

UNIFEM Informs seminar

Short fuse: Realities and solutions in family violence

Marking White Ribbon Day: the International Day for the Elimination of Violence Against Women (IDEVAW) 2005

Co-presented by UNIFEM Australia and
The Bob Hawke Prime Ministerial Centre at UniSA



Thursday 24 November 2005

3rd in the Adelaide series of seminars on social issues

Speakers

- Dr Elspeth McInnes, National Council of Single Mothers and their Children
- Mr Rob Hall, Nada Consultancy and Training
- Ms Dallas Colley, Domestic Violence Training and Consulting

Dr Elspeth McInnes – National Council of Single Mothers and their Children

The following is a quote by the Chief Justice of the Family Court, Diana Bryant, published in the Sydney Morning Herald on September 19 2005.

*“In my experience there is some mythology about the sorts of [domestic violence] allegations the court will act on,” ...
“By the time a matter came to court it would be most unusual for it just to be one’s word against the other. ...you would almost never see a case in which a mother, for example, simply made an allegation that the father was abusing the child. You would almost never see that. I suspect that if you did you would not be acting on it.”*

As this quote makes clear, it would be highly unusual for the Family Court to take any kind of protective action towards a child based on an allegation by a mother.

At this point I would ask you to think about who a young child experiencing abuse from their father would be most likely to confide in – would it be mum? A policeman? A lawyer? A child protection officer?

Perhaps while you ponder this, consider how you would go at describing your last sexual activity in detail to a complete stranger. Think about how you would do this if you were four years old and the person you had sex with was your dad. Now think how it would be if you had been told by dad that you would never be believed and get into big trouble if you did tell. Now imagine that you have told, and the person you told tells your dad and sends you to live with your dad. This is what happens to children who experience incest and whose mothers try to protect their children from this experience using the family court system.

An allegation of child abuse made to Family Court officers is supposed to be reported to state child protection departments in the same way as any other allegation. Like any other report, it will be classified using a Tier system to prioritise response. The highest priority responses are given to reports of children in immediate danger.

As the reasoning goes, a child who is resident with a non-abusing parent is not in immediate danger, and there is a whole federal family law court system to make decisions about that child. The state legislation, budgeted resources and mandate is to investigate and substantiate reports of child abuse and intervene under state legislation if needed to protect the child from continuing harm in the short-term. The outcome is that at least half of all reports arising from the family law system are never even investigated (Hume 1996; Brown et al 2001). Even when an investigation does take place, and if the young child does manage to talk about abuse during the investigation, young children’s statements of abuse are typically challenged in the adversarial court system as being potentially coached by the mother. Further, the conclusions of child protection workers may be accepted or ignored depending on the judge’s disposition towards such issues. With no workable system for investigating allegations of violence or abuse, allegations will inevitably be construed as false, given that they cannot be proved to be true.

As Bryant’s quote makes clear, violence or abuse of mothers is also not given weight by the family courts. State restraining orders are seen as unreliable indicators of violence as they may be issued *ex parte* – or without contested hearing. Men’s violent conduct in court and towards their ex-partner is often construed as a justifiable and understandable product of their frustration with her. Further, there is a dislocation between the violent partner and the ‘good father’. A man who has hospitalised a child’s mother can still be described as a ‘good father’ to the child. In the Dalton case in Queensland in 2004, the father went on to kill the children and himself after being given care of the children by the Family Court, despite the desperate warnings of the children’s grandmother about his violence. His violence towards the

mother was not seen as relevant to his treatment of the children. Such views inevitably come back to notions that adult women provoke good men to violence, but such men nevertheless remain suitable carers for children – displacing the reality that men who use violence in family relationships have already clearly demonstrated an acceptance of the use of violence as a legitimate means of control of others. Hospitalising a child's mother is hardly acting in a child's best interests

Australia has a serious problem with domestic terrorism. A study by Vic Health identified that violence against women was the biggest contributor to the public health burden for women aged 15-44 (Heenan et al 2004). The Australian homicide data shows that 76 women and 23 children were killed by partners or ex-partners and fathers in 2002-2003 (Mouzos and Rushforth 2003). In Sydney in October Police Commissioner Ken Moroney revealed that Police received an estimated 58 reports of offences against children in New South Wales every day (Glendinning 2005).

This annual death and injury toll far exceeds the death toll to Australians from global terrorism, and the dead, like the victims of global terror, are innocent non-combatants – they are mothers and children – ordinary mums, and mainly pre-school aged children. Like global terrorists, the perpetrators are not enemy aliens, but local husbands and fathers from the neighbourhood.

Laws restricting the civil freedoms of Australians are to protect citizens from global terror, but on the home front the Government is considering family law changes to increase the difficulty of successfully securing safety from violence under family law. When politicians are asked about why there are plans to increase the difficulties for separated mothers with violent ex-partners, the near universal response is to talk earnestly about the risk of women making false allegations. The tragic irony of course, is that, as Chief Justice Bryant points out, it would be very rare for the court to actually change any outcome as a result of allegations of violence. This is the fatal flaw in the argument that women falsely allege violence to gain advantage - the awful truth is that the court is unlikely to take any notice let alone provide any 'advantage'. She would win the 'advantage' of more hearings, meetings and reports and risk jail, fines and loss of care of the children. Indeed the family law reforms have flagged a 'friendly-parent' provision where children will reside with the parent most likely to facilitate contact with the other parent. Mothers trying to protect their children will quickly be labelled 'unfriendly parents' while perpetrators will be increasingly likely to be given residential care of the children.

In 2002 the Family Law Council provided a report to the Federal Attorney General identifying how and why the system was failing to protect children. The Family Law Council (2004) has also detailed to the Attorney General the failure to support safety from violence. Their letter identifies the problem with the part of the Family Law Act which requires contact orders not to contradict domestic violence orders. State courts have responded by making orders which restrict contact except for the purposes of child-parent contact. This means in turn that Police will often not intervene in instances of violence or abuse occurring in the context of father-child contact (Katzen 2000) and this means that children and mothers face continuing violence and abuse through contact orders.

In contrast to the Commonwealth's willingness to take over state's jurisdiction over industrial relations in the name of a strong economy, the Attorney General has rejected the Family Law Council call for a national child protection unit to better protect children in the family law system. The Council recommended an investigative unit attached to the family law system, but the Government wants the states and territories to continue to hold responsibility for child protection in family law, despite the absence of a jurisdictional mandate or training or funding to provide such services. What is at stake in this elegant game of inter-governmental 'chicken' is the lives and well-being of a generation of children affected by family violence, but they don't seem to count in the same way as industrial relations, for example.

We know that the most dangerous place for mothers and children is in their own home, yet when they try to achieve safety through separation, the system will deliver them straight back to their abuser. In Adelaide a mother without a lawyer has been repeatedly jailed by the court for believing her child's disclosures of child sexual abuse. The junior primary school child now lives with the alleged perpetrator and sees the mother on supervised contact where the child shows mother new bruises and asks when they can come home. This is sadly not an isolated case, just another tragic example of the horrifying failures of the family law system to deliver safety. But ultimately, what is more horrifying, is that those with the power to make change have been repeatedly informed of the problem and choose to do nothing. In this sense they are complicit in every homicide of children and mothers that the family law system delivers.

References:

- Brown, T., Frederico, M., Hewitt, L. and Sheehan, R., (2001) 'The Child Abuse and Divorce Myth' Child Abuse Review, 10: 113-124.
- Family Law Council (2002) Family Law and Child Protection, Canberra, AGPS.
- Family Law Council (2004) Family Law Council: Review of Division 11 – Family Violence, Letter of Advice to the Attorney General, Canberra.
- Glendinning L., 2005 'Horror Figures Spur Child Abuse Crusade', Sydney Morning Herald, October 24.
- Heenan, M., Astbury, J. Vos, T., Magnus, A. and Piers, L. (2004), The Health Costs of Violence: Measuring the Burden of disease caused by Intimate Partner Violence, VicHealth, Victoria Department of Human Services, Melbourne.
- Hume, M., (1996) Child Sexual Abuse Allegations and the Family Court of South Australia, Masters Thesis: University of South Australia.
- Katzen, H., (2000) 'It's a Family Matter, not a Police Matter: The Enforcement of Protection Orders', Australian Journal of Family Law, 14 (2):119-141.
- Mouzos, J. and Rushforth, C., (2003) 'Family Homicide in Australia', Trends and Issues Paper Number 255, Australian Institute of Criminology, Canberra.
- Sydney Morning Herald, 2005, 'Custody Wars: Put Kids First', Sydney Morning Herald, September 19.