

# **KILLING THE BELOVED**

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**KILLING THE BELOVED:  
HOMICIDE BETWEEN ADULT  
SEXUAL INTIMATES**

Patricia Weiser Easteal



**Australian Institute of Criminology**

###Australian Institute of Criminology 1993  
The Criminology Building  
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Canberra ACT

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National Library of Australia  
Cataloguing-in-Publication entry

Easteal, Patricia, Weiser

Killing the beloved: homicide between adult sexual intimates.

Bibliography.

Includes index.

ISBN 0 642 19305 3.

1. Homicide - Australia. 2. Unmarried couples - Australia. 3. Married people - Australia. 4. Family violence - Australia. I. Australian Institute of Criminology. II. Title. (Series: Australian studies in law, crime and justice).

364.1520994

Index, editing, typesetting and design by  
Angela Grant, Publications Program  
Australian Institute of Criminology

Cover design by Arthur Stokes

Printed by Goanna Print, Canberra

## FOREWORD

Everyday in the newspapers and electronic media we are bombarded with the horror of killings. The seeming randomness terrifies us. We spend fortunes on fortifying our homes to protect ourselves and our families.

Yet domestic killings have tended to become a footnote to the more sensational slayings, often only achieving prominence if the children of the relationship are killed, or the perpetrator suicides after a siege and police shoot-out. The inference in such cases is that the perpetrator was mad with passion, grief or some other emotion.

People working in the domestic violence area have long known about the link between domestic violence and killing of sexual intimates. For women their chances of being killed by a person with whom they have been sexually intimate are much greater than being slain by a stranger.

Dr Easteal's findings help to dispel this common view that domestic murder is usually a sudden, unexplained and uncharacteristic action, arising from extenuating and extraordinary circumstances. This research shows that the reality for many victims is that their own death is the most serious consequence of the domestic violence continuum.

Far from being random and inexplicable, all too often these tragedies were predictable. In some cases they were foreseen by the victim. Our legal system, however, has found it impossible to balance the civil rights of a probable perpetrator against the possible future victim's need for protection. In many instances injunctions in the Family Court and in the criminal courts restraining violent conduct have proved spectacularly unsuccessful in protecting victims.

Dr Easteal's study confirms our anecdotal impressions that the background circumstances are usually different where women kill their partners. It would be a rare spouse killing which does not feature prior abusive or controlling behaviour by the male perpetrator against his victim. Dr Easteal has found that for male offenders there is often a prior history of violence towards their deceased partner. Females who kill their partner usually do so to stop a long, and frequently escalating pattern of violent conduct against themselves and in some cases their children.

*Killing the Beloved* shows that when women choose the most obvious way to end a violent relationship, that is, by leaving it, they in fact place themselves at an increased risk. Thus, women victims are in a no-win situation. If they get out their chances of being killed escalate. If they kill their oppressor they will almost certainly find that the legal system is ill-equipped to understand the forces which have led to their predicament. It has become clear that women have been, and are continuing to be, treated differently to male offenders by a supposedly 'gender neutral' legal system.

The value of this research is that it draws together different factors to illustrate the 'big picture', including a timely analysis of sentencing which shows clear gender-based inequities in decision making. Dr Easteal's clarity of expression has made her work accessible to the public, students, policymakers and those who work in the area.

Ultimately, this work is much more than an academic or statistical collection of facts and data. It is a call to action to those who seek safety and justice for all.

Linda Matthews  
Director  
South Australian  
Domestic Violence Prevention Unit

May 1993

# CONTENTS

**Foreword** *v*

**List of tables** *xi*

**List of figures** *xiii*

**Acknowledgments** *xv*

Chapter 1

**The Missing Pieces of the Puzzle** *2*

Overseas Studies *2*

Findings about the incidents *3*

Theoretical models and studies of causation *4*

The outcome: suicide *6*

The outcome: legal *8*

Problems in Applying Overseas Data to Australia *10*

Methodological differences *11*

The Current Research: Filling in the Spaces *12*

The incident *13*

The people *14*

Contributing factors *16*

Suicide outcome *17*

Judicial outcome and sentencing *18*

Prevention Through the Puzzle Pieces *20*

Chapter 2

**Stalking the Cases** *23*

The National Homicide Monitoring Data (the National Data) *23*

Positive aspects of the National Data *24*

Limitations of the National Data *24*

New South Wales and Victorian Court Data Set (the In-Depth Data Set) *25*

The benefits of the in-depth data set *26*

Limitations of the in-depth data set *27*

The Data Analysis *27*

How the Combination Works *28*

Putting faces on the numbers *29*

### Chapter 3

#### **Detecting Patterns in the Incidents 31**

Where homicides between adult sexual intimates occur 31

Jurisdiction 31

Geographical area 31

Location 33

When Do the Homicides Take Place? 33

Number of Perpetrators per Incident 35

Number of Victims per Incident 36

The Method of Killing 37

Savagery 40

Type of gun 40

Premeditation or spontaneity—by the weapon involved 40

Spontaneous homicide with male offender 41

Discussion 43

### Chapter 4

#### **The Players 45**

Ethnicity 45

Gender 50

Age 53

Employment Status 55

Relationship of Offender and Victim 59

Discussion 63

### Chapter 5

#### **Why Did They Do It? 67**

Most Contributing Factors 69

Verbal altercation 72

Prior Physical Violence 73

Prior police or court intervention 76

Alcohol and Other Drugs 79

Alcohol 80

Other drugs 83

Jealousy 83

Separation 85

Psychiatric Illness 87

Physical Illness 90

Discussion 91

## Chapter 6

### **Self-destruction 93**

Comparative High Frequency in Contrast to Other Homicides 93

Jurisdiction 94

Gender 96

Number of Victims 97

Aboriginality 97

Overseas Birth 98

Age of Offenders 100

Employment 101

Physical Battering Prehistory 101

Alcohol Abuse 102

Separation/Cohabitation 102

Weapon 105

Contributing Factors in the Homicide 106

Discussion 108

## Chapter 7

### **Justice in the Courts 111**

Remand or Bail 111

By jurisdiction 111

By gender 112

Aboriginality and ethnicity 112

Time Between Homicide and Trial 113

The Verdict 114

By jurisdiction 114

By gender 115

By Aboriginality and ethnicity 116

Sentence 117

By gender 118

By Aboriginality and ethnicity 118

The Outcomes of Case Studies 121

Discussion 128

## Chapter 8

### **Sentencing Battered Women 129**

Mitigating Variables 130

Children 130

Aboriginality	131
Intent	132
Remorse	133
Defendant's childhood	133
Defendant's alcoholism	134
Summary of variables	134
An Alternative Sentencing Model	135
Battered Woman Syndrome	136
As the grounds for self-defence	137
The use of expert witnesses	139
The appearance of BWS in Australian courts	141
The Time Gap in Australia	142
If BWS had been available to the Ten Defendants	143
Chapter 9	
<b>Sentencing Men: the Discretion of the Court</b>	<b>147</b>
Guilty of Murder	147
Victoria	148
New South Wales	156
Manslaughter: Provocation	161
Manslaughter: Lack of Intent	166
Manslaughter: Diminished Responsibility	168
Discussion	172
Chapter 10	
<b>Band-Aids and Solutions</b>	<b>177</b>
Translating Data into Prevention	180
Solution: Changing Attitudes and Behaviour	184
Attitudes about men and women	184
Attitudes about battering	185
<b>References</b>	<b>189</b>
<b>Index</b>	<b>195</b>

## LIST OF TABLES

- 3.1 Incidents of intimate and non-intimate homicides, by jurisdiction, Australia-wide, 1989-90 and 1990-91 combined 32
- 3.2 Incidents of intimate and non-intimate homicides, by geographical area, Australia-wide, 1989-90 and 1990-91 combined 32
- 3.3 Incidents of number of offenders per intimate and non-intimate homicide incident, Australia-wide, 1989-90 and 1990-91 combined 35
- 3.4 Number of victims per intimate and non-intimate homicide incident, Australia-wide, 1989-90 and 1990-91 combined 36
- 3.5 Primary method used in homicides between adult sexual intimates, by gender, Australia-wide, 1989-90 and 1990-91 combined 38
- 3.6 Primary method used in intimate homicide incidents, by Aboriginality, Australia-wide, 1989-90 and 1990-91 combined 39
- 3.7 Premeditation or spontaneity of the homicides between adult sexual intimates, by weapon, in New South Wales and Victoria 1988-90 41
- 4.1 Ethnicity of offender in intimate and non-intimate homicides, Australia-wide, 1989-90 and 1990-91 combined 46
- 4.2 Ethnicity of offender in homicides between adult sexual intimates, by jurisdiction, Australia-wide, 1989-90 and 1990-91 combined 46
- 4.3 Gender of offender in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined 52
- 4.4 Age of offender in homicides between adult sexual intimates, by gender, Australia-wide, 1989-90 and 1990-91 combined 53
- 4.5 Age of offender in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined 54
- 4.6 Employment status of offender in homicides between adult sexual intimates, by gender, Australia-wide, 1989-90 and 1990-91 combined 55
- 4.7 Employment status of offender in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined 56
- 4.8 Relationship between offender and victim in homicides between adult sexual intimates, by jurisdiction, Australia-wide, 1989-90 and 1990-91 combined 59
- 4.9 Relationship status of offender/victim in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined 60
- 5.1 Victim precipitation in homicides between adult sexual intimates, by gender, New South Wales and Victoria, 1988-90 70
- 5.2 Verbal altercation preceding homicide, intimate and non-intimate cases, Australia-wide, 1989-90 and 1990-91 combined 72

- 5.3 Verbal altercation preceding homicides between adult sexual intimates, by racial appearance, Australia-wide, 1989-90 and 1990-91 combined 73
- 5.4 Recent consumption of alcohol by victims of homicides between adult sexual intimates, by gender, New South Wales 80
- 5.5 Recent consumption of alcohol by offenders in homicides between adult sexual intimates, by ethnicity, New South Wales and Victoria, 1988-90 81
- 5.6 Relationship status of offenders and victims in homicides between adult sexual intimates, by gender, New South Wales and Victoria, 1988-90 85
- 6.1 Suicide or non-suicide of offenders in intimate and non-intimate homicides, Australia-wide, 1989-90 and 1990-91 combined 94
- 6.2 Suicide or non-suicide of offenders in homicides between adult sexual intimates, by race, Australia-wide, 1989-90 and 1990-91 combined 98
- 6.3 Suicide or non-suicide of male offenders in homicides between adult sexual intimates, migrants and non-migrants, New South Wales and Victoria, 1988-1990 99
- 6.4 Suicide or non-suicide of offenders in homicides between adult sexual intimates, by weapon, Australia-wide, 1989-90 and 1990-91 combined 105
- 7.1 Bail for offenders in homicides between adult sexual intimates, by gender, New South Wales and Victoria, 1988-90 112
- 7.2 Bail frequencies for offenders in homicides between adult sexual intimates, by Aboriginality and ethnicity, New South Wales and Victoria, 1988-90 113
- 7.3 Disposition in cases of homicides between adult sexual intimates, by Aboriginality and ethnicity, New South Wales and Victoria, 1988-90 116
- 7.4 Bottom sentence (non-parole period) in homicides between adult sexual intimates, by jurisdiction, 1988-90 117
- 7.5 Bottom sentence (non-parole period) in homicides between adult sexual intimates, by Aboriginality and ethnicity, New South Wales and Victoria, 1988-90 120

## LIST OF FIGURES

- 3.1 Time of day when homicides between adult sexual intimates took place, Australia-wide, 1989-90 and 1990-91 combined 34
- 3.2 Method of killing used in homicides between adult sexual intimates, Australia-wide, 1989-90 and 1990-91 combined 37
- 4.1 Ethnicity of adult sexual intimate homicide offenders, New South Wales and Victoria, 1988-1990 48
- 4.2 Ethnicity of adult sexual intimate homicide victims, New South Wales and Victoria, 1988-1990 49
- 4.3 Gender of offender in homicides between adult sexual intimates, Australia-wide, 1989-90 and 1990-91 combined 51
- 4.4 Occupation (where known) of adult sexual intimate homicide offenders, New South Wales and Victoria, 1988-1990 58
- 4.5 Relationship of offender to victim in homicides between adult sexual intimates, New South Wales and Victoria, 1988-1990 61
- 4.6 Length of separation prior to homicide between adult sexual intimates, New South Wales and Victoria, 1988-1990 62
- 5.1 Contributing factors to the homicides between adult sexual intimates, New South Wales and Victoria, 1988-90 68
- 5.2 Prior physical battering in relationship between adult sexual intimate homicide offender and victim, New South Wales and Victoria, 1988-90 74
- 5.3 Alcohol and drug histories of adult sexual intimate homicide victims and offenders, New South Wales and Victoria, 1988-90 79
- 6.1 Suicide or non-suicide of offenders in homicides between adult sexual intimates, by jurisdiction, Australia-wide, 1989-90 and 1990-91 combined 95
- 6.2 Percentage of offenders in homicides between adult sexual intimates who commit suicide, by age, 1989-90 and 1990-91 combined 100
- 6.3 Suicide or non-suicide of offenders in homicides between adult sexual intimates, by status of relationship with victim, Australia-wide, 1989-90 and 1990-91 combined 103
- 6.4 Suicide or non-suicide of offenders in homicides between adult sexual intimates, by homicide motives, New South Wales and Victoria, 1988-90 107
- 7.1 Disposition in cases of homicides between adult sexual intimates, by gender, Victoria and New South Wales, 1988-90 115
- 7.2 Bottom sentence in homicides between adult sexual intimates, by gender, New South Wales and Victoria, 1988-90 119
- 10.1 Interaction between the various ideational and structural components of a culture which is conducive to violence toward women 185



## ACKNOWLEDGMENTS

My gratitude goes to the following people and agencies for their valuable input to this research: the Victorian Office of the Coroner and the University of Melbourne, specifically Dr David Ranson and Dr Ken Polk; the New South Wales Bureau of Crime Statistics and Research; the New South Wales State Coroner; numerous individuals from the New South Wales Supreme Court and the New South Wales Department of Prosecutions. With the help of the preceding departments and key personnel I was able to access the appropriate homicide cases and sentencing remarks. This was a tortuous task at times made easier by a few special people who will remain nameless in case the findings of this book prove to be controversial.

A very special thanks to the two women who acted as my research assistants: Kate Kerley in Sydney and Maj-Britt Englehardt in Melbourne who worked with great enthusiasm and speed in accessing cases and making synopses of their substance for me.

I would not have been able to complete this research without the assistance of certain staff members of the Australian Institute of Criminology. I owe you each a debt of gratitude: Jennifer Hallinan for her SPSS expertise and her ability to meet my panic-ridden deadlines and Diana Nelson for her word processing and editing skills and her low key personality which balanced mine.

I would also like to thank my family, particularly my partner and help-mate, Simon, for his emotional support, especially when it all seemed to be too much, and his child care during my absences. Thank you also to my children, Jesse, Brian, Ashley and David for providing some relief from the gore and devastation of homicide.

Lastly, I want to express my heartfelt thanks to my 'sisters' in ideology and/or recovery. You have helped turn my anger to acceptance of what was, and awareness of the need for action. I only hope that this book can help, and perhaps alleviate the suffering or pain of someone in the future who might have been a victim.



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## Chapter 1

### The Missing Pieces of the Puzzle<sup>1</sup>

To have and to hold . . .  
From this day forward  
'Til death do us part

When a couple marry and repeat their vows, often including the preceding lines, who would imagine that for some of them the 'death' that will sever the marital tie would be the result of the other's action? That one day, perhaps in a moment of rage, the once beloved partner will pick up a gun or knife and kill.

Just in a nine-month period, a spate of these tragic acts, which included the suicide of the offender (and thus received a good deal of publicity), took place throughout Australia: October 1990, Sydney, man kills his wife, mother-in-law and himself; December 1990, Canberra, estranged husband killed wife, two children and himself; January 1991, Adelaide, woman and three children killed, husband missing; January 1991, Brisbane, estranged husband kills former de facto, father-in-law, his 11-month old baby and himself; May 1991, Adelaide, man kills his de facto and himself; June 1991, Tasmania, man kills his girlfriend and himself.

Such occurrences tend to attract attention with little attempt made to explain causation. The newspaper reader is left not knowing whether these killings are 'one off' explosions of anger or the ultimate outcome of domestic violence. In the academic literature, the principal premise is that homicides between sexual intimates are indeed preceded by some type of battering. Another supposition within that genre is that police and legal remedies for spouse abuse are faulty and in some way responsible for the escalation of such violence to homicide.

What is the validity of these statements? Is there any empirical evidence which could negate or substantiate and provide some demographic data on incidence and patterns of occurrence? *One of the main goals of the research described in this monograph is to provide an*

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<sup>1</sup> Sections of this chapter have appeared in Eastaer 1993, 'Homicide between adult sexual intimates': a research agenda', *Australian and New Zealand Journal of Criminology*, vol. 26, no. 1, pp. 3-18.

*empirical basis to Australian policy makers and relevant agencies and workers for the prevention of homicides of this type.*

## **Overseas Studies**

Recent research (for example Gartner & McCarthy 1991; Williams & Flewelling 1988) has shown that killings between intimates may differ in some of the situational background variables from homicide between non-intimates. For example, the former authors in their study of femicide (killing of women) in Toronto and Vancouver, found that determinants of risk varied significantly relative to the relationship between the killer and victim. Unfortunately, in the bulk of studies described below, the focus has either been upon overall homicide without analysis of differences based on categories, or, upon just the category of marital homicide without discussion of its differentiation from other homicide types.

Quantitative analysis can provide a breakdown of homicide and the percentage of homicides which take place between sexual intimates, intimates or spouses. Wolfgang (1956; 1958) found that of 588 Philadelphia homicides, 100 were 'mate slayings'. Mercy and Saltzman (1989) used FBI Supplemental Homicide Reports from 1976 to 1985 and found that 8.8 per cent of all reported homicides were between spouses. They mention the problem in reliability concerning both the definition of 'spouse' and the fact that marital status is often based on self-disclosure. Thus, individuals may identify as single but actually be in de facto relationships. Kratcoski (1988) looked at 2600 cases of non-justifiable homicide in Cuyahoga County Ohio 1970-1983 and identified 14 per cent of the assailants as 'family' with 60 per cent of these 'spouses'. Of 985 cases in North Carolina in 1972, 1976 and 1977, 22.5 per cent were 'family', 12.5 per cent 'spouses' (Palmer & Humphrey 1982). Among Mann's (1988) randomly selected 296 cleared homicide cases from 1979 to 1983, 145 were 'domestic'; of these, 86 per cent were between spouses, de factos or lovers. The bias of data source is apparent since 'domestics' are cleared at a much higher rate than any other category of homicide.

Research in the United Kingdom and in Canada indicates that cultural variation exists in the proportion of homicides between sexual intimates to the homicides in total. Edwards (1985) reviewed studies in the United Kingdom and found that from 1972 to 1982, between 21 and 29 per cent of homicide victims were spouses or ex-spouses killed by their partners. Silverman and Mukherjee (1987), using police homicide reports from three Canadian cities concluded that over a seven-year period (1976-1982) three-quarters of killings involved people with some measure of intimacy; 41 per cent involved either those currently or once married (including de facto).

Cultural variation has also been apparent in studies which have identified the gender of perpetrators in this type of homicide. For example,

it appears that women are just as likely as men to kill their (ex)-sexual intimates in the United States. The landmark research in this area was done by Wolfgang (1956; 1958) and Wolfgang and Ferracuti (1967) who found that in 47 per cent of the marital killings in his sample, husbands were killed by their wives. Later work substantiated these findings. For example, Daly and Wilson's (1988a; 1988b) examination of Detroit's 690 homicides in 1972 revealed that of the eighty 'spouse' cases, forty-four victims were husbands, thirty-six were wives. Goetting's (1987) analysis of data on all those arrested for killing spouses in Detroit during 1982 and 1983 identified fifty-six women arrestees and forty-six males. She speculated that the disproportionately high number of females may be due to the preponderance of blacks both in Detroit and in the sample; female sexual intimate homicide perpetrators have been found to be more common within the lower class black sub-culture. Reidel and Zahn (1985) found that in 'family' homicides nationally, 65 per cent of the offenders were male. Unfortunately, similar to other earlier large scale government-type reports, the 'domestic' or 'family' category was not subdivided further; therefore the proportion for adult intimates was not known.

In marked contrast to the United States, there were nine times more wives killed than husbands in a United Kingdom study (Edwards 1985). In a Canadian study of three cities, the findings were also dissimilar from the near gender parity seen in the United States. Silverman and Mukherjee (1987) found that in 76 per cent of what they describe as 'domestic-stable' homicides, males were the perpetrators and that no female was the killer in a domestic-unstable relationship case. Other research (Silverman & Kennedy 1987) which looked at the larger Canadian data set between 1961 and 1983, identified 40 per cent of the women homicide perpetrators as killing their husband or de facto spouse. Neither study described what proportion of total spouse homicides this represented but concluded that homicide by females in general were a small per cent of all killings (10 to 12 per cent).

It should be pointed out that in the United States since most homicidal acts by females predominantly take place within that relationship, their share of the overall homicide count is quite low. As Wolfgang (1958), Chimbos (1978), Zimring et al. (1983), Jurik and Winn (1990) and others have shown, females kill strangers far less often than do males. Katz (1988) noted that in the United States men committed about 80 per cent of the homicides but that women were the perpetrators in 40 per cent of family killings. There is purportedly a higher rate of victim precipitation (prior victimisation with bashing) in their killing of sexual intimates than when males kill intimates.

*Findings about the incidents*

In United States studies, race (black), social class (lower), unemployment, guns, the home, alcohol involvement, evenings and late night hours have been identified as common correlates of marital homicide (see, for example, Zahn 1989; Reidel & Zahn 1985; Goetting 1989; Howard 1986). The preponderance of blacks in the cases may be a reflection of their lower socioeconomic status. The determination of alcohol intake by either perpetrators or victims is somewhat problematic since it is frequently either unrecorded or unknown. As far as the weapon used, there may be a shift taking place (for women at least). In Wolfgang's classic research (1956; 1958), 34 per cent of perpetrators shot their victim, 19 per cent of husbands and 15 per cent of wives who killed. This number seems to have risen steadily. In more recent research such as Jurik and Winn's (1990) analysis of Arizona court records, 59 per cent of the women used a gun. In Mercy and Saltzman's (1989) survey of FBI Supplemental Homicide Reports for 1976-85, firearms were used in over 70 per cent of the killings by both genders.

*Theoretical models and studies of causation*

Zahn (1989) conducted a literature review of homicide studies in the 20th century and outlined three general models of causation that have been used: structural—this includes poverty, isolation of the nuclear family and male domination over women; cultural which includes male belief in their power and control, and a view of domestic violence as non-criminal; and an interactionist perspective which stresses the role of alcohol and drugs and the male exercise of physical force as a compensation for their disadvantage verbally.

In Katz' (1988) analysis of homicide, he saw the 'marital' killers' action as an attempt to uphold their moral worth and remove humiliation; in other words, in response to victim precipitation, the killers experienced a feeling of 'sacrificial rage'. Bach (1980) agreed, stating that the killing was the ultimate punishment of a partner who is seen as 'spoiling the dream'. Chimbos (1978)—and others—have also espoused theories that sought to explain why such a high proportion of killings took place in the home, often between spouses. Feelings of being threatened or humiliated may act as the trigger and as the culminating act in keeping the spouse in line. Kratcoski's (1988) article reviewed theories on family homicide which stressed the isolation of the family with the subsequent opportunity for violence: the intensity of emotional involvement between family members; and the toleration of physical abuse within the home by the rest of society. In her study of US women killed by their spouses, Bean (1992) concludes that the factors normally cited as cause, for example, jealousy, possessiveness, conflict, separation, are all manifestations of male beliefs

and control of women. Bean sees such killings as an inevitable outcome of the patriarchy with its subjugation of any violence towards women.

At an empirical level, there is evidence that comparatively few women precipitated their own deaths by prior physical aggression but little real proof about whether most or some of these deaths were in fact the culmination of long-term domestic violence by the perpetrator. Campbell (1992, p. 102) looking at Dayton Ohio homicides from 1975 to 1979 did find a high frequency of prior physical battering—64 per cent. The primary motive in female victim homicides mentioned by many researchers is jealousy, and more specifically, the time of marital breakdown. Thus for instance Silverman and Mukherjee (1987) concluded that the highest rate of such killings occurred in 'unstable' (separated, divorced) relationships. They also noted that further research was needed to investigate this correlation. Daly and Wilson's (1988a; 1988b) review of the literature also concluded that jealousy emerged as the principal motive. Additionally in a Florida study, most of the twenty-three men who killed their wives reported infidelity and desertion by their partners as the primary cause of their killings; these are two acts which can engender jealous feelings (Barnard et al. 1982). In the same state, Hagaman et al. (1987) developed six significant predictors for wife killing; these include recent separation and vengeance threats. Wilbanks' (1984) perusal of police records in forty-three cases also found that in seventeen of the homicides, the motive was marked as 'male sexual jealousy'. However, he noted that police officers may label the motive incorrectly.

Victim precipitation in these intimate femicides does appear to be very low; for example, Wolfgang (1958) identified only 6.5 per cent of the killings of wives as fitting into this category. Goetting (1989), who believes that there is a distinct vacuum of information on the subject, found that two of twenty-three husbands had been provoked by their spouse. Significantly she was unable to find information in the remaining twenty-three cases of her sample. [Note that 'victim precipitation' is a difficult concept since it is subjective, defined by the investigator and often based upon the perpetrators' interpretation of the events.]

Victim precipitation is a much more common theme and cause in the recent literature that has examined the motivation of women who kill their sexual intimates. Rasche (1990) reviewed the aetiological models that have been generated in work done from 1895 to the present and outlined the following causation theories: deadlier species; biological defect; psychopathology; crime of passion; women's role in society; and the self-defence model. The latter was initiated by Wolfgang's (1958) analysis of 'mate' slayings in which he found that almost 60 per cent of the female perpetrators had been strongly provoked. Ward et al.'s (1969) report on women and crime prompted a new interest in women who killed after being victims of long-term battering.

Consequently during the next two decades, the focus of most studies on women who killed their 'partners' has been the description of BWS (Battered Woman Syndrome) with a plethora of case studies provided (Blackman 1989; Browne 1987; Ewing 1987; Gillespie 1989; Johann & Osanka 1989; Jones 1980; Kuhl 1985 & Walker 1989 are examples from America). Data collection in these studies did not include random samples of women who killed their sexual intimate partners. The target groups were more specific: women whose homicidal offence had ostensibly been precipitated by a long prehistory of domestic violence.

Most of the researchers who have chosen a 'husband killer' sample randomly have been limited by the same constraints mentioned earlier in studies of intimate femicide. Wolfgang's (1958) analysis found that more than half, almost 60 per cent of the female perpetrators had been strongly provoked. Eight of the eleven female spouse killers in a small Florida sample reported having been battered (Barnard et al. 1982) while eighteen of twenty-one women who killed their partners between 1979 and 1984 in Arizona had experienced 'prior conflicts' with the victim (Jurik & Winn 1990). Goetting's (1987) analysis of fifty-six (primarily black) women in Detroit oddly does not mention domestic violence background. She does state that of the forty-five cases where victim precipitation information was available, 71 per cent of the homicides had been precipitated by the male. Mann (1988) looked at 296 female perpetrator homicide cases in six American cities from 1979 through 1983 and selected out 145 'domestics'; 86 per cent of these involved de factos, husbands or lovers. Over half (58.9 per cent) of these women denied responsibility for the killing claiming 'self-defence'. Mann found that only 30 per cent of the domestic cases contained violent histories. However, the numbers of unknown were not given and the data source, FBI Uniform Crime Reports, would not necessarily contain an accurate picture of prior domestic violence.

In Canada, Chimbos (1978) looked at histories of battering and concluded that *many* of the Canadian spousal homicides were the culmination of on-going domestic violence and that women who killed had almost all been subjected to prior physical abuse. Subsequent research in that country did not look at this variable but did identify the motive in 62.9 per cent of 'spouse' killings by women as 'argument' and 21 per cent as 'anger' (Silverman & Kennedy 1987).

#### *The outcome: suicide*

West (1965) analysed 148 homicides in England and Wales that had occurred between 1946 and 1962 and compared them with 156 suicides. He found that a third of the perpetrators committed suicide either immediately or shortly after the killing. He described these deaths as more like suicide than homicide with the victim often apparently killed as part of the ultimate aim: the murderer's own self-destruction. Thus, he found a higher incidence of prior suicide attempts amongst the suicide-killers in his

sample, a significant number of offenders who were experiencing ill health, and a lower incidence of violent methods of homicide. The vast majority of perpetrator-victim(s) were from the same family (82 per cent), 60 per cent of the killers were male (41 per cent the husband or boyfriend of the victim) and 70 per cent of victims female. Thirty-seven per cent of the female suiciders killed their own children or a spouse and the children. Neither blood alcohol level nor prior domestic violence were discussed in this classic study.

Research in the United States has shown marked dissimilarities with West's findings. First, a much smaller proportion of homicides in the US ended with suicide: for example, West found 33 per cent, Wolfgang (1958) 4 per cent of his sample, Palmer and Humphrey (1980) 1 to 2 per cent, Allen (1983) 2 per cent. Secondly, Berman (1979) looked at twenty homicide-suicide cases from three American cities and found other differences with the British findings: more violent methods; and a lower frequency of offenders' suicidal histories (10 per cent) and poor health (5 per cent). The typical offender was a male in his late 30s who usually killed his spouse or lover with a bullet in the head. Half were employed while 40 per cent had consumed alcohol. Palmer and Humphrey's (1980) analysis of ninety homicide-suicides in North Carolina also found that the primary offender was a white male (94 per cent), over thirty, who usually killed his spouse. However, they concluded (unlike the other American research), that aside from marital status, the traits of these individuals were more similar to suiciders than to homicide offenders.

Los Angeles data from the same time period, the 1970s, showed a similar gender breakdown—93 per cent of perpetrators were male, most over forty years of age (Allen 1983). Almost three-quarters of the victims in the 104 case sample were the offenders' wives or girlfriends. Shooting was the most common method (88 per cent) and half of the perpetrators had been drinking. Although a history of 'interpersonal discord' was cited as common, this study, like the others above, did not investigate whether physical violence had been a part of that discord since data were restricted to police summaries and the coroners' offices for blood alcohol level. Allen concluded that there were two main types of homicide-suicides: one, the majority, which would appear to be prompted by hostility; the second, common for those older and ill, would conform more to West's sample.

Fishbain et al. (1985) were interested in female perpetrators of homicide-suicide although they noted that prior American studies had shown that the usual scenario was a white male, over thirty who killed his 'partner' with a gun. In their Florida sample, 7.5 per cent of the homicides involved a female offender. In contrast to female homicide victims, the women who killed and suicided were apt to live apart from an ex-spouse (the victim) and be severely depressed. Another study which mentioned female killers who committed suicide found that the victims in those cases

were children (Silverman & Kennedy 1987). These authors speculated that the suicidal act was a reflection of feelings of remorse.

The only other references to homicide-suicide in overseas literature were brief allusions, usually about incidence, which were found in studies of homicide or marital homicide. For example, Canadian homicide research showed that suicide took place in 10 per cent of total homicides but that in 31 per cent of domestic—unstable—killings, the perpetrator killed himself. All killers were male in this category of relationship (Silverman & Mukherjee 1987). Daly and Wilson (1988a; 1988b) also reported that 35.3 per cent of estranged wife killers suicided after killing the ex-partner, while 21.6 per cent of 'wife' killers who were not estranged from their partner took their own lives. Data on prior violence in the relationship or previous and existing legal remedies (for example restraining orders) were not provided.

### *The outcome: legal*

Although one of the more common queries raised in discussions is differential sentencing by gender, there has been little empirical research on dispositions of marital homicide offenders. The scant material available is often conflicting as shown below. One emerges from perusal of the literature without any real idea of whether males or females who killed their partners were treated more leniently. The issues are of course extremely complex and methodological difficulties complicate comparisons by gender. Since more females, for example, may plead insanity and receive psychiatric custodial or noncustodial sentences, a survey of the sentences of those imprisoned might not be an accurate reflection of differential sentencing by the gender of offenders.

In addition, let us say for the sake of argument that 60 per cent of women who killed their 'partners' used Battered Woman Syndrome as the basis of their defence which either resulted in acquittal or a lesser imprisonment time than their male counterparts. The 40 per cent of female perpetrators who did not have testimony about BWS at their trials may receive heavier sentences than the mean for males. However, if the analysis did not delve deeply into the court records and antecedents to the crime, a simple comparison by gender and length of sentence could produce misleading means. The fact that some women had been bashed for years and still received custodial sentences would be obscured along with the data that 40 per cent of the women were treated more severely than the males. Goetting's (1987) findings that the female spouse killers in her sample were treated leniently should be examined in light of the above. Since she did find victim precipitation in almost three-quarters of the cases, is acquittal or a short sentence leniency or justice? (Of those who went to court, only 38.2 per cent were acquitted).

Mann (1988) believes that the courts might in fact be getting harder on women who kill their husbands. Although more than half her sample had

no prior arrests and more than four-fifths of the homicides were victim precipitated, 37 per cent went to prison for a mean of 10.2 years in 1983 which was up significantly from the average of 4.1 years in 1979. This is just one example of how uncertain sentencing studies can be, particularly those that attempt to contrast groups.

Additionally, there are a plethora of variables such as prior criminal record that must be weighted. When Wolfgang (1956; 1958; 1967) stated that a higher proportion of women in his sample were acquitted (34 per cent as opposed to 4 per cent of the men) or when Barnard et al. (1982) looked at thirty-four Florida cases and concluded that the female spouse killers received lighter sentences, neither examined criminal records nor evaluated the nature of the homicides holistically. Yet, if prior history was included in these analyses, a different picture might emerge. For example Innes and Greenfield (1990) noted that throughout the United States in 1986 almost one-half of female violent offenders were serving their first sentence (most of these were imprisoned for homicide). If these inmates' sentences were contrasted with a comparable sample of male first time offenders incarcerated for a violent act, the idea of leniency for women might be invalidated.

Most of the overseas literature on sentencing in spousal homicide has focused on BWS and how it can and has been used. Numerous writers in legal journals have explored the historical leadup to its implementation (Eber 1981; Buda & Butler 1985; Walus-Wigle & Meloy 1988; Thyfault 1984; Walker et al. 1982; Brodsky 1987). BWS is shown to have received at least partial acceptance in the American legal system as illustrated by two state governors who granted clemency to battered women imprisoned for spouse homicide and a recent law in Ohio allows BWS testimony (Clemency Drives 1991). However, Ewing's (1987) analysis of 100 cases reported in newspapers and court decisions found that although all one hundred alleged a battering history and eighty-five pleaded self-defence, only twenty-two were acquitted. He concluded that they were not treated leniently.

As for the judicial outcome for men who killed their partners, again, there has been little study conducted overseas. Of Goetting's (1989) forty-six male sample, five suicided and 14.6 per cent of the remainder were not prosecuted. Twenty-five were convicted of murder or manslaughter with twenty-two incarcerated, three on lesser charges while five were acquitted. Unfortunately, although mean sentences were given, both that data and the above numbers were somewhat meaningless without more qualitative descriptors in the cases or some sort of comparison with either male non-spousal homicides or female spouse murderers. Goetting concluded that there was, at the least, a prosecutorial bias against this group since the prosecution rate was so high.

There are hints that at least in certain situations, the opposite has been true. The literature cites either formal laws (until recently) or informal

acceptance of men who kill their wives if provoked in certain ways; for example adultery by a wife has long been such an example, particularly if caught in the act (Daly & Wilson 1988a; Scutt 1990; Greene 1989). In fact, until 1974 Texas law stated that such an act of homicide was justified and not subject to any penalty. Other such examples of sexist or chauvinistic attitudes permeating the treatment of wife killers are frequently enumerated by feminist researchers. A particular judicial judgment that was made in Denver was cited by several authors. The defendant was a man who had hidden in the boot of his estranged wife's car, jumped out and shot her five times in the face. A few days earlier, the victim had obtained a restraining order and had left the marital home due to long-term domestic violence. The judge placed the defendant on two years work release stressing the 'extraordinary mitigating circumstances' that the defendant had been severely provoked as the victim had left him without any warning and had even cooked his breakfast as usual the morning of her departure (Crites 1985; Browne 1987).

The situation in the UK, according to researchers such as Radford (1992, p. 232) is equally prone to placing the deceased wife (her character) on trial. She cites one case in which the judge instructed the jury that it is reasonable behaviour for a man to kill his female partner if she behaves in a way that frustrates him. This not only denies women equality in the law but 'also denies them the status of persons'. Lees (1992) also discusses the (mis)use of provocation by men in the United Kingdom who have successfully argued that a reasonable man may be provoked to killing his wife by her insubordinate actions, including infidelity, poor housekeeping, and nagging.

### **Problems in Applying Overseas Data to Australia**

There are at least two important factors that should mitigate against the above body of literature's use in Australian policy formulation. There are some aspects about homicide in this country that do not conform to the experiences of this phenomenon in the United States or Britain. Thus, one cannot say that the situation is necessarily analogous; implementing similar prevention programs in different cultures could be problematic at the least and possibly a great waste of expenditure and human energy. Further, as the review above has shown, although there has been extensive research abroad, particularly during the 1980s, there are gaps and conflicting findings in those studies.

In addition, both the terminology and what it encompasses vary from study to study which make generalisation and comparability of data difficult. Some have set out to examine spouse homicide; other researchers use the terms 'mate', 'sexual intimates', 'intimates', while still others subsume killings between partners within the broader category of

domestic homicide which includes children and other extended kin relations. Further, it is not always made clear to the reader in 'spouse' homicide studies whether de factos are included. It is apparent that in the American literature, some do include common-law couples, others do not, and others do if the data source they are working from contains this category. It is also not always evident whether homosexual couples have been included as part of the sample. Additionally, there is a lack of consistency in researchers' inclusion of all homicides in their samples; some exclude cases of justifiable homicide. Therefore not only is the first part of the subject defined differently but the 'homicide' part of the research focus also often varies in interpretation. The taxonomy of the category is often dependent upon the methodology as described next.

### *Methodological differences*

Parker and Toth (1990) point out that marital homicide has been studied through either of two approaches that differ methodologically and have focused on different variables which are then not comparable. The macrosocial model which analyses rates of homicide highlights subcultures, economic deprivation, lifestyles and daily activity patterns, for example, employment status, residence, time of killing. The microsocial which narrows the focus onto marital violence, has stressed the impact of social change on marital roles, dynamics within interpersonal relationships and the influence of historical patterns and cultural norms. Thus, difficulties in comparability and generalisability are also the consequence of variation in types of data and methodological approaches. The data source varies from study to study: imprisoned killers; those who are prosecuted; those convicted; or police statistics. In an unknown proportion of cases, the perpetrator is never charged, while in others, the case is dismissed pre-trial; some are found innocent perhaps on the grounds of self-defence. Depending upon the methodology's source of information, these individuals may or may not form part of the sample. Obviously comparing at a quantitative level should not be done since study A in region A may indicate a much higher rate of 'marital' homicide per 100,000 than study B in a different city or state due not to actual incidence of killings but to the former's inclusion of *all* homicides while the latter only analysed those convicted.

Qualitative variation based on data source should also be acknowledged. For example, a study which focuses only upon those imprisoned may find a different gender breakdown and other sociocultural background traits than research which looks at all perpetrators or at arrestees.

Whatever methodology the researcher employs, the end results are limited by what is available from the data. In most homicides between intimates little police investigation is required since the perpetrator is caught and admits culpability. There may be little effort made to

reconstruct the antecedents of the incident. Thus, all too often studies which rely solely upon police reports can shed little light on the issue of whether the killing was the outcome of long-term violence. Although the police report may include the perpetrator's prior offences, it does not indicate whether those priors involved the deceased as a victim in any way.

Since most of the research on marital homicide has employed police records as its sole data source, the results are therefore only as accurate or fully descriptive as the officers have reported. Presumably these reports are based if not entirely, then certainly principally, upon the arrestees' statements. Just as a defendant in intimate femicide is unlikely to reveal a history of bashing his victim, he may be likely to justify his actions around a theme of jealousy and betrayal. These two variables have long been considered as justification or at the least provocation for a man to kill his spouse.

Or, to cite another example, if the method involves only interviewing women who have used Battered Woman Syndrome as a criminal defence, although we learn something about that sub-group, we do not learn about the battered women who have killed (ex)partners but not fought their conviction or women who were never victimised but killed for other motives. The risk is that one might generalise about all 'husband-killers' from the experiences of the first subject sample. There is the additional concern that it could be concluded that this topic has been studied sufficiently and go on to other subjects, when in fact the methodology has only disclosed part of the picture.

### **The Current Research: Filling in the Spaces**

Given all of the above considerations about terminology, scope, and method, it is clear that overseas findings may be of limited value in understanding homicide between sexual intimates in Australia. If one subscribes to a holistic view of culture—the idea that all of the parts, including the structural, behavioural and ideational components, are intrinsically tied together in a complex feedback system, then homicide between adult sexual intimates would be expected to differ cross-culturally. Causation, incidence, gender, ethnicity, suicide of offender, and the other variables that make up the homicide would depend in part upon the cultural context of the event.

Part of the current research process involves discerning what, if anything, is different about these acts in Australia and therefore to either generate culturally defined prevention programs or recognise where imported programs which have been constructed on their 'reality' need to be modified to the Australian 'reality'. Chapter 2 describes how the subject is defined in this study and how the data were obtained; and discusses the

latter's strengths and potential for filling in the gaps of knowledge plus its limitations due to methodological constraints.

Our intellectual understanding to date is limited since there has been only one study that has focused exclusively on homicide between intimates (Rod 1979). In New South Wales Wallace (1986) and Bonney (1987), each included a chapter on this type of homicide in reports which dealt with all homicides in that state. Polk and Ranson (1991a; 1991b) have a lengthy discussion within the larger context of either Victorian homicide or Victorian 'intimate' homicide which includes other relatives and intimates. In addition, there are a few reports that supply quantitative data on homicides between adult intimates, again within the broader framework of either all homicides in South Australia (Grabosky et al. 1981) or Victoria (Kapardis & Cole 1988; Law Reform Commission of Victoria 1991a; 1991b) or Australia-wide (Strang 1991). These studies have provided some information about homicide between adult sexual intimates; however, gaps in our knowledge are apparent.

### *The incident*

Grabosky et al. (1981) found that in South Australia, homicide occurred infrequently between strangers; only 10 per cent of the time with 39 per cent of homicides occurring between those in marital, de facto or intimate relationships (just over one-quarter were in the first two categories). Wallace (1986) and Bonney (1987) placed spousal homicide within the larger picture of homicide in New South Wales: about one-quarter of all killings were between spouses.

Polk and Ranson (1991b) discovered a higher proportion in Victoria. Their examination of coronial reports for 1985-86 revealed that 31 per cent of the 121 cases took place between 'sexual intimates'. This increase was possibly a by-product of the terminology used in their data collection: 'sexual intimate' instead of 'spouse'. Another Victorian study (Kapardis & Cole 1988) identified 23.4 per cent of the 320 cases as 'domestic'. Unfortunately as in much of the overseas research, immediate family members were not differentiated by relationship or by gender. In the Law Reform Commission of Victoria's Reports on Homicide (1991a 1991b) only 18.5 per cent occurred between sexual intimates. This relatively low proportion is due to the nature of their sample—homicide cases that were prosecuted.

Strang (1991) looked at all homicides in Australia for one year, 1989-90, and concluded that 29 per cent of the killings, where the relationship was known, took place between 'spouses'. Furthermore, the National Data set for the year 1990-91 reveals that approximately 26 per cent of killings were spousal, where the relationship was known (Strang 1992). It would therefore appear that between 25 and 31 per cent of homicides in Australia involved either spouses or 'sexual intimates'.

Strang's (1991) report further stated that firearms were more common in 'domestics', particularly parent-child (nearly half) and in one-third of spouse cases. Women (in general—not just spouse killers) were less likely to use firearms than males. Shooting occurred in 40.9 per cent of Wallace's (1986) cases (40.5 per cent of husband-killing cases) however, women more often chose knives (45.6 per cent). In Victorian studies, guns were identified as the instruments of death in 39 per cent of all homicides (Kapardis & Cole 1988) while Polk and Ranson (1991a; 1991b) reported that none of the women in their sample employed a gun. The choice of weapon may differ significantly from year to year; the use of firearms in homicide generally appeared to vary from year to year. However, since Australian Bureau of Statistics data did not differentiate by the relationship between the killer and victim, we do not know if similar fluctuations occurred within the adult intimates' choice of weapon.

Chapter 3 will elaborate on some of the variables above such as how often sexual intimate homicides occurred in contrast to other types of homicide and the type of weapon used. It will also look at where in Australia these incidents took place, what time of the day, and the specific location.

### *The people*

Who does this type of killing in Australia? Do we find near gender parity as in the United States? Is unemployment a factor? Separation? Ethnicity? Again, the available Australian data are nonabundant but provide an indication that the situation in Australia may not be analogous with overseas; for example, gender of the perpetrator. In New South Wales, Rod (1979) looked at all cases of marital homicide from 1958 to 1967 and from 1976 to 1978 including between those who identified as *de facto*. She discovered that three-quarters were committed by men. One-fifth of the male murderers killed estranged partners (separated or divorced). Also in New South Wales, of Bacon and Lansdowne's (1982) sixteen cases, fourteen of the victims were wives or ex-wives. Wallace's (1986) findings from that state concurred—73.3 per cent of the spouse killers were male. In her sample, over one-third (35 per cent) were separated or divorced and another 11 per cent of the wife victims died in the process of leaving their husbands. It is interesting that Bonney's (1987) follow-up analysis, in which she added 1982-86 police data to Wallace's 1968-81 material, showed a slightly higher proportion of female perpetrators—39.9 per cent. Further longitudinal study is required to see if this represented a real upward trend in increasing spouse killings by women.

Wallace (1986) also looked at sociodemographic markers for the spouse murder population and found that 61.2 per cent of these offenders were in the 'unskilled' occupational status, with almost one-third of the male perpetrators and over two-thirds of the women who killed their husbands being unemployed.

Although migrancy is not discussed in overseas literature, it is mentioned in one or two of the Australian studies of marital homicide. Wallace (1986) pointed out that a disproportionately high number of wife killers (37 per cent) in her sample were born overseas and were relatively new arrivals primarily from Turkey, Lebanon, Italy, Poland and Yugoslavia. However, she warned that the numbers from each country were small and should be interpreted with caution. In their Victorian research, Polk and Ranson (1991a; 1991b) also found an inordinately high proportion of 'young adult' female killings by recent arrivals from overseas—46.7 per cent; all were emigrants from Southern European countries.

The National Homicide Monitoring Program data contained country of birth for two-thirds of offenders; 82 per cent of all killers were Australian born (Strang 1991). Since country of birth was not cross-tabulated by relationship between offender and victim, we do not know if the Australian-wide data for spouse homicide would also show the New South Wales and Victorian pattern of over-representation by overseas-born males. Chapter 4 will reveal results of that cross-tabulation.

Strang (1991) did find that the Aboriginal community might be at particularly high risk for spousal homicide. She noted that although about one-quarter of white victims were killed by 'partners', just under one-half of the Aboriginal people murdered were victims of their spouses and points out that Aboriginal women during 1989-90 had a higher homicide rate than their white counterparts. However, it is unclear whether this difference is attributable to husband killings. Wallace (1986) also identified an over-representation of Aboriginal people among homicide offenders in New South Wales. However, she did not cross-tabulate Aboriginality with marital homicide. Further quantitative data collection and analysis is necessary with added qualitative research to obtain an understanding of the sub-cultural (and external) factors which may contribute to a higher incidence of homicide between adult sexual intimates among this population. Chapter 4 will provide additional quantitative information about this issue and subsequent chapters may shed some light on the particular characteristics of these killings between Aboriginal people.

In addition to Aboriginality, Chapter 4 will also examine other variables about the people involved in these homicides: gender, age, employment status, ethnicity and victim/offender relationship. It is hoped that the findings will provide some missing pieces to the picture of who (*if* there is any particular sociodemographic profile) is at the highest risk of victimisation.

### *Contributing factors*

What precipitates the taking of a (once) beloved's life? Can one isolate a single cause or motive, as police reports are prone to do, or is there a number of factors which weave together and culminate in the tragic climax? Chapter 5 will examine the role of alcohol, separation, battering,

jealousy, fights and other variables which emerge as contributory. Differences in causation by gender and ethnicity will also be explored. The qualitative detail and number of cases should enable some of the difficulties discussed below in the findings of prior Australian studies to be minimised.

In 46 per cent of Wallace's (1986) cases, either the offender or the victim had been drinking. Alcohol thus appeared to be a fairly common correlate of these homicides. However, other contributory variables, such as battering, have been emphasised more in the literature. Thus, Rod (1979) found that a history of battering had been reported in almost one-third of the 'wife' killings and in nearly half of the husband killings in her New South Wales sample. This relatively low figure may be due to the data source—police files. Most of the marital murders, as in other categories of homicide, were the outcome of a verbal or physical dispute.

A fairly similar background of domestic violence, 40 per cent, was found by Wallace (1986) in her analysis of wife homicides. The duration of violence extended from several months to over twenty-five years. She, however, found a higher rate of domestic violence when men were the homicide victims; almost 70 per cent. Further, 52 per cent of the female perpetrator cases took place immediately in the context of a threat or assault by the male partner. Sexual jealousy was designated as the primary motive in 12 per cent of the killings by male perpetrators.

Lansdowne and Bacon (1982) interviewed sixteen New South Wales women tried for spouse homicide and found a much higher incidence of prior battering; fourteen of the sixteen reported having been assaulted by their husbands in the past. This high number could be due in part to the tendency of some informants to justify or rationalise their behaviour.

Polk and Ranson (1991a; 1991b) looked at the 'themes' in the homicides of twenty-seven Victorian women by their male 'partner'. They found possessiveness and jealousy as the most common denominator in cases where the victims were 'young adults' and that in most instances, prior violence had been common. As already described for New South Wales, the homicide often took place when the women had tried to terminate the relationship. These researchers differentiated the sample further with older victims (sub-theme, male depression and suicide) and young adolescent-aged victims (sub-theme, immature rage prompted by fear of the female ending the relationship). Unfortunately, it is not made clear in their analysis exactly what proportion of each sub-sample conformed to the theme or motive. Their sample of husband killers was small, seven. Of these, six had committed the homicide whilst being attacked and had experienced prior violence.

Strang's (1991) breakdown of national homicide cases by primary precipitating factors did not cross-tabulate by the relationship between the offender and victim. In addition, data concerning the motivation were unavailable for 20 per cent of the total killings which is indicative again of

the lack of depth and limitations of police records. 'Desertion/jealousy' was given as the motive in 12 per cent of the known total; however, it was unclear whether the individuals in these cases were a subset of those in sexually intimate relationships. The author did note that 'a particular feature of these data concerns the number of homicides which seem to occur at the time a partner . . . leaves or threatens to leave the relationship' (p. 32). Strang also commented on the failure of most police reports to mention whether there were violent antecedents to the homicide.

Indeed, police records may not include prior battering by the deceased simply because the initial interview did not probe the antecedents. Thus, Lansdowne and Bacon (1982, p. 9) who used in-depth interviews noted that 'in most cases there was a disparity, sometimes glaring, between the woman's account and the information to be gleaned from official documents'. If the woman pleads guilty to a lesser charge, again, previous abuse may not be apparent. Further, if another party was involved in the killing or it was not immediately preceded by male violence, some researchers do not seem to consider the homicide to be within the domain of victim precipitation. Yet unfortunately the identification of victim precipitation is sometimes the only available indicator of whether prior violence has taken place. As stated earlier, the material presented in Chapter 5 should be able to provide a fuller answer to the question of violent prehistory antecedents (and other causative factors) in homicides between sexual intimates by employing a broader source of data than just police reports and an in-depth qualitative analysis of the sample of cases.

### *Suicide outcome*

There has been little empirical research conducted on homicide-suicide in Australia, and none that looks at it solely in the domestic context. Yet the contrast between this type of homicide in England and the United States has shown the danger of generalising from overseas studies. The one Australian article located (Goldney 1977) is rather dated. It notes that Australia's rate of homicides which ended in suicide, 20 per cent, was intermediate between 33 per cent in the United Kingdom and the United States' 4 per cent (8 to 9 per cent for US in the most recent studies). Goldney's findings were limited by sample size; four coroners' findings, two male offenders and two females. All four perpetrators had prior mental illnesses of severe depression or morbid jealousy. Goldney concludes as West did in the United Kingdom, that the homicides were only a part of the principal aim of self-destruction.

Wallace's (1986) chapter on homicide-(attempted) suicide in New South Wales is really the only major piece of Australian literature on the subject and contradicts Goldney's conclusion. She found that 78 per cent took place in the family with 82.5 per cent perpetrated by males who most commonly killed their spouses or lovers. The relatively few female

offenders were more likely to kill their children. Of particular interest was her discovery that homicide-suicide was most common amongst higher socioeconomic groups. This coincides with Katz (1988) who found that suicide followed homicide in 27 per cent of 'affluent' cases in America, a much higher proportion than the 8 to 9 per cent overall. Wallace generated four aetiological models (conflict, altruism, mental abnormality, miscellaneous) and concluded that the 'conflict' type is the most common. Therefore, according to that report the majority of New South Wales' homicide-suicide cases [as in the United States] more closely resembled homicide, not suicide. It is also important to note that in more than one-quarter of the premeditated 'conflict' base cases, the victim had been previously abused and/or threatened.

Bonney's (1987) added data combined with Wallace's generated a figure of one in nine homicides involving suicide or attempted suicide. This was similar to Strang's (1991) proportion (8 per cent) of homicides Australia-wide in 1989-90 since attempts were not included in her calculation. These proportions were significantly lower than Goldney's (1977) one-fifth. This may represent either a downward trend or a pattern of marked fluctuation by year. Over time, the on-going National Homicide Monitoring Program should be able to show which is true. Of the twenty-five cases found in that project, all but two offenders were male and none was Aboriginal. Further analysis of the data would be necessary to find out what proportion involved family members, and specifically spouses or estranged partners. This will be done in Chapter 6 which will examine both the incidence of the homicides between sexual intimates which end in suicide of the perpetrator and also look closely at this sub-sample of cases in order to identify whether any variables, either sociodemographically or in the backgrounds to the homicides, emerge as unique to these type of incidents.

### *Judicial outcome and sentencing*

To date, there is virtually no empirical data available on the sentencing of women and men who kill their sexual intimate partners in Australia. The Law Reform Commission of Victoria (1991b) presented the verdicts and sentences for homicides prosecuted in that state between 1981 and 1987. Although 'domestics' were isolated as a category, there was no further differentiation. Tarrant (1990) reported that in Western Australia in ten cases from 1983 to 1988 concerning a battered woman who killed the batterer, a self-defence plea was only used directly in two and peripherally in two others; it was successful in one case. Among Bacon and Lansdowne's (1982) sample of thirteen women, again it was raised for only two of the women, by the court for one and mentioned in two. Success was directly correlated with the conformity of the events preceding the killing with the traditional interpretation of immediacy.

In lieu of self-defence, what has emerged in Australia is the sometimes successful use of a provocation defence which can reduce the charge from murder to manslaughter. (Provocation was used by seven of Tarrant's (1990) ten women and by five of the thirteen in Bacon and Lansdowne's (1982) sample). Greene (1989) believes that in many of the cases, if the woman's actions have conformed to the traditional interpretation of provocation, she is allowed to plead guilty to manslaughter and little is heard about these cases.

Provocation is also a difficulty in the current legal environment when there is no immediate incident that can be construed as threatening. In other words, if the woman waits until her partner is asleep or passed out, it is doubtful that the court would accept provocation.

Cases like *The Queen v. R.* [1981 28SASR321] in South Australia, (Scutt 1983; 1990), may continue to take place. Although the deceased had essentially tortured his family for almost three decades, since R. killed him whilst he slept, as the law is currently interpreted, self-defence was not an option. Further, since provocation also involves the idea of immediacy, the trial judge refused to allow provocation to go to the jury; fortunately, due to public pressure, the appeal court held that such a decision should have been left to the jury. Ultimately, R. who had learned thirty-six hours prior to killing her husband that he had raped and wounded one daughter and had sexually abused all the daughters frequently, was acquitted. This was described in one *Bulletin* article as 'perverse' (Harding 1989) and by another commentator as 'compassionate' (Rathus 1989); obviously a controversial decision. Interestingly, Tolmie (1991) describes the case as more suited to self-defence and not provocation since the homicide was not a result of loss of self-control but a deliberate act of protection for the defendant and her daughters.

Thus, it appears that Australian women who kill their partners (assuming that an equivalent proportion to the United States experienced long-term battering) may receive harsher dispositions than in America. However, this is just conjecture since the necessary data have not yet been unearthed or analysed by researchers.

Such captions as 'Wife killed for nagging, court told' which appeared in the Brisbane *Courier Mail* (16 May 1991) whet one's curiosity about whether 'nagging and nagging and nagging' is perceived as provocation for murder in Australia. There is no doubt that gender role stereotyping and related attitudes continue into the 1990s. We do not yet know their impact in the court.

Chapters 7 to 9 will examine the judicial outcomes of a sample of cases. One component of the sentencing section is the analysis of sentencing remarks, aiming to detect whether such attitudes, as discussed above, play a role in the decisions of the judges. Other variables such as prior battering and alcohol abuse by the offender will be looked at to ascertain their influence upon dispositions.

## Prevention through the Puzzle Pieces

Most of the research and programming aimed at prevention of marital homicide or domestic homicide are built upon two premises: first that a high proportion of these killings are the culmination of ongoing wife battering and secondly that the police or other authorities are aware that the particular domicile is the scene of domestic violence and could play a more active role in averting the escalation of battering. Throughout the latter part of the 1980s all states and territories enacted legislation that granted police the power to take out protective orders (Corns 1988). Scutt (1986) points out that they have always had that capability.

However, are policies or laws which are aimed at preventing ongoing wife battering going to have any impact on homicide between sexual intimates? In order to respond to that question, we need to answer a few other queries first. Are the homicides preceded by histories of battering? If so, have the police been called to one or more of these earlier episodes of violence? If the police have indeed been summoned to a pre-homicide battering call, is the homicide an indication that the police role was ineffective or insubstantial?

As discussed above, we do not know definitively whether these homicides were preceded by histories of violence. It should, however, be noted that police intervention is at best a poor indicator of abuse in the home since only a small proportion of victims call the police. Further, when a woman does seek law enforcement assistance, it is usually only after the violence has proceeded through many incidents to a severe level. If no prior police intervention appears in the background of a homicide, it does not therefore imply that prior violence has not taken place but simply that law enforcement assistance had not been sought. The converse is also true. In Naylor and Neal's (1990) report on the work of the Victorian Law Reform Commission they found that in almost 60 per cent of the prosecuted 'domestic' homicides, there had been a prehistory of violence; this does not imply that the police had been called to these homes on other occasions prior to the killings or that most battering leads to death.

The Washington Crime Control Institute's study ('Study Finds No Way . . .' *Criminal Justice Newsletter* 1990; 'Study Finds No Predictor . . .', *Law and Order* 1990) questions whether in fact police have ever had the opportunity to arrest the basher since they found very few cases of homicide which had been preceded by calls to the police on prior occasions. The twenty-two month research in Milwaukee showed that previous domestic violence had only been reported to the police in one of the thirty-three adult domestic homicides. This was a result that contrasted markedly with prior investigation in Kansas City which had shown that a very high proportion of marital homicides were preceded by at least one recent call to the police (Breedlove et al. 1977). It is thus unclear whether

in fact police are in a position to play a significant preventive role in homicides between adult intimates.

If police were called to domestic violence situations which later culminated in homicide, does this mean that they were doing little to prevent future violence? The Domestic Violence Working Group (1988) concluded that although Victoria's new *Crimes (Family Violence) Act 1987* gave police the above powers, officers were failing to initiate intervention orders or act on breaches. Looking at New South Wales Stubbs and Wallace (1988) came to the same conclusion and pointed out that good laws can yield little change if their desired goals were thwarted by inadequate implementation.

Interestingly, in the United States, Elliott (1989) found evidence that such police failure to arrest was not unique to 'domestics'. His review of existing research showed that police were equally likely (or unlikely) to apply criminal sanctions to violent spouses as in stranger-stranger interactions. In addition, Elliott discussed the pivotal role of prosecutors in family violence and their discretion which had acted traditionally to dismiss charges. Crites (1985) also decried the gender bias of prosecutors and judges which contributed to ineffective court responses to spouse abuse.

Further, the effects of police intervention in family disputes have been the object of various major American research programs which have questioned whether arrest or other police sanctions did in fact reduce future violence. The results of these studies have been mixed. Sherman and Berk's (1984a; 1984b) research in Minneapolis indicated that arrest was the most effective strategy in reducing repeat violence. Their experimental model was replicated in Omaha where no differences were found in the prevalence or frequency of recidivistic bashing following different handling methods by police (Dunford et al. 1990). Fagan (1989) also questioned Sherman and Berk's findings concerning the efficacy of legal sanction and found that arrest only acted to desist the violence of batterers who had briefer and less severe histories. He also noted that displacement may occur.

It should be stressed at this point that although arrest may appear to have somewhat ambiguous results, a non-arrest policy or non police intervention strategy is *not* being suggested. Arrests and charging should be continued not only because their efficacy cannot be determined accurately without more longitudinal studies, but also because if arrest ultimately protects one woman or prevents one homicide, then it is of value. Further, any criminal act merits police and prosecution action—even if the outcome is not universal deterrence.

Another domestic violence prevention focus is the counselling or rehabilitation of batterers. In the context of homicide, this is based once again upon the premise that the act is the culmination of long-term domestic violence. If this premise is accurate, the first problem is that the

bashers must get into the program. One method of recruitment is outlined by Chappell (1991) who reports that Queensland domestic violence offenders who breach restraining orders have the choice of counselling or gaol. Sanctions would have to be in place to ensure their continuing participation.

Second, programs for batterers would have to be shown to be effective in deterring recidivistic violence. The results in fact are at best ambiguous on this issue. Lazarus and McCarthy (1990) surveyed the history of these programs in Australia since the first was established in Adelaide in 1983. They report that high dropout rates are a concomitant. That study and Cabassi (1989) also found recidivism; both stress that focus on the individual batterer is ineffective; that the problem is much larger, lying in the values of a patriarchal society. For those who do complete the South Australian twelve-week program, Poynter (1991) concludes that long-term behavioural change is evident. The data were, however, limited in a longitudinal sense since the post-counselling assessments took place only at six months and one year after treatment.

American evidence is also mixed and not long-term enough to make definitive statements about efficacy. For instance, Saunders and Azar (1989) determined that the rates of physical abuse were lower for 'treated' groups but that there was little or no difference in rates of psychological or emotional abuse. The latter could be indicative of a lack of fundamental change within the batterer. Continuous psychological abuse can also presumably culminate in homicide.

Chapter 10 looks at the data presented in the previous chapters and critically evaluates whether the models of prevention that have been presented to date, both in Australia and overseas, fit the evidence. If required and relevant, alternative programming, policies, or additional research will be suggested in the hope that the 'death' mentioned in the marriage ceremony will not derive from the act of the beloved partner.

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## Chapter 2

### Stalking the Cases

*S* *talking the Cases* may seem to be an odd title for a chapter dealing with methodology. However, the lack of computerisation and/or minimal differentiation of homicides in both computer programming and inputting of data in coroners' officers and the courts made the search for relevant files quite difficult and indeed somewhat sleuthlike. Restricting the sample to matching surnames would have excluded a sizeable proportion of the sexual intimates. Similarly, identification by common address of perpetrator and victim would have eliminated estranged, divorced, and other non-cohabiting intimates. The 'detective work' therefore involved searching through coronial and court files looking for indications or clues that the offender and the victim were, at some point prior to the killing, involved sexually.

However, the difficulties in data acquisition described above only took place with one of the two data bases used in this project. The first data set from the Homicide Monitoring Program did not present these problems; however, as discussed next, that data had other limitations.

#### **The National Homicide Monitoring Data (the National Data)**

As a consequence of the recommendations of the National Committee on Violence, the National Homicide Monitoring Program was established at the Australian Institute of Criminology in 1990. Commencing with 1989-1990 data, each state and territory's police have enabled the Monitoring Program's staff to identify the relevant cases in their jurisdiction and obtain information about each homicide incident (excluding driving-related offences) and the participants involved. Confidentiality and other privacy issues are strictly adhered to by the Institute.

The relationship between perpetrator and victim in the cases for 1989-90 and 1990-91 were recorded by the Program. For the purposes of this project, those from each year who had been labelled either as married, de facto, estranged, ex-married, or ex-de facto were selected out for analysis.

Boyfriend-girlfriend were not included in this sample since, as discussed shortly, the researcher was not able to access the files which would delineate the degree and duration of intimacy in these relationships. It should be noted that the numbers here may appear to be slightly different from the published National Data owing to the particular research emphasis of the sexual-intimate study, and also the date of data extraction.

The 1989-90 and 1990-91 financial years' cases were combined for this study. This was done since two years is not a lengthy enough time period to generate information on trends or patterns; thus, it did not seem worthwhile to present each year separately. Secondly, the combination of both years provides a larger total for greater validity and reliability and more numbers in the individual cells which were tested for significant variation.

#### *Positive aspects of the National Data*

These data are especially valuable as they relate to the nation as a whole. It should be noted that in the present research, jurisdiction has been cross-tabulated with some of the variables in order to make some interstate comparisons.

Another benefit of working with the Homicide Monitoring Program data was the capability of contrasting the 'intimate' homicide subset with the other non-intimate homicides. This has been done in numerous places in the following chapters in order to identify whether killings between adult sexual intimates differ in any significant way, aside from the relationship variable, from other homicides. Such findings could prove critically important in the formulation of prevention programs.

A further advantageous attribute of the National Data was their availability at the Australian Institute of Criminology.

#### *Limitations of the National Data*

Due to the nature of the National Homicide Monitoring Program and restrictions on the use of its data, information obtained from the police jurisdictions was only available to the researcher as data on the computer. The narrative summaries and police reports were not accessible; in-depth analysis was therefore not possible. Since the source of these data was police reports, a high proportion of unknowns was present in certain of the variables. The breadth of details available for both these reasons—police source and confidentiality—was therefore quite limited. However, the second data set acted to fill in many of the blanks.

## **New South Wales and Victorian Court Data Set (the 'In-Depth Data Set')**

Finding the cases of adult sexual intimate homicide is not a simple task. In New South Wales, if it is not possible to access police records, one needs to look in two different systems: the coronial court for cases in which the offender committed suicide and the criminal courts for the homicides which resulted in at least an initial charge. (The records for homicide cases that go on to a criminal court leave the coroner's court and acquire a new number and a new home at the office of the Director of Public Prosecutions (DPP). The New South Wales Bureau of Crime Statistics and Research provided a printout of all homicides in New South Wales from 1988 through 1990 which had ended in a coroner's finding of 'offender unknown or since deceased' to assist in locating all homicides (intimate and non-intimate) in which the offender had suicided.

Unfortunately, New South Wales' files (unlike Victoria) are not centralised but are housed at the local or regional coroner's court in which the case was heard. At the main Coroner's Court in Glebe, a search through all of the designated file numbers from Crime Statistics and Research revealed that all but one case that was located (some were missing from the shelves) was a 'perpetrator unknown' finding. At Westmead Court in Parramatta, similarly, only one case from the Bureau's list was both relevant and found. However, that office maintained a log for each year which gave a brief summary of the finding by the coroner. From the logs for 1988 1989, and 1990, five more homicides between adult sexual intimates which culminated in the suicide of the perpetrator were identified. These case numbers were not on the list provided by the Bureau of Crime Statistics and Research.

Letters were sent to other local coroner's courts enumerating the cases from the master list with a qualifier that these might not be exhaustive. Unfortunately, only one suitable incident's summary forms were sent to the researcher.

Consequently, this method failed to uncover all of the potential incidents, a fact that will be discussed in more detail later. In total, from the coroner's courts, Supreme Court and Departments of Public Prosecutions, 110 cases were identified: sixty in New South Wales and fifty from Victoria.

The exploration in the Supreme Court and the New South Wales DPP was more successful. Unfortunately, their records were not complete; either entire cases could not be located or the file was found but sentencing remarks were not usually contained in their records. Again, the

searching and retrieval were manual, facilitated by numbers provided by the New South Wales Bureau of Crime Statistics and Research.

At the New South Wales Supreme Court, some files were also absent; they had either been sent to the Court of Criminal Appeals, or more commonly, to Victim's Compensation. All the available homicide cases records were made available to the researcher who then identified the sexual intimate sample. Only about half of the Supreme Court files contained the judge's comments, but the Court provided assistance to locate the missing ones.

The homicide recording situation in Victoria was entirely different and much easier methodologically. 1988 and 1989 homicide cases had already been examined and labelled by relationship between the offender and victim by Polk and Ranson (1991a; 1991b). They kindly allowed this research project total access to both their summaries and the court files. Further, in Victoria, every homicide incident for the state, including both those that end in suicide and those that culminate in adjudication are housed at the Coroner's Court in Melbourne.

The 1990 incidents were identified and analysed and the sentencing remarks were obtained from the transcribing service of the Victoria Attorney-General's Department.

The relationship between offender and victim in this sample from New South Wales and Victoria is defined somewhat more broadly than in the National Data set. Since more detail was available, some boyfriend/girlfriend relationships were able to be included. The pertinent material indicated that in these cases, although the couple had never lived together nor been legally married, their relationships had been fairly lengthy and had involved sexual intimacy.

### *The benefits of the in-depth data set*

The sample gathered from the New South Wales and Victorian coroners' and criminal courts provides a depth of detail which is not available with the larger National Homicide Monitoring data. There was some variation, however, for example, the New South Wales cases which ended in suicide were fairly sketchy and lacked reports from psychologists and other workers. Nevertheless, with the inclusion of witnesses' accounts, professional reports, and the judges' remarks at sentencing, much detail is provided.

The sentencing remarks, aside from providing more background accounts of the homicides, are also of course invaluable in the disposition section of the research project. If sentences alone had been obtained, a part of the picture would still be missing: what factors appear to weigh

most heavily in the judges' thinking when they sentence a man or woman who has killed a sexual intimate?

Lastly, this data set had an unforeseen advantage. During the course of the fieldwork, the researcher was invited to address both the New South Wales and the Victorian Legal Aid Commissions on the subject of Battered Woman Syndrome. Following each of those talks, several lawyers in attendance volunteered some insights about sexual intimate homicide cases on which they had been assigned to the defence. Further information about several incidents in the sample was obtained in this fashion.

### *Limitations of the in-depth data set*

Although this sample provided more detail than the National Data, missing pieces to the picture were still apparent. These will become evident in the following chapters when 'unknowns' are enumerated.

The sample, is not the total of all homicide-(suicides) in New South Wales and Victoria during the time period. Thus, the proportion of homicides in the New South Wales sample which culminated in the suicide of the perpetrator is, for example, undoubtedly lower than the reality (due to the particular problems in acquisition of suicide outcome incidents). This is taken into consideration in the data analysis and description of findings.

The last two limitations are by-products of the courts' complexity and restrictions on research. It had originally been intended that the judicial process would be followed to its end, not infrequently the Court of Criminal Appeal. Unfortunately, this would have required more time and monies than available. In New South Wales, the identification number of the case changes when it moves from the Supreme Court to the Appellate level. Following the case is therefore problematic unless surnames are used. The permission from the New South Wales Supreme Court for the researcher to access files precluded the use of surnames; total anonymity in data collection was a prerequisite. The latter is one of the reasons why all of the offenders and victims in this study will be referred to by pseudonyms and actual record numbers will not be given.

## **The Data Analysis**

Cross-tabulations were performed on both data sets using SPSSX. With the National Data, intimate/non-intimate, gender, jurisdiction, type of relationship, ethnicity and suicide/non-suicide were contrasted with the

other known variables to ascertain the difference(s), if any, that these denominators have upon the numerous factors which contribute to the incident.

Given the small numbers in cells in the data set and the less complete New South Wales collection, tests of significance were performed on only some of the New South Wales and Victoria data. Responses were cross-tabulated by gender and by ethnicity. Simple chi-square tests also were calculated with the National Data when appropriate; significant differences from both data sets will be presented in the relevant sections.

The sentencing remarks were analysed by the researcher through listing the types of comments which were made either to explain a lesser sentence or to justify a lengthier one. The taxonomy for recording was developed throughout the analysis process. For example, if the first remarks examined mentioned the history of offender's alcohol abuse as an explanation for mitigation, this became a factor which was looked for in subsequent remarks. The list of variables was therefore evolutionary. It should be noted that aside from positive and negative effects, the impact of some factors articulated by the judge was unclear. This was noted on the recording instrument.

### **How the Combination Works**

The combination of two data sets, each with its positive and negative traits, can act to complement each other. The strengths of one can balance out the weaknesses of the other. Therefore, those variables which are known more comprehensively and have more reliability from the National Homicide Monitoring Data will be used, while those that tend to be under described or reported in that data will be explored through the New South Wales and Victoria data set. For example, domestic violence histories, alcohol abuse, and ethnicity may not be noted by a police officer filling out the homicide report; however, in-depth analysis of the coronial/court may well reveal an answer about the presence or absence of these factors.

Quantitative information from the National Data about incidence, gender breakdown, weapon used, and the suicide of the offender will be supplemented with qualitative, case history material from the second data source. For variables which have a high rate of unknowns from police reports, the quantitative picture will be drawn from the New South Wales and Victoria cases even though they are not exhaustive.

There is one major caveat about both data sets which should be noted. The Homicide Monitoring data come from a two-year period and, although the New South Wales and Victorian cases cover moderately

more time, the size of that sample is smaller. *Any conclusions that are drawn in this study must therefore be regarded as preliminary, and certainly as requiring a lengthier time frame and larger sample before attempting to identify trends.* For example, if these data show that individuals who lived in Victoria were more likely to commit suicide than offenders in the other states, it could only be concluded that such was the reality for the time period under study. The finding could be an anomaly or a fluctuation, or, it could be a consistent state variation. Only further longitudinal data could validate the latter.

### *Putting faces on the numbers*

Reports are sometimes produced which relay the numerical side of the picture of crime. Such numbers, proportions, and rates are critically important in policy formulation and design of prevention programming. There is, however, one element lost in this type of research—the human aspect which may be obscured by the graphs and flow charts. One may perhaps forget that the numbers represent real people, their pain, tragedy, and in this instance, their death or that of one close to them.

However, an aim of the current study is to convey both the quantitative detail and, to a degree, through some of their stories, aspects of the lives of the people who were killed by a sexual intimate. In that way, the numbers can become humanised which may be a necessary precursor to the empathy that motivates prevention and social change.



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## Chapter 3

### **Detecting Patterns in the Incidents**

**W**here in Australia do homicides between adult sexual intimates most frequently take place? When is the highest risk time of day? What are the most commonly used weapons? This chapter will respond to these queries and a few others in order to begin to understand the nature of this crime.

#### **Where Homicides between Adult Sexual Intimates occur**

##### *Jurisdiction*

Table 3.1 portrays the state and territorial distribution of homicide within Australia. The significant difference that was found between jurisdiction in intimate versus non-intimate homicides is reflective of the differing inter and intra-state distribution of the different types of homicide. For example, although New South Wales was the location of the highest percentage of the non-intimate homicides, it dropped to second place as the site of intimate killings with more than one-quarter (26.7 per cent) taking place in Victoria. This may be an anomaly; or it could be indicative of other factors which will be discussed later.

##### *Geographical area*

Table 3.2 shows that the majority of both types of homicide take place in the suburban areas of Australia. The variation that is apparent from statistical analysis stems from the comparatively high proportion of homicides between sexual intimates that occurred in rural areas, including Aboriginal communities. This pattern was particularly marked in Queensland where more than half of the 'intimate' homicides took place in rural settings; 28 per cent in rural centres, the same proportion in Aboriginal communities, and 8 per cent in country towns. The geographical distribution was also markedly different between New South Wales and Victoria. The latter's suburban sections were the highest risk with 65 per cent of Victoria's forty intimate homicides occurring there

while 39 per cent of New South Wales' intimate killings transpired in the suburbs.

*Table 3.1: Incidents of intimate and non-intimate homicides, by jurisdiction, Australia-wide 1989-90 and 1990-91 combined*

Jurisdiction	Intimate (n=150) %	Non-intimate (n=363) %
New South Wales	24.0	32.2
Victoria	26.7	21.8
Queensland	16.7	23.7
Western Australia	11.3	7.7
South Australia	10.0	4.7
Tasmania	1.3	2.7
Northern Territory	10.0	7.2
Total	100.0	100.0

Notes:

1. 116 incidents are not included since the intimacy/non-intimacy between offender and victim was unknown.
2. Significant difference between the two groups:  $X^2_{[6]}=14.1$ ,  $p<0.05$ .

*Table 3.2: Incidents of intimate and non-intimate homicides, by geographical area, Australia-wide 1989-90 and 1990-91 combined*

Geographical area	Intimate (n=150) %	Non-intimate (n=363) %
Inner city	2.0	5.5
Suburban	43.3	53.2
Rural centre	24.0	14.3
Aboriginal community	12.7	6.3
Other rural	6.0	11.0
Other	7.8	9.4
Unknown	2.7	1.9
Total	100.1	100.0

Notes:

1. 116 incidents are not included since the intimacy/non-intimacy between offender and victim was unknown.
2. Significant difference between the two groups when top five geographic areas are contrasted:  $X^2_{[4]}=18.9$ ,  $p<0.001$ . The remaining areas were deleted from analysis to eliminate small n's.
3. Apparent inconsistency in sum total is attributable to rounding error.

Source (Tables 3.1 & 3.2):

Calculated from National Homicide Monitoring Program data.

### *Location*

As expected, there was marked heterogeneity in the exact location where different types of homicides are perpetrated ( $X^2_{[21]}=59.8$ ,  $p<0.0001$ ). More than two-thirds of the killings between adult sexual intimates occurred in the victim's home in contrast to 40 per cent of other homicides. Of the 150 'intimate' cases, twenty-three did take place in outside areas: eleven in the street, seven in the bush, three in car parks, and one each at a park and at the beach. Thus although the home is certainly the highest risk location, the variety of settings in fact indicates that in certain situations, there is no safe place or sanctuary from death by an intimate. The relationship of location to premeditation will be looked at further in Chapter 5.

In the in-depth sample, the ethnicity of the offender appears to be a factor in determining the site of the killing. The non-Aboriginal Australian born offenders overwhelmingly either acted in the shared domicile or the victim's home; none killed outside or at the victim's work. Although overseas-born offenders also were most likely to kill in the marital home, in four cases the killing took place outside, in three instances at someone else's house, and one overseas-born female was killed at her place of work—a family owned and operated business. It is worth noting that in five cases out of the 110, the homicides did take place at the victim's employment, perhaps a situation where, erroneously, they may have felt safe.

### **When do the Homicides take place?**

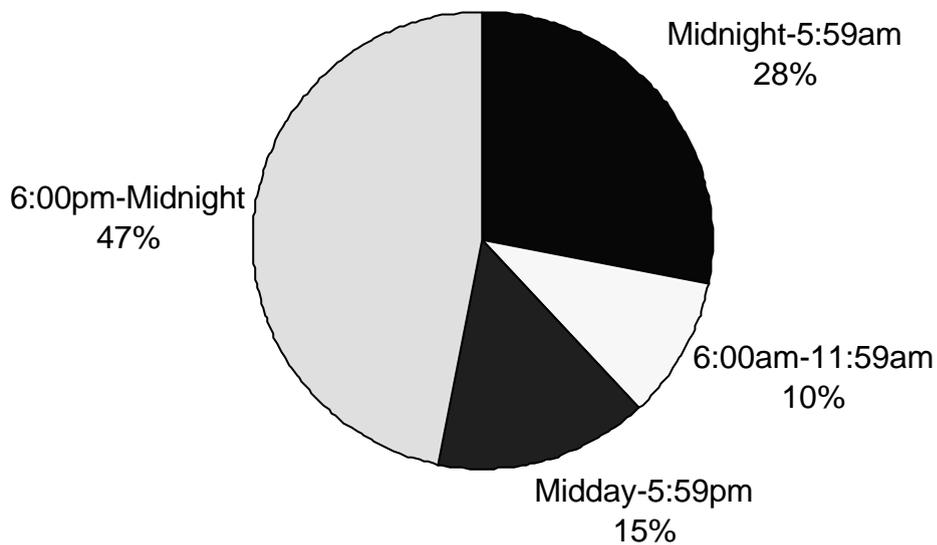
Figure 3.1 illustrates the time when homicides between adult sexual intimates took place. There was no significant variation between this distribution and the times for the killings between non-intimates.

In all homicides, not unexpectedly, the late night hours were the most dangerous, preceded by the evening time of day. It should be noted however that about one-fifth of the sexual intimate homicide incidents took place during the day time—6 a.m. to 6 p.m. Therefore such acts of violence are not necessarily restricted to the hours of darkness.

Although there was no significant variation based upon ethnicity, gender emerged as a significant factor ( $X^2_{[4]}=13.1$ ,  $p<0.05$ ). Females were more likely (41.3 per cent) to kill a sexual intimate during the late

night hours between midnight and 6 a.m.; only 19 per cent of the male perpetrator intimate homicides took place in this time period; 44 per cent of their homicidal acts took place in the evening, from 6 p.m. to midnight.

*Figure 3.1: Time of day when homicides between adult sexual intimates took place, Australia-wide 1989-90 and 1990-91 combined*



Note: In 23 incidents time of occurrence was unknown.

Source: National Homicide Monitoring Program data.

## Number of Perpetrators per Incident

Homicide between adult sexual intimates, as shown in Table 3.3 is a crime overwhelmingly perpetrated by one individual per killing.

*Table 3.3: Number of offenders per intimate and non-intimate homicide incident, Australia-wide 1989-90 and 1990-91 combined*

No. of offenders	Intimate (n=150) %	Non-intimate (n=363) %
Nil	0.0	0.6
One	95.3	81.5
Two	1.3	14.3
Three	1.3	2.2
Four	0.7	0.8
Five	0.7	0.3
Six	0.7	0.0
Eleven	0.0	0.3
Total	100.0	100.0

Notes:

1. 116 incidents are not included since the intimacy/non-intimacy between offender and victim was unknown.
2. No test for significant difference between the two groups was run due to numerous cells with small n's.

Source: Calculated from National Homicide Monitoring Program data.

However, it should be noted that variation in the number of accused by gender of accused appears in the data. Although only 2.5 per cent of the male perpetrator homicides were perpetrated by more than one person, 13.8 per cent of the female accused incidents involved more than one offender (one incident involved two offenders; two homicides involved three accused; and one case involved six).

### Number of Victims per Incident

Similarly, in this type of killing, it appears that generally the victim is one person—the partner or ex-partner. Table 3.4 indicates that this pattern differs from the other types of homicides.

*Table 3.4: Number of victims per intimate and non-intimate homicide incident, Australia-wide 1989-90 and 1990-91 combined*

No. of victims per incident	Intimate (n=150) %	Non-intimate (n=363) %
One	95.3	83.5
Two	2.7	9.4
Three	2.0	4.1
Five	0.0	1.4
Six	0.0	1.7
Total	100.0	100.0

Notes:

1. 116 incidents are not included since the intimacy/non-intimacy between offender and victim was unknown.
2. Significant differences between the two groups were not tested due to the large number of cells with small n's.
3. Apparent inconsistency in sum total is attributable to rounding error.

Source: Calculated from National Homicide Monitoring Program data.

Although not statistically significant, the gender differentiation on this issue is interesting and noteworthy. None of the incidents where women killed a sexual intimate involved another victim; four of the male offenders killed one other person and in three homicides with male perpetrators, two others were killed in addition to the female adult sexual intimate victim. Although the total number was too small to generate definitive findings, it should be noted that in five of the seven multiple victim killings, the offender and his 'partner'/victim were estranged.

The in-depth sample provides more detailed information about this subject. In four of the 110 cases, another person was killed; one eight-month-old baby daughter of the male offender and his female de facto

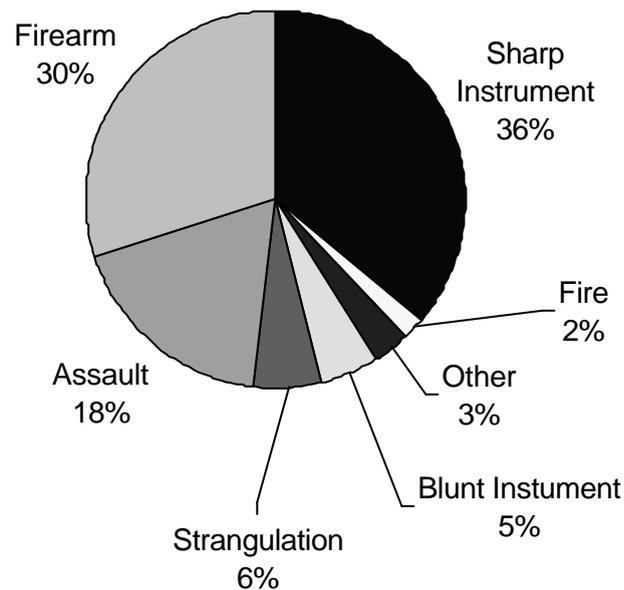
victim, one two-year old son of the offender and his wife victim, one ten-year-old child of the female victim, and a male friend of the estranged female victim. Two of the four incidents also involved the suicide of the perpetrator.

In another four homicides, although the intent may have been death the other victims survived with injuries: one mother-in-law, one twelve-month-old baby, one-thirteen-month baby, and the boyfriend of the female victim. Again, half of the homicides culminated in the male offenders' suicide.

### The Method of Killing

Figure 3.2 illustrates the means of homicide used in the 150 cases between adult sexual intimates throughout Australia. No significant variation was found between this group and the non-intimate killings.

*Figure 3.2: Method of killing used in homicides between adult sexual intimates, Australia-wide 1989-90 and 1990-91 combined*



Note: One incident in which the weapon was unknown is excluded.  
 Source: National Homicide Monitoring Program data.

There was also no significant difference between the weapon chosen by overseas-born and non-Aboriginal Australian-born. However, as Tables 3.5 and 3.6 show, gender and Aboriginality both appear to have considerable effect on the choice of method.

*Table 3.5: Primary method used in homicides between adult sexual intimates, by gender, Australia-wide 1989-90 and 1990-91 combined*

Primary method	Male (n=121) %	Female (n=29) %
Firearm	29.8	27.6
Sharp instrument	29.8	62.1
Blunt instrument	5.8	0.0
Assault	20.7	6.9
Strangulation	7.4	0.0
Fire	2.5	0.0
Other	4.1	0.0
Unknown	0.0	3.4
Total	100.0	100.0

Notes:

1. Significant difference between genders when comparing use of firearms, sharp implements, and assault/strangulation:  $X^2_{[2]}=7.7$ ,  $p<0.05$ . Remaining weapons were not included in test due to small n's in cells.
2. Apparent inconsistency in sum total is attributable to rounding error.
3. Proportions differ from Figure 3.2 since unknowns are included in this table

Source: Calculated from National Homicide Monitoring Program data.

Females, it would seem, were far more likely to use a knife or other sharp instrument than to use a gun. Although firearms were not employed by even a third of males, men were more apt to assault or strangle their victim than were the female offenders.

*Table 3.6: Primary method used in homicides between adult sexual intimates, by Aboriginality, Australia-wide 1989-90 and 1990-91 combined*

Primary method	Aboriginal (n=41) %	Non-Aboriginal (n=91) %
Firearm	4.9	37.4
Sharp instrument	46.3	29.7
Blunt instrument	7.3	4.4
Assault	39.0	11.0
Strangulation	2.4	8.8
Fire	0.0	3.3
Other	0.0	5.5
Total	100.0	100.0

Notes:

1. Significant difference when comparing use of firearms, sharp implements, and assault/strangulation:  $X^2_{[2]}=17.7$ ,  $p<0.001$  Remaining weapons were not included in test due to small n's in cells. In 18 cases, Aboriginality/non-Aboriginality was unknown.
2. Apparent inconsistency in sum total is attributable to rounding error.

Source: Calculated from National Homicide Monitoring Program data.

Only two of the forty-one Aboriginal offenders used a firearm; assault and stabbing were more common in contrast to the non-Aboriginal group. When the gender of offender was controlled, there was also still a significant difference between Aboriginal and non-Aboriginal males in their respective use of guns, sharp implements, and assault or strangulation ( $X^2_{[2]}=20.7$ ,  $p<0.001$ ). Assault was used by one-half of the Aboriginal men and by only 11.5 per cent of the non-Aboriginal men. Only one of the thirty-two Aboriginal men used a firearm; twenty-nine of the seventy-eight non-Aboriginal males shot their victims. The variation between the two female sub-groups was not tested due to the small size of the cells. Only one Aboriginal woman (11.1 per cent) used a gun while 38.5 of the non-Aboriginal females chose that method.

### *Savagery*

One aspect of many of these homicides which cannot be perceived through the above tables and the numbers is the degree of brutality involved in a number of these killings. This ferocity was particularly present in situations where a knife was used by a male.

Twenty-two stab wounds to the upper torso and face (Victoria: a male offender stabbed his female lover);

Stabbed about thirty times with a boning knife with wounds to the chest, abdomen, neck and arms (Victoria: a male vis à vis his estranged wife);

Stabbed thirty-nine times with a wooden handled carving knife to the neck, chest, breast, abdomen, back, upper thighs, arms and hands (New South Wales: a male to his eight-month pregnant wife; the foetus also died; in addition the two-year-old child was stabbed to death in the throat);

Twenty-two stab wounds, strangulation and setting body on fire (a New South Wales man to his ex-de facto wife);

Seventy-three stab wounds by an estranged husband (in New South Wales).

Extreme violence was also present with other means of death. In Victoria, a de facto wife/victim was beaten, doused with petrol and set on fire. In New South Wales, a male shot his estranged wife in the chest, abdomen, elbow, and knee; he then fractured her skull with the butt of the rifle. In the same state, a man struck his estranged wife's head with a hammer twenty-one times. Another man beat his wife to death with a brick and with 'exceptional violence'.

The coroners' reports about bodily damage caused by gunshot wounds inflicted close to the victims' bodies will not be included in this description of violence, but it should not be forgotten.

### *Type of gun*

Of those perpetrators who used firearms in the homicides between adult sexual intimates, more than one-half (57.1 per cent) used a .22 rifle while almost one-quarter (23.8 per cent) employed a shotgun. Hand guns and automatics were rarely used (4.8 per cent and 7.1 per cent respectively). The use was fairly equally distributed by jurisdiction, type of relationship, gender, and Aboriginality.

### *Premeditation or spontaneity—by the weapon involved*

In the in-depth sample, a higher proportion (37 per cent) used firearms, than in the nation as a whole. Table 3.7 should be interpreted in that light.

*Table 3.7: Premeditation or spontaneity of the homicides between adult sexual intimates, by weapon, in New South Wales and Victoria 1988-90*

	Firearm (n=40) %	Knife (n=32) %	Assault (n=36) %	Total Weapons (n=108) %
Pre-planned?				
Premeditated (n=41)	75.0	21.9	11.1	38.0
Spontaneous (n=44)	15.0	46.9	63.9	40.8
Unclear (n=23)	10.0	31.3	25.0	21.3
Total	100.0	100.0	100.0	100.0

Notes:

- 1 Two incidents are excluded because type of weapon was unknown.
2. Extreme significant difference found between the rows and columns:  $\chi^2_{[4]}=39.1, p<0.0001$ .
3. Apparent inconsistency in sum total is attributable to rounding error.

Source: New South Wales and Victorian coronial and court records.

Table 3.7 indicates that a comparatively small proportion of homicides with guns were perpetrated spontaneously. This contrasted markedly with the use of knives, and even more so when assault was the means of killing. In a large percentage of the latter two types, the homicide did not appear to have been planned but occurred in the midst of an argument. The usual scenario in this context with a male offender, was generally like the following case.

*Spontaneous homicide with male offender (project case study number 25)*

Fred had been divorced from Maria (a Filipina) and had custody of their daughter. After visiting her mother, the child reportedly would tell her father about seeing naked men, etc. He had tried on five occasions to have her access terminated by the court, to no avail. Despite all of this, he was hoping that Maria would return to him and shortly before the homicide, the couple with their daughter went away on a brief holiday. No reconciliation resulted.

A week later, Maria came to Fred's to discuss access. He offered her all of his money, \$10,000 to get out of his life. Apparently, she thought that he had more

and so she laughed and said, 'Is that all you're going to give me?' This made him so furious that he pushed her. Maria had long fingernails and scratched his neck and chest. He put his arms around her throat, trying to get her to let him go. They fell to the floor and he continued to apply pressure to her neck. She died of strangulation.

Most of the female perpetrator homicides appeared to be 'spontaneous'; four of the six (relatively infrequent) spontaneous firearm killings involved women offenders. The immediate antecedents in these cases almost always involved some sort of provocation by the male as shown in the following case.

*Homicide with female offender acting spontaneously (project case study number 94)*

Sam and Pamela had been married for five years. During that relationship they had both been heroin addicts, had commenced methadone programs, and latterly had switched to alcohol and prescribed drugs. Sam was violent on occasion and had given Pamela at least one black eye and a broken nose.

On the day of the homicide they were drinking continuously at a hotel. At one point an argument broke out and Sam hit and punched Pamela in the head. She used a knife from her bag to puncture his neck. He hit her again; management intervened and the couple reconciled sufficiently to return to their caravan.

At their home, Sam again struck Pamela when she told him that she did not want him to return to the hotel. He also called her a slut which Pamela claimed was one term that she could not tolerate. She claimed that Sam then lunged at her and she defended herself with a knife.

In the in-depth sample, the numbers of premeditated incidents were almost equal to the frequency of the spontaneous type. However, it is expected that nationally, given the lower frequency in firearm homicides, that the spontaneous knife and assault-type incidents would be more frequent.

*Homicide with premeditated use of a firearm (project case study number 65)*

Julie was only 20 when she was killed by her former boyfriend Brett. She had terminated their relationship almost three months before the homicide. Brett apparently could not accept that it was over. He made many frequent threatening calls to her and possibly had maliciously damaged her car.

On the day of the killing Brett had been drinking heavily and smoking marijuana. Armed with a .22 rifle he went to Julie's place of employment. He attempted to get her to come with him. When she refused, he pointed the gun at her head and shot

her three times. He ran out and later shot himself in the head but did not die (he was permanently partially blinded).

## **Discussion**

What can be learned just from examining a few variables concerning the incident? Analysing numbers can provide risk patterns but given the short-term nature of these data, they should only be used to indicate potential relative risk and areas that require further long-term research and data collection.

Victoria, during the time period investigated, would appear to be a high risk jurisdiction for this type of homicide, specifically its suburban areas. This may be a dynamic which fluctuates dependent upon economics and other factors which will be highlighted in the next chapter. Moreover, the information on physical distribution has shown that no particular state, locality or even location is immune. Awareness of the latter is particularly important for the high risk or highly vulnerable potential victim or law enforcement agency charged with her protection.

Similarly, although some hours are more potentially dangerous, homicides between adult sexual intimates do take place at any time on the clock. Any surveillance or safety program should take that into consideration.

It appears that these crimes are generally perpetrated by one individual against one person. When another person was killed, the act was always perpetrated by a male; the victim, in five of the eight instances involving death or injury of another person, was a child. There is no particular constellation of background variables in these cases which would earmark high risk for multiple victims although estranged relationships were the norm in the small sample. It would appear that the suicide rate of such offenders is fairly high which could be indicative of increased remorse.

The findings on weapon point again to the need for increased data analysis with future data collection on this type of homicide. The preliminary evidence points to gender and ethnic variation in preferred choice of primary weapon. Again, prevention programs should localise and assimilate these patterns prior to formulating strategy. The choice of weapon may well reflect another variable to some extent—spontaneity versus premeditation.



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## Chapter 4

### The Players

The preceding chapter has provided the background material. The following sections provide the same type of sketch for the people involved in these homicides. Some cases will be described briefly, not at this point to analyse motive or contributory factors, but to provide some humanising to the numbers and percentages.

Several of the variables surveyed in this chapter contributed to or, possibly caused the homicide incident. At this time, such aspects will only be alluded to since these facets of the 'players' will be discussed at length in the next chapter.

#### Ethnicity

Ethnicity is a controversial issue since there may be concern that findings could be used to substantiate stereotypes and existing prejudices. Nonetheless, the analysis has revealed distinct variation based upon Aboriginality and overseas birth which could be vital considerations in the formulation of prevention strategies. It is important to examine and discuss these data and their possible ramifications; however, it is equally important to remember the relatively brief time period and the limited sample size. Any findings are therefore suggestive and not conclusive.

Table 4.1 contrasts the ethnicity of those who killed their sexual intimates during the two years that data have been collected nationally. Ethnicity is a variable with a substantial proportion of 'unknowns': 34 per cent in the Homicide Monitoring Project data and 34.5 per cent of the in-depth cases. Table 4.1, which eliminates those with unknown ethnic backgrounds, indicates that a higher proportion of homicides between sexual intimates were perpetrated by Aboriginal people and by the overseas-born than was the case for other types of homicide.

*Table 4.1: Ethnicity of offender in intimate and non-intimate homicides, Australia-wide, 1989-90 and 1990-91 combined*

Ethnicity	Intimate (n=99) %	Non-Intimate (n=296) %
Non-Aboriginal Australian-born	35.4	58.1
Aboriginal	41.4	24.7
Overseas born	23.2	17.2
Total	100.0	100.0

Notes:

1. 258 incidents (fifty-one 'intimate' cases) are excluded due to either unknown ethnicity or unknown intimacy/non-intimacy of the relationship.
2. Significant difference between the two groups:  $X^2_{[2]}=16.0$ ,  $p<0.001$ .

Source: National Homicide Monitoring data.

Table 4.2 focuses upon the jurisdictional distribution of the homicides between adult sexual intimates by the ethnicity of the offender.

*Table 4.2: Ethnicity of offender in homicides between adult sexual intimates, by jurisdiction, Australia-wide, 1989-90 and 1990-91 combined*

Jurisdiction	Non-Aboriginal Australian-born (n=35)	Aboriginal (n=41)	Overseas-Born (n=23)
NSW	17.1	12.2	4.3
Vic	22.9	0.0	47.8
Qld	22.9	26.8	17.4
WA	14.3	17.1	21.7
SA	20.0	12.2	8.7
NT	2.9	31.7	0.0
Total	100.0	100.0	100.0

Notes:

1. In 51 incidents, the ethnicity of offender was unknown: 24 from New South Wales; 21 from Victoria; 2 from Queensland; and 1 unknown in South Australia and Northern Territory. Both of the offenders in Tasmania were of unknown ethnicity.
2. Apparent inconsistency in sum total is attributable to rounding error.

Source: Calculated from National Homicide Monitoring Program data.

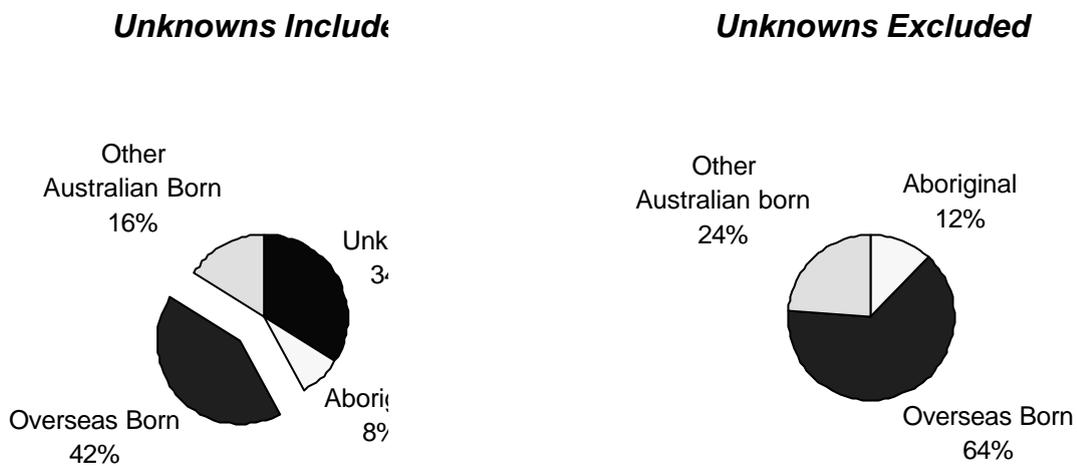
For those whose ethnicity was known, as the table shows, the findings are dramatic: 41.4 per cent were Aboriginal people. If unknowns are included, the Aboriginal proportion drops to 27.3 per cent of the total which is still a remarkably high percentage when one considers that Aboriginal people, according to the 1991 census figures constituted only 1.5 per cent of the population in Australia. Not surprisingly, the table also illustrates that jurisdiction is an important factor in the distribution of ethnicity: thirteen of the fourteen offenders in the Northern Territory for whom ethnicity was reported were Aboriginal (and there was only one unknown in the Northern Territory) while there were no 'known' Aboriginal offenders in Victoria.

The National Data thus emphasise the role of Aboriginality. Overseas birth appears to be a relatively unimportant factor with the exception of Victoria where almost one half of the offenders (for whom ethnicity was known), were born overseas. However, the in-depth sample indicates that this may be an erroneous image which might be a by-product of the 'unknown' element, particularly the two-thirds of New South Wales perpetrators for whom ethnicity was not disclosed (in the National Homicide Monitoring Program data).

Figure 4.1 indeed highlights that those born overseas represent a higher proportion in both Victoria and New South Wales than would be expected since, among 20 to 60-year-olds in the population (at large) of the two states, 28.5 per cent were born overseas which is substantially lower than the proportion of overseas-born offenders in the two states' sexual intimate homicides. In Victoria, 48 per cent of offenders were born overseas (30 per cent of population at large) while 37 per cent of the perpetrators in New South Wales had been born overseas (27 per cent of the general population). As the figure shows, if 'unknowns' are excluded from the total, the percentage of overseas-born is even more startling.

Unfortunately, coronial and court records not only do not consistently record birthplace but also do not always provide the date of the overseas-born individuals' arrival in Australia. In most of the cases where the latter was recorded, it should be noted that the offenders had arrived in this country as adults. Of the forty-six overseas-born perpetrators, seven came from Italy, six from Poland, four from Yugoslavia, three each from Malta, Hungary, Greece, Czechoslovakia and England. Albania, Germany, Ethiopia, Cyprus, Fiji, Egypt, Finland, New Zealand, and Russia were represented by one or two offenders; however, none of the sample was born in an Asian, Southeast Asian, or North American country.

*Figure 4.1: Ethnicity of adult sexual intimate homicide offenders, New South Wales and Victoria, 1988-1990*

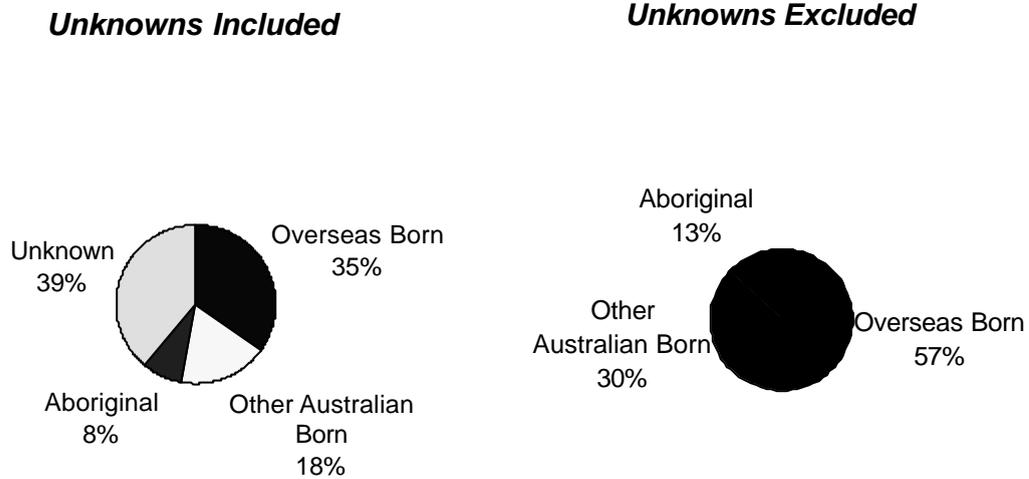


Note: In 38 cases (34% of the total) the ethnicity of the offender was unknown.

Source: New South Wales and Victorian coronial and court records.

The ethnicity of the victims in the in-depth sample is depicted in Figure 4.2. Most came from the same countries as their perpetrator, for example seven of the victims were Italian with Italian partners. There were exceptions: for example, three of the victims were Filipino women who were killed by non-Filipino males.

Figure 4.2: Ethnicity of adult sexual intimate homicide victims, New South Wales and Victoria, 1988-1990



Note: In 43 cases, the ethnicity of the victim was unknown.

Source: New South Wales and Victorian coronial and court records.

*A homicide between Aboriginal people (Project case study number 80)*

On a weekend summer day, Jim, an Aboriginal male, his de facto wife Mary, and several others gathered by the river on an Aboriginal reserve in New South Wales. The couple had been in a sporadic relationship for about nine years and were both aged in their thirties. During the course of the day a large amount of beer and wine was consumed by all present. Midway through the afternoon Jim and Mary had a physical fight; then things seemed to settle down. Sometime during the night Mary received severe blows to her head with the cooking pot; she died from these injuries several days later. Jim claimed that she had fallen over although he admitted to a male friend that he had done it, 'I've just busted my Missus up'.

One of the other women on the campout claimed to have heard Jim tell Mary that he didn't want her any more and that he was going to hit her with the pot.

There had been a history of domestic violence in this relationship (Jim admitted that they often hit each other whilst drunk) and a history of alcohol abuse by both the offender and the victim. Both were unemployed.

*A homicide between those born overseas (project case study number 18)*

The offender and his victim/wife were both Turkish, in their early thirties, with three children. Throughout the course of the marriage Sonya had been beaten and Ali had threatened to kill her on numerous occasions. These arguments were always overtly based on his delusions about her infidelity; however, his drinking, gambling and womanising certainly contributed to the marital discord.

As a result of the abuse, Sonya left the marriage; Ali begged her to return and so she did after a six-month absence.

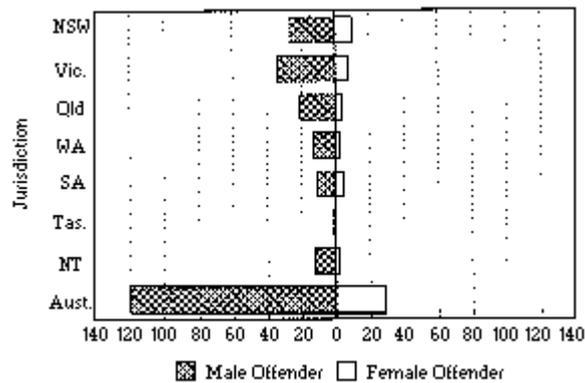
On the day of the killing Ali dropped the children at a friend's. He returned home, retrieved a loaded gun from under the bed, went to the kitchen and confronted his wife about seeing another man. He then shot several bullets into her head and chest killing her instantly. He admitted that he also wanted to kill himself but that he did not have any bullets left to do so. Indeed, he did try to commit suicide later. Psychiatric opinion was that he suffered from paranoid schizophrenia; however, he was found fit to plead.

## **Gender**

The perpetrators of all homicides in Australia were overwhelmingly male: 9.4 per cent (39) of the non-intimate perpetrators were women and 19.3 per cent (29) of the killers in the intimate type were women. This difference between gender representation by homicide type is statistically significant ( $X^2_{[1]}=9.6$ ,  $p<0.01$ ).

The low female participation in the intimate homicides does represent a distinct variation with studies in the US which found near gender parity in 'marital murders' (Wolfgang 1956; 1958; Daly & Wilson 1988a; 1988b; Goetting 1987). Figure 4.3 shows the distribution by gender and by state.

Figure 4.3: Gender of offender in homicides between adult sexual intimates, Australia-wide, 1989-90 and 1990-91 combined



Source: National Homicide Monitoring Program data.

In the 110 New South Wales and Victorian incident sample, twenty-three of the perpetrators were female with women constituting two-thirds of the Aboriginal perpetrators. However, as Table 4.3 derived from the National Homicide data indicates, although the proportion of Aboriginal offenders who were female was moderately higher than for the non-Aboriginal group; the variation was not statistically significant.

Of the 150 victims, 121 were female; of those women whose ethnicity was known (seventy-four), 39.2 per cent were Aboriginal, 25.7 per cent were overseas-born, and 35.1 per cent were non-Aboriginal Australian born. The breakdown for the male victims was very similar with no significant variation.

*Table 4.3: Gender of offender in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined*

Ethnicity of offender	Male (n=79) %	Female (n=20) %
Non-Aboriginal Australian-born	35.4	35.0
Aboriginal	40.5	45.0
Overseas born	24.1	20.0
Total	100.0	100.0

Notes:

1. In 51 incidents the ethnicity of the offender was unknown.

Source: National Homicide Monitoring Program data.

#### *Homicide by a woman (project case study number 49)*

Although Jane, an Aboriginal woman was only 19, she had been in an on again off again four year de facto relationship with Luke, an Aboriginal male, age 20 at the time of his death. They were not cohabiting at the time of the homicide although they did continue to go out socially together. Both were unemployed, and had been drinking at the time of the homicide. It is clear that Luke was a chronic drinker and a heroin user. Jane's drinking history is unclear in the records. There were two children from that union.

Jane had been subject to repeated physical violence from Luke during their relationship. In her words, 'He would bash me whenever he felt like it and it was at least once a week. He would bash me in the face with a closed fist, usually on the face, but sometimes on the body.' She had to go to the hospital once as a result of the abuse. Jane had in fact taken out a Restraining Order only a few weeks earlier.

On the day of the homicide she and Luke met so that he could see the children. They drank together for most of the afternoon and evening and then returned to the house where he had been living and where the children had been staying during the day. A conflict began since she wanted to leave with the children and Luke wanted them to remain with him for the night. He threw her on the bed and grabbed her by the throat. He also began to head butt her. When he got off her, she grabbed what turned out to be a knife and hit him with it once. Jane claimed that she was not aware that she had seriously injured him.

### *Homicide by a man (project case study number 5)*

Barry, mid-20s, had a history of violence toward his girlfriends. He had been going out with Ellen for some months when she tried to terminate the relationship. Barry became obsessively jealous and once tried to break into Ellen's flat since he was convinced that she was sleeping with someone else.

At Christmas dinner with her family, there was obvious tension between the couple with Barry becoming increasingly angry at Ellen's behaviour toward other males present which he construed as flirtatious. They left the party together, and parked the car outside the offender's home (presumably Ellen was dropping him off since it was her vehicle). They were overheard arguing. Police were summoned to the scene shortly after and found Ellen dead in the car.

When asked what happened, Barry stated, 'I strangled the bitch. That's all.' When told that she was dead, he said, 'F...ing good, the bitch deserved it.' He elaborated on his motive, 'I just lost it. I wasn't going to let her hurt anyone again. I knew that I had to do it . . . I had to make sure the job was done so I hit her in the throat a few times.'

## Age

Table 4.4 shows that there was some gender variation in the age of the offender. Women tended to be younger (mean age was 33.4) than the males (mean age, 38.7).

*Table 4.4: Age of offender in homicides between adult sexual intimates, by gender, Australia-wide, 1989-90 and 1990-91 combined*

Age	Male (n=117) %	Female (n=27) %
10-19	0.0	7.4
20-29	29.1	44.4
30-39	29.1	29.6
40-49	23.1	3.7
50-59	7.7	7.4
60+	11.1	7.4
Total	100.0	100.0

#### Notes:

1. In six incidents the age of the offender was unknown.
2. A t-test was conducted on the means of the 'raw' ages without any statistical significance found.
3. Apparent inconsistency in sum total is attributable to rounding error.

Source: National Homicide Monitoring Program data.

An interesting, and perhaps surprising to some, finding depicted in the table is that more than 10 per cent of the male offenders were over the age of sixty. In the next chapter, it will be shown that in the bulk of these incidents there is a different theme or cause of the homicides. However, at this point, let us limit our analysis to a description of one such case.

*Older age offender homicide (project case study number 31)*

Bettina and Mario were Italians who had lived in Australia almost thirty years. They had been married over fifty years and were, reportedly, a devoted couple. However, in the early 1980s, they both started suffering from Alzheimer's disease, which progressed more rapidly for Bettina. She became very forgetful which was frustrating to her husband. As her memory deteriorated their marriage began to involve heated arguments; these were not apparently physical. Their children were concerned and separated them for a short period but they moved back together again. At this time they were in their mid-late seventies.

Late one night at about 2 a.m. Mario took a hammer from a shelf beside his bed and hit Bettina over the head with it whilst she was asleep. He then poured some petrol around the room and set fire to the house.

Table 4.5 displays the age of offenders by their ethnicity. The Aboriginal mean age of 29.2 was significantly younger than either the overseas-born (44.1) or the non-Aboriginal Australian born (39.3).

*Table 4.5: Age of offender in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined*

Age	Non-Aboriginal	Aboriginal (n=40)	Overseas Born (n=23)
	Australian-born (n=34)		
	%	%	%
10-19	0.0	5.0	0.0
20-29	20.6	62.5	17.4
30-39	38.2	30.0	26.1
40-49	29.4		26.1
50-59	11.8	2.5	8.7
60+	0.0	0.0	21.7
Total	100.0	100.0	100.0

Notes:

1. In 53 incidents either the age or the ethnicity of the offender was unknown.
2. Anova test results:  $F=10.0$ ,  $p<0.0001$ . The Aboriginal/overseas-born had the highest significance, followed by the Aboriginal/non-Aboriginal Australian born. There was no significant difference between the latter group and the overseas-born.

Source: National Homicide Monitoring Program data.

The age of victims was tested for variation with age of offender; there was no significant difference. The highest risk age group were those in their twenties with one-third of victims belonging in that category. This was followed by the thirties, 27.7 per cent.

### Employment Status

(A caveat must be noted when studying employment status. Any findings concerning this variable should be considered as speculative since a high proportion (over one-third) of offenders' employment status was unknown in both the data sets.) As expected from previous studies (Wallace 1986; Bonney 1987), a significant number of the offenders were unemployed at the time of the killing: 66 per cent in the National Homicide Monitoring Program data where employment status was known. Even if all the 'unknowns' were in fact employed, the percentage not employed would still be high at 40.7.

*Table 4.6: Employment status of offender in homicides between adult sexual intimates, by gender, Australia-wide, 1989-90 and 1990-91 combined*

Employment Status	Male (n=78) %	Female (n=15) %
Employed	35.9	26.7
Unemployed	64.1	73.3
Total	100.0	100.0

Notes: In 57 incidents the employment status of the offender was unknown

Source: National Homicide Monitoring Program data.

Similarly, the victims in these homicides tended to be unemployed without significant variation by gender. Of the seventy-nine victims for whom employment information was known, 69.6 per cent were unemployed. Both this figure and that for the offenders seems so much higher than for the population at large that one is tempted to quickly hypothesise a causal relationship between unemployment and homicide between adult sexual intimates. Its role as a contributory variable will be

discussed later; however, at this point something else needs to be pointed out which reduces the tendency to think in terms of simple cause and effect.

Although gender was not a statistically significant factor in employment status, significant heterogeneity in employment status between Aboriginal people and the overseas-born and the non-Aboriginal Australian born, as shown in Table 4.7 was apparent. The unemployment factor, it would appear, must be understood within the particular sub-cultural contexts involved. It should be pointed out that this high unemployment rate for Aboriginal people is in part reflective of a higher overall rate in the population at large. According to the Australian Bureau of Statistics, in 1986, 35 per cent of Aboriginal people were unemployed in contrast to the national figure of 9 per cent at that time.

*Table 4.7: Employment status of offender in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined*

Employment Status	Non-Aboriginal Australian-born (n=29) %	Aboriginal (n=38) %	Overseas Born (n=13) %
Employed	51.7	21.1	23.1
Unemployed	48.3	78.9	76.9
Total	100.0	100.0	100.0

Notes:

1. In 57 incidents the employment status of the offender was unknown.
2. Significant difference between ethnic groups:  $X^2_{[2]}=7.6$ .  $p<0.05$ .

Source: National Homicide Monitoring Program data.

It would appear that the Australian-born offenders were more likely to be employed although almost half of that sub-group was unemployed. The same was found for victims' employment status and their ethnicity ( $X^2_{[2]}=10.2$ ,  $p<0.01$ ). All but two of the twenty-six Aboriginal victims

had been unemployed, 50 per cent of the overseas-born, and 58 per cent of the non-Aboriginal Australian born (with unknowns excluded).

The in-depth cases from New South Wales and Victoria (see Figure 4.4) are somewhat different; in that sample, a relatively low (but still markedly high as compared to the general population) 41 per cent were not employed (that is unemployed or on benefits). (If all the unknowns were employed, the unemployed proportion drops to 27.3 per cent). In this case set, those born overseas were more likely to be employed (60 per cent) in comparison with Aboriginal people (33 per cent).

Both data sets are clear: unemployment among offenders in sexual intimate homicides was far above that for the population at large.

#### *Unemployed offender homicide (project case study number 71)*

Mark had been in the navy when he met Joan and moved in with her and her two children. He remained for five months and then entered an alcohol rehabilitation program. While in treatment, he was notified by Joan that she did not want him to return since it would jeopardise her social security payments. After his completion of the program, Mark continued to drink and ultimately was discharged from the navy. Although he did not move back in with Joan, the couple maintained contact.

One Sunday, he came to her home in her absence and paid the baby-sitter. Upon her return a fight ensued which resulted in his punching her in the face and body, stabbing her twenty-two times, and setting the house on fire.

According to the psychologist's report, Mark did not want to leave the navy which contributed to his life being in a state of crisis at the time of the killing. Aside from his history of alcoholism, he had a background of depression and attempted suicide. He did not try to kill himself after murdering Joan.

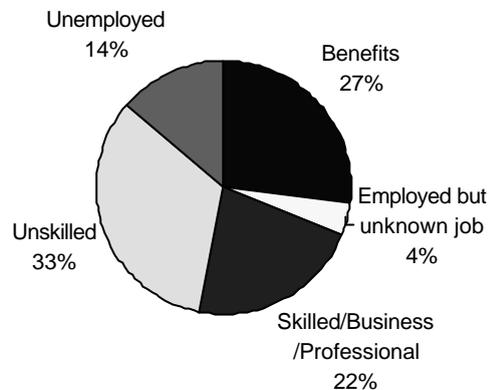
#### *Unemployed offender homicide (project case study number 83)*

In this case, Nick, the Greek-born offender in his mid-40s, was unable to work for the prior six years due to back injuries. His marriage had been arranged in Greece; there were three children.

During this lengthy period of unemployment, apparently Nick's mental health deteriorated, his frustration rose and the marriage worsened. The result was many arguments and several suicide attempts.

On the day of the homicide, Nick fatally punched his wife in the throat area and then unsuccessfully attempted suicide with poison.

*Figure 4.4: Occupation (where known) of adult sexual intimate homicide offenders, New South Wales and Victoria, 1988-1990*



Note: In 37 cases, the employment status of the offender was unknown.

Source: New South Wales and Victorian coronial and court records

The in-depth sample provides further detail about the occupations of offenders. Of those who were employed at the time of the homicide, more than half (55.8 per cent) had unskilled labour type of jobs, one-third either had their own small businesses or managed one, one individual worked in a skilled position and two (5 per cent) were professionals.

*Homicide with offender who had a professional occupation (project case study number 8)*

Matthew and Karen were both in their early 30s. He was a successful medical practitioner and she was a business manager. They had one child and Karen was several months pregnant. Although there was no known history of domestic violence in this marriage, it was reported that Matthew had been unfaithful a few years earlier. When Karen discovered the affair, she threatened to leave the marriage. Matthew had responded that he would kill her if she tried to divorce

him. She remained, but a few months before the homicide she began an intimate relationship with another man.

Matthew alleged that three men broke into their home, shot Karen, and tied him up in the boot of his car. However, the evidence that was gathered by the police showed that he had in fact killed her and Matthew was found guilty of murder.

Of the 110 victims, the occupation was unknown for twenty-one. Of the remainder, thirty-nine (43.8 per cent) worked outside of the home: twenty in skilled positions, ten in unskilled, six owned or managed businesses, and three were professionals. Nineteen of the victims were identified as 'homemakers' and two were prostitutes.

### Relationship of Offender and Victim

The relationship of the offender to the victim is depicted in Table 4.8. In the National Homicide Monitoring Program sample, over two-thirds of the incidents involved individuals who were still cohabiting at the time of the homicide. However, there was variation by jurisdiction; in Victoria for example, one half of the couples were estranged while in Queensland only 16 per cent were separated or divorced. Interestingly, the couple was divorced in only two of the 150 incidents. Perhaps the formalised legal termination of a relationship reduces some of the ambiguity and stresses of estrangement.

*Table 4.8: Relationship between offender and victim in homicides between adult sexual intimates, by jurisdiction, Australia-wide, 1989-90 and 1990-91 combined*

	NSW (n=36) %	VIC (n=40) %	QLD (n=25) %	WA (n=17) %	SA (n=15) %	TAS (n=2) %	NT (n=15) %	AUSTRALIA (n=150) %
Married	38.9	32.5	24.0	23.5	26.7	0.0	46.7	32.0
Separated	25.0	32.5	0.0	11.8	13.3	0.0	0.0	17.3
Divorced	0.0	5.0	0.0	0.0	0.0	0.0	0.0	1.3
de Facto	27.8	17.5	60.0	41.2	53.3	0.0	46.7	36.0
Ex de Facto	8.3	12.5	16.0	23.5	6.7	100.00	6.7	13.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Note: Apparent inconsistency in sum total is attributable to rounding error.

Source: National Homicide Monitoring Program data.

The table also shows that the risk of homicide appears to be marginally higher in de facto relationships compared to legal marriages. Actually, at first glance, the proportion of de factos would seem to represent more than a marginal increase in risk. However, the data must be placed in context: there was a very high proportion of Aboriginal sexual intimate homicides in which the couple were together, but not legally (70.7 per cent). This results in ethnic differentiation with the cohabitation/estrangement variable as illustrated by Table 4.9.

*Table 4.9: Relationship status of offender/victim in homicides between adult sexual intimates, by ethnicity, Australia-wide, 1989-90 and 1990-91 combined*

	Non-Aboriginal Australian-born (n=35) %	Aboriginal (n=41) %	Overseas born (n=23) %	Unknown Ethnicity (n=51) %	Total (n=15) %
Estranged or divorced	28.6	9.8	34.8	51.0	32.0
Relationship intact	71.4	90.2	65.2	49.0	68.0
Total	100.0	100.0	100.0	100.0	100.0

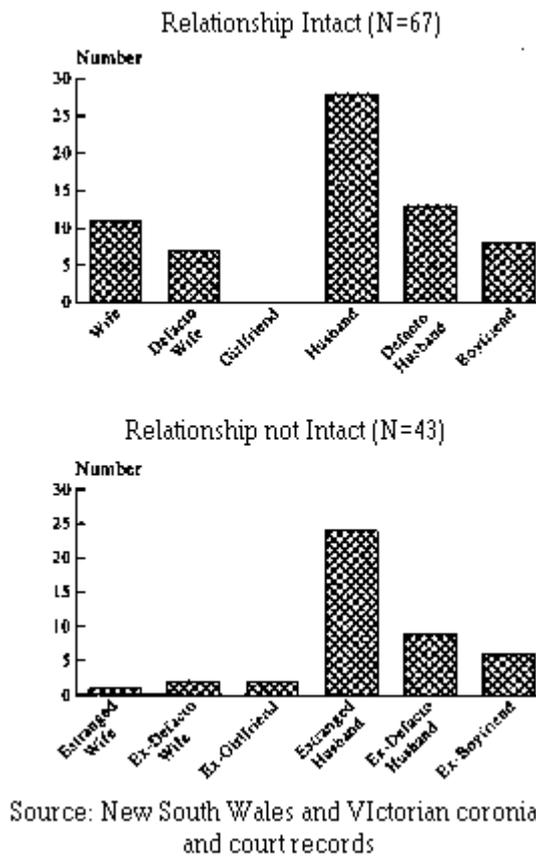
Notes:

1. Significant difference between groups with unknowns excluded:  $X^2_{[2]}=7.1$ ,  $p<0.05$ .
2. Apparent inconsistency in sum total is attributable to rounding error.

Source: National Homicide Monitoring Program data.

Almost all of the Aboriginal group were in intact relationships at the time of the homicide. This contributes to a lower overall proportion of homicides between separated couples (32 per cent) Australia-wide; than in the in-depth sample (39.1 per cent) as shown next in Figure 4.5.

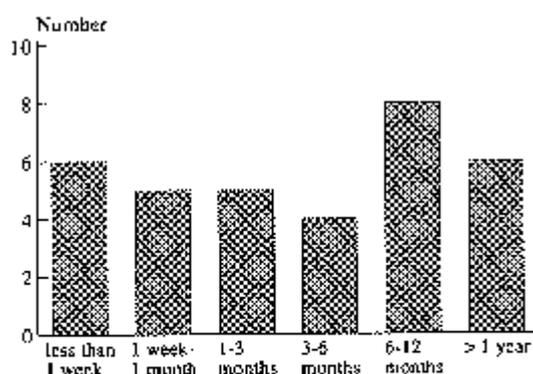
Figure 4.5: Relationship of offender to victim in homicides between adult sexual intimates, New South Wales and Victoria, 1988-1990



Differences are apparent in these New South Wales and Victorian data as can be seen in Table 4.8 which showed some jurisdictional variation in relationship distribution. More than half (61 per cent) of the offenders were still in a relationship with their victim. There were gender and ethnic variations; however, male perpetrators and the overseas-born were more likely to be estranged from their victims than were the other offenders. As Figure 4.5 illustrates, the bulk of offenders were husbands (n=28) or estranged husbands (n=23).

Figure 4.6 reveals that for those who were no longer in an intact relationship, the time between estrangement and killing was quite variable.

*Figure 4.6: Length of separation prior to homicide between adult sexual intimates, New South Wales and Victoria, 1988-1990*



Source: New South Wales and Victorian coronial and court records

It is noteworthy that a high number of these killings took place a fairly lengthy period of time after the estrangement. This will be examined more closely in the following chapter. At this point, the analysis will be restricted to looking briefly at two cases in which the offender and victim were no longer in an intact relationship at the time of the killing.

*Homicide in which the couple was estranged (project case study number 44)*

John and Linda had been married for over twenty years. During this time Linda had frequently been afraid of John since he had battered her on various occasions and was extremely possessive. Finally, she moved out.

John appeared to have a lot of difficulty adjusting to the separation and would ring another family member telling him that he wanted to die. He began to enter Linda's house, assaulted her on at least two occasions, vandalised her property and followed her to work. Five months after leaving, Linda took out a *Crimes (Family Violence Act) Intervention Order*.

Despite that Order, John continued to come to Linda's home and harass her. (Police response will be discussed later.) He also continued to threaten to kill himself and 'to get Linda'. Some ten months after she had left, that is just what John did. En route to work, Linda was still inside her car in the car-park when John broke her car window and stabbed her over thirty times. Shortly after, John gassed himself to death.

*Homicide in which the couple was estranged (project case study number 77)*

Diane and Donald had been separated for nine months when he killed her and then took his own life. She was in her late 20s and he was thirty-three. They had been married for six years prior to Diane leaving the marital home. There were no children.

On the night of the homicide, Donald apparently came over to Diane's flat for dinner. The next day, her naked body was discovered with seventy-three stab and slash wounds. Donald's body was found in the garage of his home, dead from asphyxiation with a note which read, 'Goodbye everybody. I loved Diane'.

## **Discussion**

The analogy set out at the beginning of this study depicted what was already known about homicide between adult sexual intimates as the pieces of a puzzle. After looking at the preceding information, it is obvious that this is not a simple puzzle; in fact, the picture that is emerging is one of complexity, a mosaic of variables producing a heterogeneous spectrum of homicides. From a prevention perspective this might be construed as unfortunate since effective preventative strategies might be facilitated if one monolithic model of homicide between adult sexual intimates was apparent from the data.

However, the lack of simplicity is only a problem if it is unrecognised and not used in prevention formulation. The above information about the offenders and victims in this type of killing goes some way towards providing recognition of the diversity. Aboriginal people and those born overseas both appear to be over-represented in the population of perpetrators and victims in this sort of homicide. The distribution of these groups, not surprisingly, seems to be based upon jurisdiction with the overseas-born most visible in Victoria (and New South Wales according to the in-depth sample) and Aboriginal people dominating the numbers in the Northern Territory, Queensland and Western Australia (in that order). Some differentiation in the homicides' traits based upon ethnicity of the perpetrator is beginning to take shape in the puzzle and may assume more substantial form as the findings on causes and outcomes are revealed.

Although a higher proportion of sexual intimate homicides are perpetrated by women than in other homicides, females are still less than one-fifth of the perpetrators in this type of killing. Also, although a higher proportion of Aboriginal women than females from other backgrounds were offenders, the ethnic breakdown for women offenders was very similar to that for males.

Risk by age varied according to ethnicity. Aboriginal people were significantly younger than the overall mean age and the overseas-born

tended to be older. One-third of total victims were in their twenties followed closely by those in their thirties. The frequencies then declined in subsequent decades until the sixties and older. The latter individuals are a more vulnerable age group than one might have expected.

Unemployment would seem to be an important contributory variable or correlate of homicide between adult sexual intimates. However, it can be explained partially by the higher incidence of unemployment among the Aboriginal offenders and the wider Aboriginal community. Nonetheless, the unemployment figure among the total offender population was inordinately high. Its role, in the two case studies presented, was relatively overt. Both male perpetrators had reportedly become increasingly frustrated and quarrelsome after their work careers had ended.

In many other cases where the offender was unemployed, its repercussions seemed to be more indirect, such as increased leisure time for both alcohol consumption and conflict with one's partner. As will become apparent with other cases described, the role of unemployment is not a catalyst of the homicide but one of numerous threads which interweave and ultimately culminate in the killing.

The in-depth sample indicates that in the majority of homicides where the offender had been employed s(he) worked principally in unskilled or skilled labour-type positions. This should not be interpreted to imply that familial violence is restricted to the unemployed or working classes. However, it would appear that the final tragedy of such violence, death, is more common among those groups.

The findings concerning the perpetrator/victim relationship or living arrangements have also revealed some interesting insights. It is evident that separation does not end the risk of homicide victimisation by a partner; in fact, for some (with the exception of the Aboriginal sub-group) it may be a time of quite elevated vulnerability. Although the formal rite of passage into separate lives, divorce, seems to reduce that risk, for those separated without that legal finality, even more than one year after the estrangement can be potentially dangerous.

Aside from the overseas-born group in which only a minority were in de facto relationships, de facto marriages and their endings dominated the homicides between adult sexual intimates. Census data on the nature of 'marital' relationships are problematic due to both terminological ambiguity and self-identification. (1986 census data identified less than 6 per cent of cohabiting unions as de facto; 1991 data were not yet available on this subject.) The high proportion of de facto marriages in the sample cannot therefore be contrasted with the percentage of de facto in the general

population. Nevertheless, it would appear to be a higher homicide risk relationship than the legal/(religious) marriages.

Thus, numerous variables that relate to the 'players' seem to act as parts in the puzzle or picture. At the least, it should be obvious by now that the picture is actually a collage made up of various smaller units. The next chapter will take us another step toward identifying the different themes and patterns by looking more closely at the causative or contributory variables.



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## Chapter 5

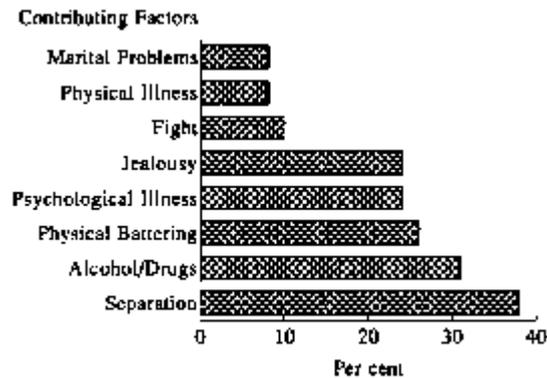
### Why did they do it?

The reason for the killing is particularly problematic in this type of homicide. In a felony homicide when for example an armed robber shoots a bank clerk, the motive is clear. Or, in a television mystery drama, the husband murders his wife in order to inherit all of her money and run off with a younger woman. The women who kill their partners in movies or on the television are often motivated by either revenge, monetary gain, or another man. Perhaps the closest to reality media depiction was *The Burning Bed* which dramatised the true case of an American woman who killed her husband after she had been battered for years. Aside from the last example, when we look at the cases of homicide between adult sexual intimates, truth is not only far different from fiction, but it is also more elusive. Often the only clues to motive are the words of the perpetrators themselves. The validity of the latter is highly questionable since, when being tried for murder, most people will attempt to justify or rationalise their action to some extent.

In order to try to see what contributing factors were operating, the current study has focused upon certain background variables which seemed to play contributory roles in the police, witnesses, defendants', and judges' perspective as documented in the research case records. Ascribing the contributing factors to the homicide has involved a degree of subjective assessment since one can obtain no more than a superficial view of the antecedents from the existing material. In fact the difficulties were exacerbated by the lack of information on cause in the National Data set and the high proportion of 'unknowns' on critical variables in both data sets.

Is the following therefore a futile exercise? On the contrary, in many ways, the analysis of contributory factors, as limited by the data as it is, provides more material to the core of knowledge which is a prerequisite for effective prevention policy formulation. However, this chapter will not attempt to generate a cause and effect model of homicide between intimates. As the cases which have been presented thus far and those given below indicate, there is no simple such formula. As stated earlier,

*Figure 5.1: Contributing factor(s) to the homicides between adult sexual intimates, New South Wales and Victoria 1988-90*



Notes:

1. In four of the incidents, the contributing factors were unknown.
2. The total of the columns in the figure exceeds 100% since most homicides had multiple contributing factors recorded.
3. Prior battering and many of the 'jealousy', 'marital problems', 'separation', 'alcohol/drugs' and 'fight' could be subsumed under one category: domestic violence or control.
4. Psychiatric illness was interpreted broadly to include four older-aged victims whose physical illness, Alzheimer's Disease, resulted in aberrant behaviour that contributed to the homicide.
5. Other contributing factors which do not appear in the figure due to their infrequency include custody of children (five cases), infidelity (four), money (four), and 'wrong person', 'claims accident', 'asset dispute', 'loss of job', 'rape of child', and 'suicide pact' (one case each). Most of these could also be seen as fitting within a larger category of domestic violence or male control over woman.

Source: New South Wales and Victorian coronial and court records.

the variables which contribute to the fatal climax are numerous and in many cases, inter-dependent. This should become even more apparent in this chapter.

### **Most apparent Contributing Factor(s)**

In 106 of the 110 in-depth cases, the principal contributing factor(s) for the killing were recorded. Up to three reasons were counted. Figure 5.1 depicts the results of that tabulation.

It should be noted that the frequency of a variable in the figure is not reflective of its actual presence in the sample. For example, as we will see in the relevant sections below, alcoholism, a history of physical battering, and separation were present in a larger proportion of the cases than the figure reflects. This is due to the fact that although in some cases the relationship was marked by prior violence or separation and in other cases the offender had a history of alcohol abuse, the violence, estrangement and alcoholism did not seem to be one of the primary contributing factors or themes in the homicide. Further, as Wilson and Daly (1992) note, police files may underestimate the frequency of jealousy and other variables. For example, they may mislabel sexual factors as mental illness.

Aside from the factors depicted in the Figure 5.1, there is another factor in these homicides which is hidden within the separate variables: self-defence. In a proportion of the incidents, as shown in Table 5.1 the perpetrator's violence was to some degree precipitated by the behaviour of the victim.

As the following cases exemplify, most victim precipitated homicides involved female killers. A history of severe physical violence or a physical altercation immediately preceding the death were the usual accompaniments to these killings.

#### *Victim precipitation by history of extreme physical violence (project case study number 50)*

Sue and Don had been married for fourteen years and had two children. Apparently, the marriage had experienced difficulties in the past few years due to financial hardships. Don had also become quite abusive, verbally and physically. The latter included many types of humiliation, and being hit across the head regularly, being threatened with death, being locked in a closet, and being forced to sit looking in a mirror while Don made derogatory comments about her.

*Table 5.1: Victim precipitation in homicides between adult sexual intimates, by gender, New South Wales and Victoria 1988-90*

Precipitated by victim?	Male offender (n=82) %	Female offender (n=22) %	Total (n=104) %
Yes	8.5	77.3	23.1
No	91.5	22.7	76.9
Total	100.0	100.0	100.0

Notes:

1. In six cases, precipitation was either unknown or unclear.
2. Extreme significant difference by gender:  $X^2_{[1]}=42.4$ ,  $p<0.0001$ .
3. Three cases in which the woman/offender had been severely beaten but not immediately prior to the homicide have been considered as victim precipitated.

Source: New South Wales and Victorian coronial and court records.

On the night of the killing, Don had held a knife to Sue's throat while threatening to kill her. He had also both locked her in a closet and urinated in her face.

Later that night, after Don had gone to sleep (he would not allow Sue to get into bed), Sue struck him with an axe to the side of the neck about three times. She then stabbed him in the stomach about six times with a large carving knife. Sue did not recollect the sequence of these actions clearly and was clearly emotionally distraught, requiring sedation, when the police arrived.

*Victim precipitation by history of severe physical violence (project case study number 58)*

Hans and Hilde had come to Australia from Europe, were aged in their fifties, and had been in a de facto relationship for sixteen years. Both were unemployed at the time of the killing and both had histories of alcoholism.

Police attendance at their residence was a fairly common occurrence as domestic arguments had escalated into physical assaults by Hans toward Hilde. According to the latter, she worried every day that he would kill her. She also alleged that he had stabbed her on more than one occasion; that she had lost most of the tip of one finger as a consequence of his violence.

On the evening of the killing, Hilde was at home alone. She drank two bottles of wine and then reportedly fell asleep. Hans returned home, intoxicated, awakened her and shortly after an argument ensued over Hilde's refusal to provide Hans with more beer. At one point, according to Hilde, Hans jumped her in the kitchen, saying, 'I'll kill you. You are rubbish, c. . . .' In the course of the conflict, she struck Hans causing him to fall to the ground cutting his head on the table.

Hans went to the bathroom and continued to verbally abuse Hilde. She got a knife from a kitchen drawer and went to the bathroom. The opening of the door caused Hans to fall into the bath tub. He started to get up but when he saw her he kicked her in the groin and the lower abdomen. She then stabbed him, penetrating his right lung. She claimed that she was carrying the knife for another purpose and only intended to hit him. [Note: As in many incidents, there was a vast discrepancy between the original interview statement with the police and the offender's later description of events. This may be due to either the shock and distress of offenders shortly after the homicide when interactions with police first take place or to offenders' opportunity to embellish their original story.]

Victim precipitation also may be part of the 'fight' factor as described in the following two incidents.

*Victim precipitation as part of a fight (project case study number 35)*

Ben and Maxine had been in a de facto relationship for fifteen years. Ben was in his early fifties and Maxine in her mid-thirties. Both were unemployed. Ben appeared to have a drinking problem and indeed was inebriated at the time of his death. Maxine did not apparently drink to excess. Frequent violence was a major component of their marriage. Ben had been arrested for assaulting Maxine twice; at seven years and four years before the homicide. Maxine had also been arrested for stabbing Ben the year before. (It might be noted that Ben had a history of abuse to his first wife whom he reportedly 'belted' two or three times a week. Many of these episodes had been reported to the police.)

In the middle of the afternoon, on the day of his death, Ben returned home from the pub noticeably drunk. A passer-by heard screaming in the flat and went to investigate. He saw Ben throw a punch at Maxine which missed due to his intoxication. He then punched her again, making contact. He was also calling her names such as 'mole' and 'slut' and Maxine was responding with the words 'dole bludger' and 'drunk'. She then picked up a foot tall vase and hit Ben over the head with it. He blacked out and she again struck him—this time with her fist—on the back of the head.

She then dragged him out of the house into the garage with his head banging on the ground. When she dropped his ankles, she was overheard to say, 'You can lie there you stupid drunk. You're nothing but a dole bludger'. She cleaned up the pieces of the vase and then went to find a doctor. (He was already deceased.)

*Victim precipitation as part of a fight (project case study number 37)*

Cassie and Roger had been married for ten years prior to separating for four years. They reconciled and tried to make the relationship work. However, Roger began to torment Cassie about her 'affairs' during their separation and about his own sex life during that time period. This would occur most commonly when he had been drinking. Roger drank quite frequently and had, at one point, been treated for alcoholism. When he became drunk, he would also sometimes assault Cassie, causing bruising and black eyes. On a recent occasion, neighbours had called the police and Roger was picked up walking away from the house and charged with assault.

One afternoon, Cassie and Roger were drinking beer and a verbal argument developed which evolved into a physical fight. Cassie got up (in front of their child) and yelled, 'I'm getting a knife. I'm going to kill you,' to which Roger replied, 'Don't be stupid. Don't be dumb.' In the kitchen Cassie grabbed a knife and stabbed Roger. She later stated that she only intended to intimidate him and that she had inadvertently collected a large 15 cm knife instead of a small one.

*Verbal altercation*

Table 5.2 shows that verbal altercation preceding the homicide was more common among homicides between adult sexual intimates than in non-intimate homicides.

*Table 5.2: Verbal altercation preceding homicide, intimate and non-intimate cases, Australia-wide 1989-90 and 1990-91 combined*

Verbal Altercation	Intimate (n=102) %	Non-Intimate (n=252) %	Total (n=354) %
Yes	85.3	68.3	73.2
No	14.7	31.7	26.8
Total	100.0	100.0	100.0

Notes:

1. In 159 incidents, this variable was unknown.
2. Significant difference between groups:  $X^2_{[1]}=9.9$ ,  $p<0.01$ .

Source: National Homicide Monitoring Program data.

Interestingly, there was no significant variation found by gender although one might have expected, from the in-depth data set, that female offender homicides would be more likely to have had a verbal altercation preceding them. The high proportion of unknowns in this variable (for example, more than a third of the female perpetrator incidents) may have contributed to the result. Furthermore, male victim precipitation was most frequently physical in the in-depth cases.

Turning to Aboriginality, the data as illustrated in Table 5.3 show highly significant racial variation with almost every Aboriginal killing (where the information was available) anteceded by a verbal altercation.

*Table 5.3: Verbal altercation preceding homicides between adult sexual intimates, by racial appearance, Australia-wide 1989-90 and 1990-91 combined*

Verbal Altercation	Aboriginal (n=36) %	Non-Aboriginal (n=56) %
Yes	97.2	76.8
No	2.8	23.2
Total	100.0	100.0

Notes:

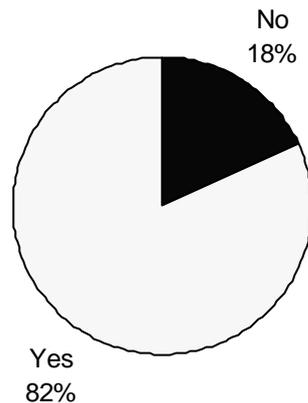
1. In 58 incidents, either 'race' or verbal altercation were unknown.
2. Significant difference between groups:  $X^2_{[1]}=5.6$ ,  $p<0.05$ .

Source: National Homicide Monitoring Program data.

### **Prior Physical Violence**

A history of physical violence was characterised as a contributing factor in Figure 5.1 in over a quarter of the cases. It was undoubtedly if not a direct factor, a thread in the tapestry in a much higher proportion. Figure 5.2 shows that physical battering had been present in slightly more than four-fifths of the cases (in which its presence or absence was known).

*Figure 5.2: Prior physical battering in relationship between adult sexual intimate homicide offender and victim, New South Wales and Victoria 1988-90*



Note: In 37 cases the presence or absence of battering could not be determined.

Source: New South Wales and Victoria coronial and court records.

Given the extremely high proportion of incidents which had prehistories of physical violence, it is perhaps not surprising that tests of variation by gender, ethnicity, and cohabitation did not reveal any significant variation. (One must also remember that the unknowns in some of these variables, including physical violence were quite high, hence some numbers were very low.) It should be pointed out that in ten of the eleven cases with a female offender, where presence or absence of violence was known, there had indeed been a history of physical battering of the woman.

The only cross-tabulation revealing significant heterogeneity was employment versus unemployment. The findings were surprising. Physical battering was more common among the employed ( $X^2_{[1]}=7.3$ ,  $p=<0.01$ ). When gender was controlled the findings remained constant for the males ( $X^2_{[1]}=9.8$ ,  $p=<0.01$ ) while all of the female offenders in the test had been survivors of physical violence. Thus, the theory that unemployment leads to increased marital homicide due to increased proximity and opportunity for violence does not gain verification from this sample. However, once again, one must remember the small sample size.

As some of the cases which have been recounted so far and many of those throughout the remainder of this study show, the role of prior physical abuse can be clear-cut or indirect. For example, the woman who kills her batterer partner may be seen as acting as a direct consequence of that history of battering. The man who has periodically assaulted his wife but this time, strikes her extra hard and in the 'wrong' part of her anatomy could also be perceived as part of the overt physical abuse causation theme.

The covert impact of a battering prehistory may be most apparent in those cases where the couple were estranged; the violence may no longer be taking place. However, perhaps its legacy and the males' perception of power and control over the woman lived on and culminated in her death. This type of jealousy as a form of domestic violence will be discussed further. The following three cases as well as many of the others in this chapter should provide examples of the conditions and diversity in which domestic violence can contribute to homicide.

#### *Homicide with physical violence prehistory (project case study number 10)*

Louise was legally separated from Andre, an Eastern European, after enduring years of assault by him. In addition, Andre had a drinking problem which, at the time of the homicide, he was purportedly working on with the help of Alcoholics Anonymous. The couple had two children who remained with Louise.

Since the separation Andre had broken into Louise's house and raped her. He had also attacked her on another occasion which resulted in the Court granting her an Interim Intervention Order. It might be noted that during this time period, Andre was sentenced to prison for a knife assault upon a former girlfriend. (He only served one month.)

A month after the Order was granted Louise met Andre outside a police station where Andre gained access to one of the children for the day. When the child was returned, an argument about future visitation occurred. Andre left the scene very

upset. He followed Louise's car and forced her to pull over. Having grabbed a twelve gauge shot gun from his vehicle, he shot Louise a number of times. He then shot himself.

*Homicide with physical violence prehistory (project case study number 61)*

In this case, a South Pacific islander, Samu, was married to Catherine, an Australian-born woman. He was a heavy drinker and had assaulted her severely in the past and threatened to kill her. He had also bashed their baby son. The police had been called on a prior occasion.

Enraged at her alleged infidelity which was particularly humiliating in his indigenous cultural context, Samu was observed punching Catherine on the head with a closed fist. Minutes later, he stabbed her to death.

*Homicide with physical violence prehistory (project case study number 76)*

This Eastern European couple, in their late forties, had a long history of domestic disputes. In fact, Ivan had allegedly threatened Natalia's life. The police had been called on at least one occasion. Natalia had left the marital home once; however, her aging father told her 'to forgive him and go home.' She returned; some time later, Ivan killed her and then, himself.

*Prior police or court intervention*

A couple of the cases presented thus far have indicated prior police intervention. In fact, of the 110 in the in-depth sample, twenty or 18.2 per cent had either had the police called on a previous occasion (seven) or had an existing Order or assault charge pending (thirteen). It could be speculated that this proportion is in fact a conservative guesstimate since some of the case records were extremely sketchy in details about the prehistory to the homicide; the lack of mentioning prior criminal justice intervention does not mean that it did not occur.

Out of the sub-set of thirteen cases in which an existing Order or charge was in effect, a gun was the weapon used in five of these homicides. In two of these incidents involving firearms the Domestic Violence Order had included removal of all guns by the police. Presumably the offenders had acquired another one.

In all but one case the homicide was perpetrated by the batterer who was under the restrictions of an operant Order or charge. In the female offender incident, the male was due to appear in court on a (domestic)

assault charge that day. The couple had continued seeing each other and were drinking together. He attacked her and she shot him.

It is unfortunate that few details are available pertaining to the police/court response in the antecedents to these homicides. From what is in the records, there appears to be a heterogeneity in the qualitative reactions and, of course, since we are looking at an end result of homicide, one is left feeling that whatever was done was simply not enough. As mentioned above, not even removing the guns in two households prevented a gun from being used to commit the offence. It is speculative whether or not a period in gaol might have had some deterrent effect. However, one of the homicide offenders who had been charged or who had breached an Order, had been gaoled. The following are a few of the cases in which police or the courts had intervened prior to the homicide.

#### *Homicide with active Order (project case study 44)*

This case was briefly presented in the last chapter. It was mentioned in the context of separation that six months after the estrangement, John assaulted Linda again, this time attempting to strangle her. The police were called and he was ordered to leave. A *Crimes (Family Violence) Act* Intervention Order was taken out the following week. However, despite the Order, John continued to enter Linda's house to harass her. The police were notified of these breaches at least once; *they said that they could not do anything unless they actually caught John on the property.*

There were other cases where police failure to arrest was discussed; for example, Samu and Catherine mentioned above. Police had been called to the household on a prior occasion involving battering and a knife; no arrest had been made. Or, in case number 41, the offender was taken away by the police a few months before the killing. At that time, the de facto husband had punched his stepdaughter, got an axe and started hitting the back door of the home. He was not charged. However, even when the police did arrest a batterer on a domestic assault prior to the killing, as in case number 37 (Cassie and Roger) discussed earlier, the homicide still took place. In that situation, after the arrest, the victim and offender had reconciled and continued their relationship.

In several killings, the antecedents included the perpetrator's prior appearance in court with, in hindsight, a less than punitive or deterrent role played by that body.

*Project case study number 55*

The offender, Joe had a history of violence toward women. In fact, his first wife had taken out an Apprehended Violence Order against him only two months before he killed his estranged second wife, Juana, a 17-year-old Filipina. (He had continued to harass and threaten his ex-wife even while married and abusing Juana.)

Juana went to her local court office and laid a complaint before the Justice that Joe had been harassing and intimidating her. She stated that she was afraid of further violence. A summons was obtained calling for Joe to attend the court *one month later*. Two weeks before that court date, Joe shot Juana several times and then struck her head several times with the butt of the rifle.

*Project case study number 81*

This case involved an Aboriginal de facto couple who both drank extensively. There was a history of physical violence in the marriage; the police had been called on more than one occasion. Helen had taken out an Order about six months before the killing. This had been breached a fortnight later. Darryl had been *fined \$500 for the breach*. In the following months, although they did not resume cohabitation, Helen and Darryl did drink together on occasion and were doing so on the night that he choked her to death in the midst of a fight.

*Project case study number 96*

This homicide was perpetrated by the female abuse victim, Betty. She had been married to Craig for eight years since she was fifteen but had moved out of their home a few months before the killing. They were both Aboriginal. During the course of that marriage Betty had lost three children due to Craig's violence and in her own words 'had been treated like a dog'. He had assaulted her one month before the killing; her injuries that time had required surgery. This attack had been reported to the police and Craig had been charged with assault occasioning physical harm. Not detained, he was due to appear in court on that charge later in the day that he was killed. Betty claimed that she was trying to shoot Craig in the leg (this was after another assault) while in a 'completely shocked state'.

Another problem arising from the courts was apparent in project case study number 65 which has already been discussed briefly in chapter 3.

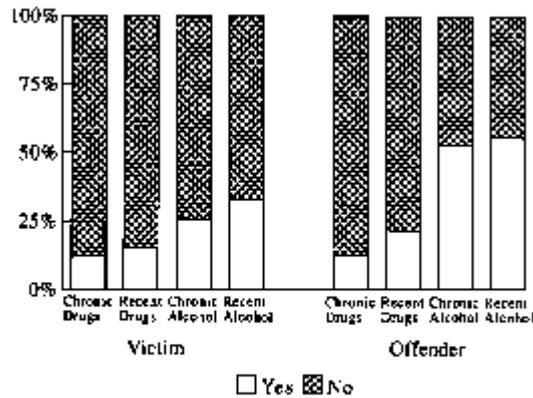
Julie was being harassed and threatened by Brett after she terminated their relationship. She and her parents went to the Chamber Magistrate to take out a Restraining Order. They were told that Brett would have to be summoned to appear with Julie before she could obtain the Order. The family, afraid that if he

were called to court that he would retaliate, decided not to continue with the process. Julie was killed the next day.

### Alcohol and Other Drugs

Another contributing factor mentioned in the context of numerous cases is alcohol, or more specifically the effects of its abuse. Figure 5.3 displays the presence or absence of alcohol or other drugs in the histories, or at the time of the crime, for both the victims and the offenders. It should be noted that there were a substantial proportion of unknowns in this factor; once again the findings should be regarded as tentative and not definitive.

Figure 5.3: Alcohol and drug histories of adult sexual intimate homicide victims and offenders, New South Wales and Victoria 1988-90



Notes:

- 1 'Recent' means at the time of the offence.
2. Victim Unknowns: Chronic Drugs - 30; Recent Drugs - 12; Chronic Alcohol - 37; Recent Alcohol - 26. Offender Unknowns: Chronic Drug - 41; Recent Drug - 32; Chronic Alcohol - 37; Recent Alcohol - 26.

Source: New South Wales and Victorian coronial and court records.

*Alcohol*

Figure 5.3 shows that alcohol played a more dominant role in the backgrounds to these homicides than other drugs. Further analysis of those data found that there was no significant variation by the gender of offender. This lack of marked heterogeneity was substantiated by the National Data set finding that forty of the 121 males and thirteen of the twenty-nine females were known to have been drinking at the time of the killing. (In more than half of the National Data, this information was unknown.)

Table 5.4 indicates that recent alcohol consumption did, however, vary significantly by the gender of the victim. Males were far more apt to have been drinking prior to their deaths than were the women in the sample.

*Table 5.4: Recent consumption of alcohol by victims of homicides between adult sexual intimates, by gender, New South Wales*

Victim drinking at time of homicide	Male (n=20) %	Female (n=70) %	Total (n=90) %
Yes	65.0	24.3	33.3
No	35.0	75.7	66.6
Total	100.0	100.0	100.0

## Notes:

1. In 20 cases the alcohol consumption was unknown.
2. Very significant difference between genders:  $X^2_{[1]}=11.1$ ,  $p<0.001$ .
3. Apparent inconsistency in sum total is attributable to rounding error.

Source: New South Wales and Victorian court records.

These findings support the scenario already presented for many female perpetrator homicides: victim precipitation either in the form of a fight or in battering by an intoxicated male partner. It should also be noted that of the thirty victims who had been drinking at the time of their deaths, less than half, fourteen, had been drinking with the offender.

In both the National Data sample and the in-depth cases, ethnicity emerged as a significant indicator of whether offenders had been drinking

at the time that they killed. Table 5.5 illustrates this association in the in-depth data set.

*Table 5.5: Recent consumption of alcohol by offenders in homicides between adult sexual intimates, by ethnicity, New South Wales and Victoria 1988-90*

Offenders drinking at time of homicide	Non-Aboriginal Australian-born (n=17)	Aboriginal (n=9)	Overseas-born (n=27)
	%	%	%
Yes	64.7	88.9	40.7
No	35.3	11.1	59.3
Total	100.0	100.0	100.0

Notes:

1. In 57 incidents, this information was unavailable.
2. Significant difference:  $X^2_{[2]}=7.0$ ,  $p<0.05$ .

Source: New South Wales and Victorian coronial and court records.

Aboriginal offenders appeared as the most likely to have been drinking. The National Data set confirms this finding: 91 per cent of the Aboriginal perpetrators in sexual intimate homicides were under the influence of alcohol at the time of the killing (thirty out of thirty-three). Table 5.5 also indicates that in contrast to Aboriginal people and the other Australian-born, overseas-born were more apt to be sober when they killed.

What is the actual role of alcohol? The answer, once again, would seem to be complex and varied. Data analysis shows that recent alcohol use was fairly equally distributed by employment status, cohabitation status and weapon types. The following three cases will show at least some of the influences that intoxication had in these relationships and in their finale.

#### *Homicide with alcohol (project case study number 40)*

Eliza was a British emigrant in her late forties. She had been in a de facto relationship with Brad for thirteen years. He regularly abused her and it was not uncommon to see Eliza with black eyes and other bruising. He stabbed her once and the police were called but she decided not to press charges.

Brad was a heavy drinker and when he drank he would become either euphoric or depressed. Eliza told people that she did not leave him because she loved him and because he was 'so good in so many areas when he was sober.' He was not usually sober.

The night of the killing, Brad drank so much that witnesses said that he was 'spastic'. When Eliza returned home from work he screamed at her and knocked her to the ground. He returned with a can of petrol, doused her with it, and threw a match on her. He then doused the house and ran out. Eliza came running out, screaming for help; Brad refused to help her and, according to witnesses, he was yelling, 'Good. I hope she's f . . . ing dead.' She died the following morning but recounted the preceding details to police prior to her death.

### *Homicide with alcohol (project case study number 87)*

In this case, an Aboriginal woman, Judy, killed her ex de-facto partner Nathan (also Aboriginal). Both drank heavily and the relationship had been violent with Nathan beating both her and her son. There were also episodes of forcible intercourse during which she learned that if she 'lay still and did not struggle' she was hurt less. He had anally raped her on three occasions prior to the night of the homicide.

That night, Judy went to Nathan's home to borrow a camera. Both had been drinking throughout the day. A verbal conflict ensued followed by Nathan throwing her across the bed. He threatened to sodomise her and also allegedly shouted that she would not leave the house alive. She grabbed a rifle, closed her eyes, and shot him.

### *Homicide with alcohol (project case study number 36)*

Carla and Ted were in a de facto relationship. They were both Aboriginal and both had histories of alcohol abuse. They also used to smoke marijuana. Violence was common in their marriage with Ted frequently physically abusive and Carla sometimes fighting back. During the two years preceding the homicide the police regularly attended their house since the couple would get drunk and extremely violent, throwing objects and threatening each other with knives.

Carla moved into a refuge for a short period and subsequently obtained her own flat. Ted moved in shortly afterwards. His drinking continued throughout this time although he had gone through an alcohol rehabilitation program. On the night of the killing, they shared a large bottle of port and a flagon of wine. A fight began which Ted claimed that Carla began. He threw a cup at her and broke a window. He punched her several times and when she fell to the ground, he placed his hands around her neck for about a minute 'to scare her'. She died of strangulation.

### *Other drugs*

Figure 5.3 shows that drugs other than alcohol were a relatively infrequent component of these homicides. In the National Data set of 150, there were only four such incidents; however, once again, the proportion of unknowns was very high. In addition, the numbers were too small to generate meaningful cross-tabulations; hence we will look at two cases to help understand the role that drug abuse can play in homicide between adult sexual intimates.

#### *Homicide with drugs (project case study number 72)*

Samantha was a British emigrant in her late twenties. She was also a drug addict and a sometime prostitute to support her drug habit. Her de facto, Tim, an overseas-born Australian from a northern European country, was a 'bikie' and an alcoholic who 'snorted' amphetamines.

According to Tim, he killed Samantha because of her addiction and her death wish which he thought might jeopardise the life of their infant daughter. He also claimed that he initially grabbed the rifle to go out and shoot her dealer but that she had tried to stop him. [However, there was a hint in the case that prior battering had occurred with the police having been called to their home. Tim had also just been attending a party (for eight hours) with other bikies and had consumed a large quantity of beer, wine and whisky.]

#### *Homicide with drugs (project case study number 13)*

Amy was only 17 when Doug, her ex de-facto boyfriend, killed her. Amy was addicted to amphetamines whilst Doug used both speed and morphine. She had moved out of their joint dwelling two months earlier and Doug apparently had difficulty accepting the end of the cohabitation.

Amy occasionally stopped by to see Doug. On the last of these contacts, he stabbed her and then set fire to the house which resulted in both their deaths.

## **Jealousy**

Another recurrent thread or theme in many of the prehistories to these homicides is jealousy. However, jealousy does not seem to be a strong enough word to describe the type of obsessive possessiveness which we have seen in a number of cases. It is a theme which is more common in homicides perpetrated by males than by women. In three of the latter, either the husband was having an affair or he had threatened to leave for another woman; the wife's jealousy appeared to be a component of her

motivation in the killing. The male jealousy cases often contained elements of severe emotional and/or psychological abuse, with the woman prevented from leaving the house without the partner or being closely monitored and questioned.

In twenty-one cases out of the eighty-seven with male offenders, this type of possessiveness did seem to play a role, particularly in those aged mid-twenties to mid-thirties. This contributing variable was fairly equally distributed among Aboriginal people, other Australian-born and the overseas-born. It appeared in about one-sixth of the cohabiting subsample as exemplified in the following two case summaries.

*Jealousy as a factor in the homicide (project case study number 1)*

Lawrence met Lucinda whilst on holiday in the Philippines. At the time of the killing they had been married for sixteen years. He reportedly used to have a drinking problem but latterly had quit due to health problems. For months before the homicide, Lawrence strongly suspected that Lucinda was having an affair with her work supervisor.

Apparently the couple had an argument related to this alleged infidelity which resulted in his striking her head repeatedly with a blunt instrument. Unlike most of the homicides between adult sexual intimates, the police were not called immediately. The police have conjectured that Lawrence hid her body in the bush and attempted to cover up the killing.

*Jealousy as a factor in the homicide (project case study number 3)*

Sophia and Paulo, both overseas-born, had been married for almost fifteen years. They had three children. Both were employed in blue collar skilled positions.

In the three years prior to the killing, Paulo had become increasingly jealous of Sophia making unfounded allegations about infidelity. He prohibited her from leaving the house without him and, on one occasion the year before, he threatened her with a gun. He was sent to a psychiatrist who diagnosed him as having pathological jealousy.

After an argument about her visiting relatives in Melbourne, Sophia and the children decided to go there despite Paulo's objection. As they were driving along the highway, they saw Paulo's car parked on the side of the road. He took a shotgun out of the boot and then began to follow their car. Sophia pulled into a rest area and attempted to get help from several people, asking them to call the police. She drove away as Paulo's vehicle entered the rest area.

Paulo followed and forced them off the road. He got out of his car and approached Sophia's car with the shotgun. He yelled at her, 'You've got to come home. You have to stay inside the house and not see your parents any more. You're going to be all right because I am going to control your life.' She pleaded with him stating that she would indeed return home. However, Paulo pointed the gun through the window

and shot her. The children ran out of the car and he shot her again. He then reloaded the gun and killed himself.

Given this type of obsessive possessiveness and exertion of control or power, it is hardly surprising that jealousy emerged as an even more common variable with estranged couples: in over one-third of these relationships in the sample, jealousy played an important role as shown in the following case and those provided in the next section on separation.

### *Jealousy as a factor in the homicide (project case study number 33)*

Ross and Rosemary had been in an intense relationship for about a year when Rosemary decided to break it off. She felt that it was not getting anywhere and she did not desire permanency although Ross wanted to get married.

Two months later, Ross came to Rosemary's flat overtly to get his flat key back from her. When she gave it to him, he grabbed her around the throat telling her that he wanted to get back together and that if they did not, he didn't know what he was going to do. He also at that time held a knife to her face and threatened to rape her. Rosemary was able to calm him down and convince him to leave. She then called the police who consequently *warned* Ross to stay away from Rosemary's apartment.

About six weeks after this incident, Ross entered Rosemary's flat and hid in the wardrobe. When she returned from her date and went into her room alone, he came out of the closet and stabbed her over forty times.

## **Separation**

Table 5.6 looks at the relationship of offenders by their gender and finds a differentiation between the groups: slightly less than half of the men who killed were estranged from their victim whilst more than three-quarters of the female offenders were cohabiting with their sexual intimate. [Note that these proportions differed in the National Data set with slightly less than one-third estranged.] Gender was the only variable which was tested that yielded moderate variation; employment status and ethnicity were fairly evenly distributed across the separation/cohabitation variable.

As already noted, some homicides by an estranged partner took place over a year after the estrangement. Analysis of the contributing factors in these crimes did not reveal any particular unique configuration for those who had been separated for a lengthy period. The separation itself was clearly a contributor in all of the sample usually coupled with a history of domestic violence, or chronic alcoholism and/or jealousy. Wilson and Daly (1992) believe that estrangement is a high risk time since the male is

*Table 5.6: Relationship status of offenders and victims in homicides between adult sexual intimates, by gender, New South Wales and Victoria, 1988-90*

	Males (n=87)	Females (n=23)	Total (n=110)
Separated	43.7	21.7	39.1
Together	56.3	78.3	60.9
Total	100.0	100.0	100.0

Source: New South Wales and Victorian coronial and court records.

at risk of losing his control over the woman, particularly his control over her reproduction. Campbell (1992, p. 106) describes these estrangement homicides as 'men's efforts to reassert power and control'.

*Homicide with estrangement (project case study number 14)*

Borut arrived in Australia in his early thirties four years before the homicide. He began a de facto relationship with another emigre, Branka, from his European country. The partnership lasted for two years. Problems began to develop and Branka moved into her own flat.

A year after the initial break up (they had continued to see each other occasionally), Branka rang Borut and told him that it was all over. That night he came to her flat drunk and after Branka told him that she had gone to bed with another man, Borut bludgeoned her on the head with a piece of wood. He then stabbed her several times leaving the knife embedded in her throat. Six months later, he hung himself whilst incarcerated.

*Homicide with estrangement (project case study number 16)*

Francesca and Fausto had been separated for fifteen months when he shot her. They had been married for eighteen years and had two children. She had moved out after becoming unhappy with the marriage. Her action was taken despite the fact that Fausto had previously threatened her life if she left him. Three months before the separation, the police had been called to their home in the context of a domestic dispute.

Fausto reportedly had found it difficult to come to terms with the break-up of the family and the subsequent legal and property settlement which was proposed. A compulsory Family Court conference to settle the division of the property was

scheduled for the day of the killing. In the early hours, he entered the house and confronted Francesca in her bedroom. The daughter entered the room and saw her parents struggling; she tried to separate them. Fausto picked up the double-barrelled shotgun which he had brought with him and shot Francesca twice.

### *Homicide with estrangement (project case study number 29)*

Karen left Rob after 25 years of marriage to live with another man. She wanted to be a career woman and had been having extra-marital affairs. There was also a large gap between their ages with Karen in her early forties and Rob some twenty years older. Rob still loved her and felt that he could not live without her. Over the two weeks following her departure he made a plan to kill her. He had never apparently made any threats nor was there a history of alcoholism or domestic violence.

First, Rob applied for a shooter's licence. He then borrowed a rifle and ammunition from a friend. On the day of the homicide he went to the car park where Karen left her car while at work and waited. When she arrived at the vehicle, he shot her in the head and then killed himself.

### *Homicide with estrangement (project case study number 101)*

Jenny and Roy (both from a Pacific Island country) had been in a de facto relationship which had ended two months prior to the homicide. There had been a history of battering in the relationship with Jenny hospitalised two years earlier.

Roy continued to keep in touch with Jenny after the separation and saw her with other men. On the day of the murder, he came to her house in the day time bringing a gift of flowers. He then stabbed her seven times. There was no apparent motive; both the victim and the offender were chronic alcoholics and Roy had been drinking at the time he killed Jenny.

## **Psychiatric Illness**

In twenty-five of the in-depth sample a contributing factor to the homicide appeared to be the offenders' psychiatric illness. As noted in Figure 5.1 this was interpreted broadly to include several incidents in which the victim suffered from Alzheimer's Disease; their mental deterioration and need for constant care were, at least in part, the motives behind the killing. Psychiatric factors were also listed in those instances where after the killing, the offender was diagnosed as having a psychotic condition. It was

not included for those cases where a psychologist, after the homicide, evaluated the perpetrator and found minor emotional disturbance.

Twenty-three of these incidents involved male offenders. Fourteen of the cases involved overseas-born offenders; only one was Aboriginal. 'Mental illness' was distributed fairly equally by employment status and living arrangement.

The following cases shed further light on this variable.

#### *Homicide with psychiatric illness (project case study number 17)*

Dijana and Bogoyo had emigrated with their two children to Australia from an eastern European country in the mid-1980s. Bogoyo harboured a strong resentment toward Dijana due to her particular ethnic ties in their native land. This dislike led him to physically abuse her about twice a month. Dijana finally complained about the assaults to the family doctor. As a consequence of that visit and an attack upon his daughter, the police came to the family home and took Bogoyo to a psychiatric hospital. He was diagnosed as paranoid schizophrenic and discharged against medical advice about one year before the homicide.

A few days prior to the killing, Bogoyo assaulted Dijana causing noticeable facial injury. A couple of days later he was seen making an iron bar with a flattened and sharpened end. It was this bar that he used to hit her at least ten times on the head. (Note : He pleaded guilty on the grounds of insanity and was held at the Governor's Pleasure).

#### *Homicide with psychiatric illness (project case study number 24)*

Nicholas was an eastern European who did house repair work for a living. He had been in a brief de facto relationship with Sarah, an Australian-born woman in her early twenties. Their relationship ended months before the homicide without any overt drama or intense feelings.

However, Nicholas began to behave strangely about this time. He met and became obsessed with another woman; was odd to those around him; and assaulted a male friend for no reason.

It appears that Nicholas rang Sarah one morning. As a result of that call she went to his place and they spent the day together. That evening the neighbours overheard an argument and then the sound of two shots.

Nicholas did not believe that he had shot Sarah—just the devil in Sarah. He was diagnosed as having a deep-seated psychological disorder and was acquitted on the grounds of insanity.

*Homicide with psychiatric illness (project case study number 105)*

In this case the offender and victim were both only 20 years of age. They were lovers but did not cohabit. Carl had a history of paranoid schizophrenia and believed that he was Jesus Christ and that everyone knew this but failed to treat him with the appropriate respect.

He also came to believe that his girlfriend was a whore and took her to the doctor to check for pregnancy because the 'voices' had told him to do so. Although the test was negative, the voices told him that there was a little boy inside her. He knocked her unconscious and stabbed her, removing her breasts and disembowelling her in order to search for the boy. (Note: The sentence and the judge's remarks are noted in Chapters 7 and 9.)

The psychiatric illness factor was spread throughout the age groups but appeared most frequently (seven) among those over the age of 60. All of these cases also included physical illness as a contributing factor. As the following two examples show, the victim (or the offender) was ill and the offender became increasingly depressed over his wife's deterioration and his need to take care of her.

*Homicide with psychiatric illness and older offender (project case study number 51)*

Francis (early 70s) and Pearl (mid-80s) were both physically ill. Pearl had a stroke and was becoming progressively more frail, mentally agitated, and confused. She required increasing care which Francis was having difficulty providing. He had become severely depressed and was prescribed anti-depressants; their side effects precluded his taking them.

He began to contemplate suicide but did not like the idea of leaving Pearl to fend for herself. Thus, he decided to kill her first. He smothered her with a pillow and then strangled his dog since he could not bare leaving it behind. He then attempted unsuccessfully to kill himself by turning on the gas and slashing his wrists.

*Homicide with psychiatric illness and older offender (project case study number 89)*

Jake was apparently convinced that he was dying of cancer. He had sought treatment but doctors were unable to locate any disease. He had been suffering from severe depression for eighteen months. His wife of 43 years, Mildred, also was experiencing ill-health and depression. One night, Jake hit Mildred at the back of her head with a wooden mallet and then wired himself to an electric cord and electrocuted himself.

## **Physical Illness**

The seven cases in which physical illness seemed to contribute to the killing all took place among the over 65-year-olds. They were quite similar to each other as the following two examples indicate.

### *Homicide with physical illness (project case study number 11)*

Bruno was suffering from cancer of the spine. His paranoid behaviour also indicated that he might have a brain tumour. Upon his return from the hospital his wife, Lucia, cared for him but it was a difficult task since Bruno became very possessive and jealous when she was not giving him all of her attention.

Shortly after his return home from the hospital, Bruno shot Lucia in the head and then shot himself. His daughter explained, 'Dad was in so much pain and couldn't stand to be without Mum. That's why he shot Mum'.

### *Homicide with physical illness (project case study number 46)*

Lloyd and Margaret had been married for over 30 years. It was purportedly a happy marriage without violence or alcohol abuse. However, things began to change some two years before the homicide when Margaret was diagnosed as having Alzheimer's Disease.

Lloyd refused to place her in a nursing home as her condition deteriorated since, as he told his daughter, 'I married her for better or for worse. I've had the better, now I'm getting the worse.' And it did get worse as Margaret became entirely dependent upon Lloyd.

The morning of her death, Margaret got out of bed and started to complain that her shoes were no good. Lloyd just 'snapped' and took a mallet-type hammer from the laundry and hit her on the head with it three or four times, killing her. He then attempted suicide unsuccessfully. (However, he hung himself some months after the homicide.)

These two cases exemplify the close relationship between the elderly physical illness type causation and the psychiatric illness contributor above. In these instances the task of dealing with chronic illness, either one's own or one's partner, plunged the sample of elderly perpetrators into depression. The relationship between these killings and the suicide of the offender has been shown in the preceding cases. It will be discussed in depth in the next chapter.

## Discussion

Without pre-empting the final chapter which will summarise much of the above, a brief discussion follows concerning the contributing variables in homicides between adult sexual intimates.

The findings have confirmed that there is no one simple cause and effect formula to be found. On the contrary, not only do most of these cases appear to represent the climax of numerous factors intermingling but they also show that those factors vary somewhat depending upon gender, ethnicity, and age.

The vast majority of male perpetrator killings were preceded by histories of physical and emotional violence. The latter was exemplified in the ownership-type of jealousy which was acted out in some of the relationships and through the final act. Both physical and psychological battering did not usually cease in these cases when the couple separated; in fact at least the latter appeared to become greater. This conforms to Bean's (1992, p. 43) thesis that

*control* is always the primary warning sign for murder. It is also the number one warning signal for violence. Murder is the final irrevocable step, the ultimate expression of men's control over women. For some men, the need for control is not satisfied until this irrevocable step is taken.

The intervention by police and the courts in a startling proportion of these cases did not prevent the ultimate tragedy. Orders were violated, court hearings were set for weeks after the complaint, and no arrests with detention took place. The legislative requirements may have been followed, for example, firearms removed from the premises, but, the existing domestic violence laws did not safeguard the lives of many female victims in the sample.

Alcohol certainly appeared as a major contributor to these homicides, particularly in the Aboriginal sample. The combination of the two elements—domestic violence and alcohol abuse—when mixed in some particular, but yet unknown way, was indeed a fatal mixture.

Interestingly, both the older-age perpetrators who killed ailing partners and the mentally ill offenders conformed to a certain extent to the male 'ownership' violence motif. The psychotic actions of some seemed to be exaggerations of the same jealousy which characterised so many of the killings by 'sane' men. The older men, who were compelled by circumstances beyond their control, to caretake and nurture their sick wives, could not adjust to that role. It is worth noting that there were no homicides committed by older women in similar situations.

The female offender homicides were also almost all preceded by the victimisation of the women in their homes and were generally precipitated by the victims at (or near) the time of the killing. As stated in the beginning of this chapter, *The Burning Bed* theme was far closer to the reality in this study than the recent popular film depictions of women murdering their partners in *Fatal Attraction* and *Basic Instinct*.

The role of unemployment would seem to be a separate contributory element and not perhaps as some might expect, a contributor to the alcoholism and battering which preceded so many of these homicides. Both drinking and assault occurred across the employment variable; in fact the former was more common among the employed. One is reluctant to generate any definitive comment on this issue since the numbers in the sample whose employment status was known was so small. However, in the overseas-born offenders' cases particularly, unemployment was statistically significant.

The pieces of the picture of homicide between adult sexual intimates might be taking on more than a shadow form at this point. Enough material has been presented thus far to show that there will be no simple solutions to these violent crimes. We may be better able to see what does not work as a preventative method; however, generating specific prevention models could well prove problematic.

## Self-destruction

When the offender in a homicide kills him or herself, as stated in the introductory chapter, it seems to capture the interest or imagination of the media. The press seem to be attracted to multiple deaths, or is it that they are catering to a public which copes better with the type of killing where there is at least an element of retribution involved, albeit through the killer's own hands? The focus of the academic literature on this subject has been upon the determination of whether these 'murder-suicides' more closely approximate the classic attributes of suicide or those of homicide. One assumes that this need to classify such incidents is based upon a prevention orientation and is not just an academic exercise in taxonomy construction.

This chapter will deviate somewhat from that *modus operandi* although some general conclusions about the 'incidents' vis à vis their resemblance or dissimilarity to other homicides between adult sexual intimates will be made. If the principal goal is the derivation of prevention techniques, it is important to know whether the killings which are followed by the offenders' suicide are sufficiently distinct from the others of that genre to merit a different homicide prevention strategy.

Suicide of offender in the following analysis includes the taking of one's life either before the police arrived or following the arrest. In the in-depth sample, attempted suicides, which appeared by the documentation available to have been bona fide attempts, have also been included.

### Comparative High Frequency in Contrast to Other Homicides

It has been theorised that when a homicide perpetrator takes her or his life, it is often a sign of remorse for the killing. Table 6.1 which indicates the comparatively high frequency of suicides for perpetrators who have killed their sexual intimates could be evidence of that repentance.

*Table 6.1: Suicide or non-suicide of offender in intimate and non-intimate homicides, Australia-wide 1989-90 and 1990-91 combined*

Did the offender commit suicide?	Intimate homicides (n=150)	Non-Intimate homicides (n=419)	Total (n=569)
Yes	21.3	3.6	8.3
No	78.7	96.4	91.7
Total	100.0	100.0	100.0

Notes:

1. This analysis used numbers of offenders instead of incidents. The intimacy/non-intimacy of 84 offenders and their victim was unknown.
2. Highly significant difference between the groups:  $X^2_{[1]}=39.6$ ,  $p<0.0001$ .
3. Suicide includes those who killed themselves either before or after arrest.

Source: National Homicide Monitoring Program data.

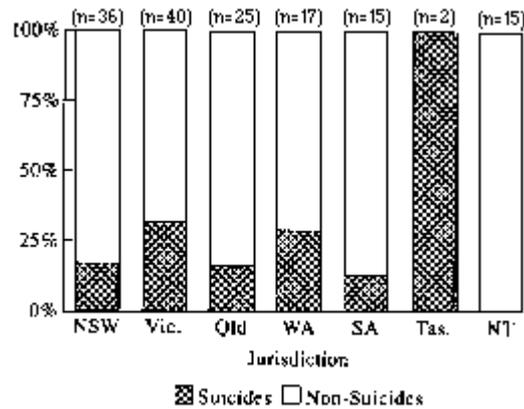
More than one-fifth of the offenders in homicides between adult sexual intimates took their own lives. This could be an indication of penitence felt after murdering the 'beloved' or, it could be a sign of the suicidal orientation of these homicides; in other words, the principal intent of the offender was to die but s(he) felt it necessary to also take the life of the (former) adult intimate. At this point, the answer is not clear. Hopefully, the sections below will help to clarify the primary intent of these perpetrators.

## **Jurisdiction**

As Figure 6.1 indicates, there was marked differentiation by state or territory. It may be an anomaly or it may be a pattern which should be heeded: in Victoria almost one-third of the offenders committed suicide.

The contrast between New South Wales and Victoria was also found in the in-depth sample which covered a three-year period; twenty-three of the fifty Victorian offenders either committed suicide or made an attempt

*Figure 6.1: Suicide or non-suicide of offenders in homicides between adult sexual intimates, by jurisdiction, Australia-wide 1989-90 and 1990-91 combined*



Source: National Homicide Monitoring Program data.

in contrast to only fifteen of sixty perpetrators in New South Wales. (However, the latter figure may be conservative due to data acquisition difficulties described earlier.) Why would the proportion of offender's suiciding vary by state? The answer may lie in the differential distribution of another variable such as Aboriginality or overseas birth. This will be looked at shortly.

## Gender

If one accepts atonement as the paramount theme in the suicide of homicide perpetrators, one would not expect those whose actions were, at least in large part, precipitated by the victim, to take their own lives. Presumably an act of self-defence would not generate the same degree of guilt as an act of simple aggressive violence. The data on gender of suicider in these cases substantiate this supposition. In both of the data

sets, only one of those who either committed or attempted suicide was a female. As that case was unique, it will be reviewed here.

*Homicide-suicide by a female (project case study number 27)*

Katie was in her mid-twenties when she killed Benjamin, her ex-boyfriend and then took her own life. She worked in a supervisory business role and had been Benjamin's girlfriend for about eighteen months. About three months before the homicide-suicide, Katie discovered that she was pregnant. She and her mother wanted her to marry Ben; they even purchased a dress and arranged for a priest. However, Ben's family was against the marriage. As a result he refused to marry her.

About three weeks before the killing, she took an overdose of Panadol and was hospitalised for three days. Four days later, Katie terminated the pregnancy and consequently became more depressed. Apparently she began to act out her hostility to Ben's mother, slashing the vehicle's tyres and making nuisance calls. She also threatened Ben stating that there would be numerous deaths in his family. He became alarmed enough to contact the police who filed a Family Incident Report and interviewed Katie about the above incidents. She denied any involvement.

Eleven days after the police had been alerted, Katie approached Ben as he entered his vehicle at his home. She shot him at close range in the neck and then doused his car and her clothing with petrol. She subsequently stabbed herself in the heart and then set the vehicle on fire.

Is this a homicide or a suicide? The incident appears to have elements of both with a severely depressed and obviously suicidal offender who had already indicated in numerous ways her deep seated anger toward her estranged boyfriend. However, the fact that the background variables in this case are markedly dissimilar to the usual pattern in female offender sexual intimate homicides (no battering or victim precipitation) would support the principal theme of suicide.

Throughout the remainder of the chapter, male offender incidents will be described. Others have already been presented in earlier chapters. Wherever possible, an attempt will be made to determine whether the suicide or the killing was the primary intent of the perpetrator.

## Number of Victims

It is significant that although it is comparatively rare for homicide between adult sexual intimates to involve multiple victims, those that do are likely to also include the suicide of the offender. Thus, of the seven intimate homicide incidents with more than one victim that occurred in Australia in 1989-90 and 1990-91, in six the killer committed suicide. Since most of these other victims were children, again the argument about remorse as motivator gains strength.

### *Homicide-suicide with multiple victims (project case study number 28)*

Annie and Louis had been married, divorced, and then reunited in a de facto relationship since Annie had discovered that she was pregnant after the marriage had legally ended. A baby girl was born but the relationship was deteriorating with Louis frequently bashing Annie.

Louis' friends reported that he became quite depressed and irritable. He reportedly felt pressured by Annie to work even longer hours than he was and did not feel that she was allowing him to get enough sleep. Consequently, one month before the killings, Louis left. He wanted to take the baby to live with him, his other child, and that child's mother. However, Annie adamantly refused to allow such an arrangement. The situation climaxed early one morning when Louis arrived at the house where Annie and the baby were residing. They argued; he left but returned shortly demanding to see his wife. There was a brief argument and then Annie was heard saying, 'Don't shoot'. Louis shot her five times and shot his daughter once in the face. He then drove to a nearby paddock where he kept the police at bay for five hours. He was observed drinking whisky and saying that he had not meant to kill his wife and daughter. Ultimately, an officer grabbed the rifle but lost his balance. Louis retrieved it, placed the barrel at the base of his chin, and fired. Louis was 21 years of age, Annie was 20, and the baby was 8 months.

The suicide of the offender seemed to be an afterthought and not the principal operating force in the above incident. Louis had received psychiatric treatment in the past and at the time of the killing was overtly depressed. However, the fact that he had not attempted suicide before, had a history of violence, and shot Annie five times when once would have sufficed, adheres more to the homicide model.

## Aboriginality

The information provided in Table 6.2 shows that none of the Aboriginal offenders committed suicide. (However, as note 1 below indicates, there

was a significant number of perpetrators whose race or ethnicity was unknown.)

*Table 6.2: Suicide or non-suicide of offenders in homicides between adult sexual intimates, by race, Australia-wide 1989-90 and 1990-91 combined*

Did Offender Commit Suicide?	Aboriginal Offenders (n=32) %	Non-Aboriginal Offenders (n=47) %
Yes	0.0	23.4
No	100.0	76.6
Total	100.0	100.0

Notes:

1. In 71 cases the Aboriginality/non-Aboriginality of the offender was unknown.
2. Significant difference between the two groups:  $X^2_{[1]}=7.8$ ,  $p<0.01$ .

Source: National Homicide Monitoring Program data.

The fact that no Aboriginal individual took her or his own life after killing a sexual intimate is another indication that homicides of this nature, within the Aboriginal community, may be quite distinct from those that take place in other communities. In the vast majority of Aboriginal killings, alcohol and fighting were concomitants. These acts did not appear to be the premeditated actions of individuals who were battling with depression. Their lifestyle may in fact be self-destructive but the homicide in most instances was a part of the violence characterising the relationship which, that one time, went too far and someone died. The lack of suicides among this sub-group also goes some way in explaining the jurisdictional distribution described earlier.

### **Overseas birth**

The situation just described for Aboriginal offenders is markedly different for the overseas-born, as portrayed in Table 6.3.

*Table 6.3: Suicide or non-suicide of male offenders in homicides between adult sexual intimates, overseas-born and non-overseas-born, New South Wales and Victoria 1988-1990*

Did offender commit suicide?	Overseas-born male offenders (n=41)	Australian-born male offenders (n=13)
Yes	43.9	14.5
No	56.1	84.6
Total	100.0	100.0

Note: In 56 cases either the ethnicity of the offender was unknown or the offender was Aboriginal or female.

Source: New South Wales and Victorian coronial and court records.

Almost one-half of the male overseas-born killers took their own lives. The concept of extreme possessiveness coupled with physical violence also seemed to feature regularly among this sub-sample. Given that type of theme, 'If I can't have you, no-one else will ever have you,' it is not surprising to find a high frequency of suicide.

The high frequency of suicide among the overseas-born male offenders also helps to explain the disproportionate number of perpetrators in Victoria who took their own lives.

#### *Homicide-suicide with the overseas-born (project case study number 42)*

Ali and Tira were both from a north African country. They met overseas; Ali subsequently migrated to Australia. He wrote to Tira and offered to sponsor her to Australia if she would marry him. Tira agreed, arrived in this country, and they were married.

However, the wedding was the beginning of the end of the relationship since Tira refused to have sex with Ali. She left him shortly after and Ali's depression which had anteceded the marriage intensified. The depression began when his mother died; he had no other relatives in Australia. He began to show evidence of intense possessiveness and jealousy and became convinced that Tira had a boyfriend. His suicidal thoughts resulted in a consultation with a psychiatrist who prescribed anti-depressants.

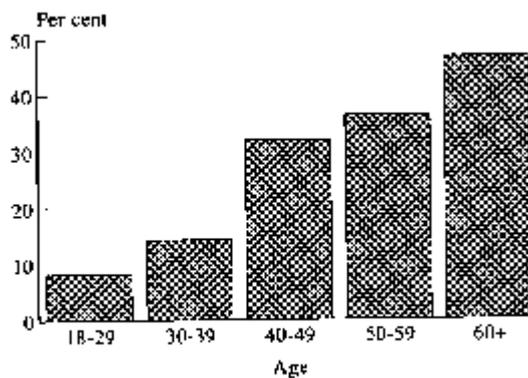
About three weeks later (and two months after the estrangement), Ali stabbed Tira a number of times and then tried to hang himself. The rope broke and he was arrested and assessed as suffering from severe depression.

This case would seem to have been principally motivated by the offender's own desire for self-destruction. The homicide appeared to have been a fairly spontaneous act which was derived from Ali's obsessive possessiveness.

## Age of Offenders

Figure 6.2 clearly indicates that as an offender's age rises so too does the risk of suicide.

*Figure 6.2: Percentage of offenders in homicides between adult sexual intimates who commit suicide, by age 1989-90 and 1990-91 combined*



Notes:

1. Six cases are excluded since the age of offenders were unknown.
2. Significant difference by age:  $X^2_{[4]}=24.1$ ,  $p<0.0001$ .

As noted in the last chapter, the usual theme in homicides between older-aged sexual intimates was physical and/or psychological illness of the victim or the offender or both. In this sub-set, the final tragic act seemed to be generated out of feelings of depression and the inability to accept an almost complete role reversal in the marriage: the former nurturer wife requiring full-time care and no longer able to take care of the husband. In most instances of this type, his depression appeared indicative of suicidal thoughts and the homicidal action seemed to be an offshoot of his own desire to die and inability to do so without taking his wife with him.

Unfortunately, in the bulk of these cases, the records provided little explanatory material. Perhaps that is reflective of the general feeling that when two old people die, their advanced age minimises both the tragedy and the need to understand why.

## **Employment**

If one theorises that unemployment contributes to both marital conflict and depression, one might predict that the rate of suicide among the unemployed offenders would be higher based on their depression about not working and their remorse for the killing and preceding violent actions. These data do not support that hypothesis. However, once again, the caveat concerning high proportion of unknowns should be heeded. Of those in the national sample whose employment status was known, six of the thirty-two employed offenders (18.8 per cent) suicided which was higher than the six of the sixty-one unemployed (9.8 per cent). When the sample was controlled by gender and Aboriginality, the findings remained consistent.

Turning to the in-depth group of incidents, no relationship between the type of employment and suicide was apparent.

## **Physical Battering Prehistory**

Not surprisingly given the high proportion of all cases that involved prior physical battering, there was no significant difference in the frequency of prior battering between the two groups. Four-fifths (81 per cent) of those who suicided had previously physically assaulted their partner while 86 per cent of the offenders who did not take their own lives had also bashed the homicide victim during the relationship.

## **Alcohol Abuse**

The data on role of alcohol in the homicide-suicides are unfortunately riddled with unknowns and there is subsequently a low number total. In the national case sample, alcohol influence on offender was known in only fifty-six episodes. Of these fifty-six, nine offenders committed suicide; two were under the influence of alcohol. Thirty-eight of the forty-seven perpetrators who did not take their own lives had been drinking. The high frequency of sobriety for the non-suicides is at least in part a by-product of the interaction of Aboriginality and gender since women and Aboriginal people did not commit suicide.

In the in-depth data set, the use or non-use of alcohol was known in eighty-four cases. Of the eighteen who suicided, more than one half (55.6 per cent) had been drinking; a fairly similar proportion (59.3 per cent) of those who did not take their own lives were also under the influence. Therefore, a simple causal relationship cannot be identified.

### *Homicide-suicide with alcohol as a factor (project case study number 41)*

Jenny and Nick had lived together in a de facto relationship for four years. Initially they reportedly got along well; however arguments about Nick's drinking and other matters began to take place and increased over time.

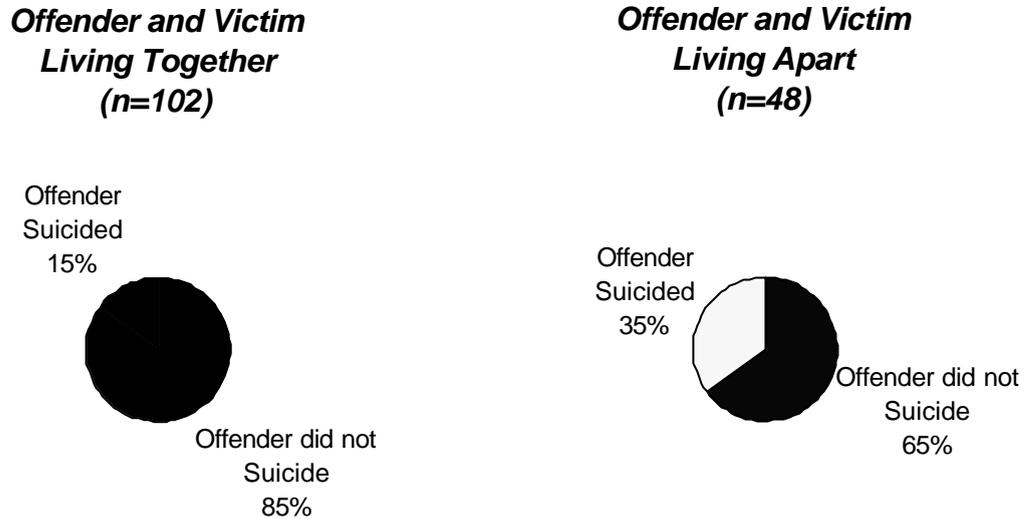
Nick was described by many acquaintances as an alcoholic and a 'no hoper'. When drunk, he yelled at Jenny and physically assaulted her. She was seen with bruises and black eyes and she and her three children occasionally sought refuge at a neighbour's. Nick's violence extended to others: he punched his daughter and made moves toward burning down a friend's house.

Events reached their tragic climax on a Sunday when Nick returned home drunk on vodka and beer. During a fight Jenny told him that she was going to leave him. Shortly after he fatally stabbed her. A few hours later, Nick was treated in hospital for unconsciousness due to his consumption of fifty valium and serepax with vodka.

## **Separation/Cohabitation**

If a principal theme in homicide-suicides between adult sexual intimates was the inability to see oneself as a separate entity from one's partner with consequent obsessive possessiveness, then we would expect to find that the suicide of offenders was more common when the couple was estranged. Figure 6.3 affirms that hypothesis.

*Figure 6.3: Suicide or non-suicide of offenders in homicides between adult sexual intimates, by status of relationship with victim, Australia-wide 1989-90 and 1990-91 combined*



Note: Significant difference between groups:  $X^2_{[1]}=7.9$ ,  $p<0.01$ .

Source: National Homicide Monitoring Program data.

The length of the separation does not appear from these data to be a predispositioning factor. Seven of the homicide-suicides occurred during the first month after estrangement, five took place between one month and six months, and six happened after six months.

The following cases of homicide-suicides in which the couple had been separated illustrate the dynamics and interaction of estrangement, control and depression.

*Homicide-suicide with separation and jealousy factors (project case study number 12)*

Afgania and Miklos, both emigrants from southern Europe, had been separated for one year preceding the homicide. There was a lengthy history of ill treatment and abuse. When Afgania left, the police were called to the family home since Miklos had threatened suicide. In order to restrain him, the police took Miklos to the police station where he was examined by a police surgeon. The doctor refused to certify him but did require that the police continue to restrain him.

Six months before the deaths an Intervention Order was taken out that prevented Miklos from seeing, communicating or assaulting Afgania. He apparently continued to be depressed and distressed about the separation and came to believe that Afgania was having an affair.

Early one morning Miklos went to Afgania's address and gained entry by breaking a kitchen window. He went to the bedroom where Afgania was sleeping and stabbed her in the throat and face area. He then fatally stabbed himself.

*Homicide-suicide in which couple had been estranged (project case study number 26)*

The marriage between Julie and Adam, both in their mid-thirties when they died, had been marked by frequent violence. Adam was an alcoholic who tried to exert control over Julie and frequently humiliated her in front of others. He also threw things and became physically violent. This behaviour culminated in a major incident four months before the killing. The police were called after Adam threw a beer bottle at Julie; they helped her and the two children to move to a friend's home. She subsequently spent time in a shelter for battered women.

After leaving the refuge, a consent order was granted which prevented Adam from harassing either Julie or the children. He was allowed to see the children on alternate weekends with a police station designated as transfer point after there was trouble at Julie's home. This did not deter Adam. He was arrested one month after the separation for sitting in his car outside the house. The consequences were eight days in gaol and an Intervention Order which was initiated by the police. Adam's firearm licence was cancelled as a consequence and all of his guns were confiscated.

Julie continued to be afraid since Adam persisted in making threats. Meanwhile, Adam who had been noticeably depressed since the estrangement started to see a psychiatrist who put him on a benzodiazepine-based medication.

About three months after his arrest, Adam went to Julie's house and awaited her return with the children. He consumed an amount of medication above the prescribed dosage along with vodka and beer. When she entered the house and

saw Adam with a shotgun, Julie ran toward the bedroom with the children and closed the door. Adam shot through the door and hit one of the children in the stomach. He then entered the bedroom and shot Julie with one shot at close range through her mouth. He then shot himself in the forehead.

In the preceding cases, the traits of the offender and the circumstances were similar to other homicides of estranged partners which did not include the suicide of the perpetrator. One additional element was the batterers' mental state of depression. Adam's and Miklos' history of violence toward their partners was a component in their control over the women. Separation threatened that control and apparently contributed to depression. Killing Julie and Afgania may have become, in Adam's and Miklos' minds, the only remaining means of exerting their mastery.

These particular stories are, in some ways, even more depressing than those which involved little or no intervention from the criminal justice system. It is worrisome and of grave concern that in the latter case, an Order was effectuated, guns were removed, the breach was sanctioned (albeit leniently) and none of these actions were able to prevent the tragedy. Similarly, in the first case the offender ended up in custody and seen by a medical practitioner; yet the drama still unfolded to its tragic finale.

## Weapon

Table 6.4 indicates that guns were by far the most common weapon used in homicides that included the suicide of the perpetrator.

*Table 6.4: Suicide or non-suicide of offenders in homicides between adult sexual intimates, by weapon, Australia-wide 1989-90 and 1990-91 combined*

Did the offender commit suicide?	Gun (n=36)	Sharp Implement (n=36)	Assault/ Strangulation (n=41)
Yes	66.7	11.1	4.9
No	33.3	88.9	95.1
Total	100.0	100.0	100.0

Notes:

1. In 37 incidents, the weapon was either unknown or did not fit into one of the above categories.
2. Highly significant difference by weapon:  $X^2_{[2]}=43.9$ ,  $p<0.0001$ .

Source: National Homicide Monitoring Program data.

Various theories could be generated about this phenomenon. One could speculate that since premeditation was found to be more common with firearm homicides, then the offender also had perhaps planned his own demise. The theme of spontaneous contrition loses some credibility with that interpretation.

However, another hypothesis could be promulgated with opposite implications. Killing oneself through self-assault or stabbing might be more difficult than merely squeezing a trigger. Thus, if the perpetrator shot his intimate and felt remorse, the means for atonement were more immediately at hand. It should also be noted that Aboriginal people, as we have learned, were unlikely to use guns and were unlikely to commit suicide. Their actions often occurred in the context of a fight; a spontaneous action within a setting of violence. Thus, perhaps remorse is more a by-product of premeditation since the ability to justify one's premeditated actions may be more problematic.

No simple equation emerges from these data on weaponry except for the obvious: guns were far more likely than other weapons to be involved in homicide-suicides among adult sexual intimates. However, as should be clear from the above, this does not necessarily reflect a direct cause and effect relationship.

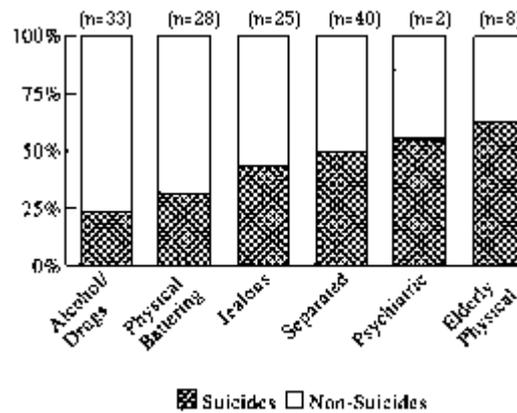
#### *Homicide-suicide with knife (project case study number 90)*

Maggie and Art had been separated for three months when he attacked her with a knife. He then stabbed himself with a fatal wound to his right leg. An alcoholic who was attempting to stay sober and was a hypochondriac, Art, had become seriously depressed since Maggie left. According to a child of the marriage, he was extremely dependent on Maggie and had been ringing her several times a day during the estrangement to ask her to come around and do very simple things for him. The day of the killing he told someone who asked how he was: 'Not very well. I'm sitting here fighting off the urge to commit suicide'. The same individual reported that Art was obsessed with having Maggie return to him. Perhaps in his depressed framework, the homicide-suicide was the means to that end.

### **Contributing Factors in the Homicide**

Figure 6.4 illustrates the principal contributing factors in homicides between adult sexual intimates and their distribution in suicide and non-suicide cases.

*Figure 6.4: Suicide or non-suicide of offenders in homicides between adult sexual intimates, by homicide contributing factors, New South Wales and Victoria 1988-90*



Note: The total number exceeds number of cases as up to three factors were ascribed to each offender.

Source: New South Wales and Victorian coronial and court records.

The principal contributing factors which were found most frequently in the suicide cases were 'elderly' physical illness, psychiatric disorder, separation, and jealousy. Examples of these have already been provided. In almost all of the homicide-suicides the perpetrator did not seem to be able to separate himself from his partner. He had become enmeshed in a complex interplay of possessiveness, control and dependency. Even those cases such as the one described next, which were labelled by the system as 'psychiatric' showed evidence of this dysfunctional perception of self and relationships.

*Homicide-suicide with psychiatric factor (project case study number 9)*

Daniel had been a successful businessman who had experienced severe financial reverses. He became deeply depressed with friends noting a mental and physical deterioration. He appeared haggard and would ramble nonsensically.

His wife Louise became frustrated with him and dominating which apparently exacerbated the situation. Daniel talked about committing suicide and killing his wife and mother-in-law since he did not believe that they could survive financially without him.

The day before the deaths Daniel was brought into the hospital for treatment. At that time he was diagnosed as suffering from a major depressive illness with psychotic and suicidal ideation. He was scheduled to be admitted the next day when a bed would become available. However before that could occur, Daniel shot Louise, his mother-in-law (she survived), his dog and himself.

This case was perhaps more potentially preventable than many of the others since the warning signs were so clear. Although the act seemed to more closely resemble a suicide than a homicide followed by remorse, once again, the offender's perception of his partner as an indispensable and dependent part of himself (like his dog) was apparent.

## **Discussion**

Are Australian homicide-suicides between adult sexual intimates more like homicides of that type or more like suicide? Self-destruction, the suicide of the offender, would seem to be the principal object in a number of these incidents where depressive and suicidal ideation preceded the act. In others, the principal motivator appeared to be the killing of the partner who had either 'abandoned' the offender or was perceived by him as untrue. Thus, there were few significant differences found between incidents ending in suicide and those that did not. Employment, domestic violence, and alcohol abuse would appear to play fairly similar roles in both types of cases.

However, on either side of this dichotomy a common thread was manifest: a perception of the partner as an integral part of the individual. This can be labelled as jealousy, or an inability to accept separation, or obsessiveness, or pathological possessiveness, or any of another hundred terms. In that light it is not surprising that separation and the ageing and ill-health of a female partner were found to be significantly correlated with the suicides. In both instances, the woman was either no longer able or willing to play the same role in the relationship that she had in the past.

The derivation of such attitudes toward a female partner are not difficult to locate : a society where women have been long regarded as the property or possessions of man. This ownership attitude is exemplified in project case number 74. The estranged de facto husband had 'belted the victim on many occasions' and had said, *If I can't have you, nobody will*'. He also threatened, 'If you do (have an affair), I'll shoot your kid'. And, he did: he shot the ten-year-old boy, the woman and himself.

Just as those who committed suicide exhibited some general commonalities, the sub-set data further illustrate the heterogeneity within the total sample. All suiciders were not distinct since many of their actions were seemingly orientated toward the homicide. However, these data on suicide of perpetrators have shown further evidence of the existence of different themes or motifs within the group of adult sexual intimate homicides. Women, Aboriginal people, and the overseas-born appear to differ in a number of significant ways from the prevailing white Australian-born male pattern. The lack of suicides among the first two groups and the frequency among the overseas-born may represent differences in causation, weapon, and other elements which precede and accompany homicide. Such differences are vitally important to recognise in the promulgation of prevention strategies.

Another aspect which seemed more apparent in this sub-set was the failure of the system to respond to the cries for help: cries from either the woman who had been battered or had tried to start a new life or the signs of deep depression by the male perpetrators. In many instances, one felt strongly that the homicide-suicide did not have to be an inevitable outcome; that it was preventable. A number of offenders were in contact with mental health practitioners or with the criminal justice system shortly before the homicide-suicide took place. Appropriate assistance was not received presumably since the gravity of the situation was not recognised.

The pathos and human misery in these events cannot be understated. These are tragic events: none more so than the following example.

*(Project case study number 48)*

Kirsten must have known that she was about to die as her estranged spouse, depressed over the separation, aimed a shotgun at her head. He directed two friends who were present to take the four-year-old child out of the house. Kirsten leaned down and kissed her son goodbye before he left. After his departure she was fatally shot in the head.



## Justice in the Courts

**F**or those who do not commit suicide, the outcome of the homicide is their interaction with the criminal justice system. Data on perpetrators' experiences with the courts were not available from the national data set. The material presented in the following three chapters was therefore derived exclusively from the in-depth data set (New South Wales and Victoria). The findings are not generalisable to other states or territories. Also, as will become obvious shortly, in numerous instances, either due to timing (for example, the case had not yet been tried) or to lack of sentencing remarks or other material, there were gaps in the findings.

### Remand or Bail

#### *By jurisdiction*

There was little difference between New South Wales and Victoria in judges' decisions about remand for those arrested for killing their spouse or allowing them bail. In New South Wales 37.5 per cent were given bail and in Victoria 41.7 per cent did not have to go to prison prior to their trial. The fact that more than one-third of the individuals who killed a sexual intimate were released into the community may be surprising. These figures are probably a reflection of the fact that such perpetrators were generally not viewed by the judicial system as representing a danger to society, unlike someone who has killed a stranger in the process of robbery who may be perceived as likely to commit a similar crime if allowed out on bail. Further, as we will see below, although most of the perpetrators were initially charged with murder, in many cases the charge was reduced to manslaughter later in the judicial process.

*By gender*

Table 7.1 shows that there was a significant difference by gender in decisions about bail: females were far more likely to be released on bail. This is not surprising in light of what earlier chapters have shown about the high frequency of victim precipitation and/or self-defence in the female offender homicides.

*Table 7.1: Bail for offenders in homicides between adult sexual intimates, by gender, New South Wales and Victoria, 1988-90*

Did defendant receive bail?	Male (n=46) %	Female (n=18) %	Total (n=64) %
Yes	21.7	77.7	37.5
No	71.7	11.1	54.7
Yes, then no	4.3	5.6	4.7
No, then yes	2.2	5.6	3.1
Total	100.0	100.0	100.0

## Notes:

1. In 27 cases, the issue of bail was non-applicable due either to suicide of offender non-prosecution of the case.
2. In 19 cases, bail or remand was unknown.
3. Significant difference between genders:  $X^2_{[1]}=7.4$ ,  $p<0.01$ .
4. Apparent inconsistency in sum total is attributable to rounding error.

Source: New South Wales and Victorian colonial and court records.

*Aboriginality and ethnicity*

Table 7.2 illustrates the frequency of bail or remand by ethnicity and Aboriginality.

*Table 7.2: Bail frequencies for offenders in homicides between adult sexual intimates, by Aboriginality and ethnicity, New South Wales and Victoria, 1988-90*

Bail Granted?	Non-Aboriginal		
	Australian (n=15) %	Aboriginal (n=9) %	Overseas-born (n=14) %
Yes	26.7	55.5	57.1
No	53.3	33.3	42.9
Yes, then no	13.3	0.0	0.0
No, then yes	6.7	11.1	0.0
Total	100.0	100.0	100.0

Notes:

1. In 27 cases, bail was non-applicable since offender either suicided (or case was not prosecuted).
2. In 19 cases bail/remand was unknown.
3. Apparent inconsistency in sum total is attributable to rounding error.

Source: New South Wales and Victorian coronial and court records.

More than one-half of the Aboriginal group (which includes a high frequency of females—*see* Chapter 4) and a similar proportion of overseas-born received bail. Unfortunately, information about remand was unavailable for a large proportion of the overseas-born. One cannot therefore make sweeping generalisations about this variable.

### **Time Between Homicide and Trial**

The mean time between the homicide and the trial was 15.3 months in Victoria and 16.6 months in New South Wales. The range extended from six months to two years and eight months. Sixty per cent of the 43 defendants for whom this information was available had more than one year to wait before trial; eight individuals waited in excess of two years.

## **The Verdict**

Information on verdict was available for seventy-six perpetrators. (In twenty-seven instances, the offender had committed suicide and in seven cases the trial was still pending.) In slightly less than one-third of these cases (31.6 per cent), the defendants were found guilty of murder; in almost one-half (48.7 per cent) guilty of manslaughter. Five cases were dropped or no billed (*nolle prosequi*), four trials ended in findings of insanity, and six defendants were acquitted.

The differentiation by jurisdiction, gender, ethnicity and Aboriginality is as follows.

### *By jurisdiction*

The high proportion of manslaughter outcomes mentioned above was in large part a consequence of plea bargaining. In twenty-three cases, the perpetrator had been charged with murder but pleaded guilty to manslaughter. This pattern was particularly evident in New South Wales where 57 per cent of the outcomes were resolved by the defendant pleading guilty to the lesser charge and obviating the need for a trial. This contrasted with Victoria where only 16.7 per cent of the cases ended with pleas of guilty to manslaughter.

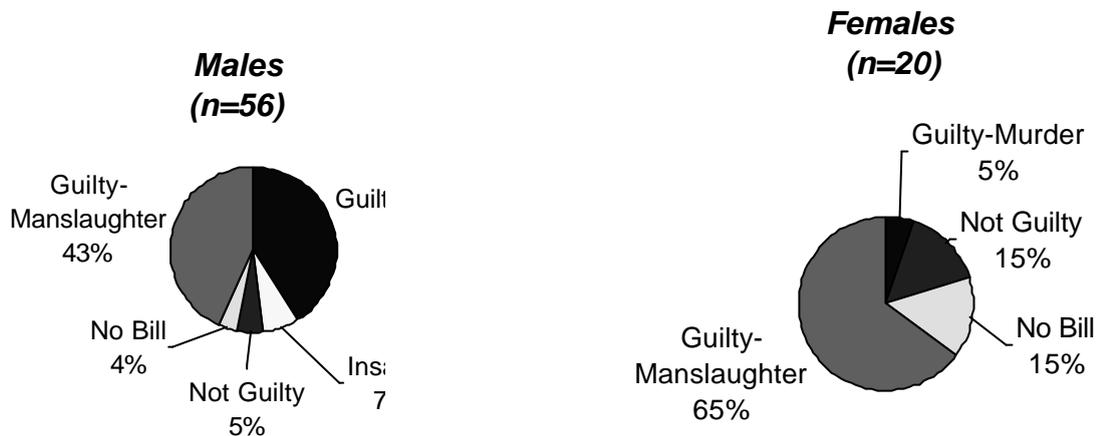
There was significant variation between the two states in frequency of murder and manslaughter dispositions in general ( $X^2_{[1]}=5.2$ ,  $p<0.05$ ). Sixty-three per cent of the guilty findings in Victoria were for murder while only 30 per cent of guilty verdicts were for murder in New South Wales. This disparity may be a reflection of the different gender, Aboriginal and ethnic composition of the two states.

Cases involving female offenders culminated in a higher proportion of acquittals and manslaughter and far less findings of guilt on murder charges. The reason may well be the violent victimisation antecedents in most of these homicides. However, one would be reluctant to label these outcomes as 'lenient' or speak of the 'softer' approach of judges and juries toward women. In fact, given the particular details of these homicides, one might interpret the manslaughter verdicts as harsh. This will be examined further in Chapter 8.

*By gender*

Figure 7.1 depicts the court findings by gender.

*Figure 7.1: Disposition in cases of homicides between adult sexual intimates, by gender, Victoria and New South Wales, 1988-90*



## Notes:

1. In 27 cases the disposition was non-applicable due to suicide of offender.
2. In 6 cases the disposition was unknown.
3. There were no insanity findings for females.
4. Significant difference between genders when comparing murder vs manslaughter findings of guilt:  $X^2_{[1]}=6.2$ ,  $p<0.05$ .
5. No bill is the same as nolle prosequi.

*By Aboriginality and ethnicity*

Is there a racial bias or ethnic prejudice operating at the time of rendering a verdict? It would seem that, as revealed in Table 7.3, the answer is 'no'. In fact, the opposite—leniency toward Aboriginal people and the overseas-born—appears, at least on the surface, to be the norm.

*Table 7.3: Disposition in cases of homicides between adult sexual intimates, by Aboriginality and ethnicity, New South Wales and Victoria, 1988-90*

Disposition	Non-Aboriginal Australian-born (n=13) %	Aboriginal (n=9) %	Overseas-born (n=32) %
Guilty murder	38.5	0.0	28.1
Guilty manslaughter	53.8	77.7	43.8
Not guilty	7.7	11.1	6.3
Insanity	0.0	0.0	9.4
Nolle Prosequi/Dropped	0.0	11.1	12.5
Total	100.0	100.0	100.0

## Notes:

1. Twenty-seven cases were non-applicable.
2. In 29 cases either ethnicity or outcome were unknown.
3. Apparent inconsistency in sum total is attributable to rounding error.
4. Statistical significance was not tested due to frequency of small numbers.

Source: New South Wales and Victoria coronial and court records.

Aboriginal offenders were found guilty of manslaughter with none convicted of murder. This is undoubtedly a by-product of both the high proportion of females in this Aboriginal sample and the nature of the homicides among Aboriginal people: spontaneity, fights, and presence of alcohol. There also did not seem to be any discrimination against the overseas-born; however, the sample size is small and other intervening variables may be operating. It is interesting, but probably an anomaly, that the

three insanity dispositions all fell within the overseas-born male offender subgroup.

## Sentence

What length of sentence did offenders actually receive? Table 7.4 provides a breakdown by the two jurisdictions.

*Table 7.4: Bottom sentence (non-parole period) in homicides between adult sexual intimates, by jurisdiction, 1988-90*

Sentence	New South Wales (n=41) %	Victoria (n=18) %	Total (n=59) %
Community based order/ Recognizance	7.3	5.6	6.8
Less than 1 year	4.9	0.0	3.4
2-3 years	14.6	5.6	11.9
4-5 years	12.2	11.1	11.9
6-7 years	14.6	11.1	13.6
8-9 years	17.1	0.0	11.9
10-11 years	2.4	38.9	13.6
12-13 years	0.0	5.6	1.7
14-15 years	9.8	11.1	10.2
16-20 years	0.0	11.1	3.4
Life	17.1	0.0	11.9
Total	100.0	100.0	100.0

### Notes:

1. Manslaughter and murder sentences have been merged since numbers would be too small to generate meaningful percentages if they were separated. At the end of this chapter, verdicts and sentences are given for the case studies used thus far.
2. In 51 cases, bottom sentence was either unknown or non-applicable.
3. In the New South Wales cases where a life sentence was given, until January 1990 such a sentence for murder was mandatory unless the judge found reduced culpability.

Source: New South Wales and Victorian coronial and court records.

When one considers that the crime was not only homicide but also in many instances a particularly violent act, the 'punishment' or time imprisoned seems remarkably low. Just less than one-half of the offenders received a bottom, or non-parole period, sentence of less than ten years. Twenty of the fifty-six perpetrators were to spend five years or less imprisoned. From

Table 7.4 it would appear that in New South Wales the sentences were shorter overall, although seven individuals did receive mandatory life sentences. The greater frequency of 'light' sentences in New South Wales was a result of the higher proportion of manslaughter dispositions in that state.

Bottom sentences for murder in Victoria ranged from ten and a half years to fifteen years; in New South Wales, the non-parole period for murder extended from eight years to life. For manslaughter the range in Victoria ran from Community Based Orders to seven years; in New South Wales, a manslaughter conviction earned the offender anywhere from recognizance to eight years (median and mean sentences are not presented as life sentences cannot be factored in).

Just as the decision to maintain a charge as murder or allow it to be dropped to manslaughter is unclear, so too are the variables which affect at what point on the range an offender will be sentenced. The following sections may illuminate at least a few of the factors that influence the length of sentence.

#### *By gender*

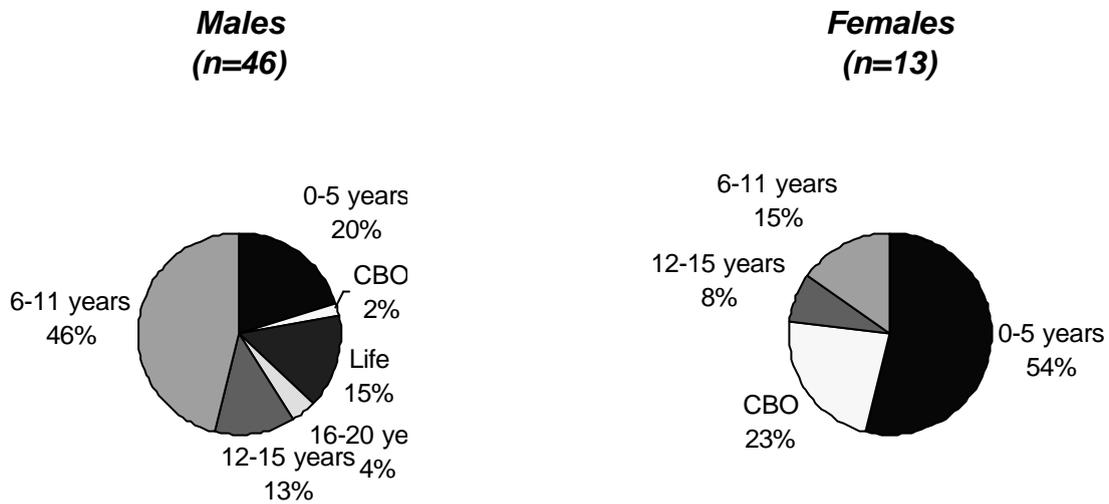
Figure 7.2 indicates that female offenders clearly received lighter sentences than males. This is in part a reflection of the dearth of murder convictions for women.

The number of non-custodial sentences and frequency of relatively short-term imprisonment terms may appear to be indicative of leniency toward women. It is certainly indicative of gender differentiation in verdict as shown in Figure 7.1. However, two, three or four-year sentences may in fact be 'heavy' time in prison if one adheres to the Battered Woman Syndrome and/or the belief that in most instances, the woman was acting in self-defence. It is not sufficient to contrast by gender; background variables need to be considered [see Chapters 8 and 9].

#### *By Aboriginality and ethnicity*

Table 7.5 displays the sentences received by offenders whose race or ethnicity was known.

*Figure 7.2: Bottom sentence in homicides between adult sexual intimates, by gender, New South Wales and Victoria, 1988-90*



Notes:

1. Manslaughter and murder sentences have been merged since numbers would be too small to generate meaningful percentages if they were separated in the figure. At the end of this chapter, verdicts and sentences are given for the case studies used thus far.
2. In 51 cases the bottom sentence was either unknown or non-applicable.
3. There were no life sentences or 16-20 year sentences for women.

Source: New South Wales and Victorian coronial and court records.

*Table 7.5: Bottom sentence (non-parole period) in homicides between adult sexual intimates, by Aboriginality and ethnicity, New South Wales and Victoria, 1988-90*

Bottom sentence	Non-Aboriginal Australian-born (n=12) %	Aboriginal (n=7) %	Overseas-born (n=23) %
Community based order/ Recognizance	0.0	28.6	0.0
Less than 1 year	8.3	0.0	0.0
2-3 years	8.3	42.9	8.7
4-5 years	8.3	14.3	17.4
6-7 years	16.7	0.0	17.4
8-9 years	25.0	0.0	13.0
10-11 years	16.7	0.0	13.0
12-13 years	0.0	0.0	4.3
14-15 years	8.3	14.3	8.7
16-20 years	0.0	0.0	0.0
Life	8.3	0.0	17.4
Total	100.0	100.0	100.0

Note: In 68 cases, either ethnicity or bottom sentence was unknown or sentence was non-applicable.

Source: New South Wales and Victorian coronial and court records.

The sample is too small to generate any empirically reliable conclusions. However, there are some interesting indications which merit further investigation. Clearly, the Aboriginal group received far lighter sentences than the other groups; this can be attributed to their conviction of manslaughter and not murder and the preponderance of females in this particular sub-sample of Aboriginal offenders. Although a higher proportion of non-Aboriginal Australian born were convicted of murder than the overseas-born, Table 7.5 shows that the overseas-born received heavier sanctions than the former. For example, one-third of the Australian-born were to be imprisoned in excess of ten years in comparison to 43 per cent of the overseas-born.

## **The Outcomes of Case Studies**

Having examined the data analysis on findings and sentences for all of the relevant in-depth cases, the outcomes for the specific cases which have been described in the previous chapters will be reviewed. Perhaps this process will shed some light on why some murder charges were reduced to manslaughter and why there was a range of sentencing within each category. The cases are presented in order of their appearance in this volume. Several are not included since the offender had not been tried for the crime at the time of writing. [Note that the perpetrator's name is given first.]

### *Project case study number 25 (see page 41)*

Fred and Maria. Involved separation and a fight in which Fred strangled Maria.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: eight years top; five and a half bottom

### *Project case study number 94 (see page 42)*

Pamela and Sam. Involved alcohol and fights. She claimed to have stabbed him in self-defence.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Deferred; recognizance in the sum of \$1000

### *Project case study number 65 (see page 42)*

Brett and Julie. Former boyfriend came to her place of work and shot her in the head three times. He then attempted suicide.

Charge: Murder

Verdict: Guilty (by jury)

Sentence: Penal servitude for life

*Project case study number 80 (see page 49)*

Jim and Mary. De facto Aboriginal male perpetrator involving alcohol abuse by both and a fight.

Charge: Manslaughter

Verdict: Guilty (by jury)

Sentence: Six and a half years top; five years bottom

*Project case study number 18 (see page 50)*

Ali and Sonya. Migrant marriage with domestic violence and his fears of her infidelity. Attempted suicide at a later date.

Charge: Murder

Verdict: Pleaded guilty

Sentence: Seventeen years top; fourteen years bottom

*Project case study number 49 (see page 52)*

Jane and Luke. Aboriginal woman killed ex-de facto batterer as he attacked her.

Charge: Murder

Verdict: Not guilty

*Project case study number 5 (see page 53)*

Barry and Ellen. Extremely possessive male strangled girlfriend in the car.

Charge: Murder

Verdict: Guilty (by jury)

Sentence: Fifteen years top; eleven years bottom

*Project case study number 71 (see page 57)*

Mark and Joan. Alcoholic male stabbed estranged de facto twenty-two times.

Charge: Murder

Verdict: Guilty (by jury)

Sentence: Seventeen years top; nine years bottom

*Project case study 83 (see page 57)*

Nick, of overseas birth and unemployed, punched wife in throat and attempted suicide.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Fifteen years top; five years bottom

*Project case study number 8 (see page 58)*

Matthew and Karen. Both were employed in white-collar jobs. Rare case since he tried to cover up the homicide.

Charge: Murder

Verdict: Guilty (by trial)

Sentence: Eighteen years top; fifteen years bottom

*Project case study number 50 (see page 69)*

Sue and Don. Allegedly emotionally and physically abused for years, Sue stabbed Don while he slept.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Eight years top; five years bottom

*Project case study number 58 (see page 70)*

Hilde and Hans. Migrant alcoholic woman killed alcoholic batterer de facto in the course of a physical struggle.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Five years top; two years bottom

*Project case study number 37 (see page 72)*

Cassie and Roger. Battered wife kills alcoholic husband in the context of a fight.

Charge: Murder

Plead: Not guilty to murder or manslaughter

Verdict: Not guilty

*Project case study number 61 (see page 76)*

Samu and Catherine. Abusive alcoholic male of overseas birth stabbed his Australian-born wife.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Twelve years top; seven years bottom

*Project case study number 55 (see page 77)*

Joe and Juana. An abusive male shot his estranged seventeen-year-old overseas-born wife and then struck her head with the rifle butt.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Ten years top; six years bottom

*Project case study number 81 (see page 78)*

Darryl and Helen. Both offender and victim were Aboriginal and alcoholic with a history of violence in their de facto relationship. She was choked in the midst of a fight.

Charge: Manslaughter

Verdict: Guilty (by trial)

Sentence: Two years and eight months top; two years bottom

*Project case study number 96 (see page 78)*

Betty and Craig. There was a long history of violence in this Aboriginal marriage. She fatally shot him while trying to just maim him.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Deferred; recognizance in the sum of \$1000

*Project case study number 40 (see page 81)*

Brad and Eliza. Alcoholic and abusive man set his de facto spouse on fire.

Charge: Murder

Verdict: Guilty (by trial)

Sentence: Twenty years top; fourteen years bottom

*Project case study number 87 (see page 82)*

Judy and Nathan. A heavy drinking Aboriginal woman killed her estranged alcoholic and violent de facto spouse by grabbing a rifle, closing her eyes and shooting.

Charge: Murder

Verdict: Not guilty murder, guilty of manslaughter (by jury)

Sentence: Three years and four months top; two and a half years bottom

*Project case study number 36 (see page 82)*

Ted and Carla. An Aboriginal male strangled his de fact in the context of a fight which involved the usual violence and alcohol abuse that had marked their relationship.

Charge: Manslaughter

Verdict Pleaded guilty

Sentence: Five years top; two and a half years bottom

*Project case study number 72 (see page 83)*

Tim and Samantha.

An overseas-born alcoholic bikie killed his wife because he allegedly feared for the well-being of their child.

Charge: Murder

Verdict: Guilty (by jury)

Sentence: Ten years top; eight years bottom

*Project case study number 1 (see page 84)*

Lawrence and Lucinda. Lawrence killed his Filipina wife allegedly out of jealousy and then tried to cover it up by hiding her body in the bush.

Outcome: Nolle prosequi. Further investigation

*Project case study number 33 (see page 85)*

Ross and Rosemary. The ex-boyfriend hid in the closet and stabbed her over forty times.

Charge: Murder

Verdict: Pleaded guilty

Sentence: Fifteen years and three months top; eleven years and three months bottom

*Project case study number 16 (see page 86)*

Fausto and Francesca. An overseas-born male shot his estranged wife.

Charge: Murder

Verdict: Guilty (by jury)

Sentence: Sixteen years top; twelve years bottom

*Project case study number 101 (see page 87)*

Roy and Jenny. Estrangement, history of violence, and alcoholism were contributory factors to Roy's fatally stabbing Jenny.

Charge: Murder

Verdict: Guilty (by jury)

Sentence: Life

*Project case study number 17 (see page 87)*

Bogoyo and Dijana. Diagnosed as a paranoid schizophrenic, Bogoyo fatally assaulted his wife with an iron bar.

Charge: Murder

Verdict: Not guilty on ground of insanity

Sentence: Held at the Governor's pleasure.

*Project case study number 24 (see page 88)*

Nicholas and Sarah. An overseas-born male fatally shot his ex-de facto.

Charge: Murder

Verdict: Not guilty on ground of insanity

Sentence: Held at the Governor's pleasure

*Project case study number 105 (see page 88)*

Carl had a history of paranoid schizophrenia. He killed his girlfriend and mutilated her body including disembowelling her.

Charge: Murder

Verdict: Pleaded guilty to manslaughter

Sentence: Thirteen years and four months top; ten years bottom (should receive psychiatric treatment whilst imprisoned)

*Project case study number 51 (see page 89)*

Francis and Pearl. Severely depressed this elderly male smothered his wife, strangled his dog, and attempted suicide.

Charge: Murder

Verdict: Pleaded not guilty to manslaughter

Sentence: Deferred; recognizance in the sum of \$500

*Project case study number 41 (see page 102)*

Nick and Jenny. Alcohol and a history of battering were the main background elements to Nick's stabbing Jenny. He attempted suicide with an overdose.

Charge: Murder

Verdict: Guilty (by jury)

Sentence: Seventeen years top; twelve years bottom

## **Discussion**

What lies behind the sentences? The dispositions of the above case studies do not evidence any particular pattern beyond the obvious conclusions: murder verdicts resulted in higher sentences than manslaughter; plea or plea bargaining did not seem to affect the sentence, the length given was fairly similar whether the defendant was convicted by a jury or pleaded guilty to manslaughter.

Gender and Aboriginality appeared to influence both the type of charge the offender was convicted on and the length of the sentence. The reasons why these act as mitigators have already been discussed. In most of the female perpetrator cases and the Aboriginal offender homicides there were significant differences that have stood out throughout the preceding chapters. Both types were usually unpremeditated and both, for different reasons, involved a degree of victim precipitation or a fight context.

However, beyond these obvious variables, there does not seem to be any consistency either in the reduction of murder to manslaughter or in the determination of sentence length. Joe viciously killed his estranged teenage wife and was sent to prison for six years having been permitted to plead guilty to manslaughter while Sue, the battered wife was sentenced to one year

less than Joe. And, Ross, not permitted to plead down, was sentenced to a little over eleven years after stabbing Rosemary over forty times.

The next two chapters will try to determine variables or situations that differentiate the above cases from each other; what factors are considered as ground for diminished responsibility or provocation and hence merit a manslaughter charge. Further, what appears to influence the actual length of sentence? And, are the above answers different based upon the gender and/or the Aboriginality of the defendant?

## Sentencing Battered Women<sup>1</sup>

**S**entencing remarks for ten women who had killed their (ex)partners following a relationship marked with battering were available for analysis. Nine of these ten cases were tried in New South Wales and one in Victoria. Any findings in this chapter are therefore pertinent primarily to the former state and are not necessarily generalisable to the other states and territories in Australia.

Although none of the women in this sample received particularly heavy sentences, there was still a range in sentences given. At the bottom end of the spectrum were three who received non-custodial sentences; at the top end was a five-year non-parole period and an eight-year non-parole period. One of the aims of this chapter is to closely scrutinise the judges' remarks in each of the ten cases in order to identify, if possible, which variables contributed to more lenient sanctions and which factors appeared to correlate with harsher sentences.

Another goal is to attempt to understand how the judges regard domestic violence and its role in the consequent homicide, and to supplement or question their interpretation with a discussion of what some theorists and workers in the area regard as the dynamics of wife battering and its impact on the victims who kill.

A caveat: it should be noted that sentencing remarks only reveal one component of the factors which judges consider at the time of sentencing. Undoubtedly there are other contributing variables that the current study could not identify due to methodological limitations and/or small sample size. For example, it is unclear from the literature whether educational attainment and higher social class work for or against a woman who is on trial. One perspective states that middle-class status can work against a

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<sup>1</sup> Sections of this chapter have appeared in other articles by Easteal: 1992, 'Battered Woman Syndrome: what is 'reasonable'?', *The Alternative Law Journal*, vol. 17, no. 4; 1992, 'Battered Woman Syndrome: misunderstood?', *Current Issues in Criminal Justice*, vol. 3, no. 3, pp. 356-9; 1993: 'Battered women who kill: a plea of self-defence', *Women and the Law*, eds P.W. Easteal & S. McKillop, Conference Proceedings No. 16, Australian Institute of Criminology, Canberra.

female defendant since the judge may unconsciously or consciously feel that she should have been able to leave the situation or handle it in a more effective manner. Another view is that judges, like many others in society, dichotomise females into the 'good girls' and the 'bad girls' and are more impressed by a woman who has children and appears to have played a 'normal' middle-class 'female' type role in her life. (See Chesney-Lind 1987; Weisheit & Mahan 1988 and Feinman 1986 for discussions about alleged leniency or harshness for women in the courts.)

There are other unmeasurable (in this research) overt or tacit variables that may play a role in sentencing. For example, the demeanour of the defendant in the courtroom could affect the judge's thoughts and feelings about her: was she well dressed, polite and deferential, or alternatively was she unkempt, surly and rude? Other paralinguistic elements which would have to be observed and documented in the courtroom might impact on judges' decision making. For instance, did the woman appear to be grieving and ashamed of what she had done? Did she display remorse by crying or did she appear impassive and stoical? Unfortunately, this research project did not include an observational component; thus, the understanding of the judges' beliefs about the defendant and their impact on sentencing were limited in this study to what was expressed in their sentencing remarks.

## **Mitigating Variables**

### *Children*

Isolating which background factors or aspects of a homicide generate lengthier sentences proved to be difficult. The judges often enumerated the same variables in different cases but rendered quite disparate sentences. For example, in case number 96 (Betty and Craig) the presiding judge, in giving 'Betty' a non-custodial sentence, discussed at some length the defendant's children and their need for her:

. . . it would be a steely-hearted judge indeed who did not take into account in making that choice the plight of such young children being left without any parents. It would be an affront to commonsense not to do so. The fact that a custodial sentence would result in three children of tender years being boarded out with relatives weighs very heavily in favour of a deferred sentence . . .

The *same* judge in case number 87 (Judy and Nathan) stated that the defendant had given birth to a child a few days before the trial had started and that: 'It is put on her behalf that I should not deny that child a proper

relationship with its mother for any longer than is absolutely necessary . . . ' Yet, he gave 'Judy' a minimum of two and a half years.

Thus, the same judge in two cases discussed children's need for a parent but made a different decision in the two situations. What differentiated these defendants and their offences? In both, the judge indicated (as was apparent in eight of the ten cases) that the manslaughter charge had been reduced from murder due to the defendants' lack of intent to kill. Both women had experienced severe violence and had been raped by the batterer partner. Judy had been anally raped a number of times by Nathan and thought he was about to do so again. Further, he had threatened, according to the judge's remark, 'that she would not leave the house alive if it was the last thing that he did'. Sexual violence, such as the anal rapes experienced by Judy and the fact that Betty's partner 'would sexually force himself upon the prisoner following the beatings', have been found to take place in marriages with the worst physical violence ((Browne 1987; Ewing 1987; Walker 1989). The judge noted in case 96 that the 'prisoner had always been treated like a dog by the deceased'. The catalogue of injuries she endured included three miscarriages and a broken nose. The fact that Betty went looking for the deceased and found him drinking was also noted and apparently not seen as intent. When she went home and picked up the rifle, she told her friend that she intended to shoot him in the leg.

Judy also gave evidence that she did not intend to kill her partner and shut her eyes when she shot the gun. However, the judge concluded that he was satisfied beyond reasonable doubt that she deliberately pointed it with her eyes open which made the homicide too 'serious for periodic detention'.

### *Aboriginality*

Another aspect about the two defendants was different. Betty was Aboriginal and Judy was not. The other Aboriginal woman in this sample, case number 66 was also given a non-custodial sentence. Is this an anomaly or was there some sort of reverse discrimination operating? The judge in Betty's case specifically made lengthy references to the Aboriginality of the defendant:

The prisoner (as was also the deceased) is an Aboriginal, in the conventional sense that she is of Aboriginal descent, she identifies herself as such and she is recognised as such by the Aboriginal community . . . I accept the proposition that Aborigines are not to be treated by the criminal courts differently to white people; the same sentencing principles are to be applied in every case, irrespective of the

offender's membership of any ethnic or other group . . . the relevance of an offender's Aboriginality is not necessarily to mitigate, rather, it is to explain or to throw light on the circumstances of the offence itself . . .

Later in the remarks, the judge explained where he believed her Aboriginality played a role:

Just why this apparently mutually destructive relationship continued is difficult to understand. Perhaps this is where the prisoner's background provides some explanation. The prisoner herself has stated that she continued to love the deceased despite his disgraceful treatment of her . . .

### *Intent*

If Aboriginality seems to lead to recognizance, provocation and diminished responsibility as grounds for manslaughter appear to lead to longer sentences. Thus, unlike the other eight defendants, 'Sue' in case number 50 and the woman in case number 85 were found guilty of manslaughter but were defined as having had the intent to kill. Sue pleaded not guilty to murder but guilty to manslaughter on the ground of provocation. Therefore, she was perceived as intending to kill her husband but as the judge wrote: '. . . in the light of the lengthy period over which the provocative conduct of the deceased built up and the extreme provocation during the night preceding the killing . . .'

Sue's comparatively heavy sentence can be understood in a number of ways. First, it is clear that the amount of violence which the battered woman has endured does not determine her length of sentence. Sue's story was one of the most violent as it contained not only major physical abuse but also extreme mental cruelty and emotional violence. What appeared to mean more to the presiding judge was her intent and the amount of violence with which she killed her husband.

The other defendant who received the harshest sentence was the battered woman in case number 85. The jury in her murder trial found her not guilty of murder but guilty of manslaughter on the ground of diminished responsibility. In the sentencing remarks it was noted that 'the prisoner was, at the time of the shooting, suffering from a severe reactive depression producing an abnormality of mind'. In this case, the abuse which the judge mentioned was emotional. The deceased had left the defendant for another woman and was accustomed 'to making unfavourable comparisons of the femininity, attractiveness and joie de vivre of the two women'. He also referred to her as 'baby bull' and said that she was 'hopeless' (shortly before the killing). Immediately preceding

the shooting, according to the defendant, her husband repeated that he did not love her, commented negatively on her physical appearance and again stated that he wished she would kill herself.

The judge in this case appeared to be particularly affected by the defendant's intent:

The manner in which she recounted the events to . . . and to police and to her brother afterwards reveals the clarity of her appreciation at the time of what she had been doing and of the wrongness of it.

### *Remorse*

Aside from Aboriginality and lack of intent, the remorse of the defendant may reduce her sentence if it is accompanied by one of those two variables. For example, in giving the defendant in case number 20 a community based order, the judge noted, '. . . and I have little reservation in accepting your assurances that you have experienced a great sense of remorse . . .' And in case number 58 in which 'Hilde' was given two years: '. . . it was obvious that the accused was genuinely distraught at what had happened and at the loss of her companion . . . There is no doubt that she is remorseful over what she has done'. In case number 66 in which the defendant was granted a non-custodial sentence: 'Her remorse over the killing has been obvious to those who have been in contact with her and it is clear that she misses the company of the deceased'. In the other recognizance disposition, case number 96, the judge reported that, 'The police have described the prisoner as having been visibly and deeply upset at that stage. She and her friend prayed out aloud that the deceased was not hurt'. Remorse of the defendant was not mentioned in the other sentencing remarks.

### *Defendant's childhood*

In three of the cases the judge alluded to something about the defendants' childhoods. However, once again, the articulation of the prisoner's tragic background did not necessarily result in increased leniency as shown by the following comments and sentences:

Case number 20: Your own background was an unfortunate one with its all too common history of sexual abuse as a child, resultant depression and the development of a lack of self-esteem . . . and ultimately became involved with the deceased who abused you both physically and emotionally. (CBO)

Case number 50: Apparently her father drank heavily and was abusive toward his wife. There were many disputes and also periods of separation when the children were sent to live with a grandmother. The prisoner herself left home and school at about fifteen because she did not get on with her father . . . (five years)

Case number 85: . . . the prisoner was the youngest of three children who believed herself to be the black sheep of the family; . . . It was her impression that she did not get on well with the family and she believed that she did not live up to her mother's expectations. (eight years)

### *Defendant's alcoholism*

Alcohol abuse by the woman was raised in sentencing remarks but again as with remorse and childhood abuse, the impact on the sentence seemed to be mitigated by the presence or absence of the other variables in the case.

Case number 57: The judge enumerated the main findings of the consultant psychologist: 'It is clear that she [the defendant] requires an extensive rehabilitation programme involving counselling at a deeper level to help her face her drinking problems and her self-destructive motivations behind her behaviour.' (eighteen months)

Case number 58: '. . . the reports state she had drunk fairly heavily until some 3 years before . . . and she had not had anything to drink from then until the night of this unfortunate incident.' (two years)

Case number 66: 'Regrettably, although perhaps it is a common experience, she had during her lifetime been much addicted to the use of alcohol. This was a habit she shared with the deceased and it led to some degradation of their lifestyle . . . In addition in her favour, is that since the killing she has refrained from consuming alcohol and there is positive evidence suggesting that she will not return to that substance.' (recognizance)

### *Summary of variables*

The analysis of the ten cases has shown that there is no clear cut relationship between most of the background variables and the type of sentence which the battered women received. If the woman was Aboriginal, had an alcohol problem, committed the homicide without intent to kill, and showed remorse, she received a non-custodial sentence. The two women who received the lengthiest sentences had been found guilty of manslaughter on the grounds of either diminished responsibility or provocation and not with the lack of intent to kill. In the provocation case, the violence the offender had received from the deceased was

possibly the worst of the sample yet that factor did not appear to weigh in her favour or it was negated by the degree of violence that she used in killing him, by her lack of remorse, and by the intent to kill. A traumatic childhood and alcoholism only seemed to act in the defendant's favour if accompanied by one or more of the crucial variables just enumerated.

### **An Alternative Sentencing Model**

Self-defence was not mentioned in any of the above cases. Yet, if tried in the United States at least some of the women who killed in this sample probably would have been acquitted on the grounds of self-defence. If defined in traditional terms, none of these cases meet the criteria for self-defence. However, the US courts have acknowledged that in many cases, both due to physiological and socialisation differences, a female simply cannot defend herself in the same manner as a male and even more specifically, that living with constant battering for an extended period of time impacts on the individual's ability to act according to the way that 'a reasonable man' would behave. In many of these trials self-defence has been shown by introducing evidence about Battered Woman Syndrome (BWS).

It is not possible to ascertain the exact number of US cases in which BWS has been used to prove self-defence. Certainly it is not featured in every such situation nor is it always successful even where it is used. Walker (1989, p. 225) reports that in the first 100 cases which she assessed for BWS one-quarter of the defendants were acquitted. Maguigan's (1991) analysis of US appeals found that in three-quarters of trials where women killed partners, BWS evidence was unnecessary since the facts at trial met the traditional definition of confrontation and imminence. However, in the sample of ten New South Wales and Victoria homicides discussed, none of the defendants was retaliating to an immediate threat as defined in male/male interactional terms. In one of the cases in the total sample of 110, a woman was acquitted by proving self-defence. This particular case used Battered Woman Syndrome and is discussed further below. However, in that case, the defendant's actions did conform to the traditional definition of imminence since she was being assaulted at the time of the homicide.

If the defendant's actions do not conform to the traditional criteria of self-defence, the defence has several options: she can plead guilty to manslaughter on the grounds discussed above; she can use BWS to describe how a reasonable battered woman would behave; or she can

plead self-defence, and without BWS evidence attempt to have *reasonable* response be defined more broadly to include what is reasonable for a woman and a battered woman's experiences.

Looking at the judges' comments in the sentencing remarks of the ten battered women who killed, it is difficult to imagine that without education or expert testimony that they could begin to understand how 'Sue's' killing her husband with an axe and a knife while he was asleep could be self-defence. Yet, if Sue's history, personality and homicide were put into the framework of BWS there is strong reason to believe that she would have been acquitted instead of spending five years in prison.

### **Battered Woman Syndrome**

This is a term that refers both to a certain pattern of violence and to the psychological consequences upon the recipient of the violence. BWS is considered to be a sub-type of post-traumatic stress syndrome which has been identified as a consequence of enduring years as a hostage or other high stress environments such as concentration camp internment. The syndrome is the culmination of three stages which can recur in the domestic violent situation (Thyfault 1984; Walker 1989). The first phase of tension building may lead to the second stage of severe bashing which is followed by the third phase, a time period exemplified by the batterer's contrition, promises, and temporary cessation of violence. The latter acts to keep the woman in the relationship believing that the nightmare is over, when in fact, most often it has just begun. The cycle continues with stage two violence increasing in type over time. These stages do not proceed at any set pace and vary over time within a relationship and among different couples.

A psychological condition may develop with the victim acquiring a learned helplessness response to the situation. She becomes convinced that her options are negligible, that the batterer is all powerful, and her repertoire of responses becomes very limited. '. . . learned helplessness explains how people lose the ability to predict whether their natural responses will protect them after they experience inescapable pain in what appear to be random and variable situations' (Walker 1989, p. 36).

Contributing to and resulting from the dynamics of the violent relationship are both the victim's increasing loss of self-esteem and her isolation from others (Douglas 1987). Fear becomes a constant companion. The battered woman lives in a state of terror, constantly vigilant against the ever present but erratic threat of violence. Her situation

is in many ways analogous with that of a political hostage; she is a hostage in the home.

Studies have shown that in cases where the victim ultimately kills her partner, there are factors that differentiate the situation from other batterings which do not result in homicide. First, the cases that end in death more often contain alcohol abuse, death threats, threats with weapons, more severe battering and sexual violence toward the woman and or others in the family (Browne 1987; Ewing 1987; Walker 1989). The actual killing is usually preceded by an unusual incident; something done by the male that is not in his usual repertoire of violence. This often concerns the children in the family; he either threatens their lives, begins to sexually assault one or more of the children, or the wife first learns of the latter. This has been referred to as 'the turning point': 'he never did that before'; something occurs that simply extends beyond the range of what the woman has learned to live with (Blackman 1989; Browne 1987).

#### *As the grounds for self-defence*

Since the woman is terrorised by the man and also usually possesses neither his strength nor the socialisation that provides the personality traits and skills needed for physical combat, she may wait until he is asleep or has passed out. She will tend to use a gun in the US, a knife in Australia although he may never have slashed her, restricting his weapons to his fists, feet, knees and hands. So, how indeed can this be an act of self-defence? Both in the US and Australia, there are three components of the self-defence law that may be problematic for battered women who kill: requirements that the threat was imminent, the responding amount of force equivalent, and the obligation to retreat or try to escape from an attack. The perception of imminence and severity of the assault plus the individual's perception of how much force is requisite to counter it must all be reasonable (Thyfault, Browne & Walker 1987).

Psychologists and lawyers in the US and more recently, Canada, have worked hard to redefine the terms in this definition to fit the actions of a victim of BWS and place the defendant's actions against the norms of a 'reasonable' battered woman, not a reasonable man:

1. (*Reasonable belief in*) *The Immediacy Issue*: Traditionally, in the context of male vs male this has been narrowly defined to mean that the attacker is in the process of attack; the defender is thus in immediate danger and strikes back in self-defence. A real man does not sneak but calls his antagonist out for a fair fight. However, one must remember that the definition states 'reasonably believes that one is in immediate danger'.

Two landmark cases in the US did not involve battered women but were relevant to the issue of differing concepts of reasonable. In *State v. Wanrow*, the Washington Supreme Court ruled that the accused who had been on crutches had committed the killing in self-defence when the deceased, a known child molester with a history of violence, entered her home. The court stated 'It is clear that the jury is entitled to consider all of the circumstances surrounding the incident in determining whether the defendant had reasonable grounds to believe grievous bodily harm was about to be inflicted' (Eber 1981, p. 921). In *State v. Garcia* (1977) the defendant had been physically and sexually assaulted by two men who threatened to return. Garcia went home, got a gun, found them and killed. In her second trial she was acquitted on the grounds of self-defence (Thyfaut, Browne & Walker 1987).

It has since been argued successfully in US courts that the victim of BWS who kills during a lull in her partner's violence—even whilst he is asleep—may be seen to believe that she is in immediate danger (Blackman 1989, pp. 184-6). This is only true if one defines the reasonable perception as based on the reasonable perception of a battered woman and not the reasonable perception of a white middle-class male. BWS theory suggests that the woman is living in a constant state of terror convinced that one day her partner will kill her. In this state, the immediacy of danger is a constant (Eber 1981). It must be remembered that the women in these cases are not alleging that because they are battered that they have the right to kill, but that because of the 'history of violence in the relationship' they become 'sensitive to cues from the batterer' that generate a feeling or belief of imminent danger (Thyfaut, Bennett & Hirschhorn 1987, p. 59). Thus, the Supreme Court of Canada recently held in *Lavallee v. R* that gender can be relevant to reasonableness and that the need for imminent danger in the traditional sense does not have to be present to prove self-defence (Martinson et al. 1991).

2. *Reasonable amount of force: Wanrow*, the case above, also dealt with the issue of whether a woman can use a weapon to defend herself if the male is not armed. That particular court recognised that to fight equally with a man, a woman may need to use a weapon. The idea of equal force being defined the same for a woman/man conflict and a male/male conflict is quite ludicrous given not only the physical differences but also the gender differentiation in socialisation that is commonplace. When considering BWS victims, one must also remember that most of these women have endured long-term punching, throwing, choking and kicking. Their partners' hands, fists and feet have in fact been dangerous and

potentially lethal weapons. Yet, until recently in North America and in Australia, case law has not been interpreted to include the danger of these body weapons as grievous enough or as a serious enough threat to permit self-defence with a non-body weapon (Gillespie 1989). Juries and judges (as shown in the case sample), without understanding BWS and the dynamics of battering, see a gun or a knife as excessive force in relation to the batterer's violence. Looking at proportionality of response in BWS killings involves a comprehension of the terror and the history involved.

3. *Use of such force necessary or 'Why didn't she just leave?':* BWS evidence, if allowed in the court, helps to explain to the jury why a reasonable battered woman does not leave. Not that she was a masochist, but that as a victim of the syndrome, for a multiplicity of reasons, she has become incapable of such action. Aside from the psychological constraints, she may have practical problems such as where to go, and a fear of retaliation which may be justifiable as illustrated in numerous of the homicides described throughout these pages.

#### *The use of expert witnesses*

Without the expert witness, it is difficult for the jury to consider the battered women's actions as self-defence since the knowledge of what is reasonable for a BWS victim has been found both through survey research and by courts in the US as beyond the ken or the understanding of the average juror (Kromsky & Cutler 1989). *Ibn-Tamas v. United States*, Washington DC Court of Appeals 1979, was the first court to hold that expert testimony about BWS was worthy of consideration in a case where a woman had killed her husband (Buda & Butler 1984-85). Numerous other courts have made similar rulings that have permitted the BWS expert's evidence (for a list of US cases, see Walus-Wigle & Meloy 1988).

Without expert witnesses, the judiciary, as shown in the sample of Victorian and New South Wales cases above, seemed to lack an understanding of spousal assault and the reasons why women remain in a violent relationship. In the homicides involving Aboriginal people the judges explained the defendants' continuous presence in the violent relationship as an aspect of Aboriginal culture and folk ways, and certainly not as a by-product of the complexities of spouse assault. Thus in case number 58, the judge reported that, 'It is a sad thing to read that the prisoner's reason for not leaving him before was that he was the only person she had in her life and when he was sober he was good to her.'

The lack of general comprehension of the gravity and criminality of domestic violence was also apparent in numerous cases when the judges made comments about the inappropriateness of homicide as a remedy to *marital difficulties*:

Case number 58 Hans and Hilde: 'It has been stated time and time again that the killing by one spouse of the other is never a justifiable solution to the *problems of a marriage (except where self-defence is a factor)* and that the court cannot look leniently upon such situations.'

The 'problems of a marriage' according to other sections of the remarks involved Hans' extreme jealousy, possessiveness, his threatening her with sharp instruments that he kept under the pillow, and much physical abuse.

Case number 94 (Pamela and Sam): 'What has been made clear in all of them [prior cases] is that matrimonial discord, even violent discord such as was exhibited regularly in the present case, *can never be an excuse for the victim to take the life of the aggressor.*'

In other sections, the judge indicated his knowledge of the extent of that abuse which could involve assault as often as three to four times a day. On the night that she killed him, earlier he 'grabbed her by the throat with his hand and he punched her in the head.'

In case number 96:

It has been made very clear by the courts that the taking of a human life, even within the context of domestic violence, will not be viewed with leniency. *Not even extreme domestic discord* can ever be an excuse for the victim to take the law into her own hands and to extinguish the life of the aggressor.

In case number 97 which involved incest and physical violence, the same trivialising of such violence is iterated by the judge:

Human life is a precious thing . . . It is important that members of the public should feel assured that the courts regard homicide as a very serious crime thereby hopefully deterring some people from even considering such a course. I appreciate that the *emotions that are involved in domestic disputes* are not amenable to logic or to a calm consideration of possible penalties.

In this instance, the 'domestic dispute' which unfortunately was not amenable to logic was the rape of a fifteen-year-old by her father and her molestation by him two years later. After the latter incident, she told her mother who then confronted her husband. He consequently became violent and threatened both his wife and step-daughter with violence if they

pursued in their accusation or if they tried to leave him. The sentencing remarks described the dead man's violence which included his getting out his gun frequently to clean it and making threats to use it. The judge explained that he could understand the defendants' fear and thus their continued residence in the house. Both the mother and her daughter received a bottom sentence of thirteen months.

In case number 50 (Sue and Don), the judge enumerated some of the abuse that Sue endured:

. . . he treated her and the children in similar fashion, regularly belittling them, describing her as stupid and cuffing her over the head. On occasions there were more serious assaults, leaving the prisoner with bruises which were obvious to friends and associates.

He continued,

The deceased often made her sit in the cupboard and repeatedly directed her to sit on the bathroom floor whilst he had a bath. There he questioned her over various matters and if displeased with the answers splashed her with water. There were other punishments, such as being made to stand in the cupboard and being instructed to look in the mirror and to listen while he made belittling remarks about her appearance . . . There was therefore clear evidence of cumulative provocation in the face of prolonged physical and emotional abuse and of immediate provocation arising out of the events of the night before the killing during which she was struck over the head, abused locked in a cupboard . . . urinated upon . . .

However:

The taking of human life is the most serious of all crimes . . . on the other hand it is quite impossible to overlook the extreme violence inflicted and the fact that both an axe and knife were used on the deceased while he was lying in bed.

Sue received a minimum of five years. One final note on the sentencing remarks: any time that a judge mentioned the concept of reasonable behaviour it was done in the context of what an average person would have done and not how a battered woman might behave reasonably. This points to the need for a broadening of the interpretation of reasonable which seems (perhaps unfortunately but realistically) to require expert witnesses.

*The appearance of BWS in Australian courts*

Until mid-1991, there is no record of the mention of BWS in Australian courts. Then, in *Runjanjik v. The Queen* (*The Queen v. Runjanjik, The Queen v. Kontinnen*, CCA (SA) King C.J., Legoe and Bollen J.J. CCA 226 and 227 of 1991, unreported) an appeals judge ruled that the defendants should be retried on the charges of false imprisonment and causing grievous bodily harm since the trial judge had not permitted the admission of expert evidence on BWS. The defence were trying to show that long term battering had affected the defendants' ability to act freely; that they had been under duress. The Crown Prosecutor's address to the jury in that trial illustrated how the Crown could imply, assert, and rebut the concept of duress by using an objective standard which excludes BWS in the absence of expert testimony to the contrary.

In April 1992 BWS was used in a New South Wales case (*Regina v. Hickey*, Unreported, NSW Sup.C, April 1992) and in a South Australia murder trial (*The Queen v. Kontinnen*, unreported, SA Sup.C April 1992). In both instances, the defendant was acquitted. In Sydney, a psychologist appeared for Cynthia Hickey to explain why she had not been able to leave the violent relationship. Ms Hickey had been involved with the victim for several years and had been beaten frequently during the course of their relationship. The killing took place during the course of a physical fight; she had been thrown on the bed and head butted. The circumstances in this homicide were more identifiable as self-defence in the traditional terms of immediacy. BWS testimony was not needed to redefine immediacy but to explain why she had no other recourse but to kill.

In *The Queen v. Kontinnen* however, the victim, Hill was asleep at the time the defendant shot him. The defence presented extensive evidence concerning the severity of physical, sexual and mental abuse which Hill had inflicted upon Kontinnen. The details provided depicted an existence for Kontinnen and Olga Runjanjik (Hill's de facto) that was beyond being a nightmare. The violence was shown through witnesses to have increased in type and frequency over time and had begun to involve the child of the 'family'.

Two clinical psychologists examined Erika Kontinnen, the defendant, pre-trial, and testified about BWS and the effects of the syndrome upon her. These included why she was unable to leave Hill and how the threat of danger was imminent to her, as a reasonable battered woman. Hill had calmly announced that he was going to kill the two women and Olga's son when he woke up; perhaps this was the turning point. Similar to many overseas cases discussed in the literature, Kontinnen did not remember shooting him. Fear of his retaliation, plummeting self-esteem, and

dependence kept her from leaving as explained in detail by the experts. The cycle of violence, post-traumatic stress disorder, and learned helplessness were also described both theoretically and specifically in reference to the defendant.

Kontinnen was acquitted. The jury, through expert evidence, apparently became convinced that, for her, the danger was imminent and that the homicide was committed in self-defence. Whether this outcome was the result of BWS testimony or due to the extreme nature of the violence which the defendant had endured, cannot be assessed except through time and the continued use of BWS in the courts.

### **The Time Gap in Australia**

Why has BWS been used in the US since 1979 and has only recently made its first appearance in an Australian court? Scutt (1983, p.184) states:

The interpretation of the law is significant and must be seen in context. Judges interpret the laws. Lawyers fight the cases for judicial decisions. Judges and lawyers until the early twentieth century, have all been men, and even now proportionately few women practise as solicitors or barristers. Men dominate the profession, so laws are interpreted with men, not women, in mind. This is nowhere more clear than in cases of murder.

Further, the courts undoubtedly act as mirrors for the values about women and battering that are held by a proportion of the general Australian population. However, patriarchal judiciaries and conservative public attitudes are not the monopoly of Australia. There must be additional factors in this country that retard the advent of grounds such as BWS. The first obstacle may in fact be simple ignorance or an unawareness that such grounds for self-defence have been used successfully. Second, the defendant may not be willing to expose the violence of her deceased spouse to the public. Still 'in love' she may desire the protection of his character more than her own future. Third, there is concern about the need for expert witnesses, particularly in relationship to testifying about a syndrome. The reluctance to allow the expert witnesses' testimony that would be a necessary component of showing exactly what is reasonable behaviour for a battered woman may stem from the Australian courts' adherence to the common knowledge rule and the ultimate issue rule; these both promote the inadmissibility of expert testimony. The common knowledge rule states that experts are not

permitted to present testimony about subjects which are already fully understood by the layperson; the latter rule dictates that experts may not provide their opinion on the ultimate issue, the guilt or innocence of the defendant. Lastly, there is concern among some feminists that syndromes medicalise women's experiences and are too narrow to be used by all battered women.

### **If BWS had been available to the Ten Defendants**

Paradoxically, if BWS had been available for the women, those who received the harshest sentences might have been treated more leniently or even acquitted. The rationale behind that statement is the following: battered women who kill after surviving extended violence may not show any remorse. If their action was indeed to defend themselves from danger and possible death, the type of regret would, one might expect, be different from that experienced by someone who kills without intent. On the latter point, the battered woman who kills to save herself and/or her children will have the intent to kill. In the preceding cases this was a variable that worked against her in the judgment.

'Sue' was sanctioned for the degree of violence which Sue used to kill 'Don'. As discussed above in proportionality of response, it is fairly absurd to expect a woman who has been dominated and disempowered by her male partner to confront him physically 'at high noon' on the main street of town to a duel. If she did so, her own life would be in extreme jeopardy. It is ironic that although the judge was adversely affected by her use of an axe and a knife, the severe abuse which she had received did not appear to influence his sentencing decision. This was just one example of where domestic violence was trivialised and was referred to in terms such as marital difficulties.

'Hilde' in case number 58 was another battered woman whose history and severity of violence would qualify her as a likely candidate for self-defence if her killing was reinterpreted in the terms of a reasonable battered woman. In fact all of the ten cases could have been argued as self-defence with redefinition of reasonable behaviour. However, as the judge in case number 97 stated when considering the defendant's stabbing of her batterer spouse:

. . . There is a slight suggestion of self-defence (a very slight suggestion indeed)- but hardly such as to have provided any *reasonable grounds* for a belief that it was necessary for the prisoner to plunge a knife into the deceased's chest in the vicinity of his heart . . . but nothing which could have induced an *ordinary person*

in the position of the prisoner to have so far lost her self-control as to have formed the requisite intent to kill.

It is obvious that the judge was using the terms 'reasonable grounds', 'ordinary person' with their conventional meaning—the male view. 'Pamela' had been subjected to increasingly violent and aggressive behaviour. She had been assaulted earlier that evening and possibly immediately preceding the death. Enough information was not present in the sentencing remarks or case material to make an assessment of the defendant; however there is strong indication that if ordinary and reasonable were redefined to fit the battered woman, she would have had an opportunity for acquittal.

If 'Sue' had been examined for the critical effects of living in long-term battering, there is little doubt that she would have conformed to the personality traits which have been described for battered women- eg. high dependency and marked low self-esteem. Her actions could have been translated into the language of self-defence through the experience of the 'reasonable' battered woman instead of being placed in the context of what a reasonable white middle class male perceives as imminent danger and commensurate retaliation.

For those who do not subscribe to BWS and are concerned about the medicalising of women's experiences, the need for expert witnesses, the cycle of violence, and the narrowness of the definition which might exclude some battered women, it should be clear from the sentencing remarks that as it stands there seems to be a failure in the judiciary's understanding of the dynamics of battering and in their acceptance of domestic violence as criminal assault. As described earlier, knowledge about battered women and the syndrome has been found to be beyond the comprehension of the average person in the US. Without experts, jurors (and judges) are left with their own preconceived notions of reasonable behaviour for a battered woman. Thus, the objective standard is meaningless if the jury is not equipped to understand what are indeed reasonable actions for a woman who has experienced long term battering. Although BWS is not a panacea, it has, at the least, provided a precedent for broadening the interpretation both of reasonable and of self-defence.



## **Sentencing Men: the Discretion of the Court**

**D**iscretion takes place at several levels of the criminal justice system: whether to allow the prisoner to plead guilty to manslaughter is in the hands of the Crown Prosecutor; then, if found guilty, the sentence by the judge on the manslaughter finding can fall within a large range. Depending on the jurisdiction, the judge also determines the sentence with a murder disposition. The facts are interpreted and a decision made about whether there are sufficient grounds to merit mitigation from a life sentence.

This chapter will summarise the remarks which judges made at the time of sentencing the males who killed their (ex)partners; lengthy statements which generally enumerate the more negative aspects of the defendant and/or the manner of killing and any positive mitigating factors. As will become clear, there does not always seem to be a clear-cut relationship between these variables and the number of years bestowed. Or, to put it differently, the same variables do not seem to produce either the same sentence or even the same finding, murder or manslaughter. In each case an attempt has been made to mention all of the variables provided by the judge.

Discretion may also take place at the Appellate level. Unfortunately, it was not possible to follow the cases through an appeal if one was lodged. Therefore, the following sentences should be seen as provisional since they may have been reduced by an appeal court.

### **Guilty of Murder**

In the following twenty cases, the perpetrators either pleaded guilty to murder or were found guilty of murder.

## Victoria

*Project case number 4:* The defendant was convicted of murdering his wife. Two months before the killing, his wife left him taking their one child with her. The judge stated that, 'You were not prepared to accept the separation and you went to a great deal of trouble to track down your wife'. In addition one month before the shooting, the defendant arranged to have the police confiscate two rifles from his house since he was afraid that he might shoot himself or someone else; they took the guns.

The judge commented on premeditation: 'It is significant that on the morning in question you visited your brother . . . and you told him that you had come to say goodbye. You said, '. . . have been given no other choice. I have got to do it, I have got to do it'.

The defendant went to see his wife who reiterated that she would not return to him and then he shot her in the back. The judge stated that it was his belief that he had intended to kill her if he did not get his way but, '. . . at the same time, I accept that the shootings were not deliberately preplanned, and in that sense premeditated . . . '

In the prisoner's favour the judge mentioned his age and his previous good character; the fact that he worked hard in his occupation and was 'strongly devoted' to his family 'even if that devotion was almost obsessively possessive and over-demanding'. Also that he 'had shown genuine remorse'.

On the negative, 'It needs to be said that your wife's conduct, even on your own account, could not be described as significantly provocative'. He received ten and a half years minimum; it should be noted that in Victorian law concerning murder there are no remissions. The entire 'bottom' sentence must be served.

Some interesting concepts emerge from these remarks, for example, what does premeditated actually mean? What sort of behaviour by the estranged wife would have been considered provocative? There is also some irony in an individual who killed a member of his family having his sentence mitigated due to his devotion to his family.

*Project case number 16* (Francesca and Fausto): Fausto had been found guilty of murder. The judge mentioned that both the deceased and the defendant were immigrants to Australia; it was not clear whether this fact was a positive, negative or neutral variable in the judge's consideration.

Similar to the previous case, the wife had left seventeen months before and had filed for divorce. The hearing would have been that day. He entered his wife's house; they had a struggle which culminated in him

shooting her twice. When asked why he had killed her, Fausto said, 'She wanted a divorce'.

On the positive side, the judge accepted evidence of the prisoner's state of depression caused by back injury and the breakdown of his marriage. And the judge added that, 'You felt shamed by your wife's conduct with another man. I accept that *you hold family stability in high regard* and that you had a genuine desire to see that your children were well provided for'.

Further, reference was made to the defendant's suffering remorse, not only for killing but from the fact that his children knew that he murdered her. 'All those matters and your previous good record go in mitigation and call for a sentence much less severe than the maximum of life imprisonment'.

However, the most negative facet to the killing was the judge's assessment that it was premeditated. Therefore although there were more mitigating factors in this case, the defendant received almost the same sentence as the defendant in the last case, twelve years.

Although once again this was a premeditated murder, the principal mitigator, reading between the lines, was the judge's acceptance that an estranged wife's 'infidelity' seventeen months after separation could cause some righteous indignation and depression of the estranged husband. The defendant's sense of shame about the killing appeared to play a dominant role in the judge's deliberations.

*Project case number 5* (Barry and Ellen): Barry was found guilty of murder. The judge described the homicide:

. . . you manually strangled the deceased and then struck her repeatedly with heavy blows to the head and neck. It is apparent that you became enraged and carried out an attack of the utmost violence upon the young woman. The evidence made it clear that prior to the killing you had developed a possessive, jealous attitude in relation to her . . . It is likely that the killing was brought about by some indication by the deceased that the association was at an end.

Thus, as in the preceding cases, the principal motive of the defendant appeared to be jealousy and an inability to accept the end of a relationship. Barry, however, was more violent in the act of killing than the prior two killers. Also, he had been warned, according to the judge, in a court appearance shortly before the killing on charges for inflicting injury upon another woman.

Unlike the other two homicides thus far, alcohol was mentioned by the judge, presumably as a mitigator: 'It is doubtless true that you had a great deal to drink and were in a highly emotional state . . . there was nothing

cold-blooded or premeditated about the killing'. The judge also reiterated the psychologist's perspective that there was an obsessive compulsive side to the prisoner's personality. And his youthful age was taken into mitigation.

Barry received a bottom sentence similar to the first two offenders, eleven years.

It is interesting that the three defendants received very similar sentences for quite different homicides. The amount of violence in the preceding case was apparently balanced in the judge's perception by the lack of premeditation. An extremely violent act, as opposed to a more cold blooded execution type of murder, would seem to merit the same length of sentence since the former is seen as evidence of lost control.

*Project case number 18* (Sonya and Ali): Ali pleaded guilty to murder. According to the sentencing remarks, he had shot his wife in the chest and then five or six times in the head. The fact that they were immigrants was mentioned early in the remarks along with background such as the fact that the marriage had been arranged and that it was not a happy one. As early as six years before, Ali, according to the judge, had begun to assault Sonya with consequent injuries that necessitated medical treatment on occasion. This stemmed from his unfounded belief that she was playing around. The judge summarised the prisoner's motive as 'delusional jealousy'.

The mitigating factors enumerated included: saving the Crown the expense of a trial which also saved the deceased's family the anguish and trauma of a trial; the remorse that he had demonstrated by suicide attempts since the murder took place; no prior criminal history; and . . . 'the undisputed medical evidence is that at the time you killed your wife you were suffering a recognised mental illness'. The latter, according to the judge, meant that little weight needed to be given to general deterrence.

The judge also made some comments about domestic violence stressing that it was no less a category of violence than non-domestic violence. However, he described why women stayed in violent homes only in terms of economic dependency, embarrassment and fear.

Ali received a minimum sentence of fourteen years.

This is the first case thus far in which a lengthy history of wife battering was noted. That fact appeared to bear some weight on the judge's sentencing since Ali received a slightly heavier sentence than the defendants in the prior cases.

*Project case number 39*: The defendant pleaded guilty to murder. The judge stated that the relationship had deteriorated with increasing

arguments. The accused had suspicions that his wife was unfaithful and she accused him of doing the same; according to the judge, she had been right.

The night of the killing she went to sleep on the couch. 'You apparently sat there, then went to another room. You obtained a firearm, you loaded it, and ultimately came in and shot your wife in the head while she was asleep'.

The positive mitigators enumerated by the judge included no prior convictions and strong evidence that the defendant was a quiet and non-violent person; a good work record and a managerial position; a person with a rigid obsessive personality which was perhaps the result of his background and loss of father.

The psychologist's view reiterated by the judge was that the accused had internalised strong emotions about possible loss of custody of his daughter with a 'pressure cooker effect'.

His age was also listed as a positive variable: 'You are 37 years old with a young daughter and good family and friend's support. 'You have been of good character and *you have a future ahead of you*'.

Additionally, the sentence was reduced since he had pleaded guilty: eleven and a half years (he had already spent eighteen months in custody).

It seems ironic that a premeditated murder by a man whom the judge believed to have been unfaithful ends up with a similar sentence to the other defendants with the principal mitigator being his non-violent history. One might say that his non-violent past was nullified by the act of killing in cold blood.

*Project case number 6:* The defendant had held a rifle to sleeping wife's head and killed her. He was found guilty of murder.

The judge noted that a substantial amount of alcohol had been consumed. However, he added that there had been no explanation for the homicide offered. 'Although your wife and yourself had experienced some matrimonial difficulties there is no suggestion in the evidence that they had assumed major proportions, at least on the surface'.

His wife had failed to conceive a child and he blamed her weight problem for that.

No psychiatric illness was apparent. And the killing was deliberate and 'with the intention of bringing about her death'. ('That is an extremely serious matter indeed'.)

The positive factors: he had been in general terms a person of stable behaviour with a history of continuous employment and only a relatively minor involvement with the criminal law.

Further, the judge accepted that the motivation was unknown even to the defendant. His background had led to the alcohol problem. Eleven and a half years.

This is the first case where the accused's drinking problem appeared to work strongly in his favour. It must have played an important role since no other variable was mentioned. Given the judge's acknowledgment that this was a premeditated murder, the sentence seems surprisingly lenient and surprisingly similar to the other cases which involved pages of mitigating variables.

*Project case number 8* (Matthew and Karen): Matthew was found guilty of murdering his wife after a very lengthy trial. The judge summarised that the jury had not accepted Matt's story about intruders and had accepted the Crown's case that he had shot Karen point blank while she slept.

The most negative variable stressed in the remarks was Matt's adherence to the 'concocted story'. Thus, the judge discounted remorse or contrition as a mitigator since 'the prisoner continued to deny the truth'. The deceptions that he practised were 'an evil mind and a continuing wicked capacity to obscure that evilness from justice'.

It was further stressed that the killing had been premeditated with all aspects planned including hiding the gun. 'You came to this crime with a degree of foreknowledge a degree of thought and perspicacity which are the hallmarks in this case of an evil man'. The fact that the defendant had shot his dog [in order to create a scenario of a stranger killing] was mentioned as evidence of this evil.

The judge also highlighted the fact that the deceased was 'a useful life': his wife was plainly an accomplished person who 'combined successfully the dual roles of mother and career': 'The life you cut short in this case was not of a person of no significance'. [Does this imply that some women are insignificant?]

Additionally,

It is not possible in the evidence to discern any material which points to waspishness, difficult behaviour on behalf of the deceased woman, that she was vengeful, nagging or difficult to live with in any way.

Thus according to the judge, there had been no provocation by the deceased. Further, a prior conviction for fraud was noted as showing 'a preparedness on your part to lie and to manipulate the truth for personal gain'. And the death of the unborn child was considered as an aggravating factor.

On the positive side, the judge stated that the accused was a man of better than average intelligence with a good career and a high standard of living. Plus he had been a good father. And 'I take into account your resilience as a man, being able to maintain your practice in a country town where the rumours must have been extravagant and possibly malicious'.

Other redeeming features concerned the method of killing:

Your wife was not tortured. She did not apparently suffer pain . . . And the redeeming feature I am prepared to take into account is that she probably did not see you shoot her. She probably did not suffer the added terror of realising that she was about to be shot to death by her own husband in the family bed in her own home.

Although the judge also noted that Matthew had only one prior conviction, he concluded that the killing in this case fell within the class of an execution: fifteen years.

The implication in the judge's comments about the virtue of the deceased woman is that if she was a nag or had not kept the house clean or worked at a worthwhile occupation, the killing would have been more justifiable. To mete out a sentence based upon the quality of the life destroyed as measured subjectively by a judge is not a just action.

It is interesting that although this homicide was described as an execution and did not include any of the mitigators found in the previous cases such as pleading guilty, remorse, or a motive. Yet, the defendant's sentence was only a few years longer than the others.

*Project case number 34:* Appeal against a 14-year minimum imposed by a trial judge on a male who had been found guilty of murdering his ex-girl friend.

The judge raised the following facts about the case in his sentencing remarks:

- that the accused had tried to strangle the victim before and that she had complained to the police but no charges had been laid; this had taken place one month before the killing;
- that the defendant had hidden in her bedroom closet and had stabbed her fifty-two times. 'It is plain from that account of the circumstances in which the offence came to be committed that the applicant was grossly emotionally unstable with a history of violence toward women'. In fact, he had a prior offence for false imprisonment only fifteen months before involving another young

woman with whom he had a relationship. She had also been threatened with a knife.

The judge concluded that the defendant's mental state could not have provided him with a defence to the crime which was a premeditated act.

The sentence had been reduced since the defendant had pleaded guilty, thus saving the tax payers money. During the appeal it was argued that there was not enough space between the top and the bottom sentences; that a longer period on release and rehabilitation with the supervision of parole was needed. The judge agreed with the appeal grounds and reduced the minimum of fourteen years to twelve with four years parole.

*Project case number 41* (Joanne and Nick): The jury found Nick guilty of murder; he had stabbed his de facto five times.

Nick claimed to have consumed vodka, Serepax and Valium in a suicide attempt since he had so much remorse about the killing. However, according to the judge, the jury's verdict reflected that they were not persuaded that there was a reasonable doubt that you acted voluntarily and with the requisite intent'.

He was an alcoholic and resented his wife's nagging him about his drinking: 'It's paradoxical that the nagging of the deceased, which was motivated by her wanting to improve your quality of life, was to prove so counter-productive, as the nagging only served to provoke more anti-social behaviour on your part'.

Prior convictions also reflected Nick's problem with alcohol. The judge reiterated the findings of a 1991 Appeal decision of the court in *Redenbach* (unreported, 22 February 1991) that if an individual's condition at the time of criminal conduct was affected by the self-induced consumption of drink, that consideration was not generally to be regarded as mitigating the offence, for in most cases the offender should be regarded as morally responsible for his condition at the time of the offence.

However an alcoholic, and particularly one suffering a fit of depression, was to be seen as different from an individual who used alcohol to summon up some 'dutch courage'. The judge felt that was an appropriate distinction and ought to be applied in the circumstances.

'Even after allowing for the alcoholism and the depression and the nagging, I cannot lose sight of the fact that you killed a mother in the presence of her two young sons': eleven years.

The judge's adherence to a view of the role of alcohol as differentiated by whether the drinker consumed alcohol voluntarily or by compulsion

(the alcoholic) is somewhat problematic. First, is a judge trained or equipped to make such a determination? Second, the premise itself could be construed as fallacious since if the effects of alcohol are the same for both the alcoholic and the non-alcoholic—drunkenness—it would seem that one either accepts drunkenness as a mitigator or one does not. This trial judge's decision making was at least in part made in reference to another court's decision which he chose to use as a precedent. Any criticism must therefore take into account the earlier Appeal case.

*Project case number 40* (Eliza and Brad): Brad had been found guilty of murder by a jury. The judge outlined a history of intoxication and arguments with prior domestic violence. The judge was satisfied that on these occasions Brad was the aggressor.

On the night in question both had been drinking heavily. Eliza's dying declarations were that he had thrown fuel on her and ignited it. He claimed to have no memory of it. She stood calling for help and he did nothing.

'In the light of this evidence I am satisfied that the jury did not accept your protestation in your unsworn evidence that you did not intend to kill your wife or intended at the very least to occasion her really serious bodily harm'. The judge further stressed that, 'The pain and suffering occasioned to her up until the time that her nerve endings were destroyed, must have been excruciating'.

In the defendant's favour, the judge discussed the role of alcohol:

There is no doubt, in my view, that your intoxicated state was a factor in your embarking upon the activities which led to your wife's death. Whilst that may explain your conduct, it can, in my view, only marginally excuse it, particularly where your drunkenness was self-induced against a background where, to your knowledge, intoxication frequently led to domestic conflict.

Other mitigating factors included Brad's remorse and the fact that, 'from an early stage in this investigation, you have acknowledged your responsibility for the actions'.

In addition,

You are the oldest of nine children, and you come from a family of respectable, hard-working people. Essentially therefore you have been in employment throughout your working life and provided support for the two families with whom you have been associated.

... given your age (forty-three), I should not impose upon you a sentence so crushing that it would prevent you ever making a new life for yourself upon release from prison.

This judge seemed to have a different view of alcoholic drinking than the previous one, perhaps unfortunately for Brad. His drinking, in the light of knowing how he became aggressive after he drank, was perceived as within his control although he had a history of alcoholism: twelve and a half year minimum.

Two other observations: The judge commended Brad for admitting his guilt early in the proceedings. Given the fact that the victim did not die immediately and had made a lengthy statement to the police which incriminated the accused, his acknowledgment of responsibility was not surprising. Further, the idea of not imposing a sentence 'so crushing that it would prevent' him from starting a new life seems to minimise the fact that Eliza's life had been ended.

### *New South Wales*

In the first six cases below, New South Wales judges may appear to be harsher since some life sentences were handed down in the sample from that state. However, until January 1990 a life sentence in murder cases was mandatory unless the judge found that culpability was diminished. That was the old life sentence when, after eight years, the prisoner could apply for a determinant sentence to then be imposed. In addition, only the first six received these 'quasi' life sentences.

*Project case number 110:* The defendant had been found guilty by a jury of murdering his estranged wife.

For the six months prior to the killing, he had been subject to a domestic violence order restraining him from approaching either his wife or his five-year-old daughter. On the day of the murder he was masked and hid in their apartment building. He threw petrol over the victim and struck a match; all this in front of his daughter, according to the judge's comments.

The remarks conclude that the defendant had continued to deny his guilt to what was a callous, planned and appalling murder: life.

*Project case number 100:* Two were indicted; one was the husband who had allegedly paid a hitman to kill his wife.

A three-month trial had resulted in a finding of guilty. The judge noted that he had received no information or evidence that would diminish by mitigating circumstances the blameworthiness of the husband. He did state that the defendant had been born in Australia, the child of Yugoslavians of the Croatian race, that he had no criminal record and was a man of standing in the commercial world: life.

*Project case number 107:* The jury found the defendant guilty of murdering his estranged wife. The judge outlined the defendant's marriage breakup; his depression; and the passionate nature of the crime and the circumstance that it was neither quite premeditated nor spontaneous.

The murder was 'a deed of exceptional violence'. The victim had been beaten to death with a brick. The defendant suggested that he was acting in self-defence and that his wife had been unfaithful. He blackened her to the jury which the judge referred to as; 'your calumny [that] degrades you as does your cowardice'.

Plus, according to the judge, in a convoluted way, the defendant, of overseas birth, had made reference to his cultural and religious adherence and claimed that his father-in-law did not make him welcome.

How that touches upon considerations concerning the murder of his daughter is not apparent to me. Indeed, if there is one relevant cultural matter it is that you have wholeheartedly embraced the subjectivism which permeates contemporary Western society. As the Crown Prosecutor eloquently put it your attitude is me, me, me . . . I do not perceive a flicker of contrition or of remorse': life.

*Project case number 82:* The defendant had been found guilty of murdering his wife. He had set their caravan on fire but claimed that he had no memory of it. He raised diminished responsibility on the ground that chronic alcoholism had resulted in brain damage. The jury rejected it.

The judge explained that culpability for the purpose of s[ection] 19 meant 'blameworthiness' as distinct from deserving of punishment and went on to reject alcohol as reducing culpability since he was not convinced that the defendant was significantly affected. The judge also rejected brain damage since one of the doctors/witnesses had done so.

The fact that the defendant pulled his wife out of the fire and his expression of regret, events after the crime, could be material for the purposes of considering whether relevant mitigating circumstances existed. But in this situation the judge did not believe that they did since a quarrel had preceded the fire: life.

*Project case study number 65 (Julie and Brett):* The jury convicted Brett of murder. The judge looked at two factors which had been proposed as reducing Brett's culpability. The fact that he had been diagnosed as suffering from reactive depression for a lengthy period and that he shot himself afterwards. The judge did not find that either of these acted to lessen his responsibility.

Reiterating that Brett had prepared for the killing, the judge further stated 'that your wicked act was essentially the petulant act of a self-centred, spoiled and jealous rejected lover': life.

*Project case number 73:* Found guilty of murder by a jury, this accused had defended himself. He had been in an existing de facto relationship with the victim.

The judge reiterated the accused's defence that he and the victim had both had some drinks and 'she got stuck into me'. His defence was that he was in a state of automatism and was therefore incapable of the intent to commit the crime due to his intake of liquor and medication. In addition, he had tried to kill himself which was a sign of remorse and he had made admissions to the police.

On the negative side, the victim had been brutally beaten and stabbed.

The judge stated that 'it does seem fair to say that the accused over a period of years has been addicted to liquor and become tolerant to it'. He further noted that the defendant was an invalid pensioner due to a bad back. But for one indiscretion a long time before, he could, according to the judge, be regarded as a man of good character.

However, the judge did not accept that liquor or pain had reduced the prisoner's culpability particularly since the arresting police felt that he had been only slightly affected by alcohol: life.

In two of these judgments from New South Wales, the role of alcohol was discussed in the sentencing remarks and both times, it was seen as either not excusing the killing or as being an insufficient quantity to affect the behaviour. From this small sample of murder cases, there would seem to be a difference in how the judiciary of the two states views the role of alcohol in mitigation, at least in the cases of murder. The murder cases which did not culminate in life sentences will now be reviewed to see if the same pattern is evident.

*Project case number 70:* The accused had been found guilty by a jury. He had gone to the victim's house; raped her and then killed her. The judge, at length, discussed the need for a mandatory life sentence unless mitigating circumstances were found. He looked at whether the conduct of the deceased was such 'as could have induced an ordinary person in the position of the accused to have so far lost his self-control as to have formed the requisite intent to kill'.

The judge also had to decide if the prisoner's depression significantly mitigated his culpability for his actions. The psychiatrists who testified in the trial had reported that he was in need of medical help prior to the commission of the crime.

The defendant's concerns about his wife's fidelity had developed over time with a concurrent fear that the family would disintegrate; this allegedly generated more depression. He claimed that he received an anonymous phone call 'warning him of his wife's misconduct'. (The lover had testified that he had an affair with her.)

The judge mentioned the defendant's previous good character plus the fact that he did not try to cover up the crime and his acknowledged shame and regret.

I find on the evidence that the diminution was significant': nine years.

In the other cases discussed thus far, a perpetrator's state of depression did not mitigate a life sentence. It would appear that the primary mitigating variable in this situation was the victim's infidelity.

*Project case number 71* (Mark and Joan): A jury had found Mark guilty of murder, an act which the judge noted, 'was a violent and terrible killing'. He had stabbed her twenty-two times and then set her on fire. The judge also stated that the failure of the defendant to plead guilty showed his lack of remorse.

The defence tried to raise intoxication, provocation or diminished responsibility with evidence from two psychologists.

The judge rejected alcohol as reducing Mark's culpability 'because although his inhibitions may have been reduced he has a long history of heavy alcohol intake, and given that history as high a reading as .14 would not necessarily result in a substantial impairment'. However, the judge did note that the defendant had been discharged from the navy for alcohol abuse and financial mismanagement.

Joan had wanted to terminate the relationship and Mark became sexually jealous. They had been de factos for a brief period of time. He also claimed to have no memory of punching the two-year-old in the face, 'a further reflection in my [the judge's] view of the complete loss of control which had overtaken you at that stage'. Thus, according to the judge, the defendant 'had passed the subjective test of provocation but failed the objective test'.

The judge concluded that the killing was an entirely unplanned action, resulting from a total loss of self-control, which in turn was sparked off by a relatively trifling taunt'. This, according to the judge, diminished Mark's culpability: nine years.

A comment on the individual discretion and interpretation of different members of the judiciary. The view of alcohol expressed in the above case is the opposite of that revealed in case number 34 where alcoholism was seen as a potential mitigator in as far as the individual was not drinking out of choice but out of addiction. In the above, the fact that the

defendant was an alcoholic was used against him since the judge believed that his history of abuse would have created a higher tolerance for alcohol. (This, by the way, is not necessarily true since an alcoholic's drinking may be marked by an erratic tolerance.)

It is also worth noting that this case was very similar to another New South Wales case, number 82, in which the defendant received a life sentence. A significant difference between the two may be the 'character' of the deceased. The victim in the last case had terminated the relationship which consequently (allegedly) gave rise to the offender's passionate jealousy. In addition, she allegedly taunted him.

*Project case number 72* (Samantha and Tim): Tim was convicted of murder by a jury. He shot his de facto by placing a rifle under her chin and pulling the trigger. In the defendant's favour, the judge noted that Tim had made no attempt to disguise the killing and had immediately informed the next door neighbours.

The defence of the prisoner was that he was provoked by Samantha's drug addiction. The judge expressed his agreement that the deceased had been heavily addicted to drugs, 'The prisoner said that living with a junkie was hell'. In that context, the defence claimed that the defendant thought she was making a drug deal and 'lost his cool, smashed the phone, slapped her and knocked her out'.

He also claimed that she said that she wanted to die. He was worried that she would suicide and kill their child.

The Crown contended that Samantha's addiction was not provocation. However, the judge stated that the defending barrister had requested that he find culpability to be significantly diminished. The judge had examined the private diary of the deceased and stated that some of his scepticism about Tim's alleged motives had disappeared.

Thus, although when one compared the defendant's different statements 'there are many serious discrepancies' and although 'the victim is unable to tell her side', the judge was prepared to accept that to some extent the defendant had lost control of himself. His culpability was thus diminished. Further, he had a deep love for the victim, had been born in Finland and consequently could not speak English so school had been difficult, and there was some suggestion of cruelty by his father. Alcohol had been a problem too: eight years.

Once again the character of the victim appeared to play a role in the judge's decision making. She had been a drug addict, not a 'virtuous' and 'good' woman. In addition, the defendant's problem with alcohol was mentioned as mitigating the sentence although there was no direct evidence about his drinking and the killing itself.

*Project case number 63:* A jury had found the accused guilty of murder. The judge enumerated some traits which he believed to mitigate the defendant's culpability for the homicide: brain damage, consumption of alcohol to excess, and no prior convictions that involved violence.

The victim's parents had objected to her relationship with the defendant which resulted in its termination.

On the day he killed her, he had been consuming alcohol excessively. He broke into the house where she lived with her parents; she went outside with him and he stabbed her twenty-three times.

Although the judge stressed that there were two knife wounds inflicted in the immediate vicinity of her private parts which he felt showed an attitude of, 'if I can't have her, no one else can,' the fact that throughout his life, the prisoner had suffered from a personality disorder was accepted as the basis of diminishing his culpability: fifteen years.

### **Manslaughter: Provocation**

In the following cases, the defendants either were allowed to plead guilty to manslaughter or they were found guilty of that reduced charge. Why is the manslaughter plea permitted for this group of offenders and not for the preceding group? Are there differentiating variables or is it simply the result of the discretion which permeates the criminal justice system?

*Project case number 25 (Fred and Maria):* Fred pleaded guilty to manslaughter. The judge's remarks looked at how Fred had gone to the Philippines to get a bride. The judge stated that Maria, according to Fred, was more interested in getting money and passports for her family than in a real commitment to the marriage.

The judge also noted that Fred was a somewhat unsophisticated person who had believed he could find a wife in that fashion and that he had no reason to doubt that Fred had tried his best to make the marriage work. The divorce had resulted in Fred getting custody of the child.

'You were obviously frustrated and angry at the failure of your relationship'. At the same time Fred wanted his wife back. Maria was in another relationship which 'she was perfectly free to do' but he felt a lot of jealousy. As early as two years before the homicide, he had sent Maria a clipping about a man who killed his Filipino wife and wrote across it approval for that man's actions.

The judge felt that at his last meeting with Maria, Fred had not formed the intention of killing her, but believed that provocation was the reason for reducing the charge to manslaughter. Other favourable factors mentioned by the judge included Fred's 'unfortunate background' in which

as a child he had to care for younger brothers and sisters, his commitment to his daughter, and his plea of guilty. Minimum of five and half years.

The victim came across in the judge's comments as a manipulative person from another country who had harmed a naive Australian male. Not only had she left him and criticised his earning capabilities but she had allowed him to keep their child.

*Project case number 32:* The accused had been convicted by a jury of manslaughter in the killing of his ex de facto. She had been having an affair with his friend [subsequent to the separation of the accused and victim].

The defendant was waiting outside the victim's house; when she returned with her boyfriend, the three went to the defendant's house where he took a gun out of the safe and shot both of them and himself. Apparently because he did not plan the murder and due to 'the relationship problems' the jury acquitted of murder on the basis of provocation.

The judge noted that the defendant was thirty-one years old with no prior convictions. Further, he had been described by experts as having an 'obsessional personality'. The judge stated that, 'Provocation in this case is relevant to the state of mind and the lack of control by the accused rather than any blameworthiness of the victim'.

He pointed out some 'aggravating features' of the homicide: the production of the gun which was not totally spontaneous since the defendant had to go to the safe to retrieve it; he had returned to the house and fired a second shot at the boyfriend, and the fact that there were two victims: seven years minimum.

Although the victim and the perpetrator were estranged, it appears that the defendant's jealousy was seen by both the jury and the judge as a basis for provocation. Although the judge even reported that there were elements of the killings that were premeditated and 'aggravated' the crime, he gave the accused a relatively 'light' sentence.

*Project case number 56:* The accused in this case pleaded not guilty to murder but guilty to the manslaughter of his wife. They were emigrants from England staying with his family. The remarks stated that since arriving in Australia, the victim had become very aggressive towards the prisoner and complained that he was insensitive and lacked earning capacity. She also repeated a threat made on earlier occasions to the effect that she was going to leave him and take their child home to England.

At the time of the killing, such a verbal interaction had been taking place. The prisoner tried to make up by putting his arm around her. The judge noted:

At that point she deliberately dug her chin into his arm causing him some pain. He said that he was trying to make up and not to strangle her. She replied that he was too much of a wimp to do that. In his words, he snapped and placed his arms around her neck and exerted strong pressure with his thumbs in order to stop her goading him.

Another factor in the defendant's favour was that he had made full admission and showed remorse. Additionally,

he worked very long hours in this job which left him physically tired at night. This problem was compounded by the fact that it was left to him to care for the child at night.

The prisoner had himself come from a broken home and had unfortunately experienced a family relationship punctuated by violent argument . . . had developed a passive and emotional personality. The deceased, however, was of volatile temperament and preferred to air her differences by open argument. In the course of various arguments she taunted the prisoner, criticised his inability to provide the lifestyle she wanted and threatened to take the boy away from him.

The judge noted that there had been no premeditation in this homicide and that the defendant had

. . . acted suddenly and impulsively . . . That he did respond in this way was due to pent up aggravation accumulated over months of marital stress which was fanned by the unfamiliar environment, the pressure of work and physical and mental tiredness.

Further, *'as in the case in so many instances of serious domestic violence the prisoner is a man of excellent prior character without any prior record of any kind let alone a history of violence'*.

The remarks also looked at the accused's age, thirty-seven, his certificates as a chief engineer, the fact that he had earned a light aircraft pilot's licence and had an excellent work history.

The judge concluded that

in favour of the prisoner in relation to the objective circumstances are the considerations that he had never previously directed violence to the deceased, that he did not use any weapon, that he was taunted and threatened with loss of his son and *that had the method of assault employed not led to mortal injury it is unlikely that anything other than a very modest penalty would have been imposed bearing in mind the domestic relationship of the parties* (emphasis added).

Other positive variables weighing on the sentence were: 'the very real personal and financial losses he has brought on himself, his genuine remorse, his plea of guilty, and the fact that he must now serve a term of imprisonment': two and a half years.

The judge's view of the victim seemed to mitigate upon his decision. There might be some concern about this factor since the defendant's portrayal of their lives was presumably uncorroborated except perhaps by his relatives.

The italicised words above give some insight into how, at least one judge, viewed domestic violence.

*Project case number 59:* The defendant had pleaded not guilty to murder and guilty to manslaughter. This had been accepted on the basis of provocation.

At the time of the homicide, the victim was eight months pregnant. She had objected to the defendant's choice of name for the baby and then told the prisoner that he was not the real father of the two-year-old. He went off to get drunk.

On the afternoon of the next day, he returned and claimed that she further rubbed in the fact that the real father would not have acted in the manner he was acting. 'He then went to the kitchen, pulled out a kitchen knife and started stabbing her. The attack can only be described as a frenzy (thirty-nine stab wounds)'.

He also killed the two-year-old and the judge believed that there were many inconsistencies relating to the versions he gave to psychiatrists. 'I don't accept . . . that he has shown a great deal of remorse. Initially he denied having anything to do with the incident'.

On the negative side, the judge noted that before he killed the child, he had time to control himself—in other words that there was premeditation. So, in killing the child, his culpability was not sufficiently diminished.

In his favour: 'for periods the defendant has been addicted to alcohol and suffered from migraine headaches but I do not accept that had a causal relationship with the killings . . . a hard working man, marriage was a reasonably happy one and he provided adequately for his wife and son'.

Further, he had pleaded guilty to manslaughter: fifteen years; murder of child, life.

The fact that the victim had confessed to past infidelity and questioned the accused's paternity of their child, was perceived by the judge as sufficient grounds for provocation. It would be interesting to see if a female who discovered that her husband had been unfaithful and killed him would also be seen in the same light.

*Project case number 60:* A jury found the defendant guilty of manslaughter.

The judge indicated that the accused was a hard working, well motivated person but according to the psychologist, had an unstable personality with a number of schizoid and avoidance characteristics.

The jury accepted that there was ground for provocation; he had stabbed his wife three times in the back and cut her throat from ear to ear. He claimed that his wife had been in the process of smothering their daughter and that she had taken a knife and attacked him: seven and a half years.

It is interesting that the ground for provocation in this case once again rested entirely on the uncorroborated story of the perpetrator.

*Project case number 61 (Samu and Catherine):* Samu pleaded guilty to manslaughter.

The judge noted that the defendant was from another country where he had two prior convictions for drunkenness and assault. Further, in 1985, in Australia, he had been convicted of assault occasioning actual bodily harm which allegedly arose out of his reaction to Catherine's infidelity. The judge also stated that her lover was from the same country as her husband and, that in their culture, adultery was not seen as the responsibility of the male but the fault of the woman.

The more negative aspects of the killing according to the judge were the savagery and ferocity of the attack and the fact that the accused took a knife with him when he went to confront Catherine and killed her.

The Crown accepted that there was provocation. The judge's remarks implied that the provocation derived from her infidelity. Plus, the judge expressed the view that the accused's ethnicity was relevant in sentencing: seven years.

*Project case number 64:* The prisoner had been found guilty of manslaughter by a jury. According to the judge, this disposition was justified by the defendant's loss of self-control which was exemplified by the 'frenzy in which he stabbed his wife twelve times'. The rage stemmed from her infidelity. 'It was your wife who pursued him and that pursuit culminated in a brief adulterous encounter. I accept and I find that you were angry and humiliated by this'.

The judge also commented that the victim's suffering must have been brief as consciousness would have been lost immediately. In addition, the defendant's character and background were described by the judge as 'impeccable, with an honourable and distinguished career in the army'. It

was also noted that he had no prior convictions and had surrendered to the police and cooperated with them: six years.

Again, the only apparent difference between this case and many of the cases which resulted in murder sentences, was the nature of the victim; specifically, her infidelity. It is noteworthy that the judge expressed the view that although the killing showed a loss of control as evidenced by the nature of the stabbings, it was a relatively merciful means of death.

*Project case number 69:* A jury found the defendant guilty of manslaughter although he had been tried on the charge of murder. He had deliberately shot his estranged wife but the sentence indicated the jury's belief that the shooting was the result of provocation.

The judge stated that the accused was born in a Southern European country and moved to Australia in 1956 when he was twenty-three. When he was fifty-two, he married the victim who was eighteen. They had two children. 'Not surprisingly your second marriage gave rise to problems caused by the differences in ages and your [country of birth] background'.

The defendant had placed restrictions on his wife's conduct; consequently she had left him about one year before the time of the killing. He believed that she had been unfaithful 'and became exasperated by what you regarded as her provocative conduct'.

The judge accepted the view that the defendant should be sentenced with a regard for his mental condition and his cultural background although 'it is important that persons of different cultures who come to Australia and who intend to live in this country should accept our rules and standards so they do not take the law into their own hands . . . '

Although the defendant had a record of violent offences, he had given evidence for the Crown in relation to a drug matter, the cultivation of Indian hemp; according to the judge, this could make prison more difficult: eight years.

It is interesting that the defendant's own apparent criminal background and connections resulted in mitigation of his sentence, although there are of course other cases where informers have had their sentences reduced.

### **Manslaughter: Lack of Intent**

The following three cases were the only ones in the male sample where the ground for manslaughter was a lack of intent. The three cases have several similarities: the offenders were Aboriginal, they had histories of 'heavy' or alcoholic drinking, and they killed in the middle of a physical fight with their partner. Each received a light sentence.

*Project case number 36* (Carla and Ted): The judge mentioned early on that the deceased was an Aboriginal and that both Carla and Ted were deaf mutes. He described their relationship as 'a close and loving one when you were both sober but it was punctuated with episodes of physical fighting when you and she had been drinking'.

The police had been called many times and fifteen months before the killing Ted was charged with recklessly causing injury to the deceased. He pleaded guilty and was fined.

At the time of her death, Carla was drunk and allegedly threw a cup at the defendant and hit him on the arm. He responded by punching her in the mouth and elsewhere; she fell down; he put his hands around her neck and squeezed hard. Ted claimed that he was just trying to stop her fighting.

The judge noted that the manslaughter charge reflected the lack of intention to kill, a plea of guilty, the accused's cooperation with the police, no criminal history of consequence, his excellent prospects of rehabilitation due to his age and attempts to overcome his alcohol problem: two and a half years.

*Project case number 80* (Jim and Mary): The jury found Jim guilty of manslaughter; the judge described the environment leading to the killing as 'Aboriginals' at a drinking party all day. Jim had admitted to a friend, 'I done something wrong, brother. I just busted me missus up'.

Mary was Jim's de facto; the judge noted that there was no evidence of a history of battering. Although he had a criminal background, there had been no arrests for violence in the past twelve years. In addition the judge noted that the defendant, 'Comes from what must be described as an underprivileged background,' was alcohol dependent and 'he has markedly limited his alcohol consumption'. Further, since the killing, [on bail] he had established a relationship with another woman and had an infant daughter: five years.

*Project case number 81* (Helen and Darryl): Darryl had pleaded not guilty to manslaughter; the jury had found him guilty.

Following a day of drinking with a group of people, Helen and Darryl went home; she got a knife out of the kitchen but later returned it. Helen told Darryl to get out of the house. He claimed that the only reason he hit her was to stop her from hitting him with a big ashtray. The doctor stated that it was unfortunate that the blow was to a particular fragile part of her head.

On the negative side, the judge recorded that the defendant had a lengthy criminal history including conviction of assaulting a female and

breach of a domestic violence order. For these he was given two \$500.00 fines. Both of these related to the deceased. *'Thus, in summary, it will be seen that although he has committed offences between 1969 and 1989, they have not been particularly heinous'* [emphasis added].

Apparently, on the positive side, the judge noted that the prisoner was an Aboriginal; one of twelve children; almost continuously employed; had genuine grief; and a history of severe abuse of alcohol. Further, the Probation and Parole officer reported that the defendant was a quiet passive man. The prisoner believed that it was alcohol that caused the violence and wanted an extended residential program of alcohol rehabilitation. 'I also take into consideration the contrition and his Aboriginal background and lifestyle which includes his excellent, in the circumstances, work record': two years with an additional eight-month parole which must be spent in rehabilitation.

Once again, a judge, in his remarks, has shown a minimising of the criminality and seriousness of domestic violence.

### **Manslaughter: Diminished Responsibility**

Where a person has caused the death of another person and the person causing the death is suffering from such an abnormality of mind as substantially impairs his mental responsibility for his acts or omissions, he shall not be convicted of murder but, rather, he shall be convicted of manslaughter. That is the legal definition of diminished responsibility according to New South Wales law at the time that the following cases were adjudicated. It is of course a definition which by necessity is broad and therefore somewhat ambiguous and open to the interpretation and discretion of psychiatric experts, juries and judges.

*Project case number 91*: The eighty-year-old defendant pleaded guilty to the murder of his wife of fifty-four years.

The psychiatric reports diagnosed him as a paranoid schizophrenic. 'It is clear therefore that your responsibility for what you did . . . was severely diminished by reason of the psychiatric condition from which you then suffered': admitted to psychiatric hospital.

*Project case number 51* (Francis and Pearl) : Francis pleaded not guilty to murder but guilty to manslaughter. The plea was accepted on the ground of diminished responsibility; that he was suffering from such abnormality of the mind as substantially impaired his mental responsibility.

Pearl had suffered a stroke and needed increasing care. Francis began to experience severe depression. So he smothered her, strangled the dog,

slashed his wrists and turned on the gas. His age, 74 was a factor in the decision and the evidence that they were a close and loving couple: recognizance.

*Project case number 55* (Joe and Juana): Joe pleaded not guilty to murder but guilty to manslaughter on the basis of diminished responsibility. The judge mentioned that Joe was born in Germany of Polish parents. His age, forty-one, and the fact that he had no prior arrests were also mentioned.

Joe had married a fifteen-year-old from the Philippines when he was thirty-eight. Recently, he had been served with an Apprehended Violence Order; the hearing concerning that Order was about a month before the killing.

The judge described the killing: 'Whilst she was lying on the ground, still conscious, the prisoner stood over her and struck her head hard blows with the butt of the rifle'.

Juana had left Joe three weeks before the killing. The judge noted that she had left the care of their child to Joe and described how Joe had worked two jobs to earn enough to send money to Juana's family in the Philippines. Apparently she had threatened to leave him if he did not.

The psychologist's report stated that the defendant had a long-standing personality disorder with a lot of insecurity and loneliness. His father was harsh, demanding and authoritarian. Near the time of the homicide, Joe had lost weight and had exhibited other signs of depressive illness. He had been sent to the hospital by one doctor but unfortunately was turned away by another doctor. Three days later he killed Juana.

The judge stated that on the one hand the sentence should reflect 'the gravity of taking the young woman's life by repeated and deliberate use of a lethal firearm that culminated in the final act of violence of fracturing her skull with the rifle butt. On the other hand, the sentence must reflect to the benefit of the prisoner his remorse; his plea of guilty; his hard-working, conviction free life, and his significant diminution of responsibility because of his abnormality of mind at the relevant time': six years with a recommendation that he be given psychiatric treatment.

*Project case number 67*: The defendant had pleaded guilty to the manslaughter of his wife. The plea was accepted on the ground that he was suffering from a severe state of depression which substantially impaired his mental responsibility.

In broad daylight, he had inflicted fourteen stab wounds on his estranged wife. He stated that his objective was to hurt her badly but not to kill her. His apparent motive was to affect the outcome of a Family Law

Court hearing to determine the division of property and the custody of children.

The judge mentioned, ostensibly in the defendant's favour, that the victim had been a schizophrenic, a condition that had made the defendant's life miserable. Further, while on remand, he had made a serious suicide attempt which was indicative of his remorse. In addition, he had worked for twenty-two years as a medical technician, was fifty-two years old and had no prior convictions.

However, the judge ended his remarks with: 'For a husband to stab a wife with a knife fourteen times over what was in essence a domestic dispute concerning the children is something which requires severe punishment': seven years.

*Project case number 68:* The accused had been indicted for murder; he pleaded guilty to manslaughter on the grounds of diminished responsibility which was described as the result of brain damage from alcohol abuse and the impairment of his ability to reason and control his actions.

The deceased, his wife, was a recovering alcoholic; his own chronic alcoholism had shifted latterly to a pattern of binge drinking. The homicide was committed in the aftermath or during such a binge. The actual killing involved the defendant striking his wife over twenty times to the head, an act that the judge described as 'a truly dreadful manifestation of conduct'.

However, in the accused's favour, the judge noted that despite his 'addiction to the bottle' he had never offended before; plus 'an astonishing array of reputable citizens . . . have come forward to speak on your behalf'. Further, there was no history of bitterness or dispute in the relationship and the judge expressed his belief that the defendant was probably not a potential danger to the community: four years.

*Project case 83:* The defendant pleaded guilty to manslaughter which was accepted on the basis of diminished responsibility. Prior to the killing he had been diagnosed as needing medical assistance for manic depression. 'A crime committed in a moment of passion when capacity to control himself was gone,' according to the judge. He had tried to kill himself with a poison which the judge construed as remorse over the killing. The medication to control the disorder had not been taken for some time.

The judge noted that the accused was a migrant (who had difficulty with English), aged 45, who had an arranged marriage in Australia. He had been incapacitated with a work injury. During the long period of unemployment and frustration, the marriage deteriorated. *His wife worked and showed little sympathy for him and his condition.* Many disputes and several suicide attempts had preceded the homicide.

I pause to say this, in my experience on this Bench, one comes across situations where migrant people, who are hard working and accustomed to being in full time employment, suddenly suffer some kind of injury at work or some other way and because of the migrant environment in which they find themselves, have more than their normal share of difficulty in coping with the situation in which they find themselves.

The judge added that prior to the injury the defendant had an extremely good work record and that his compensation damages had not met his expectation and had caused some frustration and depression.

The judge also noted that the defendant claimed that this was the first time that he had ever hit his wife and that she usually hit him: 'that she would aggravate you and that this day you could not take it and that you hit her and she hit you . . . That she used to hit you all the time like 'I was a rag or something'. He also alleged that the victim used to goad him by saying that he was not the father of the children.

The remarks on sentencing concluded that the accused would be given an extra long parole so that he would adhere to certain conditions.- Five years with another ten years parole.

In other cases where alcohol was a possible mitigator in sentencing, the fact that one drank of one's own free will as opposed to alcoholically, was used as justification for not using intoxication as a mitigating factor. In the above case, the defendant's clinical state of manic depression was the basis for acceptance of a manslaughter sentence. Yet, the judge included in his remarks the fact that the defendant had been prescribed medication for his psychiatric illness which he had not been taking at the time of the killing. Thus once again there appear to be inconsistencies in the interpretation of an altered state of consciousness which is acquired in a voluntary sense by the perpetrator.

*Project case number 99:* The accused pleaded guilty to manslaughter on the ground of diminished responsibility. A psychiatrist reported that the death occurred in the context of a turbulent and insecure relationship; that the prisoner had severe depression and had also experienced periods of heavy marijuana and alcohol use.

Although the defendant and the victim were not living together at the time of the homicide, the issue of her infidelity was raised with the prisoner stating that she told him that she'd had sex with someone else the day before. He also claimed that she had a knife and was coming at him. This series of events caused him to lose control: 'Then I flipped right out and I stabbed her. I don't recall stabbing her. I blacked out'.

The judge discussed the accused's childhood: 'It is apparent that his childhood years were difficult ones, especially because of the severe psychiatric illnesses of his mother'. Other positive variables enumerated included: the judge's satisfaction that the prisoner had felt and continued to feel real remorse, 'After killing her, he fled and genuinely attempted to commit suicide by burning his car', his attachment to his two children and they to him; and '*the fact that he had no convictions involving violence, although he was once the subject of a restraining order following a dispute, later resolved, with the deceased*': four years and two months.

*Project case number 105 (Carl)*: Carl pleaded guilty to manslaughter on the basis of diminished responsibility. The prisoner had been diagnosed as paranoid schizophrenic some eight months before the killing after his conviction on charges of assault and resist arrest. He was prescribed drugs which were also intended to wean him away from alcohol dependency. When he stopped seeing the doctor, after a month or two, he also stopped taking the drugs. By Easter, he was hearing voices again saying that she was a whore' . . . heard a voice say, 'Get the boy out'. He cut off her breast; opened her abdomen searching for the boy.

The judge stated that this illness was sufficient to support diminished responsibility but not to give rise to a verdict of not guilty on the ground of mental illness. He also mentioned that both Carl and his victim were of 'Hellenic' background; it was not clear what the implication of this was.

. . . the prisoner carried out an attack upon the deceased, an attack consisting of the most extreme form of physical violence . . . It is plain that the young woman victim died in a singularly horrible fashion and that her last moments of life must have been spent not only in great pain but also in abject terror.

In his favour, the remarks enumerated: his youth (age twenty-two); no criminal record of significance; because of diminished responsibility the judge's belief that there was a substantial reduction in regard to general deterrence; the fact that he had surrendered, made a full confession, pleaded guilty; the fact that he had undertaken medication which controlled his condition; and 'the need to avoid imposing a sentence of imprisonment which would crush the prisoner—particularly in light of his age'.

The judge explained that in 1990 the revised *Mental Health Act* could now make orders requiring people to attend health care centres to receive medication: 'I exhort those charged with the care of the mentally ill to so utilise these provisions': ten-year minimum and that shortly prior to his release that an order be generated that the prisoner must take medication.

Again, this case involved an individual with a psychiatric disorder who, as a consequence of not taking his medication, killed in a particularly savage fashion. One might be surprised that Carl was not sent to a psychiatric hospital and that his sentence was as low as ten years when compared to many of the harsher murder sentences enumerated earlier.

## **Discussion**

Whether one is in favour of prison as punishment, rehabilitation or deterrence or whether one is an advocate of alcohol, infidelity, mental illness or remorse as variables either mitigating the charge or the sentence, the concept of justice implies the concept of consistency in the application of any of the above. The look at judges' remarks in this chapter has revealed what appears to be a noticeable, even glaring, lack of such a guiding principle. However, one must note that there may have been other factors which affected the judges' decision making process; remarks undoubtedly only include the major thoughts of the adjudicator. Perhaps what appears to be a rather random and highly discretionary series of choices by the Crown, the juries and the judges, has some reasonable pattern after all which is hidden from the reader of the remarks.

When contrasting the cases which culminated in murder dispositions from those who were permitted to plead guilty to manslaughter, no variable seems to be the obvious difference. Premeditation? No, some of the manslaughters were acknowledged as premeditated. Means of killing? Again, no; some murders were less violent than the manslaughters and some of the latter showed less loss of control than some of the murders. Alcohol? We have seen that the perpetrators' intoxication did not necessarily reduce the disposition or the sentence. And, the same is true for mental illness and the victim's alleged infidelity. Different judges and states appeared to have different definitions, and to define the importance and the impact of each of these in a discretionary fashion. The result was a rather large range of sentences without any obvious thread of consistency.

On the latter trait, although a few males were found guilty of murder in situations where their wife or estranged wife had been less than the cultural ideal of female virtue, overall, the nature of the victim did mitigate the sentence. Throughout the remarks, there was a clear indication of just what that ideal involves or more accurately, what it is not. Leaving one's husband, having an affair, not taking care of the child(ren), nagging one's husband, lack of appreciation for the husband's work on behalf of the family were all *not* manifested by the ideal woman. Thus, one of the few consistencies in sentencing and/or determining whether to allow the

defendant to plead down to manslaughter was the nature of the victim and her degree of compatibility with societal norms.

Other somewhat controversial mitigators seem to include the perpetrator's work history, commitment to his family, especially his children, and his age. Thus, if a male had met the cultural values for male behaviour and had worked hard supporting his family, he should not apparently spend as much time in prison as the male who was unemployed or left his family. If he was left by his female partner, even in the context of his history of battering the victim, the court seems to understand that this man was provoked by jealousy and the loss of his children.

Consider further that history of battering: it has been observed that there has been a minimisation of domestic violence in some of these cases. In a sense, one might say that the frequency of lenient sentences is another manifestation of such a view of violence in the home. Judges are not existing in isolation. They are both agents of change and recipients of social attitudes. Thus, in that light, it is critically important that they hold and illustrate an opinion of the criminality and seriousness of domestic violence and homicide.

The three Aboriginal cases were the exception to most of the variables theorised above as influential in sentencing. In other words, the court seems to define what is culturally normal or ideal for Aboriginal males and females in a substantially different way than defined for others. Was it a coincidence that the three killings with Aboriginal male offenders were all defined as manslaughter with the ground lack of intent? Although alcohol abuse was not perceived as a positive mitigator in all of the other cases, there was a clear recognition of it as a mitigator in the Aboriginal cases. It was almost as though the judges are saying that battering women and alcoholism were so common in the Aboriginal community that they were normative and expected. If treated in this manner by the courts then they will continue to be so regarded outside of the court and Aboriginal women will continue to be assaulted, occasionally to the point of death while their community observes the killer spending either one or two years in prison.

If one sees the role of incarceration, in the case of homicide, as punishment, then one would be fairly aghast at the many lenient sentences that we have seen. Judges look at the age of the offender and if he is young they talk about his need to live a life outside again. If one is concerned with punishment then one would say, 'What about the victim? When does she get to live again?' If one believes that retribution ('a life for a life'), is what justice is about, then does one care if the victim suffered little pain at the time of her death since she was shot in the head whilst she slept? And, would one care that the court defines a frenzied extremely

violent killing as loss of control and thus reflective of manslaughter and not murder; a woman is now dead.

If one believes in a rehabilitation model, it is unclear but doubtful that any such process takes place for men who have killed their (ex) partners. Why not? A rehabilitation program would need to address the core issues which appear to be involved in these homicides: physical violence, possessiveness and jealousy and alcohol abuse. If there is no recognition that these variables are the frequent concomitants of such killings, how can they be dealt with in a therapeutic manner? In the instances where mental illness played a significant role in the homicide, it is unclear to what extent that will be addressed in the prison environment aside from a continuous course of medication.

If the aim of the justice system is to deter others from engaging in the same criminal activity and stopping the prisoner from reoffending, the plethora of lenient sentences would not be a strong deterrent. If a man reads the newspaper and discovers that another man killed his estranged wife and received a low minimum sentence, such an act might gain some attraction particularly if there is already a history of battering in the relationship. True loss of control and diminished responsibility cannot easily be deterred—certainly not by the criminal justice system. However, if these pleas are allowed to be used in the somewhat random and indiscriminate manner described in this chapter—then, the courts might be perceived as failing to discourage future bashers from killing. As far as the prisoner is concerned, we do know that without any rehabilitation a batterer is likely to continue treating women with violence. As this is being written, there is a man in Australia on trial for the attempted murder of his estranged wife and murder of her lover. That in itself is not perhaps that unusual as we have seen. However, in this instance the defendant was found guilty of the manslaughter of his first wife just five years ago. He served nine months in gaol (*see* Field 1992).



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**Chapter 10****Band-Aids and Solutions**

**T**he first chapter of this book promised to present data on homicides between adult sexual intimates in Australia and then critically evaluate whether the models of prevention that have been presented to date, both in Australia and overseas, fit the evidence. There was also a suggestion that new prevention plans might be generated as a consequence of the knowledge gained in this study.

In order to accomplish these goals, what has been discovered about homicide between adult sexual intimates in Australia will be reviewed and assessed to see if or how the knowledge could assist in prevention planning.

The survey of all homicides between adult sexual intimates over a two-year period throughout Australia showed that Victoria's suburban regions, during the time period investigated, seemed to be the highest risk areas. However, the National Data on physical distribution indicated that no particular state, locality or even location is immune. Awareness of the latter is particularly important for both the high risk or highly vulnerable potential victim and the law enforcement agency charged with her protection. For the same reasons, it is important to note that although some hours of the day were more potentially dangerous, some homicides between adult sexual intimates took place in the mornings, some in the afternoons, evenings and late at night. Any surveillance or prevention program should take that into consideration. Further, although the home of the victim was the highest risk location, death was inflicted out of doors, in the victim's car, at her workplace and elsewhere.

The Australia-wide data showed that these killings were usually perpetrated by one individual against one person. When another person was killed, the perpetrator was male whilst the victim, in five of the eight instances involving death or injury of another person, was a child. There were no particular background variables that correlated more strongly with multiple victims although there is some suggestion that these cases occurred more commonly when the perpetrator was estranged from his

family. The suicide rate of such offenders was fairly high which could be reflective of their increased remorse.

Data on weapons point to the need for increased data analysis with future data collection in this type of homicide. The choice of weapon may be a reflection of the spontaneity or premeditation element in the homicide and/or of gender and ethnicity. However, these data were preliminary and included large numbers of unknowns. Again, prevention programs should localise and assimilate these patterns prior to formulating strategic planning.

Aboriginal groups and the overseas-born were both over-represented in the population of perpetrators and victims in these homicides between adult sexual intimates. The geographical distribution of the two groups, not surprisingly, appeared to be based upon jurisdiction, with the overseas-born most visible in Victoria (and New South Wales according to the in-depth sample), while Aboriginal people dominated the numbers in the Northern Territory, Queensland and Western Australia (in that order). Some of the background variables in the killings varied by the ethnicity and Aboriginality of the perpetrator. Unemployment was found to be a significant correlate; however, it was explained in part by the higher incidence of unemployment among the Aboriginal offenders and the wider Aboriginal community.

Although a higher proportion of sexual intimate homicides were perpetrated by women than in other homicides, females were still less than one-fifth of the perpetrators in this type of killing. Also, although a higher proportion of Aboriginal women than females from other backgrounds were offenders, the ethnic and Aboriginal breakdown for women offenders was very similar to that for males.

Risk by age was also found to vary according to ethnicity. Aboriginal people were significantly younger than the overall mean age and the overseas-born tended to be older. The twenties and thirties seemed to be the years of enhanced vulnerability for females with those over age sixty also at more risk than one might have expected.

The findings of this research have confirmed that there is no one simple cause and effect explanation for these homicides. On the contrary, most of the cases in the sample appeared to represent the climactic intersection of numerous factors; the nature of those factors varied somewhat depending upon the gender, ethnicity, and age of the perpetrator. For one sub-group—the elderly with debilitating illness—the following pages are not particularly relevant, except perhaps when discussing requisite fundamental changes in gender roles. It might be coincidental that all the homicide victims in the older age group were

female, or it could be reflective of a rigidity in relationships between males and females that precludes the ongoing nurturing and care of the woman by the man.

Given these provisos, the most recurrent theme in the killings by both men and women was the antecedents of physical and emotional violence toward the woman. Alcohol appeared as a major correlate in these homicides, particularly in the Aboriginal sample. The combination of the two elements—domestic violence and alcohol abuse—when mixed in some particular, but yet unknown way, proved to be a fatal combination.

Emotional abuse was exemplified in the ownership-type of jealousy which was a component of some of the relationships; it became blatant and overt at the time of estrangement. Thus, both physical and psychological battering did not usually cease in these cases when the couple separated; in fact at least the latter appeared to become greater. The degree of brutality and savagery present in so many of these murders may be a reflection of the depths of ambivalence present in 'hostage'-type relationships.

Interestingly, both the older-age perpetrators who killed ailing partners and the mentally ill offenders also conformed in a different manner to the male 'ownership' violence motif. The psychotic actions of some seemed to be exaggerations of the same jealousy which characterised so many of the killings by 'sane' men. The older men, who were compelled by circumstances beyond their control, to caretake and nurture their sick wives, could not adjust to that role.

Unemployment seemed to be a separate contributory element and not perhaps as some might expect, a contributor to the alcoholism and battering which preceded so many of these homicides. Drinking and assault occurred among both the employed and the unemployed; in fact the former was more common among the employed. As stated earlier, no definitive conclusion can be made about this variable since the numbers in the sample whose employment status was known was so small. However, in the overseas-born offenders' cases particularly, unemployment was statistically significant.

Although the homicides which ended in the suicide of the offender varied in their principal motivation, for example, self-destruction or killing, there were few significant differences found between incidents ending in suicide and those that do not. Employment, domestic violence, and alcohol abuse would appear to play fairly similar roles in both types of cases. Further, on both sides of this dichotomy the same motif is manifest: a perception of the partner as an integral part of the individual. This could be labelled jealousy, or an inability to accept separation, or

obsessiveness, or pathological possessiveness, or as emotional violence. In that light it is not surprising that separation was found to be significantly correlated with the suicides and the ageing and ill-health of a female partner. In both contexts, the woman was either no longer able or willing to play the same role in the relationship that she had in the past.

### **Translating Data into Prevention**

Aside from a core of inequity in gender relationships, the suicide sub-set data further illustrate the heterogeneity within the total sample. All suiciders were not distinct since many of their actions were seemingly orientated toward the homicide. However, these data on suicide of perpetrators show further evidence of the existence of different themes or motifs within the group of adult sexual intimate homicides. Women, Aboriginal people, and the overseas-born appear to differ in a number of significant ways from the prevailing white Australian-born male pattern. The lack of suicides among the first two groups and the frequency among the overseas-born may represent differences in causation, weapon, and other elements which precede and accompany homicide. Such differences are vitally important in the promulgation of prevention strategies. It should be noted that these findings will hopefully prove useful to those who work with the preceding sub-populations.

Thus, the picture of homicide between adult sexual intimates that has emerged from this study is not a stark, black and white sketch, but a complex collage of colours interweaving to produce a heterogeneity of homicides. In the context of prevention, the variation could be perceived as problematic; obviously a monolithic model would be inadequate. However, there is the same heterogeneity in other crimes which necessitates flexible and situational prevention programming. Much of the information gathered above can be translated into policing and other agency strategies.

For example, since it appears that Victorian overseas-born families may be at higher risk for this type of homicide, then if domestic violence is identified in such a household, it should be seen as requiring stricter sanctions or controls. Also, since the nature of many cultures involves a strict code of secrecy and loyalty to the family and strong patriarchal values, education programs for the members of these groups need to be geared to the particular culture, with an increased sensitivity to its values.

Within the context of migrancy is the situation for women from other cultures, particularly the Philippines who are brought to Australia as brides. We have seen that in at least one instance, the husband/killer had a

history of assault against other women. Perhaps the relevant government bodies would do well to check the histories of sponsoring males before allowing them to 'import' another victim.

The information gained about homicide after separations must also be noted. Since estrangement has emerged as a high risk time for such killings, all of the participants in these situations, including the woman and any service providers working on her behalf need to be made aware of that reality, particularly the fact that the woman remains a vulnerable target for months afterwards, not just at the time of estrangement, although the danger ceases for the most part with divorce. Judges should be aware that since leaving the relationship does not stop the violence toward the woman, it is both trivialising and erroneous to label the cause of such homicides as 'marital conflict'.

The data have shown that the Aboriginal community is by far the most at risk. Alcoholism and domestic violence appear to be rampant and are even seen as normative by the judges as discerned from their remarks at sentencing. The band-aid approach to prevention in this setting would involve intensive programming within the community about the unacceptability of battering and more resources and information for the women who live in violence. An Aboriginal woman, serving a life sentence for the murder of her de facto who had physically and sexually assaulted her, was shown on a recent ABC documentary stating that she had no idea that such behaviour was not 'normal' nor did she have any knowledge about refuges or shelters for women such as herself. Thus, the transmission of information through educational and media programming must be a first important step in the Aboriginal community, and the overseas-born communities, and of course among all Australians.

As stated earlier much of the focus to date on prevention of marital homicide or domestic homicide has been built upon two premises: first that a high proportion of these killings are the culmination of ongoing wife battering, and secondly, that the police or other authorities were aware that the particular domicile had been the scene of domestic violence and could have assumed a more active role in averting the final tragic act. The cases described throughout these pages have overwhelmingly been preceded by physical and/or emotional violence. Moreover, at least one-fifth had involved police interaction for a pre-homicide 'domestic'.

Appropriately, since November 1987, police in Victoria must fill in a Family Incident Report form (FIR) on every family violence call. This has, and will continue to create a database which can be employed in prioritising calls for police assistance. Since the presence of firearms or prior injuries are also recorded on the computer, the dispatcher can better

predict which disturbance calls merit a back-up car. The FIR can also serve to monitor police performance at family domestics or at least their arrests or filing for restraining orders. For example, data from the first four months of using these forms indicated that although guns were present in 135 incidents, arrests or restraining orders were only undertaken in 35 per cent of these cases (Naylor & Neal 1990).

The current study showed the same type of result. Police and the courts had been involved in a substantial proportion of the cases prior to the killing but the homicides had still taken place. The intervention by police and the courts in a startling proportion of these cases did not prevent the ultimate tragedy. Orders were violated, court hearings were set for weeks after the complaint, and no arrests with detention took place. The legislative requirements may have been followed, for example, firearms removed from the premises, but, the existing domestic violence laws did not safeguard the lives of any female victims in the sample.

Legislative remedies are only effective if applied by the workers in the criminal justice system. Unfortunately their willingness or resistance to doing so is dependent in large part upon the social attitudes that exist about domestic violence. This will be discussed further below. The body of evidence in this study indicates that although the laws may be in place and lip service is paid, there is a general aura of minimising or trivialising domestic violence which translates into limited legal intervention. Wearing's (1992) study of the impact of the Victorian *Crimes (Family Violence) Act* confirms that negative impression. The legislation in that state was initially perceived as innovative and capable of addressing spouse abuse. However, Wearing found that its application was lacking in efficacy. Police failed, in about three-quarters of 'domestics' to take any action. That included removing or arresting the perpetrator and acting on breaches.

Magistrates varied in their interpretation of the legislation with some clearly not accepting a woman's reasonable fear as sufficient ground for granting an intervention order; for these magistrates, physical signs of abuse were necessary. Wearing concludes that the entire process can prove very demoralising for the complainant and recommends that police, magistrates and court clerks need more training.

In the sample of cases studied perhaps the most tragic ones were those in which the victim and/or the offender were in touch with an agency or practitioner prior to the homicide and the latter failed to respond to the cries for help: cries from either the woman who had been battered or had tried to start a new life, or the signs of deep depression by the male perpetrators. In many instances, one felt strongly that the homicide or

homicide-suicide did not have to be an inevitable outcome; that it was preventable. Appropriate assistance was not received presumably since the gravity of the situation was not recognised. However, it is not only the police or the courts with whom one can find fault. Medical and psychiatric practitioners, as we have seen, may also be held in part responsible for the system's failure to avert some of these deaths. Warning signs were either not heeded or the signs themselves were trivialised and not dealt with appropriately.

One way of both recognising the gravity of domestic violence and hopefully averting the ultimate tragedy was generated by the Victorian Law Reform Commission (1988). That body suggested that women at risk could wear small alarm-type transmitters similar to those used by some elderly people. There are some obvious potential problems such as cost and false alarms; however, this concept is noteworthy simply because unlike many others, it is not based on unsupported theory or overseas analogy. However, it requires that the system take domestic violence seriously enough to invest the monies into prevention.

Those who espouse gun control legislation as the sole or principal solution to marital homicide need to look more closely at the data available about the spontaneity of these killings and the weapons used. Without some sort of gun control it is impossible to say how many more of these killings would take place. Yet, it needs to be pointed out that even with the strictest controls, many of the homicides were enacted at the spur of the moment whilst in the grips of rage and the question of gun availability or nonavailability was moot. The weapon used may well have been a part of the offender's body. Even when guns were removed before a couple of the Victorian killings, the offender managed to access another one. Therefore, although no guns would certainly cut down on some of the killings of this type, there need to be more fundamental changes than the band-aids or alleged 'quick fixes' of laws and gun control. The deeply rooted causes of violence against women must be addressed before these murders will stop taking place. If homicides between adult sexual intimates are perceived as the lava of a volcano then one can understand that what exists beneath the surface—the attitudes about men and women, violence, and battering—are the foundation upon which these killings erupt or take place. Real solutions require that the foundation be redesigned in some fundamental ways.

At the least, increased monies and effort need to be channelled into services for victims of domestic violence. The availability of such agencies for abused women in the US has been found to be correlated with both fewer battered women perpetrator homicides (Jurik & Winn

1990) and a lower rate of women killed by intimate male partners (Stout 1989). The latter also showed that domestic violence laws play a similar reducing role. It is therefore incumbent upon the Australian federal state and local governments to place a high priority upon such programs and legislation.

### **Solution: Changing Attitudes and Behaviour**

#### *Attitudes about men and women*

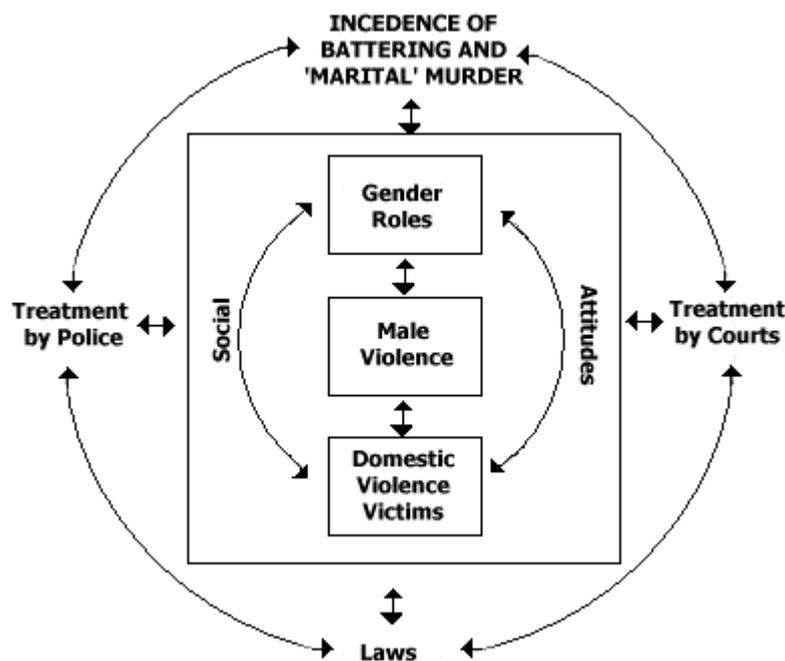
The derivation of attitudes toward a female partner that generate violence are not difficult to locate: a society where women have been long regarded as the property or possessions of man. Historically, female convicts were released to fulfil the needs of the male inmates (Gilmour 1990). This ownership attitude is exemplified in the underlying theme of many of these homicides, '*If I can't have you, nobody will*'. Wallace (1986) believes that the low rate of husband killings in Australia in contrast to the United States is further evidence of the strength of the legacy of male domination which encourages passivity in women.

Chappell (1989) reports that cross-cultural studies have found that rape is most prevalent in cultures with low female power and authority and where masculinity is expressed with violence; Australia is believed to have one of the highest sexual assault rates of western countries which says something disturbing about its gender hierarchy and emphasis on violence (Easteal 1992c). Some authors have described Australia as one of the most misogynist countries in the world (Westbury 1991). Misogyny is also derived from the emphasis upon aggression in the enculturation of males which is manifested in the type of sports which are popular. Males are more comfortable with males; they tend to socialise and communicate at a non-intimate level with other men; and they are apt to have a low regard for females. The latter is evidenced by both the type of verbal comments directed at women and the high frequency of physical violence toward female partners that has been well documented.

Therefore, the foundation alluded to above is the patriarchal society with its values of machismo and male domination coupled with a lack of respect for females which is found in other cultures. This involves cultural norms that prescribe appropriate 'feminine' and 'masculine' traits and behaviour. And, as Figure 10.1 illustrates, there is a complex dynamic interaction between the various ideational and structural components of a culture which is conducive to violence toward women and the response of the criminal justice system.

In examining the sentencing remarks it appeared that although a few males were found guilty of murder in situations where their wife or estranged wife had been less than the cultural ideal of female virtue, overall, deviation from the white male judge's standards of feminine virtue did act to mitigate the sentence. Leaving one's husband even in the context of his history of battering, infidelity, putting child care responsibilities on the father, nagging one's husband, lack of appreciation for the husband's work on behalf of the family were clearly defined a

*Figure 10.1: Interaction between the various ideational and structural components of a culture which is conducive to violence toward women*



provocative. Thus, one of the few consistencies in sentencing and/or determining whether to allow the defendant to plead down to manslaughter was the nature of the victim and her degree of compatibility with the judges' norms.

#### *Attitudes about battering*

Some theorise that Australian males hold even more conservative and intolerant attitudes about wife battering than their counterparts in other industrialised societies. Dixon (1976) describes how, in many ways the early convict history of Australia and its later experiences have contributed to numerous aspects of Australian culture which promote a rigid gender hierarchy, privacy of the family, mateship between males and a pattern of

violence against females. Acceptance of wife battering and the perception of its private nature has been found among a significant percentage of the Australian population, including both the professionals and the general public (Easteal 1988; Mugford et al. 1989). The preceding articles plus surveys of victims have found that within Australia battered women are not receiving satisfactory community or practitioner support. Thus, not surprisingly, a 1988 survey found that nearly one in five Australians believed that it is acceptable for a man to use physical violence against his wife under at least one particular set of circumstances (Public Policy Research Centre 1988).

The court's view of battering has been hinted at in some of the sentencing remarks. We have seen a minimisation of domestic violence numerous times in the previous pages. In a sense, one might say that the frequency of lenient sentences is another manifestation of this trivial view of violence in the home. In a similar vein of conservatism, we find a failure of Battered Woman Syndrome or a broader interpretation of reasonable behaviour constituting self-defence to be recognised by the judiciary in Australia. In fact, as discussed in Chapter 8, battered women who have killed their abuser husbands even have difficulty pleading provocation which would diminish the charge from murder to manslaughter since the same concept of immediacy (as defined in reasonable white male terms) is required.

As already stated, judges do not exist in a social vacuum. It is essential that when making judgments, they take into account social attitudes regarding the criminality and seriousness of domestic violence and homicide.

In sentencing the Aboriginal offenders, the judges seemed to indicate that battering women and alcoholism are so common in the Aboriginal community that they have become normal and acceptable. If treated in this manner by the courts then the status quo will be maintained and Aboriginal women will continue to be assaulted, occasionally to the point of death, while their community observes the killer receiving a light prison sentence.

Therefore, wife battering is an act of domination which cannot be seen as isolated from the patriarchal fabric of the society in which it takes place. *Prevention of homicides between adult sexual intimates requires attitudes to change about the nature of domestic violence and the nature of male/female relations. The attitudes that promulgate male violence need to be changed and women's relatively powerless position within Australian society should be radically modified.* Warning signs, such as extreme jealousy and possessiveness, need to be acknowledged as real and serious threats and not as acceptable and normal masculine traits.

Boys need to be taught how to relate to both other males and females without violence. This will be difficult given both the deeply entrenched role of violence in the media and sport and the role models in a significant proportion of Australian households. Little boys may watch their fathers physically and emotionally abuse their mothers. They hear the sexual harassment which is an intrinsic part of mateship. These are mighty forces to combat. Somehow the generational cycle of violence and dysfunctionality must be broken. This can be done within the schools; the media can also play a vital role.

The criminal justice system can play a major role in changing attitudes and preventing both battering and the homicides that are the outcome for a small percentage. However, as illustrated in Figure 10.1, the criminal justice system is influenced by the prevailing beliefs of the culture. Just as norms about domestic violence and homicide cannot be understood without perceiving how they fit within an existing cultural framework, the workers in the criminal justice system cannot be seen in isolation from societal beliefs.

The laws may change but unless the attitudes of the judges and juries change, the impact of new legislation is limited. *Prevention requires increased education of the judiciary and lawyers.* At any point in time, the courts undoubtedly act as mirrors for the values about women and battering that are held by a proportion of the general Australian population; training aside, *the wider community values also need to change*—this is not quick or easy. However, it is also not a band-aid but a long lasting solution to the problem of violence against women. The solution lies in taking the 'domestic' out of domestic violence and placing it where it rightfully belongs in the public arena and the criminal courts.



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# Index

- Aboriginal offenders  
  *see* offenders, Aboriginal
- bail/remand, 111-13  
  Aboriginality and ethnicity comparisons, 112-13  
  gender comparison, 112
- Battered Woman Syndrome, 5, 8, 9, 18-19, 27, 129-45  
  as grounds for self-defence, 137-9  
  expert witnesses, use of, 139-41  
  use in Australian courts, 142-5  
  *see also* contributing factors, prior violence
- Canada, 3, 6, 8, 137, 138
- case studies, 40, 41, 42, 49-50, 52, 53, 54, 57, 58-9, 63, 69, 70-1, 72, 75-6, 77, 78, 81-2, 83, 84, 85, 86-7, 88, 89-90, 96, 97, 99-100, 102, 104, 106, 121-8, 130, 134, 139, 140, 141, 148-72
- cause  
  *see* contributing factors
- children  
  *see* mitigating variables
- contributing factors, 16-17, 67-91, 107  
  alcohol, 3, 4, 16, 64, 68, 69, 70, 71, 78, 79-82, 91, 102, 126, 149, 151-2, 154-5, 156, 157, 158, 159, 160, 164, 166, 167, 169-70, 171, 179  
  drugs, 4, 42, 80, 79, 83, 107, 160, 171-2  
  jealousy, 1, 12, 16, 17, 53, 69, 75, 83-5, 90, 107, 149, 161, 179  
  male control, 4, 75, 84, 86, 90, 105, 109  
  physical illness, 68, 89-90, 101, 107, 108, 168  
  prior violence, 4, 5, 6, 16, 20, 63, 68, 69, 71, 73-8, 101, 104-5, 126, 150, 153, 155, 179  
  psychological problems, 50, 68, 87-9, 97, 99, 101, 104, 107, 157, 159, 164, 168, 169, 171-2  
  relationship breakdown/separation, 1, 5, 16, 68, 69, 85, 86, 102-5, 107  
  socioeconomic, 3, 4, 55, 64, 70  
  verbal altercation, 72-3  
  court outcomes, 111-28  
  *see also* police/court intervention prior to homicide; sentences; verdict  
  *Crimes (Family Violence) Act 1987 (Vic.)*, 21, 63, 77, 182
- domestic violence  
  *see* contributing factors, prior violence; Battered Woman Syndrome
- domestic violence, services for victims of, 183
- employment status, 55-9, 64-5, 71, 91, 101, 108, 179
- England and Wales, 6, 17  
  *see also* United Kingdom
- ethnicity, 3-4, 15, 33, 46-50, 54  
  offenders, 48  
  victims, 49  
  *see also* offenders, Aboriginal; offenders, overseas-born
- expert witness  
  *see* Battered Woman Syndrome
- female offenders  
  *see* offenders, female; *see also* gender comparisons
- gender comparisons 33, 50, 51, 96  
  age of offenders, 53  
  bail/remand, 112  
  employment status, 55, 56  
  ethnicity, 52

- number of victims per incident, 36
- precipitation by victim, 70
- relationship status, 85
- sentencing, 8-10
- time of incident, 33
- verdict, 114
- victim consumption of alcohol, 80
- weapon, 38, 39
- guns, 3, 4, 7, 14, 37, 38, 40, 41, 76, 77, 82, 83, 88, 96, 105, 106, 108, 109, 151, 152, 156, 157, 160, 162, 169, 181
  - see also* knives; weapons
- gun control, 183
  
- history of violence
  - see* contributing factors, prior violence;
  - see also* Battered Woman Syndrome
- homicide-suicide, 6-8, 37, 57, 63, 86, 87, 90, 93-109
  
- Ibn-Tamas v. United States* (Washington District Court of Appeals 1979), 139
  
- judges' comments, 129-45, 148-72
  - see also* case studies
- jurisdictional comparisons
  - ethnicity of offender, 46, 47
  - incidences of intimate and non-intimate homicides, 31, 32
  - relationship of offender and victim, 59
  - remand/bail, 111
  - verdict, 114
  
- knives, 1, 14, 37, 38, 40, 41, 42, 52, 63, 70, 71, 72, 76, 85, 86, 96, 104, 153, 154, 159, 160, 164, 165, 167, 169
  - see also* guns; weapons
  
- Lavalee v. R* (Supreme Court of Canada), 138
  
- location of incident, 31, 33, 43
  - geographical area, 31, 32
  - jurisdiction, 31, 32
  
- manslaughter, 111, 114, 116, 118, 120, 121, 122, 128, 131, 132, 134, 135, 161, 165, 175, 185
  - diminished responsibility, 132, 134, 168-72
  - lack of intent, 166-8
  - provocation, 161-6
    - see also* sentences; verdict
- method of killing, 37-42
  - see also* guns; knives; weapon
- methodologies, 11-12, 12-13, 23-9
  - data analysis, 27
- migrant offenders
  - see* offenders, overseas-born
- mitigating variables, 130-5
  - Aboriginality, 131-2
  - children, 130-1, 149
  - defendant's alcoholism, 134
  - defendant's childhood, 133-4
  - intent, 132-3
  - remorse, 133, 162
    - see also* sentences, case studies
- motive
  - see* contributing factors
  
- National Committee on Violence, 23
- National Homicide Monitoring Program, 23-4
  
- offenders
  - Aboriginal, 15, 33, 38, 39, 45, 46, 47, 49-50, 51, 52, 54, 56, 57, 60, 64, 65, 73, 78, 81, 82, 87, 91, 97-8, 108, 116, 120, 157, 166-8
  - age, 53, 54, 54, 55, 100-1
  - alcohol consumption, 81
  - employment status, 55-9, 64, 75

- ethnicity, 48, 52, 54, 60, 65
- female, 3, 7, 14-15, 50, 51, 53, 64, 69, 74-5, 76, 78, 80, 82, 85, 96, 114, 115, 116, 129-45, 178
- number of per incident, 35
- occupation, 58
- overseas-born, 33, 45, 46, 47, 50, 51, 52, 54, 56, 57, 60, 64, 65, 81, 83, 87, 91, 98-100, 116, 120, 126, 150, 156, 162, 165-6, 168, 169
- relationship to victim, 59-63
- overseas studies, 2-10
  - application to Australia, 10
- overseas-born offenders
  - see* offenders, overseas-born
  
- police/court intervention prior to homicide, 20, 21, 22, 41, 70, 71, 76-7, 78, 83, 91, 109, 181-2
- premeditation/spontaneity, 40-2, 43, 98, 106, 128, 148, 149, 150, 151, 152, 154, 156, 162, 163, 164, 173, 178
- prevention, 20-2, 64, 180-7
  - Aboriginal community, 181
  - alarm-type transmitters, 183
  - changing attitudes/behaviour, 184-7
  - counselling/rehabilitation, 22
  - educating the judiciary/lawyers, 187
  - overseas-born community, 180
  - role of police, 1, 21-2, 180, 181-2
    - family incident report form (FIR), 181-2
  - services for domestic violence victims, 183
- provocation, 10, 12, 19, 42, 128, 132, 134, 141, 148, 152, 154, 159, 160, 161-6, 173, 184-5, 186
  
- The Queen v. Kontinnen* SA Sup.C. April 1992, unreported, 141, 142
- The Queen v. R.* [1981 28SASR321], 19
- The Queen v. Runjanjik* CCA (SA) 226 1991, unreported, 141
  
- rate of homicide between intimates, compared to non-intimates, 2
- racial differences
  - see* ethnicity; *see also* offenders, Aboriginal; offenders, overseas-born
- Redenbach*, Victoria, 22 February 1991, unreported, 154
- Regina v. Hickey*, NSW Sup.C. April 1992, unreported, 141
- remorse
  - see* mitigating variables
  
- self-defence, 69, 135-6, 137-41, 186
  - see also* Battered Wife Syndrome
- sentences, 117-28, 129-45, 147-75
  - Aboriginality and ethnicity comparisons, 118-20, 128, 132
  - case studies, 121-8, 148-72
    - discussion of judge's remarks, 172-5, 184-5, 186
  - discussion of, 128
  - gender comparisons, 8-10, 118
  - life, 118, 121, 156, 158
- sentencing remarks, judges'
  - see* judges' comments
- separation period prior to homicide, 62, 63, 65
- spontaneity/premeditation
  - see* premeditation/spontaneity
- spouse, definition of, 2, 13
- State v. Wanrow* (Washington Supreme Court), 137, 138
- State v. Garcia* (US), 137-8
- suicide
  - see* homicide-suicide
- summary of findings, 177-80
  
- theoretical models, 4-6
- time between homicide and trial, 113-14
- time of incident, 3, 33, 34, 43

unemployment

*see* employment status

United Kingdom, 2, 3, 6, 10, 17, 18

*see also* England and Wales

United States, 2-10, 19, 21, 135, 184

verdict, 114, 118

Aboriginality and ethnicity comparisons,  
116

gender comparisons, 114

jurisdictional comparisons, 114

victims

age, 55

employment status, 56

ethnicity, 49

number of per incident, 36, 97

occupation, 59

precipitation by, 70, 71-2

relationship to offender, 59-63

weapons, 14, 38, 39, 40, 41, 42, 43, 105-6,  
178

*see also* guns; knives