

THE FAMILY VIOLENCE (SPECIALIST) COURT

You have asked me to talk to you about 'A Family Violence Court' in the context of Restorative Justice. My 'abstract' talks of Karina Williams' Manukau model and the reality of how that Court is working and benefiting South Auckland families while the Waitakere model splutters on, largely unsupported in practical terms by the Justice Ministry, and is pushed, pulled and prodded by Judges, police, community victims support groups and lawyers.

Last year a travelling roadshow of Judges toured the country to educate other Judges on Domestic/Family Violence. Its goal was admirable – to strengthen us and our Courts in the fight to reduce violence within homes. There were a number of messages given to us – the underlying two I took were:

1. The perpetrator of the violence (the abuser) had to be held accountable.
2. Delays in disposal of cases before the Court inevitably meant accountability was at risk as complainants change their minds on giving evidence against their partner.

The policy of two-four-six was given to Judges by the Chief Judge - something I have never quite got to grips with – I think it means 'Plea within two weeks – disposal of guilty plea matters (i.e. sentence) within six weeks (two + four) and hearing of defended matters within twelve weeks (six + six)!

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I asked the then Chief Judge (he was a presenter) if he would consider a s.106 discharge without conviction in a lower end of the scale family violence case where work was done by the abuser and family by way of Anger Management Course completion coupled with Alcohol/Drug Assessment and Treatment and s.9 Relationship Counselling – where the parties were wanting to remain together or apart. His response was ‘No – there must be a conviction entered’. Probably 70% (maybe higher) of the 20 or so Judges there agreed with him – almost all agreed a reduction from a male assault female charge (two year maximum prison) to Crimes Act assault (maximum one year prison) was ‘not on’ as the conviction record would not show the domestic nature of the assault. (The Ministry’s records recording system cannot record ‘Crimes Act assault – domestic!’ – it will only read ‘Crimes Act assault’.)

The view I get from most Judges is that they prefer a case floundered with the abuser set free than ‘bargain’ to get a guilty plea and the accountability which generally follows, together with the restorative work the family starts and completes following a guilty plea – ‘bargain’ as in reduce charges, agree on ‘lenient’ sentence as a response to personal and family ‘betterment’ work. It would be fair to say that many (perhaps most) defence lawyers would rather not follow the holistic approach.

Earlier this year I discharged an All Black without conviction and suppressed his name and his family’s details permanently on the basis that the family attended to issues they had to address to function securely and safely. The family wanted to go about the business of restoring and strengthening themselves away from the media spotlight. It worked. They are together and doing well.

The flak I copped from victims’ groups was predictable – the almost complete lack of support from colleagues was not. Even months afterwards I am targeted by certain persons at WAVES,

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our local co-ordinating community group – a letter arrived from them last Monday complaining about the number of s.106 discharges at our Court.

In my life, as in yours, I am sure, some things stand out as being so obviously right. My first meeting of the Auckland Council of Civil Liberties in the late 1970s had me spellbound. As a former white middle class privileged sports-mad yahooing male larikan (but with two parents with wonderful values) I knew in my heart right from wrong but had a need to be woken up. Nuclear-free issues followed and at the same time the so obviously wrong South African apartheid issues (which Shadbolt and I had already addressed in our own ways as students in the 60s).

Restorative Justice, Therapeutic jurisprudence, the Karina Williams approach to family violence are, for me, so obviously right there can be no quarrel with any of them – but there is. The ‘let the punishment fit the crime’ approach adopted by most Judges is flawed in family violence cases. It is short term in its effect. It drives the abuser underground. It does not support the victim or family. It leads to a huge number of abusers’ charges being dismissed or withdrawn because the victim will not give evidence.

Our present Chief Judge supports the principle of the Manukau Court – he helped set it up having done the same for the Westies at Waitakere. He knows it is the key to a massive reduction in crimes within the household – by offering alternatives to forced separation (which seldom works) and punishment (which reduces the likelihood ‘next time’ of violence being reported). His hands are tied/restricted by bureaucratic tape. For example there is a reluctance (refusal?) by the Ministry to order and fund an evaluation of the Waitakere model which has been in place for around five years. Specialist Courts such as the Christchurch Drug Court are seen as ‘nice little models’ – to be tucked away quietly as show pieces out of main stream and never to become main

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stream. (My friend Judge Andrew Becroft may have other views on this – and you will have heard from him of the Auckland proposal – we shall see!!)

I have 20 minutes and have used most of that already. Time to stop moaning and let you know (briefly) why the Waitakere Court is floundering while Manukau works.

Manukau – the Williams model.

Early disposition is the goal – while the abuse is still real to both parties and before the ‘realities’ (financial, parenting etc.) of separation sink in for the victim.

All cases are categorised – by negotiated agreement in Court (police/lawyers/victim adviser/Judge).

Cat. 1 – isolated violence

Cat. 2 – repeated violence – but not escalating

Cat. 3 – repeated escalating violence

Cat. 4 – the ‘Rottweiler’ – dangerous, obsessive repeated violence – ‘ownership’ of victim

The Sentencing Act allows Judges to deal with offending in a variety of ways – punitive (for the Rottweiler) and therapeutically for the majority of the others – combination for many.

The majority of cases in my Waitakere Court fall within Categories 1 and 2. Disapproval and condemnation of violent behaviour (sometimes a push, often punching/slapping/psychological abuse) is coupled, at Manukau, with rehabilitation – sometimes through a discharge with no conviction where family/restorative work has been done and a Judge is satisfied it is safe not to

enter a conviction. Convictions coupled with supervision with special conditions (attend anger Management/relationship counselling/good behaviour bonds/alcohol and drug work) are the norm – and can extend into Category 3 matters though most of those will also include community work of lengths tailored to meet the needs of punishment and the family (working offenders).

Judge Williams' work was cut off by cancer and death – she thrived on the stimulation of balancing the need to protect the public and victims with the realities that over 80% of victims will return to the relationship after a spell of Court-enforced separation (bail terms/custody) and the goal must be to rehabilitate/to strengthen – the abuser, the victim, the family. The Court is there as a tribute to her. She had the support of police prosecutor, defence counsel, probation, victim advisers, Court clerk. Only two Judges sit in the Court which sits twice a week – once for defended cases and once for other matters. The same policeman is there every week – Sergeant Laurie Ohms.

A defendant is not allowed to plead not guilty at first call (can plead guilty) – has 2 weeks to think about his life and comes back within 2 weeks for a 'discussion' with a Judge on plea – and this is where the system works or fails depending largely on the Judge and attitude of those in Court. Discussion – 'why plead not guilty? You did it right?' 'Yeah but she provoked me and she won't give evidence against me.' 'Do you want me to drag her in here? You aren't married. She is compellable as a witness'. (The new Evidence Act will allow Judges to take into account photos, videos, victim statements – where victims are reluctant to testify when the immediacy of the occasion subsides and the cuts and bruises heal.)

'Why deny what happened?' (Judge has copy criminal record and summary of what happened.)

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‘What do you want out of life? The victim adviser and the police say this is the first time in Court but probably the fifth reported incident?’ ‘I want the family life to continue.’ ‘OK – all of us here are wanting to support you – you’ve got to stop this pattern of abuse – we will help you and your family if you plead guilty – how about 20 weeks anger Management – plus let’s have a look at drug and alcohol issues which I see from the police are an issue – shoot upstairs now to the Family Court office and sign up for relationship counselling – I see your partner is here. The Court wants to strengthen your family – to stop this happening again. Plead guilty – do the work and you may get nothing other than a conviction – certainly community-based sentence (i.e. not prison)’. ‘What about a discharge?’ ‘[Few ask for this though lawyers do!] ‘Maybe – we will see!’

(I had Karina looking over my shoulder as I wrote that! ‘Hey that’s your language buddy – and its crap – mine was much better – (she wasn’t given to false modesty!)

I am out of time.

Waitakere stutters along simply because

- not same Judges (no continuity of approach even within our 4 resident Judges)
- not same prosecutors each week
- no consistency of approach by the police to family violence
- ongoing competition/distrust between victim advisers/community victim support groups
- victims’/mens’ groups conflict on accountability/how to change behaviour
- an ‘historical approach’ to the Court by certain community groups – ‘it’s our Court – this is how we have done it for the last five years – we don’t like your way’ – you don’t hold abusers accountable
- lengthy delays in disposal (defended cases out to January 2006)

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- Refusal by probation to do stand down (immediate) reports suggesting supervision (resulting in criticism by Ministry and Judge HQ for the Court not disposing of cases quick enough (i.e. we have to keep cases under the Court umbrella requiring defendants to return to Court after six weeks, 12 weeks, 20 weeks to monitor A.M./drug alcohol work before finally releasing the family from the Court's 'grip'.)

Some of these things you can help with simply by lobbying for nationwide recognition of the place and importance of specialist Courts and the Family Violence Court in particular in a country fast developing an international reputation as a leader in restorative justice: Ida Malosi has taken over her/our great friend's place at Manukau. She will work with Judge John Adams. Judges 'converted' to the model must push, with your help crucially important, for what is so obviously a right way of approaching an ugly issue.

Phil Recordon