

PROJECT MAGELLAN

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Introduction

I have been invited here today to present Project Magellan, a unique Family Court program introduced to the Melbourne and Dandenong Registries of the Family Court in Victoria on an experimental basis during 1998 and 2000 to manage residence and contact disputes where child abuse allegations had been made. The formal evaluation of the program (Brown, Sheehan, Frederico, Hewitt, 2001) has shown it to be successful and, now, supported by the Commonwealth Attorney General's Department, the various state legal aid commissions, the state child protection services, the Family Court is to establish it as a national program delivered in all the states and territories, excluding Western Australia where the Family Court of WA is conducting its own related trial program, Project Columbus.

Magellan is the first such program worldwide and it represents an acknowledgment of the significance of the role the Family Court of Australia plays in dealing with child abuse. The court was not designed for this role but, now we know so much more about child abuse as a contributing factor to parental separation and divorce, and about child abuse as one of its consequences, it is clear that it was a role that would fall to the court in time. I think the Family Court of Australia is to be congratulated in being the first such court internationally to introduce a specialised judicial program for these children.

Background to Project Magellan

Several events in 1997 catapulted the court into recognising the extent to which it had become involved, unwittingly, in child abuse issues. The first of these was the report delivered by the Australian Law Reform Commission and the Human Rights Commission on children involved in the legal process, **Seen but Not Heard**, (ALRC, 1997). That report singled out children caught up in residence and contact disputes where child abuse allegations had been made as one of the groups treated poorly by the legal process. The report found the children were subject to an extremely long drawn out, expensive and often inconclusive legal process that gave rise to considerable professional and parent dissatisfaction. The second event was the preliminary report of the Family Violence and Family Court Research Program, **Violence in Families**, published the next year (Brown et al, 1998) that explored how the Family Court of Australia managed residence and contact disputes where child abuse allegations were involved. The report showed the court had become an unacknowledged forum for the resolution of family violence, including child abuse, and that residence and contact disputes involving child abuse had become a substantial ongoing component of the court's workload. The court had emerged as an integral, but unplanned, part of the nation's child protection service system. The third event was a review the court itself undertook, **Review of Pending Cases**, (FCA, 1997) that confirmed the extent to which the court was involved in managing family violence disputes including those where child abuse was alleged.

The juxtaposition of these three reports was not coincidental. For, underlying and shaping these events was an increasing awareness of child abuse within the family, a decreasing community tolerance of it and a development of services to alleviate it. When taken together these factors flowed into a social trend that swept families into the Family Court of Australia and other similar courts internationally for resolution of their family situation.

The Relationship of Child Abuse to Parental Separation and Divorce

The relationship between child abuse and parental separation and divorce has been slow to be acknowledged and even slower to be explored rigorously. While some aspects of the relationship were noted around twenty-five years ago, explorations at that time were superficial and led to an erroneous construction of the relationship that remains influential today.

Initial explorations began following the “discovery” of child abuse when international campaigns against child abuse led by Dr Henry Kempe caused a very rapid rise in the number of formal notifications of all kinds of child abuse in the last three decades of the twentieth century (Berliner and Conte, 2002). Those working in and around parental separation and divorce soon noticed a mysterious rise in the numbers of residence and contact disputes where child abuse allegations, particularly child sexual abuse, were made. Instead of appreciating this change flowed from the impact of the child abuse campaigns, most treated it as an independent development that could be explained only as the actions of malicious parents using such allegations, especially those of child sexual abuse, as a tactic in the divorce fight.

Consequently the research of the times focused around the issue of the truth (or rather the falsity) of the allegations that had increased in number so rapidly they seemed difficult to accept (Schudson, 1991; Toth, 1991). It was at this time that Gardner constructed his theory of Parental Alienation Syndrome, explaining these events as caused by one parent, mothers mostly, falsely accusing the other parent, fathers mostly, of the sexual abuse of their children in an attempt to win the children away from the other parent (Gardner, 1986). This theory was extremely attractive to parents and professionals and is in good currency today

However, we now have considerable evidence that these theories are incorrect. We know now that child abuse in this context is more often real than imagined and that it contributes to parental separation and divorce and may result from it. At the same time the relationship seems complex and we do not know the exact or all of the dynamics of it. The research based information that we have tends to fall into two categories, information about child abuse as a contributor to parental separation and divorce on the one hand and information about it as a consequence on the other. Supporting our understanding of child abuse in this context is the research based knowledge of today that draws a clearer picture of family perpetrated child abuse, showing it to be more frequent than previously envisaged (Cawson et al, 2000).

Child Abuse as a Contributor to Parental Separation and Divorce

In Australia while only some 5% of applications filed over residence and / or contact issues involve child abuse allegations, the proportion of residence and contact disputes involving child abuse allegations rises as the court’s legal process rolls out. These cases do not drop out of the court process but remain within the process defying resolution as legal proceedings continue. Thus at the midpoint of possible court proceedings what began as 5% of applications, becomes 50% of the residence and contact disputes, then reduces slightly to 30% at the end point, that is at the trial (Brown et al, 1998). Hence the appearance of the large numbers of these cases in family court legal processes. In Australia the numbers of such cases has remained stable over the last five years (Brown et al, 1998).

Among the parents who make allegations of child abuse in this context some 10% give child abuse as the main reason for seeking separation. It is surprising that more do not do so. However, another 30% give domestic violence as the main reason for seeking separation (Brown et al, 1998).

According to AIFS research domestic violence is a growing cause of partnership breakdown (FLPAG, 2001). It is interesting to reflect on why these families where both child abuse and domestic violence occur together cite the domestic violence rather than the child abuse as the main cause of separation. Possibly the domestic violence has a greater impact than the child abuse on the partnership breakdown; also possibly the preparation of the dispute by legal professionals simplifies the picture of the family presented to the court (Brown et al, 1998). If we adopt the recent policy position of domestic violence as a form of child abuse, even when the child is not directly involved in the violence, then some 40% of these parents are seeking to separate because of child abuse of one kind or another.

When it is considered that the most common forms of child abuse, physical abuse, emotional abuse and neglect, are perpetrated by a family member (Cawson et al, 2000) it is not surprising that this kind of abuse leads to family breakdown or that after breakdown the abuse becomes an important factor in determining parents' views of appropriate residence and contact arrangements. And, while sexual abuse of children is not so commonly family based, but rather perpetrated by family friends and more distant family members (Cawson et al, 2000), a proportion is perpetrated by close family members. These family members are mostly fathers, stepfathers, grand fathers and male siblings and, far less frequently but on occasions, mothers, step mothers and female siblings (Brown et al, 2001). When this happens it is not surprising that the uninvolved parent, more commonly the mother, seeks to leave the father to protect their child and takes the issue to the family court as she seeks to prevent or restrict contact. For as the research shows, merely leaving the abusive partner does not bring the abuse to an end; it continues afterwards and frequently requires court intervention (Hester and Ratford, 199; Brown et al, 1998; Brown et al, 2001). Moreover, the child protection services internationally tend to encourage parents in this situation to take the issue to the family court rather than use the child protection services to handle the matter (Thoennes and Person, 1988; Brown et al, 1998).

Truth of the Allegations

Investigation of such allegations has increasingly shown them to be more commonly true, despite the unusual nature of some of them. A series of large studies exist now that have been undertaken in Australia (Hume, 1997; Brown et al, 1998) and in the USA (Thoennes and Pearson, 1988) showing that the allegations when investigated by the child protection services are more often correct than otherwise, with only some 9-14% being untrue, or what is termed false. False allegations do exist, but they are not more commonly made by mothers as has been suggested. They are made a little more commonly by fathers, 55%, than by mothers, 45%, (Brown, 2003).

A major issue in the investigation of the allegations is the large proportion of cases that the child protection service reports as unsubstantiated, meaning that they cannot find sufficient evidence to determine whether or not the allegations are true or false. The research has shown that the child protection services face many difficulties in abuse investigations in the context of parental separation and divorce. These include poor coordination between themselves and the court, a case overload that means such cases have a low priority, a view that these cases should be handled by family courts anyway, a poor research base on child abuse in this context combined with strongly held myths and, finally, a high incidence of allegations of sexual abuse, the most difficult of all to investigate.

Profile of Abuse in Context of Parental Separation and Divorce

For the type of abuse that is presented to family courts has a distinct profile of its own. The abuse is serious, most commonly the recently emerging category of multi-type abuse and with sexual abuse being far more common either as a single category or as part of multi type abuse than in notifications to the child protection services in other circumstances (Brown, 2003).

Child Abuse as a Consequence of Parental Separation and Divorce

More recently evidence has appeared to suggest that parental separation and divorce is a risk factor for child abuse. In other words, somehow the marital breakdown sets in train a course of events that gives children, especially girls, a higher vulnerability to abuse, sexual abuse in particular, after divorce or parental separation (Wilson, 2002). The research suggests this occurs across all cultures. Moreover, the vulnerability exists regardless of post separation and divorce parenting arrangements. The vulnerability is not only to abuse from family members but from a variety of people; it seems to be a general vulnerability. The reasons for this are not clear; it may be that other factors associated with marital breakdown, such as increased poverty, loss of parental attention or the child's isolation and alienation at the time of breakdown, are also involved.

Possibly the vulnerability can be explained by Finkelhor's views one of the factors leading to child sexual abuse is the psychological, social or physical vulnerability of the victim (Finkelhor et al, 1986). Research on children who have experienced recent separation and divorce show the majority of them suffer a number of psychological problems in the short term and a minority suffering problems in the long term (Rodgers and Pryor, 1998). Thus most children in this situation may be vulnerable for a short period of time, with a smaller number being vulnerable for longer.

However the only detailed research on child abuse post parental separation and divorce has been focused on children subject to family law proceedings and so it is likely to be concerned with abuse that has been caused by family members and to reveal only some of the larger picture. Some 50% (Brown et al, 1998) to 56% (Brown et al, 2001) of residence and contact disputes where child abuse allegations had been made were found to be about abuse allegations that occurred after the separation, half of the cases in the first of these two studies and a little over half in the second one. This proportion contrasts with 10% of cases (Brown et al, 1998) and 13% (Brown et al, 2001) concerning allegations about abuse that had occurred prior to the separation and 40% (Brown et al, 1998) and 31% (Brown et al, 2001) about abuse that occurred both before and after separation. The abuse that was said to occur after separation was substantiated in 60% of cases, that is a little more frequently than that in the other two categories. Victims were almost equally divided among males, females and both males and females in the one family and, while sexual abuse was again more common in the profile of abuse presented to the family court as opposed to the Children's Court, physical abuse and multiple forms of abuse in this group were equally common.

Thus to an extent Wilson's findings were confirmed in that separation and divorce were followed in these families by child abuse. However the victims were equally male and female or both together and sexual abuse was not the predominant form of abuse, but equal to physical abuse and multiple types of abuse. Perpetrators were family members with perpetrators other than biological parents, like step parents and step siblings being a little more common.

Project Magellan

In late 1997, following the three reports, the Chief Justice of the Family Court of Australia, the Honourable Alastair Nicholson, decided to develop new ways for the court to manage residence and contact disputes where child abuse allegations had been made. He appointed a committee based in the Melbourne Registry, lead by the Honourable Justice Linda Dessau, to undertake the work. The reports had suggested that the problems stemmed in part from the difficulties in managing the inter-organisational domain whereby a number of organisations were required to cooperate closely to resolve each family's problems. Thus the Chief Justice appointed representatives to the committee from all those organisations he saw as involved in managing these problems. These were the Department of Human Services, Victoria Legal Aid, the Law Council of Australia (Family Law Section), the Victoria Police, the Commonwealth Attorney General's Department, the Family Violence and Family Court Research Program and the Family Court.

During the next six months the committee developed Project Magellan. Project Magellan comprised three parts, firstly the sponsoring or steering committee, secondly the actual court program for the management of residence and contact disputes where child abuse allegations had been made and thirdly the formal evaluation of the experimental program.

The committee based the new court program on a series of new principles derived from the previous research. The principles underpinning the program were:

- A child focused approach that included the appointment of a legal representative for the child to be funded by the state legal aid authority,
- A judge lead, tightly managed, fixed time program with pre-set steps,

- Early intervention with full intervention resources made available at the outset,
- A multi-disciplinary team that managed all families throughout the program,
- Use of expert authority in investigations and assessments, using child protection and court counsellors as the professional investigators and assessors,
- Clear information about program processes and progress for families, including circulation of expert reports to families,
- Tight collaboration between the various services involved in the program using multiple coordination points in the program,
- Ongoing monitoring of the program by the judge led the steering committee.

The Court Program

The court program began in June 1998. It was an experimental program for families making a new application to the Family Court of Australia in relation to residence and/or contact matter that included allegations of serious physical or sexual abuse. The program offered places to 100 families, to families making applications at either the Melbourne Registry and or the Dandenong Registry in Victoria. The List Registrar and senior counsellor at the Melbourne Registry selected families into the program after they jointly scrutinised all new applications for allegations of serious physical and sexual abuse. All families were informed of the opportunity to join the program in advance. No families rejected a place in the new program. While families could come from applications made at either the Melbourne or Dandenong Registries the program operated at the Melbourne Registry. It comprised four court events. A multi-disciplinary team of a judge, a senior counsellor and the List Registrar operated the four court events.

The **first court event** was a formal hearing where the parents and their legal representatives appeared. At this court event the judge explained the new program and issued orders notifying the child protection service of the need for a child protection investigation. The report of the investigation was to be returned to the court within five weeks. The court made available the report and the file to the parents' legal advisors and to the child's legal representative a week before the next hearing. The report only was made available to the parents. The judge ordered a legal representative for the child. The legal representative for the child or children was appointed by Victoria Legal Aid and funded by them regardless of the parents' means. If parents met the normal Victoria Legal Aid criteria for being granted legal aid, Victoria Legal Aid funded their legal representation. With the prior agreement of the Commonwealth Attorney-General's Department, Victoria Legal Aid waived the cap on the maximum amount of legal aid funding it provided for parents and for children. At the court event if necessary the judge made any other relevant orders. After the hearing the senior counsellor and child's legal representative liaised with the particular child protection worker allocated to investigate.

The **second court event** was a formal hearing held seven weeks later. At the second court event the judge received the child protection services report which had already been reviewed by the child's legal representative, by the parents and their legal representatives. If there was no agreement as to residence and/or contact the judge ordered a Family Report to be undertaken by one of the family court counselling team working on the program. That report sought information about the parents' functioning, their relationships with their children, their relationship with each other and additional family members, their views of the allegations, their attitudes to their children and their plans for the children including how they saw the other parent being involved in their child's life. Counsellors undertook the report based on interviews with parents, alone and together. Children were interviewed with and without their parents. Also other supporting services were approached for information where relevant.

The **third court event** was held ten weeks later. It was an informal court hearing, a Pre Hearing Conference, lead by the List Registrar with the senior counsellor. Parents attended with their legal representatives and frequently child protection staff attended too. The Family Report was received at the hearing, having already been provided to the parents, their legal representatives and the child's representative. Discussions were informal with the Registrar identifying areas of agreement and disagreement and seeking to negotiate future arrangements for the children. If no agreement was reached the family proceeded to a trial in twelve weeks time.

The **fourth court event** was a formal trial set ten weeks after the Pre Hearing Conference.

Outcomes of Project Magellan

The new program finished in December 2000. It was evaluated by the Family Violence and Family Court Research Program. The team received a grant for the evaluation from the Australian Research Council under a research partnership scheme whereby the Family Court contributed funding and other resources. The evaluation sought to assess the pilot program's achievements against the goals the committee had established for the program, namely the improved protection of children involved in residence and contact disputes with allegations of child abuse by achieving a quicker and longer lasting resolution of the dispute. It selected five indicators for measurement to show program outcomes and used the research team's first study to provide baseline data.

The evaluation team used the same research design as used in the first study, namely an analysis of the court records in each case, observations of the cases as they proceeded through the court and interviews with staff from the diverse organizations working on the program. In addition, as a new component, a survey was sent to parents and another survey was sent to legal representatives for the parents and for the children. A second new component was the calculation of the funds spent by Victoria Legal Aid on all the cases in the program and on a comparison group of similar cases not included in the new program. Outcomes were planned to be assessed for each case no less than six months after the case finished but ultimately assessments were completed on average twelve months after case completion.

It is not possible to report all the findings of the study in this paper today. The following findings concentrate on the program's achievements as measured by the five program indicators. While they represent only a summary, hopefully they give a clear picture of the program's outcomes.

Program Indicators

The **difficulties in the child protection services and family court interface were much improved**. The time taken by the child protection service to submit a report fell from an average of 42 days to 32 days, meaning that the reports were undertaken well within the time framework set up for their completion. The reports moved from a series of ticked boxes to three page detailed reports of what investigations had been done, when, by whom, with whom and they incorporated clear conclusions and an increasing recognition of the need to go beyond consideration of the children's short term protection. The substantiation rate by child protection staff rose from 23% in the first study to 48%. This improvement may have been the result of the new program, in terms of better procedures and the better knowledge base circulated to workers using the results of the first study. However, it may have risen because the cases were selected on the basis of allegations of more serious abuse and there may have been more abuse to substantiate.

The **disputes were resolved far more quickly**, with the average time being taken falling from a previous 17.5 months to 8.7 months. This was particularly important given the findings of the preceding study that the longer the case took the more the children's functioning deteriorated.

Court events fell also, from an average of 5 events to 3. This was also important because of the findings of the previous study that each court event brought the chance of a change in the children's residential arrangements. Previously some 37% of children changed residence at any one hearing. The stability of the children's living arrangements was improved in the pilot program by reducing the number of hearings and the length of time between hearings.

Far fewer cases proceeded to a judicial determination; only 13% proceeded this far compared with 30% previously. Obviously the smaller proportion of cases going through to a trial, the most costly of all court events, would reduce the financial costs per case, to the court, to child protection services who would usually attend such a hearing, to the parents and to Victoria Legal Aid.

In addition **orders broke down less frequently**. Previously some 37% of final orders broke down while 5% broke down in the new program. As mentioned previously determining whether a final order had broken down was planned to be carried out no less than six months after the case completed. However, it was possible to do it later than this, on average twelve months after the cases completed. This was because delays with some cases drew out the time the project spent in completing all cases. The delays were caused by proceedings in other jurisdictions, most especially criminal proceedings in other courts.

The amount Victoria Legal Aid spent on all parties per case averaged over all cases in the pilot program was \$13,770 per case. This figure was well under the cap allowed for legal aid expenditure on family law cases. This average cost of the Magellan cases compared with \$19, 867 in the non-Magellan comparison group of cases. It must be pointed out that a rigorous cost comparison was not possible because calculating the costs of the cases in the first study had not been carried out. That possibility had not existed at the time of that study.

The support Victoria Legal Aid gave to the second study allowed the calculation of costs component to be undertaken for all cases in the pilot program. Since the pilot program did not incorporate a comparison group of cases (it's comparison group was that of the first study) the research team sought to obtain a contemporary comparison group of cases chosen to be as similar as possible to the cases in Magellan. This proved difficult and only 20 cases could be located. Thus the comparison of costs between the two groups of cases had limitations. Nevertheless, for purposes of estimating costs of legal aid in any extension of the pilot program the cost calculations were important.

The **proportion of children highly distressed fell**, from 28% to 4%, although the fall in the numbers of highly distressed children in the second study cannot be conclusively linked to the introduction of the new program. It is possible that the pilot program did have this effect but it is possible that other factors came into play.

The **parental levels of satisfaction were high** in terms of satisfaction both for themselves and for their children. The most common recommendation parents made for change in the program was for more post court services, especially court sponsored services to maintain the court orders and thereby maintain family stability. **Legal practitioner satisfaction levels were high too.** Child representatives were slightly more satisfied than those representing parents were. Their recommendations for change were also for more post court services for the families. Both parents and practitioners wished to maintain all components of the program.

Conclusions

The evaluation of the program showed it to be successful, as successful as had been hoped. A full account of the program and its outcomes is available in the report, *Resolving Family Violence to Children* (Brown et al, 2001). The Family Court is now moving to introduce the program nationally. Some problems were encountered with the program and these included delays for some cases in the legal process caused by hearings related to the case in other jurisdictions and also the absence of a national Magellan program or a national child protection system that made it difficult to continue to offer the program when families were located in different states or moved between them.

The project rested on the commitment and the cooperation of many different organisations and their staff. The sponsoring committee was a vital mechanism for securing and maintaining this commitment and cooperation, for providing immediate program feedback and for allowing rapid inter-organisational problem solving. The project rested also on the clearly articulated fundamental and operational principles derived from previous research. Questions arise as to whether the program can be changed to suit different environments and this is being tested out by further experimental programs in Western Australia and in Canada.

If one looks ahead to an even better program one can see that Project Magellan incorporated child protection policy principles of focusing on the child, minimising harm to the child, protecting the child, providing a transparency of process for the child and his/her parents, coordinated management of cases within the court, coordinated management of the interfaces between the court and other services, affordability of service, rapidity of legal process and outcome and in-built client and staff feedback. However it did not incorporate the principles of empowering the child, protecting other vulnerable family members, the use of a wide definition of abuse including the relationship between domestic violence and child abuse, the continuing maintenance of protection after final orders, mechanisms for culturally sensitive practices and the provision of supportive family services throughout the court processes and afterwards. We are still striving to produce better services for children; Project Magellan is one such initiative but it doubtless can be improved.

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