

FOCAL POINT



Editorial

The smackdown of the Latta Review

YOU'D THINK, WOULDN'T YOU, THAT WHEN A PRIME Minister as popular and people-savvy as John Key announced an independent review of the controversial anti-smacking law, that National would not be stupid enough to follow in the footsteps of Helengrad.

The previous regime was well known for stacking the deck, sweeping things under the carpet and using a corrupt police force to hide its misdemeanours behind.

Key promised, in an interview with *Investigate* magazine on October 28, 2007, that "If good parents end up becoming criminals because of this legislation then we'll change the law, it's as simple as that."

But is it that simple? As you will read in this month's *Investigate*, Police and CYF have found a way around the Prime Minister's promise: collect or *invent* as much mud as you possibly can about the target parents, and ensure it is placed on the case files, so that the parents can no longer be defined as "good" for the purposes of the promise definition.

Nigel Latta, a former critic of the anti-smacking law, was hired by the National Government as an 'independent' consultant to join Police Commissioner Howard Broad and CYF/MSD boss Peter Hughes in a special review of the smacking law.

Their report was published amid much media fanfare just before Christmas, with the details announced in a joint John Key/Nigel Latta news conference at the Beehive.

The terms of reference seemed wide enough:

"To review New Zealand Police and Child, Youth and Family policies and procedures...in order to identify any changes that are necessary or desirable in the interest of ensuring that: 1) good parents are treated as Parliament intended under the Crimes (Substituted Section 59) Amendment Act 2007..."

Any measure of how "good parents" were

treated under the Crimes Act would, of necessity, require a whole of case approach from initial report to subsequent conviction or acquittal. How else could you know whether "good parents" were ultimately treated fairly by the system?

However, somewhere between being given those terms of reference and delivering his report, Nigel Latta appears to have done a stunningly good impersonation of Pinocchio being led down the garden path by "Honest John" and "Gideon", in the form of Broad and Hughes.

Why do I say that? Because the review team appear to have stitched up their own, entirely different definition of what they were going to investigate. As you'll see from their *excuses* responses to our special investigation in this issue, both Latta and CYF now say it was *never* the intention to measure the severity of the initial police or CYF response against what finally happened in court. Heck no! That would be "outrageous" or "unfair" to CYF and police staff, argue Latta and CYF.

No, instead, as far as Broad, Hughes and Latta were concerned, their investigation would look solely at the initial response of the agencies based on the nature of the allegations made to them. The outcome of the cases was deliberately disregarded. If it turned out the evidence didn't stack up, well, too bad, the public would not find out because the report would say the police and CYF acted "appropriately and proportionately" in the face of serious criminal allegations.

Latta went further at his Beehive news conference, and actually boasted to journalists that Family First's sources were liars, and that he had reached a considered decision after reviewing all the facts on police and CYF files that none of the parents' complaints stacked up.

Ah, the arrogance. Read the story and judge for yourself. Metaphorically, the noses of Broad, Hughes and Latta have now grown long enough to provide nesting space for the complete seagull population of the Wellington City Dump, with space for a few hangers on included.

Latta has now told *Investigate* that minor inconvenient facts, such as parents actually being cleared of committing the serious crimes they were accused of, are "irrelevant" to the integrity of the review.

Go back and look at your terms of reference Nigel, then enjoy a Homer Simpson smack to the forehead moment. In our view, the smooth talking bureaucrats who sat beside you took you for a ride.

In doing so, the review has scored a massive own goal against its own credibility, and also a massive blow to the credibility of John Key who is now faced with incontrovertible evidence that the smacking law isn't working, and the growing suspicion that Police and CYF skewed the review in order to cover this up.

Ann & Heidi



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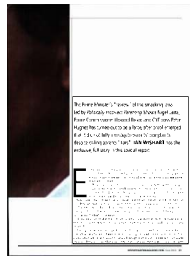
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A National **SCANDAL**

SMACKING REVIEW TEAM ADMIT THEY DIDN'T INVESTIGATE



The Prime Minister's "review" of the smacking laws led by *Politically Incorrect Parenting Show's* Nigel Latta, Police Commissioner Howard Broad and CYF boss Peter Hughes has turned out to be a farce, after proof emerged that it did not fully investigate parents' complaints despite calling parents "liars". **IAN WISHART** has the exclusive, full story in this special report

Embarrassment for the government is looming after the release of new documents showing Nigel Latta's high-profile review of the anti-smacking law was not a thorough investigation and resulted in factual errors that undermine the report's main findings.

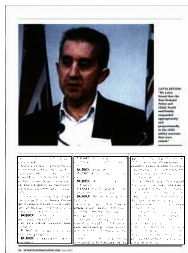
The damaging revelations come in court documents released to *Investigate* magazine that show the Latta Review failed to check the facts of smacking prosecutions referred to it by lobby group Family First, and instead took claims written in police and social workers' files at their word.

Nigel Latta himself upped the credibility ante at his news conference with Prime Minister John Key last December to announce the findings of his review, when he told reporters:

"The difficulty for Family First is that all they have is the account of the person that's talking to them, and people aren't always completely honest about the stuff that's gone on," said Latta at his Beehive appearance.

"In all of the case studies that I reviewed, it was clear that there were other aggravating features involved. In fact if the police hadn't turned up to those cases I'd be asking why they hadn't!"

The implication was that Nigel Latta had thoroughly reviewed claims made by Family First about specific cases of parents being unfairly prosecuted, got to the bottom of those claims and found that *in all cases* Family First's protests about the smacking law didn't stack up. The public, said Latta, could be utterly satisfied that the police and CYF were



LATTA REVIEW:
"Mr Latta found that the New Zealand Police and Child, Youth and Family responded appropriately and proportionally to the child safety concerns that were raised."

doing their job well and not hounding parents as alleged.

Now, newly released court transcripts have turned the tables on the Latta review, showing the panel of Latta, Police Commissioner Howard Broad and CYF boss Peter Hughes got their own report factually wrong in fully one third of the parents' cases they reviewed and that key documents were not shown to Latta.

One example of how significant this discovery is can be shown from a *Morning Report* interview with referendum organiser Larry Baldock, in the lead up to the anti-smacking referendum last year:

BALDOCK: "It is absolutely clear that if a parent uses any reasonable force right now to correct their child right now they are breaking the law..."

PLUNKET: "Can you give us an example of that having happened?"

BALDOCK: "There are examples that we'll have available..."

PLUNKET: "Can you point to *anyone* who has been criminalised for smacking a child?"

BALDOCK: "Yes we can."

PLUNKET: "Please, could you give me an example?"

BALDOCK: "Well, I'll have to go to my list of examples."

PLUNKET: "Can you give me a single example off the top of your head?"

BALDOCK: "No, not off the top of my head, I can't."

If it's good enough for Sean Plunket to demand "a single example", then presumably *Morning Report* will be following up this magazine story with gusto.

The importance of the panel's work in establishing the credibility of the government's anti smacking policy was listed right at the front of the Latta review's executive summary:

"A key element of the review was the work carried out by Nigel Latta, who was

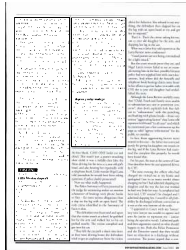
appointed as the independent member of the review group. Mr Latta examined a number of cases, including ones where it was reported that family members were inappropriately investigated or prosecuted.

"In his review of cases," says the report, "Mr Latta found that the New Zealand Police and Child, Youth and Family responded appropriately and proportionally to the child safety concerns that were raised."

Reporting on the review's findings, Wellington's *Dominion Post* noted:

"Yesterday the host of *The Politically Incorrect Parenting Show* said none of the cases highlighted by the pro-smacking lobby to bolster their argument that good parents were being made into criminals for smacking stood up to scrutiny.

"His finding, after the three-month review, has firmed the Government's resolve that there is no need to change the law, despite a resounding referendum vote in favour of change earlier this year."



In other words, the Latta review finding against Family First's cases was seen as a *crucial* part of the review by the media and the government, as shown by Prime Minister John Key's reliance on the credibility of Latta's review.

"Good parents are not being criminalised for a light smack. During the review, Nigel... was given full access to files," said Key.

Latta himself went so far as to say that the files were full of information not available to the public, which shows they shouldn't believe Family First:

"Whenever the public hear reports of a case, I think it's really important to ask yourself, do we really know all the information? Whenever I hear cases that come up in the media, my first thought now is going to be, 'yep, but I wonder what the background is that we can't know, but the CYF and the Police do?'"

"I do trust Police and CYF, and I do trust that they make the right decision."

It appears that Latta's central argument was along the lines, 'I've seen the police and CYF files on the smacking cases, the people prosecuted were scumbags who went well beyond a smack or ordinary parental discipline, and they deserve everything coming to them'.

Well, Key and Latta's credibility hinges on that report and that interpretation, so now let's see how well the Latta review actually did its job. Under the heading "What was reported" Latta details Family First's complaint in each case, then under "Agency information" he gives his verdict based on the CYF and Police information that the public "can't know".

CASE ONE

(all text in case reports is from Latta Review):

Latta Review, page 24:

What was reported

Daughter rude to police. Father charged for smack,

North Island

Oct 2008

"My daughter went through a difficult patch and became highly rebellious, including wagging school. She was picked up by the Police whilst wagging and taken to the Police Station and was highly belligerent towards them. I took her home in the car and attempted to communicate with her as we drove. She refused to talk and responded to everything with a 'yeah right'. To get her attention I smacked her once on the leg with an open hand and said 'listen to me – this

is serious'. The next day she again wagged school and went instead to CYF, encouraged by her friend, and told them I had 'assaulted' her. Despite my explanation to CYF, they asked the police to charge me. The officer who had charged me visited me at my home expressing concern about charging me but as I had admitted giving her a smack and the way the law was worded he had very little leeway. I was convicted of assault but discharged without further penalty. My daughter never thought it would go so far and has admitted to CYF that it was purely 'I'll get you'-based."

'I asked for help but instead got conviction'
NZ Herald, Jul 28, 2009

A Wellington solo father says he went to Child, Youth and Family Services for help – and ended up with a conviction for smacking his daughter.

Agency information

- A 13 year old girl alleged she was being physically abused by her father. The allegations included being struck with a telephone book a number of times and being punched in the side of the head.

- The Police reported the allegations to Child, Youth and Family. The father denied all allegations and advised that his daughter was displaying challenging behaviours which he was struggling to deal with.

- Child, Youth and Family were unable to substantiate any care or protection concerns and referred the father to a community agency for support.

- The father was convicted of common assault.

At first blush, CASE ONE looks cut and dried. This wasn't just a parent smacking their child, it was a middle-class Jake the Muss driving his fist into a 13 year old girl's head, and also beating her repeatedly with a telephone book. Little wonder Nigel Latta told journalists he would have been asking questions if police *hadn't* prosecuted!

Now see what really happened.

The Police Summary of Facts presented to the judge for sentencing makes *no mention whatsoever* of beatings with phone books or fists – far more serious allegations than a slap on the leg with an open hand. The only crime identified in the Summary of Facts is this:

"The defendant was frustrated and upset that the victim wasn't at school, he grabbed her by the arm and walked her to his car parked nearby. The victim complied and got into his car.

"They left the car park a short time later, as they were driving home the defendant tried to get an explanation from the victim

about her behavior. She refused to say anything, the defendant then slapped her on the leg with an open hand to try and get her to respond."

That's it. That's the crime: taking his truant 13 year old daughter by the arm, and slapping her leg in the car.

What was it John Key told reporters at the Latta Review news conference?

"Good parents are not being criminalised for a light smack."

But the court records prove they are, and Nigel Latta's review failed to see an example staring him in the face, possibly because police had not supplied him with court documents. And where did the fisticuffs and telephone book beatings claim come from? In her efforts to get her father in trouble with CYF, the 13 year old daughter had embellished the story.

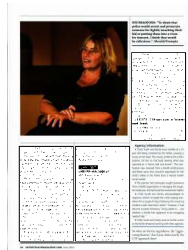
Although the Latta Review carefully notes that "Child, Youth and Family were unable to substantiate any care or protection concerns", they don't explicitly link that failure to "substantiate" with the punching and bashing with phone books – those very serious "aggravating factors" that Latta told reporters he'd found "in all cases" and which he mentioned just a few centimetres up the page as valid "agency information" for the public to consider.

In fact, those aggravating factors never existed in this case – the father was convicted purely for giving his daughter one smack on the leg, and if the Latta Review had examined the complete files properly, he would have found that.

For his part, the man at the centre of Case One describes how the case appeared driven by CYF:

"The next evening the officer who had charged me visited me at my home and apologised (not in so many words) about charging me but I had admitted slapping my daughter and the way the law was worded he had very little lee way: A complaint had been laid, CYF *insisted* I be charged and I admitted slapping her. I would in all probability be discharged without conviction as it was at the very bottom of the scale.

"I appeared in Court with my 'lawyer' (my own lawyer was unable to appear and sent his junior to represent me – junior being the operative word). I admitted guilt and then arguments started on what should happen to me. Both the Police Prosecutor and the Detective stated that they would have no objection to a discharge without conviction. The junior argued that a con-



SUE BRADFORD: "To think that police would arrest and prosecute someone for lightly smacking their kid or putting them into a room for timeout, I think that would be ridiculous." /Herald/Presspix

shortly afterwards came out remorseful and apologetic. At the next meeting with the social workers, Sue mentioned that they did smack their children but only when their behaviour warranted such discipline, and that John had smacked their daughter the previous day. That Friday, Sue received a call from CYF to inform them that an allegation of abuse had been made and that they needed to find alternate accommodation for their two children over the full weekend until Monday morning. They were interviewed by the police for 5 hours and later found out that the report to CYF said that 'they admitted to hitting their children'. CYF have since apologised and admitted they would learn from this!

UPDATE: CYF says sorry to 'traumatised' family

NZ Herald July 29, 2009

CYFS admit they "could have done a better job" in the way it handled an allegation that a couple had smacked their daughter

viction could affect my employment but the Judge replied that while he was sympathetic to my position, I had admitted smacking a child and the present law while ambiguous was still law and was in the public eye. Many organisations were demanding that people were to be prosecuted to the full extent of the law.

"After more to-ing and fro-ing the Judge passed sentence. Convicted and discharged. I still had to pay the \$1600 lawyer's bill.

"My daughter never thought it would go so far and her attitude has changed. She is now back at school and doing well.

"The anti-smacking law was ill-thought-out and I know of other parents who have been put in similar situations."

Again, with the serious allegations found to be unsubstantiated, this parent ultimately became a convicted criminal because of an open handed slap, with no marks, to his daughter's leg.

What was it Green MP Sue Bradford told *Investigate* magazine back in June 2006:

"To think that police would arrest and

prosecute someone for lightly smacking their kid or putting them into a room for timeout, I think that would be ridiculous."

And yet, here we are.

CASE TWO

Latta Review, page 27:

What was reported

Parents seek help – CYF remove children South Island
Nov 2008

John* and Sue* (names changed) sought help from a social service because of the behaviour of their daughter (9). The two case workers were very affirming of them as a family and seemed both positive and helpful. On a subsequent night, the daughter had a major tantrum which involved throwing toys, banging the bunks against the wall and verbal abuse of mum. Dad warned her that if the behaviour continued she would receive a smack on the bottom (she had already been sent to her room at this point). She continued and dad gave her a smack on the bottom. She stopped the bad behaviour, and

Agency information

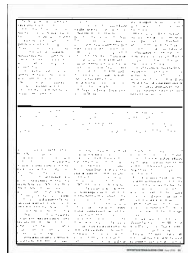
- Child, Youth and Family were notified of a 10 year old being smacked by her father, causing a bruise on her back. The smack, aimed at the child's bottom, hit her on the back leaving what was reported as a 'tennis ball size bruise'. The notification was received from a health professional, and there were also concerns expressed for the child's safety in the home from a mental health social worker.

- The parents had previously sought assistance from a health organisation in managing the daughter's behaviour and had found the involvement helpful.

- Child, Youth and Family acknowledged its response (which included the child staying elsewhere for a couple of days) following the smacking incident could have been better" however it had become involved following "being asked to ... see whether a family that appeared to be struggling needed help."

- Child, Youth and Family took no further action as the family remained working with other agencies.

So what are the key ingredients, the "aggravating features" that Latta claims justify the CYF approach here?



The obvious one is the claim that the smack left a bruise the size of a tennis ball on the child, and Latta invites readers to take this claim seriously because it was verified by "a health professional". CYF further spin the story by continuing to imply the parents not only beat their daughter, but are also incompetent at parenting, "struggling" and perhaps to be looked down on. Hardly a tone conducive to getting families to trust government agencies, when they're weighing up whether to pick up the phone and ask for help.

CYF, we are told by Latta, only took no further action because "the family remained working with other agencies".

So, on all these points, did Latta get it right? Again, the answer is a resounding no.

A letter from Police to the father accused of leaving this horrific, tennis-ball size

one and the same.

"This matter is for filing and as I have stated no further Police action will follow."

Now, that letter should have been on the police file of the case examined by Nigel Latta. If Latta read it, there is no excuse for continuing the erroneous claim in his report that the smack caused the massive bruise.

The "jump to conclusions" approach of CYF and the Public Health Nurse meant the couple's two children were removed from their care immediately in a shoot first, ask questions later process. The parents were understandably furious that CYF regarded the smack as serious enough to seize children on a Friday afternoon, but not serious enough to actually investigate what happened until the following Monday.

As the parents, Erik and Lisa Petersen, wrote to CYF later:

practical steps will be taken to prevent so great a misdiagnosis in future cases?" asked the Petersens.

One of the reasons for the overreaction may have been the politically correct behaviour of public health nurse Kate Balfour, who instead of telling CYF that the parents "smacked" their children, reported the parents had "admitted to hitting" the children. It's the same language twisting Sue Bradford indulged in, and it shows the inherent power of words when used as weapons.

"I state for the record," said Erik Petersen in a letter of complaint to authorities, "that we have never hit our children, nor have we ever stated that we did. We are deeply offended that such a statement has been made. It is a gross and misleading distortion which has already produced serious and far reaching consequences."

"IF 'CRITICAL' IS THE MOST SERIOUS RATING – HOW IS IT THAT THE RATING IS BROAD ENOUGH TO COVER A CHILD WITH BROKEN BONES OR CIGARETTE BURNS OR REPEATED RAPES ON ONE END OF THE SPECTRUM, AND A LITTLE GIRL FROM A LOVING FAMILY WITH A BRUISE THE SIZE OF A 50 CENT PIECE (OBTAINED INNOCENTLY) ON THE OTHER?"

bruise, tells a sorry tale of CYF and Public Health Nurse incompetence:

"I write to you today to inform you of the Police decision not to continue with a prosecution of assault against you in that an allegation was made that you had physically disciplined your daughter...to excess.

"In summary ...this was initiated by CYF's after receiving information from the Public Health Nurse and CAPS [Child Abuse Prevention Service] after meetings/assessments which surrounded [your daughter's] behaviour.

"Police enquiries revealed that the information these agencies and ultimately CYF's had based their judgements on were a misinterpretation of events that occurred separately. In particular the two events being firstly where [your daughter] had hurt herself by bumping her back causing bruising and secondly, some nine days later, a misguided but in the circumstances justified disciplinary action where an open handed smack struck her high on the buttock rising to her lower back.

"Unfortunately the agencies referred to believe the two mentioned incidences were

"What allegations and information lead to our case being rated 'critical'?

"If 'critical' is the most serious rating – how is it that the rating is broad enough to cover a child with broken bones or cigarette burns or repeated rapes on one end of the spectrum, and a little girl from a loving family with a bruise the size of a 50 cent piece (obtained innocently) on the other?

"Why did it take over 72 hours between the time that the case workers had met to discuss the alleged abuse of our children to the time that either they or a health professional actually sighted our children? Why was it necessary for us to push that such a sighting actually took place? Is it standard practice in a critical case to take more than 72 hours to sight the children involved?

"Given that it took less than an hour for the social worker to determine that our children were completely safe and in a very loving home, questions must be raised as to the validity of our case being assessed as 'critical' in the first place. What specifically lead to such a wrong assessment, and what

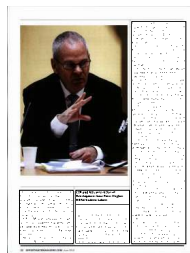
Those far reaching consequences included stress-related trauma for Petersen, who experienced "tightness of the chest, difficulty breathing and tingling, loss of appetite and feelings of both rage and helplessness....my daughters are both clingy and upset, one is being teased at school."

CYF maintained their stance initially that the tennis-ball bruise was the result of the smack, until that claim was shot down after police spoke to the child and reviewed health worker case notes where they discovered the bruise incident had been reported to authorities a week earlier than the smack.

The police letter exonerating the parents was sent 11 months *before* the Latta Review completed its work. It should have been available.

Investigate sought comment from Police Minister Judith Collins, the Ministry of Social Development and Nigel Latta. Our questions on this specific case were:

- At page 27 of the report it is stated: "CYF were notified of a 10 year old being smacked by her father, causing a bruise on her back.



further action as the family remained working with other agencies". Is Latta or CYF aware that the family had no ongoing contact with other agencies? If not, why not?

The answers to these questions will surprise you later in this article.

You couldn't make this stuff up! The Government's much vaunted uber-review of the anti-smacking law is disintegrating as the report's own credibility is torn to shreds by police documents they themselves should have read.

The final irony is that the Latta Review included this case as proof that CYF acted "appropriately and proportionally", despite CYF's own file on the incident revealing it apologised to the family for mishandling the case.

"We regret this did not happen in your case, and social workers did not meet with you or the girls until the following Monday," wrote CYF's acting regional director Theresa Perham to the family.

"These practice gaps were not acceptable... Once again Mr Petersen, both Ross and I apologise that best practice standards were not followed in relation to our contact with your family and this caused both yourself, Mrs Petersen and the girls undue distress."

Again, this apology was on the CYF file and was only glancingly referred to by the Latta review.

In fact, Ministry of Social Development's CEO (also in charge of CYF) Peter Hughes attempted to spin his way out of the contradiction in a January 18 letter this year that gives a clue to the narrow focus of the Latta Review.

Hughes told Petersen "The review team had access to all electronic case file information held by CYF. I consider that this information, *focussing on the statutory investigation by CYF*, was relevant and sufficient for the review team's determination about the appropriateness and proportionality of the investigation."

Check out the portion in italics. From this letter, it appears the Latta Review was only given documentation in support of the *initial* police and CYF responses, not the outcomes. The Latta Review, if so, was merely rubber stamping police and CYF decisions to go in hard on the flimsiest of evidence and most outrageous allegations.

One of the scandalous claims the Petersens were hit with was possible sexual abuse (see sidebar interview). A schoolteacher sees a gregarious and bubbly schoolgirl trying to give her little sister a kiss and a big squeeze hug as they pick her up after school, despite little sister's protestations, and reports the

The smack, aimed at the child's bottom, hit her on the back leaving what was reported as a 'tennis ball sized bruise'. The notification was received from a health professional etc". Are CYF and Latta aware that this summary of facts, as reported in the Latta review, was wrong?

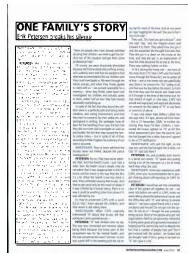
- Are CYF and Latta aware that when police investigated they found the "tennis ball sized bruise" had been caused on a different occasion when the child had tripped while playing?

- Given that the police file included a letter to this effect dated 7 February 2009, not-

CYF and Ministry of Social Development boss Peter Hughes. NZPA/Andrew Labett

ing that "CYF's had based their judgements on a misinterpretation of events", and that the smack to the child was, in the view of police a "justified disciplinary action", why did the Latta review of December 2009 fail to pick up this crucial information from the review of the case files?

- The Latta review records "CYF took no



ONE FAMILY'S STORY

Erik Petersen breaks his silence

INVESTIGATE: Just can you clarify for me, you self-referred to the CAPS (Child Abuse Prevention Service) team, what happened there?

PETERSEN: Well, our daughter has been a really strong-willed child. She's really come right in the last six months or so but before that time she was just a major handful. She'd had a meltdown at school and the principal had strongly recommended that we get her to CAPS for an assessment. So we went to visit CAPS with the view of finding out whether her behaviour was the result of mental illness or just a strong-willed child.

It was during that visit with CAPS that they noticed she had a bruise, and they asked her about the bruise and she explained that she had tripped over a vacuum cleaner and fallen against the thing the phone sits on, and had gotten the bruise.

Around seven or nine days later they had a home visit and came and saw her at home. Then the day after that she threw a massive paddy and I smacked her bottom. She was wriggling during the smack and it left some fingermarks on her lower back, which we'd never done before. Of course I felt bad about it, in the same way as you'd feel bad about treading on your daughter's foot. My wife mentioned it to the health nurse, and the health nurse said, 'oh, I wouldn't be that concerned about it', but the next day the health nurse called CAPS and said 'oh, the mother says they've smacked their child and it's left a bruise', and Lynda Jelley at CAPS has said 'I've seen a bruise!' and between the two of them they decided that the bruise that "A" had on her hip was the mark that I had made on her back. They decided that that bruise was not consistent with a smack, which of course it wasn't – it was consistent with falling against a hard object.

What they reported to CYF when they put in the referral was that we had admitted, they say 'hitting' the child, they never used 'smack', they say we had admitted hitting our children and that I had hit "A" causing a bruise, and they sent in the paperwork on the bruise that Lynda Jelley had sighted, with the very clear implication that this was the bruise that we had admitted to causing.

So when CYF got the information, for them it wasn't an investigation per se, for them it was

'these are people who have already admitted abusing their children, we need to get the children out of the situation and get them some professional help'.

Of course, we were absolutely blindsided because we'd done absolutely nothing wrong, and suddenly were told that we needed to find alternate accommodation for our children until they could investigate us. We went through the whole process, and when they finally agreed to meet with us – we pushed repeatedly for a meeting – when they finally came down and investigated our children and actually spoke to them, within half an hour they had cleared absolutely everything up.

In spite of the fact that they found the children were in a perfectly safe and loving home situation, and caring environment, and that they had no concerns for their safety etc, and apologised in writing, the apologies have all been for the handling of our case, the fact that they did not come and investigate as soon as practicable, the fact that they caused the family undue stress – but in spite of all of that, according to Peter Hughes the summary of our case is accurate.

INVESTIGATE: They've never admitted the bruises were not linked, despite the police investigation?

PETERSEN: No, no. They have never admitted that. And the health nurse, I just had a letter from the health nurse's lawyer, they do not admit that it was inappropriate to link the bruise and the smack in the way they did. But it's a lie. What the health nurse has done is said, 'they confessed causing that bruise'. And that bruise could only be the result of abuse if it was inflicted by a human being. There is no way it could be anything other than abuse if it was inflicted by me.

So they've presented CAPS with a quick Q.E.D. that I have abused the children, and that record is still sitting there.

INVESTIGATE: When CAPS originally interviewed "A" about that bruise, did that admission come spontaneously –

PETERSEN: "A" had climbed onto my lap. She was very concerned and nervous about being there because she knew part of the assessment was for her mental health, and she was concerned she wasn't normal. So she was scared stiff in the meeting and she sat on

my lap for most of the time. And at one point as I was hugging her she said 'Ow, you're hurting my bruise!'.

They said, 'Oh, have you got a bruise?', and she said 'Yep,' and she hopped down and showed it to them. They asked how she got it and she explained. We thought that was that. They did put in a sheet on the bruise at the time, and they did put in an explanation of how the child obtained the bruise at the time. There was nothing further on that.

In fact, during the home visit – we have all the notes from CYF, from CAPS and the health nurse, through the Privacy Act, we've gotten all of that – and in the home visit she specifically says there is no concern for "A's" safety at all, and that was the day before the smack. So from the time they saw the bruise and made note of it through to the time of the home visit, for that stretch of eight or nine days, CAPS had voiced and expressed and reported absolutely no concerns for the safety of "A" or any fears or concerns of abuse.

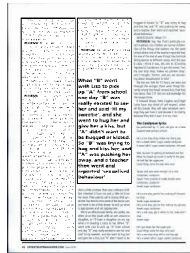
It was only when Kate Balfour called her, she says here, '4:15pm, phone call from Kate' – this is 27 November 2008, 're mother disclosing they have hit their children. I mentioned the bruise sighted on "A" at AX [the initial assessment] and how the parents said she had banged into a table. Kate and I agreed to do a CYF notification.'

INVESTIGATE: Let's get this right, so she says you said she had banged into a table, not that "A" had told them?

PETERSEN: Yes, and probably both events in a sense are correct. "A" spoke very quietly during a lot of the interview so a lot of times we'd relay what she said.

INVESTIGATE: Given your experiences with CAPS, what your recommendation be to people thinking about self-reporting to CAPS for assistance?

PETERSEN: I would say just stay completely clear of the system all together, do not – we were told before we went to CAPS, when we were talking about the behavioural issues and the difficulties with "A" and talking to people about it – we have a good friend who's a medical doctor and he said 'Do not get into the system, do not do it.' I thought he was probably being cynical. Most of the people who get into organisations like this are genuinely interested in doing some good and genuinely interested in helping out the community. And so despite the fact that a number of people had said 'Don't get involved with the system', we looked and we thought 'well, if this is going to be best for "A" let's give it a try'.



But having been through, I would say you are much better finding the money to do it privately, take out a second mortgage if you need to. I would steer well clear of the system.

INVESTIGATE: Is it incompetence, or is it almost a recklessness?

PETERSEN: My own feeling, and I'm willing to be 100% wrong on this, but there were a number of comments in the records looking through that, for instance, one of the allegations that was made against us was also sexual abuse. Now the initial note of our visit reflects nothing of that, they were very affirming of us as a couple both coming in, being involved in the assessment and "A's" life. But after the allegation was made of abuse, shortly following thereafter was one of sexual abuse. Lynda Jelley talked about the fact that "A" was all over me and that she kissed me on the lips.

INVESTIGATE: And that's sexual abuse?

PETERSEN: If she had done that with my wife, would that have raised any concern at all? But because it was me and I was male, you know? Later on, too, when we called the health nurse to put in an initial complaint my wife called her and I was saying in the background 'ask her this...' — which my wife sometimes does to me and I sometimes do to her when we're on the phone — and the health nurse put in brackets, during the conversation, "controlling husband?" with a questionmark.

So, I suspect, given that information and given our experiences, that probably a number of people who go into the field of working in an organisation such as CAPS or CYF do so because they have had an upbringing where they have had an abusive father or a dysfunctional family situation and they want to do something to set it right so it doesn't happen to other people. And I would suspect that probably they bring some of those prejudices to work with them. That would be my guess.

Now, as I say I'm completely ready to be 100% wrong on that, it's an impression. I think there is certainly a degree of incompetence as well. CYF, when they were doing their investigation, they never established a timeline. They never put down the specifics of the allegations. They put about half of what was actually reported to them and they were so muddled on it that although I repeatedly asked for specific allegations and the sources of them, and although the people who made the allegations had signed disclosure statements, it was not until I actually got the information through the Privacy Commission that I was able to see the exact nature of the allegations.

And the reason for that was the CYF record-keeping was so poor. There were questions that

I brought up that they've gone back and talked through and looked at their records and they say, 'we can't tell anymore, we're not sure'. I think there's a degree of incompetence, yes.

INVESTIGATE: I noticed in one of the CYF letters to you was an allegation of inappropriate sexual play between the two children, what was that?

PETERSEN: Yeah, well what happened was we were very fortunate to be able to pinpoint that one immediately and know exactly what that one was. We were blindsided with that one as well. What happened was that our eldest daughter "B" is dyspraxic, which means that

When "B" went with Lisa to pick up "A" from school one day "B" was really excited to see her and said 'Hi my sweetie', and she went to hug her and give her a kiss, but "A" didn't want to be hugged or kissed. So "B" was trying to hug and kiss her, and "A" was pushing her away, and a teacher then went and reported 'sexualised behaviour'

she's a little clumsier than your ordinary child. She inherited it from me and a little bit from her mum. They used to call it clumsy child syndrome. You tend to miss some of the social cues and tend to be a little slower to pick up what is appropriate and not appropriate.

We're an affectionate family, we cuddle, we often sit on the couch with an arm around a daughter, or I'll have a daughter on my lap when I'm reading a story to her. When "B" went with Lisa to pick up "A" from school one day "B" was really excited to see her and said 'Hi my sweetie', and she went to hug her and give her a kiss, but "A" didn't want to be

hugged or kissed. So "B" was trying to hug and kiss her, and "A" was pushing her away, and a teacher then went and reported 'sexualised behaviour'.

INVESTIGATE: What???

PETERSEN: Yep. Yep. That's politically-correct madness. Our children are normal children. One of the things that bothers me, the same school where one of the teachers reported that, for one of the end of year things they had kids doing dances to different songs. And the year 6 class, I think it was, did one to [Christina Aguilera's] Candyman, it's got the words, 'he's my one stop shop, makes my panties drop', and I thought, 'hmm, and you are wondering about sexualisation in kids!'

We lost our kids for 72 hours, we were put through the wringer, there were things blatantly wrong that break several Acts, that they had done, that CYF did not acknowledge for the longest time.

If Howard Broad, Peter Hughes and Nigel Latta have any shred of self-respect, when all this breaks they will take whatever earnings they got from it and donate it to charity, because they didn't earn it in my view.

The Candyman lyrics

(as performed by 11 year old girls at a New Zealand state primary school):

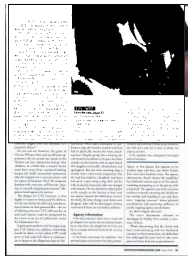
He's a one stop shop, makes my cherry pop
 He's a sweet talkin' sugar coated candyman
 A sweet talkin' sugar coated candyman, ohh yeah

Well, by now I'm getting all bothered and hot
 When he kissed my mouth it really hit the spot
 He had lips like sugarcane
 Good things come for boys who wait

Tarzan and Jane were swingin' on a vine
 Candyman, candyman
 Sippin' from a bottle of vodka double wine
 Candyman, candyman
 Sweet sugar candyman

He's a one stop, gotcha hot, making all the panties drop
 Sweet sugar candyman
 He's a one stop, got me hot, making my ugh pop
 Sweet sugar candyman
 He's a one stop, get it while it's hot, baby don't stop
 Sweet sugar

He's got those lips like sugarcane
 Good things come for boys who wait
 He's a one stop shop with a real big ugh
 He's a sweet talkin' sugar coated candyman



matter to CYF in what that agency has recorded on its database as "were observed playing in a sexually inappropriate manner".

If the nation's school teachers and social workers are now trying to stamp out any displays of affection between young sisters by calling it "playing in a sexually inappropriate manner", then every family with daughters in New Zealand is now at risk under John Key's legislation. And CYF will justify their heavy-handed response as "appropriate and proportional" because of the serious nature of the allegations.

There's another area of danger for families around New Zealand that's emerged in all this.

A former CYF community panel board member has signed a statement confirming CYF is now maintaining a database on every single family it comes into contact with, based on its own notes and not necessarily including court outcomes or transcripts that reject CYF evidence as unsubstantiated. According to his statement, the database is a kind of Orwellian computer overview that notes down every suspicion, tip-off or supposition passed onto CYF by teachers, neighbours, community social workers, medical centres or estranged parents.

"Any child who mentions to a school teacher that they have been smacked or touched in any physical way, is brought under investigation and their names are indelibly logged onto our database as a potential 'abuser'."

As you can see, however, the game of Chinese Whispers that such tip-offs and suppositions rely on turned one smack in the Petersen case into "admitted to hitting" their children, to a belief that a massive bruise must have come from a parental bashing despite the child's uncoached explanation that she tripped over a vacuum cleaner and hit a piece of furniture. The CYF computer database will, even now, still have the "playing in a sexually inappropriate manner" allegation listed against the parents.

The danger for CYF, however, is that legally it is open to being sued for defamation by any family who find such unsubstantiated claims on their personal files – the act of allowing even one CYF staff member to read such reports could be interpreted by the courts as an act of 'publication' under the Defamation Act.

Legal experts spoken to by *Investigate* suggest CYF reliance on a defence of privilege would be likely to fail unless CYF could prove it had made full efforts to substantiate or disprove the allegations kept on file.



CASE THREE

Latta Review, page 23:

What was reported

Father charged for smacks for 'correction'
North Island
2008

"John* and Mary* had been having difficulties with their teenage daughter – especially her secretive behaviour with her boyfriend. When John attempted to confiscate a ring, she started to scratch and John had to physically restrain her from attacking him. Despite giving her a warning she continued to be defiant so he gave her three smacks on the bottom with an open hand. His daughter eventually calmed down and apologised. But the next morning rang a teacher from school and complained that she had been held in a headlock, had been tied up to a post using a dog lead, and hit with an electric fence pole. John was charged with assault. He was advised to plead guilty to the smacks on the bottom as they were not used to 'restrain' the child but to 'correct' the child. All other charges and claims were dropped. John will be discharged without conviction if there are no further problems."

Agency information

- The Police received a report that a 14 year old girl alleged to her teacher that she had been beaten by her step-father. She alleged that he hit her, put her in a strangle hold and tried to tie her up using a dog lead.

- The Police interviewed the stepfather who admitted aspects of the incident (including attempt-

ing to tie his step-daughter up) and to hitting her three times on the bottom. The step-father was charged with assault (male assaults female).

- Child, Youth and Family involvement identified that there were significant concerns regarding the safety of this young person and she was removed from her mother and step-fathers care.

- The concerns related to both the initial allegation and ongoing concerns regarding physical punishments and parenting. A family group conference was held and a plan put in place to address the ongoing concerns.

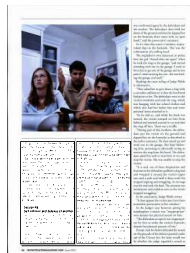
- The stepfather was subsequently discharged without conviction.

Again, at first glance this appears to be another open and shut case where Family First must have backed a loser. The agency information clearly shows the stepfather has admitted various aspects of the attack, including attempting to tie the girl up with a dog lead. The agencies say there was clear evidence to justify removing the child from her mother and stepfather's care and there were "ongoing concerns" about physical punishments and parenting sufficient to justify ongoing agency involvement.

So, did it happen this way?

The court documents released to *Investigate* by Family First include a summary of facts:

"When discovering that the victim had been communicating with her boyfriend contrary to their instructions, the defendant has challenged her and tried to take some personal items from her as punishment.



"A fight has ensued between both parties where they have wrestled and fallen to the ground. During the scuffle the victim's MP4 player was partially broken."

We'll stop there for a moment. Even the prosecutors admit the teenager physically assaulted her stepfather after he tried to confiscate the ring her "boyfriend" had given the 14 year old (remembering it is illegal for anyone to have sexual relations with a 14 year old girl).

Under the Crimes Act, the daughter committed an assault on her stepfather, and legally, the stepfather had every right to defend himself, as section 48 of the Crimes Act shows:

Section 48:

Self-defence and defence of another

Every one is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.

This piece of law trumps the anti-smacking legislation. It has always been permitted for people to use force to defend themselves

– even, in the case of dealing with home invaders, lethal force. A fight initiated by the daughter that did not end until she was smacked would fit the requirements of s48, 'self defence'.

So let's return to the prosecution 'summary of facts' and see how the fight developed:

"The defendant has removed a ring from around the victim's neck by breaking the chain that it was attached to. The ring was a gift from the ex boy friend.

"Another scuffle has ensued and the defendant has put the victim in a head lock in an attempt to restrain her. He has then entered the shed and tried to destroy her ring by smashing it with a hammer.

"The victim has then entered the shed and attempted to reclaim her ring. The defendant has then tried to evict her from the garage and has ended up carrying her out.

"Once out of the garage he has restrained the victim by tying her up to a post using a dog lease [sic]. The victim was yelling, screaming and trying to get away from the defendant.

"Once this method of restraint had failed the victim went into the house where she

was confronted again by the defendant and her mother. The defendant then held her down of the ground and then he slapped her on the buttocks three times with an open hand," said the prosecutor's summary.

So it's clear this wasn't a random, unprovoked slap on the backside. This was the culmination of a rolling maul.

The stepfather's own statement to police how the girl "chased after me again" when he took the ring to the garage, "and started wrestling with me in the garage. I tried to force her to get out of the garage and at one point I tried carrying her out...she was kicking the garage and stuff."

Reading the court ruling of Judge Walsh is informative.

"They asked her to give them a ring with a cannabis emblem on it that the boyfriend had given to her. The defendant went to the victim's wardrobe and took the ring, which was hanging with her school clothes and which also had her locker key and some personal items attached to it.

"As he did so, and while his back was turned, the victim jumped on him from behind and reached around to try and take the ring off him. There was a scuffle.

"During part of this incident, the defendant put the victim on the ground and slapped her on the buttocks as described in the police summary. He then stood up and went out to the garage. She kept following him, persisting in physically trying to remove the ring from his hand. The defendant asked his wife to intervene to try and stop the victim. She was unable to stop the victim.

"It is said, out of sheer desperation and frustration the defendant grabbed a dog lead and wrapped it around the victim's upper arm and a pole and held it there until she stopped arguing and struggling. At no stage was she tied with the lead. The restraint was momentary and ended as soon as the victim stopped struggling."

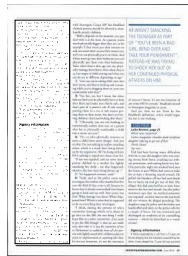
In his conclusion, Judge Walsh writes:

"It does appear the victim may have been somewhat provocative in her conduct."

In the Judge's eyes however, giving his stepdaughter a smack was "inappropriate" even despite her physical assault on him:

"The defendant accepts it was inappropriate for him to strike the victim's buttocks, despite her physical pursuit of him."

Except, had the father defended his smack on the grounds of the defence granted under s48 of the Crimes Act, the issue would not be whether the judge regarded a smack as



"appropriate" but whether a jury agreed that it was "such force as, in the circumstances as [the stepfather] believes them to be, it is reasonable to use". Under section 48, the test of reasonableness is in the eyes of the person using the force, not the opinion of the judge. It is hard to believe a jury, in a country where 87% believe parents should not be criminalised for the occasional smack, would not agree that a smack in response to hitting and scratching is justified.

Section 48 has been used by police officers to defend themselves. It is just as easily available to parents where their children have initiated an assault.

Despite his disapproval of smacking, however, Judge Walsh nonetheless concludes, "I am satisfied, when I have regard to the gravity of the offending, it is at the lower end of the scale of seriousness...a conviction would be out of all proportion to the gravity of the offence. Therefore, a discharge under s106 of the Sentencing Act is granted."

Now, contrast that with the inflammatory language Nigel Latta evidently cut and pasted from the CYF file:

Agency information

- The Police received a report that a 14 year old girl alleged to her teacher that *she had been beaten* by her step-father. She alleged that *he hit her*, put her in a *strangle hold* and tried to tie her up using a *dog lead*.

- The Police interviewed the stepfather who admitted aspects of the incident (including attempting to tie his step-daughter up) and to hitting her three times on the bottom. The step-father was charged with assault (male assaults female).

- Child, Youth and Family involvement identified that there were significant concerns regarding the safety of this young person and she was removed from her mother and step-fathers care.

Spin, spin and more spin. No mention of the father being scratched and beaten by his stepdaughter, and again CYF changing the word "smack" to "hitting" and "beaten". Nor is the "dog lead" incident given any context by Nigel Latta.

Admittedly, the step-father seems to have also been the victim of bad legal advice, as his counsel should have considered a defence under s48 of the Crimes Act instead of pleading guilty. He wasn't smacking the teenager as part of "you've been a bad girl, bend over and take your punishment", instead he was trying to shock her out of her continued physical attacks on him.

Interestingly, in a June 2006 interview

with *Investigate*, Green MP Sue Bradford claimed parents should be allowed to manhandle unruly children:

"Well it depends on the situation, you just deal with it at the time. As a parent you're much physically bigger than they are, so for example if they won't put their sweater on and you want them to put their sweater on, well you can physically put it on them. And if they won't go into their bedrooms you can physically put them into their bedrooms. Yeah, when they're that age you can physically manage them better than when they're 14, but stages of child-rearing and what you can do are so different depending on age."

Q: "Let's say you're taking little ones into their room, and they're kicking and screaming while you're dragging them in, were you comfortable with that?"

A: "Yes, but, yes, but I mean, but when kids are little you do physically have to look after them and make sure they're safe, and that's part of a parent's job. If safe means putting them in a cot or safe means putting them in their room, but that's not hitting children, that's just looking after them."

Q: "Obviously you are not looking to intentionally outlaw time out, or a parent who has to physically manhandle a child into a room, are you?"

A: "No, or who physically removes or saves a child from some danger. And just on that, I'm not seeking to outlaw smacking either, which is a myth that's being driven up by my opponents. All I'm doing with my bill is seeking to repeal one clause of an Act."

"If s59 was repealed, and say some mean person dobbed in a mother for lightly smacking her child – say that happened, which is the fear that's being driven up –"

Q: "It's happened overseas, yeah."

A: "Yeah, and so the police come and investigate the mother who smacked her five year old child (if they come at all, because we know they're already overworked) but they're going to look and say well, how severe was that? What damage was done? What's happened here? Which is what they're supposed to do in everything they investigate."

"I think, during the process of select committee hearings which we're about to go into on this Bill, the one thing I really hope that as a select committee, if we want to get this Bill through, is that we can make very clear that it is not the intention of me or Parliament to suddenly have all the parents who lightly smack their children subject to arrest or imprisonment or anything like that. It's not my intention, it's not the intention

HE WASN'T SMACKING THE TEENAGER AS PART OF "YOU'VE BEEN A BAD GIRL, BEND OVER AND TAKE YOUR PUNISHMENT", INSTEAD HE WAS TRYING TO SHOCK HER OUT OF HER CONTINUED PHYSICAL ATTACKS ON HIM.

of anyone I know, it's not the intention of any other MP. It's a myth," Bradford insisted to *Investigate* magazine in 2006.

And yet, here we are. Even by Sue Bradford's definition, critics would argue the law is not working.

CASE FOUR

Latta Review, page 21

What was reported

Father charged for 'shoulder shake' of defiant daughter refusing to get out of bed

North Island

Sep 2007

Dad had been having major difficulties with his 15 year old daughter who was stealing money from home, sneaking out without permission, and coming home very late. One particular night she sneaked back into the house at 4am! When dad went to wake her at 6am a shouting match ensued. He pulled the blankets off her bed and shook her to hurry up and get out of bed. She alleges that dad punched her at least three times in the face and mouth, but the police statement says that 'no medical attention was required', and her sister in the top bunk did not witness the alleged punching. The daughter rang the police and the father was handcuffed and taken to the police cells for a couple of hours. He was convicted and discharged on condition of six counselling sessions – which he described as a 'waste of time'.

Agency information

- Police responded to a call from a 15 year old female alleging that she had been assaulted by her father. It was alleged the 15 year old was punched

at least three times in the face and mouth.

- The Police attended the home and the father was removed to the police station. The father was arrested and charged with assault.

- Child, Youth and Family was informed of the allegation by the Police and spoke with the young person, her mother and father, and a staff member at her school. 'It was identified that there was a breakdown in the relationships within the family and that the young person was significantly challenging her parents. The parents' however were not willing to engage with any support/community services and determined that they would manage the situation by setting clear boundaries for their daughter.

- Child, Youth and Family ensured that the young person knew what action to take if there was another incident and took no further action in relation to the allegations.

- The father was subsequently convicted for assault and discharged on condition of counselling sessions.

Again, if you believe the Latta Review, this wasn't actually a smack or shoulder shake

"At that hearing Police agreed that no punching had occurred. This concurs with [my client's] consistent denial of punching and formed part of his affidavit. A s106 discharge without conviction was granted on 11 December 2007 by Ongley DCJ at the District Court in Upper Hutt. Police did not oppose the application."

It's staggering that the Latta Review got its facts wrong on the outcome of the case. But it gets worse. As alluded to, the punching allegations were thrown out. All that the father pleaded guilty to was shaking his defiant daughter's shoulder – an incident not even mentioned by Nigel Latta in his review of the case.

So again, what actually happened?

If you believe the daughter's statement to police, now obtained by *Investigate*, she claims her parents refused permission for her to go out with her friends at 9.40pm, so "I stayed in the lounge to watch television. I fell asleep. I woke up before 6am and came down to my room.

presented to the court on 10 October 2007 (a month after the father's arrest), still maintains the brutal punching claims:

"The defendant entered the victim's bedroom and began yelling and swearing at her. He punched the victim with a closed fist on at least three occasions, hitting her in the face and mouth. The victim did not require any medical attention as a result of the assault."

That last sentence should have been a red rag to investigators: a girl claims to have been beaten "five or more" times with a closed fist in the face and mouth by an angry adult male tradesman, yet no injuries.

Little wonder that police were forced to concede at the 10 October hearing that no punching had taken place. Instead, the only thing they could salvage from their summary of facts was this:

"When spoken to by Police the defendant admitted to shaking the victim a number of times by the bed clothes."

What had been a "Male Assaults Female"

THAT LAST SENTENCE SHOULD HAVE BEEN A RED RAG TO INVESTIGATORS: A GIRL CLAIMS TO HAVE BEEN BEATEN "FIVE OR MORE" TIMES WITH A CLOSED FIST IN THE FACE AND MOUTH BY AN ANGRY ADULT MALE TRADESMAN, YET NO INJURIES.

at all, but a sustained Clint Eastwood-style beating where big dominant male "punched" his 15 year old daughter "at least three times in the face and mouth".

In fact, according to Latta there was nothing else to this case except the beating. There's no reference in his report to any other kind of alleged assault. Just the punches. According to the Latta Review the father was "convicted" for assault.

So what really happened? What did Latta miss?

Firstly, the father's lawyer, Michael Bott, says there was no conviction – the review is factually wrong:

"On 10/10/2007 Charge was amended from Crimes Act Common Assault to Summary Offences Act Assault. A plea of guilty was entered to the amended charge, but no conviction entered against his name [a s106 discharge without conviction]. This was done before Behrens DCJ," says Bott in an email.

"My mum started yelling, saying I had been out. My dad woke up and started screaming...he came down and ... hit me in the face. He hit me a few times more than three. It could have been five or more. He hit me around my cheeks and mouth. He used a fist."

That statement, in the handwriting of a police officer, initially has the teenager claiming to have been asleep in the lounge all night. Both her parents, however, told police their daughter had snuck out and arrived back around 4am. Faced with this, the girl's statement was amended to read, "I went out at about 11:30pm for an hour and got back just after 12:30 – I was gone for about an hour, I was with [boyfacer known to police]."

So yes, we know the daughter initially lied to police about her whereabouts, making her allegations about the punching suspect as well.

Yes, the original police summary of facts

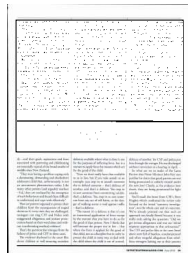
charge under s194(b) of the Crimes Act, with a penalty of two years' imprisonment, was dropped, in favour of the defendant pleading guilty to a much lesser common assault charge for shaking his daughter, under the Summary Proceedings Act.

And, on 10 December 2007 when he appeared for sentencing, the father was discharged without conviction, not "convicted" as claimed by Latta.

The entire Latta Review segment on this case, was inaccurate. The alleged "aggravating features" that Latta claimed justified police and CYF actions "in all cases" he reviewed, turn out to have been a fabrication.

In his submissions for sentencing, lawyer Michael Bott told the court:

"After stewing over her behavior [my client] confronted his daughter and during the course of an argument shook her for a few seconds as she lay in bed. This incident was...the culmination of several incidents where his daughter had been leaving



the house at odd hours to be with boys and other strangers.

"Three months ago, during August, youth aid officers contacted [my client and his wife] at around 3-4 am in the morning, as their daughter was found intoxicated in Manners Mall. This was a complete surprise. Their daughter had told them that she was staying with a girlfriend at her parents' house in Silverstream.

"Recently, [my client] and his partner have discovered that over the last 6 months around \$3,200 has been removed in small withdrawals from the family grocery money and [my client's] business account. Both [my client and his wife] are fearful that their oldest daughter has been accessing these funds."

The child was 15. Increasingly out of control, lying not just to her parents but even to police in her statement of evidence. Her father shook her, and was prosecuted.

"It is submitted," concluded the lawyer, "that in essence [my client's] family represent a normal New Zealand middle-class fam-

ily...and their goals, aspirations and fears associated with parenting and childrearing are essentially typical of the broad swathe of middle-class New Zealand.

Family First spokesman Bob McCoskrie says parental fears that such things would happen have been justified, and that it fundamentally undermines a family's ability to keep behavioural control over their children and, ultimately, keep them safe.

One bad sexual encounter can see a child raped or left with a potentially devastating sexually transmitted disease. Associating with other out of control teens can result in drug-taking, intoxication or even death.

In a June 2006 interview, lawyer Nick Davidson QC was worried the anti-smacking law failed to recognize the need for force to prevent a child from doing something that could be dangerous:

"So I think there must become a series of

but not to inflict force for the sake of that, is the distinction to be drawn as a matter of law," Davidson told *Investigate*.

Perhaps the courts should rapidly consider a more liberal interpretation of s48 of the Crimes Act, so that force when used "in defence of another" is taken to include preventing your child from accessing potentially dangerous things/people until such time as parents are no longer legally responsible for them.

An example of precisely this dilemma emerged in January, when a Christchurch father was arrested and spent two nights in police cells, for pushing his four year old son forcefully at Hagley Park in Christchurch. The boy, with a history of behavioural problems, had begun throwing a tantrum and lunged for his mother who was carrying a three month old baby. Father intervened just as forcefully to prevent mother and newborn being injured, and police arrested him.

The man had a clear defence under s48 of the Crimes Act, because he was acting in

SO WHAT ARE WE TO MAKE OF THE LATTA REVIEW THAT PRIME MINISTER JOHN KEY SAYS JUSTIFIES HIS CLAIM THAT GOOD PARENTS ARE NOT BEING PROSECUTED OR UNFAIRLY TREATED UNDER THE NEW LAW? CLEARLY THEY ARE BEING PROSECUTED FOR LIGHT SMACKS.

ily...and their goals, aspirations and fears associated with parenting and childrearing are essentially typical of the broad swathe of middle-class New Zealand.

"They were having a problem coping with a dominating, demanding and disobedient adolescent child that, unfortunately, is not an uncommon phenomenon today. Like many other parents [and arguably teachers - Ed.] they are confused by the emergence of such behaviours and found them difficult to understand and cope with effectively."

How are parents supposed to protect their children from the consequences of stupid decisions if, every time they are challenged, teenagers can ring CYF and Police with exaggerated allegations and initiate prosecutions based on their word alone and without corroborating medical evidence?

That's the question that emerges from the failures of police and CYF in these cases.

The evidence disclosed in the court files shows children or well-meaning outsiders

defences available where what is done is not for the purposes of inflicting force, but is a warrant to apply force for reasons which are for the good of the child.

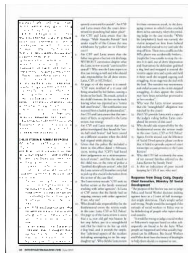
"Now we don't really have that available to us in law, but if you take assault as an example: you step in to assault someone else to defend someone - that's defence of another, and that's a defence. You step in to save someone from committing suicide, that's a defence. You step in to save someone from any act of self-harm, or the danger of walking across a road against traffic - that's a defence.

"The reason it's a defence is that it's not an intentional application of force except by the warrant that you have to do so for the good of that person. Now I think that will become the proper test in law - that where the force is applied for the good of that child, not as a discipline but in order to protect the child in some way, or deal with the child where the child is out of control,

defence of another. Yet CYF and police put him through the wringer. He was discharged without conviction at a hearing in April.

So what are we to make of the Latta Review that Prime Minister John Key says justifies his claim that good parents are not being prosecuted or unfairly treated under the new law? Clearly, as the evidence here shows, they are being prosecuted for light smacks.

You'll recall the letter from CYF's Peter Hughes which confirmed the review only focused on the initial "statutory investigation", not the whole case and its outcome. We've already pointed out that such an approach was fatally flawed because it was really only asking the question: "Did we get serious allegations and was our initial response appropriate to that seriousness?" The CYF and police files in the cases listed above were full of baseless, unsubstantiated and often vengeful allegations from rebellious teenagers lashing out at their parents



as a result of clashes over boundaries (sleeping with older men, wagging school, being intoxicated in a public place etc).

If CYF and the police had truly done their jobs appropriately and proportionately, the cases listed here would never have gone to prosecution, with all the costs to the taxpayer and families that this entailed. None of the serious allegations stacked up, and parents ended up being convicted for a light smack, a shake or self defence – almost because the Crown felt the need to justify its investigation. The parents, and other children in the families, were put through hell.

As defence lawyer Michael Bott pointed out: "If it is the case that the psychologist's review of the file in terms of appropriateness of charging amounted to a read through only of the Police Summary of Facts – that is worrying as that just amounts to allegations, the substance of which is routinely altered or disputed and amended as cases wind their way through the system.

"Such a review is not a review and would amount to no more than a rubber stamping exercise of marginal or zero utility."

In other words, the Prime Minister's Latta Review has failed to prove the smacking law is working, and the evidence collated here for the first time proves it is not.

CHILD, YOUTH & FAMILY RESPONSE

What follows is the CYF response to a series of questions sent in by *Investigate*. The magazine believes you will find them eye-opening, as they appear to confirm the Prime Minister's Latta Review was indeed a 'rubber stamping exercise' – Latta's involvement appears to have been an attempt by the Government to lend credibility to a non-credible review. Our questions to CYF, later and police were:

1. The case on page 24 of the Latta review – girl struck with phone book – why was Latta not told by CYF or Police that phone book and punching allegations were dropped at court hearing and do not appear in the court Summary of Facts?
2. Does CYF and Latta now agree that the father was actually only convicted for slapping his daughter's leg with an open hand, not for assault with a phone book?
3. The case on page 21 of the Latta review – shoulder shake of daughter. Latta reports agency info as "punched at least three times in the face and mouth"...and Nigel concludes, "The father was subse-

quently convicted for assault". Are CYF and Latta aware that the court determined no punching had taken place?

4. Are CYF and Latta aware that the charge, "Male Assaults Female" laid under s194(b) of the Crimes Act was withdrawn by police on 10 October 2007?
5. Are CYF and Latta aware that the father was given a Section 106 discharge WITHOUT conviction despite what the Latta review records "convicted for assault"? Why was the Latta report on this case wrong as well and who should take responsibility for all these errors: Latta, CYF or NZ Police?
6. At page 27 of the report it is stated: "CYF were notified of a 10 year old being smacked by her father, causing a bruise on her back. The smack, aimed at the child's bottom, hit her on the back leaving what was reported as a "tennis ball sized bruise". The notification was received from a health professional etc". Are CYF and Latta aware that this summary of facts, as reported in the Latta review, was wrong?
7. Are CYF and Latta aware that when police investigated they found the "tennis ball sized bruise" had been caused on a different occasion when the child had tripped while playing?
8. Given that the police file included a letter to this effect dated 7 February 2009, noting that "CYF's had based their judgements on a misinterpretation of events", and that the smack to the child was, in the view of police a "justified disciplinary action", why did the Latta review of December 2009 fail to pick up this crucial information from the review of the case files?
9. The Latta review records "CYF took no further action as the family remained working with other agencies". Is Latta or CYF aware that the family had no ongoing contact with other agencies? If not, why not?
10. Who should take responsibility for the fundamental errors the review made in this case: Latta, CYF or NZ Police?
11. On page 23 of the Latta review it states that a 14 year old girl was beaten by her step father, put in a stranglehold and that he tried to tie her up with a dog lead, and it records the stepfather "admitted aspects of the incident including attempting to tie his step-daughter up". Why did the Latta review

let these comments stand, in the damaging context in which Latta couched them in his summary, when the presiding judge in the case records: "While his [stepfather's] back was turned, the victim jumped on him from behind and reached around to try and take the ring off him. There was a scuffle and the MP4 player was accidentally broken... [stepfather] was unable to stop the victim. It is said, out of sheer desperation and frustration the defendant grabbed a dog lead and wrapped it around the victim's upper arm and a pole and held it there until she stopped arguing and struggling. At no stage was she tied with the lead. The restraint was momentary and ended as soon as the victim stopped struggling...It does appear the victim may have been somewhat provocative in her conduct".

12. Why was the Latta review unaware that the "stranglehold" allegation was rejected by the court?
13. Did CYF provide Latta with a copy of the judge's ruling before Latta completed his review of this case?
14. Who should take responsibility for the fundamental errors the review made in this case: Latta, CYF or NZ Police?
15. Again, for the record, can the Ministry of Social Development please confirm that it failed to provide copies of court transcripts or judgements to the Latta Review?
16. Why did CYF fail to identify the cases of ten named families referred to the Latta Review by Family First?
17. Is this an indication of poor record keeping by CYF, if not, why not?

Response from Doug Craig, Deputy Chief Executive, Ministry Of Social Development

"The purpose of the Review was not to judge Police and Social Worker decision making against facts as a Court of full investigation might determine. That's simply unfair and wrong. People would be outraged if the attitude of social workers or Police was to be disbelieving of people who report abuse and assaults.

"It would be wrong to judge a social worker or Policemen's response based on what subsequently are found to be the facts. What people say happened and what actually happened can be different. But Social Workers and Police don't have the luxury of hindsight to help them decide to respond or not.



"The Review by Police Commissioner Howard Broad, Peter Hughes of the Ministry of Social Development and Nigel Latta concluded that based on the nature of the allegations Police and Child, Youth and Family acted appropriately in responding to the allegations they had received.

"Mr Latta took a full part in the Review. He was given access to Ministry and Police information about a number of cases where it was reported that family members were inappropriately investigated or prosecuted as a result of the Section 59 Amendment Act. This was based on information provided to Mr Latta by Family First New Zealand.

"In all the cases Mr Latta concluded that Police and Child, Youth and Family were right to act. This included information obtained from the CYF, Police and Court documents.

"The Review did identify that more could be done to assure and inform parents and other caregivers who may need to be spoken to by Police or a social worker in response to allegations of assault.

"As a result Child, Youth and Family and Police have:

- Established a new parent support helpline within CYF so that parents who have questions or concerns about how they are being treated can be dealt with more quickly.
- Published guidelines for social workers dealing with child abuse reports that involve smacking, and a subsequent briefing for all CYF social workers.
- Required Police officers and social workers to provide families with specific information on what to expect, what their rights are and what they can do to question what is happening when they have to deal with Police or CYF.
- Collecting more specific information on the application of S59, so a clearer picture is available of how the law is operating in practice.
- In addition, both CYF and Police have formal independent complaint systems.

"More specific answers to some of your questions:

18. "Are CYF and Latta aware that the father was given a Section 106 discharge WITHOUT conviction despite what the Latta review records "convicted for assault"? Why was the Latta report on this case wrong as well and who should take responsibility for all these errors: Latta, CYF or NZ Police?"

"This was an error in recording however we do not accept that this undermines the report's findings for the reasons I've outlined



above. It is also worth noting that the person would have either pleaded guilty or been found guilty. Either way Police were clearly right to act on the complaint.

10 & 14 "Who should take responsibility for the fundamental errors the review made in this case: Latta, CYF or NZ Police?"

"With the exception of the above issue re conviction or not, I cannot see that the report is wrong – it is reporting the information held by the agencies at the time.

15. "Again, for the record, can the Ministry of Social Development please confirm that it failed to provide copies of court transcripts or judgements to the Latta Review?"

**Police Commissioner Howard Broad.
NZPA/ Andrew Labett**

"The information that was provided by CYF was the electronic case files relating to the families/children concerned. This was provided in order to consider whether the CYF response was appropriate based on the information received.

16. "Why did CYF fail to identify the cases of ten named families referred to the Latta Review by Family First?"

"Some of the information provided by



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Family First was somewhat vague and did not clearly identify children's names or the names of parents. For a couple of cases the name of the child was not apparent. In five cases, they were either not referred to CYF and/or no record could be found.

17. Is this an indication of poor record keeping by CYF, if not, why not?

"No. Our recording system records information against the child's name, and the children's names were not always available."

NIGEL LATTA'S RESPONSE

"I stand by the review and the part I played in it. I worked with Peter Hughes and Howard Broad on the Review of Section 59 for the Prime Minister. It certainly was not the 'Latta Review'.

"Any suggestion that the findings of the Review were somehow compromised by court material being 'kept' from me is completely wrong. Summaries of facts and what material a Court may or may not have seen is frankly irrelevant and misses the point.

"The terms of the review were very clear. We were asked to look into what happens when Child, Youth and Family and Police respond to reports of smacking. Is their response appropriate? Did they do the right thing? We were certainly not asked to say whether we thought a criminal conviction was warranted or fair.

"I stand by what I said at the time the review was released. In each and every case I reviewed it was clear to me that CYF and the Police had to act to look further into the complaints they received. Had they not done so, the public should rightly be demanding to know why not.

"These agencies need to act quickly when allegations are made to ensure children are safe. Just because at the completion of the investigation, they find the child wasn't at risk or that the allegations weren't as first appeared, doesn't mean the case should not have been investigated. It is outrageous to suggest that because sometimes the facts turn out to be different than at first thought that the Police or Child Youth and Family should not follow up what on the face of complaints are serious assaults against children and young people.

"What the Review clearly showed was that both agencies were committed to making the best decisions they can with the information they have to hand at the time."

RESPONSE FROM INVESTIGATE

With respect to both Messrs Latta and Craig, in our view your mea culpa is rubbish. In

the great scheme of things, police have to attend to armed robberies, home invasions, road traffic accidents and frauds on little old ladies. They need to prioritise already stretched resources.

I once laid an official complaint of fraud with the NZ Police over the Winebox case. I was supported by signed documents that nailed the offenders red-handed, and supporting rulings from the New Zealand Court of Appeal and the Privy Council stating that they had found a prima facie case for multi-

million dollar fraud against the taxpayer. The Police were "too busy" to investigate, *at all*.

New Zealanders were told that police would use common sense (sadly, no one expects such from CYF) in deciding whether to arrest and prosecute a parent for smacking a child. It should have been blatantly obvious to investigating constables, for example, that a girl claiming to have been punched with a closed fist five times or more in the mouth an hour earlier, and without a mark on her, was probably suffering a serious cred-





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ibility problem. It should have been obvious to you as reviewers. It should have been obvious that a complainant who lied in her initial statement to police about staying home and then later being forced to admit she had snuck out, probably had a credibility problem.

It should have been obvious to you as reviewers that defences under s48 of the Crimes Act might have been appropriate and that therefore the police had failed to take into account all circumstances.

ANY SUGGESTION THAT THE FINDINGS OF THE REVIEW WERE SOMEHOW COMPROMISED BY COURT MATERIAL BEING 'KEPT' FROM ME IS COMPLETELY WRONG. SUMMARIES OF FACTS AND WHAT MATERIAL A COURT MAY OR MAY NOT HAVE SEEN IS FRANKLY IRRELEVANT AND MISSES THE POINT.

– Nigel Latta



Instead, what this review showed is that despite all the other more serious crimes and bashings taking place, taxpayer resources are being wasted on petulant kids challenging boundaries and overly-politically-correct social workers and teachers who jump at every shadow.

Are you really endorsing, Nigel, a school-teacher who see two sisters hugging, reporting them for inappropriate sexual play?

No one is saying there should not be an investigation. Parents' primary concern was not that police would knock on the door, but what would happen after that. Your now self-admitted meaningless review tells the public nothing about whether parents

have been prosecuted for minor matters – all you've said is that police were justified in turning up on the doorstep in the first place.

Newsflash, no one had a problem with that. We were all told that police were clever and would quickly sort out whether anything really needed to be followed up. Instead, we find police and CYF all over families like a rash for what we now know were non-events.

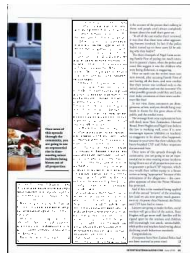
What this magazine (which specialises in complex investigations to a criminal court standard) argues is that in the absence of clear injuries police need to look long and hard about the wisdom of taking it to prosecution. After all, isn't that what Prime Minister Key has said – no parent should

be prosecuted for giving their kid a smack with no lasting consequences?

It is ironic that, since the smacking law came in, serious attacks on babies and toddlers have leapt 65%. And while more babies are being attacked, police and CYF workers are going into red-alert mode over what turn out to be ordinary smacks with no injuries. Funny set of priorities that is.

While Inspector Plod and Nanny CYF pounce on ordinary families with gusto, those guilty of real brutality are making hay while the sun shines, unmolested until it is too late.

The attitude from CYF and Police, evidently supported by you, Nigel, is that not only should they shoot first and ask ques-



Once news of this spreads through the community, you are going to see an exponential rise in time-wasting minor incidents being blown out of all proportion

tions later, but instead of objectively testing the evidence themselves they should simply throw everything at a judge and hope that some of the mud sticks in a taxpayer-funded prosecution-fest.

How can parents trust the National Government to protect them from vengeful, unsubstantiated prosecutions if that is the policy?

Are you all seriously suggesting it is equitable to force families into defending prosecutions and CYF child removals at up to \$100,000 a time, ultimately just because they smacked a child?

Remember what Sue Bradford told *Investigate*.

"I'm not seeking to outlaw smacking either, which is a myth that's being driven up by my opponents. All I'm doing with my bill is seeking to repeal one clause of an Act. If s59 was repealed, and say some mean person dobbed in a mother for lightly smacking her child – say that happened, which is the fear that's being driven up, and so the police come and investigate the mother who smacked her five year old child (if they come at all, because we know they're already over-worked) but they're going to look and say well, how severe was that? What damage was done? What's happened here? Which is what they're supposed to do in everything they investigate.

"I think, during the process of select committee hearings which we're about to go into on this Bill, the one thing I really hope that as a select committee, if we want to get this Bill through, is that we can make very clear that it is not the intention of me or Parliament to suddenly have all the parents who lightly smack their children subject to arrest or imprisonment or anything like that. It's not my intention, it's not the intention of anyone I know, it's not the intention of any other MP. It's a myth."

Like Bradford says, there has to be a threshold where cases are judged worthy of prosecution or referral to CYF, and based on what you have now admitted your review was confined to, the public and the media can no longer trust that your report was correct. You see the prosecutions of parents in this article as valid, and if these cases passed muster with you as "valid" what hope do others have?

In arguing that the purpose of the review was NOT to ultimately determine whether good parents had been wrongly prosecuted for smacking their children, you directly contradict what Prime Minister John Key said when he was standing beside you: "Good parents are not being criminalised for a light smack."

If you *knew* your review was not assessing the ultimate validity of prosecutions, why did you not *immediately* correct him? People get criminalised through the court process, not the initial response process. The media and public were effectively misled about the significance and extent of your review, in our opinion, and the damage to John Key's credibility from this may be very serious. Did the Prime Minister know his review was not actually going to investigate the cases he claimed it had?

Latta stated at the news conference: "The difficulty for Family First is that all they have

is the account of the person that's talking to them, and people aren't always completely honest about the stuff that's gone on.

"In all of the case studies that I reviewed, it was clear that there were other aggravating features involved. In fact if the police hadn't turned up to those cases I'd be asking why they hadn't!"

The sheer chutzpah of Nigel Latta accusing Family First of paying too much attention to parents' claims, when the police and court files suggest it was the children who were being dishonest, is staggering.

How on earth can the review team now turn around, after accusing Family First of not having all the facts, and now confess that their review was confined only to the initial complaint and not the outcome? On what possible grounds could Key and Latta even make comments at their news conference like that?

In our view, those comments are disingenuous, at best, and you should hang your heads in shame for this gross abuse of the public and the media's trust.

The message from your explanations here will shock most New Zealanders: Howard Broad, Peter Hughes and Nigel Latta believe the law is working well, even if it now encourages tipsters (children or teachers) to exaggerate or lie about what happened, because in your view that then validates the heavy-handed CYF and Police responses documented here.

Once news of this spreads through the community, you are going to see an exponential rise in time-wasting minor incidents being blown out of all proportion just so as to guarantee a police/CYF response, which you would then rubber-stamp in a future review as being "appropriate" because of the seriousness of the allegations – the complete opposite of what the Prime Minister has promised.

And if this is the standard being applied to all the annual "reviews" of the smacking law (and we can now pretty much guarantee it is), it's pretty clear National, the Police and CYF have lied to voters.

Lawyers are going to make fat fees, social workers will get a slice of the action, Peter Hughes will get more staff, families will be ripped apart by the tensions and children will increasingly run amok, untouchable, while police and teachers hand-wring about declining youth behaviour standards.

Congratulations.

(A response from New Zealand Police had not been received at press time) □