ 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.

¹⁰⁴ Scott, 52-53.

¹⁰⁵ Pride, 230; Besharov, "'Doing Something'....," 569-570.

¹⁰⁶ Pride, 241.

¹⁰⁷ Scott, 58.

¹⁰⁸ *Ibid.*, 59-60.

¹⁰⁹ Armbrister, "When Parents....," 105.

¹¹⁰ Scott, 55. She writes that on one of the standard risk assessment form 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); 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."

¹¹¹ Pride, 44, 48.

¹¹² Hollida Wakefield and Ralph Underwager, unpublished manuscript on the child witness and sexual abuse, Institute for Psychological Therapies, quoted in Slicker, 18.

¹¹³ Pride, 44.

¹¹⁴ *Ibid.*, 46.

¹¹⁵ 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).

¹¹⁶ Richard Wexler, "Invasion of the Child Savers," 22.

¹¹⁷ Besharov, "'Doing Something....," 570, citing 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*, 10, no. 1 [Jan.-Feb. 1994], 21, 23).

¹¹⁸ Besharov, "'Doing Something....," 568-569. The court cases which 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).

¹¹⁹ Whitfield, 25.

¹²⁰ See *Page's Ohio Rev. Code Annotated*, Sec. 2151.99 (A); Ohio Administrative Code, Chap. 5101.2-34-04 (C) (Division of Social Services Regulations).

¹²¹ Armbrister, "When Parents..." 106; Scott, 142-143 (Scott notes, *inter alia*, that this curtain of confidentiality was even the basis for the San Diego County agency as its grounds for refusing to cooperate with the investigating grand jury).

¹²² Armbrister, "When Parents," 106.

¹²³ *Ibid.*

¹²⁴ See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Prince v. Massachusetts*, 321 U.S. 158, 166, 168 (1944); and *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). These cases are all cited in Robert J. D'Agostino, "State Intervention in the Family and Parental Rights: A Legal Assessment," in Krason and D'Agostino, 149.

¹²⁵ *Pride*, 169.

¹²⁶ 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, the practice of allowing appeals to be filed and even heard is liberal and they are frequently resorted to.

¹²⁷ *Pride*, 229.

¹²⁸ *Ibid.*, 160-161, 228-229.

¹²⁹ In 1985, a U.S. district court decision in Illinois held that such searches 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). Below (in the text), we discuss some more recent contrary rulings.

¹³⁰ Scott, chap. 9.

¹³¹ In the *White* decision, *supra*, 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 married couple 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 state child protective agency 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, 101-103). Nevertheless, the Ninth Circuit sustained the convictions (*Swan v. Peterson*, 6 F.3d 1373 [1993]).

¹³² The grand jury in San Diego County specifically charged that its child protective system had shifted the burden of proof in sexual abuse cases from the state to the alleged perpetrator (Scott, 84).

¹³³ 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). In recent years, the tide has perhaps 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).

¹³⁴ The Alabama case is discussed in *The Home School Court Report*, vol. 8, no. 5 (Sept.-Oct. 1992), 1, 4 and 9, no. 2 (Mar.-Apr. 1993), 1, 24. The New York case is discussed in *The Home School Court Report*, 10, no. 6 (Winter 1994-1995), 1. The Maryland case was discussed in *The Home School Court Report*, 9, no. 5 (Sept.-Oct. 1993), 5. This writer received further information about the latter case from constitutional lawyer Vieira by personal communication.

¹³⁵ *Pride*, 229.

¹³⁶ See Krason, in Krason and D'Agostino. The extent to which this frenzy about child abuse has gripped America in recent years is seen by the fact that one major newspaper poll 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. (*Minneapolis Star and Tribune*, May 19, 1985, cited in Michael P. Farris, *supra*.)

¹³⁷ Philip Jenkins, "Believe the Children? Child Abuse and the American Legal System," *Chronicles* (Jan. 1993), 22.

¹³⁸ On the point about the assumptions and outlook of 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.

¹³⁹ Jenkins, 22.

¹⁴⁰ 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).

¹⁴¹ 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.

¹⁴² Besharov, "Doing Something'...", 562.

¹⁴³ Pride, 55.

¹⁴⁴ Wexler, "Invasion of the Child Savers," 22.

¹⁴⁵ Scott, 35.

¹⁴⁶ Besharov, "Doing Something'...", 584, 560.

¹⁴⁷ *Ibid.*, 560.

¹⁴⁸ Pride, 77-79, 81.

¹⁴⁹ *Ibid.*, 20-21. See also Whitfield, 26.

¹⁵⁰ Pride, 81-83.

¹⁵¹ Scott, 101.

¹⁵² Sometimes these decent people wind up becoming victim of the system themselves. Children who have kicked 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 (see, e.g., Pride, 21, 232-233; personal communication of this author with a Franklin County, Ohio family who experienced this).

¹⁵³ 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.

¹⁵⁴ Armbrister, "When Parents...", 106.

¹⁵⁵ *Ibid.*, quoting Richard Wexler, apparently from an interview.

¹⁵⁶ See, for example, Whitfield, 25, 26; Scott, chap. six; Besharov, 557

¹⁵⁷ 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.

¹⁵⁸ Krason, in Krason and D'Agostino, 192-194.

¹⁵⁹ *Ibid.*, 194.

¹⁶⁰ *Ibid.*, 194-195.

¹⁶¹ See, e.g., *Page's 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. Previously, 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]).

¹⁶² 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.

¹⁶³ Scott, 183-184.

¹⁶⁴ 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).

¹⁶⁵ See Thomas Sowell's syndicated column in *The Washington Times*, Nov. 6, 1994, B1.

¹⁶⁶ Pride, 61-62.

¹⁶⁷ Alexis de Tocqueville, *Democracy in America* (ed. J.P. Mayer; Garden City, N.Y.: Doubleday [Anchor], 1969), vol. I, pt. ii, 294.