

The Child Abuse and Divorce Myth

When the authors of this article undertook a study into the way the Australian legal process managed child abuse allegations in custody and access disputes following partnership breakdown in de facto and legal marriages, they encountered what they came to think of as 'the child abuse and divorce myth'. The myth centred around a belief that child abuse allegations made during or after partnership breakdown were weapons fashioned to gain advantage in the marital war. Therefore, they were not real; therefore, they should not be taken seriously. Despite little previous research, these views were strongly held by both families and professionals. The article examines the myth, believed to be an international phenomenon, and shows, in detail, how the study's findings do not support it. In fact, the findings from this unique study contradict the myth in its totality and in its specific aspects. Thus, it is argued that the myth should be abandoned and a new knowledge base for professional intervention that recognizes the reality of this problem be adopted instead. As a result of the study, a new specialized intervention program for children involved in residence and contact disputes where child abuse was alleged is being trialled in the Family Court of Australia. Hopefully, the introduction of further intervention programmes based on the reality of child abuse in these circumstances rather than on the myth will follow. Copyright © 2001 John Wiley & Sons, Ltd.

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The Child Abuse Divorce Myth

Five years ago, the authors of this article began a study in Australia into the way the legal process managed child abuse allegations in residence and contact disputes (formerly termed custody and access disputes) between parents in legal and de facto marriages that had broken down. Seeking funding for the study, they approached the chief executive of a charitable fund with a history of supporting child abuse research. From the outset of the meeting the chief executive rejected the funding proposal, arguing that child abuse allegations in such circumstances were merely a product

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*'Child abuse
allegations in
residence and
contact disputes'*

'There was a special myth of denial of child abuse in the context of partnership breakdown'

'The literature has focused primarily on the truth or falsity of the allegations'

of the parental war surrounding the partnership breakdown. Thus, the allegations were likely to have no basis in fact and the research did not warrant funding.

These views took the team aback. Nevertheless, it proved to be only the first of many encounters with the child abuse and divorce myth. While the research team was aware that child abuse in general has been surrounded by a myth of denial (Summit, 1983, Stanley, 1991), they were not aware that there was a special myth of denial of child abuse in the context of partnership breakdown. There is little explicit reference to it in the literature, but then there is little literature about child abuse in the context of partnership breakdown. However, it was put to the team again and again, by parents and by professionals. It was clearly strongly held.

Considering that there has been almost no research in this area previously, the existence of the divorce and child abuse denial myth is possibly not surprising. However, with the completion of the study (Brown *et al.*, 1998), it seems important to put forward publicly the study's findings in relation to the myth. For the findings contradict the myth, both in its totality and in its various specific aspects. Therefore, if professionals respond to child abuse problems in these circumstances based on knowledge derived from the myth, their response may be wrong. They need to review their intervention in the light of this study's findings.

Literature

Compared with the literature on child abuse in general, the literature on child abuse in the context of partnership breakdown is sparse. Most, but not all, of the literature comes from the United States, possibly because of that country's longer history of a high incidence of partnership breakdown. Until very recently, the literature has focused primarily on the truth or falsity of the allegations. The discourse (Bross, 1992; Schudson, 1992; Toth, 1992) has been about identifying the proportion of true versus false allegations, with the language itself suggesting a sense of disbelief about child abuse in these circumstances.

The discourse has focused on sexual abuse alone. Other forms are not given any attention. Thus, the only substantial prior research undertaken, a pioneering USA study of almost 200 cases of child abuse allegations in residence and contact disputes selected from several states and pursued through the divorce courts and the child protection services, studied only sexual abuse cases. The interrelationship between the various forms of abuse was not investigated. This study (Thoennes

and Pearson, 1988) was directed at testing the truth or falsity of the child abuse allegations in such circumstances. The findings showed a low level of false allegations, around 14%. More importantly, the study found that the children at the centre of the allegations were served very poorly by the legal and the child protection services. Subsequent literature confirmed the problems identified for these children, such problems as poor coordination between the divorce courts, the child protection services and the criminal courts (Rubin and Flango, 1993), variations in the many jurisdictions' definitions of abuse (Saunders, 1988), case drift (Rubin and Flango, 1993) and procedural issues about children caught up in the legal process, issues of representation (Myers, 1989) and of giving evidence (Gordon, 1992).

This literature did not link child abuse and partnership breakdown with other forms of family violence. This may have been due to the past compartmentalization of the various forms of family violence noted previously by a number of researchers (Humphreys, 1997; Brown *et al.*, 1998). If the links are not made in other research arenas, they cannot be transferred to partnership breakdown. At the same time, while recognition of partner-to-partner abuse has grown, recognition of it as a cause of marital breakdown has been slow, as, for example, in the pioneering US longitudinal study of marital breakdown (Wallerstein and Kelly, 1980). Partnership abuse is now acknowledged in partnership breakdown, as for example in the US partnership breakdown work of Johnson and Campbell (Johnson and Campbell, 1993) and in the UK research on partnership violence and child contact (Hester and Radford, 1996). However, while child abuse is acknowledged by these researchers, the focus remains on the abuse of the adult rather than on the abuse of the child.

Finally, the literature did not cover de facto marriages, only legal ones. Yet, in many countries, issues of residence and contact from a variety of partnerships such as de facto marriage or non cohabiting couple partnerships are directed to divorce or family courts.

The Study Setting

The study took place in the Family Court of Australia. This court was established in 1976, through new federal 'no fault' divorce legislation, as one of the first specialized divorce courts world wide. It presides over residence and contact issues for children and property issues for parents. It now takes responsibility for residence and contact disputes

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between parents who are not legally married but who have separated, including non cohabiting couples, between parents and grandparents and between foster parents and natural parents. As a federal court, it has registries (offices and courts) throughout the nation. It incorporates a mediation section providing counselling (voluntary and compulsory), voluntary mediation and family welfare reports that have been ordered by the court. Mediation is staffed by social workers and psychologists and shores up its voluntary mediation services with court legal staff. Clients must be informed of these services when first consulting a legal practitioner and at the court’s information sessions.

The family law legal system in Australia is not precisely the same as that in the various family law jurisdictions in the UK. Structurally, it is a specialized stand-alone court and not a section of a wider court, as in England, or an undifferentiated element in a general court system, as in Scotland. However, philosophically there are many similarities that arise from Australia’s tradition of looking to England in its development of sociolegal policies. Thus, the Australian Family Law Reform Act 1995 took ideas regarding children’s wellbeing from the UK Children’s Act 1989, including the policies of maintaining joint parental responsibility after separation and of the desirability of placing children’s interests at the forefront in residence and contact decision making (Graycar, 2000).

However, one major difference lies in the relationship between the child welfare system and the family law system. Australia’s child welfare system is a state system and so it has eight different sets of child welfare legislation. Agreed-on protocols between the federal and state services govern these relationships. As is the case in the UK, the protocols give priority to the child protection service’s investigations when an allegation of child abuse is made in relation to a residence and contact dispute. The family court notifies the child protection service immediately and the court waits till child protection investigates, decides whether to take action itself or not and finally reports its actions and recommendations to the family court.

The Study Design

The study sought to analyse the family court records of 200 cases where child abuse allegations had been made. Some 150 cases came from the state of Victoria; they represented a random sample of one third of all such cases in an 18-month period in 1995-96 that presented to the Melbourne Registry.

Another 50 came from the Australian Capital Territory; they represented all such cases during the same time period from the smaller Canberra Registry.

The cases chosen proved to be typical of the catchment region's population in the two state's capital cities and in the country at large. The parents were distributed proportionately across the full range of occupations in the two regions, using the Australian Bureau of Statistics occupational typology, and across the full range of the diverse ethnic and racial groups now resident in Australia.

Data from the case records included data from the time child abuse was alleged to the time of resolution of the dispute, either by the agreement of the parties or by a court judgement. They covered the first application to the court, the subsequent child protection investigation, the various court actions (including hearings, counselling and family welfare assessments/reports undertaken by Mediation), through to the end of the case. In addition, the team interviewed a selection of staff from the two court registries, the judges, registrars, counsellors and security, as well as staff from state child protection and related services, such as refuges. A full account of the study's framework, design and findings is contained in the study's first report (Brown *et al.*, 1998).

The Myth of Child Abuse in the Context of Parental Separation

The myth centres around the belief that most, if not all, allegations of child abuse in partnership breakdown circumstances are false. A typical example of the myth is the banner headline on the front page of a Canadian newspaper reporting a Canadian study somewhat similar to this one: 'Thirty per cent of child abuse allegations in divorce are false'. Over the page, the actual article stated some 70% of allegations had been substantiated by the child protection service and said nothing about what proportion of allegations were found to be false (Calgary Herald, 1999).

Since, at the moment, most partnership breakdowns with children involve both a male and a female parent, the war is a gendered one, with particular gender myths supporting the overall one. Myths about women, namely that women make false allegations of child sexual abuse and/or partnership violence to gain leverage, are often propagated by fathers' rights groups (Kay and Tolmie, 1998; Boyd, 2000). Myths about men are less easily sourced; they are implied by a defence of women, namely that women do not perpetrate sexual abuse on their own children or victimize their partner

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through violence—only males do. One UK article has flagged the existence of the myth. Its author details how it has been constructed and concludes that it is universal. She calls for more research to determine its accuracy (Humphreys, 1997).

Shattering the Myth

The Allegations Are Not False

The study found that most allegations were not false. Only 9% of the allegations were found to be false. This finding was confirmed in another Australian study investigating child sexual abuse allegations in residence and contact disputes completed later (Hume, 1997). This is the same incidence of false allegations as reported by the Australian child protection services (Armtyage, 1997), and so the circumstances of partnership breakdown do not change the incidence of false allegations or reports. Nor were the false allegations made predominantly by women. Both fathers and mothers made them, as did people who were not the children's parents.

Assessing the incidence of the truth or falsity of the allegations in residence and contact disputes is complex. In this study, as in most others, a false allegation was defined as an allegation that proved to be untrue, arising either from misunderstandings or from fictitious accusations. The assessment was made on the basis of the state child protection reports, the court's family welfare reports and the court's judgements. If any one of these groups determined that the allegations were substantiated, the research team accepted that view. However, it was not possible to accept the state child protection's assessment of unsubstantiated abuse as conclusive. If the state child protection service did not substantiate, the research team reviewed subsequent court family welfare reports and judicial decisions.

This approach was made necessary by the discovery during the research that the state child protection service acknowledged fully investigating only 50% of the family court notifications. Thus, the findings of no substantiation of abuse proved not to be a reliable indicator of false allegations. Furthermore, the substantiation of abuse rate was found to vary greatly according to which state child protection service investigated the allegations. It is likely that the different policies and practices of each state's service affected outcomes. For example, Victoria had a practice of bypassing the issue of substantiation in their reports if the child's residential parent was not the perpetrator and the child

protection service thought the residential parent had taken appropriate protective action for the child.

Most of the children (80%), were not previously known to the state child protection services and substantiation of abuse did not relate to prior contact with the service. Thus, the view that the abuse allegation would have surfaced previously and the family become known to the child protection service already if the abuse was real was not true.

The Abuse is Serious

The study avoided prior definitions of abuse because it wanted to learn what the family court regarded as child abuse. In fact, abuse as defined by the parents and the various professionals included physical, sexual and emotional abuse, neglect, failure to protect and exposure to family violence, such as partnership violence. The inclusion of exposure to family violence, by which was meant living in a home where family violence other than that inflicted directly on the children occurred, produced a wider definition of child abuse than was used by the state child protection services. Abduction was not included. It was seen as a criminal act but not child abuse, although the team thought it was a form of child abuse and partner intimidation in certain circumstances.

The profile of abuse was the same as that of abuse cases prosecuted in the state children's court, that is, those cases which progress on to the children's court when all other forms of service intervention have failed. The most common type of abuse was multiple forms of abuse; this comprised 41% of the total. It included physical plus sexual abuse, (8%), physical abuse plus neglect, (2%), physical abuse plus being exposed to violence, (13%), neglect plus risk of harm, (2%), sexual abuse plus neglect, (2%), sexual abuse plus being exposed to violence, (4%), and physical plus sexual abuse plus one other form (6%) and more than three forms of abuse, 4%. The high incidence of multiple forms of abuse was due, in part, to the high incidence of other family violence. The incidence of sexual abuse was higher than reported by the state services, being 33% in total, comprising 12% as a single form of abuse, and 21% as one of a number of forms.

The Family Violence is Real

Family violence was prominent in these families, 10% more than in the families known to the state child protection

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'The high incidence of other family violence'

'The violence was primarily ongoing episodic male battering'

'For half of the children, the abuse took place after separation'

services (Armytage, 1997). Family violence was the most common single cause of the partnership breakdown. Some 20.5% of the partnerships had broken down solely due to partner-to-partner violence or to child abuse or both.

Fathers instigated the violence more frequently. Some 40% of fathers had domestic violence orders taken out against them, whereas only 7.3% of mothers had. Both fathers and mothers had above average incidences of criminal convictions, males 23.5% and females 9.7%, with the men having a very wide range of such convictions, usually accompanied by convictions for violence and the women having a narrow range of convictions, not including violence.

Partner-to-partner violence was categorized using the Johnson and Campbell typology (Johnson and Campbell, 1993). The violence was primarily ongoing episodic male battering, 30.9%, and male controlling behaviour, 10%, as opposed to separation induced violence as hypothesized by Wallerstein and Kelly (Wallerstein and Kelly, 1980).

Fathers or Mothers Are Not the Only Perpetrators

Fathers and mothers were not the only perpetrators, but almost all perpetrators were family members. Fathers predominated, being 40% as against mothers, 22%; stepfathers were 8% and stepmothers 2% of the perpetrators. Grandfathers were 1%. Re-partnering had taken place in 30% of the total families. Thus, the emergence of step or half siblings as 5% of the perpetrators might be expected.

In conjunction with these findings, it was noted that one-third of the children were abused by another perpetrator subsequent to the abuse that was the basis of the allegations. Step-parents were the largest group (half) of perpetrators of additional abuse.

Separation Does Not Guarantee Safety

The findings suggested that, sadly, parental separation does not necessarily bring safety to these children, a finding supported by other research (Hester and Radford, 1996). For half of the children, the abuse took place after separation. The residential parent or a member of their family can be the perpetrator after separation. Also, abuse can occur at the changeover for the contact visit or during the contact visit, either through the contact parent or through a member of their household.

These Disputes Do Not Resolve Themselves

Thinking that these disputes were probably based on false allegations arising out of the separation, many legal and child protection professionals imagined that the disputes would resolve of their own accord, as many post-separation disputes are thought to do over time. Thus, they saw no immediate intervention as the preferred option.

However, the study showed that these disputes did not resolve without intervention. The disputes took 17.5 months and five hearings on average to resolve and, because of this, they grew to become half of the court's workload in children's matters. Moreover, the longer the dispute took, the more the functioning of the children, who were mostly 4 and 5 years old, deteriorated; this was no doubt due in part to the frequency of changes in residence. At every court hearing, the children had a 37% chance of having their residence arrangements changed.

Counseling Does Not Produce Agreements

Voluntary or court-ordered counselling did not produce agreements in relation to residence disputes, only in relation to contact. Some 12% of voluntary counselling and 12% of court ordered counselling produced agreements over contact.

Authoritative Intervention Does Produce Agreements

Authoritative intervention did bring resolution, however. Where the child protection reports substantiated abuse, some 86% of these cases were immediately resolved by agreement. Resolution seemed related to the amount of detail and clarity of the reports. When the court ordered family welfare assessments, these assessments brought about agreement in 40% of those cases. A subsequent study (Australian Law Reform Commission, 2000) has confirmed this finding. The court has the power to appoint legal representatives for the children, and their appointment also brought resolution.

Summary for Professional Knowledge

The study shows that when professionals are involved in child abuse allegations in residence and contact disputes, they need to begin from the knowledge base this study provides. This is: child abuse allegations in these cases are no more likely to be false than in other circumstances; the abuse is serious

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'Child abuse allegations in these cases are no more likely to be false than in other circumstances'

'Authoritative intervention undertaken as soon as possible is the most useful intervention'

'The specialized intervention programme is child rather than parent focused'

abuse and often of several types; one of any number of possible family members is likely to be the perpetrator; it often takes place against a background of family violence; and authoritative intervention undertaken as soon as possible is the most useful intervention.

Conclusions

Breakdowns in legal and de facto partnerships are increasing world wide (Rodgers and Pryor, 1998). As the breakdowns increase, so will allegations of child abuse in these circumstances. They have in Australia since this study began. Thus, it is important that the professionals base their practice with these children on tested knowledge rather than myth. It is hoped that the findings will weaken the misleading divorce and child abuse myth that has been prevalent until now and that they will assist in developing knowledge for professionals working with families where the partnership has broken down and where child abuse allegations are involved.

Future Directions, Policies and Programmes

Following the study, the Family Court of Australia is pioneering a new trial programme for these cases based on this research. The specialized intervention programme is child rather than parent focused, with every child having a government-funded legal representative appointed from the outset; it is court led and tightly managed; it uses a multidisciplinary judicial/counselling court team; it commissions child protection reports and family welfare reports immediately the case becomes known to the court. This research team is evaluating the new programme. If the programme is successful, the court and its funder, the Commonwealth Attorney General's Department, will translate the it into new policies and programmes for the court and its related services.

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References

- Armytage P. 1997. Children in the State Protection Services, Paper presented to the Australian Association of Family Lawyers and Conciliators, Children at Risk Seminar, University of Melbourne.
- Australian Law Reform Commission. 2000. *Managing Justice*. Report No 89. Commonwealth of Australia, ACT.
- Boyd S. 2000. Backlash and the construction of legal knowledge child custody law reform in Canada, Paper presented to the 10th World Congress, International Association of Family Law, Brisbane.
- Bross D. 1992. Assumptions about child sexual abuse allegations. *Journal of Child Sexual Abuse* 1: 2.
- Brown T, Frederico M, Hewitt L, Sheehan R. 1998. *Violence in Families: Report Number One, The Management of Child Abuse Allegations in Custody and Access Disputes Before the Family Court of Australia*. Monash University: Clayton, VIC.
- Calgary Herald*. 1999 Report on child abuse study. May 28, 1–3.
- Gordon M. 1992. Recent Supreme Court rulings on child testimony in sexual abuse cases. *Journal of Child Sexual Abuse* 1: 59–71.
- Graycar R. 2000. Families, law and family law reform, Paper presented to the 10th World Congress, International Society of Family Law, Brisbane, Australia.
- Hester M, Radford L. 1996. *Domestic Violence and Child Contact Arrangements in England and Denmark*. Policy Press: University of Bristol, Bristol.
- Hume M. 1997. Child sexual abuse allegations and the family court. Masters Thesis, University of South Australia.
- Humphreys C. 1997. Child sexual abuse allegations in the context of divorce: issues for mothers. *British Journal of Social Work* 27: 529–544.
- Johnson J, Campbell J. 1993. Parent child relationships in domestic violence families. *Family and Conciliation Courts Review* 31: 282–312.
- Kay M, Tolmie J. 1998. Father's rights groups in Australia. *Australian Journal of Family Law* 12: 19–67.
- Myers J. 1989. Allegations of child sexual abuse in custody and visitation cases: recommendations for improved fact finding and child protection. *Journal of Family Law, University of Louisville* 1: 1–41.
- Rodgers B, Pryor J. 1998. *Divorce and Separation: The Outcomes For Children*. Joseph Rowntree Foundation: York.
- Rubin T, Flango V. 1993. Court and families: a time for change. *State Court Journal Summer/Fall*: 27–34.
- Saunders E. 1988. A comparative study of attitudes towards child sexual abuse among social workers and judicial system professionals. *Child Abuse and Neglect* 12: 81–90.
- Schudson C. 1992. Antagonistic parents in family courts: false allegations or false assumptions of child sexual abuse? *Journal of Child Sexual Abuse* 1: 111–113.
- Stanley J. 1991. Child abuse and other family violence: an exploratory study of this association and how it might affect the child protection worker. MSW Thesis, Monash University, Clayton.
- Summit R. 1983. The Child Abuse Accommodation Syndrome. *Child Abuse and Neglect* 7: 177.
- Toth P. 1992. All child abuse allegations demand attention. *Journal of Child Sexual Abuse* 1: 117–118.
- Thoennes N, Pearson J. 1988. Summary of findings from sexual abuse allegations project. In *Sexual Abuse Allegations in Custody*

- and Visitation Cases*, Nicholson B, Bulkley J (eds). National Legal Resources Centre for Child Advocacy and Protection: Washington; 1-28.
- Wallerstein J, Kelly J. 1980. *Surviving the Breakup: How Children and Parents Cope With Divorce*. Basic Books: New York.

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