Women's Studies Journal

2005 19 : 2

WOMEN AND VIOLENCE

Spring 2005

Women's Studies Journal

Volume 19, Number 2

2005

The Women's Studies Association of New Zealand
with University of Otago Press

The *Women's Studies Journal* is published twice yearly by the
New Zealand Women's Studies Association Inc. with the
University of Otago Press

Coordinating Editor: Jenny Coleman <J.D.Coleman@massey.ac.nz>
Book Review Editors: Ang Jury <A.J.Jury@massey.ac.nz>
and Leigh Coombes <L.Coombes@massey.ac.nz>
For further information and guidelines for submitters,
see www.womenz.org.nz/wsj

All contributions and content enquiries:
Jenny Coleman
Women's Studies Programme
School of Sociology, Social Policy and Social Work
Massey University
Private Bag 11 222
Palmerston North
Aotearoa/New Zealand

All subscription and advertising enquiries:
Women's Studies Journal
University of Otago Press
P.O. Box 56
Dunedin.

Subscriptions
Institutions … $45
Individuals … $45
Single copies … $24.95
Overseas airmail … Aus$45, US$45

ISBN 1 877372 17 X
ISSN 0112 4099
Printed by Otago University Print, Dunedin

Cover image
'Keep close/d' – Nikki Morgan, 2004.

Contents

Women's Studies Association (NZ) Inc.

WSA (NZ), PO Box 5043, Wellington
www.womenz.org.nz/wsa/

The Women's Studies Association (NZ) is a feminist organisation formed to promote radical social change through the medium of women's studies. We believe that a feminist perspective necessarily acknowledges oppression on the grounds of race, sexuality, class and disability as well as gender. We acknowledge the Maori people as tangata whenua of Aotearoa. This means we have a particular responsibility to address their oppression among our work and activities.

Full membership of the Association is open to all women. Other individuals may become associate members. Annual membership includes three newsletters per year and inclusion on the wsanz e-list.

Organisations and institutions ……..	$35
Individuals, medium-high income ….	$35
Individuals, low/medium income …..	$25
Individuals, low income …….....	$10
Secondary school pupils ……..…...	$5

Women's Studies Journal

The Women's Studies Journal is a biannual peer-reviewed academic journal established by the Women's Studies Association of New Zealand. It is published by a committee of WSA members in association with the University of Otago Press.

The Journal is essential reading for academics with an interest in gender issues, focusing on research and debate concerning women's studies in New Zealand and the Pacific. Issues of the journal are often used as texts in tertiary institutions, as it contains a wealth of resource material.

Submissions

The Editorial Collective welcomes contributions from a wide range of feminist positions and disciplinary backgrounds. The Journal has a primary but not exclusive focus on women's studies in New Zealand and encourages papers which address women's experience, explore gender as a category of analysis, and further feminist theory and debate.

Call for Papers: General Issues

Two issues of the journal are published each year. Contributions for general issues are accepted at any time. Submission guidelines and deadlines for Special Issues on a particular theme are available on the journal's website (www.womenz.org.nz/wsj/). Subscriptions, advertising and distribution are handled by the University of Otago Press. All contributions should be sent to the Coordinating Editor (see page 2).

Call for Papers

Special Issue: Women and Spirituality

The area of women and spirituality (or religion) is a broad theme which is gaining increased attention in scholarly literature. In February 2005 two research symposia on this theme were held at Massey University's Auckland and Palmerston North campuses, centred on the visit to New Zealand of feminist theologian Carol P. Christ. These symposia brought together a fascinating range of speakers and participants from very different backgrounds both within and outside academia.

The idea for this special issue on women and spirituality gained its impetus from these meetings. The papers presented at the symposia revealed the wide range of research currently being undertaken in

this area. The intention of this issue is to cast the invitation more widely and submissions are welcomed from all academic disciplines and from those working in the area of women and spirituality in the community. The Journal has a primary, but not exclusive focus on New Zealand and the Pacific region.

Each submission will be peer reviewed by two reviewers. Editors are Kathryn Rountree (k.e.rountree@massey.ac.nz) and Mary Nash (m.nash@massey.ac.nz).

Contributions should be between 5000 and 8000 words, including tables, notes and references and should use either APA reference format or endnotes. The deadline for submissions is 15 April 2006. All submissions should be sent to the **Coordinating Editor:**

Jenny Coleman, J.D.Coleman@massey.ac.nz
Women's Studies Programme
School of Sociology, Social Policy and Social Work
Massey University
Private Bag 11 222
Palmerston North
Aotearoa/New Zealand

Editorial

Kia ora koutou. A warm welcome to this special issue of the Women's Studies Journal on Women and Violence.

The call for papers for this special issue generated an overwhelming response, which has provided us with a wealth of information about current interest in issues around violence – and of course some very difficult editorial decisions. We have only been able to include a portion of the contributions we received in this issue – so we are keeping our editorial comments to a minimum. We hope that you will look forward to further issues in which we will continue with some of the themes addressed here.

We would like to offer our thanks to all contributors, especially the Hon. Ruth Dyson, Minister for Women's Affairs, and Professor Jane Ritchie for their commentaries. The Minister for her contemporary update on the Labour government's commitment to women and the eradication of violence in Aotearoa/New Zealand, and Jane Ritchie for her thought-provoking comments on women's violence towards children and society's response to this issue.

The issue covers a wide field, and contributors engage in scholarly reports and discussion around a number of intriguing questions including the relationship between traditional sociological theory and women's accounts of their experiences of abuse; the relationship between sex work and violence, between the spread of HIV and violence; how doctors' talk about intimate partner abuse; how women experience legal interventions based on the Domestic Violence Act (1995); and the law governing women's evidence in rape trials.

The first three articles variously consider women's experiences as victims of violence. Ang Jury discusses Goffman's theory of mortification of the self in relation to women's experiences of domestic violence. Miriam Saphira and Avril Herbert report on violence among underage sex workers in Auckland. Laura McCloskey, Ulla Larsen and Corrine Williams report on the contribution of violence to the spread of HIV-AIDS in Sub-Saharan Africa. These articles represent the diversity of women's experiences of victimisation across different relationships, social contexts and geographies.

Amy Aldridge and Leigh Coombes have contributed a study

of general practitioners' stories of the difficulties they face with regard to responding to the effects of domestic violence on their women patients. In the following article, Rachael Pond and Mandy Morgan report on women's experiences of lawyers who provide legal interventions – especially protection and custody orders in the aftermath of partner abuse. In the final article, Elizabeth McDonald discusses current rules that are applied to women's evidence in sexual assault cases, the problems that these present for women, and proposals for change. These papers provide some insight into the broader contexts of violence and abuse towards women – especially in relation to service provision/intervention.

While approaching the theme of this special issue from widely divergent positions, these articles all share a common concern with the pervasive and destructive consequences of violence to women's lives across a vast range of social contexts.

We won't ask you to enjoy this issue – but we do hope that it serves to stimulate further debate, research, discussion and interventions towards eliminating violence from women's lives. We also look forward to receiving more articles for future issues – the next special issue on women and spirituality and our general issues. Remember to renew your subscription!

And now a date for your diaries. The WSA conference 2005 will be held in Auckland, on 25–27 November. See you there.

Ang Jury and Mandy Morgan.

Commentary from the Minister for Women's Affairs

HON RUTH DYSON

I wish to thank the Women's Studies Journal for asking me to share my views regarding women and violence today. This edition gives us the opportunity to explore women's experiences of violence and to reflect on both the achievements of the past and challenges for the future in this area.

The United Nations High Commissioner for Human Rights Louise Arbour's statement to mark International Women's Day on 8 March this year talked about the widespread tolerance of violence against women that exists in communities. Her statement highlighted that 'it is essential that society, as a whole, recognise its role in fostering respect for human rights.'[1]

New Zealand has a strong and proud history of being world leaders in women's rights. However, despite significant advances, there is still work to be done. Violence against women and in particular intimate partner violence has a devastating impact on women in New Zealand today. It affects the health, economic status, social participation and general wellbeing of women and their children.

The New Zealand National Survey of Crime Victims 2001 found that in 2000, women were more likely than men to be repeat victims of violent victimisations, and to be repeat victims of threats.[2] More recent research, such as the Auckland University study published in 2004, showed that 33 per cent of women in Auckland and 39 per cent of women in the Waikato had experienced at least one act of physical and/or sexual violence by a partner in their lifetime.[3]

Reflection

We need to reflect on the achievements of the past to understand the status of women today and to create a future direction that will achieve the vision of an inclusive New Zealand where all people enjoy opportunity to fulfil their potential, prosper and participate in the social, economic, political and cultural life of their communities and nation.

New Zealand was the first country in the world to give women

the right to vote. It is important to acknowledge such achievements and it is worth reflecting that women today have more opportunities than in 1893. We have also come a long way since 1954 when the first Family Planning Clinic was opened in the face of bitter opposition from many doctors.

An increased awareness of the prevalence of violence against women can be attributed to the increased recognition of women's rights in the 1960s through the feminist movement, and subsequently the formation of women's refuges and the establishment of rape crisis centres, and women's health organisations.[4]

Despite significant social and legislative advances, including the passing of the Domestic Violence Act 1995 which aims to prevent violence and recognises violence in all its forms as unacceptable behaviour, New Zealand continues to have a high incidence of family violence. Priority areas for action to address this are discussed below.

Priority Areas

The Government's Action Plan for New Zealand Women launched in 2004 capitalises on progress made and continues work towards improving the circumstances of women in New Zealand today. It is an integrated government approach.

One of the priority areas in the Action Plan for New Zealand Women is to reduce the incidence and impact of violence on women and children through *Te Rito: New Zealand Family Violence Prevention* Strategy and the *Crime Reduction Strategy.*

Opportunity for All New Zealanders (Opportunity for All), a summary statement of the Government's strategies to improve social outcomes, launched in December 2004, has identified family violence as one of five critical social issues. *Opportunity for All* will build upon the work already underway in *Te Rito*, and highlights the seriousness of this issue for government and government's desire to do even more to address family violence.

Complementary to the actions underway in the area of Family Violence, the Safer Communities Action Plan to Reduce Community Violence and Sexual Violence has been developed in the context of the Crime Reduction Strategy, to address identified gaps to reduce sexual violence and community violence in New Zealand. Implementation of this Action Plan is an important step towards a co-ordinated and com-

prehensive approach to reducing community and sexual violence.

Safety is fundamental to our wellbeing, and it is clear that violence has a devastating impact on women's wellbeing outcomes.

The Ministry of Women's Affairs is devoting more resources to identify the complex factors that influence the level of violence and how the current legislation is working. Part of this work is assessing the impact that policies and legislation designed to reduce the incidence and impact of violence are having on women. Domestic violence is predominantly carried out against women, and it is therefore important that gender analysis is used in policy development, implementation and evaluation.

The Government's commitment to addressing violence within New Zealand families will be achieved through:

- high-level leadership;
- a strong focus on monitoring and evaluation against an outcomes-based framework;
- an increased commitment by government agencies to work together; and
- building on the partnership between government and non-government agencies.

Government has a responsibility to develop the right policy, laws, and enforcement but violence is not something that the Government alone can fix. Ultimately every New Zealander has to take more personal responsibility.

Violence against women is an issue for all of us.

Hon Ruth Dyson, *Minister for Women's Affairs*

Notes

[1] http://www.unhchr.ch/huricane/huricane.nsf/view01 last accessed 5/05/2005

[2] New Zealand National Survey of Crime Victims 2001, Ministry of Justice, 82, 83, 94.

[3] Fanslow, J., Robinson, E. 'Violence against women in New Zealand: prevalence and health consequences' (26 November 2004) *The New Zealand Medical Journal,* vol. 117, no. 1206.

[4] McMaster, K., Wells, A. (2003). *Innovative Approaches to Stopping Family Violence.* Wellington: Steele Roberts Ltd, p. 8.

Mortification of the self: Goffman's theory and abusive intimate relationships

ANG JURY

As is the case in most Western nations (Erez & Laster, 2000), intimate partner violence[1] remains a serious social issue in Aotearoa/New Zealand (Barwick, Gray, & Macky, 2000; Murphy, 2002). Despite comprehensive anti-violence legislation, both government and public support, and an active network of community-based anti-violence agencies, little abatement in the incidence of abuse against women by their intimate male partners has yet become apparent (Morris, Reilly, Berry, & Ransom, 2003). Such intransigence in the face of concerted and sustained opposition prompted the research underpinning this article, of which the following discussion is but a small part.[2]

Part of that research process involved an invitation to participants to review and comment on draft write-ups of the project, a strategy chosen to ensure analysis that was meaningful to participants. This invitation was taken up by a small group of four women. As analysis proceeded, I became interested in the applicability of Erving Goffman's ideas of the total institution and mortification of the self, introducing these to the group in order to see if their interest mirrored my own. During the course of our ongoing discussions, it became clear that Goffman's explanation of the way in which stigmatised individuals can become separated from a solid sense of self, or at least disinterested in maintaining this self (1968b) was attractive to participants. These women commented that this spoke to them, describing their experience of 'losing themselves' – and provided an intelligible explanatory framework of how it was that 'on to it' and intelligent women could reach a point of feeling utterly without either voice or value.

In the discussion which follows I will explore a re-framing and application of aspects of Goffman's work in relation to abuse within intimate relationships. Of particular interest will be ideas contained within *Asylums,* published in 1968. Within this publication, Goffman sets out to describe the process undergone by those admitted to institutions such as prisons and mental asylums. Labelling these as 'total institutions' because of their characteristically rigid and

complete control over every aspect of inmates' lives, he then introduces us to what he terms 'mortification of self', an induction process designed to systematically strip away an inmate's sense of self. As will be outlined below, such a process can be seen at work within many abusive intimate relationships, even though these institutions are premised upon emotional and psychological barriers rather than solid concrete walls.

Participants

The twenty-five women involved in the research came from a diverse range of backgrounds in terms of socio-economic, educational and marital status, and ranged in age from twenty-two to fifty-nine years. The abusive relationships the women described ranged in duration from three to twenty-five years, with an average length of approximately eight years. Seventeen women were legally married to their abusers, and all participants were cohabiting with the abusive partner when the abuse occurred. Most were mothers, with between one and five children, although six women had, for one reason or another, remained childless. The majority described themselves as being of either Pakeha or New Zealand European ethnicity, with six women identifying as Māori. With the exception of one respondent who identified herself as lesbian (experiencing abuse from both male and female partners), all identified as heterosexual – currently, and at the time of the abuse.

Method

Employing feminist informed qualitative methodology (Oakley, 2000), the work is based upon face-to-face interviews. In order to minimise 'shaping' of participant responses, the concept of abuse was left deliberately undefined in the initial advertising for respondents. The only criteria for participation were that respondents considered themselves to have experienced abuse, and had been living free from abuse for at least two years prior to participation. Of the women who ultimately chose to participate, all reported having experienced physical violence, mainly in concert with psychological, emotional and sexual violence.

Semi-structured in-depth interviews were conducted with each respondent, ranging in length from one to three hours. The interviews (the majority of which were carried out in participants' homes), were

audio-taped and transcribed verbatim, with initial transcripts then returned to participants for comment and/or amendment – a process resulting in only minimal alteration, although several women chose to delete sections of text in the interests of confidentiality. The amended transcripts were then subjected to an analytic process aimed at identification of common themes, with these explored in more depth during a series of follow-up interviews, in order to ensure that analysis was congruent with participant understandings and experience.

Loss of self and the social construction of abuse discourse

A 'loss of self' is a point noted in many accounts of domestic violence. Some, such as the influential 'learned helplessness' model developed by Lenore Walker (1984), trace this element of abusive relationships to the internal workings of individual psyches under the stress of severe and ongoing violence. Others employing a coercive control model, the underpinning to the majority of feminist analyses (Yllo, 2005), locate explanation of this diminution of self within larger social structures, using concepts such as patriarchy, domination and socially sanctioned male violence to present it as an understandable and logical response to gender-based oppression and abuse (Dobash & Dobash, 1980).

While most participants demonstrated an understanding of the implications of structurally based analyses, they also communicated clearly that these fell somewhat short of capturing the lived everyday or 'micro' realities of their experience. Similarly, the notion of learned helplessness, while capturing their sense of victimisation, failed to account for their ongoing resistance to violence and the often creative strategies many employed to cope with and eventually end the abuse – basically extinguishing acknowledgement of agency on their part (Lamb, 1996). In addition, the implicit individualism of this framework tended to gloss over the various social elements and/or dominant discourses supporting their victimisation and inhibiting attempts to free themselves from it. In short, while all could see elements of their experience in each of these approaches, for a variety of reasons neither seemed a totally comfortable fit.

The primary point for these women was that the discourses of abuse circulating around them – most informed by some combination of the theories above, did not provide an adequate explanation of the actual day-to-day lived processes by which they somehow came to

'lose themselves' – and even take the blame for their victimisation. It is these processes that form the focus of this paper – the way in which many participants came to take on personal blame and responsibility for the abuse. The concept of discourse used here encompasses the 'forms of knowledge or powerful sets of assumptions, expectations and explanations governing mainstream social and cultural practices' (Baxter, 2003). As this implies, discourse is not a purely linguistic phenomena, but must be seen as expanding to incorporate all meaningful social relations and practices – material and otherwise (Laclau & Mouffe, 1985).

'It's my fault … isn't it?'

For many, their taking on of blame was not an easy issue to understand, and one they had spent considerable time deliberating over. The key question for them was why and how they had come to find themselves in such a position – especially given that most considered themselves intelligent and sensible women. There was a clear 'knowing' by these women that anyone with a degree of intelligence simply would not find themselves in such a situation and, if they somehow did, would (and should) remove themselves very quickly. They also communicated clearly the sense of dismay and shame attached to themselves upon realisation of their 'complicity' in the abuse.

All of the above are easily recognised as central components of dominant discourses of abuse (Dunn, 2005) – and were understood as such by these women. They 'knew' they were not to blame. They 'knew' they had not caused it. They 'knew' such relationships are often very difficult to end or escape from. Knowing any of this, however, did little to make their situation any easier to understand. Indeed, since leaving the relationship, many had decided to put questions of why and how on hold. Most were simply glad it was no longer a part of their lives and thought that since the understandings provided by the discourses available to them didn't quite 'fit', then perhaps their particular experience (or response) was somehow different to the 'norm'. For some women, however, this inability to make sense of their experience was problematic – leaving an unpleasant and unhelpful emotional residue (often of shame and/or guilt) around their part in the relationship. In short, they simply could not comprehend how they had 'allowed' themselves to be abused.

Goffman and the social construction of the self

For the women reading the initial version of this paper, their experience became more easily comprehensible when placed within the framework advanced by Goffman in *Asylums* (1968a). The primary value of this particular work was that its adaptation not only provided a dramatically illustrative account of the experience itself (in that the women could 'see' themselves within it), but also of the process that had managed to reduce strong, 'on-to-it' women to the position of victim. Such a reading depends upon acceptance of a central, although not always explicitly stated, platform of Goffman's work: an implicit understanding of the self as socially constructed (Burr, 1995; Weedon, 1997). Thus construction of self is an active process whereby human actors take up and perform identities constructed from the range of possibilities made available via the multiplicity of discourses within which we live. Such identities are flexible, amenable to alteration by actors – but within boundaries, these are also socially constructed and therefore culturally and historically specific and contingent. Of course, individuals *do* possess agency, both in terms of what identities they choose and how they choose to perform them, but these choices are not unlimited. Actors are inevitably constrained to a greater or lesser extent by the circumstances of individual lives. Also important to this understanding of personal identity is the belief that the self is a fluid, rather than a fixed entity – that it is in a constant state of flux and change (Weedon, 1997).

Such an understanding of the self as a 'work in progress' opens consideration of the idea that individuals can become disheartened and eventually disinterested in, and apathetic towards, trying to maintain a sense of an autonomous self. If the self is an ongoing process, constructed within the confines of our daily lives, control of this everyday experience by another individual will inevitably become part of that self – ownership of the project may well seem to be vested in another. As noted above, while individuals *do* exercise personal agency, this is *not* unlimited and is constrained by the circumstances of individual lives. If this constraint consists of control by one's partner – an element generally seen as characteristic of abusive relationships, the self then becomes a project over which one seemingly has little influence. Goffman characterises this process as a form of moral loosening or fatigue, engendered by the individual learning "that the

self is not a fortress, but rather a small open city", and thus less easily defensible (1968:152).

Mortification of the Self

Once the individual comes to learn, via various processes Goffman terms 'mortification of the self', "[w]hat it is to be defined by society as not having a viable self, this threatening definition – the threat that helps attach people to the self society accords them – is weakened" (1968:151–2). A process described clearly by Sandy;

> I lost total respect for myself … and I think that that was the thing that got me in the end, was my self esteem. I compromised my beliefs all the time to suit his, and in the end, you hate yourself for it. Because I mean, you are nobody. You live in limbo. You lose all of your sense of caring and it's, you're only half a person. And I think that's the thing that got me in the end.

From the words above it is clear that this process can be linked to the experiences of abuse victims. Goffman's model, whereby individuals are systematically separated from or stripped of the elements necessary to maintenance of a robust sense of self, is premised on physical confinement.[3] However, there appear few reasons preventing extension of his analysis to encompass psychological and or emotional barriers. This is even less the case if one considers emotion as a key underpinning of human life – the motivating force for all human activity (Gergen, 1994). Indeed, from such a perspective, psychological and emotional barriers cannot be seen as anything other than equally as powerful in their effects. That they are often experienced as such is demonstrated by the way many victims of abusive relationships liken their experience to having been imprisoned, detailing often highly punitive, yet often intangible, restraints upon their lives (Anderson *et al.,* 2003; Jones, 2000). In many cases these depended on no more than the communication that some action/behaviour/thought was forbidden – underpinned by fear of implied (or actual) punishment of transgressions.

Role dispossession

According to Goffman, the process of mortifying the self, consisting of seven clearly identifiable steps, begins with role dispossession. Individuals are, by virtue of their admission to the institution, denied

the freedom to organise the various roles played throughout the course of their normal lives – restricted to the role of 'inmate' and barred from participation in the wider social world. Common to most abusive relationships are gradual attempts on the part of the abuser to isolate his partner from the world (and potential support structures) outside the relationship (Arriaga & Oskamp, 1999; Bart & Moran, 1993; Bograd, 1988). Lynette's partner, for instance, exercised total control over her contact with the wider world. Living in a rural area with no telephone service – and before the advent of cellular phones, even the postal service was under close surveillance.

> I was never allowed a letterbox. I was not allowed a letterbox. It, he didn't want any junk mail and yet where we lived, it was a very isolated place, and it was, nobody came with junk mail anyway. There was a post box [in town] so of course he got all the correspondence.

However, while some isolating tactics may entail actual physical separation, such as living in remote areas, and/or restricting access to vehicles, the chosen strategy is often psychological and/or emotional manipulation (Arias, 1999; Chang, 1996; O'Leary & Maiuro, 2001). The role of wife/partner is presented as of paramount importance – all other roles are at best secondary and therefore dispensable if this is required or demanded by the abuser. As Heather recounts,

> He hated my Mum and Dad because of the times they stuck up for me. He used to say – Heather, you should choose me over your parents. I don't want you seeing your parents ever again.

Heather's words present a copybook account of this aspect of abusive relationships, in which victims are told that their primary loyalty must (and should) reside in the relationship. Outside ties with family and friends are seen as threatening and demonstrating a lack of love and commitment. Pauline saw this as an entirely deliberate strategy by her partner. As she explains,

> You see, that was part of the process, I think, for him … was to break me away from the family, and all friends. I had no contact other than him and the kids … because I was cleaning at night and it was … I just never, never had contact with other people basically. And that was on purpose. He did that purposefully.

For some of those participants involved in employment outside the home during the relationship, their partner's isolation and control

strategies took a different shape. These aimed to either reduce or eliminate participants' workforce participation and were often played out via explicitly displayed and intense pressure to bear children and take up the role of full-time, at-home mother. Liz, for instance, describes the conflict her involvement in part-time work generated.

> I started working part-time when [son] was six months old, doing a bit of nurse aiding and that caused a lot of fights because [husband] wanted me to have my next child when [son] was six months old. So it caused a lot of fights because he really did like, I guess the old cliché about barefoot and pregnant. He liked me at home. He liked it when he had control which meant me at home, him at work. Didn't have the money – didn't have the choices – kept me away from people … and that suited him nicely.

Others spoke of partners hiding or throwing away contraceptives, or simply forbidding their use, as Angie describes in her account of her partner's behaviour following the loss of her job.

> I was made redundant and he wouldn't let me go back to work. He decided that, no, you can stay home and we can try for children. So what I was doing was sneaking off to the doctor and having the depo [IV contraceptive] until he started coming into the doctors with me. He'd come into the doctors and sit there while they spoke to me.

The information game

While the initial separation from family, friends and workmates generally comes at the instigation of the abusive partner, over time the victim may become more active in supporting isolating practices as part of what Goffman terms the 'information game' (Goffman, 1968b) – a process whereby stigmatised individuals attempt to control/deny access to potentially discrediting information. In the event of stigma becoming realised – resulting in the individual becoming discredited (for instance if an abusive or violent event occurred in front of others), then the information game becomes one of limiting damage or even attempting to reframe the event in less discreditable terms. This is a point illustrated clearly by Anita's comments below in which she details a strenuous and lengthy effort to explain away visible signs of abuse.

> I nearly got busted when the Christmas between my second and third year at Teachers' College, [large industrial plant], had a huge shut down. And they were looking for tradesmen, assistants or tea-ladies, whatever

> ... and it was over that period that I had three black eyes in three weeks. And the first black eye, everyone said 'Oh, what happened to you Anita?', and I said 'oh, at my Mum's – because when you walk up her balcony and up to the back door step the window comes out. And she pushed it out to see who was coming', and I explained it away. … And that hadn't quite healed up and I had another black eye, but on the other side. And a friend who knew [partner] and his family, when I went to deliver some morning tea, said 'he hit you, eh?' and I said, 'No, he didn't!' And I tried to explain it, and he said, 'don't lie to me Anita, he hit you eh?' and I said 'It's none of your business, and no he didn't'.

Identity trimming

Next in Goffman's mortification process comes 'identity trimming' and 'programming' as the inmate undergoes a series of indoctrination procedures – aimed at distancing them from their previous life and instructing them in the rules of the institution. This process is relatively brief and speedily done within the physical confines discussed by Goffman. In an abusive relationship, however, it may be an ongoing long-term project on the part of the abuser, most notably in terms of learning the rules – what is and is not permissible or expected within the confines of the relationship. This component of the process was most often demonstrated by participants in ways closely aligned with traditional gender roles – especially around issues like housework. Theresa remembers this point clearly:

> I wasn't allowed a toy on the floor when [partner] came inside for tea – nothing was allowed out of place. You know what I mean, and if I hadn't done the washing I'd hide it somewhere in the spare room till he'd gone to work the next morning and then I'd finish it.

Or, as Anita recalls,

> I had to make sure I was home, before he got home. Because, if I didn't, that would guarantee a hiding and I had to have the washing and everything done, and a meal almost on the table. Now if he came home and the washing machine was going, or the dryer, or even the hair dryer … or because I was prettying myself up, or drying my hair, that would be disturbing for him. And I discussed it with his mother and she, you know her advice to me? 'Well, he listens to a chainsaw all day, so the last thing he wants to hear when he gets home is another machine, so Anita, get your shit squared away, and don't have a machine going when he's

> home'. Her other solution was 'Have a baby, so that you are at home all the time anyway, and you can do all the jobs'.

Combined with the role dispossession discussed above, it is not difficult to see the way in which a victim's attachment to previous identities and roles can rapidly assume a tenuous (and even indefensible) quality.

Identity dispossession

The third discussed element concerns the dispossession of name, property, and 'identity kit'. Via this process individuals are deprived of various items necessary to the performance of their previous identity – in short, the 'props' used to sustain their presentation of self, for instance, clothing and cosmetics, the equipment to maintain these, along with access to services such as hairdressers and clothing stores. This, according to Goffman, is important to the mortifying process as these items may have a special significance to the individual, thus exacerbating the impact of their removal. As he notes, '[t]he individual ordinarily expects to exert some control over the guise in which he (sic) appears before others … to be stripped of his (sic) usual appearance and of the equipment and services by which he (sic) maintains it [means] suffering a personal defacement' (1968:28–9). This is an issue repeatedly surfacing in participant accounts, with women recounting instances either of destruction of such items or intense control by the abuser over what should be worn, along with when, how and for whom. As Laura recounts,

> It was the subtle abuse … being made to wear, like absolutely plainness so that nobody could ever find you attractive. Not allowing you to wear makeup. Um, not allowing you to have your hair in a nice attractive style … I had long hair, right down to here 'cause I was never allowed to cut it. Only had it trimmed, was never allowed to cut it.

Miriam adds to this in noting what happened when she made attempts to assert control over her appearance.

> I'd have a shower and I might put some lipstick on and kind of feel a bit happy, you know. He didn't like that. It, cause straight away, it would be, 'what've you got that shit on your face for? Where've you been? Who'd you meet?'

In essence, these women's stories describe attempts on the part of their abusers to 'make over' and control aspects of the self they

present to the outside world. Women in the current study spoke also of having these types of items destroyed or their use forbidden altogether. As Heather notes;

> When I was with [partner], he took all of my wages, and if I did buy myself a dress or something, he told me I looked like a slut in it. And he wouldn't let me buy makeup.

Control tactics such as these can operate to further inhibit women's interaction with others, particularly those still committed to an information game strategy of disguising the abusive nature of their relationship.

Degradation and forced deference

The next item in Goffman's framework is one hugely relevant to the description of domestic violence – the imposition upon the inmate of degrading postures and deference patterns. As he notes, 'certain movements, postures and stances will convey lowly images of the individual … any regulation, command, or task that forces the individual to adopt these movements or postures may mortify his (sic) self' (1968:30). Included within this aspect of the mortifying process is the likelihood that the inmate may be required to provide humiliating verbal responses – a 'forced deference pattern'. This may consist of being placed in the position of having to beg or make humble requests for simple 'favours' – such as permission to make telephone calls – or even use the toilet. As Nancy recalls:

> When I was in [small provincial city], I would ask if I could go to the toilet. I would ask 'is it all right to put the heater on?' I would ask for anything that I needed to do. I had to ask.

Instances of behaviours such as the above characterise virtually all discussions of domestic abuse and the accounts provided by participants in this project were no exception (Sleutel, 1998; Taylor, Magnussen, & Amundson, 2001; Towns, 2000). For many, humiliation was a routine everyday aspect of their lives – precisely how this was manifested seemed limited only by the abuser's imagination. This is illustrated with stark clarity in these comments from Miriam:

> He had a thing about … total control. He, he used to prevent me from going to the toilet. One time he actually did it over twenty-four hours. I mean, in hindsight I just know how dangerous that could have been for

> me, physically and he would do things, like I'd get, I'd wake up in the morning and he wouldn't let me go to the toilet.

Contaminative exposure

Next in Goffman's list is another easily identified element of most abusive relationships – contaminative exposure, whereby the 'boundary that the individual places between his [sic] being and the environment is invaded and the embodiment of self profaned' (1968:32). While Goffman outlines several ways this may occur, for the purposes of this discussion, the most important is that which is accomplished via direct physical contamination at the hands of another person. Clearly identified by many participants as an intensely humiliating and shame-filled part of their relationships were repeated instances of unwanted sexual contact – either coerced or as a result of direct physical force. As Lorraine describes:

> I don't know if you'd call it marital rape or what, but he did have his own way sometimes when I was trying to get away from him. He just took what he thought was rightfully his, and just left me absolutely stunned that he'd even consider that. So, that was a real nasty part and, but that was just something I couldn't cope with. It was just absolutely disgusting and turned my stomach. I couldn't believe that he'd want to put me through something extra like that.

Or as Sandy explains,

> He was always at his worst when we'd been away somewhere, and had had a good time and then had come home. It was like he had to stamp his mark again. It [sex] was a real power thing … and incidentally, after he knocked me around he always had to have sex. That was the big thing. It was like he had to reclaim his stake so to speak.

Although forced sexual contact was the most frequent (and extreme) example of contaminative exposure within participants' stories, it was by no means the only instance. Anita, for instance, recalls an incident with her partner that impacted heavily on her physical well-being and self-care strategies for the remainder of the relationship.

> I remember one time being in the shower and, I'm 5'11 and I was probably about a size 12 … I was never much more than a 12. I had a little tummy. I had just eaten quite a lot and I was in the shower. I always showered before he got home and I'd kick myself if I didn't get out of the shower on

> time. Anyway, he caught me in the shower. He ripped the shower curtain back and he went 'ooh look at your tummy, is my baby in there?' And I felt like vomiting … he was touching my tummy, and going 'Is my bubba inside there?' And when he left … when I managed to get him out of the bathroom, I felt like ripping my body apart, literally. I honestly did … I just looked at my tummy and thought – you bastard of a tummy! And then I went into diet mode. I just didn't eat … I've got photos. I was a stick. I went down to a size 10. There was no way I was eating ever again. I wasn't ever to be accused of having his bubby again.

Looping

The penultimate step in Goffman's mortifying process consists of the disruption of the usual relation of the individual actor and their acts. This occurs through a form of 'looping', whereby an individual's defensive responses may be collapsed back into the initial situation and become the target for subsequent attacks. In the course of normal civil life, Goffman suggests, individuals enjoy a degree of latitude in the way they may respond to actions that cause offense – various 'face-saving' strategies such as sullenness, anger, or the lack of usual deference signs. Within a total institution however, such behaviours can become grounds for further punishment. Thus the inmate is denied an important self-protection element in that 'he [sic] cannot defend himself in the usual way by establishing distance between the mortifying situation and himself (sic)' (1968:41). This was a common feature of participants' stories. Many women detailed instances when attempts to protect themselves – either by trying to reason with the abuser or by non-responsive strategies such as 'being quiet' or 'keeping their head down' – or trying to do exactly what was demanded, were construed as demonstrating a lack of respect or the appropriate level of deference and resulted in renewed or intensified abuse. Penny offers clear illustration of this in her description of the way her attempts to preserve the peace often resulted in precisely the opposite:

> He used to have mates round for a beer and most of, I mean, I just didn't like most of them very much and he'd do things like make me run round getting drinks and stuff. And he was sometimes pretty happy then so it was okay to do that stuff to keep the peace but then he'd get pissed and it'd go all pear-shaped. Like he'd yell at me or whack me 'cause he reckoned I'd been disrespectful of him or his mates but sometimes if I talked to them

> I'd get a whack too 'cause he'd say I was trying to get off with them. It got so I was too scared to say or do anything. If I talked I was cheeky or flirting. If I didn't talk I was disrespectful and stuck up.

Tania echoes this unpredictability in her account of repeated attempts to 'get it right':

> It was really weird too 'cause I never knew really what I was supposed to be doing. Like, I always got it wrong. I remember one time, no, lots of times it was, like, he'd come home from work and I'd have tea ready and we'd have tea and I'd go to start the dishes and he'd say 'no, come and watch TV with me. We never sit and watch TV anymore'. So I'd think okay, 'this is what he wants' so I'd do it and everything would be nice. But then in the morning I'd get shit for being a filthy slut for not cleaning up. But then other times if I didn't get up and start clearing up straight away I'd get something thrown at me. It was like he couldn't decide what he wanted. Didn't matter if I did what he said or not.

Self-determination

Finally, and also clearly congruent with accounts of abusive relationships, are the restrictions upon individual autonomy, self-determination and freedom of action that characterise total institutions. Goffman suggests that by the time individuals in normal civil society reach adulthood they have come to expect and take for granted relatively high levels of personal freedom and autonomy of action, along with the right to self-determination. These rights are stripped from the individual upon entry to the total institution, to be replaced by extensive and pervasive surveillance and control of the individual's activities – a process made even more humiliating for some women because of their 'collusion' in the abuse. As Sandy describes,

> I tried very desperately to be the best wife I could, to him. I tried to do the thing that he wanted and I turned inside out to do them. And of course the more I did it the more he wanted. It was never-ending. We were never going to win on that. I don't think of myself as a victim, just as a martyr. I tried to manipulate myself. I tried to change my personality and it didn't work. You can't do that with your own personality.

This was a process readily identifiable within participants' accounts, often in an extreme fashion, with some women literally not allowed out of their abuser's sight.

Shifting goalposts

One important difference from Goffman's model did emerge from some participant's stories however. Whereas within Goffman's total institutions the aim is the control of inmates in line with a generally clear set of institutional guidelines, within the relationships described by participants the process was fluctuating and unsteady – with constantly shifting goal-posts. While women were thus aware that they were under a virtually constant form of surveillance and control, this was accompanied by a feeling of confusion – of not knowing the rules, because these tended to change frequently and arbitrarily. Julie tried for many years to 'get it right' with her husband before reaching a realisation that this simply wasn't going to happen. As she explains,

> I thought this isn't right, but I sort of just hung in there, and I think being my first relationship – you want it to work. You know, and I really tried my best. I tried all kinds of ways to please him, but there was nothing I could do to make him happy. I mean, where was the problem? I actually blamed myself. But I mean, the house was clean and the food was cooked, everything was done, so, washing was done. There was nothing he could have complained about – but there was always something wrong.

Many women also noted a sense of shame at the extent of their own complicity in maintaining their abuser's surveillance over and control of their activities – feeling foolish that they had so easily believed in their abuser's (claimed) ability to track their movements and activities. Paula, for instance, reported that she took extreme care to follow her abuser's instructions to the letter when he was working out of town, even though logically she knew he could not possibly be aware of what she was doing.

Conclusion

So, given the discussion above, Goffman's notion of the total institution appears a good fit as an explanatory framework for participants' accounts of abuse. Perhaps, more importantly, it provides some insight into the way separation from a sense of self, or even apathy towards the utility of maintaining self, can occur under specific conditions. From this position it is not difficult to see how this could easily render as highly problematic any proactive response to the abuse.

While there are, of course, differences between the barriers described by Goffman and those detailed above – the similarities

of *effect* are strikingly apparent. In some cases it seems that the psychological and emotional constraints of an abusive relationship may be even more devastating than actual physical incarceration. In the case of an abusive intimate relationship, the person responsible for the humiliation and punishment is a person with whom the victim has been, or still is, often strongly emotionally involved – as opposed to institutionally based strangers (Towns, 2000). Second, few of the punishment limits controlling and regulating the behaviour of institutional staff members exist in abusive relationships. Abuse can, and often does, continue unabated for extensive periods of time – unless or until serious injuries come to the attention of authorities. Even this is sometimes no guarantee of safety, with information game strategies often coming into play to conceal the source of the injury (Peckover, 2002; Rodriguez, Quiroga, & Bauer, 1996; Stark & Flitcraft, 1996). Third, domestic abuse, by definition, generally occurs in the victim's home – a space expected by most people to provide a safe environment becomes a dangerous and unpredictable place for abuse victims.

Finally, except in extreme cases, institutional incarceration is normally a finite episode in an individual's life – and the inmate can reasonably expect to exit the institution with at least minimal knowledge of how to avoid further episodes. Such encouraging expectations and/or protective guidelines were absent from the accounts of many participants. Not only did they report feeling that there was no way out of the abuse (fortunately an unfounded pessimism for these women), but the way many found themselves suddenly, and/or unexpectedly, involved in an abusive relationship has severely damaged belief in their own sense of judgment. They now doubted their ability to detect early warning signs and, for some, the only safe strategy has been to avoid intimate relationships altogether.

It appears then that a lack of solid institutional walls detracts little from the suggestion that abusive relationships can indeed be equated with the total institution model advanced by Goffman. Quite to the contrary it would seem from the discussion above. Far from weakening the institution, replacing more tangible boundaries with their psychological and emotional counterparts may ultimately be more effective, and the impact on inmates/victims lives perhaps even more subtle and durable. When these psychological barriers consist

of a sense of shame and associated emotion states – engendered, communicated and performed within an environment of socially generated and supported stigma around abuse – the power of the abusive relationship – as a total institution – is unmistakable.

Ang Jury *teaches in the Women's Studies and Sociology programmes at Massey University and is completing doctoral study in the School of Sociology, Social Policy and Social Work. Her research focuses on the role of emotion – specifically shame – within abusive intimate relationships.*

References

Anderson, M., Gillig, P., Sitaker, M., McCloskey, K., Malloy, K., & Grigsby, N. (2003). 'Why doesn't she just leave?': A descriptive study of victim reported impediments to her safety. *Journal of Family Violence, 18*(3), 151–5.

Arias, I. (1999). Women's responses to physical and psychological abuse. In X.B. Arriaga & S. Oskamp (eds), *Violence in intimate relationships* (pp. 139–62). Thousand Oaks & London: Sage Publications.

Arriaga, X.B., & Oskamp, S. (eds). (1999). *Violence in intimate relationships*. Thousand Oaks & London: Sage.

Avni, N. (1991). Battered women: The home as a total institution. *Violence and Victims, 6*(2), 137–49.

Bart, P.B., & Moran, E.G. (eds). (1993). *Violence against women: The bloody footprint*. Newbury Park & London: Sage.

Barwick, H., Gray, A., & Macky, R. (2000). *A summary of Domestic Violence Act 1995: Process evaluation*. Wellington: Ministry of Justice.

Baxter, J. (2003). *Positioning gender in discourse: A feminist methodology*. Basingstoke & New York: Palgrave Macmillan.

Bograd, M. (1988). Feminist perspectives on wife abuse: An introduction. In K. Yllo & M. Bograd (eds), *Feminist perspectives on wife abuse* (pp. 11–26). Newbury Park: Sage.

Burr, V. (1995). *An introduction to social constructionism*. London & New York: Routledge.

Chang, V.N. (1996). *I just lost myself: Psychological abuse of women in marriage*. Westport, Connecticut & London: Praeger.

Dobash, R.E., & Dobash, R.P. (1980). *Violence against wives: A case against the patriarchy*. New York: Free Press.

Dunn, J.L. (2005). 'Victims' and 'Survivors': Emerging vocabularies of motive for 'battered women who stay'. *Sociological Inquiry, 75*(1), 1–30.

Erez, E., & Laster, K. (eds). (2000). *Domestic violence: Global responses*. Oxfordshire: A B Academic Publishers.

Gergen, K.J. (1994). *Realities and relationships: Soundings in social construction*. Cambridge, Massachusetts & London: Harvard University Press.

Goffman, E. (1968a). *Asylums: Essays on the social situation of mental patients and other inmates*. Harmondsworth: Penguin Books.

Goffman, E. (1968b). *Stigma: Notes on the management of spoiled identity*. London: Penguin Books.

Jones, A. (2000). *Next time she'll be dead: Battering and how to stop it*. Boston: Beacon Press.

Laclau, E., & Mouffe, C. (1985). *Hegemony and Socialist Strategy*. London: Verso.

Lamb, S. (1996). *The trouble with blame: Victims, perpetrators, and responsibility*. Cambridge, Massachusetts & London: Harvard University Press.

Morris, A., Reilly, J., Berry, S., & Ransom, R. (2003). *New Zealand national survey of crime victims, 2001*. Wellington: Ministry of Justice: Te Manatu Ture.

Murphy, C. (2002). *Women coping with psychological abuse: Surviving in the secret world of male partner power and control.* Unpublished MA thesis, University of Waikato, Waikato, New Zealand.

Oakley, A. (2000). *Experiments in knowing: Gender and method in the social sciences*. Cambridge: Polity Press in association with Blackwell Publishers.

O'Leary, D.K., & Maiuro, R.D. (eds). (2001). *Psychological abuse in violent domestic relations*. New York: Springer Publishing Company.

Peckover, S. (2002). Domestic abuse and women's health: The challenge for primary care. *Primary Health Care Research, 3*, 151–8.

Rodriguez, M.A., Quiroga, S.S., & Bauer, H.M. (1996). Breaking the silence: Battered women's perspectives on medical care. *Archives of Family Medicine, 5*(March), 153–8.

Sleutel, M.R. (1998). Women's experience of abuse: A review of qualitative research. *Issues in Mental Health Nursing, 19*(6), 525–39.

Stark, E., & Flitcraft, A. (1996). *Women at risk: Domestic violence and women's health*. Thousand Oaks: Sage.

Taylor, W.K., Magnussen, L., & Amundson, M.J. (2001). The lived experience of battered women. *Violence Against Women, 7*(5), 563–85.

Towns, A. (2000). 'If I really loved him enough, he would be okay': Women's accounts of male partner violence. *Violence Against Women, 6*(6), 558–86.

Walker, L.E. (1984). *The battered woman syndrome*. New York: Springer Publishing Company.

Weedon, C. (1997). *Feminist practice & poststructuralist theory* (2nd edn). Oxford & Cambridge, Massachusetts: Blackwell Publishers.

Yllo, K. (2005). Through a feminist lens: Gender, diversity, and violence: extending the feminist framework. In D.R. Loeske, R.J. Gelles & M. Cavanagh, (eds), *Current controversies on family violence* (pp. 19–34). Thousand Oaks: Sage.

Notes

[1] The literature surrounding harm suffered by women within their intimate relationships demonstrates great diversity in relation to conceptual terminology, for example, abuse versus violence, domestic versus intimate relationship. This reflects debates within the field around questions of how best to describe and talk about this phenomenon; questions that remain open today. This conceptual diversity is mirrored within popular discourse, with no one descriptive term or set of terms clearly dominant. It is hardly surprising therefore that the stories of participants in this research failed to exhibit a shared descriptive language. Because of these two points (and because I believe each holds both advantages and disadvantages), I have chosen to use the terms 'intimate partner abuse', 'intimate partner violence' and 'domestic abuse' interchangeably. I hope through this strategy to avoid privileging one woman's voice over another.

[2] The larger project explores shame in relation to abusive intimate relationships and is interested in tracing connections between discourse, discursive practices, human interaction and emotional experience – in the context of these abusive relationships.

[3] See 'Battered women: The home as a total institution' by (Avni, 1991) for an example of the application of Goffman's model to violent relationships – a discussion based upon research with women who had been physically confined by their partners.

Victimisation among those involved in underage commercial sexual activity

MIRIAM SAPHIRA AND AVERIL HERBERT

With the passing of the Prostitution Reform Bill (2004) into law, New Zealand has been able to amend the Crimes Act 1961 to fully ratify the 'Worst Forms of Child Labour Convention' adopted by the International Labour Organisation (ILO) in June 1999. The 'worst forms' of child labour addressed by the Convention include: all forms of slavery, prostitution, pornography, the use of children for illicit activities, and work likely to harm the health, safety or morals of children.[1] The Minister of Labour, the Honourable Margaret Wilson, said in a press release on May, 2000:

> The Convention aims to raise the standards of protection for children against very grave forms of exploitation, and has a strong human rights dimension. New Zealand participated actively in the negotiations on the Convention and we have a consistent record of being a supporter of children's rights (Holm, 2000).[2]

'Child sexual abuse' is defined as contacts or interactions between a child and an older or more knowledgeable child or adult (stranger, sibling or person in a position of authority, such as a parent or caretaker) when the child is being used as an object for the older person's sexual needs. These contacts or interactions are carried out against the child using force, trickery, bribes, threats or pressure.[3] Monetary payment or equivalent in a sexual abuse situation may be a risk factor in child prostitution.

Child sexual exploitation or child prostitution has been defined as 'the use of a child for sexual purposes in exchange for cash or in-kind favours between customer, intermediary or agent or others who profit from the trade in children for these purposes [parent, family member, procurer, teacher etc].'[4]

The term 'sex work' is the preferred term of Australian sex workers' organisations, but it is considered less appropriate for young people.[5] Sex work implies a degree of formality and identification where the sex worker plans their sex work, knows the monetary value of their service, has some power to negotiate the type of service and

is represented by organisations. The experience of young people in sexual activities, which usually occurs on the fringe of the sex industry, is a different one.[6]

There are numerous hazards involved in undertaking commercial sexual activities. These include rape, assault, demands to have money refunded after sex, robbery, abduction, refusal to drive the worker back to the street, and refusal to wear condoms. These risks were reported in a previous New Zealand study where the streets were seen as more dangerous to work on than in massage parlours.[7] Many children begin their involvement with commercial sex on the streets. Plumridge found that young people, while alert to the risks on the streets, discounted these dangers as they did not accord with their self-image as streetwise and in control.[8]

One New Zealand study of 303 sex workers in Wellington and Christchurch found that 83 per cent reported experiencing at least one violent incident while working.[9] Higher rates of childhood penetrative sexual abuse have been found among women and transgenders involved in commercial sexual activity than women who have other occuptations.[10,11] It has been suggested that performing sex for money may by its very nature cause psychological distress such as post-traumatic stress disorder (PTSD).[12,13,14] Sex workers employ dissociation and other ways of cutting off, such as the use of tranquillisers, to protect their sense of self from violation. This suggests that the work undertaken may be abusive to psychological wellbeing.[15] Dworkin suggests that violence is experienced not only as a punishment and control mechanism but also serves to consolidate the women's feelings of worthlessness and invisibility.[16]

Once involved with the sex trade, young people will use coping strategies, developed as children, to contend with the trauma of these hazards. Women involved in prostitution talk about psychological and physiological methods that they use to protect their self-concept.[17] Most avoid kissing, they learn to dissociate and they concentrate on making tricks as short as possible. There has been no evidence to suggest that this is different for a younger age group.

Young people involved in underage commercial sexual activity are very likely to have a family background of disruption, psycho-social problems, physical abuse by family members (51 per cent) and sexual abuse (38 per cent).[18] This abuse was more likely to include penetrative sex than the abuse found in a random sample of women.

The Dunedin and Wellington sex workers (no ethnicity given) in the Potter, Martin and Romans study 'were more likely to have been exposed to a high level of personal abuse stress as young girls'.[19] This often led to them leaving school early with lower qualifications, having early pregnancies and reduced work opportunities. In addition to leaving home before completing school, they left what should have been a nurturing environment, and the oversight of a mature adult.

Young people involved in underage commercial sexual activity have in the main already been influenced by older people associated with the sex trade.[20,21] Their youthfulness and disruptive backgrounds, combined with a lack of social maturity and experience, leave them vulnerable in violent situations.

Aim

This study looks at childhood sexual abuse and violence in the lives of people who began their involvement in the sex trade before the age of eighteen years.

Method

Questionnaires were distributed and/or interviews were held in the Auckland, Northland and Waikato regions. Forty-seven forms were completed. The questionnaire was developed in consultation with medical and psychological researchers and Maori community workers in South Auckland. Completed questionnaires were returned from brothels, private workers, New Zealand Prostitutes Collective drop-in centres, former workers from a snowballed sample and from street workers. Ethical approval was obtained from the Health Funding Authority Ethics Committees for the Auckland and Waikato Regions. Reporting sexual assault or childhood sexual abuse in a written questionnaire or in a one-off interview can make the person feel vulnerable and under reporting is expected in these circumstances.[22, 23]

The average age of the forty-seven respondents was twenty-four years and ranged from fifteen to forty-seven years. There were thirty-seven females, three males and seven transgender. At the time they started having sex for money, 81 per cent of respondents were living away from one or both of their parents. There were twenty Pakeha (43 per cent), nineteen Maori (40 per cent), five Pacific Peoples (11 per cent) and three people who came to New Zealand as childhood immigrants (6 per cent).

Results

The lead-in question in the interviews was about verbal abuse. Of the twenty-five respondents who were interviewed, nineteen reported being verbally abused and seven reported being hit by the client.

Table I: Number of Participants Reporting Verbal Abuse and Physical Assault

	Verbal Abuse	Physical Assault
Yes	19	7
No	6	1
Total	25	8

All the respondents (N =47) were asked if there was an occasion, after they had begun having sex for money, when they were forced to have sex when they did not want to. This had occurred for 77 per cent of the respondents. For thirteen of the thirty-six (36 per cent) this had happened on more than one occasion.

Respondents who used their own home for commercial sexual activity were subjected to a high rate of assault (see Table II). Some assaults left the person unconscious. One had been badly knifed in an attack and spent some time in hospital recovering. Another described being forcibly auctioned in a brothel. In addition to sexual assault, several respondents talked about being picked up in a car and being dropped off after sex at a place different from where they were picked up.

Table II: Place where Sexual Assault Occurred

Place where Participants Reported Sexual Assault	Total
Own Home	11
Brothel	6
In a car	4
On the street	3
Thrown out of speeding car	2
In a taxi	2
Total	28

Few escaped sexual assault. Ten respondents became injured during sex for money and found their client refused to stop and injured them further. A further eight respondents found that their client became

violent and refused to pay. A further two respondents were assaulted by the police, one was gang raped and another reported being drugged and raped. Due to the small numbers of respondents in each category no clear trend emerged as to whether those who were involved in commercial sexual activity at an earlier age were more prone to disclose sexual assault than those that began later. Although it has been noted that indigenous children are more vulnerable to commercial sexual exploitation,[24] there was no difference in the ethnicity or gender of those who were sexually assaulted. There were differences with regard to those who had been subjected to childhood sexual abuse, who were more likely to experience further assaults.

Table III: Age of First Sex for Money and Reported Incidence of Sexual Assault

Age Of First Sex For Money	Reported Incidence of Sexual Assault	No forced sex	Total	% incidence of assault by age group
12 years old and under	4		4	100
13 & 14 years old	10	3	13	77
15 years old	6	4	10	60
16 & 17 years old	16	4	20	80
Total	36	11	47	

In 21 per cent of instances a condom was used when the sexual assault occurred. There was an expectation that those who had been assaulted without protection may have sought and received more medical assistance but this was not supported by these respondents. Most of the respondents carried on without help. Those who received support at this time were those who required medical treatment for their injuries.

Exploring the incidence of childhood sexual abuse, 59 per cent of respondents in the current study disclosed childhood sexual abuse compared to 38 per cent in the Dunedin study.[25] There were ethnic differences in the rate of disclosure. Seventy-four per cent of Maori disclosed sexual abuse as a child compared to 40 per cent Pakeha and 60 per cent Pacific People. The high numbers may be related to openness to disclose in a one-off interview rather than actual rates in the community. Another explanation may be that young people in

this group did not get access to ACC counselling at an appropriate time. Subjects were not asked whether they had accessed support prior to becoming involved in commercial sexual activity. (Sensitive Claims counselling is only available to the individual person who has been assaulted and not to whanau. Provision for individual assistance may not be taken up so readily when viewed as a more collective or whanau responsibility.)

Two New Zealand studies of prevalence (showing a sexual abuse rate of between 10 per cent and twenty-five per cent) were carried out only on a South Island population which has a different ethnic mix, fewer transient people and less-crowded urban areas.[26,27] More recently, national adolescent research has recorded a rate of unwanted sexual events as between 24 per cent and thirty-one per cent. [28]

The likelihood of secondary victimisation is noted in therapeutic discourse on childhood sexual abuse.[29,30]

Table IV: The Relationship of Current Sexual Assault Associated with Sex For Money and Prior Childhood Sexual Abuse

	Prior Childhood Sexual Abuse	Sexual Assault Associated with Sex for Money	No Sexual Assault Reported
Yes	27	23 (85%)	4
No	20	13 (65%)	7
Total	47	36 (77%)	11

There was some support for the notion that childhood sexual abuse may lead to further victimisation. Subsequent rapes were reported by 85 per cent of the group who had disclosed childhood sexual abuse as compared to 65 per cent of the group who had not disclosed childhood abuse. In this study, only four of those disclosing childhood sexual abuse did not report being sexually assaulted since beginning commercial sexual activity.

Conclusion

In this study, over half disclosed childhood sexual abuse and over three quarters had been subjected to at least one sexual assault. Verbal and physical abuse was also common. No sub-group or ethnicity was less likely to be assaulted. Lacking maturity, social experience and family

guidance, many young people found themselves in difficult and violent situations. Embarking on sexual relationships before developmentally mature thinking had been achieved may have heightened their vulnerability to engaging in commercial sexual activity.

Few of those who had been sexually assaulted since engaging in commercial sexual activity sought or received assistance. Help was generally received only if hospital treatment was necessitated.

With the new laws on prostitution the police have less power to randomly visit brothels. Random police visits to certain street sites may result in identifying child sex workers but to date there have been no prosecutions of the men who sexually use children on the streets, nor have there been strategies set up to deter them. 'The real problem is not that children and young people are involved in prostitution but that adults (the majority of whom are men), are actively seeking out these young people to sexually exploit. These children are not on a level playing field with adults'.[31]

Averil Herbert *is a clinical psychologist with a 30- year career in mental health, welfare and education. She has been actively involved with Maori arts and conservation issues and has contributed to publications in these areas. Professional appointments have reflected her commitment to Maori advancement and bicultural development. She is currently Maori counsellor at Waiariki Institute of Technology in Rotorua with research responsibilities and she continues in an associate role in psychology at Waikato University.*

Miriam Saphira *has qualifications in Clinical and Educational Psychology and has worked with violent and sexual offenders for many years. She has been involved in feminist issues since 1973, campaigning against the sexual abuse of children, working for Broadsheet, writing articles, books and exhibiting art. She wrote the first lesbian book in New Zealand and more recently carried out research into lesbian health. She has written five books, edited two anthologies, as well as writing three poetry books.*

Notes

[1] Ministry of Justice, NZ. (2001). *Protecting our innocence: New Zealand National Plan of Action against the commercial sexual exploitation of children*, Wellington: Ministry of Justice.

[2] C. Holm (2000). New Zealand to ratify child labour convention, Parliament Press release 16 May, [Internet].

[3] United Nations Economic and Social Commission for Asia and the Pacific (UNECAP) (1999). *Sexually abused and sexually exploited child and youth in South Asia: a qualitative assessment of their health needs and available services*. New York: United Nations.

[4] Ibid.

[5] R. Tschirren, K. Hammet, & P. Saunders (1996). *Sex for favours: The on the job youth project the definitive report*. Adelaide: Sex Industry Network.

[6] E. Martyn (1998). *Youth for sale.* ECPAT: Melbourne, Australia.

[7] L. Plumridge & G. Abel (2001). A 'segmented ' sexual industry in New Zealand: sexual and personal safety of female sex workers. *Australian and New Zealand Journal of Public Health*, *25*(1), 78–83.

[8] L. Plumridge (2001). Rhetoric, reality and risk outcomes in sex work. *Health Risk & Society, 3*(2), 199–215.

[9] L. Plumridge & G. Abel, 78–83.

[10] K. Potter, J. Martin & S. Romans (1999). Early developmental experiences of female sex workers: a comparative study. *Australian & New Zealand Journal of Psychiatry*, *33*, 935–40.

[11] H. Worth (2000). Up on K Road on Saturday night: sex, gender and sex work in Auckland. *Venereology*, *13*(1), 15–24.

[12] E. Giobbe (1990). Confronting the liberal lies about prostitution, in D. Leidholdt & J.R. Raymond (eds) *The sexual liberals and the attack on feminism*. New York: Pergamon Press.

[13] C. MacKinnon (1989). *Towards a feminist theory of the state.* Massachusetts: Harvard University Press, 149.

[14] M. Farley (2003). *Prostitution, trafficking, and traumatic stress.* Binghamton (NY): Haworth Maltreatment and Trauma Press.

[15] C. Hoigard & L. Finstad (1992). *Back streets: Prostitution, money and love*. Cambridge: Cambridge Polity Press.

[16] A. Dworkin (1997). *Life and death*. New York: Free Press.

[17] C. Hoigard & L. Finstad (1992). *Back streets: Prostitution, money and love*. Cambridge: Cambridge Polity Press.

[18] K. Potter, J. Martin, & S. Romans, 935–40.

[19] Ibid., 935.

[20] M. Saphira & A. Herbert (2004). *The involvement of young people in underage commercial sexual activities.* Auckland: ECPAT.

[21] W. Pederson & K. Hegna (2002). *Children and adolescents who sell sex: A community study.* Norway: University of Oslo.

[22] D. Femina, C. Yaeger, & D. Lewis (1990). Adolescent records versus recall. *Child Abuse & Neglect*, *14*, 227–31.

[23] J. Anderson, J. Martin, P. Mullens, & S. Romans (1993). Prevalence of childhood sexual abuse experiences in a community sample of women. *Journal of the American Academy of Child and Adolescent Psychiatry*, *32*, 911–19.

[24] Ministry of Foreign Affairs and Trade (2001). An address to United Nations. Wellington: MFAT.
[25] K. Potter, J. Martin, & S. Romans, 935–40.
[26] J. Anderson, J. Martin, P. Mullens, & S. Romans, 911–19.
[27] D. Fergusson, Lynskey, & Horwood. (1996). Childhood sexual abuse and psychiatric disorder in young adulthood: Prevalence of sexual abuse and factors association with sexual abuse. *Journal of The American Academy of Child and Adolescent Psychiatry, 35,* 1355–64.
[28] Adolescent Health Research Group. (2003). *A profile of student health and well-being*. Auckland: University of Auckland.
[29] J. Briere (1992). *Child abuse trauma: Theory and treatment of the lasting effects*. London: Sage.
[30] A. Brannigan & E. Gibbs Van Brunschot (1997). Youthful prostitution and child sexual trauma. *International Journal of Law and Psychiatry*, *20*(3), 337–54.
[31] S. Martin (2001). Protecting environment and children everywhere, *Sri Lanka Peace Newsletter, 39*, June.

Violence against women and the burden of HIV-AIDS in Sub-Saharan Africa

LAURA ANN MCCLOSKEY, ULLA LARSON AND CORINNE WILLIAMS

Patriarchy establishes men's domination over women, restricting women's self-determination in domains as profound as marriage, fertility, work, education, inheritance, and sexuality. Intimate partner violence and coerced, exploitative sex are two especially harmful expressions of underlying patriarchy. Sexual abuse in childhood and early adolescence exposes girls to sexually transmitted infections, results in younger pregnancies, damages their mental health, and even augurs premature aging. Later in life, the hidden and often chronic burden of violence in marriage or intimate relationships endangers women's health in numerous ways, from direct injury to a reduction in their immunity to viruses and other medical conditions. Rape and other forms of intimate partner violence generate severe stress, often for long stretches in a woman's life. It is especially important to chronicle violence against women in societies that are on the brink of health crises. In sub-Saharan Africa, among the most pressing health threats is the pandemic of HIV-AIDS. Although the geographic focus of the present paper is on the African continent, the gender-based dynamics fanning the pandemic in Africa are widespread in other regions of the world. In the Pacific, Papua New Guinea is especially poised for such a health disaster, sharing many of the same risk factors, including gender disparities, which underlie the spread of HIV in Africa (Howe, 2002).

In our paper, we review the research literature on violence against women and girls in various regions of sub-Saharan Africa and the juncture of violence with HIV-AIDS. We then report on findings from a population-based survey performed in an urban centre in northern Tanzania in which we explore indicators of gender inequality, the measurement of different forms of violence against women and, finally, the link between women's victimisation and their HIV status.

According to the World Bank, gender-based violence accounts for about 5 per cent of healthy years of life lost to women in developing countries. The threat of escalating mortality due to AIDS lends weight and urgency to the topic. Gender-based violence potentially

magnifies the risk for HIV in women throughout many regions of the world. Without addressing violence against women, the disease will erupt and flourish for many years to come in Africa and other geographic locations. Additionally, to the degree that gender-based violence fosters depression in women, it may account for more quality of life years lost, since depression contributes substantially to the global burden of disease (Murray, 1996). Sixty per cent of the AIDS cases worldwide are concentrated in sub-Saharan Africa, though the continent holds only 10 per cent of the world's population. Countries in sub-Saharan Africa are the only ones in the developing world where there has been a decline in real income (per capita GDP) over the past twenty years. People are becoming poorer across sub-Saharan Africa, and the spectre of HIV-AIDS has followed closely on the heels of retracting income. At the outset of the pandemic, women were targeted as the primary 'vectors' of the disease through their role as sex workers or through their apparent willingness to have multiple sexual partners (i.e., their 'promiscuity'). Such theories were promoted throughout the research literature in the 1980s, and still hold currency, especially among some academics and journalists in sub-Saharan Africa.

There are emerging facts of the virus, however, which belie women's central role in its propagation. One stunning finding is the gender disparity in infection rates among young Africans. Women under twenty-five are more likely to be infected with the HIV-1 virus than men of the same age by several-fold. The chasm exceeds ten years before men converge on the same rate of infection. For instance, in Tanzania, 7 per cent of women from a population-based sample who were between the ages of twenty and twenty-four, tested positive for HIV-1 as compared to well under 1 per cent of the men in the same age range; and 12 per cent of women aged twenty-five to twenty-nine tested positive in contrast to the 3 per cent of their male counterparts (Kapiga *et al.,* 2004). Over time and across older cohorts, the gender gap closes, but is projected to resurface again in terms of earlier mortality: women necessarily must die before male peers in age if they are infected earlier. Mounting statistics of a gender gap in infection rates among monogamous married women, have inspired alternative narratives to the 'woman as vector.' Clearly another dynamic is at work. That dynamic unwinds at the nexus of gender inequality, violence, and disease. Worldwide, gender inequality, as reflected in income and educational disparities, translates into high rates of sexual

and partner violence (Yodanis, 2004). The thesis of our paper is that it is through such violence that women are uniquely subjected to the threat of HIV-AIDS. Gender inequality establishes the conditions for the spread of sexually transmitted disease, and emerges as a necessary, if not sufficient, precursor to the HIV pandemic. Among the conditions are sexual abuse, especially of minors, the lack of alternatives for women in abusive relationships, and even women's lack of power in condom use for protection (Wingood & Clemente, 1997). There are regions of the world (e.g., the Middle East) where women have little economic or political power, yet the infection rates are low at least in part because of cultural constraints on men's sexual access to girls, and because of the strict proprietary boundaries surrounding girls and women. In sub-Saharan Africa women face the disenfranchisement but none of the protection that patriarchy affords.

Tanzania is a country veering perilously close to the shoreline of African pandemics such as AIDS, tuberculosis, and malaria. It is among the poorest of African nations, with an annual GDP per capita of $270 in 2000, and a life expectancy at birth of about forty-five years. As many as one in ten Tanzanians are seropositive for the HIV virus, with women's rates overcoming men's by 30 per cent (CIA, 2003). During the past decade, the Kilimanjaro region of Tanzania had the fastest growing HIV prevalence rates in east Africa (Setel, 1999), making the country a targeted location for research. Between 1992 and 1997, for example, sentinel surveillance of women visiting antenatal clinics showed the number of pregnant women with HIV-1 increasing by a factor of five; among male blood donors the increase was by a factor of about four (Setel, 1999).

Violence could amplify the risk for women further. It is important to establish what the rates are of sexual assault and intimate partner violence among Tanzanian women. It is also important to identify those features of culture and the political economy that might place women at heightened risk for violence in order to craft policies and interventions which could derail the present course of HIV-AIDS in sub-Saharan Africa.

Prevalence of intimate partner violence in sub-Saharan Africa

Partner violence appears throughout different regions of sub-Saharan Africa. For example, one convenience sample from Sierra Leone revealed that a staggering 66.7 per cent of women recounted lifetime

exposure to partner violence. Other population-based surveys have also yielded some fairly high rates: in the rural Rakai District of Uganda, 20 per cent of women reported partner violence during the preceding year, with 30 per cent reporting lifetime prevalence (Koenig *et al.,* 2003). A South African household survey uncovered 9.5% of women with a 12-month prevalence and 25 per cent with a lifetime prevalence of partner violence (Jewkes *et al.,* 2001). Given such elevated rates, it is surprising that so few researchers have undertaken studies on this topic in sub-Saharan Africa. The threat of escalating mortality due to AIDS lends special weight to the topic, yet gender-based violence as a contributing force has been under the radar until quite recently.

Prevalence of sexual violence in sub-Saharan Africa

Researchers also have documented high rates of sexual assault across regions of sub-Saharan Africa. In South Africa, more than one in five South African women reported forced sex during the preceding twelve months (Jewkes *et al.,* 2001). Adolescent girls are especially vulnerable to sexual exploitation. Worldwide, nearly half of sexual assaults are perpetrated against girls age fifteen or younger (United Nations Report on the Status of Women, 1995) and a similar pattern applies to sub-Saharan Africa. More than one in four adolescent girls and young women in Ghana (Ankhoma, 1996) report sexual abuse experiences. Sexual violence in East Africa appears to be equally commonplace. Twenty-one per cent of sexually experienced females reported that they had ever experienced sexual coercion in a study of Kenyan adolescents ages ten to twenty-four; women experiencing coercion were more likely to have had three or more sexual partners and to have experienced symptoms of reproductive tract infection (Erulkar, 2004). A significant number of women in sub-Saharan Africa are coerced or raped, during their first sexual encounter, often before they are fifteen or sixteen years of age. In a household survey, 14 per cent of sexually active women in the rural Rakai District of Uganda reported 'forced sex at first intercourse' (Koenig *et al.,* 2003; Koenig *et al.,* 2004). In this study, younger age at first intercourse increased the likelihood that it was coerced. Women experiencing forced first intercourse were more likely to have ever been pregnant, to indicate that their most recent pregnancy was unintended, to have had two or more sexual partners, and to have one or more genital tract symptoms

at survey date; they were also less likely to have used a condom at last intercourse. At least one study identified 30 per cent of secondary school girls in Tanzania having a history of sexual abuse (Matasha *et al.,* 1998).

Gender-based violence and HIV

Across continents, child sexual abuse creates the risk for later victimisation and poor adult health outcomes. Such a pattern indicates that coerced first sex, or child sexual abuse, may limit women's choices while launching them onto dangerous trajectories. Child sexual abuse is associated with poor health (Walker *et al.,* 1999) and HIV risk for women from affluent, economically developed regions of the world (Wingood & Clemente, 2001; Zierler *et al.,* 1991). In North America, women sometimes are infected through intravenous drug use, stemming in part from child sexual abuse (Dembo *et al.,* 1992), but sexual transmission is the primary route to infection in Africa.

Intimate partner violence also relates to HIV risk among women especially as assessed in patient populations. In Soweto, South Africa, women attending antenatal clinics showed an elevated odds of HIV if they reported intimate partner violence or relationship control (Dunkle *et al.,* 2004). Additionally, Tanzanian women at a voluntary testing clinic were more likely to report partner abuse if they were HIV-positive, with abused women under the age of thirty about ten times more likely to have the virus than non-abused women in the same age cohort (Maman *et al.,* 2002). In sub-Saharan Africa, child sexual abuse (as measured in queries of 'forced first sex') is reported more often by women who are HIV-positive. Even controlling for several other risk factors, coerced sex at first intercourse remained a strong predictor for HIV positive status among rural Ugandan women (Koenig *et al.,* 2004).

A lifetime perspective on violence against women

Many women married to abusive husbands have a prior history of gender-based violence, and especially child sexual abuse. The chance that any given woman might encounter a violent partner may be equal in the population as a whole, especially when intimate partner violence is so commonplace. However, in many communities the distribution of partner violence is not random because some women have predisposed risk factors which limit the spectrum of men who

might be available to them as partners. In addition, family members might have enforced marriage arrangements unfavourable to the women. Women with a sexual abuse history in sub-Saharan Africa, therefore, are likely to have retracted marriage options. Gender-based violence in their early lives could also set the stage for later abuse in marriage and further hardships, including increased susceptibility to HIV. One aim of our study, thus, is to examine the life span risk profile for HIV, from adolescent forced sexual experiences to adult exposure to intimate partner violence.

The Tanzanian Study

Data Collection Methods

Our findings are derived from a population-based survey completed in 2003 of 2019 women in the Northern Tanzanian city of Moshi, the central urban district of the Kilimanjaro region. Moshi has a population of more than 100,000 and has an established presence of Chagga and Pare tribal members, but attracts people from many different tribes throughout Tanzania. It is the centre for coffee bean processing and distribution for Northern Tanzania, and because it lies at the base of the glacier-capped peaks of Mt. Kilimanjaro, it also has a tourist industry.

The household survey

In selected households from a random sample in Moshi all women aged twenty to forty-four were invited to participate in the survey interview. In-person interviews occurred between November 2002 and March 2003. The one-time interview included questions about socio-economic characteristics, sexual practices and marriage, pregnancy histories or parity, and gender-based violence. Women provided informed consent. All interviews were in-person and conducted in Swahili by local nurses. There was no monetary compensation provided to the participants. To protect confidentiality, interviewers ensured privacy and returned to interview the women at convenient times. The interviews took between one and two hours. In addition, women were asked to provide blood for HIV testing and other health-related tests.

Measuring gender-based Violence

Forced first sex

Women were asked to describe the first time they had sexual intercourse, specifically ‘How would you describe the first time that you

had sex? Would you say that you: (1) wanted to have sex; (2) you did not want to have sex but it happened anyway; or (3) were you forced to have sex?' This question has been used in previous studies of African women (e.g., Chapko, 1999; Koenig *et al.,* 2004). Responses were recoded into a dichotomous variable by collapsing those who reported unwanted first intercourse with those who reported forced first intercourse.

Intimate partner violence

Three items assessing intimate partner violence were administered, two of which came from a brief screening tool used in emergency department in the United States (McFarlane et al., 1995): 'In the last 12 months [or ever in your life] how often has your husband or partner: (1) Insulted or sworn at you? (2) Hit, slapped, kicked or otherwise physically hurt you? (3) Threatened to hurt you physically?'

Empirical Findings

As displayed in Table 1, 20.5 per cent of the women reported threats or actual physical abuse, with 15 per cent describing threats and 16 per cent experiencing actual physical forms of abuse. Slightly more (24 per cent) reported lifetime exposure to partner violence, suggesting that they were still with the husband who accounted for both past year and lifetime abuse. Additionally, a very high proportion of women disclosed forced or unwanted sex at first intercourse (26 per cent).

Characteristics of women disclosing partner violence

Women who experienced intimate partner violence during the twelve months prior to the survey, were similar to other women on several demographics such as tribe and religion. On the other hand, those variables in the survey, which date back to the women's earlier life and experiences, do distinguish women who are married to violent husbands (see McCloskey, Williams, & Larsen, 2005 for further details). We found that more women in violent marriages than non-violent marriages report that they were forced to have sex at first intercourse and that their education was terminated. We also found that more abused women were in polygamous marriages than non-abused women. Abused women had more children than non-abused women. Our findings taken together reveal a life trajectory marked by gender-based violence and personal loss for many Tanzanian women, culminating in early mortality. Women with forced sexual experiences

Table 1: Percentage of Tanzanian women reporting different forms of gender based violence[1]

Type of Violence	Item	In the last 12 months		At any time (includes last 12 months)	
		Number of women	%	Number of women	%
Physical					
	Threatened to hurt you physically	209	15	243	17
	Hit, slapped, kicked, or otherwise physically hurt you	234	16	279	20
	Any Physical Violence	**288**	**20.5**	**332**	**24**
Coerced first sex	Unwanted or Forced first Intercourse (combined)			466[2]	26

[1] N=1,446 the number of women with partners during the year prior to the survey
[2] Out of a total of N=1835 women surveyed

differ from other women in their marriage patterns, with more polygamous unions. Furthermore, the quality of marriage for women with coerced sexual histories is diminished with a higher number of women reporting intimate partner violence. It is important to note that early sexual abuse derails women's education, either forcing them into early marriage, or disrupting their lives to the point that they are unable to continue in school. Sexual coercion is a significant contributing factor to women's school attrition.

The relation of gender-based violence to HIV in women

Women married to abusive men endure many hardships, but perhaps the highest price they pay is with their own life and health. Women who were forced to have sex during their first sexual encounter were more likely to be HIV-positive. Fully 17 per cent of women with forced sex histories were HIV positive in contrast to 10 per cent who 'wanted' to have sex at their first encounter. Although only 5 per cent of women who were forced to have sex actually married their assailants, these women are several times more likely to be HIV positive in adulthood than other women (see Figure 1).

It is likely that such marriages were imposed by family members. Finally, the type of marriage union correlates with HIV-1 rates, with 19 per cent of those women in polygamous unions testing positive in contrast to 9 per cent in monogamous marriages (see Figure 2).

Discussion

Our research suggests that features of women's early life presage partner violence, including forced first sexual relations. Various authors have identified gender inequality as laying the foundation for HIV (c.f., Zeirler & Krieger, 2002), and our study provides evidence for at least one important expression of that gender inequality leading to a life trajectory of risk for HIV and other sexually transmitted disease.

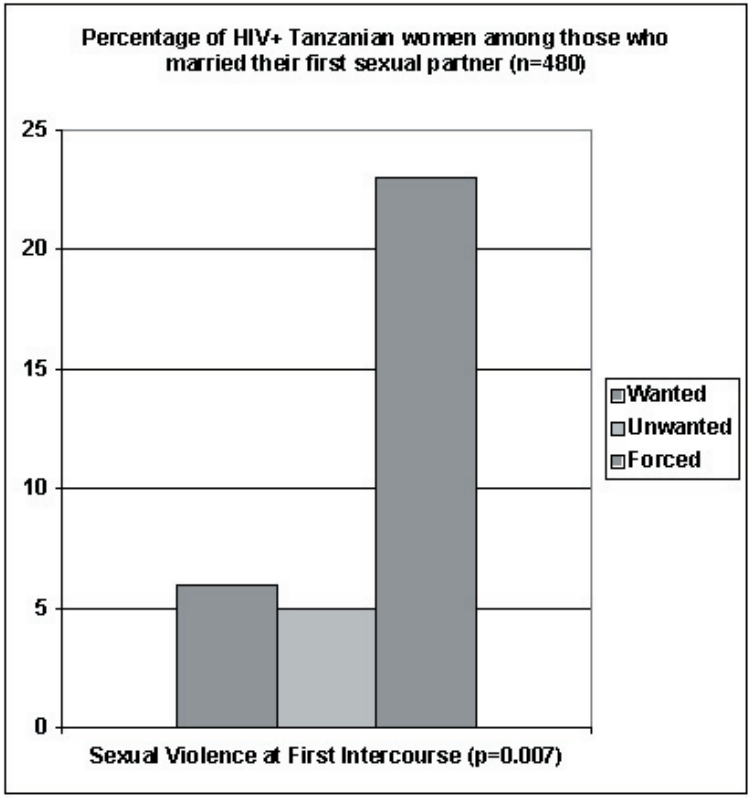

Figure 1

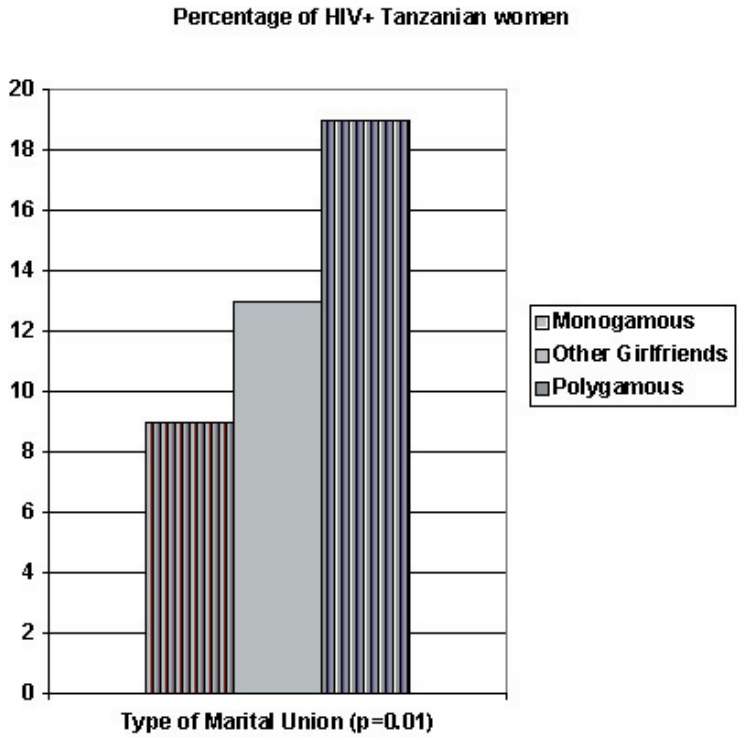

Figure 2

Sexual abuse during early adolescence can interrupt the formation of women's human capital, launching them into early marriage and the risk for infectious disease. But women's education buffers against partner violence. The importance of girls' education, therefore, is paramount for their ultimate freedom from violence and their wellbeing. If educational institutions can be strengthened to meet the unique needs of women, and to provide safe environments for learning, the first step to end gender-based violence across the lifespan and, ultimately, the spread of HIV-AIDS, could be launched. Ensuring equity in education and promoting secondary education should be a primary aim.

The threat of social stigma usually prevents young women from speaking out about rape and abuse. In Zimbabwe, rape cases are sometimes settled out of court where the perpetrator either pays

compensation to the girl's father or pays a bride price and marries the girl to avoid bringing public attention and shame to the girl and her family. In Tanzania men incur few costs for the sexual assault of girls or women, and no costs for partner violence. Raising the toll for men in these domains, in ways that are enforceable and consistent with cultural norms, should be a priority. One further effect of forced early sexual debut may be to launch girls into transactional sexual relationships. Men assume the role of 'sugar daddies,' as they are popularly called, and exchange money and resources, and especially school fees, for sex.

One might ask whether gender-based violence and HIV in Africa pertains to the spread of HIV elsewhere in the world. In highly technological, affluent societies in Europe, North America, Australia and New Zealand, and some Asian countries, HIV propagation follows a very different course. The most notable feature is that women in wealthy nations have a low rate of infection relative to men: HIV is concentrated among gay men and intravenous drug users. What barriers keep the virus from rapidly entering the general population and disproportionately affecting women, as in sub-Saharan Africa? Women in affluent societies enjoy freedom of sexual choice, access to education, healthcare and fertility control only dreamed of by women in the most impoverished regions of the world, notwithstanding the notable income disparities within some of these wealthy nations, most notably the United States. Indeed, in the United States the virus is expanding to the poorest women of colour, primarily in the Northeast. Sexual abuse of girls and women occurs throughout the world, but such abuse with its attendant health cost is commonplace in poor African countries such as Tanzania.

Regions of the world, therefore, with pronounced gender inequality, marked by violence and potentially sexual abuse, and which are also poor, with migratory patterns of male labour, are the most vulnerable. In Oceania, Papua New Guinea is identified as displaying the characteristics of a potential pandemic, although the threat has received remarkably little attention. The conditions of abject poverty, the migration of the poorest people to urban areas such as Port Moresby, and the currently very high rate of sexually transmitted disease even among the rural population, and among women, are potential precursors to a pandemic (Caldwell and Isaac-Toua, 2002). Add to these identified risk factors the pervasive gender inequality in Papua New Guinea, and the shadow of an African-scenario pandemic looms even larger. Rural women in particular have long endured abuse and disenfranchisement,

implicated in the high female suicide rates in the rural highlands (Johnson, 1981). Their access to education is notably lower than men's, and because education is the route in Papua New Guinea, as elsewhere, for political participation, they are vastly unrepresented in government or other institutions of authority (Johnson, 1993). Gender inequality spikes among rural women. The work we have described, therefore, illuminates risk indicators which already exist in Papua New Guinea (PNG), and it is hoped that attention will be paid to avert the next regional crisis of this devastating disease. The most recent reports from PNG indicate that 1.7 per cent of adults aged fifteen to forty-nine are HIV-positive (about 50,000 people), with young women (fifteen to twenty-four years) showing twice the infection rate. Indeed, UNAIDS estimates that 124,070 deaths will result from the disease in PNG by 2020 without interventions or the development of a vaccine in the intervening years.

Conclusions

Coerced first intercourse has a major impact on women's life trajectories, even creating a heightened risk for HIV-1 infection in adulthood. Given the potentially lethal outcome of coerced sex in sub-Saharan Africa it is especially important to better understand the context of forced sex, the family and community response, and how women adapt, in order to inform prevention and intervention efforts for this damaging form of human aggression.

Women's status relates to the spread of HIV. Partner violence reflects women's disenfranchisement. There remains an urgent need to describe the context of sexual assault in sub-Saharan Africa, and elsewhere in the world, in order to better prevent it. An in-depth profile of women with assault histories is also necessary to the development of culturally competent treatment for East African women who have been assaulted, in order to thwart a path to adversity.

Acknowledgements

The empirical research reported here was funded by the National Institute of Health (NICHD), RO1 HD 41202 to Ulla Larsen. Research was performed with IRB approval from the Harvard School of Public Health (HSC Protocol # 0108ACOM) from the Kilimanjaro Christian Medical Centre Research and Ethical Clearance Committee, and from the National Institute for Medical Research, the United Republic

of Tanzania. Informed consent was obtained from each woman interviewed. We also thank Dr. Saidi Kapiga for his intellectual and practical support and advice, especially at the early stages of the research. The authors would like to thank Said Aboud, Mlemba Abassy, Emillian Karugendo, Fred Matola, and Marianne Massawe for their valuable collaboration in data collection. Tina Jiwatram helped to edit the manuscript. Correspondence can be sent to: Laura McCloskey, School of Social Policy & Practice, 3701 Locust Walk, University of Pennsylvania, Philadelphia PA 19104 email: lmcclosk@sp2.upenn.edu

Laura Ann McCloskey *is an associate professor in the School of Social Policy and Practice at the University of Pennsylvania, Philadelphia. She has a doctorate in psychology from the University of Michigan and conducts research on the impact of intimate partner violence on women and children. She has taught previously at Harvard University and the University of Arizona.*

Ulla Larsen *is an associate professor in the Department of Sociology at the University of Maryland, College Park, Maryland. Her doctorate is in demography from Princeton Univerity. She has conducted demographic work on fertility in sub-Saharan Africa for more than a decade. She previously was on the faculty in Population and International Health, School of Public Health at Harvard University.*

Corrine Williams *is a doctoral candidate in public health at Harvard University. She holds a bachelor's degree in women's studies and engineering from Massachusetts Institute of Technology. Her research focuses on the health impact of gender-based violence on women.*

References

Caldwell, John C. and Isaac-Toua, Geetha (2002). AIDS in Papua New Guinea: Situation in the Pacific. *Journal of Health Population and Nutrition*, *20*(2), 104–11.

Chapko, Michael K., Somse, Pierre, Kimball, Ann Marie, Hawkins, Reginald V., and Massanga, Marcel (1999). Predictors of rape in the Central African Republic *Health Care for Women International*, *20*, 71–9.

CIA The World Factbook. Springfield (VA): National Technical Information

Service (US); 2003 [cited Dec 11 2003]. Information regarding the economy of Tanzania. Available from http://www.cia.gov/cia/publications/ factbook/geos/tz.html#Econ.

Dembo, Richard, Williams, Linda, Wothke, Werner, Schmediler, James, and Brown, C.H. (1992). The role of family factors, physical abuse, and sexual victimization experiences in hi-risk youths' alcohol and other drug use and delinquence: A longitudinal model, *Violence and Victims, 7*, 245–66.

Dunkle, Kristin, Jewkes, Rachel K., Brown, Heather C., Gray, Glenda E., McIntryre, James A., and Harlow, Sioban (2004). Gender-based violence, relationship power, and risk of HIV infection in women attending antenatal clinics in South Africa, *Lancet*, *363*, 1415–21.

Howe, Megan. (2002). Papua New Guinea faces HIV epidemic. *Lancet*, *2*, 386.

Jewkes, Rachel K., Loveday Penn-Kekana, Levin, Jonathan, Ratsaka, M., and Schriber, M. (2001). Prevalence of emotional, physical and sexual abuse of women in three South African provinces, *South African Medical Journal, 91*, 421–28.

Johnson, Patricia L. (1981). When dying is better than living: female suicide among the Gainj of Papua New Guinea. *Ethnology*, *20*, 325–34.

Johnson, Patricia L. (1993). Gender and the 'new' inequality in Papual New Guinea. *Anthropology and Education Quarterly, 24*(3), 183–204.

Kapiga, Saidi, Lyamya, E., Vuylsteke, B., Spiegelman, Donna, Larsen, Ulla, & Hunter, David J. (2002). Risk factors for HIV-1 sero-prevalence and family planning clients in Dar Es Salaam. *African Journal of Reproductive Health*, *4*, 88–99.

Koenig, Michael, Zablotska, Irena, Lutalo, Tom, Nalugoda, Fred, Wagman, Jennifer, and Gray, Ron (2004). 'Coerced first intercourse and reproductive health among adolescent women in Rakai, Uganda', *International Family Planning Perspectives*.

Maman, Suzanne, Campbell, Jacquelynne C., Sweat, M.C., and Gielen, Andrea C. (2000). 'The intersections of HIV and violence: directions for future research and interventions'. *Soc Sci Med*, *50*, 459–78.

Maman, Suzanne, Mbwambo J.K., Hogan N.M., Kilonzo G.P., Campbell, J.C., Weiss E., *et al*. (2002). HIV-positive women report more lifetime partner violence: Findings from a voluntary counseling and testing clinic in Dar es Salaam, Tanzania. *Am J Public Health, 92,* 1331–7.

McFarlane, Judith, Parker, Barbara, Soeken, Karen, and Bullock, Linda (1992). Assessing for abuse during pregnancy: Severity and frequency of injuries and associated entry into prenatal care, *Journal of the American Medical Association*, *267*(23), 3176–8.

McCloskey, Laura A., Williams, Corrine, & Larsen, Ulla (in press). Gender inequality and prevalence of intimate partner violence in Moshi, Tanzania. *International Family Planning Perspectives*.

Murray, Christopher (1996). '*The global burden of disease'.* World Health Organization.

Setel, Philip (1999). *A Plague of Paradoxes: Culture and demography in Northern Tanzania.* Chicago: University of Chicago Press.

UNAIDS. Geneva: United Nations Publications. www.unaids.org, accessed July, 2005.

Walker, Elaine, Gelfand, A., Katon, Wayne, Koss, Mary P., Von Korff, Michael, Bernstein, D., and Russo, Janet (1999). 'Adult health status of women HMO members with histories of childhood abuse and neglect'. *American Journal of Medicine, 107*, 332–9.

Wingood, Gina M. and DiClemente, Ralph J. (2001). Application of the theory of gender and power to examine the exposures, risk factors and effective HIV interventions for women. *Health Education & Behavior*, *27*, 539–65.

Wingood, Gina M. and DiClemente, Ralph J. (1997). Consequences of having a physically abusive partner on the condom use and sexual negotiation practices of young adult African American women. *American Journal of Public Health*, *87*, 1016–18.

Yodanis, Carolyn. (2004). 'Gender inequality, violence against women, and fear: A cross-national test of the feminist theory of violence against women'. *Journal of Interpersonal Violence, 19,* 655–75.

Zeirler, Sally, L. and Krieger, Nancy (2002). 'Reframing women's risk: social inequalities and HIV infection.' *Annual Review of Public Health*; *18*, 401–36.

Zeirler, Sally, Feingod, L., Laufer, D. *et al.* (1991). Adult survivors of childhood sexual abuse and subsequent risk of HIV infection. *American Journal Public Health*, *81*, 572–5.

'It's really quite a delicate issue':[1] GPs talk about domestic violence

AMY ALDRIDGE AND LEIGH COOMBES

This paper evolved from an ongoing concern with the health effects of domestic violence for women. As researchers and service users it seems important to focus attention on healthcare delivery rather than continuing the practice of research *on* women who have been abused as if they were *'the problem'*. While it remains necessary to identify health effects experienced by women, the ongoing problems women encounter when seeking healthcare need to be addressed. Current research suggests that non-detection of domestic violence by healthcare professionals, and the identification of symptoms such as chronic pain, injuries and substance abuse without attention to the underlying cause of those symptoms – violence within intimate relationships – is problematic. Although healthcare professionals are in a particularly good position to render assistance, the relationship between them and their patients who experience the effects of domestic violence may be such that the experience of violence remains unspoken.

Although healthcare delivery problems are relevant to all medical health professionals, general practitioners (GPs) are privileged in this paper. GPs are likely to know women across time and are likely to regard the general health of their patients as the domain of their practice. Therefore, they are more likely to be able to detect subtle changes in their patients' general health, attribute these changes to an effect of lifestyle (i.e. exercise and diet; socioeconomic, psychological and emotional factors) and to prioritise detection of 'lifestyle effects' as an integral part of their approach to, and treatment of, their patients. This paper reports part of a study that addresses some problematic aspects of GPs' understandings of domestic violence and their response to issues of detection and prevention.

Domestic violence and medical health professionals

Health service providers are likely to be among the few whose professional relationships with women will be ongoing (Heise *et al.,* 1994; Pahl, 1995). As such, health professionals are in a unique

position to recognise, diagnose and treat the effects of domestic violence against women (Fischbach & Herbert, 1997). They are of particular importance considering that the isolation imposed on women by abusive male partners may estrange them from other support services which could render assistance (Stevens & Richards, 1998).

Although it is estimated that of all women patients who seek medical care from emergency departments between 22 per cent and 35 per cent are women who have been battered (Smith & Gittelman, 1994), all women who are abused by their partners will also have general medical issues, and will therefore seek non-trauma medical care at some point (Stark and Flitcraft, 1991). The healthcare system is often the first and most likely place for women who have been abused to seek help (Pahl, 1995; Smith & Gittelman, 1994). However, domestic violence histories go routinely undetected by medical health professionals (Campbell, Harris, *et al.,* 1995; Harris & Dewdney, 1994; Yam, 1995). More recently, research has shown that health professionals believe domestic violence is a significant healthcare issue but they do not agree with routine screening until there is evidence that it is beneficial (Richardson, Feder, Eldridge, Chung, Coid & Moorey, 2001).

In addition, research reports that women rate health professionals as the least helpful service providers (Campbell, Harris, *et al.,* 1995; Easteal & Easteal, 1992; Randell, 1990; Stark, Flitcraft, & Frazier, 1982). This is of concern because women who are abused are more likely to seek help from non-emergency primary care sites, such as general practitioners, than emergency departments (Stark & Flitcraft, 1991).

The failure of health professionals to detect abuse means that the immediate health issues of the woman presenting are treated, but the underlying cause of those health issues remain unaddressed (Kingston & Penhale, 1995; Yam, 1995). One reason for this may be that women are infrequently asked about abuse (Campbell, Harris *et al.,* 1995; Fischbach & Herbert, 1997). Cultural myths and stereotypes, such as the belief that women provoke men which results in violence, that 'fighting' is a normal part of an intimate relationship, that domestic violence against women is not a medical matter, and that women who are abused by their male partner cannot be helped, often deter practitioners from asking about abuse (Yam,

1995). It is likely that the same attitudes that have kept domestic violence a private matter inform the belief that the violence of men against their female partners is neither prevalent nor severe (Browne, 1993). Several sources suggest that women are reluctant to disclose or volunteer abuse histories due to shame and self-blame though they may be willing to disclose if asked (Bewley & Gibbs, 1991; Heise *et al.,* 1994; Campbell & Lewandowski, 1997). Reluctance to disclose or volunteer information appears to indicate the need for greater awareness of abuse and the possibility of domestic violence histories on the part of health professionals, based on the consistent finding that most women who have been abused and sought treatment wish that someone had questioned them about abuse in a direct manner (Bewley & Gibbs, 1991; Campbell, Harris *et al.*, 1995; Fischbach & Herbert, 1997). Recent research has shown that women welcome being asked about their experience but are rarely asked by their doctors (Bradley, Smith, Long & O'Dowd, 2002; Jewkes, 2002; Richardson, Coid, Petruckevitch, Wai, Moorey & Feder, 2002).

Medical Health Professionals Responses When Abuse Is Detected

Historically, research has shown that abused women do seek healthcare, especially when seriously injured and regardless of their utilisation of or reporting to other services such as the police (Stark, Flitcraft, & Frazier, 1982). However, medical response is often less than satisfactory to the purpose of helping and treating women who are abused by their male partners, whether this abuse has been detected or disclosed, or not. In early studies, women consistently reported that their disclosure of abuse by their intimate partner was not accepted by doctors (Stark, Flitcraft & Frazier, 1982), medical health professionals did not implement protocols designed to assist abused women, they often blame women for 'being victims', and they were unsympathetic to women's experiences of abuse (Yam, 1995). Heise *et al.,* (1994) state that little training is given to medical professionals regarding the nature, incidence, or *sequelae* of abuse. Research on training programmes for healthcare professionals suggest that screening rates for domestic violence remain low due to professionals reporting they are inadequately trained to provide care for abused women. Davidson, Grisso, Garcia-Mareno, Garcia, King and Marchant (2001) argue that there has been inadequate evaluation of recent training programmes for healthcare providers.

In addition to being unsatisfactory, the medical response to women who are identified as having been abused by their partners is often inappropriate, if not damaging and destructive. Archival and observational research reports that women who are abused by male partners are more likely than non-abused women to be referred to psychiatric services, institutionalised or denigrated by attendant service providers. They are also more likely to be prescribed tranquillisers, antidepressants and pain medication (Stark & Flitcraft, 1991). It appears to be a mundane finding that health professionals respond to women who have been abused by their partners by treating medical problems only, whilst the cause of these problems, the abuse, remains unaddressed or simply ignored (Randell, 1990; Yam, 1995). This means that the ongoing risk to the women is never assessed (Browne, 1993). Moreover, mistreatment may occur when interventions related to secondary problems, such as substance abuse, exacerbate the women's vulnerability to 'victimisation' (Stark & Flitcraft, 1991). Bewley and Gibbs (1991) found that there is often poor liaison and communication between helping agencies so that even sympathetic responses to women abused by their male partners may not result in adequate assistance being received.

As well as the dissatisfaction women who have been abused express at the response of medical health professionals, doctors too have expressed their discomfort regarding the problem of domestic violence and their professional response to it. In a review of empirical research on doctors' attitudes and responses to domestic violence against women, Richardson and Feder (1996) identified doctors' fears and worries regarding the detection of abuse in the lives of their women patients. Doctors had fears about the amount of time needed to deal with domestic violence, and that lack of time might prevent identification of the problem; fears that detecting domestic violence might 'open a Pandora's box' or lead to threats against the doctor by the perpetrator; close identifications with women from similar backgrounds to the doctor; worry about offending the woman or putting the doctor–patient relationships at risk; feeling powerless to 'fix' the problem and without control over the success of interventions; lacking medical training about domestic violence against women and also lacking knowledge about appropriate community services.

Researchers concerned with the medical health effects of women's abuse by male partners make various calls for changes in

the attitudes and protocols of medical health professionals, in their training and in their awareness of the prevalence and significance of women's experiences of abuse. Research concerned with the care of abused women and the desire to better assist them was easily found, particularly in the nursing and midwifery literature. Campbell, Poland *et al.* (1992) call for a greater degree of alertness, and the provision of extra nursing and follow-ups for women abused during pregnancy. Taggart and Mattson (1996) advocate greater awareness of the more subtle signs of abuse, namely psychosomatic complaints and other indicators of abuse such as explanations of injuries which are incongruous with them, missing appointments, and vigilant partner presence. Saunder, Hamberger and Hovey (1993) caution physicians to be aware of domestic violence histories when treating divorced and single women because of the long-term health effects of abuse and the possibility of ongoing abuse even after women separate from violent partners. Stevens and Richards (1998) state that nurses are in a prime position to assist women through healthcare delivery, commitment to higher education and research, and their position in policy development. Therefore, calls for changes to be made by medical health professionals in terms of what they should do to address these problems is supported in the literature, yet there is little empirical research which addresses the problems some medical health professionals have regarding the issue of domestic violence against women.

This research is therefore particularly concerned with the experiences of GPs as primary non-emergency service providers for women who have been abused by male partners. It is concerned with the question – how do GPs' experiences support the detection and intervention of domestic violence (DV) as problematic? What are the implications for women?

Method

Since the focus of the research question was on GPs' experiences we used a semi-structured interview technique to speak with doctors directly about their experiences. All participants were asked the same questions; even so, each interview was substantially different from any other. The aim of the interviews was to enable doctors to speak openly and in confidence about their experiences. They were encouraged to direct the course of the conversation with the interviewer, who

followed tangents that they introduced and picked up on issues that they raised, as well as asking questions in a different order (or not at all) depending on the direction chosen by the interviewee.

To recruit participants, letters were sent to ninety GPs in a central North Island province (including rural areas)[2] inviting them to take part in the study. Three general practitioners out of ninety responded to this mailing. Due to the low response rate, twenty days after the first mailing, the original letters plus a note saying 'Just in case you didn't receive this the first time' were sent again. Five doctors responded to this mailing and agreed to participate. Two doctors were recruited through personal contact. Therefore, of ninety GPs in the region, ten agreed to participate in the study.

The difficulty in finding participants may be attributed to several factors. Response rates to single unsolicited requests by mail are only around 20 per cent (Bourque & Fielder, 1995). Additionally, people are less likely to volunteer to participate in studies they perceive to be on sensitive or threatening issues (Bradburn, 1983). However, another possible reason for the low response rate was the belief of some doctors that they do not see women patients who are suffering the effects of domestic violence. Evidence for this was revealed by the responses of some doctors declining participation, and by some who were interviewed.

Three GPs' receptionists/secretaries telephoned to decline the request to participate. One told us 'We don't see that type of people here'. Another told us that as the doctor she worked for was elderly he was not likely to see women experiencing domestic violence. Two doctors telephoned to decline, one of whom said he 'didn't see that type of person' in his practice. He was asked if he would still be willing to take part in an interview; he was not.

Six doctors declined by letter. Two doctors referred to 'not seeing' domestic violence as their rationale for not wanting to participate, and their responses are as follows: 'I hardly ever see any direct consequence of domestic violence, probably only 1 in the last 5 years'; 'I haven't completed your research survey as I am a Specialist in Obstetrics and Gynaecology rather than a General Practitioner. I therefore have little personal involvement in cases of domestic violence and don't feel I would be able to contribute much to your study. I do wish you well with your ongoing research'. Although this study was concerned with GPs this was still a particularly telling

response. In a study of violence against women before and during pregnancy, Irion, Boulvain, Straccia and Bonnet (2000) found that prevalence rates were high for this group of women but severely underestimated by their healthcare providers.

Two general practitioners wrote letters after the second mailing, saying they were willing to be interviewed but had felt they would not have much to offer to the research. One stated that 'I work part time, and have a large proportion of older patients in my practice, and therefore do not see many cases of domestic violence. I did not reply to your original letter, as I felt my contribution would probably not be very helpful to you.' The other expressed similar feelings, saying that 'I didn't think I could be of much use to you – only in a negative way as I seldom recognise this problem'. After assuring both participants that their experience would be valuable to the research interview times were made and interviews later took place.[3]

Interviews with the ten GPs were conducted and transcribed by the first author (Amy) as per the ethical requirements of the Massey University Human Ethics Committee. Her goal was that the experience of being interviewed would not be a negative one for the participants. The participants stated that they wanted to know how to better help their patients and to know how to take positive action, hence their involvement in the research. All participants were offered a copy of the transcripts for comment and change prior to analysis.

The concept of narrative is appropriate to the analysis in this project because the interview questions took the form of requests for the GPs to tell stories. The GPs who participated in this study did account for their past actions, individually, and each transcript offers an understanding of their past in relation to the issue of domestic violence, it's bearing on their present experiences, and makes sense of their interest in the issue, their concern for solutions to problems of detection, and their willingness to contribute to the research (Freeman, 1993). Storytelling so dominated the interviews that the GPs did not always answer questions when these were not connected to a particular story they wanted to tell and subsequently did tell. They employed topic-centred narratives, which are characterised by the relating of past events that are linked thematically (Riessman, 1993). Thematic linking and the organisation of events into storylines enable narratives to be analysed to identify commonalities and to 'build up' an aggregate story which represents these commonalities. Reissman (1993) calls

the result of this kind of narrative analysis 'metastories'.

In analysing the doctors' texts, we attended to sequence both within and across stories (Riessman, 1993). We also attended to thematics. Through analysing sequence and thematics we were able to build up metastories around particular issues and events that the doctors commonly experienced. The metastory we present in this paper concerns how GPs *feel* about women's experiences of violence by intimate partners and how they respond to it in their practice.

A metastory of doctors' feelings and responses to women suffering the effects of abuse by their violent partners

In this study the GPs' feelings and responses to domestic violence are informed by a number of concerns, both personal and professional. All but one of the GPs interviewed had experience of a female patient with a history of violence. The GPs were worried about failure to detect such histories. In part, this worry stemmed from a belief that women do not disclose to their doctor. The GPs were also concerned that they had not been trained in the effects of DV or in its detection and were therefore not sure what to look for or how to help. They also commented on the lack of response from GPs to take part in the research and suggested that the lack of knowledge/training about DV may be a source of embarrassment for doctors and therefore might be felt by them to be a 'weakness'. They suggested that DV was not a comfortable issue to talk about, particularly if they too have a history of abuse or of being abusive. They did, however, suggest that it was important to deal with the effects of DV despite the difficulties of facing the issues. They suggested that the only possible explanation for not addressing the issues was through ignoring them. The fragments below illustrate the desire of the participants in this study to be able to respond responsibly and appropriately to women who present with the effects of abuse.

A commonality across interviews was that the GPs felt concerned about and wanted to help their patients. However, they articulated feelings of powerlessness, and explained how this can lead to a feeling of despair for them. Part of their despair arose from understanding the situation as one that cannot be fixed, or even approached in the same manner as a discrete medical problem. In this way, they questioned their medical training as not necessarily able to address the effects of violence, raising the question of training. The GPs interviewed stated

that they understood the problem of domestic violence against women to be deeply complex, and an impossible problem for them to solve, leaving them feeling inept and incompetent to deal with it.[4]

> I'm trying to help as much as possible
>
> (Dr G, 267)

> you have this great feeling of despair I guess not only for the person but the fact that you can't really fix it. You see GPs like to fix things and when you can't fix things, that's a bit depressing for us I think. ... And it's very frustrating, very frustrating too ... 'Cause it's a very hard thing to fix, isn't it. ... If you had a broken leg it would be easy, put it in plaster ... if you had a broken leg people could see your broken leg too, and they'd think 'Oh, how bad,' you can't fix domestic violence and you can't see it either ... it's a very difficult, I find it a very difficult condition.
>
> (Dr J, 286–99)

> I mean, there's very little, you, you end up feeling absolutely impotent as to what you can do to help. ... so (.) you know, we (.) i-, it's a very difficult area for us to get into.
>
> (Dr A, 93–110)

> [It is hard] to know quite how to deal with it, what to do for the best.
>
> (Dr A, 212–21

The above extracts illustrate some of the problems that emerged through the GPs' stories, such not being able to 'fix' domestic violence as if it was a broken leg. As a consequence, the participants considered their attempts to resolve the problem through urging the women to take action to help themselves, which often was understood as not happening. This ultimately left the doctors feeling that there is not much they can do, and they conclude that the woman must help herself as she is the only one who can.

> And to (indecipherable) counselling, very seldom have I been able to make any dent. ... Even when I've appealed to the victim ... to seek legal redress, they often don't.
>
> (Dr L, 22–27)

> I try and point out to them that, that no one in this society has to live in fear of physical violence. And that nothing can be done about this until they do something about it.
>
> (Dr B, 51–53)

In this study, when attempts at intervention did not have the desired outcome, the GPs sought to explain the problem by attributing it to personal characteristics of the women. In this study women in violent relationships were understood as extremely difficult to help. This was attributed to the woman's trouble accepting help, either because of the ongoing abuse, or the possibility of gender issues – one GP felt that being male may make it less easy for women to disclose to him.

> I mean, I can't tell them what to do, and often I suspect it doesn't matter what you tell them anyway, (2) and I'm, I'm always worried that a lot of them are going to go back and get abused again and I point out to them (.) that there is a risk that they could be killed.
>
> (Dr J, 73–76)

> And ah, she had many incidents with really serious injuries and I was really quite concerned ... that the [injuring things] kept happening basically and police intervention and the guy (2) sort of (2) not, (.) didn't change and so she [left him].
>
> (Dr N, 73–77)

> And they are difficult people too, 'cause you can say 'Now look, I'm worried about you and I'd like you to come back in the next week 'cause we've got so much to talk about,' but you never see them sometimes, they are not very good at um (2) not very good at coming back and accepting help, whether they don't like men and I'm a male I, I don't know but they're hard people to try and help sometimes. ... Um (.) I think they find it hard to accept help from anyone, they are a rather special sort of difficult, not on purpose, just difficult people to help, I think.
>
> (Dr J, 305–12)

Having identified abused women as being difficult to help, the GPs in this study also encountered difficulties when they attempted to get help from government agencies for women. One doctor talked about frustration with welfare and justice systems, specifically Children, Young Persons and their Families Service and Family Court.

> I sit there and I think about (3) I don't report to CYPS, if CYPS come to me it works brilliantly, (2) if you go to CYPS and get through their intake process, that's something I've never managed to wade through.
>
> (Dr K, 178–80)

So while the GPs were able to identify concerns about the women's access to adequate care, they also described losing sympathy for

women when they presented with the same problems repeatedly – not changing herself or her life sufficiently to prevent her own 'victimisation'.[5] The woman's behaviour was commonly explained in terms of emotional dysfunction linked to a cycle of violence where there was a familial history of abuse.

> I think you'll find that health professionals, when you see a person coming back, having reinserted themselves into the same set of circumstances again and again and again, um, with different spouses, different de facto's, um, that you tend to lose your, lose your sympathy, and realise that they are emotional victims of themselves and that, probably that they [inaudible] sort of person who abused or has a parent of (3) ...
>
> (Dr B, 24–30)

This loss of sympathy was also experienced by the GPs in this study as frustration at what they saw as the wilful continuation of the behaviour that keeps a woman in an abusive relationship. They felt that this is because the woman denies to herself the potential seriousness of her situation. It was commonly speculated that repeated violence is attributed to the woman being overpowered by her violent partner, which reduces her emotional strength and her ability to leave. They spoke of the possibility that the violent relationship is in a way co-dependent, which functions to keep the woman emotionally tied to her violent partner. It was also commonly understood that their healthy and normal women patients would not tolerate any violence from their partner, and they contrasted them to women who have been abused, who do as illustrated in the excerpt below:

> (8) Um, one of the most frustrating things I've found is the denial of the abused person (2) who (.) listens when you say 'Look, this is a very potentially serious thing,' um, (.) I've always found it very difficult to understand why a woman comes along and then three months later comes along again (2), it's something that obviously is a power thing and almost a co-dependency state sometimes but it never ceases to amaze me how they keep coming back (laughs) um, and I know in the Women's Refuge twenty-five percent come back to the refuge so I can't understand that, but I can, and it seems very odd. ... it makes me feel so sad for the lady, and you think, you know, now why does she do it? Now I think I know why she does it, 'cause she's so overpowered and so terrified that she does come back (.) um but you think, you almost feel like grabbing her and saying 'Look, go away.' ['What are you doing?'] Yeah, 'What are you doing?' My, some of my healthy clients would say 'Well if he even

> laid a finger on me, I'd plant him or I'd leave him,' but these people get so overpowered by it, obviously they can't, they haven't got the strength to leave, now, I find that so frustrating, I'm sure everyone does, so it's the denial that's the hardest thing to understand.
>
> (Dr J, 228–47)

The GPs in this study had strong personal responses to abuse. They experienced distress when treating a woman requiring care for the effects of a severe violent attack from her partner. While they commonly speculated on the emotional effects of detecting abuse in the context of previous experience of violence, the following fragments explicitly link practice with personal experience suggesting that GPs might also be required to understand their own histories.

> Yeah – and it can, can be to a young um, GP I think a real, a severe abuse can be quite frightening, um and brings up your own, of course, issues, and how um, how you handle abuse yourself, or if you've ever been abused or whatever, but there's a lot of emotions involved
>
> (Dr J, 183–86)

> I personally have never liked violence much and I think it's a matter of whether you are used to violence and if you handle it right.
>
> (Dr J, 200–201)

It was apparent that despite their experiences (their frustrations) of not being able to 'fix' the problem, the GPs commonly experienced a great deal of worry about the consequences for a woman who remained in a relationship with her violent male partner, and for her children.

> Mm, so it is so frustrating ... and you worry about them you know, you think 'Oh, God, what's going to happen to your kids and what's going to happen to you?'
>
> (Dr J, 254–57)

Building on the thematic that the GPs worried about continued violence for their women patients, they talked about their personal involvement with some cases of continued violence against a woman patient. This personal involvement increased the impact of the patient's situation on the GP, especially knowing that the abuse continued, or ended in death.

> I know that when, when I left South Africa, the couple concerned came to me and they gave me a gift, and they said 'You know,' um 'You understand us.' ... They actually went out of their way to do that ... Which I

> found really quite touching ... but it didn't help – 'You were still beating her up regularly'!
>
> (Dr L, 45–54)

> Um, (2) and um, also I had a person (2) who was a patient that I knew very well who was in a violent relationship that kept, you know like (2) um (.) she had a terrible time ... (4) I can remember her pretty clearly, in fact it's probably the one that I remember most, um, so it's kind of really this thing that kept happening to her and it kept happening despite all of the intervention and a lot of support, it kept happening. Um, although eventually she did move out [inaudible, spoken very quietly and quickly], so that was another part of all that and, and then she, um, she had a dramatic death ... so, I, kind of feel like I'm linked to that story, really, it was a pretty amazing story.
>
> (Dr N, 61–71)

Alongside the experiences of distress and frustration, the GPs in this study commonly experienced fear as a strong personal response to abuse. Common across narratives were fears about possible threats to them from the perpetrator of the violence. The GPs did not necessarily have to have come into contact with the perpetrator to experience this fear: the experiences of the abused woman were sufficient to instil it. However, it was also commonly reported that they had also been personally assaulted within their practices. Their fear of the threat to their own physical safety is therefore realistic and well-founded.

> … they're crying and upset and there's some big hairy monster in the background who's probably gonna knock your block off if you ever came within [inaudible] there's a threat to your own physical (.) safety sometimes.
>
> (Dr J, 188–90)[6]

> I either ask them or they tell me that physically, sexually, if they've been abused at home. Occasionally you find out because you interview the partner, and he physically abuses you, which is always an exciting experience!! ... Whereupon you get to do those great expressions of 'what is that like to live with?' while you are trying to get the ringing out of your ears and they are kind of shouting at you (laughs).
>
> (Dr K, 62–68)

The fear of personal safety was not the only fear the GPs in this study talked about. The GPs also held had fears related to professional practice, one of which was the fear of harming or killing a patient due

to lack of knowledge of specific physiological medical conditions – a fear of failure. They stated that expectations of medical students are incredibly high, and the emphasis is on the possibility of a fatality if a doctor has insufficient medical knowledge. This fear also seems reasonable in the light of findings that healthcare professionals do have the opportunity to intervene prior to the murder of some women by their partners, yet that opportunity appears to have been neglected (Sharps, Korziol-McLain, Campbell, McFarlaine, Saches, & Xu, 2001). The extracts below follow one narrative that problematises lack of knowledge.

> [medical students] live in this very, very sort of boxed world, incredible expectations, if you don't know about these Japanese vascular diseases, one day you'll kill somebody, it will be your personal fault that that person dies a slow and agonising death because you failed, the public says you failed, if it is not a good outcome it is because the doctor failed.
>
> (Dr K, 364–68)

Lack of knowledge and/or a patient's death will be perceived to be the doctor's personal fault and will result in public and professional condemnation. In this extract the GP refers to professional discipline for failing to correctly make a life-saving diagnosis, as a necessary requirement of practice. However, the fear of failure is more associated with those health problems that are concrete.

> … it's just the fact that you are in this pressure cooker learning environment where if you don't know how to save the person's life with the heart problem, or the lung problem, or the whatever problem, you will be negligent, they will hang you. ... So you are so busy worrying about the concrete.
>
> (Dr K, 371–75)

Within this framework, empirical and practical medical knowledge is favoured over learning about social problems with health consequences. In this instance, it is commonly understood that GPs are not so likely to be professionally censured for inadequate treatment of health problems related to social issues.

> And someone comes along and says 'My husband hit me' and if it's not fractured (indecipherable), then what do I do? [Professional body] doesn't tend to strike people off because I mean if you get it wrong then they just hang you up for the bad outcome, no one gets hung for stuffing up emotional abuse.
>
> (Dr K, 384–87)

Another common theme that emerged was the possibility of being set up by a patient, and having to go through litigation. While the GPs felt that they can be caught between two sets of agents who have the power to damage them both personally and professionally, it seems likely that the power of litigation, rather than adequate intervention, informs practice.

> You have to actually be, ah, you know, how would, it, it, it's really quite a delicate issue. [So you feel that this delicacy is something that prevents doctors from approaching patients?] Yes. ... Especially in this litiginous age. ... You know? I mean look at what happened (indecipherable) I don't condone what I read about the goings on in Hawke's Bay, um (3) but (2) where it is possible that you could be set up by a woman who might see this as an opportunity to take you to the cleaners, and maybe, you know, so in the end you say well, well my notes look fine ah, you know, I've done everything according to the plan that says subjective, objective assessment plan, medical counsel can't (2) hammer me, I've done everything correct here, if she didn't bring up that issue, it's not my department.
>
> (Dr L, 250–65)

In this context of personal liability, the participating GPs greatly feared making mistakes in the course of medical practice. Thus, they focus on making sure they have done everything formally required of them. They are aware that public expectation of GPs is high. They are also continually alert to the surveillance of medical authorities, whilst also noticing that one group of doctors who should be dealt with by the authority are never formally disciplined and continue to practice – apparently with the support of the 'powers that be'. For most GPs, however, censure is severe; affecting the doctor professionally and personally, and therefore the possibility of it must be taken seriously. This concentration on following the rules, and the importance of doing so, deflects these practitioners away from pursuing abuse issues where they suspect a patient has them.

> you do spend your life trying to cover your arse and making sure you've done everything right and it's been properly documented. ... So you spend most of your life being afraid ... So yeah, so there is one group who are incredibly arrogant, and incredibly hide-like-leather and don't give a damn about their patients, and so all sorts of awful things, often with really bad medicine and certainly atrocious psychological medicine, and the system seems to make sure that they practice, and practice forever, and

> the rest sit there largely with a great deal of fear because they re so afraid of being caught out … and um, discovering some retrospective piece of legislation from the health benefits [indecipherable] that they didn't know about and didn't discover until two months after they committed the offence. ... And they will be personally held liable for that.
>
> (Dr K, 478–97)

Another professional practice fear was the censure of the medical community (their peers) for attempting to intervene on behalf of and help their female patients experiencing violence. They fear this censure would take the form of ostracism and unpleasant representations of them.

> There are individuals who have a passion for it, and there are other professionals up in [location] (.) most of us don't mention it. ... we are afraid of stereotyping (indecipherable) with impressions, being labelled, being rejected (2).
>
> (Dr K, 247–51)

Many of the GPs in the study talked about their medical training as inadequate for addressing domestic violence as a health issue. They understood this as a problem of the reductionist model of medicine. In the excerpt below, one GP articulated this problem as related to the specialisations in medical training: they are trained divide the body into parts, and each specialist area deals with a particular part.

> A separate world, you are in that separate world, you are taught only by hospital doctors, about hospital medicine from hospital perspectives – nobody does integrative medicine, you know, it's all 'the lung man will tell you about lung diseases' and then you finish the lung course and go on to the heart course, and then a skin course and then a kidney course and if you say 'Is there a link between skin and kidney?', they decide which side of the white line you are on and if it's a skin question ask it and if it's a kidney question tell you to go and talk to the kidney man and that's how the specialist process works. If you go in with a cough – you'll be seen by the lung man who will tell you that it may be a (indecipherable) lung, if yes, he'll fix it, if no. ... Heart man says, yes, no, if no, he sends you to the tummy man, if no for the tummy you are out the door, because it is not lung, not heart, not tummy – but she's still got the cough. [Go home?] Well it's not go home, but it's just not my problem, it's my problem if it's a tummy problem, and it's not a tummy problem.
>
> (Dr K, 346–62)

Health problems linked to social problems, such as intimate violence and alcoholism, were specifically excluded as medical problems in these GPs' training, resulting in their feeling that they lack a way of understanding health problems that arise from social problems.

> I remember seeing (2) alcoholic cases and, you know, told it was a social disease you know, we didn't have to get involved in it, and that meant I wouldn't see the patients.
>
> (Dr L, 176–78)

> It's a social problem, if her lungs were fine, her heart was fine, her kidneys were fine, it's not really our chair.
>
> (Dr K, 393–94)

Despite their own training, it was commonly understood that there has been a change of awareness in the medical profession regarding the issue of domestic violence against women. As illustrated below, there was a belief that there is better awareness of its prevalence and perniciousness, in contrast to the past when little was published in medical literature on the issue and it was not talked about among themselves.

> Like people were not aware of how prevalent it was and how serious it was and how dangerous it was, and, and so on, you got me? And I think (.) over the years all of that has shifted. ... I think. Both in me, and doctors, and society, I think, basically. And sometimes with the public campaigns ... have helped, I think in that um, but, I don't know, it, it, subtle change occurs you know, like when you read articles about it in our journals, we discuss it at meetings and you know what I mean. I, it it's okay to talk about and so on, whereas before it was sort of like, oh yeah, you know? kind of thing. About twenty years ago.
>
> (Dr N, 20–30)

So, although there is a fear of (peer) censure when talking about being concerned with domestic violence, the GPs in this study were able to attribute these changes to public campaigns, and changes in social attitudes as well personal change based on experience working alongside other concerned service providers.

> There's doctors that are fairly (2) unliberated and conservative in general, yeah I'm sure there are. ... Although I think that, I think that it's less and less acceptable ... um (6) yes it's interesting, I don't really know. Um (4) I

> mean it's kind of like a guess at their social attitudes, and um (2), I 'spose I'm [inaudible]. No, I think it's shifted, I don't think a doctor could defend this any more, (.) except in his own head or in his own family. ... But he couldn't, no one would buy it, in any discussion group he'd be jumped on by everyone else.
>
> (Dr N, 335–43)

> Oh, no. No, in my, I and remember, in my um, I can't remember whether it was paediatrics or what it was we were, [I was given] work with a social worker and um, that was my very first evidence of anything untoward happening in a family. ... and, um, it just blew me away, at that stage, I didn't believe that anyone – everybody wasn't a happy family, ... um, but no, and had I not been (.) allocated to that (.) um, social worker I guess I might have continued thinking that nothing ever happened to people.
>
> (Dr A, 71–84)

Although the GPs in this study felt that it was indefensible that their peers could ignore the effects of violence, one doctor felt that medicine as a profession still does not pay sufficient attention to issues with health effects which cannot be empirically tested or defined.

> (Sighs) As a profession I think it does lip service to most issues it can't measure with a stethoscope.
>
> (Dr K, 241–43)

Another doctor felt that an improvement in the ability of GPs to assist people in terms of psychological issues has risen commensurate with the rise in the quality of general practice in general, although this depends on the measurable quality of the psychological problem.

> Um, what I'm trying to say is that I think the quality of general practice in, in, has improved substantially and that I've, because, and because it's in ways that are easier to measure, I think it's probably fair to assume that we've improved in those which are more difficult to measure, like the psychological issues.
>
> (Dr G, 300–303)

Conclusions

The participants in this study expressed concern that they do not always detect histories of abuse, and had received no training regarding domestic violence or the detection of it during the course of their medical schooling. They were aware, however, of the forms violence can take, and that the effects of violence extend beyond physical injury. They expressed several views regarding the cause of violence, most

commonly accounting for it as an effect of social problems. Detection was a problem for the interviewed GPs, as was asking patients about their experiences. They felt that trust and knowing the patient reduces the difficulty of this situation. They were deeply concerned about the problem of abuse, and tried to support women to leave violent male partners. When women do not leave, the GPs may experience worry, frustration, or a loss of sympathy.

While these GPs understood abused women as damaged by the effects of the abuse, and as suffering a loss, lack or impairment of their ability to make decisions or take action, they also understood recovery as *her* responsibility and that *she* has to leave her partner to make that possible. According to the GPs understandings, women often choose to return to unsafe and damaging relationships. They account for their frustration, lack of comprehension or sympathy, and their sense of powerlessness to help, by attributing responsibility to the abused women: if she chooses to return, then the violence is her responsibility.

The analysis suggested that the GPs in this study were able to locate the act of violence as a problem of an individual man – one who exercises control over the woman and who is capable of posing a real threat of physical harm to the doctors themselves. They also construed violence as a social problem, implicating social conditions and strains in the aetiology of the violent act. However, they did not introduce a notion of social responsibility for ending the violence or preventing its damaging effects. Furthermore, they stated that social problems are often not regarded as part of their professional domain, and as such they may avoid dealing with them so as to not place themselves at risk professionally.

As a medical practitioner, a GP is an 'expert' in general health and wellbeing, and makes decisions based on the standards of and ideal for 'normal' physical wellbeing. As a consequence, they are able to distinguish the decisions and actions of a 'normal' woman from those of an 'abnormal' woman. In this study, they spoke of the possibility that the violent relationship is in a way co-dependent, which functions to keep the woman emotionally tied to her violent partner. It was a common theme among these GPs that their healthy and normal women patients would not tolerate any violence from their partner; this distinction risks promoting a view of male violence as a form of pathology within the woman.

Despite their expertise, the medical model through which the GPs understand health and wellbeing does not enable to doctors to speak directly of abuse as underlying a medical condition. Psychological abuse is particularly problematic for GPs because it leaves no observable, medical 'trace'. Where the effects are not visibly located 'within' the body, its 'discovery' does not rely on the usual techniques of diagnosis through interpreting signs and symptoms, but on the woman's disclosure of the relationship in which she being abused. If a woman is unwilling or unable to disclose abuse, she may well be understood as 'difficult' or 'powerless'. The GPs who participated in this research were acutely aware of the lack or inadequacy of their training in domestic violence, and their inability to offer appropriate support. They were also aware that other doctors did not share their concern, and were even less well equipped to provide support for their distressed patients.

The GPs' narratives account for all but two of the empirically identified attitudes and responses of doctors to domestic violence against women by Richardson and Feder (1996). Doctors in this study did not speak of close identification with women who had experienced abuse by their male partners or lack of knowledge of community services. In our study, they tell of fears and worries, feelings of inadequacy and powerlessness, frustration and distress.

How the GPs understand the abuse of women by their intimate partners contributes to avoiding, denying or deferring responsibility in the face of powerful negative emotions such as fear and powerlessness. It may be the case that improved training could provide a more sympathetic understanding of the psycho-social effects of the experiences of abuse and increase doctors' opportunities for supportive intervention. However, future evaluations of training programmes need to include assessments of how well the programmes address GPs' emotional responses to violence against women.

Acknowlegements

The authors would like to thank the GPs who took part in the broader study and Dr Mandy Morgan for supervision of the research within the Domestic Violence Interventions and Services Research Programme conducted within the School of Psychology at Massey University. The comments from the blind reviewers (including the title suggestion) have helped to strengthen this paper.

Amy Aldridge *holds an MA in psychology and works in health psychology context, delivering primary healthcare with a focus on harm reduction.*

Leigh Coombes' *research interests generally focus at the interface of feminism, critical psychology, and critical legal studies. She is a lecturer in critical psychology at Massey University in Aotearoa/New Zealand.*

References

Bewley, C., & Gibbs, A. (1991). Violence in pregnancy. *Midwifery, 7,* 107–12.

Bourque, L., & Fielder, E. (1995). *How to conduct self-administered and mail surveys.* Thousand Oaks, California: Sage.

Bradburn, N. (1983). Response effects. In P. Rossi, J. Wright, & A. Anderson (eds), *Handbook of survey research* (pp. 289–328). New York: Academic Press.

Bradley, F., Smith, M., Long, J., & O'Dowd, T. (2002). Reported frequency of domestic violence: cross sectional survey of women attending general practice. *British Medical Journal*, *324,* 271–4.

Browne, A. (1993). Violence against women by male partners: Prevalence, outcomes, and policy implications. *American Psychologist, 48*, 1077–87.

Campbell, J., Harris, M., & Lee, R. (1995). Violence research: An overview. *Scholarly Inquiry for Nursing Practice: An International Journal, 9*, 105–26.

Campbell, J., & Lewandowski, L. (1997). Mental and physical health effects of intimate partner violence on women and children. *The Psychiatric Clinics of North America, 20*, 353–74

Campbell, J., Poland, M., Waller, J., & Ager, J. (1992). Correlates of battering during pregnancy. *Research in Nursing & Health, 15*, 219–26.

Davidson, L.L., Grisso, J.A., Garcia-Mareno, C., Garcia, J., King, V.J., & Marchant, S. (2001). Training programs for healthcare professionals in domestic violence. *Journal of Womens Health & Gender-Based Medicine, 10*(10), 953–69.

Easteal, P., & Easteal, S. (1990). Attitudes and practices of doctors towards spouse assaults: An Australian study. *Violence and Victims, 7*, 217–28.

Fischbach, R., & Herbert, B. (1997). Domestic violence and mental health: Correlates and conundrums within and across cultures. *Social Science and Medicine, 45*, 1161–76.

Freeman, M. (1993). *Rewriting the self: History, memory, narrative.* London: Routledge.

Harris, R., & Dewdney, P. (1994). *Barriers to information: How formal help systems fail battered women.* Conneticut: Greenwood Press.

Heise, L., Raikes, A., Watts, C., & Zwi, A. (1994). Violence against women: A neglected public health issue in less developed countries. *Social Science and*

Medicine, 39, 1165–79.
Irion, O., Boulvain, M., Straccia, A.T., & Bonnet, J. (2000). Emotional, physical and sexual violence against women before or during pregnancy. *British Journal of Obstetrics and Gynaecology*, *107*(10), 1306–8.
Jewkes, R. (2002). Preventing domestic violence. *British Medical Journal, 324*, 253–4.
Kingston, P. & Penhale, B. (1995). *Family violence and the caring professions.* Houndmills: Macmillan Press.
Pahl, J. (1995). Health professionals and violence against women. In P. Kingston, & B. Penhale (eds), *Family violence and the caring professions* (pp. 127–48). Chichester: Wiley.
Randell, T. (1990). Domestic violence intervention call for more than treating injuries. *Journal of the American Medical Association, 264*, 939–40.
Richardson, J., Coid, J., Petruckevitch, A., Wai, S.C., Moorey, S., & Feder, G. (2002). Identifying domestic violence: cross sectional study in primary care. *British Medical Journal, 324*, 274–7.
Richardson, J., Feder, G., Eldridge, S., Chung, W.S., Coid, J., & Moorey, S. (2001). Women who experience domestic violence and women survivors of childhood sexual abuse: a survey of health professionals' attitudes and clinical practice. *British Journal of General Practice, 51*(467), 468–670.
Richardson, J., & Feder, G. (1996). Domestic violence: A hidden problem for general practice. *British Journal of General Practice, 00,* 239–42.
Riessman, C. (1993). *Narrative analysis*. California: Sage.
Saunder, D., Hamberger, L., & Hovey, M. (1993). Indicators of woman abuse based on a chart review at a family practice center. *Archives of Family Medicine, 2,* 537–43.
Sharps, P.W., Korziol-McLain, J., Campbell, J. McFarlaine, J., Saches, C. & Xu, X. (2001). Healthcare providers' missed opportunities for preventing femicide. *Preventive Medicine, 33*(5), 373–80.
Stark, E., & Flitcraft, A. (1991). Spouse abuse. In M. Rosenberg & M. Fenley (eds), *Violence in America: A public health approach* (pp. 123–57). New York: Oxford University Press.
Stark, E., Flitcraft, A., & Frazier, W. (1982). Medicine and partriarchal violence: The social construction of a 'private' event. In E. Fee (ed.),*Women and health: The politics of sex in medicine* (pp. 177–209). New York: Baywood Publishing Company Inc.
Stevens, P., & Richards, D. (1998). Narrative case analysis of HIV infection in a battered woman. *Healthcare for Women International, 19*, 9–22.
Taggart, L., & Mattson, S. (1996). Delay in prenatal care as a result of battering in pregnancy: cross-cultural implications. *Healthcare for Women International, 17*, 25–34.
Yam, M. (1995). Wife abuse: Strategies for a therapeutic response. *Scholarly Inquiry for Nursing Practice: An International Journal, 9*, 147–58.

Notes

[1] *Dr L, 250–265.*

[2] There were 90 GPs listed for the region at the time of the study.

[3] These two participants were included in the 5 GPs who responded to the second mail-out.

[4] **(.)** – a pause of less than one second; **(3)** – a pause in speech, and the length of pause, in this case a pause of three seconds; **I was cross** – underlined words indicate speech was emphasised; **...** indicates that material has been omitted from the transcript; **[text]** – this is not the participant's speech. Text within these brackets are either the interviewer's speech or an explanatory note; **(23–78)** – numbers within a bracket indicate the lines from which excerpts from GPs' transcripts are taken. The letter representing a particular GP bears no resemblance to the actual name of the participant.

[5] While the terms 'victim' or 'victimisation' are problematic in feminist literature, medical discourse has a tendency to reduce the effects of abuse to the patient.

[6] This doctor showed me (Amy) that the chair provided to the patient was chained to the floor. He explained that a male patient had picked it up and tried to hit him in the head with it. It was not related to a domestic violence situation that he knew of.

New Zealand women's experiences of lawyers in the context of domestic violence: Criticisms and commendations

RACHAEL POND AND MANDY MORGAN

Lawyers play an integral role when women use the legal system in an attempt to protect themselves and their children from domestic violence and abuse. Family lawyers representing victims of domestic violence typically prepare protection order applications and provide advice and information about the orders.[1] As part of the protection order application process, they prepare the women's affidavit, a sworn statement that outlines the nature of the applicant and respondent's relationship, the occurrences of physical, sexual, and/or psychological abuse, and the necessity of the order for her protection and any children's protection. If relevant, they might also address custody and access issues. Ideally, lawyers representing victims of domestic violence should also encourage women to attend education programmes, and explore matters such as maximising personal safety and instigating criminal charges where relevant (Barwick, Gray, & Macky, 2000).

Many family lawyers also work with respondents. Such work involves explaining the implications of a protection order or a protection order application, defending an application or a temporary order, and/or objecting to one or more of the conditions of a protection order. Some family lawyers have authorisation to be appointed as Counsel for Child. Such lawyers represent the child by placing the wishes and views of the child before the Court whilst at the same time keeping the welfare and best interest of the child paramount, and making such factors known to the Court. Criminal lawyers represent clients charged with violent offences and/or breaches of protection orders. Domestic violence work done by lawyers is interrelated with the work and decisions of police and judges.

Although there has been considerable research focusing on the police and judicial response to domestic violence, there has been little New Zealand research regarding the effectiveness of lawyers assisting women survivors of partner violence. Research on women's access to justice more generally reported that some lawyers fail to

respond appropriately to women who are seeking protection from violent partners (New Zealand Law Commission, 1997a). Another study, looking at women's satisfaction with their lawyers in the context of partnership breakdown and custody and access proceedings (Nash & Read, 1992), found that a significant proportion of women felt they were not listened to carefully enough, that the speed of communications and making things happen was too slow, and that they had not been given sufficient information or explanations. Over one-quarter described their lawyer as 'not at all supportive'. Women particularly appreciated lawyers who had a caring attitude, dealt with things promptly, treated them as an equal, and understood their point of view.

Nan Seuffert's (1994, 1996) research and the supplementary project on Māori women's perspectives (Milroy, 1996) are the only studies to have specifically examined lawyering in relation to domestic violence. Interviewed women reported that like police, judges, and society generally, their lawyers held attitudes that tended to minimise and trivialise the domestic violence and blame them for it (Seuffert, 1996). The women also reported that their lawyers did not understand the dynamics of domestic violence (Seuffert, 1994, 1996); a number of lawyers admitted this themselves (Seuffert, 1996). Some women noted a lack of respect and/or condescending attitudes from their lawyers (Seuffert, 1996).

Mirroring findings of other research, women in Seuffert's (1996) study believed that the legal system is gender biased. Many women felt silenced, either by not having a chance to tell their story, by having to keep their emotions separate from their story, or by not having their harmful experiences legally recognised. A number of women felt that their lawyers were also gender biased because they doubted their credibility and/or discredited them. Many concerns mirrored those in women's access to justice research (Morris, 1999; New Zealand Law Commission, 1997a, 1997b, 1997c). For example, women found legal terminology difficult to understand (particularly when overwhelmed by emotions), and had difficulty asking their lawyers questions. Many complained that they were not included in the decision-making process (Seuffert, 1996). Unfortunately, as in Busch, Robertson, and Lapsley's (1993) study, some women described their treatment by the legal system as comparable to the abuse that they had suffered from their partners: a double-victimisation. Many commented that although

their (ex-)partners lied throughout proceedings, their (ex-)partners were believed and they themselves were not (Seuffert, 1996).

Several of the women mentioned some positive aspects about their interactions with lawyers, such as having a lawyer who listened to them, who supported them and their decisions, who seemed to understand their situation, who involved them in the decision-making, and who provided clear explanations of the process. When asked, women said they would also appreciate a lawyer who offered emotional support, and who understood women's lives and domestic violence. Despite these positive comments, Seuffert (1996) concluded that her research raised some serious concerns about lawyers. It seemed that lawyers sometimes end up being barriers instead of facilitators to justice for survivors of domestic violence.

The present research was undertaken because the responsiveness of lawyers (and other legal personnel) affects the safety and protection of women, as well as their satisfaction with the legal system. The research took place around the beginning of the millennium. This research explored, first, how well the New Zealand legal system serves the needs of women who experience abuse and violence from their male partners and ex-partners, and second, how the legal profession makes sense of domestic violence within the context of their work. The former phase of the research examined and represented women's satisfaction with lawyers (the focus of this paper), the Family and District Court, protection orders, and child custody and access issues. By examining and representing women's satisfaction with lawyers, the present research also aimed to increase the body of research and women's voices on this topic.

Methodology

This first phase of the research utilised narrative methodology. This methodology accords with feminist theory and research practice, where women's accounts of their experiences are considered a legitimate contribution to knowledge about women's lives.

Narrative representation (referred to as 'narrative analysis' by Polkinghorne, 1995) was specifically used. Here, accounts given by women during interviews were organised into coherent stories about their experiences using the legal system for domestic violence (Pond, 2003). Enquiring after and representing women's experiences of the legal system gave women survivors of male partner violence 'a voice'

where this has frequently been silenced, dismissed, or overlooked. It also gave women an opportunity to have their experience affirmed.

After representing women's stories, we identified significant problems mentioned by the women as well as factors they appreciated. Congruent with feminist principles, it was hoped that the research might contribute towards change by raising awareness of the problems faced by women who are victimised in their heterosexual relationships and/or marginalised by the legal system. Enhancing women's satisfaction with the legal system and increasing the safety of women and children were important considerations.

Method

Women participants were recruited through advertisements in a free weekly newspaper and through an agency that provided education and support to women affected by domestic violence.[2]

The first author interviewed ten women who met the pragmatic, experiential, and ethical criteria for participation, and she subsequently transcribed their interview audiotapes, and organised their accounts into individual narratives. These women had experienced previous psychological, sexual, and/or physical abuse from a male partner, and they had been involved with the legal system for this violence (either by their own initiation or as required by police for prosecution). Ethically, women could not participate if they were still experiencing abuse or if they would incur any physical or emotional risk by being involved in the research. Recognising that some women might have occasional contact with their ex-partners, appropriate contact methods were established and regularly evaluated. Women were fully informed about the research and any questions were answered before they agreed to participate. Safety and comfort during the interviews were a priority, and participants could have a friend or support person present if they wished. During conversations and interviews, the first author was affirming, empathic, and responsive to the experiences shared by the women and associated emotions. She offered women avenues of support when they felt they might benefit from this, and she welcomed ongoing contact with participants. The participants were given the opportunity to censor information that they provided during the interview but did not want included in research reports. Details that might reveal their identity were changed or removed to protect their anonymity. Also, in an effort to reduce power relationships that

exist between researchers and researched, a conscious effort was made to create a relaxed research atmosphere and to involve participants in decisions. The university human ethics committee approved the research project.

Research Findings

Based on the women's narratives, it was evident that women encounter many problems when they become involved with the legal system for issues pertaining to partner violence. It was also evident that women are very appreciative of certain qualities in legal personnel when they experience these. Those judged as most prevalent and/or significant by the researchers are discussed next. Whilst we can not estimate the proportion of women who have similar experiences of the legal system based on the experiences of ten women, it can be argued that if one or more of these women experienced legal personnel and processes in particular ways, other women in New Zealand also do.

Women's experience of their own lawyers

Lawyers only doing a job for money

It was evident from the narratives that women viewed and positioned lawyers in particular ways, often based on or confirmed by their experiences with them. First, women spoke of lawyers being primarily motivated by money and less interested in their clients' personal situation. Hence, they felt that lawyers were less concerned with their client's safety, protection, and other matters that were intensely significant to the women, including their children's welfare. The women also perceived lawyers' interactions with them as being 'only a job' for the lawyers. The final result was not important to the lawyers, nor did they have to live with these consequences.

> Alana: This was a biggy for me, was trusting that your lawyer will do the best for you. Knowing that, that their stake in it is business. That's all it is, business. They might believe in what they're doing but the bottom line is to them it's business. But to you it's the most important issue you'll ever have to face. Like it's your safety, and your children's safety. And that's a very hard thing to, to put your trust in a lawyer when the bottom line is it's dollars to them.

> Aroha: I think he was out for money. He wasn't there to help me … He was very money orientated.

> Katherine: Except once again you had to pay for lawyers. They just try and take whatever they can, you know.

Other research (Morris, 1999; New Zealand Law Commission, 1997b, 1997c) has also pointed out that women frequently find lawyers as self-interested and primarily concerned with making money, rather than being concerned with women's needs. Even though other types of work might be more lucrative for the legal profession, this perception and experience of lawyers is unlikely to imbue women with confidence in the service lawyers provide.

Lawyers are costly

Several women in the present research commented that lawyers were too expensive, particularly if their ex-partners unnecessarily prolonged legal involvement. Partner persistence also meant that legal aid grants were sometimes depleted before matters were resolved, and/or that little money was left from any property settlement after legal aid costs were retrieved. Sometimes legal aid was not offered or applications were not followed through, which meant these women were deterred from applying for orders or received bills they could not afford. One woman's lawyer failed to explain that a large proportion of his work was not covered by legal aid, so she received an unexpected bill that was well beyond her means. The following interview excerpts illustrate these problems.

> Aroha: I was granted legal aid. And, because of my ex-partner's persistence, you know, he'll just keep going and going until he gets his own way. He kept opposing, yeah … And by then I'd given up. The money had gone, the lawyer hadn't helped me … And then after that I was stuck, and I couldn't do anything more.

> Rebecca: It had been drawn out so much and I was just really hagged, I was run out, I was broken, and I thought, 'I'm mentally not going to be stable soon,' nervous breakdown or something, and I could lose the children like that too … And also my lawyer was at this stage reminding me constantly of the cost … because it had been drawn out so much. Yeah, I had legal aid, but when you get the settlement from the house, the legal aid takes it. And that's what she was saying, I was going to get to the stage that I was going to be left with nothing.

> Katherine: I was not offered even legal aid, and I didn't even know about it … The last guy did end up bringing up legal aid after quite some time,

> and then he just said, 'Oh, let's not worry about it. It's too many forms and that to fill out.' And so then I got this huge bill, like huge, about six grand for absolutely for nothing.
>
> Alana: He didn't inform me fully about my legal aid position so I'm ending up, I had a $700 bill from him that I'm paying off at five bucks a week, and it's going to take me a long time to pay that off. He gave me all the legal aid forms to fill out, which I did … But he never explained that [only some of his work would be covered], so I assumed that the whole lot was covered by legal aid. Which just added stress on top of, you know, the heaps of stress I was under.

The perceived and actual financial cost associated with using lawyers has been raised in previous research (Morris, 1999; New Zealand Law Commission, 1997a, 1997b). Lawyers' expenses and constrained legal aid grants mean women are sometimes deterred from involving the legal profession, or are not able to continue until a good outcome is reached (Morris, 1999; New Zealand Law Commission, 1997b). As mentioned by women in the present research, financial stress also increases women's emotional distress.

Lawyers are too busy

> Alana: My criticism of lawyers that I've come across are that they're real busy. They're so damned busy that they don't have a lot of time for you. Things are rushed, things are pushed through, mistakes are made. I picked up two or three pretty serious mistakes in my affidavits. Appointments are changed … You'd be rung at the last minute saying, 'Oh, can we put this off because such and such else has come up?' And it's like, it's awful.

As evident in the excerpt above, women found their lawyers much too busy and without adequate time for them. They felt rushed and pressured for time during appointments, and a nuisance when contacting their lawyers between appointments. As identified in previous research (Morris, 1999), some lawyers were poor at returning phone calls, even when the woman's call was urgent in nature or she rang several times. Women were also upset that time constraints meant lawyers made mistakes in their affidavits. Not only does the time pressure and busyness of lawyers cause women stress and dissatisfaction, it can deter women from seeking necessary assistance outside of their appointments. Other women's excerpts also illustrate

their feeling that lawyers had insufficient time for them.

> Jenny: I hadn't felt listened to at all. Yeah, in fact, I felt like I was a damn nuisance… I remember phoning the lawyer that afternoon to let her know, you know, to find out, what was going to happen … And I tried to get hold of her. She never, she wouldn't return my calls. You know I always felt that I was, just like I said, a damn nuisance.

> Rebecca: She was always very busy. Very busy lady. [So], you always felt like you were, well for a start, you felt lost for words. And you were trying in a hurry to get out things, and try and get her to picture what you were going through. Which she wasn't really interested in anyway, well, I felt she wasn't.

> Aroha: You know, I had like an hour with him and then, you know, 'Sorry,' you know, 'next customer please.'

Although the business ethos associated with the legal profession and law firms will likely act as a barrier, lawyers need to give more time and reassurance to their clients. This would increase perceived legal support and responsiveness, and enable the women's situation to be treated seriously. Insufficient time means that lawyers compromise their representation of clients. Increased time with domestic violence clients is problematic however, as this would equate to increased cost for services.

Lawyers lack understanding about domestic violence

Some women commented that their lawyers lacked understanding about their personal situation. They also felt that lawyers lacked understanding about domestic violence, psychological abuse, the seriousness of such abuse and violence, and the reasonableness of their panic and distress. This is illustrated in the following interview excerpts.

> Rebecca: I had a woman [lawyer] … But there were some things I did not find good at all with her … Just sort of lack of interest {inaudible} my case, like I was treated like I was over-reacting. And I had a lot of the time said to me, 'Just don't panic. Look you're panicking. There is nothing to worry about,' you know. And I thought, 'You live with a man for fifteen years that's, you know, used your head as a punching bag, and then say 'Oh, just nothing to worry about.' … I actually would like to see the legal system understand this is a very, very frightened person. This

> is a person who has gone through hell, and what the lawyers are seeing are only what's, you know, what's described as the tip of the iceberg. Yeah, I would like to have been treated like a person.
>
> Alana: That's another thing actually, that I thought was quite shocking. After [my second lawyer] sent that letter stopping access but offering supervised access, she said to me, 'Oh well, if something happens,' meaning something violent, I mean, if he came to my house as a result of that letter and bashed me, we'd be, basically be home and hosed for the protection order. 'My god,' you know, {laugh}, 'success at all costs.' I think, in my experience with the court and both of my lawyers, that they don't actually understand or put a lot of seriousness to psychological abuse. I, I feel that really strongly, because it seemed to me that you almost had to prove you were either physically hurt or physically about to be hurt to lend any weight to psychological abuse … So, no, I don't think they do understand psychological abuse.
>
> Katherine: When I got home [from overseas], like the lawyer just wasn't understanding at all. Even though [my ex-partner] had been really violent, had been arrested and everything, she thought it was, yeah, really wrong of me to have organised my daughter to stay with this nice stable family. I felt awful. I was scared, a grown woman, and I was scared about having to go in and having to get a big telling off from [my lawyer] … When she didn't have a clue what my life was like or what he was like.
>
> Jenny: I didn't have a real really good understanding of [domestic violence] myself. It certainly wasn't explained, any of that, by lawyers. I wonder whether they actually have an understanding of domestic violence and all it's implications themselves.

Women in Seuffert's (1996) research also reported that their lawyers did not understand the dynamics of domestic violence. They felt their lawyers sometimes minimised and trivialised domestic violence, or blamed them for it. Other New Zealand research (Morris, 1999; New Zealand Law Commission, 1997c) has also commented that lawyers (and judges) are thought to lack awareness of women's lives and the situations that lead them to seek legal assistance. Amongst other things, lawyers and judges were thought to be ignorant or indifferent to the violence that may be dominating women's lives, and the urgency with which they need matters resolved so that they and their children can feel secure. Women obviously experience

greater satisfaction with lawyers who have a good understanding of domestic violence (including psychological abuse), and who do not dismiss women's distress or panic at their situation.

Lack of empathy and poor interpersonal skills

It seemed evident that some lawyers had poor interpersonal skills. Other research has found lawyers' poor communication skills to be one of the most frequent complaints by women (Morris, 1999), at a crisis time where good interpersonal skills are rated as very important (New Zealand Law Commission, 1997b). In the present research, one woman specifically mentioned that she did not feel heard:

> Jenny: You never really feel like you've got a voice when you get entangled in the legal system… that's been my whole experience. And that's interesting because I've talked to a lot of women who have felt similar.

Several women described their lawyers as being unwilling or unable to cope with the emotion that comes with domestic violence work. These lawyers lacked understanding and empathy, and sometimes dismissed the woman concerned as being over-emotional or over-reacting. The process used by some lawyers was also described as cold and apathetic. For example, when collecting information for their affidavits, lawyers were only interested in the legalities and facts of the situation, and expected women to be able to separate from their emotion when providing such information. Similar to other research (New Zealand Law Commission, 1997a), women in the present research resented having their emotions treated as irrelevant and quite separate from the facts of their deeply personal problems.

> Rebecca: Like I was treated like I was over-reacting. I felt between her and me the understanding wasn't there. Like I'd stick up for myself, for my rights, 'cause I said to her, 'I will not be abused at [by my ex-partner],' you know. And she said, 'I think you should go to your counselling,' you know. Always shoved off to there. 'Oh, you're too emotional. Oh, don't panic. Go to the counsellor,' you know … Well, I recognised that she had to be professional. I did recognise that she had to be professional and stick to the facts, that she was no counsellor … She does have to do the job. She's got to get the facts out. I do respect that. But in the same token, I really felt like she wasn't working for me, that I was the bad guy.

> Alana: [My first lawyer], he ended up discounting you as a person and you were too much trouble, too much bother … I got the feeling that he sort of dismissed, eventually dismissed me as sort of an over-emotional woman. I was over-emotional {laugh}, but then you are when you're in those situations.
>
> Jasmine: Like to them it was just, basically it's a legal document, 'I want to get the legal technicalities right.' That's all it was. And there was no feelings or emotions or anything like that involved in it. And yet they're asking you gut-wrenching questions, and you were expected to just sit there and answer it cold-bloody-heartedly. So yeah, that's why I'm saying to have someone there who's got an empathy for the situation would make just the most amazing difference.
>
> Katherine: Certainly not understanding, certainly not, not sympathetic, neither of them … I'd be very hesitant to use the legal system again actually when I think about it, very hesitant, because they made no difference in, in my life. You're not necessarily expecting a counsellor but you'd expect a bit of empathy.

The lawyers who dismissed women as over-emotional and/or over-reactive told women that they should not panic or that they should go to their counsellor. Sometimes, lawyers acted as if their clients' emotional state impacted on their ability to accurately assess the 'reality' of their situation. These participants resisted being treated as 'over-emotional women'. They did not want to have their experiences disregarded because of assumptions made about women. Instead, they wanted the dignity and respect that is normally afforded to a 'person' or 'human being'. They also felt that their highly emotional state was very reasonable considering their circumstances. Not only had they endured abuse and violence directed towards them, they were currently in danger, were often trying to protect their children, and usually facing additional stress because of the legal system. Previous research (Morris, 1999) has also shown that women do not think lawyers (or judges) respond well to women who are emotional or distressed about their circumstances.

It also seems that lawyers do not respond well to women who stand up to their partners, perhaps because it is not considered congruent with how abused women are perceived to behave. For example, when one woman was assertive to her husband about the laundering of their children's clothes after access visits, her lawyer

told her that they were both playing power games. This same lawyer did not respond well when this woman challenged her about her own behaviour. Lawyers need to recognise that whilst some women avoid confrontation with their (ex-)partners because of the threat of abuse and violence, some women defend their rights and assert themselves within and/or after their abusive relationship. Similarly, some abused women are quite able to provide feedback to their lawyers when their service is unsatisfactory.

Some women described their lawyers very negatively. One woman described her first two lawyers as 'dreadful' and 'hopeless'. Neither of them was sympathetic or encouraging and both seemed more interested in her ex-partners rights to his children, not the children's personal safety and wellbeing. Two women mentioned that their lawyers had a position of power over them that somewhat mirrored the power imbalance, and their powerlessness, within their abusive relationship. One of these women's lawyers treated her very badly. This lawyer had poor communications skills, was moody, unpredictable, disinterested in her case, and lacked understanding and empathy. Whilst preparing her affidavit, she made derogatory, inappropriate, and exasperated remarks, and sometimes acted bored. She did not acknowledge the seriousness of her situation, and consistently told her that she was over-reacting, that there was nothing to worry about. Sometimes, her lawyer did not believe her and treated her with suspicion, or she supported or defended her ex-partner's actions. When her ex-partner threw a tantrum, her lawyer would appease him. This lawyer also expected her to accommodate her ex-partner. She was treated like the person in the wrong. She did not feel that this lawyer treated her ex-partner's violence and abuse towards her children seriously. She also felt very uncomfortable with the level of communication between her lawyer and her ex-partner's lawyer. Sometimes her lawyer breached confidentiality by passing on confidential information to her ex-partner's lawyer, who would then tell her ex-partner. This woman also felt that her relationship with her lawyer sometimes mirrored that with her (ex-)partner. Such stories by women are disheartening to say the least. They raise the issue of whether some lawyers adequately represent their (women) clients. One also wonders whether lawyers' views about what constitutes a just outcome sometimes overshadow the intentions of the Domestic Violence Act and the best possible outcome for their women clients.

The stereotype of women as vindictive

At least one woman participant thought her lawyer viewed her as vindictive.

> Alana: Well, I rang my lawyer and told her [what the policeman had said about the weapons]. And she said, 'Oh, I haven't got the energy for this.' And that made me feel once again like she thinks I'm just being vindictive.

Because her ex-partner used to tell her she was vindictive, she always questioned herself, and lacked confidence in expressing her opinions. More specifically, she was worried that she might come across to her lawyer as a vindictive woman when revenge was not her motive.

> Alana: When you've been in an abusive relationship like that, you're still not convinced that it's not, a lot of it's not up here, that you're not being over the top. You're being told by your ex-partner that you're vindictive even though you're not. But that doubt is still there. You're questioning yourself the whole time. And then when you do come up with various things, points to your lawyer, 'Well, you know, why don't we do this? Or, why don't we do that?' it's, it's, very diffidently, I suppose, because you don't want to come across as a vindictive woman, and make what he says true about you.

Another woman commented that lawyers sometimes conceive women as vindictive when they are not. Women involved in other research have also reported that lawyers have told them they are vengeful (New Zealand Law Commission, 1997a). Stereotypical representations of women as vindictive or manipulative thus contributed to women's dissatisfaction with legal interventions.

Inadequate consideration of children's safety and wellbeing

Some women also felt their lawyers insufficiently considered their children's safety and interests. For example, one lawyer was prepared to gamble with the safety of a woman's son by suggesting a 'greater force' would protect him if they chose to pursue unsupervised access. Behaviour that lacked consideration of children's wellbeing was particularly distressing for women who were legally trying to increase the safety and protection of their children through supervised access.

> Alana: I mean [my second lawyer] said to me at one stage 'Well look, why don't you just let him have his access unsupervised.' She said, and

> this is pretty much the exact words, 'God, or the universe, or whatever you believe in, has a way of looking after these children.' And I thought, 'That's all very well for you to say, but it's my child that you're gambling with.' There are too many children who have been killed in this country, you know, by parents, to believe that they're protected in any way.

Women also thought that children's safety was not emphasised in other ways by the legal system more generally. For example, one woman felt there was an expectation that supervised access is only a temporary phase that progresses, sometimes over-hastily, to unsupervised access, regardless of whether the non-custodial parent has learnt responsible parenting skills in this time. Also, a couple of women were very dissatisfied that important decisions regarding access are made on the basis of one meeting between Counsel for Child and those concerned. Such one-off meetings are unlikely to be representative of the actual situation or to indicate problems or safety concerns that are present. Two issues related to children's safety, which also involve lawyers, are discussed below in the section on Counsel for Child. These include Counsel for Child excusing ex-partners who are not parenting responsibly or adhering to access arrangements, and Counsel for Child emphasising fathers' rights and interests over and above children's rights and interests.

Inadequate explanations of terminology

Several women commented that their lawyers did not explain terminology (e.g., 'mediation conference', the distinction between 'custody' and 'access'), omitted to tell them important information, or did not provide enough information about matters that could have had serious implications. However, no women specifically mentioned that their lawyers spoke in 'legal jargon' as has been found in previous research (Morris, 1999; New Zealand Law Commission, 1997b).

> Alana: 'Another thing about [that lawyer] was that I felt he expected me to know a lot of, of the law about custody and things like that. And I didn't have a clue. No idea at all. And I found out quite accidentally through a Family Court co-ordinator that I didn't actually have custody of [my son], which I guess I'd never really thought about, but assumed that seeing I was the Mum and he was living with me that that was how it would be until the court might change it for some reason. But that wasn't the case … I found out that [my ex-partner] was not legally required to bring [our son] back to me, that he could have just kept him,

> and then I would have had to have gone to the Family Court to fight to get him back.
>
> Katherine: Another thing too, I suppose, they omitted to tell me was to close down any bank accounts, which I didn't do. And he had the cheque book, and then five grand went … because unfortunately our account was in both of our names. You see nobody told me. Oh man, {laugh}, it was bad luck after bad luck.

It is important that lawyers do not assume that lay people understand terms that are commonplace within the legal arena as many words seem to be misused or poorly understood within an everyday context. Provision of clear explanations (both written and oral) of terms that have specific legal meanings and implications (e.g., custody, guardianship) could reduce confusion. Lawyers also need to ensure that they advise women of actions they need to take to protect their assets.

Unsatisfactory decision making processes

A few women found the decision-making process unsatisfactory. For example, one woman felt her lawyer bullied her. Another woman noticed that her lawyers did not provide the options and information required to make informed decisions. Instead, they did what they thought was in her best interest. Another research participant felt powerless because her lawyer would make decisions with her ex-partner's lawyers and then push her to accept them. Consequently, she would end up complying with decisions with which she felt unhappy.

> Jenny: I don't recall being given a lot of information from [my first lawyer]. It was almost like he decided what was in my best interest, which I suppose is what lawyers seem to do, isn't it? But, [he] ploughed on and tried to get me to do what he thought was in my best interest … He wasn't giving me information … And again [with my second lawyer], she was just going off and doing what she felt was in my best interest, okay, and didn't, and never gave me clear information to make choices. That's been my whole experience with lawyers. They don't lay out the options, no, no, no, and they don't give you the relevant information, and so you can't make, you can't make an informed choice.
>
> Rebecca: There were a lot of phone calls going between lawyers. And you just you had no record of what was being said … And I felt that

> they were hitting on agreement without your authority, and then they'd come back at you and work you around to that … A lot of things I was agreeing to that I wasn't happy with, because I just found that my lawyer would not really have it. She was very negative to anything that I wanted … So you felt like nothing was really in your power.

Women participating in other research have also complained that lawyers assume too much control, do not provide enough information for women to make their own decisions, and/or cut them out of the decision-making process by coming to a solution with the other party's lawyer (Morris, 1999; New Zealand Law Commission, 1997a; Seuffert, 1996). Involvement in the decision-making process is likely to give women a greater sense of control over the process, and to ensure they are more satisfied with the decisions made. Issues of control are critically important to women seeking legal interventions for domestic violence, since controlling behaviour of (ex)partners is frequently a dimension of abuse they have experienced.

Positive experiences of lawyers

Some women did make positive comments about their lawyers. Overall, they appreciated lawyers who had a good understanding of domestic violence, treated their situation seriously, had concern for their safety, and had their children's interests and welfare at heart. They also appreciated it when lawyers listened to them, believed them, and validated their experiences of abuse and of their (ex-)partner. Empathy, understanding, support, and encouragement were characteristics that were valued.

> Sally: [My first lawyer] just seemed really on to it. The attitude was, 'No, that's not acceptable. Get some back up, and we'll try and stop this.' She seemed very confident and knew what she was doing … [And my second lawyer] never gave the impression that she didn't believe me, or that she thought what he was doing was okay. She had that same attitude too. Yeah, they treated me seriously in a way of that I was there for a good reason, that I wasn't just kind of wasting everyone's time and being, you know, silly and emotional, like what I was there for was valid.

> Jenny: And then I got a lawyer who was just wonderful … Again, quite gentle, not pushy. Would listen to me, and then he would tell me what he thought… He had, clearly had my son's interests at heart. In fact, I think he, you know, he really came from that perspective of what was in the

> best interest of my child, yeah. Clearly worked from that mandate. So I could trust him. And I think he was far more astute, seemed to have quite a grasp of [domestic violence], yeah, streets and streets ahead.
>
> Alana: The lawyer, he was such a sweetie. I told him that [my partner] was forcing me go and answer the door to the cops. And he said, 'That is despicable.' And that actually made me feel quite good, because I, I sort of thought, 'No, I'm meant to be the loyal woman who stands between her man and all danger, sort of thing,' {laugh}, you know.
>
> Hayley: The lawyer was very sympathetic … And we did things. We set up little bits and pieces later on, like when [my son] went to crèche and to school, the crèche had a photo of his father, and then later the school. And if [my ex-partner] ever entered the property they were to ring 111 straight away.

Women also appreciated lawyers who were informative, dealt with things promptly, kept them well informed, included them in decision-making, and did not rush them.

> Sally: [My first lawyer], she was more on the ball. Like she kind of knew exactly what to do, got the information, got it together, got [the order] served.' … And she gave me a lot of information. And then she kept in contact with me after, you know, if I needed to ring and ask anything about it … And she kept me informed with letters, you know, that the order had been served, and then when the legal aid came through, and sending little notes for your information… You knew exactly what was going on and when … [And my second lawyer], it was like a Friday afternoon, but she wanted to get the order cleared or get it confirmed then and there, so that if anything happened say over the weekend I wouldn't have to wait. So she was on to it like that, getting the judge that afternoon to look at it, and then getting back to me with that, that had been done, and that kind of thing. So, she was, she was on the ball that way too, I think.
>
> Aroha: [My second lawyer], he had time for me … I was able to ring him at any time if I didn't understand any of the orders. Yeah, and that was really choice … And I could pop in, you know, to see him with, with that issue. He was there for me, and it was really cool, you know. I felt secure that this man is good {laugh} … The patience too, yeah, he had a lot of patience and time through this process … You need a really good lawyer {laugh}, one who's going to listen, who is willing to, you know, basically lay down their life for this, these women, you know. Because

> that's what my lawyer has done. And by that I mean his time, yeah, his time and his patience, and his understanding, and, and non-threatening, you know. Yeah, yeah, real choice, really neat this time.
>
> Rose: She could sort of relate, even though she probably hasn't been through those experiences she could relate to them … And she was always willing to sort things out and to advise me … She always kept me informed of anything that was going on. And she always kept me informed of correspondence that came from his lawyer, anything like that, phone calls, all correspondence, she kept me informed of it … We'd sit down and talk things through and she'd always agree … Yeah, no, I don't regret anything that she's done. She's, I actually find her to be a quite good lawyer. It makes you feel more easy about what they're doing and where you're going and what you're, you know, where you're heading in life I suppose … And I found her quite supportive when I'd talk with her.

Some women particularly appreciated lawyer's letters that were supportive of them and represented their interests clearly.

Past research by Seuffert (1996) has also found that women appreciate (or would appreciate) lawyers who understand domestic violence, listen to them, provide emotional support, give clear explanations of the legal process, and involve them in decision-making.

The need for advocates to work alongside you and your lawyer: A suggestion from women

As mentioned, women had good experiences with lawyers who had empathy and understanding. Indeed, this seems an important part of women's satisfaction or dissatisfaction with their lawyers. However, women realise that some lawyers are not skilled at dealing with emotion, and lawyers do not always consider this their responsibility. To improve their experience with the legal system, particularly with lawyers, a couple of women suggested the need for empathic advocates. It was envisaged that these advocates could support women through the legal system and offer emotional support because lawyers seem unwilling or unable to do this. These advocates could provide information, assist with the process, and make sure that proper procedure was being followed. One woman suggested that having an advocate to assist with writing affidavits would mean that women would not have to separate out emotion from fact.

> Alana: And women who have been in abusive relationships are really fragile, and they're really vulnerable, and very emotional. I feel they really need somebody with them who understands the system and who doesn't take any shit from lawyers, and this sort of thing, to help them through. Because, I mean, I can understand lawyers aren't counsellors and they don't want to sit there and listen to you bleat on for hours about this, this, and the other. They've got to sift out the facts. But the point is, you're not in any state to do that. You really do need somebody else, to be a support person that you can, you can go out and cry on their shoulder or whatever. But someone to help keep you strong too.
>
> Jasmine: There should be an advocacy, well like an advocacy system. Definitely, when you're going through shit like that. You don't think straight. And how can you think straight … You need to have a back up system where the person who's lodging the complaint is going to get back up and support. Plus they can help that person process what they're trying to do, because you can't process it on your own, and you can't fight for the lawyers and judges and police … To have someone there who's got an empathy for the situation would make just the most amazing difference … Also, if you're going to apply for a protection order, someone like an advocate would go in and tell you the ins and outs because the lawyer's not going to tell you. They're only going to do the paperwork … You definitely need somebody there to lead you along to tell you how it works, someone who is going to follow up and make sure that it's doing what it's supposed to do.

Alternatively, as part of their role, lawyers should demonstrate a caring and empathetic response towards women who are distressed because violence has been used against them.

Problems with their ex-partners' lawyers

Women had four main complaints about their ex-partners' lawyers. The first concerned unprofessional behaviour:

> Rebecca: Anyway, his lawyer actually phoned me, and I didn't even know who she was. And [she] started going on about it… And then I got thinking about it … And I rung up the court co-ordinator. And I said, 'I've just had this phone call.' And I told her what had happened. And she said, 'No. That's not on. They shouldn't be ringing you personally. They should be getting to your lawyer.'
>
> Alana: Plus, [his lawyer] had actually breached ethics prior to it … She rang me and tried to get me to talk with [my ex-partner], or to, I don't

know what she was after. But I didn't know that, that was like against ethics in law. But I was quite shocked that she'd done that … And when I told [my lawyer], she was like blown away. She said, 'She's not allowed to do that.'

Hayley: His lawyer is really intimidating … He does all the really bad crims… I have heard a lot of really bad things about him … And there were things like, before we actually went in to the courtroom he yelled out, 'Oh, here comes that [lawyer's surname] woman,' who was my lawyer. You know, sort of yelled it down the stairs … I think he was trying to intimidate me because he knew I wouldn't like that. And [my lawyer], she could cope because there was no doubt she was used to him. But, you know, if you're, if you're about to enter a courtroom and you've got someone's lawyer, you know, larking off another lawyer in front of the clients, I think it's really bad … Really unprofessional. And then [he] made some comment about had she been sober later … It wasn't smart, it was just, I don't know, I've never seen anything like it. Just bad … So it puts you on a back foot before you even start. You just want to turn around and run.

Second, one woman was particularly displeased that her ex-partner's lawyer obstructed legal processes. More specifically, he repeatedly stalled the hearing for the non-molestation order, and would not respond to written communication from her lawyer. She strongly believed that behaviour like this should not be tolerated. Such practice prolongs stress for women, increases costs, and may result in some women giving up.

Rebecca: We [were] trying to get access worked out … [and] the situation here with his belongings and the property sorted out. And like I've got this huge pile of letters that went out to [his lawyer], okay. And he just did not respond. And that's how the communication went the whole way through. He just didn't respond. And I'd be chasing up my lawyer, because you can imagine what mess, that was me, when we weren't getting a response and nothing was happening sort of thing… I was told that a week should be the acceptable time between letters. [His lawyer] went months. We would be letter, letter, letter, no reply. That should be looked at seriously, especially in a separation where custody of children and non-molestation, that should be taken very seriously … Also, the court registrar, you know, is supposed to put through a court time so that you should go into court to get the final molestation order come through … Well, [his lawyer] kept going to the court registrar and changing times.

> 'I can't make it then, I can't make it then,' and the registrar would just accept it, and tell [my lawyer], 'Sorry, that's off.' … And that happened on a number of times. And in the end I said to [my lawyer], 'This, this doesn't seem normal.' … And [my lawyer] said to me, 'This is strange, this is not normal,' but she wouldn't explain to me. But I knew that there was something amiss there. I felt like old boys were patting each other on the back doing each other a favour, and I really felt that that had been happening between [his lawyer] and the registrar.

Third, some women mentioned that they were upset that their ex-partner's lawyer absolved their ex-partner of responsibility for his violence. Women felt similarly upset if their ex-partner's lawyer treated them as the guilty party or accused them of lying or being vindictive. Women obviously (and not surprisingly) want the legal system to hold perpetrators and not victims accountable for violence.

> Sally: Because you're, you're standing there, and, you know, my heart was pounding, and yeah, I'm panicking … especially when you've got someone, you know, like, who's defending him, who's arguing that you asked for it, or it's your fault it happened kind of thing… His [lawyer's] attitude was, you know, like he's got to make out that his client is innocent and that … 'You wind him up,' you know. 'You're making it out worse than what it is to be,' you know. And then he'll, he'll bring up times that you've let him in the house, you know, like the year or two before, all this kind of thing … Yeah, he tries to take it away from the incident I felt … 'He's not, he's a really good guy,' you know, 'let him off,' you know. 'This women takes him back. She must want that kind of life. She must be happy like that, you know,' {laugh}… I felt really, really angry, really annoyed. Oh, and he also made a comment, 'My client will say that what you're saying is not true,' and that kind of thing … I felt like you're kind of taking on everyone, and you're, there's just little old you, and you're up against a system that you don't know how it works, and you're up against these lawyers who are, and your ex, who will twist anything and lie to, to make it look like it's not, not really wrong what he's done, that it's more you.

> Aroha: The men need to be accountable. That's all it is, okay. They need to face what they've done, okay … [His lawyer] blamed me {laugh} … Well, there was a knife involved, okay. But I didn't use it. But it was a form of threat, you know, 'Just back off,' you know, 'don't come near me.' Because I had had enough of the fella … He said that I had tried to stab him, and things like that, yeah. And there was a whole lot of lies

… It was horrible {laugh}, yeah, it really was.

Finally, some women found their ex-partner's lawyers' adversarial approach within the Family Court and District Court very unpleasant. Cross-examination during District Court trials was particularly difficult. As evident in the women's excerpts, their ex-partner's lawyers lied and twisted things, minimised the seriousness of the violence, removed responsibility for the violence from the ex-partner, and blamed and accused them of lying instead.

> Jenny: [The court experience] was shocking, absolutely shocking … His lawyer got up and he went straight for the jugular … he went straight for the jugular. And by that time I was quite well down my road of recovery and I was feeling quite strong. But I was a mess afterwards, an absolute mess afterwards. And I think that if I hadn't have been that far down the track then I would have gone to pieces on the stand ... [His lawyer was doing] the goading, the baiting, the answers to questions with the, you know, yes no questions when they weren't necessarily yes no answers. He got pissed off with me, he got really pissed off, you know, because he'd asked me yes no answers and I would expand … 'Just answer the question. Yes or no?' And he'd, you know, it was really hard, really really hard … It was not an experience I would wish to repeat … His lawyer, honestly, he was an arsehole.

Women in other research (New Zealand Law Commission, 1997b) have also experienced an aggressive, adversarial approach within the Family Court.

Interestingly, some women mentioned that their ex-partner's lawyer had been less threatening or less aggressive than they had expected during Family Court proceedings. Their expectation that they would be aggressive suggests that many women fear or angst about how their ex-partner's lawyer will treat them. This likely deters some women from initiating legal involvement or from continuing with certain legal proceedings. Indeed, one woman felt so intimidated by her ex-partner's lawyer's adversarial approach and the prospect of him cross-examining her that she decided not to follow through with finalising her non-molestation order.

> Rebecca: And I found the whole idea of having to get up on the stand and being, what's it called, cross-examined by a lawyer, too much, too much ... Too threatening, totally. Especially since I knew that I was going to get hell from [his lawyer]. Too much. And also the general feeling

> of mistrust of the legal system, the way I was getting treated anyway. I just felt very strongly my instincts were telling me, 'You get up there, they're going to make mincemeat of you.'

When fear of the other party's lawyer deters women from continuing with legal options, women's and children's safety and wellbeing are not enhanced.

Problems with Counsel for Child

Some women found it frustrating that the legal system protects ex-partners who do not parent responsibly or adhere to access arrangements by excusing their behaviour, or by repeatedly outlining what he needs to be doing, not what he actually is doing. One woman repeatedly found that her children's lawyer did this. There was an attitude that 'all he needs is a little bit of help and encouragement.' Whilst this left her ex-partner without consequences for his actions, it made her situation seem hopeless, especially because he would not change his behaviour or adhere to legal advice.

> Rebecca: And [the children's] lawyer wrote in the, in the letter for [my ex-partner] that he should do this and he should do that with the kids, all the things that he should do with the children … And what I'd been saying is, 'For goodness sake … he doesn't do that thing. Get it in your head, he does not do those things.' And this woman is saying, 'Well, he should do this and do that and do the other.' And it seemed to wipe out the fact that he just didn't, if you know what I mean. It was the language that was in there. Again it sort of put a little protective circle around this poor guy. He just needed to be helped along a bit and encouraged … And telling people that, 'Look, he just does not do those things,' in one ear out the other. You just sort of felt like it was of no importance. And this was something I've heard through other women too, especially when the children are very young, is the father is not doing those important care to those kids, and it, the system just ignores that, and writes this little note, 'The father should do this and should do that with the child when he [is with them].' They're not looking at the fact that he doesn't do those things. And the woman is stuck with that … Excuses seem to be made for them. For some reason they've got the impression that if these lawyers put it in writing what he should be doing, a bit of direction for the guy, everything would be, you know, honky dory. Forget about it. They weren't looking at the situation of him not doing these things.

Another woman complained that her son's lawyer was over-

concerned with her ex-partner's rights but less interested in her son's (his client's) rights and welfare. Indeed, before their mediation conference, this lawyer took her aside and criticised her for wanting supervised access.

> Alana: So, I was sitting there waiting and, and then [my son's lawyer] and [my ex-partner] walked in together. And [my son's lawyer], I don't know whether he didn't see me or didn't recognise me, but he didn't acknowledge me … And then [my son's] lawyer came around to me, and he said, 'Oh, look, have we got time for a little meeting before we? Come into this room.' And he just was like really aggressive … He hounded me about access. He, huh, he said to me, 'Well, what are your objections?' And I mean, I'd already given him some of them when I'd met with him. And, and he said, 'Well, what about [your ex-partner's] rights?' And he started pounding me with [my ex-partner's] rights. And it was like, you know, I mean, I was feeling really shaky by the way this guy was being. Really sort of domineering and bulldozing and intimidating and at me and at me and at me … And I mean, afterwards, as you always do, I had time to calm down and think about it. I thought to myself, 'Well, this guy didn't want to talk about [my son's] rights, and he's actually [my son's] counsel. All he was concerned with were [my ex-partner's] rights.' And I was really worried about that … Also, because I would say that his behaviour towards me was really inappropriate. He was [my son's] lawyer and he was pushing [my ex-partner's] rights … And no, I, I didn't like that, the way he treated me at all … I think he's quite a strong advocate of the importance of fathers in the life of children, especially of little boys. And I don't disagree with that, but, but, but, but ... it's not the case of any father is better than no father.

Such behaviour by Counsel for Child seems to conflict with their role to represent the wishes and best interests of children. Women who are relying on Counsel for Child for the safety and protection of their children will obviously feel distressed when their children's welfare is not their children's lawyers' primary concern, or when their ex-partner's inappropriate parenting is ignored. Children may consequently be placed at risk. Custodial parents in other New Zealand research (Chetwin, Knaggs, & Young, 1999) have also suggested the need for improvements in the performance of Counsel for Child.

Concluding Comments

Narrative representation is a useful way to present women's experiences of being involved with the legal system. It gives women voice, and recognises women's tellings of their experience as legitimate contributions to knowledge about how well the legal system serves their needs. When these narratives are looked at together, it is evident that women had both positive and negative experiences with legal personnel.

In summary, women's satisfaction or dissatisfaction with lawyers depended on several things: their understanding of domestic violence and psychological abuse; whether they treated their situation seriously, had concern for their safety, and had their children's interests and welfare at heart; whether they listened to, believed, and validated their experience of abuse and of their (ex-)partner; and whether they were empathic, supportive, and encouraging. Good interpersonal skills were valued. Women were also appreciative of lawyers who provided sufficient information, dealt with things promptly, kept them well informed, included them in decision-making, and did not rush them. Many of the issues raised about lawyers in this research are not new. This highlights their ongoing significance for women.

As mentioned previously, whilst we can not estimate the proportion of women who have similar experiences of the legal system based on the experiences of ten self-selected women, it can be argued that if one or more of these women experienced legal personnel and processes in particular ways, a significant number of other women in New Zealand also do.

It is also important to consider the relationship between the findings and the period of time that women participants were involved the legal system. All of the women used the legal system in the 1990s or around the time of the new millennium. Hence, the issues raised cannot be easily generalised beyond this point in time. Also, because no comparison was made between the experiences of women who had involved the legal system before the introduction of the Domestic Violence Act 1995, after the introduction of this Act, or over both periods, no authoritative statements can be made about whether this Act has improved women's satisfaction with legal personnel. However, it is possible to say that some women had negative experiences of lawyers after the introduction of the Domestic Violence Act. Future research examining women's experiences of lawyers (and the wider

legal system) now that the Domestic Violence Act has been in place some time is pertinent.

Research findings accentuate the need to educate legal personnel about the gravity of psychological abuse and domestic violence against women. Lawyers need to realise that their clients will likely feel much distress as a consequence of abuse and safety issues, and sometimes because of legal involvement. This emotional state is very reasonable. They should not be treated as 'over-emotional women' or 'irrational', and dismissed because of this. Because women's emotions cannot easily be separated from the facts that lawyers require during this crisis time, lawyers need to be able to respond to the emotional component of this type of work. Alternatively, the legal system needs to fund advocates to assist with this process.

Some consideration needs to be given about the adversarial approach employed by some lawyers in the domestic violence arena. Whilst abusive men also require good-quality representation, an overly aggressive approach towards the woman ex-partner is unwarranted. Minimising the violence or blaming her for it also seems to contravene the intention of the Domestic Violence Act. Professional behaviour by all lawyers is important, as is a commitment to dealing with matters in a timely and efficient way. Finally, instead of taking a moral side in the debate about mothers' and fathers' rights to a relationship with their children, Counsel for Child need to keep children's safety and wellbeing as their principal concern as they are required to do under the law.

Rachael Pond *has a primary interest in social justice issues, especially those related to gender, mental health/illness, and poverty within an international context. As part of Dr Mandy Morgan's programme of research, she has examined women survivors' experiences of the New Zealand legal response to domestic violence, and the discursive resources lawyers use to understand (and shape) legal intervention and domestic violence. Rachael has also conducted research examining the needs of rural-dwelling families affected by mental illness. Her most recent research is concerned with media representation of New Zealand's 'sensitive claims' policy for survivors of sexual abuse. Rachael worked with Women's Refuge for several years. She is currently lecturing in the School of Psychology, Massey University.*

Mandy Morgan *is a senior lecturer in critical psychology at Massey University in Aotearoa/New Zealand. Her theoretical interests generally focus on the relationship between feminism, poststructuralism and psychology. She has also been facilitating the The Domestic Violence Interventions and Services Research Programme which is concerned with the ways in which service and intervention providers understand their experiences. The research programme aims to identify possible solutions to problems of service delivery by systematic analysis of discourses mobilised by service providers to explain domestic violence within the context of their work.*

References

Barwick, H., Gray, A., & Macky, R. (2000). *Domestic Violence Act 1995 process evaluation.* Wellington: New Zealand Ministry of Justice and the New Zealand Department for Courts.

Busch, R., Roberston, N., & Lapsley, H. (1993). Domestic violence and the justice system: A study of breaches of protection orders. *Community Mental Health in New Zealand, 7*(2), 26–44.

Chetwin, A., Knaggs, T., & Young, P. (1999). *The domestic violence legislation and child access in New Zealand.* Wellington: New Zealand Ministry of Justice.

Milroy, S. (1996). Maori women and domestic violence: The methodology of research and the Maori perspective. *Waikato Law Review: Taumauri, 4*(1), 58–76.

Morris, J.R. (1999). *Women's access to legal services: Women's access to justice*. Wellington: New Zealand Law Commission.

Nash, M., & Read, L. (1992). How women consumers experience legal processes of family separation: Part 1. *Family Law Bulletin, 3,* 58–60.

New Zealand Law Commission. (1997a). *Women's access to justice: Women's access to legal advice and representation: Law Commission miscellaneous paper 9.* Wellington: Law Commission.

New Zealand Law Commission. (1997b). *Women's access to justice: Lawyer's costs in family law disputes: Law Commission miscellaneous paper 10.* Wellington: Law Commission.

New Zealand Law Commission. (1997c). *Women's access to justice: The education and training of law students and lawyers: Law Commission miscellaneous paper 11.* Wellington: Law Commission.

Polkinghorne, D.E. (1995). Narrative configuration in qualitative analysis. *International Journal of Qualitative studies in Education, 8,* 12–28.

Pond, R.L. (2003). The legal response to men's violence against women (ex) partners: Narrative representation of women's experiences and discourse

analysis of lawyers' talk. Unpublished doctoral thesis, Massey University, Palmerston North.

Seuffert, N. (1994). Lawyering and domestic violence: A feminist integration of experiences, theories and practices. In J. Stubbs (ed.), *Women, male violence and the law* (pp. 79–103). Sydney: Institute of Criminology.

Seuffert, N. (1996). Lawyering for women survivors of domestic violence. *Waikato Law Review, 4*(1), 1–57.

Notes

[1] A protection order is a legal document that prohibits the respondent (i.e., abuser) from being physically, sexually, or psychologically abusive to the protected person, and that can also prohibit any contact by the respondent should the protected person wish this. It is at the centre of legislation known as the Domestic Violence Act 1995. Under previous legislation (the Domestic Protection Act 1982), non-violence orders and non-molestation orders performed a similar role. The former prohibited violence and the latter prohibited contact.

[2] Although recruitment occurred within a particular geographic region, women's legal involvement had occurred in several regions of New Zealand. The region where recruitment occurred is not specified to protect women's anonymity.

Sexual violence on trial: Assisting women complainants in the courtroom

ELISABETH MCDONALD

> There is little incentive for rape victims to come forward when the system which is supposed to protect the public from crime serves them up in court like laboratory specimens on a microscope slide.[1]

For more than twenty years, those working in the New Zealand criminal justice system have been concerned about the experience of women victims of sexual violence who testify in court as complainants. Ten years ago, Justice Thomas (who subsequently sat on the Court of Appeal), had this to say:

> The extreme distress of a complainant giving evidence in a rape case and reliving the trauma of the ordeal in the witness box, can be seen in the courtroom at any time. It is not an uncommon occurrence, and it is done in the name of justice. But there can be no justice in a practice which brutalises the victim of a crime in a way which is repugnant to all civilized persons. It is inexplicable that the practice can be tolerated with such equanimity.[2]

Justice Thomas was writing ten years after the publication of a report that resulted in a number of significant changes to the trial process, changes which I outline in Part II of this article. Many of these changes impacted significantly, and positively, on the experience of complainants in sexual cases. Others have been less successful in their implementation. More recent research indicates that further changes, either not contemplated or not supported twenty years ago, need to be considered.

In considering further changes, I am primarily concerned with those reforms that will potentially improve the experience of women complainants, while not discounting the importance of fair trial requirements. The article will therefore focus on reforms which are responsive to concerns actually expressed by women complainants. Some of these reforms are contained in the Evidence Bill, which I discuss in Part III. Other possibilities have yet to be fully debated in New Zealand, and Part IV sets out some systemic reforms worthy of attention.

I conclude by reaffirming the need for the criminal justice system to be open to 'innovative possibilities' that can 'best address the needs of victims',[3] and to be willing to experiment with such possibilities in the near future.

The current evidential and procedural rules

There are many evidential rules that apply both in cases of sexual offending as well as in a wide range of other criminal cases. In this section, I focus on the rules which are relevant only in 'cases of a sexual nature' (adopting the definition from s23C(a) and s23A(1) of the Evidence Act 1908) as well as any other rules of broader application which I consider have a particular significance in the context of sexual cases, because of how they are applied, or because of how they could be applied.

In this section I also expressly consider the role of the prosecuting counsel and the judge, as significant participants in the trial process from the point of view of complainants in sexual cases. The 'voices' of complainants will also form part of the critique of the current law and practice, which I also begin in this part.

Alternative ways of giving evidence and the provision of support persons

The statutory-based assistance for complainants in sexual cases, regarding the use of different 'modes' of giving evidence (allowing them to testify out of court, for example), only applies to complainants under the age of seventeen at the time of the commencement of the proceeding (s23C(b) of the Evidence Act 1908).

The provision of assistance for adult complainants in sexual cases has been more limited, although the Court of Appeal has recognised that orders covering the manner in which complainants (or indeed any witnesses) may give evidence, are possible as part of the exercise of the court's inherent jurisdiction.[4] In this way, women complainants in sexual cases (and adult witnesses in other cases) have been permitted to testify from behind screens, via CCTV, pre-recorded videotape and even via video link from overseas, although such orders are relatively uncommon in sexual cases and tend to be made when the complainant can establish some other form of vulnerability aside from merely their status as complainant in a sexual case. In other words, as in the case of the intellectually impaired woman in *R v Thompson*,[5] the more the

complainant is 'child-like', the more likely the court will accept the argument that special provision should be made, by analogy with the statutory regime.

Although I am not aware of any recent research on this point, anecdotal evidence indicates most women complainants in sexual cases are not provided with any assistance while they are giving evidence, except the use of a support person. If any other modes of evidence are agreed to, it tends to be the use of a screen (which allows the complainant to testify without seeing the accused) rather than CCTV (which allows the complainant to testify from outside of the court room). I am not aware of any adult complainant offering their evidence in chief on pre-recorded videotape (with the exception of the complainant in *Thompson*), although there is no particular reason why a complainant, or indeed any witness, should not have their evidence pre-recorded in this manner.

Privacy issues

Also a result of the 1986 reforms, section 375A of the Crimes Act 1961 provides for closure of the court while the complainant is testifying. The object of the provision is to 'reduce the embarrassment a complainant is likely to experience when having to deal in detail with the alleged offence, and there is an associated hope that such protection will encourage more victims to complain.'[6] Complainants would, of course, prefer that the provision should apply throughout the trial, not just when they testify, given the on-going disclosure of their personal details.[7]

(General) witness questioning rules

There are no specific statutory provisions which guide the nature of the questions put to adult complainants in sexual cases. Section 14 of the Evidence Act 1908 (which controls the asking of 'indecent' and 'scandalous' questions) is intended to apply, yet the current language is not wide enough to include all of the types of questions which complainants find unnecessary, unpleasant or offensive. It is up to the trial judge to make decisions about appropriateness on a case-by-case basis.

Appropriate judicial control of proceedings is also important in sexual cases where the defendant is unrepresented and wishes to personally cross-examine the complainant. Such a process is

prohibited pursuant to s23F(1) of the Evidence Act 1908 in cases of child complainants but it has always been left to the trial judge to deal with the situation when it arises with women complainants in sexual cases. Again, anecdotal evidence and the information collected from trial judges and practitioners by the Law Commission, suggests that such questioning by an accused is widely thought to be impermissible, yet a case in Christchurch in 2002 highlighted the difficulties of upholding the rights of an accused while protecting the complainant, where this occurs in the absence of clear legislative guidance. Responses from practitioners, women lawyer groups and the Government at that time indicated wide-ranging support for some kind of legislative intervention to prevent such questioning,[8] which has yet to occur.

Sexual history evidence

Section 23A of the Evidence Act 1908, which is aimed at limiting the admission of sexual history evidence about the complainant (with any person *other* than the accused), is the New Zealand equivalent of what is referred to in some other jurisdictions as a 'rape shield' provision. Along with the other evidential rules, which apply specifically to sexual cases, rape shield provisions have attracted much (feminist) academic analysis.[9] Complainants have also been asked to report the extent to which they have been questioned about their sexual history at trial.[10]

A number of replicated findings and commonly held perspectives may be distilled from the significant literature on this topic:

(i) Complainants consider it distressing, irrelevant, embarrassing, unfair and distracting to be asked about their previous sexual experience. Complainant distress impacts on the quality of evidence they are able to give. The fact that victims of sexual offences know they may be asked about their sexual experience may well be a factor in low reporting rates.

(ii) Admission of evidence concerning a complainant's sexual history makes it more likely the fact-finder will attribute blame to the complainant and less likely they will consider the accused's conduct criminal. (This is more likely to occur when the evidence concerns the complainant's sexual history with the accused – evidence not currently subject to section 23A.) The prejudice arising from such

evidence cannot be meaningfully countered by a direction from the judge, nor does it appear that 'limited use' directions are an effective way of ensuring that the evidence is used by the jury only for specific purposes (for example, to assist the decision about belief in consent and not for the impermissible purpose of informing jury opinion about the credibility of the complainant).

(iii) Although theoretically desirable as a matter of principle, the admission of sexual history evidence has traditionally not been appropriately controlled in the absence of a specific rule (that is, subjecting the evidence merely to a relevance requirement and perhaps to an inquiry into its prejudical effect, has not been sufficient to prevent the admission of irrelevant and highly prejudicial sexual history evidence).

(iv) Rape shield laws that allow for the exercise of judicial discretion (as in New Zealand) seem to be the least effective way of preventing the introduction of irrelevant and prejudical sexual history evidence. Category-based exclusion provisions are more effective yet are more open to challenge on the basis of potential or actual unfairness to an accused.

The challenge should now also be, subject to the final form of clause 46 of the Evidence Bill (see the discussion in the next part), subjecting evidence of the sexual experience of the complainant *with the defendant* to appropriate scrutiny – in a way that reduces the prejudice to the complainant but does not prevent fairness to an accused.

Recent complaint evidence

The rationale for the admission of recent complaint evidence arises from the historical expectation that a victim of sexual abuse would immediately raise a 'hue and cry'. In the absence of such a response, it was presumed a later, delayed allegation was unlikely to be true and more likely to have been motivated by malice, blackmail or simply a change of heart. Given the significance placed on the existence of a 'recent complaint' in the context of a sexual case, it seems just that such a complaint should be offered as evidence of consistency (and therefore creditability) of the complainant as an exception to the rule against narrative.

Despite receiving much attention from critics, who favour a range

of alternatives including abolition, liberalisation, and extension (to other offences), this common law (or 'judge-made') rule of admission has changed very little over time. The requirements for admission are still that the complaint must be made at 'the first reasonable opportunity', to the person the victim would be expected to complain to. More latitude is given (especially in the case of complaints by children) with regard to 'evolving' or 'incremental' complaints, so that complaints to more than one person may be admitted if forming part of the same disclosure, linked by some degree of timeliness and similarity of content.

Although the recent complaint exception is a common law rather than statutory rule, part of the 1986 reform package resulted in the enactment of section 23AC of the Evidence Act 1908.[11] The section is an important addition to the operation of the rule and is consistent with its rationale, in the sense that it allows a (judicial) response when there is a delay. If the defence suggests that the lack of recent complaint indicates lack of veracity (that is, lack of recent complainant 'diminishes the credibility of the complainant'),[12] the judge may direct the jury that there may be 'good reason' for the delay.

Corroboration

Traditional suspicion of the truthfulness of sexual offence allegations ('easy to make') and the supposed difficulty of avoiding conviction ('hard to disprove') was also behind the common law's development of the corroboration warning in sexual cases.[13]

Corroboration was never a requirement for a rape conviction, but that did not prevent the development of a large and complicated amount of case law concerning what might amount to corroboration, if only for the purpose of adjusting the directions to the jury, who were otherwise told that it was 'dangerous to convict on the uncorroborated [unsupported] evidence of the complainant'.

Twenty years on, Warren Young's criticism of the routine use of the corroboration warning seems uncontentious.[14] The resulting section 23AB of the Evidence Act 1908, made it clear that judges may still, in appropriate cases, direct a jury to exercise caution in the absence of independent evidence. There is, however, no reason to subject the evidence of a complainant in a sexual case to any more scrutiny (or any more suspicion) than any other complainant, but I am not aware of any New Zealand study that has examined current practice on this

point. At the 1996 Wellington Conference, however, *Rape: Ten Years Progress?* Ellis J stated that, despite the reform: 'I still give them not the old six inch gun, which said it is dangerous to convict unless there is corroboration … I think in the view of quite a few judges there has not been particularly significant change in substance.' More recently, Bill Wilson QC, during in a trial in Palmerston North, told the jury that 'sexual allegations are so easy to make, so difficult to disprove.'[15]

Tellingly, however, Ellis J also said as part of his 1996 presentation that:

> As a practicing lawyer, I was always of the view, and so was my family, that it would only be in the most extreme circumstances that you would ever advise a woman to participate in the criminal process if she was alleging that she had been raped.

The role of the judge

During a sexual offence trial, as in any indictable proceedings, the judge has significant control over the trial process – from the manner in which the complainant gives evidence, to questions of admissibility and the content of jury directions. However, even though the judge is best placed to influence the 'tone' of the proceedings, research indicates that judges are cautious about interfering in the questioning of witnesses, especially with regard to defence counsel in criminal proceedings.[16] This may be a result of the best intentions in the context of rape trials: to avoid an appeal leading to a re-trial as a result of the judge 'descending into the arena' or prejudicing the defence case or trial strategy.

Complainants, unaware of the significance of the role of the judge, tend to report favourably about judges who allow them to take a break during testifying or appear sympathetic or understanding in other ways. They tend to place responsibility for the distress of cross-examination solely on counsel (defence counsel for asking the questions and prosecuting counsel for not objecting), even though the judge has ultimate control over the manner and content of questions.

The role of prosecuting counsel

A complainant in a sexual case is 'just a witness' (even though they are usually the 'primary witness'), so they do not have their own representation. Many complainants are unaware of their true

status, however, and view prosecuting counsel as 'their lawyer'. For obvious reasons, this creates unrealistic expectations and a high level of dissatisfaction. Even those who do understand their position as a witness rather than a party, regularly report that lack of contact with the prosecution, which means lack of information and a sense of lack of support (or having someone 'on their side'), adds to the difficulty they experience as a complainant – in particular, a sense of disempowerment and irrelevancy.[17]

Regardless of how well informed they are as to the role of prosecuting counsel, complainants do hold them responsible for not protecting them more from the distressing aspects of cross-examination. Research does indicate that prosecutors could be more pro-active with regard to preventing inappropriate or irrelevant questioning of complainants.

The extent of complainant disappointment with prosecutors who are seen as failing to protect their interests is not jurisdiction-specific. All the research, which examines the experience of women complainants in sexual cases, concludes that the majority of prosecuting counsel are viewed as adding to the difficulties of the trial process, rather than alleviating it.

A number of jurisdictions have recommended initiatives to address some of these concerns. One of the recommendations of the Crime and Misconduct Commission in Queensland was that,

> the Office of the Director of Public Prosecutions develop formal policies for communicating with complainants in sexual matters. As part of these formal policies, a senior legal officer of the ODPP should be required to prepare a written summary of the reasons for decisions that are made about the case.[18]

More recently, the Fawcett Society's Commission on Women in the Criminal Justice System recommended that,

> [t]he Crown Prosecution Service should have the responsibility for victim liaison in sexual or domestic violence cases following charge so that accurate information and explanations of review and other significant decisions are routinely passed onto the victim. This will require special training for CPS caseworkers and prosecutors to ensure that they have the appropriate skills to carry out this function.[19]

Recommendation 2 from *Heroines of Fortitude: The Experience*

of Women in Court as Victims of Sexual Assault,[20] also focuses on the need for better information and communication. Most recently, the Victorian Law Reform Commission's *Final Report on Sexual Offences*,[21] recommended on-going, specific training for prosecutors and members of the judiciary.

Further reform options for New Zealand: Within the current adversarial process

Given that complainants in sexual cases still report dissatisfaction with the trial process, despite the effects of the 1986 reforms, there is a need for the introduction of further measures to improve their experience in the courtroom, as well as pre-trial.

Some reforms proposed in the Evidence Bill 2005,[22] although of general application, will have particular significance in sexual cases (if enacted); others relate specifically to sexual cases. In the next sections I discuss the relevant Bill provisions and assess the desirability of the proposals. I conclude by identifying matters that are not addressed by the Bill, which may be worthy of further consideration, especially in the context of sexual cases.

The Evidence Bill proposals: An evaluation

(i) Alternative ways of giving evidence and the provision of support persons

The Bill extends (and amends) the existing legislation, which provides for the giving of evidence in alternative ways (currently applicable only to child complainants in sexual cases), to all witnesses. The types of alternative ways that may be used are broadly defined in clause 101 of the Evidence Bill and include the use of CCTV, pre-recorded videotapes, screens and video links.

With regard to women complainants in sexual cases, and any other witnesses, directions may be made for their evidence to be given in an alternative way (clause 99). The directions may be made after application by a party or as a result of the judge's own initiative. The grounds for the making of an order are set out in clause 99(3) and include matters of particular relevance in the context of sexual cases: the trauma suffered by the witness; the nature of the proceeding; and, the nature of the evidence that the witness is expected to give. Other grounds may also be relevant in particular cases: the witness's

fear of intimidation; and, the relationship of the witness to any party in the proceeding. (Similar provisions are included in the recent Vulnerable Witnesses (Scotland) Act 2004, amending ss271–271M of the Criminal Procedure (Scotland) Act 1995.)

The Evidence Bill 2005 also proposes legislative confirmation of the practice of allowing a support person to be near a complainant in a sexual case, while they give evidence: clause 75(1) makes the presence of a support person an entitlement for a complainant in any proceeding.

(ii) Witness questioning rules

Section 14 of the Evidence Act 1908 is extended and amended by clause 81(1) of the Bill. It provides that the judge 'may disallow, or direct that a witness is not obliged to answer, any question that the judge considers intimidating, improper, unfair, misleading, needlessly repetitive, or expressed in a language that is too complicated for the witness to understand.'

Although the discretion to disallow such questions remains with the judge, clause 81(2) provides a list of matters that the judge may take into account. This list includes reference to 'the nature of the proceeding' and so encourages judges to consider 'improperness' and 'intimidation' in the specific context, for example, a sexual case.

The Bill's extension of section 23F of the Evidence Act 1908 to other cases may be more contentious. Limitations on an accused's ability to conduct their own defence, it has been argued, is a breach of their right to confront witnesses against them. The Law Commission, however, did consider the rights of a defendant in a criminal case and concluded that the proposed limitation was not a breach of the right to confrontation, as understood in New Zealand.[23]

Clause 91(1) of the Bill therefore provides that a defendant in a criminal proceeding is not entitled to personally cross-examine a complainant in a sexual case; a complainant in a case involving domestic violence; and, a child witness in any case, unless the judge gives permission. In any other case, the judge may order that an unrepresented party must not cross-examine a particular witness (clause 91(2)). The grounds for such an order are set out in clause 91(3) and are virtually identical to the grounds for making an order about the manner of giving evidence (the nature of the proceeding, for example), as are the fairness matters the judge must consider (clause 91(4)).

The scope of the section will probably be broadly supported, given the reaction to the recent Christchurch case, however, the manner in which cross-examination may proceed under the Bill has already been the subject of criticism. The New Zealand Law Society was of the view that an *amicus* should be appointed. Clause 91(5)(6) provides that the questions from an unrepresented party may be 'put to the witness ... by the judge or a person appointed by the judge for that purpose' (if the defendant fails or refuses to engage a lawyer for the purpose within a reasonable time). Commentators considering the comparable Australian legislation consider that the questions should not be asked twice (once by the defendant and once by the judge) and that it may be preferable for counsel to be appointed for the specific purpose.

(iii) Sexual history evidence

The Law Commission's Evidence Code proposed some changes to section 23A of the Evidence Act 1908. Section 46(2) of the Code extends the 'heightened relevance' test to evidence concerning the sexual experience of the complainant with the particular defendant, but the evidence is not subject to a leave requirement and its effectiveness will be dependant on defence counsel considering the evidence in light of the rule and the willingness of the prosecution to object.

In my view, the leave requirement (that is, where the evidence is subject to a decision by the judge, in the absence of the jury, as to its admissibility) should be extended to cover evidence of the complainant's sexual experience *with the particular defendant*. Empirical research into the connection drawn between an existing sexual relationship and the attribution of responsibility, indicates the significance of limiting evidence of the sexual history of the complainant and the defendant:

> It was apparent from the vignettes that the degree of responsibility attributed to the male decreased with the change in the sexual history of the relationship and in the implied consent of the female, whereas the amount of responsibility attributed to the female increased … In fact, many males believe that the longer the partners are together and the more formal their commitment to each other, the greater the right to sexual access of their partners and the greater the likelihood that females will feel obligated to accommodate their partner's sexual demands.[24]

Drawing on research on this point, Hart Schwartz argues that, although it appears that the courts have 'finally rejected the myth

that some women are "the type" who "always say yes"', current legal changes suggest a belief 'that a woman who has engaged in consensual sexual intercourse with a *particular man* is more likely to do so at another time with *that same man*.'[25]

The Code does strengthen the current proviso in section 23A by the wording of s46(3):

> In a sexual case, no evidence can be given and no question can be put to a witness relating directly or indirectly to the reputation of the complainant in sexual matters (a) for the purpose of supporting or challenging the truthfulness of the complainant; or (b) for the purpose of establishing the complainant's consent.

This makes it clear that evidence of a complainant's 'reputation' in sexual matters is irrelevant to the issue of whether or not consent has been given on the occasion in question. I would go further, as the Law Commission was not inclined to do, and recommend a further limitation – that reputation evidence can also not be offered for the 'purpose of establishing the defendant's belief in consent'. The point here is that this part of the provision is concerned with 'reputation' evidence, not evidence of 'sexual experience'. How can the complainant's reputation in sexual matters provide, of itself, grounds for the defendant believing she consented to sexual relations with him? Consent is, after all, given to a person, not a set of circumstances.

Unfortunately, clause 40 of the Evidence Bill 2005 does not follow the Law Commission's recommendations and merely retains section 23A of the Evidence Act 1908. The fact that the Bill makes no changes to the current law is also problematic as the wording of clause 36(4) means that sexual history evidence about a complainant that is offered as being solely or mainly relevant to truthfulness will be admissable under the 'substantial helpfulness' test, rather than the heightened 'direct relevance' test. Depending on how the substantial helpfulness test works in practice, this change has the potential to re-introduce the drawing of inappropriate connections between sexual conduct and credibility, which section 23A was introduced to prevent.

(iv) Recent complaint evidence

The Evidence Bill 2005 replaces the common law rule concerning recent complaint evidence with a general provision applicable in all cases. The relecant part of clause 31 provides that '[a] previous

statement of a witness that is consistent with the witness's evidence is not admissible unless ... the statement is necessary to respond to a challenge to the witness's truthfulness or accuracy ...'. (Truthfulness is defined in clause 4(2) of the Bill.)

This exception is wider than the current exception concerning 'recent fabrication'. It also contains no requirements relating to recency or recipient, so that any 'complaint' may be offered in evidence to 'meet a challenge to that witness's truthfulness'. Aside from the requirement that the complaint must be consistent with the witness's evidence and must 'meet the challenge', the Bill's general exclusion provision in clause 8(1)(b) (which focuses on 'needless' prolonging of the proceeding) will operate to control the amount of complaint evidence being offered under clause 31.

This proposal seemingly addresses the concerns that the recent complaint exception is discriminatory. (This argument is made from two different positions: feminists argue that the exception operates to perpetuate the belief that complainants in sexual cases, usually women, cannot be believed on their evidence alone; masculinists argue that it is an example of inappropriate paternalism which benefits women and prejudices the accused, who is usually male.) It may not, however, limit the amount of case law concerning the admission of what we know refer to as complaint evidence in sexual cases: it will just be centred around different issues. Rather than the evidence being scrutinised as to timeliness, for example, appeals concerning the admissibility of complaint evidence will be based on whether there really had been a challenge to the complainant's truthfulness; whether the content of the previous complaint was sufficiently consistent with the complainant's evidence; and whether the complaint was responsive to the truthfulness challenge. These inquiries will, of course, not be limited to sexual cases any more, but that may arguably be the only advantage to the abandonment of the common law recent complaint exception. My preference would be for the 'recency' requirement to be relaxed with regard to women complainants in sexual cases, as it has been for children.

(v) Evidence of character and credibility (truthfulness and propensity)

Currently it is not permissible to bolster the credibility of a witness except in some limited circumstances, and not by offering evidence

of the witness's reputation for truthfulness. The accused in a criminal case is in a different position with regard to evidence as to their truthfulness and good character. Even though it may be of limited probative value, and offering it comes with attendant risks for some accused persons, their ability to offer such evidence about themselves is a long-standing concession.

Unsurprisingly, complainants in sexual cases, especially where they have been subject to cross-examination about their sexual experience, manner of dressing, social, and drinking habits,[26] consider it unfair that they are not permitted to offer good character evidence about themselves. This disparity is not, of course, limited to sexual cases, but it is more pronounced in such cases, as it is far less common for the victims of other offences to be subject to wide-ranging questions about their personal lives and reputations.[27]

The Evidence Bill proposes to allow evidence about the character ('propensity') and credibility ('truthfulness') of any witness to be called under certain conditions. The Bill's rules are intended to be wide enough to allow witnesses, including complainants in sexual cases, to offer evidence about their own (or any person's) truthfulness or propensity. The Bill defines 'propensity evidence' as evidence of 'the reputation or disposition of a person; or acts, omissions, events or circumstances with which a person is alleged to have been involved', which tends to show that person's propensity to act in a particular way or to have a particular state of mind' (clause 4).

There was very little concern expressed about the extension of these rules when the Law Commission consulted with the profession about the draft Evidence Code in March 1998.[28] In fact, some defence counsel had already been discussing the issue, particularly in the context of sexual offences.[29]

Matters not provided for in the Evidence Bill 2005

Research that has examined the experience of complainants identifies many difficulties complainants face when testifying at trial. Although rules and procedures are in place, or are proposed in the Evidence Bill 2005, which may well be responsive to those concerns, further reform may also assist complainants to give their best evidence and not be unnecessarily distressed by the trial process.

In this section, I outline two other possible reform options, which are responsive to complainant concerns.

(i) Use of narrative evidence

Concern expressed by complainants that they can only respond to questions when giving evidence, rather than being allowed to use their own words, is not limited to sexual cases or even to complainants. The feeling of not being in control of what they want to say may be exacerbated in sexual cases by limited contact with the prosecution and by the nature and content of complainants' evidence. 'Very few women understand the trial process in any depth, and find the process – especially the fact that they never get to "their story" – confusing and alienating.'[30]

The authors of the Australian study, *Heroines of Fortitude: The Experience of Women in Court as Victims of Sexual Assault*,[31] recommended use of section 29(2) of the Evidence Act 1995 (NSW) by complainants in sexual cases. This provision allows for the giving of evidence in narrative form; no similar provision is included in the Evidence Bill, which does draw on the Australian legislation in other contexts (see for example, s63 and s75). Nicola Lacey has similarly called for changes to 'allow victims more fully to express their own narrative in the court room setting'.[32]

As Stephen Odgers points out, however, with regard to the Australian provision, one of the matters that the judge needs to take into account when allowing a witness to give evidence in a narrative form is the witness's understanding of the rules of evidence.[33] It seems therefore to be a model that was proposed to cater for the evidence of expert witnesses as opposed to complainants in sexual cases. Presumably, however, complainants could be assisted in the preparation of their evidence so as to ensure their 'narrative' does not breach any admissibility rules. Such preparation (only with regard to advice as to admissibility, not 'coaching' or instructing her what to say) might be undertaken with the complainant's separate representation, as discussed below.

Provision for offering narrative evidence in writing 'in the form of a prior statement' is now possible in Scotland pursuant to s271M of the Criminal Procedure (Scotland) Act 1995, as amended in 2004. Such a statement is admissible as the (vulnerable) witness's evidence in chief 'without the witness being required to adopt or otherwise speak to the statement in giving evidence in court' (s271M(2)). A 'vulnerable witness' is defined in terms of the likelihood of the witness

becoming distressed, the nature of the proceedings and the type of evidence the witness will give – a definition that would cover most complainants in sexual cases.

(ii) Legal representation for complainants

A number of civil law jurisdictions allow separate representation for complainants in sexual cases, in some contexts because a civil claim is heard together with the criminal case (France, for example), but in other jurisdictions because State-funded legal representation is available for complainants as part of the criminal proceedings (Germany, for example). Some aspects of the role of these lawyers cannot be easily accommodated within an adversarial trial process (for example, the possibility of the prosecution *and* the complainant's lawyer cross-examining the accused), but other versions of this representation model could operate within the current criminal justice system.

One such possibility is the Danish model, which Jennifer Temkin argues could be adapted for England.[34] In June of 1980, section 741 of the Danish Procedural Code was amended to provide that a lawyer was to be appointed at the victim's request in sexual cases (this provision has since been extended to also apply in a range of violence, including robbery.) Counsel may also be appointed at the request of the police for the duration of the police investigation. At court, the complainant's counsel may apply for leave for the complainant to give evidence in the absence of the defendant, for example, and may object to inappropriate questions put by the defence.

The advantages of separate representation for complainants in sexual cases would be: increased amount of information given to complainants about the trial process, outcome and appeal options; extra support available during the trial process; applications could be made in the best interests of complainants (for example, applications as to alternative ways of giving evidence); and, full argument could be made as to admissibility matters (for example, sexual history evidence).

It is certainly arguable that these roles can and should be fulfilled by victim support workers, prosecuting counsel and trial judges. However, research has consistently demonstrated that these tasks are not routinely undertaken to the satisfaction of complainants, or even in a manner that is consistent with existing legal authority. The absence

of relevant support and strong, effective advocacy about admissibility matters, or manner of questioning, means that complainants tend to be distressed by and dissatisfied with the trial process. Distressed complainants are unlikely to give their best evidence and dissatisfied complainants will not encourage other victims to proceed with their complaints.

More recently, Ireland introduced a limited form of legal representation for complainants in sexual cases within an adversarial model. Under section 4A of the Criminal Law (Rape) Act 1981 (as amended by section 34 of the Sex Offenders Act 2001), when the accused wishes to offer sexual history evidence about the complainant, the complainant has legal representation available to her for that application process. The Irish Act therefore enacts a limited version of legal representation for complainants in rape cases. Similar proposals are being considered in Scotland.

Both these reform options could also be incorporated as part of more significant structural or systemic changes – which I discuss below.

Reform options: Structural and systemic change

Separate specialised courts to deal with sexual offences

'Sexual offences courts' operate in South Africa. The advantage of separate specialised courts is the ability to have the proper facilities (for example, separate waiting rooms, CCTV equipment) appropriately trained staff and counsel and judges with the relevant expertise. Such courts could utilise different procedural and evidential rules, which could therefore accommodate an extended role for any complainant legal representation (for example, objecting to the manner of cross-examination, assisting the judge with formulating jury directions), increased use of written evidence, or the offering of narrative evidence. The court could also incorporate relevant aspects of 'restorative justice' in appropriate cases (see the discussion below) and perhaps even a different model of decision-making (for example, a 'panel' rather than a jury).

In its *Final Report on Sexual Offences*,[35] the Victorian Law Reform Commission notes that a new stand-alone court (for child sexual assault cases) is currently being piloted in New South Wales. The trial is over half-way through its 28-month period and some evaluative information is available. The Commission, however,

only recommended the establishment of a specialised *list* in the Magistrates' Court and assignment of a designated judge to hear sexual assault cases involving child complainants. Similarly, 'without the results of adequate comparative evaluation data', the Queensland Crime and Misconduct Commission did not feel able to make any recommendations about the implementation of alternative processes, while noting that any such recommendations would be outside the terms of reference of their Inquiry *Seeking Justice: An Inquiry into how Sexual Offences are Handled by the Queensland Criminal Justice System*.[36]

Disadvantages of a specialised sexual offences court may include: the reluctance of counsel or members of the judiciary to 'specialise' in this of the law; the 'privileging' sexual offences over other offences which may have similar impact on victims, for example, domestic violence and other serious assaults, or alternatively, treating sexual offences as less serious as those which are the subject of 'usual' indictable proceedings; and, the invariable issues of increased cost. Notwithstanding these kind of concerns, however, special domestic violence courts are currently being trialled in Queensland, New South Wales and Manukau.

Incorporating the advantages of an inquisitorial model?

Under an inquisitorial model, significantly more evidence is offered in written form, as there is less emphasis on the principle of orality, and any questioning of witnesses is mainly undertaken by the judge or judicial panel. Any discussion of reform options that address the concerns of complainants in sexual cases would not be complete without consideration of what might be possible under a different model of prosecution. Although significant changes to procedure and admissibility rules could not occur without full consideration of the advantages and disadvantages of such change, a version of an inquisitorial model could presumably operate in the context of a separate sexual offences court.

'Restorative justice' and sexual offending

I have put quotation marks around the words 'restorative justice' to indicate the concept is a flexible one and the label is invoked to describe a range of practices which respond to crime but vary significantly.[37] It has been used to describe New Zealand's family

group conferences, Marae justice, and victim-offender mediation, as well as the process of victims being involved in a police cautioning process or the decision about sentencing.

The type of 'restorative justice' most utilised in New Zealand is a pre-sentence 'conference' that involves the victim (and their supporters or family), the offender, who has admitted responsibility for the offence (and their supporters or family), as well as those responsible for facilitating the conference and assisting those involved (most particularly the victim) to achieve an agreed outcome.[38]

Because this type of process usually requires the victim and offender to meet and reach an agreement, feminists have expressed concern that such 'restorative justice' is problematic for women who have been the victims of domestic violence or sexual offending – often discussed together and referred to as 'gendered harms'. The primary reason for this concern stems from the view that these are crimes that stem from the power imbalance between men (usually the offenders) and women (usually the victims). Critics are concerned, as they are with the use of mediation for sexual harassment,[39] or domestic violence claims,[40] that women will not receive a just result when the power dynamic that has led to the harm is replicated in the restorative justice or conference process.[41]

These criticisms are responded to in the work of (among others) Allison Morris,[42] Kathleen Daly,[43] and Mary Koss.[44] They argue that some form of restorative justice may be possible in response to sexual offending, in a way that does not re-victimise the complainant. Current initiatives, including the RESTORE programme in the United States,[45] are, however, limited to cases involving first-time offenders who have committed less serious (that is, non-penetrative) sexual crimes. Advocates of restorative justice consider that it may be an effective option in cases of 'acquaintance' or familial sexual offending, including rape, but it is just as important, some would say more so, to attend to concerns about the possibility of coercion and disempowerment in situations in which the victim and offender know each other and may need to have an ongoing relationship. It is also important to bear in mind that the category of 'acquaintance rape' contains a large variety of offending – from rape within a marriage or a long-term relationship, to rape which occurs on a first date, or as part of workplace victimisation. Not all of these rapes may properly be dealt with outside of the traditional criminal justice process.

New Zealand is a world leader in the development and application of restorative justice, due to both Governmental and community initiatives. It would be consistent with the use of restorative justice initiatives here to date to explore the appropriateness of restorative justices processes in the resolution of sexual offending.[46] There are, however, many special considerations to take into account when formulating an appropriate 'restorative justice' response to sexual offending, more, I would suggest, than can be addressed by just following the 'Best Practice' model advocated by the Ministry of Justice. Not the least significant matter is the relative seriousness of the offending. Because *rape* complainants have most often been asked about their experiences of the trial process, any proposed alternatives should improve their experience, not worsen it. It has not been established to date that rape cases can be effectively dealt with, from a victim's perspective, by a restorative justice process. The indications are that it might be possible, but not in every case, not for every victim, and not without thoughtful development of the best process.[47]

Conclusion

In this article I have outlined the current law and practice, the relevant current reform options contained in the Evidence Bill 2005, and other proposals that have relevance to the prosecution of sexual offences, with a view to determining which reforms could improve the experience of (women) complainants.

Under the existing criminal trial process, it would be possible to have limited legal representation for complainants following the Danish model. New Zealand could also pilot a specialised sexual offence court. A separate trial process in such a court could accommodate the following: the ability for complainants to give narrative evidence; the ability for complainants to give written (or narrative) evidence; and, State-funded legal representation for complainants. There will be, and should be, further research and discussion about the possibility of restorative justice in (some) sexual offence cases. These are some options possible within the current system, which could be pursued in tandem with the implementation of the Evidence Bill 2005.

However, in 1996, at the conclusion of the DSAC Conference *Rape: Ten Years' Progress?*, Warren Young, now Law Commissioner,

spoke as part of the 'Future Directions Panel'. The panel was asked to address the question: 'If the conference reconvenes in ten years' time what will have changed?' He said this:

> The message from the conference is that the criminal justice system is not geared to meet the needs of victims. I am not convinced that within the current adversarial system under which we operate, it can really be modified to do so. I would therefore argue that if we were to make real progress we ought not waste too much time or energy on reforming the criminal justice system. …We need to be looking for alternative ways of dealing with complainants which can best address the needs of victims. Such alternative methods may include restorative justice or marae justice but we need to be open to *other innovative possibilities* and be prepared to experiment and evaluate them. That is where I hope we will have moved to in 10 years' time.[48]

In this article I have outlined some 'innovative possibilities' that are in operation overseas and may not sit easily with our current adversarial model. This does not mean, however, that they cannot be implemented in New Zealand. They are options worthy of further consideration. In my view, a range of options, to match the range of sexual offending, should be available to provide the best outcome in each individual case. The current trial process may suit some types of sexual offending, but not others. Whatever the reform, the potential impact on complainants must be of primary concern.

ELISABETH MCDONALD *is an Associate-Professor of Law at Victoria University of Wellington. The law relating to sexual offences connects all of Elisabeth's teaching and research interests, which include criminal law, the law of evidence, feminist legal theory and law and sexuality. Elisabeth has been involved in research projects assessing the experience of women complainants in sexual cases and was employed by the New Zealand Law Commission to review the law of evidence. She is currently also Co-Convenor of the Women's Consultative Group, an advisory committee of the New Zealand Law Society.*

Notes

1 Jenny McEwan, 'Documentary hearsay – refuge for the vulnerable witness?' *Criminal Law Review* (1989) pp. 629–42.

2 'Was Eve Merely Framed; or Was She Forsaken?' *New Zealand Law Journal* (1994) pp. 368–72.

[3] Warren Young, 'Future Directions Panel' in *Rape: 10 Years Progress?* (Wellington: DSAC Conference Proceedings, 1996) p. 163.
[4] *R v Moke & Lawrence* [1996] 1 New Zealand Law Reports, p. 263.
[5] Unreported, 19 March 2003, Court of Appeal, CA 361/02.
[6] Gerry Orchard, 'Sexual Violation: The Rape Law Reform Legislation, *New Zealand Universities Law Review*, *12* (1986) pp. 97–113.
[7] Bridget MacKintosh, 'Crown Prosecutor's Perspective' in *Rape: 10 Years Progress?* (Wellington: DSAC Conference Proceedings, 1996) p. 97.
[8] 'Law Change to Protect Sex Attack Victims', *New Zealand Herald*, 16 November 2002.
[9] Jennifer Temkin, 'Sexual History Evidence: The Ravishment of Section 2', *Criminal Law Review,* (1993) pp. 3–20; Aileen McGolgan, 'Common Law and the Relevance of Sexual History Evidence', *Oxford Journal of Legal Studies*, *16* (1996) pp. 275–305; Elisabeth McDonald, 'Syllogistic Reasoning and Rape Law', *Women's Studies Journal*, *10*(2) (1994) pp. 41–61; Sue Lees, *Carnal Knowledge: Rape on Trial* (London: Hamish Hamilton, 1996); T. Brettel Dawson, 'Sexual Assault Law and Past Sexual Conduct of the Primary Witness: The Construction of Relevance', *Canadian Journal of Women and the Law*, *2* (1987–88) pp. 310–34; Regina Schuller and Marc Klippenstine, 'The Impact of Complainant Sexual History on Jurors' Decisions', *Psychology, Public Policy and the Law*, *10* (2004) pp. 321–41; Jennifer Temkin, 'Sexual History Evidence: Beware the Backlash', *Criminal Law Review* (2003) pp. 217–342.
[10] *Heroines of Fortitude: The Experience of Women in Court as Victims of Sexual Assault* (NSW: Gender Bias and the Law Project, Department for Women, 1996); *The Legal Process and Victims of Rape* (Dublin Rape Crisis Centre, 1998).
[11] *Rape Study: A Discussion of Law and Practice: Volume I* (Wellington: Department of Justice, 1983) p. 145.
[12] Orchard, p. 110.
[13] Elisabeth McDonald, 'An(other) Explanation: The Exclusion of Women's Stories in Sexual Offence Trials' in *Challenging Law and Legal Processes* (Wellington: New Zealand Law Society, 1993) pp. 47–68.
[14] *Rape Study: A Discussion of Law and Practice: Volume I* (Wellington: Department of Justice, 1983) p. 140.
[15] 'Evidence was 'concocted'', *The Wairarapa Times-Age*, 17 May 2001, p. 3.
[16] Louise Ellison, 'Rape and the Adversarial Culture of the Courtroom' in Mary Childs and Louise Ellison (eds), *Feminist Perspectives on Evidence* (London: Cavendish, 2001) p. 48.
[17] Elisabeth McDonald, '"Real Rape" in New Zealand: Women's Complainants' Experience of the Court Process', *Yearbook of New Zealand Jurisprudence*, *1* (1997) pp. 59–80.
[18] *Seeking Justice: An Inquiry into How Sexual Offences are Handled by the Queensland Criminal Justice System* (Brisbane: Crime and Misconduct

Commission, 2003) p. xxiii.

[19] *Commission on Women in the Criminal Justice System* (London: The Fawcett Society, 2004) p. 21.

[20] Gender Bias and the Law Project *Heroines of Fortitude: The Experience of Women in Court as Victims of Sexual Assault* (NSW: Department for Women, 1996) p. 147.

[21] Victorian Law Reform Commission, *Final Report on Sexual Offences* (Melbourne, 2004) Recommendations 35–41.

[22] The Evidence Bill 2005, introduced in May 2005, adopts most of the proposals contained in the work of the Law Commission: New Zealand Law Commission, *Evidence: Evidence Code and Commentary: Report 55 – Volume 2* (Wellington, 1999).

[23] New Zealand Law Commission, *The Evidence of Children and Other Vulnerable Witnesses* (PP26, Wellington, 1996) p. 51.

[24] Sophia Xenos and David Smith, 'Perceptions of Rape and Sexual Assault Among Australian Adolescents and Young Australians', *Journal of Interpersonal Violence*, *16* (2003) pp. 1103–19.

[25] 'Sex with the Accused on Other Occasions: The Evisceration of Rape Shield Protection', *Criminal Reports (4th)*, *31* (1994) p. 233.

[26] Lees, p. 31.

[27] Jennifer Temkin *Rape and the Legal Process* (2 edn, Oxford University Press, 2002) p. 296.

[28] *The New Zealand Law Commission Consultative Workshop on the Proposed Evidence Code* (Wellington: New Zealand Law Society, 1998).

[29] 'Why shouldn't a complainant be able to call character witnesses?' Gary Turkington, quoted in Pamela Stirling, 'Trial and Terror', *New Zealand Listener*, 30 November 1996, p. 21.

[30] *Commission on Women in the Criminal Justice System* (London: The Fawcett Society, 2004), 29.

[31] Gender Bias and the Law Project, p. 5.

[32] 'Unspeakable Subjects, Impossible Rights: Sexuality, Integrity and Criminal Law', *Canadian Journal of Law and Jurisprudence*, *11* (1998) pp. 47–68.

[33] Stephen Odgers *Uniform Evidence Law* (5th edn, Sydney: Lawbook, 2002) p. 66.

[34] Temkin, *Rape and the Legal Process*, p. 281.

[35] Victorian Law Reform Commission, Chapter 3.

[36] (Brisbane: Crime and Misconduct Commission, 2003) p. 156.

[37] See further Howard Zehr and Harry Mika, 'Fundamental Concepts of Restorative Justice', *Contemporary Justice Review*, *1* (1998) pp. 47–55.

[38] *Restorative Justice in New Zealand: Best Practice* (Wellington: Ministry of Justice, 2004), p. 8.

[39] Claire Baylis 'The Appropriateness of Conciliation/Mediation for Sexual Harassment Complaints in New Zealand', *Victoria University of Wellington Law Review*, *27* (1997) pp. 585–620.

[40] Hilary Astor, 'Swimming Against the Tide: Keeping Violent Men Out of Mediation' in Julie Stubbs (ed.) *Women, Male Violence and the Law* (Sydney: nstitute of Criminology, 1994) p. 147.

[41] Stephen Hooper and Ruth Busch, 'Domestic Violence and the Restorative Justice Initiatives: The Risks of a New Panacea', *Waikato Law Review*, *4* (1996) pp. 101–30.

[42] 'Critiquing the Critics: A Brief Response to Critics of Restorative Justice', *British Journal of Criminology*, *42* (2002) pp. 596–615.

[43] With Sarah Curtis-Fowley, 'Victim Advocacy Groups and the Idea of Restorative Justice', forthcoming in Violence Against Women <http://www.griffeth.edu.au/school/ccj/kdaly.html>.

[44] With C. Quince Hopkins, 'Incorporating Feminist Theory and Insights into a Restorative Justice Response to Sex Offences', forthcoming in Violence Against Women.

[45] See Mary Koss *et al.,* 'Restorative Justice for Sexual Violence' (2003) *Annals of the New York Academy of Sciences*, *989* (2003) pp. 384–95.

[46] Judge FWM McElrea raised this as a possibility at the 1996 Conference: 'What Relevance Might Restorative Justice Have in the Case of Rape?' in *Rape: Ten Years Progress?* (Wellington: DSAC, 1996) p. 109.

[47] Since this article was written, the Safe Programme's Project Restore at the Grey Lynn Community Centre, which provides a restorative justice option for victims of sexual offending, was launched (5 August 2005).

[48] Young, emphasis added, p. 163.

Commentary: Women's violence to children

JANE RITCHIE

Feminists often feel uncomfortable about talking about, or even acknowledging, women's violence, whether it be women's violence to men, women's violence to other women, or women's violence to children. It is now generally recognised that women can be violent to their male partners, but that women's violence is often in self-defence, and does not usually result in the same degree of hurt and injury as does men's violence to women. As someone who, for many years, has been concerned about parental use of physical punishment, I have long been aware that women can also be violent towards their children.

It is almost a truism to point out that an abused child is a child who has also been physically punished. I have never heard of an abused child who had not also suffered physical punishment at the hands (or feet) of its parents. If New Zealand parents could be assisted, by means of education and support, to use the more positive and more effective disciplinary techniques, then children will be less likely to be injured.

In my view, all parents who hit their children are being violent towards them since they are, technically, assaulting them. But this would not be society's view of the harm caused to children by the usual forms of physical punishment. However, some parents seriously injure or even kill their children and there would be no argument that these parents have acted violently.

So who is being violent to children in this way? The literature suggests that both men and women can be abusive to children (Gelles and Cornell, 1985, Martin, 1983). But when it comes to homicide, men are more likely to be the killers of children. An analysis of figures supplied to me by the Police of children killed by their parents and step-parents between 1988 and 1994 indicates that mothers were the perpetrator in only one quarter (26 per cent) of child deaths; fathers were the killers in 39 per cent of the cases and step or de facto fathers in 34 per cent. More recent data on the eighty-seven child homicides between 1990 and 1999 (*New Zealand Herald*, 28/11/01) confirms that males rather than females, that fathers and stepfathers rather than

mothers, are far more likely to have been the perpetrators of the most severe form of violence to children. Of the offenders, 22 per cent were fathers, 21 per cent were stepfathers, 25 per cent were other family members and only 16 per cent were mothers.

We also know that men who abuse their partners are also likely to abuse their children. Bowker, Arbitell and McFerron (1988) found that 70 per cent of the battered women surveyed reported that their children had been abused by the batterer. Ross (1996) reports that the greater the amount of violence against a spouse, the greater the likelihood of physical child abuse by the aggressive partner. This relationship is stronger for men than for women. Fanslow (2002) has pointed out that 'the substantial overlap between the occurrence of child abuse and partner abuse in families, with between 30 and 60 per cent of families who report one type of abuse also experiencing the other type of abuse. The likelihood of co-occurrence of child abuse increases with increasing frequency of partner abuse' (Fanslow, 2002, p. 23). Thus, children who live in homes where their mother is abused are likely to themselves be abused.

When, in earlier work, I looked at some highly publicised child deaths at the hands of mothers or women caregivers, I found that women who were seen as responsible for the deaths of their children were punished extremely severely.

Although Tania Witika was originally to be a police witness against Eddie Smith, her de facto partner, the police later charged them both with murder. The Crown was unable to prove who the principal offender was (Revington, 1998). We do not know who inflicted the blows which killed her daughter, Delcelia, but Eddie Smith was known to boast of the way he had sexually abused the child. Both were convicted of manslaughter and both were sentenced to sixteen years' imprisonment.

It is clear that Tania did not protect her child from Eddie's Smith's abuse; nor did she seek medical attention for Delcelia's injuries. However, Tania's defence of battered women's syndrome was not even permitted to be heard in court. Is failure to protect a child of the same degree of heinousness as actually killing a child? Her lawyer, Frank Hogan, noted that battered women's syndrome was not recognised as a valid defence at the time of the trial: if it had been, he believed that her sentence would have been different (*New Zealand Herald*, 14/5/98).

Tania's case was aired on television (Inside New Zealand: Deadly Love – the Tania Witika Story, TV3, 10 May 1998). I started to watch the documentary with a decidedly negative attitude to Tania; by the end of the programme I had changed my mind and felt that a sixteen year sentence was far too long for a woman who clearly had been brutalised herself by a very violent man. Later that night I listened to radio talkback and was astonished at the degree of harshness still shown to Tania, both by the callers and the host. If there was increased awareness of battered women's syndrome and its effects within the judicial system, it had not at that time spread to the wider community.

Although Frank Hogan believed that there has been a change in the courts' attitudes towards battered women, others had reservations. Catriona MacLennan wrote in the *New Zealand Herald* (22/5/98) that although battered women's syndrome had been used in a number of cases and had achieved some degree of acceptance,

> the approach has been piecemeal, and in some cases judges are still not permitting battered women's syndrome to be put to juries. There is no coherent understanding of, or agreement on, how the syndrome fits into the criminal justice system with long-established defences such as self defence, provocation and necessity.

Sacha Wallachs (1997) also believed that the usual defences of provocation and self defence fail to take into account the experiences of battered women who kill.

Another high profile case of child homicide in the late 1990s was the death of Shae Hammond at the hands of her carer, Elizabeth Healy. In this case there was no other offender, and it seemed clear that the injures were inflicted while Shae was in Healy's overnight care. Healy's defence was that she had been drinking that night and had no memory of injuring the child. (*Sunday Star-Times*, 11/5/98). Healy was found guilty of murder.

My understanding is that the crime of murder requires intent; manslaughter is the appropriate charge when death results without prior planning or intention. I have no doubt that Elizabeth Healy was responsible for the child's death, but was this a planned, premeditated murder?

I have demonstrated that women are far less likely than men to kill the children in their care than men do. Why, then, when they do, are

they treated so harshly by the courts, and, if radio talkback is anything to go by, by their community?

Before I go on to try to speculate on this question, I must mention a child homicide that contradicts the picture I have drawn on the cases of Tania Witika and Elizabeth Healy. This was the case of Sharon Moke who killed her young son, Anaru Taylor, after months of abuse. The child had been removed from her at birth, by her gang member partner, and then just as capriciously returned to her about a year later by which time she had another baby. Her defense lawyer made much of alleged deficiencies in the help she had received from the Income Support Service. Though convicted of causing the death of her child, Sharon Moke received a non-custodial remedial sentence since the judge believed that a jail sentence would not benefit her or her other children, an attitude which I believe could have equally applied to Tania Witika. The judge may have been sympathetic to her because her relationship to the child had been disrupted by acts of the father over whom she had no control and so she had not been permitted to be a 'normal' mother and bond with the boy.

Of the cases of child homicide in the 2000s, there have been few high-profile cases of children killed by their mother. There have been a number of high profile child deaths in recent years where children have been killed by caregivers, for example, James Whakaruru, Coral Ellen Burrows, Saliel and Olympia Aplin: each killed by a stepfather (Office of the Commissioner for Children 2000, Coddington 2000, Office of the Commissioner for Children 2003). In these cases there does not seem to have been the same critical commentary on the failure of the mother to protect her child, as happened in the case of Tania Witika. Is society becoming more understanding of the stresses experienced by mothers who live with men who may ill-treat their children?

I can only speculate about why, in general, society, through its judicial system, has been so hard on women who are seen as responsible for the death of their children, but it would seem that if a woman departs from her traditional nurturing, caring role, and severely injures or fails to protect a child, then society exacts a harsher penalty than it might on a man in the same situation.

Washburne pointed out 'that prevention efforts in the field of child abuse and neglect have tended to focus on reducing general societal violence and eliminating corporal punishment.' (1983, p. 290). She

noted that the welfare of children is closely related to the welfare of mothers, and until greater efforts are made towards women's equality, child abuse will continue. Clearly, there is more understanding now of how child abuse can be prevented by, for example, the provision of home visiting programmes (Leventhal, 1996, Fergusson, Robins & Grant, 1997). The Government's new SKIP (Strategies with Kids, Information for Parents) uses existing community organisations to provide parents with information and support, but Washburne is correct: until women are empowered to remove themselves and their children from the violent men in their lives, child abuse will continue.

Children must be protected from the violence meted out to them by their caregivers, and the women who care for children must be protected from the violence of male partners. This will, in turn, contribute to a safer environment for their children.

Professor Jane Ritchie, *Waikato University*

References

Bowker, L. Arbitell, M. and McFerron, J.R. (1998). On the relationship between wife beating and child abuse. In K. Yllo and M. Bograd (eds). *Feminist Perspectives on Child Abuse*. Newbury Park: Sage.

Coddington, D. (2000). Disciplined to Death. *North and South* January/February 33–44.

Fergusson, D. Robins, L. and Grant, I. (1997). *Early start project evaluation document.* Christchurch: Early Start Project Ltd.

Fanslow, J. (2002). *Family violence intervention guidelines.* Wellington: Ministry of Health.

Gelles, R.J. and Cornell, C.P. (1985). *Intimate violence in families.* Beverly Hills: Sage.

Leventhal, J.M. (1996). Twenty years later: We do know how to prevent child abuse and neglect. *Child Abuse and Neglect, 20*(8), 647–53.

Martin, I. (1983). Maternal and paternal abuse of children: Theoretical and research perspectives. In D. Finkelhor, R. Gelles, O. Hotaling and M. Straus (eds). *The dark side of families.* Beverly Hills: Sage.

Office of the Commissioner for Children (2000). *Final report of the investigation into the death of Riri-O-Te-Rangi (James) Whakaruru.* Wellington: Office of the Commissioner for Children.

Office of the Commissioner for Children (2003). *Report on the investigation into the deaths of Saliel Jalessa Aplin and Olympia Marisa Aplin.* Wellington: Office of the Commissioner for Children.

Revington, M. (1998, May 9). It comes with a fist. *Listener*, 68–9.
Ross, S. (1996). Risk of physical abuse to children of spouse abusing parents. *Child Abuse and Neglect, 20*(7), 589–98.
Wallach, S. (1997). A defence for the battered woman? Assessing the adequacy of legal defences available to battered women. *Women's Studies Journal, 1*(4), 131–43.
Washburne, C.K. (1983). A feminist analysis of child abuse and neglect. R. Gelles, O. Hotaling and M. Straus (eds). *The dark side of families.* Beverly Hills: Sage.

Book Review

JUST SEX? THE CULTURAL SCAFFOLDING OF RAPE

N. Gavey

London and New York: Routledge, 268 pages
ISBN 0-415-31072-5

Just sex? provides a stimulating and explicitly political account of rape and its relationship to normative heterosexuality in Western culture. Beginning with a short history of conceptualisations of rape, Gavey outlines the dramatic shift from seeing rape as rare and perpetuated by strangers to an understanding of rape as fairly common (experienced by around 15 per cent of women) and generally perpetuated by (male) partners within normal (actual or potential) heterosexual relationships. The historical claim – that an accusation of rape is both easy to make and difficult to defend against – is also evaluated in light of social science research suggesting that the exact opposite is true. Accusations of rape are uncommon, rarely make it to court, and only occasionally result in convictions. Even when convicted of rape, men are unlikely to go to prison (7 per cent of those convicted in one American study, p. 18). Gavey discusses this research in some depth, satisfying those with an interest in what these findings *mean* based on methodological issues and the justifications for particular decisions.

I loved the complications which Gavey skilfully introduced into the discussion. In particular, the advantages and disadvantages of 'victim' talk and the critique of viagra and 'sexual dysfunction' bring to life the complexity and humanity of this area. The problems associated with talking about men as victims and with gender neutral understandings of rape also enliven the later chapters and are balanced by other concerns, such as the paradoxical re-constructing of gender stereotypes which we arguably reinstill 'each time we continue to assert them as the very truths we seek to change' (p. 219). Gavey also explored such issues as the ethics of labelling some women as 'unacknowledged rape victims' if they describe an experience consistent with legal definitions of rape, but also answer no to a direct question about whether they had ever been raped. Throughout, this book is fascinating but scholarly, well argued and well referenced.

As a student in a clinical psychology training programme, I felt that this book should be compulsory reading for mental health practitioners everywhere. However, I was also struck by its relevance to *anybody* involved in or with heterosexual society. Gavey is clear that not all heterosexual sex is coercive, overdetermined by gendered dynamics, or even problematic. However, I think that even for those most removed from experiences of rape and sexual violence, a working knowledge of the kinds of discourses about sex and rape that exist in our cultural milieu is useful in promoting responsible sexual choices. This book is for people who have had problematic experiences with sex, for those who want to have great relationships with (or without) sex, and for those who serve as 'bottom of the cliff' workers.

Although *Just sex?* is a very easy and involving read, mention of social constructionist ideas (e.g., language as constructive, identity as socially constituted) may not be entirely understood by some audiences. This is not really a limitation as Gavey gets her point across and doesn't sacrifice the serious theoretical stuff, which makes this book interesting to people with a more academic background. Nevertheless, theoretical discussion is necessarily brief. Gavey's position on the conflict between theoretical purity and social action is quite explicit: this book is about making changes in the real world, and theoretical sacrifices are necessary. Theoretical positions are tools; means to the political end of removing the protection of ambiguity in normative heterosexual relations and ending rape. I found the way Gavey draws on both traditional positivist research and social constructionist understandings (while simultaneously acknowledging their epistemological differences) both refreshing and sensible. Gavey's suggestions that we attack rape on many fronts, rethink heterosexuality and remain reflexive seem likely to encourage further movement away from sexual violence and towards forms of just sex.

Leith Pugmire
BA (Hons)
School of Psychology
Massey University
Palmerston North

Cracks in a Glass Ceiling

New Zealand Women 1975-2004

This newly published book looks critically at developments in women's lives since 1975. Personal comments from almost 100 women flesh out the facts and figures, providing a provocative comparison of the present situation with the past.

Commissioned by the Otago Branch of NZFGW to follow on from the 1975 surveys *What Price Equality?* and *Women at Home,* the book is written by Joyce Herd, based on the research of Claudia Bell, and is published by the New Zealand Federation of Graduate Women.

117 pages; 46 photographs;
7 page chronology; index

RRP: $34.95 + Postage: one copy $5;
Two copies $8, more than two copies $3 per copy.

Enquiries to

Lorraine Isaacs, Flat D, 27 Middleton Road, Dunedin
Phone: (03) 487 9439. Fax: (03) 487 7714
email: b.s.cathro@xtra.co.nz