FEATURE

Downloading a Nightmare

When autism, child pornography and the courts collide.

By **ANAT RUBIN**
Illustrations by **ALEX TATUSIAN**

THE RAID

Just two hours before the SWAT team surrounded their home on a quiet Midwestern suburban street, Joseph's parents were sitting together at church, saying thanks for the immense progress their autistic son had recently made. After decades of struggling with a debilitating developmental

disability, Joseph—we're using his middle name to protect his privacy—was beginning to find his place in the world. At 25, he had a full-time job and was getting ready to move out on his own.

The details of that Tuesday evening in 2012—where they sat in the empty church, the light through the stained glass windows—might have been lost in the usual blur of memories if not for the fact that they represent, for Joseph's parents, the last moments of their life *before*. And everything for the family is now divided into *before* and *after*—two distinct worlds separated by armed men banging on the front door.

"They showed up at about 8 o'clock and by 8:10 we were all in handcuffs," said Joseph's dad. "Camouflage, bulletproof vests, helmets, assaults pistols. It was a military operation—there's no other way to describe it."

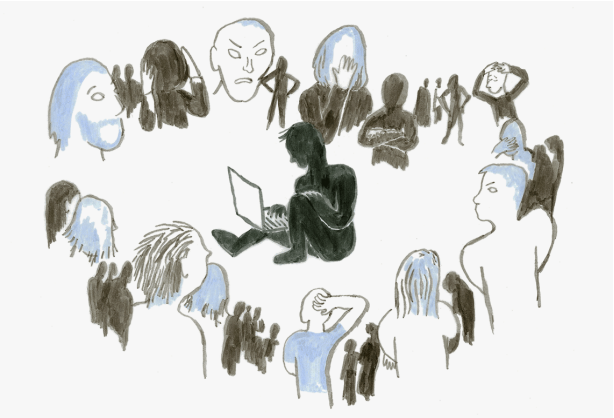
Joseph had been viewing and downloading child pornography, and federal officials had traced the illicit images to his IP address.

Outside, the neighbors watched as the men in body armor surrounded the house. Inside, some of the officers searched the rooms for evidence while others rounded up the family members and brought them, at gunpoint, to the living room. Joseph had no idea what was going on. It didn't occur to him that something he had on his computer could be connected to the raid.

"Then a county detective came in, and he zeroed in on me very quickly," Joseph said. "He took me into my room. He knew I was the one who knew about computers. He asked me about child pornography."

Joseph immediately admitted to everything. Like many people with autism, he's brutally honest. After the officers took him in for further questioning, a detective explained to his parents and 16-year-old sister that Joseph had downloaded and viewed pictures and videos depicting the sexual exploitation of children.

"Then he told us that this could lead to abuse of children," his father said. And that's when Joseph's sister, who hadn't said a word since she first opened the door to find men with a battering ram on her front porch, began to sob.



"TIP OF THE ICEBERG?"

The events unfolding in Joseph's home—the SWAT team, the stunned parents, the vast collection of child pornography on a hard drive—have become increasingly familiar to autism clinicians and advocates. They are part of a troubling and complex collision between the justice system and a developmental disability that, despite its prevalence, remains largely misunderstood in courts across the country.

The result for defendants can be the crushing impact of a system that clinicians say confuses autistic behavior with criminal intent and assumes, without hard evidence, that looking at images could be the precursor to illicit and dangerous contact with kids.

Over several months, The Marshall Project interviewed a dozen families whose adult autistic sons were caught up in child pornography investigations—as well as clinicians, lawyers, and autism organizations scrambling to respond to parents who call in the aftermath of an arrest.

It is unclear whether their stories point to a larger trend, or if people with autism are overrepresented among those prosecuted for downloading child pornography. But their cases throw into question some of our assumptions about men who are caught with images and videos of child exploitation, and shed light on the ways in which the criminal justice system is struggling to understand autistic defendants.

Child pornography is widespread, easily accessible, and horrible to contemplate. Uncounted images and videos circulate in perpetuity, making it difficult for some victims—many of whom are now adults—to move beyond the pain and humiliation of the darkest moments of their lives.

But autistic defendants, clearly guilty of having downloaded or shared the illicit material, are victims of a different order, their advocates say.

People on the high-functioning end of the autism spectrum can have impressive cognitive abilities that mask areas of extreme deficit. They might be intellectually adult but socially childlike, hobbled by their inability to read emotion or understand non-verbal communication. They long for meaningful relationships but are routinely rejected because they are unable to navigate the intricate, invisible rules of social interaction. They are isolated and carry with them the scars of having been ridiculed and bullied in school.

And so a great many people with high-functioning autism take refuge in computers, which allow them a way of approaching the world without the discomfort and risk of face-to-face interaction. "And they transfer to that computer the same naiveté, the same lack of street smarts and common sense, that they have in their everyday life," said Ami Klin, a nationally recognized autism clinician and researcher who heads Emory University's and Children's Healthcare of Atlanta's Marcus Autism Center.

From a young age, the internet becomes a portal through which to pursue the obsessive, narrow interests that are a hallmark of autism— a place to collect and categorize information on train timetables or the inner workings of cameras. During adolescence, the internet also becomes a place through which to explore sexuality. This is by no means uncommon—a recent study found that 93 percent of boys are exposed to online pornography during their adolescence. But for those on the spectrum, the internet might be the sole source of information about sexuality well into adulthood. As they become more isolated, they spend an increasing amount of time online, where child pornography—once bought through the mail or in the backrooms of bookstores—is now just a few clicks away.

Klin first encountered the issue more than a decade ago, when, as director of Yale's autism program, he was asked to consult on a case involving a former patient charged with possessing child pornography. Klin had worked with the defendant when he was a child, and tried to explain to the judge and prosecutor the role that Asperger's syndrome had likely played in the man's actions.

Soon after, Klin was asked to consult on two more cases involving former patients charged with the same crime, and he was becoming alarmed. In a 2008 letter to a federal judge, he said he was convinced he "was seeing the tip of the iceberg."

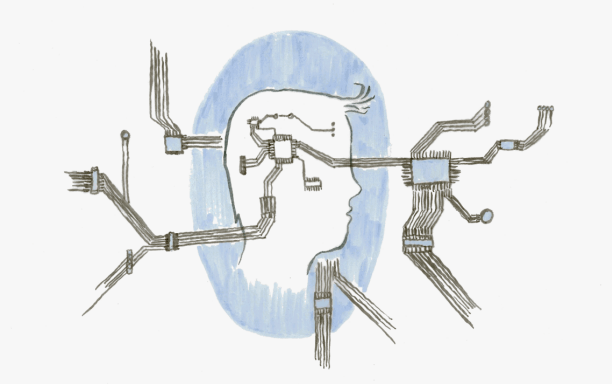
"Individuals with Asperger's syndrome, whose disability makes them especially vulnerable to committing this sort of offense, are entering a criminal justice system that is unfamiliar with their condition," Klin wrote. "Their conduct is easy to misinterpret, with devastating consequences."

Escalating punishments for downloading child pornography—years in prison, a lifetime on the sex registry—are fueled by the pervasive belief that someone who views depictions of child sex abuse must also be capable of sexually abusing a child. But autism clinicians say people on the spectrum lack the ability to manipulate or "groom" a child for abuse. And studies show that their inability to read other people's intentions makes them especially vulnerable to being sexually abused by others. They are, Klin said, "much more likely to be victims than victimizers."

The line between legal and illegal in the world of online pornography may be especially blurry for someone without an inherent understanding of social mores and taboos. Some pursue their curiosity well beyond that line, viewing and downloading thousands of images of children—many of them prepubescent, some much younger. Until it is clearly explained to them, clinicians say, many cannot fathom what most people intuit: that the children in the pictures and videos are the victims of horrific abuse.

About one in 42 American boys is autistic, and they face significant social and behavioral challenges that can sometimes get them into trouble with the law as they get older. But those on the high-functioning end of the autism spectrum have an especially difficult time in court.

"With people who are lower functioning, the disability is obvious," said Leigh Ann Davis, head of the National Center of Criminal Justice and Disability. "When it's not immediately apparent, it causes all sorts of issues. The system doesn't recognize the disability."



JOSEPH

Joseph's parents began to notice something was wrong with their son when he was a toddler. He didn't like to be touched and didn't make eye contact. He preferred to spend time by himself, and

his language skills were lagging far behind his peers. He was almost four years old before he completed his first sentence.

In kindergarten, Joseph was diagnosed with ADHD. Two years later, he was diagnosed with Tourette's. He was seeing neurologists, psychiatrists, and developmental pediatricians. Then, in the fourth grade, a special education evaluator saw something his teachers and therapists had missed: Joseph was very good with numbers. She gave him a series of complicated math sequencing problems, and he solved them without difficulty.

"She called me and told me about the test results, and I asked 'Well, what does that mean?'" his mom said. "And she said 'It means his brain works like a computer.'"

In 1997, when he was 11 years old, Joseph was diagnosed with Asperger's syndrome, which was then a relatively new diagnosis under the autism umbrella. Today, Asperger's is commonly referred to as "high-functioning" autism. But the name can be misleading. Many people with high-functioning autism remain dependent throughout their adult lives.

Joseph's parents were determined to help him avoid that fate. When it became clear he would languish at the local public school, his mom left her job to home-school him. She created games to teach him how to read basic facial expressions, and engaged him by tailoring lessons around those things that captured his attention. It became apparent, early on, that computers would play a key role in building a bridge between Joseph and the outside world.

Joseph found solace in computers. He used a computer for the first time in fourth grade. By the following year, he had taught himself how to write code. Computers made sense to him in a way the social world never had. He built his first computer when he was 12 years old, dragging his parents to electronics shops to find motherboards and central processing units. When he was 15, he was earning money by fixing computers for neighbors and family friends.

By that time, Joseph was already looking at adult pornography online, but his parents would never have guessed as much. Autistic teenagers can remain childlike in their interests and emotional affect, even as they experience the same hormonal changes as their peers. Parents, who are scrambling to meet the demands of their child's disability, often postpone discussions about sex.

Joseph didn't have any friends to talk to about sex. He had crushes on girls, and wanted a relationship. But those things felt increasingly out of reach.

“It’s hard to kind of articulate my thoughts, but I had the feeling that I was different,” Joseph said last year. “I also had a feeling about my parents thinking that as well—that maybe I couldn’t have a relationship.”

The gap between his social development and that of his peers—who were beginning to date—was widening.

“I didn’t have the ability to relate to people,” he said. “In a way they didn’t understand me.”

Still, this was a good time in Joseph’s life. With a great deal of special education support, he transitioned back to his local public school. During his senior year, he made the dean’s list. After he graduated, he enrolled in a two-year computer-networking program at the local community college. Independence is the holy grail for the parents of children with disabilities, and Joseph’s parents allowed themselves to believe he might have a shot at it.

“To us he had overcome a big hurdle,” his father said. “And we felt ‘Yes, this kid can make it. He knows computers. He loves computers.’”

ASSUMPTION OF DANGER

Before computers created a direct portal to child pornography in every home with an internet connection, the federal government focused its enforcement efforts on those producing and profiting from the material. Prosecutions solely for possession of child pornography—which were relatively rare—generally concentrated on those people paying for the illicit images, with the understanding that their payment led directly to more child abuse.

Today, almost everyone charged with possession of child pornography downloaded the material online, free, through peer-to-peer networks that allow users to share files—movies, music, software—without a central server. The file-sharing networks also provide access to a vast collection of pornography, including images and videos of child sex abuse. Federal agents monitor these networks to search for the illicit material and trace specific images and videos to IP addresses.

Federal prosecutions for possessing and distributing child pornography increased from 77 cases in 1992 to more than 1700 cases in 2010, and the overwhelming majority of those arrested had no other criminal offense on their record.

A recent study by the U.S. Sentencing Commission tracked hundreds of offenders for eight and a half years after their release and found that only 3.6 percent were subsequently arrested for or convicted of a sexual "contact" offense such as rape or sexual assault of a minor or adult. The commission cautions that these numbers likely underestimate the number of contact offenses, as child sex abuse is severely underreported. But the results, which are reflected in other recent studies, challenge the assumption of danger that drives these prosecutions.

Advocates say that assumption may be especially problematic when it comes to autism. Child sex abuse often follows a period of manipulation that requires the perpetrator to exploit the feelings and vulnerabilities of his victim. But a central feature of autism is the inability to understand other people's intentions.

Autistic people have a reduced capacity to place themselves in other people's shoes, a symptom that used to be described as a lack of empathy.

"When someone says 'lack of empathy,' they are throwing people with Asperger's in the same cauldron as sociopaths. Those are such different people," said Lynda Geller, an autism clinician who evaluated Joseph. "They don't pick up the social cues, but if you say 'I'm mad' or 'I'm sad,' they react, they care."

'S STORY

a familiar face on the autism speaker circuit and the author of
ut living with the disorder, so when he was arrested for
pornography, the news circulated fast.

Google news alert for autism, this story came up," Dubin said. world caved in on me in one moment."

eant that hiding was not an option. Instead, Dubin decided to ence in a book, "Autism, Sexuality, and the Law," published in one of the very few examinations of the issue, and has turned contributed chapters, into a kind of emergency hotline for ith autistic sons who have been charged with the same crime.

uch shame that is involved—you see it when you talk to these u hear how isolated they become," said Larry Dubin, Nick's parates you from the rest of life, from the rest of society."

hen he was arrested for downloading child pornography— os of prepubescent boys. He awoke at 6:30 in the morning to nts with guns and flashlights standing over his bed. After four gation, the agents called his father, a law professor in Detroit, find his son in a fetal position on the couch.

ally facing 8 to 10 years in prison. But after evaluations from ogists and autism clinicians concluded he was not a threat to utors agreed to reduce the sentence to five years' probation and istration. The plea agreement cites the "effect that his autism has ty, and absence of likelihood of reoffending."

ft-spoken, and flushes easily. The hard-won progress he had ad to independence—his consulting job, his home, his ability to world—was erased on the day of his arrest. At 40, he is still k on his feet.

a part of me that feels I should have known better, but the fact is, l. "After the fact, once it's explained to you, it becomes obvious. e not known that? But that's where a lot of shame comes from."

bin first began to research his son's charges, he was shocked to clinicians were already aware of the issue.

l down," he said. "Everyone kind of knows about it, at some level, owball that needs to roll down that hill."

ganizations have been hesitant to bring the issue to the forefront lic will mischaracterize people with autism, already facing so s, as potential sex offenders. But in the last few years, the calls ve been mounting, and organizations across the country have g to respond.

formerly with the Massachusetts-based Asperger/Autism many calls on the issue she created a private online discussion es.

cent of the callers are parents or significant others, and they call authorities show up at the door," she said.

rrest, Larry Dubin has become an advocate for increasing of autism in the criminal justice system and reducing r certain sex offenses. His most recent effort—a book titled Web of the Criminal Justice System: Autism, Other Disabilities and Non-Contact Sex Offenses"—is due out this

ilies who call him describe sons who, like Nick, are socially and ure and have never been on a date or had a sexual relationship. s, "the least likely people to ever want to harm a child. And these w anyone who is charged with this offense to be likely to be ı ready to attack the first child that goes by."

PROSECUTION

Joseph first saw child pornography when he was 22 years old—he said it popped up on the screen while he was looking at adult images. But he soon learned to seek it out, and began to download zip files, some of which contained hundreds of images.

"I would just hit 'select all' and just download without even looking at what I was downloading," he said.

A search of his computer turned up 1,500 images and 445 videos of child pornography. Among these, authorities have focused on four images involving infants and 63 images involving sadomasochism. Although evidence shows Joseph did not search for these specific files, they could trigger significant sentence enhancements.

Joseph's parents were initially horrified by what he had viewed. "I was ashamed and embarrassed," his mother said. "And I felt that he was a criminal." His father remembers feeling relieved when a neighbor assumed Joseph had been arrested for a drug-related offense.

Still, they found it difficult to believe their vulnerable son could be a danger to others, and as they researched the issue of autism and child pornography, it became clear to them he did not understand the ramifications of what he had done. An evaluation from Geller would eventually conclude that Joseph was not a threat to children. But why did he look at these images? What kept him coming back?

Joseph's explanations are riddled with the things he has learned during years of group therapy for people charged with sex offenses. It's difficult for him to separate what he was told about what motivates someone to download child pornography from what he might have felt at the time he was viewing it.

He said he had a pornography addiction and, "like any addiction, you want to seek out more and more. And peer-to-peer is a Pandora's box. It's not governed by general rules like websites tend to be."

Some clinicians believe people on the spectrum are drawn to images and videos involving children and adolescents with whom they identify in social and emotional age.

Much of the illegal pornography Joseph viewed involved girls in their pre- and early teenage years. He said he didn't think of them as victims because "in the images and videos they appeared as though they were consenting." He knows now that "there is a lot more going on than what it appears, and they are being forced to look as though they are enjoying themselves."

Joseph understands that people assume men like him are predators who could physically harm a child. But pornography, he said, "does the opposite—it provides an escape from reality." It was, for him, a substitute for human interaction.

Two decades ago, the average sentence for acquiring or possessing child pornography—an offense that accounts for more than 90 percent of federal child pornography prosecutions—was just over a year and a half. Today, it's close to nine years in prison followed by lengthy supervision and sex offender registration.

Prosecutors can ensure strict punishments by charging receipt or distribution, which carry mandatory minimums. And anyone who downloads images and videos on a peer-to-peer network, is, by the very nature of the file-sharing program, also receiving and distributing the material.

Many people on the autism spectrum who are caught with child pornography have amassed thousands of images and videos. Clinicians say this behavior is symptomatic of the disorder, a central trait of which is the compulsion to collect information.

"Because of the way their brain works, because they're delayed socially, they don't learn the taboos, they don't learn that it's wrong. And they don't conceptualize the idea that something is wrong with looking at something on their computer," said Mark Mahoney, a Buffalo, N.Y., defense lawyer who is working on Joseph's case.

Mahoney published a paper on his law firm's website describing the ways in which autism challenges notions of culpability when it comes to child pornography cases. He argues that people with autism should be allowed diversion programs instead of prison because they are unlikely to commit a hands-on offense and are rigid about following rules—a central symptom of the disorder—once they understand them.

Some judges have been open to these types of arguments. Robert Steinke, a state district court judge in Nebraska, sentenced a 22-year-old autistic man convicted of downloading child pornography to eight years of supervised probation and sex offender registration, in contrast to other defendants in his courtroom who received years in prison for similar charges.

Reports on how the man's disability affected his actions, and how it would likely affect his rehabilitation, convinced Steinke that he didn't belong in prison. He said the young man's supportive parents, as well as his access to disability support services, have kept him compliant with the strict terms of his probation.

"This guy was not going to act out, at least in my view," he said. "It would have been a travesty for the court to sentence this defendant to prison."

And yet prison is where some autistic defendants end up. In a federal case in Cedar Rapids, Iowa, Mahoney brought in an autism expert who had evaluated his client and explained to the judge the role developmental disability played in the young man's actions. After listening to testimony, the judge said Asperger's "seems to be the defense of the year to child pornography," and sentenced the young man to 11 years in federal prison.

Compounding the issue is the fact that high-functioning autism is severely under-diagnosed, and so some autistic men are diagnosed as a result of evaluations following their arrest for child pornography possession. Many of these defendants have a long record of struggles that chronicle the disability—in school records and medical evaluations—even when it isn't appropriately labeled. But a diagnosis after an arrest can raise suspicions on the part of prosecutors and judges, who might assume it is being used as a convenient justification for offending behavior.

Even when the diagnosis is clearly established, prosecutors who bring these cases argue a record of disability is not enough.

"I certainly wouldn't agree that a diagnosis makes you incapable of harming children," said Maeghan Maloney, the district attorney for Kennebec County, in Maine.

Her office prosecuted a case in which an autistic man charged with child pornography possession had also told police he had sexually assaulted a young child. While prosecutors were not able to corroborate the assertion, the confession helped them obtain a longer prison term.

"Autism is such a broad spectrum that it's hard to put everyone who's in that category in one small box," she said.

It's a sentiment echoed by autism advocacy groups. "If you've met one person with autism, you've met one person with autism," goes a favorite quip. Making autism a central part of a criminal defense requires making generalizations about the disorder. And some people on the spectrum take offense at what they perceive as someone using the diagnosis to excuse criminal behavior while casting a negative light on the entire community.

THE AUTISM DEFENSE

The "autism defense" was thrust into the spotlight by the case of Gary McKinnon, who, in 2002, from an apartment in London, broke into computers at the Army, Air Force, Navy, Department of Defense and NASA, searching for evidence of a UFO cover-up. In fighting his extradition to the

United States, McKinnon's legal team argued that his crime was the result of his autistic compulsions.

"And then we started to see an increase in other individuals coming forth and claiming that Asperger's was causal in their need to—and their compulsion to—download child pornography," said Chad Steel, who conducts digital forensics investigations for the federal government.

Steel, who also teaches digital forensics at George Mason University, wrote a paper to help forensic psychologists and others in law enforcement gather evidence to refute the central assumptions of the autism defense in child pornography investigations.

"A frequent argument we get is that the person was unable to control their impulses, unable to know it was wrong. There have been some cases where that's absolutely been true," he said. "But when you read 'this person has high-functioning autism, they didn't know what they were doing'—that's not necessarily true."

He said before the McKinnon case, he was seeing defendants who were likely autistic, even if they didn't have an official diagnosis. But since McKinnon, the disability is more likely to take center stage.

The autism defense can be a double-edged sword in court. Arguing that the defendant has the social and emotional maturity of a child can backfire. Prosecutors can use that information to argue the defendant is likely to reoffend. More often, parents whose lives have been defined by their child's disability find that, in the eyes of the criminal justice system, their child doesn't seem disabled enough.

The Marshall Project reached out to state and federal prosecutors with experience in child pornography cases. With few exceptions they were unwilling to discuss cases involving autism.

For all child pornography defendants, outcomes depend largely on geography. Some judges stick close to the federally-recommended sentences, while others have spoken out against the increased punishments. But for autistic defendants, the outcomes seem also to depend on how autism is explained to the court.

"In cases where judges and prosecutors have really been informed on all the dimensions in which Asperger's applies, they got drastically reduced punishments," Mahoney said. "If they get the right information, there's a good chance —a much better chance than defense attorneys imagine—that

prosecutors will understand that this is a population that just doesn't have the dangerousness we associate with the behavior."

In arguing for diversion, Mahoney focuses on what prison is like for an autistic person. Many people with autism are unable to understand the hidden social structure of a prison environment. They sometimes tell on others who break the rules. They are eager to please and easily manipulated. Their behavior can be misinterpreted by prison staff, and they are often placed in isolation, either as a form of punishment or for their own protection. It is, Klin wrote to a judge more than a decade ago, "horrifying to contemplate."

"You have a family that has struggled for years to try and give their child a normal life," Mahoney said. "When they start actually learning what happens in these cases, there's panic. It's a nightmare."

BEFORE AND AFTER

Joseph is still awaiting sentencing. It's been five years since his parents' home was searched, and more than a year since he was charged with receipt of child pornography, which carries a mandatory minimum of five years in prison.

Before he was arrested, after years of job applications, he had landed a full-time job as a data center engineer. This was no small feat. People on the spectrum have a difficult time making it past a job interview. Those years, he said, were some of the best in his life. But he was let go soon after he told his supervisor about his charges.

Joseph's neurological tics are gone save for a slight, repetitive nose twitch. He wears an ankle monitor so his pre-trial probation officer can track his movements. He is not permitted to use a

computer, and has taken to building his own stereo amplifiers to pass the hours. He is allowed out of the house to attend a court-mandated group therapy program for people charged with child pornography offenses, and has watched as one participant after another is sentenced to lengthy prison terms.

His parents have spent the last few years trying to mount the kind of legal defense that would help Joseph avoid the same harsh punishments. Last month, they got lucky.

Prosecutors in Joseph's case agreed to accept a guilty plea of "transportation of obscene material," a lesser felony that would keep him out of prison and, at least for now, off of the sex offender registry. If approved by a judge, that outcome— rare in federal child pornography cases—would place Joseph in a tiny category of people charged with a child pornography crime who are not required to register as sex offenders. He will likely be sentenced to probation.

Other autistic defendants have not fared as well, and Joseph's parents know they are fortunate. But they are still worried. His plea agreement includes descriptions of the most egregious material found on his hard drive.

"If somebody gets wind he has a record and looks into it, and sees there is child pornography involved, they could force him to register," Mahoney said. Even a routine traffic stop could put Joseph on a sex offender registry. Its severe restrictions and stigma would follow him for as long as he lives, and that prospect is almost more than his parents can bear.

They have distanced themselves from family and friends, who still don't know about Joseph's case.

"I can't share their joy or their sadness because I have so much that we're holding in," his mother said. "I kind of ostracized myself because I didn't know how to exist in their world anymore."

They still go to church, but only during weekly adoration, when the church is open to congregants but remains mostly empty. Attending regular services, where other parents are bragging about the forward trajectory of their children's lives, is just too difficult.

"My wife and I, we live in another dimension now—a dimension we didn't even know existed," the father said. "It's a different reality."