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"I Respectfully Concur With Dr X": The Risks and Benefits to Women and Children of Family Law Judges Using Social Science Research in the Courtroom

Presented by Ms Zoe Rathus AM

Date:  26 August 2015
Time:  4:30 – 6:30 pm
Location:  Moot Court (67.202)
RSVP:  Online

This paper will explore and analyse the risks and benefits of the use of social science research material by family law court judges during the course of parenting proceedings. It will examine its consequential influence on judicial-decision-making and particularly consider its impact on the lives of women and children. It will canvass the nature of some of the social science present in court room ‘discussions’, drawing from an extensive case review as well the results of a series of focus groups conducted with family lawyers and non-legal professionals operating in the family law system. It will be argued that the social science research being used might be “filling the gap” for judges between the provisions of the Family Law Act and the guidance they require to make safe and appropriate orders for the parties before them and their children whose best interests they are required to determine.

The research demonstrates that the commencement of significant amendments to the Family Law Act in 2006 coincided with an increase in the amount of social science literature research being cited by judges and lawyers in the family courts. These amendments encouraged parents and courts to find arrangements which maximised the time that children spent with each of their parents post-separation. Since that time judges have turned to the social sciences on a range of topics such as attachment theory, post-separation shared care, parental “alienation” (a controversial area), child development ages and stages and the impact of parental conflict and introduced that information into the courtroom in many different ways. It will be shown that this research material can be both a useful tool and dangerous weapon in the hands lawyers when it becomes part of the decision-making process.

Zoe Rathus AM is a senior lecturer in law and Director of the Clinical Legal Education Program at Griffith University Law School. She teaches family law and ethics and professional responsibility as well as a number of the clinical courses. A focus of her research is the Australian family law system with an emphasis on family violence, women and children. After obtaining an LLB (Hons) from the University of Queensland Zoe worked in private practice from 1981, until becoming coordinator of the Women’s Legal Service in Brisbane in 1989. She worked there until 2004, engaging in extensive law reform activities for women. She has served on the Queensland Domestic Violence Council, the Taskforce on Women and the Criminal Code, the Board of Legal Aid Queensland and a number of management committees. Between 1995 and 1998 she worked extensively in South Africa on gender issues. Zoe was awarded an Order of Australia in 2011 for her services to women, the law, Indigenous peoples and education.