

THE REAUTHORIZATION
OF THE FEDERAL CHILD ABUSE ACT:
THE NEED TO PROTECT PARENTAL RIGHTS

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THIS paper focuses on the deficiencies of the nation's child protective system. However, I want to emphasize the importance of strong child protective efforts at the state and local level—and of strong yet flexible leadership at the national level. The nation's child protective capacity is many times greater now than it was ten short years ago. Given the choice between what things were like then and what things are like now, I would unhesitatingly choose our present system—warts and all. But that is not to say that we cannot try to do better.

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In part because of the impetus of the federal Child Abuse Prevention and Treatment Act, in the past twenty years, there has been an enormous expansion of programs to protect abused and neglected children. In 1985, more than 1.9 million children were reported to the authorities as suspected victims of child abuse and neglect. This is more than twelve times the estimated 150,000 children reported in 1963. Specialized "child protective agencies" have been established in all major population centers. Federal and state expenditures for child protective programs and associated foster care services now exceed \$3.5 billion a year.

Nevertheless, there are still major problems—which threaten to undo past improvements. Of the estimated one thousand children who die under circumstances suggestive of parental mistreatment each year, between 35 and 50 percent were previously reported to child protective agencies. Many thousands of other children suffer serious injuries after their plight becomes known to the authorities.

At the same time, about 65 percent of all reports are labeled unfounded (or a similar term) after investigation. This, by

the way, is in sharp contrast to 1975, when only about 35 percent of all reports were "unfounded."

As I will try to describe, these two problems are connected—and can be addressed by an amendment to the federal child abuse act.

Past Indifference

Child abuse and child neglect are not new phenomena. "The maltreatment of children is as old as recorded history. Infanticide, ritual sacrifice, exposure, mutilation, abandonment, brutal discipline and the near slavery of child labor have existed in all cultures," notes law professor Sanford Katz.

Nevertheless, until the 1960s, child maltreatment was a social problem largely hidden from public view. Few abused or neglected children were reported to authorities. Even children with serious—and suspicious—injuries went unreported. A 1968 study in Rochester, New York, for example, revealed that 10 percent of all the children under five treated in a hospital emergency room fell into the "Battered Child Syndrome" and another 10 percent were neglected. The researchers concluded that, had it not been for their study, most of these cases would not have been reported. Two years later, a study in nearby Auburn, New York, determined that of 195 hospital emergency room cases, 26 (or approximately 13 percent) involved children with "suspicious injuries" that should have been reported. None were.

Reporting was so haphazard that even many murdered children were not reported. A 1972 study by the New York City Department of Social Services, for example, found that many children known to the Medical Examiner's Offices as suspected abuse fatalities had not been reported to the Central Registry as neglected or abused. This was not simply a problem of keeping statistics. When fatalities go unreported, the siblings of these dead children are left unprotected.

Mandatory Reporting

In the early 1960s, a small group of physicians, led by Dr. C. Henry Kempe, became convinced that the only way to

break this pattern of indifference was to *mandate* certain professions to report. In 1963, they persuaded the United States Children's Bureau to promulgate a model law that required physicians to report children with a "serious physical injury or injuries inflicted . . . other than by accidental means." The response of the States to this model law was far beyond anything expected. In the short span of four legislative years, all fifty states enacted reporting laws patterned after it.

Initially, mandatory reporting laws were narrowly drafted. Only physicians were required to report and they were only required to report "serious physical injuries" or "non-accidental injuries." In the ensuing years, though, increased public and professional attention, in part sparked by the number of abused children revealed by these reporting laws, led many states to expand their reporting laws: (1) to make more types of children maltreatment reportable, and (2) to increase the categories of professionals required to report. But change was slow and unpredictable, being dependent on shifting political priorities and the vagaries of the legislative process in the various states.

The seeds for more rapid change were planted in 1973. In that year, then Senator Walter Mondale held a series of hearings on child abuse and neglect. These Congressional hearings documented shocking weaknesses in state and local child protective efforts, and clearly moved Mondale and his colleagues. Mondale later wrote that nothing he saw in his nine years as a Senator "was as disturbing or horrifying, or as compelling, as the stories and photos of children, many of them infants, who had been whipped and beaten with razor straps; burned and mutilated by cigarettes and lighters; scalded by boiling water; bruised and battered by physical assaults and starved and neglected and malnourished."

The hearings Mondale held served to galvanize Congressional support for action to improve child protective programs. Through Mondale's efforts, as well as those of Representatives Patricia Schroeder, John Brademas and Mario Biaggi, the Congress passed the Child Abuse Prevention and Treatment Act of 1974.

The new Child Abuse Act required the Secretary of Health,

Education and Welfare (now Health and Human Services) to establish a National Center on Child Abuse and Neglect. The National Center was to serve as a clearinghouse for the development and dissemination of information about child protective research and programs. The Center received an annual appropriation of \$18.9 million. Most of these funds were used for a wide range of research, demonstration, training, and technical assistance projects. But the Act specified that up to 20 percent of each appropriation (about \$3.7 million per year) was for special state grants.

This small state grant program was, in many respects, the most important aspect of the new Act. In order to obtain one of these special grants, states had to meet specified eligibility requirements. Only three states were able to satisfy these requirements in 1973. What happened in the next six years was just as remarkable as the quick adoption of the first reporting laws ten years earlier. State after state passed new child protective laws and made the programmatic improvements needed to qualify for federal aid. By 1978, 43 states, the District of Columbia, Puerto Rico, Guam and American Samoa had established the comprehensive child protective systems required by the Act. In 1984, three more states and the Northern Marianas Islands also qualified.

What accounts for this rapid advance in state child protective capabilities? Certainly, it was not the amount of the state grant. In the years involved, the average state grant was a mere \$80,000—far less than the costs of these programs. The state grant program, together with other National Center activities, served as a catalyst for making the improvements long advocated by child protective specialists. Reformers were able to cite the eligibility requirements as a Congressional endorsement for the changes they proposed. (Often, though, it took a child's tragic and well publicized death to break legislative and bureaucratic logjams.)

Among the Federal Act's eligibility criteria was a requirement that states broaden their child abuse reporting laws. Thus, in the process of establishing eligibility, states had to amend their reporting laws to require the reporting of *all* forms of child maltreatment. As a result, almost all states

now have laws which require the reporting of suspected physical abuse, sexual abuse and exploitation, physical neglect, and emotional maltreatment. Although these terms are never adequately defined, state laws impose civil and criminal penalties on medical, educational, social work, child care and law enforcement professionals who fail to report. These laws also have provisions which encourage all persons—including friends, neighbors, and relatives of the family—to report suspected maltreatment. In fact, nineteen states require all persons to report suspected child abuse.

Real Progress

These mandatory reporting laws, and associated public awareness campaigns, have been strikingly effective. The number of children reported to the authorities because of suspected child abuse or neglect rose from 150,000 in 1963 to 610,000 in 1972, and to 1.5 million in 1984. These statistics led President Carter to say: "One of our most serious blights on the prospects for children of our country is child abuse and the damage that results from it."

Many people ask whether this vastly increased reporting signals a rise in the incidence of child maltreatment. While some observers believe that deteriorating economic and social conditions have contributed to a rise in the level of abuse and neglect, there is no way to tell for sure. So many maltreated children previously went unreported that earlier reporting statistics do not provide a reliable baseline against which to make comparisons. However, one thing is clear: the great bulk of reports now received by child protective agencies would not have been made but for the passage of mandatory reporting laws and the media that accompanied them.

One must be impressed with the results of this twenty year effort to upgrade child protective programs. Increased reporting and specialized child protective agencies have saved many thousands of children from death and serious injury. In New York State, for example, within five years of the passage of a comprehensive reporting law which also mandated the creation of specialized investigative staffs, there

was a 50 percent reduction in child fatalities, from about 200 a year to under 100. Similarly, Drs. Ruth and Henry Kempe, well known leaders in the field, report that: "In Denver, the number of hospitalized abused children who die from their injuries has dropped from 20 a year (between 1960 and 1975) to less than one a year."

Unfounded Reports

Despite this progress, we now face an imminent social tragedy: the nationwide collapse of child protective efforts caused by a flood of unfounded reports. Nationwide, about 65 percent of all reports prove to be "unfounded," that is, they are dismissed after investigation. This is in sharp contrast to 1975, when only about 35 percent of all reports were "unfounded."

New York State has one of the highest unfounded rates in the nation, and its experience illustrates how severe the problem has become. Between 1979 and 1983, as the number of reports received by the State Department of Social Services increased by about 50 percent (from 51,836 to 74,120), the percentage of substantiated reports fell almost 20 percent (from 42.8 percent to 35.8 percent). In fact, the *absolute number* of substantiated reports actually fell by about 100. Thus, almost 23,000 additional families were investigated—while fewer children were aided.

Unfounded Reports Hurt Families

Unfortunately, the determination that a report is unfounded can only be made after an unavoidably traumatic investigation that is, inherently, a breach of parental and family privacy. To determine whether a particular child is in danger, caseworkers must inquire into the most intimate personal and family matters. Often, it is necessary to question friends, relatives, and neighbors, as well as school teachers, day care personnel, doctors, clergymen, and others who know the family.

Richard Wexler, a reporter in Rochester, New York, tells what happened to Kathy and Alan Heath (not their real names): "Three times in as many years, someone—they sus-

pect an 'unstable' neighbor—has called in anonymous accusations of child abuse against them. All three times, those reports were determined to be 'unfounded,' but only after painful investigations by workers . . . The first time the family was accused, Mrs. Heath says, 'the worker spent almost two hours in my house going over the allegations over and over again . . . She went through everything from a strap to an iron, to everything that could cause a bruise, asking me if I did those things. [After she left] I sat on the floor and cried my eyes out. I couldn't believe that anybody could do that to me.' Two more such investigations followed."

"The Heaths say that even after they were 'proven innocent' three times, the county did nothing to help them restore their reputation among friends and neighbors who had been told, as potential 'witnesses,' that the Heaths were suspected of child abuse."

Laws against child abuse are an implicit recognition that family privacy must give way to the need to protect helpless children. But in seeking to protect children, it is all too easy for courts and social agencies to ignore the legitimate rights of parents. Each year, over 500,000 families are put through investigations of unfounded reports. This is a massive and unjustified violation of parental rights. As Supreme Court Justice Brandeis warned in a different context, "experience should teach us to be most on guard to protect liberty when government's purposes are beneficent."

I have also taken the liberty of attaching a case history of another troubling case. (See Appendix, p. 55.)

Some Unfounded Reports Are Necessary

There are, of course, many reasons for the high unfounded rate—evidence of child maltreatment is hard to obtain, overworked and inadequately trained workers may not uncover the evidence that does exist, and many cases are labeled unfounded as a means of caseload control or when there are no services available to help the family.

Moreover, a certain level of unfounded reporting is necessary to make the system work; it is an inherent—and legitimate—aspect of reporting *suspected* child maltreatment. We

ask hundreds of thousands of strangers to report their suspicions; we do not ask that they be certain.

These realities, it seems to me, make an unfounded rate of 30–40 percent acceptable. It is the last 20 to 30 percent of unfounded reports that is the cause for concern. For the reasons I will describe, they could be removed from the system without threatening the fundamental mission of child protective agencies. The failure to do so imperils the future credibility of child protective efforts.

Endangering Children

The current flood of unfounded reports is overwhelming to the limited resources of child protective agencies. For fear of missing even one abused child, workers perform extensive investigations of vague and apparently unsupported reports. Even when a home visit based on an anonymous report turns up no evidence of maltreatment, they usually interview neighbors, school teachers, and day care personnel to make sure that the child is not abused. And, even repeated anonymous and unfounded reports do not prevent a further investigation, as the Heath case illustrates. But all this takes time.

As a result, children in real danger are getting lost in the press of inappropriate cases. Forced to allocate a substantial portion of their limited resources to unfounded reports, child protective agencies are increasingly unable to respond promptly and effectively when children are in serious danger.

Ironically, by weakening the system's ability to respond, unfounded reports actually discourage appropriate reports. The sad fact is that many responsible individuals are not reporting endangered children because they feel that the system's response will be so weak that reporting will do no good and, indeed, may make things worse. According to the federal government's National Study of the Incidence and Severity of Child Abuse and Neglect, professionals—physicians, nurses, teachers, social workers, child care workers, and police workers—still fail to report half of the maltreated children whom they see. Each year, about 50,000 children with observable injuries severe enough to require hospitalization are not reported.

Undermining Public Support

Unreasonably high unfounded rates are a public relations disaster. Almost every journalist who covers children's issues knows that the number of missing children was grossly exaggerated—or at least misleading—and that the first journalist to write about it won a Pulitzer Prize. To be blunt, many reporters are now eager to challenge child abuse statistics and to "expose" what is really going on.

Let me tell you about a phone call I received late last year. A local radio reporter called to ask what she could do to help her housekeeper of ten years who had just been reported for child abuse. The reporter said the allegations were "crazy."

The housekeeper had been summoned to her twelve-year-old son's school because he had been misbehaving. She was required to take her son home. As she was leaving the school yard with her son, she whacked him across the rear with her hand. The principal saw this and made a report of suspected abuse on the basis that one whack—nothing more.

One more journalist is now convinced that there is something very wrong with the reporting process.

Angry Parents

The growth of VOCAL, an organization of parents who claim that they were wrongly accused of child abuse and neglect, has also been encouraged by the high unfounded rate. VOCAL now has over 3,000 members, with chapters in more than 30 states.

To the extent that VOCAL calls for better trained child protective workers coupled with a greater recognition of parental rights, I am a strong supporter of the organization—regardless of the guilt or innocence of its members. But one does not have to share this view to realize that VOCAL is becoming a powerful political force. In Minnesota, VOCAL members collected 2,000 signatures on a petition asking the Governor to remove Scott County prosecutor Kathleen Morris from office because of her alleged misconduct in bringing charges, subsequently dismissed, against twenty-four adults in Jordan, Minnesota. In Arizona, VOCAL members were

temporarily able to sidetrack a \$5.4 million budget supplement which would have added 77 investigators to local child protective agencies.

I understand that VOCAL is about to commence a national letter writing campaign directed at the Congress. The purpose? To gain support for amendments to the federal child abuse act that would encourage states to do a better job protecting the rights of innocent parents—and their children.

Needed Action

To ignore the present harmfully high level of unfounded reports is to court catastrophe. In the short run, it may be possible to avoid admitting that the reporting system has serious shortcomings. In the long run, though, already severe problems will worsen—and become more visible to outsiders. As more people realize that hundreds of thousands of innocent people are having their reputations tarnished and their privacy invaded while tens of thousands of endangered children are going unprotected, continued support for child protective efforts will surely erode.

Child protective professionals have begun to respond. At the national level, the APWA, through its National Association of Public Child Welfare Administrators, and the U.S. Children's Bureau, under the leadership of Jane Burnley, have begun work on the problem of unfounded reports. So have many states.

What should be the agenda for reform? I believe that the only way to lower the rate of unfounded reporting is: (1) to develop improved definitions (and guidelines) for what should be reported—and what should not be reported, and (2) to implement these definitions through public and professional education and through the screening of hotline reports.

Better Definitions

Few unfounded reports are made maliciously. Studies suggest that, at most, from 5 to 10% are knowingly false. Many involve situations in which the person reporting, in a well-intentioned effort to protect a child, overreacts to a vague and often misleading possibility that the child may be mal-

treated. Others involve situations of poor child care that, though of legitimate concern, simply do not amount to child abuse or neglect. In fact, a substantial proportion of unfounded cases are referred to other agencies for them to provide needed services for the family.

Thus, we need better definitions of child abuse and neglect (incorporated into public awareness and professional education materials) that provide real guidance about what should be reported—or not reported. Generalized statements about children who are “abused,” or “neglected,” or “in danger” will not do. Unfortunately, better definitions will not come easily, for they require resolving a series of complex technical and controversial policy issues.

Let me give just a few examples of areas in which *technical* work is needed. (There are many more.)

Anonymous reports: Even though only about 15 percent of these reports are later deemed founded, all states accept anonymous reports because they sometimes identify children in serious danger who would otherwise go unprotected. However, this is no reason for investigating anonymous reports that can cite no specific reason to suspect maltreatment. One agency accepted a report that alleged nothing more than that “there are strange noises coming from next door.”

Matrimonial and custody cases: Divorce and the acrimony that frequently follows is a fertile ground for unfounded reports. Fear of criticism—and liability—is leading agencies to accept, unquestioningly, reports from estranged spouses. These reports cannot be rejected out of hand, because a small proportion involve real danger to children, as demonstrated by the *Mammo* case, described below. However, a method must be found to screen out the vast majority of obviously inappropriate reports.

“Reasonable” corporal punishment cases: Until very recently, it was accurate to say that all states recognized the parental right to engage in “reasonable” corporal punishment. But, alas, our concern to identify children in “imminent danger,” (more on that in a minute) is leading many agencies to investigate reports that, *on their face*, amount to nothing more than what courts would recognize as reasonable corporal punish-

ment. Many of these parents need help in child rearing, of course, but, again, accepting and investigating the case only adds another unfounded report to the statistics.

Behavioral indicators: There is a tendency to consider the so-called "behavioral indicators" of child abuse, and especially of sexual abuse, *on their own*, without physical evidence, without statements of the child or others, without anything else, as sufficient reason to make a report. Intake workers are accepting reports from teachers and others that "Mary is shy in class," or that "Mary is over friendly."

Behavioral indicators have a valid place in decision-making. They provide important clues for potential reporters to pursue, and they provide crucial corroborative evidence of maltreatment. But *alone* they are an insufficient basis for a report. There are many other explanations for such behavior. It is essential that this point be made. Otherwise, every shy or over friendly child in the country will be reported.

Imminent danger cases: Agencies cannot wait until a child has suffered serious injury before acting. That is why all states allow reports of "imminent danger" or "threatened harm." However, the failure to articulate the reasons for believing that a child may be in danger of *future* abuse encourages vague reports that agencies feel they cannot reject without an investigation.

Emotional maltreatment: Once again, vague definitions—one state defines emotional neglect to include "the failure to provide adequate love"—encourage reports that cannot be rejected, but that are almost invariably deemed unfounded after investigation.

The "Child Protective" Mission

Today, child protection is at a cross roads. Across the nation, child protective agencies are being pressed to accept categories of cases that, traditionally, have not been considered their responsibility—and for which their skills do not seem appropriate. In community after community, the dearth

of family oriented social services is pushing CPS away from its traditional role as a highly focused service for children in serious danger—and toward an all encompassing form of child welfare services.

In essence, CPS is paying the price for its past successes. People know that a report of possible maltreatment will result in action. As a result, “child abuse” hotlines are being bargained by reports that, at base, really involve adolescent truancy, delinquency, school problems, and sexual acting out, not caused by abuse or neglect; children who need specialized education or residential placement; parent-child conflicts with no indication of abuse or neglect; and chronic problems involving property, unemployment, inadequate housing, or poor money management. Many of these reports result in the family receiving much needed services, and many do not. But either way, another unfounded report is added to the statistics.

In effect, CPS is being used to fill gaps in what should be a community wide child welfare system. Some child advocates welcome this development, because, they think, it will mean more money for desperately needed services. But sooner or later, politicians will recognize what is happening and will cut us back. Then, we will be in real danger of losing the progress that has been made. Even if this strategy were more likely to succeed, we should shun it. For, the CPS process is a coercive, often traumatic one that should be limited to situations in which the danger to the child overrides our traditional reluctance to force services on unwilling parents.

We must make it clear that CPS cannot be all things to all people. Here, the major challenge will be to develop definitions that distinguish between those child rearing situations that we think are less than optimal—and for which we would like to offer voluntary services—from those that pose a clear and present danger of serious injury—and for which we are prepared to intervene involuntarily, through court action and removal of the child, if that is necessary.

Screening Reports

Better definitions of reportable conditions will go only part way in reducing the level of unfounded reports. The new definitions need to be enforced. This is the role of intake staff.

Afraid that a case they reject will later turn into a child fatality, most agencies now shirk their central responsibility to screen reports before assigning them for investigation. According to the American Humane Association, only a little more than half the states allow their hotline workers to reject reports, and even those that do usually limit screening to cases that are "clearly" inappropriate.

Imagine a 911 system that cannot distinguish between life threatening crimes and littering. That is the condition of child abuse hotlines. Many hotlines will accept reports even when the caller can give no reason for suspecting that the child's condition is due to the parent's behavior. This writer observed one hotline accept a report that a seventeen year old boy was found in a drunken stupor. That the boy, and perhaps his family, might benefit from counseling is not disputable. But that hardly justifies the initiation of an involuntary, child protective investigation.

Child protective agencies used to do much more screening. But that was before the recent media hype and before cases like *Mammo v. Arizona*, where the agency was successfully sued for the death of a young child after the agency refused to accept a report from the non-custodial father.

Overreacting to cases like *Mammo v. Arizona*, some child protective agencies assume that they should not screen reports at all; that is, that they must assign all reports for investigation. This is a mistake. The proper lesson to be drawn from *Mammo*, and cases like it, is not that screening reports is disallowed, but, rather, that decisions to reject a report must be made with great care.

Just as child protective agencies have a duty to investigate reports made appropriately to them, they also have a duty to screen out reports for which an investigation would be clearly unwarranted. They should reject reports whose allegations fall outside the agency's definitions of "child abuse"

and "child neglect," as established by state law. (Often, the family has a coping problem more appropriately referred to another social service agency.) They should also reject reports when the caller can give no credible reason for suspecting that the child has been abused or neglected. And, they may have to reject a report in which insufficient information is given to identify or locate the child (although the information may be kept for later use should a subsequent report about the same child be made).

The kind of intake decision-making that I am proposing cannot be done by clerks, nor by untrained caseworkers. The agency's best workers should be assigned to intake—where they can have the greatest impact. In fact, I would suggest that we make assignment to intake a promotion, in which we place our most experienced and qualified staff.

Lowering the Rhetoric

Doing something about the problem of unfounded reports (and it seems to be still growing) requires telling the American people that current reporting statistics are badly inflated by unfounded reports. Up to now, most child welfare officials—in federal, state, and local agencies—have lacked the courage to do so, because they fear that such honesty will discredit their efforts and lead to budget cuts.

Therefore, the necessary first step in reducing harmfully high rates of unfounded reporting of child abuse must be a general lowering of child abuse rhetoric. A more responsible use of statistics would be a good start. Child maltreatment is a major social problem. Each year, about 1,000 children die in circumstances suggestive of child maltreatment. But its extent and severity must be kept in perspective.

We regularly hear that there are upwards of a million maltreated children (including those that are not reported). This is a reasonably accurate estimate, but the word "maltreatment" encompasses much more than the brutally battered, sexually abused, or starved and sickly children that come to mind when we think of child abuse. In 1979 and 1980, the federal government conducted a National Study of the Incidence and Severity of Child Abuse and Neglect. According

to this Congressionally mandated study, which collected data for twelve months from a representative sample of twenty-six counties in ten states, only about 30 percent of all "mal-treated" children are physically abused, and only about 10 percent of these children (3 percent of the total) suffer an injury severe enough to require professional care. Thus, 90 percent of the cases labeled "physical abuse" are really situations of excessive or unreasonable corporal punishment which, although a matter of legitimate government concern, are unlikely to escalate into a serious assault against the child. (Other data from the Incidence Study indicated that fewer than one in five of these cases presages anything resembling child abuse or neglect, let alone serious injury to the child.)

Sexual abuse makes up about 7 percent of the total. This is probably a low figure; major efforts are being made to increase the reporting of suspected child sexual abuse.

Physical neglect makes up about 17 percent of all cases. The three largest categories are: failure to provide needed medical care (9 percent); abandonment and other refusals of custody (4 percent); and failure to provide food, clothing and hygiene (3 percent). Physical neglect can be just as harmful as physical abuse. More children die of physical neglect than from physical abuse. But, again, the number of cases where serious physical injury has occurred is low, perhaps as low as 4 percent of neglected cases.¹

The remainder of these cases, about half,² are forms of educational neglect and emotional maltreatment. Educational neglect, at 27 percent, is the single largest category of cases. Emotional abuse, mainly "habitual scapegoating, belittling and rejecting behavior," accounts for about 20 percent of the total. And various forms of emotional neglect, defined as "inadequate nurturance" and "permitted maladaptive behavior," are 9 percent of the total. While some forms of emotional maltreatment are deeply damaging to children, most cases do not create the need for aggressive intervention as do cases of serious physical abuse or neglect.

Almost 85 percent of all cases of "child maltreatment," then, involve excessive corporal punishment, minor physical neglect, educational neglect, or emotional maltreatment.

These are really forms of emotional or developmental harm to children that pose no real physical danger. Moreover, the overwhelming bulk of these cases, which are most accurately considered forms of "social deprivation," involve poor and minority families. Compared to the general population, families reported for maltreatment are four times more likely to be on public assistance³ and almost twice as likely to be black.⁴ Furthermore, maltreating parents tend to be the "poorest of the poor." Most research confirms one study's finding that, as between maltreating and non-maltreating families, the former "lived under poorer material circumstances, had more socially and materially deprived childhoods, were more isolated from friends and relatives, and had more children."⁵ About 30 percent of abused children live in single parent households and are on public assistance; the comparable figure for neglected children is about 45 percent.⁶ Protecting these children means lifting the parents from the grinding poverty within which they live.

Recognizing these realities would go a long way toward reducing the current hysteria about child abuse. It would also make people less likely to believe that every bruised child is an abused child.

"Doing Something" To Improve Reporting

Few unfounded reports are made maliciously. Most involve an honest desire to protect children coupled with confusion about when reports should be made. Hence, much can be done to reduce the number of unfounded reports without discouraging reports of children in real danger. Let me summarize the points I have tried to make in this statement.

First, reporting laws and associated educational materials and programs must be improved to provide practical guidance about what should be reported—and what should not be reported. They should call for reporting only when there is credible evidence that the parents have already engaged in seriously harmful behavior towards their children or that, because of severe mental disability or drug and alcohol addiction, they are incapable of providing adequate care. The parent's behavior need not have already seriously injured the child for it to be

considered seriously harmful. A report should be required if the parent's behavior was capable of seriously injuring the child. The criminal law would call such behavior an "attempt" or "reckless endangerment." While such terms are not applicable to child protection (because they imply a higher degree of intent than is necessary and because they seem to exclude situations of child neglect), the criminal law's fundamental reliance on past wrongful conduct as the basis for state intervention has equal validity for child protection intervention.

Second, the liability provision of state reporting laws should also be modified. Most reporting laws penalize the negligent failure to report while granting immunity for incorrect, but good faith, reports. This combination of provisions encourages the overreporting of questionable situations. Fearful of being sued for not reporting, some professionals play it safe and report whenever they think there is the slightest chance that they will subsequently be sued for not doing so. To reduce this incentive for overreporting, six states already limit civil liability to "knowing" or "willful" failures to report. All states should do so.

Third, child abuse hotlines should fulfill their responsibility to screen reports for initial sufficiency. They should reject reports whose allegations fall outside the agency's definitions of "child abuse" and "child neglect," as established by state law. They should also reject reports when the caller can give no credible reason for suspecting that the child has been abused or neglected or when its unfounded or malicious nature is apparent.

Fourth, the Federal Child Abuse Prevention and Treatment Act should be amended to encourage states to better protect the rights of parents accused of abusing and neglecting their children. Since the passage of the Child Abuse Prevention and Treatment Act in 1974, it has mandated states to seek the reporting of even greater numbers of abused children—without regard to the validity or appropriateness of reports. While this one dimensional approach may have been justified ten years ago when few reports were made, these requirements have remained essentially unchanged in the face of ever increasing numbers of unfounded reports.

On the other hand, I would not recommend major changes in the Act. Basically, it has served us well. And this is not the time for major change. In this, as in all areas, a series of small, carefully considered steps is more likely to lead us in the right direction than is one long leap.

Therefore, I would recommend only two changes in the Act. *First*, states should be required to demonstrate that they are making efforts to encourage more accurate reporting. This would include:

- (1) the preparation and dissemination of educational and training materials that describe what should *not* be reported—as well as what should be reported, and
- (2) the adoption of better screening policies and procedures for hotline.

Second, states should be required to demonstrate that they are making efforts to prevent children from being removed from their homes without an appropriate investigation—unless they appear to be in imminent danger. Such a requirement would merely apply to child protective decision-making the IV-E requirements of reasonable or “diligent” efforts to return children who have been placed in foster care.

Conclusion

To continue to ignore the present harmfully high level of unfounded reports is to court disaster. In the short run, it may be possible to avoid admitting that the reporting system has serious shortcomings. In the long run, though, already severe problems will worsen—and become more visible to outsiders. As more people realize that hundreds of thousands of innocent people are having their reputations tarnished and their privacy invaded while tens of thousands of endangered children are going unprotected, continued support for child protective efforts will surely erode.

Child maltreatment is a serious national problem. It need not be exaggerated in order to gain public and political support.

Footnotes

1. American Association for Protecting Children, *Highlights of Official*

- Child Neglect and Abuse Reporting: 1984*, p. 16, Table 6 (1986).
2. The total comes to 110 percent because there is a slight overlap among categories of cases.
 3. American Humane Association, *Trends In Child Abuse and Neglect: A National Perspective*, p. 24, Table IV-3 (1984).
 4. *Trends In Child Abuse and Neglect: A National Perspective*, *supra* n. 3, p. 97, Table A-IV-7.
 5. Horowitz & Wolock, "Maternal Deprivation, Child Maltreatment, And Agency Interventions Among Poor Families," in L. Pelton, ed., *The Social Context of Child Abuse and Neglect*, pp. 137, 138, 161 (1981).
 6. *Trends In Child Abuse and Neglect: A National Perspective*, *supra* n. 3, p. 97, Table A-IV-7.

APPENDIX

FOR THE LOVE OF BASEBALL

There is a nine year old little boy who, for the last six years of his life, has been in love with a game called Baseball (I know, I am his mother). At age eight, he tried out for the "Lambert Little League" and proudly became a single A Angel.

In 1984, he won a trophy for being the Good Sportsmanship Player of the whole league. Chris won a Certificate of Award from the Laurel Elementary School PTA for the Reflection Contest, when he drew a picture of a baseball diamond with himself at bat titled, "I have a Dream of Being a Baseball Star." This was in the second grade.

This year, 1985, Christopher tried out again and now he plays for the double A Angels. Only now I am afraid for him to play baseball at all!

On May 6, 1985, Monday afternoon, Christopher was practicing pitching and catching in the front yard of our house with two neighborhood boys. They were using a tennis ball and a pitchback. This is an aluminum frame with a net designed to pitch the ball back to you. (It was a Christmas gift from his aunt.) During the game he missed the ball with his mitt and was struck in the nose, in fact, right between the eyes. It left a red mark on his nose and the side of one eye. It didn't hurt much and there was no bleeding so instead of being a sissy in front of his friends, he did not come in to the house crying that he was hurt. I was not aware of any injury.

The next day Christopher was forty minutes late coming home from school. I sent my sister, his aunt, to look for him and thinking the baby (Jenny, age 16 months) might enjoy the ride, she took her along. They went up to the school looking for Chris. There she was met by police officials and Christopher, who was scared to death and crying. In front of Chris, the policemen removed my baby from her aunt's

arms and told her that they were taking my children for child abuse and we could not see them.

The children's aunt came back home in a state of total hysteria. She stood in the middle of the living room crying and screaming. It took several minutes to find out what was wrong. She kept saying, "They took our kids! Oh God, Oh God! Why did they take our kids?"

The police took my children to La Miranda Community Hospital to be examined for possible child abuse. (The hospital has since sent me a bill for \$373.00.) The hospital report on Chris said, "a small bruise on bridge of nose, redness around one eye and a couple of small scratches on face" (due to baby Jennifer). They recommended no treatment. They x-rayed all of both children's bodies and neither had ever broken a bone in their lives (Thank God). They found no signs of abuse of any kind on Jennifer.

The DPSS then had Chris placed in a foster home which already had two children sleeping on the floor and whose playground was the local high school where the children played unsupervised after school hours.

Jennifer was placed in MacLaren Hall where she sustained numerous bruises on her face, ear, arms, and legs. Only Jenny can't talk to tell how it happened.

Christopher told the teacher, school nurse, and school principal about the baseball accident, he told the police and DPSS workers, he told anyone and everyone and they still took my babies away. They wouldn't believe him or even telephone me.

After three days of being unable to eat or sleep, we had a dependency hearing, where the judge ordered my children detained until trial on July 22, 1985.

On Friday I was finally allowed to visit Jenny in MacLaren Hall, I found her sick, dirty, and covered with bruises. The only answer they could give me was that "maybe another child got to her." By Monday I was hospitalized for stress and severe dehydration.

The following Wednesday we finally went before a judge who released the children to me until trial.

I have pawned my jewelry and I am in the process of selling

my car and furniture. I have called every attorney I can find. My job put me on a personal leave of absence so that they would not have to pay my salary until I have solved my personal problems. I'm broke! Now I have two very frightened kids at home besides myself. Am I guilty? I did buy him his first baseball!



BOOK REVIEW

Beyond the Bake Sale. An Educators Guide to Working with Parents by Anne T. Henderson, Carl L. Marburger, and Theodora Ooms, The National Committee for Citizens in Education, Columbia, Maryland 1986. Reviewed by Frederica M. Galloway.

Beyond the Bake Sale would not have been published a few years ago, when educators seemed to consider parents mere providers of raw material. Since then, parents have protested that attitude and demanded a role in the educational process. Now a book exists to explain to educators how to encourage parents to involve themselves, not only in the education of their own children, but in the school system itself.

For this reason alone, *Beyond the Bake Sale* would be of some interest to non-professionals interested in education. However, because of the information it contains about school bureaucracies and educator concerns, the book provides both guidelines for parents and implications for government action and policy changes.

The authors discuss the school system frankly and informatively; frankly, because the book is written for other professionals, and informatively, because the authors, although using an academic format, avoid using an overly professional style. Thus, parents, who occasionally have a limited understanding of the system, can learn how to work more effectively with the system rather than simply wreaking havoc. The book includes sample assessment sheets for schools, which parents can use to learn about concerns other than their own; graphs, so parents can show reluctant administrators the advantages of parental involvement; and many suggestions for both specific situations—having parents press for publicity about lacks in school maintenance—and for more general situations, such as improving communications by inclosing suggestion forms with literature sent to parents.

The authors acknowledge the role the federal government

plays in education, and there is a section in the book devoted to what the government could do. The possibility for state and federal action can be found throughout the book since whenever a program is suggested, there is implied that all levels of government could assist, either financially or by encouraging expanded use of a successful program. However, since this is a how-to book addressed to teachers and administrators, its application to changes in the government's role in education is limited.

The authors' philosophy is clear: The process of educating children should involve a partnership at every level between the community, parents, and educators. Moreover, the responsibility for creating and encouraging this partnership should not fall on the parents alone, but also on those whose job it is to see that children receive the best possible education. That teachers and administrators are involved in a work like this is not only a testimonial to the efforts of parents who have worked for change, but an indication of a trend for better education in this country.

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By the Family—Not Vice Versa
Jack Kemp

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Robert Constable & Herbert J. Walberg

The Reauthorization of the Federal
Child Abuse Act: The Need to Protect
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