HB

44

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

Bill Number: H 44
Abbreviated Title: Domestic Violence

Sponsor: Ulmer Original Received: May 3, 1991
Written Request to Schedule Rcv'd: _____ From: _____
Sponser's Statement Rcv'd: _____ From: _____
Sectional Analysis Rqst'd: _____ From: _____
Sectional Analysis Received: _____
Fiscal Note (Original)
Rqst'd Of: _____ Rcv'd From: Pub Saf O Date: With File
Rqst'd Of: _____ Rcv'd From: PD O Date: With File
Rqst'd Of: _____ Rcv'd From: Admin O Date: With File
Court O
Fiscal Note (C.S.)
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Five Day Notice Given: _____ Notice of Hearings Given: _____
Committees of Referral: First: _____ Second: _____ Third: _____
LAA Contact: _____ To Senate Secretary: _____

COMMITTEE ACTION

DATE:
5-15-91 Moved Sen CS w Ind Rec. all Sen in Favor
5-15-91 Turned in the Sen Sec.

PERSONS TO BE NOTIFIED OF HEARING

1. Sponsor Ulmer
2. Agency
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 44

Revision Date:
Title: An Act relating to domestic violence
Sponsor: Ulmer, Parnell, B. Davis
Requestor: Ulmer

Department Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Division: Alaska Court System
Phone: 264-8228
Date: 02/04/91

Approved by: Arthur H. Snowden, II, Administrative Director Stephanie Cole, for
Agency: Alaska Court System
Date: 02/04/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 44

Revision Date: _____ Department Affected: Department of Administration

Title: "An Act relating to domestic violence." BRU: Public Defender Agency

Component: _____

Sponsor: Rep. Ulmer, Parnell, B.Davis

Requestor: HESS COMPONENT SERIAL NO. 4 2

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Barbara K. Bink for

Prepared By: John Salemi, Public Defender Phone: 279-7541

Division: Public Defender Agency Date: 2/6/91

Approved by Commissioner: Millett Keller

Agency: Department of Administration Date: 2/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 44

Revision Date: _____ Department Affected: Administration

Title: "An Act relating to domestic violence." BRU: Office of Public Advocacy

Component: Office of Public Advocacy

Sponsor: Ulmer, Parnell, B.Davis

Requestor: House Judiciary COMPONENT SERIAL NO. 4 3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) See Attached

Prepared By: Brant McGee, Public Advocate Phone: 274-1684

Division: Office of Public Advocacy Date: 2/5/91

Approved by Commissioner: Millett Keller

Agency: Department of Administration Date: 2/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 44

It is unlikely that the number of new cases generated under the provisions of this bill will have a significant impact on the Office of Public Advocacy civil and criminal caseload.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 44

Revision Date:
Title: An act relating to domestic violence
Sponsor: Rep. Ulmer
Requestor: H. HESS

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO. | | 7 | 9 | 9 |

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gayle A. Horetski
Phone: 465-4322
Division: Commissioner's Office
Date: 2/6/91

Approved by Commissioner: Gayle A. Horetski for Richard L. Burton
Agency: Department of Public Safety
Date: 2/6/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 44

Revision Date: _____ Department Affected: Corrections

Title: "An Act relating to domestic violence." BRU: _____

Component: _____

Sponsor: Rep. Fran Ulmer

Requestor: _____ COMPONENT SERIAL NO. | | | | |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director Phone: 465-3376

Division: Administrative Services Date: 02-05-91

Approved by Commissioner: _____

Agency: Department of Corrections Date: 02-05-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
May 14, 1991

To: Senator Rick Halford, Chair
Senate Judiciary Committee

From: Representative Fran Ulmer

Subject: HB 44

There are several statutes which, depending upon the circumstances, would be applicable if a person supplies false information in petitioning for a domestic violence restraining order. They are:

1. The petition for a domestic violence restraining order is made under oath, which means that a person falsely applying could be charged with perjury for completing the written petition, as well as for presenting the evidence . Perjury is a Class B Felon under 11.56.200.

2. Unsworn Falsification under 11.56.210 is a Class A misdemeanor.

3. Making a False Report to a Peace Officer is 11.56.800.

Thanks for your assistence with HB 44.

Attachment

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

Alaska State Legislature

REPRESENTATIVE FRAN ULMER

MEMORANDUM

MAY 2, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: Senate CS for CS for House Bill No. 44 (State Affairs)

This is to request that you schedule HB 44 for hearing at the earliest possible time. Domestic violence is epidemic nationally. In Alaska, more than 19,000 women are victims of domestic violence annually. HB 44 is an important bill which revises existing laws to improve protection of the victims of domestic violence.

Provisions:

1. Under current law regarding harassment, the crime of harassment is committed if a person, with intent to harass or annoy, violates the conditions of a domestic violence restraining order by communicating with the petitioner. HB 44 moves that provision to a new section, entitled Violating a Domestic Violence Restraining Order, and sets out the circumstances when the crime is committed. It establishes the offense as a Class A misdemeanor. It removes the necessity for a law enforcement officer or prosecutor to prove that one intended to harass another, by stating that the crime is committed if a person knowingly violates a provision of a domestic violence restraining order.

2. Currently, the law provides that a court, in determining the conditions of a domestic violence restraining order, shall consider, among other things, ordering the defendant to participate in personal or family counseling. HB 44 provides that if the court directs personal counseling, the counseling must propose alternatives to aggression if that type of counseling is available. It also provides that a court shall not direct family counseling, unless it makes a finding that the family counseling will not result in further domestic violence. This is an important provision, as it has been reported many times that family counseling sessions are often followed by episodes of violence.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

3. Current law does not include persons involved in a courtship, engagement or dating relationship in the list of parties eligible to obtain domestic violence restraining orders. This leaves some victims, specifically teenagers who still live with their parents, without recourse. HB 44 adds courtship, engagement and dating relationships to the list.

4. HB 44 establishes that a sentencing court may mitigate a presumptive term in assault, attempted assault, homicide or attempted homicide cases when the defendant was acting in response to domestic violence against the defendant.

5. This bill clarifies the circumstances under which the court may issue a domestic violence restraining order which restrains both the petitioner and the respondent from communicating. The court must make a finding of mutual violence or find that there is other good cause based on extraordinary circumstances of the case.

Thank you for prompt scheduling of this bill.

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
April 8, 1991

To: Senator Rick Halford, Chair
Senate Judiciary Committee

From: Representative Fran Ulmer

Subject: Senate CS for CS for House Bill No. 44 (State Affairs) "An Act relating to domestic violence."

HB 44 is pending scheduling for a hearing before the Senate Judiciary Committee. I believe that this bill needs to become law as quickly as possible, as there are growing numbers of victims in need of the protections it provides. There is not much time remaining in the session, and I ask your assistance through immediate scheduling of HB 44 for a hearing.

If I can provide further information or back-up, please let me know. Thank you in advance for your attention to this matter.

Thanks!

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

BILL NO: HB 44

DATE: February 6, 1991

TITLE: An Act relating to domestic violence.

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence
and Sexual Assault

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

The Council on Domestic Violence and Sexual Assault supports HB 44. This legislation contains numerous sections that will promote the protection of victims of domestic violence. As more is learned about the dynamics of domestic violence, it becomes apparent that revisions must be made to existing laws. This legislation addresses many of the changes in legislation the Council has identified as important.

Alaska continues to maintain high rates of domestic violence. According to a study conducted by the University of Alaska, 26% of the women in Alaska have been victims of domestic violence in their lives. Recently in Anchorage, an apparent domestic violence murder-suicide was committed. Tragedies such as this point out how important it is that changes in legislation to further protect victims are identified and made.

Andy Klamser

Andy Klamser, Chair
Council on Domestic Violence
and Sexual Assault

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA
99901

Chambers of
THOMAS E. SCHULZ, Presiding Judge

April 25, 1991

Senator Rick Halford
Room 103, Capitol
P.O. Box V
Juneau, Alaska 99811

Re: House Bill No. 44

Dear Senator Halford:

A copy of House Bill No. 44 was given to me by Gigi Pilcher of the WISH organization here in Ketchikan. When I initially reviewed the Bill I did not have anything in the way of comments for Gigi, but I have reviewed the Bill further, and I do have a couple of comments that I wanted to pass on to you. My first comment relates to Section 4 which provides for a minimum term of imprisonment of 20 days, and then goes on to provide that the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours. That is contradictory language, and gives judges a lot of trouble. I am generally opposed to mandatory minimum sentences in misdemeanor cases because our limited jail capacity is already taxed to the maximum. However, I think we should be able to expect mandatory minimum sentences that are consistent if we're going to have them at all. I do not wish to express any opinion as to whether 72 consecutive hours is an appropriate minimum sentence as opposed to a minimum of 20 days, but I would respectfully ask that the legislature pick one or the other.

At a First District Magistrates Training Conference in Sitka I was told that this Bill had been amended to include provisions prohibiting reciprocal restraining orders in Domestic Violence cases. One of the justifications for that position was that the National Council of Juvenile and Family Court Judges supports it. The other justification that I was

given for it was that a number of crisis intervention centers in the State of Alaska and women's groups supported that position. Well, I cannot speak for the women's groups and crisis centers such as WISH in Ketchikan, I can say that I have been a member of the National Council of Juvenile and Family Court Judges for over 20 years, and that is not the first mistake that that organization has made. The function of a Domestic Violence hearing is not to assess fault; the function of the hearing is the get the violence to stop. One of the quickest ways to do that, and one of the most effective ways to do that is to prohibit both parties from contacting the other at least until that ten day hearing. I would like to emphasize that judicial time, police officer time and counselor time in places like WISH is not unlimited, and while I think it is entirely appropriate for the State to intervene in these situations and get the violence stopped, I do not feel it is appropriate at all to take away a very effective tool, particularly when the only complaint about the use of that tool is the depravation of someone's rights for a relatively limited period of time.

I have been using reciprocal no contact orders almost from the time the Domestic Violence Act was first enacted. It became apparent very early one that one of the primary causes of hearings in that first ten days was that the "victim" contacted the respondent and did not like what he or she heard and filed a violation with the court. That ten day period between the petition and the initial hearing is an excellent cooling off period, and we loose a substantial advantage if this Bill is enacted to take that away from us. Finally, I have never had a complaint about the use of the reciprocal no contact provisions. All most all of the people who have applied for these orders at the Ketchikan Trial Courts, with whom I have dealt, have expressed satisfaction with the reciprocal no contact order, and no one has disagreed with it.

Thank you very much for considering these remarks.

Very Truly Yours,

Thomas E. Schulz
Superior Court Judge

TES/dhr

cc: Representative Fran Ulmer
Gigi Pilcher

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA
99901

Chambers of
THOMAS E. SCHULZ, Presiding Judge

May 3, 1991

Ms. Gigi Piltcher
Women In Safe Homes
P.O. Box 6552
Ketchikan, Alaska 99901

Re: CS For House Bill 44 (Judiciary)

Dear Ms. Piltcher:

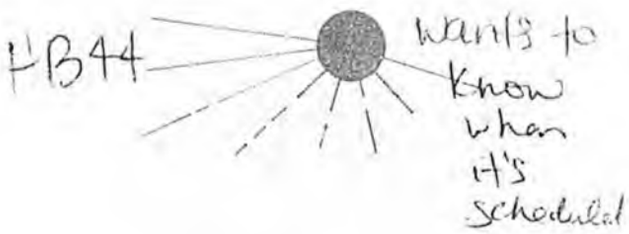
Thank you very much for your note of May 2nd. I will get to the articles you enclosed as soon as I can. Regarding House Bill No. 44, I had the unfortunate experience of meeting a couple of the citizens who are pushing this Bill in Sitka. I say unfortunate, because they were totally unwilling to discuss the provision regarding no contact orders on petitioners in domestic violence cases. I have been told by Mr. Snowden that the amendments done in the Senate are about as far as we will be able to go, but I am convinced that the legislation is a piece of dumb legislation particularly regarding sections 10 and 11. One of the quickest ways to restore peace in these domestic violence situations is to restrain both parties from contacting the other, at least until the initial hearing when both are present. I remain totally mystified as to why the legislature is so committed to taking this valuable tool away from us, but apparently that is what's going to happen. I frankly get a little tired from time to time of trying to preserve everybody's rights and counting black eyes all at the same time.

Very Truly Yours,

Thomas E. Schulz

Thomas E. Schulz
Superior Court Judge

TES/dhr
cc: Arthur H. Snowden, II
Representative Fran Ulmer
Senator Rick Halford


HB44
wants to
know
when
it's
scheduled

ALASKA FAMILY
SUPPORT GROUP

4-29-91

SENATOR RICK HALFORD
PRES., JUDICIARY COMMITTEE
PO BOX V
JUNEAU, AK 99811

RE: HB 44

DEAR RICK,
AS YOU CAN SEE IN THESE ATTACHMENTS, TEXAS AND NEW YORK ARE DEALING W/ FALSE DOMESTIC VIOLENCE/CHILD ABUSE CHARGES.
IT'S TIME THE ALASKA LEGISLATURE DEALT WITH THE ISSUE ALSO.
PLEASE AMEND HOUSE BILL 44 TO INCLUDE PENALTIES FOR MAKING FALSE ALLEGATIONS. REP. ULMER INCLUDED CHILDREN IN HOUSE BILL 44.

FATHERS (AND MOTHERS) ARE BEING RIPPED AWAY FROM THEIR HOMES AND THEIR CHILDREN BY FALSE ALLEGATIONS DURING DIVORCE PROCEEDINGS, THIS IS A NATIONAL DISGRACE.

SINCERELY,
Steven P. Stumbo

PLEASE DISTRIBUTE TO THE COMMITTEE MEMBERS.

P.O. Box 521155 Big Lake, Alaska 99652 Phone/Fax (907) 892-7760

CHILD ABUSE ALLEGATIONS ARISING IN THE CONTEXT OF ADVERSARIAL DIVORCE

M. Guyer, Ph.D., J.D., P. Ash, M.D., Child and Adolescent Psychiatry, University of Michigan Medical Center, Ann Arbor, Michigan 48109-0706

SUMMARY:

A considerable body of literature addresses the psychological effects of divorce upon children. Some studies indicate that highly adversarial divorces, with prolonged custody disputes are especially harmful to children. Our own experience and research in conducting court ordered custody evaluations over the last five years (n =400) indicates a relatively new phenomenon in such cases which heightens the risk to children and makes the custody evaluation process considerably more difficult - this phenomenon is the allegation of sexual abuse or misconduct made by one parent against the other. During the last year, the frequency of allegations of sexual abuse in custody/visitation cases referred to our Program has risen to approximately 33%. This is in contrast to much lower frequencies in our previous years' referrals. Our research on cases involving such allegations draws attention to the problems of distinguishing true from false allegations in contested custody cases. Because such allegations often trigger the involvement of child protection and law enforcement agencies the custody evaluation becomes quite complex, with difficult "evidentiary" concerns as well as clinical problems in making accurate assessments due to the multiple agency/multiple assessment of the child(ren) in these cases. Our paper will discuss the legal and clinical problems created by these new "allegation" cases including the unique stresses which they create for children and parents. We will also present our paradigm for managing such evaluations in a way which minimizes risk to the child and reduces the need for multiple evaluations of the child by various child protections agencies. Our paradigm is based upon our clinical/forensic experience in conducting such court-ordered evaluations over the course of six years.

CHILD ABUSE AND NEGLECT DEFINED FOR THE FIRST TIME EVER IN TEXAS LAW

§ 34.012. Definitions.

In this chapter:

(1) "Abuse" includes the following acts or omissions by a person responsible for a child's care, custody, or welfare:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by Section 43.01, Penal Code, sexual penetration with a foreign object, incest, sexual assault, or sodomy inflicted on, shown to, or intentionally practiced in the presence of a child if the child is present only to arouse or gratify the sexual desires of any person;

(F) failure to make a reasonable effort to prevent sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by Section 43.01, Penal Code, sexual penetration with a foreign object, incest, sexual assault, or sodomy being inflicted on or shown to a child by another person, or intentionally practiced in the presence of a child by another person if the child is present only to arouse or gratify the sexual desires of any person;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code; or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Penal Code) or pornographic.

(2) "Neglect" includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child; or

(B) the following acts or omissions by a person responsible for a child's care, custody, or welfare:

(i) placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child; or

(iii) the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused.

(3) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by Section 71.01 of this code;

(C) a person with whom the child's parent cohabits;

(D) school personnel or volunteers at the child's school; or

(E) personnel or volunteers at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.

FALSE REPORT OF CHILD ABUSE MADE A CRIMINAL OFFENSE

§ 34.031. False Report.

(a) A person commits an offense if the person knowingly or intentionally makes a report under this chapter that the person knows lacks factual foundation. An offense under this subsection is a Class B misdemeanor.

(b) If, in connection with a pending suit affecting the parent-child relationship, one parent of a child makes a report alleging child abuse by the other parent that the parent making the report knows lacks factual foundation, the report shall be deemed a knowingly false report. Evidence of a false report shall be admissible in any suit between the parents involving terms of conservatorship.

STATE OF NEW YORK

2050--A

1989-1990 Regular Sessions

IN ASSEMBLY

January 25, 1989

Introduced by M. of A. HOYT, VANN, HARENBERG -- Multi-Sponsored by -- M. of A. DIAZ, HINCHEY, LOPEZ, MARSHALL, McPHILLIPS -- read once and referred to the Committee on Children and Families -- reference changed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law and the penal law, in relation to false reporting of child abuse or maltreatment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 8 through 12 of section 424 of the social services law are renumbered subdivisions 9 through 13 and a new subdivision 8 is added to read as follows:

8. refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision three of section 240.55 of the penal law to the appropriate law enforcement agency or district attorney;

§ 2. Section 240.55 of the penal law, as added by chapter 276 of the laws of 1973, subdivisions 1 and 2 as amended by chapter 146 of the laws of 1979, is amended to read as follows:

§ 240.55 Falsely reporting an incident in the second degree.

A person is guilty of falsely reporting an incident in the second degree when, knowing the information reported, conveyed or circulated to be false or baseless, he or she:

1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire or an explosion under circumstances in which it is not unlikely that public alarm or inconvenience will result; [or]

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD05918-04-9

2. Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire or an explosion which did not in fact occur or does not in fact exist; or

3. Reports, by word or action, to the statewide central register of child abuse and maltreatment, as defined in title six of article six of the social services law, an alleged occurrence or condition of child abuse or maltreatment which did not in fact occur or exist.

Falsely reporting an incident in the second degree is a class A misdemeanor.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law, provided however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of the foregoing sections of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

SUNDAY
TIMES UNION
October 14, 1990

Abusing the system is child abuse, too

By Richard Wexler

The tragic death of 3½-month-old Michael Lewellen in Schenectady, allegedly at the hands of his mother, will set in motion events that are entirely predictable, and almost certain to result in more such tragedies in the future.

Here's what's likely to happen:

(1.) Politicians will swoop down on this case like vultures. They will seek out scapegoats. They will pledge to "crack down on child abuse" by urging more people to report the slightest suspicion of maltreatment to authorities. They will suggest legislation to make it even easier than it already is to remove children from their parents.

This is sure to make everything worse. Though there are more than two million "reports" alleging maltreatment of children every year, the kind of severe beatings that come to mind when we think of "child abuse" represent at most 3 percent of those reports, and sexual abuse represents another 6 percent.

In contrast, nationwide, at least 60 percent of all "reports" turn out to be false. In New York the percentage is even higher. Defenders of the status quo will tell you that in some cases labeled "unfounded" there really was abuse. But, a federal study found that for every such case there are at least two cases in which parents are wrongly labeled abusive by child protective workers.

Richard Wexler is a Times Union staff writer. His book, "Wounded Innocents: The Real Victims of the War Against Child Abuse," was published this month by Prometheus Books.

So, the 60 percent figure actually underestimates the problem of false reports. Of the remaining reports, more than half are cases of "deprivation of necessities." Often that means sweeping laws allowed a child protective worker to confuse "neglect" with poverty and remove children from their parents because of poor housing conditions, for example.

The deluge of false reports leaves child protective workers with insufficient time to deal with cases in which children truly are endangered. In New York City, for example, allegations of abuse sometimes have piled up in boxes because no one had time to investigate them.

Overwhelming caseloads are given to workers with minimal qualifications — In New York, a bachelor's degree in anything — and little training — is enough. That's why the system errs in both directions. Children who should be left at home are taken from their parents, and children who should be taken from their parents are left at home. Encouraging more reporting and broader laws will only make that worse.

(2.) There will be a foster care panic. Protective workers in Schenectady will be running scared. Every time they go out on a case, they will wonder if it might turn out to be the next Michael Lewellen — and if they will be blamed. So, workers will be much more likely to remove children from their homes for little or no reason. Some will convince themselves that's good because it supposedly keeps more children safe. But, what could be more traumatic to a small child who has suffered no harm from

See **ABUSE** / B-8

THE TIMES UNION
Tuesday
October 23, 199(

Group offers support

To the Editor:

Congratulations to staff writer Richard Wexler on his Oct. 14 article on "Abusing the system is child abuse, too" and his recently published book on "Wounded Innocents: The Real Victims of the War Against Child Abuse."

The formation of VOCAL NEW YORK and the rapid growth of Victims of Child Abuse Laws in the Capital District and throughout the state of New York bears testimony to the epidemic and widespread abuse of our legal system through false reports of child abuse which have victimized (1) non-abused children subjected to repeated interrogation and instructional messages, (2) innocent parents wrongfully deprived of access to their children as the result of false reports of child abuse, (3) innocent teachers, day-care workers, and clergymen who have been falsely accused, (4) under-educated over-worked child protective service workers who are incapable of distinguishing true allegations from false allegations and who systematically abuse our children in the name of protecting them, (5) gullible family court judges who routinely presume innocent adults to be guilty until proven innocent, and (6) the legal system itself when used intentionally and maliciously to falsely accuse innocent adults of child abuse.

The purpose of VOCAL NEW YORK is to provide emotional support and education to children, innocent adults, and families that have been victimized by false reports of child abuse; to promote and support just and reasonable child abuse laws; to protect children and innocent adults from false reports of child abuse; and to work toward changes in the legal system so that innocent adults shall be presumed innocent until proven guilty.

In short, our goal is to protect our children and their families from all forms of abuse. Our member's kit containing much needed valuable and practical information can be obtained by calling us at 371-7239. Our national hotline number is 1-800-848-6225.

PETER G. SOKARIS
Albany

THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL

ABUSE

Continued from B-1

his parents from whom he was taken from them and suddenly dropped into the laps of strangers — with no idea if he ever will see his parents again.

That's about the least amount of harm foster care can do. Often, children are bounced from home to home, emerging unable to love or trust anyone again. And foster care is no guarantee of safety.

Corey Greer of Treasure Island, Fla., was about the same age as Michael Lewellen when he died in his crib of dehydration in a filthy, overcrowded foster home. A witness at the foster mother's trial said the white foster mother had to teach black children and described Corey as a big baby.

A study of case records in Baltimore found there was abuse in one of every four foster homes studied, and in Maryland, 35 percent of foster children are placed in four or more homes. Abuse in foster homes is so rampant in Los Angeles County that the state of California is considering taking over operation of the county's child welfare agency.

(3.) Bureaucrats ducking for cover will find some way to blame Michael's death on efforts to keep families together. They will say "the law" requires them to keep children in, or return them to, dangerous situations.

There is no such law. There is a federal law requiring "reasonable efforts" be made to keep families together — reasonable, not ridiculous, efforts — and that law is regularly ignored with impunity anyway. Nor is there a conflict between child protection and family preservation. Programs all over the country are keeping children at home with a record of safety far better than the foster care system can claim — and at lower cost.

Such successes get little attention because, like a plane that doesn't crash, a child kept safely at home is not news. But, experts estimate at least half the children now in foster care could safely be home if adequate services were provided.

If the system is ever to do better, family preservation must become its centerpiece. In addition, definitions of neglect — that often are confused with poverty — must be narrowed, and a screening mechanism must be put in place to reduce the number of false and trivial reports investigated.

Yes, such screening would mean some maltreatment will be missed, but we miss more such cases now by overwhelming the system. Letting reports pile up in boxes is screening, too.

1-21-91

ALASKA FAMILY
SUPPORT GROUP

SENATOR RICK HALFORD, CHAIR
SENATE JUDICIARY COMMITTEE
P.O. BOX V
JUNEAU, AK 99811
RE: HB 44
DEAR RICK,

THE PURPOSE OF THIS LETTER IS TO ASK YOU TO HOLD HB 44 IN COMMITTEE FOR TWO WEEKS TO GIVE US A CHANCE TO PREPARE AN AMENDMENT TO THE BILL THAT WOULD RE-INSTATE THE PERJURY SANCTION ON ALL COMPLAINT FORMS, AND TO PROVIDE PENALTIES FOR FILING FALSE DOMESTIC VIOLENCE/CHILD ABUSE CHARGES.

WE REQUEST THIS TIME PERIOD TO COLLECT DATA FROM OTHER STATES WHERE DOMESTIC VIOLENCE LAWS ARE ALSO TERRIBLY ABUSED.

DOMESTIC VIOLENCE IS A FAMILY ISSUE. THIS BILL WOULD MAKE IT AN ISSUE TO BE DEALT WITH BY COUNCELING MALES ONLY. THIS BILL PUTS CHILD ABUSE INTO THE SAME REALM AS DOMESTIC VIOLENCE. PLEASE NOTE ATTACHED DOCUMENTS THAT SHOW BOTH ALASKA AND TEXAS ARE EXPERIENCING MORE DOMESTIC VIOLENCE/CHILD ABUSE BY WOMEN THAN MEN.

WE BELIEVE THIS BILL IS THE VEHICLE TO USE TO SEND THE MESSAGE TO THE PUBLIC AND THE COURTS THAT FALSE DOMESTIC VIOLENCE/CHILD ABUSE CHARGES ARE NOT TO BE USED TO REMOVE A SPOUSE (MOM OR DAD) FROM THE MARITAL RESIDENCE, DEPRIVE HIM OR HER OF PROPERTY AND CHILDREN IN A PENDING DIVORCE ACTION.

DOMESTIC VIOLENCE IS DEPLORABLE, AND IS A NATIONAL DISGRACE, BUT HB 44 IS NOT THE WAY, AS WRITEN, TO DEAL WITH THE PROBLEM.

SINCERELY,
STEVE STRUBE

C.C.: SENATORS RODEY, ADAMS, COLLINS, FRANK, FISCHER

P.O. Box 521155 Big Lake, Alaska 99652 Phone/Fax (907) 892-7760

Texas Dept. Human Resources

Characteristics of Alleged Perpetrators in Confirmed Reports of Abuse/Neglect

	Total Number of Cases			Percentage of Total			Average For Three Year Period
	Year			Year			
	1987	1988	1989	1987	1988	1989	
Age Group							
Under 19	1,687	1,303	1,640	3.7	3.7	4.2	3.9
18-25	10,505	8,387	8,729	23.3	23.7	22.4	23.1
26-35	19,604	15,500	17,101	43.4	43.9	43.9	43.7
36-45	9,456	7,146	8,057	20.9	20.2	20.7	20.6
Over 45	3,924	3,009	3,427	8.7	8.5	8.8	8.7
Sex							
Male	21,004	16,402	18,200	46.5	46.4	46.7	46.5
Female	24,172	18,943	20,754	53.5	53.6	53.3	53.5
Ethnic Group							
Anglo	24,036	17,539	18,971	53.2	49.6	48.7	50.5
Black	8,441	7,544	8,585	18.7	21.3	22.0	20.7
Hispanic	12,095	946	10,897	26.8	2.7	28.0	19.1
Other	604	516	501	1.3	1.5	1.3	1.4
Marital Status							
Married	23,598	17,882	18,879	52.2	50.6	48.5	50.4
Widowed	779	599	574	1.7	1.7	1.5	1.6
Seperated	3,717	2,874	3,227	8.2	8.1	8.3	8.2
Divorced	6,292	4,728	5,120	13.9	13.4	13.1	13.5
Single	6,617	5,600	6,473	14.6	15.8	16.6	15.7
Unknown	3,084	2,767	3,471	6.8	7.8	8.9	7.9
Under 18	1,089	895	1,111	2.4	2.5	2.9	2.6
Not Applicable							
Relationship to Oldest Victim							
Mother	20,977	16,532	18,400	46.4	47.1	47.2	46.9
Father	11,137	8,820	9,447	24.7	25.0	24.3	24.6
Stepparent	4,244	3,209	3,510	9.4	9.1	9.0	9.2
Parent's Paramour	2,199	1,995	2,231	4.9	5.6	5.7	5.4
Grandparent	1,476	1,136	1,315	3.3	3.2	3.4	3.3
Aunt/Uncle	1,535	1,144	1,393	3.4	3.2	3.6	3.4
Sibling/Other Relative	1,746	1,269	1,629	3.9	3.6	4.2	3.9
Other Caregiver*	1,862	1,140	1,038	4.1	3.2	2.7	3.3
Total Alleged Perpetrators	45,176	35,345	38,954				

* Includes Daycare, School and Institutional Personnel, Pre-consummated Adopted

Alaska Dept. Health & Social Services

CHARACTERISTICS OF ALLEGED PERPETRATORS OF CHILD ABUSE/NEGLECT

	Total Number of Perpetrators Year						Percentage of Total Year					
	1985	1986	1987	1988	1989	1990	1985	1986	1987	1988	1989	1990
Age Group												
00--17	67	94	94	60	75	64	2%	3%	2%	2%	2%	2%
18-25	490	365	429	409	407	398	17%	10%	10%	11%	12%	13%
26-35	1417	1206	1255	1068	901	904	51%	34%	31%	28%	27%	29%
36-45	544	1585	2011	2105	1831	1626	19%	44%	49%	54%	54%	52%
Over 45	286	321	309	230	186	161	10%	9%	8%	6%	5%	5%
TOTAL	2804	3571	4098	3872	3400	3153						
Gender												
Male	1242	1569	1728	1623	1442	1339	44%	44%	42%	42%	42%	42%
Female	1565	1999	2374	2252	1961	1821	56%	56%	58%	58%	58%	58%
TOTAL	2807	3568	4102	3875	3403	3160						
Ethnic Group												
Ak. Native	797	904	939	857	751	602	28%	25%	23%	22%	22%	19%
Non-Ak. Native	12	8	11	16	15	18	0%	0%	0%	0%	0%	1%
Black	150	153	137	155	224	234	5%	4%	3%	4%	7%	7%
Asian	16	27	29	31	39	38	1%	1%	1%	1%	1%	1%
Mexican	23	22	11	33	33	39	1%	1%	0%	1%	1%	1%
Caucasian	1727	1717	1515	1469	1304	1393	62%	48%	37%	38%	38%	44%
Other	55	67	43	26	43	27	2%	2%	1%	1%	1%	1%
Unknown	20	665	1405	1271	987	803	1%	19%	34%	33%	29%	25%
TOTAL	2800	3563	4090	3858	3396	3154						

The Truth About Domestic Violence: A Falsely Framed Issue

R. L. McNeely
Gloria Robinson-Simpson

Domestic violence has received increasing attention during the past decade; attention that has framed the violence as essentially a masculine form of assaultive behavior. This article presents the results of empirical studies that contradict the popular conception. The authors suggest that the popular view has contributed to men's increasing legal and social defenselessness. The appropriateness of psychotherapeutic approaches to the problem is discussed briefly.

AS McNEELY AND JONES noted in 1974, the prevalence of physical abuse of women by their male intimates has resulted in the classification of woman-battering as a severe social problem. Feminists have made efforts to heighten public awareness of violence against women and have successfully escalated media coverage of the subject and introduced numerous federal and state bills to provide women with increased legal protection from abusive men. Pizzey's seminal book raised urgent questions, such as "Who are these men?" and "Why do these men do it?"[1]

Asking these questions frames an important social problem in a context that may inaccurately depict the phenomenon. The questions are based on the assumption that men, exclusively or nearly exclusively, perpetrate domestic assaults. Thus, the public, legislators, change agents, and other activists are acting on underlying assumptions that may be false or, at best, not fully reflective of domestic violence. Policies, then, are being built on an erroneous vision of physical abuse. Accounts of domestic violence reinforce the dominant view by excluding virtually any reference to the pervasiveness of violence in American families and, almost invariably, by ignoring male victimization. Steinmetz notes that "Husband abuse is not uncommon, although many tend to ignore it, dismiss it or treat it with 'selective inattention.' "[2]

This article surveys domestic violence investigations, compares those revealing high abuse for both sexes with contradicting investigations that yield findings more consistent with the popular view of domestic violence, and considers briefly some of the implications of the inaccurate view of the problem. The authors examine whether psychotherapeutic treatment of male assailants is a sound response to the social problem of domestic violence and whether recent legal actions designed to protect the rights of women contribute to men's social and legal defenselessness.

INVESTIGATIONS OF SPOUSE ABUSE

In 1977, Steinmetz studied conflict tactics used in 57 families selected by a public opinion polling firm. The study group included families from a broad range of socioeconomic status categories and age groups. She found that 93 percent of the families used verbal aggression, and 60 percent had used physical aggression at least once to resolve marital conflicts. Thirty-nine percent of husbands and 37 percent of wives had thrown things, 20 percent of both husbands and wives had struck their spouses with their hands, and 10 percent of both husbands and wives had hit their spouses with a hard object. Steinmetz observed that there were few differences between husbands and wives in the type and frequency of physical aggression and that many families experienced reciprocal aggression. Steinmetz also noted that women were as likely as men to select and initiate physical violence to resolve marital conflicts and that men and women had similar intentions when using physical violence, although men were somewhat more likely to cause greater injury, perhaps because of their superior physical strength. Pointing out that an equal number of wives and husbands kill their spouses—a pattern that has been stable over time—Steinmetz observed that when weapons neutralize differences in physical strength, about as many men as women are victims of homicide. In supporting her assertion that women are equally likely to engage in violence, Steinmetz noted that women are more likely than men to physically abuse children, and that throughout history women have been the primary perpetrators of infanticide.[3] In fact, Steinmetz found that mothers abused children 62 percent more often than fathers, and that male children were more than twice as likely to suffer physical injury.[4] Men were underrepresented in the Steinmetz study because a greater percentage of husbands than wives chose not to participate in the oral interview (as opposed to the structured questionnaire) portion of the study. Apparently, men were less likely to discuss their victimization if required to do so in face-to-face interaction.

Nisonoff and Bitman conducted a telephone survey in which subjects were asked to report on incidents of violence with current and former spouses and former intimates.[5] Because divorced and separated individuals would be surveyed, the researchers presumed that the investigation would reveal high marital violence rates.

Whereas 15.5 percent of the men and 11.3 percent of the women reported having hit a spouse, 18.6 percent of the men and only 12.7 percent of the women reported having been struck by a spouse. Thus, although a higher percentage of men than women

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ported having hit a spouse, a higher percentage of men reported having been hit by a spouse. The investigators found no differences between the sexes in the frequency or severity of spousal violence. The investigators concluded that "As predicted, wives reported hitting their husbands almost as frequently as husbands reported hitting wives, and a higher proportion of men reported having been hit by their wives than vice versa...men often are the victims of spousal violence."[6]

Time Periods Compared

Gelles's 1974 study was the first to examine a group of families who had no known history of abuse, and thus it provided some data on the incidence of family violence in the general population.[7] He found that 2.5 percent of the wives had been victimized between two and five times during the course of marriage, and 12.5 percent of the husbands had been so victimized. Five percent of both husbands and wives had been victimized as often as once every two months, and 7.5 percent of the wives and 2.5 percent of the husbands were victimized at least once per month; some were assaulted daily. Gelles concluded that "Although the wives were less violent than their husbands, they were far from passive."[8]

In 1986 Straus and Gelles published the findings of a nationally representative survey that replicated Straus's earlier study. A primary research objective was to compare domestic violence rates for two time periods.[9] The study revealed that the incidence of violence against females decreased between 1975 and 1985. About 12.1 percent of all women reported at least one violent incident in 1975, whereas 11.3 percent reported being victimized in 1985. Reports of severe violence dropped from 3.8 percent in 1975 to 3.0 percent in 1985. The investigators note that this represents a 26.6-percent decrease in the rate of severe violence men committed against women.[10] Violence against men, however, increased: 11.6 percent reported victimizations in 1975, compared with 12.1 percent in 1985. The rate of severely violent incidents men reported dropped slightly from 4.6 percent to 4.4 percent.

Straus and Gelles's data demonstrate that women are as violent, if not more violent than men.[11] Women also appear to use weapons far more often than men, which the authors suggest is explained by the greater average size and strength of men. In 1975, 2.2 percent of the respondents reported men using objects to strike women, and 1.7 percent reported it in 1985. No change was reported for women: 3.0 percent used objects in both 1975 and 1985. Also, unlike 1975 when males were more likely actually to use a gun or a knife, no differences were observed in 1985, when 2.0 percent of both men and women used at least one of these weapons against their intimates. No changes were observed in the percentage of those threatening to use a gun or a knife: 4.0 percent of men made these threats in 1975 and 1985 and 6.0 percent of women threatened use of a gun or knife in 1975 and 1985.

Discussing the decrease in violence against women and the increase in violence against men, Straus and Gelles commented:

> Violence by wives has not been an object of public concern. There has been no publicity, and no funds have been invested in ameliorating this problem because it has not been defined as a problem. In fact, our 1975 study was criticized for presenting statistics on violence by wives. Our 1985 finding of little change in the rate of assaults by women on their male partners is consistent with the absence of ameliorative programs.[12]

Degrees of Violence

Straus conducted the first study of domestic violence using a demographically representative national sample.[13] Noting that "wife beating" is a political rather than a scientific term, Straus developed an ascending continuum (the Conflict Tactics Scale) of violent acts that included (1) throwing things at spouse; (2) pushing, shoving, or grabbing; (3) slapping; (4) kicking, biting, or hitting with the fist; (5) hitting or trying to hit with something; (6) beating up; (7) threatening with a knife or gun; and (8) using a knife or a gun. Items 1 through 8 were termed a "Violence Index," and items 4 through 8 constituted a "Severe Violence Index." Data were obtained to reflect the yearly incidence of violence perpetrated by men and women.

Findings indicated that in a given year men perpetrated a median of 2.5 assaults (items 1–8) a year and women perpetrated a median of 3.0 assaults (items 1–8) a year. Using means rather than medians to assess central tendencies reveals that men engaged in an average of 8.8 assaults a year and women engaged in 10.1 assaults a year. Because means are more sensitive than medians to extreme scores (scores of those who engaged in many violent acts per year), the latter figures reflect more accurately the total amount of violence occurring, and the medians reflect more accurately the normative rates of violence.

Women also engaged more often than men in severe violence as measured by items 4–8. Men perpetrated a median of 2.4 acts of severe violence per year, whereas women committed a median of 3.0 acts of severe violence against male intimates. The mean severe violence rate for men was 8.0 acts per year; however, women committed 8.9 acts of severe violence. Men and women also engaged in different types of severe violence: women more frequently kicked, bit, or hit male intimates with their fists, they more often hit or tried to hit men with objects, and more women than men threatened to use knives or guns. However, men were slightly more likely actually to use a gun or a knife, and men beat up women more often than women beat up men. Men were found to beat up women an average (median) of 1.7 times a year, whereas women beat up men an average (median) of 1.4 times a year. When all severely violent acts were examined, the data indicated that women as a group were more violent to their male partners, and more men than women were victimized. Applying the results of the study to the total U.S. population, Straus posits that about 1.8 million females are victims of severe violence each year and about 2.1 million males are victimized. Although the data do not indicate what proportion of the violent acts by women were in response to violent acts by men, the fact that women had higher mean and median rates for severe violence suggests that female aggression is not merely a response to male aggression.

In fact, the study probably underestimates the true extent of domestic violence because divorced and separated couples, who are likely to have experienced violence, were not represented. Straus noted that women are no more likely than men to reject physical force on moral grounds and stated that "The old cartoons of the wife chasing the husband with a rolling pin or throwing pots and pans are closer to reality than most—and especially those with feminist sympathies—realize."[14]

National Crime Survey

The National Crime Survey (NCS)[15] defines spouse abuse as "Assault without theft in which the offender was the victim's spouse or ex-spouse."[16] Consequently, cohabiting couples and incidents involving theft are excluded. NCS does not focus specifically on domestic violence, and no interviewing techniques sensitive to the difficulties of obtaining domestic violence data are used. In fact, spouses of victims may be present when NCS interviews are conducted. The result is estimates of domestic violence that are significantly lower than those found in other studies, and the

Bureau of Census notes that assaults by relatives are the most underreported of all types of victimization NCS investigates.[17]

According to NCS data, annualized for the years 1973, 1974, and 1975, Gaquin reports that fewer than 1 percent of both women (3.9 per 1,000 persons) and men (0.3 per 1,000 persons) are victimized by spouses or ex-spouses.

McLeod examined 6,200 cases of domestic assault that were reported to law enforcement authorities or to NCS interviewers to determine whether or not females sustained greater injuries than males when victimized.[18] Men comprised 6 percent of all self-reported spousal assault victims in her study, a figure that is considerably higher than that reported by Gaquin, who also used NCS data in her analysis of domestic violence.[19] McLeod's survey, unlike those of Steinmetz, Straus, and Nisonoff and Bitman, disproportionately sampled black people, who, when aggregated, were decidedly below the national average for income. Seventy-seven percent of all male victims in McLeod's study were black men, which introduces further questions about the extent to which her findings can be applied to the general population.[20]

Whereas a weapon was used in about 25 percent of all cases in which women were victims, 82 percent of all victimizations of men involved weapons. McLeod suggests that the data underrepresent weaponless assaults, because victims are less likely to report these incidents to the police. Although 25 percent of all offenses against women were classified as aggravated assaults, about 80 percent of all offenses against men were classified as aggravated assaults, and the vast majority of the latter cases involved the use of weapons. In fact, none of the men reported a serious victimization in which no weapon was present.[21] In noting that 73 percent of male victims known to the police and 77 percent of those reported to the NCS sustained injuries, McLeod estimates that corresponding figures for female victims are between 52 percent and 57 percent.[22]

McLeod concluded that

> Clearly, violence against men is much more destructive than violence against women....Male victims are injured more often and more seriously than are female victims....The data do provide rather strong support for the view that violence against men and violence against women are independent events. Overall differences in weapon use, weapon choice, offense severity, and injury are evident.[23]

RESEARCH FLAWS AND COMMON MISCONCEPTIONS

Data from the studies reviewed here present a view of domestic violence at odds with common assumptions about the nature of the problem. Surveys that show higher rates of men as aggressors invariably are based on NCS data or official law enforcement records, but the researchers point out that these studies are flawed methodologically because the samples are not representative and because men are less likely to lodge official victimization reports. Nonetheless, two of the three studies reviewed that used data from NCS and other official sources found that victimized men are abused more often, are more severely injured, or both.

Another problem with much of the domestic violence literature is that it is based on clinical populations, specifically battered women receiving shelter services or therapy.[24] Data collected and conclusions drawn from those who seek shelter or therapy cannot be generalized to the broader population. Victims who seek services may differ significantly from the broader population, so the value of these studies lies primarily in spawning clinical prescriptions for treatment, not in describing or explaining domestic violence in general.

An unquestioned belief about human behavior is that men are more aggressive than women. Yet when Frodi, Ropert-Thome, and Macauley surveyed the empirical literature on aggression, they found that 61 percent of all studies reviewed did not show men to be more aggressive than women, and that "...women [did not show] consistently lower tendencies than men to be physically aggressive."[25] In fact, Frodi and her colleagues reviewed studies examining nondomestic aggression, a sphere in which women are assumed commonly to be even more timid than in family, cohabitation, or dating relationships.

There are other common misconceptions. Most people accept the assumption that wives, particularly low-income wives, cannot escape abusive relationships because of financial dependence. Their entrapment is used to explain the desperation of those who resort to spouse killings. However, examinations of female spouse abuse victims reveal that low-income women are more likely than affluent women to leave domestic arrangements involving spouse abuse.[26] Also, Steinmetz's study of battered males showed that men stay in violent homes for some of the same reasons women remain in abusive situations. In particular, men often become the targets of abuse when they step in to protect children being abused, and because women usually become the custodial parent upon divorce, many men are afraid to leave for fear of further violence directed at their children. Steinmetz adds:

> It is always assumed that the husband's greater economic resources could allow him to more easily leave a disruptive marital situation. Not only do men tend to have jobs which provide them with an adequate income, but they have greater access to credit and are not tied to the home because of children. This perspective rests on erroneous sexist assumptions. Although males, as a group, have considerably more economic security, if the husband leaves the family, he is still responsible for a certain amount of economic support of the family in addition to the cost of a separate residence for himself. Thus, the loss in standard of living is certainly a consideration for any husband who is contemplating a separation.... Interviews with abused men suggest that leaving the family home means leaving....the comfortable and familiar, that which is not likely to be reconstructed in a small apartment.[27]

Another common misconception is that black men treat women more violently than do white men. Even Straus, Gelles, and Steinmetz, whose survey is the most comprehensive and methodologically sound of all domestic violence investigations, contributed to this misconception. Reporting in 1980 that wife abuse was 400 percent greater among black couples than white couples, they failed, as have the investigators of nearly every other domestic violence survey, to take into account that social class differences between the races, rather than race itself, may explain discrepant rates.[28] However, in the one study published thus far that was designed specifically to examine the convergence of race and class in explaining domestic violence rates, Lockhart found virtually no difference between the races.[29] Although a higher percentage of black women reported at least one victimization event, the median rate of violent episodes experienced by middle-class white women was somewhat higher than that experienced by middle-class black women.

CONSEQUENCES OF MISCONCEPTIONS

The danger of these misconceptions is that social policy, legislation, and the attitudes of officials and the public are being shaped by erroneous information.[30] For example, the

assistant district attorney of Milwaukee County's Sensitive Crime Unit stated that "Ninety-eight percent of all victims are women. Often, the woman is passive and allows it to happen."[31] Milwaukee County's Domestic Abuse Specialist indicated her conviction that 94 percent of all abuse involves male assailants and female victims, and that all of the men are disturbed emotionally and characteristically have low self-esteem.[32] John McNally, a prominent Milwaukee attorney, pointed out another consequence of misconceptions:

> In Milwaukee County, the complexion of a jury often determines the outcome of a case. Out of 12 jurors, seven or eight will be women, and five of the women will be white. The majority will be over 50 years of age. If you are a black male charged with domestic assault, rape or sexual assault of children, what do you think your chances are? Black males start out with a foot in the bucket to begin with. And juries in Milwaukee County are more racially mixed than most juries elsewhere.[33]

Men increasingly are defenseless when allegations of domestic violence are made. Women increasingly are successfully using charges of past abuse as a justification for assaulting, killing, or planning to kill husbands. Women also increasingly escape first-degree homicide convictions when they claim past spouse abuse.[34] The effectiveness of past abuse as a defense results from the popular view of domestic violence as perpetrated solely by emotionally disturbed men against women who are physically weak, defenseless, predisposed to passivity, and philosophically nonviolent.[35] Rittenmeyer notes that this view is supported by women's rights activists and a growing body of academic literature, and that women who kill their husbands increasingly explain their actions in the context of a history of abuse.[36] These facts are particularly interesting given the fact that approximately equal numbers of men and women are killed each year by spouses.[37] Rittenmeyer states that

> ...the [battered woman] defense, by exploiting the traditional stereotypes regarding women's weaknesses and vulnerability, licenses the quick use of deadly force by a specialized group and stands as an ironic contradiction both to the social equality sought by women and to the basic aim of the criminal law. And, finally, the defense, if accepted by the courts, is an unconstitutional, invidious, sex-based classification of the due process and equal protection rights of male homicide defendants and victims...bestowing upon the abused wife the unique right to destroy her tormentor at her own discretion.[38]

The politically charged atmosphere that pervades the broad array of gender-sensitive crimes such as marital rape, sexual abuse of children, and child abuse increasingly provides the means by which women are able to victimize men socially merely by alleging their occurrence. For example, growing numbers of wives are falsely accusing their husbands in divorce disputes of having sexually assaulted their children.[39] Wives reportedly are motivated to make the false accusations to improve their negotiating posture in property settlements, to improve their chances of being awarded sole custody of children, or simply to be vindictive toward divorcing husbands.[40] Attorney McNally states that the popular view of these accusations has spawned a host of publicly financed support services that serve inadvertently in some cases to "...throw gasoline onto the fire."[41] Typically staffed by social workers, the services provide assistance to legitimate victims, but also can prolong court proceedings and increase legal fees for men implicated in marginal or deceitful cases. Wives who allege assault, child abuse, sexual abuse of children, or marital rape also have the benefit of free representation by county prosecutors or district attorneys. Data indicate that 60 percent of the nation's alleged abuse cases that involve children turn out to be false, only 1 percent of all allegations involve the serious assaultive behavior the public generally regards as truly abusive, and disgruntled neighbors as well as spouses increasingly use false abuse allegations vindictively.[42]

SUGGESTED APPROACHES

The authors do not intend to diminish the seriousness of domestic violence. Yet attempts to address the problem will not be effective unless the full scope of the phenomenon is acknowledged. Although, as Steinmetz notes, "...it is not likely that feminist researchers and counselors will publicly acknowledge that males might also be victims," society must recognize this fact or we will be addressing only a part of the phenomenon.[43] Nearly every investigation includes the caveat that the prevalence of violence was likely to be underestimated. Most estimates of the true magnitude of the problem are that 60 percent of all American families experience spouse abuse. When child abuse is considered also, forecasts have envisioned family violence as a nearly universal phenomenon.[44]

Given the magnitude of the problem, it is unlikely that psychotherapeutic approaches can successfully address it, or that psychological disturbance is the root of family violence in most instances. It is more likely that the causes are located in society's reverence for violence, as evidenced in movies, advertisements, popular music, and in the high rate of firearm ownership.[45] Thus, laws must clearly state that spouse abuse cannot be tolerated; it is not just a "family affair." Progress has been made: more jurisdictions have instituted procedures requiring police officers to document cases of suspected abuse.[46] Additionally, some evidence suggests that recidivist abuse is reduced when assailants are jailed, and more jurisdictions are mandating the incarceration of abusers.[47]

A large percentage of homicides involve spouses or other intimates. Considering the fact that more than one-half of all American households own guns, most of which are handguns, Straus recommends the enactment of stringent gun control legislation.[48] Additionally, efforts should be made to mitigate the scope of violence portrayed in the mass media, even in the absence of convincing empirical evidence of a relationship between media violence and household violence.

Given the strong relationship between childhood victimization and subsequent participation in violence during adulthood, harsh discipline must be defined as physical abuse and merit official intervention.[49] A number of studies have shown that violence becomes more likely when families are isolated from extended kin; thus, some suggest that governmental policies that encourage geographical mobility at the cost of reduced ties to members of extended families be reshaped.[50]

Other strategies will be required as well. Some writers have argued that violent behavior is a natural reaction to inegalitarian structures in society that inhibit personal growth, and the extent to which socially structured racial, gender, and class inequalities frustrate human needs largely predicts the amount of domestic violence in society.[51] Consequently, efforts must be made to achieve a more egalitarian society. But concerted efforts in all of these areas are unlikely to be effective unless society realizes that domestic violence is a two-way street.

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THE CHILDREN'S ADVOCATE

Newsletter of The New Jersey Council for Children's Rights

April, 1991 Vol. IV No. 2 Box 615, Wayne, NJ 07474 / (201) 694-9323

N.J.C.C.R. HELPS STOP D.V. BILL

A-2408 Sent Back To Assembly For Revision!

The New Jersey Council for Children's Rights and the National Rifle Association successfully defeated the Assembly version of the Domestic Violence Bill which deleted a provision calling for perjury sanctions to be stated on all complaint forms. This provision was lobbied for by the N.J.C.C.R. because it is being evidenced by lawyers, prosecutors, judges and others in the legal system that the current domestic violence laws are terribly abused. In the January 1991 edition of the New Jersey Family Lawyer--a newsletter distributed to family court lawyers--that domestic violence is used as a "first strike" weapon in a pending divorce that effectively "blindsides" a spouse, usually the husband, by throwing him out of the marital residence and depriving him of his property and most importantly his children.

As previously reported in *The Children's Advocate*, the Middlesex County prosecutor's office knows that women use domestic violence to gain the upper hand in divorce actions to win property and custody. All of this done without due process and usually without the other side being given immediate notice and an opportunity to be heard.

Reports from the NJ State Police and the Administrative Office of the Courts Report on Domestic Violence state that 82% of all D.V. complaints are filed by women, not 95% that you always see in the media. According to these reports approximately 50% of these cases are dismissed, withdrawn, don't rise to the standard of evidence, or are false. Probably this figure is more in the 70%-80% range because repeated complaints are filed in the same cases for harassment purposes, and end up inflating the statistics.

Because the defendant's property interests, family and children are implicated and the government's interest to protect those truly abused is important, it is no small constitutional matter. A judge must define the injury and state why it is irreparable, when giving out an order without notice. The decisive matter then is the risk of erroneous deprivation. The law provides no protection from risk of error or false allegations and because no showing of imminent danger is required to be stated on the pre-printed D.V. complaints, the statute is fatally defective because it is not narrowly drawn, but is now open to abuse. Federal Rules of Civil Procedure 65 (c) grants security (property, money, etc.) if a TRO is falsely or erroneously given.

Even though some argue women would be reluctant to file a complaint if the perjury provision is on the form, that argument fails because in most complaint situations police officers responding to the scene have the power to make an arrest or file complaints on behalf of the complainants if they deem necessary.

We have also argued for a commission to be set up to investigate the rising number of false allegations. This is not forthcoming and should be addressed by each and every member to the press and to their legislators.

The N.R.A. argued against the pending legislation also. The police would have been granted broad new powers to confiscate weapons that were not used in the alleged assault. The judge conducting a summary hearing could revoke the firearms credentials of the owners, and they would then have to petition the court to get them back.

N.J.C.C.R.'S STORMIN' NORMAN ATTACKS

Stormin' Norman Wright, our Monmouth/Ocean County chapter coordinator, along with member and non-member parents from his area, kept a vigil on the status of D.V. Bill A-2408/S-2230 as it was hurriedly rammed through the Assembly. After alerting the N.J.C.C.R. of the impending act, we were able to organize a letter and phone campaign to our Legislators that was instrumental in stopping this back-door approach by Assemblywoman Marlene Lynch-Ford of Ocean County and the Commission on Sex Discrimination in the Statutes. Norman and others passed out literature to every individual they came into contact with in Trenton. Legislators, lobbiests, special interest groups, aides, and the media were besieged with literature concerning this bad legislation. This organization sends a special note of gratitude to Norman and his forces for their effort to protect the rights of children to two parents.

Continued on Page 3

GUEST SPEAKER

APRIL 15TH 1991
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Nick Appicelli

Open Forum. Come meet the lawyer who is offering the Legal Insurance plan to our members. He will answer questions on the

TESTIMONIAL STATEMENT

Prepared For:

THE SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
CONGRESS OF THE UNITED STATES

Regarding:

House Concurrent Resolution 172

Prepared By:

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Professor of Social Welfare
School of Social Welfare
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15 May 1990

TESTIMONIAL SUMMARY

Proponents of H. Concurrent Resolution 172 might wish to consider the following: (1) The Resolution, as presently worded, permits a tremendous amount of discretionary latitude in what might be considered as abuse, suggesting that it may be too ambiguous; (2) custody rights may be denied to both parents in families with a pattern of reciprocal abuse; (3) custody rights may be denied to a large number of women; and (4) the absence of specified criteria to determine the veracity of spousal abuse evidence may be problematic.

Chairman Frank and honorable members of the subcommittee, I would like to thank you for holding this hearing, and I would like to thank you for inviting me to participate today. I wish to start by indicating that although I do have a concern about Concurrent Resolution 172, I do not view myself as having a partisan role in these proceedings. I am here merely to provide information that may be useful in your deliberations. In addition, I wish it to be clear that I am not here as an apologist for violence. My comments should not be construed as motivated by an intent to diminish the seriousness of domestic violence. Acts of domestic violence are deplorable. They should be punished and, wherever possible, all prudent deterrents should be employed.

Having made these points I would like to begin my remarks by noting that there are two images of domestic violence. One image has been projected by the popular media and by academicians who have examined victims of domestic violence housed within shelters for abused women. The image that emerges from this view of domestic violence is that men, exclusively, or nearly exclusively, are the perpetrators of physical violence in domestic assaults. This image often has guided lawmakers, domestic violence change agents, and other activists.

A conflicting image of the phenomenon emerges from research that has been conducted on the general population in which people at large are asked to disclose their participation in domestic violence. The view of violence that emerges from this research is that violence is a nearly universal phenomenon in American families, with both sexes being perpetrators and victims of violence. If, for example, one uses as one's yardstick of abuse the resort to physical punishment in disciplining children, nearly all American families can be said to be abusive at some time or other. In addition, estimates are that at least 60% of all families will experience at least one episode of physical aggression occurring between spouses during the course of a marriage. And some studies have found that 95% of both husbands and wives employ verbal aggression against each other, such as yelling, screaming, insulting each other, and stomping out of rooms. Perhaps it is important to note that such actions often precipitate physical violence; in fact they are often precursors to domestic homicide.

One implication of these findings is that violence against spouses and children is more the norm than it is the exception in American family life. If it is the norm, one might wish to consider whether or not a spouse who has on one or two occasions resorted to the use of physical punishment in disciplining children should be barred from having custodial rights. I suspect that most people would argue against the barring of custodial rights unless it can be shown that there has been a pattern in which the person repeatedly engages in routine acts of physical punishment.

Similarly, the pattern as well as the nature of spousal abuse should be taken into account in any proceedings in which a parent's custody rights are at stake. Yet as the Resolution is worded presently, I can see no distinction between those families that have experienced battering exclusively in the form of verbal abuse and those that have experienced physical abuse. Nor can I see a distinction drawn between those families that have experienced only one episode of physical spousal violence, and those that routinely experience a pattern of physical abuse. And what about families in which there is a pattern of reciprocal violence? Finally, I am unable to discern any distinction between a situation in which spouses have resorted to the use of a push or a shove, versus those, for example, that have resorted to the use of fists or objects in striking spouses.

Given this, it seems to me that the Resolution, as presently worded, permits a tremendous amount of discretionary latitude in what might be considered as abuse. Forecasting future courtroom situations suggests that the Resolution may be too ambiguous and subject to legal challenge.

Another point I would like to make is that it is conceivable that custody rights will be denied to more women than presently imagined if the Resolution is enacted into law. Most people are surprised to find out that the best scientific estimates indicate that whereas 1.6 million wives are "beaten" by their husbands each year, 2.4 million husbands are "beaten" annually by their wives. By "beaten" is meant having been kicked, bitten, or hit with a fist or object, actually being beaten up, or having been victimized by the threat or actual use of a gun or knife.

One reason why people tend to react with such disbelief to these figures is because they fly in the face of the popular image of violence promoted by the media and by academicians who examine female victims housed in shelters. They also fly in the face of official crime reports that indicate much greater male involvement in physical abuse. And such data do not correspond to the image most people have of women as being philosophically nonviolent and predisposed to passivity.

Yet rigorous studies have shown that men tend to contact formal authorities only in the most serious cases of female perpetrated abuse, thereby skewing the official crime report statistics by underreporting female perpetrated spousal violence. Rigorous studies also have found that women are as likely as men to select and initiate physical violence, that men and women are equal in their intentions when using physical violence, and that whereas husbands are the aggressors in some families, wives are the aggressors in other families, and that many families experience reciprocal violence. Another finding that tends to surprise people is the fact that battered men often stay

in abusive situations because they fear that their absence will result in continued violence being visited upon their children. As one researcher found, these men often became targets for abuse when they step in to protect children from being abused. I might add that studies also have found that women are somewhat more likely than men to engage in the most serious forms of violence, perhaps because of the greater average size and strength of men.

Given these findings I think it is important for those who support Resolution 172 to consider that one possibly unintended consequence of the Resolution might be that a large number of women will be denied custody rights to their children. I also wonder what the courts will do in cases wherein domestic violence is reciprocal. Will both parents be denied custody?

Finally, the Resolution does not appear to set out criteria relating to the veracity of evidence to be considered in court. It merely indicates that spousal abuse evidence should be considered. It seems to me that guidelines should be established that can determine the veracity of the evidence. This is especially so when one considers that some seminar leaders apparently are recommending to divorce-prone seminar participants that false records of abuse are expeditious means to remove husbands from the marital residence prior to the commencement of actual divorce proceedings. They can be used also as tools to achieve better bargaining positions in property settlements, or to improve chances of being awarded sole custody of children. According to one author who attended a number of seminars, the means recommended to seminar participants to achieve these objectives is by the filing of false domestic violence claims prior to filing for divorce.

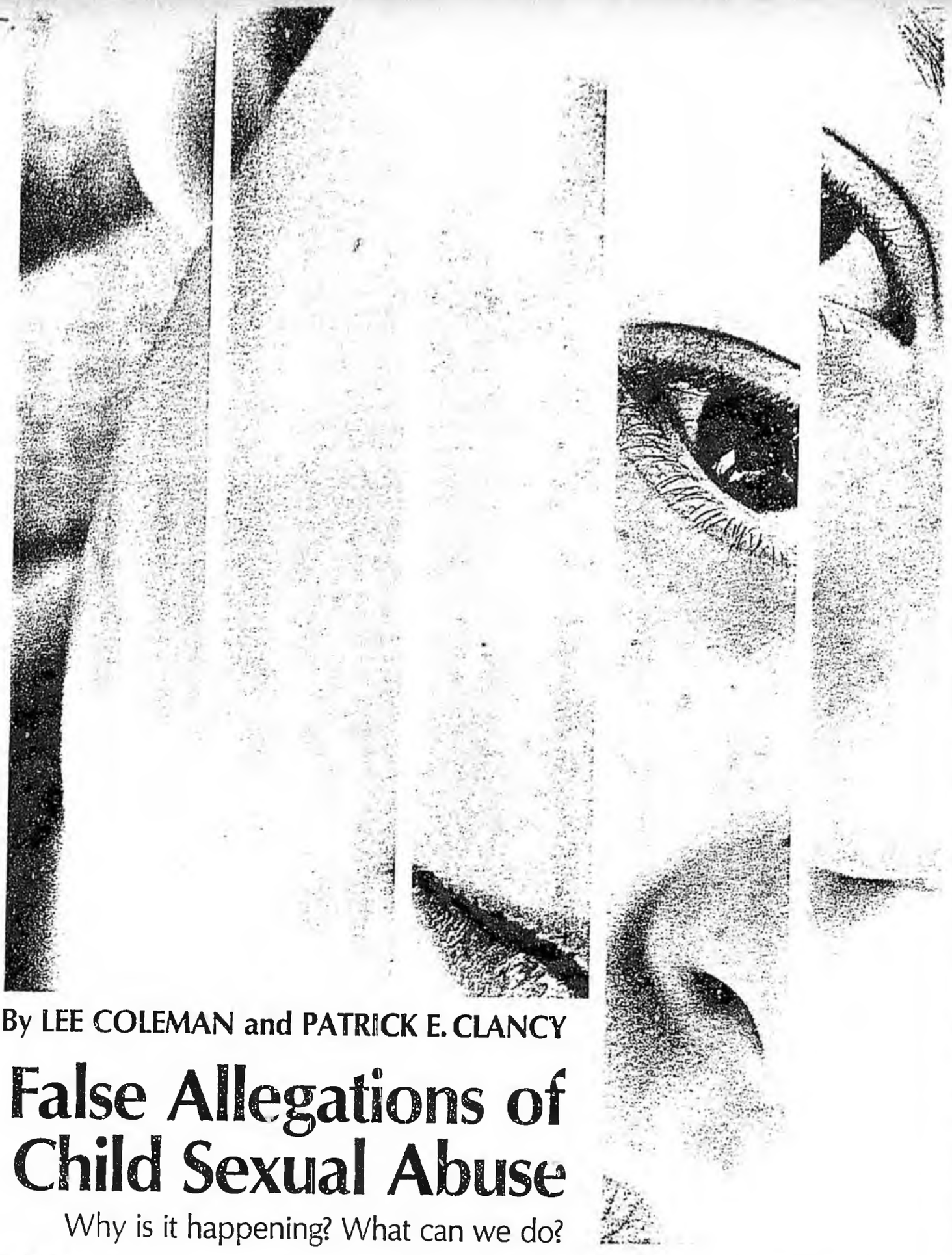
I might add that false claims of spousal violence is but one strategy. More and more false sexual abuse allegations are being heard each year. One researcher has estimated that more than 500,000 families are put through investigations of unfounded reports of sexual abuse each year. And, in the most serious of situations, those involving domestic homicides, another researcher found that fewer than 10% of cases involving female perpetrators examined in her study of five major American cities actually warranted justifiable pleas of self-defense. This was despite the fact that nearly 60% of the women claimed self-defense as the homicide motive. Indeed, in cases involving male homicide victims who were asleep, infirm, intoxicated, or helpless, 73.3% of the female assailants claimed self-defense. Yet 30% of the women had prior violent arrest records involving individuals other than their spouses.

In conclusion, it would appear to be most advantageous for attention to be directed to the issue of credible evidence. The Resolution merely specifies that evidence of spousal abuse should create a statutory presumption. The absence of focus on credible evidence seems to me to be a serious flaw.

THANK YOU

Biographical Sketch

R.L. McNeely is a professor of social welfare at the University of Wisconsin-Milwaukee. He is a graduate of Eastern Michigan University, the University of Michigan, and Brandeis University. He is the author of more than 50 articles published in scientific journals, and he has published two books, including, Race, Crime and Criminal Justice (with C. Pope). He is a Research Fellow of the Gerontological Society of America, and was selected recently as an American Council On Education Fellow, where he served in the Office of the Chancellor, University of New Orleans. He appeared on CBS Morning News, and on NBC's Showcase Series, to discuss the issue of domestic violence, and has spoken before numerous groups and organizations on the topic.



By LEE COLEMAN and PATRICK E. CLANCY

False Allegations of Child Sexual Abuse

Why is it happening? What can we do?

Just a few short years ago, neither of the authors could have anticipated that his professional life would become so heavily involved in cases of alleged child molestation. One of us, a public defender, found that only 1 or 2 percent of his clients were truly innocent of any wrongdoing. Many defendants had been overcharged, but were actually guilty of lesser crimes; many defendants were guilty, but the prosecution didn't have the proof necessary to convict. The truly innocent defendant was rare. The other author, a practicing psychiatrist and a critic of courtroom reliance on psychiatric examinations, testified regularly on behalf of the prosecution, rebutting defense experts' claims that psychiatric tools were helpful to a jury deciding *mens rea* questions.

Now something new and unprecedented has emerged, something that is having a devastating impact on the lives of thousands of persons and threatens many of the due process protections of all of us. We are speaking of the widespread occurrence of false accusations of child sexual abuse. And while informed persons may disagree on how often false accusations are made, there is no real doubt that it is happening far more often than our society can afford.

Some researchers claim that only 8 percent of cases studied are fictitious. (David P.H. Jones and J. Melbourne McCraw, *Reliable and Fictitious Accounts of Sexual Abuse of Children*, 2 J Interpersonal Violence (March 1987).) Others stress that nationwide, only about 40 percent of all reports are substantiated. (Douglas J. Besharov, *Child Abuse and Neglect Reporting and Investigation: Policy Guidelines for Decisionmaking*, Report to American Bar Association and American Public Welfare Association, Oct 8, 1987.)

We are unimpressed by studies done in laboratories, claiming that children are not susceptible to leading questions. Such studies fail to duplicate the reality of investigative interviews in actual cases. However, it clearly would be unethical to attempt to see if a child could be trained to believe falsely that sexual abuse had taken place.

Even if the true incidence of false allegations of sexual abuse is unknown, it seems beyond question that the problem is a serious one, deserving of a careful reevaluation of current theory and practice.

To begin to understand the developments that ultimately led to innocent persons being charged with child molestation and to prosecutors relying so heavily on those whom they traditionally disdained—the mental health professionals—we may take as a starting point Senator Walter Mondale's 1973 hearings on child abuse and neglect. Those hearings led to the passage of the Child Abuse Prevention and Treatment Act of 1974, 42

USC §§ 5101-5106. Gradually, all the states were required to develop programs aimed at faster recognition and treatment of child abuse. We see no reason to doubt that thousands of children benefited, but at the same time, a disturbing trend was set in motion.

While physical abuse will leave behind physical evidence, sexual abuse may not. As a result, investigators from law enforcement and child protection agencies had the difficult job of interviewing young children who might be afraid to say what had happened to them. As they have done so often, public agencies turned to "experts" from the mental health professions, this time for lessons in how to talk to children.

It is our contention that false allegations of child sexual abuse are on the increase as a direct result of this alliance between law enforcement and mental health professionals. We want to explain this development and suggest a better way to protect children while protecting the innocent.

Investigators and therapists: two different worlds

Neutrality is the *sine qua non* of the criminal investigator. He or she advocates neither for individuals nor for political and social causes. Wherever the truth leads, the responsible investigator follows.

We believe that the root cause of the current problem of false allegations of child sexual abuse is the incompatibility between the neutrality required of investigators and a series of biases imported into the investigative process from the mental health professions.

Unlike investigators, therapists are *not* neutral. They are advocates who seek to promote the welfare of their patients. The patient (sometimes including the family) becomes the major source of information, and the therapist monitors progress by relying heavily on the reported *feelings* of the patient.

What would happen if therapists became investigators in legal cases involving their patients? Conversely, what would happen if investigators were trained to think and act like therapists, seeing themselves as *advocates* for one or more persons being investigated? This is what happened in the late 1970s and early 1980s, and while the results are all around us, little has been written to explain this history and its aftermath.

Both camps, the sexual abuse "specialists" from mental health fields and the criminal and child protection investigators, came to believe sincerely that their major task was to "believe the child" and to convince others to do the same. This was certainly not an attempt to hide the truth. It was, rather, the result of their belief that when it comes to sexual abuse, the child's statements *are* the truth.

Society had for so long ignored incest victims, some of whom never told anyone about their victimization out of fear of their abusers or out of family loyalty, that the new mental health specialists conceived the problem solely as one of helping molestation victims to disclose their abuse. The exclusive focus was on the molested child who hid the fact; they failed to recognize that under certain conditions, a child might make a false allegation. They failed to understand that their own questioning of the child, if it was based on a prior assumption that abuse had occurred, might be the very thing that could cause such an undesired result.

To illustrate the "believe the child" approach, consider the recommendations of psychiatrist Roland Summit, a major figure in the developments outlined above. In 1983, in an article describing what he termed the "child sexual abuse accommodation syndrome," Summit wrote:

- Acceptance and validation are crucial to the psychological survival of the victim. . . .
- [Summit invited] more active, more effective clinical advocacy . . . within the systems of child protection and criminal justice.
- . . . [T]he validation of the child's perception of reality, acceptance by adult caretakers and even the emotional survival of the child may all depend on the knowledge and skill of the clinical advocate. Every clinician must be capable of understanding and articulating the position of the child in the prevailing adult imbalance of credibility.
- Clinical experience and expert testimony can provide advocacy for the child. . . . [Children] need an adult clinical advocate to translate the child's world into an adult-acceptable language.
- As an advocate for the child both in therapy and in court . . . the more illogical and incredible the initiation scene might seem to adults, the more likely it is that the child's plaintive description is valid.
- The specialist must help mobilize skeptical caretakers into a position of belief, acceptance, support and protection of the child.

(Roland Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 Child Abuse & Neglect 177 (1983).)

Summit justified such a one-sided approach with a claim which is still echoed by many child abuse professionals: *"It has become a maxim among child sexual abuse intervention counselors and investigators that children never fabricate the kinds of explicit sexual manipulations they divulge in complaints or*

Lee Coleman *practices psychiatry in Berkeley, California. His concerns about the influence of psychiatry in legal proceedings have been reflected in several dozen articles as well as in his book,* The Reign of Error: Psychiatry, Authority, and Law *(Beacon Press 1984).* **Patrick E. Clancy** *is a certified criminal law specialist in the State of California. Clancy's law firm in Sacramento deals exclusively with child molestation, representing both juvenile accusers and the accused.*

interrogations." [Emphasis added.]

Such ideas had a profound impact on front-line workers from law enforcement, social work, and mental health. Workshops on sexual abuse promoted the feeling that a competent, sensitive, and up-to-date professional would believe molestation had occurred, while one who raised doubts was incompetent, insensitive, and not fit to handle such cases. Under such pressures, investigators could easily come to feel that every case labeled "substantiated" or "founded" was a sign of competence and concern for children.

The myth that children never fabricate stories about sexual abuse brought a glorious simplicity to the difficult task of investigating possible sexual abuse of a child. If molested children may be hesitant to admit what happened (something we do not dispute) and non-molested children (quoting Summit) "never fabricate explicit sexual manipulations," then *interrogators would have everything to gain and nothing to lose by using a questioning technique aimed at "encouraging" the child to disclose abuse.* Leading questions suggesting that abuse had occurred, and positive reinforcement for statements about abuse, would "help" the molested child tell the secret, while non-molested children would be resistant to such techniques.

We now know, of course, that these ideas are wrong. There is no group of human beings that is immune to suggestibility—and the idea that children are immune is especially unlikely, given their intellectual and emotional immaturity and their dependence on adults. There is considerable irony in the fact that it was the "experts" from the mental health professions who so effectively convinced police and social work investigators of these false ideas.

Thousands of children have been subjected to interviews based on these ideas. Those who have had a chance to study audio- or videotapes of these interviews do not need expert credentials to under-

stand what can happen. Here is an example from the well-publicized "Country Walk" case in Miami, which in 1985 resulted in the conviction of a couple who ran a babysitting service in their home. (*People v. Francisco Fuster*, Dade Cty, Fla, No 84-19728 A (1984); *People v. Illiana Fuster*, Dade Cty, Fla, No 84-19728 B (1984).)

Creating "memories"

"Sue," close to her fifth birthday, was interviewed at the request of prosecutors by a social worker who had a special interest in sexual abuse. Asked what happened at the babysitters', Sue replied, "They did nothing bad to me." Asked if she saw anything bad done to others, she said, "No."

After Sue said she had learned from her mother that the babysitters were bad and were in jail, she was then told by the social worker that other children claimed naked games were played. (In truth, such statements came only after highly leading and suggestive interviewing.) Sue said she didn't think this had happened, so the social worker asked her to pretend what *might* have happened. After undressing the "anatomically correct" dolls, Sue was asked what kind of games they played. "Duck, Duck, Goose," she responded.

When Sue failed to play a sexual game with the dolls, she was told that *if* the children were touched in private places, then that was wrong. Sue again repeated that "they didn't do anything bad to me," to which she was told that if she *did* have a secret to tell, "everybody would be very proud of you for telling."

Now Sue asked if bad things happened, and she was told, "some of the children said so, and I believe the children, because I don't think children make up stories like that." (Sue, of course, could not know that none of the other children talked about any sexual activities until they were subjected to techniques similar to what she was experiencing.)

When Sue next was told that even "bigger" children had said such things, she was finally convinced. "Now I found out that it was true because other children said it," she said. She was also told that "all of the parents . . . are real proud of their children if they don't keep a secret. . . ."

Despite the fact that Sue had consistently denied seeing such things and had clearly said she had now "found out" what had happened, she was next asked to demonstrate with the dolls. She complied, touching the penis of the male doll with her finger. As the session drew to a close, she was encouraged to try to "remember" even more after she went home and to try to tell her parents.

Five months later she was again interviewed, and now her "memory" was definitely improved. She talked about knives held to necks, "cut your head off" games, and now "Duck, Duck, Goose" included taking clothes off. She now "remembered" that each of her babysitters pulled on her vagina at the same time.

Encouraged by Sue's new "memories," her interviewer asked if she had seen any boys have their penises bitten, whether the children played a "pee-pee" game, whether they played with urine and feces, and whether the children had been given anything to eat or drink that made them sleepy. These were all things the social worker said the other children had claimed, but Sue said she hadn't seen any of this.

Once again, she was encouraged to try to remember more and tell her parents, because, as her interviewer said, "I kind of have a feeling that maybe there might be something else. . . ."

Eight months after this session, and over a year since the first interview, Sue was the first child witness called by the prosecution. She promised to tell the truth, which satisfied the judge that she was competent to testify, and then went on to describe the "cut your head off" game, and also said that any children who asked for a cupcake had a knife held to their throats. Everyone was naked, she said, and her private parts were pulled. She was even able to draw a picture of what happened. Sue said she didn't see anything done to other children, but later said she knew it happened to them.

Not lying and not telling the truth

The "believe the child" approach thus turns out to be more truly a "disbelieve denials but believe disclosure" approach. Children may "lie" when they deny abuse, out of fear or loyalty toward the abuser, but they never "lie" about abuse. As the preceding example shows, however, by the time Sue testified against her babysitters, she was hardly "lying." She now believed what she was saying, and was too young to understand that her beliefs came not from memories of her own experiences but from what she had *learned*.

Thus, the frequently heard debate about whether children may "lie" about sexual abuse misses the point in most cases. The real question is not whether the child believes what he or she is saying, but whether the statements are based on memories of real events or on a mental image created by suggestive questioning.

In our experience, which adds up to hundreds of allegations and about fifteen hundred hours of audio- or videotaped interviews with children being investigated for possible molestation, children quite regularly make allegations that can be factually proven not to be true. When this happens, it is rare for the child to be the true initiator of the false statements. In most cases, the child's false statements are the product of an interviewing style that leads the child gradually to construct a mental picture of abuse. This picture becomes the child's "memory." The result can be disastrous, not only for the justice process but also for the child's emotional well-being.

Separating real memories from indoctrination

Given that real molestation most certainly does occur, the courts are left to separate the wheat from the chaff. When is a child's testimony trustworthy, and when is it the product of interviews that have contaminated the child's ability to know the truth?

It seems to us that a clear record of all interviews with the child, via audio- or videotape recording, is the best way for a judge or jury to determine responsibly whether the child's testimony is coming from memory or from prior suggestive interviews. We find that in many cases, none of the interviews are taped; in many other cases interviews are taped only after many sessions have already taken place and the child is now ready to "disclose."

We think it is significant that those who like to call themselves "advocates for the child," such as police, child protective services, district attorneys, and abuse therapists, are the very ones who have resisted the use of tape recording as a standard investigative tool. In other words, those who are talking to the child in the crucial early stages of an investigation seem to be the most uncomfortable about documenting everything that is happening.

Therapists as investigators

This problem of undocumented interrogations of children, which leaves the trier of fact with inadequate evidence to evaluate the quality of the questioning process, is most severe when child therapists become part of the investigative process. It is common practice for police or child protection investigators to refer a child for therapy at the very outset of an investigation. The stated purpose is either to help the child disclose information about abuse or to help the child with the trauma secondary to abuse.

If the child is a true molestation victim, both of these purposes may be fulfilled with no harm done to the truth-seeking process. But if the child has not been abused, such therapy can have a profoundly contaminating impact. Week after week, the child is questioned about abuse and encouraged to "tell the secret." In our experience, children may "learn" in such sessions that they are in danger and may develop major fears and anxieties. They may learn to believe they were abused and gradually construct the details. They may come to believe in these inventions with all the sincerity that real events would call forth. They may, tragically, learn to hate a parent who has never harmed them.

The therapists chosen by the investigators are often handpicked from among a small group of "specialists" in child sexual abuse. These abuse specialists, trained as they are to be "advocates for the child," have no doubt that a child brought to them as a molestation victim is a true victim. In case after case we have studied, such therapists grudgingly acknowledge that false allegations do occur, but they are nonetheless sure that the case in question is a valid case.

The interviews that these therapists conduct are called "therapy" and are therefore protected, in nearly all states, by the patient-therapist privilege. But such sessions are also *investigative*, because the child is regularly asked to describe what supposedly happened. They are therefore crucial to the court's efforts to determine the truth. Nonetheless, in many jurisdictions, accused persons are unable to gain access to information that might shed light on what type of questioning is taking place. In this way, *therapists become investigators who work in secret*, depriving the judge or jury of crucial information.

Not surprisingly, therapists working for months or even years to help children deal with the aftermath of assumed abuse are not likely to change their opinions about whether abuse actually took place, regardless of evidence to the contrary. Faulty conclusions therefore go unrecognized, and we see no lessening of the use of leading questions in interviews.

Kelley-Frye rule of reliability

Despite such problems, our courts have traditionally allowed mental health professionals to offer expert opinions rather freely. In California prior to 1984, psychologists, psychiatrists, and Child Protective Services personnel testified at will that in their opinion, a certain child was the victim of molestation. Such testimony then began to be challenged under the *Kelley-Frye* rule of reliability (*Frye v. U.S.*, 293 F 1013 (1923); *People v. Kelley*, 17 Cal 3d 24 (1976)), according to which scientific evidence must be shown to be accepted as reliable by the relevant scientific community.

In 1984, in *People v. Bledsoe*, 36 Cal 3d 236, the California Supreme Court ruled that the rape trauma syndrome was not accepted as a scientific tool to determine whether a particular woman had been raped. It was then quickly recognized that if behavioral syndromes that might result from rape were not *specific* to rape, and therefore could not reliably be used as evidence of rape in a trial, the same held true for the various behaviors said to be typical of child victims of molestation. As a result, psychological opinion testimony that a child was a victim of molestation fell into disuse.

Prosecutors immediately found a way around *Bledsoe*. The same evidence was introduced to rebut what were said to be common myths about child molestation victims: that they would actively resist their abusers, would report immediately, and could during the first interview tell everything that happened. (*People v. Roscoe*, 168 Cal 3d 1093 (1985); *People v. Gray*, 187 Cal 3d 213 (1986); *People v. Sanchez*, 208 Cal 3d 721 (1989); and

People v. Stark, 213 Cal 3d 107 (1989).) The result of dispelling numerous "myths" was to create a profile of a child molestation victim that was tailored to fit the child involved in the case at hand. The appellate courts realized this subterfuge and moved to block it. (*People v. Baucher*, 203 Cal 3d 385 (1988).)

Expert opinions that rely on attempts to evaluate the accused rather than the child are also being excluded under *Kelley-Frye*. Penile plethysmographs were held to be unreliable, as were profiles of pedophiles. (*People v. John W.*, 185 Cal 3d 801 (1986).) Opinions based on children's play with sexually explicit dolls were held to be unreliable. (*U.S. v. Gillespie*, 852 F2d 475 (1988); *In re Amber B.*, 191 Cal 3d 682 (1987); *In re Christine C.*, 191 Cal 3d 676 (1987).) In response, prosecutors attempted to introduce such doll play and let the court form its own opinion. This was also barred on the grounds that a judge's opinion, if based on an unreliable method, is not a proper substitute for an expert opinion based on the same method. (*In re Christine D.*, 206 Cal 3d 469 (1988).)

The juvenile court took a short detour. In 1984, *Cheryl H.*, 153 Cal 3d 1098, held that the juvenile court worked under different rules and continued to allow opinion testimony that a child had been molested. That detour was short-lived when it was held that the *Kelley-Frye* test applied to juvenile court as much as to adult court. (*In re Sara M.*, 194 Cal 3d 585 (1987).)

The last chapter in the battle over admissibility of expert opinion is not over. The California Supreme Court recently issued its opinion in *People v. Stoll*, 49 Cal 3d 1136 (1989), holding admissible as character evidence psychological opinion testimony based upon interviews and personality tests (MMPI and MMCI) said to show that the defendant displayed no signs of "sexual deviance" or "abnormality." The court held that such opinion was *medical* opinion and not the type of scientific opinion that *Kelley-Frye* monitors.

Clearly, then, both prosecution and defense interests have been able at times to convince the courts that experts from mental health fields are able, based on examinations of the child or the accused, to assist the finders of fact. We think such reliance hinders rather than advances quality investigations and fair trials, but it is in the next area of improper investigation where vigorous application of *Kelley-Frye* is most needed.

Faulty medicine

Recognizing that true victims of molestation might be too frightened to tell about it or too young to describe their abuse, it is easy to see why investigators would be eager for clear physical indicators that molestation has occurred. In the late 1970s, when a handful of doctors claimed they knew how to interpret "subtle clues" that most doctors would miss, the law enforcement and child protection communities eagerly adopted these doctors as their own. Before looking at how such unsupported claims came to be considered reliable evidence of sexual abuse, a few clarifications are in order.

Doctors who are told of a suspicion of abuse and write this down in their reports as "history of sexual abuse" have not made a finding, but have merely repeated the allegations. Likewise, a normal examination does not help to establish that molestation occurred. Nonetheless, it is extremely common for doctors examining a child to report: 1) "history of sexual abuse," and 2) "physical examination consistent with sexual abuse." The result? An examination with no positive findings might be understood by investigators to prove molestation, with devastating impact on the subsequent handling of the case.

If investigators are misled by this improper use of language when the child's examination is normal, the problem is magnified when these same doctors interpret normal variations of anal or genital anatomy as subtle signs of prior trauma. To understand this problem, we need a bit of history.

Medical examinations for sexual abuse of children performed long after the alleged fact are a new phenomenon. All but a handful of the articles on this subject were written only within the past decade. (Lee Coleman, *Medical Examination for Sexual Abuse: Have We Been Misled?* Champion (Nov 1989).)

An early but influential article was, significantly, a collaboration of Ventura, California, family physician Bruce Woodling and local district attorney Peter Kossoris. (Bruce Woodling and Peter Kossoris, *Sexual Misuse: Rape, Molestation and Incest*, Pediatric Clinics of North America (May 1981).) They listed a number of findings as being indicative of prior sexual abuse—findings which in truth were either nonspecific or open to subjective interpretation, including erythema (redness), tightness (too much or too little) of pubic or anal muscles, anal fissures, and hymenal variations said to be "transections," or old scars.

What support did Woodling and Kossoris offer for these new interpretations? Only Woodling's "experience." Even beginning students of scientific methodology know that experience, unaccompanied by corrective feedback, is hardly a guarantee of reliable conclusions; the developing movement in child protection was too eager for validation to notice this lack.

A still small but growing number of physicians and nurses took a special interest in forensic ano-genital examinations of suspected child abuse victims, usually because these professionals were members of new "sex abuse teams." They attended workshops and readily absorbed the kind of unsupported claims that a handful of physicians like Woodling promoted.

Sodomy, they were told, could be determined by seeing if the anus

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privilege nor the psychiatrist-patient privilege should be used to shield psychiatrist-patient communications when the defendant's mental state is in issue (Stephen A. Saltzburg, *Privileges and Professionals: Lawyers and Psychiatrists*, 66 Va L Rev 597 (1980)); and

8. A defense-retained psychiatrist is much more than an attorney's "interpreter"; the psychiatrist's observations and conclusions—apart from the defendant's communications—constitute material knowledge relevant to the case, and such knowledge "should be treated just like the knowledge of any other witness and should be discoverable from the [psychiatrist] himself" (Jack H. Friedenthal, *Discovery and Use of an Adverse Party's Expert Information*, 14 Stan L Rev 455, 463-64 (1962).)

Therefore, given the arguments on both sides, the lack of any Supreme Court precedent, the split on the circuits, and the risks of disclosure of a defense-retained psychiatrist's "privileged" communications, as a federal litigant you should assume nothing about psychiatric confidences in the context of insanity or other diminished-capacity defenses. And you should be prepared to argue it all—and to lose it all. **CJ**

Sentence Reduction

(Continued from page 7)

ically has shown remarkable restraint when reviewing prosecutorial decision making generally. (See Bennett Gershman, *Prosecutorial Misconduct* § 4.1 (Clark Boardman 1985).) Even so, as a practical matter, reviewing prosecutorial discretion under a subjective bad-faith test is meaningless. Cases that apply a bad-faith standard to prosecutorial behavior have rarely found against the prosecutor. (See B. Gershman, supra; *United States v. Smitherman*, 889 F2d 189, 191 (8th Cir 1989): threatening to intervene if prosecutor arbitrarily and in bad faith refuses to file a 5K1.1 motion.)

Rexach is a prime example of arguably bad-faith conduct by the prosecutor. Although Rexach provided information leading to the drug arrests of three persons, the Second Circuit sustained the prosecutor's claim that the assistance was not substantial enough. Finally, the Second Circuit's confidence that institutional incentives guarantee prosecutorial good faith may be fanciful. After *Rexach*, it is probably more likely that cooperating defendants will be reluctant to enter into cooperation agreements with prosecutors without much more meaningful assurances than simple reliance on the prosecutor's good faith. **CJ**

Sexual Abuse

(Continued from page 20)

failed to contract when the skin nearby was stroked. If the anus relaxed instead, this was said to be a sign that the child had learned to anticipate penetration. Another example: Hymenal edges that were not lacy and thin were said to have been traumatized.

As these trainees went back to their communities and in turn became the trainers in more workshops, these uncorroborated "signs" became conventional wisdom. Community pediatricians usually refused to get involved, deferring to those few who claimed to be "specialists." Law enforcement and child protection workers learned to refer possible victims to the "sex abuse teams."

By now, thousands of criminal, civil, and juvenile trials have prominently featured expert testimony from these examiners, usually with devastating impact on triers of fact. A doctor's opinion that physical examination findings show clear evidence of sexual molestation is likely to convince almost anyone who is not familiar with the true state of the art. And few doctors are willing to testify in defense of alleged child molesters, even when they are aware of the scientific shortcomings of such claims.

In search of research

Clearly, there is a need to get beyond these naked claims and into the world of research findings. It is remarkable, considering the attention paid in recent years to the sexual abuse of children and the devastating consequences to all parties of good and bad investigations, how little research has been done to validate the claims so readily offered in court by the doctors who examine the children.

Only in the last three or four years has *any* research been done, and the trend is clear: The conventional wisdom is wrong. Normal children frequently show the very things said to be unmistakeable signs of molestation. Reflecting this development, the journal *Child Abuse and Neglect* recently devoted an entire issue to medical examinations for sexual abuse (v 13, no 2 (1989)). Significantly, the editor titled his introduction "The More We Learn, The Less We Know With Reasonable Medical Certainty" and acknowledged that previously held ideas about physical signs of prior molestation had been hastily drawn

and were unsupported.

Given such admissions, it is obvious that defense lawyers have been remiss in not mounting a *Kelley-Frye* challenge to a good deal of the medical testimony being offered in child molestation trials.

Confusion in the laboratory

Overinterpretation of data has not been confined to the physical examination of children. Well-intentioned but hasty efforts at child protection have also infected the laboratory. We now know, for example, that gonorrhea, especially of the throat, is sometimes misdiagnosed because of inadequate laboratory techniques.

The federal government's Center for Disease Control recently reported that of 40 specimens sent from various hospitals for confirmation of gonorrhea, 14 (35%) turned out to be something else. (See E.R. Alexander, *Misidentification of Sexually Transmitted Organisms in Children: Medicolegal Implications*, 7 Pediatric Infectious Disease Journal (Jan 1988); W.L. Whittington, et al, *Incorrect Identification of Neisseria Gonorrhoea from Infants and Children*, 7 Pediatric Infectious Disease Journal (Jan 1989).) The report also noted that ". . . these instances represent the tip of a large iceberg. . . . Many probably go unnoticed."

We can add one of our own, for in the "Country Walk" case described earlier (where Sue—like the other children—learned from her interviewer about the things she later testified were her memories), the jury also heard unrebutted testimony that the son of the babysitters had gonorrhea of the throat. What the jury didn't learn was that Miami's Jackson Memorial Hospital failed to perform (or to preserve specimens so others could perform) the very tests which the Center for Disease Control has shown are absolutely necessary to confirm gonorrhea.

Other false medical claims being offered to courts include unreliable screening tests for chlamydia, and the unsupported conclusion that genital warts are always sexually transmitted.

Learning from the *McMartin* case

After more than six years, a jury finally reached a verdict in the *McMartin* case. (*People v. Peggy McMartin Buckey and Ray Buckey*, No A750900 (Los Angeles Cty Super Ct, 1990).) And while it was unique as the longest and most costly criminal trial in U.S. history, in many important respects the case had features common to countless other cases of alleged sexual abuse. It therefore has much to teach us.

The most frequent question is: If the allegations were not true, why would the children say not only that they were sexually abused, but also that they were exposed to rituals involving animal slaughter and even murder? The answer is both simple and terrible. They were trained. Trained first by the experts whom law enforcement agencies trustingly allowed to evaluate the children, and then by handpicked therapists hired to treat them for the molestation that everyone was so sure had taken place.

What makes the *McMartin* case so instructive is that the medical and mental health professionals who set the tone of the case were not unknown but were some of the very professionals who were most influential in developing the thinking and style of the new child sexual abuse movement. In studying the *McMartin* case, we have an opportunity to see the best and the brightest in action. If they come up short in our estimation, we may be sure that their proteges, spread across the nation, are using similar methods.

Let us begin by going back to February 1986. Virtually everyone still believed the McMartin pack was guilty. Nonetheless, questions were starting to arise. Perhaps most common was the issue of how the children from the McMartin preschool had been interviewed. The videotaped interviews had been seen by only a handful of persons, but word was leaking out after the preliminary hearing. The charge was that the children had been prodded and pressured into claiming abuse.

However, the law enforcement/mental health team that handled the case had at that time far more defenders than detractors. Most influential among them was psychiatrist Roland Summit, whom we have already heard from. Summit wrote in a *Los Angeles Times* editorial that social worker Kee MacFarlane of the Children's Institute International used proper, up-to-the-minute techniques to interview the children.

"There was both reason and precedent for the methods used . . .," he wrote. The interviews represented the "state of the art . . . highly evolved, intensely specific, and largely unknown outside the fledgling specialty of child abuse diagnosis." This form of interviewing, Summit continued, was "an amalgam of several roles . . . the knowledge of a child development specialist to understand and translate toddler language, a therapist to guide and interpret interactive play, a police interrogator to develop evidentiary confirmation, and a child abuse specialist to recognize the distinctive and pathetic patterns of sexual victimization." Such techniques were needed because "specialist understanding is both unexpected and counterintuitive." (*No one invented McMartin "secret,"* L.A. Times, Feb. 5, 1990 part II, 1-2.)

Study of just how the McMartin preschool children were interviewed offers us, then, more than an opportunity to study one case. It offers us a chance to study thousands of cases, because Dr. Summit has helped train thousands of front-line investigators, and Kee MacFarlane, lead interviewer of the McMartin children, has for years been considered a model for those entering the field of child sexual abuse investigations.

We wish we could reproduce here the transcripts of all the interviews done with the *McMartin* chil-

dren. One of us (L.C.) has viewed 56 hours of videotaped interviews and can assure readers that the following excerpt is in no way exceptional.

As we come in, MacFarlane is interviewing an eight-year-old boy who had attended the McMartin preschool four years before. He has a Pac-Man puppet on his hand.

> **MacFarlane:** Here's a hard question I don't know if you know the answer to. We'll see how smart you are, Pac-Man. Did you ever see anything come from Mr. Ray's wiener? Do you remember that?
> **Child:** (no response)
> **MacFarlane:** Can you remember back that far? We'll see how . . . how good your brain is working today, Pac-Man.
> (Child moves puppet around.)
> **MacFarlane:** Is that a yes?
> **Child:** (Child nods puppet yes.)
> **MacFarlane:** Well, you're smart. Now let's see if we can figure out what it was. I wonder if you can point to something of what color it was.
> (Child tries to pick up the pointer with the puppet's mouth.)
> **MacFarlane:** Let me get your pen here. (Puts a pointer in puppet's mouth.)
> **Child:** It was . . .
> **MacFarlane:** Let's see, what color is that?
> (Child uses the Pac-Man's hand to point to the Pac-Man puppet.)
> **MacFarlane:** Oh, you're pointing to yourself. That must be yellow.
> (Child nods puppet yes.)
> **MacFarlane:** You're smart to point to yourself. What did it feel like? Was it like water? Or something else?
> **Child:** Um, what?
> **MacFarlane:** The stuff that came out. Let me try. I'll try a different question on you. We'll try to figure out what that stuff tastes like. We're going to try and figure out if it tastes good.
> **Child:** He never did that to [me], I don't think.
> **MacFarlane:** Oh, well, Pac-Man, would you know what it tastes like? Would you think it tastes like candy, sort of trying. . . .
> **Child:** I think it would taste like yucky ants.
> **MacFarlane:** Yucky ants. Whoa. That would be kind of yucky. I don't think it would taste like . . you don't think it would taste like strawberries or anything good?
> **Child:** No.
> **MacFarlane:** Oh, think it would sort . . . do you think that it would be sticky, like sticky, yucky ants?
> **Child:** A little.

Such, then, is the "state of the art" advocated by Summit and many of his associates and being taught to front-line investigators throughout the country. This is what is happening in the little as well as the big cases, except that most often there is no tape recorder running to preserve the evidence.

Having seen similar examples over and over in the *McMartin* tapes, only one conclusion is reasonable: MacFarlane and her trainees had decided *before the first interview* that children were molested at the McMartin preschool. However they may now try to rationalize their interviewing techniques, their behavior with the children looks like an attempt to squeeze from them evidence of what the interviewers were convinced must have taken place.

After these interviews, parents were told that their children had disclosed abuse, and none of the parents demanded to watch the entire videotape. Instead, they heeded the advice to take their children to therapists who specialized in "sexual abuse trauma." As months stretched into years, and the children not only did their best to please their therapists but also exchanged information with each other at school and were repeatedly questioned by parents and investigators, the stories grew and grew. It is hardly surprising that some of the children who initially said over and over that they saw nothing happen, now insist that they were victimized.

Los Angeles County District Attorney Ira Reiner has summed it up as well as anyone. Interviewed for the "60 Minutes" television program, he said:

> The entire case was turned over by the district attorney . . . to a group of social workers. . . . Now, these people are absolutely unqualified to handle a criminal investigation. . . . They start from a premise . . . that no child is capable of fabricating stories about sexual molestation. To do so would require them to talk of a thing of which they have no understanding or knowledge, and so we can always rely upon a child talking about being sexually molested. . . . But what we had here were these social workers questioning the children, asking very leading and very suggestive questions. . . .

With the children's statements so badly contaminated, the prosecution had no choice but to lean heavily on the alleged medical evidence. Once again, however, this turned out to be a false alarm. On child after child, medical reports done by doctors specifically selected by the police concluded with: 1) "history of sexual abuse," and 2) "physical examination consistent with sexual abuse." We have already examined the linguistic trickery of such phrases. In the few examples where alleged abnormalities were described, rebuttal testimony explained that the alleged signs of "trauma" were now known to be variations of normal anatomy.

The question naturally arises: Why was the case prosecuted if the investigation was so badly botched? Reiner admitted that when the case was taken to a grand jury for indictment, the prosecutors had not bothered to view any of the videotapes of the children! Only later did prosecutors realize how the children had been bludgeoned into making accusations, and by then the political stakes were so high that the case couldn't be dropped. Charges were dismissed against five of the seven defendants one week after the close of California's longest preliminary hearing (which took

18 months), but the D.A.'s office took the remaining two defendants to trial and cost Los Angeles taxpayers $15 million.

After the jury acquitted Ray Buckey and his mother on 52 counts and deadlocked on 13 other counts, Reiner decided to retry the case, despite his frank admissions about the lack of evidence. It is difficult not to conclude that politics, not justice, was the uppermost consideration in such a decision.

How exceptional was the *McMartin* case? Its size and cost were certainly unprecedented, but its basic flaws were the same that we have seen in hundreds of other cases. In the aftermath of the jury's verdict in the *McMartin* case, a parent wrote a letter to a local newspaper, the *Daily Breeze*. His experiences are similar to those of thousands of others, but few have summarized them so well.

> My son attended a preschool in Manhattan Beach. It was not the McMartin school. After his preschool closed for unexplained reasons, my wife "concluded" that our son had been a victim of molestation.
>
> She took him to see the sheriff's investigative team for an interview (twice), but nothing was turned up. Then, on the advice of a "support group," my wife took our son for a discovery session with a psychologist at a South Bay counseling center.
>
> The session with this expert produced a horrible story of physical and sexual abuse. Unfortunately, the interview was not recorded.
>
> On the way to school the next morning, I told my son that I had heard what happened and I was sorry there were such people in the world. After a short pause, he looked at me and said, "Dad, that puppet story wasn't true. It really wasn't true."
>
> When I told my wife what he had said, I was instructed that this was merely denial and that indeed the story was true.
>
> Our son was taken to individual therapy for more than three years, even though he showed no signs of emotional distress. The therapist kept my wife completely upset by alluding to "privileged" secrets that she had with our son. She also advised my wife that our son "shows a lot of anger" (which is nonsense) and that the therapy would go better if he came in twice a week.
>
> The therapist could not understand when I objected to the additional counseling, because the Los Angeles County Victim's Witness Office was going to pay for it. I wrote to the Victim's Witness Program and told them they were not to pay any fees. I suspected they paid anyway, but the office refused to show me my son's file.
>
> It struck me as ironic that these psychologists were chanting, "Believe the children," but that didn't apply if the child wanted to say a puppet story was untrue. Then it was "denial" that needed extensive counseling.
>
> Anyone with some experience with small children knows that children will go along with a fantasy game. But to take advantage of a child's colorful imagination to implant serious accusations that are not true is a form of child abuse.
>
> Some serious child abuse occurred as a direct result of very unprofessional work by some psychologists. Is there no way to hold these people accountable?

Ramifications

Most forms of child abuse are not new. While some societies do better than others, none protects its children to the degree that they deserve. We see no reason to doubt that sexual abuse of children, like other forms of abuse, may leave permanent scars.

We think it is especially tragic, however, when a society creates a new form of child abuse that is perpetrated by the very agencies mandated to prevent abuse. While we are sure that none of the individuals involved intends anything but protection for children, we are equally sure that many children are being abused by the faulty investigations of recent years.

The cases we have studied lead us to conclude that children who learn to believe they were abused, as a result of ongoing interviews by investigators and therapists, may develop the same fears as those who were real victims. Many such children are learning from their interviewers that their lives or the life of a parent is in danger. And many have had a loving relationship with a parent (usually a father) destroyed.

Not only do false accusations cause psychological damage to the child; they often destroy whole families. Even after a successful end to criminal charges, the families of the falsely accused are often left in a shambles, with life savings gone and relationships never quite the same.

We also consider the accusers in many cases to be victims. Many of the parents of the *McMartin* children, to cite just one notorious example, still believe and undoubtedly always will believe that their children were molested at the school. Their adamant point of view, however, is the result of having been told repeatedly by trusted medical and mental health experts that molestation had been proven by reliable scientific techniques. If many parents, after months or years of therapy for abuse they are assured has taken place, are unable to see how they have been misled, it is the professionals and not the parents who are responsible. These families, whom we may call the false accusers, are harmed just as surely as are those of the falsely accused.

Society also pays a heavy price for the large number of people falsely accused. Today, people are afraid to have neighborhood children in their homes. They are afraid to touch a child in a caring way for fear of being accused. Teachers, Boy Scout and Girl Scout leaders, day-care providers, and anyone else in contact with children are

drawing back. Fathers are becoming afraid to bathe their infant daughters. Such fear is certainly not going to reduce the incidence of child molestation, but it is reducing the incidence of normal, healthy contact between adults and children.

Our legal system is left to process the results of investigations done improperly, and we all pay the price. Some judges or jurors may wonder whether accusations are ever genuine. Others, inclined to confuse political agendas with courtroom fact-finding, may be determined not to let a child molester get away. The ferocity with which child molestation cases are fought leads to many ethical violations by attorneys who are bent on winning at any cost. Judges are afraid of being voted out of office because these cases are so political. Doctors are afraid to testify for fear their practices will be harmed if word gets out that they "defended a child molester."

Each year, hundreds of laws of questionable constitutionality are proposed, and many passed, as a way to make convictions easier. Politicians are afraid not to jump on the bandwagon, fearing they will be labeled "soft" on child molesters. Important elements in our legal, medical, and social systems are threatened, all in the name of protecting children.

Panic never protected anyone, and we know of no better word to summarize the developments described above. It is time to admit the mistakes we have made, muster the courage to look closely at why we made them, and start again.

Reforms

If the analysis we have presented is correct, the necessary reforms follow logically. First, police and child protection agencies must recognize the mistake of relying on a few persons from the mental health and medical fields who have set the tone for the new child sexual abuse prevention movement. Investigators must *not* think like therapists, but like investigators.

The practical ramification is that investigators must be retrained. In place of the "believe the child" approach, they must rely on neutral investigation that acknowledges the reality of both true and false accusations of child molestation.

Investigators who truly understand that finding the truth, and not assuming abuse, is the best way to protect children will be more likely to avoid leading and suggestive interviews. Their retraining must include practice in avoiding such questioning. There is no need for mental health professionals to be involved in such training.

While investigators should be required to tape record all their interviews, those with the child are especially crucial. If the child is able to tell his or her own story, even tentatively, a tape recording will document this fact, and such evidence should help convict the child molester. If, on the other hand, the child's real source of information is an overzealous interviewer, that will also be revealed by the tape recording, and such evidence will help avoid convictions of innocent persons. If the truth is our goal, we have everything to gain and nothing to lose by responsibly documenting all interviews with children.

Investigators must also learn how they have been misled by a few doctors who are confusing their desire to stop child abuse with legitimate medical science. Until these doctors reform themselves, the investigators should no longer send children to them for examinations. Ordinary pediatricians who confine themselves to describing bona fide medical findings should be encouraged to perform such examinations.

District attorneys have the power to implement many of these changes simply by letting police and child protection agencies know that cases will not be accepted for prosecution unless minimal standards are observed. A neutral investigation, fully documented, should be a minimum requirement insisted upon by all prosecutors.

The courts also must improve. Judges must do a better job of judging the competence of potential child witnesses. Children who know that a blue tie is not a red tie, and that to say otherwise is to tell a lie, have not demonstrated their competence to testify. The competent witness must also be able to base testimony on *personal recollection* or *independent recall*. In order to decide whether a child's statements are based on such recall or are instead a product of training by interviewers, judges must study the prior interviews and not just the child's statements in court.

Juvenile court judges are especially in need of a reminder that a finding that molestation has occurred, if in reality there has been no molestation, is just as harmful to a child as the failure to recognize and stop abuse that has in fact occurred. The argument that "it is better to err on the side of the child," meaning that molestation will be assumed, is an easy cop-out that may make judges feel better but does nothing to protect children.

Finally, legislators need to recognize that the flood of legislation in recent years, which is generally aimed at weakening due process protections of accused persons, should not be equated with better protection of children. The evidence that false allegations are widespread is now too strong to make such an easy assumption. In our view, efforts to encourage hearsay exceptions, to deny the right of confrontation, and to pass draconian sentences that make plea bargaining more likely than a contested trial are making convictions easier but are promoting neither justice nor child protection.

We do not expect these reforms to come easily. The law enforcement/mental health alliance is too busy defending current practices to be receptive to such changes. The only hope lies in more effective courtroom advocacy that exposes current mistakes, coupled with a growing public awareness that our child protection system needs an overhaul. CJ

SEX ABUSE LEGITIMACY SCALE
(SAL SCALE)

An Instrument for Differentiating Between
Bona Fide and Fabricated Sex-Abuse Allegations of Children

Richard A. Gardner, M.D.

Clinical Professor of Child Psychiatry
Columbia University
College of Physicians & Surgeons

WARNING: In order to be used in a meaningful way, this instrument *must* be used in association with the information provided by Dr. Richard A. Gardner in chapters 3, 4, and 5 of his book, *The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse* (Cresskill, New Jersey: Creative Therapeutics, 1987). The book explains how best to evaluate and score each of the items in the scale. Failure to use these guidelines may result in misleading or erroneous conclusions.

Creative Therapeutics, PO Box R, Cresskill, NJ 07626-0317

ISBN: 0-933812-19-1

Packets of 25 copies of the SEX ABUSE LEGITIMACY SCALE may be obtained at $12.50 per packet + $2.50 postage and handling from Creative Therapeutics, P.O. Box R, Cresskill, N.J. 07626-0317.

INSTRUCTIONS

The differentiating criteria in this scale are most applicable when the sex abuse has taken place in a family situation in which the father (or stepfather) is the alleged offender and the mother is the accuser. It is also applicable when the alleged offender is known to the family and can be identified. This would include relatives, frequent visitors to the home, and babysitters. The scale is most valid if all three parties (child, accuser, and accused) are interviewed, individually and in various combinations, as warranted. The scale is less valuable (but may still be useful) when the alleged offender is unknown or inaccessible for interview. It is applicable to both boys and girls as the victims of the alleged incest.

Medical evidence may provide the most compelling confirmation that the child has been sexually abused. Medical evidence includes findings such as damage to the genital or rectal tissues; general body trauma; foreign objects in the genital, rectal, or urethral openings; the presence of a sexually transmitted disease; and pregnancy (obviously, applicable only to teenagers). When such evidence is present, the SAL Scores can provide additional data—generally confirmatory, but in rare situations nonconfirmatory. When medical evidence is not present, the SAL Scores may be the primary sources of information about whether or not the sex-abuse allegation is valid.

The items are worded so that the greater the number of *Yes* answers, the greater the likelihood that the sex abuse is genuine. In contrast, the smaller the number of *Yes* answers, the greater the likelihood the sex abuse has been fabricated. The differentiating criteria are divided into three categories, from the most to the least valuable. In order to give greater weight to the more valuable criteria, the following point scores are to be given for *Yes* answers in each of the three categories.

Part A. Very Valuable Differentiating Criteria—3 points for each *Yes* answer.
Part B. Moderately Valuable Differentiating Criteria—2 points for each *Yes* answer.
Part C. Differentiating Criteria of Low But Potentially Higher Value—1 point for each *Yes* answer.

Checks are placed in the *Yes*, *No*, or *Not Clear or Not Applicable* columns to the right of each item, in whichever column is appropriate. The total number of *Yes* responses in each category is multiplied by the appropriate factor for that category to obtain a weighted score for that part. The sum of the weighted part scores (Part A + Part B + Part C) is referred to as the *Sex Abuse Legitimacy Score (SAL Score)*. Separate SAL Scores are calculated for the child (maximum 60 points), the accuser (maximum 27 points), and the accused (maximum 27 points). A cumulative SAL Score of all three parties is not computed.

Because of the large number of criteria and because no individual can be expected to satisfy all or even most of them—even in cases of proven sexual abuse—SAL Scores in the range of 50% of the maximum or more are highly suggestive of bona fide sexual abuse. In contrast, when the abuse is fabricated, the SAL Scores are usually quite low (below 10% of the maximum) and may even be close to or at the zero level in many cases. Accordingly, when using this scale, the best way to interpret the findings is to consider very low SAL Scores (below 10% of the maximum) to be strongly indicative of fabrication. From that low point, the higher the SAL Score above the 10% level, the greater the likelihood the abuse is genuine. This is especially the case when the SAL Score exceeds 50% of the maximum.

The SAL Scale was developed by Dr. Richard A. Gardner from studies conducted between 1982 and 1987 of children who made allegations of sex abuse. As a result of these studies, Dr. Gardner concluded in some cases that the children were indeed sexually abused and in other cases that they were not. The criteria he used for making this differentiation are embodied in this scale. The items that were selected for inclusion in this scale appeared to be clinically useful indicators for differentiating between bona fide and fabricated sex-abuse allegations. Face validity only is claimed for these items. These clinical studies indicated into which of the part categories (A, B, or C) the item should reasonably be placed. Clinical experience also suggested the cutoff levels for differentiating between the two classes of sex abuse. Accordingly, the cutoff levels and their significance should be viewed as preliminary and tentative. They may be modified after more extensive studies (by Dr. Gardner and possibly others) and will be revised, if necessary, in future editions of this scale.

The examiner does well to give serious consideration to conclusions derived from the SAL Scale, but not to make the complete decision on the basis of its findings. Rather, it is crucial that other data be considered

before coming to a final conclusion. These other sources of information would include medical reports, reports from other examiners, and interviews with other parties (especially those who claim to have been witnesses to the alleged abuse).

The SAL Scale is not designed to be used as a questionnaire, wherein the examiner asks the interviewee his or her opinion regarding whether or not a criterion is present. If direct input from the interviewee is elicited, it is very likely that the conclusions will be contaminated by the bias of the respondent. Rather, the scale should be used *after* the interviews with the child, accuser, and accused have been completed. Both individual and joint interviews *must* be conducted in order to properly assess conflicting data that is often provided. This is especially the case for the child's items, because parental input may be crucial if one is to assess adequately each item, and properly score it. It is only after all of these interviews have been completed that the examiner is in a position to properly utilize the scale. Before completing the evaluation, the examiner should review the SAL Scale (not in the interviewee's presence), in order to be sure that *all* items have been considered. Not to do so will compromise significantly the value of the findings.

The Child Who Alleges Sex Abuse

Name _____ DOB: _____
Address _____
Date(s) of interview(s) _____

Part A *Very Valuable* *Differentiating Criteria* (3 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
1. Very hesitant to divulge the sexual abuse			
2. Fear of retaliation by the accused			
3. Guilt over the consequences to the accused of the divulgences			
4. Guilt over participation in the sexual acts			
5. Provides specific details of the sexual abuse			
6. Description of the sex abuse credible			
7. If the description of the sex abuse does *not* vary over repeated interviews, check *Yes*. If the description *does* vary, check *No*.			
8. Frequent episodes of sexual excitation, apart from the abuse encounters.			
9. Considers genitals to have been damaged			
10. Desensitization play engaged in at home or during the interview			
11. Threatened or bribed by the accused to discourage divulgence of abuse			
12. If a parental alienation syndrome is *not* present, check *Yes*. If a parental alienation syndrome *is* present, check *No*.			
13. If the *complaint* was *not* made in the context of a child custody dispute or litigation, check *Yes*. If there *is* such a dispute, check *No*.			
Total *number* of checks in the *Yes* column for Part A (items 1–13) _____ (maximum 13)			

Part B *Moderately Valuable* *Differentiating Criteria* (2 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
14. If the description does *not* have the quality of a well-rehearsed litany, check *Yes*. If it *does* have a litany quality, check *No*.			
15. If there is *no* evidence of a "borrowed scenario" (description taken from other persons or sources), check *Yes*. If the description appears to have been taken from external sources, check *No*.			
16. Depression			
17. Withdrawal			
18. Compliant personality			
19. Psychosomatic disorders			
20. Regressive behavior			
21. Deep sense of betrayal, especially regarding the sex abuse			
Total *number* of checks in the *Yes* column for Part B (items 14–21) _____ (maximum 6)			

Part C *Differentiating Criteria of Low But Potentially Higher Value* (1 point for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
22. Sleep disturbances			
23. Abuse took place over extended period			
24. Retraction with *fear* of reprisals by the accused, rather than retraction with *guilt* over the consequences to the accused of the divulgences			
25. Pseudomaturity (girls only)			
26. Seductive behavior with the accused (girls only)			
Total *number* of checks in the *Yes* column for Part C (items 22–26) _____ (maximum 5)			

Computation of the Child's Sex Abuse Legitimacy Score	*Number of Yes Checks*	*Multiply by Factor*	*Weighted Score*
Score Part A (items 1–13)		x3	(maximum 39)
Score Part B (items 14–21)		x2	(maximum 16)
Score Part C (items 22–26)		x1	(maximum 5)
SAL Score (sum of scores A+B+C) _____ (maximum 60)			

A SAL Score of 6 or below indicates that the sex-abuse allegation is extremely likely to have been fabricated.

SAL Scores from 7 through 29 are inconclusive. However, the closer the SAL Score is to 7, the more likely the allegation was fabricated; the closer it is to 29, the more likely the abuse took place.

SAL Scores of 30 and above are strongly suggestive of bona fide sex abuse.

The Accuser
(Especially when the accuser is the mother)

Name _____ DOB: _____
Address _____
Date(s) of interview(s) _____

Part A *Very Valuable* *Differentiating Criteria* (3 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
1. Initially denies and/or downplays the abuse			
2. If the complaint was *not* made in the context of a child custody dispute or litigation, check *Yes*. If there *is* such a dispute, check *No*.			
3. Shame over revelation of the abuse			
4. If she does *not* want to destory, humiliate, or wreak vengeance on the accused, check *Yes*. If such attitudes are present, check *No*.			
5. If she has *not* sought a "hired gun" attorney or mental health professional, check *Yes*. If such professionals have been or are being sought, check *No*.			
6. If she does *not* attempt to corroborate the child's sex-abuse description in joint interview(s), check *Yes*. If she *does* exhibit such behavior, check *No*.			
Total *number* of checks in the *Yes* column for Part A (items 1-6) _____ (maximum 6)			

Part B *Moderately Valuable* *Differentiating Criteria* (2 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
7. Appreciates the psychological trauma to the child of repeated interrogations			
8. Appreciates the importance of maintenance of the child's relationship with the accused			
9. Childhood history of having been sexually abused herself			
10. Passivity and/or inadequacy			
Total *number* of checks in the *Yes* column for Part B (items 7-10) _____ (maximum 4)			

Part C *Differentiating Criterion of Low But Potentially Higher Value* (1 point for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
11. Social isolate			
Total *number* of checks in the *Yes* column for Part C (item 11) _____ (maximum 1)			

Computation of the Accuser's Sex Abuse Legitimacy Score	*Number of Yes Checks*	*Multiply by Factor*	*Weighted Score*
Score Part A (items 1-6)		x3	(maximum 18)
Score Part B (items 7-10)		x2	(maximum 8)
Score Part C (item 11)		x1	(maximum 1)
SAL Score (sum of scores A+B+C) _____ (maximum 27)			

A SAL Score of 3 or below indicates that the sex-abuse allegation is extremely likely to have been fabricated.

SAL Scores from 4 through 13 are inconclusive. However, the closer the SAL Score is to 4, the more likely the allegation was fabricated; the closer it is to 13, the more likely the sex abuse took place.

SAL Scores of 14 and above are strongly suggestive of bona fide sex abuse.

The Accused
(Especially when the accused is the father)

Name _____ DOB: _____
Address _____
Date(s) of interview(s) _____

Part A *Very Valuable* *Differentiating Criteria* (3 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
1. Bribed and/or threatened the child to keep the "secret"			
2. Weak and/or feigned denial			
3. If the complaint was *not* made in the context of a child custody dispute or litigation, check *Yes*. If there *is* such a dispute, check *No*.			
4. Presence of other sexual deviations			
Total *number* of checks in the *Yes* column for Part A (items 1-4) _____ (maximum 4).			

Part B *Moderately Valuable* *Differentiating Criteria* (2 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
5. Childhood history of having been sexually abused himself			
6. Reluctance or refusal to take a lie detector test			
7. History of drug and/or alcohol abuse			
8. Low self-esteem			
9. Tendency to regress in periods of stress			
10. Career choice which brings him in close contact with children			
Total *number* of checks in the *Yes* column for Part B (items 5-10) _____ (maximum 6)			

Part C *Differentiating Criteria of Low* *But Potentially Higher Value* (1 point for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
11. Moralistic			
12. Controlling			
13. Stepfather or other person with frequent access to the child			
Total *number* of checks in the *Yes* column for Part C (itemse 11-13) _____ (maximum 3)			

Computation of the Accused's *Sex Abuse Legitimacy Score*	*Number of* *Yes Checks*	*Multiply* *by Factor*	*Weighted Score*
Score Part A (items 1-4)		x3	(maximum 12)
Score Part B (items 5-10)		x2	(maximum 12)
Score Part C (item 11-13)		x1	(maximum 3)
SAL Score (sum of scores A+B+C) _____ (maximum 27)			

A SAL Score of 3 or below indicates that the sex-abuse allegation is extremely likely to have been fabricated.

SAL Scores from 4 through 13 are inconclusive. However, the closer the rating is to 4, the more likely the allegation was fabricated; the closer it is to 13, the more likely the sex abuse took place.

SAL Scores of 14 and above are strongly suggestive of bona fide sex abuse.

Thursday, June 29, 1989 WEATHER: Su

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Albany, N.Y.

THE TIMES UI

NOW urges veto of bill outlawing false child-abuse calls

By Deborah Gesensway
Capitol bureau

ALBANY — The state Legislature wants to make it illegal to knowingly and maliciously make a false report to the state's child-abuse hot line.

● **Other legislation**/B-16, B-20

But women's rights advocates say the measure may end up scaring some people — particularly parents involved in custody disputes — from reporting legitimate child-abuse cases.

"This bill is based on ignorance and false information," said Amy Neustein, a Brooklyn sociologist, speaking on behalf of the National Organization for Women. "This bill is going after women, women men see as vindictive and vengeful."

She and other opponents are urging Gov. Mario M. Cuomo to veto the bill.

Sponsors of the bill, however, say opponents don't understand that the bill's provisions can't be used against anyone who reports suspected child abuse in good faith.

"All they need (to make a report to the state child-abuse hot line) is reason to believe," said Stephanie H. Wacholder, an aide to Assemblyman William B. Hoyt, D-Buffalo, sponsor of the false-reporting bill. "We think this is important because there are people out there using the child-abuse hot line maliciously, to get back at a neighbor or a spouse."

The bill, which has been passed unanimously in the last few days by both the Senate and the Assembly and sent to Cuomo for his signature, would make it a crime to report a case to the Central Register of Child Abuse and Maltreatment that the person knew to be "false or baseless." If convicted of the misdemeanor, the person making the false charge could be jailed for one year.

"The burden of proof is clearly on the person who brings the charge of false report"

— Paul Elisha, state Department of Social Services

It is already illegal to knowingly report a false incident to police, but the bill would extend that to include false reports made to the state child-abuse hot line.

Once a suspected case of child abuse is reported to the statewide hot line, it is referred to local child protective services offices in each county, whose caseworkers investigate.

Of the 88,000 cases reported in 1988, nearly two-thirds were ruled "unfounded" by child protective services caseworkers, according to Paul Elisha of the state Department of Social Services, which runs the hot line. "Unfounded" means that caseworkers were unable to find enough evidence to declare a case valid, he said, not that the cases were false. Wacholder said about 15 percent of all reports are considered false.

Elisha said his agency didn't originally back the bill because of fears that it might have "a chilling effect on reporting of child abuse," but the department isn't opposing the provisions now because officials think that they include enough safeguards to protect people who report cases in good faith that then turn out to be false.

"The burden of proof is clearly on the person who brings the charge of false report," he said. "They have to prove malicious intent and knowledge beforehand that it is false."

Several legislators, including Democratic Assembly members Helene Weinstein of Brooklyn and Jerrold Nadler of Manhattan, have said they have serious concerns about the bill, although they voted for it. They and their aides said they have seen instances in which mothers who report their ex-husbands for allegedly sexually abusing their children have been punished by the court system for making the accusations.

That is what Neustein, of NOW, said

See **ABUSE** / A-1

ABUSE

Continued from A-1

happened to her. "Incest is prevalent and there are judges who refuse to believe that," she said. "They don't think a father would do that so they charge the mothers with brainwashing their children to say they were sexually abused by daddy and then take the children away from the mothers" for emotionally abusing their children.

Neustein lost custody of her 8-year-old daughter after she accused her ex-husband of sexually abusing the child. Her case has been the subject of a Senate investigation and featured prominently in joint Senate-Assembly hearings this spring into Family Court procedures for assigning custody and visitation rights where charges of sexual abuse have been made.

Tom McGreevy of the state Fathers Rights Association, on the other hand, said this kind of legislation is needed because feuding parents — both women and men — have taken to calling the child-abuse hot line to report their spouse in an attempt to gain an edge in custody hearings.

"The difference is when a mother uses this strategy, she usually wins custody," he said. "When the case is finally cleared up and they find there was no abuse, the court will say that since the child has been in the custody of the mother, the child should stay there."

Men who have attempted to use the system in the same way usually lose all visitation rights, he said. Added Wacholder, "We know that this is being used in custody disputes oftentimes at the suggestion of an attorney."

Jules Kerness, an aide to Sen. Mary B. Goodhue, R-Mount Kisco, who also sponsored the bill, said he understands the women's groups' fears that criminalizing false reporting could discourage some people from calling in real cases.

"We're looking for a chilling effect for the harassment calls that are clogging the system," he said.

THE TIMES UNION
Thursday,
July 13, 1989

Child abuse claims

To the Editor:

The National Organization for Women's opposition to the Legislature's bill outlawing false child-abuse calls bears testimony to the widespread misuse of the Child Abuse Hotline by mothers and matrimonial attorneys who have victimized:

☑ Non-abused children misdiagnosed and mistreated for sexual abuse;

☑ Innocent fathers deprived of access to their children during the pendency of a custody dispute;

☑ Uneducated, untrained child protective workers who are all too anxious to assist falsely accusing mothers;

☑ Gullible judges who presume falsely accused fathers to be guilty until proven innocent, and

☑ The system itself when used maliciously and intentionally to deprive our children of access to their fathers.

The horrendous national disgrace of our children being deprived of their fathers by overzealous child protective workers, manipulative matrimonial attorneys, misguided family court judges and the feminist radicals of the National Organization for Women requires an immediate and comprehensive solution which would include (1) passage of additional legislation to punish and deter false allegations of child abuse, (2) education and training for social workers to enable them to distinguish between true and false allegations of abuse, and (3) education and training for family court judges to enable them to consider false allegations as one of the criteria in determining custody.

PETER G. SOKARIS
Albany

THE TIMES UNION
Thursday,
July 20, 1989

Law makes malicious charges of abuse a crime

Associated Press

ALBANY — Gov. Mario M. Cuomo on Wednesday signed into law a bill that supporters said will curb malicious, false reports to the state child abuse hot line.

The law will apply only to those people who have no reason to believe their accusations of child abuse are true, said Stephanie Wacholder, an aide to Assembly sponsor William Hoyt, D-Buffalo.

The law, which takes effect in November, will make calling the hot line with a baseless abuse charge a misdemeanor, falsely reporting an incident. The crime will be punishable by up to $1,000 fine and a year in jail.

The state's chapter of the National Organization for Women had urged Cuomo to veto the bill, saying it could be used to penalize mothers.

Amy Neustein of NOW said the state should be concentrating on jailing abusers, not abuse reporters.

"Why are they using their paltry resources to go after the one who makes the call?" she said.

Wacholder said the law doesn't apply to callers who have reason to believe that there is a basis for their abuse charge.

Neustein said she didn't trust the state's criminal justice system to decide which calls are malicious.

The state Department of Social Services has estimated that up to 15 percent of the false reports received by the hot line are made maliciously, Wacholder said.

In other bill action Wednesday:

● Cuomo signed a law that will place stricter controls on professional fund-raisers working for law enforcement support groups, such as police unions.

The new law requires any organization that raises money for police or their families to register with the state.

Furthermore, it bars fund-raisers from identifying themselves falsely as police officers or from promising donors special breaks, such as immunity from parking tickets.

The law takes effect immediately.

● State research scientists will finally be able to share in the royalties for new products and processes they patent, under legislation designed to bring New York into conformity with federal rules.

The new law, which takes effect immediately, will allow state employees to take royalty money in addition to their salaries.

● Under another law that took effect immediately, the state Department of Environmental Conservation has been ordered to develop an inventory of bodies of water that are out of compliance with cleanliness standards and to identify the sources that pollute them.

The law also authorizes EnCon to administer a grant program to fund up to half the cost of cleaning up the pollution.

● Cuomo also signed legislation extending the life of the state Superfund Management Board, which oversees cleanup of hazardous waste sites, through March 31, 1994. The law takes the state economic development commissioner off the panel and adds two citizen representatives instead.

● Cuomo signed a law extending the program that requires utilities to conduct home energy-conservation surveys.

● Christmas trees will be considered a crop under another bill signed by Cuomo.

The law, which took effect immediately, includes Christmas trees in the legal definition of a crop so that land used to grow the trees can be eligible for agricultural assessments.

● Patrons of Off-Track Betting simulcast parlors will be able to pay their bar tabs with credit cards under another new law.

The measure, which took effect immediately, also increases to 15 the number of simulcast facilities permitted in New York City and to three per county permitted all other OTB districts.

● Leased used cars will be included in the used-car Lemon Law. The bill is aimed at helping people who lease used cars that are defective by requiring dealers to issue warranties. It takes effect in November.

● Cemetery vandals could find themselves sentenced to repair the damage they cause under another new law.

The law allows judges to direct cemetery vandals to repair or maintain cemeteries as a condition of probation or conditional discharge. It takes effect in November.

● Rural letter carriers will no longer have to fiddle with their seat belts every time they deliver mail, thanks to Cuomo's approval of a measure exempting motorized mailmen from the state's mandatory seat-belt law. The exemption takes effect immediately.

● Effective Nov. 1, kerosene cannot be placed in portable containers of less than five gallons unless the containers have spouts and tight closures or are designed so contents can be poured without spilling.

● Starting next month, banks will be forbidden to charge fees for accepting U.S. coins for deposit or exchange into paper money. However, the coins must be properly rolled and must display the customer's account number. No more than 10 rolls can be turned in at any one time.

Cuomo names rape panel

Associated Press

ALBANY — Gov. Mario M. Cuomo, saying that New York needs to improve the way it responds to crimes of sexual assault and rape, appointed a task force Wednesday to recommend changes in laws.

Cuomo said he hoped that his study commission, chaired by Judith Avner, director of the state's Division for Women, would come up with recommendations in time for next year's legislative session.

There were 91,000 reported rapes in the United States in 1987, Cuomo said, and this represents only a fraction of the actual crimes. Too many women, fearing the continued wrongful impression that they're somehow to blame for attacks against them, fail to report crimes, he said.

"Clearly we have to face rape and sexual assaults for what they are," Cuomo said. "They are dehumanizing acts of violence. Seeing it any other way absolves the violator and condemns the violated."

Cuomo's task force includes members of state agencies for health, social services, parole, youth, domestic violence and crime victims. The panel also includes state Supreme Court Justice Richard Andrias of New York City and officials of several county and city agencies dealing with sexual assault.

State Senate Majority Leader Ralph Marino said he welcomed Cuomo's task force, but said lawmakers should act quickly on three Republican-backed bills. These proposals would restrict plea bargaining in rape cases, increase penalties if a weapon is used in sexual assault and establish a statewide rape crisis program with a 24-hour hot line.

"These bills should be enacted as quickly as possible and are not in need of further study," Marino said.

M E M O R A N D U M I N S U P P O R T
submitted in accordance with Assembly Rule III, §1 (e)

Number: Assembly 2050-A Senate _____ _X_ Memo on original bill ___ Memo on amended bill

Sponsor(s): Member(s) of Assembly: William B. Hoyt

Senator(s): _____

TITLE OF BILL:

AN ACT to amend the penal law and the social services law, in relation to falsely reporting a case of child abuse or maltreatment.

SUMMARY OF SPECIFIC PROVISIONS:

Section one of the bill amends section four hundred twenty-four of the social services law to require local child protective services to refer suspected cases of falsely reporting child abuse and maltreatment in violation of provisions of the Penal Law as added by this act, to the appropriate law enforcement agency or district attorney.

Section two of the proposal adds a new subdivision three to section 240.55 of the Penal Law, relating to the making of false reports of child abuse or maltreatment to the statewide central register of child abuse and maltreatment. Specifically, a person would be guilty of falsely reporting in the second degree if he or she when, knowing a report is false or baseless, reports, by word or action, to the State Central Register, an alleged occurrence or condition of child abuse or maltreatment which did not in fact occur or exist. Falsely reporting in the second degree is a Class A misdemeanor.

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER:

1. Under current law there is some question under what circumstances it is a crime to knowingly make a false report of suspected child abuse or maltreatment to the State Central Register. Currently, it is illegal to, knowing the information to be false, report -- an alleged occurrence or impending occurrence of a catastrophe or emergency which did not in fact occur or does not in fact exist. A report of suspected child abuse or maltreatment may not necessarily involve an impending catastrophe or emergency. This bill makes it clear, by adding a new subdivisior to Section 240.55 that any knowingly false report to the State Central Register, whether or not an emergency or catastrophe is alleged, is illegal.

2. Under current law (section 422(4), Social Services Law) a court or grand jury has access to information contained in the State Central Register, under current law and practice, however, this information is only made available to such entities upon request. This bill proposes to make clear that the State Department of Social Services may, in its discretion, refer a suspected case of false reporting of child abuse or maltreatment to the appropriate district attorney.

STATEMENT OF SUPPORT:

The incidence of child abuse and maltreatment in New York State has reached alarming proportions. Each year since the establishment of the State Central Register, the number of reports of suspected child abuse or maltreatment has increased steadily, more than tripling from 1973 to 1988. In 1988, the number of reports was 122,917 involving 199,878 children.

It has been estimated that perhaps 15% of all reports of suspected child abuse or maltreatment may be reports that, when made, were known by the reporter to be false. A number of reports which have been investigated have involved situations where an individual used the Central Register to harass and annoy someone with whom they have a personal relationship, or for purposes of increasing an individual's chances in a child custody case.

In some instances, the same individual would repeatedly make false reports. Although the subject of the report and the reporter were both known to the register, under the law, with each report, an appropriate investigation must take place.

The subject of the report does have a right, even if somewhat limited, to protect themselves. The subject may commence a libel or slander action or may file a criminal complaint alleging Harassment (Penal Law §240.25) or Aggravated Harassment (Penal Law §240.30). Because of the difficulty of proving these cases, and apparently for personal reasons, these avenues for recourse are rarely, if ever, used.

The state, however, does not have the ability to discourage such improper use of the register. Improper use, which is annoying to the subject, also wastes valuable state and local resources. Caseworkers, heavily burdened with cases and responsibilities, should not have to repeatedly investigate allegations they know, from past investigations, to be false. This bill will help to reduce the number of false reports.

This bill gives the State Department of Social Services the ability to notify the local district attorney who may commence a criminal proceeding.

FISCAL IMPLICATIONS:

May result in more efficient use of state and local resources.

LEGISLATIVE HISTORY:

1984 - A.11415 - Referred to Codes Committee
1985 - A.3205 - Referred to Codes Committee
1986 - A 3205 - Passed Assembly, Died in Senate Rules

EFFECTIVE DATE:

First day of November after this act becomes law.

HB44

Other "Truths" about Domestic Violence: A Reply to McNeely and Robinson-Simpson

Mr Daniel G. Saunders

Whenever I read in a professional journal that someone has found the Truth about a problem I wonder if more heat than light is being generated. An example is "The Truth about Domestic Violence: A Falsely Framed Issue."[1] The authors, McNeely and Robinson-Simpson, claim that the problem of domestic violence has been presented falsely as a problem of men's violence against women. They believe that male victimization has been ignored, that the public, legislators and change agents are acting on a faulty assumption, and that legal action to protect the rights of women may lead to men's "social and legal defenselessness."[2]

As with most social problems, the truth about domestic violence is far more elusive than McNeely and Robinson-Simpson would like us to think. In fact, they may have led social workers further from the truth by failing to mention important limitations of the research they cite, ignoring evidence that counters the research, and relying heavily on conjecture, opinion, and anecdotal evidence. Existing evidence shows that women are abused to a greater extent than men and thus our priorities for services and legislation have been placed properly. Especially disturbing is that the conclusions made by McNeely and Robinson-Simpson may be used to block services for battered women, deny them their rights, and suggest types of intervention that may increase their risk of victimization. The question of whether husband abuse is a significant problem is profoundly important to the social work profession because social workers have been involved in developing services and policies aimed at halting domestic violence.

Women's Right to Defense

McNeely and Robinson-Simpson cite several representative community and national surveys and one crime victimization survey to show that rates of violence by husbands and wives are about equal; more selective surveys of help-seeking battered women show similar results.[3] However, to call the violence by women "abusive" is to miss the mark. The authors fail to cite evidence that most of the wives' violence is in self-defense and that size and strength differences mean the women will be the most victimized.

McNeely and Robinson-Simpson make the same mistake as Steinmetz in citing statistics on the equal rates of spousal homicides by husbands and wives without reporting the rates at which the homicides were in response to violence. Wolfgang's study, which showed equal rates of homicide for husbands and wives, also showed that in 60 percent of the cases in which wives killed husbands, the women were responding to violence. In only 9 percent of the cases in which husbands killed wives were the men reacting to the wives' violence. Although a justifiable self-defense motive was not established firmly in the study, Wolfgang concludes that "we are left with the undeniable fact that husbands more often than wives are major precipitating factors in their own homicide deaths."[4] Indirect evidence for self-defense comes from a study of women who had been in both a violent and a nonviolent relationships: 23 percent used violence occasionally when in a relationship with a violent man whereas only 4 percent did so in a nonviolent relationship.[5]

A study by this author of battered women at five shelters and a family service agency showed that most of the women had used violence, but largely for self-defense.[6] Of the women who used severe violence, 71 percent used it exclusively to defend themselves against their partner's aggression, which they often defined as "fighting back." The women's reports on their motives for violence were not correlated with a measure of social desirability response bias.

McNeely and Robinson-Simpson rely heavily on the early work of Steinmetz but do not reveal the flaws in her data presentation and conclusions. Some researchers have called her work on battered husbands "the battered data syndrome."[7] For example, Steinmetz left out the most serious forms of violence from her initial report; a subsequent report revealed that four wives and none of the husbands in 54 marriages suffered severe and repetitive beatings.[8] McNeely and Robinson-Simpson also were selective in the data they presented. They left out the category of Steinmetz's original study—"pushing, shoving, grabbing"—that showed much higher rates for husbands. Contrary to the claims of McNeely and Robinson-Simpson and of Steinmetz herself, nowhere does Steinmetz measure who initiated physical aggression or what their motives were for being aggressive. All of the studies cited in the article suffer from the same inadequacy, yet McNeely and Robinson-Simpson apply the term "victim" to men unequivocally and use the phrase "reciprocal violence," which implies that the violence is equal in purpose and effect.

McNeely and Robinson-Simpson also report selectively from other studies. For example, two of the frequency categories in the Gelles study, both of which showed higher frequencies for husbands, were not reported.[9] The authors do not mention that the increases and decreases in marital violence rates between the 1975 and 1985 national family violence studies are not statistically significant.[10] The false conclusion is that violence against husbands is increasing and violence against wives is decreasing. The authors quote Straus and Gelles to explain that continued violence against husbands is probably from a lack of public concern and ameliorative programs for the problem of women's violence. Yet something is being done: If current findings on women's self-defense are generalizable, then efforts to stop men's violence and to offer women alternatives to a violent home will decrease violence against men.

Consequences of Physical Differences

The generally greater size and strength of men means that women are likely to suffer greater injuries and, if they are to repel an attack, to be required to use a more severe form of violence. McNeely and Robinson-Simpson play down Steinmetz's statements that physical differences lead to greater injury to women by saying that "men were somewhat more likely to cause greater injury."[11] Steinmetz actually makes stronger statements about the greater harm to women:

> When the wife slaps her husband, her lack of physical strength, plus his ability to restrain her, reduces the physical damage to a minimum. When the husband slaps his wife, however, his strength, plus her

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nability to restrain him, results in considerably more damage."[13]

n who batter average 45 pounds heavier four to five inches taller than their part-s, but strength and fighting experience are likely to give them an advantage.[13] IcNeely and Robinson-Simpson falsely me that the higher frequency of some es of severe violence by women suggests their violence is not merely a response iolence by their partners. Yet it is legal-stifiable and likely that women will use e severe forms of violence to defend nselves or their children.[14] The results of Leod's survey showed that none of the was seriously injured unless a weapon or knife) had been used against them. eporting on the Straus and Gelles study, Neely and Robinson-Simpson claim that nen used "weapons" more often but e "hitting, or trying to hit with ething" in the same category as the "use knife or gun." Given size and strength rences, hitting with an object constitutes rent "weapons" for men and women. refore, the Conflict Tactics (CT) scale other measures of marital violence are balanced for gender differences. Simp-eporting men's and women's rates for a item or assigning categories of vere" and "nonsevere" can be highly eading.

pplying the theory of defensive violence e National Crime Survey (NCS) data pro-s very different conclusions. If the cases rious assault were most similar to Wolf-g's homicide cases, then only a small entage of the men used violence defen-y compared with the majority of women. same assumption applied to the NCS shows an estimated 74 percent of the us assaults by women to be in response acks by their partners. McLeod's finding men were more likely to be injured was result of the use of weapons, and such s are more likely to be reported in the type ime study she conducted. Although the ortion of incidents of women using a e or gun was higher in the NCS study (34 ent compared with 22 percent), given the o 13 ratio of male to female victimization the ratio of men to women having a knife n used against them still is skewed (one to eight women). McNeely and Robin-Simpson do not reveal that 88 percent of nen's injuries were minor; 17 percent of nen needed some medical attention com-d with 24 percent of the women (an over-ale–female ratio of one to 18). The ratio nospitalization rates is even more lop-d—one man was hospitalized for every 46 en. Thus, although the proportion of men ng injuries is higher, the representative NCS study indicates that women suffer more serious injuries.

McLeod's conclusion that the profiles of weapon use and injury are different for men and women is consistent with the theory of defensive violence. Her statement that violence against men and violence against women are independent events does not mean that the violence of one person is not in reaction to the violence of another, only that women used weapons more often than men and that as a result men were more likely to be injured.

Most studies of domestic violence fail to ask about the motives for and consequences of violence. The issue is not whether women have the capacity to be aggressive but whether they are abusive in their aggression, using it for coercion, domination, or the expression of anger and not for self-protection or the protection of others.

Research Flaws and Misconceptions

In trying to correct what they see as an imbalance in the domestic violence literature, McNeely and Robinson-Simpson describe what they perceive as a number of "research flaws and common misconceptions." They also draw on literature from outside the realm of domestic violence.

Who Is More Aggressive?

To show that women are as aggressive as men, they cite a review by Frodi, Macaulay, and Thome.[16] However, the review also contains some important qualifying statements. First, none of the studies was of people who were given the option of truly violent, hurtful behavior. Second, although women in the experiments did not differ from men in their overall rates of applying the experimental aggression (shock or annoying noise), in many situations the women avoided acting aggressively because of anxiety or guilt about being aggressive. Third, one factor that brought women's aggression up to the rate of male aggression was situations in which the justification for aggression was socially approved.

Child Abuse

To bolster the point that women are as aggressive or more aggressive than men, McNeely and Robinson-Simpson cite Steinmetz, who says that women are more likely to abuse children. However, McNeely and Robinson-Simpson do not add that Steinmetz also points out that women spend more time with children and are usually the parent in single-parent homes, which are prone to increased levels of stress.[17] When official reports of abuse were analyzed in a study by the American Humane Society and the study contained controls for "time at risk," 76 percent of the abusers were fathers.[18] In the first national study of family violence by Gelles, the difference between fathers and mothers was not very great and fathers used more serious forms of violence.[19]

Underreported Victimization

McNeely and Robinson-Simpson also follow Steinmetz in claiming that the problem of husband abuse has been ignored because men are less likely to admit to their victimization. However, the evidence contradicts this claim. In the NCS data, the differences are not substantial, with 54 percent of the women and 45 percent of the men stating that they reported their victimization to the police.[20] One reason that some men may be reluctant to report all but the most severe violence against them is that they fear being arrested for just having attacked their partners. McNeely and Robinson-Simpson speculate that only a few men in the Steinmetz study participated in the face-to-face interview because they were reluctant to discuss their victimization, but Steinmetz gives other reasons—the time did not seem convenient for the husbands or they saw the research on families as the wives' obligation.[21]

The first national study of family violence by Straus and the community survey by Nisonoff and Bitman suggest that men are more willing than women to admit being subject to violence.[22] In both of these random surveys, the proportion of men who admitted being subject to violence was higher than the proportion of women who admitted being aggressive toward their partners. Underreporting by women appeared to occur in the community survey but not in the national study. Gelles speculated that "There are a number of possible reasons for these discrepancies, but one is that men, being in a superior position in the family and society, are perhaps less humiliated by being hit and are more likely to admit it than their wives."[23]

Battered Women's Reasons for Staying

Most researchers, including Straus, list women's economic entrapment in intimate relationships as one of the reasons to aid battered women more than abused men.[24] McNeely and Robinson-Simpson, in contrast, state that "examinations of female spouse abuse victims reveal that low-income women are more likely than affluent women to leave."[25] This statement is based on Steinmetz's distortions

the United States," in R. J. Gelles, ed., *Family Violence*, p. 84.

20. McLeod, "Women Against Men," p. 173.

21. Steinmetz, *The Cycle of Violence*, p. 16.

22. M. A. Straus, R. J. Gelles, and S. K. Steinmetz, *Behind Closed Doors: Violence in the American Family* (New York: Anchor Press, 1980); and McNeely and Robinson-Simpson, "The Truth about Domestic Violence," p. 485.

23. Gelles, "The Truth About Husband Abuse," p. 140.

24. Straus, Gelles, and Steinmetz, *Behind Closed Doors*, p. 44.

25. McNeely and Robinson-Simpson, "The Truth about Domestic Violence," p. 487.

26. B. E. Aguirre, "Why Do They Return? Abused Wives in Shelters," *Social Work*, 30 (1985), pp. 350–354; L. M. Cristall, "A Comparison of Androgyny and Self-Actualization in Battered Women," *Dissertation Abstracts International*, 39 (1979), pp. 5039–5040; C. Ellsworth and L. Wagner, "Formerly Battered Women: A Follow-up Study." Paper presented at Council on Social Work Education, Louisville, Kentucky, 1981; C. A. Heintzelman, "Differential Utilization of Selected Community Resources by Abused Women." Unpublished doctoral dissertation, The Catholic University of America, 1980; B. Z. Lesser, "Factors Influencing Battered Women's Return to Their Mates Following a Shelter Program: Attachment and Situational Variables." Unpublished doctoral dissertation, California School of Professional Psychology, 1981; L. E. Okun, "A Study of Woman Abuse: 300 Battered Women Taking Shelter, 119 Woman–Batterers in Counseling." Unpublished doctoral dissertation, University of Michigan, 1983; and *(reports two studies)* M. J. Strube, "The Decision to Leave an Abusive Relationship: Empirical Evidence and Theoretical Issues." Unpublished manuscript, Department of Psychology, Washington University, St. Louis, Mo.

27. Aguirre, "Why Do They Return?" p. 352.

28. B. J. Rounsaville, "Theories in Marital Violence: Evidence from a Study of Battered Women," *Victimology*, 3 (1978), pp. 11–31.

29. Pagelow, *Family Violence*, p. 194.

30. Straus, Gelles, and Steinmetz, *Behind Closed Doors*, p. 127.

31. N. A. Cazenave and M. A. Straus, "Race, Class, Network Embeddedness and Family Violence: A Search for Potent Support Systems," *Journal of Comparative Family Studies*, 10 (1979), pp. 101–299.

32. L. L. Lockhart, "Methodological Issues in Comparative Racial Analyses: The Case of Wife Abuse," *Social Work Research and Abstracts*, 21 (1985), pp. 35–41.

33. Cazenave and Straus, "Race, Class, Network Embeddedness and Family Violence," p. 296.

34. Kiervet, "The Battered Wife Syndrome," p. 223.

35. A. Brown, "Assault and Homicide at Home: When Battered Women Kill," in M. J. Saks and L. Saxe, eds., *Advances in Applied Social Psychology* (Vol. 3; Hillsdale, N.J.: Lawrence Erlbaum Associates, Inc., 1986).

36. J. Totman, *Murderess—A Psychosocial Study of Criminal Homicide* (San Francisco: R & E Research Associates, 1978).

37. W. Wilbanks, "The Female Homicide Offender in Dade County, Florida," *Criminal Justice Review*, 8 (1983), p. 13.

38. McNeely and Robinson Simpson, "The Truth about Domestic Violence," p. 488.

39. D. Finkelhor and K. Yllo, *License to Rape: Sexual Abuse of Wives* (New York: Holt, Rinehart & Winston, 1985), pp. 170–171.

40. J. Goodwin, D. Sahd, and R. T. Rada, "False Accusations and False Denials of Incest," in J. Goodwin, ed., *Sexual Abuse: Incest Victims and Their Families* (Boston: John Wright, 1982); D.P.H. Jones and J. M. McGraw, "Reliable and Fictitious Accounts of Sexual Abuse of Children," *Journal of Interpersonal Violence*, 2 (1987), pp. 27–45; and J. J. Peters, "Children Who Are Victims of Sexual Assault and the Psychology of Offenders," *American Journal of Psychotherapy*, 30 (1976), pp. 598–642.

41. K. M. Dillon, "False Sexual Abuse Allegations: Causes and Concerns," *Social Work*, 32 (1987), pp. 540–541.

42. Ibid.

43. K. MacFarlane, "Child Sexual Abuse Allegations in Divorce Proceedings," in K. MacFarlane et al., eds., *Sexual Abuse of Young Children* (New York: Guilford Press, 1986).

44. M. Fields, "Wife Beating: Government Intervention Policies and Practices," in *Battered Women: Issues of Public Policy* (Washington, D.C.: U.S. Civil Rights Commission, 1978); and U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (Washington, D.C.: U.S. Commission on Civil Rights, 1982).

45. D. G. Saunders and P. B. Size, "Marital Violence and the Police: A Survey of Police Officers, Victims, and Victim Advocates," Final Research Report to the Wisconsin Council on Criminal Justice, 1986.

46. McNeely and Robinson-Simpson, "The Truth about Domestic Violence," p. 488.

47. D. Finkelhor and D. Russell, "Women as Perpetrators: Review of the Evidence," in D. Finkelhor, ed., *Child Sexual abuse: New Theory and Research* (New York: The Free Press, 1984), pp. 171–187; S. Tauboman, "Beyond the Bravado: Sex Roles and the Exploitive Male," *Social Work*, 31 (1986), pp. 12–18; K. Yllo, "Sexual Inequality and Violence Against Wives in American States," *Journal of Comparative Family Studies*, 14 (1983), pp. 67–86.

48. R. J. Gelles, *The Violence Home* (Beverly Hills, Calif.: Sage Publications, 1972); and S. K. Steinmetz, "Women and Violence: Victims and Perpetrators," *American Journal of Psychotherapy*, 19 (1980), pp. 334–351.

49. P. H. Neidig and D. H. Friedman, *Spouse Abuse: A Treatment Program for Couples* (Champaign, Ill.: Research Press, 1984). *For critiques of their position, see* J. L. Edleson, "Violence In The Issue: A Critique of Neidig's Assumptions," *Victimology*, 9 (1984), pp. 483–489; and D. G. Saunders, *Spouse Abuse: A Treatment Guide for Couples*, Book Review, *Journal of Marital and Family Therapy*, 11 (1985), pp. 216–218.

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**THE TIMES UNION
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B SECTION

Child abuse hot line a noose for unjustly accused

☐State has no way to sort malicious reports from true ones.

By John Caher
Staff writer

For thousands of battered and neglected children, the state's child abuse hot line is a lifeline rescuing kids from the horrors of beatings and sexual molestations.

But for unjustly accused adults who go to astounding lengths to prove their innocence and for children who are exploited as pawns in divorce or custody battles, the hot line is a noose.

Since 1973, the Central Register of Child Abuse and Maltreatment has provided a way for those who suspect child abuse to report their suspicions anonymously and initiate a prompt investigation. State law requires caseworkers to investigate all hot-line complaints within 24 hours and arms them with the power to interrogate children and adults. When warranted, the child can be placed in foster care.

The system is designed to err on the side of overprotection.

Child care workers, law enforcement officers, teachers and medical professionals are required to report their suspicions, no matter how slight, and can be charged with a misdemeanor if they don't. The standard of proof needed to indicate child abuse — "some credible evidence" — is far below the proof "beyond a reasonable doubt" needed to sustain criminal charges. Courts have found that Fourth Amendment protections against unreasonable searches don't apply if the caseworker deems the situation an emergency.

"It's a very sad commentary on our society," said Schenectady County Family Court Judge G. Douglas Griset. "We are now at the point where we have so much abuse and neglect of our children ... that we have to devise laws and systems to deal with this horrible problem."

While few dispute that the hot line has helped many abused children, critics claim that a zealous effort to crack down on child abuse has trampled the rights of adults and children, disrupted and undermined families and victimized the very people the system is designed to protect — children.

Aside from simple mistakes, in which a well-meaning person wrongly reports what on the surface appears to be a case of child abuse, authorities acknowledge that the hot line is sometimes abused by estranged couples and malicious neighbors as a tool of intimidation and harassment. In New York, about 60 percent of the 130,000 reports to the hot line last year were unfounded — meaning investigators were unable to find any credible evidence of abuse or neglect when they interviewed the child and alleged abuser, said Terrance McGrath, spokesman for the state Department of Social Services, which operates the hot line. About half of the people who appeal an indication of abuse or neglect have the finding overturned, state figures show.

Some child welfare advocates have estimated that as many as 15 percent of calls to the hot line may be outright lies, up to 20,000 calls annually.

After scores of individuals and groups such as Victims of Child Abuse Laws complained about false allegations, the Legislature enacted a statute in November 1989 making it a crime to file a false report intentionally with the hot line.

Although the law threatens a $1,000 fine, a year in jail or both, the number of unfounded complaints has remained about the same and it is unclear whether anyone has ever been convicted of making a false report, McGrath said.

Skeptics say the law is toothless because calls to the hot line can be made anonymously.

"Anybody who makes a false report is not going to leave their name," McGrath said. "It is not going to happen."

McGrath said the law was designed more to deter false calls than to prosecute malicious callers. Victims of Child Abuse Laws has been seeking a stronger statute that would remove the veil of confidentiality that shields those who call the hot line.

"It is very easy to raise the allegation," Griset said. "From that bare allegation oftentimes comes a very traumatic experience for the children and the person charged."

In recent years, dozens of people have called *The Times*

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HOT LINE

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Union claiming to be victims of malicious reports. One caller last month said that during his 17-month custody battle he has repeatedly been the target of false allegations of sexually abusing his 5-year-old son.

The Albany County man, who like many others who called asked that his name not be published, said in his last call that he was fleeing with his son to another state to escape the repeated investigations and interviews by caseworkers. He suspects that the child's mother, who is challenging the father for custody, is responsible for malicious reports to the hot line.

"They are torturing my son," said the father, who claimed that every investigation has determined that the abuse allegations were unfounded.

"They grill this kid over the coals with all sorts of sexual questions and he doesn't even know what the hell they are talking about."

Another caller to the newspaper claimed that she was caught in the middle of a custody tug of war between her boyfriend and his former wife.

The woman, a local college professor, said there have been nine anonymous reports — all unfounded — alleging that she or the father had abused his 3-year-old boy and 4-year-old girl. She said the children had initially told caseworkers that they had been abused, and then recanted.

"The true abuse," she said, "is these children have been forced to fabricate stories. They have learned that to win their mother's approval they have to harm us. Every time one of these stories is told, these children are grilled by social services workers."

Without proof that their mother is making the allegations and knows that they are false, there is nothing that can be done to put a stop to the endless stream of allegations and investigations.

Divorce attorneys and family law specialists say that allegations of child abuse — particularly sexual abuse — have become so pervasive in custody and divorce cases across the country that some judges have stopped taking the charges seriously, creating a "cry wolf syndrome" that jeopardizes children who really are being mistreated.

Studies conducted by the University of Minnesota Medical School's department of family practice and community health indicate that as many as 70 percent of child molestation allegations raised in the context of a divorce or custody proceeding are false.

On the other hand, organizations such as Victims of Child Abuse Laws contend that some judges are so protective of children that even baseless allegations of abuse will cost the parent custody.

"It's a balance," said Griset. "Do you restrict the people making hotline complaints and jeopardize little children, or do you have the parent falsely charged suffer the indignity of an investigation?"

Some parents who claim to have been wrongfully accused suffer far deeper indignities than a personal investigation.

At the University of Minnesota Medical School, for example, adults desperately seeking to prove their innocence submit to a battery of tests, including psychological profiles, polygraph examinations and voice-stress comparisons. Some men go so far as to allow clinicians to show them pornographic pictures of children while a gauge attached to the penis measures arousal level.

While McGrath concedes that little can be done to stop people intent on misusing the hot line, he suspects that there are far fewer malicious reports than suggested by some studies.

"All reports that are not substantiated are not necessarily malicious or false," McGrath said.

Griset said the problem of false reports pales in comparison with the number of actual cases of abuse and neglect.

The judge said that over the last decade the statewide family court docket of child abuse cases has swollen 800 percent. Griset, noting a dramatic increase of cases in his court in which adults admit abusing or neglecting children, said the child protective system is properly geared toward overinvestigating and overreporting allegations.