Child abuse in the context of parental separation and divorce

New reality and a new intervention model

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Child abuse allegations in the context of parental separation and divorce have long been seen as merely weapons fashioned by angry and vindictive parents involved in separation and divorce wars. They have been disregarded on the basis that they were unlikely to be real.

However recent research from Australia and overseas has shown that this picture is not true. Child abuse in this context is real and it is serious. Moreover the research has shown that the socio-legal system does not serve children caught in this situation at all well.

The Magellan program, a world first experimental program to overcome the problems for these children and their families as they progress through the socio-legal system, was introduced by a consortium of agencies in Victoria recently. This article reports on the program and its outcomes, and considers implications of some of the components of the new program for the various professionals working with this issue.

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Child abuse in the context of parental separation has been seen as a weapon manufactured by parents to gain a tactical advantage in their private divorce war. Thus, it has long been regarded as fictitious and unreal. Researchers, even when they encountered it, felt free to ignore it, committed to the prevailing view that it was different from child abuse in other circumstances. Services shared the same view. They gave it a low priority as a problem in comparison with child abuse in other contexts. It represented only the fight between two adults breaking up a high conflict partnership (Brown, Frederico, Hewitt & Sheehan, 2001).

However, recent Australian research is leading the way internationally in showing that child abuse in this context is real, that it is serious and that past interventions have been inadequate. Much of the inadequacy in intervention has come from a poor understanding of child abuse in this context, an understanding that has been based on a widespread myth and not on any reality. The research findings now challenge the idea of child abuse allegations as a tactic and an irrelevancy in parental separation. Instead the research positions child abuse as a critical event on the pathway to separation, and parental separation as a critical event on the pathway to child abuse. The research shows that child abuse may frequently be a cause of parental separation, and parental separation may frequently be a cause of child abuse.

In 1998 a new model for intervention in families where child abuse allegations had been made in the context of a residence and contact dispute was piloted by a group of Australian socio-legal and human service organisations. These comprised the Family Court of Australia, the Victorian state child protection service, Department of Human Services (Victoria), the Victoria Police, Victoria Legal Aid, the Law Council of Australia (Family Law Section) and the Commonwealth Attorney General's Department. The model was based on the reality of child abuse in this context and was tailored to what the research showed worked best in dealing with child abuse in this context. The outcomes of the new model imply that intervention based on the research findings of child abuse in the context of separation and divorce is effective, far more effective than intervention based on the previous reality, which was actually just a series of myths.

BACKGROUND

The myths surrounding child abuse in the context of parental separation and divorce have many sources. One unwitting source was probably the research of the pioneering USA team of Wallerstein and Kelly who commenced the first longitudinal study on separation and divorce some twenty years ago (Wallerstein & Kelly, 1980). They saw and noted partnership violence and child abuse in the 60 separating families in their study, but dismissed the violence, describing it as a temporary phenomenon caused by the stress of the disintegration of the partnership. Subsequently the USA clinician, Gardner, propounded a view (with no research to support it) that most allegations of child sexual abuse in the context of partnership separation and divorce were fictitious. He argued that the allegations were concocted by mothers to ensure the permanent alienation of children from their fathers,

(Kay & Tolmie, 1998). This view found ready acceptance among men's rights groups, in Australia as well as overseas. It remains firmly entrenched in their thinking even now, judging from submissions to the recent enquiry into the family law service system instigated by the Family Law Pathways Advisory Group (FLPAG, 2001).

RESEARCH

Consequently the original research in this area was constructed to test this view. Were the allegations true or not? How many were true and how many were false? Initially the research supported the prevailing view but later studies returned contradictory results. It soon became clear that the studies were so small they were unreliable (Schudson, 1992; Toth, 1992). Soon larger studies were carried out, beginning with the study commissioned by the USA National Center for Child Abuse (Thoennes & Pearson, 1988) and progressing to recent Australian (Hume, 1997; Brown, Frederico, Hewitt & Sheehan, 1998, Brown et al, 2001), Canadian (Bala & Schuman, 1999), and UK (Hester & Radford, 1996) research. These studies showed a very different picture.

The most recent research, to which Australia has been the major contributor, showed the new reality. It showed that child abuse allegations in this context should not be classed as a red herring, or a diversion arising from the dispute, but as a red light, as an indicator of serious family problems. Child abuse in this context was real and it was serious.

THE REALITY OF CHILD ABUSE IN THIS CONTEXT

A number of Australian studies have now shown that child abuse causes parents to separate (Brown et al, 1998). If partnership violence is included in the definition of child abuse (and it should be noted that the Family Court of Australia regards the existence of partnership violence, whether witnessed by the child or not, as child abuse), then some 43% of parents leave their spouse for reasons of child abuse or serious partnership violence (Brown et al, 1998; FLPAG, 2001).

Sadly, research shows that the act of leaving the abusive partner does not bring the abuse of the children to an end (Hester & Radford, 1996, Brown et al, 1998). Mostly, in around some 80% of families where the non-abusive parent leaves, it continues. Parents have rights to contact with their children after separation. To stop the abuse many parents have to stop contact by taking action in a family court such as the Family Court of Australia.

Not only does separation not stop child abuse and partnership violence, but current research suggests also that parental separation is likely to cause abuse to occur. Wilson (2000), in an analysis of all research on children's well being post separation and divorce, concluded that the loss of the protection gained from two parents living together rendered children vulnerable to abuse, no matter what parenting arrangements were put in place post separation. She suggested female children were the more vulnerable and that they were vulnerable to sexual abuse in particular.

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Research associated with the Magellan program described below (Brown et al, 2001) showed that those responsible for the abuse were family members, as is the case in profiles of substantiated abuse reported by child protection services. Fathers were most commonly found to be responsible (53%), then mothers and fathers together (11%), a family group of people such as a father and a grandfather (11%), then mothers (8%), siblings and step siblings together (7%), stepmothers (5%), and finally stepfathers (5%). However, it should be noted that a small group usually present, friends and neighbours, were not present in this population (Thorpe, 1994).

In terms of what allegations made against whom were most likely to be substantiated, as opposed to most commonly substantiated (Brown et al, 2001), allegations of sexual abuse made against mothers, stepparents, grandfathers, siblings and stepsiblings were most likely to be substantiated. They were less frequently made, but when made were most likely to be substantiated. Surprisingly mutual allegations of any kind of abuse made by both parents simultaneously were highly likely to be substantiated. The allegations least likely to be substantiated were those of physical abuse inflicted by mothers. It should be emphasised that no allegation against any one category of person was invariably found to be untrue. Apparently unlikely allegations, such as a mother sexually abusing a daughter and a mother sexually abusing a stepson, were substantiated. Similarly, seemingly paranoid allegations of sexual abuse of all children in a family by a family group of father, uncle and grandfather were substantiated.

Moreover, when allegations were directed against a former partner and they were found to be untrue, on some occasions the allegations were correct but another family member was the perpetrator. In addition parents who alleged their former partner or another family member had abused the child were found, on occasions, to have been the perpetrator themselves.

Similarly all kinds of abuse were found to occur (Brown et al, 1998; Hume, 1998; Brown et al, 2001) – physical abuse, sexual abuse, neglect and emotional abuse. However, neglect was not as common as in the profile of abuse that is notified to the state child protection services or the profile of abuse over which action is taken in the Children's Court (Sheehan, 2001). Sexual abuse in the context of parental separation and divorce was more common than in the profile of abuse relating to notifications to the state child protection services. This fact probably flows from the likelihood of a parent leaving their partner following the discovery of sexual abuse and their subsequent need to seek court orders protecting the child during contact visits. The most common form of abuse was found to be multiple forms of abuse.

OLD MODEL OF INTERVENTION

The last fifteen years of research in Australia and overseas have shown that the customary model of intervention has not been successful, although it is probably a misnomer to term past practices as a true model of intervention. Prior to the model introduced with the Magellan program, once a person made an allegation of abuse of a child involved in a residence and/or contact dispute to the Family Court, the case would be referred to the state child protection service for investigation. Only half of the cases notified were investigated, reports to the court were cryptic and they took a long time to be completed. The cases then wandered through many court hearings without any priority or planned directions being established for them.

A major problem identified was the inadequacy of the interface between the child protection service and the family court. The flow of information between family courts and child protection services and back again was poor (Thoennes & Pearson, 1988; Brown et al, 1998) and coordinated action, especially required in child protection (Hallett, 1995), did not occur. Cases drifted for very long periods of time, many court hearings took place, and the children's position remained unchanged except that their emotional distress escalated. Some interventions did work. These were clear and detailed initial child protection investigations, court ordered Family Reports, legal representation for children and the bringing together of all three for consideration at a court hearing.

A NEW MODEL OF INTERVENTION

In 1997 the Chief Justice of the Family Court of Australia, the Honourable Justice Alastair Nicholson, decided to consider new ways for the court to manage residence and contact disputes where child abuse allegations had been made. Two studies have just been completed showing that residence and contact disputes involving child abuse allegations have become core business of the Family Court and that the Family Court was emerging as an integral part of the national child protection services system (Australian Law Reform Commission & Human Rights and Equal Opportunity Comission, 1997; Brown et al, 1998). Furthermore the research showed the court was having considerable difficulties in managing these disputes. A committee, led by the Honourable Justice Linda Dessau, was appointed to undertake the work. The committee included representatives from all those organisations that he saw as having to be involved in managing these problems. These comprised 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 and the Family Violence and Family Court Research Program.

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Over a six month period the committee developed a new program for the management of Family Court residence and contact disputes where child abuse allegations had been made. The program was based on a series of new principles derived from the previous research. The principles underpinning the program were:

- a child-focused approach that included automatic legal representation for the child or children that was funded by the state legal aid authority;
- a judge-led, 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 a steering committee led by a judge.

THE MAGELLAN PROGRAM

The new program, named the Magellan program after the famous explorer who sailed around the world and demonstrated it was not flat as previously declared, began in June 1998. It was an experimental program for families making a new application to the Family Court of Australia in relation to a residence and/or contact matter that included allegations of serious physical or sexual abuse. The program offered places to 100 families making applications at either the Melbourne Registry or the Dandenong Registry in Victoria. Families were selected into the program by the List Registrar and senior counsellor after the two staff 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 which were operated by a multi-disciplinary team of a judge, a senior counsellor and the List Registrar.

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 or children who 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. 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 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. Other supporting services were also approached for information where relevant.

The third court event was held ten weeks later. This was an informal court hearing, a Pre-Hearing Conference, led 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. This formal trial was the fourth court event.

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OUTCOMES OF THE NEW INTERVENTION MODEL

The Magellan program finished in December 2000. It was evaluated by the Family Violence and Family Court Research Program whose members were Professor Thea Brown with Dr. Rosemary Sheehan and Lesley Hewitt from the Social Work Department at Monash University and Margarita Frederico from the School of Social Work and Social Policy at La Trobe University. David Downey and Pam Carty-Salmon worked on the project as research assistants.

The evaluation was able to use the data from the team's first study on residence and contact disputes in the Family Court where child abuse allegations were involved as base line data. That study (Brown et al, 1998) had included 200 cases, taken from two registries in two states, Canberra and Melbourne, and active in the 1994-1996 period in the Family Court. However, the data used for comparison purposes in this report is taken only from the Melbourne component of the first study, thus attempting to make the two groups as similar as possible. In both studies the families presenting at the Victorian registries of the Family Court of Australia represented both the full range of socio-economic groups and the full range of ethnic and racial groups to be found in the Australian population.

The evaluation covered all of the 100 cases in the new program. It used the same research design and research instruments as the first study, namely an analysis of the court records of each case using a twelve page questionnaire, observations of the cases proceeding through the court, and interviews with staff working on the program. In addition a survey was sent to the parents and the legal representatives for all the parents and for all the children. Another component was added by 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 that had not been included in the new program. The outcome measures for the evaluation included time taken for the children in the legal process, numbers of hearings in the legal process, rate of breakdown of court orders by agreement and by court decision, numbers of cases proceeding to the full length of legal proceedings, the incidence of highly distressed children, and the legal aid costs provided to families in the new program.

A detailed report of the evaluation of the program has shown it to be very successful (Brown et al, 2001). It is not possible to report all the findings of that study in this article. However the following summarised findings give a clear picture, if not a detailed one, of the program's outcomes.

- The disputes were resolved far more quickly, with the average time taken falling from 17.5 months to 8.7 months.
- The number of court events fell also, from an average of 5 events to 3.
- Far fewer cases proceeded to a full judicial determination; only 13% proceeded this far as compared with 30% previously.
- Orders broke down less frequently. Previously some 37% of orders broke down while merely 5% broke down in the new program.
- Cost savings were considerable, with the average amount spent by Victoria Legal Aid per Magellan

case being $13,770 as compared with $19, 867 in the comparison group.

- Moreover the proportion of children categorised as highly distressed by social workers, psychologists and psychiatrists who were assessing and treating the children fell, from 28% to 4%, although the incidence of distressed children cannot be conclusively linked to the introduction of the new program.
- Parental and professional satisfaction levels were high.
- The conclusions of the evaluation were that all components of the program were necessary to its success; none should be removed if the program were to be reproduced elsewhere.

CONSIDERATION OF EXPERT INVESTIGATIONS AND EXPERT ASSESSMENTS

In the past much emphasis was placed on counselling with such families. In this program the child protection workers and counsellors employed by the Department of Human Services and the Family Court were used as expert investigators and assessors, and it is worth considering further their specialised role.

Child protection investigations and reports

Child protection investigations of child abuse allegations in the circumstances of parental separation and divorce have received little attention. Informal discussions with child protection services in Australia as part of the evaluation of the new model suggested workers found such notifications very common at certain times of the week or year, but less common otherwise. These times were weekends or school holidays when children were going to or returning from contact visits. The workers did not have a conclusive estimate of what proportion of the workload these families comprised. However, the families were thought to be a growing group.

Workers reported that they found the parents difficult to deal with, in particular they were more aggressive and articulate than was usually the case. Since the abuse was framed within a context of separated parents, it presented as a marital dispute with allegations of child abuse, rather than as allegations of child abuse alone. The dispute and the parents' distrusting, anxious and angry relationship tended to occupy centre stage, rather than the abuse allegations.

The evaluation showed that workers needed to see past the dispute and to keep a very open mind in the investigation. The evaluation showed, as had other research, that all types of abuse were found to occur; all types of perpetrators were found to be responsible; the families had extremely complex structures that were difficult to discern, especially when family members moved regularly between countries; the families had longstanding problems; and the families had histories of past childhood abuse. Family information was quite frequently concealed from one or other family member, as well as from child protection staff.

The Magellan program ... was an experimental program for families making a new application to the Family Court of Australia in relation to a residence and/or contact matter that included allegations of serious physical or sexual abuse.

In the experimental program every family was referred for an investigation and report concerning the allegations of child abuse at the first court event. The child protection workers had five weeks to undertake the investigation and make a report to the court. They achieved this deadline with ease. Almost half of the allegations (48%) were substantiated, with no one type showing up as more likely to be substantiated. This was over twice the rate (22.5%) found in the first study (Brown et al, 1998). The reports provided to the court were usually two to three pages, with the process of the investigations documented as well as the conclusions and recommendations. Over time, the reports incorporated a view of the future risks to the child so as to take account of the fact that Family Court orders are long term. They stand until changed by the court.

The child protection workers provided more than just an investigation service to almost all of the families (approx. 89%). They gave short term counselling services, referred children and families to other counselling services, provided a combination of both or, on occasions, provided a long term service themselves. The investigation and report aided resolution. Where abuse was substantiated, those families resolved the dispute immediately.

Court counsellors' assessments of the family and reports

While little has been written about child protection investigations and reports in the context of parental separation and divorce, more has been written about Family Reports or family assessments for residence and contact evaluations when undertaken by court counsellors (Brown, 1995). These assessments focus on each member of the family and their relationship to the child, the care they can provide, their attitude to the child's functioning and the child's view of their own situation. Counsellors see the parents, the grandparents on occasions, the children with and without their parents, and have contacts with community agencies such as schools and counselling services.

In the experimental program the Family Report was an automatic intervention ordered by the judge at the second court event and after the family and the court had received the child protection report. As many cases were resolved before the Family Report was ordered, reports were undertaken in only some 59% of cases.

In doing these particular reports, counsellors estimated they took a few more hours per report than they had with such reports previously. They commented that they greatly appreciated the prior child protection report, believing the existence of an up to date child protection investigation gave them an opportunity to work with families at a more advanced stage of potential resolution. Since the abuse

had been carefully investigated by the child protection service, the counsellors could move on to the next step, that is the long term parenting arrangements.

Counsellors did identify additional children at risk, in a further 16% of cases. However, the identification of that extra group resulted more from the differences in the definition of child abuse between the Family Court and the child protection services than from any overlooking of abuse by the state child protection service. The Family Court has a broader definition of child abuse than the child protection service; for instance, it includes partnership violence, whereas the state child protection service does not. The Family Court uses the concept of *unacceptable degree of risk* in relation to the child's best interests as opposed to the concept of the child protection service, *has suffered or is likely to suffer harm* (Sheehan, 2001).

Families' views of such expert reports

The evaluation of the program sought parents' views of these reports and the reporting process. Some 50% of these parents were satisfied with the child protection reports and the same proportion was satisfied with the Family Reports. Some 10% of parents identified either one or other of the reports as the best feature of the program.

Considering the type of parent who responded, those who were most disappointed with the court's decision, these results were surprisingly positive. Parents commented that child protection workers and court counsellors treated them and their children 'well', that they were 'fair', and that they provided considerable 'support and advice'. The most common complaint was the absence of any debriefing by any service for the parent who was dealing with allegations that were clearly false.

Although no parent mentioned the issue of the transparency of the reports in terms of the process and the results, this could have been an influence on parents' responses. Presumably the experience of the reports for the parents, in terms of time given, care taken, commitment to the children and empathy with children and parents, would be important in determining their views of the child protection and counsellor assessments. Parents were not asked about these issues in detail. Another study is under way to investigate parents' and children's experiences in such reporting processes (Hay, 2001). It will be an invaluable addition to our knowledge base when completed.

CONCLUSION

Child abuse in the context of parental separation and divorce requires even more attention. Current research, to which Australia is a very large contributor at the moment, has shown it to be a cause of partnership breakdown and other research has shown that it may be a consequence as well. Australian research shows the incidence of such abuse, its nature, its victims, the perpetrators and the complexity of the various family situations. The work undertaken by a collaborative group of agencies in a new pilot program in Melbourne has shown successful intervention strategies. Hopefully the findings from this pilot program will lead to further programs of this kind in Australia and overseas. ♦

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