

# False complaints by children of sexual abuse

Paul Wilson

**Not all complaints of sexual abuse by children are genuine. Paul Wilson explores reforms needed for a system which protects both the victim and the false complainant.**

Late in November 1985, Dr Dennis Johnson (a pseudonym), a qualified medical practitioner working in a non-medical faculty at a university in Brisbane was visited by members of the Queensland police force. He had anticipated the visit because two months previously he and his wife consulted the writer and a social worker concerning possible allegations of sexual molestation that might be made against him by his 13-year-old step-daughter.

In reconstructing the sequence of events that occurred, it became apparent that his step-daughter of four years (whom I will call Julie) had been in a state of considerable conflict and tension with Dr Johnson and his wife, Julie's natural mother. She had asked to live with her natural father in Sydney, a request that had initially been refused and later accepted.

However, after a time, Julie's father found his life-style was not appropriate to the guardianship of a 13-year-old girl and asked Dr Johnson and his wife to take back the youngster. Julie disagreed with this plan, having enjoyed herself in Sydney and proposed her god parents who also lived in Sydney look after her. Neither the god parents nor the mother and step-father agreed and, much to her disappointment, Julie was returned to Brisbane.

Conflict between the teenager, her mother and step-father worsened over a variety of issues, not the least of which was a decision about the number of times Julie could go to dances and the hours she could stay out. Julie, according to her mother, stated on several occasions that 'she would do anything to get back to Sydney and do her own thing' and said she would 'force her guardians to send her back'.

On the occasion when Dr Johnson and his wife visited me (two months before being interviewed by the police) the couple had heard through a third party that Julie was insinuating her step-father had sexually molested her. This was at a time when the media was awash with stories concerning child abuse, alleged paedophile rings, Asian teenage prostitution rings and the formation of a citizens' organisation dedicated to protecting children from the sexual advances of adults.

Dr and Mrs Johnson's anxiety was well founded as Queensland police questioned the academic after Julie's school counsellor had heard rumours from other school children of allegations Julie was making regarding her step-father. Dr Johnson was interviewed at length and in his own words 'in a harrowing way—they just assumed I must have been guilty!' Mrs Johnson said the police interviewed her but thought that she was covering up for her husband: 'When I told them Julie had made up stories and had been a most difficult, disturbed child years before I ever met Dennis they thought I was just

protecting him' she said. Social workers from the Child Sexual Abuse Unit arranged the suspension of Mrs Johnson's licence to practise as a registered day care worker.

Dr Johnson who was not charged by the police remains bitter about the experience. 'They never told me precisely what the allegations were', he complained. The allegations were vague and changed from day to day. 'They told my lawyer they were not going to charge me but I feel dirty, as though there is a big stigma over my head.' He went on to state 'all it takes is for some kid with problems to say you touched her and, in the current climate, everybody believes her'.

## OTHER CASES

Clearly, as Dr Johnson was not charged, 'everybody' did not believe the complainant but the psychological and economic harm done to Dr Johnson and his wife was considerable. Such harm has been expressed to me in a number of cases by men and women embroiled in family custody disputes or disciplinary problems in school.<sup>1</sup> Although Australian cases have not yet been verified and documented, there are American cases with implications for the investigation and interviewing of complainants and accused persons.

Between October 1983 and June 1984, Jordan, Minnesota, home to 2660 people, was the site of a national scandal as, one after another, its residents were charged with criminal sexual abuse of children.<sup>2</sup> Rumours not only of sexual orgies, but also of torture and murder, were rife throughout the town. When two of the alleged victims admitted they had fabricated stories of killings, State and Federal agents closed their homicide investigations and shortly afterwards charges of sexual abuse against 24 accused adults were dropped.

Although the saga of Jordan, Minnesota, is a long and complicated one, the important point for this discussion is (as David Kirp, Professor of Public Policy at the University of California, Berkeley, points out) the fact that some of the youngsters were questioned as often as 29 times by as many as five different investigators whose questions were often suggestively phrased.<sup>3</sup> When coached and cajoled by adults many times (as in this case) it is not surprising that at least some of the children will try and please their elders by telling them what they want to hear.

Consistent and aggressive grilling of witnesses and accused persons occurred in the 1984 case of Californian Judge Brian Taugher who was accused of molesting one of six girls (friends of his daughters) who were staying at his house after a 'slumber' party. Kirp reports Taugher's two daughters (and one stated this in court) were grilled for hours and pressured into admitting their

father had also molested them.<sup>4</sup> The prosecutor's case was weakened when a neighbour testified the alleged victim had a habit of making up stories of abuse. The case fell apart when a paediatrician who examined the alleged victim concluded the vaginal bruises, the only corroboration of her story, were actually a small vein under the surface of the skin.<sup>5</sup>

The role of professional evidence in cases of child abuse is dramatically illustrated in the Taugher example. A psychiatrist appearing on behalf of the prosecution (at \$1000 a day) claimed the child's behaviour, not crying out, appearing normal the following morning, and waiting weeks before saying anything to her mother (Taugher's estranged wife), was consistent with what the psychiatrist called 'The Child Sexual Abuse Accommodation Syndrome'. But on cross-examination the psychiatrist admitted children who had not been abused most probably would act in the same way.<sup>6</sup>

The Jordan, Minnesota and Brian Taugher cases are by no means isolated phenomena. Recently attention in America has focussed on a 23-year-old woman, Erin Tobin, falsely accused of interfering with three-year-old twins and the famous McMartin pre-school case in Los Angeles, where the prosecution dropped a number of sexual abuse charges against pre-school workers. In both these cases, severe criticisms of the directional and aggressive interviewing of child witnesses were made by defence lawyers and by other professionals.<sup>7</sup>

#### THE ISSUE OF FALSE COMPLAINTS

These cases are not cited in order to argue that children are particularly susceptible to distorting or fabricating stories of sexual abuse. Indeed, my research has shown false complaints in rape cases are rare and I have seen no evidence to suggest a child victim is a more unreliable witness than any other (a position taken as well by the Canadian Law Reform Commission).<sup>8</sup> However, malicious complaints do occur. Following the much publicised trial of a British politician arising out of an alleged homosexual liaison, a schoolmaster was prosecuted for immoral behaviour with his boy pupils. The Howard League Working Party, investigating malicious complaints by children, reports that at the last moment one of the witnesses confessed stories against the schoolmaster had been told out of malice, the idea being conceived after boys read about the trial.<sup>9</sup>

Evidence on the issue in Australia is scant and fragmentary and generally confined to newspaper accounts. For example, Barrow reports an account of a young girl who admitted to falsely accusing her father of sexual interference and a Perth school teacher who successfully sued a teenage girl pupil who claimed he sexually harassed her.<sup>10</sup>

Allegations of sexual abuse of children are not uncommon in family court custody disputes and these, together with other accounts of false allegations have been related to the writer. The reports, from both professionals and persons accused, have involved conflicts over discipline in the schoolroom and in youth organisations involving contact between adults and young people.

Most of this evidence is anecdotal. Even when statistical information is provided, its nature is usually so ambiguous as to make conclusions difficult. For example, the report of the Director of the Department of Children's Services in Queensland for 1985 states that of 5784 cases of abuse notified, 2476 resulted in 'no abuse/neglect identified'.

We cannot assume that nearly 45% of child abuse cases are false complaints as there are alternative explanations for these figures. The Queensland Department of Children's Services is notoriously understaffed, making proper assessment of notifications difficult. Many notifications received by the Department come from anonymous phone calls which are of a malicious or a questioning nature rather than a definite allegation. And, we know from a variety of surveys conducted by women's refuges and sexual assault clinics that many cases of child molestation are never reported.

Great caution should be exercised in this area despite there probably being few false allegations of child sexual assault and many children alleging sexual assault who encounter disbelief. For, in recent times, the crusade against child sexual assault has often taken the form of a contemporary witch-hunt with attempts by crusaders to turn a complex social problem into a simple morality play.



In the United States, elements of a witch-hunt were obvious in the Jordan, Minnesota, Brian Taugher and Erin Tobin cases. As civil rights lawyer Nancy Hollander recently stated, 'This campaign is on the verge of reaching completely delirious proportions'.<sup>11</sup> In Australia, the activities of the now disbanded Delta Squad in Victoria, crusading journalists and many anti-child abuse organisations mirror the American experience.

Some critics of the current child abuse campaign have suggested that the strident tone of writing and speaking on this topic have rendered rational debate on the topic almost impossible. Not only has it made any physical contact between the generations (no matter how innocent and non-sexual) difficult, but it has led to a climate where, in the words of a child welfare officer 'the really serious cases of molestation often get lost in the attempt to arrest anyone to prove something is being done'.

The Spiderman comics revealing how our hero was sexually abused, the 'stranger-danger' campaigns and the 'don't touch me' books are constructive in their place. They have helped to make children aware of unwanted adult advances and have banished complacency about the sexual abuse of children. They have also contributed to an ethos where some children, professionals and the public are often eager to assume molestation has occurred. In Kirp's words, 'taking the lid off the topic has put the accusation of molestation on too many lips and in too many minds'.<sup>12</sup>

### INTERVIEWING, INVESTIGATION AND CRIMINAL JUSTICE CONSIDERATIONS

Bronwyn Naylor in a two-part review of the law and the child victim concluded that any changes in procedures in criminal justice processing must be made 'in the context of the basic right of an accused person to a fair trial and to equality of treatment'.<sup>13</sup>

This article endorses this view and suggests such an orientation must start well before a criminal trial. To begin with it should be recognised by professional persons involved with the protection of children that, even though children rarely lie about sexual assault, situations do arise in family conflicts (as with Dr Johnson), in small towns (as in Jordan, Minnesota) and in complex emotionally charged adult-child interactions (e.g. the Perth sexual harassment case) where it serves the child's interests to substitute fantasy for reality in allegations of sexual molestation.

Of more significance is children's perception of what *could have* happened as a result of aggressive, constant and often cajoling professional questioning. If police or social workers really believe an accusation of abuse is true (despite an initial denial by the child) and are determined to prove it, this perception will be picked up and acted on by the child. Anatomically correct dolls and other professional devices are not, in themselves, protection against a child's desire to please a cajoling adult questioner. If nothing else the case of Jordan, Minnesota, should demonstrate this.

Naylor suggests that in preliminary investigations specialist sexual protection units already in existence (such as the Queensland Police Force Rape Unit or the Victoria Police and Prosecutors Sexual Offence Units) be trained to cover all forms of alleged sexual assault on children. She argues that not only is greater expertise created in a specialist unit but the child has fewer people to whom the story must be told.

I also suggest that personnel in sexual assault units be carefully trained in interviewing children in a non-aggressive, sympathetic and neutral manner. In the past some investigators have only paid lip-service to these techniques. While investigators may hold severe hostility towards alleged child sexual offenders, interviewing techniques should be no different in style and tone than those employed with other alleged criminal offenders.

Much discussion has centered on the relative merits of using Israeli style youth examiners and of videotaping the child's statement in sexual assault cases. Doubts exist as to the admissibility of evidence in Australian courts collected in this way and some organisations (such as the New South Wales Child Sexual Assault Task Force) express concerns relating to the use of tape or video recordings.<sup>14</sup>

The Task Force, for example, pointed out that the child may need to be interviewed at short notice and in circumstances which do not allow arrangements for tap-

ing. They recommend there be discretion to use tape-recording. However, given there are now documented occasions (however rare) which indicate biased interviewing of suspects by police or professionals,<sup>15</sup> it should be mandatory for tape or video recordings to be made of interviews as soon as practically possible after the alleged offence is notified. Clearly, this will require legislation permitting the use of taped material.

It has also been suggested that one way to eliminate the stress to the child of a court proceeding would be to videotape evidence and examination with both the prosecution and defence present.<sup>16</sup> However, if the accused objected to this procedure (for legitimate or illegitimate reasons) the jury may hold that against him, thus jeopardising his rights.

While understanding court proceedings for children are stressful it is hard to support the notion that evidence should be given in the form of written statements or videotapes. The recent Howard League Working Party on sex offences and offenders argued that jurors must see prosecution witnesses for themselves; 'cases of mistaken identification, charges made out of malice, and misinterpretation or exaggeration in testimony all have to be guarded against'.<sup>17</sup>

Naylor's suggestion which is also supported by the Howard League Working Party, of screening off a section of the courtroom with 'one-way glass' where the judge, child and counsel could sit observed by the accused, the jury and the public would seem to balance fairly the rights of the accused with measures designed to reduce stress on the child witness.

Finally, the difficult issue of whether corroboration rules regarding child witnesses should be abolished or not has to be tackled. Naylor has looked in detail at the law relating to this issue. Generally, in Australian States, if a child gives evidence in court the judge will usually require other evidence implicating the accused be provided which corroborates the child's testimony. The distinction between sworn and unsworn testimony is important here. The child's unsworn testimony must be corroborated before the accused can be convicted and if the evidence is sworn the judge must give the jury a warning concerning the dangers of convicting solely on uncorroborated evidence.

Naylor argues that the abolition of the *requirement* of a warning regarding unsupported evidence would leave the judge the power to give such a warning as needed. She suggests that any warnings should refer only to the special need for caution (rather than 'danger') and that any such warnings be at the judge's discretion when it is genuinely at issue. Similarly, Naylor, in line with the recommendation of the Canadian Law Reform Commission, wishes to abolish special corroboration requirements in child sexual assault arguing that a jury should be permitted to evaluate the evidence of a child sexual assault victim as it does with other witnesses in other cases.<sup>18</sup>

However, inherent in my support of Naylor's proposal is the maintenance (or modification) of existing procedures whereby the accused is able to watch the child give evidence and the defence is able to cross-examine the witness. Abolition of these procedures would jeopardise the rights of accused persons and maximise the chance of miscarriages of justice due to some of the difficulties that have been described here.

### CONCLUSION

There is much community and professional concern

with child sexual abuse. Efforts are being made to increase its reportability and to ensure victims are not traumatised by the criminal justice system.

In an effort to rectify the neglect of children subject to sexual assault, campaigns, some of an hysterical nature, have swept across this country just as they have in other Anglo-Saxon jurisdictions. The danger is that, whereas in the past we failed to detect sexual abuse when it was present, we now detect it when it does not exist.

There is a grave danger that police and professionals will investigate allegations, automatically assessing that accused persons are guilty. Lists of vague, catch-all symptoms allegedly displayed by children suffering from sexual abuse add to a climate where accused men (and sometimes their relatives) are assumed to be guilty without thorough and impartial investigating procedures.

Though instances of malicious complaints are probably small in number, documented cases both here and overseas suggest that such complaints are by no means isolated. Further, there is evidence that alleged victims and offenders are sometimes aggressively interviewed with the former being cajoled into constructing events that did not occur.

While there are sound reasons for abolishing or at least modifying corroboration rules regarding child witnesses in such cases, it is important that the rights of accused persons are protected. This protection is best afforded by proper and sensitive training of police and allied workers, by videotaping initial interviews with the child and by ensuring the rights of defendants to face their accusers and to cross-examine them when necessary are maintained.

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## REFERENCES

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2. For a full account of the Jordan, Minnesota case see Stover, D., 'Sex Hysteria in a Small Town', (1985) *American Forum*, March, pp.26-40.
3. Kirp, D., 'Hug a Kid, Go to Jail', (1985) *American Spectator*, October, p.6.
4. *ibid.*, p.6.
5. *ibid.*, p.6.
6. *ibid.*, p.6.
7. Accounts of the Erin Tobin case are taken from the *Australian*, 30.10.85, p.5. The McMartin pre-school case and its implications are reported in the *Los Angeles Herald Examiner*, 12.6.85.
8. Canadian Law Reform Commission, *Report on Evidence*, 1975, p.108.
9. The Report of a Howard League Working Party, *Unlawful Sex: Offences, Victims and Offenders in the Criminal Justice System of England and Wales*, London, Waterlow, 1985, p.34.
10. See *Sun Herald*, 21.7.85, p.120; and *Truth*, 3.8.1985, p.2.
11. Reported in the *Brisbane Telegraph*, 10.4.85, p.6.
12. Kirp, D., *op. cit.*, p.6.
13. Naylor, B., 'Sexual Assault: The Law and the Child Victim' (Pt 1) (1985) 10 *LSB* 12-17 and (Pt 2) (1985) 10 *LSB* 72-5.
14. *ibid.*, (Pt 2) p.74.
15. Professor Donald West, Professor (Emeritus) of Clinical Criminology at the Institute of Criminology, University of Cambridge, argues that 'interrogations by officials, in efforts to bring perpetrators to justice, can be more distressing than the sexual incidents'. See West, D. J., *Sexual Victimization*, Aldershot, Gower, 1985, p.164.
16. Naylor, B., (Pt 2) *op. cit.*, p.75.
17. The Report of a Howard League Working Party, *op. cit.*, p.148.
18. Naylor, B., (Pt 1) *op. cit.*, pp.12-17.

# Reviews

**PROGRAM FOR CHANGE: Affirmative Action in Australia** by Marian Sawer (ed); Allen & Unwin Australia, 1985; pp. i-xxvi, 1-177; hardback \$22.50, paperback \$10.95.

The use of 'semantic polemics' both by opponents to undermine, and proponents to underplay anti-discrimination legislation has long been a feature of the anti-discrimination debate. The now familiar term, affirmative action, for example, has been identified by the anti-affirmative action contingent in Australia with quotas and asserted by affirmative action proponents, most notably the politicians, as implementing, or more accurately, maintaining the merit principle. This important point is one of the many raised by Marian Sawer in her introduction to *Program for Change*, a collection of essays by prominent authors and academics in the field.

Unfortunately, many of the key issues raised in the introduction such as — the misuse of terminology, failure of the unions in this country to give their whole-hearted support to combatting discrimination in the workplace, the need to restructure gender roles in our society and the necessity for introducing comprehensive programs for

those workers with family responsibilities — do not receive the in-depth analytical treatment one would have hoped for in the main part of the book. Most of the essays are largely descriptive in nature with the exception of Ros Byrne's essay, 'Secretaries and Power', and Margaret Thornton's essay, 'Affirmative Action and Higher Education'.

The former essay is sociological in emphasis with an easy and straightforward style. Its content concerns power relations in the office and offers valuable insights into male and female roles and stereotypes. It suggests practical ways and means of redressing some of the power imbalances in the office such as changes to organisational structures, the introduction of career-development training for secretaries and an emphasis on skills rather than credentials.

Margaret Thornton's essay analyses the problematic terminology of affirmative action, pointing out the incorrect identification of affirmative action with its most extreme form: reverse discrimination. She gives a clear and very useful definition of affirmative action, distinguishing it from individual, past-oriented, legal remedies (complaints-based legislation) and also from specific,