

PARENT ALIENATION SYNDROME REVISITED

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Those attempting to come to grips with the issue of child abuse in the context of determination of contact and residency issues are not operating in a social vacuum.

When I began psychiatry 35 year ago, sexual abuse was not on the agenda. Wives did not get battered - and if they did, they deserved it. Physical abuse of children had only just been recognised in 1962 and Kempe was shouted down when he presented his first paper.

My awakening with regard to the sexual abuse of children came as late as 1985 when I was the family therapy consultant to an inpatient unit. Three girls came in with parasuicidal behaviour. Over the weeks they were in hospital, each disclosed that her father was having sex with her - the word abuse in this regard was not regular currency.

I remember shock and disbelief. How could I have missed this for so many years. Why hadn't patients told me? Did they give me clues I'd missed? And more importantly why aren't our professional organisations shouting from the rooftops that this is happening?

Psychiatry, the Law and Child Abuse

Firstly, psychiatry has never admitted it has missed anything.

Secondly, the profession still minimises sexual abuse and other traumas in its engagement with its clients' symptoms. For instance a glance at the annual report of the Beyond Blue project, headed by Jeff Kennett, government funded to deal with the burgeoning incidence of depression and suicide in the Australian community, reveals little attention being paid to child abuse, poverty, racism and unemployment as antecedents to psychiatric problem.

Thirdly as Thomas Szasz once said, if Freud had stuck to his guns, there would have needed to be a social revolution, not the invention of psychoanalysis. The same can be said of the recent fin de siecle.

Masson's Assault on Truth¹, first published in 1983 showed the backlash suffered by Freud when he asserted that a major cause of neurosis was the sexual abuse of children. Freud quite consciously recanted, shocked at the response of the psychiatric establishment, but clear that he would have to give up the theory if he was to have a career in the profession. In one of his letters to Fliess at that time, he wistfully wrote:

The expectation of eternal fame was so beautiful, as was that of certain wealth, complete independence, travels, and lifting the children above the severe worries which robbed me of my youth. Everything depended upon whether or not hysteria would come out right.²

Masson's book became a focus for the reaction against the reality and importance of CSA. The vast majority of reviews attacked his person and his motives, but did not address the new information he had managed to get from Anne Freud's archive in London.

Around this time - the mid to late eighties - many books on abuse were published, Richard Gardner described the Parent Alienation Syndrome, Ralph Underwager, Hollida Wakefield and the Freyds formed the False Memory Syndrome Foundation and professionals in the field became divided into the believers and the sceptics. Many highly regarded professionals supported parents who were accused of CSA and were very successful in discounting memories which emerged in therapy as recovered memories and therefore implanted by the therapist.

¹ Masson, Jeffrey. Assault on Truth. 1984. Farrar, Strauss and Giroux

² Letter of Freud to Fliess, September 21, 1897.

In a recent publication, Finkelhor observed the decrease in CSA reports in the last ten years and postulated that some may have been frightened out of reporting because of the unlikelihood of being believed.³ He also countenanced other possibilities - for example that CSA was less common and that early intervention had been more successful.

Advocates for children who have been sexually abused have been on the ropes under this onslaught, which has not just come from the psychology and psychiatry professions, but also from academics like Elaine Showalter⁴ and Ian Hacking⁵, who talk of mass hysteria perpetrated by social workers and women's advocates and juxtapose this with the studied thoughtfulness of the distinguished grey eminences of the psy-professions. And for a while it looked like we might be heading for a new Dark Ages in trauma studies.

But there were hopeful signs. Freda Briggs' book *From Victim to Offender*⁶, Mezey and King's *Male Victims of Sexual Assault*⁷, Bea Campbell's *Unofficial Secrets*⁸, the work of Judith Herman⁹, van der Kolk and McFarlane,¹⁰ Mullen¹¹, Astbury¹² and recent papers by John Read¹³, Andrew Moskowicz and others are documenting the undeniable long-term effects of CSA to professionals and to the community, should they wish to be so informed.

In family courts, the ramifications of recognising abuse as a reason for supervising or aborting contact have led to laws which are ambiguous, expert opinions which are not based in science and outcries from parents of both sexes about the unfairness of the system. The concept of alienation has gained ascendancy in family courts around the world particularly over the last five years. While most professionals familiar with the courts' workings recognise that children can and do side with one or other parent, especially in the early stages of separation, little was done to research this. Indeed most of the papers written address Parent Alienation Syndrome, not parent alienation, and distinguished researchers in the field have only just turned their attention to the problem.

In 1975, the incidence of incest was put at 1/1,000,000 in Freedman and Kaplan, the recommended tome for psychiatric trainees. By 1985, the figures were nearing 1/20 women. The Parent Alienation Syndrome or PAS¹⁴ was proposed by Richard Gardner in 1987 to account for the apparently burgeoning incidence of sexual abuse allegations in custody disputes in the US family courts.^{15, 16} PAS was not developed to explain other kinds of alienation, and it is important to remember that abuse allegations, particularly serious sexual abuse allegations, were essential to the original definition of Parent Alienation Syndrome. Without the false allegation, there could be no PAS. PAS was conceptualised in the context of emerging concerns about false or distorted memories.

3 Finkelhor, David. Improving Research, Policy and Practice to Understand Child Abuse. *JAMA*, vol 280, 21, pp 1864-5 1998, Dec 2.

4 Showalter, E. *Hystories. Hysterical Epidemics and Modern Culture*. Picador. 1997

5 Hacking, I. *Rewriting the Soul*. Princeton Uni Press. 1995

6 Briggs, Freda, *From Victim to Offender: how child sexual abuse victims become offenders* Allen & Unwin, Sydney. ISBN 1-86373-759-6

7 Mezey, G. and King, M. *Male Victims of Sexual Assault* O.U.P. 1992

8 Campbell, Bea. *Unofficial Secrets: Child Sexual Abuse. The Cleveland Case*. Virago 1988. revised 1997

9 Herman, Judith. *Trauma and Recovery*. Basic Books 1992

10 van der Kolk, Bessel and McFarlane, A. *Traumatic Stress*. Guildford Press 1996

11 Mullen, Paul 1993 *BJPsych*

12 Astbury, Jill. *Crazy for You*. OUP - USA 1996

13 Read, J., Perry, B., Moskowicz, A. & Connolly, J. (2001). The contribution of early traumatic events to schizophrenia in some patients: A traumagenic neurodevelopmental model. *Psychiatry: Interpersonal and Biological Processes*, 64, 319-345.

14 Gardner, R.A. (1987). The parental alienation syndrome and the differentiation between fabricated and genuine sexual abuse. *Creative Therapeutics*, Cresskill, N.J.

15 Faller, Kathleen Coulborn. Professor, Michigan University School of Social Work. *The Parent Alienation Syndrome: What is it and what data support it?* *Child Maltreatment*, vol 3, no 2 May 1998 100-115

16 Parental Alienation Syndrome According to Gardner (September 1993), "The PAS is a disorder of children, arising almost exclusively in child-custody disputes, in which one parent (usually the mother) programs the child to hate the other parent (usually the father). The children generally join the programming parent with their own scenarios of denigration." Gardner (1987, p. 67) asserts that PAS has become increasingly common and he now sees manifestations of this syndrome in over 90% of the custody conflicts he evaluates. In 80-90% of these cases, Gardner (1988, p. 61) says that the mother is the favoured parent and the father is the vilified one. In addition, Gardner (1987, p.274) claims that PAS is responsible for most accusations of child sexual abuse that are raised during custody disputes, and that "in custody litigation ... the vast majority of children who profess sexual abuse are fabricators." Gardner (1991, p. 24) claims "irate" mothers have found false sexual abuse allegations to be "powerful weapons" against their "despised" husbands. Mothers use such allegations to win custody, to cut off the father's visitation, or to wreak vengeance on the father.

A recent report by the American Judges Foundation states that in approximately 70 percent of challenged cases, battering parents have been able to convince authorities during custody battles that their victim is unfit or undeserving of sole custody.¹⁷ It would be interesting to know what the figures are here.

US child advocate and attorney, Richard Ducote states that there has been virtually no change in the process during the past two decades. "In fact, a pilot study in the early 1990s by the California Protective Parent Association and Mothers of Lost Children found that 91 percent of fathers who were identified by their children as perpetrators of sexual abuse received full or partial unsupervised custody of the children and that in 54 percent of cases the non-abusing mother was placed on supervised visitation."¹⁸.....

Furthermore, "In essentially every case in which courts place children with (alleged) abusers, despite substantial evidence of sexual abuse or domestic violence and no evidence of fabrication on the protecting parent's part, it is the parental alienation syndrome that is used by the judge, the evaluator or the child's lawyer to ignore and discount the abuse evidence and to wrongfully construe all of the child's symptoms as evidence of alienation."

Diane Hofheimer, divorce attorney, interviewed Gardner for a documentary on American family courts and asked him, "What would a good mother do if her child told her of sexual abuse by his or her father?"

His answer: "What would she say? 'Don't you say that about your father. If you do, I'll beat you'." That statement, she says, is on tape with a signed release.¹⁹

PAS and Alienation

The term alienation derives from the old concept of alienation of affection, which was applied to the entrance of a third party to the marital dyad. It too was resurrected in the mid-eighties in the context of a major change in awareness about sexual abuse in the community.

Gardner's work has received a considerable hammering through the nineties by academics who have taken to task his unsubstantiated claims and unvalidated research tools. His definition of PAS in 1999²⁰ does not mention sexual abuse accusations yet he continues to use the PAS term as if its criteria are unmodified. He refers to PAS as a psychiatric disorder, though it does not appear in the diagnostic manuals. Attachment, the possible effects of forced separation from the primary parent, developmental issues, the high incidence of abuse in the community -on all of which there is a long and scientifically reliable body of work - are no longer foreground. This, combined with the law "reforms" that we have seen recently in Australia make family courts places perceived by many as offering little protection to children.

I will discuss the attempts at reformulation of PAS into the diagnosis of parent alienation, particularly that of Kelly and Johnston²¹. I invite you to ponder whether the concept of alienation is of any assistance in the deliberations of family courts, particularly with regard to assessment of the likelihood of abuse and in the management of children who refuse to go on visits.

17 Article on Web by Garland Waller about her research for a doco on Family Court judgments in the US ("Small Justice: Little Justice in America's Family Courts," award-winning documentary by Garland Waler: > <http://www.smalljustice.com/>)

18 ibid

19 ibid

20 Gardner, R. 1999. Family Therapy of the Moderate Type of Parent Alienation Syndrome. *The American Journal of Family Therapy*, 27: 195-212

21 Kelly, Joan B. and Johnston, Janet R. *The Alienated Child: A Reformulation of Parent Alienation Syndrome*. *Family Court Review* vol 39 no 3 July 2001 pp 249-266.

Reformulation of Parent Alienation

When I presented a similar paper on behalf of the Child Protection Forum of the Family Court of WA, a group set up because of concerns about the way the abuse allegations were being dealt with in that court, I was informed publicly and privately that PAS was no longer an issue and it hadn't been used in any recent decisions in the FCWA. And this is true - in Perth. What is also true however is that the rhetoric of PAS is clearly present in evidentiary discourse, as recent cases, as well as appeals show. Terms like severe alienation, brain-washing, coaching, vilification of the other parent and enmeshment are common.

Sandra Berns' study²² found that all thirty of the family law legal practitioners she interviewed in Brisbane had used PAS divorce proceedings. In 50% of cases, PAS was used to counter a sexual abuse allegation, in 25 - 50% of cases to counter domestic violence allegations. The father was as likely to be the alienating parent as the mother. There was no evidence that use of the syndrome in contested residence and contact cases was becoming less common.

What is not common, however, is discussion of best practice in assessing child abuse, research of outcomes for children - immediate and long-term - after removal from the primary parent via a change of residence order, attendance to the studies of appropriate assessment of child abuse, especially severe abuse, or to the studies showing the likelihood of other kinds of violence when battering is present.

To any who have doubts about the ascendancy of PAS in the public and academic arenas, I invite you to punch in the term on a google search. Over 7000 citations. On a random search by myself, most of them are highly favourable to the concept and its use in contested custody cases.

In 2000, Joan B. Kelly does not mention either Gardner or PAS in her review paper "Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research",²³ in spite of PAS continuing to be prominent in cases where abuse is alleged and in spite of her methodology being "a review of key empirical studies from 1990 to 1999 regarding the impact of marital conflict, parental violence, and divorce on the psychological adjustment of children, adolescents, and young adults." Neither is it mentioned in her 5 part article for the USA Law Offices.²⁴ I would postulate that Gardner's theories have become so powerful in family courts that he now cannot be ignored.

Joan Kelly collaborated with Janet Johnston in 2001 on a paper on the alienated child.²⁵ Both are well respected researchers in the field of divorce and its sequelae.

Wallerstein and Kelly described the deliberate influencing of children by one parent against another in the late 70s. The phenomenon of the "strident rejection" of one parent by an older child or adolescent was described by Wallerstein and Kelly in 1976. This did not occur in infants and young children. They saw this as different from the rejection of visitation for a variety of "normal, realistic and developmental reasons". These include the resistance of the infant to separation from one or other parent, the child's reaction to a high-conflict divorce, the parenting style of the rejected parent and dislike of a new partner. They saw most alienation as a transient phenomenon and likely to remit over time.

22 Berns, Sandra. Parental Alienation Syndrome in the Family Court; "Magic Bullet or Poisoned Chalice?" Australian Journal of Family Law 15, 191, 2001

23 Kelly, Joan B. Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research. Journal of the American Academy of Child & Adolescent Psychiatry 2000;39:963-973

24, The Determination of Child Custody in the US. Children and Divorce, Spring 1994.

25 Kelly, Joan B. and Johnston, Janet R. July 2001 pp 249-266. ref 21 above.

As described by Kelly and Johnston, the major difference between PAS and PA is the “the pernicious behaviours of a “programming” parent are no longer the starting point. Rather the problem of the alienated child begins with a primary focus on the child, his or her observable behaviours, and parent-child relationships. “They contend that this focus enables professionals to consider whether the child is alienated and to use a “more inclusive framework for assessing why the child is now rejecting a parent and refusing contact.”. They stress the importance of distinguishing alienated children from other children who resist visitation and also of recognising a continuum of child-parent relationships after separation.

The most important distinction they make is between the estranged child and the alienated child. In the former there are demonstrable reasons why the child may refuse access. In the latter, there is no history of parent behaviour which may cause such refusal.

But many forms of child abuse for instance occur in private. Unless the assessment is thorough-going, rigid refusal of visits can look unreasonable. History is not enough.

Furthermore, Kelly and Johnston state that most children who are subjected to “alienating behaviour” do not reject the other parent, but may be more or less psychologically disturbed by the conflict and pain of their parents and others in their social system. This takes us outside the realm of alienation and into the realm with which all practitioners in the field are familiar - children suffering because, as Sandra Berns²⁶ puts it - their parents are “behaving badly”. In these cases it would seem more appropriate to drop the term alienation altogether and take each case on its merits.

As Tolstoy said: *Unhappy families are unhappy in their own ways.*

Kelly and Johnston end with the following: “It should be noted that marital and divorce conflict that focuses on the child, and high intensity and overtly hostile marital conflict, are well established predictors of psychological adjustment problems in children.” Well, yes! And there is a wide literature on this that doesn’t seem to be used in recent and current cases.

Their paper makes a start towards a more objective consideration of children who refuse visitation. However, like Gardner, they describe characteristics of the alienated child, the alienating parent and the alienated parent, and use his constructs to engage with the problem. Very little space is allowed for showing how the allegations, particularly with regard to abuse, are found to be false. Often the expert witness is the person charged with assessing whether abuse has happened. I would contend that some expert witnesses do not have the hands-on expertise to make this assessment and that by default, mainly due to the confusion of laws governing such assessments in abuse allegations in divorce proceedings, they are being asked to do what is usually a state-mandated activity. In this situation many are resorting to Gardner’s concepts rather than to the body of literature available on best practice in assessment of CSA allegations²⁷.

Johnston and Kelly give more credence to Gardner’s theoretical constructs than are his due. The same can be said of the paper by Matthew Sullivan and Joan B Kelly²⁸, with its tenor of conviction that the exercise of authority and force will solve the impasse. Where is the evidence? The long term effects of such recommendations, which are taking place in Australia, the US and the UK²⁹, can be grave.

26 Berns, Sandra. see 22 above

27 Faller, K see 15 above.

28 Sullivan, M. and Kelly, Joan B. Legal and Psychological Management of Cases with an Alienated Child. Family and Conciliation Courts Review Vol. 39 No. 3, July 2001 p 299-315

29 Smart, Prof. Carol and Neale, Dr Bren Fam Law May 1997 pp 332 - 336

Williams J³⁰ reviews other conceptual frameworks, eg that of Darnell³¹, who defines parental alienation as “any constellation of behaviours, that could evoke a disturbance in the relationship between a child and the targeted parent...” He postulates a continuum of naive, active and obsessed alienators and does not see the child as taking an active role in the process. Others see parent alienation as similar to PAS but without the sexual abuse allegations.³² Williams documents other syndromes which do nothing to improve the situation - SAID Syndrome (Sexual Allegations in Divorce), Divorce-Related Malicious Mother Syndrome, Delusional Parent Disorder, MSP-Munchausen’s Syndrome by Proxy - the medical disorder being false sexual allegations.

After looking at these and other theorists using the terms either PAS or Parent Alienation, Williams J. asks: “Is the methodology behind PAS and PA testable? Subjected to peer review? Is their general acceptance of what PAS and/or PA mean within a profession or professions? Generally? My review of PAS and PA suggests there would be some difficulty answering these questions in the affirmative.”

He questions whether either concept - PAS or PA - is of much help in dealing with cases of alleged alienation as follows:

“There is little or no benefit brought to a dispute resolution and fact finding process whose goal is to focus on the ‘best interests’ test by a diversion into the efficacy of a controversial psychiatric/social science term that has no common meaning in the psychiatric/psychological/social work fields.”

And yet as Berns states: “As a rebuttal to allegations of child sexual abuse, for example, they are rhetorically elegant, using the allegation that the father sexually abused the child to establish the mother’s unfitness as a parent. *Allegations of PAS are, in this setting, so perfect that if PAS did not exist, it would be necessary to invent it.*”³³(Her italics)

Justice Response

What are the alternatives in the justice system? The Magellan³⁴ and Columbus³⁵ projects are a great step forward and the Victorian and West Australian courts are to be congratulated on these initiatives. There is good evidence that, in using the former process of intensive up-front assessment, legal advice and counselling, court time is shortened, more cases are settled without recourse to judicial enquiries and children are less traumatised by the process. The Columbus project in WA is too young to be evaluated, but has been welcomed by child advocates. However I understand that it is open to parties to refuse to engage in this process³⁶. I would imagine that these situations are those in which at least one party can afford a long court case or in which the accusations are more serious. We look forward to results of the research in progress.

What of agreements reached via consent orders? There is strong anecdotal evidence that parents who allege abuse are being told by their legal representatives and by separate representatives to agree to these orders - otherwise they will be seen as mischievous and untruthful litigants. As Lisa Young’s paper³⁷ indicates, we do not know the percentage of parents alleging abuse who are agreeing to consent orders because they have been informed they have a high chance of losing the child altogether.

30 Williams, J. Should Judges Close the Gate on PAS and PA? *ibid* p 267-81

31 Darnell, D. Ph.D. *Divorce Casualties: Protecting Your Children from Parental Alienation*. 1998. Taylor Publishing Co.

32 Garrity C.B. and Baris, M.A. *Caught in the Middle: Protecting the Children of High-Conflict Divorce*. 1994, p.125.

33 Berns, see 22 above.

34 Brown, Thea, Sheehan, Rosemary, Federico, Margaret, Hewitt, Lesley. *Resolving Family Violence to Children*. Family Court of Australia Web Site.

35 Murphy Dr. Paul and Pike, Dr Lisbeth. *The Columbus Pilot in the Family Court of Western Australia: Some early findings from the evaluation*. Paper presented at the Eighth Australian Institute of Family Studies Conference Melbourne, 12-14 February 2003

36 Hay, Alison Ph D in process - paper in this AIC series

37 Young, Lisa 1998. *Child Sexual Allegations in the Family Court of Western Australia: an Old Light on an Old Problem*. *Sister in Law*, 3.98-121

Furthermore, we have no idea what contact orders - and the Draconian measures recommended by the Family Law Council to enforce them - are accomplishing for or imposing on children, though there is evidence that they are counter productive.³⁸

My experience with the effects of the imposition of a recovery order in one case was that the trauma to the child was enormous and caused him to threaten suicide both during and after the event. A policeman involved called the mother and said it was the worst thing he had had to do in twenty years of policing. Gardner asserts that such action will lead to the child developing a close relationship with the new residence parent. As far as I know there is no evidence for this.

The Family Law Council's rhetoric in my view is about enforcement and not about protection. For example, Recommendation 12 states:

“1.37 Council takes the view that mechanisms must be in place to deal with such matters as child abuse and domestic violence. Where violence or abuse is alleged, they must be properly investigated and, if shown to exist, the circumstances relating to child contact need to be carefully and fully examined. The Family Law Act 1975 provides that in certain circumstances where there is a family violence order a court may vary, discharge or suspend a contact order if it is considered to be in the best interests of the child. However, the existence of violence or abuse in some cases should not be accepted as a reason for not dealing with the problems being experienced by parents in general.”³⁹

This last sentence seems to imply that violence and/or abuse are not a sufficient reason for a child to be allowed to refuse contact. And this is anecdotally what we hear in practice about both contact and residency.

Patrick Parkinson excellent paper⁴⁰ about parent-child contact in such circumstances suggest a four-part plan which differentiates the issue of whether the child has been abused by the alleged perpetrator in the past from the question of whether there is a serious risk, that the child might be sexually abused in the future. His description of the gradual violation of the child's boundaries in the grooming process, if taken seriously by officers of the court, would be extremely useful when the abuse seems minimal. This formulation recognises that abuse is not an event but a process.

He suggests that the following questions be asked:

- a) What evidence is there before the Court which gives rise to serious concerns about the child's welfare if contact is allowed with the alleged perpetrator or a residence order is made in his or her favour?
- b) What other evidence is there before the Court which might lead the Court to conclude that there is a heightened risk of abuse if contact is allowed with the alleged perpetrator?
- c) Are there any factors in the case, or options available to the Court, which might operate to reduce the magnitude risk to the child in the future?
- d) Are there other factors relevant to the best interests of the child which might affect the ultimate decision of the Court?

A good basis for an alternative resolution, perhaps. It also depends however on the skills and knowledge of the expert witness and as recent appeals (eg W and W) show, these can be highly variable.

38 Rhoades, H. Graycar, Reg, Harrison, Margaret. The Family Law Reform Act: The First Three years. Uni Sydney.

39 Family Law Council. Child Contact Orders: Enforcement and Penalties 1998

40 Parkinson, Patrick. Family Law and Parent-Child Contact: Assessing the Risk of Sexual Abuse. Family Court of Australia, Third National Conference, Hotel Sofitel, Melbourne, Tuesday 20- Sat. 24th Oct 1998.

The changes in the implicit definition of the best interests of the child in the Family Law Act 1995 have cast long shadows over some judgements when abuse is alleged. Custody was renamed residence and access contact. The emphasis on right of contact as Chief Justice Nicholson has pointed out, was an attempt to produce an attitudinal change and allow non-resident parents as much power over major decisions as the residence parent. “Re the first matter, ie the change of terminology, and the emphasis on a child’s right of contact, was an attempt by legislative means to produce attitudinal change. The second was a substantive recognition of violence as a factor to be taken into account in making parenting orders in respect of children.”

However, and again I quote “there has been an explosion in litigation as a result, with increased numbers of fathers making contact applications or applications seeking to restrain the mother from relocating away from them. This seems to be because the Act’s emphasis on the child’s right to contact has created a transference of this “right” from the child to the parent and is being used and in some cases misused by parents seeking to retain a measure of control over their former partner. This in turn has more than counterbalanced the Act’s increased recognition of the effects of violence upon children.”⁴¹

To this we may add Parkinson’s observations that there is a reluctance in the Family Court to make findings of fact that one of the parties has committed what amounts to a criminal offence, both in *M v M* and in *Briginshaw v Briginshaw*, where, to quote Parkinson, the High Court actively discouraged the making of findings of abuse in the Family Court.

This presumably would not matter if the best interests of the child was its own safety. But if the best interests of the child is contact with both parents, then judges would be inclined to order this, because the accused party has been found guilty of nothing, even if the evidence of abuse is strong. In WA the Child Protection Forum has been informed regularly of forced contact and change of residence orders in situations that would be unthinkable in the Childrens Court.

On the other hand, if I were a judge in this situation, I might think, “Hey, wait a minute, this must be happening in lots of families who do not come to court unless the family breaks down. If all these parents, mainly fathers, are prevented from seeing their kids, we are going to look biased, the fathers will be reluctant to pay maintenance and the cases will go on, costing the tax payer big bucks, the family might finish up in poverty.” And then protective parents might look obstructive, bloody-minded, hysterical and unreasonable, to judges, separate representatives and often, from my reading of reports, to the expert witnesses. For all these people to carry out the mandate designed for them by the government, all that is needed, it appears, for the mother to be firm with the child and stop alienating him! Simple! Just like Gardner suggests.

On the other hand, those who work daily with abused children and adults often assumed that other professionals have the same experience. We know now that the unthinkable can and does happen in the child’s own home - a reading of Dr Briggs’ book establishes that, as does attendance in any paediatric casualty department - so maybe those wishing to protect children must research and publish and persuade their fellow professionals that all is not well in some homes. The question mark must always be there - is this child telling the truth, no matter how bizarre the allegation?

Alternative Resolution

To attend to the title of the conference, what can we offer except the big stick. Well, Magellan and Columbus for a start, but more studies (I can’t believe I’m hearing myself, a therapist, asking for more studies!) are necessary, because alternatives are not easy and they are not cheap.

⁴¹ Opening Address : The 19th Annual Congress Australian and New Zealand Association of Psychiatry, Psychology and Law by the Honourable Justice Alastair Nicholson AO RDF, Chief Justice Family Court of Australia, 17 September 1999, Sydney

We need:

- a) More information on whether residence parents are threatened with losing their children if they do not consent to contact in situations of alleged abuse and if they have been seen as alienating the child from the contact parent.
- b) Protocols for what is basic to an adequate expert opinion, including evidence in the report that the expert has experience with abused children and is familiar with a broad range of literature, including the literature on best practice in assessing child sexual abuse.
- c) Longer and broader outcome studies regarding the effects on the child and protective parent of forced contact and change of residence.

I have seen five cases in the last two years of cases where the court had decided in change of residence when a father was accused of abuse. Some occurred recently, some many years ago. In no case did the child stay with the father. In three cases the children, now young adults, have no contact. In one, the children, now teenagers, have been returned to the residence father after removal five years ago by DOCS after allegations of child abuse. The circumstances of this return are unknown. In another case, both children left the father's home for the mother's after he was granted residence, the girl at twelve and the boy at seventeen. They have refused to see him since.

I know of three women who spent large sums to prevent either change of residence or unsupervised contact. In two, they spent their entire settlements - \$35,000 and \$45,000 - and one spent \$100,000 before becoming a litigant in person. In two of these cases, the allegations were eventually seen as sufficiently serious to lead to contact with the father being denied. In the other, another court put a restraining order on the father when two other siblings disclosed sexual abuse by the father. In all cases the parents were left exhausted, traumatised and in a financially precarious situation.

I have no doubt that the same also happens to fathers in similar instances - eg when a father suspects or knows that abuse from the mother and or step-father is occurring and must either bankrupt himself or become a litigant in person to protect the child.

- d) Recognition of the enormous trauma to a child when he is subjected to forced recovery and when he is told that his mother or father will be gaoled if he/she does not make him comply.
- e) Government policy to reflect best practice and not undermine it.
- f) To know whether abuse is more common in lower socio-economic groups and is related to social trauma or whether well-off perpetrators are just better at getting avoiding exposure.
- g) To offer alternatives, such as long-term case management, when contact is ordered by the court, to try to ascertain in each case where the sticking point may be. I know this kind of interventionism is anathema to libertarian thinking, but in the case of children at risk, it is warranted.

However, to quote Justice Nicholson again, "We live in a time of great change in relation to family law, which Government, in the way of Government of whatever political persuasion, likes to describe as "reform", however regressive the measure may be."⁴²

⁴² ibid