THE INCREDIBLE WOMAN: A RECURRING CHARACTER IN CRIMINAL LAW

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TO BE A WOMAN, WHETHER AS VICTIM OF CRIME OR ACCUSED, IS TO BE INCREDIBLE in the context of the law. This is nowhere more clearly illustrated than in the case of Lisa Jane Kelly. Lisa Jane Kelly is a young woman (now dead) whom we, as women, know without any modicum of doubt, was raped on 23 May 1990. We know that, as a direct consequence of that rape, she died on the Brunswick Road entrance to the Tullamarine Freeway. We know further that, if the law were to be applied appropriately, those who raped Lisa Jane Kelly ought also to be held guilty (in addition to rape) of murder or, at best, criminal manslaughter.

The rapist or rapists intentionally committed the act of grievous psychological harm constituting the rape (together with the physical damage associated with it), as a direct consequence of which Lisa Jane Kelly died on a Melbourne road. But what does the legal system, through its enforcement arm, the police, say of this rape and unlawful killing?

> . . . the results of tests on whether she had been sexually assaulted were inconclusive and could not be confirmed until the end of the week (*The Age*, 24 May 1990).

Thus are the dying words of a woman incredible in law. They are unable to be taken as the truth: that the woman was raped. If these dying words are unable to be believed, and medical confirmation is necessary—that is, the *credible* words of a (no doubt) male professional, a police surgeon or doctor, what price the words of live women in the criminal justice system?

Woman as Victim and Survivor of Crime

Sexual assault

Nowhere is the incredible woman more in evidence than in laws relating to rape. Chief Justice Hale's aphorism that rape is a crime 'easily charged and hard to be disproved 'tho [the accused be] never so innocent' (Hale 1678, *Pleas of the Crown*, p. 635) founds the basic body of rape law. It underlies special rules which developed over time, through judicial decisions, which set rape law apart from the general run of the criminal law. One such rule was that of the prompt complaint. If a woman did not promptly complain of rape, then there was an assumption, at law, that she was not raped at all. However, if she did complain promptly, this was no evidence that she had in fact been raped. It was evidence solely of the reality that she had complained soon after the alleged act. Thus, the woman who for whatever reason did not make a complaint to anyone as soon as the opportunity arose after the act of sexual intercourse, was incredible at law: she was not to be believed. Complaining as soon as possible did not, however, render a woman credible.

The corroboration rule is also illustrative of the incredible woman syndrome. Prior to amendments to laws around Australia in the early 1980s, judges were required to warn juries, in all sexual cases, of the danger of convicting an accused unless the evidence of the chief witness for the prosecution—the woman stating she had been raped—was corroborated. That is, for juries, the woman's word was indicated as being insufficient in itself: they had to look for 'independent' evidence—evidence from other witnesses, or at least medical or other material that would go to support the woman's story (*R v. Graham* 1910, note 1967). A jury was entitled to convict on the word of the woman alone; but if a judge failed to warn them against the purported dangers of doing so, the conviction could be quashed on appeal.

In the 1980s, jurisdictions around Australia modified the corroboration rule, so that a judge was no longer mandatorily required to give the corroboration warning. But it remained the law that a judge had a discretion to apply the warning: that is, it was up to the individual judge, in the individual case, to determine whether or not the corroboration warning should be given. This could hardly be said to be an advance. Indeed, it left the way open for there to be no effective change at all: if judges continued to subscribe to long held beliefs (and there is hardly any reason why they should change their views overnight), the lack of credibility of women giving evidence about their own rape would remain, with a consequent application of the corroboration rule, unchanged. As all judges have been trained in a legal system which solidly subscribes to the notion of woman-as-incredible in sexual offences, for a judge not to continue to apply the corroboration rule in the same way as he (or she) had prior to the change would be extraordinary. That this is a fair assessment is evident when looking at more recent judicial decision-making where the word of woman is placed before the courts for determination.

In 1989 in the Victorian County Court Sandra Jane Collis and Tracey Michelle Collis pleaded guilty to perjury and were sentenced to 27 months' gaol apiece, with a minimum term of one year and nine months before becoming eligible for parole. The perjury charged against them was that on 22 May 1986 each of them made signed statements to the police that she had been indecently assaulted by her father Robert John Collis, and subsequently stated that this was a knowing, wilful and corruptly false statement.

For the appeal, Tracey and Sandra Collis placed evidence on affidavit that they had been under intense pressure from their parents to retract accusations of sexual abuse by their father. Their original statements were true, and the retractions made under pressure. When served with the summons charging perjury, their father took them to a solicitor. That solicitor was a solicitor the father had earlier consulted in relation to the charges against him (of incest).

In *R v. Sandra Jane Collis and Tracey Michelle Collis* (Nos. 75/1989 and 76/1989, 14 September 1989) the Court of Criminal Appeal said there was 'no suggestion that the pleas of guilty were entered by mistake or that the applicants were forced against their will to plead guilty or that they did not know what they were doing when they pleaded guilty'. Yet at least the evidence as to the role of the father and his wife (the children's mother) in the matter could be taken as an indication of some pressure upon Tracey and Sandra Collis in pleading guilty to the perjury charge. However 'neutral' the solicitor considered his conduct to be, Tracey and Sandra Collis may have been influenced in what they did by the fact that he was effectively (or had been) their father's legal adviser in the very matter wherein they had made statements against their father. (They were represented by Counsel instructed by the same solicitor, at the trial.)

Further, the Crown conceded that if the allegations of sexual abuse against the father were true, then the convictions for perjury were not sustained by the factual situation. The Crown, indeed, took a position that was supportive (or at least not negative to) the appeal by Tracey and Sandra Collis: that is, they acknowledged the miscarriage of justice and problems with the original case for the Crown, although they acknowledged that the father and mother could not be tested on the evidence, because they had escaped the jurisdiction and were unable to be found.

The Court held that because the women had originally pleaded guilty to perjury, and therefore there was never any argument as to whether or not the father had committed the acts of incest against them, the truth of the incest was not a matter for it in the appeal. The Court seemed to say that, because the young women had told one false story (albeit, as we are able to discern, under what might be said by some to appear to be considerable pressure), they were rightly convicted of perjury, although the conviction for perjury related to statements that were in fact true.

The Tracey and Sandra Collis case shows too well that the legal system is impervious to the rights of women and children who are sexually abused in the family, or who complain of violation. Women who seek the assistance of the authorities are met with disbelief. Their claims are viewed as incredible. When they retract, as did Sandra and Tracey Collis, the ability of the system (ostensibly) to believe women's words suddenly, miraculously even, comes to the fore.

The pardon of Tracey and Sandra Collis at the behest of the Attorney-General (not the courts) was no less than should have been granted. But how much better if the legal system had never supported, as it continues to do, the possible sexual abuse of Tracey and Sandra Collis in the first place. The legal system had to right its own wrongs. It pardoned Tracey and Sandra Collis, but it has done little to right the wrongs done to them and to the thousands of other girls and young women victims and survivors of sexual abuse and exploitation. Their words remain disbelieved, they remain categorised as incredible women.

A similar lack of credibility is still imposed upon adult women who are raped. Thus in *R v. David Ram Singh* (No. 226 of 1990, 18 December 1990) the Victorian Court of Criminal Appeal set aside a jury's convictions of a man for indecent assault

and two counts of rape, and entered verdicts of acquittal. A reading of the decision reveals that where there was some conflict in the woman's story, the Court considered this to be of considerable importance, and that the determination by the jury to believe her story of rape was 'unsafe and unsatisfactory' (p. 5): the jury acting reasonably [sic] should have had a reasonable doubt as to the guilt of the accused. However, where the accused's story contained conflict (and indeed a prior inconsistent statement) this was not considered to be any evidence of dissimulation—or downright lies, but rather *evidence of the veracity* of the accused.

A number of difficulties arise in the Court of Criminal Appeal's decision. For example, although the notion that a woman has to evidence rape by torn clothing, bruising or other physical damage is said to no longer be required, the Court of Criminal Appeal infers this is necessary: 'When the prosecutrix was medically examined at about 10.30 am *no abnormalities or any sign of force having been used, apart [sic] from the love bites [sic] on the neck, were found*' (my emphasis, pp. 3-4). This seems to be saying that: (a) signs of force remain necessary, at least in Victoria; (b) if there are signs of force that are arguably consistent with consensual sex, then they must be evidence of consensual sex and are not evidence of rape. This seems to be a modern version of 'heads I win, tails you lose'—or simply a restatement of antediluvian law.

When it comes to inconsistencies in the accused's story, the reader could not be blamed for considering that a *reasonable* jury acting *reasonably* (the legal expression used to refer to the legal standard applicable) could perfectly properly hold that this was evidence of the accused's lack of honesty. Rather, the Court of Criminal Appeal saw it as clarifying his veracity: he in being inconsistent is credible (or even increases his credibility); she in being inconsistent is incredible.

The Court of Criminal Appeal was critical of the woman's evidence relating to the extent of her acquaintanceship with the accused. It also raised as a criticism of her evidence that she admitted that before she was pulled down on to the carpet in the kitchen the [accused] had asked her to have intercourse with him in her bedroom. She replied that there were children in both beds and added: 'We will have to do it on the kitchen floor'. The Court went on to say (putting paid to any notion that in Victoria signs of force, struggle, crying out and the like are no longer necessary to prove rape) that the evidence 'did not suggest that the intercourse was not consensual'—this ignores entirely the victim's word. A reference to 'no disarrangement of furniture in the flat' seems to imply that not only must one struggle and be injured or at minimum bruised, shout, and cry for help; one must fight back to such an extent that furniture is strewn about in disarray.

Further, it is revealing that the jury, with all the evidence—and the contradictions—before it, and with the general community mindset of which we are aware: namely, a tendency to disbelieve rape has occurred (particularly on single women of 30 years or so, and especially those who are divorced with young children) actually found the man guilty. The Court of Criminal Appeal shows that it is even further behind the community in coming to grips with the real nature of rape and the rights of women to operate as autonomous beings, whatever our lifestyle, our marital arrangements and the like, without being subjected to unwanted sexual acts.

In 1980 in New South Wales rape laws were reformed to make clear that there is no requirement that the prosecution show evidence of struggle, torn clothing and the like as necessary for a conviction for rape. The Victoria Court of Criminal Appeal decision in *R v. David Ram Singh* makes clear that this legislative reform is essential:

without it, judges continue to render incredible women who have been raped and who have their word alone (plus 'love bites') to show for it.

The 'quasi-criminal' and the incredible woman

The category of incredible woman as victim has taken a new turn with the reality that has been brought about by the decriminalisation of criminal assault at home through the passage of laws relating to non-molestation orders, injunctions, intervention orders and the like. The problem for women has been that because we lacked credibility as legitimate victims of crime, where our husbands, 'boyfriends', 'lovers' and sons beat us, rather than demanding that the criminal justice system take us seriously as legitimate citizens, the path was taken of passing 'new' laws. Under these laws, criminal assault at home is decriminalised. Instead of husbands being arrested for committing criminal acts of assault, unlawful wounding or grievous bodily harm on wives, 'non-molestation' or 'intervention' orders are (sometimes) taken out to 'prevent' a man assaulting or harassing the woman again (McCulloch 1985; Scutt 1983, 1986, 1990)). A woman *may* obtain a non-molestation order (this is by no means assured (Community Council on Violence 1991)). Yet the woman is more likely than not to have suffered more crimes than she has orders. Thousands of women around Australia have been thus diverted from the criminal justice system into the quasi-criminal system. Simultaneously, men who are in truth guilty of crimes of violence against women with whom they are living, or with whom they have lived, escape criminal intervention. They escape the clear recognition for themselves that what they have done contravenes the criminal law. They are led yet again into a position of being figuratively patted on the head and asked (politely, now) not to 'do it' again.

And within this system, women *still lack credibility*. To present a man who has inflicted criminal acts upon another human being with an order that he 'not do it again', which is comparatively rarely followed up, anyway, is hardly confirmation that women are equal citizens, with equal rights not to be bashed, brutalised and abused.

One particular case illustrates the way in which a woman whom we would consider 'the system' might be forced to take seriously—to regard as credible—loses that credibility in the legal system. The woman in this case is a professional person, with a university degree and other qualifications. Her husband was in a field peripherally allied with hers, but without formal qualifications. As she appeared as an assertive person who fitted into the court's mould of a professional woman who could 'look after herself', she was defined out of the category requiring legal intervention. Ironically, had she come into the category that the judge might have thought needed 'protection' she would hardly be likely to be in court in the first place: would the police have taken action on her behalf? Rarely do they, where intervention orders are concerned. Even more rarely do they put into effect the criminal law, despite their responsibility to do so. Would she have been able to take the action herself? Refuge workers and ethnic community workers do give considerable assistance to women in this area. Yet there is evidence that the system has a credibility gap it imposes on women in this category, as exemplified in a report of the Victorian Community Council Against Violence, *The Legal System and Family Violence* (1991).

In Western Australia it is reported that certain magistrates refuse ethnic workers the right to be in court together with their client when she makes application for an intervention order (personal communication, 1990). Thus the woman is robbed of

credibility as a citizen with entitlements to be accompanied by a court-friend. The ethnic workers (all of them women) are denied credibility in their professional status.

Numerous examples are available of difficulties women experience with the legal system in getting (the semblance of) protection from domestic violence through intervention orders (and their equivalents throughout Australia). At a conference in October 1990, held by the Victorian Community Council on Violence, reports included:

- Clerks of court disbelieving or judging a woman's situation and not allowing her to apply for an intervention order or even an interim order;
- Women applying for interim orders having to wait four days or more for the applications to be heard by a magistrate;
- Clerks telling women that they are unable to apply for Interim Orders unless the other partner is present to tell their side of the story;
- Clerks telling women that magistrates are tired of women applying for intervention orders so that they can be granted priority housing;

- Women being told by clerks and police that they are unable to apply for intervention orders unless they have already separated from their partner;

- Women being told by clerks of court that an intervention order will not be granted for emotional abuse;

- Police not taking out intervention orders on behalf of women (Community Council on Violence 1991).

The difficulties do not lie only with clerks of the courts. In 1991, a magistrate at the Prahran Magistrate's Court in Victoria, is reported to have swept into the courtroom where a woman waited, together with a support worker from the women's refuge to which she had fled, for her application for an intervention order to be considered. 'I've read these papers, and you don't need an order', said the magistrate (or words to that effect). 'You're at a refuge. They're supposed to be looking after you'. Reiterating that she did not 'need' any intervention order (because she was a refuge resident), the magistrate dismissed the application and swept back out of court (personal communication, 1991). Like non-English speaking background workers in Western Australia and Victoria, women's refuge workers (together with women applicants) lack credibility in Australian courts.

The incredible discount in sentencing

The incredible woman exists not only as victim and witness in trials prior to conviction or acquittal, and in the newly created category of 'quasi-victim'. She is evident also at the sentencing stage, and where victim compensation is in question.

On 14 August 1991 women demonstrated outside the County Court, then marched to *The Age* building in Spencer Street, Melbourne, to protest their anger at a decision by a judge that rape was likely to cause women working as prostitutes less psychological harm than other women. The week in between had seen numerous letters to the editor published on a daily basis, declaring opposition to the judgment.

The rationale for sentencing Hakopian, the man convicted of rape, to a lesser term than would have been the case, was as stated by the judge that the woman whom he attacked and victimised was working as a prostitute. The judge said that the courts do not apply one law for prostitutes and another for 'chaste women':

> Prostitutes are not second class citizens. Prostitutes are not, by reason of their vocation, any the less entitled to receive the protection of the law. However, one important consideration with respect to sexual offences is the effect on the victim. As pointed out by Starke, J. in the case of *Harris*, the experience of the courts is that the forcible act of sexual intercourse, very often has a serious psychological effect on the victim *I do not think that that applies to the same degree here*.

> *As a prostitute, Miss [X] would have been involved in sexual activities on many occasions with men she had not met before, in a wide range of situations. She had, for money, agreed to have oral and vaginal intercourse with you, and had very shortly before these offences occurred, had oral intercourse with you on a consensual basis.*
>
> On my assessment, the likely psychological effect on the victim of the forced oral intercourse and indecent assault, *is much less a factor in this case and lessens the gravity of the offences* (my emphasis, at pp. 7-8).

He then went on to acknowledge it would have been 'a frightening experience for Miss X, particularly as you had a knife. It went beyond what prostitutes such as Miss X might be prepared to accept [sic] as conduct that is part and parcel of their occupation' (at p. 8).

The case highlights a certain 'grading' of credibility of women as victims of crime, and a categorisation of women-harm-damage calculated with reference to *a woman's sexual experience*. The defence counsel for Hakopian argued (amongst other matters) that Hakopian should be sentenced taking into account that he had raped a prostitute. It was rather akin, the argument ran, to raping a woman wearing a mini skirt, make-up and 'wandering through a Housing Commission car park' (*The Age*, 9 August 1991). This astonishing proposition was not accepted by the Court. But the Court did accept, and confirm as a legal proposition, the notion that sex-for-money (or consensual) sexual experience is relevant to psychological damage in rape. On appeal to the Supreme Court Appeal Division, the Crown dropped as a ground of appeal the proposition that the sentence should not have been affected by the fact that the woman raped was a prostitute. The Crown 'conceded that the judge was justified in making the comment (that 'the likely psychological effect on the victim of the forced oral intercourse and indecent assault is much less a factor in this case and lessens the gravity of the offences', in the context being a 'reference to the fact that the victim of the assault was a prostitute') and that, generally speaking (the judge) was not in breach of any sentencing principle when he dealt with the matter as he did on the basis that the complainant was a prostitute' (*R v Heros Hakopian*, unreported 11 December 1991, pp. 10-11, citing *Attorney-General v. Leonard Richard Harris*, unreported 11 August 1981, Court of Criminal Appeal, Melbourne, Australia). Consequently the Crown dropped as a ground of appeal the proposition that the judge 'erred in placing too much weight on the fact that the complainant was a prostitute'.

If, as the County Court said (and the Court of Criminal Appeal repeated), prostitutes are not 'second class citizens' and the law treats them in the same way as other citizens—or at least other women—then the only conclusion can be that the relevance of Miss X's profession is not that she barters sex for money, but that she has had a variety of sexual experiences with a number of men. This means that all women who have had a variety of sexual experiences with a number of men, whether for money or not, are 'better' targets for men who rape. That is, so long as they direct their actions at women in this category, men will gain lesser penalties for rape, whatever the circumstances of the rape.

This form of reasoning has also found its way, at least initially, into the victim compensation field. On 22 November 1989 K.R. was awarded a sum of $2,295.00 for paid and suffering pursuant to section 21 of the *Criminal Injuries Compensation Act 1983 (Victoria)* for injuries suffered on 20 May 1988 as a result of offences by Joe Huljak. He had pleaded guilty to false imprisonment, intention to cause injury, and

indecent assault, and was convicted in the County Court. The sum of compensation requested in K.R.'s original application was cut down in accordance with section 20(1) of the Criminal Injuries Compensation Act.

The physical injuries were detailed in a report of Dr How of the Royal Woman's Hospital and included a swollen and tender jaw with difficulty opening her mouth properly, severe bruising of the forehead, eyes, face, mouth, neck, chin, shoulders, arms, elbows, wrists and legs, bilateral subconjunctival haemorrhages and right peri-orbital swelling and marks from the laces and cord. Her false upper denture was also broken.

The swelling lasted about two weeks. K.R. and social workers gave evidence that the marks on her face and discolouration and bruising lasted eight weeks or more and she experienced pins and needles of the hands. At the time of the Tribunal hearing she was continuing to suffer from headaches and disturbances of her sleep with nightmares of the experience a couple of times a month. The Tribunal observed marks on her arms and legs, where she was bound with the laces and cords as shown by the photographs. The birth of her child was normal.

The Tribunal acknowledged the severity of the assault but claimed there was no evidence of permanent physical injury apart from the possibility of scarring. Because there was no expert evidence, the Tribunal said there could be no finding of psychological injury. It was further said that K.R. had directly contributed to her injuries by returning to her flat, taking amphetamines, and continuing a relationship with the offender.

Again the message seems to be that women who come into a particular classification have even less credibility than those who do not. Yet on this sort of analysis, any woman can be 'classified in' to the relevant category. If a woman returns to her own home, following a criminal assault upon her by a person with whom she lives, she is in the class. Equally capable of argument under this application of principle is that the woman who walks down the street late at night and is raped ought not to qualify for compensation, or ought to have the compensation cut down, because she put herself in a situation where rape occurred. Indeed, in the current world the woman who walks out on the street in daylight runs the risk not only of being attacked, but also under this analysis having victim compensation reduced on the basis that she was there—right there where she was raped.

As the 'trigger' for crimes against women is the very fact of being a woman; under this analysis a woman cannot escape her responsibility, so long as she remains female —and thus falls inevitably into the category of the incredible woman.

Woman as Criminal Accused

Women are placed in a special category in the criminal law, particularly where they are accused of crimes relating to violence at home. Women are not credible in terms of provocation law and self-defence laws: these laws, although ostensibly 'sex neutral' are biased in favour of male action and male characteristics. Thus a woman is more likely to be prosecuted for murder, and where an argument as to provocation is made the experience in Australian courts is that such an argument is not well considered. Self-defence is not only not considered—it is rarely if ever even put forward! In a small number of cases, where women are not put on trial for murder they are given an opportunity to 'plea bargain', so that they plead guilty to manslaughter rather than murder. But in these cases, the more appropriate outcome would be a full acquittal on the basis of self-defence.

Examples which can be selected at random are numerous. They include the Beryl Birch case in Queensland (Rathus 1985); the case of Georgia Hill in New South Wales (Court of Criminal Appeal, New South Wales, 18 June 1981); that of *R v. R* in South Australia (1981, p. 321); that of 'Sylvia' in Western Australia. The latter two cases involved women who had been victims of long periods of violence at home, inflicted by the husband. In each case shortly prior to the killing, the woman had revealed to her by her daughters, with final admissions by the husband, that he had been sexually abusing the children. In one case the woman killed the husband and father with an axe. In the other the weapon was a gun. In each case the woman was prosecuted for murder and provocation was not allowed to be put to the jury. This is ironic in the light of the traditional provocation base being the case of the man who comes home to find his wife in bed with another man, then kills one or the other, or both. Provocation is the standard argument. Yet for each of these women, where the abuse and violence was against their *daughters*—and with the added horror and violence that that involves—the system was unable to give credence to the act within the bounds of provocation.

The 'sick' incredible defendant

Women are also rendered 'incredible' through a definition of an accused woman as 'ill'—the raging hormones theory. Thus infanticide laws, instead of having regard to the real economic, political and social position of woman-as-mother, provide for women to be classed as guilty of a crime equivalent to manslaughter on the basis that the killing of her child was carried out whilst she was lactating, or her body had not recovered, hormonally, from giving birth. Every aspect of the menstrual cycle has at one time or another been called upon to define women out from being competent participators in the world, to being 'ill', 'mentally 'off" or their biological or hormonal equivalents. The argument generally runs that women are suffering from 'diminished responsibility' during these times, and thus have no or little or lesser control over their actions.

To recognise and deplore this defining of women into the category of 'sick' is not to refuse to acknowledge that some women suffer real pre-menstrual and menstrual pain. But it is important to ensure that 'research' which purports to attribute every antisocial or criminal act of women as arising out of our hormonal 'nature' or 'character' is recognised for what it is—unwise; or not to be recognised at all.

A Credible Future?

The criminal law shows some little evidence of a move toward a more credible future for women as participants in the justice system. On 30 September 1988 in the Brisbane Magistrate's Court two police constables were committed for trial on charges of failing to perform their duty over the alleged rape of a woman by a police officer. Anthony Mason Rawnsley and Ian Harry Friend were charged with between 11 February 1988 and 22 February 1988 failing to investigate the complaint (*Courier Mail*, 1 October 1988).

In Melbourne on 17 July 1990 the Victorian County Court was the forum wherein a man was found, by a jury, guilty of rape when he refused, despite her request, to wear a condom and went ahead to force unprotected sexual intercourse upon her. The 21-year-old woman was concerned about the AIDS virus. Garry John Norwood was found guilty of one count each of rape, attempted aggravated rape, detention for the purposes of sexual penetration, having caused injury intentionally, and theft. He was sentenced to five years and nine months gaol. The jury's decision and the judge's sentence illustrate what is hopefully a shift in the way women are regarded. Hopefully it shows the beginning of what might turn out to be a trend in granting credibility to women in criminal law.

As for victim compensation, the decision of the Victim Compensation Tribunal in Victoria, relating to K.R. (referred to earlier) did not remain as law. On 30 July 1990 the Administrative Appeals Tribunal upheld an appeal against the determination. Those aspects of the Tribunal decision which held that K.R. was in somewise responsible for her own injuries, or the level of them—such as taking amphetamines, returning to the flat after discharging herself from hospital and 'persisting with her association with the offender' were discounted. The Administrative Appeals Tribunal said that if the K.R.'s action in returning to the flat was to have any relevance to a 'contribution' it could only be if her return was unusual and unnecessary 'in the sense of there being a real alternative which should have occurred to K.R. at the time'.

As for women as accused persons, in Australia moves have generally been forced into the system, where women and women's groups have undertaken political action when a woman has been prosecuted for and convicted of murder in circumstances of self-defence or provocation. The legal system is being pushed into a position where it will have to begin to accommodate women as credible figures in criminal law, when in the position of accused persons. In the United States, in particular, women are beginning to move toward a position of credibility as accused persons, where charged with retaliatory offences resulting in death for a violence spouse or attacking rapist (Tong 1984). Self-defence is more often being used as a legitimate defence to crimes of violence committed against women who fight back. Yvonne Wanrow fought back against a prison guard who determined to rape her. Self-defence was eventually accepted on the basis that her resort to a weapon to defend herself was appropriate in a circumstance where the strength, size, weight and power differentials were pronounced: she was a woman, her attacker a man. Francine Hughes, who killed her husband by burning, after years of his torture, abuse and attack violently meted out against her—because she was his wife—is an example of the Women's Movement working assiduously to have women reinstated (or more accurately instated) as credible characters in the criminal justice system. The case illustrates that, for the woman who is under constant abuse and attack by her husband, too often the only

credible way to escape is by killing her gaoler and torturer—her husband (Jones 1981).

Women in other areas of the law—family law, paternity law, contract law, consumer law—have suffered from the failure of the legal system to take women seriously, to grant to women the same allowance that is extended to men: that of characters with full mental powers, with full human status, with the right to be regarded as credible as human beings operating in this world. At the same time, there are apparent moves toward extending credible status to women here, in ways that may in turn feed back into the criminal justice system, so that the incredible woman becomes a creature of a misogynist past. Sadly, in the interim, whilst we fight to advance the new millennium, too many women are being disregarded or distorted by a justice system which should take women, like men, seriously.

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