

**DISCUSSION AND COMMENT — “IN WHOSE BEST INTEREST” —  
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MONDAY, 9TH JULY 1984**

**CLARKE:** Thank you John. John has raised a number of interesting issues and I am sure there are some members from different SCAN Teams present here today who would like to ask him some questions in relation to the comments he has made on SCAN. I agree with you John in relation to having a Legal representative on SCAN Teams. I don't know what people here who represent SCAN think of that but from my experience in Family Court matters in which SCAN Teams are involved. I think having a legal person on the Team would be of great benefit in the presentation of the case. When I was explaining earlier, when you act as a separate representative of the child is the same position really as the people who are on SCAN because you are trying to determine what is in the best interest of the child and present the evidence to the Court in an independent and unbiased way and I think that the addition of a Legal representative on the Team would be of great benefit to everyone. Have I, does anyone have any comment to make in relation to that?

**FEMALE VOICE — NO I.D.:** When I start, I find the suggestion rather a confusing one, but perhaps if I give my initial reaction. I think that a Legal person on a SCAN Team would find that they were spending enormous amounts of their time which they could not afford about issues that were not relevant to them, that's one point. Perhaps a Legal person made available to SCAN Teams when it is necessary. I don't know whether you are aware of just how much time is being taken up by professionals who are just simply in conference sessions processing SCAN cases, That's the initial problem as I see it. The other, if we simply, could I clarify what the role of that person would be, because if we are talking about the necessity of a Legal adviser, it is simply to ensure that the evidence which the relevant member present to the Court when that's necessary is of a good standard. I think we are all aware of the necessity to improve that, but is putting a Legal representative on the SCAN Team the most efficient way of doing that or it is rather to provide better training to SCAN Team members on an ongoing basis which is another thing which is constantly talked about?

**ROBERTSON:** What I had in mind was, and I appreciate your very good point about the time factor, I didn't contemplate a Legal representative being involved in all the processes, but I was speaking really from the context of my own experience that where particular problems of a Legal nature arise, then the SCAN Team should have access to a panel of Lawyers who are experienced in the area and that is essential to clarify those issues for the benefit of the Team and I think I wouldn't be seeing it in terms of that Legal representative making decisions about the type of evidence that might be used, I think that's the role for the Prosecuting Authorities. But the sort of situation I had in mind which does arise where SCAN Teams in the course of their investigation want to bring the male father figure in and have him interviewed. In those circumstances a Legal representative who is not acting for the offender, he'd be in the nature of a Legal representative or a special Legal representative attached to the Team, would be able to advise the Team how they should approach that person. See, what happens in my experience is that the offender often at that stage because of a whole lot of confusion engendered by his own lack of insight by often the Lawyer's lack of insight into the problem, his training for years and years in the adversary system which Mr. Justice Vasta referred to and the Social Worker's lack of insight into the problem in not understanding the offender's rights. It's in

that particular area where I could see that a Legal person with training and experience in the area would have a role. Does that clarify what . . . was trying to express . . .

**FEMALE VOICE — NO I.D.:** . . . if you go on from that, if you get away from the sexual abuse, if we perhaps start with the sexual abuse area and just clarify with you that the process as I understand it that would take place normally in the city is that if a complaint of sexual abuse is made by a child and a statement is taken, then no other member would normally interview the offender other than the Police Officer who has carried out the investigations and then interviewed the offender. That is handled a little differently from other forms of abuse in cases and perhaps that is where the confusion is arising and perhaps to blow open the limits that we do face in this, I think that practice in the past has been, I personally have frequently felt that one of the worst things that could happen to a family in the case of Child Abuse is for them to get into the Legal System too quickly, to immediately call their Solicitor and then have their Solicitor instruct them not to talk to anyone and that usually means that legal action will be forced because no one is able to ensure the protection of the child and maybe that's the real point that we're coming to because, and it reflects that perhaps split approaches to how best to handle Child Abuse whereas I think from the time when the SCAN Teams were first formed as I see there's been, there was initially perhaps "throwing out the baby with the bath water" and not charging anyone. This is setting aside sexual abuse but in the cases of physical abuse mainly perhaps not charging. I think then that people look back and said "we're not charging enough" and so charging happened more frequently. So if we look at the dilemma that we are facing, we want to get help to the family so that those parents can care for their own children if at all possible.

If we are unable to assess at the beginning, by talking to the family, then the child is likely to be unnecessarily removed from her family for a long period. Usually that's clarified but if it's after a lengthy Court proceeding it may be six months to a year and the child may be three months, two months, four months older and we have abused the child within the Justice System by doing that simply because a Social assessment was not able to be made because of the Legal System.

**ROBERTSON:** Well I think probably it's at that stage, I'm talking about attempting to prevent that situation. If for instance there was a Lawyer or a panel of Lawyers as I foresee it attached to the SCAN Programme on the consultative basis, and that situation arose, and say you found yourself dealing with a Solicitor who was quite intransigent about the whole issue and said "under no circumstances is the family for whom I represent to be approached, under no circumstances is the father whom I represent to be approached", in that case the Solicitor attached to the SCAN Programme can then plug into the other Lawyer who is being difficult and try and open up the lines of communication at that particular point in time at an early stage. Often you see the families come to the conclusion that because they took Legal advice which was probably right, it was correct in the technical sense because they took Legal advice, they've been punished by the Children's Services Department by having the children removed and placed in care and having the father charged. Now that I think is a horrible consequence and that's what I'm aiming at in my suggestion, trying to and I think we probably agree on that.

**MALE VOICE — NO I.D.:** You don't . . . being affected?

**ROBERTSON:** Well I don't know. I suppose people would have asked before SCAN started in Queensland. Do you see SCAN as being affected, one doesn't know until one's tried it and the idea of these types of Conferences of course is to open up these issues and it's up to everyone to decide as a matter of consensus whether it's a good idea or not.

**MALE VOICE — NO I.D.:** I guess that gets rid of the social problem . . . suspect . . . I would think that that Lawyer acting on behalf of the client, we see Lawyers I think as really holding out for their client, perhaps more than, now with Social Workers I think I'm speaking for most Social Workers take a wider view, a wider sense of responsibility. I'm not suggesting that the Lawyer is doing anything bad by protecting his client, I think that's his role. The Social Worker on the other hand is inclined to look at both, try to look at the offender, try to look at the victim and try to look at their interest.

**ROBERTSON:** What I am talking about as I said before was the question of communication and there is Queensland whether people accept it or not a complete lack of communication between the two professions and the sort of situation that I referred to before where the family feels because they have taken Legal advice that they have been punished could be avoided if that sort of system was in place. See the whole idea surely in this area of Child Abuse is to break down the barriers, it applies to the Judges, it applies to the Social Workers, it applies to the Lawyers, it applies to the Police. We've all adopted stances over the years from which we're not prepared to resile and of course it's the children who are suffering. I think that's a question of attitude and I'm not, don't get me wrong, I'm not pointing the finger at the Social Work profession, I think my comments were pointed equally at the Judicial and Legal profession. It's a question of attitude and it's a question of trying to open up communications and I've proved in my own personal experience that it can be done.

**MALE VOICE — NO I.D.:** Yes, I suppose that that is what I was trying to get at . . . that it could be done, I was just wondering, I wasn't trying to point the finger at the Lawyer . . . that he had to be too, but technically he may have to.

**ROBERTSON:** But I think what I say is correct that we've all adopted stances and that's the unfortunate thing of course. It's Conferences like this which re-educate people like you and people like me.

**MALE VOICE — NO I.D.:** I like the boy.

**FEMALE VOICE — NO I.D.:** . . . the SCAN Teams are very much in tune with the rights of the children and that's really where our priorities lie . . . but also among many other professions is that even Social Workers are very trained in terms of having adults as clients and so the people tend to have the rights of adults as their priorities and that sometimes that's where the lack of communication arises.

**MALE VOICE — NO I.D.:** I think that some of the problem that we are talking about here by actually . . . solved sentencing options and in ways of dealing with offenders because if you are looking at a situation where you may be facing a long period in jail, then the Solicitor saying "well you can't muck about with this, you can't take a risk, you're going to say something, he's going to throw you in jail for seven years, ten years, okay," and it seems to me that if we had a System whereby there was more predictability as you've said, and there were a range of options so that a father or an offender knew that this is what you are looking at, this could happen to you, these sorts of things, then there is much more of a possibility that people will talk to you rather than say nothing.

**ROBERTSON:** I think the system at the present time is the

reverse of what it should be. It has at an indeterminate period of time in the future, someone made the comment before about the delay once the decision's been made to prosecute before something is concluded even when the father pleads "guilty". Often that's not known until the very last minute so the child is left in limbo as to whether he or she is going to be giving evidence. I think the System should be in reverse where perhaps as happens in some of the American Programmes, where you have a Judge involved right at the start by some procedures. The alleged offender is taken before a Judge and he is told what the allegations are, he is not asked to comment, but he is told that the family are going to become involved in this SCAN Programme and this is putting it very crudely, "and if you don't, off with your head". That sort of thing. I think that the System has got to address the problem early on when it's immediately detected rather than having it in reverse. One must always keep in mind what Mr Justice Vasta said about the rights of an accused person and when you start cutting away those rights you're really on very dangerous ground. But my experience has been and I think of a couple of cases in which I have been involved, acting for male offenders, where the SCAN Programme has really worked. One of the problems of course is the male himself regards everyone as being the enemy. Now in both these cases, I because I was his solicitor, convinced him that the SCAN Team were not the enemy, they were all about achieving a happy result for everyone. Now that only happened because everything came together at the start and there wasn't that lack of communication and in both those cases that offender subsequently received Probation. It was known right from the outset that the child wouldn't be called to give evidence, the father figure declared himself right at the outset and said "I'll be pleading guilty to this and there will be no need for my daughter to be called to give evidence." He co-operated with the SCAN Team and followed their recommendations. On occasions he was very upset by some of the recommendations, came running in to me full of fight and I was able to alleviate his fears. In both those cases it worked out that the family eventually got back together again and it was the sort of result we should all aim for.

One of the problems of course is that the cases clearly show that if an offender is charged not so much with indecent dealing but even with those type of offences with incest invariably the outcome is imprisonment if he is convicted and that puts an incredible burden on the child, on the mother, on the offender not to disclose it, to pretend it's not there.

**TONY McKINNON — Probation Office:** It may well be that the Probation Office should put some feedback into this system. From my experience and my colleagues can speak for themselves obviously but I've found considerable problems with offenders that I've had with respect to these types of offences principally because a paedophile often has extraordinary resistance to any sort of rehabilitation treatment. Send him to Psychiatrist, Psychologists and whatever, and I've found with a number of them that it doesn't seem to do much good at all. They're still somewhat of a danger to society, they're still a danger of reoffending in a like manner and as much as I try to sit on them and as much as I try to emphasise the nature of what will happen to them if they are caught again, some of them do reoffend in a like fashion and I, certainly concerned at the way things are going at the moment. I'm finding myself not terribly effective with certain paedophiles in this nature of this type. It also seems to me that as time goes on with an offender with these sorts of offences that they tend to rationalise their involvement incredibly. You get a person who's shortly after the commission of the offence and shortly after being dealt with

the events, they're more likely to be amenable to treatment but give it a couple of years down the track or even get it six months down the track and the defences are up, their rationalisations are up and it's like bashing your head against a brick wall. I've just offered those comments.

**ROBERTSON:** That's perhaps an area where the power of the Courts in giving Probation can be widened. It's not a matter which the Judge can take into account — the future of the family in making a Probation Order. He's primarily got to be concerned with the interests of the offender. If the sentencing options as I've suggested can be widened to include as a condition of Probation, that the offender be part of a SCAN Programme for rehabilitation involving the whole family and that's supervised then by a Probation Officer in theory, in theory that gives that particular Probation Officer the power to breach the offender and bring him back before the Sentencing Judge if he shows a sort of lack of response and a lack of co-operation that you've experienced.

**FEMALE VOICE — NO I.D.:** We've just had a small conference here and decided that we should clarify something. You keep referring to a SCAN Programme and it's very pleasing to find you referring to that Programme positively. There's lots of people here who are out of State and probably later on there will be, there is a session on SCAN Teams, however those of us who have been listening to you this morning, I think are a little uncomfortable with the suggestion that there is a SCAN Programme who can offer this family help and we are very aware that we have a fairly sophisticated and now well developed Programme for receiving complaints, for assessing what needs to be done and nothing to follow up in terms of the, of how to do what is to be done. When I say nothing there's a lot of dedicated people around the town who are attempting in an "ad hoc" way to follow things up and perhaps one of the recommendations could come out of this, that could come out of this Seminar, is that that badly needs to be addressed, that SCAN Teams are simply racking, that we can see what needs to be done with simply racking our brains and bleeding the community's resources dry in terms of finding that a great failure.

**JEFFERIES:** John in regard to the sentencing options the Courts have and deterrents, it's been my experience that basically the deterrent that I feel now operates is that a deterrent is basically we deter people from coming to us to receive assistance because they don't have as you said, any faith in the System. There are too many inconsistencies amongst the different professions, the Legal profession, Police, Social Workers, etc, etc, etc, that the people don't have faith in us as a group of people and faith in what will happen to them. Basically I think they see that they come forward, they will end up in jail and they can see all the terrible things that will happen to their family in terms of their child going in to be cross-examined, etc, etc. I have a very strong belief that people who interfere with their children carry a heck of a lot of guilt and they want to get rid of that guilt and they really do want in terms of the majority of people, the want to approach somebody to get off that guilt for what they have done and I think that it's, that really groups of people need to get together the different professions and as you say, iron out some of the difficulties that we have within the System so that people will come forward and approach us as a group of people, as a body of people.

**CLARKE:** May I ask a question first. I was interested to hear your comments on the arbitrary way at times SCAN may appear to make a decision. You mentioned that it made its decision at times in the manner of the Star Chamber. I wonder if you can elaborate on that.

**ROBERTSON:** Well I had a number of incidents in mind

involving matters in which I've acted and more particularly matters in which my partner, Terry O'Gorman has acted, in which one particular case involved a finding by a Paediatrician attached to the particular SCAN Team which we had no way of assessing, we weren't allowed access of course to what the finding was except in summary form. Both Lawyers involved in the case were of the view that the examination that had taken place was of such a perfunctory and short lived nature that the conclusions that were drawn could not have possibly been not so much valid but certainly could be held open to question and on these occasions that we have tried to feed in to the particular SCAN Team our concerns, the blinds have come down and I think this is the whole problem that I've been addressing that we've been discussing that there's got to be that sense of communication at that very early stage otherwise all hope is lost. A Star Chamber is really one that makes decisions about people's rights and futures without letting that person have any chance to defend himself or herself.

**MALE VOICE — NO I.D.:** John, one of the points I wanted to make is the fact that we have been talking about Paedophilia, we've been talking about Intra-familial sexual abuse and we have also been talking here this morning about "Stranger Danger". I think the first thing we have to get into line is where are we going, I must say I'm from south of the border, where are you going in respect of these forms of sexual abuse? Are you going to have a different response for each of those categories of sexual abuse or are we merely talking here today, this week, about Inter-familial sexual abuse. That's point number 1.

SCAN Teams are a very good concept but in my long experience from Child Abuse, I find that Child Abusing families are very highly motivated. The greater the crisis the greater the motivation and one of my greatest concerns is that we involve ourselves in SCAN Team like concepts, without any formality and without being able to protect the child in the long term and **Michael Locke** puts some words in my mind about three or four months ago. It was on a Queensland case and I can never forget it. It was how a child who was dealt with on a Social Welfare model. Dad had been having intercourse with the child for four years. At seventeen she got into trouble with the Police, she was very quiet and then she came out with this comment, "it was all right with society for Dad to screw me for four years, but because I stole a Violet Crumble bar, I'm a criminal." So we can't forget that concept as well.

The third one is Paedophile. In my experience and studies you can never change a Paedophile because they will tell even after they've been to jail for three or four times, "a situation will arise where if I see the right child, at the right time, in the right place, I will take her off." So I think we must consider this sort of situation as well.

The other thing, Barry's taken my note now, thank you Barry, was of sexual abusers not likely to reoffend. We find that quite often when the opportunity does arise, that they will reoffend. Now the other thing is that even though sexual abusers even though they are fathers or de factos, they may go to jail for a very, very short period of time — you might have a head sentence of ten years, but effectively they might do six months and they're back in the family, and it's all starting again. The big problem there is you don't very often get a second notification from the child. They'll talk out once and once only.

**MALE VOICE — NO I.D.:** John, I think you mentioned that the sentencing options should be incarceration only in the most exceptional cases and in the other cases probation. It seems to me that the moment you go for Probation in the majority of cases you have to acknowledge that the offender

admits his guilt, concedes that he has a problem and can be managed, I find difficulty in the case where a person pleads "not guilty", goes to trial and then you impose upon him Probation and he is not going to respond for something unless he acknowledges his guilt.

**ROBERTSON:** I think that's a very good point. I don't think that Probation would be effective for Child Abusers unless they are prepared to acknowledge that they have got a problem. I think that's trite.

**FEMALE VOICE — NO I.D.:** I could see that system working as it is or has worked in some parts of the States that I know of where the Probation is strictly that the Offender is sentenced into a treatment programme and on Probation as it is in this city at this time I agree that the gentleman over here who made the comment, I think that I don't know much about Paedophiles because that's not my area, but it's our experience that Sexual, fathers who sexually abuse their children will reoffend, most likely to reoffend and it's that psychiatric evidence presented to the Court to the contrary I think is very dubious.

**MALE VOICE — NO I.D.:** Yes, well of course the Criminal Justice System stops when the, it bows out when the persons sentenced and I think what you're on about is what happens after that, which I think is vital.

**FEMALE VOICE — NO I.D.:** I think that according to their needs, there needs to be, in order for the Law to change there needs to be the programme as well, there needs to be the services in order for the Law to change.

**MALE VOICE — NO I.D.:** Well that's the point I made earlier in the paper that the Criminal Justice System is responsive, the Law is responsive. Now the Law only changes in response to Society's needs. It's, Lawyers can make suggestions about changes but the Judges are bound by the Laws as it is, and in Queensland the Law is made down the other end of George Street, and that's probably where we should be addressing the problem.

**MALE VOICE — NO I.D.:** I would just like to make a comment that in my experience as a Probation Officer, that it is not uncommon to find that people do have to look . . . . . and that they sometimes look for the . . . . . and that in other cases without some form of punishment it, they underestimate the problem that they have. They seem to take the position that it's not bad unless people. Most people have concept that if you do something bad you should be punished. I don't think you can just enforce that Law.

**MALE VOICE — NO I.D.:** Certainly not, you know that really goes to the whole sort of basis of punishment, why does the Law?

**MALE VOICE — NO I.D.:** I suppose going to . . . . . at Christmas as being the . . . . . and I think . . . . .

**ROBERTSON:** I don't think anyone disputes that. In Queensland we have this segregation of Child Abuse Offenders so that they're all piled in together so you have the Paedophiles, you have the people that may have the chance of rehabilitation, but have committed a gross act of indecency against a child and have therefore been sent to jail all mixed in together.

**MALE VOICE — NO I.D.:** . . . . .

**MALE VOICE — NO I.D.:** Yeah, Yeah, it's much better to be a Rapist or an armed robber in jail society. It's a curious reflection on the whole of society really.

**MALE VOICE — NO I.D.:** Just one thing John, one thing that always worries me is the fact that you talked about SCAN Teams, how SCAN intervenes to protect the child, but it always works out that the child becomes the victim again in having to be removed from the family situation as Judge Vasta talked about infringing on the Offender's rights — to me the victim particularly a child victim, whether it's a sexual

abuse and a Criminal Justice System, whether it's a physical abuse in the family from the age of two months where they have three or four fractures of the legs and a couple of fractures of the skull, they can't talk bit that is the victim. that's the child that gets removed from the home the same as the sexual abuse. The victim again gets removed from the family situation to protect it. I mean it's wrong. I mean we should have a more flexible system where we can intervene without making the child a victim again. I don't know how we do it it's something that in New South Wales we're going to look, we're looking at now actually, Dr Burnside and I are both members of a sexual assault, Childrens' Sexual Assault committee which has been organised by the Premier a Task Force has six months to report and to look at all aspects of sexual abuse including education, right through the judiciary, Police, Health and Welfare, the Education Department as well, Probation Parole, Law Reform. The Committee is fairly extensive and we have to report by the 7th December of changes that will be required or may be required to try and ease the burden of kids. At the same time protect offenders and try to put the families back together again. I think that one of the problems that happens and we have already referred to this is people's perception of what occurs in a particular system when there is a complaint of Child Abuse and in cases in which I have been involved in Queensland rather than remove the child from the home, the Offender on a voluntary basis removes himself from the home while Rehabilitation and Treatment Programmes are put in place and each member of the family is dealt with individually. so it's not just simply a case of when Child Abuse is reported and someone's charged, the child is removed, but I think the real problem is the perception of each particular person concerned, the perception of the father, "what's the system going to do to me?", the perception of the child and the perception of the family and I think that's probably where Education Programmes and where something can be done to address that problem.

**MALE VOICE — NO I.D.:** But the motivation of the father to leave home is one of not going to Court.

**ROBERTSON:** It may be, it may be.

**MALE VOICE — NO I.D.:** Well It's highly motivated.

**ROBERTSON:** In these cases . . .

**MALE VOICE — NO I.D.:** But we're trying to protect instead.

**ROBERTSON:** Well in these cases, I'm thinking of three in which I have been involved, he'd actually been charged and he was actually in the System.

**MALE VOICE — NO I.D.:** But that's usually the reason for co-operation now isn't it?

**ROBERTSON:** Oh certainly and I think Tony McKinnon mentioned this before that once he gets Probation and out he was dealing with people that are regarded as Paedophiles. Once they've got Probation they you know thumb their nose at the System and they're back into it.

**MALE VOICE — NO I.D.:** . . . . . I'm a Paediatrician from Sydney. Could I just say that about all the concern about the voluntary system of Offenders of any case of Child Abuse, saying what they will do and what they will not do, it's been our experience over a period of some years with all cases of Child Abuse that where there is just the voluntary undertaking to do certain things that kind of undertaking . . . . .

**ROBERTSON:** If I gave the impression that I was advocating that, I didn't mean to.

**MALE VOICE — NO I.D.:** No, no, I'm just saying that unfortunately, it would be good if that could be so but if there is even some compulsion, I don't mean incarceration, but any kind of compulsion, that the thing is hanging over, that somebody is looking over the person's shoulder they are

much more likely to co-operate that if they just undertake. They soon for get and . . . .

**ROBERTSON:** I couldn't agree more and this is where quite frankly Probation if it's effectively explained and effectively administered and there perhaps they're too ambiguous I don't know, where it can be so effective. If you have a long period of Probation, of a period of four years say, and the offender knows that if he breaches the conditions of the Probation Order he goes back before the Judge who dealt with him in the first place, that is surely some form of control.

**FEMALE VOICE — NO I.D.:** Recently we had cause to have some children removed from their home, subsequently their parents wrote to them saying the reason that they were removed was because they had been bad children and they were bad children.

**ROBERTSON:** I'm sorry.

**FEMALE VOICE — NO I.D.:** Is it on, it's on. Is that better. Recently we had reason because of physical abuse to remove some children from their home. Subsequently their parents wrote to the children saying the reason the children were not taken, the reason the children were given to the children.

**ROBERTSON:** Yeah.

**FEMALE VOICE — NO I.D.:** Not audible.

**ROBERTSON:** See one of the problems I think that we all accept is that it is such a wide spread problem now, it's, it's and people are because of the I think the greater public awareness over the last few years in this State anyway are coming forward. That's just an example of I'd say hundreds and hundreds of examples where because of a lack of perception on behalf of the parents, a complete lack of understanding of the problem. They take the stance of rationalising their own conduct by blaming the system, in that case the Children's Services Department. Now if there was say an involvement of a SCAN Programme in that particular case, if there was say the threat of prosecution, if there was the involvement of people of each profession who were able to at different levels, and at different relationships, explain to those parents exactly what the system involved will perhaps that would be the way, but there's no way that the system as it presently stands can prevent that sort of additional abuse and that is what is of course. Children I think someone made the point over here, children are grossly underestimated too in determining in what they want to do and what their rights are and etc and I think Dianne's suggestion which she is going to enlarge in her paper tomorrow or Wednesday, having separate representatives for children and that would spill over into the Children's Court situation not only in relation to sexual and physical abuse that I've been talking about.

**SHIELA MONTRAM — Royal Brisbane Hosptial:** I am one of those people who are in an ad hoc fashion writing Programmes for both sexual abuse and physical abuse for families. We've been talking about a child's need to be removed and/or the father's need to be removed from a family situation. Over and over again children have said to me that they are being punished by being removed from the family by saying that they have been abused, they are removed from the family, Dad is still within the family. However if you just remove the child, sorry, just remove the father and leave the child in the family, the child then is the victim of undue pressure from all members of the family, and I just am mindful of so many children we have actually removed the family and had in our unit where family members have visited and applied that kind of pressure, so that we're not just dealing with an either or situation, we're probably dealing with looking at removal of both the child the victim and the father, until such time as all the whole family can be addressed and looking at what goes on within that

family dynamics. If father is on Probation what often happens is that he goes back into the family and a child will not reinvite, well very rarely . . . . that father, therefore the father may commit further offences and again I am mindful of the children who have gone to extreme lengths so that somehow the family will be reinvestigated but not coming again and saying "this has happened again."

**FEMALE VOICE — NO I.D.:** You made the comment about the difficulty of Solicitors communicating with members of the SCAN Teams. I just wanted to say that when people, Social Workers from the Department of Children's Services or members of SCAN Teams involved in a case have a Solicitor on the phone particularly if it's your colleague who has got a big name, they panic. Why shouldn't they panic when they have the Solicitor? I think they panic because they have the feeling that this Solicitor is going to "be playing games with me." I recognise that that's probably quite erroneous but I think that that's the situation.

**ROBERTSON:** Well well we'll do, I think what I'd say to you is "do you truly recognise that that might be erroneous," you said that, "isn't that the problem?" but you immediately feel that say in Terry O'Gorman's case, because he has a reputation for being a Civil Liberterian, people immediately place him in a particular role which is totally unfair to the man and I think I am more in a position perhaps than anyone in the room to say that, because he is my partner and immediately he's on the phone the SCAN Team panics well perhaps at that stage if for instance I was on a Consultative Panel of legal Representatives that were attached to the Programme I was contacted, in those circumstances those sort of fears which can lead to all sorts of aberrations which and of course it's not your problem, the SCAN Team's problem, or Terry's problem, or my problem, it's the problem for that family and that child and that's exactly what I was addressing and I'm glad you said that but it's a question of communication and we've got this sort of Mexican standoff which I think is, it's vital that something should be done about breaking down those barriers.

**FEMALE VOICE — NO I.D.:** Is it, I think that there should also be a feeling from those of us who are not in the Legal profession, that here is a Solicitor who is going to be ensuring that there is no chance that any charge can possibly ever be pinned on his client, and that seems to be very far removed from protection of children.

**ROBERTSON:** Well I challenge your perception and see from my own case and I think that the Police Officers that I've dealt with would I hope confirm this that when I am acting for a client who hasn't been charged but who is a subject of an investigation, I will explain to him without failing in my duty to him that it's in his interests, his interests, leaving aside every one else, in his interests, that if there has been Child Abuse and if the substance of the complaint which I only often have in a very flimsy fashion, I don't really know what's been said, it's just a case of Child Abuse, a complaint has been made, I don't know what that complaint is, but I encourage him to the best of my ability to admit it and many times I have been present at interviews where despite the classical perception of Lawyers saying "Don't answer any questions" the client has made full admissions, because I've decided that it's in his best interests and I have advised him accordingly to make those admissions at that stage and you know I think it comes back to this whole question of attitude and you know I stress I'm not laying the fault at the door of the Social Work profession, I think it equally applies to the Legal profession.

**MALE VOICE — NO I.D.:** . . . . .

**ROBERTSON:** Certainly.

**MALE VOICE — NO I.D.:** John, I'd just to support what you've said in terms of your involvement, because I've had a couple of cases myself and so have staff in our Unit. The

problem that I think we have is not in accepting the principle but in terms of getting communication open and that's what you've actually said, but what's happened in the past is we've had a few unfortunate experiences where in fact confidences have been betrayed or there's been misunderstandings and what has happened is that people involved in the system of seeing families and kids hurt because of what they felt was a misuse of information by a Legal Representative and I think that's in many respects caused by misunderstanding of roles and probably not good communication right at the outset. I think what we've got to do is take up the challenge and start talking and capitalise on the gains we've made in terms of admitting what you and your representation of clients has done and how that can be improved on and I'm hopeful that this is what can be done here in this Conference.

**ROBERTSON:** See one of my suggestions was an education of Judges as to what the Programme offers. When I've had many instances in the District Court where I've stood up to talk to the Judge on behalf of the client who has pleaded "guilty" about the SCAN Programme and I'm met with a blank stare and you know these, that's not the fault of the Judges that's for sure and it's the same with Lawyers and people from the SCAN Programme should be coming along and talking to Lawyers about what's offering and Judges too.

**FEMALE VOICE — NO I.D.:** I just wonder if part of the dilemma is the fact that the rights of the adults are fairly clearly defined. I don't think we have any rights of children defined in any way whatsoever and that may in fact be where our dilemma lies and we need to look at the rights of the child.

**ROBERTSON:** I think this Conference is addressing that exactly and Dianne and Mr Justice Lambert will be discussing that the Family Law Act and the research that's gone into that has attempted to address that problem. I think probably the same principles apply when you are dealing with

a child who is in you know a broken marriage situation. The same sort of guilt feelings, the same sort of pressure is brought to bear in families like these, they're broken families just as much as these families in which sexual abuse occurs, are broken families.

**CLARKE:** Thank you John. Just a couple of points I'd like to take up and that is the relationship between the Lawyer and the Social Worker. I think from many over many years we've not really understand one another's roles or one another's background and I can say from experience in working in the Legal Aid Office, where we have three Social Workers on staff, one of whom is here today, Claire Tilberry, it's been very satisfying for me to work with Social Workers closely and see how they approach the matter and for them to see how I approach it and to work together as a team which we do in Family Law matters and also in Care and Protection matters. So it can be done and it works very well. The second thing is in my experience in the Family Court, after a trial has finished and the parties all leave the Courtroom with their nerves all in tatters, there is nowhere to take that child and that family and I hope that one of the resolutions coming from this Conference is that the Government provide further funds so that we can have Programmes to help families who have been through the trauma because the child is continuing to be abused if we don't. I'd like on behalf of all of you to thank John Robertson for his very well researched, interesting, thought provoking and at times controversial Paper. I enjoyed it tremendously John and I know everyone else here did. I hope we all are able to discuss with you over lunch some further aspects and thank you once again. I'd like you to join with me in showing John our appreciation.

It is lunchtime. I understand that we should be back here at 1.15 and I'd ask you please not to be late.

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