

# CHILDREN AND THE COURTS



This paper is the text of an address delivered during Child Care Week in Sydney, N.S.W. in September 1976 by Mrs Audrey Marshall, Director of Counselling and Welfare, Family Court of Australia, Counselling Service, Sydney.

In my twenty years experience in social work, my particular interest has always been working with children. I know many of you are from children's homes and I feel very much at home among child-care workers having spent 9 years as social worker at Pallister Girls' Home which was then an 'open' home for Court Committed school girls. I also spent several years in an adoption agency which brought me in touch with unmarried very young girls — children really — and a certain number of older children who were surrendered for adoption.

While working in these two positions, I was brought into constant touch with children's courts, other children's homes — both state and voluntary. During this time, I did some work in fostering and am in fact a foster mother myself. All this experience led me to an appreciation of the great importance of substitute care for children and an awareness of the great demands residential work places on child-care workers. Working with other people's children who have often been emotionally damaged to some degree, requires tremendous generosity, wisdom and patience and I know, what splendid work is often done in quite difficult conditions. There is never enough money for back-up services, never enough staff to do all that you would wish to be done, and sometimes despite everyone's best efforts, there is little that can be done, and one has to sit back and observe the painful effects of severe deprivation and conflict on some children where the damage to their personalities seems irreversible. To all the child-care workers here today, I would like to express my personal appreciation of their demonstration of concern for children. This seems to me to be a heartening contrast to the pervading mood of disinterest and cynicism expressed in so many ways in modern society.

Although I imagine I have been invited to speak because of my present position in the Family Law Court, I do see a connection between this and my earlier work. During the years at Pallister Home and also in

adoption, one could see often how clearly and closely the behaviour and emotional problems of the girls were related to family stress and family breakdown. One often felt so angered by the distress of children that it was perhaps natural to want to blame someone. The most awful stories of neglect and both physical and emotional battering were often unfolded. Yet, as I got to know some of the parents and to work with them, I had to accept emotionally, something which I already knew intellectually, that there was nowhere to lay the blame. The parents are so often, although not always, the grown up version of a confused and deprived child.

During those years, I used to wish so often that someone had been able to intervene and help these families at an early stage. I think everyone in any area of child care has wished for that. During the last few years, there has been a significant increase in awareness that the best way to help a child is to help the family — where that is possible, and many family centred services have been developed, throughout the community by both statutory and voluntary organisations.

## **FAMILY COURT COUNSELLING & WELFARE SERVICES**

I believe the inclusion of counselling and welfare services in the Family Court structure reflects the understanding that, if help is readily available at times of family stress and breakdown, some of the worst effects on children can perhaps to some extent be mitigated.

The concern for the welfare of children reflected in the Act is expressly referred to in three different sections. The Act refers in its different Sections to "Marriage Guidance Officer" and "Welfare Officers" but in fact the Counselling and Welfare Staff is made up of social workers and psychologists.

## Section 14 Which Deals With Counselling & Reconciliation

This section makes it the duty of Judge, or magistrate constituting the Court, and of every legal practitioner representing a party, to give consideration to the possibility of reconciliation, and a Judge or magistrate may adjourn proceedings and refer the parties for counselling.

Also where the Court makes an Order or grants an injunction under another section, the Court can direct parties to attend for counselling, if it is in the interests of the parties or the children of the marriage to do so.

This is done constantly, with Judges holding up the matter in Court, for a few hours until the parties are referred for counselling.

Similarly, in the Section of the Act dealing with Welfare and Custody of children, there are several subsections which in effect offers the opportunity to the counselling and welfare staff to work with families in a way which can in many cases benefit the children involved considerably, by working with parents to understand and break down their mutual and destructive hostility in which the children are involved sometimes to an extent which poses severe threats to their mental health. So often parents are so caught with their own pain, frustration and anger that they deny or minimise the effects of this on their children. I call to mind an 8 year old boy so distressed by his mother's forbidding him to speak to his father, that when, in Court, the father approached him he had a severe asthma attack.

## CHILD ABUSE

During the child care week conference, there have been references to child battering and child abuse, and I'm sure it is no news to any of you that the emotional battering that takes place in some of these custody and access battles between parents can be as severely damaging to healthy development as physical battering and abuse.

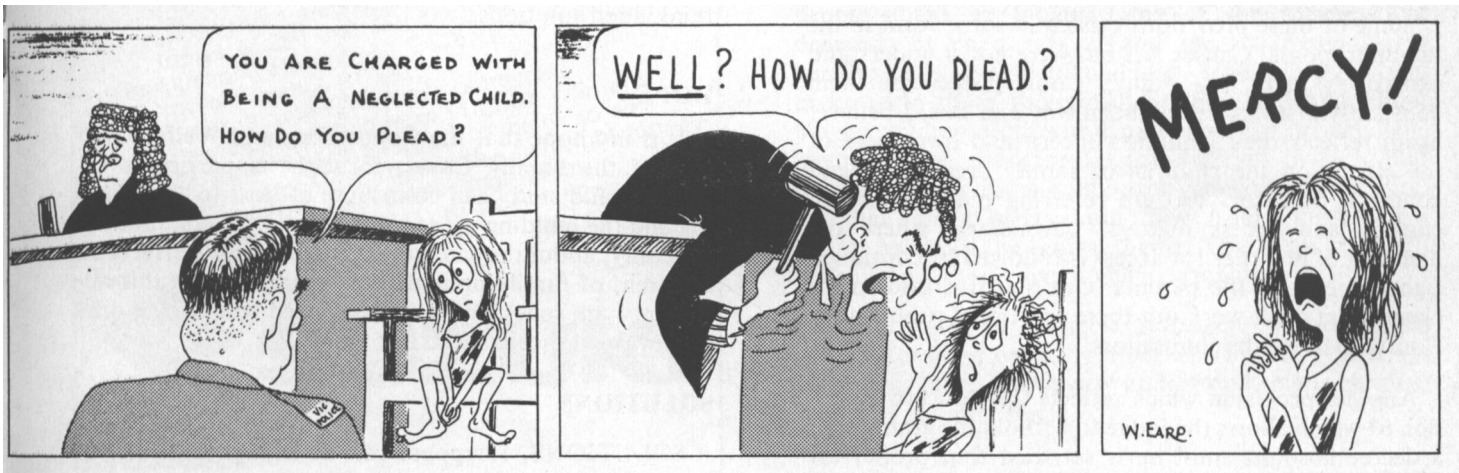
Recently, I talked to a mother with three of her four children chronically unwell and attending psychologists for treatment, though well cared for physically. She said it was because they did not like their father and were forced to see him each alternate weekend as this was the order of the Court. Counselling helped her to see how her own unresolved and intense hostility to her ex-husband was affecting her children.

Under the Welfare and Custody of Children Section the Court also may make an order directing the parties to the proceedings to attend a conference with a Welfare Officer to discuss "the welfare of the child" and if there are any differences between them, (the parents) affecting the welfare of the child to endeavour to resolve those differences. This provision is very little different from the provisions under Section 14 referred to earlier.

A further provision in this Section on Welfare and Custody of Children allows the Judge or magistrate to call for a report and the report may be received in evidence.

## CONTESTED CUSTODY

Such reports are often called for in matters of contested custody where the social and emotional factors are very complex. These reports allow for a contribution of the thinking from the social behavioural sciences, to judicial decision making. The circumstances, views, ideas, attitudes and emotional capacities and plans of both parents and children can be reflected in the report. Children are seen in their home settings and in interview/play settings where necessary, in an attempt to assess their feelings and ideas and preferences as to the conflict for guardianship. During the preparation of a report, people are inevitably responding to counsellors and the opportunity for help. Quite often as a result, people can rethink their custody claims and reach some agreement. These provisions can bring people, sometimes in severe stress, to the counsellors — people who have never sought and may never have sought counselling from another source. This work with people in stressful conflict over matters of custody and access is



going to constitute the main bulk of the work of the Family Court counsellors. We do, of course, see people at all stages of the family breakdown process but this work with parents and children is developing as the speciality of the court workers.

### **ADVANTAGE**

There is great advantage it seems to me, and in fact, many clients have expressed this feeling, in having access to counsellors at the very time they are facing Court, the degree of their conflict with their previous partners. Of course, early referral for counselling help may have been effective but many people in the most painful family situations do not readily think of looking for help.

### **NO SURPRISE**

It will come as no surprise to you that many children are often intensely distressed by this kind of conflict and in fact are often expressing in physical symptoms their inability to make a painful choice between parents. Children are grieved, confused, depressed, often it seems in fairly direct relation to the degree of preoccupation of the parents with their own anger or pain. There are, of course, people who obviously work out comfortable arrangements who never appear before a Court for these matters. Some, in counselling, come to see clearly the destructive effects on children and withdraw from the contest. One such case was as follows. A father and mother of a 5 year old child. Father had custody — mother claiming custody. Both parents responsible and loving but not at first very clearly focusing on the needs of the child. Eventually, the father asked my opinion as to what was best. I agreed with him that both had much to offer the child and perhaps, I suggested, "it would take the wisdom of Solomon" to know. This made the father very thoughtful and he replied by saying "I will be the child's true mother and surrender my half".

Some of these provisions existed in some form in the old matrimonial Causes Act but were not, I understand extensively used. The Family Court judges use them constantly in a most thoughtful way and this, I believe, again reflects their genuine concern and awareness of the effects on the children of family breakdown and conflicts. Solicitors too are referring many clients in custody and access matters, particularly where the handling of an order for access is followed by continued fighting, etc. by the parents. One solicitor said to his client "you can't work out these emotional problems in Court, go to see the counsellors".

Another provision which reflects this concern is Section 63 which allows the judge to withhold the granting of a decree absolute until he is satisfied that proper ar-

rangements have been made for the children. Under this provision, counsellors are put in touch with families with problems relating to their children and are sometimes able to help them work towards a solution.

### **PREVENTION**

In terms of prevention as I mentioned earlier, the in-building of a counselling and welfare service into the court structure seems a useful and wise provision. The service can help families in these crisis situations, and where on-going help is needed, referrals are made to marriage guidance and family counselling agencies, both statutory and voluntary, with whom the counselling and welfare service of the Family Court is forming very close and effective links.

### **COMMITTEE**

A committee has been formed of these organisations and the Family Court Counselling Service so that we can together assess the effectiveness of referrals and to become aware of the kind of problems emerging as a result of the tragically increasing rate of family breakdown and divorce. Clearly there is an increase in the new type of family where children have to work out relationships with their old and their new parents and sometimes new siblings.

### **COMPLEX FACTORS**

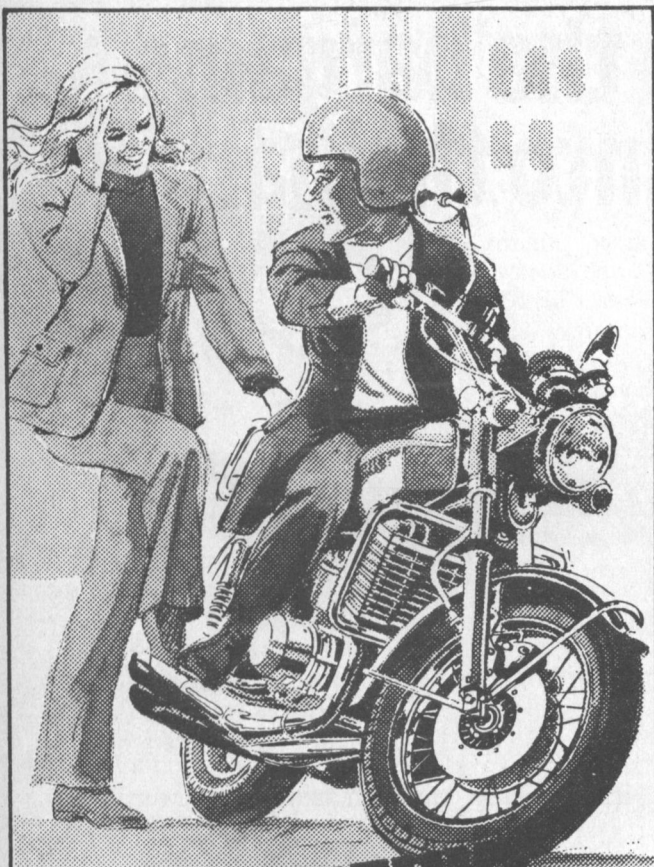
Speakers at this conference were asked to offer solutions. To think of solutions to family breakdown and solutions to the effects on children is a mind shattering task — so many complex factors are involved — there are no simple or glib answers. The temptation is, I think to be overwhelmed oneself by the weight and complexity to the problems, to shrug one's shoulders and say "there is nothing I can do", yet the close proximity to people and particularly children in distress leads one to go on thinking and wanting to make a contribution to thinking of solutions.

### **HOPE**

It is my hope that the Counselling and Welfare Service of the Family Court, through its particular experience and study can contribute at least to the thinking and the building up of awareness in the community, generally, about the sad and often destructive effects on children, of family breakdown. I imagine with this audience, I am speaking to the converted who are all only too aware of these aspects.

### **SOLUTIONS**

SOLUTIONS, I suppose can be thought out at dif-



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ferent levels; at one level, I certainly see family counselling and family support agencies as vital. If I had to select one factor to emphasize as a contribution, it would be to do whatever I can to heighten awareness of the tremendous responsibility involved in bringing a human being into the world and the potential we all have for harming and distressing another human being. I would like young women to be taught to say "I'm going to have a man or a woman" rather than "I'm going to have a baby". I often wonder how women who choose, (rather than have no choice) to bring up a child alone can bear the responsibility. There is so much in the mass-media which encourages the young to seek sensation and freedom, and seemingly so little about responsibility. Despite the pill, there are many unplanned pregnancies, and it is the experience of many hospital social workers and adoption workers that the conception and the keeping of the child by young single mothers often seems to be in response to peer group pressures rather than a thoughtful decision based on a knowledge of what is involved in the full time care of another human being.

### DISTRESSED MOTHER

One distressed mother of a 15 year old pregnant girl said to me once with despair "she has been reading all those magazines which tell how to perform in bed, but there's never any article about what it means to actually be a parent and responsible for a whole life". This lack of knowledge and understanding of the needs of children is quite often reflected in the custody and access work in the Court setting.

Yesterday, various speakers mentioned the need for "education for living" at high school level and Anne Deveson referred to the "Personal Development Programme" being implemented in various degrees at New South Wales state high schools. I believe this programme is one of the ways to begin to build-up attitudes of responsibility to children and child caring. Young people could be taught some of the realities and demands of child rearing and the requirements for healthy development of children. I believe this could make them more thoughtful in their decisions about having children, both within and without marriage. One mental health educator I know believes in fact, that education for living should be the very core of education and that other subjects should flow from it more or less as they relate to the central theme. That is an idea with which I find myself very much in sympathy.

In the words of Francois Mauriac, "we are shaped forever for good or ill, by those who love us". Perhaps if this was more thoroughly understood, many children would be in better shape.

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