

## CHILD ABUSE AND NEGLECT: FAILED POLICY AND ASSAULT ON INNOCENT PARENTS

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*This paper is a modified version of a talk presented by the author at the SCSS's Capitol Hill Luncheon-Seminar on "Defending the Family," at the Rayburn House Office Building, Washington, D.C., April 23, 2004. It is an updated examination of the subject in question since the author's lengthy and more comprehensive article on the subject in the SCSS's 1998 anthology, **Defending the Family; A Sourcebook** (which is still available from the Franciscan University Bookstore, Steubenville, Ohio 43952). Like the earlier article, it shows that the problem of false allegations of child abuse and neglect against parents continues to be massive. It identifies vague laws, attitudes of operatives in the child protective system, the ease of making reports, and the legal immunity of protective system operatives as the main reasons for this. It discusses the threats to children and innocent families posed by the system. It finds the limited protections for parents written into recent federal law an encouraging development, but points out that parents still have relatively few rights in the face of the system. It presents the case as to why the current child protective system is fundamentally flawed and should be eliminated in favor of a different approach to protecting children from true abuse and neglect.*

For thirty years or so, we have been convinced in the United States that there is an epidemic of child abuse that justifies a sweeping policy at all level of government to address it. Due to the decline of religious faith, sound morality, and strong family life, it is likely that there is now more child abuse than there was in past times. Still, many years of research have convinced me that the real epidemic we face is that of false allegations of abuse and neglect and the governmental assault on innocent parents and families that results from it.<sup>1</sup> This problem has not received nearly as much attention from media, scholarly commentators, policymakers, and even pro-family activists as other issues, even though it is one of the most direct, and potentially devastating, threats facing families.

## How Great Is the Problem of False Reporting?

Our current national child abuse policy was shaped in 1974 by the Child Abuse Prevention and Treatment Act (CAPTA), also often called the “Mondale Act,” which made federal funds available to the states for child abuse prevention and research programs on the condition that they passed laws which mandated the following: reporting by certain professionals (such as physicians) of even *suspected* cases of child abuse and neglect; the setting up of specialized child protective agencies (cpa’s), usually housed within state and corresponding county public social service or child welfare agencies, to deal with abuse and neglect; and the granting of complete immunity from criminal prosecution or civil liability for the mandated reporters and cpa investigators regardless of their actions and even if the allegations are grossly erroneous.<sup>2</sup> CAPTA’s mandates encompassed all kinds of known and suspected child maltreatment, including physical abuse, sexual abuse, physical neglect, and psychological and emotional maltreatment. It never defined these terms, however, and there has not been and is not today any widely accepted definition of them even among professionals working in the field.

Some would say that false reports and unwarranted investigations of innocent parents by cpa’s is a *minor* problem, and is the price that must be paid so children can be protected from genuine abuse and neglect. The evidence overwhelmingly indicates that it is not just a minor problem, however, and has actually harmed the effort of protecting children in need. If we survey studies and the assessments of noted authorities over the past 25 years, we consistently find that about *two-thirds* of the reports of child maltreatment made to cpa’s are unfounded. This data comes from a range of sources: the Department of Health and Human Services, Prevent Child Abuse of America (formerly called the National Committee for the Prevention of Child Abuse and long a leading group in the fight against abuse), respected experts such as Douglas J. Besharov of the American Enterprise Institute who was a former HHS official who helped shape CAPTA in the 1970’s, and even surveys of cpa’s around the country. The numbers involved are staggering. HHS reported that in 1992 there were 1,227,223 false reports nationwide.<sup>3</sup> In 1997, of the 3 million reports of child maltreatment in the U.S., 1,980,000 were false.<sup>4</sup> It is even doubtful that all of the remaining cases involved true abuse or neglect, since the standards and definitions employed are very loose—as discussed below—and there is a problem of duplicate counting in many states.<sup>5</sup> Further, as Besharov points out, a substantial number of the

“confirmed” cases (involving about 800,000 children and 470,000 families each year) are really poverty cases, not true maltreatment.<sup>6</sup> The overwhelming majority of the false allegations are against parents. Cpa’s *primarily* investigate parents or children’s permanent caretakers; charges against strangers or non-caretakers are dealt with primarily by law enforcement. Often, media and commentators take the number of reports to be synonymous with the number of cases of actual child maltreatment; this is obviously not the case.

What the above means is that, according to HHS statistics, about 700,000 innocent American families go through the trauma of a cpa investigation each year.<sup>7</sup> They have the sanctity of their homes violated, their intimate family affairs pried into, many unwillingly have their children interrogated and physically examined by cpa operatives, and some face on-going monitoring by cpa’s or have their children taken away for brief or extended periods of time. The highly respected periodical *Reader’s Digest* called this “systemic abuse,”<sup>8</sup> and Besharov says it is “a massive and unjustified violation of parental rights.”<sup>9</sup>

The claim is made that child abuse can be found anywhere, in any family, in all classes, in all social groups, in all situations. In fact, the incidence of *true* child maltreatment—genuine physical abuse, sexual abuse, and reckless or intentional deprivation of a child’s basic needs—occurs disproportionately in cases of single parentage (especially families headed by teenage mothers), foster parentage, “live-in” boyfriends, and in poor families (apart from the false claims of “neglect” and other maltreatment above due to simple poverty).<sup>10</sup> Genuine abuse is found the least in intact families (i.e., where both married, natural parents are present).<sup>11</sup>

### **Outrageous but All Too Typical Cases**

One could provide an almost unlimited number of examples of the kinds of things that have started or frequently start investigations of parents for child abuse and neglect (and sometimes have resulted in children taken away and families destroyed). This is only a *sampling*: bruises on a child caused by the normal falls or bumps that all children have; burn-like rashes that cpa’s insist *must* be actual burns that just *had* to have been inflicted by the parents; decisions about when to seek medical care for children bothered by even small problems; homeschooling; home birthing; a public SWAT on the bottom for misbehavior (in the celebrated 1994 Kivi case in Georgia this landed a mother in jail)<sup>12</sup>; a young girl getting a yeast infection (which made a cpa *insist* that her father was sexually abusing her); a somewhat dirty

house; a clean house, but with too many neatly folded piles of laundry around it; a child who is too shy; a child who is too loud or talkative; parents “grounding” an unruly teenager; parents raising their voices in anger at their children when they misbehave; fathers kissing their young daughters on the mouth (some cpa’s apparently view this as indicative of sexual abuse)<sup>13</sup>; a little girl trying to undo the buttons of her father’s shirt when she was sitting in his lap (this case also signaled sexual abuse to a cpa, and resulted in the girl being placed in foster care for weeks); a baby spitting up too much (in this case, emergency room personnel apparently saw this as indicating “emotional neglect”); rare childhood bone diseases which lead to easy fracturing and other physical symptoms (medical personnel sometimes bungle these diagnoses and cpa’s are only too ready to allege physical abuse); when a parent one-too-many times is late picking up a child from school; arbitrary decisions that a child just under twelve cannot be left home alone, even for short periods; a child supposedly “failing to thrive” because she was below the average growth curve; a two-year-old girl momentarily darting out of the house naked one morning pursuing her kitten; claims of sexual abuse by one parent against the other in custody proceedings after a divorce (this has been a *real* epidemic); and made-up stories by unruly teens and pre-teens against their parents who have learned from school and media how to “work the system.”<sup>14</sup>

### **Why Is There Such a Problem of False Reports/Allegations?**

Why is the child protective system flooded with cases like the above? Why is there such a high percentage of unfounded reports? The first, most obvious, reason was stated above; it is the root cause of most of the others. From CAPTA on down, the reigning statutes have left open-ended what “abuse,” “neglect,” “maltreatment,” etc. are. As Jeanne M. Giovannoni and Rosina M. Becerra said in their 1979 book *Defining Child Abuse*, “Many assume that since child abuse and neglect are against the law, somewhere there are 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.”<sup>15</sup> Not much has changed since then. Writing in 2000, Besharov states, “[c]onfusion about reporting is largely caused by the vagueness of reporting laws.” Such laws are “often vague and overbroad.”<sup>16</sup>

It is a basic principle of American constitutional law that statutes cannot be overbroad or vague, so as to avoid their proscribing innocent behavior or behavior that was not intended to be within their reach. Courts have been notoriously unwilling to hold the child abuse

laws to this standard.<sup>17</sup> These statutes and accompanying agency regulations tend to be written broadly, apparently with the aim of encompassing all possible behaviors that can result in a child being threatened or harmed. Sometimes they include language, such as “seriously impairing the mental health or development of a child,” that involves notions whose meanings are constantly changing and fundamentally unclear.

Secondly, surveys of cpa personnel, many of whom are social workers, reveal that they do not even agree among themselves about what abuse and neglect are.<sup>18</sup> In effect, they investigate and take action against parents for many types of conduct that they are not even sure is harmful. Studies also show that even the supposedly most expert of the mandatory reporters, physicians, are uncertain about what constitutes “child maltreatment.”<sup>19</sup> It is the same with judges.<sup>20</sup>

Cpa’s also have unreasonable ideas about finding evidence of abuse. Some have criticized their “doctrine of the immaculate confession,” which holds that when relating incidents of abuse, children simply do not lie.<sup>21</sup> Anyone who has been around children knows, however, that they do sometimes lie, and they also fantasize. They are especially likely to do these things when subjected to the power of suggestion or when told that something bad might happen to their parents if they do not tell a cpa interrogator what he seemingly wants to hear. This became abundantly evident in such spectacular false child abuse investigations as the Jordan (Minnesota) and Wenatchee (Washington) fiascos—where there supposedly were large rings of parent sex abusers—the McMartin Preschool, Kelly Martin, and Amirault cases—where there was supposedly massive sexual abuse in preschool and day care facilities—and the Bobby Fijnje and San Diego cases where children were supposedly abused on a large scale by church youth workers.

There are two other offshoots of the doctrine of the immaculate confession. One holds, contradicting the main part of the theory above, that if a child denies he was ever abused or recants an earlier accusation, even in spite of suggestive questioning, he is somehow not to be believed. The other is called the “Child Sexual Abuse Accommodation Syndrome,” which insists that sexually abused children contradict themselves, cover up the abuse, typically show no emotion after the abuse, and often wait a long time before making the allegations.<sup>22</sup> The upshot of the Child Sexual Abuse Accommodation Syndrome is that if there is evidence of sexual abuse, there is sexual abuse; but also if there is no evidence of sexual abuse, then there is still sexual abuse.

Further, cpa's operate on the assumption—so foreign to American law—that if a report is made to them it means that parents are guilty; the burden of proving their innocence falls on the parents.<sup>23</sup> This assumption—and, more broadly, a “blame the parents for everything” attitude (illustrated above)<sup>24</sup>—probably comes from the influence of cpa workers' training, both in their college social work programs and on the job, which all too often views family pathologies as widespread and all parents as potential abusers. Cpa's can proceed this way because child abuse/neglect statutes are not typically part of the criminal law, with its standard of innocence until the state proves guilt. They are essentially in the category of juvenile law, kind of in between criminal and civil law.

The third reason for massive false reporting is the ease by which a person—any person—can make a report of child abuse or neglect to a cpa. In the past thirty years, there have been large-scale media and outreach campaigns carried on by cpa's, law enforcement, and other organizations, to “educate” the public about child abuse. These campaigns have sought to convince people of the “epidemic” of abuse and about the need to look out for and report it, but have done little to *truly* educate the public about what it is. As a result, people make reports about all sorts of parental behaviors, a large number of which have nothing to do with abuse and neglect (in fact, many reports are downright ridiculous). This development has been further encouraged by the establishment of telephone hot lines, and by the absence of any requirement that the reliability of reporters be determined or even that they identify themselves. So, parents often find themselves the subjects of a cpa investigation without ever having the opportunity to find out who the reporter was or to confront or challenge him. All too often the reporter is just an irritated family member, busybody neighbor, or even just a passer-by. Most states until recently did not even have any procedures for screening out questionable reports.<sup>25</sup> It is not clear in practice how many local agencies diligently screen reports. By investigating all complaints, no matter how flimsy or outrageous, cpa's over the years just thought they were following CAPTA's requirement, above, that even “suspected” abuse and neglect must be investigated. While police must establish some threshold of reliability of an informant in order to secure probable cause to get an arrest or search warrant in a criminal case,<sup>26</sup> cpa's face no such requirement. Children often are taken away from parents on the basis of a mere anonymous complaint about some insignificant thing. *The result is that, in effect, anonymous reporters—not even cpa's themselves—are often deciding what the vague laws on child*

*abuse/neglect actually mean.* If their reports automatically give rise to investigations and cpa interventions into families, they essentially become the arbiters of child protection policy.<sup>27</sup> Fourthly, such CAPTA-mandated provisions as legal immunity for reporters, confidentiality requirements, and state laws establishing a one-sided legal liability for cpa operatives have contributed to this out-of-control system. The immunity has meant, for example, an overreadiness on the part of some physicians and emergency rooms to report injuries as possible abuse. While confidentiality requirements were supposed to protect parents and families, they have functioned to shield cpa's from public scrutiny.<sup>28</sup> By "one-sided legal liability" is meant this: Cpa personnel can face civil liability and criminal penalties for failing to investigate possible abuse or take sufficient action if a child later is seriously injured or dies from abuse. They face no legal consequences, however, for whatever actions they take against an innocent family, including wrongly removing children. Given these terms, it is not surprising that they intervene into families even at the drop of a hat. The result of these legal provisions has meant cpa unaccountability. This unaccountability has been aggravated by the fact that the confidentiality requirements give cpa's a smokescreen to hide their actions from public scrutiny. Even juvenile court judges, who are supposed to function as a check on cpa's, do not help insure accountability. They often engage in "defensive judging," issuing an order to permit a child to be removed from a home or upholding "emergency" removals on weak evidence with the thought that it is better to err in the direction of excessive intervention because to do otherwise is more likely "to come back to haunt them."<sup>29</sup>

### **Parents Have Few Rights in CPA Investigations**

Child abuse statutes accord parents few due process rights in cpa investigations. Such customary rights of criminal defendants as the right to a trial or hearing, access to agency records about their case and the right to examine evidence, protection against unsubstantiated records being kept in a case file, the right to confront accusers and cross-examine them, protection against double jeopardy, and the right to appeal (which would seem to be precluded anyway when there is not a prior right to a legal proceeding or to a review of the record) have been uncommon or nonexistent around the country.<sup>30</sup> There have been some developments in recent years in protecting parents. The CAPTA amendments of 2003 require cpa's to tell parents of the nature of the accusations against them on first contact.<sup>31</sup> The area in which the most

success has been achieved has concerned the Fourth Amendment, as state and federal courts around the country have increasingly held that Fourth Amendment search and seizure protections apply, in one aspect or another, to cpa investigation of families.<sup>32</sup> The legal struggle about this continues, however. Also, the CAPTA amendments of 2003 require that cpa operatives now be trained about the constitutional and other legal rights of families.<sup>33</sup> Some slight movement in the courts is also beginning on the probable cause question—that is, that anonymous complaints are insufficient justification to begin an investigation. The most notable example is the 2003 *Stumbo* case in North Carolina (concerning the little girl above who darted outside naked after her kitten).<sup>34</sup>

Why do parents have so few rights when facing cpa investigations? The answer is found in what Professor Philip Jenkins of Penn State calls “therapeutic values.” CAPTA and similar laws were shaped mostly by experts and activists in the child and family welfare field. The view they brought to the table was that “objective” professionals such as social workers and medical authorities should be left unimpeded by legal restraints in their sincere effort to protect children and alleviate their suffering. It is they, not lawyers or judges or juries, who know what is best for children, and they necessarily will only act in children’s best interests. The concern must be therapeutic, not legal. Why, they reasoned, should rights make any more of a difference when combating child abuse than when one goes to his physician for a physical malady?<sup>35</sup>

### **The Harms Caused by the Epidemic of False Reporting**

What are the harms that result from this systematic problem of false child abuse allegations? First, a false report disrupts a family. At worst, children may wrongly be taken away. This can result in psychological or physical harm to a child and can damage his relationship with his parents.<sup>36</sup> This harm can be intensified by the long, repeated interrogations of children by cpa workers that sometimes accompany investigations. Forced physical examinations, even once, can leave emotional scars. Even if removals do not occur, the emotional aftermath, fear, and insecurity caused to children and parents can be ongoing. The children can become distrustful of outsiders, those in authority, and neighbors, who may have been the anonymous reporter. Strains can develop between the parents. The disruption of the orderly flow of a family’s life is often not easily overcome, and the disruption is intensified if there is ongoing cpa monitoring. Moreover, the privacy

so vital to healthy family relations is violated whenever there is cpa intervention, no matter how limited. This is not even to mention the financial harm caused to so many families by extended legal battles with cpa's and the damage to parents' reputations.

There are other harms. When children are removed from their families, they often wind up in foster care. Such problems of foster care as abuse and neglect by foster parents, some of whom are in it for the financial benefits, and children getting lost in the foster care system<sup>37</sup> have gotten much attention (on the former, HHS data showed in 1999 that the rate of child maltreatment was more than 75% higher in foster care than in the general population<sup>38</sup>).

One hardly needs to mention the substantial waste of tax dollars resulting from the use of cpa resources on unwarranted investigations.

Finally, most importantly, cpa's often fail to protect children who are *truly* being abused and neglected. Besharov writes that, over the years since the enactment of CAPTA, studies have revealed that 30-55% of deaths due to abuse or neglect involved children known about by a cpa.<sup>39</sup> As he says, "[t]he current flood of unfounded reports is overwhelming the limited resources of" cpa's, and responsible people are often discouraged from reporting real cases because they figure that nothing will be done.<sup>40</sup>

### **What Should Be Done about the Problem of False Reporting and Unwarranted Intervention into Families?**

How should the child protective system be changed to insure that children are truly protected, but not at the cost of terrorizing innocent parents? The 2003 CAPTA reforms noted will, to be sure, have a positive although limited effect. The developments in the courts, slow but certain, especially in the area of Fourth Amendment protection, are also very important. Several additional changes to CAPTA are needed, however, which would decisively check the insecurity and vulnerability of innocent parents and families: 1) Clearer, more certain definitions of abuse and neglect should be enacted into law. 2) Cpa's should not be permitted to begin an investigation, or even keep any record of a report, unless the reporter gives his name and his reliability can be established. Although efforts to eliminate anonymous reporting failed in the 2003 CAPTA deliberations, they should continue. 3) The full range of due process rights must be provided to parents. 4) Confidentiality requirements must be reexamined. 5) The blanket legal immunity given to cpa's and mandated reporters must be eliminated. There is no more

reason why abusive social workers should be immune from suit than abusive police are. Also, hospitals might be inclined to insure their emergency room personnel are better trained in differentiating between child abuse and natural conditions if they knew they faced the risk of a lawsuit. These changes would go a long way toward ending the threat posed by the system, comparable to how the *In re Gault* decision of the U.S. Supreme Court (1967)<sup>41</sup> halted the arbitrary and nightmarish character of the juvenile-justice system (the juvenile-justice movement was, before the war on child abuse, the last major “child-saving” effort in American history).<sup>42</sup>

Still, all this is insufficient. I concluded almost a decade ago that our present system of child protection is fundamentally and fatally flawed, and should be dismantled. Specialized cpa’s, which were spawned by CAPTA, have not shown that they can deal with the problem of child maltreatment any better than other approaches; they have caused all the above problems and have not sufficiently protected endangered children. The system’s basic problem is that it is a *therapeutic* system—although coercively therapeutic—and as such it has the following drawbacks: 1) it sees true child maltreatment too much as a condition to be remedied by treatment, instead of a moral evil and criminal act to be punished; 2) while it commendably believes in prevention, it wrongly believes that state action can universally bring that about without also creating universal regimentation and a monstrous tyranny; 3) it is routinely manned by people whose education and training has not made them particularly sympathetic to the family or aware of its basic, natural, and irreplaceable value; 4) the confusion among cpa operatives about what constitutes child maltreatment also reflects their training in contemporary relativistic social science with its ever-changing notions, theories, and even definitions for words (so, even with more precise legal definitions of abuse and neglect, we could expect cpa’s would still find grounds to infringe on legitimate parental actions); 5) it is beleaguered by the rigidities, limitations, self-interestedness/self-protectiveness, and inanities of bureaucratic institutions everywhere; and 6) it is beset by the basic contradiction of providing social services and assistance on the one hand and being an enforcement arm on the other. Not only are social workers not fundamentally trained for the latter, but help and coercion do not go together very well under the same institutional roof. We would do better to simply turn child abuse enforcement over to police departments utilizing existing criminal laws along with, say, carefully drawn new criminal neglect statutes. The police—at least if not trained in this area by cpa’s, as currently happens too often—are generally more

commonsensical and congenial to families; they do not carry the ideological baggage of many social workers. They also are more skilled at investigation. Dismantling cpa's would also decisively signal government's willingness to refrain from imposing child rearing practices; this, and not fighting child abuse, is *in reality* the main thing that cpa's do. If child protection laws that encourage the neighborhood busybody to spy on and report parents were eliminated, maybe we would begin to see the restoration of a true neighborly spirit of looking out for children, knowing and interacting with the family next door and down the street, and kindly and charitably assisting them and bringing problems to their attention. A kindly but firm Widow Douglas and Miss Watson taking care of an abused Huck Finn is much preferable to a cold, impersonal, distant government agency. It perhaps does take a village to raise a child, but not in the sense Hillary Clinton and others mean. Rather, it means community respect and support for the family, helping parents—while fully aware of their prior natural rights *as parents*—in their difficult God-given task of child rearing instead of interfering with and undermining them.

## NOTES

1. For a more thorough treatment of this subject by the author see: Stephen M. Krason, "Child Abuse: Pseudo-Crisis, Dangerous Bureaucrats, Destroyed Families," in Stephen M. Krason & Robert J. D'Agostino, eds., *Parental Rights: The Contemporary Assault on Traditional Liberties* (Front Royal, Va.: Christendom College Press, 1988), 153-196, and Stephen M. Krason, "A Grave Threat to the Family: American Law and Public Policy on Child Abuse and Neglect," in Paul C. Vitz & Stephen M. Krason, eds., *Defending the Family: A Sourcebook* (Steubenville, O.: Catholic Social Science Press, 1998), 235-267. (This second article was reprinted in a collection of the author's writings, *The Public Order and the Sacred Order: Reflections on Contemporary Socio-Political Problems and Prospects, in Light of Catholic Social Teaching, Philosophy, and the Western and American Traditions* [Otsego, Mich.: PageFree Publishing, 2003], 202-244.)

2. See Douglas J. Besharov, "'Doing Something' About Child Abuse: The Need to Narrow the Grounds for State Intervention," *Harvard Journal of Law and Public Policy*, vol. 8 (Summer 1985), 543-544, quoting 42 U.S.C. 5101-5106 (Supp. V 1975) (CAPTA) (hereinafter cited as "Besharov I"). CAPTA has subsequently been amended, as recently as in 2003, but its basic features remain largely unchanged.

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

4. Douglas J. Besharov, "Symposium: Violence in the Family: Child Abuse Realities: Over-Reporting and Poverty," *Virginia Journal of Social Policy and the Law*, vol. 8 (Fall 2000), 176, 179 (hereinafter cited as "Besharov II").

5. *Ibid.*, 180.

6. *Ibid.*, 181-182. See also: Richard Wexler, *Wounded Innocents* (Buffalo: Prometheus Books, 1990), 17, cited in Brenda Scott, *Out of Control: Who's Watching Our Child Protection Agencies?* (Lafayette, La.: Huntington House Publishers, 1994), 33.

7. Besharov II, 190.

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

9. Besharov II, 190.

10 See Mary Pride, *The Child Abuse Industry* (Westchester, Ill.: Crossway, 1986), 11, 33, 236 (citing as sources the following: a study reported in the *St. Louis Post-Dispatch* (Oct. 30, 1985); Pamela D. Mayhall & Katherine Eastlack Norgard, *Child Abuse and Neglect: Sharing Responsibility* [N.Y.: John Wiley & Sons, 1983], 11); Besharov II, 183-188. There is also a higher incidence of substantiated or founded reports of maltreatment in black households than in Caucasian or Hispanic ones, although as Besharov points out that is simply a reflection of the tragically higher rates of poverty and single-mother households among blacks (Besharov II, 188).

11. See, e.g., the conclusion, based upon a survey of studies, of Patrick F. Fagan of the Heritage Foundation in "The Child Abuse Crisis: The Disintegration of Marriage, Family, and the American Community," *Background* (June 3, 1997) (co-authored with Dorothy B. Hanks), 3, 5, 10, 15, and "The Modern Western Family: Trends and Implications from the United States," unpublished paper, 16.

12. Cpa's almost instinctively dislike spanking, which they seem to view as a form of physical abuse not really distinguishable from a

beating. Many were ready to promote academic family expert Murray Straus's "National Spank-Out Day" several years ago. More recently, Straus has claimed that simply yelling or screaming at a child—"psychological aggression," he calls it—is deleterious (see *The Washington Times*, Feb. 9, 2004, A2). For a good, objective psychological assessment on the subject of spanking, see Richard W. Cross, "The Problem of Spanking: The Vexing Question of Childhood Discipline in the Development of Conscience," in Vitz & Krason, 195-235.

13. In Illinois in 1985, a CPA speaker who went before a senior citizen group told them to keep their eyes open for parents who hugged and kissed their children in any way because they might be practitioners of incest (see Donna Whitfield, "Tyranny Masquerades as Charity: Who Are the Real Child Abusers?" *Fidelity*, vol. 4, no. 3 [Feb. 1985], 26).

14. These examples are primarily related in Krason, "A Grave Threat.," 240-244; Pride, *passim*; and Scott, *passim*.

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

16. Besharov II, 195, 196.

17. Besharov I, 569-570.

18. See Pride, 230; Besharov I, 569-570.

19. Besharov I, 570; *Home School Court Report*, vol. 10, no. 1 (Jan.-Feb. 1994), 21, 23, citing a UPI report (Jan. 1994) about a study conducted at Children's Hospital, Columbus, Ohio.

20. Besharov I, 568-569.

21. See, e.g., Pride, 44-50.

22. *Ibid.*, 44, 48, 46. The now increasingly discredited "recovered memory" therapy seems to hold that the "wait" can even extend long into adulthood.

23. See Krason, "A Grave Threat.," 240-241, 253, 254, 257; "President Bush Signs Keeping Children and Families Safe Act of 2003," *Home School Court Report*, vol. 19, no. 4 (July-Aug. 2003), 38.

24. Pride writes that this is another one of the “doctrines” that are subscribed to by cpa’s (Pride, 43).

25. Besharov II, 198.

26. See Alpheus Thomas Mason & Donald Grier Stephenson, Jr., *American Constitutional Law: Introductory Essays and Selected Cases*, 12th edn. (Upper Saddle River, N.J.: Prentice-Hall, 1999), 368.

27. There is some dispute about the actual percentage of reports that are anonymous. The Home School Legal Defense Association (HSLDA), which does much litigating on false abuse/neglect reports, told this writer that they believe that 60-70% of reports are from anonymous sources, though they acknowledge that this figure is not based on a systematic study but from anecdotal information such as the experiences of their members and others who they have defended and discussions with social workers (phone conversation with HSLDA, July 30, 2004). The Children’s Bureau of HHS claims that about 10% are anonymous (see Children’s Bureau, U.S. Dept. of Health and Human Services, *Child Maltreatment 2002* (Wash., D.C.: U.S. Government Printing Office, 2004), 6. One of my colleagues who worked in a cpa in Ohio for a time found that perhaps 50% of the reports to his county agency were anonymous, although one cannot know if this is typical. My own years of research and gathering of anecdotal information indicates to me that the HHS figure is definitely much too low. While HHS’s data is the closest thing to a systematic study of the subject, its reliability is problematical. HHS relies on data from the states that, as suggested by the problem with duplicate reporting, is not completely accurate. Also, it is likely that the organization of their data puts what are essentially anonymous reports into other categories of sources of reports based, perhaps, only on the reporter’s stating some relationship to or association with the person he is accusing without actually identifying himself (which is rather typically done when reporters contact cpa’s). Thus, in its 2002 report HHS says 8% of reports are from another relative other than a parent (the latter would probably mostly be non-custodial parents during custody disputes [noted above]) and about 6% are from friends or neighbors. Among “nonprofessional sources” of reports, HHS lists almost another 18% in the category of “other” or “unknown or missing.” Thus, if we assumed that virtually all of the reports in these additional categories came from people who did not specifically identify themselves (my knowledge of the issue suggests to me that this is a reasonable assumption), this would be 42%. It is also

fair to assume that there are a not insignificant number of reports made from two of the categories of “professional sources” listed—educational personnel and medical personnel (which together make up 32% of the overall number of reports)—without the person specifically identifying himself (e.g., a nurse simply calls a local cpa saying she is a staff member at the emergency room of hospital X). Let’s assume it is 5%, which is probably low. This would bring the overall total of, effectively, anonymous reports to 47%, which is not far from the percentage mentioned by my colleague. It is at least reasonable to conclude that a sizable minority of reports are anonymous. Actually, the percentage of anonymous reports is almost certainly higher than even 50%. The HHS data indicates that the categorization of referrals is compiled only from referrals that have not been “screened out.” HHS’s numbers show that fully 32% were screened out, probably reflecting the CAPTA requirements of recent years that cpa’s do such screening. It is very likely that the screened out reports were overwhelmingly from nonprofessional sources and also quite likely that most of these were anonymous (which according to any rational screening procedure would make reports less reliable).

28. Armbrister, 106; Scott, 142-143.

29. See Paul Chill, “Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings,” *Family Court Review*, vol. 41, at <http://web.lexis-nexis.com/universe/document?;> Internet; accessed March 5, 2004. 5. He says, “children are seldom removed on anything but an emergency basis—either unilaterally, without a court order, or on the basis of some form of ex parte judicial authorization” (at 2).

30. See Pride, 169; Scott, Chap. 9.

31. “President Bush Signs...,” 38. A problem, however, is that as of early 2005, the Department of Health and Human Services had not instituted any procedures for monitoring if the states are implementing these new requirements (the legislation provides that they can lose federal funding if they do not) (see “2004 Summary of State Legislation,” *Home School Court Report*, vol. 11, no. 1 [Jan.-Feb. 2005], 4.)

32. See *ibid.*, 31; Krason, “A Grave Threat,” 254. These cases have involved such matters as forced entry by cpa workers into the homes of

reported parents, forced strip searches of children in the home, forced interviews of children in a private school whose parents had been reported, and forced physical examinations of children at a Head Start facility without parental consent.

33. "Congressional Breakthroughs in CAPTA Reform," *Home School Court Report*, vol. 18, no. 5 (Sept.-Oct. 2002), 24.

34. See "The Stumbo Decision: Turning the Tide," *Home School Court Report*, vol. 11, no. 4 (July-Aug. 2003), 33.

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

36. See Besharov I, 586; Chill, 5-6.

37. Although changes in federal law in the late 1990's are supposed to help remedy this, the pattern over the years has been that once children are placed in foster care most averaged 2-3 years there, being shuffled from foster home to foster home. 10% stayed in foster care for over 7 years (Patrick F. Fagan, "Adoption: The Best Option," in Connaught Marshner, ed., *Adoption Factbook III* [Washington, D.C.: National Council for Adoption, 1999], 4, citing Reason Public Policy Institute, *Privatization Watch* [Nov. 1997], I, 7). I might just further observe that I am wary of the law that Fagan refers to, the Adoption and Safe Families Act, P.L. 105-89, passed in 1997. In spite of its calling for reasonable efforts to reunite families where there has been maltreatment, it also requires that proceedings to terminate parental rights and make a child eligible for adoption generally be instituted after he has been in foster care for 15 of the previous 22 months. It also gives states bonus federal grant money for achieving more adoptions (see William L. Pierce, "Adoption and Safe Families Act: Provisions of the Act," in *Marshner*, 130). I wonder if, with these mandates and incentives, cps's may not become even more willing to accept unfounded allegations and remove children. Armbrister says that over the years, laws have provided less incentive to keep families together than to remove children (see Armbrister, 106).

38. The rate of fatal maltreatment was 350% higher. (See Chill, 10, citing Children's Bureau, U.S. Dept. of Health and Human Services, *Child Maltreatment 1999: Reports from the States to the National Child Abuse and Neglect Data System* [1999], tables 3.2, 4.1. It is worth

mentioning, too, that he says that fully a third of children removed from their families were subsequently found not to have been maltreated [at 3].)

39. Besharov II, 192. See the article for his citations.

40. *Ibid.*, 191, 194.

41. 387 U.S. 1.

42. For a history of what he calls “child-saving” efforts in America, see Allan C. Carlson, *Family Questions: Reflections on the American Social Crisis* (New Brunswick, N.J.: Transaction Books, 1988), 241-254.