Believe the Children?

Child Abuse and the American Legal System

by Philip Jenkins

Anna Mycek-Wodecki

We may begin with a nightmare. Imagine that you are the parent of a preschool child and that one day police and child-protection officials appear at your door. They inform you that a teacher or daycare worker suspects that your child has been abused and that subsequent interviews with therapists have proven this fact to their satisfaction. Moreover, it is clear to them that you and your spouse are the abusers. As an emergency measure, the child and any siblings will be removed to a foster home while you face among the most serious and damning criminal charges of all. If you are very lucky indeed, you may recover your child within several months or no more than a year or two. If you are less fortunate, the child will be adopted, and you and your spouse will be imprisoned in an environment where molesters are the most despised and persecuted population.

All this may sound horrific enough, but then you discover the testimony that has ruined your life. It turns out that the original stories can be traced to the fantasies of one deranged adult, perhaps a neighbor or teacher, seeking revenge for the injustices he or she believes to have suffered in early life. Once started, this gave therapists and investigators the ammunition with which to proceed. Through deceptively innocent tactics of "play therapy," through the use of dolls and pictures, intense peer pressure, and simple old-fashioned leading questions, the child was induced to make statements that apparently pointed to abuse. Of course, the child's testimony also included a great deal of material that could only be fantasy—impossible accounts of meeting famous people or cartoon characters, tales of hidden tunnels and flying machines, stories of being barbecued in microwave ovens or dangled over alligator pools. However, the investigators believed that such adornments did not discredit the essential truth of the charges and even conspired to insure that no jury ever become aware of the more blatant fantasies. Prosecutors thus select the plausible elements and portray the therapeutic process as a heroic cooperative endeavor between victimized child and dedicated professional.

If any part of this scenario appears outrageous or improbable, then you have not been following the course of the American child abuse panic that has been under way since the early 1980's. Everything outlined here is based on one or more of the celebrated cases of the last decade, and most elements have more than one source or parallel. In the McMartin preschool case that began in California in 1983, the epicenter was a schizophrenic woman who believed that her son had been abused at the school (as well as at home, church, and many public places in the neighborhood). She also believed that he had been repeatedly mutilated by his abusers, though they had mystically repaired any obvious wounds, and that they had taken him flying. Naturally, this was enough to persuade the local police to recommend that all children who had attended the school be taken for therapeutic examination, which duly found that a large number had been subjected to like molestation.

Children do their best to accommodate puzzling requests for tales of outlandish behavior. In the Jordan case of 1984, they told of being taken to sinister orgies, where all the men looked like Elvis and where the bare-breasted women were Hawaiian or Japanese (this was in rural Minnesota). The alligators and microwave barbecues stem from the recent Edenton affair in North Carolina. Several child witnesses have been clearly bemused by probes for information about wrong or unpleasant acts associated with the genital area; and thus they have produced accounts that the innovative molesters have urinated or defecated on them. How would they know better?

Philip Jenkins is a professor in the Administration of Justice Department at Pennsylvania State University.

The investigators, however, have duly accepted these fantasies and brought appropriate charges in court.

Some child witnesses have also charged that babies were tortured or killed, giving rise to a whole subindustry of "ritual abuse" experts, anxious to prove a Satanic conspiracy against America's children. Since McMartin, there have been hundreds of mass or ritual abuse cases across the country, as well as countless lesser affairs that have received only local attention. And while some cases have more or less collapsed, there are now many people imprisoned for their fictitious misdeeds.

In describing the situation of parents or teachers implicated in such cases, we might be tempted to use terms like "Kafkaesque," but this would be to impose too much rationality. *Alice in Wonderland* might offer a better literary analogy, as well as an appropriate warning about the standards of evidence and belief employed in this thought-world; for this is a territory far removed from any traditional assumptions of Anglo-American law. In this world, the primary beliefs are summarized in the slogan "Believe the Children": children never lie about matters of sexual abuse. This does not mean that they always tell the truth, as their denials of abuse are almost invariably fictitious. In fact, denial of abuse is a peculiarly vicious pathology, usually indicating that the children are too afraid or ashamed to admit their victimization. Denials that a crime has occurred must therefore be rejected; but once children admit the fact of abuse, this fact must be accepted and affirmed with absolute tenacity. Heads I win. . . .

If a child's story appears fantastic, this may be overcome in several ways. First, it might be argued that the falsehoods are harmless frills, irrelevant to the substance of the accusation. However, the nonsensical quality of the tales might indicate that we are dealing with particularly clever or sinister abusers, who deliberately commit their crimes in fantastic settings, so that subsequent accounts will not be believed. An abuser might for example tell a child that his name is Fred Flintstone or George Bush or fake an incident about placing a child in a "microwave oven." In this sense, the more fantastic and improbable the story, the more likely it indicates the reality of serious and organized abuse . . . so tails you lose.

The idea of "Believing the Children" in such circumstances has rather complex roots, but there are several key elements. The feminist movement must receive a good deal of the credit for this legal revolution, and insistence on the absolute credibility of a child victim is in large part an offshoot of the antirape campaigns of the 1970's. Women, we were told, did not lie about rape; they would never risk the traumatic and sordid experience of a court appearance if they did not genuinely believe they were victims of a savage assault. And just as rape was one manifestation of the enforcement of patriarchal power, so was incest, as were the other forms of sexual assault daily inflicted on millions of children within the male-dominated home. To challenge the credibility of a child witness or an "incest survivor" was exactly akin to doubting the veracity of a "rape survivor," to suggesting that perhaps the victim had "asked for it." Seeking corroboration was a particularly unacceptable manifestation of this brutal skepticism.

In demanding the rigorous detection and prosecution of child abuse, feminists place themselves on the ideological high ground of asserting the rights of innocent and voiceless children. And when cases come to court, defeat is impossible. Conviction proves that the prosecution was justified and confirms that known cases represent a tiny tip of a huge iceberg. If a suspect is acquitted, this shows that the courts serve patriarchal interests rather than the interests of women and children. Even when charges have been disproved as preposterous fabrications (again, as in the McMartin or Jordan cases), the inevitable rhetoric asserts that "this shows once more that we live in a society that doesn't believe children."

Parallel to the feminist legal onslaught, we find changes within the therapeutic community, such as the growth of professionals whose whole *raison d'être* involves the exposure and treatment of childhood abuse. Since the early 1980's, there has appeared a vastly profitable industry of psychiatric "experts" with novel theories and techniques that they are desperately anxious to validate. Once established, the new "straighteners" stand to reap rich rewards in the form of hefty fees for treatment and for expert testimony in the courtroom. These professionals offer a very complete service. Not only will they diagnose and treat sexual abuse in children, they will also analyze and cure a bewildering variety of adult conditions infallibly traced to childhood victimization. These conditions may be physical in nature, but they also include sloth, unhappy relationships, self-doubt, or lack of confidence, stigmata that a saner age would have attributed to moral failings or else demonic influence. (In fact, the symptoms commonly listed bear an uncanny resemblance to the traditional Seven Deadly Sins.) Such problems require not only the "courage to heal," but many, many years of lucrative treatment. Therapists even offer explanations for the pernicious "syndromes" that cause children to deny that abuse has occurred—and even, in some cases, to fail to recall the horrors wrought on them by their parents! Allied with the new abuse therapists are pediatricians, who have in the last decade claimed to diagnose the 20th-century equivalent of the witch-mark, those mild but significant malformations of a child's anus or genitals that indicate a record of sexual exploitation.

In such an intellectual environment, it would be almost unthinkable for therapists and pediatricians to examine a sample of children *without* concluding that a majority of them had been the victims of abuse, the exact form of assault depending on the vogue of the moment (allegations of anal rape are quite fashionable today, but tastes in accusation change rapidly). This is wonderful news for some in our litigious society, who have discovered a whole new range of grievances to take before a jury. Perhaps the richest harvest of all lies in recovering damages for the adult "survivors" of abuse, who are only now recalling under therapy the wrongs inflicted upon them many years previously.

It will perhaps come as no surprise that it is the state of California that has taken the lead in legislating these new trends. A 1990 law permits alleged victims of abuse to launch civil suits many years after the supposed incident, demanding only that action be taken within three years after the abuse is "recalled." The measure naturally raises golden vistas both for therapists and for the lawyers who fee them. In less accommodating states, proof that a parent has abused a child has become a common weapon in divorce proceedings and custody fights, and there are usually therapists and abuse experts to serve as hired guns for one side or the other. Child abuse has been the largest single tool in restoring the "fault" to no-fault divorce.

Academics, feminist theorists, therapists, pediatricians, chil-

dren's rights advocates, and lawyers—this powerful coalition has been able to place a political emphasis on the detection and prosecution of abuse, which few have had the will or the desire to oppose. (Few votes are to be gained from asserting the due process rights of alleged child molesters or incestuous parents.) In practice, this political support has been expressed in the form of allocating resources to child protection services and specialized anti-abuse units in the police or social services. Such organizations have a powerful vested interest in asserting the continuing reality and seriousness of the threat they were established to combat. When did we last hear any bureaucrat state that his agency found itself with little work to do, so that he would be grateful if his excess resources could be reassigned to a more worthy cause? There is thus a bureaucratic dynamic in favor of the invention of abuse cases where none existed and of the exaggeration of others that would otherwise have been regarded as trivial or nonthreatening. Abuse statistics spiral upwards, creating still more demand for new resources and legislation, and the cycle appears inexorable.

In other words, "Believe the Children" has become an elaborate ideological system that offers articles of faith about the scale of crimes against children (vast), the effects of abuse upon victims (devastating and lifelong), and the changes in law and government required to fight the menace (revolutionary). Controversies over child abuse offer perhaps the most telling illustration of the conflict between legal and therapeutic values, the debate outlined in the 1970's in Nicholas N. Kittrie's classic *The Right to Be Different: Deviance and Enforced Therapy*. Anglo-American legal values assume the innocence of the accused person and require that the state prove its charges against him or her before penal sanctions of any sort can be imposed. The suspect also benefits from other miscellaneous protections, such as the requirement that the state delineate precisely what he or she is said to have done and when and where this occurred, so that a defense is possible. Also, the actual courtroom setting offers the defendant a chance to probe and (ideally) disprove the testimony of an accuser, hence the right to confront and cross-examine a witness.

Central to this process is the assumption that witnesses are only to be believed about specifics if they impress the judge and jury with their credibility. For example, what destroyed Jim Garrison's original investigations into the JFK assassination was not so much the specific charges made by any of his witnesses, but the general impression these individuals created in court by their striking manifestations of personality disorders and bizarre mental states. Legal values therefore require that both witnesses and their specific charges be tested and proven in a public setting.

Therapeutic values are fundamentally different, above all in the belief that courts are in the business of enforcing social hygiene rather than imposing punishment. It is sound social-work practice to remove a child from an abusive home and therapeutically desirable to require incarceration or treatment of a suspected molester or abuser. When a woman alleges physical abuse, it is necessary prevention to order her husband to vacate the home, but this is not penal in nature, any more than a painful surgical procedure. One does not demand constitutional rights when visiting a doctor, who has only your best interests at heart; and we do not insist that hospital stays be regulated by statutory sentencing guidelines. Similarly, the courts have no business regulating the actions of objective professionals such as social workers or medical authorities in seeking to protect children. Once a child has been led to state that abuse has occurred, or once therapists interpret his or her responses in such a way, the "Believe the Children" theory comes into operation. Abuse *has* occurred, and to doubt this fact is to ignore the sufferings of innocent children and to become, in effect, an accomplice to the act of abuse.

Child abuse cases begin with the assumption that crime has occurred and that remedial action must be taken. An alleged molester is assumed to be guilty, even if this cannot be proven in court, and social service agencies proceed on this belief. It is therefore permitted and even desirable to record a suspected abuser's name and particulars on a state-controlled register. Depending on the jurisdiction, this damaging record will remain on the books for several years, even if court proceedings result in acquittal. Appearance on such a register carries no appeal or redress, not even through the law of libel: after all, this is the world of social hygiene, not law.

In the courtroom, "Believe the Children" means that judge and jury are no longer expected (even in theory) to be neutral between accuser and accused. The court exists to assist the child victim secure justice against the abuser, for there is no longer any doubt about the guilt of the accused. Defense lawyers, in this view, are cynical thugs who aim to discredit brutalized children by badgering them on the stand, reducing them to sobbing wrecks by leading them into foolish misstatements and apparent contradictions. The main priority of reform is to prevent innocent victims from suffering further trauma in the court itself, to reduce the "jeopardy of children on the stand."

Measures taken in this direction range from the mild and sensible to the breathtaking and grossly unconstitutional. Some states, for example, suggest that small children should not be forced to confront their alleged abuser, as in testify in front of the accused. This might mean testifying from behind a screen or else from a remote location by means of videotape. Others have gone much further, reducing or abolishing protections against hearsay evidence. In some cases, a judge will examine a toddler and find that he or she is easily led to testify to anything demanded by a friendly grown-up. The child is therefore declared incompetent to testify, which should logically mean that all evidence from this source is regarded as tainted and inadmissible. In the new environment, however, the opposite conclusion is reached. If a child is incompetent, his or her testimony is provided by "experts" reporting what they gleaned in conversations with the child. For the defendant, the presentation of evidence in this manner effectively destroys the right of cross-examination and an invaluable chance to demonstrate flaws or contradictions in the prosecutor's case. Naturally, sober professionals report what they believe to be relevant and do not recount tales of magic, tunnels, and flying machines. Even when a child graciously makes a personal appearance, some jurisdictions have attempted to restrict cross-examination of these young witnesses or to eliminate it altogether.

In the long conflict between legal and therapeutic values, child abuse cases have served as a massive bridgehead for the notion of the "objective expert," the neutral professional who is seeking to protect the child and the community in the face

of all the obstacles posed by outmoded legalism. Individual rights and protections must, according to this philosophy, be superseded in the interest of defeating domestic tyranny and exploitation. And when such protections have been undermined in one area of law, how much easier it is to accept their dilution in other matters—in drug cases and rape prosecutions, in matters of domestic violence and sexual harassment. Soon we are left with a world in which the only offenders with their rights intact are professional robbers and burglars, whose atrocities seem to offend us so much less than the crimes of ever-fluctuating social morality.

We might expect a clear political demarcation here, with liberals pushing measures that advance the feminist agenda and the therapeutic state and conservatives upholding the long-established boundaries that defend the individual and the family. In practice, the lines have long been hopelessly confused, with the Supreme Court offering a fascinating microcosm of the dilemmas and contradictions in contemporary conservatism.

In 1988, the case of *Coy* v. *Iowa* struck down a state law permitting children to testify from behind a screen. Justice Scalia (a celebrated conservative and a Reagan nominee) wrote tellingly that "it is difficult to imagine a more obvious or damaging violation of the defendant's right to face-to-face encounter. . . . Face-to-face presence may unfortunately upset the truthful rape victim or abused child, but by the same token it may confound the false accuser or reveal the child coached by a malevolent adult. It is a truism that constitutional protections have costs."

Paradoxically, it is this same Court that in 1990 decided by a 5-4 majority to *uphold* the radical principle of televising children's testimony in abuse cases (*Maryland* v. *Craig*). This case found Sandra Day O'Connor in the familiar position of defending whatever regulation seemed convenient to an administrative body, while Scalia responded with a scathing dissent of the sort that we traditionally associate with extreme liberals like Thurgood Marshall and William Brennan. (Part of his philippic noted that "seldom has this Court failed so conspicuously to sustain a categorical guarantee of the Constitution against the tide of prevailing current opinion.")

We could perhaps speculate on how and why Antonin Scalia and his fellow dissenters found themselves in a minority on what is alleged to be a conservative court. The same questions must be posed in the wider society. Why has there been so little opposition to the "Believe the Children" ideology, with all its nefarious consequences? Why have so many conservatives been willing to acquiesce to such a radical transformation of American criminal justice and to such an evisceration of constitutional protections? And when did conservatives start believing that therapists and state agencies were the best judges of the conduct and morality of the family? c

---

The Penny Arcade, Carmine Street

by Gloria Glickstein Brame

He's losing her at the penny arcade
where the play and the outcomes turn
on small change. Formed of flattened tin,
the ducks that swim in straight lines
don't even dent when hit. He raises the gun
to his cheek, targets the simple things
he shoots to kill, poised as St. Julian
before a powerful assault of cats, equipped
for violence, knowing what it is
to be a man, and how a her reacts to a him.
The obligations of being born
father and son make him light with fear.
He cocks his weapon, sets the sights,
discharges three times. Bullets go awry.
She shrugs at the unwon prize
and touches his arm as if to say,
Not everyone succeeds every time.
He puts another dollar down
and lifts the barrel above her head,
concentrating on her encouragement,
squints, aims surely, and misses thrice again.
She grins uncomfortably at passersby and
notices his blue jeans are too big;
his studded cowboy shirt doesn't quite fit.