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Pedophiles use 'junk' theory to win custody

CHILDREN AT RISK

Peter Ellingsen

Pedophiles around Australia may be escaping punishment and retaining custody of their young children by evoking a questionable psychological condition. The condition, Parental Alienation Syndrome (PAS), undermines a child's complaint of sexual abuse by claiming it is the result of one parent's influence.

It is cited in Family Court custody battles, and can play a part in a parent accused of sexual abuse, usually a father, getting custody.

It is argued that a child's complaint of sexual abuse arises because one parent, usually the mother, has become alienated against the other, and then swayed the child.

In 1997, the full bench of the Family Court cited an article supporting PAS and said that it "leaves us in no doubt that Parental Alienation Syndrome is a very real psychological phenomenon . . ."

In 2002, a workshop, "PAS Fact or Fiction", was presented to Family Court judges. According to psychologist Bob McDonald, the workshop, which included some criticisms, would have left most judges convinced PAS was legitimate. He told an Australian Family Therapies conference this week that PAS is unscientific and linked to pedophilia.

Mr McDonald, a former director of the Family Court counselling service in Townsville, said: "Certainly, lawyers use it, and a number of 'court experts' believe in the notion."

He knew of ongoing cases where PAS had played a crucial role in custody being awarded to a parent accused of child sexual abuse.

The PAS theory was developed by American psychiatrist Dr Richard Gardner in the 1980s. It has been used widely in courtroom battles, but according to critics such as Dr Paul Fink, a past president of the American Psychiatric Association, it is "junk science".

Melbourne University professor of psychiatry Alasdair Vance agrees, saying PAS has no standing in mainstream psychiatry or medicine and that research indicated children were more reliable than adults in reporting sex abuse.

"It is not helpful for the community to be hoodwinked by information that's not rigorously tested," he said.

Leading child abuse expert Freda Briggs, emeritus professor of child development at the University of South Australia, said influential people were using PAS to conceal

pedophilia and retain their access to children.

Professor Briggs was co-author of last year's Anglican Church report into how former governor-general Peter Hollingworth handled sex abuse complaints when he was Brisbane archbishop.

She said PAS was raised in a Family Court hearing in Adelaide recently to discredit a mother's claims that her former husband was sexually abusing their child.

"People in high places are using PAS to defend their pedophilia," she said. "I know of many cases where this has happened, and continues to happen. PAS has no credibility.

"But it's frequently used to say the mother is a bad person who has encouraged the child to imagine abuse. I recently gave evidence in a case where a lawyer raised it. It has resulted in abusing parents winning out."

Professor Briggs, a consultant to the New Zealand police, said Family Court judges were not well educated on child abuse. "It is good to see the new chief justice interested in the question," she said.

"But when it comes to child abuse and child development, judges are experts in law, and that's not sufficient."

A Family Court spokeswoman said judges were not expected to be experts in other areas. She said the court had a professional development program for judges on issues including child abuse.

"Indeed, a number of judges attended the Family Law Conference held this week in Queensland, where a paper on this issue was presented by Dr Janet Johnston of San Jose State University," she said.

Dr Johnston's paper queried the empirical basis for PAS and offered a "reformulation" of the notion of the alienated child.

The paper also said fathers' rights groups had used PAS in custody and access battles.

It said evidence for PAS had been largely based on "expert" testimony and the clinical experience of Dr Gardner, who died last year. It called for a new model of the alienated child that was more inclusive.

NSW sex abuse campaigner Liz Mullinar followed 25 cases where there was evidence that either a mother or a father had sexually abused their child, and found that the parent accused of abuse won custody, partially by resorting to PAS.

"It is heart-breaking and it is unspeakable, but it is happening," she said.

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Too close to home: the hidden horror of child sex abuse

SUNDAY INSIGHT - CHILDREN AT RISK

Peter Ellingsen

It was not a news flash or a phone call from police that propelled "Emily" into the jagged world of child sex abuse. Like most parents who have to face their worst fears, the source was closer to home.

So close, and so fragile, in fact, that Emily felt the blood drain from her body. Could this be true? Was her three-year-old son "Nathan" saying that his genitals were sore because his father had interfered with him?

"What does your father do to you?" she asked. The boy dropped his pants and fondled his penis. Emily felt physically sick.

What followed was a marathon of claims and court appearances. But when it was over, Nathan's father would not be charged. His son, however, would, as a teenager, become suicidal. For more than four years, despite claims of sex abuse, Nathan was handed to his father for access visits.

This is the hidden story of child exploitation. While we rightly fret about child pornography, a mismatched court and welfare system inadvertently allows abusing parents to go on abusing.

As leading domestic violence expert Professor Thea Brown, from the social work department at Monash University, says: "It is true, there are cases where an abused child is handed back to an abusing parent."

Joe Tucci from the Australian Childhood Foundation agrees. "We have situations where the child is handed over to the perpetrator," he says.

Karen Flanagan, the acting national director of Child Wise and former head of Victoria's Children's Protection Society, says despite recent improvements in the

operation of the Family Court, "kids are still being sent to stay with alleged perpetrators".

In an interview with *The Sunday Age*, the new Chief Justice of the Family Court, Diana Bryant, says that her court's role is to decide on parenting orders for children, not prosecute for alleged abuse. Asked if the court could get it wrong, she says: "No one is infallible."

She says the court is able to view all the evidence, and find if an unacceptable risk of abuse existed. It had to decide whether some form of contact was in the best interests of the child. "The court is effectively the umpire and hears all of the evidence," she says.

A quarter of the cases before the court involve child abuse claims, and yet the court has no independent power to investigate such allegations. It relies on a view that says sex abuse claims are "subservient" to the "best interests of the child".

In addition, the Federal Government has so far failed to act on calls from its own Family Law Council for a national child protection service that would investigate abuse allegations made in the Family Court.

All this means that children are at risk. It is not just that at least two children, subject to Family Court battles, have died recently. In at least one case, the court delivered a child to a father with a criminal record for sexual assault.

According to Frida Briggs, emeritus professor of child development at the University of South Australia, who sat in on the case, the girl, now aged nine, remains with the father. The mother lost custody after refusing to allow the father access. "Mothers have been jailed for refusing to hand over child abuse victims to their abusers for unsupervised contact," Professor Briggs says.

Emily understands. She was threatened with jail if she did not hand Nathan over to his father for access visits, so she reluctantly complied. It left her feeling useless and hopeless.

Even today, sitting in the sparse lounge of the flat she occupies with Nathan, she still relives those first signs of unthinkable betrayal. She was separated from her husband after he tried to molest her 10-year-old daughter, but he still had access to his son.

Emily noticed that Nathan was angry and aggressive, and began to bite, whimper and sweat at night after seeing his father. A brain scan found nothing. And even when the boy disclosed the sexual abuse by his father, and had signs of it noted by a doctor, and after reports were taken by police and the Department of Human Services (DHS), access visits were not curtailed.

There was no doubt the boy was deeply disturbed, but with the father denying responsibility, it was difficult to apportion blame. So the visits went on, albeit supervised, as did the molestation.

Nathan often returned from his father with small injuries. But, as often happens with abused children, he found it hard to speak when interviewed by police or DHS staff. But in an interview with a psychologist, who prepared a confidential report for DHS, he said his father hurt him by "playing with (his) doodle".

In his report, the psychologist said: "I am disturbed over the little respect given for the plight of this child." He pointed to the key problem of authorities not believing stories of sex abuse.

"(Emily's) story, though unbelievable to those not really aware of the dark side of life, has been often retold," the report says. "The evidence to hand causes me to have to believe what (Nathan) is saying. Every bit of literature points to the need to take seriously what a child in a sexual abuse case is saying."

The report, written when Nathan, now 13, was a child, warned that abused children could end up suicidal. That is what has happened to Nathan.

Shortly before we spoke with him in his Western District home, he had tried to cut his wrists. As happens with many abuse victims, he self-mutilates, using a compass or nail to slice his chest and arms. He calls each cut an air vent. "It lets out frustration," Emily says. She sees it as an echo of his toddler years when he would get up in his cot and rock so violently against his pillow that skin flaked from his forehead. Recently, the flashbacks and nightmares have set in.

At least Nathan's case was reported and, after the psychologist's report, the Family Court granted an indefinite restraining order, preventing any contact with the father. In most cases, however, sexual offences go unreported. Less than one in seven incest or molestation cases goes to prosecution. There is a difficulty getting evidence admissible in court, something the Law Reform Commission says should be addressed by allowing what children tell trusted adults to be taken seriously.

As Chief Justice Bryant says, the Family Court was not set up to try allegations of sex abuse. And yet 25 per cent of cases it hears involve allegations of child abuse. Studies show less than 10 per cent of such claims are false.

It is argued that the escalation in abuse claims is, in part, due to separated fathers gaining custody of their children at twice the rate of a decade ago. This is, in many cases, a good thing. But it is also a reform that is running ahead of the court's ability to protect children from abusing parents, especially sexually abusing fathers.

Sue Price from the fathers' advocacy group Men's Rights Agency, however, takes a different view. She says fathers are far less likely to sexually abuse than boyfriends of mothers. "Less than 1 per cent of children are sexually abused by their fathers," she says. "It is shocking that these experts believe fathers are abusing children. They have tunnel vision in relation to abuse."

She argues father-daughter incest is rare, and the most likely abuser is another sibling. "Fathers are the least likely to sexually abuse," she says. "Children are safest with their fathers. There is a huge mythology created by advocates of domestic violence who are seeking funding for themselves and their cause. If you produce the woman as victim, it opens the purse strings of the politicians."

Ms Price says children are not reliable witnesses when they are being coached by a parent. "You have so many people asking leading questions," she says. "I am extremely sceptical of most of the research conducted on this subject."

This is not, however, the view of most experts. Associate Professor Chris Goddard,

interim director of the National Research Centre for the Prevention of Child Abuse, says that because parental sexual abuse occurs behind closed doors, it is probably under-estimated.

"There is anecdotal evidence of abused children being handed over to abusing parents," he says. "Many people suggest it is exaggerated, but sexual abuse is far more prevalent than people know."

Dr Goddard, who argues domestic violence is child abuse, says the Family Court does not fully respect children's rights. "Children are represented by adult words and representatives and we are slow to recognise the limits of this," he says.

Rosi Lever, head of the Children's Protection Society, says the Family Court is putting children at risk. "The court processes are traumatising for children," she says. "The most significant institution in our land's working against the protection of children."

Allie Bailey from Victoria's Domestic Violence and Incest Resource Centre says she knows of cases where abused children have been handed over to abusing parents by the Family Court. "The court's attitude is that the child must have a relationship with the father at all costs," she says. "Even when violent and abusive, the trend is for contact."

In Victoria, the Family Court diverts cases involving child abuse into a stream called Magellan which, by bringing DHS, police and court officials together, reduces children's stress by a third and halves the time taken to resolve cases. But the system is not available everywhere, and even where it is, it does not include domestic violence, which is the single biggest indicator of sex abuse.

Chief Justice Bryant says Magellan was set up to deal with the most serious cases, and domestic violence was eliminated for financial reasons. "There had to be some way of deciding what the cut off is," she says. "All these things are a compromise. I would like to be able to provide the service of Magellan in all cases, but . . . unless we get unlimited money, we always compromise."

Ms Bryant says the Family Court protects children because it does not have to prove sexual abuse according to the criminal standard of evidence. "(We) can find a much broader reason to protect children," she says. "The standard of proof is lower. It is civil standard. Even if we can't find that something happened, we can still order no contact because there is an unacceptable risk."

A 1996 Australian Bureau of Statistics study found that one in four women and one in seven men experiences some form of sexual abuse, not limited to family members, by the time they are adults. A 1999 survey found that only 38 per cent of those who experienced sexual assault reported it, mainly because they were too young, wished to protect the offender, or worried they would not be believed.

Doctors are required to report any incidents of abuse, but seem reluctant to do so, perhaps because they fear it may disadvantage the child. Of the 35,000 notifications in 1998-99, only 3.3 per cent were made by doctors.

One study found domestic violence present in a quarter of child abuse cases.

Professor Thea Brown says it is the most reliable sign that abuse is taking place. "Until the Family Court includes domestic violence as child abuse, they are treating children in an inappropriate way," she says. She says judges do not understand sex abuse and should be specially trained in it.

A spokesman for federal Attorney-General Phillip Ruddock says legislation is pending to simplify how children give evidence. But nothing had been done to set up a Child Protection Service, as urged by the Family Law Council and backed by Chief Justice Bryant.

This has disappointed council member Dr Belinda Fehlberg from Melbourne University's law department. "It is a very serious situation," she says of the federal-state divide that allows abused children to fall between the cracks. "There's considerable bureaucracy. I suppose child protection is one of those issues that comes and goes, but does not win votes."

Karen Hogan, who heads up Gatehouse, Victoria's main centre for abused children, thinks this is a scandal. "We're getting busier; it goes up every year," she says. Gatehouse, at the Royal Children's Hospital, has a waiting list of seven months for counselling. "The staff are beside themselves. It's horrendous," Ms Hogan says. "We're being forced to virtually shut the books."

She has more than her share of horror stories, as does Professor Frida Briggs, one of Australia's leading child abuse experts. Earlier this year, a lawyer in the Family Court, acting for a father, challenged her, saying sexual abuse did not matter if it occurred when a child was small and could not remember.

The case involved a woman who spent nearly \$500,000 on legal costs to win custody of her daughter. Medical evidence was led that the daughter had been abused. But because the father was a GP, and denied the abuse, he continued to have access to his daughter, aged two. Last month, after years of wrangling, the father agreed not to contact the child in return for his former wife dropping charges made against him. The medical specialist who examined the girl, and gave testimony in court, says there was evidence of injury, but it was not easy to say who caused it. "The child was too young, and that is where the system falls short," he says. "The state-federal divide is crazy. The Family Court needs to be able to get more professional assessment of allegations of abuse."

The president of the State Children's Court, Judge Jennifer Coate, recognised the powerlessness of children at risk when she called for an independent commission for children. "It is almost anachronistic to have a system that is so fractured in the way in which our Australian system is," she says. Former Family Court chief justice, Alastair Nicholson, has also called for reform.

He was the judge that ended Nathan's exposure to his father. The decision had taken nearly five years and, apart from soul-destroying torment, had cost Emily thousands in legal fees, most of it raised from selling household goods. Nathan is a tall, brown-eyed boy, with short hair brushed forward. He has recently been diagnosed with high functioning autism, possibly bought on by the trauma of sexual abuse.

The father has not been charged with any offence. Nathan has been awarded a substantial compensation payment, held in trust until he comes of age. "It is a real sad and sorry tale, and we are still living it," Emily says.

Nathan has not seen a photo of his father for years, but can describe him precisely. Like the self-mutilation marks on his chest, the details are etched into his brain. He sees images of his father, and what happened, in his mind. And they do not go away. Some of the names in this story have been changed to protect the anonymity of those involved with Family Court matters. The Domestic Violence and Incest Resource Centre: 9486 9866; The Children's Protection Society: 9458 3566.

Caption:

PHOTO: Victim of sexual abuse "Nathan" plays on his trampoline at home. Abused as a young boy by his father, Nathan has become a suicidal teenager who frequently self-mutilates. PICTURE: JESSE MARLOW