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# Are Children Protected in the Family Court? A Perspective from Western Australia

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Despite a landmark High Court judgement in the area of child sexual abuse allegations (*M and M*, 1988), a major concern in such cases seems to be the fear that mothers use false accusations against fathers as 'weapons' in custody and contact cases. This paper seeks to examine the validity of such views as they apply to Western Australia. In particular, it examines the belief that false accusations are rampant; the questionable nature of 'parental alienation syndrome', the belief that young children's accounts of abuse lack credibility, and the ignoring of the effect of abuse itself on the nature of a child's testimony. The paper argues that the principle of 'protection of the child's best interests' should not necessarily be equated with the child having access, even supervised access, with a parent previously accused of having abused the child.

In 1988, the High Court of Australia handed down what is still the definitive judgement in the area of child sexual abuse allegations in Family Court proceedings, *M and M*. The High Court held, inter alia, that it was not the Family Court's role to determine whether or not child sexual abuse had actually occurred; however a Court was not to grant custody or contact to a parent if that custody or contact would expose the child to an unacceptable risk of sexual abuse.

The Full Family Court of Australia later added that if there were a positive finding of abuse, only in the most extraordinary cases would contact with the perpetrator not be seen as exposing the child to an unacceptable risk of abuse. It was also held that supervised contact may still provide an unacceptable risk of disturbance, whether physical, emotional or psychological, to a child who is compulsorily brought into contact with a parent who has sexually abused him or her, or who the child believes to have sexually abused him or her, and the court has the obligation to protect children from such harm (*B and B*, 1993).

The Court's approach in that case gave much cause for hope that the protection of children would be the major focus in making rulings on parenting disputes where such allegations are made. Despite the High Court's judgement, a major issue in such cases seems to be the fear that mothers use false accusations against fathers as 'weapons' in custody and contact matters.

There are still grounds for concern in relation to judgments made in the Family Court in Western Australia. For example, within a six month period (June 2001 to October, 2001), a trial judge ordered a change of residency in two cases. Each of the children (both aged four at the time of trial) had disclosed abuse and identified their father as the perpetrator. The trial judge ordered a change of residency in favour of the father and ordered supervised contact for the mother. I will use a case vignette, based on my experience in one of these cases, to introduce the issues explored in this article.

## Case Vignette

'Sarah' (mother) and 'Terry' (father) were married for twelve months. Sarah stated that she left the relationship in March 1997 as a result of Terry's violence towards her and, on one occasion, his violence against an older stepchild. 'Joe', the child of the marriage, was three months old when his parents separated. Joe resided with his mother until the court ordered a change in residency. Following the separation, Sarah had concerns regarding the welfare of Joe while in his father's care. These concerns focused on Sarah's view that Terry:

- failed to adequately administer prescribed medicine for his child's gastric reflux;
- failed to stick to a prescribed feeding schedule;
- failed to apply creams, per instructions, for the child's chronic eczema, and;
- failed to change the child's nappy frequently enough to avoid severe nappy rash.

Sarah's concerns also related to the child returning from contact with bruising which was not explained. It was noted

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This paper was presented at Australia's 1st Forensic Psychology Conference, 7th–11th February, 2001, The Wentworth Hotel, Sydney, NSW.

that, following a two-hour contact in 1997, the child returned with a very sore, inflamed and weeping penis head. No explanation for this condition was offered by Terry.

In 1998, Sarah detailed concerns that Joe returned from contact with Terry on a number of occasions complaining of having a sore bottom. 'When Joe complained of a sore bottom he holds on to the front and back of his nappy.' The child was reported to have said his father was 'naughty' and that 'he hurt me'.

In 2000 Sarah reported to the police the following conversation she had with Joe:

Joe said, "He pinched me". I asked Joe, "Where did Daddy pinch you?" Joe demonstrated by pinching with all fingers and thumb. He started pinching his belly around his navel and worked his way to his penis. Joe pinched his penis on the top and said 'It hurts'. Sarah described Joe's penis as 'red from tip to the base'.

Terry was interviewed by the police with regard to two charges of 'indecent dealing with a child'. He denied the charges and there was insufficient evidence to proceed.

The court appointed expert stated in his report: 'What [Sarah] is reporting is probably an accurate account for her experience ... these problems appear to have been documented honestly by the mother. The child had reached a state where he was so upset that he was crying and wetting his pants and nearly being sick ... I found no evidence to suggest she was making things up. The child appeared to be saying the things which she is reporting.'

The same expert also noted the contact handover supervisor's report of one contact visit when she describes Joe as 'crying hysterically and to the point of wetting himself several times in a short period of time ... She described the child getting so terribly upset to a level she has not observed in a child before in these circumstances.' The expert also noted in his report a conversation between Joe and the contact handover supervisor, prior to this episode, when, 'For no apparent reason Joe told me "I don't want to go with Daddy". I asked him why, to which he replied "I'm scared of him". I asked Joe why he was scared of him, and he replied "Because he hurts me".'

Sarah applied to the Court to have Joe's contact with Terry supervised, as a result of her concerns following Joe's disclosures of abuse. Terry applied to the Court for a change of residency and to have Joe's contact with Sarah supervised. I was a 'second opinion expert' contracted by the mother.

During the trial, the reality of the child's disclosures was not challenged. Joe, the child in question, was three when his early disclosures were reported. The credibility of the mother became a major feature of the trial, notwithstanding the court appointed expert's view, expressed in his report, that 'these problems appear to have been documented honestly by the mother'. When questioned, it was my view that, as allegations had been made by the child – this was not disputed – one would have to consider those allegations very seriously, given what we know about the veracity of children. The mother's credibility was not the central issue. The judge seemed to ignore my answer both on the day, and when presenting his judgement.

The court appointed expert made reference in his report to 'alienation'. He stated, 'I am not certain how much is a direct and deliberate attempt to alienate the child, and how much is the mother's inability to contain her emotional reactions ... From my experience children become more alienated from a parent through unconscious emotional alignment than the direct conscious reactions' (in other words, the parents' reactions are more powerful than their statements). Although this view is not referenced in his report, in conference and 'College' presentations, this court appointed expert specifically relies on Gardner's work. I presented a critique of Gardner's work in my written evidence.

In his 'Reasons for Judgement', the judge states 'It may well be that the concept of parental alienation is the subject of ongoing debate between psychologists. In my view, whether there is or is not a syndrome described as "Parental Alienation Syndrome" is not the critical issue. The critical issue is whether in this particular case, the wife by her conduct consciously or unconsciously has, or is likely to alienate the child from the husband so that the relationship between them, if not destroyed, has been or will be severely damaged.'

Such comment appears to offer implicit endorsement of Gardner's 'Syndrome'. As someone untrained in this particular area, the judge, I believe, is obliged to choose between the expert opinions, rather than offering his own diagnosis.

The child's wishes were also disregarded. The court appointed expert, in his report, stated, 'I do not think it is feasible to consider a three year-old's wishes in relation to contact. At that age the child has no concept of what is best for him. He will only be repeating back what he feels those around him want him to say.' This opinion was challenged in my report. I quoted Wallerstein & Tanke, who advise,

... children at a very young age have powerful feelings that do not necessarily reflect the feelings of the adults in their lives ... the courts and the legal profession in America have been overly committed to an implicit perspective of children as passive vessels of parental attitude and interest (1996: 307).

In reporting his conclusions in relation to parenting orders, the Judge stated:

A consideration of all the matters to which I have referred leads me to conclude that the interests of the child would be best served by an order that he reside with the husband ... In reaching this conclusion I have had regard to all of the evidence presented to me and to my findings. In particular I have had regard to the following:

- My finding that the husband has not sexually or otherwise abused the child; [this finding appears to ignore the ruling of the High Court in *M and M*, 1988]
- Any negative behaviour of the child towards the husband is likely to be the result of alienation of the child from the husband, rather than the result of sexual or other abuse by the husband.

A further nine points are listed in the judgement.

In relation to contact, it was ordered that, 'Given the wife's attitude to the husband and his relationship with

the child I am of the view, that in the short to medium term, her contact with the child should be supervised' (*E and R*, 2001, unreported decision of the Family Court of Western Australia). The fact that the child was disclosing abuse was not disputed in this case. The fact that the mother responded to her child's disclosures was interpreted, by the court appointed expert, the separate representative [the lawyer appointed to represent the interests of the child] and the judge, as the mother alienating the child from the other parent, against whom he was making the disclosures. The mother lost residency and in the short to medium term, was limited to supervised contact.

Even if we put to one side the undisputed disclosures of abuse in this matter, it still remains difficult to accept the rationale that the 'best interests of the child' can be met through a willingness to sacrifice the child's relationship with his/her primary caregiver, given what is known about the importance of this relationship, in order to facilitate a relationship with a secondary carer. In the remainder of this article, I shall examine whether there is any evidence to support the assumptions underlying such judgements as the one I have just quoted. The assumptions include the belief that false allegations of child sexual abuse are widespread and increasing, the belief that such allegations often or mostly result in the denial of contact or access; the belief that Gardner's 'parental alienation syndrome' is scientifically sound, and the belief that young children's testimony to sexual abuse need not be taken seriously.

### Child Sexual Abuse Allegations: Numbers and Outcomes

In Western Australia, it is not uncommon to hear court personnel describe 'false' allegations of child sexual abuse as 'rife' and 'on the increase'. Indeed three senior court officials, in a joint presentation to a 'Forum Relating to Men' (27th–28th November, 1998, Perth) went so far as to state that the Family Court of Western Australia was being 'overrun by malicious allegations of sexual abuse by mothers against fathers'.

Humphreys (1999), however, reports that 'The empirical studies of child sexual abuse allegations in custody disputes belie the popular conceptions of the "falsely accusing" mother' (41). She quotes a comprehensive six month survey by Thoennes and Tjaden (1990) of eight domestic relations courts in the United States, which found there were over 9000 cases of custody/visitation disputes. Of these, only 169 (2%) involved allegations of child sexual abuse. Mothers accusing the child's father of sexual abuse occurred in only 48 per cent of these cases. These figures suggest an *under-reporting* by mothers of child abuse in divorce proceedings, rather than the reverse.

Humphreys also cites two Australian studies (Bordow, 1987; Hume, 1996) which examined Australian Family Court Counselling Services and found only a comparatively small number of cases contained allegations of child sexual

abuse. Again, mothers were the source of the allegation in only 42.3 per cent of these cases.

Research by Young (1998) looked at allegations of sexual abuse in the Family Court of West Australia, and found the rate to be somewhere in the range of 1–2 % of all cases involving parenting disputes. This figure reflects the findings of Thoennes and Tjaden (1990) and a later US study by McIntosh and Prinz (1993). On the basis of these studies, reports of child sexual abuse in the family court could be considered a rarity.

The refrain by judges that rape is a charge 'easily laid but difficult to defend' is now unacceptable in criminal cases because it reflects a bias in favour of the accused; however, the fear that child sexual abuse is 'a charge easily made but hard to defend' was expressed by Justice Barblett of the Family Court of Western Australia, in a paper delivered in 1993 to a conference held by the Advisory and Coordinating Committee on Child Abuse. Justice Barblett stated: 'The problem in the family court is what to do about a parent who may not have abused a child but cannot prove he has not. To prove a negative is very difficult. How can a father be seen to get justice if a court says it cannot find that abuse has occurred or that he is the abuser and yet he is denied access to his child.'

The focus of this statement appears to relate to the rights of a parent. However, surely the principle established in *M and M* (1988) is that the interests of the *child* are paramount? The Hon. Justice Alastair Nicholson, Chief Justice of the Family Court of Australia, reiterates this point:

... the correct test to apply is whether contact or residence would expose the child to an 'unacceptable risk' of abuse ... the High Court emphasised that ... the Family Court is to make the order which, in all the circumstances will promote the best interests of the child (Nicholson, 2001: 6).

Commenting on how allegations of sexual abuse may affect orders for contact in the Family Court, Kenneth Byrne, a prolific writer on the subject, states '... there is no other weapon more powerful than an allegation of child sexual abuse. It usually provides an immediate halt to the other parent's contact with the child ...' (1991: 12).

This view is refuted, however, by an Australian study, undertaken by Humphreys in 1993. This study tracked every case of child sexual abuse confirmed by the statutory agency in four regional centres over a six month period ( $n = 155$ ). In twelve cases, action was being taken or was pending in the Australian Family Court for changed contact or residence orders. In two cases matters were still pending but in half the sample (five out of ten), fathers who were alleged sexual abuse perpetrators were granted access or supervised access to their children. In two cases supervised access was in the presence of family members who did not believe the sexual abuse had occurred. Humphreys (1999: 42) comments, 'These decisions occurred in spite of legislation and case precedents that should have precluded such a situation (*M v M*, 1988, FLR 606).'

With regard to the Family Court of Western Australia, Young advises: ‘... it remains extremely difficult to convince the FCWA to suspend contact in these cases’ (1998: 9). In 1993 *no* non-custodial fathers against whom allegations had been made were denied contact with the child in question. Similarly, in the period 1 January 1997 to 15 October 1998, there were six matters where the trial considered an allegation of sexual abuse against a father and in only *one* case was contact suspended.

So, an allegation of sexual abuse is *not* a powerful weapon in the Family Court arena. It does not, as Byrne (1991), would have us believe, usually provide an immediate halt to the other parent’s contact with the child.

### Rhetoric and Mythology vs. Empirical Research

What evidence is there to support concerns that allegations made in the context of Family Court proceedings are more likely to be false? Writers such as Coleman (1986) report many false allegations in the United States, Wakefield and Underwager (1988) argue that false accusations are on the increase and common in custody cases, and clinicians such as Green (1986) and Gardner (1987) have developed tables and scales to distinguish, they say, between true and false allegations. Their papers, however, have been widely criticised by researchers and clinicians such as Berliner (1988), Berliner & Conte (1993) and Faller (1998).

Berliner and Conte advise that Gardner’s Sexual Abuse Legitimacy (SAL) Scale

... is based entirely on the author’s personal observations of an unknown number of cases seen in a specialized forensic practice. Although reference is made to studies carried out ‘between 1982 and 1987’ (Gardner, 1987: 301) these are unpublished, not described, and are of unknown value (1993: 114).

Berliner & Conte also note:

Many of the criteria are poorly defined. There have been no scientific tests of the ability of the SAL Scale to discriminate among cases. There is no evidence that the numerical scores have any real meaning. Indeed, to our knowledge, the entire scale and parent alienation syndrome upon which it is based have never been subjected to any kind of peer review or empirical test (114).

They quote a Florida case (*Page v Zordan*, 1990) where the

... appellate court reversed a conviction when an expert testified to the truthfulness of a child’s statement using the scale. The court stated, ‘The sexual abuse legitimacy test scale was not supported by any evidence concerning its recognition and acceptability within the scientific community’ (114).

It was on the basis of the SAL that Gardner developed his theory of ‘Parental Alienation Syndrome’ (PAS). Gardner does not provide any research findings to support his assertions regarding the proposed characteristics and dynamics of PAS (Faller, 1998). Gardner also publishes the vast

majority of his work himself. His work, therefore, does not have to meet the standards of peer review.

Gardner’s assertion that the vast majority of allegations of sexual abuse in divorce are false is not supported by research. According to Jones & McGraw (1987), false reports of sexual abuse occur in no more than 2 % of cases. False reports in general, which include allegations fabricated by adults as well as false reports by children, are thought to total up to 8 % of cases. This particular study is cited repeatedly in the literature because of its comprehensive nature and sound methodology (Corwin et al., 1987; Parkinson, 1990; Myers, 1989–90; Faller, 1998).

When the focus of research narrows to custody cases, however, several authors report much higher rates of fabricated reporting. For example, Jones and Seig (1988) examined 20 consecutive cases where sexual abuse allegations

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co-existed with a custody or access dispute. Fourteen were thought to be reliable, four were probably or definitely fictitious, one was unsubstantiated and in the last one, there was insufficient information to make an assessment. This study, among others, has been criticised in the literature for using such a small sample. Also, the age of the child making disclosures needs to be given special consideration. Green (1986) evaluated eleven suspected victims of child sexual abuse and concluded that four of the allegations were fabricated (36%). Corwin et al. (1987) describe Green’s case descriptions as too abbreviated to provide a comprehensive view of all the factors involved. They also advise his sample does not fulfil basic statistical guidelines for sampling procedures and should not be used for generalisation.

Commenting on papers such as Green (1986) and Benedek and Schetky (1985), (who were unable to document abuse in ten of eighteen cases (55%)), Quinn (1988: 181) states, ‘these are very small clinical samples with a selective pattern of referrals’, thus creating potentially biased samples. Berliner (1988) notes that most of the cases described were subjected to multiple evaluations, which resulted in conflicting opinions among professionals.

Corwin et al. observe that:

... beliefs about such problems as child sexual abuse are likely to affect the symptoms and behaviours that clinicians find of note. Perhaps someone from a different theoretical point of view would have made different determinations in Green’s four ‘false’ cases. A second pitfall concerns the nature of the clinician’s experience. If

the clients seen are not representative of the typical sexual abuse case or range of possible cases, the clinician's conclusions may not generalise (1987: 92).

In assessing the data from all the cases mentioned above, Berliner and Conte conclude, 'the most likely explanation for a report of sexual abuse from a child is that abuse occurred' (1993: 113). Parkinson similarly concludes 'The danger of a child making up events is quite minimal' (1990: 68).

In assessing the veracity of any disclosure, a distinction needs to be made between unsubstantiated reports and false reports. A false report is a deliberate fabrication. An unsubstantiated report is one without enough evidence to determine whether or not abuse occurred. There are many reasons why an accurate report may be classified as unsubstantiated — no proper investigation; insufficient evidence available; the child is too young to describe the nature of their experience(s), etc.

Despite the rarity of false disclosures, Salter cautions that:

... it is extremely important to determine when a child is lying, both to protect the accused, who is not guilty, and to protect those many children who are telling the truth and whose chances of being believed are severely damaged by fictitious allegations by others (1988: 245).

Salter adds:

Criteria by which false allegations can be distinguished from accurate reports include the extent and type of detail, the level of language and presence/absence of spontaneous statements regarding the abuse, the affect of the child, the progression of the offences, and the statements regarding secrecy (245).

### The Quality of Expert Testimony

Good decisions, I believe, are made on the basis of good information. If mythology is winning over actual research findings, then it seems appropriate to review the quality of information being presented to the Family Court of Western Australia. My own experience of expert report and testimony raises serious concerns. For example, one Family Court appointed Expert, called to give evidence in a criminal case in Perth, stated: '... we know certainly, we have over 300 years of history of children telling lies. We can go back to Salem, to the witches.'

It is not uncommon for Court appointed Experts to label the disclosures of sexual abuse from children as 'unreliable'. The age of the child (three to four years and older) is often cited in support of this view. Such views, however, are not supported by the literature.

In their comprehensive article 'Suggestibility of the Child Witness: A Historical Review and Synthesis', Ceci and Bruck note:

Recall of action related events is highly reliable, even in preschoolers (e.g. Davies, Tarrant & Flin, 1989; Jones et

al., 1988) particularly when they are participants in an event (Rudy & Goodman, 1991) ... Preschoolers remember as much as adults when the task does not emphasise verbal recall (Nurcombe, 1986) and in response to specific questions ... it is clear that children — even preschoolers — are capable of recalling much that is forensically relevant (1993: 433).

Parkinson (1990) states:

... young children who have made disclosures may be able to give very accurate testimony ... especially when the events have been repeated over a certain length of time ... young children do not order events in the way adults do, but if there is a certain level of detail which surpasses what might be expected for children of that age, and if the statements are made in the course of free recall and objective questioning, one may place considerable reliance on the statements of children, about the central events of their experience (72).

It is noted that disclosure in itself is regarded in the specialist literature as a highly probable indicator of sexual abuse (Smith, 1995; Salter, 1995). Clinicians stress the importance of believing the child victim (Berliner & Stevens, 1982), on the grounds that young children cannot fabricate detailed accounts of sexual activity unless they have been involved in it or witnessed it (Kempe, 1977). According to Mintick (1983) the rule of thumb is to believe the child. He advises that the professional tendency to look for 'motivation' for reporting abuse is seriously flawed.

Acknowledgement of the level of secrecy involved in the commission of sexual abuse, and the likelihood of a child's uncorroborated evidence being dismissed in courts has led to the identification of a number of behavioural indicators which may help detect children who have been abused but have not reported the abuse, as well as adding to the credibility of those who do disclose. Michelle Elliott (1987) distinguished between 'red' indicators which were considered highly indicative of sexual abuse, 'green' indicators which were considered indicative of sexual abuse but could also have alternative explanations, and 'blue' indicators which could suggest a wide number of possibilities. Such indicators were designed for each of three age groups of children, 0–5, 5–12, and 12+ years.

Elliott's 'Red' indicators for the 0–5 group include: visible bruising, bleeding of genitals; venereal disease; inappropriate sexual play/knowledge; simulating the sexual act; penetration; masturbation (compulsive); use of sexual language/words; disclosure; sexualised child; sexual drawings. Similarly detailed, but somewhat different, sets of indicators are provided for the two later age groups.

In practice, however, such indicators are not always given due consideration, even where clusters of 'red' indicators can be identified. Take, for example, the case of a five year-old child who made disclosures of physical and sexual abuse. This child disclosed incidents of apparent abuse, in the first instance, to her teacher, then to her mother, to a number of access supervisors, to medical personnel, to a family friend, and to the Court appointed Expert. In each

of these disclosures she identified her father as the perpetrator of this abuse. The child:

- (a) was exhibiting quite severe behavioural indicators of distress and aggressiveness (this included the killing of one pet and the attempted killing of a second)
- (b) was showing signs of severe distress at the prospect of access with her father
- (c) was exhibiting sexualised behaviour
- (d) was found, on medical examination, to have physical indicators 'compatible with a previous history of repeated attempted penetration of the genital tract'
- (e) had been consistent in stating her wish not to have access with her father, and
- (f) had been consistent in her expression of hatred towards him

However, the Court appointed Expert reported

It is my opinion that the regression in [the child's] behaviour which occurs after access visits relates to the conflictual situation in which she finds herself when transitioning between her parents. She knows her parents are antagonist [sic] toward one another and may feel disloyal to her mother if she interacts in a positive way with her father.

A recommendation was made for 'supervised access initially'.

I also feel concern about how mothers may be viewed and described. For example, one Court appointed Expert, when asked to provide a second expert opinion, described the mother of a four year old child disclosing sexual abuse as possibly being '... neurotically overprotective, personality disordered, or malicious (not uncommon in Family Court cases)'. His review did not include any psychometric testing, or even an interview with this mother. It was later discovered that the father in this case, against whom the child was disclosing, had previously been convicted of 'indecent dealing with a child'.

Another Court appointed Expert describes a mother as:

... angry and defensive. She came over as persistent, controlling and demanding. It appeared that she did not trust male figures, mistrusts figures in authority and says that the 'system' is against her ... There was a tendency for her to be anxious, dependent, evasive and immature ...

Following this description, however, he comments:

Considering her past history, she has coped remarkably well. [She] has had to deal with considerable psychological stress factors over the last 5 years. She had to deal with the birth of her child, being a single mother, relating to [her ex-partner], as well as the Court processes due to the conflict they have with one another. Despite these stress factors she has been able to take care of [the child] to the best of her ability.

The contradiction between the mother's apparent emotional state and her behaviour appears most strikingly in her ability to discharge her responsibilities as the residential parent. The child is described in the same Expert's report as:

... an intelligent child for her age who spoke clearly, laughed easily, enjoyed playing and wanted to interact with people around her ... She seemed happy, active, enjoyed playing and was able to concentrate well for her age with her parents ... Projections also indicate that she has a good self concept.

And it is, I believe, a matter of concern that such a negative view of the mother was presented by the Expert without any acknowledgement of how such a profile may be affected by the experience of domestic violence (which was reported in this case), and by the belief that her child has been sexually abused. The effect on 'normal' parents who believe their child has been abused and then are disbelieved by professional evaluators needs to be taken into account. As Humphreys notes, '... in the context of divorce, unlike any other context, the rules for mothers are different. Protectiveness is construed as paranoia, and reporting abuse is treated as vindictiveness' (1999: 39).

## Conclusion

The view that childhood sexual abuse constitutes trauma in the lives of victims is now commonly accepted (Breer, 1987; Cunningham & MacFarlane, 1991; James, 1989; Johnston, 1998; van der Kolk et al., 1996). Trauma here refers to overwhelming, uncontrollable experiences that create in victims feelings of helplessness, vulnerability, loss of safety, and loss of control. The traumatising event may be a single occurrence or a series of interactions which, in totality, is traumatic.

According to Pynoos et al.,

By their very nature and degree of personal impact, traumatic experiences can skew expectations about the world, the safety and security of interpersonal life and the child's sense of personal integrity (1996: 332).

Successful emotional and cognitive processing of the experience simply cannot take place when the child remains subject to, and internalises, the comments, manner and attitudes of an abuser in denial. In such circumstances, all points of contact between the abuser and the victim — supervised access, unsupervised access — offer opportunities for the abuser to make comments, or to take actions, that reflect his denial and challenge the child's reality. In the absence of a full understanding of all the facial expressions, coded language, and 'games' abusers may employ, even the most diligent supervisor will fail to adequately protect the child from such manipulations.

Wallerstein and Tanke note:

... judges have sometimes applied a seemingly irrefutable presumption that frequent and continuing access to both parents lies at the core of the child's best interest. Therefore, it is important to state very clearly that the cumulative body of social science research on custody does not support this presumption (1996: 311).

Research carried out by Mertin (1995) (confirming earlier findings by Church, 1994) highlights the detrimental

effects on children forced to regularly visit their fathers regardless of their own fears. Johnston's research (quoted in Wallerstein & Tanke),

...shows psychological deterioration among both boys and girls when frequent contact is ordered over the objection of one or both parents in these intensely conflicted families. The unintended effect is that the child feels emotionally safe nowhere (314).

To maintain emotional wellbeing, children must be able to *feel* safe in addition to *being* safe. The ability to protect oneself is fundamental to a sense of self-efficacy, and efficacy is fundamental to a constructive sense of self. The

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younger a child is, however, the greater reliance that child must place on its parent's or caretaker's ability to nurture and protect it. When a parent fails to create safety, the outcome can have traumatic consequences for the child. Children may not always exhibit symptoms of distress or trauma on each and every occasion they are with a parent who abuses them. Rather, the relationship between abuser and abused is often based on ambivalent feelings and it is the nature of this ambivalence that causes harm and can lead to attachment problems. When a perpetrator is also a parent, a child can feel intense conflicts of loyalty and betrayal. Isolation and lack of social supports enhances traumatic attachment. Positive care may be intermittently replaced with neglect. It is the intermittent nature of the care that creates traumatic attachment.

Tebbutt, Swanston, Oates and O'Toole found:

Any contact at all with the abuser between the 18 month and the final follow-up was associated with significantly higher depression scores and lower self-esteem ... This finding highlights the need for parents and therapists to remain sensitive to the possible effects of the presence of the abuser even after a period of 5 years (1997: 334–337).

Increasingly issues relating to the protection of children have become a core component of the Family Court's workload (Brown, Frederico, Hewitt & Sheehan, 2000). For the Family Court to be able to fulfil this crucial role it needs to be appropriately informed and advised. However, some Court appointed Experts can, through ignorance of the research literature, perpetuate myths about the prevalence of 'false reporting' and 'over-reporting' of sexual abuse

in contested Family Court cases. Furthermore, when allegations of abuse have featured in contested Family Court cases in other jurisdictions, many have been substantiated following investigation by the statutory authorities.

As Young concludes:

... it would seem in reality that there is no flood of child sexual abuse allegations reaching the Family Court, at least in Western Australia — rather it is more of a slow trickle ... it would appear that the chances of any of these parents (who faced allegations) being denied contact at trial were extremely remote (1988: 11).

She comments 'this picture of rampant false allegations is not only a myth but ... the existence of this myth serves to maintain a status quo that protects sexual abusers at the expense of children' (3).

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