

2-1-2003

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Recommended Citation

Murphy, Paul and Pike, Lisbeth (2003) "The Columbus Project in the Family Court of Western Australia: some early findings from the evaluation," *ADR Bulletin*: Vol. 5: No. 9, Article 3.

Available at: <http://epublications.bond.edu.au/adr/vol5/iss9/3>

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ADR in the Family Court of Western Australia

The Columbus Project in the Family Court of Western Australia: some early findings from the evaluation

Paul Murphy and Lisbeth Pike

This article reports on some of the early findings of the evaluation of the Columbus pilot project being conducted in the Family Court of WA.

The Columbus Project was conceived as an extension of the ideal of shifting the focus in family law matters from litigation as the first choice in family disputes to a more responsive approach that encourages the parties to negotiate appropriate outcomes.

Columbus is an holistic multi-disciplinary differential case management approach to address allegations of domestic violence, child abuse, child sexual abuse and family violence where there are inherent child protection implications. A designated judicial officer and a court counsellor jointly chair a series of Columbus case conferences with a view to achieving a negotiated agreement concerning issues of contact and residence, rather than an imposed outcome which, in all likelihood, will become the subject of further court action. Columbus thus epitomises the

the processes within the court system are adversarial and are therefore not conducive to encouraging co-operative post separation parenting. This is especially relevant where there have been allegations and/or incidents of domestic violence and/or child sexual abuse and child abuse.

One approach to addressing some of the issues inherent in the current system was the Magellan Project conducted in the Melbourne and Dandenong Registries of the Family Court of Australia in the late 1990s. This project essentially 'fast tracked' cases involving allegations of child abuse and seemed to achieve significant results in terms of time saved, agreed outcomes (consent orders) and reduced stress on litigants and, vicariously, on their children. The Magellan Project evaluation report suggested that a 'case management' approach could produce a number of other outcomes which significantly affect the way the various Family Court processes might be managed.²

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concept of primary dispute resolution (PDR) proposed in the recent report by the Family Law Pathways Advisory Group.¹

Background

Over the past decade there has been growing concern that the Family Court in Australia has not been achieving optimum outcomes for separating parents and their children. Many of

In early 2001 the Chief Judge of the Family Court of WA approved a pilot project to assess the efficacy of a comprehensive differential case management approach to expediting cases where there had been allegations of domestic violence, child sexual abuse, child abuse, or where there was evidence of significant risk factors. The Columbus pilot project was implemented in July 2001 and formally

'launched' at a symposium in November of that year.

An inter-disciplinary research team from the Department of Social Work and Social Policy at The University of Western Australia and the School of Psychology at Edith Cowan University was made available to conduct the evaluation of the pilot project. The team presented its First Interim Report in July 2002³ and this article reflects some of the early findings in Stage I of the evaluation.

Methodology

The evaluation methodology sought to replicate relevant aspects of the Magellan project, thereby providing for some degree of comparative analysis. These measures included basic demographic profiles of the sample families, length of time until an acceptable outcome was achieved and number of attendances at court — known as 'court events'. As in Magellan, the researchers also interviewed members of the court staff (both judicial officers and counsellors), some child representatives and some staff from a range of direct service providers represented on the Columbus Reference Group. Feedback from legal practitioners and clients is scheduled in Stage II of the evaluation.

The team also developed a mapping framework in which each of the cases could be displayed and compared against the Columbus design in terms of process, staff time intensity and an imputed 'cost' of court staff. This costing mechanism enabled a comparison of relative costs between:

- the Columbus pilot cases;
- a 'control group' (cases with similar characteristics to those in the pilot but which for one reason or another did not meet the selection criteria);
- a 'comparison group' (five cases which were excluded on the basis of their time in the system); and
- the Columbus design.

A total of 25 cases was mapped in this first stage of the evaluation. The three samples were Columbus pilot (14), control group (11) and comparison group (2).

It is accepted that these are very small samples — Stage II of the evaluation will have 50 cases in each of the

Columbus and control groups. However, the primary aim in Stage I was to explore the efficacy of the methodology and to assess its potential as an evaluation approach.

The costing mechanism can also be extended to include Legal Aid assistance in terms of individual representation and child representatives, and to non-government service providers. These will also be included in Stage II of the evaluation.

Discussion

Columbus was conceived as an early intervention strategy in which clients would be identified, confirmed, referred for inclusion, assessed and then case managed through a series of conferences. The conferences are jointly chaired by a registrar and a counsellor until either a stable, safe contact regime is established or the matter is referred back into the formal court process usually for a pre-hearing conference and possible trial. There is currently no specified number of conferences available to a couple, although pressure on resources may require some restrictions to be considered.

The Columbus design envisaged a short court appearance where some indication of violence or abuse alerted the magistrate. The matter was then referred to the Family Court Counselling Service where the couple were separately interviewed to assess the situation.

Depending on the counsellor's recommendations, the magistrate then formally referred the case for assessment by the manager of Family Court Counselling. Once a case was included in the pilot, a Columbus conference was scheduled as soon as possible. The imputed cost of this process to the end of the first two hour Columbus conference is approximately \$1085. Each successive conference costs about \$900.

It must be remembered that the clients assigned to Columbus are some of the most difficult and complex situations that commonly require up to five days if they proceed to trial.

The imputed daily 'cost' of court staff is approximately \$3000 for each trial day. For a full cost estimate preparation time should be added. Thus the

apparent initial high cost of the Columbus process may be justified purely in terms of cases that do not proceed to trial.

The First Interim Report considered the data from a number of perspectives:

- a comparison with the Magellan Project outcomes;
- the Columbus pilot process and benchmark indicators;
- the impact on Family Court staff;
- the impact on the wider Columbus Network; and
- the impact on clients.

There was a significant difference in the types of relationships between the two populations (Columbus and Magellan). Almost half (48 per cent) of the Columbus clients were living in de facto relationships, compared with 39 per cent in Magellan, and 12 per cent had not cohabited, compared with 2 per cent in Magellan. Almost two-thirds (64 per cent) of the Columbus sample were repartnered families. The parents in the Columbus sample also tended to be younger, the lengths of relationships were shorter and the ages of the children were also younger than in the Magellan Project. These differences may be a reflection of the small sample sizes in the Columbus pilot and they will be investigated further in Stage II.

The average time that a Columbus case took from identification to the first conference was two weeks — the benchmark of early intervention is being achieved. The cost element is indicative only, as half of the control group had not achieved stable or 'acceptable' outcomes and are continuing with further and progressively more expensive, court events; hence the need for the longitudinal data in Stage II. By comparison, 80 per cent of the Columbus cases had achieved a stable contact and residency regime within the same 25 weeks.

The control group averaged slightly fewer court events (5.6 compared with 6.1) but half of these cases were scheduled for further hearings. Longitudinal data may well establish that these cases will conform to the pattern exhibited in the comparison group, where the average number of court events was 10 in each case.

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A significant difference is the managed process inherent in Columbus whereas the control group cases continue under their own momentum, creating their own pressure on all parties involved.

Vicarious outcomes of the Columbus pilot have been the inter-disciplinary understanding, mutual acknowledgment and collegial support that have developed between the judicial officers and counselling staff. This is having its own impact on the culture of the Family Court.

The child representatives are becoming an integral element in the conferencing process as their role is evolving to address the challenges of a 'team approach'. The involvement of non-government agencies, namely Anglicare/Kinway, Relationships Australia and Centacare, as part of the evolving Columbus Network has led to new areas of understanding and collaboration. Various protocols are being developed with both government and non-government agencies to enable information sharing and referral mechanisms to be more transparent.

Conclusion

The Columbus Project incorporates the ADR principles of enabling and empowering parents to determine their own outcomes as they seek to establish their own unique post separation parenting regime. In this respect the Family Court of WA is playing a leading role in addressing critiques of the family court system, while at the same time becoming an increasing influence on the promotion of social capital and therapeutic jurisprudence for its clients. ●

Dr Paul Murphy is seconded to the Family Court of Western Australia from the Department of Social Work and Social Policy at The University of Western Australia to undertake the Columbus Pilot evaluation. He can be contacted at Paul.Murphy@justice.wa.gov.au. Associate Professor Lisbeth Pike is the Head of the School of Psychology at Edith Cowan University (Joondalup Campus). She can be contacted at l.pike@cowan.edu.au.

Endnotes

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3. Murphy P and Pike L *Columbus Pilot Project Evaluation: First Interim Report* report prepared for the Family Court of Western Australia, School of Social and Cultural Studies, The University of Western Australia and the School of Psychology, Edith Cowan University Perth 2002.

PUBLISHING EDITOR: Natalie D'Enyar **MANAGING EDITOR:** Elizabeth McCrone **PRODUCTION:** Kylie Gillon **SUBSCRIPTIONS:** \$467.50 per year including GST, handling and postage within Australia of 10 issues plus binder and index **SYDNEY OFFICE:** Locked Bag 2222, Chatswood Delivery Centre NSW 2067 Australia **TELEPHONE:** (02) 9422 2222 **FACSIMILE:** (02) 9422 2404 **DX** 29590 Chatswood www.lexisnexis.com.au natalie.denyar@lexisnexis.com.au

ISSN 1440-4540 Print Post Approved PP 255003/03417 Cite as (2003) ADR 5(9)

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