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February, 1982.

Feminist Legal Action Group Report

"Women Homicide Offenders in N.S.W."

Robyn Lansdowne and
Wendy Bacon

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ACKNOWLEDGMENTS

We would like to thank the following persons or organisations for their support or assistance with this project; the Law Foundation of New South Wales; the Criminology Research Council; the Social Work Department of the University of Sydney; Ros Omodei and Professor Stuart Rees of that Department; the Department of Corrective Services including the Probation and Parole Service; the Health Commission of New South Wales; the Attorney-General's Department of New South Wales, in particular the Bureau of Crime Statistics and Research and the Court Reporting Branch; the Public Solicitor and the various public defenders, public solicitors and other lawyers we interviewed.

Most of all we would like to thank the women we interviewed who revealed their lives to us when there was no need to do so, and no guarantee that any positive changes in the law or practice generally would result. We would like to think that this report may be a step in introducing the reforms so badly needed in this area.

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CHAPTER I : BACKGROUND

INTRODUCTION

The project "Women Homicide Offenders in N.S.W." is a detailed study of the cases of 35 women who have been charged with homicide offences. Within the category of "homicide offences" we included charges of murder, manslaughter, attempted murder, conspiracy to murder, and infanticide.

One of the objects of our study was to examine a group of cases in sufficient detail so that we could reconstruct the context and events leading up to the killing or attack, placing particular emphasis on the meaning of the act to the woman herself. We then aimed to trace each case as it had been processed through the criminal justice system. By adopting this unusal 'longitudinal' approach, we hoped not only to increase understanding of the situation in which the offences were committed, but also to evaluate the appropriateness of the criminal justice response.

Given the purposes and aims of this study, selection of cases was made according to the availability of detailed information, particularly from the point of view of the woman herself. The core of the research consisted of interviews, normally two of about one and a half to two hours duration, with most of the women whose cases were included in the study. The information obtained from these interviews was, with the consent of the woman herself, supplemented by and compared with a reading of the transcript of the trial and the solicitor's file on the case. In two cases instead of reading the court and lawyers' file on the case, we examined a hospital file. In the interviews, we not only explored the background to the offence, we also covered the woman's personal history and her experiences in the criminal justice system, from arrest through to trial and imprisonment.

As the core of the research was to be the interviews, the main determinant of the group of cases to be examined was access to the women concerned. Accordingly, we approached all of the women convicted of homicide offences serving sentences of

imprisonment or detained in mental hospitals in New South Wales during the period of the study, July 1979 to March 1980. Of these 27 women, 24 agreed to be part of the study. Two women imprisoned in the women's goal, Mulawa, declined to be part of the study and there was insufficient information contained in hospital records in respect of one woman detained as unfit to plead to murder in a mental hospital since 1944 to include her case in the study. It is interesting that while the records disclose that she had killed a hospital nurse on escaping from an isolation cell, hospital mythology has it that she killed a fellow patient. As far as the records disclose she has never been to court.

In addition, four women who had previously been released after serving sentences of imprisonment or being held at the Governor's Pleasure for homicide offences agreed to be interviewed. We also included the cases of seven women who were tried during or soon after the period of our study. Although we did not interview these women, we felt that in each case we had sufficient information to justify its inclusion in the study. In these cases we either attended the woman's trial or read the trial transcript. We did not interview any woman on remand or bail i.e. in the period before her trial, and have included only completed cases in this report.

Of the women in our study, 27 were found guilty of a homicide offence, and three of the lesser offence of malicious wounding or wounding with intent to cause grievous bodily harm. Four were found not guilty of murder by reason of insanity, and one was acquitted of a charge of attempted murder, but found not guilty by reason of insanity of malicious wounding. We did not interview any woman who had been completely acquitted. Thus our study cannot be said to be representative of women charged, convicted or imprisoned for homicide offences, although it may well expose elements that are features of other cases.

ADMINISTRATION

The research was funded initially by two grants to the Feminist Legal Action Group ("FLAG"), one each from the Criminology Research Council and the Law Foundation of N.S.W. Each grant was sufficient to employ one graduate research assistant for 6 months. Because the grants were staggered in fact the two researchers, Wendy Bacon and Robyn Lansdowne were employed for nine months, for three months of which they were paid part time. We would like to thank the Criminology Research Council and the Law Foundation again for their assistance. The Law Foundation made a further grant later in the project to cover additional typing costs.

The grants were paid to and administered by the University of Sydney. The two researchers although selected by FLAG were employed as research assistants by the University of Sydney to carry out the research in the Social Work Department under the general supervision of Roslyn Omodei, a member of FLAG and then a tutor in the Social Work Department. We would like to thank Professor Stuart Rees, Roslyn Omodei and the rest of the Social Work Department for their support.

Approval for interviewing the women in goal had been obtained from the research section of the Department of Corrective Services before the project began. Subsequently Dr. Vinson, the then newly appointed Chairman of the Corrective Services Commission, indicated that he wished to consider the project personally. There was some delay in obtaining Dr. Vinson's consideration of the project because he was absorbed in industrial problems caused by a prison officers' strike for several weeks at the beginning of the project. Once Dr. Vinson's approval was obtained, however, there were no real difficulties in obtaining access to the women and interviewing them and indeed the staff of the gaols concerned were quite helpful. Interviews were conducted at the maximum security women's gaol, Mulawa Women's Training and Detention Centre, Silverwater, Sydney or at Parramatta Linen Service an industrial laundry attached to Parramatta Gaol, Sydney, where a number of the women worked during the day. At the time of the study there

was only one other women's gaol in N.S.W. - a minimum security camp at Tomago, near Newcastle. No homicide offender was detained there.

It is significant that Wendy Bacon was not permitted to interview women in gaol, ostensibly because her presence would anger prison officers. As far as we are aware they were not actually consulted with regard to their attitude towards her conducting interviews inside gaols for the research. It is somewhat anomalous that the very people who, like Wendy, have both the trust of prisoners and substantial academic and practical knowledge of prison issues should be prevented in such a way from applying that knowledge.[1]

Access to the convicted women detained in mental hospitals was arranged through the Medical Superintendent of each hospital concerned, Parramatta Psychiatric Centre and Rydalmere Hospital. These interviews were conducted by Ms. Bacon.

As well as approaching women still detained we wanted to interview convicted women who had been released on parole or licence. To this end we contacted the Probation and Parole Service. The Service would not permit us to contact the women directly, but agreed to send a letter from us explaining the project to the parole officer supervising each woman. The parole officer would then a make a decision as to whether or not to pass the letter on to the woman herself. If the woman wanted to be interviewed she was to write back to us and we would then arrange a time for interview.

This procedure was not very successful. Ultimately we were able to interview only <u>one</u> woman contacted in this way of the approximately 25 women convicted of a homicide offence and on parole or licence at the time of the study. In one other case a woman indicated she would consent to an interview but gave us no way of contacting her. We interviewed three other women on parole or licence, but these were personal acquaintances or were contacted through mutual friends.

There seem to be a number of reasons for the very low response rate from parolees and women on licence. The director of the Probation and Parole Service was supportive of the research but his office lost the letter we had drafted directed to the women themselves and wrote their own directed to the parole officer which may not have explained the project quite as successfully particularly its practical ramifications. In a number of cases parole officers contacted the head office of Probation and Parole and said that he or she would not pass the letter on to the woman as in the parole officer's view it would be detrimental to the woman's interests to remind her of the homicide or to seek to interview her. It is possible that in some cases this decision represented the parole officer's view of the worth of the project or of the heinousness of the particular homicide, rather than the woman's own wishes or interests. We do not know if there were other cases in which the parole officer failed to ask the woman if she wished to participate. We were notified of a couple of cases where the woman had been asked and had declined.

It is difficult to know how many women on parole or licence would have been prepared to be interviewed had we been able to approach them direct. Some may have been willing to be involved, but did not take the positive step required by the procedure we had to adopt of contacting us. Possibly some of these women would not have wanted to talk about an episode in their lives they were trying to forget. Virtually all the women we approached in gaol or mental institutions were prepared to be involved, perhaps to break up the tedium of institution life, perhaps because they were still living the consequences of the homicide, but this may well not have been the case for people returned to the community and trying to lead normal lives again. Further, two of the three women released on licence who were interviewed told us that they were afraid of retribution from and rejection by neighbours should those neighbours become aware of the woman's past. It may be that other women on parole or licence feared exposure and unfortunately we were not able to reasure them that any personal information about their current lives would not be made public.

The transcripts and depositions on the cases were made availabl by the Attorney General's Department, in the case of the transcripts through the Court Reporting Branch. Although in all cases the court proceedings themselves were open to the public the Attorney General's Department required the consent of each woman before making the court papers on her case available.

We were able to obtain this consent for every case included in this report but have not been able to contact every defendant whose case we are examining in an extension to this research. In view of this difficulty the Attorney General's Department has relaxed its requirement, specifying that consent be obtained wherever possible.

We can understand and endorse the concern that people who have gone before the court should be protected against malicious or sensational publication of the evidence of the trial. There is an equally important principle, however, that court proceedings should be open to public scrutiny, not only by physical attendance at the trial but also by reading the written record of what occurred.

As stated in the introduction, where the women gave her authority we also approached her solicitors and asked to read their file on her case. In most cases the woman had been represented by the Public Solicitor, the body providing legal aid for criminal proceedings in N.S.W. The Public Solicitor's Office was extremely helpful in making available the files we requested. The files contained much valuable information particularly in the form of notes of instructions, psychiatric and pre-sentence reports and police records of interviews with the women.

In some cases the women had been privately represented at their trial. Access to the files of these solicitors was more difficult to obtain, due to a combination of factors. In a number of cases private firms of country solicitors failed to reply to our letters asking for access. In other cases,

particularly where the trial had been some years before, the file had been destroyed or misplaced. Some private firms were, however, quite obliging and allowed us access with the woman's authority to whatever material they had retained.

We were able to obtain the depositions for most cases through the Inspectorate of the Attorney General's Department. Indeed the Inspectorate obtained for us the entire Clerk of the Peace file which contained not only the depositions, but also the court exhibits and the prosecutor's notes. This was because up until very recently and after the date of the study, the Clerk of the Peace was both the body administering the progress of criminal cases through the courts and the solicitor for the prosecution in such cases. The Clerk of the Peace files were an invaluable source of information, particularly where the file of the woman's own solicitor was unavailable or incomplete. Unfortunately, in several cases the office of the Clerk of the Peace was unable to locate files we had requested.

We approached a number of lawyers who had represented one or more of the women in the study for interview. All but one was willing to talk and these lawyers gave us a valuable insight into the tactical decisions made in the course of a particular case or cases. We had initially planned to interview the women's lawyers extensively as to their perception of and communication with their clients but found in the interviews we did conduct that this was a less profitable exercise than discussion of tactics. Lawyers are generally not very aware of or reflective about such matters of social interaction and while the lawyers we did interview were most instructive as to the decisions they made and actions they took in a particular case, they were far less so as to general questions of law reform and the lawyer/client relationship. For this reason and lack of time we did not approach all the lawyers who had been involved in the cases and whose clients had agreed to us speaking to them.

Finally, we would like to thank Julie Stewart, who assisted us in many aspects of the research. During the latter part of the

research in early 1980 Julie was a final year Social Work student in the University of Sydney Social Work Department, under whose aegis this work was conducted. Julie spent her placement with this project during which time she was of great assistance attending trials, analysing data and sorting and filing information.

We attended several trials during the course of the project and found the experience valuable, not only because of the notes we took of the evidence but also because of the insight it gave us into the almost medieval drama of a murder trial. Whether or not the evidence presented at trial gives the true picture (and our study suggests that in many cases it does not) the presentation and weighing of the evidence can become for the onlooker an absorbing experience. Biblical notions of right and wrong, guilt and punishment that in the everyday world may seem far too simplistic assume enormous significance in the courtroom, cut off as it is from the social context of the events being recounted within it, or the consequences of conviction. Sitting in court for a day can give one a salutary taste of what the impact of their daily occupation must be on the minds and hearts of judges and magistrates.

The Interview Approach

We have stated that it was a central concern of the research to obtain information about the case from the offender herself. The emphasis on interviews distinguishes this study from most earlier homicide studies, which have set out to establish the social characteristics of a sample of homicide offenders drawn from police and court records. In most cases, the official source of the data is treated uncritically. E.g., Marvin Wolfgang's famous studies on homicide used the police files of the Philadelphia Police Department.[2] Other studies then followed a similar pattern. e.g. Voss M.L. and Hepburn J.R. "Patterns in Criminal Homicide in Chicago".[3] The only two (both unpublished) comprehensive studies of homicide in New South Wales used the files of the New South Wales Police Department, Central Invesigation Bureau. R. Mackenzie,

Murder in New South Wales 1933-57[4] and T. Rod, Murder in the Family in N.S.W. 1958-1967.[5] An exception to this style of research is Pawel Horoszowski "Homicide of Passion and its Motives"[6]. Horoszowski relied on court files but notes at page 5:

> Neither police statistics nor police records nor court statistics seemed to me sufficient for my study ... In the case of police records we have to do with incompetent qualifications. Such records include a substantial number of cases which the court does not consider homicide at all ... The police were often prone to a kind of professional exaggeration, and jump to premature conclusions on the basis of quite often insufficient evidence ... Felonious homicide is not what the police say but what the court establishes in its sentencing procedure.

Our reason for choosing the interview approach to obtain data about the homicides was a suspicion that official records would often contain incomplete or misleading information. We specifically wanted to test if this theory was correct by comparing the woman's own account of the events leading up to the homicide and the homicide itself with the information and image that emerged from the police material (chiefly the record of interview and statements from witnesses called by the prosecution) and the case in court.

The interviews proved our suspicion to be correct. In most cases there was a disparity, sometimes glaring, between the woman's account and the information to be gained from official documents. In no case for instance where a woman killed her husband in response to violence from him was the extent and quality of the violence the woman had experienced from her husband, often over many years, as graphically portrayed in the record of interview or in the court proceedings as in her own account to us.

In some cases the disparity could have been merely the result of a complex human situation being forced into narrow and rigid legal categories of behaviour and excuse.

In other cases, however, there appears to have been deliberate distortion of the reality into the official record either by the accused herself or by the prosecution. In one case, for example, one woman, a young girl at the time, admitted to a stabbing she says her boyfriend actually committed, believing that as a juvenile she would not receive a harsh sentence and would save him from gaol. She was tragically wrong - and spent 3 years in an adult gaol, the first six months of which was in solitary confinement to "protect" her from the older prisoners, because of this mistake.

In other cases the prosecution appears to have distorted the true picture by a concentration at the trial on a motive which was perhaps more easily digested by the jury because of its similarity to detective fiction but which bore little relation to the true facts. In one case, for example, the prosecution alleged that a woman and her son had killed her husband, the boy's father, in a rage over the fact that the father was to inherit an amount from the estate of another child in the family. That child had died leaving a will which left nothing to his father. The will was invalid and as a result the property was to be divided between father and mother equally (which incidentally left the woman better off than under the terms of the will).

True it was that the woman was angry and upset that the man who had brutalised and terrorised her and the children for so many years was to inherit from his son's estate, and against that boy's wishes. This was a minor irritant, however, compared to the violence and fear throughout her married life which eventually drove her to kill her husband.

A slick response to our assertions of a disparity between the woman's own account and the case in court or specifically in the prosecution's account would be to say that the woman cannot be believed. This is however far too glib an answer. (We discuss some of the reasons for the disparity, at least in the cases of women who killed their husbands, in the chapter entitled "Women Who Kill Husbands: The Battered Wife

on Trial" in Carol O'Donnell and Jan Cranney (eds), Family Violence in Australia, Longman, Cheshire, 1982.) Admittedly a person charged with a criminal offence may have the strongest of motives to present his or her conduct in a particular light, even to honestly believe that the events happened in a way that is contrary to the evidence from other sources. But the women in this study were not merely charged with an offence and yet to be tried; these were women who had all been tried, convicted and sentenced, in many cases several years ago. They had little reason by the time we interviewed them to deliberately give an incomplete or inaccurate account.

This is particularly the case for the women who had killed their husbands. There was substantial support in the gaol for these women, many of whom had endured years of brutality from the husbands they killed in a moment of panic or fear to protect themselves from assault. The inadequacy of psychiatric services within the gaol was compensated to some extent for these women by the solidarity and support they gained from each other and from other women in the gaol. Unlike some other offenders, such as women who had killed children, these women were not constrained by hostility within the gaol from coming to terms with what they had done. Indeed they gained a sorely needed confidence from each other which enabled them to speak about their actions and experiences in detail and with considerable insight. The personal stories they told ring true when gauged against general material on domestic violence.

In a domestic killing the woman herself may well be the only person who can say what life in the home had been like for her in the months or years before the homicide. Often there are no other witnesses to violence the woman had suffered at the hands of the husband she eventually killed, or to her mental and emotional state before she killed her child. In homicide with its legal emphasis on intent and the offender's state of mind at the time of the homicide it is crucial to know what that offender was feeling and thinking and often only she can say.

It is possible that some of the women we interviewed cannot see their own actions, particularly the homicide itself, clearly. Some women felt great guilt and remorse, a limited number appeared unable to confront what they had done, or to have blocked it from their minds. This is not surprising when one considers the lack of psychiatric care or even simple counselling available in the women's gaol. Many women commented that they received no psychiatric treatment when requested other than doses of tranquilising and anti-depressant drugs, others said that they felt unable to talk freely and openly to the prison psychologist because of her role in the prison administration. The research showed that the trust and confidentiality necessary for successful counselling is impossible when the counsellor or psychologist is a prison official part of whose job it is to prepare reports to be used in the security classification of the prisoner and in consideration of the grant to her of parole or licence.

The women's emotional state was exacerbated by the physical conditions in the gaol. At the time these interviews were conducted the majority of the women prisoners were housed in dormitory style halls, divided into smaller "rooms" by glass topped partitions which were not soundproof and did not reach the ceiling. Even when a woman had one of these "rooms" to herself, as some of the longtimers did, she had little privacy or refuge from the noise and activity all around her. The group ethos of a gaol is very much opposed to solitude and solitary occupations, and gaol is a harsh and disciplined environment where feelings must be kept bottled up, perhaps for years on end.

We designed the interviews around a questionnaire so as to cover the same topices with each woman but found that the questionnaire was too bulky and too formidable to use directly in the interviews. As a result we used the questionnaire more as a checklist and guide for the interviews, than a "questionnaire" in the strict sense. Preparation of the questionnaire was, however, extremely useful in clarifying our own thoughts. The questions in the questionnaire were open ended as we wanted to gather not only basic factual data about the woman's life and the homicide

but also her own descriptive accounts of her feelings, views and experiences. Similarly we explored in the interviews features of a woman's life or case that were highly relevant to her particular situation, although other women interviewed may not have had those same experiences. Some women for example had been in institutions as children. We discussed their experiences in those institutions with those women not withstanding the fact that not every woman had been in that situation.

We aimed to interview every woman at least twice and in most cases were able to achieve this aim. The interviewer did not go into the first interview completely ignorant of the woman she was to interview, and her case. We felt that the sensitivity of the subject matter was such that is was vital to know at least the broad outline of the woman's offence and background before interviewing her. Before the second interview, we analysed the notes or transcript of the first interview (interviews were tape recorded where the woman consented) to see what areas had not been covered and what areas needed further exploration. We also tried to have read the transcript of the woman's case (and often the solicitor's file as well) before this second interview so that we could ask the woman any questions that were suggested by that material.

Consumer Views on the Criminal Justice System

It is implicit in what we have said already that as well as hoping to obtain from the interviews a fuller account of the facts of the homicide than is possible from official records, we also wanted to gather the women's opinions about her experiences in the criminal justice system, from arrest to trial and in most cases imprisonment. In this report we will discuss the women's views of their legal representation specifically. This aspect of the study is in the tradition of earlier studies of the justice system which include the consumer perspective such as Susan Bell, Silent in Court[7], J. Baldwin and M. McConville, Negotiated Justice[8] and Pat Carlen, Magistrates' Justice.[9]

Interviewing in Gaol

As stated earlier most of the interviews were conducted inside gaols or mental institutions. There were disadvantages to interviewing in such a situation. From the point of view of the interviewer, the most frustrating aspect was that it was not possible to contact an inmate directly to confirm and arrange a time for interview. On a number of occasions the interviewer arrived at Mulawa or the Parramatta Linen Service (where a number of the prisoners worked during the day) only to find that the prisoner she had planned to interview was ill, or had stayed back at Mulawa, or that no interviews were possible at all because of a sudden strike by prison officers.

For some women, particularly those who had not come to terms with their crimes or who were still facing long terms of imprisonment, there was the possibility that the interview could awaken distressing thoughts which would accompany the woman out of the interview room. Back in the general prison environment there may well have been no outlet for these feelings which would have to be contained and denied. At the most basic level, the interviewer could walk out of the prison gates: the woman interviewed could not.

We were sensitive to this possibility and did not pursue in an interview any topic a woman appeared reluctant to discuss. It was a condition of our entry to the gaol, imposed by the Department of Corrective Services that the prison psychologist be consulted in advance of the interviews and in fact she was in the environs of the gaol whenever an interview was conducted so as to be available should the interviewed prisoner wish to talk to her.

On balance we do not feel that the delicate nature of the material in the interviews caused any difficulty. Many of the women seemed glad for someone to talk to, or at least a break in the monotony. As well, the women were able in the interviews to express feelings that they often felt they could not discuss with the other inmates, all of whom had troubles enough of their own.

We would not be honest if we did not acknowledge that the institutional environment can work for the researcher in less acceptable ways. Prisoners and mental health patients are in a powerless situation. They are used to complying with middle class professionals, psychologists, psychiatrists and parole officers who ask personal questions. They may not perceive that they have the right to privacy and the right to say no. Nevertheless we believe the women granted us an access that they may well not have afforded other researchers. We did not approach the research as neutral observers. We were interested in changing the law to better accommodate women's cases and in improving conditions generally and we told the women that.

Neither did we meet the women themselves as complete strangers. Both of us, particularly Wendy Bacon, had been associated with groups working for prison reform. In many cases we knew friends or lawyers of the women whose cases fell within the study. We asked those friends or lawyers to approach the women first to tell them about the project and ask if they wanted to be involved. Those personal links and our interest in change were in our view significant factors in encouraging at least some women to agree to be interviewed.

STUDY OF WOMEN OFFENDERS

Traditional Criminology

An orientation towards reform of the current law and practices in the interests of prisoners and defendants is unusual among researchers in criminology. Most mainstream criminology is concerned - either overtly or covertly - with the collection and analysis of (generally statistical) information for the better management of the existing criminal justic system. Just as our own orientation has clearly influenced the directio of our research, so the concerns of mainstream criminology constantly affects questions and problems which the researcher chooses to confront. As a result, the values and assumptions underlying the criminal justice system are rarely examined in conventional research. If any open practical commitment is made by the researcher it is to the more efficient working of a system which is taken as given.

Traditionally criminology has almost exclusively been concerned with the activities of men as criminals, police and prison administrators. As Carol Smart has argued in her book - Women, Crime and Criminology: A Feminist Critique[10] - there has been little attention, at least until very recently to female offenders. What work has been carried out relied on dubious assumptions of biological determinism and/or rigid, sexist stereotypes of female behaviour. Even most of the recent work of female criminologists which has criticised the assumptions of biological determinism and sex stereotyping, has been directed towards women as victims rather than offender

Lombroso and Ferrero (1895) Thomas (1923) and Pollak (1961) pioneered the study of female criminality. The influence of these authors continues today partly, as Carol Smart has argued, because of the lack of interest show in women by criminologists but also because the biological determinism which is the foundation of their work coincides with the "ideological stance" of "professional pathologists and agents of social control" and with the

> widely based and popular belief in the non-cognitive, physiological basis of criminal actions by women.
> (Smart, p27)

Lombroso has been called the founding father of the biological-positivist school of criminology. In 1895, he and co-author, Ferrero, published The Female Offender[11] a study which is based on the concepts of atavism - the belief that criminal elements are biological throwbacks from an earlier evolutionary stage - and social Darwinism - the belief that individuals or groups will develop the necessary physical or psychological characteristics which will enable them to function more efficiently in their pre-determined roles (e.g. Lombroso argued that murderesses or violent women evolve an unusual strength which enables them to kill with more vigor).

Lombroso and Ferrero studied pictures of female offenders, measured skulls and counted the moles and other body marks of women prisoners in order to find consistent signs of degeneration. Finding few in their sample who, according to their counting methods, could be classified as 'true' criminal types, they then used these results to explain why 'true' criminals are rarely found in the female population. They argued that women offenders reveal fewer signs of degeneration because they have evolved less than men. Moreover, they also claimed that women on the whole were more law abiding than and conservative than men because of "the immobility of the ovule compared with the zoosperm". (Lombroso and Ferrero, 1895 p 109.) Whatever the patterns, whatever the differences, Lombroso explained them all in terms of his biological theory of criminality.

Since she was not law-abiding like most women, the female criminal had to be a biologically abnormal woman. But that was not all. She was male-like as well. Indeed, possessing the worst characteristics of both sexes - the violence of the male and the cunning deceitfulness and cruelty of the female.

> As a double exception, the criminal woman is consequently a monster.
>
> (Lombroso and Ferrero, 1895, p 152)

To further illustrate he quoted Euripides: - "The violence of the ocean waves or of devouring flame is terrible. Terrible is povert but woman is more terrible than all else", and an Italian proverb, "Rarely is a woman wicked but when she is she surpasses the man". Abnormal as a woman, more wicked even than the criminal man, the female criminal especially the violent female criminal, was indeed set apart from other human beings.

Even in the world of biological determinism, Lombroso is clearly outmoded today. Carol Smart states that his work served to create an ideological framework in which later, more contemporary studies have developed.

> Variations on the belief in biological determinism, both of crime and the nature of women and an implicit support of double standards of morality, along with the failure to take account of the socio-economic, political and legal context in which 'crime' occurs, all appear in later works on female criminality. Thus although Lombroso and Ferrero's theories of criminality are now accepted as intellectually inadequate and morally distasteful their influence remains.
> (Smart, P 37)

In what is generally considered the next major work on female criminology, The Unadjusted Girl[12] W.I. Thomas pontificated sadly on the "demoralisation of girls" evident in the changing sexual behaviour of women from peasant communities from eastern Europe who had migrated to large American cities. Although Thomas cautio the reader against assuming the universality of traditional standards of morality it is clear he himself is disturbed by the increasing restlessness of young girls, and their increasing involvement in pre-marital and extra-marital sex, as he traces it from the somewhat questionable source of "true confessions" in Yiddish immigrant magazines such as Forward.

His conception of the nature of women and their place in the socia order is heavily sexist. He states, for example, that a woman's value is in making a good marriage (page 98), a value which the young girl must learn from other people. Woman is an empty vessel she has no self apart from what is conferred on her by others, wha she sees reflected in their eyes:

> the girl as child does not know she has any particular value until she learns it from others, but if she is regarded with adoration she correspondingly respects herself and tends to become what is expected of her. (page 98)

The third of these primitive works on female criminality most commonly discussed is that of Otto Pollak, The Criminality of Women first published in 1961.[13] This is a startling book: at one and the same time it recounts men's traditional fear and distrust of women, and falls a victim of the same fear and hostility in its own analysis. On the one hand Pollak states:

> In our male dominated culture women have always been considered strange, secretive and sometimes as dangerous ... (page 149)

On the other he quite uncritically adopts as criminological source material a legal code used in German witch trials, first appearing in 1487, the theological conception that women's predeliction for lies, concealment and ruses arises from the fact that Eve was created from a curved rib of Adam, and incantations against women in mythology and literature throughout the ages. (pages 8-9). His work displays the combination of fear and fascination with women that is typical of much early psychoanalytical theory - shown for example in his almost fetish like description of the minutiae of femininity (make up, long finger nails, high heels etc.) (Page 12) and the role they play in the commission of crime. This is prejudice and fear masquerading as scientific analysis and enquiry.

Pollak states that in order to feel better about their oppression of women men have either:

> idealised them (i.e. women) into a sweetness and purity which made them appear docile and harmless or they have maligned them in order to be able to condemn them. (Page 149)

These self deceptions have resulted, in the field of criminology, in one great deception in Pollak's view - that women commit far fewer crimes than men and:

> that when they do so they somehow betray their womanhood by venturing out into a reserve of men. (Page 149)

Pollak sets out to challenge both of these central tenets. It is his thesis (set out in pages 1-7) that there is a vast amount of female crime that is not recorded in official statistics. He argues that the criminality of women has been thus "masked" through a number of factors. First, he stresses that women are more deceitful than men and so their crimes are not detected. In homicide for example they are likely to use poison, and so a killing may be masked as a natural death. Women are not only

deceitful, they are manipulative and cunning as well - the masterminds behind criminal organisations rather than the hired hands actually committing the crime.

Secondly, he argues that "typical" female crimes such as postitution, abortion and theft by servants from employers and prostitutes from their clients are of a type more greatly under-reported than male crime. The typical victims of crimes committed by women (husbands, children, lovers) are also unlikely to report such offences to the police.

Thirdly, he argues that women slip through the justice net through the leniency and chivalry of males, from the male victim to the male policeman and judge. In Pollak's view, female crime is not the perversion of womanhood male gallantry and unease about women has led us to believe. It is the natural product of the innate deceitfulness of women and their "preferenc for persons in the immediate family circle as victims. (page 14).

Many of the central pillars of Pollak's thesis have been subject to serious question.[14] For a start, as Scutt states:

> (M)any of the fields in which women may be said to be escaping (e.g. abortion, prostitution) are areas of non-serious crime, and crime which in some jurisdictions is considered to be better removed from the criminal sphere.[15]

Further, recent material on domestic violence and rape has suggested that it is not female crime against men that is unde. reported but far more serious physical assaults committed by men on women.[16] It is instructive to compare Pollak's hysterical denunications of false accusations (of sexual attack) by women against men (Pages 24, 56) which he glorifies as a crime against the person with the real facts about the far more serious crime of rape, a crime evidence has shown to be greatly under-reported. Pollak states that women's isolation in the home allows them to keep their crimes "under cover to a much greater degree than is the case with men" (Page 56). He does not recognise or discuss the force of equally compelling features of our society, partiarchy and the privacy of the home, in preventing the reporting of serious crimes by men against women - rape, incest and domestic assaults.[17]

Pollak's other argument, that women are as a whole treated more leniently by the courts is also open to serious question. Historical research has shown that on occasion women have been treated far more harshly than men who have committed similar crimes, quite openly as an examplar to disprove the commonly held belief that women receive more lenient treatment.[18]

Our own research suggests that where women have strayed beyond the permitted bounds of womanhood they are perceived as fiends and receive correspondingly harsher sentences than men committing the same offence. For example, in our studies all three of the women who committed murder as juveniles received life sentences athough a life sentence was not mandatory. We are aware of the a number of cases of boys found guilty of murder committed while under 18 - in none of those cases, did the boy receive a life sentence.

Critique of the positivist approach

All three of these authors wrote in the positivist tradition of criminology, typified by its belief that scientific methods could be applied with equal validity to the study of human behaviour as to the study of physics and chemistry.[19]

As Taylor, Walton and Young have shown in The New Criminology[20] the mantle of scientific neutrality is a convenient way to avoid confronting the influence one's own values and objectives will inevitably have on one's research. Quite apart from the myth of scientific neutrality, "scientific" data collection methods are also subject to severe limitations. Statistics, even if reliable in themselves, can never be more than the bare bones of a situation. For the flesh and blood recourse must be had to more impressionistic and subjective accounts.

Lombroso, Pollak and Thomas also all display a quite uncritical acceptance of the existing order of society, even where recognising as do Thomas and Pollak that the existing order can cause substantial injustice, in particular for women. Their emphasis is on the individual pathology of the female criminal, what it is about her that makes her deviate. To a limited

extent Pollak and Thomas appreciate that social conditions may play a part in causing women to act in a way that is defined as criminal or delinquent, but nowhere do they question the norms the women have breached or the definition of their behaviour as criminal.

Thomas, for example, regards sexual promiscuity as necessarily delinquent while Pollak quite uncritically accepts the definition imposed by the then current criminal law and standards of morality. Thus he regards abortion and homosexuality between women as crimes (pages 1-2). Indeed his central thesis that women's crime is far more under-reported than that of men relies heavily on material on the alleged incidence of abortion (see the chapter "The Real Extent of Female Crime"). That his adoption of statute definitions of criminal behaviour has absurd consequences is shown by his discussion of prostitution. He states at page 55

> ... the crime of prostitution as such can be committed only by women because of the statutory definition of this behaviour. ... The man makes himself guilty only of such crimes as fornication or adultery.

He goes on to state at page 154 that because women commit both these offences and the offence of prostitution itself in every encounter they are therefore twice as criminal as men.

On occasions Pollak goes even further, stretching the limits of the criminal law to proscribe behaviour that he as a man clearly finds disturbing. Thus:

> (E)xhibitionism occurs frequently among girls. ... This can easily be observed by anyone who passes the streets with open eyes to human behaviour, but no prosecution on that charge has ever been recorded. (Page 2).

We have already mentioned his frequent hysterical denunciations of "false accusations" (of sexual attack) by women, behaviour which he dramatises as a crime against the person (see for example pages 24-25).

The authors do, however, reflect differing views as to the source of female criminality (as a personal pathology). For Lombroso it is clearly biological, but for Thomas the beginning of female

criminology, which he saw as mainly sexual, lay in a failure to adjust to the limited nature of women's proper role. The "demoralisation" of these girls is not their fault - they are not immoral but amoral because inadequate families and background have failed to supply them with moral code (Thomas, 1969, page 98). Delinquent women are not inherently criminal, merely under-socialised.

The breakdown in community control and the failure of some (working class) families to adequately repress the yearnings of their young girls for excitement provides the justification for extended surveillence and control by state agencies, in particular juvenile courts and child wefare agencies. In wholeheartedly adopting the development of increasing state control over the lives of (in this work) young girls, Thomas reveals not only his sexual double standards but also his middle class bias. The behaviour in young girls he describes as warranting state intervention is not only sexual behaviour that would be condoned in a young man; his remedy is to remove the girl from her working class environment and place her in a "good" (for which read middle class) home. (See for example pages 161-165).

Pollak's thesis is that social and biological factors inter-relate in the production of female criminality. To a certain extent he recognises that attributes commonly ascribed to women, such as deceitfulness, may be culturally induced - the socially sanctioned method of action for a sex that has no direct access to power, and whose members must secure economic support from husbands they are not supposed to pursue freely (Pollak, 1961 Page 11). He places equal weight, however, on the "physiological fact" that a man can't fake an erection whereas a woman can fake sexual interest and orgasm. He notes that:

> (I)t cannot be denied that this basic physiological difference may well have a great influence on the degree of confidence which the two sexes have in the possible success of concealment and thus on their character pattern in this respect. (Page 10).

He suggests that women are especially susceptible to criminal activity during their "generative phases" - menstruation, pregnancy and menopause. (pages 125 et seq). The crudity of this analysis is apparent - not only is it difficult to test because given that women menstruate once a month inevitably large numbers of women who commit criminal acts will do so when menstruating; it also paints women as unreasoning creatures, the victim of their own biology, for at least a fourth of their lives. Evidence has been given in several recent cases in the United Kingdom that a woman offender should not suffer the full rigour of the law because when she committed the act the subject of the charge she was suffering from hormonal imbalance due to pre menstrual tension.[21] We do not have sufficient information about these cases to discuss them in any detail. It does appear however, that the reaction of the women in those cases to the hormonal changes prior to menstruation was extreme. Recent material on pre menstrual tension does suggest that many women suffer from a milder form of this condition but generally the literature does not consider whether symptoms of tension might not be the product of socially negative attitudes to menstruation rather than an unavoidable biological state.

Pollak is similarly unsatisfactory in his treatment of the social factors that can cause crime. He tends to concentrate on the undesirable manifestations of poverty and inequality such as the broken home and truancy, rather than the structures of poverty and inequality themselves. Where he does recognise inequality as a cause of crime, for example the sexual double standard, he is not only uncritically accepting of the existing state of affairs, even this aspect of women's oppression is turned against us in his analysis. Just as menstruating women are said to harbour a burning desire for revenge because menstruation "destroys their hope ever to become a man" (Page 127), women consigned by society to only one permitted sex partner, their husbands, are said to express their resulting aggression by crimes of passion against these same hapless husbands. (Page 141). The alleged greater propensity of married women to commit crimes against the person as a result of this aggression is discussed (page 142); no mention is made of the

fact that perhaps married women have good reason to kill assaultive husbands, or beat children who represent an additional burden in an already intolerable situation.

The tension in Pollak's analysis between social and biological factors as causes of female crime is typified in his discussion of infanticide (pages 20 et seq). Other writers (for example Ann Jones[22]) have convincingly argued that historically infanticide and concealment of birth have been products more of the stigma of illegitimacy and the sexual double standard than any innate criminality on the part of the mothers. While Pollak recognises this to a very limited extent (for example pages 21-22), the effect of such social conditions as he traces it is primarily in determining particular features of the homicides, such as the method of killing, attempts to conceal the body and so on. The homicides themselves, his thesis implies, would have happened anyway as a function of the criminality lurking within the women.

Similarly, in his view only the characteristics of female homicide are related to women's social isolation in the home (page 13) and the caring, nuturing role for husbands and children including the preparation of food and medicine (page 17). These considerations determine not whether or not women will kill but merely that when they do they are likely to kill husbands or children and use poison to do so. Women are seen as killing not in response to a particular situation such as an oppressive marriage, but as an outburst of a criminality that lies within, waiting for a victim. Husbands and children become those victims not because they form part of an oppressive situation, but because their relationship to the woman makes them easy prey.

Thus Pollak states:

> In addition to the limitations of her contacts, it is also the nature of women's social roles as such which leads her to prefer certain types of victims. In our culture the care of children is woman's task. This function permits women to select children as the victims

> of their crimes in ways in which men could never indulge without arousing suspicion. (page 13 emphasis added) and

> It is undoubtedly true that marriage adds a husband and very often children to the possible personal objects of a woman's criminal attacks. (page 145 emphasis added).

That this view of female criminality as independent of situation the situation merely defining the particular form of its expression, is not confined to Pollak is shown by the press reporting of a talk given by one of us about this research at an Institute of Criminology seminar in Canberra in February, 1981. The "Australian" headed its article on the talk "Female Killers 'Strike at Their Own Families'" (the Australian 26 February, 1981). The implication was clear - the women would kill anyway, they just happened to choose the nearest victim.

Our approach: a feminist and social analysis

We differ fundamently from these earlier theories of female criminality in several respects. We do not place our emphasis on women's biology as the explanation or source of the criminal acts committed by the women in the study. Nor do we place great emphasis on any other of their individual characteristics such as mental disturbance or personality. This is not to say we discount the crucial influence that these factors may play in causing a particular woman to react in the way she did in a particular situation.

We are not, however, psychologists and do not have the skills to trace the influence of psychological factors. What we do say is that psychological and social explanations for homicide or indeed any other behaviour, are not necessarily in opposition to one another. Biological explanations that fail to take account of the interaction between an individual's psychological state and the social and cultural context within which she lives are seriously inadequate. A person's immediate social environment and broader structures of society will intimately effect her mental and emotional state. Personal, psychological symptoms of distress or disturbance may be a reaction to stresses placed on the woman by this social environment - a battered woman may well show signs of clinical depression and anxiety, not because

she is inherently disturbed but as a reaction to constant battering.[23]

The emphasis on biology and personal characteristics is objectionable because it deflects attention from crucial analyses more dangerous to the status quo. These are the views that the criminal act may have been a rational, or at least understandable, response to a given situation and, at a broader level, criticism of the social structures that force people into these situations of conflict and stress in the first place and then confine them there.

Our view that more insight is to be gained by seeing these women's acts as explicable in the light of their social and family situations than as expressions of individual deviance has been confirmed by our research. Explaining deviant acts solely in terms of the personality of a particular individual is more acceptable because it does not threaten the social order. We place stress not on how the women in this study differ from other "non-criminal" women, but on how they are the same - on the similarity between the situations in which they found themselves and the domestic and family situations of many other women in Australian society, situations of domestic oppression and economic disadvantage that are rooted in the sex and class structure of our society.

In this sence our work is in the same tradition as that of feminist historians who have related the patterns of female homicide at different times to the then prevailing social conditions, in particular the position of women. Ann Jones in her book Women Who Kill[24] traces the patterns of female homicide in the United States from the first Puritan colonists to the modern day. She shows that the type and incidence of female homicide and the public response to it have reflected sex, race and class divisions in society.

Mary Hartman in Victorian Murderesses[25], took a different tack; she focused on the cases of 13 19th Century English and French women of the "respectable" middle class who were accused of being murderesses or accomplices in murder and whose cases subsequently became notorious.[26]

If the crimes of the women in the study were to a large extent understandable in the light of the common experience they share with many women in Australian society it follows that their lives can tell us something about the lives of other non-criminal women. As historians both Jones and Hartman have argued along these lines. They say that not only in many respe is female homicide the product of a particular arrangement of society at a given time but also that the lives of the women whose stories have been recorded because of their crimes, unlik the great mass of their law abiding sisters, can tell us a grea deal about the situation of all women at that time. As Ann Jon says:

> Women who kill find extreme solutions to problems that thousands of women cope with in more peaceable ways from day to day. So we can learn a good deal about woman's changing position in American social life by considering whom she killed, when, why, and how her community regarded her crime. From the very beginning of the country, women on the raveling edge have outlined and made plain the fabric of society. (Jones, 1980 Page 1

There are obvious dangers and difficulties in generalizing from the exceptional cases to the ordinary or more common.[27] But to the limited extent we can without historical data we would wish to do so in this study. We suggest in particular that the information we have gained about the violence many of these women suffered at the hands of their husbands before finally killing them is relevant to understanding domestic violence generally, even when it doesn't end in death.

HOMICIDE STUDIES: SOME THEORETICAL ISSUES

Apart from the feminist historical homicide studies already discussed, homicide has been studied from the standpoints of anthropology, sociology, psychiatry and psychology.[28] The anthropological studies share the approach of the historial in viewing homicide as imbedded in the social fabric, and so one indicator of the points of tension in a society at a given time. Many of the early sociological studies, however, examined homicide as a discrete, deviant phenomenon, studying the characteristics of offenders or victims but not the relationship between them, or the links between homicide and the social environment.

Wolfgang and "Victim Precipitation"

The work of Von Hentig in the 1930's and 40's marked a change in the emphasis. He focused his attention on the relationship between the victim and offender. The notion that this relationship between victim and offender is significant was adopted and further developed in the much more well known work of Marvin Wolfgang. To quote from his classic work, Patterns in Criminal Homicide,[29]

> ... the agent and his victim work upon each other profoundly and continually, even before the moment of disaster. ... To know one person involved in a homicide situation, we must be acquainted with the other. (Wolfgang, 1966, Page 9)

As one aspect of this concentration on the relationship between offender and victim, Wolfgang developed a theory of "victim precipitation". This was the idea that in many homicides the victim has played a leading role in his or her victimisation and ultimate death. In the crude form first developed by Wolfgang the theory is severely limited. Nevertheless it was a considerable advance in criminological thinking about homicide. In particular, Wolfgang limited his definition of victim precipitation to situations where the victim was "the first in the homicide drama to use physical force directed against his subsequent slayer " (Page 252). Non physical forms of provocation, such as verbal threats, harrassment or adultery were excluded from his analysis.

Wolfgang's narrow definition of victim precipitation could well result in the exclusion of cases where a woman responded to verbal threats of physical violence. If a woman fears that she will be unable to rebut a threatened and she believe imminent physical attack, she may pick up a weapon and be the first to actually use physical force in the homicide drama. Nevertheless her resort to violence will have been the result of threat of physical force. The restricted definition may also render less reliable his findings in relation to homicides by men, particularly those men who kill their wives in response to what the men perceive to be verbal harrassment or adultery. It may be that the difficulty with Wolfgang's definition is that any objective test of "victim precipitation" will inevitably leave out some cases where subjectively the offenders perceived themselves to have been provoked.

More significantly, for the cases of female offenders, the theory was deficient in that it concentrated on the events immediately preceding the homicide. The theory lacks an historical perspective of the relationship between the partie in which there may have been many past incidents of violence. Further, it does not allow for the case where the homicide may be a response to physical force from the victim which is still operating on the mind and self control of the slayer although the attack from the victim was some time before. In a number of our cases a woman killed her husband in response to a recent or feared physical attack by him, usua yet another attack in a long history of violence, but took her lethal action some hours after the attack, waiting until the man was asleep.

These cases would presumably not be included in Wolfgang's definition of victim precipitated homicides, yet our evidence strongly suggests that the women were still operating under the effect of their husband's recent violence when they kille them. They were simply too afraid to fight back when their husbands were in a position to overpower them.

Despite these deficiencies in this early form of the theory, it is striking that Wolfgang found that in 43 out of 88 cases where a male victim had been killed by a female offender the victim had precipitated (in Wolfgang's definition) his own death. (Page 259). He states that 28 of these male victims were the husbands of their killers (page 260) but the proportion may have been higher in fact because of the difficulties in determining marital status due to the cultural prevalence of common law marriages among Negros (page 212).

The theory of victim precipitation has been developed by later writers. Avison[30] has argued that:

> (t)he victim can contribute in many different ways to the interaction preceding the aggressive behaviour, and it may be more meaningful to consider such involvement on a continuum ranging from participation (which may involve little more than a mere presence of the victim in a given situation) through varying degrees of provocation, and culminating in active precipitation by the victim. (Page 58).

The advantage of Auvison's approach is that it does allow for more flexibility in the characterisation of the participants as victim or offender. The problem with this approach, on the other hand, is that this more subjective attitude gives free reign to the researcher's own preconceptions including sexist ones, indetermining whether or not certain conduct is inviting attack. For example Avison cites the situation of a woman or girl killed after a sexual attack where it may be impossible to know anything about the role of the victim yet "there is some reason for believing that in many such cases the victim, if not deliberately contributing to her death, at least selects herself to be at risk". (Page 59). Similarly, he argues that a child who accepts a lift in a car from a stranger and is subsequently killed may have participated in his or her own death, citing with approval a study showing that there is a group of child victims of sexual offences "who show little maladjustment, but are simply submissive, seductive girls ready to participate in any relationship at a superficial level." (Page 60).

Such an extended theory of victim participation if it is to be used in any way to extenuate the killing is inconsistent with legal notions of responsibility. We would suggest it could also be dangerous in that in being applied to particular types of crime it could reflect and reinforce popular notions of blaming the victim, and sex and racial superiority.

The concentration in subsequent writing on victim precipitation has remained on the events immediately preceding the homicide, but Luckenbill[31] has noted that in almost half of the 71 cases of criminal homicide in one Californian county he examined

> there had previously occurred what might be termed rehearsals between the offender and victim. These involved transactions which included the escalation of hostilities and, sometimes, physical violence. In twenty six percent of these cases, the offender and, sometimes, victim entered the present occasion on the assumption that another hostile confrontation would transpire. (Luckenbill, 1977, Page 178).

He describes homicide transactions as involving a consensus among participants that "violence was a suitable if not required means for settling the contest". (Page 177) Our results suggest that this consensus, at least in killings of husbands by their wives, can be based on bitter experience by the wives of violence at their husband's hands. An historical examination of the entire relationship between offender and victim is crucial in family homicides - even where it is clear that the offender's lethal act is in response to some immediate violence from the victim the full dimensions of her response and reasons for it will not be understood without an appreciation of what had gone on before in the relationship and what was likely to continue happening in the future.

Apart from examining the relationship between offender and victim, Wolfgang's was a seminal work in its sheer weight of information about the characteristics of offenders, victims and the homicides themselves. He obtained data not only as to the race, sex, age etc. of offenders and victims, but also as to the empirical facts of the homicide: the time of day, day of week, location, weapon used, presence or absence of alcohol, and so on. In his study he examined police files for

all criminal homicides in Philadelphia over a five year period 1948-1952. The format was subsequently replicated by other researchers for other American cities.

Wolfgang's stated aim was to provide data "on which a practical programme of control and prevention might be based" (Wolfgang, 1966, page 4). In adopting such an aim he seems to assume that "prevention and control" are the aims too of the police force, whose work in other portions of the book he praises. Rhetoric aside the fact is that, the police are not chiefly concerned with the prevention of homicide but rather with the detection and apprehension of offenders once the crime has taken place. Indeed were the police chiefly occupied to prevent the commission of homicides theirs would be a thankless task as the prevention of such a complex phenomena, deeply rooted in family conflict in many cases which until the homicide may have remained hidden from public view, is far more complex than Wolfgang's simple call for "prevention and control" would suggest.

This is the other difficulty with his stated aim. It is not that his data cannot illuminate the nature and background to homicide, just that he, and most researchers in this field, do not tease out the significance and implications of their own material. The data is presented baldly as though the conclusions to be drawn from it are self evident, but unless the findings are analysed in the context of some general analysis of the role the family serves for the State and the patriarchal organisation of our society the data will remain obscure, the only possible conclusions trite and uncritical of the very institutions which contributed to the homicides. The fact, for example, that a high percentage of husband killings are victim precipitated can tell us a great deal about the dynamics of the family situation that gives rise to the homicide, but attempting to "prevent" further such homicides on the basis of this insight would require the analysis and overthrow of the patriarchy that sanctions the use of force by husbands against their wives, a long term and difficult exercise at best.

We have already mentioned some criticisms of the reliance on police records as a source of information about homicides.

Wolfgang's use of police files may have particularly lead him into error in relation to the "motives" for the homicides. As we discussed earlier in some of our cases there was a glaring disparity between the prosecution (and presumably police) accou of the motive for the homicide, and the woman's own account, which should at least be afforded equal recognition. Wolfgang lists only a very small proportion of all female homicides as being accidental (3.7%) or committed in self-defence (1.8%) (Wolfgang, 1966, page 191) yet this latter statistic is in contradiction to his own subsequent finding that a high proport of all husband killings were victim precipitated. His low percentages for accident and self defence do not correspond to our material which as is discussed later in this report showed that a high proportion of husband killings contained a strong element of accident or self protection. The largest category of ascribed motive revealed in the police files for female homicide studied by Wolfgang was "domestic quarrel" (33.9%) followed by "altercation of relatively trivial origin; insult, curse, jostling etc" (27.5%) (page 191). These categories are so general as to be quite unhelpful. It is entirely possible that either or both would include cases that could also be described as "accidental" of "self-defence".

More significantly his categories are the prosecution account and so may only tell half the story. It may well be that a woman offender had a perfectly adequate case of self defence or accident that she did not convey to the police, or they did not accept, but which was subsequently accepted by the jury at her trial. Some of these "offenders" included by Wolfgang in his discussion may well have been acquitted after all. Wolfgan like most social researchers, accepts the reasonable suspicion necessary for a police charge as conclusive evidence of guilt of the act charged, rather than the determination of guilt according to law. Indeed the regrettable fact that "(s)ome defendants are found not guilty" (page 13) is one reason Wolfgang advances for the superior reliability of police statist

As lawyers concerned about the operation of the criminal justice system our aim is to provide a body of information and some analysis which can be imported into the court disposition of women homicide offenders, in an attempt to

make their treatment by the criminal justice system appropriate to the real life dimensions of their crimes. As social researchers, our aim is to present material on the background to the homicides with particular emphasis on the perspective of the woman offender herself.

The "Sub-Culture of Violence" Theory

Wolfgang's other contribution to the sociological study of homicide has been his theory of the "sub culture of violence". This idea was first developed by him in Patterns in Criminal Homicide and subsequently expanded.[32] The theory attempts to explain the high rates of homicide as found by Wolfgang in Philadelphia committed by young negro males who kill friends and acquaintances. It postulates that these offenders (and their victims) typically live in a ghetto or at least working class black culture where violence is the expected response to any perceived insult or threat. Wolfgang compares this subculture of violence with the "upper middle and upper social class value system" which "considers many of the social and personal stimuli that evoke a combative reaction in the lower classes as "trivial"".[33]

The "sub cultural violence" theory may be of some use as a description of the social context of homicides between young working class, particularly black, males, arising out of quarrels over money or other relatively "trivial" alteractions.[34] The theory is useful in so far as it states that the perception of stimuli and the response to those stimuli can be determined by the sub cultural approval and acceptance of the ready use of violence. The concept has serious drawbacks, however, in that it is merely descriptive: it does not attempt a structural or historical analysis of society to explain the origin of such different perceptions of the use of violence[35] and it isolates working class and upper middle class cultures from one another without recognising that each may be a realistic adaptation to what life is really like for members of each class.

Wolfgang and Ferracuti state that:

> (t)he variations in the surrounding world, the continuous challenges and daily frustrations which are faced and solved by the adaptive mechanism of the individual, have a greater chance of being perceived and reacted upon, in a sub culture of violence, as menacing, aggressive stimuli, which calls for immediate defence and counter aggression.[36]

They imply that this is not a valid perception and so ignore that a working class man unemployed or employed as an unskilled or semi-skilled wage earner may indeed have less control over his daily life than an upper middle class professional and fewer possible responses to inroads on his autonomy and self image. A professional may be able to use the police, courts or business practices to retaliate against a threat to life or property; the working man will often only have his fists.

The theory is most suited as an explanation for homicides arising out of isolated incidents such as, to use Wolfgang's categories, "altercation(s) of relatively trivial origin; insult, curse, jostling etc.", altercations over money and robbery. Even in these cases, it has the limitations discussed above. It is of less utility as a descriptive tool in the analysis of homicides of family members. In cases of family homicides the acceptance or otherwise of the use of violence may be based not so much on its acceptance in the broader social environment, but on the use of violence in past incidents between the parties, the "rehearsals" of which Luckenbill speaks. Our material suggests this is particularly the case for homicides by women of their husbands, in the majority of which cases the man had used force against the woman in the past although she had never before retaliated with violence. Even in working class culture the overlying influence of the patriarchy which trains men in physical activity, including violence, and socialises women into passivity is sufficiently strong that for most of these women their final use of physical force was not a resort to a culturally condoned means of response, because violence was not culturally condoned for women, but a response to violence offered to them by their husbands.

This is not to say that the use of violence in the social environment as a whole can be ignored in the analysis of homicides by women. It is necessary to consider violence in the community to understand the resort to violence by the husbands, and to understand the accepted use of weapon resulting in a death in the non-family homicides by women. We would argue, however, that the examination of violence in society generally should not stop as Wolfgang's analysis does at the acceptance or otherwise of personal violence as a means of solving disputes with another. The analysis should extend to the various forms of institutionalised violence in our society, such as violence and killings by police,[37] the use of violence in prisons to coerce, control and punish[38] which reinforces rather than undermining the ethic of violence in the men sent to gaol supposedly to be rehabilitated[39] and the acceptance at an international and national level of violence in war as a means of solving political disputes. It is important in this context to remember that homicides defined by the state as criminal and so attended by social disapproval and all the expensive trappings of the criminal justice system, are but a fraction of the number of deaths caused in ways deemed more acceptable. In 1980, for example there were about 100 criminal homicides in N.S.W. compared with 1303 deaths on the roads and 236 due to industrial "accidents" or the negligence of employers in the year 1979-80. Criminal homicides are not unique and isolated instances of interpersonal violence. They are but a part of a whole spectrum of violence, some of which is protected by the state, some of which, such as incest, rape and wife bashing, is technically criminal but is rarely brought to public attention.

Finally, the analysis should examine those structures that create and perpetuate the use of violence. Class and race are obvious examples; further in the case of domestic homicides by women their lethal act and the violence from the ultimate victim that may have preceded it must be seen in the context of a patriarchal society which creates and condones the use of violence by men against women. The "sub

culture of violence" that is relevant for the analysis of these cases is domestic violence by men against women which research has shown to be a problem of enormous proportions, and one not limited to any one class or ethnic group.

Australian Studies of Homicide

There have been a number of relatively small scale studies of homicide in Australia.[41] The two major studies in N.S.W. have collected information from police files as did Wolfgang on the social and personal characteristics on victims, offenders and their crimes. MacKenzie in his unpublished Ph.d. thesis (1961)[42] examined all criminal homicides between the years 1933-1957 inclusive and Teresa Rod in her unpublished MA thesis (1979)[43] examined criminal homicide between the years 1958-1967 inclusive. The relevant findings of these studies will be discussed in the next section on classification of our cases. The N.S.W. Bureau of Crime Statistics and Research is currently undertaking a study of police files for criminal homicides from 1968 (by virtue of a grant from the Criminology Research Council) which will, with the earlier studies, provide an historial study of homicide in N.S.W. over a span of more than 40 years.

These studies suffer from the limitations we have already discussed inherent in any study based on police material. The Rod and Bureau studies in particular, however, have attempted to transcend mere "number crunching" and develop more descriptive and theoretical analyses of homicide. Teresa Rod refers to a number of anthropological studies of homicide in different cultures and interprets the statistical material she obtained through a discussion of the role of women and violence within the family. The Bureau study aims to obtain additional information from sources other than police files, such as transcripts in a sample of cases to provide a more detailed examination of a group of cases and highlight any deficiencies or bias in the police record. It also aims to trace any prior history of domestic violence in cases of domestic homicides by men or women.

As well as these studies of homicide there have been a number of studies of related issues. The N.S.W. Bureau of Crime Statistics and Research has published a report (May, 1975) on intentional shootings which found that both suicides and criminal firearm casualties were often "impulsive, "spur of the moment" acts rather than considered, intentional shottings."[44] The study focused "on the role palyed by the accessible lethal weapon in transforming an aggressive impulse into a fatality."[45] In several of our cases where women killed their husbands or boyfriends the death was the unintended result of a show of force that was intended to harm slightly or frighten only. Death resulted because the woman used a weapon, in most cases because they felt unable to retaliate by physical force alone.

Biles and Freiberg have studied the workings of the life sentence in Australia,[46] the mandatory penalty in all states for murder and recidivism rates for homicide offenders have been studied in Victoria.[47] As could be expected the study found that men released after serving sentences for homicide have a much lower rate for recidivism both for violent and non-violent offences than those who had served sentences for other violent crimes.[48]

CHAPTER I: BACKGROUND

FOOTNOTES

1. Another argument that is sometimes advanced as to why pe with experience in a particular field and a political commitment to it should not conduct research in that fie is that they may introduce a bias into the results. As state elsewhere in this report, we believe that all rese is informed by the political and social views of the researchers, even if they assume a posture of objectivit It is interesting that Greg Lyons in his article "Surveyi Aboriginal Opinion Concerning the Law: Some Methodologic Considerations" in Peter Cashman (ed), Research and the Delivery of Legal Services Law Foundation 1981 states th it is crucial that Aboriginal persons should be involved research to obtain consumer perspectives from Aborigines (p259).

2. Patterns in Criminal Homicide University of Pennsylvania Philadelphia 1958.

3. 59 Journal of Criminal Law, Criminology and Police Scie 449-508.

4. Unpublished PhD thesis in Anthropology Sydney University

5. Unpublished MA Honours thesis in Anthropology Macquarie University 1979.

6. Drapkin, I. and Viano, E. (ed), Victimology: A New Focus Volume IV Violence and its Victims Lexington Books 1975 at page 3 (a summary of a longer work in Polish).

7. London Bell 1971.

8. London Martin Robertson 1977.

9. London Martin Robertson 1976.

10. Carol Smart, Women Crime and Criminology London Routledge & Kegan Paul Ltd. 1976.

11. Lombroso, C. and Ferrero, W. The Female Offender London Fisher Unwin 1895.

12. First published by Little, Brown and Company in 1923. Al references in this chapter are to the 1969 edition publis by Patterson Smith of Montclair, New Jersey.

13. Otto Pollak, The Criminality of Women New York Barnes 196 (Perpetua Books).

14. For a general critique see Carol Smart, Women, Crime and Criminology note 10 above; Dorie Klein, "The Etiology of Female Crime: A Review of the Literature", in Datesman, S and Scarpitti, F.R. (eds), Women, Crime and Justice Oxfor University Press 1980; and Jocelynne A. Scutt, "Debunking the Theory of the Female "Masked Criminal"", ANZJ Crim (1978)23.

15. Scutt, note 14 above, at P40.

16. See for example NSW Bureau of Crime Statistics and Research report Domestic Assaults 1975 and the Report of the NSW Task Force on Domestic Violence June 1981.

17. Scutt points out for example that even where disputes come before the authorities many jurisdictions have methods of dealing with them other than by referral to criminal courts, with the result that there is no recording of a "crime" or of a "criminal", Scutt, note 14 above at p31.

18. See, for example, the discussion of the case of Ann Bilansky in Ann Jones, Women Who Kill, Holt Rinehart and Winston New York 1980 pp179-185.

19. See in particular Thomas, note 12 above, at pages 222 et seq for an explicit statement of this position.

20. Taylor, I., Walton, P., and Young, J., The New Criminology: For a Social Theory of Deviance Routledge and Kegan Paul London 1973.

21. See for example article by Marcel Berlins and Tony Smith of The Times reprinted in The Newcastle Herald, Saturday November 14, 1981.

22. Women Who Kill, see note 18 above.

23. See, for example, Elaine Hilberman and Kit Munson, "Sixty Battered Women" Victimology Vol 2 Nos 3-4 1977-78 p460.

24. See note 18 above.

25. Schocken Books, New York 1977.

26. Judith Allen, a feminist historian at Macquarie University, Sydney, is currently researching patterns of female involvement in crime, both as victims and as offenders, in New South Wales between 1880 and 1940 for a PhD in History from that University. See her chapter, "The Invention of the Pathological Family: Aspects of Family Violence and its Treatment in New South Wales 1880-1940" in Carol O'Donnell and Jan Cranney (eds), Family Violence in Australia Longman Cheshire 1982.

27. Mary Hartman has recognised these problems - see p7 note 25 above - but suggests that the women in her study "may have been among a group which was especially sensitive to certain problems and tensions which were common to a large number of middle class households." (p2).

28. For a psychiatric study of homicide see Lunde, T., Murder and Madness San Francisco, San Francisco Book Co. 1976 and Oscar R. Schmalzbach, Profiles in Murder Hodder and Stoughton Sydney 1971. Tess Rod quotes a number of anthropological studies of homicide in her MA thesis, note 5 above, at pp 5-6. The most well-known anthropological collection is probably Bohannan, P., (ed) African Homicide and Suicide Princeton University Press Princeton 1960.

29. This work was first published by the University of Pennsylvania in 1958. All references in our report are to the edition published by John Wiley and Sons of New York in their Science Editions 1966.

30. Neville H. Avison, "Victims of Homicide" in Drapkin, I., Viano, E., (eds) Victimology: A New Focus Volume IV Viole and its Victims Lexington Books 1975 at pp55-67.

31. David F. Luckenbill, "Criminal Homicide as a Situated Transaction" Social Problems Vol. 25 no 2 Dec 1977, P176.

32. Marvin E. Wolfgang, (ed), Studies in Homicide Harper & Ro New York 1967.

33. Marvin E. Wolfgang, Patterns in Criminal Homicide, note 2 above, at p189.

34. Marvin E. Wolfgang, Patterns in Criminal Homicide, note 2 above, at p 191.

35. Wolfgang explicitly recognises this at p279 of Studies in Homicide see note 32 above, in his chapter with Ferracuti "Subculture of Violence: A Socio-Psychological Theory", where they state that they have not attempted to explain the cause of the subculture of violence. They continue on p279 "Such an endeavour undoubtedly involves analysis of social class and race relations that would include residential, occupational, and other social forms of discrimination and cultural isolation as important factors

36. "Subculture of Violence-A Socio-Psychological Theory", note 32 above, at p278.

37. Richard Harding, Police Killings in Australia Harmondswort Penguin Books 1970.

38. See the Report of the Royal Commission into New South Wale Prisons March 1978.

39. Cf Wolfgang and Ferracuti, "Subculture of Violence-A Socic Psychological Theory" in Studies in Homicide, note 32 abov at p280: "In the correctional environment, the treatment program, especially when using individual or group psychotherapy, should try to counter-balance or to elimina the allegiance of the subject to the subculture of violer and his differential perspective of the world".

40. The number of road deaths was obtained from a report in th Sydney Morning Herald, 24 October, 1981 at p2; the number to industrial accidents from the Annual Report of the Work Compensation Commission of New South Wales for 1979-1980 a the number of criminal homicides an estimate from the curr study of the NSW Bureau of Crime Statistics and Research i homicide.

41. See, for example, Jackob M. Najman, "Victims of Homicide: An Epidemiological Approach to Social Policy" in ANZJ Crim (1980) 13 and the recent report of the South Australian Office of Crime Statistics Homicide and Serious Assault in South Australia November 1981, which extends work publi in a similar homicide study by that Office in 1979.

42. Mackenzie, Murder and the Social Process in New South Wale 1933-1957 note 4 above.

43. Rod, Murder in the Family in New South Wales 1958-1967, note 5 above. See also her chapter "Marital Murder" in Jocelynne A. Scutt (ed), Violence in the Family Australian Institute of Criminology Canberra 1980.

44. New South Wales Bureau of Crime Statistics and Research, Intentional Shootings May 1975 at pl.

45. Note 44 above.

46. Arie Freiberg and David Biles, The Meaning of "Life": A Study of Life Sentences in Australia Australian Institute of Criminology July 1975. See also a summarised version of the study published as "Time Served by Life Sentence Prisoners in Australia" in Aust NZJC (1976) 9 p77.

47. Peter H. Burgoyne, Homicide and Recidivism Report to the Criminology Research Council and the Victorian Department of Community Welfare Services December 1979.

48. Note 47 above, pp7-9,82.

CHAPTER II: CHARACTERISTICS OF OUR CASES

RELATIONSHIP BETWEEN VICTIM AND OFFENDER

At the end of the period during which we collected information on which this research report is based, we were faced with a large amount of information on the cases of each of 35 women.

Each woman in this study had her own story to tell - while there are of course similarities, the subtleties and complexities in each are different. The researcher who studies a small number of cases in considerable detail has more problems in categorisation than the researcher who is interested only in broad social characteristics. In the latter case, the limits of the analysis are determined beforehand by the variables chosen. Yet in order to present our material in a digestible form and to protect the anonymity of the women themselves, it was imperative that we discuss the cases in broad groups.

Since the introduction of victimology into the field of homicide studies, the conventional division of cases has been according to the relationship between victim and offender.[1] Our initial classification of the cases is between those women who killed or attacked members of their own immediate family and those who did not. We then further divided the cases of those who attacked or killed family members into three smaller groups according to whether the victim was husband/boyfriend, their own child or their father. (There were no siblings, or mothers among the victims). While this classification has proved a useful one, we have some misgivings about the implications which may be drawn from it which will be discussed briefly later in this report in the section dealing with the homicide of non family members.

According to this broad division, of the 35 women in our study, 24 were charged with killing or attempting to kill members of their own family. Of these 24 women, 17 were

charged with killing their husbands or boyfriends, 3 with killing their father (the same victim) and 4 with murder or attempted murder of their own child. Twelve women had been charged at one time with killing or attacking a person who was not related to them. (Two of these women were also convicted o a separate homicide offence in one case of the woman's husband, in the other of her own child and have been included in those categories as well.) Of these twelve women, five were convicted of the murder of strangers in the course of robberies, or, the prosecution alleged, for other financial gain. Two of these women who were said to have killed for gain knew their victim before the homicide. We qualify this description of the crimes as being the prosecution's account because in one case the woman vehemently denied she had caused the death at all and in another suggested to us in our interviews with her that the man she killed, in the prosecution's account for money had raped her on the last occasion they had met. Two women were convicted of a homicide offence committed on a neighbour or acquaintance, committed in both cases when the woman had been drinking and after an argument with the person she attacked. Three women were convicted or found not guilty by reason of insan of the murder of a young baby, not their own but with whom they had been in close contact. It seems in these cases that the baby was the object of aggression initially stimulated by other persons. One woman was found guilty of wounding her parole officer, and the final woman was found not guilty by reason of insanity of the murder of a taxi driver, previously a stranger to her, whom she killed as an act of aggression against the sexual organisation of a world that would not at that time (the late 1950's) allow her to be freely homosexual. It is only in this case and the three robberies mentioned above that the person killed or attacked was a complete stranger to the woman charged before the crime. In every other case in our sample, 33 of the 37 homicide incidents (one woman was charged with the death of three people arising out of the one incident and in this section we have counted that as one incident, not three) the woman had had some kind of relationship with the person she attacked or killed. Our study corroborates the findings of more exhaustive studies of homicide that homicide

is very much a matter between family and friends.

In one case, a young woman was charged with attacking her girlfriend with whom she was living - strictly speaking this case should be included with the cases of women who attacked family members. The experiences of this woman however and the themes which emerged from her case fitted so much more comfortably into the group who killed non family members that we decided to discuss her case with those in that group. Such a decision is, we recognise, unorthodox in research terms but this research project is of much less value for the quantitative data it can provide than for the qualitative insights gained through a detailed study of a group of cases.

As can be seen from the above breakdown of the cases, more than 2/3rds of the women charged were charged with killing members of their own family. Because of the method in which the group of cases was selected, these figures can clearly not be taken as indicating exact proportions of the victims of women charged with homicide in New South Wales. Up to date information of this kind should become available when the N.S.W. Bureau of Crime Statistics completes its profile of the N.S.W. Police Department Police Files (Research project funded by the Australian Institute of Criminology). Nevertheless, the proportion indicated by our own study is in line with the strong and direct link between homicide and the family which has been demonstrated here and elsewhere.

It is probable that a sample based on prison populations would underestimate the proportion and number of cases where women killed their own infant children (for which crime offenders tend to receive non-custodial, or very short sentences), and overestimate the proportion of cases where women killed non family members for which women tend to be convicted of murder or receive long sentences for manslaughter. In our sample no women who had killed a non family member had her charge broken down to manslaughter,

whereas in 13 of the 17 cases where women killed husbands they were convicted of manslaughter only. (The sentences received in these cases will be discussed in greater detail in Chapter III Some Legal Issues).

New South Wales studies: relationship between victim and offende

Previous completed studies of homicide in New South Wales (Mackenzie, 1961; Rod, 1979, and Allen, 1980)[2] have shown that a high proportion of all homicides are of family members. At no time since 1880 has the percentage of victims who are members of the same family as the person charged been less than 46%, and indeed for most of the period the percentage has been higher still. It appears that the percentage of homicides that are family homicides is slowly declining. Allen's figures show that in the decade 1880-1889 63% of all indictments for murder or attempted murder related to attacks on family members. By the decade 1930-1939 the percentage had declined to 54%.[3] Mackenzie found that for a slightly overlapping period, 1933-1957 52% of all murder charges (note: he did not include attempted murder charges) related to the homicides of family members.[4] By the decade 1958-1967 the proportion of all homicides that were family homicides had declined to 46%.[5]

The proportion of family homicides has always been far higher in New South Wales in the case of female offenders. Mackenzie found that 82% of the 177 victims of female offenders in the period 1933-1957 were family members. Of these 177 victims 28% were the lawful or de facto spouse of their slayer and 48% were one or more of her children.[6] This proportion remained reasonably constant for the next decade: Rod found that 85% of all victims of female offenders were family members.[7] The Rod study also revealed an interesting internal shift in the patterns of family homicide by women. In the earlier period covered by Allen and Mackenzie (1880-1957), a woman was more likely to kill her own child than she was her husband. By the time of Rod's study (1958-67),

she was more likely to kill her husband. 40% of the women offenders in that decade killed their husbands, and 34% one or more of their children.[8] Our own study suggests, but does not confirm that this trend has continued during the last decade. We agree with Judith Allen (1980) that such shifts in homicide patterns need to be interpreted in the light of and are indicative of broader changes in the family and its social relations. An analysis of the change in patterns of female homicide should consider the effects of the increasing availability of birth control, changes in the ideologies and practice of marriage and motherhood, and the increasing privatisation and isolation of family life during this century.

It is important to remember in this discussion of female homicide that far more men commit homicide offences than women. In the twenty five years covered by the Mackenzie study (1933-1957) responsibility for the 835 homicide deaths in that period was attributed by the police to 786 individuals, of whom 151 were women and 616 were men. In a further 19 cases the crime was unsolved and the police did not know the sex of the accused. Charges were laid by the police against 583 of these people, 166 having suicided at or shortly after the homicide and 34 cases being unsolved.[9] By the decade 1958-1967 the disparity between the sexes had increased even further. In those years 526 men and 93 women were accused of homicide, murder or manslaughter.[10] This is a startling increase in absolute figures, for both men and women, but while the figures for women increased by half, those for men more than doubled over that time. Of course, to a certain extent these increases reflect an increasing population, and one that is increasingly urban with a corresponding rise in social tensions that may lead to homicide. There are also some difficulties in comparing Mackenzie's and Rod's figures. Mackenzie examined only murder charges whereas Rod considered charges of voluntary manslaughter as well.[11] She does not indicate what proportion of her cases were manslaughter charges and what murder.

Between 1880 and 1967 all studies indicate that between three and four times as many husbands killed their wives as wives killed husbands.[12] Although spouse killings by men constituted only 23% of all killings by men in the years 1958-1967 as compared with 40% of all killings by women, spouse killing was the most frequent category of homicide for both men and women offenders. It is striking that the next most frequent type of homicide by men in those years was the homicide of a sexual rival. Rod records[13] that 21% of men offenders had killed a sexual rival, while none of the women offenders had. This category was followed for men by homicides of acquaintances or friends (20%) and homicides of persons with whom the offender had no known relationship (17%). This category would include homicides in the course of a robbery or rape. The corresponding figures for women for those categories was 6% and 1% respectively. (Note: all percentages have been rounded off to the nearest whole number).

Because of the selective nature of our sample it is not possible for us to tell accurately whether the rate of female homicide per head of population has increased in the years since 1967. Our impression is certainly that absolute figures at least have increased. Simply by noting newspaper reports for 1980 and 1981 of homicide charges against women we have counted 32 cases in those two years, as compared with 93 women charged over the ten years 1958-1967.

Overseas studies: relationship between victim and offender

A number of overseas studies have shown that in other societies as well family homicides are a high proportion of the total. Wolfgang found that more than 50% of all victims in his study of all criminal homicides recorded by police in files for Philadelphia between the years 1948-1952 were either related to or close friends of their slayers.[14] It is striking, however, that family relationships accounted for only about half of these close relationships (24.7% of the total) with close friends being the offenders in 28.2% of all cases. Women

offenders were far more likely to kill family members, however. Of 105 identified female offenders 45% killed their husbands (the proportion was approximately the same for white and Negro (Wolfgang uses this term) female offenders although there were far more Negro than white offenders, both male and female - 89 Negro female offenders for whom a victim offender relationship was identified and 15 white female offenders). Of 445 identified male offenders only 12% killed their wives.[15]

Family relationships are more predominant in homicides committed in the United Kingdom. Between 1957 and 1960 53% of all victims were related to their killers and in 27.9% of cases the victim and offender were known to each other.[16] Morris and state that:

> In this country (i.e. England) murder is overwhelmingly a domestic crime in which men kill their wives, mistresses and children, and women kill their children. Of the murder victims over the age of 16, 70 per cent are female, and of those females nearly half are killed by their legal husbands and a quarter by other relatives or lovers. When considering victims under 16, again, about three quarters are killed by their parents and other relatives.[17]

Family homicides constitute a high proportion of all homicides in non-English speaking societies as well. The journal Victimology has published a number of studies of homicide statistics in various European countries. Sessar found as a result of a study of all murder or manslaughter cases that came to the attention of the courts in 1970 and 1971 in one of the states of West Germany, Baden-Wurttemberg, (including attempted crimes) that 49% of the offenders were either related to or the close friends of their victims.[18] In 18% of all cases the victim was the spouse of the offender, in 14% his or her child and in 6% a close friend. Sessar compared the motives in these homicides between persons in "primary relationships" with the motives in other "secondary" homicides, previous criminal record for offenders in the primary and secondary group and the court disposition of offenders in each category. His thesis is that the particular characteristics of family homicide, in particular the fact that:

> in secondary groups, the victim is interchangeable because the actual situation moulds the act more so than a particular person; in primary groups the crime is mostly unthinkable without the specific victim involved [19]

and the tendency for offenders in family homicides to have no or fewer prior convictions than offenders in the secondary group should be taken into account in the legal disposition of homicide offenders. He concludes that the court dispositions of offenders appear to be giving effect to this aim.[20]

Polish figures analysed by Pawel Horoszowski give a similar picture. It is a little difficult to directly compare Horoszowski's figures as he studied closely not all homicides but only 330 completed or attempted "homicides of passion" for which the offenders were convicted in a number of courts in Poland for the years 1932-1936. One would expect family homicides to be a greater proportion of homicides of passion than of other homicides. Indeed Horoszowski confirms this. He found that even excluding killings of an illegimate child 47.4% of the victims of crimes of passion are the offenders' family members, relatives and similar close persons.[21] He continues: "In the cases of ordinary homicide this percentage is lower (28.3%)." Virtually all the 78 victims of the 77 female offenders were members of their family, including 41 children and 25 husbands or paramours.[22]

In respect of non-European societies, Teresa Rod carried out a cross-cultural comparison of homicide studies concluding:

> In all societies where murder occurs, family members are a high percentage of the victims particularly for female killers.[23]

Two further studies of female offenders support this conclusion.

In a comprehensive survey of homicides and attempted homicides committed by women in Hungary since the end of World War II, Gabriella Rasko found that 40% of the victims of the 125 female offenders whose cases were studied were husbands, common-law

husbands or lovers, and 20% were children.[24] (This study did not include victims of infanticide. If infanticide had been included, children would have constituted the largest class of victims.) Rasko concluded that:

> The distribution of female killers in Hungary by the type of victim-offender relation is comparable to that of other countries, cultural and time differences notwithstanding.[25]

A similar distribution to Rasko can be found in Jane Totman's (1971) study.[26] Her data based on official statistics collected in two states of America are as follows: 40% of the victims were husband, common-law husband or the lover of the woman charged; 21% were children (excluding infanticide); 39% were other relatives, acquaintances or strangers.

CHARACTERISTICS OF OFFENDERS

The study revealed interesting comparisons between the social characteristics of the women who killed their husbands (the larg group in the study) and the women who killed non-family members. The women in the study who killed their husbands tended to be older, more likely to be married, less likely to have a criminal record and more likely to be living in the country than the other women in the study. Women who killed non-family members, on the other hand, tended to be young, poor, with some prior criminal record and living in the Sydney metropolitan area at the time of the offence.

Age

Teresa Rod in her study of homicide cases between 1958 and 1967 found that there was a tendency for both victim and killer in spouse murders to be older than those charged with homicide generally. This same tendency appears in our own study where 11 of the 17 women who killed their husbands were over 40 years old at the time of the killing and five of the women were over 50. (See Table 1) By comparison, 11 of the 13 women charged with killing a non family member were under 30 at the time of the act giving rise to the charge, and 7 were under 20 years of age.

TABLE 1

AGE

Age of Women Accused of Homicide* (in years)	Husband or Boyfriend	Victim		No intimate relation	Total
		Child	Father		
14 – 17			2	4	6
18 – 20	1		1	3	5
21 – 29	2	3		4	9
30 – 39	3	1		1	5
40 – 49	6			1	7
50 +	5				5
TOTAL:	17	4	3	13	37

*The two women accused of two homicides have been included twice on the table.

More than half the group were under 30 at the time when they commited the homicide and more than a quarter (29%) were aged between 14 and 20. Women who were older, tended to be those who had killed their husbands.

Marital Status

All but two of the 17 women charged with killing their husbands or boyfriends were living with them at the time of the homicide, although in quite a few of these cases there had been earlier periods of separation. Of the other two, one woman's boyfriend had joined one of the armed forces and spent time on leave at her place. She did not, however, regard their relationship to be of sufficient permanence to be a de facto relationship. The other woman killed an ex-husband from whom she had been separated for seven years.

Of the 15 women who had been living with their husbands, 7 were lawfully married and 8 were living in de facto relationships. Some of these relationships were of considerable duration - in fact, 6 of the women had lived with their husbands for more than 11 years (including the woman separated for seven years at the time of the killing) and 10 for more than six years. The relationships of those women who were lawfully married tended to be longer than the relationships of those who were not (see Table 2).

TABLE 2

DURATION OF RELATIONSHIP: HUSBAND/VICTIM

Duration of Relationship (in years)	Living together at time of killing		Not living together		Total
	Married*	De facto	Divorced	Boyfriend	
0 – 1		2			2
1 – 5		3		1	4
6 – 10	2	2			4
11 – 15	1		1 (married 15 years, separated 7)		2
16 – 20	1	1			2
21 +	2				2
TOTAL:	6	8	1	1	16

*We have no information about the duration of the relationship in one case where the parties were married and living together.

In at least half of the cases (8 of the 15 cases where we have information) the deceased was not the woman's first husband or de facto spouse. This proportion of second relationships seems striking, though it may be of course that it merely mirrors patterns of multiple relationships in the general community. In almost all (7 of the 8) of these second relationship cases the woman and the man she killed were living in a de facto relationship, rather than lawful marriage. One of these women, who had had a bad first marriage, said that she had deliberately never married the man she lived with for 17 years after that so as to preserve the tiny portion of independence she felt she would surrender on marriage. There were two other long-standing de facto marriages each of ten years duration, both involving women who had been married or in a de facto relationship before. One of these women expressed sentiments similar to the woman above, appearing to feel she had preserved a part of her autonomy by never marrying her de facto husband. The other woman had been anxious to marry her de facto but claimed that the opposition of her children by a former marriage and other friends to the marriage, her de facto being a very violent and unpredictable man, had prevented her.

It seems that in quite a large proportion of these cases where the man killed was not the first husband of the woman charged, her earlier relationship, or relationships, had not been happy either. A number of these women had experienced violence at the hands of their first husbands; it may be that they reacted as they did, with fatal force, to violence from their second husbands because they simply weren't going to put up with it any more. Certainly one may be more likely to react with panic and fear to the threat of violence if one has been beaten before (see our discussion earlier in this chapter of other cases where battering is relevant). All these characteristics considered together, there were two paradigms for a woman killing her husband although many of our cases exhibited features of each.

On the one hand there was the case of a woman married and separated and living with a de facto generally for quite a

short period of time before she retaliated with fatal force to his assaults on her generally not intending to kill but to defend herself or wound only. On the other, there was a small but marked group of cases of women who had been married to their (first) husbands for generally quite long periods of time and had endured their assaults in silence throughout the marriage. When these women killed their husbands they generally intended to kill them, and were acting from a sense of complete desperation.

Six of the women who killed husbands or boyfriends had dependent children living with them at the time of the killing, but in two cases these were not the children of the man they killed. The four women who killed non-family members who were aged above 25 at the time were all married or living in a de facto relationship and all had dependent children. The only other woman who killed a non-family member who was in a permanent or semi-permanent sexual relationship was the young girl who shot her girlfriend and as we have already explained strictly speaking she should probably have been included in the family group. The other women in this group were all young and single. One was caring for her infant daughter at the time of the offence, one had had two children in adolescence who were in the care of others and one was seven months pregnant at the time of the offence. The pregnancy made it difficult for her to work as the only work she knew - stripping or prostitution - and so contributed to the economic insecurity that led to the robbery she committed in the course of which a shopowner was killed.

Residence

Table 3 sets out the place of residence of the women charged. Approximately 2/3rds of the women lived in metropolitan Sydney at the time of the offence. The women who did not live in Sydney tended to be women who had killed their own husband.

TABLE 3

PLACE OF RESIDENCE

Victim's Relation to Accused	Sydney Urban	Provincial City (W'gong & N'castle)	Country Town	Rural	Total
Husband	9		2	6	17
Father	3				3
Child	3			1	4
Total Family	15	0	2	7	24
Non Family Member	11		1	1	13
TOTAL:	26	0	3	8	37

It is interesting to note that Mackenzie, who compared the area of residence of the offenders in his sample (all murder charges 1933-1957) with the residential distribution of the general population found that:

> Female accused are distributed among the four major residential categories in proportions that depart significantly from chance expectation. Male accused are not. The difference among females takes the form of an excess in rural areas (which include our categories of rural and country towns) and a deficiency in provincial urban (our provincial city category) areas.[27]

Given that the residential distribution of victims under the age of 15 exhibited the same pattern [28] and 48% of the female offenders in Mackenzie's group killed children, it may be that the concentration in rural areas was due to

child killings. Of our cases committed in country towns or rural areas all but two were husband killings, and half of the women who killed their husbands lived in the country.

Five of the women who killed non family members although resident in Sydney at the time of the offence, grew up in areas outside Sydney - in New South Wales country areas, interstate or overseas. These young women had no parents or siblings living in Sydney at the time of the offence. A further four women although they may have had relatives living in Sydney had either no contact with them or were in conflict with them at the time of the offence. For example, one fifteen year old girl had recently been thrown out of the house by her mother. Another had been thrown out of home by her mother after she admitted to being homosexual. It may be that the isolation of these generally young women from family support contributed to the commission of the homicides.

Economic circumstances

No woman in this study had more than extremely limited economic resources at her disposal. This lack of money had implications both for the actual commission of the homicide with which she was charged, and, certainly, for the woman's subsequent progress through the criminal justice system. The Bail Act of 1978 went some way towards removing the bias in the grant of bail towards those with large sums of money that could be deposited as security, but with such a serious crime as murder large amounts may still be required as security to guard against the non-appearance of the accused, even if she has substantial community ties that would militate against flight. An accused person without substantial financial resources of her own will not be able to afford private representation at trial and must be content with representation by the Public Defender assigned to her case. The Public Defenders are, generally speaking, experienced, capable and committed advocates and so "having"

to rely on legal aid may not operate to the actual disadvantage of an accused, and may well achieve better results than could be obtained by a private lawyer who might not have the same experience in criminal matters. As our later chapter on legal representation shows, however, some of the women did feel at least initially that the public lawyer was second best.

Lack of money can obviously also play a part in the commission of the crime. Two women who as adolescents killed a woman in the course of a robbery directly attributed their actions to their desperate economic circumstances. In one of our four cases of an attack by the woman on her own child, the woman, Lindy, had left her husband on whom she had been financially dependent for another man, taking her two young children with her. When the new relationship broke up she was left destitute. Her lover, who had a family of his own, could not afford to pay her anything and her husband did not feel he was obliged to as she had left him. She had not worked for five years and suddenly found herself with no money, no job, no home and two young children to support. Despite her steadily deteriorating emotional state she pushed herself at a frantic place to find a house and job, but the strain became too much and one morning, after attempting suicide the night before, she attacked her eldest child.

Similarly, lack of money may prevent a battered wife from leaving her husband and the lack of social resources and knowledge apart from money that characterise working class life may be such that even had she the money she wouldn't know where to go or how to go about leaving. There is some evidence that marital violence is by no means restricted to lower class families[29] but it may be that middle and upper class families have other ways of expressing hostility (e.g. by destructive game-playing) and better social resources to escape a potentially violent situation.[30]

Very few of the women had any independent income at the time they committed the offence. In only 8 of the 37 cases (counting

twice the two women who were each charged with two separate homicides) was the woman working at the time of the homicide although some had worked at other times and in two of these cases the women were forced to hand their money over to husbands who used it to pay for gambling debts. For those women who killed husbands or children isolation in the home and lack of the outside contacts that flow from employment outside the home may well have trapped them in a domestic situation that was becoming increasingly unbearable.

The majority of those women who did work outside the home were employed in stereotypically female manual or domestic jobs such as shop assistant, barmaid, process or worker and nurse aid. Two women were clerks, and two were still at school. Only one woman had had any tertiary education and she was the only woman to have a skilled occupation, though she had only begun working again after a break for some years immediately before the homicide. It seems the strain of suddenly having to find a job and support her two children contributed to the commission of the homicide offence with which she was charged.

In 12 of the 37 cases the women were economically dependent on male husbands, fathers or stepfathers at the time of the offence. Most of these men were employed in working class occupations, though a couple were employed in more skilled occupations. One man was employed as a junior manager (C class according to the Australian Bureau of Statistics scale) and one as a navy officer (B class). These two were the gamblers referred to above. Both had wives who usually worked in poorer paid and lower status jobs than themselves. In the husband killing cases, no man had a wife who had a higher income than himself and no man was dependent on an employed wife.[31]

In a further 13 cases the women were themselves unemployed or dependent on an unemployed husband. In most, but not all of these cases, the woman or if she was married, her husband, was in receipt of unemployment benefits. In 4 cases, the women were living on social security pensions. Economic

research has shown that the economic resources of these 17 women, nearly half of the total, who were at best dependent on a social security pension or benefit for survival placed them near or below the poverty line.[32]

Table 4 below sets out the economic situation of the women according to the category of offence.

TABLE 4

ECONOMIC CIRCUMSTANCES

Victim's Relation to Accused	Employed earning independent income	Supporting Self on Pension	Single and Unemployed	Dependent Employed Father/ husband/ stepfather	Dependent on Unemployed husband father	Total
Husband	4	1		7	5	17
Father	1				2	3
Child	2	1		1		4
Total Family	7	2		8	7	24
Non family member	1	2	6	4		13
TOTAL:	8	4	6	12	7	37

Prior criminal record

Once again a contrast can be drawn between women who killed non-family members and those women who killed family members. Six of the 24 women who killed family members had prior adult or juvenile convictions but only one of these women had previously been charged with an offence involving violence to persons (she had been found not guilty by reason of insanity of the murder of a child several years before she was convicted of the murder of her own young son). Three of the other 5 women had one prior conviction only, in one case for receiving stolen property, in another for the child welfare offence of "uncontrollable" and in a third for malicious injury to property in the form of some shop windows broken by the woman when she was in the throes of an earlier nervous breakdown. One woman had a string of convictions but all for drunkenness (now not an offence) or drunkenness related offences such as vagrancy (also no longer an offence). The fifth woman had several prior convictions for property offences, bigamy and harbour escapee.

By contrast, 10 of the 13 women who were charged with a homicide offence in respect of a non-family member had one or more prior convictions at the time of the homicide. But again for all but one woman the homicide or attack was the first time she had been charged with an act of personal violence. One woman had a number of previous convictions stemming from emotional crises in her late teens and early twenties including one previous conviction for assault. The failure of the prison and psychiatric system to deal with her problems can be gauged by the fact that since her release on parole in respect of the offence included in this report she has been charged with a further serious assault again as in all her previous incidences of violence apart from her constant suicide attempts committed on a figure of authority.

Several of these women, still girls or young women at the time of the homicide that was to put them back inside for substantial periods had spent large portions of their lives in child welfare institutions.

In six of these ten cases where women who killed non-family members had previous convictions the initial charge against them had been for one of the child welfare offences of "being uncontrollable" or "neglected". In three of these cases the initial charge had led to a period of incarceration in a child welfare institution. Some of these girls had gone on to commit other offences, generally property offences or offences connected with prostitution. The balance of the prior convictions in this group of cases consisted of minor public order offences, property offences, or, in one case, making a false declaration when obtaining the gun with which the woman was later, still suffering from psychiatric illness, to attempt to shoot her girlfriend.

CHARACTERISTICS OF THE HOMICIDES

Method of killing or attack

Table 5 sets out the method or methods of killing or attack by category of offence. It shows that the most common methods were:-

gunshot wound (from a gun habitually in the house of the (accused) 8 cases
gunshot wound (from a gun acquired specifically for the (events giving rise to the homicide or (shortly before the homicide(7 cases
kitchen knife 8 cases
manual methods 8 cases

Although these methods were for the group as a whole equally common the method employed in a particular case depended on the relationship between accused and victim and the age of the victim. Manual methods were employed only by male co-accused of the woman in this study (male co-accused caused the death in the two husband cases where manual methods were used and in one of the non-family cases) or where the victim was a child. In all cases where the victim was an adult the woman used a weapon if she herself inflicted the fatal injuries.

In most of these cases the victim of the woman's attack was an adult man frequently stronger, taller and heavier than she. Where the victim was a husband who had been brutal to the woman in the past she had every reason to fear that she would be immediately overpowered and no doubt violently assaulted should she try and stand up for herself without a weapon of some kind. Role expectations can also lead people to carry a weapon although there may be no objective need to do so. In one case in this study two young girls robbed a jewellery shop. According to one they had taken a loaded rifle with them not with any conscious intention of firing it but because she thought "it was the thing you do". When the woman attending the shop began

TABLE 5

WEAPON USED

Victim's Relation to Accused	Gun already in home	Gun acquired for or shortly before crime	Kitchen knife, scissors	Knife acquired for the crime	Axe, Hammer, cricket bat	Beating Drowning, strangulation etc.	Poison	Fire	Total
Husband	5	2	6 (stab wounds)		2	2	1 (garden pesticide)		18 (one woman attacked her husband with both kitchen knife and a hammer)
Father	3								3
Child			1 (slit throat)		1	2			4
Non Family		5	1	1		4 (3 child victims)	1 arsenic	1 (using household kerosene)	13
TOTAL:	8	7	8	1	3	8	2	1	38

NOTES: Each separate weapon used is listed separately for each of the 37 homicide incidents.

1. In both of the cases where women killed their husbands with guns the women had acquired shortly before the homicide they said they had acquired the guns for protection, not for the homicide, in one case protection against the husband, in the other protection against a third party.

2. In one of the husband cases the man was killed by a kitchen knife the woman was carrying in her bag for protection against rapists.

to scream they panicked and fired the gun, killing her. In a further two cases the victims were adult women. Despite the fact that the objective factors of greater height and weight on the part of the victim or previous experience of violent assaults at his hands were not present in these cases the woman assailants both clearly felt unable to accomplish the attack without a weapon, in one case a gun in the other a knife. Women in Australian society are not trained in physical activity in the same way boys and young men are. Sports are generally not taken as seriously for and by school girls as they are for and by school boys and women are socialised quickly into physical inactivity and passivity. Consequently many if not most women do not feel comfortable with or able to successfully exert physical violence on the body of an adult other, at least without the distance and "edge" of a weapon.

The pattern revealed in these cases of almost total reliance on weapons rather than methods requiring physical force only is consistent with the findings of earlier studies. These studies show the pattern is quite different for men. Mackenzie found that only 7.9% of the women charged with murder between 1933 and 1957 killed their victim by "battering with a handy object" (other than an axe or hammer) or "bashing, fists and feet only" as compared with 25.6% of the men so charged. A further 16 women killed their victims by drowning as compared with only one man who used this method but the women's cases probably relate to homicides of young children.[33] Rod's figures for the next decade, 1958-1967, are even clearer. She analysed separately the methods used by men and women in the killing of spouses[34] and found that while both husbands and wives were most likely to kill their spouses by shooting (35.8% of all cases where men killed their wives and 36.6% of husband killings) 41.8% of men killed their wives by strangling, smothering, battering with a handy object (other than an axe or hammer) or bashing with fists and feet only but only 14.7% of women killing their husbands had used these methods. No woman had killed her husband by bashing with

fists and feet only; 28 men had killed their wives in this way.

The traditional interpretation of these findings, which have been demonstrated in other western societies as well[35] is that

> men kill spontaneously relatively more often than women, and that women kill deliberately and in "cold blood" relatively more often than men.[36]

This is a sexist misconception based on theological views of women as evil and cunning and perpetuated by unimaginative interpretation of available statistics.[37] The more detailed information available to us has shown, as indeed any examination of court dispositions of cases rather than just police files could well, that in many cases women who used a weapon did not do so because they intended to kill or in connection with an attack that had been coldly planned beforehand Many of the women used a weapon initially intending only to protect themselves or wound slightly, feeling unable to do even this without some equaliser. What was intended to be a non-serious assault or no assault at all became a homicide or serious assault because of the lethal propensities of the weapon used or because the mere presentation of the weapon such as a gun by the woman incited even greater violence from her husband so that, terrified, she fired when she may not have originally intended to. We discuss this topic further later in relation to the husband cases but the argument is not only applicable to that group of cases. In one case in the group as a whole a woman killed her neighbour and two of his children in a fire she had lit in a drunken rage after an argument with the neighbour and his wife. The Crown did not argue that she had intended the deaths (we discussed this case earlier in relation to reckless indifference in the chapter Some Legal Issues) or that the crime had been planned beforehand. The Crown case was that drunk and furious she had flung some of her household kerosene and a match on the stairs leading to the upstairs flat where her neighbours lived, tragically causing their deaths.

There were only two cases in the group where the woman was convicted of murder by poison. There would appear to have been a dramatic shift away from the use of poison by women homicide offenders since the nineteenth century when it was the preferred method, at least in cases of women killing their husbands. Judith Allen found that between 1880 and 1940 between 45% and 63% of the (small) number of women who killed adult men (in virtually all cases their husbands) used poison.[38] Poison was throughout that period the most frequently employed method of effecting death.[39]

In the years covered by the Mackenzie study 1933-1957 poison was used by women to kill 22 times (14.6%) of all cases of women offenders. It was the method adopted by only 2% of the men killers.[40] Unfortunately Mackenzie does not breakup this data by age of victim so it is not possible to tell whether the women poisoned their husbands or children. Rod found only one case of deliberate poisoning of a man by his wife (she does not specify whether there were any other poisoning cases by women) which she comments:

> is scarcely sufficient evidence to authenticate the stereotype (of the devious female who uses undetectable means to "do-in" her unsuspecting husband)[41]

Both the women in our study convicted of causing death by poison still deny their guilt. There is only one other woman in the sample who does not concede that she committed the act of which she was convicted. Allen remarks that women accused of husband murder in the time period studied by her, most of whom were accused of using poison, tried to deny the deed throughout the trial, even when the evidence appeared indisputable. In both of the poisoning cases in our study the evidence against the woman was mainly circumstantial together with alleged admissions that no doubt weighed heavily in the mind of the jury but were hotly contested by the women themselves. One woman had been interrogated in conditions of extreme intimidation over a period of several days until she was so worn down, that in her account

she told the police to write down whatever they liked and she would sign it. At one of her trials the resulting admissions were not allowed to go before the jury because they were made after the woman's husband had urged her to confess. The other case is similar. The prosecution relied heavily on an admission of guilt they said had been made by the woman in a moment of consciousness after a period when even in their own evidence she had been unconscious and before she lapsed back into unconsciousness. Again at one of the woman's three trials for this offence these alleged admissions were ruled inadmissible. At a subsequent trial a different judge taking a different view allowed the prosecution to rely on the admissions and the woman was convicted.

Household weapons and weapons specially acquired

There was a marked difference as between the two largest group of cases, women who killed husbands and women who killed non-fami members in relation to whether or not the weapon the woman used had been specially acquired by her for the crime. Of eight weapons specially acquired (excluding the poison cases) six were obtained by women who killed non-family members. In all of these latter cases the homicide or events giving rise to it had been planned beforehand by the woman, although in some cases such as the robbery situations she may not have deliberately se- out to kill. In the majority of the husband killings, by contrast, the weapons used were habitually found in the house and the woman had not consciously set out to acquire a weapon with which to threaten or kill her husband. Of the five cases where the woman killed a husband with a gun normally found in her house four took place in the country using rifles kept in the house for rural purposes. Notwithstanding that the rifles were ostensibly kept for legitimate purposes in two of these four cases the man eventually killed had himself used the gun to threaten his wife or children in the past. In the remaining case of the five where guns habitually in the house were used the family lived in the city and the man had originally acquired the rifle to bring his wife and children back home at gunpoint

when they had had the temerity to leave some years before the homicide. The rifle had remained in the house as a constant threat since that time.

The other weapons used to kill husbands were all (excepting the poison cases) habitually found in the couple's home. All but one of the six cases where the man died from a stab wound or stab wounds took place indoors, in the couple's home. The woman had reached for a kitchen knife as the nearest weapon. In the other case the man was stabbed in the course of a heated argument between him and his girlfriend in his car but she denied she had carried the kitchen knife used to the car for the purpose of attacking him, explaining that she kept the knife in her handbag all the time for protection in the event of an attack from a man in the street.

Husband killings: location

In 14 of the 17 cases where husbands were killed the homicide took place in private - in 13 cases in the woman's (and generally the man's) home and in one case in the man's car. Gelles has pointed out that the private location of most domestic violence has clear implications for the likely seriousness of the assault.[42] There may be nowhere for the woman being attacked to run and no one to intercede for her so that she does not need to take up a weapon in her own defence. In the absence of outsiders and a place of retreat a quarrel can quickly escalate into a lethal altercation. The absence of witnesses, other on occasion than the children of the home, is also significant in relation to the case against the woman in court. When there are no independent witnesses who can say what took place admissions from the woman herself become even more important prosecution evidence.

The finding that the majority of homicides took place inside the house is consistent with other studies [43] but the distribution of the homicides in our cases throughout the house differs slightly from the pattern found elsewhere. Both Wolfgang and Rod found that a high proportion of husband killings took place in the kitchen.

Wolfgang found that the kitchen was the most frequent place for a wife to kill her husband (40% of his cases) and although a significant number of women killed their husbands in the bedroom (23%) the proportion was far higher in the case of men killing their wives - most (45%) of the wives were killed in the bedroom. Rod's figures for New South Wales are more like our own in that s found that although a higher proportion of men killed their wives in the bedroom than wives killed husbands in that room nearly 40% the women who killed their husbands did so in the bedroom. She did find, however, that the kitchen was the next most likely spot for a woman to kill her husband.[45]

In our admittedly small group of cases no husband was killed in the kitchen and six of the 13 killed at home were killed in the bedroom. It could be that a prison population is biased against homicides committed in the kitchen which are generally committed with a kitchen knife in the midst of a quarrel or assault and so could attract shorter sentences than homicides committed when the husband is asleep in bed.

The bedroom killings were of two types. In two it appears (we have limited information in relation to one of these cases) that the man was killed after the woman retaliated to his assaults on her which took place in the bedroom. In these cases the location had been initially selected by the man and the choice of the bedroom tallies with the findings of other studies that the bedroom is the most frequent place for men to kill their wives. In the other four cases the man was asleep, or the woman could have believed so, when she or her co-accused attacked him. In these cases, together with two others where the man was asleep but in the living room, the woman either deliberately waited until the man was asleep or certainly felt free to retaliate then when she would not had the man been awake and able to overpower her. This does not mean that the killings were coldly premeditated, however, or that the women had recovered completely from the provocation offered by the man's last assault on them. Far from it - these women were still smarting from the last attack, they were simply too afraid of

the man to retaliate when he was awake.

It was also striking that in four cases the man was killed in the entrance to the house. In two cases the woman was determined to prevent the entry into the house of the drunken husband she knew was about to assault her as he had done many times before; in one the woman had been assaulted and thrown out of the house the night before by her husband after he had returned drunk and belligerent from the club, and she had decided to protect herself against her husband's return from work early the next morning. In the fourth case the woman and her boyfriend had split up the previous day but the man returned very early the following morning, drunk and acting strangely. When he refused to leave the woman's (isolated country) house she got her gun, frightened that he like her former husband was about to assault her.

Time of day, day of the week and time of year

It was striking that of the 15 cases of women killing their husbands where we have information as to the day of the week of the homicide, in 14 the man was killed in the period from Friday night to Monday night i.e. there was a remarkable concentration of cases around the weekend. The distribution over that period was as follows:-

Friday evening from 6 p.m.	4 cases
Saturday morning	1 case (this case arose out of an altercation on the preceding evening)
Saturday evening from 6 p.m.	3 cases
Sunday evening from 6 p.m.	2 cases
Monday evening from 6 p.m.	4 cases

A heavy concentration of cases around the weekend has been noted in other studies.[46] The usual and obvious explanation is that the weekend is a time when the man and woman will be in close contact, unlike the week when one or other may be working. Further, on the weekend one or other may well be drinking. Although these factors of close contact and alcohol were clearly significant in our cases it is interesting that in several the man did not confine his drinking to the weekend and had often assaulted his

wife on weekday evenings after returning from the pub or club so there was no apparent reason why the woman should eventually retaliate on the weekend. Further, in several cases the man was not working at the time of the homicide and so he and his wife were together in the home throughout the week as well, not only on weekends.

It may be that violence from a husband is particularly unbearable on the weekend when the prevailing expectation is that one should be enjoying one's self, ideally with the spouse society teaches should be one's friend and support. The cold truth that the husband in whom you have invested all your emotional energy is far from the ideal mate may be just that much more impossible to ignore when the rest of the world appears to be having fun. The association of the weekend with enjoyment was made explicit in one case where the man was killed on a Saturday night in the course of an argument with his girlfriend about going out. She wanted to and he did not.

In all four of the cases where the man was killed on a Monday evening it seems that the homicide was the product of the events of the preceding weekend. In one case the Crown case was that the woman had killed her much younger boyfriend because he had left her. It may be that if rejection was indeed the reason for the homicide a weekend without her man had been too much for the woman to accept. In the other three cases the homicide followed a weekend of tension between the man and woman. In one the wom had only come home from hospital on the Friday and it appears tha the man was having difficulty accepting her presence in the home again and her need because of her disabilities to be looked afte In the other two cases the man had terrorised his wife by violence and threats over the weekend. The lapsed response of these women i.e. not retaliating until the evening of the next day after a day apart may be analogous to the time interval betw last attack from the man and fatal response from the woman noted in a number of the cases. The women may take time to recover from the paralysis of fear caused by an assault as it is happeni On the other hand it may simply be that after two days of violen the woman reacted on the Monday night when the man began again,

not being able to bear a continuation of the weekend's assaults. In both these cases the woman had put herself in a state of readiness to assault her husband before the Monday night (in one case by acquiring a gun and in the other by arranging for male co-accused to assault the husband on her signal) but did not take the final step until after further threats and violence on that evening.

We only have information as to the time of the homicide in 16 of the 17 cases. In 14 of these 16 cases the man was attacked either in the evening or at night after he had retired. In the other two cases the man was shot early in the morning but in each of these cases the woman's actions related to events of the evening or day before when she and her husband or boyfriend had argued and, in one of the cases, he had violently assaulted her. In the majority (11 cases) of the 16 cases where we have information the last altercation between the parties before the woman killed her husband took place after the husband alone or both husband and wife had been drinking. There were a number of patterns to these cases but the most frequent was the case where the man returned home drunk and his wife who had generally not been drinking attempted to prevent his entry for fear that he would assault her or retaliated after he had assaulted her. In other cases both man and wife had been drinking and a quarrel developed after they returned home from the pub or club.[47] In these cases the drink probably loosened the control of both parties. It is interesting that the two cases where the man was killed by his wife or de facto in a public place both took place in drinking locations - one a pub and the other an R.S.L. Club. In one case the woman had (deliberately?) made herself very drunk before shooting her ex-husband in the club; in the other the woman had gone to ask her husband for some money but terrified of his violence had armed herself with his gun. The small amount of alcohol she had consumed when drinking with him shortly beforehand may have made her more susceptible to the panic that led her to fire the gun when she thought he was coming towards her; the alcohol he had consumed may have made him more likely to react violently as he did to the presence of the gun.

The presence of alcohol and the expectation that one should be enjoying oneself could be part of the reason for the marked concentration of cases around December and January. Just under half of the 17 cases (7 cases) took place in either of these two months, a significant clustering even given the small overall numbers. Three of the cases took place in the period before Christmas when there is a heavy emphasis in the media and popular mythology on the peace and understanding we should all be experiencing which is countered by the reality of exhaustion due to the end of the year, the slow unravelling of inhibitions as Christmas approaches and a frantic rush to buy presents and food. Other researchers have noted that there is a high incidence of domestic violence around Christmas and New Year.[48] Two of our cases took place actually on these days - one on Christmas Day and one on New Year's Eve. Society teaches that we should be happy on these days and if we are not it is that much more unbearable. As other researchers have noted bringing families together on these days can exacerbate existing tensions within the family which in the presence of alcohol can explode into violence. The financial pressures that Christmas brings can also cause violence. In one well-known case in Victoria, the Krope case, a man who had been violent to his family for many years was finally killed by his son shortly before one Christmas. Tensions within the family had been increased by the man's refusal to give his wife any extra housekeeping to provide for Christmas.

The other two cases in the December-January period each took place during the Australia Day long weekend, one on the Friday night before the long weekend and one on the Monday night at its end.

It may be that in each case the extra day of close proximity to a violent husband and father the Monday holiday would bring on had brought was too much for the woman and, in one of the cases where the man was killed by his wife and three of his daughters, his family to bear.

Attempts to separate and violence

We have noted the marked association in these cases between alcohol and the homicide. There was another factor that was clearly associated in a number of cases with the husband's death. This was attempts by the wife to leave the relationship or her request of the man that he leave. Several of the women had made attempts earlier in the relationship to leave only to be brought back forcibly by their husbands, in one case at gunpoint. Others had asked their husbands to leave and were beaten black and blue for their temerity or told that he, the husband, would kill her first. This pattern was repeatedwith fatal results in three of the cases where husbands were killed. In two the man was killed when he became violent at the woman's request that he leave, and in a third the woman herself had left but returned to try and get some money from her husband. She had been assaulted by him many times before, in particular on several occasions when she had attempted to leave, so, terrified of his violence, she armed herself with his rifle which she discharged when she thought he was coming towards her to attack her.

The danger a woman runs leaving a violent man is illustrated as well in the cases of men who killed their wives. Teresa Rod, in her research, found that in a striking proportion of such cases the man killed an estranged wife.[49] A casual survey of newspaper cuttings on male killings of wives over the four years 1968/9 and 1976/7, also suggests that in a significant number of the cases, wives were killed as a result of either having left their husbands, or in the course of leaving.[50]

Victim-precipitated homicide

We discuss in detail in the chapter on the cases of women who killed their husbands the background of violence many of these women had previously experienced at their husband's hands. We were able to obtain so much information about this

background of violence because of our exhaustive examination of various sources of information about each case and in particular through the interviews we conducted with the women themselves. It is significant then that even relying on the far more limited source of police records Teresa Rod found too that in a large number of cases where women killed their husbands the husband had assaulted his wife in the past. She found that almost half the men who were victims of their wives had assaulted them on previous occasions.[51]

Rod also found that a previous history of assault by the man of his wife is frequent in cases of wife killings. Police records are seriously deficient for an examination of previous assaults. Research on domestic violence has shown that women are frequently so terrified of retaliation from their husbands that they do not call the police if they are assaulted. If they do the police are likely to say it is not their affair so that no record of the assault will appear on police records. Even if the woman brings court proceedings herself against her husband in many cases pressure from the husband or economic considerations may force the woman to drop the charges.[52] The inadequacy of police records is of course compounded when the husband has killed his wife. As Rod acknowledges "(t)he husband is unlikely to volunteer information on his wife-beating habits to the police".[53] Despite all these deficiencies Rod found that approximately one third of men who killed their wiv had previously assaulted them.[54] The true figure is no doubt higher than this.

Not only had the majority of the men who were killed by their wives in our group of cases assaulted them on prior occasions; as we discuss in Chapter IV in 13 of the 17 cases the woman killed her husband in fear that he was about to attack her or shortly after yet another assault. Other studies have also found that a high proportion of killings of husbands by their wives were committed in self defence or in situations where the man had precipitated his own death, generally by an attack on his wife.

Wolfgang found that of 47 cases where wives killed their husbands in 28 (over half) the homicide had been victim precipitated (in his limited definition). The court disposition of the cases echoed this fact. Sixteen of the 47 wives were found not guilty and of the 26 convicted of homicide 22 were convicted of manslaughter only. By contrast provocation recognised by the courts occurred in only 5 of the 53 cases where men killed their wives. Only 2 of these 53 men were acquitted and of the 34 convicted twenty were convicted of murder.[55]

In the Background chapter we criticised the limitations of Wolfgang's definition of "victim precipitation". If he had used a broader notion of victim precipitation taking into account more subjective elements and violence from the victims over a longer period it is possible that the percentage of husband slayings which were victim precipitated might have been even higher.

Rod found that in 11 of the 41 cases in the years 1958-1967 where women killed their husbands the husband had been the first to use violence in the homicide situation,[56] and she states that there were 7 cases where the wife killed the husband in self defence.[57] It is not clear but it would seem likely that these seven cases are ones where the determination of the court was one of self defence. These proportions are lower than found in other studies but Rod does note the inadequacy of merely identifying the aggressor in the homicide situation[58] and her overall summary of cases where women killed their husbands suggests a more frequent element of precipitation by the husbands:

> The pattern of viricides (husband killings) demonstrates that the wives have had to take drastic steps to protect themselves from physical assault by their husbands either by retaliating to an attack or by attacking first as a precautionary move in a potentially violent situation.[59]

Gabriella Rasko in her study of female homicide in Hungary reported that of the 56 (40%) of victims who were husbands, the rate of "participation" and "provocation" was high. About

half of the husbands were "really provocative".[60] In these cases the behaviour of the victim:

> aroused hatred in the usually humiliated and embittered doer (woman) and provoked her overt aggression .... In the case of such victims Von Hentig's words (1956) are particularly true "The victim is not only an inert subject of the dynamics of murder, but it is also an active element" Provocation takes forms that are recurrent and stereotypic: alcoholism, brutality, refusal to undertake financial obligations, humiliation of the spouse, forcing her to work beyond her strength. This type of provocation is well known as stated by McDonald (1961) "The sadist, who threatens the lives of others may lose his own. Provoked beyond all measure, the long suffering wife of the alcoholic tormentor may take her revenge in an impulsive act of violence."[61]

In a study of women imprisoned in California for the killing of their husband or child, Totman interviewed 36 women convicted of killing their husbands.

She found that 20 of the 30 women not convicted of first degree murder said they killed in self defence or in defence of their children. Another 2 described the killings as accidental, while the remaining 8 put the killing down to mental confusion or drunkenness.[62]

Unfortunately, there is no indication as to just what sort of situations are comprised in each category, and so one suspects that they may well overlap. In particular, a number of our cases could be described both as accidental in the sense that the women did not intend to kill, or even injure the man, and as self defence situations where the woman resorted to the use of a weapon, though she only intended to threaten with it, to protect herself. To emphasise one aspect or the other distorts the true complexity of the situation.

Curiously, all five women convicted of first degree murder who were interviewed in that study denied that they had

committed the killing.[63] Some of these women may have been on appeal - a fact which could have an obvious effect on their frankness in discussing the killing. They all denied that they had had any problems with their husbands and complained that they had been unjustly treated by the justice system.[64]

WOMEN WHO KILL CHILDREN : A NOTE

There were only four women in the study who had been convicted of the homicide or of an attack on their own child. As we have alrea suggested this is no doubt a great underestimation of the proporti of women charged with homicide offences or believed to have committed them before their own suicide who had attacked or killed their own child or children. For example, we understand from the study of police files on homicide being carried out at present by New South Wales Bureau of Crime Statistics and Research that in 1980 alone, of the 21 women who were charged with murder or manslaughter or believed to have committed a homicide before suiciding, that seven had killed their own child or children. Three of these seven women killed themselves after killing their child or children.

There is reason to believe that the small number of cases of this type in our study are not only a fraction of the true numbers of such cases but are also unrepresentative of the broader group. As we have mentioned elsewhere, women who kill infants under twelve months, particularly new-born babies, tend to receive no or very short sentences of imprisonment. Three of the seven cases where women killed one or more of their own children in 1980 were of this type. This type of case would be greatly under-represented i a prison sample. Similarly, it appears that women who kill their own children are very likely to attempt or succeed in their own suicide shortly afterwards. Again these women would not appear in a prison sample. Further/the four cases we have been able to examine are distinct in many ways. This does not necessarily mear patterns would not emerge in a larger and more representative stud of the cases of women who kill their own children, but it certainl limits the usefulness of anything we can say about the cases we have studied.

Given these limitations, there are still some points that do emerg from the four cases in the group. Of these four women, three admi the killing or attack which they were found to have committed. Or woman, who was convicted of the murder of ther three year old son and accordingly sentenced to life imprisonment, denied at the time and still denies that she killed him. The three women who admit t offence all committed it while in a state of mental disturbance, which state was put forward in their defence at their trials.

Two of the women were found not guilty by reason of insanity, one of the malicious wounding of her five year old son, and the other of the murder of her two and a half year old son. The third woman killed her two month old daughter and the Crown accepted her plea of guilty to manslaughter in discharge of an indictment for murder on the basis of diminished responsibility.

The fourth woman, Jenny, who still denies that she was responsible for the death of her son, may well also have had a psychiatric defence available to her if she had admitted the offence. (We, of course, do not know whether or not she did indeed commit it.) She had some few years earlier been acquitted of the murder of another baby, not her own, on the grounds of insanity. She had spent 21 months detained at the Governor's Pleasure in Mulawa before she was released on licence. The child she was subsequently convicted of killing was born inside Mulawa while she was detained for this first offence. She had committed that offence at a time when she was greatly disturbed, in particular by the birth of her elder boy. He had been born with a badly deformed foot. She killed the new-born baby of a friend while that friend was visiting her, it seems in response to the fact that that baby was perfect, while hers was not. Jenny had also had a difficult childhood and had recently suffered a number of family crises at the time she committed the first offence. When she was released on licence, it was on condition that she undertake psychiatric care. This she did, and indeed she had last seen her psychiatrist only a short time before her younger boy was found killed and she was charged with his murder. Psychiatrists who interviewed her for the trial all reported that she no longer showed any sign of psychiatric illness, but this diagnosis would inevitably have been affected by the fact that she had denied the commission of the second offence. There was only circumstantial evidence to connect her with it, and an alleged admission to the police which she vehemently denied making

Although all three of the women who admitted the offence received psychiatric dispositions of their cases, there were striking differences in their treatment by the criminal justice system.

The clearest and most stark comparison is between the cases of the two women found not guilty by reason of insanity and detained at the Governor's Pleasure. One of these women, Lindy, was detai for a period of three months only before she was released on licence. The other, Dorothy, has been detained in state mental hospitals or gaols continuously since she killed her baby son in 1944. She was said to be unfit to plead until 1947, when she sto trial for the child's murder and was acquitted on the ground of insanity. She has been detained ever since at the Governor's Pleasure.

To a certain extent the different periods of time served under detention by these two women may be due to changing attitudes wit the passing of time. Lindy stood trial for an attack on her five year old son in 1976, almost thirty years after Dorothy had stoo trial for murder. Their different treatment by the criminal just system probably has at least as much, if not more, to do however, with racial prejudice and their widely different social and econ positions. Dorothy is a part Aborigine, described in press cutti when she was first arrested in 1944 as a "half-caste". She lived a rural area of outer western New South Wales. We have quite lim information about her case, but it seems that she lived in condit of great poverty, as did most Aborigines living on reserves or on /skirts of towns at that time (and indeed still today). Her house out described in press cuttings as a "humpy", and although this description may have been partly the result of racial prejudice it suggests that she was very poor. She had a number of other children, and they and several other adults shared the house or "humpy" with her. There is a suggestion in the press cuttings tha the boy's father did not live with her. We do not know whether th father was white or black.

After her arrest Dorothy spent nearly three years in a mental hospital before she was found by a jury to be fit to plead. There was no mention on her hospital file of any applicationfor bail. It may be that bail would have been unlikely at that time on a murder charge but in any event Dorothy would not have had the economic or social resources to obtain bail even if it was theoretically available. During this time before trial she received shock treatment a number of times for her psychiatric condition with the result that she had no memory other than the barest outline

of the killing. The psychiatrists who had given her this shock treatment then argued at the trial on the question of whether she was fit to plead that she was not fit to stand trial for the killing because, as she had no memory of it, she could not instruct her lawyers. This catch 22 situation alarmed her counsel who rightly pointed out that this argument could mean that a person with, for whatever reason, no memory of the actual events said to constitute the crime would never be fit to stand trial for that crime and would be detained indefinitely as unfit to plead, although he or she might have a good defence. In the result the jury found Dorothy fit to plead and stand trial where as we have said she was found not guilty by reason of insanity.

There are notations on Dorothy's hospital file of a number of attempts she made in her first twenty or so years of detention to secure her release. A number of times she wrote to the Minister of Justice, or said that her children were writing for her and she sometimes asked to see someone about release. There is no indication on the file of the outcome of any of these letters or requests to see someone- we can only assume that they were fruitless.

Lindy's treatment by the criminal justice system was better in every way. She had attacked her five year old son when she was in the throes of a mental and emotional breakdown caused by a number of factors but in particular by the successive break up of her marriage and then the relationship with the other man for whom she had left her husband, and the enormous financial burden she suddenly faced as a result of being on her own with two children to support. Lindy was in custody after her arrest for only three weeks before she was bailed on condition that she go to a private psychiatric clinic. There she received such positive assistance including group therapy once a day that within two or three weeks she was fit to leave. By the time of her trial for attempted murder she was completely well; she had established a new life with her new husband, had found a job and had recovered entirely from her earlier difficulties.

When she was found not guilty by reason of insanity the trial judge had no option but to order that she be detained in strict custody until the Governor's Pleasure be known, but he recommended that she be immediately psychiatrically assessed with a view to immediate release. In fact it was 26 days before she was assessed,

and three months before she was freed, but this was still far sooner than would have been the case for most people found not guilty by reason of insanity yet sane by the time of the trial.

Lindy was fortunate in that she was white, middle class and from a professional background. Unlike Dorothy, who had had only rudimentary schooling, Lindy was tertiary educated. She had the political and legal contacts to enable her to find two very committed and able lawyers who not only worked extremely hard for the trial itself, but also made continued representations after she was found not guilty to secure her release. Without the continued pressure they applied she would no doubt have spent a substantially longer period in custody although there was no justification for her continued detention. And first of all, she had had the economic resources and know how to apply for and be granted the bail that allowed her to get well.

A further striking feature about these four cases is that in the three where the women admit the offence each of them had showed signs of distress before the homicide or attack and made attempts to obtain some help. We have limited information, as we have said about the 1940's case but it appears from the trial transcript that the woman had started out to see her local minister the night of the homicide. She committed that homicide in the belief that the Lord was commanding her to kill the baby, and it may well be that she was planning to speak to the minister about the voices th had been troubling her. We do not know why she did not reach the minister that night.

Of the other two cases,the woman Alison who killed her two month old baby had showed signs of stress since shortly after the birth. She had seen a doctor about her fears of breakdown and he had prescribed tablets (probably tranquillisers). She had told her boyfriend, the father of the child, that she feared she was headir for a breakdown and would do the child some injury but he didn't listen. She had begun to talk about having the baby adopted becau she couldn't cope but her boyfriend and family were opposed to the idea. Perhaps they thought she was exaggerating her fears, or perhaps they simply didn't want to know about any distress she was suffering.

The third woman, Lindy had been under considerable stress as we have said in the weeks before the attack. She had been in a psychiatric clinic for a time but had signed herself out because she was so anxious about her children and how she was going to provide for them. Two nights before she attacked her son she had tried to kill herself and the two children with gas but had stopped at the last minute. The next morning she had asked her husband, from whom she was separated, to take the children for a time as she was afraid she would hurt them. He said if he took them it would be for good so they stayed with her.

She asked her boyfriend, for whom she had left her husband but who had subsequently gone back to his own wife, only to vacillate some more between his wife and Lindy, to stay with her tnat night. She madeanother attempt at suicide before he arrived, which she didn't tell him about, and then that night tried to gas herself again. He found her and took her back to bed but had to leave early in the morning to go and collect his own children. Later that morning Lindy attacked her son, associating him with his father whom he resembled, her husband. Somehow the boy became, in her immense distress and depression, the object of her suppressed anger about the way she had been treated by her husband and her boyfriend.

In this case, as in the case of the woman Alison who had talked of adopting out her two month old baby it seems that the child became the innocent victim of anger and conflict stimulated by adults around the woman. Lindy was in the middle of an emotional tug of war between her husband, who had threatened to take her son away from her if she went back to the other man, and that other man, her boyfriend, who after some indecision had decided he wanted to be back with her. In the other case, Alison, who was described by a psychiatrist who interviewed her for the trial as having low intelligence, an extremely deprived background and low stress tolerance had always had a hostile yet dependent relationship with her mother.

Shortly before the homicide she had asked her sister, then her mother to look after the baby for a few days because she could not cope. On the day of the homicide her mother arrived with the baby at her sister's place, where Alison had slept the night before after

an argument with the baby's father, and an argument developed as the mother was feeding the baby. Alison felt that her mother was picking on her and calling her "mad" for considering adoption. When the mother refused to hand the baby to her to allow her to attempt to feed it she cracked, seizing the baby and throwing it to the floor in her anger and frustration at her mother.

There are no infanticide cases in our study. In terms of sheer age of the baby killed, Alison could have been convicted of infanticide as opposed to manslaughter as her baby was under 12 months when killed. The Crown may have taken the view that the mental disturbance that led her to kill the child arose not from the effects of giving birth or of lactation, as the offence of infanticide requires, but from other factors such as her sub-norma intelligence and deprived background. These factors, combined w her low stress tolerance, meant that she could not cope with the strain of caring for a young baby who cried a lot.

There is a good argument, however, that the medical basis for the offence of infanticide is a false one, and that the factors that lead women to kill very young babies are not medical but precisely the social factors that played a part in Alison's case.[65] Ignoran and lack of social or family support, which may apply to either me or women caring for very young children, together with the stigma, lesser these days, of illegitimacy may well have far more to do wi the homicides of new born or very young babies than any supposed psychiatric disturbance following child birth or lactation. The medical model is convenient - it perpetuates the image of child as a potentially disturbing condition, which is a useful model for the medical profession; it relies on and reinforces the picture o women as dependent on their biology; and it excuses what in forme times at least was often an economically necessary act without the necessity for an examination of the social and economic conditions that may place women in a position where they kill their young children. There is reason to suspect, however, that this medica model is seriously deficient if not quite false.

CHAPTER II: CHARACTERISTICS OF OUR CASES

FOOTNOTES

1. Mackenzie in his PhD thesis Murder and the Social Process in New South Wales 1933-1957 Sydney University 1961 discussed his cases according to the relationship between victim and offender but he cautions against the assumption that all homicides between persons in a particular relationship necessarily arise out of that relationship. He commented for example in relation to homicides between non family members in occupational or residential relationships that the homicide may arise out of some other facet of the interaction between victim and offender rather than any dispute about the rights and obligations of this relationship as such (Chapter Eleven). Mackenzie developed a complicated and fairly unwieldy analysis of the "antecedent situation" to the homicide to discuss the types of dispute or other situation that give rise to homicide.

2. Mackenzie, note 1 above; Teresa Rod, Murder in the Family in New South Wales 1958-1967 unpublished MA Honours thesis Anthropology Macquarie University 1979; Judith Allen, "The Invention of the Pathological Family: Aspects of Family Violence and its Treatment in New South Wales 1880-1940" to be published by Longman Cheshire in Carol O'Donnell and Jan Cranney (eds) Family Violence in Australia in 1982.

3. Note 2 above, Tables Four and Seven.

4. Note 1 above, Table 10.1 p194.

5. Rod, note 2 above, p39.

6. Note 1 above, Table C.22 p121 Vol 2.

7. Note 5 above.

8. Note 5 above.

9. Mackenzie, note 1 above, p25.

10. Rod, note 2 above, p38.

11. Note 2 above, p34.

12. In the period studied by Mackenzie just under three times as many men killed their wives as did wives husbands (140 wives were killed as opposed to 50 husbands) p194 note 1 above; Rod found that more than three times as many wives were killed as husbands (134 wives and 41 husbands). In most of the decades studied by Allen between three and four times as many wives were killed as husbands but between 1920 and 1939 the number of wife killings rose markedly to become between six and eight times as frequent as husband killings (compare her Tables One and Four).

13. Note 2 above, p39.

14. Marvin E. Wolfgang, Patterns in Criminal Homicide John Wiley and Sons Science Editions, New York 1966 (first published by University of Pennsylvania Press 1958), Table 24 p207.

15. Note 14 above, p214. It is not possible to tell from Wolfgang's data what proportion of women killed children.

16. Terence Morris and Louis Blom-Cooper, "Homicide in England" in Marvin E. Wolfgang (ed), Studies in Homicide Harper & Row New York 1967 p32.

17. Note 16 above at p32.

18. Klaus Sessar "The Familiar Character of Criminal Homicide" in Drapkin & Viano E., (eds) Victimology: A New Focus Vol IV Lexington Books 1975 p30.

19. Note 18 above, p39.

20. A somewhat similar approach is taken by Jackob M. Najman in his article "Victims of Homicide: An Epidemiologic Approach to Social Policy" ANZJ Crim (1980) 13, at p272. He argues that the view presented by the media and promoted by conservative forces that murder is calculated and so can be influenced by deterrent factors is not supported by the data. His analysis is that "the "causes" of homicide are structural and ... are a result of social disorganisation and poverty. ... The popular stereotype of homicide which has been used by politicians and other policy makers to justify a penalties-oriented response is not supported by any of the available evidence." (p279).

21. Pawel Horoszowski, "Homicide of Passion and its Motives" in Drapkin & Viano (eds), note 18 above, p8.

22. Note 21 above, pp5 and 8.

23. Note 2 above at p5. She cites as relevant studies ; Sualastoga (1956) Okada (1965); Driver (1967); Nash (1967); Levy, Kunitz and Everett (1969). See also Bohannan, P., (e African Homicide and Suicide Princeton, Princeton Universit Press 1960.

24. Rasko, G., "The Victim of the Female Killer", Victimology Vol 1, No 3 Fall 1976, pp396-402.

25. Note 24 above, p397.

26. Totman, J., "The Murderess", Police July-Aug 1971

27. Note 1 above, p40.

28. Note 1 above, p72.

29. See for example the Report of the New South Wales Taskforce on Domestic Violence July 1981.

30. See Tess Rod, "Marital Murder" in Jocelynne A. Scutt (ed), Violence in the Family Australian Institute of Criminology 1980 at p102.

31. This finding is interesting in the light of the theory sometimes advanced that one cause of wife beating is tensio due to the wife having a higher educational or occupational status than the man. See, for example, Gelles, R., The Vic Home Vol 13 Sage Library of Social Research Sage Publicatic Beverly Hills 1972 at p137.

32. See the First Main Report of the Australian Government Commission of Inquiry into Poverty Poverty in Australia AGPS Canberra 1975 at p23.

33. Mackenzie, note 1 above, p128.

34. Rod, note 2 above, Table 4.6 p80.

35. Wolfgang, note 14 above, found that only 3% of women killed by beating, whereas 28% of men used this method - p85.

36. Mackenzie, note 1 above, p129.

37. Wolfgang at least recognises the power imbalance that leads women to use weapons. See p86 of note 14 above.

38. Allen, note 2 above, Table Two.

39. See also Ann Jones, Women Who Kill Holt, Rinehart and Winston New York 1980 in her chapter "Domestic Atrocity".

40. Mackenzie, note 33 above.

41. Rod, note 2 above, p80.

42. See Gelles note 31 above at p93.

43. Rod found that 85% of all spouse murders were committed in the home (p86 note 2 above) as did Wolfgang, note 14 above, at p215.

44. Wolfgang, note 14 above, at p215.

45. Rod, note 2 above, at p88.

46. The recent South Australian study, Homicide and Serious Assault in South Australia Attorney-General's Department, Office of Crime Statistics Series 11 No. 9, November 1981 found that nearly half of all homicides and serious assaults occurred on the weekend (p26). Rod, on the other hand, found that spouse murders were evenly distributed throughout the week (note 2 above, p86). This result would of course be primarily determined by the much greater number of wife killings.

47. It is interesting that Rod found that alcohol consumption occurred far more frequently in the murders of husbands by their wives than in the murder of wives by their husbands (note 2 above, p65). In 41.5% of husband killings both husband and wife had been drinking and in 24.4% of husband killings the man had been drinking but not the wife. In no husband homicide had the wife been drinking but not her husband.

48. Gelles, note 31 above, at pp105-107.

49. Teresa Rod, Note 2 above, pp.74, 87. In this study of all murder and manslaughter charges laid in N.S.W. between 1958 and 1967, 134 men were charged with killing their wives, compared to 41 women charged with killing their husbands. 15 men killed wives (lawful and de facto) from whom they were separated. In 13 of these cases, the man went to the house

where the woman was living. In the other two cases, he lured the woman back to the house where they used to live together. In Rod's study, only one woman killed a man fro whom she was separated.

Rod's study does not give an indication of how many women were killed in the course of attempting to leave husbands, or during an attempt to persuade a husband to leave them.

50. This survey of the Sydney Morning Herald revealed 35 cases where men killed their wives. In thirty of these cases we were able to gain some indication of motive, though admittedly press cuttings are not necessarily reliable. Of the 30 cases, five women were killed as a result of either hav left their husbands or in the course of leaving.

51. Rod, note 2 above, p73.

52. New South Wales Bureau of Crime Statistics and Research, Statistical Report 5 Series 2, Domestic Assaults September

53. Rod, note 51 above.

54. Rod, note 51 above.

55. Wolfgang, note 14 above, pp216-217. Of eleven examples of victim-precipitated homicides which he lists at pp253-254 seven are instances of women killing men.

56. Rod, note 2 above, p103.

57. Rod, note 2 above, p111.

58. Rod, note 2 above, p104.

59. Rod, note 2 above, p74. See also Horoszowski, note 21 abo

60. Rasko, note 24 above, p397.

61. Rasko, note 24 above, p397-398.

62. Totman, J.W., The Murderess: A Psycho-Sexual Study of the Process of Criminal Homicide unpublished thesis California (Berkeley), D.S.W. September 1970 at p87. See also Totman note 26 above.

63. Totman, note 62 above, p93.

64. Totman, note 62 above, p95.

65. See the Butler committee report Mentally Abnormal Offender London HMSO October 1975.

CHAPTER III : SOME LEGAL ISSUES

We have stated that we approached all women convicted of a "homicide offence" detained in a gaol or mental hospital during the period of the study, and as well included in the study several cases of women previously convicted of a "homicide offence" but now released, or who came to trial for such an offence during the survey period. We included within our definition of "homicide offences" charges of murder, manslaughter, attempted murder, conspiracy to murder and infanticide. As it happened no woman in our group of cases had been charged with conspiracy to murder or infanticide. We will discuss the infacticide situation in more detail later. Four women were initially charged with attempted murder but none were convicted of this offence.[1] All of the remaining women were initially charged by the police with murder, and all but one of these women went to trial for that offence, although a number pleaded guilty to manslaughter at that stage.

Murder

Murder is defined in the NSW Crimes Act as follows:

> s18(1)(a) Murder shall be taken to have been committed where the act of the accused, or thing by him omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him, or a crime punishable by death or penal servitude for life.

The general rule is that a person cannot be convicted of murder unless in causing the death complained of he or she either intended to kill, was recklessly indifferent as to whether death was caused or intended to cause grievous bodily harm. "Grievous bodily harm" means really serious physical harm[2]; "reckless indifference" means that the accused adverted in her mind to the possibility of the harm occurring but carried on regardless, even though she may not have actually desired that harm to ensue, or positively hoped that it would not.[3]

There is one exception to this general principle, set out in the section. The effect of this exception, commonly known as the "felony murder" rule, is that where a person is killed in the course of the commission by another of a crime punishable by death or life imprisonment, that other and each of his or her accomplices is guilty of murder even if she did not intend the death at all. Some crimes punishable with life imprisonment are arson of a dwelling house knowing a person to be in the house (s196 of the Crimes Act), armed robbery with wounding (s98 of the Crimes Act), or formerly rape.[4] Thus a robber who is surpris in the course of a robbery and strikes a glancing blow which unfortunately kills the victim is guilty of murder under this rule, although he or she did not intend to kill, or even to cause serious bodily harm.

This doctrine, which exists in slightly different form in other states of Australia has been extensively criticised by academic writers and law reform groups.[5] It is obnoxious to the central tenet of our criminal law that persons should only be punished for those acts that they intended. It is also clear that the doctrine can have no deterent value for the very reason that the death is presumed to have been unintentional - a person will not be deterred from criminal activity that may conceivably endanger life, such as armed robbery, if she has not even cast her mind to the possibility of a death occurring and certainly does not intend to kill. The doctrine has been abolished in England[6] and should be so here.

The breadth of the state of mind that is sufficient for conviction for murder where the accused has at least adverted to the possibil of harm has also been criticised in much scholarly writing, and in law reform reports. Recent law reform inquiries in Victoria[7] and South Australia[8] have recommended that murder be confined to cases where the accused either intended to kill or was reckless indifferent to the result. The U.K. Criminal Law Review Committee in its Fourteenth Report, Offences Against the Person[9] goes even further. That committee would confine murder to cases where the accused intended to kill, excluding even reckless killing unless the killer not only knew there was a risk of

causing death but also intended unlawfully to cause serious bodily injury[10]. The fundamental objection to states of mind other than an intention to kill being sufficient for conviction for murder is said to be, as in the case of felony murder:

> the basic injustice of subjecting persons to conviction and punishment for murder in respect of consequences of their actions which they in no way intended.[11]

Most critics are content with the notion that reckless indifference to the possibility of harm ensuring should be a sufficient state of mind for murder provided that the harm that is foreseen is the risk of death[12]. Deliberately and without lawful excuse undertaking a course of conduct that one has foreseen may cause death, even if death is not actually desired is said to be equally reprehensible as deliberately undertaking that course positively intending to kill[13]. It is not clear whether reckless indifference in this sense is philosophically or legally the same as intending to kill, or a distinct state of mind sufficient for conviction for murder, but on the authorities it is immaterial.[14]

More objection is taken to the doctrine that intention to cause, or appreciation of the risk of, grievous bodily harm, not death, is sufficient for murder. In N.S.W. intention to cause grievous bodily harm is sufficient but reckless indifference must be as to the risk of death, not merely grievous bodily harm.[15] At common law, however, (and so in the United Kingdom, Victoria, South Australia, and the Northern Territory) a person may be convicted of murder who did not intend to kill, did not realise that death was a possibility, and did not even intend to cause grievous bodily harm provided she realised that really serious bodily injury was a possible result of her actions. "Really serious bodily injury" has no precise or exhaustive meaning - it is for the jury to consider whether the injuries the accused adverted to were of that character, but conceivably the term would include injuries that no one would expect in this day and age to involve the risk of death. In one case in our sample, the woman was initially convicted of murder on the basis that she intended grievous bodily harm to her husband, in this case the breaking of his hands so that he could no longer assault her. Her male accomplice had gone too far in their attack and killed him.

In earlier times, when the common law doctrine of murder developed, medical knowledge and skills were limited and it could reasonably be expected that anyone who had suffered really serious bodily injury might die, particularly if that injury were in the form of an open wound subject to blood poisoning or infection. This is no longer the case, however, and the law should be modified to confine the crime of murder to those cases where death was the intended or foreseen result.[16]

The Victorian Law Reform Commissioner recommended that if his proposals as to the restriction of murder to cases where the defendant intended to kill or was recklessly indifferent to that result were adopted the maximum penalty for manslaughter, presently 15 years in Victoria, be increased to 20 years to accommodate cases accordingly excluded from the ambit of murder. We would question his apparent assumption that long sentences necessarily deter crime, but in any event in N.S.W. the offence of manslaughter which carries a maximum penalty of life imprisonment should provide a sufficiently wide range of sentencing.

One final point about the elements of the crime of murder, is that a person can be convicted of murder although she did not herself inflict the fatal blow, or was not even at the scene of the crime. Such a person is guilty of murder as an accessory before the fact, provided the Crown can establish there was a common purpose extending to the acts causing the death betwe her and the person or persons who in fact directly inflicted the fatal wounds. The penalty on conviction for murder as an accessory before the fact is the same as the penalt for murder simpliciter [17]: a mandatory sentence of life imprisonment.

Our cases

These principles on the penumbra of the law of murder affected a number of women in the group. Several women did not act alone in causing the death - they acted with one or more other people In some of these cases each participant was physcially involved

in the commission of the acts causing the death, in others the woman was found to have been a party to the general plan whether that was to assault, to kill or to carry out some other offence of which death was the unintended consequence but was not actually involved in the commission of the fatal acts. It was striking that in a number of these latter cases the women still did not really understand how they could have been convicted of murder when they themselves did not fire the gun, or carry out the fatal assault. At the other extreme, in one case a woman went to extraordinary lengths to assert, despite all the evidence to the contrary, that she must have fired the shot that killed her husband, and not her son, believing that this approach would save her son from conviction. In the result it did not, and it deflected the attention of the jury from the real issue in the case, the husband's brutality to that woman and their children over many years.

This lack of understanding could show that the law was never properly explained to these women, with possible disastrous consequences for the accuracy of their instructions and the carriage of the case. On the other hand, it may simply be that one crumb of comfort in the desolation of imprisonment is the belief that at least you didn't actually commit the fatal act.

Whatever the convicted person herself may think the Courts are hostile to claims of innocence in one situation at least - the armed robbery where one of the participants, intentionally or otherwise, kills someone and the other participant or participants in the armed robbery claim that the killing was outside their common purpose and so she or they are not guilty of murder. In one case we studied two young girls were convicted of murder in the course of an armed robbery. Only one of the girls had fired the fatal shot and the other, whom we will call Frances, claimed that the shooting was outside the agreed plan. In her statement from the dock she explained that they took a loaded rifle to the shop they planned to rob not because (as far as she was concerned at least) they had expressly or implicitly agreed to use it if necessary, but because "I thought it was the thing you do". She said that when she was urged to shoot by the other

girl she couldn't do it - "I just could not pull the trigger". On the basis of this statment her counsel argued that even if the shooting had been within the plan originally when it came to the point she had withdrawn from this common purpose.

The jury must be taken to have rejected this argument as both girls were convicted of murder. On appeal, the Court of Criminal Appeal was not kindly disposed to the arguments of Frances's counsel that the judge had not put the law on common purpose correctly or sufficiently clearly to the jury. Street C.J. in dismissing the appeal said that:

> Where two or more go out to commit a crime and one, with the knowledge of the others, carries a loaded firearm, it will be open to a jury to convict all of murder if the weapon is fired and a victim killed in the course of commiting the crime - a jury is entitled in such circumstances to conclude that the assent of all concerned to embark on the joint venture with one of their number known to have a loaded firearm is enough to establish that its discharge was contemplated as a possible incident of the venture.

Such an uncompromising approach may be appropriate in some cases but we would question whether it was really suitable in this one. These two girls were aged 16 and 17 at the time of their crime, lost young girls who had run away from New Zealand and were mixing in the drugs and stripping set at Kings Cross. They had been involved in a similar "scene" in New Zealand but that apparently was tame compared to the pace and "heaviness" of Kings Cross. They had had some juvenile convictions for property offences in New Zealand but no offences of violence and had never been in an adult gaol until they arrived in Sydney, when they spent some time in Mulawa on a minor charge having lied about their ages. At the time they committed the robbery, their first attempt at armed robbery, they were destitute and had only been released from Mulawa several days before. In this milieu it is conceivable that it was "the thing to do" to take a loaded gun to a robbery, without any conscious intention to use it. Most telling of all, Frances says it was in Mulawa that she first heard talk of armed robberies and began to wonder whether she could do one too.

We applaud a firm and uncompromising opposition to the use of violence. The difficulty is that violence is not deplored uniform

in all situations in our society. In a culture saturated with "cops and robbers" and crime shows emphasising and usually celebrating the use of violence, and where the use of violence by the State in the form of police and prison officers in particular is condoned it seems hypocritical to so roundly condemn putting the media message into practice.

It may be that the community in its expression of views on juries shares the judicial condemnation of armed robberies. In one other case in our study a woman was convicted of murder although she had no direct involvement at all with the acts causing death. In that case the woman convicted was an accessory to an armed robbery in the course of which a person was killed.[18] She did not carry out the acts causing death, was not even present when they took place and certainly did not intend them. Indeed there was evidence in the Crown case that the accused had chosen that moment to break into the building with the intention of stealing two safes believing that no one would be on the premises at that time. In the event, the woman's male accomplices inside the building were surprised by a security guard who was killed in the ensuing scuffle. Despite the fact that, if anything, her plan had been to avoid injury to any person, the woman was convicted of murder and sentenced to life imprisonment.

Her case has one further twist. She was convicted almost entirely on the basis of alleged admissions contained in an unsigned record of interview, which purported to record an interview with the police she said had never taken place.

In both of these cases the participant in the armed robbery who actually caused the fatal injury could have been convicted either on the basis of his or her intention to kill or cause grievous bodily harm, or on the basis of the felony murder rule, as he or she was guilty of armed robbery with wounding (section 98 Crimes Act N.S.W.), a felony which carries a maximum sentence of life imprisonment. In theory at least the felony murder rule was the simpler basis for conviction in each of these cases as the Crown need not prove any specific intent for murder. It is interesting then that the Crown appeared to prefer to base its case on the more substantial footing of an intent to kill or cause grievous bodily harm. In one other case where a woman was

convicted of the murder of three people killed in a fire she had started in a drunken rage the Crown relied on the felony murder rule as an alternative to reckless indifference, the felony in that case being setting fire to a dwelling house knowing it was occupied (section 196 Crimes Act N.S.W.). Although the judge did leave this aspect of the Crown case to the jury he expressed some reluctance about doing so.

It may be that some practicing lawyers and judges share the view of many academic writers that the felony murder rule, although a convenient and (in theory at least) uncomplicated basis for conviction, is objectionable because it holds persons responsibl for acts they did not intend.[19]

The case involving the fire was a particularly tragic illustrati of the doctrine of reckless indifference. There seems no doubt that the woman in that case, Maxine, did not intend to kill her neighbour and his children and her remorse for their deaths is unremitting. She was convicted on the basis that she had adverted in her mind to the possibility that they would suffer harm and whether or not she in fact truly desired that harm, proceeded to light the fire regardless.

The only evidence that she had contemplated that they might be injured was contained in the record of her interrogation by the police in which to the question: "Did you realise at the time you lit the fire that lives could be lost?" She replied: "Yes, but I didn't want to kill anyone."

On its face this is unequivocal, but it is possible that that answer did not really reflect Maxine's state of mind when in a drunken rage she lit the fire. In the months preceding the fire she had been suffering increasing anxiety and tension. She had sought to have herself admitted to a mental hospital, had begun drinking heavily and was on prescribed tranquilisers. It is possible that she feared that she would suffer another nervous breakdown as she had some years before. A neighbour gave evidence at the trial that on several occasions in the last few months Maxine had smashed up kitchen furniture when drunk. Maxine herself had no memory of these outbursts and it

entirely possible that she was so drunk when she lit the fire that she gave no thought at all to the possible consequences. It is not enough for this head of murder that a reasonable person would have realised that lives could be lost - the Crown must establish that the defendant herself realised that danger.

If Maxine did not realise what she was doing at the time she did it then why in the record of interview did she say she did? This interrogation was conducted some hours after the fire commencing at 5 a.m. on the following morning. By that time the effect of the alcohol and drugs that may have clouded Maxine's mind at the time she lit the fire would have eased and she had been confronted with the hideous deaths of her neighbour and two of his three children in the fire. Sober again, exhausted and shocked it may have been inconceivable to her that she could do such a thing without realising the danger. Lives having been lost in fact, it is difficult to accept that the risk of that happening was not foreseen.

Maxine's state of exhaustion and shock at the time of the record of interview can be gauged by her answer to the question next after the one already quoted. To the question: "Do you realise that your actions in lighting this fire were such that there was a reckless indifference to human life?" She replied simply: "Yes".

"Reckless indifference to human life" is such a clumsy and legalistic phrase that surely anyone not totally numb would query it, rather than simply assent. Her assent to the question casts doubt on the reliability of the remainder of her answers, as recorded in the record of interview. The question is objectionable first because Maxine and indeed any murder suspect would be unlikely to know that one head of murder is reckless indifference to human life. By her assent to this question possibly based on a misunderstanding of the meaning of what is a clumsy phrase or at least a failure to appreciate its particular legal meaning, Maxine incriminated herself almost certainly without appreciating the significance of the question. The ultimate

question for the jury at the trial was to be whether on the bas: of all the evidence the defendant had been recklessly indifferer to human life. Faced with a conflict of evidence between the record of interview and the defendant's evidence at the trial the jury may be tempted to rely on the written question and answer in front of them. The record of interview as an exhibit goes into the jury room with the jury, the transcript of other evidence does not. It is improper and unfair to attempt to confine the jury's consideration of all the evidence by a neat question and answer in this form.[20]

The Life Sentence

The penalty for murder is automatic - penal servitude for life. (We will discuss later in this section of the report the questio of whether life imprisonment should be the mandatory penalty.) The convicted person does not normally spend the rest of his or her natural life behind bars, however.[21] Most lifers are released after a period of time on Licence, a permission from the Governor to be at large, analogous to the tickets of leave granted to convicts. The licence generally states that it is of a certain duration, often 3 or 5 years, and it has endorsed on it certain conditions, generally reporting and good behaviour conditions, plus others as deemed appropriate. For example, the licence may require that the licencee seek psychiatric treatment or stay within a certain portion of N.S.W. During the period of the licence it can be revoked and the person retu to gaol if he or she commits another offence, or fails to meet any condition.[22] In practice the licence is granted by the Governor on the recommendation of the Minister for Corrective Services, who in turn relies on the recommendation of the Parole Board.

The Freiberg & Biles study conducted in 1975[23] showed that the average period of imprisonment served by a male life sentence prisoner in N.S.W. released in the years 1960 - 69 was 19 years, and in the years 1970-74 was 16 years 6 months. The longest period of imprisonment served by a male lifer in the years 1940-7 was 30 yrs 6 months and the shortest was 1 year 5 months.

The average imprisonment for a male lifer in N.S.W. is considerably longer than in other States. In Victoria the average time served by male lifers released in 1970-74 was 13 years and in South Australia for those years it was 9 years 8 months. Women lifers also serve longer in N.S.W. than in other States. The average length of imprisonment for female life sentence prisoners in N.S.W. 1932-74 was 10 years 4 months, the maximum being 14 years 3 months. These figures are greater than in any other State and are double the corresponding figures for all States except Queensland. It should be noted, however, that the numbers involved are very small which may make these results unreliable - in N.S.W. in that period there were only 9 women serving life sentences, and in all other States combined over roughly similar periods there were only 10.[24]

We interviewed only 2 women who had been released on licences from a life sentence for murder before the commencement of the project. One of these women was released after serving 10 years and the other after 13. One further woman sentenced to life imprisonment whose case was included in the study has since been released. Violet Roberts was released with her son Bruce in October, 1980 after serving 4 years nine months of a life sentence. She and her son had been convicted of the murder of her husband, Bruce's father, a violent alcoholic who had beaten and abused them for many years.

They were released after an intensive public campaign during which over 20,000 signatures were collected on a petition calling for their release. Their cause received an enormous amount of public sympathy and focused attention both on the problem of domestic violence and on the inadequacy of the present laws of homicide to deal with cases such as theirs.[25]

Release after 4 years is most unusual, although the government has the power to release at any time after conviction. At the time of the campaign for Mrs. Robert's release the policy of the Department of Corrective Services was to first review the case of a woman sentenced to life imprisonment after she had served 6 years 9 months. (As at January, 1982, this is still the policy.) The woman could not expect to be released as a result

of that first review and would normally have to serve a consider further period of imprisonment and be reviewed several more time before release.

It is in the very nature of an indeterminate sentence such as life that release is not guaranteed at any time, even after the offender has served the average period. The Departmental policy introduces some element of standardisation but the materi obtained by Freiberg and Biles shows that the period actually served can still vary widely either side of the average. And in any event the offender who comes to gaol with a life sentence is not given any official indication, at least when she first arrives, of the likely period she will serve. The first question a life sentence prisoner asks is "how long is life?" But she has to rely on gaol folklore for an answer. For a woman who has perhaps killed her husband and has had no prior experien of gaol this uncertainty and lack of reliable information can only add unnecessarily to the trauma of conviction and imprisonm

A number of official inquiries as well as academic writings on life imprisonment have stressed that the anxiety and hopelessnes caused by an indeterminate sentence, with no certain release dat can be seriously debilitating. The Report of the U.K. Advisory Council on the Penal System, Sentences of Imprisonment: A Revie of Maximum Penalties expressed the effects of the life sentence thus:

> Longterm prisoners often become introverted and highly institutionalised. The very indeterminacy of his sentence can only increase the insecurity of the life-sentence prisoner whose anxiety, as recent research shows, appears to increase considerably after the "normal release point is passed. (para 226).

Our own research confirmed that the worst aspect of the life sentence, for the life sentenced prisoner, is the uncertainty about release date. One young woman who had served four years on a life sentence at the time we interviewed her, said she couldn't envisage what it would be like to be out, or what she would do, because of the uncertainty of her release date:

> I know I would like to be out; I think a lot about it, yes. But then when you have been in so long it seems like, I don't know, it is a different world, like out there and you out here. This is your little, you know, your little world ... I think it is because I don't know when I am getting out. You know, I sort of can't think, sit down and think what am I going to do when I get out because I don't know when I am getting out ... it is sort of really hard to think, where am I going to go, what am I going to do ... how do you know, because you don't know how many years you are going to be in.

Apart from the women who have now been released, there were nine other women in the group who were convicted of murder and are now serving life sentences. The earliest of these sentences was imposed in 1972 and the most recent in 1981. As at January 1982 all these women were still in custody. Three of these women were under 18 at the time they committed the murder. A life sentence was not mandatory for them, yet each was sentenced to life imprisonment. We have noted this fact elsewhere in refutation of the suggestion that women necessarily receive more favourable treatment from the criminal justice system. Indeed, in one of these cases involving a young girl who was 14 at the time of the crime and 15 when she was sentenced, her counsel in arguing that she should not receive a life sentence cited a case where a 14 year old boy was convicted of a particularly violent murder and yet received a determinate sentence, in that case of 13 years with a 6 year non-parole period. He also referred to a case where the Court of Criminal Appeal reduced a sentence of life imprisonment on a boy of 16 to one of 7 years. Nevertheless, the judge sentenced that young girl, Ann, to life. He may have felt in part that he had no real choice, because her co offender, who had been 18 at the time of the offence, had necessarily to be sentenced to life. He also appears to have been appalled by her crime (she had killed a baby) describing it in his interchange with her counsel as "almost beyond experience". The judge may have proceeded to this view from a false image of childhood and adolescence as all sweetness and light, so that violence by a child, particularly a girl, must be a horrifying deviation If indeed the judge approached the trial with such a popular image of childhood, the conduct of the trial would if anything have confirmed rather than challenged these assumptions. There was no attempt during the trial to place Ann's behaviour in any

social or psychological context which might have made her behavio understandable, if still horrifying. If anything the previous innocence and sweetness of this young girl was emphasised at her trial and sentencing.

Above are the judge in Ann's case took the view that an indetermi sentence, which would necessarily be a life sentence was the most suitable because it was the most flexible.[26A] He said he would impose an indeterminate sentence "leaving it to the authorities to work out when in the public interest and in her own interests it would be safe to release her", noting that under that arrange "she is elegible for parole (he means release on licence) at any time". In fact he commented, an indeterminate sentence might be " most merciful here in the long run" because Ann could theoretical be released as soon as she had shown herself to be ready. While superficially attractive this flexibility argument has serious flaws. It assumes both that there is regular review of life sentence cases by the authorities who consider release, and that a life sentence prisoner can make real efforts towards "rehabilitation" (assumimg such a thing is ever possible in gaol) despite being in a situation of constant uncertainty as to when he or she will be released. We have discussed the latter point above: the uncertainty of a life sentence is crippling, a life sentence prisoner cannot prepare for release when she does not know for sure when that release might be. The first assumptic is also quite wrong. The judge was in error if he believed that Ann may in fact be released sooner from an indeterminate sentenc than she would be from any determinate sentence of years it would be appropriate to impose. Ann and her co-offender are currently the longest serving female life sentence prisoners in N.S.W. (they were each sentenced in 1972). This says nothing about their conduct inside gaol, or their progress at "rehabilitation". The simple fact is that (at least until very recently)[27] there has been no regular review of life sentence cases, even where it would seem to be particularly warranted, as in the case of a very young prisoner. Life sentence prisoners are swallowed up by the prison system and forgotten until the standard time for initial review of his or her case arrives. And even if this were not the case, and there was a real opportunity for early

release if warranted, the uncertainty attached to such release would prevent an indeterminate sentence from ever being "merciful".

Governor's Pleasure

Five women in the group have been at one time acquitted of a homicide offence on the grounds of insanity. (One woman who was released after a period in custody at the Governor's pleasure following her acquittal of a homicide offence on the ground of insanity subsequently committed another homicide offence in respect of which she was convicted of murder. She is presently serving a life sentence for that offence and her permission to be at large in respect of the earlier offence has been revoked.) Under s23(2) of the Mental Health Act a person acquitted on the ground of insanity is not set free but is detained "at the Governor's pleasure" i.e. until such time as the Governor on advice releases him or her pursuant to s29 of the Act.

According to evidence give at the Royal Commission into N.S.W. prisons, the time spent in detention by Governor's Pleasure detainees ("GPs") varies greatly. The Royal Commission found that the average period of detention of the fifty-seven GPs released from custody during 1966-1976 was six years and eight months. The shortest period of detention was 3 months, and the longest 23 years 11 months.[28] (These figures relate to total periods of detention i.e. detention in either a prison or a mental hospital.) Three of the GPs in our group had been released from that custody at the time we interviewed them, including the woman described above who has since been convicted of another homicide offence. One was released after 3 months, one after 21 months, and the third after 17 years under detention. At the time of the release campaign for this woman, Sandra Willson, she was described as the longest serving woman prisoner in N.S.W. In fact, the research we undertook for this project has shown this not to be true. We are aware of the case of a woman who killed a nurse in a mental hospital in the 1940's who has been detained since that time, for nearly forty years, as unfit to plead. She has never faced trial for the offence she is said to have committed, the details of which have become blurred in hospital rumour over time. It is

most unlikely that she would ever now be released. We have not discussed her case further in this report as we were unable to obtain any detailed information about it.

There is another woman who has been detained as a criminal mental patient since the 1940's. That woman, one of the two GP's in our group still in custody, was found not guilty by reason of insanity of the murder of her two year old son in 1947. She is still in custody in a Sydney psychiatric hospital and it is said that she is now so institutionalised that it would be cruelty to release her. We were able to examine her medical file which recorded regular comments from nursing staff. For the first twenty-five years of her imprisonment, this woman would at times make attempts to secure her release, by writing to the Minister for Justice or requesting that someone see her about release. The whole tenor of the file suggests that these requests were not taken seriously and were interpreted as signs of paranoia, further signs of an illness which justified her continued presence in the hospital. By the time help may have been available for this woman she was perhaps too defeated and institutionalised to fight for her release any further. Her tragic history serves to remind us of the powerlessness of patients in psychiatric hospitals where any attempt to exercise rights can be rendered meaningless by medical staff who interpret behaviour within a medical model of symptoms and treatment.

The fifth woman in our group was found not guilty by reason of insanity of the murder of her husband in 1975. After three years in the woman's gaol, Mulawa, she was transferred to a psychiatric hospital where she remains today.

Contrary to popular belief a person found not guilty by reason of insanity is not necessarily detained in a mental hospital. Indeed it may well be that there is no present need for any psychiatric treatment at all as the defence relates to insanity at the time of the offence, not at the time of the trial. Even if the defendant is perfectly sane by the time of the trial, however, the trial judge has no option but to sentence her to be detained in strict custody until the Governor's pleasure

be known. The trial judge has no power to release immediately, or to release on conditions. This aspect of the present law was severely criticised by the Royal Commission, which recommended that the trial judge should have discretion as to the disposition of the defendant who is sane by the time of the trial.[29]

The draconian results of the present situation are clearly illustrated by Lindy's case. Lindy attacked her 5 year old son when suffering from a severe nervous breakdown. Sympathetic psychiatric treatment while she was on bail restored her to sanity, so that she was quite sane by the time of her trial for attempted murder. She was acquitted outright of this charge, and of the less serious charge of wounding with intent to do grievous bodily harm, on the basis that she lacked the necessary intent. She was not acquitted outright of malicious wounding, however, but found not guilty by reason of insanity. The judge, apparently much to his horror, had no option but to direct that she be held in strict custody. It was 26 days before the departmental authorities arranged for her first psychiatric assessment, although the judge had ordered immediate assessment, and even then the assessment was made only after the judge complained about the delay. Eventually, Lindy was to spend 3 months in gaol waiting for the authorities to accept the psychiatric evidence that she was no longer insane and she should be released. When compared to nearly all the other women in our study, Lindy had an extraordinary degree of outside legal and social support during this three months. Without it, it is unlikely that she would have been released so soon.

Such bureacratic delay is inexcusable. Even a relatively short period of time in gaol can cause serious dislocation to a person's life, particularly when coupled with the anxiety of being on an indefinite sentence with no fixed release date. Lindy told us that although she was "only" in gaol for 3 months and came out into a fairly good family and job situation she still experienced difficulties in adjusting to life outside:

> I was amazed because I had denied before I got out that I would have any trouble adjusting when I got out. I was appalled at what I felt and horrified because I thought what the hell must it be like for people who are there for a long time. Because I felt very intense cultural shock after 3 months - I could not cope with traffic and I could cope with all the people. It took me a while to get used to being able to cope with doing the housework again. I felt as though I had withdrawn into this cell inside myself where I hadn't had to think. I had nothing to do, no decisions to make, and everything seemed dulled my brain, my senses. I was obviously run down even though when I went in there I was very healthy. I used to run and I used to be very conscious of my diet .. This amazed me ... I remember feeling the first few days after I got out like I wanted to go back again. I can really understa people who feel this.

Even if the person acquitted on the ground of insanity is still disturbed at the time of the trial there is no guarantee that he or she will be admitted to a mental hospital. The Royal Commissi found that about half of all GPs never go to a mental institution (though there is no way of telling of course how many of these people do need psychiatric treatment one would be justified in assuming that a fair proportion, probably the majority, do).[30] One source of difficulty is that the legal test of insanity, which determines acquittal on the ground of insanity, is not the same as the definition of mental illness in the Mental Health Act. It is this latter definition that must be satisfied before a GP detainee can be transferred to a mental hospital. This surely cannot account for all cases where people found insane by the courts are nevertheless detained in a gaol, rather than a mental hospital however.

A further serious defect in the present system of detention of GP prisoners is the procedure for release. This also attracted the criticism of the Royal Commission.[31] Although formally acquitted a GP is not automatically released once he or she is certified sane. Once sane the GP is transferred back to a gaol (if indeed he or she ever left) to await a decision as to whether he or she is "dangerous". It is only if she is both sane and no longer "dangerous", in the opinion of the department's consulting psychiatrists, that a GP will be released on licence. It may be many years before the department is satisfied that the GP is ready for release according to this test - in the case of

Sandra Willson it was 6 years after she was certified sane before she was released and even then only after a public campaign had drawn attention to her plight.

Sandra Willson killed a taxi-driver in 1959 while disturbed at the break up of a love affair. She was found not guilty by reason of insanity in 1960, after a period during which she was unfit to plead. After 11 years in a psychiatric hospital she was judged by a panel of psychiatrists to be sane, in 1971, and was sent to the women's prison. Sandra first applied for release on licence in 1972 and after that applied every year. The Parole Board refused her application on each occasion, generally without vouchsafing her the courtesy of reasons. Her case illustrates many of the inadequacies and dangers of the "dangerousness" test. First of all, there is considerable doubt whether psychiatrists have any special ability to predict future violent behaviour. Some researchers have produced data showing that in a large number of cases where predictions of the likelihood of future violent behaviour have been made the psychiatrists showed no overall expertise i.e. no degree of accuracy other than what might be expected by chance. This same research found that in this ad hoc and unreliable exercise of attempting to predict whether a person who has been violent once is likely to be so again the factor most often relied on by the psychiatrist making the evaluation was the nature of the violent act already committed:

> ... out of the wide range of socio-demographic, criminal, hospital history and diagnostic variables (we) gathered, only one was statistically significant in differentiating those defendants found to be dangerous from those found to be non-dangerous by the psychiatrists. This variable was 'current alleged offense'. Regardless of age, criminal diagnosis or anything else (we) measured, if the individual being evaluated was charged with a violent offense, there was a strong possibility he would be found dangerous. [32]

Of course such an emphasis on the violent act already committed will have the inevitable result in homicide cases of a high prediction of future dangerousness, whether the offender in a particular case is likely to re-offend or not.

Psychiatrists then may have no special claim to accuracy in the question of the future behaviour of someone who has been violent once. Indeed one must question whether any one has the ability to make this prediction with any degree of certainty. The concept of "dangerousness" is an undefined one. To the lay mind, intransigence or deviation from the sexual or cultural norm may be significant signposts to future violent behaviour. In Sandra's case, for example, although the Parole Board often did not give reasons for its refusal of her requests for licence they did let it be known that one reason was her unrepentant lesbianism.

Sandra, like any other long term prisoner on an indefinite sentence, was caught in a further double bind. On the one hand had to establish that she was not institutionalised and so could cope with the world outside; and on the other she had to demonstrate that she was rehabilitated. To the Parole Board the fact that she had never become submissive, despite her years of instituionalisation, and had expressed anger and resentment at th petty nature of many rules of prison life was evidence that she had not been "rehabilitated", yet this determination and spirit were the very qualities that would ensure (and in the event have ensured) her success in the world outside despite being excluded from it for so many years. As for the Parole Board's other requirement, that she prove she was not "institutionalised", this of course became more and more difficult each year, the Parole Board refusing to accept that a person who had been incarcerated for so long could not be "institutionalised". The irony was of course that it was the Parole Board who was keeping her in gaol and so making its own requirements ever more difficul to attain.

In an article on the Sandra Willson campaign,[32] Janet Wahlquist makes the point that "someone held at governor's pleasure is often treated as if they have been convicted and, therefore, as if they were responsible for their actions. Instead of treatment or in addition to it, they are punished." That the danger of thi occurring was very real is revealed by the fact that at least unt

the Royal Commission, the same board (the Life Sentence Review Committee) considered convicted life sentenced prisoners for release and acquitted GPs. After the Royal Commission the Life Sentence Review Committee was disbanded, and consideration of the release of persons on GP was undertaken directly by the Parole Board. The arrangement still suffered from the same defect, however, because the Parole Board is principally occupied with the consideration for release on parole of convicted prisoners. There remains the very real danger that the Board will apply to the cases of persons acquitted by the legal process, in respect of whom the presumption should be for release once they have been certified sane, principles that are only of relevance to convicted persons.[34]

Fitting the charge to the crime

Counting separately each homicide charge ever faced by the women in the study that proceeded either to conviction or a finding of not guilty by reason of insanity there were 39 such charges. The disposition of these charges is set out in Table 6. In 35 cases a person had died - in each of these cases the woman was initially charged by the police with murder, the most serious homicide charge, although in only 18 cases, just over half was the woman subseqently found to have committed this offence. In 17 cases the woman was found guilty of the lesser offence of manslaughter, in 12 of these cases after her plea of guilty to this offence was accepted by the Crown in full satisfaction of the indictment for murder.

In the remaining 4 cases of the 39 woman was charged with attempted murder. In none of these cases was the woman convicted of this offence, or found to have committed it while insane. Only two of these women stood trial for the offence of attempted murder. One of these women was found guilty of the lesser offence of wounding with intent to do grievous bodily harm, and the other was acquitted of attempted murder but found not guilty by reason

TABLE 6

PROGRESS OF INITIAL CHARGE TO CONVICTION*

Stage	Murder	Mansluaghter	Attempted murder	Wounding with intent to do grievous bodily harm	Malicious wounding
Police	35		4		
Committed for trial	35		4		
Went to trial**	34	1	4		
Convicted after plea of guilty in discharge of indictment for murder or attempted murder		12		1	1
Convicted after trial before jury	14	4		1	
Not guilty by reason of insanity	4				1
Substituted conviction on appeal		1			

*In this table we have counted each separate charge. Thus where a woman committed more than one homicide offence whether on the one occasion or on different occasions each charge has been counted. Similarly, where a number of women combined to kill the one victim the charge against each woman has been separately counted. This adds up to 39 separate homicide charges. Two of the 35 women were each charged with two homicides arising out of different incidents and one was charged with the deaths of three people in one incident.

**In a number of cases women won retrials on appeal. In this table we analyse the final trial of each woman on each charge.

TABLE 7

COURT RESULT BY CATEGORY OF CASE
(39 Homicide incidents)

Victim's Relation to accused	Convicted of murder	Convicted of manslaughter by plea of guilty	Convicted of manslaughter by trial or substituted conviction on appeal	Not Guilty on grounds of insanity	Convicted of wounding with intent to do grievous bodily harm	Convicted of wounding	Total
Husband	3	8	5	1			17
Father		3					3
Child	1	1		2			4
Non family member	10			2	2	1	15
TOTAL:	14	12	5	5	2	1	39

of insanity of malicious wounding. In the other two cases the Crown had accepted before the trial the woman's plea of guilty to a lesser wounding offence.

Thus although whenever a death occurred the suspect woman was charged with murder, in almost half the cases she was later found not to have committed this offence, in most instances because another agency of the same state that had initially charged her had subsequently conceded that in fact she was not guilty. Why then was she initially charged with murder, and why in all but one a case did it take until immediately before her trial for murder for the Crown to agree not to proceed on that charge? To answer these questions we need first to consider the elements of the less serious form of criminal homicide, the crime of manslaughter.

Manslaughter is not defined in the N.S.W. Crimes Act. There are two categories of manslaughter - voluntary and involuntary. Voluntary manslaughter is a homicide where the person causing the death did so with one of the states of mind sufficient for convic for murder, but in circumstances such that the crime is reduced to manslaughter by the operation of one or more of the partial defences - provocation, diminished responsibility or excessive self defence. The meaning of these defences will be discussed later in this report.

Involuntary manslaughter, as the name suggests, is an unintenti homicide for which the person causing the death is criminally liable because it was caused while he or she was committing an unlawful and dangerous act, or in circumstances of the most extreme negligence. It is an unlawful and dangerous act to point a loaded gun at someone even if you only intend to frighten them away, for example, unless the threat they presented was such that it was objectively necessary for you to take that actio

The crucial distinction between murder and manslaughter as far as the disposition of the offender is concerned is that whereas murder carries, for adult offenders, a mandatory life sentence the trial judge may impose any sentence he sees fit from a bond

to life imprisonment on conviction for manslaughter. On a trial for murder the accused can challenge one or more of the elements of the Crown case, all of which the Crown must establish beyond reasonable doubt for conviction, such as identity or, commonly, intent or she may raise a defence that assumes all these elements but nevertheless reduces murder to manslaughter, or would result in complete acquittal. The great risk at a murder trial is that the jury may not accept the defence in which case on conviction the defendant will be automatically sentenced to life. Many people facing a murder charge are eager to avoid standing trial for murder and this consequent risk of conviction and a life sentence by seeking agreement from the Crown beforehand that the Crown will accept a plea of guilty to manslaughter. This may even be so where the defendant might if she stood trial have a chance of complete acquittal. The risk of the life sentence seems to make lawyers reluctant to put their clients on trial and argue for complete acquittal on the grounds of accident (i.e. no intent to kill and no unlawful and dangerous act) or self defence. The more cautious approach is to concede that the defendant did commit an offence, the lesser offence of manslaughter, in the hope that the Crown will agree, the danger of an automatic life sentence will be avoided and all forensic efforts can be devoted to argument on sentence.

The plea may be offered and accepted on the basis of lack of intent or one or more of the partial defences, and once accepted by the Crown the defendant is convicted of manslaughter and the only issue remaining is that of sentence.[35] A further consideration is that if the defendant does run the risk of conviction of murder by standing trial, and in the event is convicted of manslaughter only she may be at a disadvantage to the defendant who has pleaded guilty to that offence. It is often said that a plea of guilty will secure a more lenient sentence than conviction after trial as the former indicates contrition and saves court time whereas the latter insistence on rights does not. Indeed there is judicial authority approving such an approach.[36] Even if that were not the case, it is far easier as a matter of forensic tactics to present a well-developed case in mitigation on the question of penalty after a plea than after the exhaustion of a jury trial where all attention has been focused on the initial question of conviction

In this discussion of the acceptance by the Crown of pleas of guilty to manslaughter in discharge of an indictment for murder it is not our intention to criticise the existence of the practice Although the proferring of a plea of guilty to the lesser offence undoubtedly saves the Crown work where it is minded to accept the plea in that the prosecution does not then have to establish its case, it would be mindless to object to the practice on this ground alone. In a proper case where it is manifest that the Crown cannot make out its case or that a partial defence exists it seems to us entirely laudable that the case should be resolved in such a way. It saves the state the expense of a trial, and, more significantly, saves the defendant the anxiety of standing trial for murder and the risk of a perverse jury verdict of that offence.

What we do query is the way the practice of fitting a suitable offence to the facts is applied at present. Specifically we as why this matching cannot be achieved much sooner, and earlier in the process from arrest to trial.

As we have said, in each case where a death occurred the woman was initially charged with the most serious homicide offence. In all of these cases the woman was committed for trial on this offence, and in all but one a bill of indictment (the formal document initiating a trial) was filed by the Crown law authorities for murder rather than manslaughter. In one case a bill was filed for manslaughter only, the Crown accepting that it could not establish that the defendant had the necessary intent for murder. The woman's lawyers in that case had made a "no bill" application, submitting that the Crown would not be able to make out its case and so the woman should not be put on trial for murder, but the application did not really address the next question, which was whether she should be put on trial for manslaughter. In the event she was, and was convicted of that offence. only 3 of the 21 cases where the women stood trial for murder was she successful in reducing the charge to manslaughter. In the other 12 cases where manslaughter convictions were arrived at this was by way of plea of guilty. Of the remaining 18 cases where the woman stood trial for murder, she was convicted of that offence in 14 of them, and found not guilty by reason of insanity

in 4. These figures suggest either that the Crown exercises good judgment in declining to accept pleas of guilty in those cases where the jury is likely to convict, or that this is a self-fulfilling prophecy: when the woman chooses or is forced (by reason of the fact that the Crown will not accept a proferred plea of guilty) to put her case before a jury, she is unlikely to be successful.[37]

There are two arguments commonly advanced as to why a person who has committed an unlawful homicide should be charged, and stand trial for, the most serious homicide charge, that of murder. The first is that the question of whether the person was provoked, was suffering from diminished responsibility or acted in self defence is a jury matter and should be left to the jury to determine on the basis of all the evidence before it. This was the argument utilised by the South Australian Crown law authorities in defending their decision not to accept a proferred plea of guilty to manslaughter on the basis of provocation in the second trial of the notorious axe murder case in South Australia in December, 1981. In that case a woman who killed her brutal husband of over twenty years with an axe after discovering that he had systematically sexually abused all five of their daughters from their early years was convicted of murder at her first trial after the trial judge ruled that the defence of provocation was not available to her. She appealed, amidst an enormous public outcry at the verdict, and the Court of Criminal Appeal held in allowing her appeal and ordering a retrial that the trial judge had been in error, and that there was evidence raising the defence at law. She sought acceptance of a plea of guilty to manslaughter on the basis of provocation, to avoid the distress and risk of another trial, but the Crown was intransigent. As it turned out, this was fortunate for her. Despite the fact that there was no legal basis for complete acquittal in her case the jury at her second trial did acquit her, perhaps preferring common sense to the nonsense of the law in this area.

Luckily the N.S.W. Crown is not so stuffy. To the extent this argument is advanced at all in N.S.W. it is rhetoric. The simple fact is that in many cases of women homicide offenders, and we suspect in many cases of men offenders, the Crown does accept a plea of guilty to manslaughter on the basis of a defence or the Crown's likely inability to be able to establish intent although these are strictly jury issues. Indeed it may be that there is an increasing readiness on the part of the Crown in N.S.W. to accept pleas of guilty in recent years. In one of our cases the Government psychiatrist examined the woman who had been charged with the murder of her husband and reported that she was suffering from a depressive illness which amounted in his view to diminished responsibility within section 23A of the Crimes Act. There was no other psychiatric report obtained, and thus the only psychiatric evidence, and that from the Government psychiatrist whose opinion is normally afforded the highest respect by the Crown in homicide trials, was that the defence had been made out. Our research suggests that in recent times this would by far and away be sufficient[38] for the Crown to accept a plea of guilty to manslaughter on the basis of diminished responsibility. The barrister who appeared for that woman was the only one we approached who declined to be interviewed about the case, notwithstanding the fact that his former client had consented to a discussion, so we do not know whether he approached the Crown to see if they would accept a plea of guilty on that basis or whether he was so confident of the defence that he felt safe in leaving it to the jury. In any event it was the only defence advanced for that woman, although other lawyers who have looked at the case again in more recent years have considered that the defence of provocation was available, and it was not accepted by the jury. The Crown had argued that notwithstanding the woman's psychiatric condition she had killed her husband out of resentment over a family financial matter, not as a result of this condition and so the defence was not made out. If indeed the Crown had been approached about a plea in that case this view of the facts, which the woman has consistently denied, may have been why they refused to accept a preferred plea. On the other hand it is possible that at that time the defence was a new and unfamiliar

one, and the Crown was responding cautiously. The defence had only been introduced the year before that case went to trial.

It would seem that in most cases where the defence of diminished responsibility is an issue if the Government psychiatrist prior to the trial indicates that he would give evidence in support of such a defence, a plea will be accepted. Where he does not find evidence of diminished responsibility, whatever the views of other psychiatrists approached by the defence, it is more likely the case will go to trial - leaving the often complicated and conflicting psychiatric evidence to be decided by a jury. In practice, then the position of the Government psychiatrist, Dr. Schmalzbach is a powerful one. The practice of psychiatry is a field where there are many conflicting views - diagnosis being far from an exact science, espcially where the state of mind being analysed is in the past rather than the present. Prejudices and preferences of the Government psychiatrist could have considerable influence on the pretrial determination of cases.

It is less easy to discern a pattern in the acceptance of pleas where provocation is the defence at issue. Unlike the case of diminished responsibility, there is no expert whose evidence can be relied upon and the case is likely to go to trial - in some cases, pleas have been offered half way through the trial. There are, however, cases where pleas have been accepted by the Crown before trial, including a case in 1980 where a man stabbed a wife whom he claimed had been verbally harrassing him. In the absence of expert evidence, it is the Crown Prosecutor and his instructing solicitor who will make the decision as to whether or not to accept the plea. In the case of the psychiatrist his report outlining his reasons for finding or not finding evidence of diminished responsibility, will be tended at the trial. The reasons of the Crown Prosecutor on the other hand do not need to be articulated and not be publicly recorded. Where prejudices and popular assumptions about behaviour have affected the decision of a Prosecutor their effect will be difficult to identify. When the conduct in question at trial is that of a woman offender it may be that a female Prosecutor would be in a better position to evaluate it than a man. There are no female prosecutors in N.S.W. at present.

The second argument commonly advanced as to why it is acceptable and indeed necessary that a homicide offender should be charged with and proceed to trial on a murder as opposed to a manslaughte: charge is that the facts that will determine that the proper offence is manslaughter and not the graver charge of murder may not emerge until some time after the initial charge is laid, and possibly not until the trial. It is certainly the case that the material necessary to establish a defence of diminished responsibility will not be immediately apparent, because this defence requires evidence from a psychiatrist and a psychiatric examination takes time to arrange. (There is no necessary reason, however, why the psychiatric evidence could not be obtained before the committal so as to found the basis for an argument that the defendant should not be committed for trial on murder.)

But in so far as this argument is advanced in respect of the other defences, or the inability of the Crown to make out its case, it ignores the crucial significance of the record of interview i.e. the written record of the defendant's interrogation by the police. As we have shown elsewhere,[39] the record of intervie often contains not only evidence in the form of admissions that will be crucial for the Crown case; it is also the first statement in many cases of the defence case. Where the woman is later to rely on provocation, lack of intent or self-defence there will generally be material in the record of interview raising this defence. In some cases, the material in the record of interview is the whole of the defence case on this issue, or a large part of it. Thus much or a substantial part of what is later to be the material on which the Crown will accept a plea of guilty to manslaughter is within the knowledge of the state authorities from the very first contact the woman to be charged has with them. There were, for example, cases in our sample where from her very first interrogation by the police the woman maintained that she did not intend to kill, and her plea of guilty to manslaughter was later accepted by the Crown on this basis.

It could be said that in most homicide cases it would be imprudent

for the police to charge other than murder until they have had the benefit of the medical evidence as to how the deceased died. It may well be, for example, that the angle of the blow which killed the deceased, the site of entry of the fatal shot or position of the fatal wound or some other piece of medical evidence casts doubt on the assertions of the suspect that she did not intend to kill, or killed in the course of a struggle.

All the police evidence must be obtained and presented at the committal, however, and so it would be apparent by this stage whether or not the medical and other evidence supports or undermines the woman's case as put in her record of interview. It is remarkable then that in no case in our group of cases did the magistrate fail to commit on a charge of murder. We do not know whether this is principally a comment on the timidity of magistrates, or of lawyers as we do not know for sure in how many cases the defence lawyers submitted to the magistrate that he or she should not commit on murder. There may be good tactical reasons for the defence not apprising the Crown of its case by going into evidence at the committal, but there is at least one case in the group where serious deficiences in the Crown's own case must have been apparent by the comittal. In this case it must have apparent by the committal that the Crown could not establish the requisite intent for murder simply because this was the very ground on which the charge was dropped, before trial and without the taking of any further evidence, to one of manslaughter after a "no bill" application. Why then was this point not taken, or if taken not accepted, at the committal?

We suspect that the committal is treated by most defence lawyers (and by magistrates) as a mechanical process, an administrative stage in the proceedings where points are to be scored by storing up answers in cross examination of Crown witnesses that may prove useful if these witnesses give different evidence at the trial; where the Crown case is to be explored but not actually tested against the elements of the charge. Court observation of some committals supports this supposition. In one case, for example, where there was apparently clear evidence in the record of

interview to support a defence case of lack of intent, provocatic or self defence the proceedings were treated by the lawyers invol as purely administrative, a matter of fact and fairly genial exercise where there was no question but that the normal course would be followed and the woman would be committed for trial on murder. The defence made no submissions on prima facie case i.e. the defence lawyer did not submit that the Crown had failed to make out its case and did not call any evidence.

Treating committals in this way is all very well for lawyers who are well aware that the most significant stage of the proceed is yet to arrive, the trial and where appropriate the plea negotiations with the Crown beforehand. It is no doubt more taxing for the woman charged. Even if her lawyers have explaine to her that committal on murder is by no means the end of the story she still must bear the anxiety and strain of facing a murder charge.

One young woman whose plea of guilty to manslaughter of her boyfriend on the basis that she did not intend to kill him was accepted by the Crown told us that she did not know until the plea was in fact formally accepted by the Crown before the trial judge on the first morning of what would otherwise have been her trial whether or not it was going to be accepted. As she said, "it was pretty scary" thinking that she might have to go to trial on murder because "from what the people were saying, they find you guilty of murder, that's life." She certainly did not experience committal on a charge of murder as a routine matter. She was insistent that it had not been murder and said that when she was committed on that charge:

> I was getting worried, because that's what everyone was telling me, they either drop to manslaughter there or they don't. ... I was worried for four months after that. Because I didn't know what was going to happen. I kept saying to everyone, you know, psychiatrists and that, it's not murder, you know.

In the four months between her committal and trial that young woman was put on very heavy medication in gaol because she was so anxious and depressed. Delay and undertainty as to exactly when the trial would be were further sources of her anxiety.[40]

> I didn't know for four months when it would be ... it's terrible, just sitting around waiting. Waiting and waiting. You know, like, really things take time, but if they were put through quicker, you could get your sentence organised. Because once I got my sentence I settled down. I wasn't worrying any more about what was going to happen.

That young woman's experience in not knowing until the very morning of her trial whether she was to stand trial for murder or not is not unique. In one other case in our group it was not until the evening before the trial that the defence lawyers confirmed that a bill of indictment had been laid for murder (a no bill application had apparently been made). The question of a plea of guilty to manslaughter was discussed in that same conversation on the evening before the trial between the Crown and defence lawyers, the Crown indicating that they would accept a plea of guilty. There would have been no time that evening for the defence lawyers to consult their client, at least not in person, and so she was placed in the position on the very morning of her trial for murder of having to decide whether or not to plead guilty and so forgo her chance of complete acquittal on the ground of self defence, or stand trial and risk a life sentence. This is a very heavy burden to place on any defendant. It may well have been that the defence lawyers had discussed the pros and cons of pleading guilty with the woman beforehand, and given their advice on the issue, but the whole tenor of these last minute negotiations with the Crown suggested that it was not until that stage that the Crown had indicated definitely that it would accept a plea (even if the Crown and defence had discussed the question before) and so the woman was left until the morning of her trial not knowing whether a plea would be accepted if she wished to follow that course.

The anxiety of awaiting trial is not necessarily any the less if the defendant is out on bail. Indeed it may even be more debilitating simply because the period between committal and trial is generally very much longer for those defendants on bail as priority is give to the cases of defendants detained in custody. We are aware of two cases which have come to trial since the field work for this report was completed where the woman was

on bail awaiting trial on a murder charge for over a year. In one case, the period was 15 months from the homicide to the trial, in the other the woman was on bail on a charge of murdering her husband for twenty months. In one case in our group of cases the woman charged was on bail for eleven months in total, including nine months between committal for murder and trial. She suffered two nervous breakdowns while out on bail, both of them after she had been committed for trial. Even when the charge was dropped after a successful no bill application to one of manslaughter only the strain of waiting was still immense.

> I was ... hoping that it would be dropped when the no bill went in, and it went down to manslaughter, and you know, that was sort of a big lift off your shoulders, but it was still there. And I think you're constantly brewing over it in your mind all the time. And it just built up to a point where ... just got the better of me and I just cracked up completely.

Again in that woman's case a large part of the strain was caused by not knowing when the trial would be, coupled with the anti-climax when it was adjourned at the last minute as it was a number of times in her case. It is probably significant that her first nervous breakdown while on bail (for which she had to spend two weeks in hospital) was in May, which was the first scheduled date for her trial. We do not know whether she collapse before this date, or after the trial had been adjourned, but in either event it seems that the stress of anticipating a major trial or the anti-climax when it was suddenly cancelled was a principal cause of her distress. In answer to the question "Did you know when the trial was going to be on, or were you waiting all the time to set a date?" she replied:

> Well, they set a date and then they changed, and then they set a date again. I think they changed it about four times, you know, putting it back and putting it back and putting it back all the time, instead of getting it over and done with ... that May it was going to be first time, and then it was going to be about a month later and then a couple of months later, and it just sort of went on and on ... If they had have set a date, right from the word go, and even if they'd said, well November (when her trial for manslaughter in fact took place), I would have known it was then, but it was sort of, you know, you'd sort of be built up for it and then it's not on.

As we mentioned earlier, in none of the four cases in our group of cases where the woman was initially charged with attempted murder was she subsequently convicted of this offence. Because we did not study any case where the police had initially charged a woman with a wounding offence less serious than attempted murder we are not in a position to compare the facts in such a case with the facts in those cases where attempted murder was charged. One would think that the charge of attempted murder should be reserved for the most serious of woundings, normally where the person attacked has suffered really serious injury. To succeed in a trial on attempted murder the prosecution must establish that the accused intended to kill his or her victim, not merely that he or she intended to wound or even seriously injure. Normally it would be difficult to prove such an intent without serious injury having in fact been caused. In one of our four cases, however, a young woman was charged with attempted murder although she had only grazed the hand of the person she attacked with a knife. The woman charged did say that she had intended to kill the other woman she attacked, but she was obviously in a disturbed and unstable state when she made this admission and it needed to be weighed against the very slight nature of the wound actually caused.

Although this statement of intent was possibly sufficient justification for the charge of attepmted murder there were several other factors at work in that case that probably had as much, if not more, to do with the laying of that most serious charge. The woman attacked was a parole officer, and it seems likely that the police viewed an assault on a figure of authority, particularly a person in a semi-custodial position, such as their own, as more serious than the mere domestic "quarrels" our work on the cases of women who killed their husbands shows they are often ready to ignore, even when the husband has inflicted quite serious injuries. As well, the young woman who attacked her had, to the knowledge of the arresting police, previously assaulted another person in a supervisory role in her life, on that occasion an officer of the Department of Youth and Community Services. The police may

have felt that a serious charge was warranted on the repetition of such assaultive behaviour, despite the fact that the charge must correspond to the facts of the particular assault in question and not the police's view that more serious action should be taken because of the suspect's past conduct. Finally there is every reason to suspect that the arresting police were extremely hostile to the woman charged, not only because of her past conduct but because she was the complainant in a rape prosecution against one of their brother officers who had raped her while she was in custody on the earlier assault charge.

The police have enormous influence by their choice of charge over the future conduct of criminal proceedings. Not only does this charge set the effective ceiling to the possible offences for which the defendant may be convicted (the Crown can place a person on trial on a charge for which they have not been committed but it is rare), the seriousness of the charge may also materially affect the chance of the defendant being granted bail, and the nature of the charge initially laid will determine the area for discussion with the Crown as to a plea of guilty to a lesser offence. We would argue that the fact that influence this initial decision as to what charge to lay in a wounding or homicide case should be closely examined. In addition we would urge that lawyers re-appraise their approach to committal proceedings, and the frequent practice of leaving discussions about plea right to the last minute. In civil cases the practice of last minute settling, though universal, has earned much criticism from judges and others concerned at the waste of public money and the client's money and endurance. Surely the criminal practice should also be re-examined.

Sentencing

Should the life sentence be mandatory?

We have commented in other sections of this report on some aspects of the sentencing of the women in the study. We have discussed, for example, the imposing of a life sentence on the juvenile offenders convicted of murder. For those women convicted

of murder who were not juveniles at the time of the crime there was no issue at the stage of sentencing. A life sentence was the mandatory penalty for them. There has been a great deal of discussion in law reform reports both in Australia and overseas as to whether the life sentence should be the mandatory penalty for murder. The main argument for the retention of the mandatory life sentence is said to be that an automatic penalty of the most severe kind marks the seriousness of the crime of unlawfully taking the life of another. It is argued that the release powers of the executive can always be exercised to mitigate the harshness of the penalty where appropriate. As we have already argued, it is a fallacy to place much reliance on the power of the executive to release on licence. It is inevitable that administrative authorities will adopt a cautious and conservative attitude to release of life sentence prisoners which will operate against release, and in any event life sentence cases are not regularly reviewed for consideration of release until the prisoner has served a substantial and standard term of imprisonment.

The principal argument for discretionary sentencing is that all murders are not the same. The proponents of change argue that murder can range from the compassionate mercy killing of a close relative suffering great pain who has asked to die, to the most heinous and cruel torture or gangland "contract killing". They say that the judge should be able to impose a comparatively merciful sentence in the first sort of case, while still expressing the abhorrence of the community for the latter type of homicide by the imposition of the life sentence which would remain the maximum, though not automatic, penalty for murder. Indeed they argue the imposition of the life sentence would become a more effective expression of condemnation if it were not the mandatory penalty.

Two recent law reform reports in the United Kingdom have called for the abolition of the mandatory life sentence and its replacement by a power in the trial judge to impose any sentence up to life imprisonment. In addition to the argument of greater flexibility summarised above they have reasoned that

change is necessary because, in the words of the Advisory Council on the Penal System:

> efforts to alleviate the harshness of the mandatory penalty have led to complications in legal proceedings for which we believe there can be no proper justification

The Advisory Council continued, in its report Sentences of Imprisonment: A Review of Maximum Penalties:

> If the mandatory element were to be removed, we would hope that mitigating factors in cases of mental incapacity provocation, self-defence, or mercy killing could all be accommodated within the range of non-custodial disposals and custodial disposals of varying lengths.42

Unfortunately the Advisory Council did not go on to spell out what such change would mean for the distinction between murder and manslaughter that exists at present. Were they proposing that the distinction be abolished entirely, and the two offences merged into the one offence of unlawful homicide, as Lord Kilbrandon had proposed in the House of Lords judgment in R.v. Hyam?[43] It is not clear.

The Butler Committee in its report on mentally abnormal offenders presented to the U.K. Parliament in 1975 did not go so far. No doubt because of the limited nature of its terms of reference the Committee only considered the two sets of circumstances that may reduce murder to manslaughter that include a component of mental disturbance - diminished responsibility and infanticide. We have discussed diminished responsibility briefly already. It is a defence that applies where the defendant although not insane suffers from an abnormality of mind that "substantially impaired his mental responsibility" for the act causing death (s23A of the Crimes Act). Infanticide is a separate offence in New South Wales as in the United Kingdom. It covers the situation of a mother who kills her infant child under the age of twelve months while "the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation." (Section s22A N.S.W. Crimes Act). As the offence is deemed to be the equivalent of manslaughter on conviction the trial judge may

impose any sentence from a bond to life imprisonment. In practice we understand that very lenient sentences, generally release on a bond, are normally imposed.[44] The Butler Committee canvassed the difficulties and anomalies with these two "defences" and concluded that the solution lay in the abolition of the mandatory sentence for murder and its replacement by complete discretion for the judge whether to impose a life sentence or some other sentence.[45] The Butler Committee did not consider that such a change would involve merging murder and manslaughter into the one offence[46], but of course they did not consider the implications of discretionary sentencing for the defence of provocation.

It is interesting to note in the light of our previous discussion of the standard practice of the police to charge murder whenever a death has occurred that the Butler Committee also recommended that if the life sentence was to remain mandatory and so the defence of diminished responsibility will remain that where the prosecution are in possession of evidence indicating that a diminished responsibility defence can be made out then "it should be regarded as a proper practice ... for them to charge manslaughter in the first instance rather than murder."[47] The recommendation no doubt depends to a certain extent on the Committee's associated recommendation that the burden of proof in relation to diminished responsibility should lie on the prosecution and not as is the current situation in both the United Kingdom and New South Wales on the defence i.e. it should be for the prosecution to negative diminished responsibility once it is properly raised by the defence rather than for the defence to positively prove it.

The associated areas of provocation and the penalty or conviction for murder have also been considered recently in New Zealand. In a report on homicide published in 1976[48] the New Zealand Criminal Law Reform Committee recommended that:

> there be a single offence of unlawful killing to cover what is now comprised in the offence of murder and those cases where murder is reduced to manslaughter by reason of provocation

which offence would carry a maximum, but not a mandatory penalty of life imprisonment. The Committee came to this conclusion in part because it regarded the legal definition of provocation as unsatisfactory.[49] The Committee stated that if these changes were to be introduced, "the Court could do justice to the accused without being constricted by any formal definition of provocation."[50] The Committee also considered that judges should be able to play a greater role in determining what period of time a convicted murderer actually spends in custody. They stated that:

> These changes in the law would eliminate what may legitimately be described as an anomaly, in that Judges who are entrusted with the task of saying what custodial element is necessary for the purpose of prevention and deterrence in every other case play virtually no part at all, as the law now stands, in determining the period which convicted murders spend in prison.51.

In New South Wales in the aftermath of the Violent and Bruce Roberts release campaign culminating in the release of the Roberts in October 1980 the Criminal Law Review Division of the Attorney General's department prepared a working paper[52] on desirable changes to the law of homicide. That document adopted the publicly expressed views of several Supreme Court judges in New South Wales including the Chief Justice who have stated that the mandatory penalty should be abolished. The Division was wary, however, of the danger that once the mandatory penalty was removed disproportionately long determinate sentences of, for example, 40 or 50 years might be imposed which although nominally less severe than life imprisonment would in fact result in far longer periods in custody. To meet this difficulty the Division proposed in that working paper that the trial judge be able to impose any determinate sentence up to ten years, or life. We understand that the Division has since been considering other more satisfactory ways around this difficulty, such as stating in the legislation that the trial judge may impose a sentence less than life where in his view a less severe penalty is required.[52A]

The area is a difficult one and fraught with conflicting opinion. There have been, as is evident from the brief discussion in this report, a plethora of law reform reports in recent years on the

law of murder and manslaughter. These reports echo the continuing interest in the law of homicide by lay people and lawyers alike, despite the fact that criminal homicide causes but a fraction of all unnatural deaths in any one year and represents but a tiny proportion of all criminal matters before the courts. Throughout the nineteenth as well as in the earlier years of this century there have been innumerable Royal Commissions, enquiries and reports on homicide and related areas such as the death penalty in all the jurisdictions which have inherited the British common law.[53] Many of the recent reports come to conflicting conclusions. The Criminal Law Revision Committee in the United Kingdom was not able to agree in its fourteenth report Offences against the Person[54] as to whether the life sentence should remain the mandatory penalty for murder. In the light of such disagreement between commentators it seems likely that there will be no change, at least in the short term. We are not aware of any change that has been introduced to the law of homicide as a result of the recent British and Australian reports.[55]

Our own view is that the abolition of the mandatory life sentence would be a desirable move, although by no means the complete answer to the present difficulties with the law of homicide. Unlike some other commentators we would be reluctant to abandon the partial defences of provocation and diminished responsibility completely, merging murder and manslaughter into the one offence of criminal homicide. This is because we feel the law should retain some positive description of those sets of circumstances that automatically, though not excusively reduce what may otherwise be the most serious form of criminal homicide to a lesser offence. Secondly, whether or not it is desirable that it should be so the word "murder" and the description "murderer" have a potent force that we feel the community would be loath to lose by abandoning the distinction between murder and manslaughter. Finally, if provocation and diminished responsibility were to become no more than matters

for the judge to consider on sentence the jury's role in a murder trial would be considerably limited. This does not seem to us to be a good thing, and we do not trust judges sufficiently to grant them the entire discretion in relation to these matters of mitigation.

This said, there is still an important role for discretionary sentencing. As we discuss later in this report, in the section on the defences, there are a number of changes we would like to see to the defences, particularly to the force defences of provocation and self-defence. These changes would bring the defences more into line with the real life situations with which they are meant to deal. Even if these changes were to be made, however, there will always be fact situations which do not come within them, and yet from a human perspective mitigate the culpability of the offender. The mercy killing is the clearest example, but there are others. In one of our cases, for example, the offender was a young woman who had suffered the most extreme emotional and social deprivation in her childhood. She had been raped by a relative as a child and before she could even attempt to come to terms with the trauma thus caused was made a ward of the state. She spent most of the next 12 years, from the age of 6 to 18, in child welfare institutions, each more punitive than the next as each cry for help was met with more punishment. As an example, she was sent to Hay girls' home, a paramilitary establishment where girls had to march three feet apart from each other and were allowed to speak for ten minutes only each day, and then only in banalities, after she tried to commit suicide in another institution. In the prosecution's account, at her murder trial, she killed a man in the course of a robbery. He did not die as a result of the first shot, but lay in pain until she shot him again some hours later. In her account she shot him the second time to "put him out of his misery".

That young woman had no real defence to the murder charge, but if the penalty had not been automatic her lawyers could have put her background to the judge in an attempt to gain some sentence less than life. They could have explained that her

actions in firing the second shot should be seen in the light of the harsh way she had been treated all her life. One does not learn to respond to others with humanity if one has never been treated with humanity oneself.

There was a further twist to that case. The woman told us that she had killed the man because he had raped her, which brought to the surface all her unresolved anger about the first rape when she was a child. She said she did not tell her lawyers of the rape because she was an ex-prostitute and did not think she would be believed. Even had she been able to tell her lawyers what had really occurred it is doubtful that it would have amounted to a defence of provocation. She did not kill the man immediately after, or in the course of the rape, but brooded on it until the next time she was due to see him, two weeks later. Nevertheless if discretionary sentencing had been available the rape would have been a powerful argument for a more lenient sentence than life on conviction for murder (assuming that despite her past and the man's respectability she would have been believed).

Sentencing for manslaughter

All of the women who were convicted of manslaughter, after a plea of guilty, after standing trial for either murder or manslaughter or by virtue of substituted conviction at the Court of Criminal Appeal had killed family members, their own husband, boyfriend, father or child. None of the women who killed persons who were not members of their own family, all of whom were initially charged with murder, were succesful in reducing this charge to manslaughter. This does not mean that all women who killed family members were convicted of manslaughter only. Three women who killed their husband or boyfriend were convicted of murder, one was found not guilty by reason of insanity of the murder of her husband, one woman was convicted of the murder of her own child and another found not guilty by reason of insanity of a wounding offence on her own child. The substantial majority of women who killed their husbands were convicted of manslaughter, however, not murder, 13 of the 17 cases.

In all but two of these cases the women were sentenced to imprisonment. The longest head sentence imposed on a woman who had been convicted of the manslaughter of her husband was a period of twelve years. This sentence was quite out of step with the other cases (which as we have shown in the section of this report on the cases of women who killed their husbands generally had a similar background of violence and abuse from the husband killed). The most common head sentence was a period of eithr five or six years imprisonment. This was imposed in all but two of the eleven cases where the women were sentenced to terms of imprisonment. One of the exceptions was the case where twelve years was imposed, mentioned above, and the other a case where the woman had been convicted of the murder of her husband after the trial judge removed the issues of provocation and diminished responsibility from the jury. On appeal to the Court of Criminal Appeal her conviction for murder was set aside and a conviction for manslaughter substituted. The Court held that the judge had been incorrect in ruling that these defences were not available to the woman concerned, and went even further by suggesting that self defence had also been in issue. After substitution of the conviction for manslaughter the woman was sentenced by the Court of Criminal Appeal to a term of eight years imprisonment with a three year non-parole period.

For most of these women who had killed their husbands the more significant aspect of the sentence was the non-parole period stipulated by the trial judge. This is the period that a prisoner must serve before being eligible for release on parole, pursuant to The Parole of Prisoners Act (NSW). Women who kill family members are generally first offenders who are granted parole as soon as it is available and so the non-parole period is for them their effective goal sentence. In all cases where the woman was sentenced after the introduction of parole in 1966 (all but one of the eleven cases where sentence of imprisonment were imposed) the judge saw no reason not to grant a non-parole period and so allow for release before the expiration with remission of the head sentence.[56] The non-parole periods varied widely. The two women who received the

longest head sentences, twelve and eight years respectively, correspondingly received the longest non-parole periods.[57] Each received a non-parole period of three years. Three women were sentenced to non-parole periods of two years.

In the remaining five cases the women were all sentenced to non-parole periods under two years, two to the minimum period possible under the Parole of Prisoners Act, a period of six months, two to eighteen months and one to fifteen months.

The interesting thing about these cases is not so much the actual periods of time ordered to be served but the implications of the reasoning behindthe judge's order for other similar cases, and the pattern that appears to be emerging in the cases of women who kill a husband who has been physically violent to them. This pattern is clearest in the decisions of the Court of Criminal Appeal over the last three years. In August 1978 the Court in R. v Bell unreported handed down 10 August 1978, the case we have discussed above where they substituted a conviction for manslaughter for one of murder, set a head sentence of eight years with a non-parole period of three years. In that case there was evidence that the man had beaten his wife an elderly woman on one occasion in the past and that on the night she killed him he had threatened to kill her. She killed him on finding an axe under his bed, which she feared he had put there to use on her. There was also substantial mitigating material relating to the woman's poor physical and mental health, and evidence that she had been taking a very large amount of prescribed medication at the time for anxiety and illness. Notwithstanding these mitigating factors the court imposed what was really a very long sentence for a woman not in good health, of previously exemplary character and then aged 66 years.

A little over a year later, in the next case to come before them of a woman who had killed her husband, R. v Whiting, unreported handed down 27 September, 1979, the Court of Criminal Appeal allowed the woman's appeal against the sentence of ten years with a four year nine month non-parole period which had been imposed on her by the trial judge and substituted a sentence

of five years with an eighteen month non-parole period. Mrs. Whiting had pleaded guilty to the manslaughter of her husband on the basis of diminished responsibility, what the psychiatrist called "an inability to cope", caused by her husband's repeated violence to her. (For our comments as to the use of this defence in these circumstances see the later section on the defences.) The Chief Justice recognised that she had been trapped in a violent and unhappy marriage yet still felt compelled to impose a custodial sentence. He stated:

> The appellant had no way of escaping from her husband in as much as she had no income or money, she was not able to drive a car and she was dependent essentially upon him for existence, unhappy though that existence had become for her. (page 2)

yet was adamant that the trial judge had been

> properly concerned to ensure that there could be no impression gained from what had taken place that matrimonial discord, even extreme matrimonial discord such as one sees in this case, can ever be an excuse for the victimised party to take the life of the aggresso (page

Nevertheless the judgment in that case was a powerful message that the correct "tariff" in similar cases of prolonged brutality was about eighteen months non-parole.

Almost a year later the Court of Criminal Appeal was again asked to consider the appropriate non-parole period (and so effective sentence) in a case of a woman killing a violent husband. In R. v Douglas unreported handed down 17 July, 1980 the trial judge had imposed a sentence of five years imprisonment with a two year non-parole period on a woman who had killed her violent de-facto husband after he had attacked her while drunk. There was a history of other attacks on her by him in the preceding few months that they had been together. The Court ruled by majority, Reynolds J. dissenting, that the non-parole period was excessive, and reduced it, not to the eighteen months they had only a year before declared to be the appropriate period in such cases, but to fifteen months.

This trend in the Court of Criminal Appeal towards shorter non-parole periods for women who kill violent men who have attacked them appears to be continuing. The most recent such case to come before the Court, and the next after the Douglas case, was the appeal by Georgia Hill against her conviction for the murder of her de-facto. This appeal was heard in June 1981. The Court quashed the conviction for murder and substituted a conviction for manslaughter, holding that there was substantial evidence of provocation in the form of the de-facto's brutal assaults on Ms Hill. The sentence imposed by the Court on this occasion was shorter in both head sentence and non-parole period than sentences earlier approved or imposed by the Court. Ms Hill was sentenced to four and a half years imprisonment (down from the earlier standard of five years) with a non-parole period of twelve months, three months shorter than the period imposed in the Douglas case a year before, as the period in that case had itself been three months shorter than the period imposed a year before that in Whiting.

The two cases where the minimum non-parole period of six months was imposed by the trial judge are interesting because the judge took the inadequacy of medical and psychiatric facilities inside the gaol into account in setting the non-parole period. In Pemberthy in July 1979 the defendant was a 54 year old woman with a history of heart trouble, convicted of the manslaughter of her husband. The trial judge Roden J. imposed the minimum non-parole period, although he took the view that in other circumstances a more substantial sentence would have been appropriate, because of the medical evidence as to her condition and the fact that in Mulawa she would be detained in the prison hospital locked in behind a grille to which the nursing staff on duty did not hold a key. In the event of a heart attack she would be dependent on other inmates in the ward, possibly psychiatric patients, to call for assistance and the nursing staff would not be able to attend to her until a custodial officer had been called to open the grille.

In Watts in March 1979 the trial judge Yeldham J sentenced the defendant to the minimum non-parole period in view of her need for constant nursing care and psychiatric treatment. She had suffered organic brain damage as a result of an attempt to kill herself with gas after stabbing the man with whom she shared a house. The trial judge in sentencing her made the following remarks:

> Plainly you cannot receive proper attention in gaol. The unfortunate fact is that there are at present available only very limited facilities for psychiatric or other medical care in our prison system, a matter which judges of this and other Courts have constantly regretted ... It is not my function to criticise the absence of these facilities, the provision of which is not inexpensive but to again point them out. No doubt the Government, which is in the process of implementing the recommendations of the Royal Commission is well seized of the need for more adequate medical services and for proper hospital and institutional care to be provided for persons convicted of criminal offences, where this is necessary. But the present case, is a good example of the need for a suitable institution to which, as part of your sentence, I can send you. I sentence you to penal servitude for five years. I fix a non-parole period of six months which is the minimum I can impose. This I do so that the Parole Board if it think it proper, and if it is able to do so, may release you on parole at an early date upon arrangements being made for your care in some suitable hospital or institution.

Pemberthy and Watts were perhaps special cases in that the defendant in each was suffering from a serious condition. Nevertheless the general approach adopted in those cases is potentially applicable to many other homicide (or indeed any other offence) cases. The case that most clearly demonstrates this is the Calleja case in October 1979 where a woman and her three daughters who had pleaded guilty to the manslaughter of their husband and father respectively were each given a bond, rather than a custodial sentence. In his remarks on sentence Roden J. stressed the life of "fear, torment and torture" to which deceased had subjected each of the accused but he would have had in mind the evidence that had been placed before him that each of the acccused was in need of psychiatric care and counselling to offset the effects of this dreadful life, care which on the evidence the gaol would not be to give them. The significance of that case is that the same

argument could be put in respect of virtually any woman who has lived with a brutal husband for some time before she in desperation kills him. The Callejas pleaded guilty to manslaughter on the basis of diminished responsibility. Whatever can be said about the politics of using such a plea of mental defectiveness in a case where the mental disturbance has been solely caused by the conduct of the deceased, it is no doubt a realistic recognition of the emotional and mental damage done by a life with such a man.[58]

There was one other case in the study where the defendant received a bond, rather than a custodial sentence. Since the field work was completed, there have been a number of other cases in which woman who have killed their husbands, or in one case brother, after or in the course of an assault on them by the deceased have received bonds.[59]

The most recent such case was the Hetherington case in Wollongong in November 1981 where once again the defendant pleaded guilty to manslaughter of her husband on the ground of diminished responsibility. The judge Yeldham J. accepted that the deceased had been a violent man who had assaulted her on many occasions in the past. As we do not have details of cases before the research period we cannot say whether sentences for such cases are getting shorter in any meaningful historical time scale. It does seem, however, that in the last few years at least judges have increasingly shown an understanding of the tormented situation of many battered women who kill, an understanding which is being reflected in shorter sentences. If the sudden burgeoning of information and interest in domestic violence in recent times, and the community debate about the law of homicide sparked by the Violet and Bruce Roberts case, have done nothing else than bring about this change they have been worthwhile.

CHAPTER III: SOME LEGAL ISSUES

FOOTNOTES

1. Two were convicted of the lesser offence of wounding with intent to inflict grevious bodily harm (one pleading guilty to this offence which plea was accepted by the Crown Prosecutor), and the third pleaded guilty to the still less serious offence of malicious wounding, which reqires no special intent. The fourth woman, who had attacked her own child, was acquitted of attempted murder and wounding with intent to inflict grevious bodily harm and found not guilty of malicious wounding by reason of insanity. It may well be that this pattern of breaking down an initial charge of attempted murder at trial or by plea to a lesser offence is typical. The Higher Court statistics for 1974 - 1978 inclusive (from the Australian Bureau of Statistics) show that in that time only two women were convicted of this offence in New South Wales - one in 1975 who receive a bond, and another in 1978 who received a sentence of between 3 and 4 years inprisonment with a nonparole perio of between 6 and 9 months. We do not know the circumstan of these offences but it is interesting that the woman who pleaded guilty to the strictly lesser offence of wounding with intent to inflict grevious bodily harm in ou own group of cases received a substantially longer senten than these women - 8 years, 3 years nonparole period.

2. D.P.P. v. Smith (1961) A.C. 290 at 334

3. See generally Pemble V. The Queen (1971) 124 C.L.R. 107 a La Fontaine v. R. (1976) C.L.R. 52

4. In fact in New South Wales there are over thirty separate offences punishable by penal servitude for life - see Arie Freiberg and David Biles, The Meaning of "Life": A Study of Life Sentences in Australia, Australian Institute of Criminology July 1975 Appendix A.

5. See for example Report No. 1 of the Victoria Law Reform Commissioner, Law of Murder August 1974 (paras 34 - 51 inclusive); the Fourth Report of Criminal Law and Penal methods Reform committee of South Australia The Substantiv Criminal Law July 1977 para 6.5; John Willis, "Felony Murd at Common Law in Australia - The Present and the Future" (1977) 1 Crim L.J. 231

6. Homicide Act 1957 s1.

7. Law of Murder see note 5 above at paras 52-60 inclusive.

8. The Substantive Criminal Law see note 5 above at paras 6.2 - 6.4

9. H.M.S.O. London March 1980

10. Paras 17 -31 inclusive, see in particular para 28.

11. Law of Murder note 5 above at para 58.

12. With the exception of the U.K. Criminal Law Revision Committee. It is also not clear how real a possibility death must be for conviction for murder, and critics disagree as to what the requirement should be. In the leading U.K. case Hyam V. D.P.P. (1975) A.C. 55 there was no real discussion as to whether death must be forseen as merely probable, or as highly probable and the Law Lords disagreed in their dicta. In Pemble V. The Queen (1971) 124 C.L.R. 107. which also dealt with the common law as opposed to the statute definition applicable to New South Wales the High Court disagreed as to whether harm must be forseen as probable, or as merely possible. Barwick C.J. adopted the latter test, while McTiernan and Menzies J.J. considered that the defendant must realise that harm was probable. In strong judgements in the most recent High Court case La Fontaine v. R. (1976) II A.L.R. 507 Gibbs and Jacobs J.J. both took the view that the appreciated harm must be probable although it was unnecessary to decide the issue in that case. The Victorian Law Reform Commission considered it adequate that the person causing death realised or believed that his actions were certain, or more likely than not, to kill (para 60) but the South Australian Committee were adamant that the act causing death must have been highly likely to cause that result and that the person doing it must have realised that it was of that character (para 7.)

13. See for example Lord Hailsham in and Lord Diplock in Hyam (note 12 above) on p.p. 78 and 86 respectively.

14. See the discussion in Hyam (note 12 above)

15. Begg J. with whom Street C.J concurred in R. v Solomon (1979) A. Crim R. 247 at pp. 257 - 258. In one of the cases in our group the trial judge directed the jury to consider recklessness as to the possibility of grevious bodily harm, as well as recklessness as to death. This misdirection was not picked up on appeal. There was in that case, however, an alternative basis for conviction in the felony murder rule.

16. The U.K. House of Lords has in two recent cases declined to limit the common law doctrine that intention to cause grevious bodily harm is sufficient mens rea for murder. In Hyam (note 12 above) although it seems that some of the majority were sympathetic to the arguments that this doctrine should be limited, if not abolished, the majority held that any charge must come from the legislature. In R. v. Cunningham speechs delivered 8 July, 1981 and reported in The Times on 9 July, 1981 at p. 28) a differently constituted House declined to follow the dissenting opinion of Lord Diplock, with whom Lord Kilbrandon had agreed, in Hyam, and affirmed that a person who intentionally kills another, intending only to do him grevious bodily harm is guilty of murder.

17. Johns v. The Queen (1979) 54 A.L.J.R. 166

18. In fact in that case although the male accomplices who entered the building to carry out the robbery were armed with a loaded rifle, the man who surprised them was kill not by a shot but by being beaten over the head with the rifle. In these circumstances it would be more difficult to apply the reasoning of Street C.J. discussed earlier, the use of a loaded rifle to beat, as opposed to shoot, arguably was not contemplated by the others in the plan.

19. It was quite marked that in those cases where felony murder was relied on by the Crown as an alternative basis for convicition the judge spent far less time on it in the summing up than on the substantive case for the prosecution based on intent. In some cases the doctrine was mentioned not only cursorily in the summing up but also in a very confusing way.

20. For further discussion of the police interrogation of the women in the study see our paper "Women homicide offende and police interrogation" presented at the Criminal Inju. System conference at Sydney University 28 February and 1 M 1981, and to published by the Australian Legal Workers Gro and the Legal Service Bulletin with the papers of that conference.

21. In a study conducted in 1975 of all persons sentenced to life imprisonment in Australia Arie Freiberg and David Biles found that of all male persons so sentenced in New South Wales between 1932 and 1974 77.6% of those who were no longer in custody had been released. 12.9% had died in custody and 4.5% had committed suicide. (See tabl 2 Freiberg and Biles, "Time serv ed by Life Sentence Prisc in Australia" A. (1976) Australia and New Zealand Journal of Criminology 77 on p.79 an abridged version of the long research report published in July (1975) see note 4 above.

22. There is an argument that under 463 Crimes Act NSW a licen granted to a person sentenced to life imprisonment, as opposed to a fixed term, extends to that person's death. Section 463 speaks of a licence to be at large "during the unexpired portion of (the offender's) sentence" which, of course, in the case of a life sentence prisoner is the balance of his or her life. The licence merely suspends the offenders sentence. It does not expunge it, and so, i this argument is correct, the life sentence prisoner relea on licence remains liable to recall to serve "the remainde of his sentence" (S. 463 (2) for the rest of his or her life. A life sentence licensee could then have her licenc revoked and be returned to jail to serve the balance of he life sentence for tivial offences that would not even occa the imprisonment for a short term of another person. Fort unately, this alarming prospect appears contrary to the Department's practice.

23. See Note 21 above.

24. This information all comes from the Freiberg & Biles study described in Note 21 above.

25. For discussion of the Violet and Bruce Roberts release campaign, see the following articles in the Legal Service Bulletin, April 1980, p. 63; October 1980, p. 240 and December 1980, p.312.

26. Home Office, London, HMSO 1978.

26A. For a similar approach on different facts, see Szabo Court of Criminal Appeal, Adelaide, 31 August, 1977, reported in (1977) 1 Crim. LJ at 327.

27. In early 1981, the Corrective Services Commission re-established the Life Sentence Review Committee which aims to review the situation of every lifer every six months.

28. Report of the Royal Commission into NSW prisons, March 1978, p. 595.

29. Note 28 above, pp 597 - 598.

30. Note 28 above, p. 591. The Commission found that, of fifty-one GPs detained on 16 December, 1976, only 29 were in mental hospitals. Of the 57 GPs released during 1966 - 1976, only 26 had been admitted to a mental hospital at some stage of their detention.

31. Note 28 above, pp. 593 - 596.

32. Steadman HJ and Cocozza J, "Psychiatry, Dangerousness and the Repetitively Violent Offender" (1978), 69 Journal of Criminal Law and Criminology 226, 228.

33. "Governor's Pleasure : The Campaign to free Sandra Willson" (1977) 2 Legal Service Bulletin 211.

34. See the comments of the Royal Commission on the similar dangers inherent in the former practice, Note 28 above at pp. 594 - 595. The Life Sentence Review Committee has, in fact, been reconstituted since early 1981 with responsibility for both life sentenced and Governor's Pleasure prisoners. Initially, the Committee did not have jurisdiction in respect of GPs, who were meant to be reviewed by the Health Commission, but the Committee took on this task when the Health Commission failed to establish a suitable review committee.

35. In R v. Douglas unreported, judgement handed down 10 April 1980, the trial judge Roden J. was at first reluctant to proceed to conviction for manslaughter on the basis of a plea of guilty to that offence offered by the Defendant and accepted by the Crown. His Honour took the view that there

were issues between the parties which it might be appropriate to have determined by a jury. Both the Crow and defence counsel submitted that when a plea of guilty offered and accepted by the Crown, the Court has no disc to refuse to accept it. In the event, His Honour accept the plea and proceeded to conviction for manslaughter without deciding whether or not he could have required t trial to proceed.

36. See the English cases R v. De Haan (1967) 3 All ER 618 and R v. Turner (1970) 54 Cr App R 352. Cf High Court in Bruce v. R unreported 21 May 1976 and the Federal Cou in Tait and Bartley (1979) 24 ALR 473.

37. We do not, of course, know in how many of the cases wher a woman stood trial for murder, she had positively sough acceptance of a plea of guilty. It seems clear that a p would not have been sought where the woman positively de any involvement in the killing or killings. This was th case with five women (charged with seven offences). In least one other case, one of the two cases where self defence was raised by the defence, the woman may not hav sought a plea, preferring to aim for complete acquittal trial on the basis of self defence.

38. The Crown could not, of course, be required to accept th plea merely because the medical evidence was uncontrover just as the jury is not required to accept the defence where the medical evidence all supports it. The English cases establish that the jury can look to the whole of t evidence in refusing to accept the defence. Walton v. (1977) 3 WLR 902 (PC) and R. v. Kisko (1978) 68 Cr App R (CA).

39. Bacon W. and Lansdowne R, "Women Homicide Offenders and Police Interrogation" paper presented at the Criminal Injustice System conference at Sydney University, Februa and March 1, 1981, to be published by the Legal Service Bulletin and the Australian Legal Workers Group with the papers of the conference.

40. She, like most persons on serious charges, was committed trial to a general sittings of the Court - not to a part day.

41. Report of the Advisory Council on the Penal System, Sentences of Imprisonment : A Review of Maximum Penalties Home Office HMSO London 1978, para. 244.

42. Note 41 above, para. 247.

43. (1975) AC 55.

44. Potas, Sentencing the Violent Offender .

45. Report of the Committee on Mentally Abnormal Offenders, London HMSO, October 1975, para 19.13.

46. Note 45 above, para. 19.15.

47. Note 45 above, para. 19.19.

48. Report on Culpable Homicide

49. See paras 8 - 16 and 27.

50. Para 50.

51. Para 26.

52. Greg Woods, "Homicide Law Reform" given as a paper at the Criminal Injustice System Conference, see Note. 39 above.

52A. The NSW Cabinet approved on 10 February 1982 the abolition of the mandatory life sentence for murder together with certain changes to the defence of provocation. Legislation to implement these changes has not yet been introduced.

53. Some of these inquiries are listed in the report of the Victorian Law Reform Commissioner, The Law of Murder, 1974.

54. Criminal Law Revision Committee, Fourteenth Report, Offences Against the Person, London, HMSO, March 1980.

55. See Note 52A above. The Royal Commission into NSW prisons (Note 28 above) also touched on the question of the life sentence recommending at p. 616 that judges should be empowered to set non-parole periods when imposing life sentences. The Muir Committee which reported on 6 February, 1979 and which was set up to investigate the implementation of the Royal Commission's recommendations on parole recommended that every life sentence prisoner's case be considered in his or her fourth year of imprisonment with a view to commuting the sentence to a term of years, if appropriate. If no such commutation was made after the fourth year, the case was to be reconsidered in the prisoner' seventh year of imprisonment. Neither the Nagle nor Muir recommendations have been adopted.

56. The Parole of Prisoners Act 1966 provides in Section 4 that a non-parole period is to be specified unless "it appears.... that by reason of the nature of the offence or the antecedent character of the person convicted .... the specification of a non-parole period .... is undesirable". (S4 (3)). If the judge takes this view, he must give his reasons in writing.

57. Although logical, the head sentence and non-parole period do not necessarily run parallel in this way. In one case in our group a young woman was sentenced to two sentences of five years to run cumulatively (i.e. an effective ten year with a non-parole period of one year. This arrangement was to facilitate her early release if her psychiatric condition improved. It has backfired, however, in that whether or not that woman still feels in need of treatment (of which there is little or none in gaol anyway), she is compelled to say she does not, to secure her release on parole.

57A. For a non-homicide case where a serious medical conditio was taken into account by the trial judge, see Vachalec Court of Criminal Appeal, NSW, unreported 5 October, 197 See also the comment in(1980) 4 Crim. LJ 121.

58. See, for example, Elaine Hilberman and Kit Munson, "Sixty Battered Women" in Victomology, Vol 2, 1977/1978, p. 460.

59. See, for example -

R. v. Payne - Friday, 9 May, 1980, Cross J.

R. v. Baddeley - Tuesday, 7 October, 1980, O'Brien, CJ o:

R. v. Mahon - Friday, 22 May, 1981, O'Brien CJ of CrD.

R. v. Hetherington - Monday, 2 November, 1981, Yeldham J

CHAPTER IV : WOMEN WHO KILL HUSBANDS

Introduction

As explained in Chapter II we have grouped together all cases where the woman killed her lawful or de facto husband or boyfriend. These cases form a distinct category, not only because of the common relationship between the woman and her victim, but also because in each case the motive for the killing, or circumstances in which it took place, grew out of this relationship.

In all, we examined in detail 17 cases where husbands or boyfriends were killed. Of the 15 women in Mulawa, 13 agreed to be involved, as did both the women in mental hospitals. We also interviewed one women on licence, the only woman on licence or parole who agreed to be involved who had been convicted of killing her husband.

Three other women were convicted during the survey period and although we did not interview them we felt we had sufficient information on their cases to justify their inclusion.

All but two of the seventeen women convicted of killing their husbands or boyfriends admitted to some part in the interaction which resulted in the death of the man. One woman told us that she was not part of her boyfriend's plan to kill her husband but later protected him from the police, and one has consistently denied any part in her fiance's death by poisoning from her initial interrogation by the police to date. She has stood trial three times on a charge of murdering her fiance. At her first trial she was convicted of murder but a re-trial was ordered after a successful appeal. Her second trial miscarried when the judge excluded as involuntary admissions she was alleged to have made to the police in one conscious moment, after a period of admitted unconsciousness before and after the alleged admissions. At her third trial, however, the judge

took a different view of these same admissions - they were admitted into evidence and she was convicted of murder. The Crown case apart from these alleged admissions was entirely circumstantial.

In this chapter we discuss the motives for the killings and the background of violence most women had suffered from the men they subsequently killed. There are obviously other aspects of these cases that merit attention and the fact that we do not discuss them in this report is a function of time rather than of relative importance. One area that could be examined further is the question that is always asked in cases of prolonged domestic violence, particularly where the victim of that violence says she has been driven in the end to attack or kill her own attacker. Why didn't she leave if the violence was truly so unbearable?

We discuss some of the reasons in the material in this chapter on the violence the women suffered. Fear, shame and extreme social and in some cases geographical isolation (some of these battered women lived on isolated country properties) are crucial factors that inhibited battered women from wrenching themselves from their situation. Lack of money, lack of employment experience and skills and the demands of young children are others. The majority of these women were battered at a time when there were no women's refuges (there are still far too few for the demand) and domestic violence was not the publicly aired issue it is today. They believed it was their problem and they had to live with it. Many had sought help at one time, usually early in the relationship, but the police said that they didn't come to "domestics", or could not arrest the man unless they actually witnessed the attack on his wife, or the husband became even more brutal in retaliation after the police had left. Friends did not wish to become involved, or the woman herself was too ashamed to admit the violence and ask for their help, or reluctant to bring her trouble, in the form of a pursuing husband, onto others.

Indeed the question should not be "why didn't she leave?" which assumes that all responsibility falls on the victimised wife, but "how did society keep her there".[1] The structural

inequality that deprives women of equal job opportunities while at the same time consigning to them the ultimate responsibility for child care, the privacy that surrounds the home and the illusion that a woman's ultimate satisfaction is to be found in marriage (and so if the marriage is not a success it must be her fault) as well as the crippling psychological effects of prolonged battering should all be examined to explain why battered women can be effectively trapped in their violent marriages.

We have entitled the section of this chapter on the violence in these women's marriages "The Violent Husband". This is deliberate: evidence from a number of sources (the woman's interview with us, the transcript of her trial and evidence obtained by the police) establishes that for the majority of these women the homicide was the first violent act of their lives. Generally speaking they did not retaliate to their husband's violence with violence of their own, preferring to try and escape by locking doors or running away. In no case was there evidence that the woman had ever been the first to strike or attack her husband, apart from the fatal attack.

In the limited span of this report we have not been able to examine the dynamics of the husbands' violence. One area that would obviously merit further attention is the role alcohol played in the husband's violence. Another is the purpose and meaning of the violence. Other research suggests that the aim of much violence directed by men towards their wives is to control.[2] Our research tends to support this conclusion. Dobash and Dobash have argued that an historical analysis of the legal and cultural institutions that condoned and still condone violence against wives is essential to an understanding of wife beating. They see violence used by men against women in the family as

> attempts to establish or maintain a patriarchal social order. Violence is used by men to chastise their wives for real or perceived transgressions of his authority and as attempts to reaffirm and maintain a hierarchical and moral order within the family.[3]

They found as a result of a study of violence against women in Scotland that wife beating is "firmly established with the domination, control and chastisement of women in their position as wives."[4] and continue

> (in) our research it was the real or perceived challenges to the man's possession, authority and control which most often resulted in the use of violence ... a late meal, an unironed shirt, a conversation with any man no matter how old or young, all served as "justification" for beatings. Many of the precipitating factors were exceedingly innocuous and would appear inexplicable without an understanding of the context of authority, subordination and control in which they occurred.[5]

Many of the scenarios sketched by Dobash and Dobash as leading to wife beating were related by the women in our own study as being the background to violence from their husbands.

Accepting that the purpose of the violence in these cases was to reassert control does not mean that we ignore that there was a two way relationship between attacker and victim. The complaint of some at the attention now being paid to physical violence by men against women is that women can be, in the view of these critics, equally destructive through weapons of verbal taunts or harrassment or emotional manipulation We do not accept this view. Psychological and emotional attacks can obviously be damaging but violation of one's physical integrity particularly on a repeated and severe basis should not be belittled by association with these other forms of family dynamic that cover a whole spectrum from great mental cruelty to trivial nagging. Even if the weapons used by men and women were equal they do not play on an equal battleground. Men normally have the economic resources to leave a relationship that becomes unbearable, women financially dependent on their husbands do not.

Nevertheless, women denied access to direct means of power and assertiveness in the world and unable to fight back physically may well develop strategies for coping and less direct

retaliation towards their husbands. In one case, for example, in another state, a woman killed her husband who had repeatedly assaulted her, accusing her of sexual infidelity. Women are not men's property and there was no excuse for this man's proprietorial attitude but on the other hand it may be that this woman deliberately or unconsciously flaunted her past affairs or sexual prowess to test her husband's "love" - i.e. in her insecurity was sexually provocative with others to bind him by jealousy all the closer to her.

Homicide as Self-Preservation

Case 1: Theresa: (convicted of killing husband)	It was either him or me and the kids. I had to do it.
Case 2: Gai: (convicted with mother of killing her father)	I shot my father. I thought it was the last resort. We had already tried leaving him. We thought if we didn't do something about getting him out of our lives he would kill us.
Case 3: Janet: (convicted of killing husband)	...after the last bashing it was so painful, you know I put up with agony. He tried to choke me in this part of my neck .... I went through so much pain, I thought I couldn't, you know I couldn't stand any more pain. I'm going to kill him this is it. Finished. Finish all the pain. I thought I couldn't stand it and I couldn't and I thought this is going to be my freedom ... it's my freedom from pain ... I thought I've got to kill this man because he's causing me too much pain ...

Whilst it is important to analyse the personal characteristics of the woman who kills and the husband she kills, the clearest pattern emerges from an examination of the motives for the killings.

In the overwhelming majority, the motive as described by the woman herself was not gain, or jealousy or the wish to dispose of a husband in order to live with or marry a lover, the motives most commonly ascribed to women who kill husbands in detective fiction, and in certain cases by the Crown. In all but four cases, the woman was motivated by the need to protect herself against physical harm, either from an immediate attack or from a life of suffering and pain at the hands of her husband which had become unbearable.

The most striking feature of all this group of cases is that in 14 of the 17 cases, the woman had been physically abused in the past by the husband she subsequently killed. In most of these cases the women had been subjected to repeated and severe violence, resulting in severe injuries, over virtually the entire duration of the marriage, in 3 cases for 20 years or more.

This battering was not only the background to the homicide and the context in which it took place. For 13 of the 17 women (12 of the 14 women who had been assaulted in the past by their husbands plus one woman who had not been previously attacked by the man she killed but feared he was about to attack her) violence or fear of violence was the direct and immediate reason why they killed their husbands, while for another woman it was a major reason, though not the only one. In one further case the woman's husband had been very brutal to her but she said that she was in reality only an accessory after the killing of that husband by her boyfriend. She said that she hadn't known anything about her boyfriend's plan beforehand, and when he told her afterwards, she didn't tell the police out of a combination of loyalty and fear of retaliation.

Yet these women did not kill in mere retaliation for past abuse, though to many people that in itself may be excusable. In each of these 13 cases, the woman was the victim of yet another assault or some other provocation in the 24 hours preceding the killing, or was, she believed, at the time she killed her husband in imminent danger from him. In about half of these cases it was the immediate or threatened attack itself which was so serious that the woman believed her life was in immediate danger unless she killed first. In three of these cases, the woman killed her husband while fighting back in the course of a violent attack by him. In the other two, the husband had threatened to kill his wife in such a manner that she believed he meant it.

In these cases, the act of homicide was one of self preservation in the narrow sense that is all generally speaking the law recognises - self defence in the course of or in the immediate expectation of a serious assault. For reasons that will be discussed later in this report, however, self defence was actually raised in the trial or on appeal in only 2 of these 5 cases.

In the other cases it seems it was not the assault itself in isolation that drove the woman to homicide, though it may have been quite serious and perhaps more violent than any previous assault. It was more the simple fact of yet another assault on top of so many in the past and the clear indications that this pattern was going to continue indefinitely into the future unless she did something that caused the woman in desperation to kill her tormentor. These women had all tried other avenues, such as leaving, the police, the law, medical help and so on, to no avail. Homicide was for them the only way to escape from an intolerable situation, an act of self preservation in that wider sense. The law of self defence takes no account of this situation. The technical legal defence of self defence developed historically in the context of assaults between strangers, where the person attacked was assumed to be the physical equal of the attacker and both able and willing to fight back in the course of the attack.

Accordingly, it is quite inappropriate to situations such as these of a continuing relationship where one party, the woman, is in an unequal physical and economic position and so is forced to remain in a marriage where she is repeatedly battered.

It is important to remember too, that it is slightly inappropriat to even divide up the cases in this way. There is simply no clear distinction and to pretend there is one perpetuates the very limitations of the law of self defence we seek to attack In those cases where the violent assault was perceived by the woman as life threatening, she did not see it in isolation. In these cases, as well as those that we have called more general self preservation cases, there was a large element of not able to take any more, and of guarding against future assaults in the women's actions. They weren't only protecting themselves against the immediate threat.

It is one of the large deficiencies of the law of self defence that little account can be taken of such past assaults. By and large, where a woman kills her husband to protect herself against assault, her use of deadly force must be justified by the seriousness of that assault in isolation. Equally, in some of the more generalised self protection cases, the women also believed that their lives were in eventual danger from their husbands, though not necessarily immediately. They killed not only to escape from an intolerable situation, but also, so they believed, to save their lives in the long term.

Use of a weapon: to kill or only to protect oneself?

It is vital that this sort of break up of the cases does not slur over the differences in the women's actual intent at the instant they took a weapon to their husbands. The majority did intend to kill them, but a significant number intended merely to threaten, to harm slightly, or to protect themselves. Their husband's death was an unintended result of what was intended to be non-lethal self defence.

It is not possible to say exactly how many intended to kill, and how many a lesser degree of harm, even given the voluminous amount of material we collected on each case.

The woman's statement of intention in the record of interview can be unreliable or inaccurate[6] and the presentation by the defence at the trial of what her intention was at the time can be distorted by the necessity to force a complex human situation into rigid legal categories. She may not even know herself what she was thinking at the time, or her intentions may have been mixed, or changed at the last moment if an attack suddenly appeared imminent.

For example, in one woman's case, in one account by her she decided during the course of the night after a particularly vicious attack by her husband that the only way to save herself and the children was to wound him and give them some time to work things out while he was in hospital. Other material in the case suggested, however, that her intention in arming herself with a gun the next morning was to protect herself from further attack only. On this view she fired the gun as her husband came towards her reaching for the gun - terrified that he would shoot her if he got it.

The latter interpretation raises very important issues, issues that recur in a number of the cases where the woman did not intend to kill her husband, but did so because her only means of protecting herself against his assault was by the use of a weapon, a knife or a gun, or male assistant that in a scuffle proved fatal. Is a woman entitled to resort to a weapon against violence offered by a man without a weapon if past experience and the circumstances at the time all tell her that she cannot protect herself in any other way? These issues will be examined in greater detail in the final chapter of this report on the defences.

The cases where the woman did not intend to kill but did so because of the use of a weapon constitute a major sub-group

of the cases where the woman had been battered before, whether the woman killed in the narrow or in the broad sense of self defence. As well, one of the two cases where there was no prior history of battering by the man killed is of this type, and another is analogous. In the first, the day after the couple had terminated their relationship, the man returned to the woman's isolated country home, upset and abusive. He went to grab her and she panicked, because her earlier husband had beaten her, and got a gun to protect herself. She did not intend to kill him, but the gun went off in a scuffle and he was killed.

In her state of panic and fear and given the external circumstances - they were alone at the house with no other houses in sight at 7 a.m. in the morning - it seemed to her the only way to protect herself.

In the case which is analogous, the woman was in no immediate danger of assault at the time she grabbed a knife, but she resorted to a weapon to show how greatly she was distressed. The weapon was used, as in the other cases, to supplement a perceived inadequacy, though in this case, more to express frustration and anger, rather than to protect herself.

The man in that case had not been brutal, but was becoming increasingly possessive and jealous, and imposing constraints on his girlfriend's social life. In the course of an emotional quarrel one Saturday night about whether or not they would go out she grabbed a knife, intending if anything at all to hurt herself slightly as a symbolic indication of the importance of the issue and her degree of frustration and distress. There was a scuffle and he was accidentally stabbed.

Other cases where battering is relevant. Rejection as a motive

The first case discussed above also illustrates that a history of battering can be relevant even where it is not the battering husband who is killed, because it can explain why

the woman reacted with such fear to the prospect of an assault, even from someone who had never struck her before.

Battering was also relevant in the case mentioned earlier where it was part of the reason why the woman killed her husband but not the entire reason. The couple had separated 7 years before, but the woman was never able to really accept the break up of her marriage and the fact that her husband was living with another woman. Her feelings were complicated however. The marriage had been a violent one, in which she had been physically abused, sexually humiliated and driven almost to breaking point. Her husband also seems to have benefited financially from the separation and divorce, with attendant injustice to her.

When she killed her husband it was not only from love and jealousy. Perhaps even more importantly, she could no longer control her rage at what he had done to her, her bitter resentment at his ill-treatment culminating in his complete rejection of her.

For this woman then, the death of her husband was the only way she could free herself from the pain the relationship brought her. In many ways, the case is similar to those of men who kill their estranged wives, as discussed by Rod in her thesis.[7]

The case is also similar to another where the Crown Prosecutor alleged at the woman's trial that she had killed her much younger boyfriend because she could not bear him to leave her. The man had moved out of her flat several days before.

These were the only two cases where love and the pain of rejection or jealousy appear to have been significant motives for the killing.

<u>The motive according to the Crown</u>

In a number of the cases, the Crown Prosecutor ascribed a different motive to the killing than the woman herself.

In most of the 12 cases where the husband's violence was according to the woman the reason for her crime, the Crown did not dispute this, but in two the Crown presented radically different motives. The Crown argued in one that the husband was killed so that the woman could live with her boyfriend; in the other, the Crown's case was that the man was killed so that he would not inherit under a dead son's intestacy. Both of these women vehemently assert that it was their husband's violence that caused them to kill them.

Of the remaining five cases out of a total 17 there were full trials in only two. In each the Crown version differs from that of the woman herself. One of these women denied that she killed her boyfriend while the Crown alleged that she did so because he had left her. In the other case the Crown insinuated that the woman had been trying, against her boyfriend's wishes, to keep his T.V. (they had separated a day or so before) rather than protect herself from his assault when she accidentally killed him.

The Violent Husband

We discuss here in detail the ill treatment the women offenders received at the hands of the husband's they subsequently killed. The bulk of the portion of this report will therefore deal with the 14 cases where the women had been physically ill treated at least once before by their husbands, but the other cases will be included in the discussion where relevant.

Violence

> I could always tell when he was going to be cranky, you know. I'd get this real sick feeling in my stomach and by the time he got up to the house, because we lived off the road a bit, I could always feel this fear building up in me. You know, like I was going to choke and my heart was in my mouth or something. I don't know what it was like. And then I could hear the door slamming on the car, and so I knew that was it. I never knew what for, but I think sometimes someone might have picked on him at the club or something. But he'd never pick on anyone there himself. So he'd come out and take it out on me. But it'd usually start by name calling, then he'd

> start hitting me about the face and then he'd knock me to the floor and start kicking. Then he'd try to strangle, push you outside and try to shoot me.
> (Mrs. A.)

Six and possibly seven nights a week, Mr. A. would drink till closing time at his club. Between once a week and once a month he would beat either his wife or his son when he returned home. He would hit them with an open hand, punch them, pull them by the hair, throw them on the floor.

Three or four times he strangled his wife till she passed out, frequently he would chase her out of the lonely country house and she would have to spend the night outside, sometimes in freezing temperatures. Once he shot at her as she was running away, another time he put a gun to her head as she was cleaning up the food he had thrown on the floor. Their son, terrified in the next room, heard him say he was going to kill her and then the click of the hammer of the shotgun. Luckily the cartridge was a dud, but mother and son could hardly take comfort in believing that Mr. A. had known this: he came into his son's room and angrily berated him for having used the cartridge and put it back in the box.

Mr. A. was also violent to their youngest child, and only son, David. He would drag him out of bed by the hair, kick and punch him. A few times he had ordered him too out of the house; once he made threatening stabs at him with a knife. On another occasion he dragged David, then aged 15, out of bed and was throwing him around by the hair when the boy went back first through the fibro wall of the kitchen.

Mrs. A. often had scratches to her face, black eyes and bruises around her arms and legs from this treatment. The violence had begun soon after they were married and continued for twenty years.

In 14 cases of the 17, the women had experienced physical violence at the hands of their husbands at least once before

the 24 hours preceding his death. The violence that Mrs. A. experienced was by no means unusual in degree or frequen though not all of these 14 women suffered quite so much. In one case the woman had only been assaulted once before to our knowledge, but in all the others violence was a repeated and frequent element in the marriage.

In the case with only one instance of earlier violence, as distinct from threats, the husband began beating his wife around the head in the car after claiming that she had been speaking about him to her friend. She received two black eyes but retaliated with a Coca Cola can and he was bruised in the head as well.

Such an incident may seem almost comical in the tradition of humour that sanctions and trivilises the use of force between spouses, but may well have been a very serious matter to the participants. In that case, for example, the woman had been married before to a man who had beaten her, and a violent argument in her second marriage would no doubt bring flooding back all the feelings of guilt and rage associated with the earlier marriage. In that case too, the husband had on a number of occasions threatened to kill his wife, so that even an isolated incident of violence must be seen in the context of a deterioration in the marriage as a whole and escalation in fear and intimidation.

a) Types of Violence

The most common form of violence was punching and kicking. All of the women had been hit, punched or kicked by their husbands. The pattern in Mrs. A.'s case was quite common - verbal abuse, then slapping about the face with an open hand, and then punching with a closed fist. The women would then fall to the ground, whereupon the husband would "lay the boots in", as Mrs. A. on another occasion expressed it. Some husbands utilised their physical advantage of size and weight or socialised advantage in wrestling and fighting by other forms of brute force. A number tried to choke their wives, some with their hands, some with implements such as the cord

from an electric jug. This is how one woman described the sensation:

> He'd get me down and half throttle me. Well I thought, this is the end, I've had it. I've tried to say, calm yourself down, calm yourself. Well I thought I've had it, you know, I'm going to die, this is it ... and his face, you know, the look on his face, he always did have terrible eyes ... and he was on top of me with his hands around my neck and I thought, well this is it.

That happened to that woman not once, but several times during her marriage.

Other husbands would literally throw their wives around the room. One dragged his wife on her back along the concrete patio of their flat, causing severe lacerations and bruising. She also described another occasion when he beat her black and blue, throwing her up and down on the bed.

It is to be expected that the most common implement used by these men would be their hands and bodies. At different stages most of the men had used other weapons, though it appears not as frequently as their own fists and bodies. In some cases it was obviously the nearest thing to hand with which to hit their wives - in one case a woman had a bottle smashed over her head by her alcoholic husband, in another a woman was knocked unconscious by a saucepan. A number of the women said their husbands had terrified them by driving wildly at great speed while they and the children were in the car.

In other cases the men used actual weapons, knives and guns, in deliberate attempts to intimidate their wives and families. Interestingly, there was no case reported where a woman was actually injured by a knife or a gun, though this may have been, as in Mrs. A.'s case, providential. There were, however, a couple of instances where male relatives of the woman had been attacked with a knife by the husband. Clearly there is no need to resort to weapons when one has a physical advantage anyway, they only become necessary when all things are equal or one is at a positive

disadvantage. It is interesting that in all cases where a woman actually killed her husband herself she used a weapon.

In a number of cases women had been directly threatened with guns. One woman who had finally managed to escape with her children from her husband and gone to another part of the state was forced back by her husband after five months at gunpoint. After that she and the four children were continually threatened with the gun. Another woman was baled up all night at gunpoint if she refused to give her husband the money he had spent on other women, encounters which he would describe to her in graphic detail. A third was kept awake all of one night by a knife at her throat and raped at the point of the knife.

As that example shows, some violence described was sexual, as well as physical. Only a small number of the seventeen women volunteered that they had been forced to have sex with their husbands against their will or been otherwise sexually abused by them and it is clear from the reports of the government and other psychiatrists that a number had told these (male) psychiatrists that their sexual relations were normal. There were indications, however, that the incidence of forced or (to the woman herself) repellent sex may well have been higher. For example, one woman who said she had been sexually abused by her husband spoke freely about the insistence of her husband's demands but could not bring herself to be explicit about some of the things he made her do which she obviously found repellent. On such a private and possibly embarrassing topic, many people would be reluctant to speak and indeed women may be anxious to assure a male psychiatrist in particular that all was normal. The reporting to this project may have been affected by the fact that the interviewer was a young woman and that no specific questions were asked about sexual violence.

b) <u>Injuries suffered and frequency of violence</u>

In accordance with the fact that for most of the women the most frequent form of violence was punching and kicking, the

most common injuries were bruising, black eyes, and swollen faces with possibly cut lips and smashed teeth. These weren't just occasional injuries either, several women said that they were never without bruises or black eyes and that their husbands would beat them or the children at least once a week.

For the others, there were respites, but violence was still a recurrent element in the marriage, though there may have been intervals of months at times when they were uninjured.

Some husbands were careful about where they placed their punches. One woman remarked bitterly that her husband had said he would never mark her and so punched her on the side of the head, rather than on the body.

In most cases the attacks were not so localised. The women suffered not just one bruise from an attack, but such extensive bruising all over their bodies, particularly their faces and arms, that it suggested repeated and frequent punches. One husband went to gaol for six months for punching up his wife so badly that her night gown was covered in blood. She was bleeding from the mouth, the face and the head. That same man had on another occasion smashed into her with such savagery that she had had a few days in hospital. Her teeth were smashed, her face, eyes and mouth bruised and swollen.

In another case, the husband, Mr. C., was an alcoholic who was very violent and abusive when drunk. He used to punch his wife in the face, but then he began to hit and claw her where it wouldn't show, so that the neighbours wouldn't see. Once she was on the floor he'd start kicking her. This woman has numerous lumps and scars over her head and body from her husband's punches and scratches. She also suffered more permanent and severe injuries. Three times she suffered broken or fractured ribs from his kicking, on another occasion a broken arm, another time a slight stroke that twisted a finger in her hand. She was kicked in the head a couple of times, and used to get very bad dizzy turns as a result. As she told it "He'd jump on me ... when he'd get you down, he'd jump on you, if your head was in the way, that's why I was

always frightened you know. I thought that me head was going to be caved in one day you know."

As well, Mrs. C. is a nervous asthmatic and would frequently suffer attacks of asthma while being assaulted by her husband, or while injured. Her terror and distress can hardly be imagined One of the reasons she suddenly snapped and killed her husband as he was about to attack her yet again was that she simply could not bear the thought of once more having to be in bed struggling to breathe against cracked and bruised ribs. Her husband had cracked her ribs for the third time only two months before and they were just healing.

Many of the women have had major breakdowns in their health as a direct or indirect result of their husband's bashings. One woman in her early fifties suffered her first stroke after a particularly violent beating and has since suffered two more. Another woman has suffered a heart attack in gaol and suffers from angina. Yet another has a permanent kidney complaint caused by fear and shock. She is only forty, yet as well as the kidney complaint has suffered a slight heart attack since being in gaol, and is susceptible to nervous fears. The strain of imprisonment no doubt has contributed to these women's poor health, but the groundwork was laid by a life of fear and terror. As the woman with the kidney complaint said when describing her poor health while living with her husband:

> There's nothing like living in fear all the time. It ruins you completely ... your face gets thin, and you sort of lose weight and you can't eat for fear, you know, worrying, tension. Your eyes pushed back in your sockets, and you look terrible.

c) Private violence

Virtually all wife beating and violence between family members takes place in private.

The N.S.W. Bureau of Crime Statistics and Research found in a 1975 study of domestic assaults that

> an overwhelming majority of the alleged assaults took place in private ... In those few cases where the incident occurred in public, the assaults were typically less serious and prolonged than those committed in private - though the women's injuries were not necessarily less severe on this account.[8]

Richard Gelles found the same pattern in his research on 80 American families.[9]

As Gelles has pointed out,[10] several things flow from the location of this violence in the home rather than in public.

There are no bystanders present who can intervene to break up the fight, help one of the participants, or call the police. When trouble is brewing in public, one or both of the participants can often simply leave or run away. In the home, however, not only is there no one to help, there is nowhere to go. Leaving the scene means leaving one's possessions, one's children and one's home territory. Much of the violence takes place at night, when it is particularly difficult for the victim to run away - where can she go in the dark, when all the neighbours are securely tucked away in their own homes?

Because the violence usually takes place in private there are generally no witnesses, except possibly children. Frequently the worst violence takes place late at night in the bedroom behind closed doors and so even those potential witnesses are excluded. This becomes a major difficulty in researching domestic violence or attempting to prove it in court.

It is not only in terms of location that domestic violence is private violence. It is also seen as private by the participants themselves, and by the outside world, including those who actually witness the assault. Even relatives and friends of the woman will not intervene while she is being bashed. They hold back from a combination of fear for their own safety, a reluctance to get involved in what is perceived as the private business of a married couple, and a base assumption

that a man is entitled to hit his wife. The woman herself may be reluctant to involve others. She may be ashamed, or fear retaliation or simply not want to bring trouble onto other people

This attitude affects not only ordinary citizens, but also the very people who are employed and trained to protect others. The police are notorious for their reluctance to become involved in what they dismissively label "domestics" - they will not come when a woman calls, if they do they give no real assistance at the time and they will not press charges.[11]

The notion that domestic violence is private violence has dire consequences for the woman battered. It increases her isolation from anyone who could help her - friends, relatives, neighbours, police, social agencies - either because the woman doesn't report the violence, or because if she does no one wants to get involved. Isolated a woman can be abused more and the cycle continues, possibly with increasing viciousness.

In all of the cases of battering in our sample, the violence the women described was inflicted principally in private, in their home or in one case in their car. In a number of cases the women were attacked in bed at night. One woman whose husband had tried to strangle her while she slept said she got to the stage when she would wake up in the morning astonished to be still alive. Others said their husbands would punch and kick them in bed, or push them out of bed, possibly in association with demands for sex.

Sometimes the man was violent to others as well, not only his wife. It is difficult to say exactly how often this was the case. We did not speak to any friends or relatives of a deceased husband, and his good character - just as his bad - was often not an issue in the trials. Many women did not see their husband in social situations outside the home, and so simply do not know what their husbands were like in public. Even where she did know or guess, the battered wife's view about her husband's behaviour in public may well not be reliable.

In a couple of cases the men seemed to have quite different characters outside the house. In one case a witness noted that the deceased husband "seemed a person of two characters, with myself he was quite nice; once he was inside that household in my assessment he seemed somewhat of a maniac." Another man was described in quite glowing terms by his wife's brother, although the brother knew that the husband had assaulted his wife on a number of occasions. Violence towards one's wife it appears is sufficiently socially acceptable that it need not detract from one's general reputation.

In about half the cases there was some evidence that the husband had been violent with others. In three cases he had physically attacked male relatives of his wife, in two to our knowledge he had attacked members of his own family. One man, an alcoholic who had broken his wife's brother's ribs and attacked him with a knife also was violent to others when drunk. He had assaulted people in the hotel and a local shopkeeper and had convictions for assault on others (though not his wife).

There were only two other cases where to our knowledge the man had been violent to people who were not members of his wife's or his own family. One of these was closely analogous to the family cases. That man had threatened his wife's friends and attacked and threatened her lover. The other man would be abusive to people he had just met for no reason, had once tried to smother his mother with a pillow and had upturned a dinner table when dining at a friend's place. His wife also said that he had tried to run down gambling and work enemies with his car. She said that doctors had described him as a psychopath.

The fact that others knew of the husband's violence generally or even witnessed actual attacks on his wife did not give these wives any protection. The astonishing thing in these cases is not that there were frequently no witnesses to a particular beating. That was to be expected. The astounding thing is the number of times relatives, friends, neighbours, let alone police

and doctors, all knew of the violence, yet no one did anything. In one case, the woman's lawyer told us, 80 people came forward after she was charged with her husband's murder wanting to give evidence of his brutality to her and their children. In many cases, neighbours described hearing screams and thumps, or the woman's voice begging her husband not to hit her. Friends and relatives saw the woman's husband strike her, or saw her afterwards bruised and injured. Some women told their friends about the violence, many called the police.

There are several reasons why this sort of evidence doesn't come out in court. One must ask however, why these people did not intervene at the time.

Sometimes they did. The children of one woman who was living with a violent third husband begged her again and again to leave him and come and live with them. She refused, in a tangle of love and self denial.

In another case the woman's brother and his wife, were living with her and her husband. The brother had been himself attacked by her husband and often heard screams and thumps coming from his sister's room. One night, in his own words,

> ...I had had enough and I went downstairs and I knocked on their door and I said 'cut it out (name)' I said 'leave her alone,' I heard whispering. He was whispering to my sister. My sister said not to interfere, so I left and went upstairs.

From shame, or fear of retaliation or fear for her brother's safety that woman did not want her family to intervene.

There were other cases however, where relatives or friends witnessed violence, but simply did not want to become involved. Even in the case described above, when the brother had eventually been driven to intervene, he and his wife moved away after six months of living in the household. The brother saw his sister whom he knew was the victim of constant attacks only once in the next five and a half years, perhaps out of fear for his own safety. His wife explained it thus, "Since moving away from - Street, I've seen nothing of

the pair of them. I just keep right away."

In another case, the woman's brother spent a great deal of time at her place and often went out drinking with her husband. He frequently heard arguments between his sister and her husband and must have known that her husband had hit her in the past. He had seen her once with a black eye, and on another occasion with a split lip and once saw her husband push her up against a fridge. Yet whenever they began an argument he would get out of the way: "They were married and I didn't want to interfere ... I just thought that was the way they wanted to live."

In another case the couple had a boarder living with them. The man in that case was of quite solid build and the boarder only a boy which could explain why, when the husband was kicking down the door to the bedroom where his wife crouched screaming and terrified, the boarder, in his words "took off out the back".

Threats

For the woman left crouched behind the door the fear in which she lived was often caused as much by the threat of violence as by violence itself. These threats took two main forms - direct threats to kill and indirect threats.

a) Threats to kill

Three men repeatedly threatened to kill their wives, and in the two of these cases where there were children, the children as well. This is a small proportion of the total number, but the cases are significant because although these women had also all been assaulted by their husbands, for each the main or major source of her fear, the fear that finally overwhelmed her so that she killed her husband, was the repeated threat to kill.

The threat was such a powerful weapon, partly because it

built on past violence by the husband and partly because the woman knew that there was a weapon in the house. One woman had been told by her husband that he would shoot her if he could find a bullet to fit the gun. She was sufficiently intimidated to secretly give the gun away, so as to get it out of the house. In another case, the husband had forced his wife and children back to him at gunpoint (this case was mentioned earlier). After that, even when he did not directly brandish the gun, his repeated threats to kill them all would have carried with it their knowledge that the gun was in the house. Similarly, he had once attacked them with an iron bar - the continued presence of an iron bar in the house must have been a reinforcement to his threat to kill.

A major contribution to the power of a threat to kill however is simply its repetition. In two cases the threat seems to have been constant. In one the husband talked incessantly for over a year of killing his wife, their three children and her boyfriend after he discovered that she was having an affair. On one occasion she fell sick after a party and he said someone must have put something in her drink, her boyfriend was trying to kill her. He would tell her that he had made enquiries about having them killed, but that it was too dear and he would have to do it himself, though "to be fair" he would warn them beforehand. He would talk about it in front of the children, aged 4 to 8, threatened the boyfriend and once parked his car outside the boyfriend's place for two weeks, watching all his movements. During that period, he constantly asked him to come for a drive with him, alone.

The wife was completely terrorised by these constant threats. Neighbours saw her in tears, she was constantly nervous and upset, she had to take pills to cope. The effect on her nerves was magnified by her husband's violence around the house and his constant verbal harrassment. He had smashed furniture, had struck her and would race in from work and cross-examine her about her movements during the day.

The atmosphere of hysteria and panic mounted till in desperation

she killed him, believing that "it was either him or me and the kids. I had to do it." On the night she killed him he had assured her that he would haunt her till the day she died, which wasn't going to be very long, telling her that he had been up to Kings Cross and found out about a poison he could put on the tip of a cigarette that would kill her instantly.

The men who threatened to kill the children as well had a particularly cruel weapon. In the case just discussed, the woman begged her husband to kill her, but not the kids. His reply was that he would kill her first, as it would be easier with her out of the way. She would never know whether he had killed the children as well. In the other case, the husband said he would kill his wife and all four children, noting that he'd receive no greater punishment for five deaths than for one.

In was reasonable for these women to take their husbands at their word - family annihilation murders where a man kills his wife and all children then himself are not uncommon [12] and are usually reported when they occur. One woman in Victoria who was subsequently acquitted of conspiring with her son to murder her husband acknowledged this when she said in her defence at her trial:

> I have read of men who go and kill their wife and children and then kill themselves. His outbursts were getting worse, and I feared we might all be part of such a tragedy.

b) Indirect threats of violence

In the majority of cases the men did not expressly threaten to kill their wives, but frequently the threat of violence was implicit in their behaviour generally.

The most common form of indirect threat was smashing up furniture.[13] Six women reported that their husbands had smashed chairs and tables or other furniture, kicked through doors or upturned tables of food. One had smashed his fist several times through a new dining table, another set alight

to the lounge room furniture, a third chopped up the couple's bed with an axe. These explosive displays of temperament and violence would be even more terrifying when the woman herself was clearly the next in line - as in the case mentioned earlier where the woman was behind a locked door as her husband kicked it in.

Jealousy and Possessiveness

As part of the total domination and control sought over their wives the majority of husband victims in this study were excessively possessive or jealous or both. In all of these cases the men had assaulted their wives as well, except for one involving a young couple who had only been together for some 18 months.

This possessiveness took several forms.

a) Forsaking all others

> He wanted me to talk only with him. He said so. When I would talk to another woman, like stopped in the street he would get sulky and if it was a man oh God it was a hiding when I got home. Say if a man innocently asked you the time or direction or something there was no way in the world that he would say 'what did he want' or anything, he'd just go white with rage. He had no common sense whatsoever. I'd see him go and sit in the back yard and sulk just because I was talking to our kids ... You'd say what's the matter with you? He wouldn't answer. Then after about several times of saying what's wrong with you he might say you can talk to them but you can't talk to me. So you had the worry of him all the time.

In virtually all of the cases where the husband was possessive he did not like his wife or girlfriend to have friends or contacts outside the home, or in extreme cases as in the one above, with anyone apart from himself. In many cases the husbands enforced their prohibition by violence or verbal harrassment or both.

Many of the women said they were "not allowed" to have friends or visitors. Their husbands would make it uncomfortable for any friend who did come to the house, or were so violent

and abusive that friends or relatives would not come at all, or only while the husband was away at work. The woman herself may have preferred this. It was embarrassing to her for others to see her husband violent and cantankerous and for the sake of avoiding an argument some women preferred to give up social contact altogether.

A couple of women spoke of instances when a friend or relative of theirs had come to stay for a holiday. In both cases the woman's husband or boyfriend was so unpleasant or violent that the visits were cut short. In another case if a friend of the woman rang up and her husband answered he would announce the call by saying loudly so that the friend could hear "here's another of your lesbian friends". This sort of behaviour was highly embarrassing for the woman.

At the same time, many of the women were not allowed out of the house other than for housekeeping purposes, or to go to work. Indeed two said their husbands wouldn't let them work outside their homes. The result was often extreme isolation. In one case, the woman, who lived in the country a mile or so from a small country town, did not go out for fourteen years while her children were young. Her husband would drive her and the children into town with him sometimes when he went to the club, but they had to sit in the car and wait until he was ready to come home.

In the most extreme cases, the men kept a constant watch over their wives' movements. They worked either from home, or not at all, or had irregular working hours so that there was no certain interval in the day when their wives were free from surveillance. In one case one man gave up work at one stage to start a business from home so that he could keep a closer watch on his wife's movements. When he returned to working outside he would come home at odd hours and if his wife wasn't there would inquire at the neighbour's where she was, or, his wife said, had people to follow her.

One woman explained her inability to leave by this constant watching:

> ... while he was at home there was no chance, he watched me like a cat watches a mouse, every move I made. I could not even go to the toilet, he'd be standing at the back door, watching me go in and watching me come out; I was completely I don't know what you would call it, but I was certainly cowed by him.

That husband constantly accused his wife of meeting other men outside, even though they lived in the country in a house totally isolated.

It was striking that another woman used the same example - she also said she couldn't even go to the outside toilet without accusations or violence.

Where the woman worked her husband or boyfriend was also anxious to ensure that she made no contacts outside work. A couple of women reported that their husbands picked them up every day from work - which they saw as an act of possessiveness as much as consideration. One said that when she was working on Saturday and Sunday afternoons "he'd (husband) be haunting the place, he'd be there all the time, checking out what was going on." Even where the husband could not physically keep an eye on his wife he kept her in line - in one case the man demanded that his wife ring him at work every night at 6 p.m., although he would frequently refuse to take the calls, to her humiliation.

The tragic fact simply was that the man did not need to be physically present to constrain his wife's movements. Many of the women were sufficiently cowed by the constant accusations of infidelity or interest in other men and the violence that accompanied any movement outside the home that they tempered their own movements, intimated into fearful submission.

One woman explained how she had got to this point. She described how she and the children had had to plead and cajole her husband into allowing the children to attend a school dance, where she was to help with the tea and keep an eye on them. She continued:

> Finally he give in, and said seeing I was there he'd pick us up when the club shut. So we had to make sure we were out the front, you know, when the car pulled up, because he wouldn't wait anyway. But he was very full, accused us all, the most terrible names going home, that they only wanted to go out to get pregnant, you know. School dance, mind you. All these thoughts going through his head all the time. Called them terrible names, and stuck into me, because why wasn't I home getting his tea, I'd rather be at school getting the kids tea or the other parents tea, and so on, it was shocking. So you get that way you just don't ask him. (emphasis added)

Another gave the following example of the constraint her husband's tyranny placed on her movements:

> I was never allowed to leave the house, never allowed to move outside the door. I know this sounds stupid, but that's the way it was. And when he'd go to work I used to sneak down my mother's place. Rush down and say hello and rush back real quick, you know ... and then a friend of mine died, and I wanted to go and see the grave. I was driving home from work and I stopped the car and I just happened to get through the fence went up to see the grave and it hit me - 'Oh I can't do that, he'll have to see me coming through the bush he'll think I've been there with someone.' So I couldn't even go off the road to a grave, to pay respects.

The end of that woman's marriage came after her husband bashed her up in public so badly that she had to be hospitalised. A woman friend had persuaded her to go out for a drive to a club while her husband was out. She had reluctantly agreed, saying nervously that she had to be home before her husband. When they got to the club however, her friend got absorbed and lost track of the time. In her fear and terror at her husband returning and not finding her at home, the woman did the only thing she thought she could do - she rang her husband at his work and asked him to pick her up. She had spent the whole day sitting at a table with an elderly couple, too worried about getting back in time and too intimidated by her husband's possessiveness to speak to anyone else. He arrived some time later, drunk and furious, saying he was going to put them both over a cliff in the car. She refused to get in and he started hitting, pushed her across the car park and tried to strangle her before taking off in the car. When others called at him to stop, his reply was "mind your own business, it's

my bloody wife."

b) Sexual Jealousy

Accusations of Infidelity

As it appears from the examples given earlier, in very many of the cases the men would constantly accuse their wives of infidelity and interest in other men.

Many studies of battered wives and domestic violence have also found that very many men who assault their wives are also very possessive and frequently accuse them of infidelity, usually with no foundation.[14] There is a close link between the husband's possessiveness about his wife's time and conversation generally and this sexual jealousy and insecurity. As one woman said, "I couldn't talk to anyone because he thought I was on with everyone."

In that woman's case in particular, her husband's innuendo and accusations that she was unfaithful were a constant harangue. From the court papers in the case it appears that in the months before she killed him every night was a battleground where he cross-examined and accused her, he would scream and yell, lock doors, smash cupboards and occasionally hit her. She frequently ended up in hysterics or tears from the violence and nervous strain. She described it thus:

> He used to race home every night (from work) questioning me over and over, what I'd done and where had I been ... it was just like a judge and jury. I'd have to tell him everything I'd done, and (he'd) question me over and over, you know? It would always end up in a big fight.

This sort of prolonged interrogation followed by violence was noted by Richard Gelles in his study of the dynamics of domestic violence, The Violent Home.[15] He reported that:

> Typically, sex-related violence is accompanied by a lengthy interrogation of the partner who is suspected of cheating ... Sometimes, the interrogation and the violence that follows, take on the aura of "Gestapo Violence". (PP.82-83)

The case described above was one of the rare ones in which the husband had some justification for his suspicions. His wife actually did have a boyfriend and the husband was no doubt sorely tempted by the frequent visits to their house of this man whom he suspected of being his wife's lover. The double standard is exposed, however, when one learns that the husband himself had been unfaithful on several occasions in the past and had in fact been violent to his wife when she objected - he had punched her in the mouth some years before when she had caught him with another woman.

The case is yet more ironic: his wife and her boyfriend became friends originally when as neighbours she found him a sympathetic listener to her problems with her husband. Her husband was even then violent and jealous, while at the same time playing around with other women himself. The wife and her boyfriend actually only became lovers after months of jealous and spiteful innuendo and accusations by the husband that they were sexually involved. It could well be said that he had positively driven them into each other's arms.

In most of the cases however, there was no basis in fact at all for the husband's accusations. They were not only persistent but wild and irrational as well. Many wives described their husbands as "insanely jealous"; one reported that her husband himself had said he needed treatment badly for what he saw as a sick possessiveness. He told her, "You don't know what things go through my mind when I'm at work, things I picture you doing." This husband accused his wife of putting on her make up before going to work as a cleaner in a hotel only on those days when the cigarette man came to the hotel. He apparently was an ancient and shrivelled up old man.

A frequent occasion for accusations was when the husband returned to the house and found something moved. One woman who was virtually totally isolated in her country home filled her time rearranging the furniture the better to get in the

corner to clean. Once she accidentally broke the mirror on the dressing table and her husband accused her of having another man there. He would also continually check the gateway after returning from the club where he spent each night to see if any strange car had been there. Another woman described a time when her husband was away and she drove his car and parked it in a slightly different way. His first question when he returned was: "Who's been driving the car?" When she said she had he refused to believe her saying "Don't start - what guy's been driving the car?"

One husband was more direct. Instead of wasting time in accusation he knocked his wife unconscious when she returned one night after drinking after work with a woman friend and that friend's boyfriend. Presumably her husband heard a man's voice at the door wishing her goodbye and he did not stop to ask who the man was.

Many of these incidents seem trivial in isolation. But it is important to remember that for these women they weren't isolated occurrences. The effect on their nerves and temper of constant, irrational and unjust accusations cannot be discounted, particularly when these verbal displays of jealousy were accompanied by physical abuse.

"Terrible, terrible talk"

When accusing their wives of infidelity or interest in other men the husbands would frequently abuse them by calling them a slut, or moll or other perjorative terms, indicating sexual promiscuity. These are ugly words that have ugly connotations, even for otherwise "liberated" women.[16] For the women in our study, for the most part quiet, middle aged women with middle class views about morality and respectability, and virtually all completely faithful to their husbands, such words seemed a particular insult. Many women complained of being called "terrible names", and in one case at least the woman finally broke after an argument in which her husband had abused her in this way: "He had been calling me a slut and a moll and I couldn't take any more of it, so I got a

knife and stabbed him."

It seems that these words were sometimes used even where the husband was not accusing his wife of any particular infidelity. Thus name calling was often the initial stage of a display of rage and ill temper by the husband which would end in violence. In several cases the occasion for the abuse was when a husband wanted sex and his wife refused. In one incident a husband returned home drunk and expected his wife, who had been at home alone all evening, to have sex with him, which she refused. In another case, if the women refused to have sex with her husband he would accuse her till she gave in:

> ... and the forced sex nearly all night long, this was so hard. You're tired, you're weary, but if you say one word wrong, like I'm too tired, he'd say so and so and this and that, you'd give it to everybody else won't ya, terrible, terrible talk.

Projections of infidelity and the double standard

As mentioned earlier, in all cases bar one, where the husband accused the wife of being unfaithful, she, on all the evidence available to us, was not. In many of these cases, however, the husband himself had been unfaithful, in some cases frequently. In two extreme cases, they flaunted their affairs with other women before their wives in what can only be seen as a deliberate attempt to hurt and humiliate, while at the same time insisting on strict isolation for their wives.

Many of the women were hurt and angry at their husband's infidelity. They had generally invested all their emotional energy and identity in the relationship and had few other sources of satisfaction or self esteem, particularly where their husbands insisted on their own isolation. But unlike their husbands the women lacked the power to insist on fidelity and turned their distress in on themselves. Two women reported that they had tried to commit suicide over their husband's unfaithfulness. In two cases, resentment

and distress over rejection by their husband seem to have been crucial reasons why the woman killed him, but in both even on the prosecution account she also planned and attempted to kill herself.

It seems then that in many cases the husband's suspicions of his wife may well have been a projection of his own behaviour. One woman articulated this: "He was sex crazy and wouldn't believe that everybody wasn't the same as himself." Another was told by a psychiatrist about her unfaithful yet jealous husband, "... while he was running around he was thinking you were at home running around too."

In other cases the husband's jaundiced view of his wife's loyalty may have been affected by previous bad experiences he had had with women. Two particularly suspicious and accusing men had been involved before their present marriage with other women who had let them down. One had been "married" to a woman who was still married to another man and was later arrested for bigamy and the other had been engaged to a woman for some time who then "jilted" him. The women they later married and accused constantly of meeting other men believed that these past experiences were one reason for their husband's behaviour:

> ... I was true to him the whole three years (of their courting), all through my married life and everything, but the way he kept thinking that I was always playing up behind his back, because his other girlfriend did...

c) Man and Wife

To the outsider one of the striking things about many of these cases is that the woman was simply not perceived by her husband, nor, sadly, by herself, as having any identity, social or personal, distinct from that of her husband.

Certainly this is not an uncommon state of affairs in our society, where the institution of marriage and the ideology of the couple, being close personal involvement with one other person, encourages one partner to merge their identity with the other. Moreover, in a patriarchal society such as

this it is the woman who primarily loses her separate identity - the process is not a mutual fusing, but rather the swallowing up of one person in the life of another - the woman becomes merely her man's wife.

Seeing the wife as a mere extension of the man is also, of course, a realistic assessment of the social and economic realities. There still is no recognised place for women alone in our society and social legitimacy is conferred by connection with a man, father then husband. Many women too, are economically dependent on their husbands, particularly if they have young children and cannot work.

One of the women interviewed articulated these concerns when she spoke about being single again on her release:

> - you always feel funny when you're on your own, because you feel left out. I mean, you go to dances and things, and you always need a partner, you know. You feel funny walking in without one. Can't even go to a club or anywhere without a partner, you know. And if you walk in with another woman, well they think oh, she's that sort. You know. So you stay home. But I don't want to do that, because I've had enough of staying home. (emphasis added)

Given this background, it is not surprising that the social lives of many women were to a large extent dependent on their husbands. The same woman quoted above spoke with complete unconsciousness about her dependency on her husband's indulgence and unreliable temper for any social life at all. In answer to the question "did you go out much at all?", she replied:

> Occasionally he'd be very good. We used to go out for tea. ... um, we used to go to carpet bowls once a week, and of course, he made a wrong marking one night, accused the other person of cheating. He was always right, never wrong. No matter what he done. We didn't go carpet bowling any more. The same, we used to go to the socials, when he was in a good mood he'd take me. Some bloke was dancing with me, very possessive and jealous, he thought we were talking about him all the time I was dancing with him, so that put a stop to the dances too. So then he took up golf and thought I might like it, you know, something we can do together, so I

> agreed, so I went and learnt and I did enjoy it, but I found out later, the only reason that I was allowed to play was because I was playing with the women, through the week, and he was playing with the men at the weekends. It wasn't very often that we'd play together... (emphasis added)

Several of the women remarked that they could never go out because they couldn't take their husbands anywhere - they were too violent and unpredictable. One describes it thus:

> Couldn't take him anywhere special, you know, anywhere .. I mean, if you went to a dance, if anyone invited you to a dance, or a wedding or somewhere, you couldn't go, because you'd be too frightened. You'd be putting up with one of his turns. He'd have to argue with somebody and then the fists would be thrown. See what I mean? He was too aggressive, you see. And, people don't like that, you know. So ..

These were women whose husbands wouldn't allow them to have friends or visitors in their own home. Their fear of their husbands' behaviour in public meant they were doubly isolated.

The more disturbing aspect of this sort of possession is that many husbands did not accord their wives any separate <u>personal</u> identity, let alone social. Two women reported similar incidents - in one case both the woman and her husband were alcoholics, although the woman would go dry for long periods. Her husband took no account of this however, Whenever he was drinking he would make a verbal and then physical fuss if she wouldn't drink with him. Similarly, when he was not drinking neither could she. As she expressed it:

> But you'd have to drink with him. You'd have to, to keep the peace with him, you know. And then, when he'd sobered up, oh, you couldn't have a drink then. See what I mean? And you might be dying for a drink, and he'd say, 'No, oh, no. I can knock it off, why can't you?'

In the other case, both partners smoked heavily, yet when the man stopped, in his view his wife should also. He hid

her cigarettes and refused to buy her any more. (She had no money of her own.)

More seriously, one woman who worked said that she had to give all her earnings to her husband. In her words, "(he) never looked at me as earning anything." He returned $40.00 to her from their joint income with which to feed and clothe the two of them, plus two adult and two younger children.

Perhaps the greatest violation of all was suffered by the women who were sexually abused by their husbands. These men did not see that their wives had any right at all to refuse sex and as we have seen earlier, sometimes went to the point of raping them. One of these women described how she had always had to do as she was told, in this case go to bed whenever her husband wanted:

> ... I've done this many times over many years. You lay down on the bed, 'cause he'd tell you you're coming to bed or something .... You really don't have any choice what you do. You do as you're told 'cause you fear a hiding ... there's no more sleep in you than a fly. You're not ready for bed anyway. There's things you want to do before you can go to bed. He doesn't take into consideration anything you want to do, or you have to do, even. He just decides what you will do all the time. You just go along, otherwise you ... you get a hiding.

The saddening fact is that these experiences are probably not confined to the women we interviewed, nor even unusual. They are no doubt shared by many other women who, like the women we interviewed, are isolated in the home, had little education and, general speaking, little opportunity or experience in leading an independent life either before their marriage or during it. For these women, the lack of a separate identity is a major manifestation of their oppression.

Humiliation and Debasement

In other sections we have described the violence and threats suffered by the fourteen women who had been assaulted by their husbands in the past. In several cases, the ill-treatment went further - the husbands engaged in conduct that can only be seen as calculated to debase and humiliate his wife, or his wife and children.

These acts generally took one of two forms. Some related to sex. As mentioned earlier, several husbands were unfaithful, but in two cases they positively flaunted their infidelity. One man would bring his other women, often young girls, to the house. His wife once saw him having intercourse with a fourteen year old girl on the verandah. The wife was seven months pregnant at the time with their second child.

Another man would normally stay out late with other women. When he returned he would tell his wife what they had done in great detail and demand that she give him the money he had spent. He would bail her up against a window with a shotgun if she refused. Once she expressed doubt that he really had all the women he said. He returned the next night with a pair of woman's underpants, wet with semen, which he rubbed in her face as supposed proof of his exploits. He would invite his girlfriends to parties at his home, without telling his wife who they were. He told the other women that his wife was really his mother. At one stage, one of them rang his wife up at work in this belief to ask if he was always so violent. She rang off hastily in embarrassment when she discovered her mistake.

We said in the section in violence that a few women complained of sexual abuse, though they did not spell out what this involved. In one case however the wife did relate part of what her husband did. He also stayed out drinking, and she had been woken upon his return by him urinating and "the other thing" on her. After defaecating on her body he would

say "That's all your loving for the week." She could not bring herself to describe the other forms of his sexual abuse of her.

This type of complete debasement is reminiscent of rape cases where victims often complain that they have been debased as well as raped per se. Perhaps the explanation is the same as that suggested for rape cases, the need to assert power, and a deep hatred for women.[17]

The other main form these acts of debasement took related to food. In the case above, the woman was treated literally, like dirt. In the food cases, she or the children were made to eat it. In one case, the man would return drunk and pull everything out of the fridge and tell his wife to get down and clean it up. Once she refused and he got out his rifle and threatened to kill her unless she obeyed. He sat in a chair with the gun pointing at her the whole time she was cleaning up his mess. Sometimes she'd cook a leg of mutton, and because he was never home for meals anyway, the children would eat all the crisp skin on the outside. If he was in a bad mood when he returned, he'd hit the roof. She tells what he would do:

> ... he'd get it and throw it on the floor, wipe his boots all over it, squash it right in to the floor, then make us get down on all fours and eat it. And we'd be as sick as dogs, but we had to sit there on our all fours and every time we'd stop chewing he'd kick us, to make us keep on eating it.

This horrifying tale of exultant power was not unique. Another family had a very similar experience. The father had returned home drunk one night at meal time. He had forced the three eldest children to leave the house and get down on their hands and knees on the lawn outside and eat grass. He stood over them, screaming, "Eat, swallow it."

Economic Exploitation

Several of the husbands also exploited their wives economically. At one end of the spectrum, there were two cases where the woman was given completely inadequate sums for housekeeping and expected to manage. In both, they were given $40.00 per week to provide in one case for husband, wife and three children and in the other, husband, wife and four children. One of these women worked for a time, but had to give all her earnings to her husband who spent the bulk of his income on gambling.

This extreme economic starvation was a continual source of anxiety for these women, who would be beaten if the meals they somehow conjured up were not satisfactory. It also kept them in the house. Money for leisure activities had to come out of the housekeeping, and the woman would have no chance at all to amass sufficient money to leave, even enough for the fares alone.

At the other end of the spectrum, there were a couple of cases where the woman herself worked but spent considerable amounts of her wages in paying her husband's debts. In one case the woman had several jobs in an attempt to placate her husband and stave off the creditors. Her husband capitalised on her slavish devotion. On one occasion, he complained that his car radio had been stolen. She bought him another, and another, when that was stolen as well, and another, until she realised that he was selling them. That woman paid all their joint expenses while her husband spent his wages on gambling.

The Children

Many studies on domestic violence have recorded the deleterious effects this violence can have on the children of the union.[18] Our findings have also been that the children suffer greatly, both physically and emotionally.

As mentioned earlier there were only four cases where the man and woman were living with their children at the time the woman killed her husband. There were two other cases where the parents had separated before the killing, and in each of these the children lived with their mother.

a) Physical violence from the father

In four of the six cases where their children had at one time lived with the woman and her husband, the man was violent to them beyond the range of normal discipline, at least occasionally. In three of these cases which will be discussed below the children, like their mother, were the victims of constant and serious physical abuse. We have no information about the relationship between the father and children in one further case, and in the other, it seems that the man did not physically abuse his children, at least not seriously. The woman reported that the children got on well with their father and were disturbed when the parents separated.

Indeed, for some families, the violence began even before the children were born. One woman reported that her husband used to kick her in the stomach when she was pregnant. Luckily her children were not harmed. Another woman was not so fortunate. She suffered a miscarriage after a severe beating around the body by her husband when she was four months pregnant and did not conceive by him again. Studies on domestic violence have noted that husbands are often particularly violent to their wives when pregnant.[19]

In three families the father's violence and cruelty to the children was extreme. Some indication of this is given by the fact that in two of these families children joined with their mother in killing their mutual tormentor. In these families the violence to the children began when they were babies. The women could remember the babies being hit, punched, and in one case thrown across a room. One woman recalled that one of her sons was hit in the mouth when he was five months old because he was crying. It made the baby's mouth bleed.

Another son was hit in the mouth when he was ten months old. His mother had left him sleeping on the front verandah of the house while she went inside to get some tea. His father hit him apparently for no reason.

This woman, who was herself beaten and punched at least once a week said the greatest strain was protecting the children. She could never turn her back for fear that he would hit one of them. In her words:

> That was the biggest worry, I think, was trying to watch the kids from him getting them. Just for nothing. Just because they were there, or something. I'm sure he was jealous of the children. He must have been, must have been. Jealous of the kids.

The constant strain on that woman of separating father and children and appeasing the father so that he would not hit her or the children is illustrated by what she described as a typical occurrence. When the children were small her husband would arrive home drunk and demand his tea. It didn't matter if she was about to feed the babies - they had to wait. She would have to cook his dinner with one hand while nursing a distressed and hungry child with the other, for fear that if she put the child down he would scream and his father would hit him.

In that same family, one boy was attacked by his father when he was in bed, aged four. As a result of that attack his chest is still caved in today. He can remember crying in bed, struggling to breathe. The emotional toll on children who have suffered such violence will be discussed later, but an example is the devastation wrought on this child. As an adult now he can still remember a birthday party when he was seven - a perfect day until his father bashed him later that night. He thought then that he didn't want to have any more happy days if they were to end that way.

Violence to the children often seemed to occur around dinner time, when all the family were together and the father had

returned home drunk for his tea. On one occasion in the same family, the father returned from drinking and demanded of one terrified child "What have you done to deserve any tea?" The boy answered "Nothing Dad" and was punched and sent through a fibro wall which was smashed by his back and head. He was about nine at the time.

There are echoes of this violence in another of these three very violent families. In that family one child in particular was the subject of his father's violence, the youngest and only boy, though the two older girls were terrified of his bad temper as well. That boy would be dragged out of bed by the hair, and thrown around the room by the hair. He was punched, kicked, ordered out of the house, and at one stage threatened with a knife. He also was once punched through a fibro wall. At the same time this violence may have been the product of at least some degree of interest in the child. The woman reported that neither she nor the daughters ever received a Christmas or birthday present though the boy at times did, and quite expensive ones too. His father would also take him fishing and generally show a greater degree of interest in him than the girls.

A similar feudal interest in male succession may have operated in the third of these very violent families. The father's violence to the children, all girls, seemed to begin at his disappointment at not having a son. They were struck as babies for crying, and as they grew older were beaten for any slight misdemeanour. From the age of seven onwards they were expected to carry out adult duties in the kitchen. Their heads would be knocked against the wall, they would be punched and kicked, and verbally abused if they didn't have the vegetables done for dinner when their father arrived home, or if they were still in their school uniforms.

The children in these families were often injured as a result of this violence. As with their mothers, the most frequent injuries were bruises, which could become serious. One young girl had ulcers on her legs from where her father had kicked her. Many of the children also suffered more

permanent physical harm in addition to the emotional and psychic devastation of such a life. Several have long standing complaints from being struck in the face or head, in one case a nasal complaint, in another severe headaches for which the child's father refused medical attention, in a third a speech impediment which the child's mother puts down to beatings in the head when the child was young.

b) Non-physical injuries

Such a speech difficulty could also be caused of course simply by fear, the constant living in fear that all these children experienced, or by the damage to schooling and education caused by disturbance at home.

Several of the children suffered specific complaints caused by fear. One young woman suffered for years from severe nausea out of a fear of going home. She would shiver, her eyes would blur and she would be unable to see. She was also frequently depressed and contemplated killing herself - there seemed no other escape from her father's violence. She described how she would become paralysed with fear in the face of this violence:

> I would stand in a trance ... compelled out of fear not to move. (It was) only through pain that I would move.

For the child, his or her earliest intimations of the nature of personal interaction and the social world, which then shape his or her own ability to interact, are formed by the atmosphere in the home. In these four very violent homes, the pattern the children observed was not a happy one. In two it seems that the atmosphere was normally cold and strained, with a constant undercurrent of apprehension that would focus into intense fear at warning signs in the father's behaviour. The children said that their father never showed them any affection and they were all afraid of him and tried to avoid him. Their mother would rarely speak to the father, or when he was present, so that the household was a silent one where all

the actions of mother and children were designed to obliterate themselves from their father's notice. One young woman who grew up in such an atmosphere said:

> As far back as I can remember I lived in a very cold and strained atmosphere, and I knew it was an unhappy family, but I did not realise to what extent until I went to school, and could compare with other students.

In the other two households it seems that home for the children was a place of constant violent noisy brawling between mother and father. These children were not only afraid for themselves, their nerves were jangled by confusion and noise and fear for their mother as well.

In one of these families, the father was particularly angry, accusing and violent to his wife, but it seemed to her, interested in the children only as a lever to use against her. He became substantially more possessive when he discovered that as they were not legally married he had no legal rights to the children and could not force her to stay with him by his right to them.

The children were very disturbed by the hysteria and anger in the household. Their school work was beginning to suffer, and they would refuse to leave their mother to go to school. As the crisis intensified, the eldest child, a boy of eight, attempted suicide by laying on the road. Shortly before he had attacked his father with a knife when the father broke into the house late at night and began to strangle his wife, the boy's mother. All the children would hit their father when he was violent to their mother in an attempt to protect her.

In three families, including the one discussed above, the children were terrorised, not only by violence, but also by the father's threats to kill them. In two, the father threatened in his children's presence to kill his wife and

all children. These cases were discussed earlier in the section on threats. In the third, however, the man had never threatened to kill his wife, although she was constantly bruised and injured from his frequent drunken beatings. It seemed to his son that the father felt that particular degree of vicious hostility, the wish to kill, only towards the children whom, according to the boy's mother, he had always resented.

In one case the father was not only physically violent to the children, he also sexually abused his adolescent daughters Every Sunday he would compel one or more of them to lie with him. According to their accounts in court he didn't have intercourse with them, but would wrap his arms and legs so tightly around the chosen girl that she couldn't move, then go to sleep leaving her trapped. This man was killed by his wife and daughters on a Friday night - perhaps the thought of the coming weekend, and the peculiar horror that Sunday would bring for one or more of them was too much to bear.

Such physical and sexual abuse would of itself cause severe damage to the emotional and sexual development of a growing child, and the ability of that child to trust and form close personal ties with others. In some cases however, the children were further isolated by the same sort of control as imposed on their mothers. In the cases where the children were living with both parents through their adolescence they were not allowed to attend leisure or social functions outside the home and could not invite friends home.

The effects of the father's violence could also be more indirect. In one family, all six children were made state wards because their alcoholic and brutal father made conditions in the home intolerable. At different stages they all spent considerable periods of time in foster homes. Those children suffered both directly and indirectly from their father's violence - directly in the physical attacks at his hands,

indirectly by the separation the violence caused from their mother. It was almost impossible for her to recover them, even after she had separated from her husband because she could not earn sufficient to establish a home. Her chance came when she was asked to housekeep for her ex-husband's father and several of the older children ran away from their foster homes to be with her again. The younger children were never returned to her however. This may not have harmed them if they were stable and happy in their foster homes, but for the woman herself, one of her most bitter complaints against her husband is that he cost her her family.

In another case, an adolescent boy was convicted of stealing a truck and driving without a licence after his father had assaulted him. His father had attempted to strike him but missed and the boy terrorised had run off into the nearby country town, leapt in a truck and driven off. The boy received a further beating before his court appearance on the charges to intimidate him and so ensure that he would not reveal the conditions at home to the court.

One can only fear for the future of these children. Several women were optimistic that such a brutal childhood could have positive effects. They felt that their male children had seen enough of their mother being hit to ever hit anyone themselves, and that the girls would realise the danger of marriage to a violent man and be able to avoid it or escape early. Sadly, the sociological evidence belies these hopes. Many theorists have speculated that a child brought up in a violent home is likely to repeat the pattern in later life. If male he is likely to respond to frustration and disappointment with violence as his father did, if female she is likely to copy her mother's pattern and become involved with a domineering violent man. Such data as there is, admittedly limited, tends to support these theories.[20]

c) Divided loyalties

A child trapped in a violent home may have seriously divided loyalties, adding to the pain and confusion of his or her life.

Children can be torn between loyalty to their mother and the desire to protect her, and love for their father, particularly where their father is not often violent to they themselves. The eight year old boy who went for his father with a knife we mentioned earlier had attacked him with a knife on other occasions when he was beating the boy's mother, yet, his mother said, "quite liked" his father when he wasn't being violent. For a boy of this age, the confusion over whether to identify with a strong father or protect his mother must have been very great.

Children in all violent homes can experience these divided loyalties, but the conflict is of course much greater where the mother has finally killed the father. In one case at least where the woman was not charged in connection with her husband's death for some years her children seemed to harbour a lingering suspicion and resentment against her for all those years.

In another the children may well have seen their mother as the cause of the instability and disturbance in their lives. Their father was not violent to them, only to the mother. They became involved in this desperate war between the parents when the parents separated and the woman broke after years of physical and mental torture. Unable to control her rage she staked out the house, planning to shoot her husband when he returned. In the course of that siege she smashed furniture in the house, ripped up clothes and took her eldest daughter hostage. The daughter was saved, but it is understandable that her first reaction to her father's death when her mother did shoot him, some years later, was to scream hysterically:

> Well you did a good job. You killed him, you bloody bitch. You killed him. He's dead, are you satisfied now? You bitch. I hope they (pause) they send you to gaol.

Some children may attempt to resolve any conflict by seeing both parents as equally to blame. A child whose childhood was a blur of pain and upheaval may know only that he was hurt,

and withdraw from both parents rather than have to ascribe blame to one or the other. Rejection of the whole family, including ties of devotion to the mother may also be the only way that the child can escape into a life of his or her own. In one recent case in Victoria, the mother and brother of the then reigning Miss Australia, Gloria Krope, were charged in connection with the killing of her father. Gloria Krope herself had only managed to escape the violence and fear of the home by leaving at the age of sixteen.

In another case a young man who was convicted with his mother of the murder of his father described in moving terms how he was torn between the private hell of his family and a life of his own. He attempted to free himself by setting out across Australia, but in the end could not leave his mother alone with her brutal alcoholic husband, the father who had also beaten him viciously all his life and whom he hated and feared. He returned and within a few months had killed his father. He was convicted of murder and received a fifteen year sentence.

Fear, Shame and Mental Strain

a) Fear

We have touched in some of the earlier sections on the side effects of living constantly under the threat of violence or death. For most of these women fear was as debilitating a product of the threats and violence as the physical injuries they suffered. Fear was the constant accompaniment to their lives. They were always at risk of a beating, yet were effectively trapped in the marriage.

Ironically enough, this fear was one of the very factors trapping the women in their marriages. Through fear of their husband's violent displeasure they did not retaliate when being attacked or speak up for themselves, they cut themselves off from friends, they didn't go to the police and they couldn't leave for fear of being followed. In the extreme cases every action was circumscribed by the fear that it would offend. One woman described how she was too frightened to speak up for herself:

> I got that way I was too frightened to open my mouth, because whatever I said, sort of, he took it the wrong way, or thought I was having a dig at him, or something. So it was just a very silent household. Kids were frightened of him and I was frightened of him.

She would watch TV while waiting for her husband to come home from the club, but would turn it off when she heard him coming. She was afraid he would put his foot through it, but it is not clear from the interview whether he had actually ever done this, or simply that her fear of what <u>might</u> happen alone was compelling enough for her to turn it off.

> W: ... I was always frightened to leave it on when he was home, because he used to always be complaining about the programmes I was watching, saying that I'd picked them, and he's put his foot through it quite often.
>
> I: Put his foot through the TV?
>
> W: <u>He would have done</u>. So made sure the TV was switched off when I heard him coming. Just to save it, because it was the only entertainment we had. (emphasis added)
>
> W: Woman I: Interviewer

Fear not only imposes limits on behaviour, it can also erode the ability to act at all. Several of the women we interviewed said they were rendered helpless by violence and fear. They described themselves as "cowed" by their husbands, made timid and nervous by years of bashings. One woman said she was taken to a doctor by a friend at work because she had been paralysed into silence. "I got that way I couldn't talk. Go to work and sit there like a dumb thing, you know."

That this is part of the experience of battered women generally is shown in a study of sixty battered women who had been referred by the medical staff of a rural health clinic in North Carolina for psychiatric evaluation.[21] Psychiatrists Elaine Hilberman and Kit Munson found that:

> ... there was a uniform psychological response to the violence which was identical for the entire sample. The women were a study in paralyzing terror which is reminiscent of the rape trauma syndrome (Burgess and Holstrom 1974) except that the stress was unending and the threat of the next assault everpresent .... In contrast to dreams in which they attempted to protect themselves or to fight back or to escape, their waking lives were characterized by overwhelming passivity and inability to act on their own behalf. They felt drained, fatigued, and numb, often without energy to do more than minimal household chores and child care. There was a pervasive sense of hopelessness and despair about themselves and their lives. They saw themselves as incompetent, unworthy, unlovable and were ridden with guilt and shame. They felt they deserved the abuse, had no vision that there was any other way to live, and were powerless to make changes.[22]

Of course, the women in our study did by definition make changes - they killed their husbands (as indeed did one in the Hilberman and Munson sample). And for several as we have discussed earlier it was intense fear for their lives or fear of another beating that finally propelled them into action.

b) Failure and Shame

The women were paralysed not only by fear but by their own feelings of failure and shame. Most of the women we interviewed did not work and had limited education or experience in independent life. They had expected all their lives to be married or involved with a man and primarily occupied with domestic duties. For them, a failed marriage was a failure in the most significant area of their lives. They were degraded and made to feel worthless by the violence and abuse they suffered. The women were deeply ashamed of this violence, believing that it was somehow their fault and often went to extraordinary lengths to hide it from others.

In one case the woman said that she would stay in the house when she was injured. She wouldn't let people see her black and blue. When she was forced to go out for food, she would wear dark glasses and long sleeved blouses, or try and cover up bruises on her face with make up. Even then she was conscious of people looking:

> ... I used to stay in the house. I wouldn't let them see me black and blue, but, at that - you know, you couldn't stop there forever. You'd come out with dark glasses on you know. And - How - what happened to your eyes, you know, they'd be looking, and they, you know, they wake up to you. See what I mean? And then you've got different bruises. Trying to cover up bruises on my chin, you know, with make up, and you can't sort of conceal it. They can see. They're looking, you know what I mean. It's hard to live a life like that. Continually locking yourself up. Black and blue, sick, you know, and ... it's a terrible life, and you've got to lock yourself up and keep yourself from answering the door you know. In case they see you with bruises all over, you know.

From a combination of simply being often too bruised to move easily, shame, and a consciousness of how others viewed her bruises, this woman was virtually imprisoned in her own home.

That woman's husband at least had the grace himself to be ashamed of his own violence, but here again, this only appeared to further isolate the wife. It was partly at his insistence that she rarely emerged from the house and hardly ever sought medical attention for her many serious wounds.

Several of the women said that they were embarrassed to have people see their bruises. Said one, "I was so ashamed, always, to face the tradespeople who called. You noticed their looks at your beaten face, great bruises on arms etc."

Another reported that she left jobs frequently because she was embarrassed to appear with bruises and black eyes. She couldn't bear the knowing glances, and the dry remarks that she must have walked into a door.

In another case the woman had few social contacts, but still would not go to her weekly game of golf if she was bruised or had black eyes. She would attempt to cover them with make up or ring the friends who picked her up (her husband had refused to teach her to drive) and say she was sick. Earlier in her

marriage she had not wanted her family to know that she was being bashed. "I just wouldn't go and visit them or anything or just go out, if I had black eyes or bruises on me, you know. Anything that would show what was going on." Similarly, she went to a doctor for her kidney complaint, but wouldn't go if she had bruises or black eyes.

All women in our society are taught to judge their worth by their attractiveness and these women were no exception. They could not bear others to see them with bruises, not only because of the implication that it was their fault, but also because bruises made them ugly and so even more an object of disgust to themselves and others.

The women were not only ashamed that they were bashed, they were also ashamed of the behaviour of their husband in public with which they would necessarily be associated as his "other half". As discussed earlier, some husbands were too unpredictable and violent to be taken anywhere. This shame could touch the children as well. In one case the man had been convicted of indecent exposure before the children at the local school. His son would often play truant from that same school because he could not bear the taunts of the other children and the shame.

Above all, the women were ashamed that though brutalised they couldn't leave. This shame then enclosed them in even greater isolation - they wouldn't talk to others about the violence and tried not to let them see the bruises for fear that the judgments of others would confirm their own poor self image.

This shame still affects the way the women discuss their marriages today. Descriptions in our interviews of their own isolation or the reasons why they stayed were often prefaced with embarrassed remarks like "See what a fool I was", "It's hard to believe, but ...", and "it seems silly now".

It was not strange that the women would feel ashamed of their own situation and they had good reason to fear the condemnation of others. "Blaming the victim" is a well known defensive

reaction to the distress of another and protection against seeing the suffering of another as in any way likely to happen to oneself. A rape victim "asks to be raped" and a battered woman clearly likes it otherwise she would leave. Other people, even friends and relatives, might have been all too ready to criticise, to be repelled at the marks of violence and to blame the woman herself for her husband's violence.

c) Mental Strain and the long term effects of fear

In a later chapter we will discuss the defences utilised at the trials of the women. At one level it seems that the tendency to rely on the defence of diminished responsibility, which says that the woman was not fully mentally responsible at the time of the killing, rather than the defences of provocation or self defence, which lay more emphasis on the conduct of the victim, has more to do with stereotypical views of women than with the facts of the case. At another, however, it is clear that few people could survive years of violence and fear without severe long term effects on their mental and emotional health.

In one recent celebrated case this was expressly recognised by the defence which argued that the woman and three daughters who had pleaded guilty to the manslaughter of their husband and father were all suffering from a depressive illness caused by the years of torment and abuse they had suffered at his hands. In the study referred to earlier, Sixty Battered Women,[25] fully half of all the women referred by the medical staff of a rural health clinic in America for psychiatric evaluation in a twelve month period were found to be victims of marital violence.

In two cases in our study the women suffered nervous breakdowns after they had separated from their husbands. In each of these cases the breakdown came after years of accumulated strain, aggravated in one case by the woman's inability to accept that her marriage was at an end and her sense of blazing injustice that her husband who had so ill treated her could now abandon her.

We have already discussed some of the elements of the almost intolerable mental strain under which these women lived - fear of death or physical violence; fear of offending; and the need to always be protecting the children. For some there were other turns to the screw, however. In one of the cases above the husband had deliberately tried to drive his wife mad according to her account. Part of her flaming resentment was that she had had no nervous troubles till her marriage, but he had, in her words "turned her brain" by years of mental torture and later bashings as well. Once she had asked him why.

> I turned round to him and said, 'Oh, why are you doing it to me, why are you doing it to me?' And he said, all I can remember is the look on his face, he looked me straight in the face, and he said 'I'm going to push you and push you until you break.'

In the other case where the woman had a nervous breakdown after separating from her husband the strain on her during the marriage had been compounded by the pleading, wheedling demands of her husband when he wasn't being violent. A great deal of the time he was like a demanding child who would sulk or become violent if not indulged. This was the husband mentioned earlier in the section on possessiveness, who would sulk in the garden if his wife talked to anyone else, even their children. As his wife said, "You had the worry of him all the time." Many times, she tried to leave, but always he would contact her, crying and pleading that he would be different. She laid charges against him but he begged and cried till she dropped them; she and the children packed his things to send him away, but he begged to be allowed to stay.

Such pathetic grovelling and emotional blackmail can be even harder to tolerate than violence. This woman, unlike some of the other women, was not only afraid of her husband, though she was certainly that. She was also disgusted with him, and exhausted by frustration, exasperation, the constant strain of worrying about his sulking and trying to protect the children. Her fear of his physical violence meant that she could never disobey a request, however unreasonable, and

could not retaliate or resist, even with words. One can imagine the slow burning suffocating fury this would cause. Even when she left, there was the fear that he would follow with his violence and scenes - little wonder that she suffered a nervous breakdown after fifteen years of this hell.

In another case the women said she still loved her husband despite his violence, but it was obvious that she lived on an emotional big dipper, one moment laughing and joking with the man who "made her laugh again" after an earlier disastrous marriage then next plunged into confusion and fear at his cruelty and violence. Because his violence was to her completely unpredictable and after a violent episode he would act as though nothing had happened, she began to doubt her own perceptions of the situation and lived in a constant state of anxiety, desperate to please. As is clear in the following extract, she became a slave to the intricacies of his tyranny:

> ... He didn't sort of need anything. His face would just change, you know. Just like a Dorian Gray, you know that picture of Dorian Gray, how his face changes .. but the eyes would protrude and the whites of his eyes would be sort of like that, and .. you wouldn't dare, you couldn't cook for him. You could wash and iron his clothes, that was a must. You mustn't make his bed. You mustn't go inside that room. You had to keep right out .. and then .. a couple of times I'd go in there and I'd find that he'd be in my room and stolen my jewellery, or things like that, but that was to give his girlfriends, because he didn't have any money to buy it. And yet he had all the money in the world. He had every cent he got, was his money, just his play money. Because I paid everything else.

For women like this, even the death of their husbands will not set them free. Indeed, a woman so ravaged by years of dominance that little of her own personality remains may well find it difficult to adjust to life again by herself, even after the interval of imprisonment. This same woman expressed the extent of her annihilation with almost painful hesitancy in explaining why she couldn't leave:

> .. And then again, like, his aggressions, and dom .. domineering, all the time, it sort of ... it squashes all your own personality. Then .. you're not big enough to make decisions any more, you just can't do it, you know.

Not all the women were quite so devastated by the years of oppression and violence and indeed for some of those who can see the end of their prison terms there is light and hope in the future. All have suffered permanent emotional damage however from the experience. Several said that they were now frightened of men and did not think they would be able to ever have a close relationship with a man again. As was mentioned earlier (in the introduction section) one young woman was imprisoned for the accidental shooting of her boyfriend when she over-reacted to his assault because she had been battered in the past by her husband. Battering clearly leaves a legacy of panic and distrust.

The habits instilled by years of fear are not easy to shake off either. Several of the women said that they were still nervous and frightened in gaol and others seemed over-anxious to please, or afraid that they would offend. One woman described how she was continually tense in gaol, afraid that she would be given something to do that was too hard.

> (For)ever having someone yell at you .. you know, if you do something, or .. well, you always seem to be thinking, am I doing the right thing? .. I feel they're going to give me a job that I can't do. That's a feeling that I have all the time.

Another woman could see clearly why she was so timid and why she reacted with such panic to any hint of violence in the gaol:

> I'm not violent, by any means, I mean I wouldn't raise my voice to anyone. I wouldn't complain. I mean, I'd put up before I'd complain. <u>I think it's only because of what he's done to me</u> ...
> (emphasis added)

She then described how she was always afraid something would happen at meal times in the gaol when all the prisoners were brought together.

I: Do you think, in one way, that why you're so terrified is because -
W: Because of what's happened.
I: Because of what's happened?
W: Yeah. Because I know that I've taken so many bashings and I haven't stood up for myself. I've become enclosed in some sort of protective shell. You know. I'm not game to speak my mind, to bring your feelings out - it's all been locked in for so long, and I think if I see a fight now, I think straight away, 'Oh, I'm back home, I've got to keep quiet.' And I think I still react the same way, I mean - I'm getting better than what I was - I'm coming out of the shell now, but I still don't say I'd stand up for myself, if a fight did break out.
I: And do you get the same sort of sick feeling?
W: Yes. I get the same sort of feeling .. I mean, 20 years is a long time to erase, you know, within (a few) months, at any rate, I'm trying. It's something you won't forget. You live with it the rest of your life.

I - Interviewer; W - Woman

There are several implications of the fact that battered women who have killed their husbands suffer long term physical and mental harm from the battering. At the very least this should be recognised by the Department of Corrective Services and medical and psychiatric facilities inside the gaol improved.

This emotional devastation should also be put by the defence and considered by the courts on bail applications as a major side effect of battering is depression and passivity. Unless the woman can be reached through counselling or psychiatric help where required, she may be unable to properly instruct her lawyers or advance her cause at her trial.

As mentioned earlier, the emotional and mental harm suffered can form the basis of a defence or plea of guilty to the lesser offence of manslaughter on the basis of diminished responsibility.

Finally, and perhaps most importantly, it is relevant to the sentence the woman receives. In a number of recent cases, including some in this survey, the defence has argued that proper medical and psychiatric facilities are not

available in the prison system, and that the defendant will not receive the medical or psychiatric care he or she needs. (These cases have been discussed in the sentencing section of the chapter on legal issues). The residual effects of battering on the woman's physical and mental health clearly raise this issue. In the case of the woman and her daughters referred to earlier, the defence successfully argued that they should not receive a custodial sentence because they needed counselling and psychiatric help not available in gaol. It seems from our material that this line of argument on sentence would be open in many cases and should be further explored.

CHAPTER IV: WOMEN WHO KILL HUSBANDS

FOOTNOTES

1. See chapter 4 "How Society Keeps Her There" in Terry Davidson, Conjugal Crime New York Hawthorn Books 1978.

2. See in particular Dobash and Dobash, "Wives: The "Appropri Victims of Marital Violence" in Victimology: An Internatio Journal 1977 Vol. 2. Nos. 3-4.
Judith Allen also argues in her chapter "The Invention of the Pathological Family : Aspects of Family Violence and its Treatment" in Carol O'Donnell and Jan Cranney (eds), Family Violence in Australia Longman Cheshire Sydney 1982 that husbands beat their wives in the period studied by her, 1880-1940, in response to perceived challenges to the authority. She suggests that the killing of women who hav left the relationship by their husbands was the ultimate expression of this possession and control. Rod and Macken also found a significant percentage of men killed their estranged wives. Rod, T., Murder in the Family in New South Wales 1958-1967 unpublished MA Hons thesis in Anthropology at Macquarie University 1970 pp 74, 87 and Mackenzie, Murder and the Social Process in New South Wales 1933-1957, unpublished PhD thesis Sydney University 1961.

3. Dobash and Dobash, note 2 above, page 434.

4. Dobash and Dobash, note 2 above, page 435.

5. Dobash and Dobash, note 2 above, pages 438-439.

6. See our paper, "Women Homicide Offenders and Police Interrogation" given at the Criminal Injustice System Conference at Sydney University 28 February and 1 March 1981 and to be published by the Australian Legal Workers Group and Legal Service Bulletin with the proceedings of the conference.

7. Rod, note 2 above, pp 74, 87.

8. Department of the Attorney General and of Justice New Sou Wales Bureau of Crime Statistics and Research Domestic Assaults 1975 at p6.

9. Gelles R., The Violet Home: A Study of Physical Aggression Between Husbands and Wives Vol. 13 Sage Library of Social Research Sage Publications Beverly Hills 1972 at p 94.

10. Gelles, note 9 above, in his lucid discussion pp93-94.

11. See, for example, Jocelynne A. Scutt, "Domestic Violence: The Police Response" paper given at the Conference of Women Advisors on Domestic Violence Sydney Nov. 8 and 9, 1979; and the Report of the New South Wales Task Force on Domestic Violence July 1981 at pp78-79.

12. Rod, note 2 above, at p113 and Mackenzie, note 2 above, at p205.

13. See Gelles, note 9 above, at p73. He found many examples of men using violence on inanimate objects to intimidate their wives.

14. See, for example, Gelles, note 9 above, at pp 82-85.

15. Note 9 above.

16. Germaine Greer, The Female Eunuch Paladin London 1971 discusses the power of these words at pp 263 et seq. Gelles, note 9 above, discusses at p160 the way name calling can lead to physical violence.

17. See Susan Brownmiller, Against Our Will New York Simon and Schuster 1975.

18. See, for example, Jean Renvoise, The Web of Violence: A Study of Family Violence Penguin Books 1978 at pp66-76; and Erin Pizzey, Scream Quietly or the Neighbours Will Hear Penguin Books 1974 at pp47-70.

19. Gelles, note 9 above, suggests at p146 that the husband's violence may be due to resentment and worry about the birth of the child. In the case we mention in the text, where the woman was kicked in the stomach when pregnant, she said that her husband had felt trapped because they "had" to get married i.e. married because she was pregnant.

20. See, for example, Jean Renvoise, note 18 above, at pp74-76 for a summary of recent research.

21. Elaine Hilberman and Kit Munson, "Sixty Battered Women" in Victimology: An International Journal Vol 2 1977-78 Nos 3-4 pp460-470.

22. Note 21 above, p464 and 465.

23. Note 21 above.

CHAPTER V : WOMEN WHO KILL NON-FAMILY MEMBERS

Introduction

We now come to the discussion of the cases of those women in our study who attacked or killed victims who were not members of their own family. As we explained earlier, we have found a broad division of the cases according to whether the accused and victim were members of the same family unit to be a useful one. It is not without misgivings, however, that we have adopted this approach.

Recent publicity and activity surrounding the cases of battered women who have killed their husbands, and daughters and sons who have killed brutal fathers, has aroused some sympathy and understanding in the community for those who kill members of their own family. Although, as we have argued elsewhere[1], the history of domestic violence and conflict which lies behind these killings is often not adequately presented in court, the activities of the women's movement especially in relation to establishing women's refuges, campaigns by action groups around particular cases and the stance of feminist lawyers have all affected the legal processing and public presentation of these cases. The public image of these women has shifted from being one of killer to one in which the emphasis is increasingly on them as victims of the very man who is killed. Indeed, headline epithets like 'monster', 'bully', 'Nazi', 'torturer' are reserved for the victim of these cases rather than the accused.

Once the background to a homicide is clearly publicly focussed on the history of a relationship between two people, the actions of the killer become more understandable and consequently are perceived as less threatening to those outside the immediate situation. Thus, a person who is described as killing as a result of on-going family conflict is depicted as less of a threat to the community at large than someone who kills someone whom they have only known briefly or someone they have never met before. Such perceptions, of course, depend on the presentation of crime as being a series of disconnected individual acts rather than as an aspect of institutional life and the distribution of power and resources

in our society. Once violent crime is analysed collectively in a broader framework, people might well come to see that they have more to fear from family life than they do from life in the streets.

By comparison with the cases of those who attack their own husbands and fathers, the cases of women who attack those who ar not members of their own family have generally been treated unsympathetically both in the courts and the public arena. In the media, the young women who are accused in these cases have usually been presented as cold, premeditated killers, even representatives of a new and threatening upsurge of female violei Aggression in women is generally regarded with social disapprov-

The young woman who kills commits the added crime of behaving in a way that is regarded as shockingly unnatural to her sex. The more her youth and demure and attractive demeanour are described emphasised, the more 'unnatural' she becomes, and the more she be the repository of some hidden evil. What could be more threaten: to conventional notions of femininity than an innocent young woma suddenly killing a person whom she has never even met before, especially when the homicide itself, as is usually the case, is seen in isolation and not in the context of the rest of her life.

We have some fear that a classification of these cases of the type we have adopted, while useful and convenient, will tend t once again over-emphasise the differences between the two main groups. The danger of such research classifications is that if they are treated superficially, they can provide an excuse for separate policies and even harsher treatment of those who do not kill family members. That is certainly not our intention. Our own opinion is that the link between the institution of the famil and conflict within it, and homicide is much closer and more complicated than any simple division of "family" and "non-family" murders suggests.

It has not been our aim, nor would it be possible, to attempt a causative analysis of these cases anymore than we have attempted to do that elsewhere. However, contrary to the approach of sections of the judiciary and media when faced with these same cases, we start from the assumption that there is no such thing as inexplicable behaviour, and that behaviour, however apparently odd, is the product of human experience rather than inherently defective moral qualities. As we studied these cases, we came to see that each woman had her own story which, if only known and understood, would shed light on what might seem at first glance inexplicable. In some ways, this might best be conveyed if each case was presented individually. We could have mapped out, at least in as much detail as our information allowed, the experiences of each woman within the institutions of the family, school, work, the child welfare system and so on. We could have then described how social isolation, stress and tension built up in the life of each woman towards the time of the homicidal attack. Such an approach, however, might not protect the anonymity of the women who consented to be part of this study.

To protect their anonymity, we will develop several themes and issues which run through some if not all of the cases. While we woul never contend that an awareness of these issues and their effect on these particular women provides a complete explanation of any of these homicides we do maintain that any consideration of these cases, whether official or unofficial which excludes any examination of such issues, especially if it fails to recognize the link between individual behaviour and social institutions, is grossly deficient. The issues which we will discuss in relation to these women - the dynamics of family life, poverty, rape, and to a lesser extent institutionalisation and homosexuality - also touch the lives of many other women of their age, time and class. The crucial part an appreciation of these issues would seem to play in understanding the lives and the actions of these women is in pointing to the similarities and links between homicide offenders and other women rather than to the impression of specialness and separateness which is encouraged by the media and court treatment of their cases.

We have eliminated two of the thirteen cases from our discussior the background to the cases where women were convicted of killi a non-family member. One of these women denied to us that she h committed the act which caused the death of the victim at all. main evidence against this woman was a signed record of an inter which she claimed at the time of her trial and to us that she ha signed under pressure from the police and her husband, at a mome of extreme exhaustion and in ignorance of the real implications of her doing so. The only other evidence was alleged oral admis made substantially prior to the event (which seemed to us of lit weight) and some circumstantial evidence. This woman served thi years of a life sentence on conviction for this murder. In talk to her, and in reading the transcript and solicitor's file, we both felt that there was at least a reasonable doubt as to whet she committed the offence. For that reason, we decided to elimir the case from any examination of the background to the offence.

Another woman was accused of being part of a robbery during which a security guard was killed. At the time of the assault on the guard, she was sitting outside in the car. Not only did she her not use a weapon, she was not present at the immediate scene of t killing. Nor was she part of any agreed plan to kill the man as there was evidence in the Crown case that they had chosen that ti to commit the robbery believing no security guard would be presen We have decided therefore also to omit any discussion of her case from this analysis of the background to the homicides.

One significant theme which we have identified in these cases is that these women would appear to share a background of emotional deprivation or at least have experienced feelings of extreme loneliness and isolation in their childhood and adolescence. Thes experiences occurred while they are living within their own famili within child welfare or psychiatric institutions, or while they we living independently. Set against this background of deprivation which, in some cases, could only be described as extreme humiliati degradation and even cruelty, we have, nearer the time of the homicide, a period of crisis and a building-up of stress, in some cases accompanied by what could be termed one or more 'trigger'eve

In at least two cases, the events immediately preceding the homicide mirrored almost exactly a particular traumatic episode in the girl's past. In one case, a girl who had been raped as a child of six was raped again as a young woman. She killed the man who raped her on the second occasion the next time she saw him. In the other case, the woman was a lesbian at a time when there was very little acceptance of homosexuality within the community. She had seen one close lesbian relationship destroyed and her personal life publicly exposed in the child welfare courts as a seventeen year old girl. A couple of years later, different authority figures, this time the head sisters at the hospital where she was working as a nurse again intervened to destroy a relationship. She became extremely depressed. Feeling victimised and completely alone, she decided, not without justification, that the sexual organisation of the world was her enemy and killed a random man in retaliation.

The number of cases in this study is small. We are not, however, the first writers in this field to suggest such a pattern. Anthony Storr, in an introduction to a book of readings on family violence,[2] writes :

> A great deal of human violence seems to be the worm turning; the person who has felt comparatively weak and helpless suddenly reversing this role.
>
> In a recently published book, The Deadly Innocents, the psychoanalyst, Muriel Gardiner, tells the story of Tom. Tom was a rejected child whose mother banned him from mixing with the rest of the family. He was kept in a shed at the end of the garden, and whipped if he made any attempt to get in touch with his ten siblings. When the facts of his family life came before the juvenile court, he was taken away from home and put in the care of an uncle and aunt. Unfortunately, the uncle turned out to be a violent alcoholic who resented Tom, and who treated him almost as cruelly as had his mother. Tom managed to find a stray kitten with a broken leg which he tended with great care and gentleness. The kitten was the first creature with whom he developed ties of affection. One afternoon, his uncle came home early from work, and, in a fit of rage, strangled the kitten in front of Tom. When Tom attempted to bury it, the uncle trod the little cross he had made into the ground, destroying the grave. At this point Tom seized one of his uncle's guns and shot his uncle, his aunt and another woman who was living in the house.

> In this case, as in many others, the ultimate act of violence occurs against a background of repeated humiliation and cruelty. The trigger may or may not be something quite trivial.

Storr goes on to argue that "many violent acts are committed by persons who have been made to feel humiliated, ineffective and of no account" and that "resentment which finally issues in violence often goes back a long way, so that the person who is attacked represents not only himself but a whole series of other persons who have caused humiliation".

While the theme of emotional deprivation is undoubtedly a powerful one in these cases, it is equally important that this in turn is seen in the context of the limited economic resources and power which these women had at their disposal as working class children and young adults. These economic circumstances - circumstances which, in some cases, amounted to outright poverty circumscribed both their own lives and the lives of their parents determining their choice of lifestyle and work and the assistance and support which was available to them when it came to coping wi conflicts, tension and fear.

The Economic Background

As we discussed in Chapter II, the briefest possible description the women who attacked or killed non-family members would be th they tended to be young, poor, and living in the Sydney metropoli area at the time of the offence.

It would be difficult to describe exactly the economic background of these young women as in some cases our information is limited. It is safe to say, however, that all but three of these women cam from working class backgrounds. It appears that each of the eleve experiencedat least a period of poverty in their childhood or adolescence.

Three of the women were brought up by single mothers. Single women with children in this society receive pitifully little economic and social support. The young women in this study were born in the late 1950s and early 1960s when conditions for and the negative connotations surrounding single motherhood were even more severe than they are today. It is not surprising that two of these young women spent part of their childhood with foster parents and in child welfare institutions. The third woman remembered moving from house to house in the inner city during her childhood. Frequently, she, her mother and her mentally-retarded sister went hungry.

Where the economic status of a woman is dependent on that of her husband, a breakdown in that relationship can lead to a gross shift in the economic conditions in which she and her children live. Five of the mothers of these women separated from the husbands during their childhood or adolescence. This included the three women whose backgrounds could probably have been described as middle class or lower middle class. In each case, a period of economic crisis followed. One woman described her mother in her adolescence as movin from room to room in the inner city, having little time for or intere in her. Another two women were aware that their mothers had been forced to work long, hard hours struggling to provide for their children. Another woman recognized that it was partly her mother's anxiety at having, for the first time in twenty years, to earn her own living that led to her severe psychological breakdown which, in turn, left her and her sister for a period with neither mother or father.

All of these young women left school when they were fifteen or younge Only five of them obtained their School Certificate (fourth form standard) and three of these did so when they were in child welfare institutions. One of these would almost certainly have continued further if it had not been for the fact that expectations and encouragement of education and achievement in such institutions are so minimal. Lack of education and opportunity in turn restricted even further the limited possibilities open to them as women.

Nine of these eleven women could be said to have been living in poverty at the time of the offence. None of them were employed at the time. Six were unemployed and one was dependent on an unemployed man. Another two were receiving Sickness Benefits an a Supporting Mother's Benefit respectively. Of the other two women, one was still at school and dependent on a working mother and father. The other was dependent on a working husband.

Those of the women who had worked at any time had been employed in traditionally female, poorly paid jobs, usually as process workers or shop assistants. (The one woman who was an exception to this pattern was a trainee psychiatric nurse.) Two of them h escaped what they saw as the dreary tedium of factory work into more exciting world of strippers and prostitution, in the proces acquiring a standard of living which would otherwise have been denied them. One of them, Sue, told us that she had also felt th the financial rewards and glamour would increase her status in the eyes of her father who regarded her as a 'dumb blonde'. She described her early work experience as follows :

> The condition of my exemption (from school) when I was only thirteen was that I work at my parents' shop. They had a fish and chip shop at the time. I worked with them for a while and in the end I didn't like it so I tried to get other jobs. I had heaps of factory jobs - it just wasn't me - so then I started modelling, and I liked that, but you had to wait for the jobs. And from there I met some strippers and they talked me into doing stripping.

While work in clubs and massage parlours provided more money than they could have earned in a factory, such work is insecure and wrought with sexual intimidation and exploitation. Sue went on to speak of the atmosphere in which she worked at fourteen :

> .... in the end it was just getting too heavy. I couldn't get out of it. Once I was in it, that was it. One of the guys who was running the club had a "batch" down the back of the club. Me and Viv were staying in a room on top of the club - all these Samoans kept hassling us. I said to Viv - I'm going to bed and we went and locked the door and they all came chasing us, knocking the door down. There was a boxer by the name of Tony, one of New Zealand's best boxers, and they were trying to knock the door down.

> We were so stoned, we were really tired. They were trying to get in the window and when I woke up there was this big boong in my bed. I didn't know where Viv was and he held me down and was biting me like an animal. I just screamed the place down. He was a maniac. He was standing over all the girls in the club, making them turn it up to him - I wouldn't - or giving them the sack. So I just split from the club. This other guy who runs a club said come and work for me. So he and his wife came and packed our bags and I went and lived with them. I bumped into the other big boss and he was really wild about us leaving and he said "Why?" and I said, "Tony was beating his customers up with iron bars and out on the streets and standing over the girls and making them sleep with him or he would give them the sack." He asked me to come back and I was having a few hassles at the time and he offered to pay my fare back to Christchurch. So I went. He tricked me. I arrived back and he said "Oh, we need a girl in Dunedin. We have just opened a club up and we want you to open it up." I said "I don't want to go." He said, "You owe us the fare to Auckland and back." At that time I didn't have any money. I had blown it all on dope, and I owed a few people. So I said "Okay". It was a matter of having to or he really would have got very heavy.

Sue and her friend, Frances, were still adolescents when they killed a woman in the course of a robbery. They were the only two women in the study who directly attributed their actions to their desperate economic circumstances.

> We knew we had to do it because we were staying in a hotel at the time and I think we were about three days behind in paying; we had to pay nightly and we were being hassled about that. We had no money at all and we just knew we had to do something.
>
> We have got nothing. What are we going to do sort of thing, especially over here. We couldn't sort of, there was no one we could go to. There was only us here and that is when it happened.

They had left their jobs as strippers and become involved in their own independent break and enters, an enterprise, which unusual (at least according to popular stereotypes) for girls of their age, was at least initially an exhilerating experience in itself.

> The excitement of doing it you know. Beating the police. Just getting away with it. Because when we got the money we wouldn't bank it or anything. We wouldn't make use of it, we just used to waste it.

Soon wanted by the police in New Zealand and fearing incarcerati in girls' homes, they fled to Australia. A couple of months lat they found themselves destitute in a faster, more ruthless Sydne After a brief period in the adult womens' gaol (they put up thei ages) on charges of prostitution, they were released penniless. Once again, men associated with prostitution rackets were standing over them for money. The actual decision to do the robbery was, however, their own. Later, Frances wondered if she would have even thought of armed robbery if she had not been in prison.

> I don't know, like when I first went out there for two weeks and I got pinched for stealing. I was talking to a lot of people there and they sort of were saying to me, I'm in for murder and doing this and that and I don't know if that sort of got into my head but I sort of felt well let's do an armed robbery you know, and so it happened....and at times I think maybe it was listening to them and thinking to myself, well I could have got away with that if I had done it this way.

Only in the cases of Sue and Frances could the link between the women's economic circumstances and the killing or attack itself be said to be a direct one. For the rest of the women, their restricted economic opportunities and social resources simply formed a fundamental part of the social fabric in which they lived.

Families

There is a tendency in conventional and popular criminology to trace the cause of behaviour that is labelled "delinquent" or "criminal" back to so-called "inadequate parenting" or to the "broken home". Thus, such explanations of crime focus on the individual pathology not only of the person her or himself, but also on her or his parents. The social blame for the child's behaviour is thus laid to rest with inadequate parenting which is responsible for producing a dysfunctional family.

In this report, we have already noted that the parents of five of these eleven women separated during their childhood and adolescence, while a further three were taken care of by single mothers in their early childhood. The researcher obviously picks out of all available data that which seems significant, and it might appear that by drawing attention to this fact, we ourselves lean towards a 'broken home' explanation of these cases. At least as far as the most superficial statement of this explanation is concerned, this is not the case.

The chief weakness, as we see it, with the 'broken home' or 'inadequate parenting' approach is that it treats each family as an isolated unit. It is as if individual families develop or inherit a sickness which is passed on to its individual members. However, frequently such 'illness' might be discovered, the analysis never seems to extend further to any critical examination of the institution of the family itself or its place and role in society. The link between the individual and the particular family is made. Never, however, are we directed to ask ourselves how the behaviour of the individual person in the context of a particular family background might reflect the tensions and conflicts which are characteristic of the family in a modern capitalist society.

The weakness of the so-called 'broken home' explanation is <u>not</u> that it focuses on the individual in relation to his or her particular family. Nothing can detract from the reality of the pain which a woman whose husband leaves her may feel; the loneliness of the child who believes she is deserted by her parents; the anxiety and anguish of the child who tries to separate parents locked in a violent brawl. The real problem with the theory is that it fails to establish the link between the experience of the individual and the conflicts and tensions which characterise the family, one of the key institutions of our society, and in turn, the relationship of that institution with other major institutions of our society - the economic system, the school, psychiatry, the criminal justice and child welfare system and so on.

Most exponents of the 'inadequate parenting' view of crime rely on various assumptions which may or may not be articulated These include first and foremost the assumption that the heterosexual nuclear family is the norm and the only sound arrangement, and that any alternative comes only as a result of 'break' or the failure of individual people to match up to the norm. They usually assume that the disintegration of any particular nuclear family is due to the personal inadequacies of the individual parties rather than to choice of a different lifestyle or to social pressures and events which are beyond the control of these individual parents. Consequently, it is assume that any deleterious effects of the 'break' or sole parenthood flow from the inherent inadequacies of the single parents - rath than from the fact that our welfare, child care and housing structures are all biased towards two parent families.

When we look behind the ideology of the family in modern capitalist society, we find that reality is very different. In our society, the expectations and the pressues imposed on the family, especially the mother, are enormous. The mother carries major responsibility for caring and nurturance of her husband (if she has one) and children - that is but part of her role in the reproduction and daily production of labour. While, on the one hand, relationships within the family are idealised in the ideologies of love and caring, the distribution of power and duties at the core of family life provide a continual source of tension - tensions which commonly erupt in open confl and violence. We have already argued in an earlier chapter tha the lives of the women who killed their husbands are unusual, not because of the violence that pervaded their relationships but bec the eventual outcome was the death of the violent husband. But tl violence which so commonly occurs between family members is merel a physical expression of the simmering tensions and subterranean conflicts which characterise daily family life. The messages whic signify these conflicts and tensions may be less obvious than physical blows but may similarly lead to depression, frustration, fear and anxiety. Often there is enormous pressure on individual family members to repress their own anger and emotional needs and to continue to behave as if what is happening is not what is reall happening at all.

Such is the emotional stake of individual members of the family in its collective existence, that separation when it occurs can be emotionally shattering. Women who find themselves alone may not only face, like men, the task of reorganising their sexual, economic and social lives, but they will usually be left as well with the job of continuing to sustain the lives of their children.

Parents in our society, especially single parents, most of whom are women, are expected to provide for the care of their children with very little external community support unless, of course, the state in the form of the child welfare department, decides they are not fit or able to do so. The parents may abdicate responsibilit either temporarily or permanently - what happens to the child then will depend on the availability of alternative care (e.g. from relatives, in a boarding school). Obviously, more resources are available to wealthy parents. If he is rejected, abandoned or his parents cannot handle looking after him or her any longer, a working class child may end up looking after his or her self independently (there are many homeless children on the streets of our cities) or may once again end up in the hands of the child welfare department charged with being 'neglected', 'exposed to moral danger', or 'uncontrollable'. Even where this step is publicly justified in the name of 'treatment' or 'alternative care', the child herself may well experience such a step as 'punishment' for sins which she senses she or her parents must have committed.

Undoubtedly, there is a strong link between the family life of the women in this study who killed non-family members and the commission of that crime. What we argue, however, is that it is not a matter of blaming the parents who 'failed' in their role, or of a 'broken home' inevitably leading to criminal behaviour. It may be that any deleterious consequences that flow from single parenting are the result of unreal expectations of single parents, particularly mothers, and a lack of social and economic support, rather than the personal failure of that particular family group.

In one case in this group, for example, a woman who, when still a teenager, graduated from property offences to her first armed robbery, which tragically ended in a death, had been left alone at the age of 13 with her slightly older sister to fend for herself after her father left her mother and her mother suffered a nervous breakdown. After a period in a mental hospital, her mother took her younger sister (there were three daughters in th family) to live with her and her new boyfriend but it seems coul not cope with the additional responsibility of caring for the elder two adolescent daughters. As far as these two daughters w concerned,their mother disappeared for two years. They also had contact with their father during this period.

For two years, the woman who was later to commit the armed robbe: then 13 years old, and her 16 year old sister looked after themselves. Initially, they worked at factory jobs but became gradually more and more involved with a world of drugs, "break and enters" and stripping. Both began using heroin. By the time their mother had recovered her balance, two years later, it was too late to resume family life with her and her new husband who was, in any event, reluctant to accept the two elder girls.

The traditional interpretation of these events in that young woma adolescence would be that she had been abandoned by her mother who was to blame for the subsequent dislocation of her life. Undoubtedly, the girl's separation from her mother and disturbed home life were significant for her, but, to blame the mother entirely, without examining the pressures on her too is far too punitive and simplistic. There was, for example, no social expectation that the father should assume some responsibility for his children's upbringing, and yet the mother, Joan, was complete ill-equipped to deal with the entire responsibility for child car his departure had consigned to her.

For the 21 years of her marriage, before the separation, she had not worked and had, no doubt, no self-image other than that of wi to her husband. Her husband's departure was not only an emotiona blow. At one blow, her economic security and entire self-image w cut out from under her as well. It is no great wonder that under the strain she broke, but this has not prevented her from carryin ever since a burden of guilt about her abandonment of her daughte during their adolescence, a guilt which, apparently,the young gir

father, let alone her mother's de facto husband, did not share. According to the woman in our study, since her arrest on a murder charge at 17, her father has not visited her, or ever written to her.

> When I got busted he said to my mother to give me his regards and keep his name out of the paper. I haven't heard from him since.

In the bulk of this chapter which follows, we discuss some of the experiences that would seem to have played a part in placing these young women in the situations that gave rise to the homicide. Where we discuss family difficulties, however, we do so with the caution that it is not a matter of ascribing blame to one or more members of a 'dysfunctional' family. The family situation must be seen in the context of the social and economic organisation of society as a whole, in particular the opportunities for and expectations placed upon mothers and daughters and the lack of other community support for those not in an economically viable family unit.

Family Conflict

At least four of these young women grew up in families when they frequently witnessed violent conflicts between their mothe and father (in two cases, stepfather). In at least one case, the girl was herself also beaten for attempting to intervene in these fights. We have already seen in the chapter on women who kill husbands how the effects of physical violence on the victim may include devestating fear and eventually permanent anxiety. The effects of such conflicts on the child who silently watches or perhaps even feels a responsibility to attempt to stop the conflict may be equally as destructive.

Margaret, who is one of only three women in this study who has been charged with more than one offence involving violence and whose mind was described as 'tortured' by a psychiatrist, spoke of her childhood in these terms.

> ... her and Dad used to fight a lot when I was a kid, they used to throw knives at each other and I used to get bashed around as a kid, and plates and cups and everything used to get thrown 'cause Dad was an alcoholic, and I'd try to break 'em up and I'd get hit for trying to break them up you know. I'd get into trouble 'cause I used to go up to the police. One night the police even had to come down and break them up and put Dad in the clink for the night in the Psych Centre.

Whatever the horror and fear created in Margaret by her parents' violence when they split up she was still extremely upset. As before, Margaret longed for her parents to resolve their conflicts.

> I was just really upset and tried to commit suicide all the time because me parents had split up and I didn't want em to split up. Dad did his best to give up the drinking and Mum kept on sleeping with the guys next door and going out with different men, and I just got really upset and I had to look after the family and got really upset looking after the family, trying to bring them up.

With her father gone, Margaret's mother had to work long hours to provide for her family. Margaret meanwhile was expected to help carry the domestic burden.

> ....Mum used to work from seven o'clock in the morning until 5 o'clock at night. She used to come home at 5 o'clock and I'd have to have tea cooked or else I'd get into trouble and then they'd go out to play so I had all the housework to do for Mum. I used to bath the baby and get him ready for bed and all that.

At the age of fifteen, Margaret, who already had coped with a high degree of stress in her life, was under a lot of pressure. She was already at this stage "taking pills" - probably barbituates. She finally tried to commit suicide - the first of many attempts to kill herself - and was hospitalised for a fairly lengthy period. How much of the distress she had been feeling up to this point she revealed openly it is not possible to say. Her mother obviously behaved as if her daughter could cope (Perhaps she felt she had little choice but to do so).

When a mother leaves her children or is physically or psychologically unable to continue caring for her children, it is the daughters of a family, especially the oldest daughter, who are expected to share or carry the burden. An adolescent girl who herself is experiencing the effects of a family crisis may well be expected to suppress her own feelings while she copes with the housework and demands of her younger brothers and sisters. Such expectation are consistent with and might even be considered good training for her future female role. At least three of the women whose cases we are discussing were placed in the position of carrying heavy responsibility for their mothers or younger sisters, during periods when they themselves were under great emotional pressure. Each of these young women attempted suicide and suffered a psychological "breakdown" before they reached twenty-one. Margaret's breakdown was the first of a series of psychological crises that have marked her life since that period. For the most part, these crises have been characterised by persistent attempts at self destruction, coupled with a number of violet attacks on others, in all cases authority figures.

In these attacks on others Margaret has felt she wanted to kill and was being directed by voices (sometimes those of her parents) but she has actually caused only slight physical harm to the people attacked.

Ann's parents separated when she was four. Some years later her mother remarried. Again, she describes her mother and stepfather as drinking heavily. Arguments occurred which on occasions ended in her mother being beaten. In this case, Ann saw her mother as the provocative one.

> Mostly when he drank he would just go to sleep, he'd just get drowned and he'd go to sleep. But my mother - not my mother - ....like most of the fights happened over alcohol...they would both be drunk but he would be trying to sleep his off, and she would try to nag and aggravate, so he'd just end up gett ing up and beating her, or having a shot or something. And then it would be on. Mad household.

There were some occasions when Ann and her mother would leave after these fights. On other occasions, her mother would abandon the plans at the last minute.

> And when my mother gets depressed she turns to drink.. Like while she's under the influence of alcohol her mind's going playing, you know, he's having affairs, and this is happening and she's being badly treated and she's just build it up and build it up until she's got this terrible conviction against him - and she'll just say, come one, we're leaving, you know. So now I'll be all for leaving him because I know that once I'm away from my stepfather I'll have it a lot easier.. so I would pack everything. I would be ready to go. Then I'd be all ready to go and then my mother would turn on me. Do you think money grows on trees? Where do you think we're going to live? You know, all out of the blue, and I'd say "Wait a minute, this was your idea, you started this," and I'd get so sulky, because I was copping the blame. So I'd forget all about it, I wouldn't talk to her for a while, then 5 minutes later, she wants to leave again. Oh...I used to just walk out. I just used to say, "I don't want to know about it". Walk off and leave.

I: What, you'd go off by yourself?

A: Yeah, just leave her. Because you know, one minute she is leaving, and the next minute it's my fault, you know. Then he's doing something wrong and then it's my fault. Oh ... it was just unbelievable.

I = Interviewer A = Ann

Once again, it must be emphasised that what we have here is a young woman's subjective recall of experience in her early adolescence. It would appear that her mother was highly ambivalent about her relationship with her husband but ultimately decided to stay with him. It may be that she redirected some of the confusion and hostility which she felt about the relationship towards her young daughter, Ann, who was certainly not able at that time to understand her mother's ambivalence or perhaps fears of yet another permanent separation. The result was that Ann felt herself, not her mother or stepfather, to be the victim of the situation.

She describes how she felt towards her mother who worked hard as a barmaid and according to Ann, often stayed out late drinking afterwards.

A: They wouldn't get home until late. Mostly...my stepfather would come home before my mother got there you know. But she would swear black and blue in the morning that she was home by half past 8 which was about 10, 11, 1 o'clock in the morning.

I: Was that most nights?

A: Yeah. Well see, my mother and I...there wasn't much kind of conversation between us...she was always gone before I got up for school. She'd come in and wake me for school and she'd be off. So I'd have to get myself off to go to school. And half the time, I wouldn't even go. I couldn't be bothered. She never took the weekends off. So for about three years I was lucky to see her. We were lucky if we even crossed each other's paths. And for a long time, for years, I really resented her... I hated her, she was really everthing I despised. She was a drunk. She didn't care about me. You know all she cared about was herself and her drink....I would come home from school, and all the other kids would be called in at 5 o'clock to change their uniforms and have their tea. But I would walk into an empty house and ..... I had this fetish on weet-bix in a cup. Like...that would be my tea. Sit there and eat weet-bix out of a cup...other kids would envy me because I didn't have parents nagging at me to do this and do that. But in actual fact, I envied them. I would outwardly say 'yeah I've got it good'. But I took my resentment out on my mother. You know I was always having goes at her, walking out and leaving her...to more or less show her...to show her I hated her. I hated what she was doing and why she wasn't there. I - used to always you know say ' why can't I live normally, why can't I come home from school and you be here for once.' 'She never was. I'll be here, I'll be here'. She never was. It was just a drag.

In retrospect and in later years, Ann has developed a more sympathetic view of her mother while still asserting that earlier her resentment had been intense.

> She tried to buy me with material worth. But I was wrong because she thought she was doing the best she could, she was working to give me everything. You see, we had a pretty big family...she had to send them all to school, and clothe them all. They more or less had hand me downs. And they didn't have much. Didn't have any toys, didn't go out much or nothing like that. So I being the baby, my stepfather and mother working - they could afford to give me everything. So..maybe..now I look at it, maybe in her eyes...she was doing what was right. She was more or less making up for the others. But I hated her so much.

It is clear from her own description of her adolescence that Ann felt confused and lonely. She acted on this hostility by walking out of home but it is possible her withdrawal was interpreted differently by those around her. That she was distressed at least at times was indicated by two attempts at suicide. Once she cut her wrists. On the other occasion she took a large number of pills. A school social workerdescribed her as 'highly strung'. It seems that she may have shown signs of emotional distress at an even earlier age. From the age of five, shortly after her parents separated, Ann had been a nosebleeder. This nosebleeding occurred when ever she became tense or angry and apparently was put down to 'nerves'. In addition, she was anaemic, suffering often from severe bouts of tonselitis.

During her holidays, Ann was expected to babysit for her older sister, who like herself was often ill. It would seem that Ann was ambivalent towards these babysitting visits. On the one hand, she claimed she found it a break from her home. On the other hand, she perhaps saw them as confirmation that her mother did not want her.

It was during one of these babysitting "holidays" that Ann committed the homicide for which she was convicted and given a life sentence. The lead up to the homicide was as follows. Several days after Ann had arrived at her sister's her mother visited her. At court later she said her daughter Ann had looked (physically) "terrible", possibly because she had forgotte

to take her anaemia pills with her, It seems Ann wanted to return with her mother. Her mother was uncertain as to what to do but Ann's sister was most unwilling that Ann should leave as she required her services that night. Eventually, it was decided that Ann and Pam, her friend who had accompanied her on the holiday would stay. Ann, who had had very few hours sleep and had also been without her pills for several days, described her condition on that day:

> See I was really angry with her ie. her mother. And I turned to my stepfather and I had asked him to take me back. And he always saw my side of things. He said 'Okay'. Then I told Mum that my stepfather said I could go back. And Mum was saying 'Your sister is sick... rave, rave.' And I said 'Oh all right, I'll stay' And I sulked for the rest of the afternoon..... I got really upset and I spent the whole day, you know cracking up, and going off to my mother because she wouldn't take me back.

That night, Ann and Pam killed one of the children while they were babysitting. The child belonged to a friend of Ann's older sister. Neither girl remembers the precise thoughts or discussion which led up to the killing. It would seem very unlikely that there had been any thought of it before that night.

Their act, at the trial and in the media, was presented as the inexplicable act of two apparently innocent young girls. They were both given life sentences. It may be that all concerned in the disposition of the case preferred to present it as inexplicable. The image presented by Ann's family to the court and to the media was certainly of a childhood happier than that Ann herself spoke of in the interviews. Her problems if mentioned at all were seen only as related to physical illness. It may be that the family, confronted by what was referred to as a 'monstrous' act, understandably tried to present their child as being as normal as possible. Ann herself may have wanted to spare her family any further distress and so did not speak of her unhappiness. Perhaps she was simply never given the opportunity to talk. She has said later that she got the feeling at the time that no one was really interested in why she had acted as she did.

Feelings of rejection and loneliness

Several of the other women we interviewed who had killed or attacked non-family members told us of memories of loneliness and feelings of isolation in their adolescence such as those described by Ann. In other cases there were similar accounts in reports prepared for the woman's trial. This in itself is not unusual, many adolescents experience such feelings at some time. One is struck however by the intensity of these feelings in some of these cases. As we have already shown, these feelings were often experienced in situations marked by a high degree of stress and crisis.

Several of these women, (Ann, for example) felt isolated from other girls of their own age. Lacking company, they started going out to pubs and discos, mainly associating with older people while they were still in their early adolescence. In this sense, like the young women who had to take responsibility for their younger brothers and sisters, they were projected into a world in which they were expected to act as young adults rather than as a child. They assumed an early sophistication which to some extent may have been a mask for the loneliness and anxiety they really felt.

The feelings of loneliness which were articulated in the interviews were usually associated with adolescence rather than earlier childhood years. The stories told by several of these women would suggest that they experienced intense loss and probably feelings of rejection much earlier in their lives as well.

When one looks at the family background of these women, one is struck by the fact that in many cases, they were separated temporarily from one or both of their parents during their childhood. The significance of such periods of separation can of course be exaggerated. The effect of separation from one or both parents at an early age will obviously depend on the individual child and the capacity of others around to make a child feel secure despite the change. The poverty which confronts working class single parents often makes it difficult for them to provide housing and food let alone

continual care for their children. Single parents are unlikely to be able to afford temporary alternative care for their children to give themselves a breathing space while retaining some measure of control over the lives and destiny of their children. Too often in a poor home when the parents or single parent are unable even for some temporary reason to provide child care acceptable to middle class values the children are permanently removed by the child welfare department and made state wards.

Peter Marris in his book Loss and Change after completing a series of studies in different settings, has discussed the effect of sudden loss on the adult. He does not include the effect on the child of loss but there is little reason to conclude the effect is necessarily less intense, or less difficult to cope with. He notes how women whose husbands die suddenly or leave unexpectedly feel as if 'the bottom has fallen out of their lives':

> When the dead person has been as it were the keystone of a life, the whole structure of meaning in that life collapses when the keystone falls....The intensity of grief is related to the intensity of involvement, rather than of love.[3]

Marris claims that women experience personal loss more intensely than men because personal relationships are more central to their existence. On this reasoning children to whom personal relationships may be still more crucial, will experience loss yet more intensely. A child is not necessarily able to understand if a loss is permanent or temporary - and may be even less able to understand the withdrawal of a mother who does not leave physically but withdraws into depression as occurred during the childhood of at least two of the women in this group. The adult, and even the adolescent, is more likely to be able to articulate intense feelings of loss than a young child. The young child's pain is also easier to negate by increased control. Persistent crying may be met with distaste, even punishmen rather than affection. Passive co-operation may be rewarded by approval.

In 1954, two New Zealand girls who were involved in a homosexual and intense friendship killed the mother of one of them. One of the psychiatrists who gave evidence at their trial diagnosed that they were sufferring from an unusual mental illness, "folie a deux", a paranoia of the elated type that might not have developed if they had not met and then developed such a close relationship. The psychiatrists traced the seeds of disturbance in each girl to feelings of loss and isolation they had both experienced in their early childhood.[4]

Susan Richmond, one of the girls, was born in the Second World War, the daughter of a leading scientist who was absorbed in wartime activities. Her mother was ill after her birth and also had little energy to devote to her daughter. Susan was in London during the Blitz, aged three, although she was short afterwards removed with her mother to the country. Later they were joined by her father; when Susan was six, he was suddenly sent away to work on the atom bomb. In his absence her mother had another baby, a son. After his birth, her mother again became seriously ill and had to remain in hospital. Susan was left without mother or father. Eventually her father was summonsed home. Even after her mother's recovery and her father's return, Susan showed little affection for the brother whom she felt was responsible for her abandonment. Psychiatrists later interpreted this reaction as sym bolising Susan's sense of desolation, a sense of separateness.

Alison Gregory, the other girl whose mother they killed was five years old when she contracted osteomyelitis. She had operat after operation. Later, at home whe was more often sick than not. She was forbidden by her doctor to join in games or sports with other children. As a child she retreated more and more into a fantasy life which held none of the loneliness or pain of the real world.

In the cases of each of these girls, the sense of separateness and isolation developed out of events which were to a great extend unavoidable. The sense of isolation which they felt might have continued, or eased as they grew older if it had

not been that they developed such an intense friendship and if that friendship had not in turn been threatened with destruction by parental intervention. Susan Richmond's parents had decided to take her with them overseas despite her stenuous objections and Alisons mother had also determined that the relationship should end.

There were episodes similar to those described in this New Zealand case in the background of most of the young women in our cases which may have had an influence on their development. In two cases, for example, the women's mother was hospitalised more than once with "nervous breakdowns" during the girls childhood. One would imagine that such a breakdown would be preceded by periods of withdrawal and anxiety as their mothers experienced more and more difficulty in coping with life, including the daily responsibility for their own children.

In addition, one of these young woman, Pam, had an extremely severe accident when she was only four. She was hospitalized for many months and later had to learn to walk again.

The childhood of another young woman in this group, Barbara, was also unstable. Barbara's mother was only nineteen and working as a stripper when she was born. Barbara was thirteen months old when her mother separated from her father and was looked after by foster parents until she was eight. When she was eight, her mother had her with her for several months after which she put her in a Catholic Boarding School for twelve months. She spent the next holiday period with her daughter and then left her with her own parents while she went overseas. She returned several years later and took her daughter to New Zealand where at the age of only thirteen she gained employment as a hairdresser's assistant. Her mother subsequently returned to Australia, leaving her daughter behind. Barbara's fare back to Australia was paid for by the child welfare department and she was charged with being 'exposed to moral danger'. An order was made for her to be kept in a girls' home for twelve months and for a period she again attended school. After being released she returned to her mother who apparently soon 'threw her out'. At the time of her arrest at fifteen when she charged with stabbing a man who had insulted her she was living independently with friends.

Her mother did not visit her while she was being held in custody before her trial. During Barbara's childhood, her mother married three times. She perhaps also found it difficult to cope with the responsibilities of motherhood which could well in themselves have created difficulties in her relationships with her husband. No doubt she felt ambivalent about the expectations and demands imposed on her by the child she had mothered while still an adolescent herself.

Karen's childhood was also very traumatic and painful. She lived with her mother and brothers and sisters in the bush until at the age of six she was raped, she believes by a male uncle.

> I think it was an uncle or something,... I knew them.. So it was really hard....,Mum found me .. I'd been missing or something. Mum and my auntie had come looking for me. And they found me in a paddock somewhere.. I had a lot of cuts and brusies...I think it was a state of shock more than anything else, because I didn't remember a lot of it...
>
> I used to wake up having nightmares, walking in my sleep... Mum found me one day. I woke up in a clothes basket. With clothes over me. I was curled up in a little ball.

It wasn't long after that, when she was six or seven, that Karen was made a state ward.

> From what I can remember I went really funny .. really funny. I'd never go near a man.
>
> Some time after it, that's when things started to go rotten. I used to run away from home - wouldn't go to school. And do all these break and enters ...

Presumably, Karen was charged with "being neglected" perhaps even "uncontrollable". More will be said later of Karen's childhood which she remembers as being, for the most part, thoroughly miserable. Suffice it to say, that her sudden removal to a state home at that traumatic point in this young girl's life could well have been experienced by her as punishment. Another state ward (the son of a brutal father who subsequently joined with his mother to kill him) has described his feelings on being collected by the "welfare":

> About this time, I can remember a car pulled up outside the house and we children were told to get in. Someone said it was the "welfare". We went to court. I believed then we were going to stay at the Catholic Home for a short while and that the reason we went to court was to get my father sent away for a long time. I know now that we were made state wards. When I first went to the home I thought I would soon be joining my mother again when she was well. I soon realised, however, that I couldn't leave. I kept thinking "what have I done wrong?" I thought I must be punished for "acting up at home".

Karen was denied the comfort she so obviously badly needed and it is hard to imagine the desolation, perhaps also sense of betrayal, she must have felt. Her mother, who certainly later and possibly also by this stage was an alcoholic and obviously found it difficult to cope alone with several small children (two others had already been institutionalised) may have felt guilty about her inability to protect her daughter. Later Karen felt angry that her mother had taken no police action about the rape - perhaps her mother, like many others, did not want to put her daughter through a further ordeal, perhaps she was protecting a male relative.

Karen only saw her mother once between the time she was made a state ward until she returned home briefly after she was released from her statewardship at eighteen. During the same time, she received only two letters from her mother. It is possible that Karen's mother was discouraged by officials from making contact with her daughter. Whatever the reason for the lack of contact there can be little doubt that Karen felt rejected by her mother. The care which the State offered Karen in place of her mother's was loveless and often brutal. The more cheerful moments Karen remembers were those spent as a young runaway on the streets of Kings Cross where at least she shared a certain camaraderie with other runaways, and the kindly concern of some older prostitutes.

Little research has been done on the long term effects of child sexual abuse. One researcher, De Francis (1969) maintains that guilt, shame, and loss of self-esteem on the part of the child are the immediate results of sexual abuse. In Karen's case, those immediate effects were followed by the sudden loss of her mother. The institutional and foster 'care' that

replaced that loss can only have further reinforced the initial loss of self esteem. More will be said of that 'care' later.

Homosexuality

> The pressures on young girls to suppress any hostile or aggressive impulses are greater than those in boys. When young girls do become aggressive, verbally, physically or sexually, punishment and further suppression may follow more quickly than for a boy who takes similar action. Such punishment, may fix the young person in a vicious cycle of hostility, punishment and further lowering of self-esteem.
> From Konopka The Adolescent Girl in Conflict

The conventional young adolescent girl is expected to show a social and sexual interest in boys by the time of her later adolescence. Signs of homesexual behaviour, let alone open identification as a homesexual is bound to lead to disapproval and ostracism from some quarters. Whether a homesexual person's parents accepts or rejects him or her will depend on their own moral code, their own attitude towards sexuality and their ability to incorporate non conventional behaviour into their own world. Some will accept; some will ignore; otherswill attempt to enforce a change; still others, temporarily or permanently will reject their child.

Maureen, was an adolescent homesexual girl in the 1950's. While female homosexuality has never been illegal, evidence of it was sufficient in those days for her parents, police, court, and child welfare authorities to institute immediate proceedings in the juvenile court, allegedly for Maureen's "protection". In fact, child welfare intervention resulted for her in isolation and punishment.

Maureen was first picked up by the police when she ran away from home at the age of ten.

When she was fourteen, she puther arm around a friend, an older woman who was a neighbour. The woman accused her of marking sexual advances, which perhaps in a tentative sort of

way she was, and went to the police. Maureen's mother took her down to the police. They questioned her about her attitude towards her parents (immediately treating her as if she was in some way 'disturbed'). During that period Maureen hated and feared her father. She made the police promise that if she talked to them they would not repeat to her father what she said. After the conversation, (of which we do not know the contents) they called her father down and told him everything she had said. This destroyed what trust she might have had in the police and probably further alienated her from her father as well. It is not clear whether Maureen was charged or whether she was simply given a 'talking to'. This incident, however, certainly had repercussions on the way she was treated in the future.

> Because I had to tell the headmistress why I wasn't at school and I said I was down at the cop station. She immediately thought "Oh my god, I've got a criminal offender here". And when I turned around in the class one day, the kid behind me, she was annoying hell out of me, I turned around and slammed her one across the face - sure enough the headmistress notifies the parents and asks the parents to lay an assault charge on me.
>
> (The girl's school she was attending was a well known public high school which was in those days "selective").

Maureen was placed under a care order and 'sentenced' to the Parramatta Girls Home. A similar action by a boy would certainly have attracted little notice. Even a girl, who had not previously had police contact, might have been no more than reprimanded for 'unladylike' behaviour. In Maureen's case she was given no lee way. In the headmistress's eyes she had already been partially criminalised - according to Maureen, even when the parents of both girls wanted to withdraw the charge, it was at the headmistress's insistence that they proceeded with it. Perhaps the headmistress wanted to isolate a potentially corrupting influence from her other charges. What ever her reasons the result for Maureen was that she was further isolated from her peer group, made to feel 'different' and 'bad'. She was indeed stigmatised - and as a consequence it was of no apparent concern that she was, as a result of her sudden removal from high school,

deprived of the educational opportunities she had shown every sign of taking advantage of.

Maureen herself was initially not unhappy to be going to the "Training School". She was so miserable at home that it came as a welcome relief. She felt intensely isolated by the overprotectiveness of her parents (unlike Ann whose sense of isolation grew from her parents' absence).

> I couldn't turn to them to talk, take my problems to them and I just had to handle everything alone and I couldn't. I felt stifled too because I wasn't allowed to do anything, you know, my judgement wasn't any good. I couldn't go swimming because I would drown. I couldn't go to the movies because I'd be molested by men and raped and murdered. You know very protective, over protective.

She imagined that in the "home" she would be able to live and mix with other girls her own age. Unfortunately, she soon discovered that such was not to be the case. While homosexual relationships are common in girls homes and child welfare institutions, theyare officially disapproved of and selectively punished. Maureen had already been 'officially' labelled as 'homosexual'. She was immediately isolated from the other girls. She spent most of the next two years in isolation cells in the girls' home and then a psychiatric hospital.

The girl who had always feared isolation was made more isolated by her 'treatment' and 'care'. At sixteen Maureen was released. Her parents were now separated and she no longer saw the father whom she had held in 'great fear'. Her mother during this period moved from room-to-room. Maureen felt her mother, who she believed had always made her feel alien and isolated from others,had little time for her, and went to live in a Salvation Army Hostel. Here she met her first girl friend and they moved into a flat. Maureen made the mistake of sharing this good news with a friend whose parents once again contacted the police. What follows must have been a shattering experience, crushing whatever confidence she had gained in her new relationship.

> I wrote to a friend of mine, you know,... lovely girl you know, live together, gave the address. Fucking mother read the letter, notified the cops. Cops turned up one bloody night when I was just hopping into bed, and take us down to the cop station. But this time it was different. As they were driving us down - 'What do you do? Finger each other?' You know, all this fucking heavy.... heavy stuff....they wanted statements from Babs and me. Now I knew better than to make a statement.... I'm trying to tell Babs not to make a statement.... She was conned up and she made a fucking statement. And oh my God. She described everything. The cops read it out in court. Every bit of bloody lovemaking. They read out in fucking court. And that freaked me too, because I thought, Christ, you know, they don't have to read out every fucking little detail. Oh.... even how many fingers sort of bloody thing - oh it was bad.

Maureen's first real love relationship was publicly trampled on and brutally, forcibly brought to end. This devestating experience had a damaging and lasting effect on her.

> And off to Glebe, (Girls Shelter) where we were separated. She was in one dorm and I was in another dorm. She worked one place and I worked another place. Never fucking set eyes on her. That was very unsettling indeed. Very emotionally rattling. And then when we went to court, went at different times. I came back and she didn't come back. I couldn't find out what happened to her, where she'd gone - and oh, it was really bad, you know. That's when I really broke down and just cried and cried and cried. I've never cried like that before...or since..... in my whole bloody life. And I think too, that freaked me out. The shame, the emotion - swelling emotion, crying - this possibly contributed to the murder, because by this time I trusted no one, trusted no one. Lean on no one. Don't show emotion. All these sort of things. And the other thing that happened, instead of being able to break down, instead of being able to cry, instead of being able to talk to anybody.... um... you know ..... 'Got to kill someone' 'Give them back what they gave me'. Yeah.

As Maureen herself recognised, she might well have received less harsh treatment by the state welfare system had she not been so uncompromising in the presentation of herself as a homosexual person. The isolation of her childhood and early adolescence had taught her none of the social games used by others to enable them to survive.

> I didn't go along with the sort of the nice routine. You see, most of the girls that were, kept their mouth shut. Didn't talk about it. And sort of... they were sort of carrying on with another girl, they sort of joked about it and they... sort of talked about boys in front of the screws and that sort of thing. And they sort of played up to the screws and gave the screws what they wanted. And I didn't know what they wanted, because I'd been isolated from human fucking company so much of my life. Even from when I was with my parents. I just wasn't allowed to fucking mix.

After the court case, Babs was released. Maureen (seen as the aggressor) was committed and sent back to Parramatta Girls Home until she was eighteen. She was again charged with being 'exposed to moral danger' - presumably in this case her own homosexual inclinations. At Parramatta, she was put in a "V.D. isolation cell" while she waited results of V.D. tests. The tests were negative but she was held in the cell anyway until she turned eighteen. This time isolation was enforced as if she was not only corrupted but actually diseased.

> It was a cell, and it was sort of like a VD isolation cell in the sense that screws didn't even talk to me, my lunch was just thrown in... on a tray ... that was it. I saw the superintendent twice. The first time I asked him for a book, so I got the bible, the second time, I was sitting there on the bed with blankets around me, and he walks in in his shirtsleeves. It was fucking boiling hot outside. 'Oh, you're cold are you'. but I asked him how long I had to be in, and he said 'You're almost 18 aren't you?' And I said, 'Yeah'. 'I believe you can hold me longer.' He said, "oh, no.' He just ambled out, saying 'You're all right aren't you?'...you just feel you can't even communicate with them, you say 'No.' 'No, I'm fucking no good.' You know 'I want to see the sun, I want a bit of exercise.'

A year later when she was 19, Maureen commenced training to be a psychiatric nurse at a major psychiatric hospital. She fell in love with another woman trainee and they began a passionate affair. Maureen became intensely anxious that the affair might end. Feeling increasingly depressed, she decided to discuss the matter with two older nurses. These two senior staff put pressure on the other girl to break the relationship. She rejected Maureen, saying she now considered their relationshi

to be unnatural and perverted.

Intense anxiety reactions to rejection experienced as violence are not unusual. Men sometimes attack women who plan to leave them. Women more frequently turn their destructive impulses inwards. Maureen describes her reaction .

> Upon those words, 'I can never see you again'. I went into a state of shock - after begging her to see me because I was close by, I went to the hospital and heard her tell me about the pressure being applied to her by the night staff. I felt like killing myself on the spot.... By a long train of events I decided that killing myself alone was no good, people would be glad to see me gone - so if I killed one of them/society, someone would cry and possibly be sorry that they had interfered in my life and my right to live.

Shortly afterwards, Maureen killed a taxi-driver, a random man. (Her act was undoubtedly the product of a depressed, paranoid mind - but this does not mean that this disturbance was not itself the product of years of isolation and the only too real oppression of herself and other homosexual women). Six days later she turned herself into disbelieving police.

> Prison was the best punishment - a time of living death when each day I would remember her and grieve over losing her.

Maureen was found not guilty on the grounds of insanity - and was not released until eighteen years later. Much of this 18 years was spent in isolation - the very isolation that had contributed to her alienation during her childhood and adolescence.

Almost twenty years after Maureen was sent to Parramatta Girls Home, Patricia, too, came to realise that she was homosexual. She tried for a time to repress this knowledge which she was aware would be unacceptable to her puritanical mother. She even became engaged and agreed to a wedding in order to please her mother, but was in the end unable to go through with these plans. Eventually, she told her mother about her homosexuality. Her mother's reaction was

to pack her daughter's belongings, leave them on the doorstep, and lock her out. In retrospect, Patricia thinks that her mother probably believed she would plead to be allowed to stay. Whether her mother's gesture was merely emotional blackmail or not, Patricia acted on it and found herself a flat. She did not visit her mother's home - perhaps it was even a partial relief to be free of some of the responsibility she had experienced throughout her childhood. After many months, she met her mother and older retarded sister in the street and invited them home to dinner. She subsequently discovered her mother had been making false social security claims in her name. She refused her mother's invitation to return home.

Patricia had had a very puritanical upbringing in the Salvation Army. It may be that she herself was in conflict about her own homosexuality, but compared with Maureen, twenty years earlier, she was aware of a homosexual culture which she could and did feel part of. That her homosexuality caused such a serious conflict with her mother to whom she had always been so protective and so close, was probably a more serious problem for her.

Patricia's parents had separated before her birth. She had very little contact with her father during her childhood and remembers being regularly told by her mother that he had raped her mother during her pregnancy. As a child Patricia lived alone with her mother and older sister who was retarded. They were very poor and were often evicted because they could not pay the rent.

Patricia remembers that even at the age of ten, she used to pay all the family bills. Looking back, she believes her mother was addicted to barbituates. She described a regular routine of putting her mother who had fallen over and wet her pants to bed and of then 'fixing up' a screaming, older sister. Patricia has described the conflicting roles her mother expected her to play as being confusing and difficult to balance. At one moment she was expected to be adult and responsible (even like a male protector,) at the next, childlike and innocent. Her mother had always presented men as alien, hostile figures. On the announcement of her

homosexuality, once again, it seemed to Patricia that her mother was exacting conflicting and impossible demands. On the one hand she had been expected to hate men, even protect her mother and sister from them - on the other hand she was expected to reconcile herself to living with one.

After some initial attempt at suppression, Patricia, like Maureen, showed no sign of relinguishing her homosexuality. Perhaps this might have been the first crucial step in the process of separating herself from her mother's competing demands and interpretation of the world.

Unfortunately at this crucial point in her life, Patricia's mother suffered a massive stroke from which she never recovered. Her death created a full blown emotional crisis for the young guilt-ridden and conflict - torn Patricia. It was during this crisis that she attacked the girl friend with whom she was living.

Death

Patricia's case is one in which the homicidal attack occurred during a period of crisis and of enormous stress caused by the death of her mother with whom she had unresolved conflicts. The loss which accompanies the death of someone close can be devastating, especially when the person who dies has assumed a key significance in the life of the bereaved. As well as grief itself, death may make more acute guilts and conflicts which have previously been repressed:

> Often too, such extreme events as death or mental illness of a parent can for someone who feels that he has not been a good child, act as a confirmation of the feeling that he can harm people. The guilt and self-accusation which he now feels can make it much more difficult for him to become psychologically independent of them.[5]

Patricia is not the only woman in our study who was deeply affected by the death of someone close. Several of the women who killed their husbands had experienced the death of a family member during the couple of years preceding the

homicide. One of these tried to commit suicide in the period following the death of both her parents, subsequently she stabbed and killed her de-facto husband and attempted again, to kill herself. Her breakdown was described at her trial as a schizoid episode brought on by the death of her parents.

Patricia's mother lived for some time after her stroke but Patricia was never again able to speak to the mother who had played such a central role in her development. Her mother's illness threw her into a paroxym of guilt. She feared that her homosexuality and subsequent departure had killed her mother.

She began visiting and sitting beside her mother everyday. Her immediate desire was to get enough money to be able to move her mother from the public hospital to a private hospital, where perhaps she would receive more attention and care. During this period, Patricia became sexually involved with an older brother, who she had apparently previously not known very well. He introduced her to the world of "porn" movies which she said that she entered - performing lesbian acts - as a way of trying to earn the necessary money to provide the best care for her sick mother.

Later she wanted to end the relationship with her brother who as a result attempted to strangle her. In revenge, he pasted nude photographs of her on the doors of surrounding flats. It was during this period that she met a girlfriend, Denise, and later moved in with her.

Patricia was already under severe stress before her mother died. On the day of her death, she visited her in hospital. When she arrived, she noticed attendants were busy with her mother. She thought they were changing her. Moments later, she discovered her mother had already died. It was only after her mother's death, that Patricia became openly disturbed. She attended her mother's funeral and believed that her brothers (who had apparently not lived with her during her childhood) shunned her, acting as though she was responsible for the death. She began hearing voices for the first time - expecially that

of 'Elizabeth' - the name she used in her childhood but changed in her adolescence. She could not accept her mother's death, attempting to communicate with her by letter. She began taking pills and on several occasions overdosed - desiring to die herself. All of this she experienced without the support of any older relatives who might have supported, protected and reassured her during this vulnerable period.

One night Patricia having taken some pills fell down in the street, in the same way as her mother had often done during Patricia's childhood. Not at all surprisingly, (women are more likely to be raped when their condition is more vulnerable Patricia was raped. Later, she reported this rape to the police. Apparently there was no real doubt that she had been raped but the police declined to act because of her drugged condition at the time.

This rape certainly accelerated and reinforced Patricia's already disturbed state. Angry that the police had (as is not uncommon) refused to act, she conceived a plan to kill all men, in the process avenging both herself and her dead mother. She began to see Denise, as someone to whom she was close, as a possible hindrance to the carrying out of this plan.

Patricia bought an air-rifle to carry out her plan. In buying it, she used a different name than the one she had used when she complained about the rape. (She had in fact changed her name by deed poll previously and both the names she used had at one time been her genuine name.) She was charged with making a false statement- the first occasion on which she had ever been charged. She spent a week at Silverwater Prison which can scarcely have assisted her disturbed condition.

The attack on Denise was preceded by many warnings. She told Denise's relatives, and a nurse at a large hospital that she had an impulse to hurt the woman she loved. Apparently, no one took her seriously, or if they did, they were unable to help. She was admitted to a psychiatric hospital but was

discharged shortly afterwards on the grounds that she was not in need of hospital care. When she did eventually shoot Denise, fortunately she only grazed her neck. She was charged with attempted murder and convicted of malicious wounding. For this offence, she was sentenced to five years hard labour. (A one year non-parole period was set).

While she was on bail before her trial for the shooting, Patricia, at times, was still intent on killing or castrating all men. As part of this plan, she kidnapped a taxidriver. Using the gun she forced him into the boot of his car. She then left him and called the police. For this further offence, she received an additional five years gaol - making a total of ten years imprisonment. Since that time she has spent several years incarcerated in gaol or in mental hospitals.

Institutions

Seven of these eleven women had been imprisoned for some time in correctional institutions - child welfare establishments or prisc prior to the time when they were charged with the homicide or att Two women had been imprisoned on minor charges only days before their arrest for murder. Four women, and possibly more had been previously admitted to psychiatric hospitals. Only two women had not been admitted to either a correctional or a psychiatric institution before their arrest for the homicide or attack.

a) Child Welfare Institutions

> No acceptable outlet for aggression, no way to relieve the guilt stemming from behavior they themselves despise, no hope of ever regaining a sense of self-worth, little or no sense of being protected, essential loneliness - all of these increase the self-hate. But the destructive process does not stop with this. It is known that people who have little or no self-respect find it difficult to respect others. .. In spite of this knowledge treatment of delinquents not only has taken little cognizance of this fact but often deliberately increases the feeling of degradation. In many girls' institutions, practices seem as if taken out of a textbook for purposely increasing the sense of worthlessness ... Girls' institutions often increase the low self-concept by a whole design of daily living conducive to the wiping out of individual worth; by harsh regimentation, by giving little opportunity to the girls to make any decision, by making it impossible for the voices to be heard, by forbidding communication with friend by treating the girls as inherently bad ..[6]

These words were written in 1966 by Gisela Konopka in one of the very first books dealing specifically with adolescent girls who are labelled as 'delinquent'. The institutions she spoke of were in the United States. But the destructive process she writes of could equally be used to describe the institutions experienced over a period stretching from the mid 1950's to the mid 1970's by women in this study.

Three of the women in this study, Karen, Maureen and Barbara spent time in child welfare institutions before they were charged with a homicide offence. (A further three spent time in such an institution after they were charged.) The accounts of the institutions given by the women in these interviews supports the view formed from more general research material that such institutions could only have reinforced feelings of low esteem and isolation, forcing all feelings of anger inwards. Several male writers have written autobiographically of their destructive and harsh experiences in the boys' institutions of NSW.[7] The experiences of the girls in this study matched them in rigidity and discipline. When it came to brutality the girls' institutions were not far behind - while in the realm of pettiness of punishment they were in a class of their own.

We have already described how Maureen was sent to Parramatta Girls Home. Superficially, at least she was being punished for an angry classroom outburst, however word of her homosexual inclinations travelled before her.

> When I first went in I was in a dormitory situation and then within bloody 2 or 3 days, possibly when they read my record, they moved me out of the dormitory into a single cell, I couldn't go to school with the kids, you know. And be with the kids. And just be one of the mob ...
> I: Which is what you wanted to be?
> M: Yeah. Then I was left alone to do the work, you know, while everyone else went out, I was down the back in the security section, I was kept in isolation most of the time. I was separated from the other women. I didn't need school training - I was already over their level, I was left alone in this bloody kitchen area all day to scrub it out. You know, I was getting a bit... fed up, unhappy ... and one day I did smash this window. But surely smashing a broken window isn't a bloody... I wasn't able to cope with things like that. But then they locked me up again in isolation for God knows how many weeks, and the I was transferred to the psychiatric centre.

The reason for Maureen's isolation was not made clear to her. She suspected it was because of her homosexuality. On the other hand, her more advanced educational standard, something which perhaps could have been a reason for positive encouragement, was used as an excuse for her isolation. When she was placed in a VD isolation cell in a subsequent commitment she was left again with the feeling that it was because of her homosexual behavior. The message was always the same - she was different, unfit to socialise with others.

While Maureen experienced little of the normal daily routine of a girl's home, Karen experienced so many different routines between the ages of six and eighteen that she can barely remember them all. Her childhood after she was made a state ward is a haze of foster homes, different institutions and runni away. Her memory of the various foster homes she was placed in i: one of unhappiness - of being expected to work very hard and bein treated like a slave. By then, she was perhaps a difficult and lonely child, believing herself to be unlovable. Life seemed to be an endless series of new adjustments, each new environment imposing different demands.

W: Backwards and forwards. Backwards and forwards.
I: What were they like - the different places?
W: .. I don't know. .. They made me grow up a little bit more, than what I should have. Each place had it's own little... variety... it was really odd. Going from one place to the other.. It was different all the time. There was a change in me all the time, there was a change in places all the time. I dreaded the thought of growing up. I suppose I always wanted to be a kid.

As a young adolescent, Karen would run away to Kings Cross - surviving in the company of other runaways by stealing, "break and enters"and occasional "assault and robs". Soon she worked in her rare periods "on the run" as a prostitute.

As so often happens to State wards as a result of running away, Karen graduated at the age of twelve or thirteen from a "care" to a "punishment" institution. At fourteen, she was sent to the Parramatta Girls Home.

Ann who spent several years in Parramatta Girls Home in the early seventies after she was charged with a homicide offence, described the system of control used at that institution.

> I: What was Parramatta like?
> W: Hard ... Very, very military. You know, marching and everything. ... ...
> I: You couldn't wear your own clothes?
> W: No way. You couldn't even lift your eyebrows. Or shave your legs. They were very strict. Everything was based on the merit system. You had to work for it. ... And you kind of - you knew where you stood - because you knew the punishment.

There were more than one hundred girls at Parramatta in those days. They slept in dormitories (without cubicles), each housing about 30 beds. No personal belongings other than toiletries were allowed and these were kept under lock and key by an officer. Visitors could bring some food which was searched, locked up and handed out during recreation periods.

> I: What were the penalties at Parramatta?
> W: Well, it's ... ..for swearing, right, you were locked up. It was up to the superintendent how many days, you know. For scratching (attempt at self mutilation)... You were sent to the loft. Which is this unbelievable section above the laundry. Where it's kind of like - it's like an attic. There's all beam work. Pigeon dung galore, and you had to do half an hour beam scrub and then half an hour on your knees scrub. Real joke. And you started about, say 7 in the morning, till about 9 at night. And you just stopped 5 minutes for each meal. 15 minutes break. Oh, you went to the toilet, and you were on silence, completely. Because it was punishment. And you did that punishment for about 3 days. If anybody more or less refused to do it, or played up, or spoke their days would be extended. Oh, wow. It was tough. Really tough. You could be locked in the dungeon. Which was underground cells. ... isolation ... actually they had quite a warped sense of humour. I mean, if you plucked your eyebrows they would either Tarzan grip these furry things on your face, or get a Texta and draw, like .. um .. question marks and exclamation marks on your head. Really weird Really strange. ... if you were caught, say, with extra food, say you stole a piece of bread. Well it would be hung around your neck for about two days as a punishment.

The punishments described by Ann were for what must surely have been regarded as minor offences. Attempting to commit suicide was apparently regarded more seriously. Attempted suicide like less serious forms of self mutiliation such as cutting oneself or "scratching" is by no means uncommon in custodial institutions for women and girls. It can indicate a desire to die - perhaps more often an indication of helplessness and despair - an action which the women vainly hopes may change something in an unbearabl situation. Attempts at suicide - and also other attempts at self mutilation - tend to go in waves. In Karen's case, what was sure a sign of unhappy desperation provided an excuse for punishment o an even more severe kind.

> I was going through a stage of comitting suicide. Everyone goes through that. And it's just that I got someone else to do it for me. I held my hand out, someone cut my wrist. .. It didn't go deep enough, so I said that I'd cut my own wrist. Got locked up in isolation for 24 hours, and the man called Guildford come in.
> I: Who came in?
> W: Guildford. .. Started knocking my head against the brick wall, punching me in the gut, face and that.
> I: Was that a woman, or -?
> W: It was a guy. And when I started to fight back, he said, 'Right, you're going to Hay.'
> I: And that's why you got sent to Hay. .. And he came into isolation, where you were?
> W: And there was a female screw standing outside the door watching that no on e else came there.

Over the decades, there have been various protest actions taken by girls at Parrmatta Girls Home calling attention to complaint of brutality.[9] Usually these have resulted in "whitewashes" - at best selective removal of particularly violent officers. As a result of one of these protests in the late 1960's - or riots as they were called officially - Hay Gaol was re-opened in the form of a special security institution for ten girls. Every detail of life at Hay Girls Home was regimented. The days were filled with heavy work - painting, and sewing heavy aprons. At six at night each girl was locked alone in her own cell with no belongings. During the night the officers patrolled.

> They walked around, all they had to do was open the hatch and see that you were not hanging or tied with a rope around your neck and hung from the bed, but you never got a chance to get rope in there.

There were even instructions about how to sleep. If a girl was not sleeping on her side or had her hand under the covers (perhaps masturbating?) her surname would be yelled out and she was expected to leap from her bed to attention.

> W: You marched everywhere and you did 3-4 exercises a day, one at 6 in the morning, one at 11 o'clock one at about 1 o'clock and one at 4 o'clock.
> I: And what were the exercises?
> W: Army exercises. .. You were never allowed near anybody. Not anywhere near them.
> I: Did you eat together?
> W: No, you had to be away - you had your own little table. ...you have 10 minutes to talk all day. And then you're only allowed to talk about the weather you've got to have your eyes down.

The regime described by Karen has been documented elsewhere, and was never denied by the N.S.W. Department of Youth and Community Services [9]. The existence of such a regime is perhaps less surprising when one remembers that the punishment 'tracs' for men at Grafton Gaol (based on regular physical punishment) and Tamworth Boys Home with a regime reputed to be even harsher than Grafton, existed during the same period.

Karen describes her return to Parramatta Girls Home after six months at Hay:-

> No, I still had my eyes down. Like, when you turn, or do something, you've got to stamp your foot when you bring it down, and I was still stamping my foot about a week later. Forgetting where I was. Wasn't talking to anyone. Took me a long time to get back in the swing of things. But I just more or less stuck by myself then. .. right up until the time I got out.

Karen had been released from Child Welfare institution for five years before she committed the homicide for which she received a life sentence. In these five years, she survived outside any institution - itself an achievement not attained by many who spend their childhood in child welfare 'Homes.' She attempted to make a life for herself - even moved from Kings Cross in an attempt to avoid further trouble. She sought psychiatric treatment in an attempt to end the terrifying nightmares which plagued her. She says the homicide she committed cannot be directly attributed to the brutality and deprivation of her childhood. She killed a man

who raped her - and her extreme response had probably much more do with unresolved anger from an earlier occasion when she was raped at the age of six. But the fact that she trusted no one i authority - either before or after the homicide - and the fact that she was unable to speak about or resolve her anger after th first rape - would seem to be least linked to her experiences in the child welfare system.

b) Psychiatric Hospitals

Two women in this study were released from psychiatric hospitals only shortly before the events that led to their arrest for atte ted murder. Both of these women would have been willing even an to undergo further treatment. One of these women had been admit to a major psychiatric hospital on the advice of her lawyer afte she had been charged with a minor offence and released on bail. She was released a couple of days later on the grounds that she did not require further treatment. During the period which follc she sought help from various sources claiming that she believed would shoot her girlfriend. She had never previously been charge with any violent offence and apparently none believed that she would do what she feared. Tragically, they were wrong and she was right. The second woman was refused further treatment from a hospital only a couple of days before she attacked her probatic officer. Treatment was refused on the grounds that she could not afford to pay the bill. During her stay in hospital she had been given shock treatement. After her release she was prescribed tranquilizers by a local doctor. A psychiatrist at her trial gav evidence that the effects of the shock treatment continued for days after the last application and could well have reacted negatively with the tranquilizers - indeed he attributed her actions partly to incorrect medical treatment.

A third woman sought help from a psychiatric hospital only one week before she was charged with murder. Six years previously, a the age of 23 with an unemployed and alcoholic husband and five young children, she had been hospitalised several times with a severe reactive depression. In the few months before the homicid of which she was later convicted she feared that as pressures mounted again she again was becoming unable to cope. Her second husband had lost his job and their debts were growing. She began drinking heavily and having frequent fights with the neighbours w whom they shared the tenement house, former friends who were also

unemployed and drinking. She began to experience alcoholic black-outs. More than once she awoke in a flat full of smashed furniture, remembering nothing of the night before. She felt that she was heading for another breakdown and went to her doctor for help. He prescribed tranquilizers, and for a time that made her feel better. The week before the homicide she had another argument with the neighbours and again felt her ability to cope slipping. She went to a psychiatric hospital for help but they told her to return the following Monday because the doctor was not in the day she had sought help. But by the next Monday it was too late:on the Saturday night she had another argument with the people upstairs and in a drunken rage threw kerosene and a match on the stairs. Tragically, the man and two of the three children living in the upstairs flat were caught in the ensuing fire and killed.

We raise these aspects of the women's experience with psychiatric institutions not necessarily to blame these institutions for failing to recognise the need of the women who sought their help. When a person who has only recently been released from a psychiatric institution or sought help from one commits a crime it is all too easy to say that the person should never have been released or should obviously have been admitted. On some occasions it may be possible to lay the blame at the door of the 'helping' institution which failed for other than medical reasons to help, as in the case of the hospital that refused continued treatment for the girl who could not pay. But in most cases the institution can not really be blamed for failing to appreciate the degree of the person's distress, or for failing to predict the future violent act. People must be released from psychiatric care sometime, and we would not want to see a situation where persons in psychiatric hospitals were detained for periods longer than were absolutely necessary for fear that they might commit a crime if released. We do not know the proportion of all people who seek psychiatric help or are released from psychiatric institutions who subsequently commit a violent crime, but we would suspect it is very small. The lives of the great majority of people in psychiatric care should not be further restricted because of the danger represented by a very few.

On the other hand the fact that in the majority of the cases where women killed non family members the woman had had some recent contac with ostensibly helping or 'correctional' institutions does raise

some serious questions about the appropriateness of the stress in the law on the individual responsibility of the offender. In the cases where the women had been exposed to "correctional" car (in the case of child welfare institutions) or"training" (in the case of the women who had been to gaol prior to the homicide), their period or periods in the institution seem if anything to have increased the chance that they might commit further offences, rather than reduce it. In other cases women who had recognised their own vulnerability to stress or mental disturbanc had sought help, yet did not receive it.

We would suggest that the failure, for whatever reason, of the helping institution to give them the help they needed and had positively sought makes it more than a little cruel to subsequent treat the women, once they have committed an offence, and are within the criminal justice system, as exclusively and totally responsible for the commission of the crime.

Rape

There was one further situation where the failure of state institutions to give the protection they promise played some part in the events before the homicide. We have already mentionec that several of the women had been rap ed in the period before the homicide. There was only one case where the homicide was directly linked to rape. This was the case of Karen, whom we have discusse in the earlier section on child welfare institutions. Karen told us that the man she shot, according to the Crown for robbery, had raped her on the last occasion she had seen him, two weeks before. She did not tell her lawyers of the rape, fearing she would not be believed, and so had virtually no defence at her trial for murder and armed robbery. She was convicted of each offence, sentenced to life imprisonment for the murder and a twenty year sentence for wounding in the course of a robbery. The Supreme Court judge who sentenced her, who is also the Chairman of the Parole Board, recommended that she should never be released.

According to Karen, the man she killed had raped her when he called at her house two weeks before. She felt that he had sensed she was an ex-prostitute and therefore open game. The rape had not only been enormously distressing in itself, but it had reawakened subconcious fear and anger the product of her childhood rape.

She had been left with the unresolved trauma of the first rape despite the fact that she sought help in her later adolescence.

> I can remember parts of it, (the earlier rape) but not everything that happened. I can remember before and after but not during. .. When nightmares happened, years later, I had to tell her (a friend) what was happening. I had to tell her. But she couldn't understand it. That's when I went to see the Psych. He said, look, it's just a permanent block, you'll never ever know. It's just one of those things where people... When something happens to them and they never want to remember it, so they really put a block up against it. And you never know. You could turn around and remember and you couldn't, you know. Depending on you. But I'd .. I used to wake up having nightmares, walking in my sleep.

Eventually, Karen had sought help from a hynotherapist. From that time, her nightmares stopped until she was again raped.

> I: Did it make you feel better talking to him about it?
> K: Well .. after getting rid of that pent aggression, (through hypnosis) so called .. never had the nightmares .. again. Like .. until this time.
> I: Not until after this rape?
> K: Mm. That freaked me, So I suppose I was in shock.
> I: When did you start getting the nightmares about this one?
> K: Afterwards .. 2 weeks before I shot him, every single night.

Karen told us that her initial intention had been only to frighten the man when he called again. She shot him when he grabbed the gun. During the next five hours, she was uncertain what to do. At times she talked to him asking him why he had raped her. She thought of going to ring for a doctor - but her own experience had taught her enough to know that she would probably not be believed. As she held the gun she kept having flashbacks. At times, she also felt a desire for revenge. In the end, she shot the man again. She was caught several days later in Queensland.

When she was arrested, Karen made two records of interview with the police. In one she claimed her motive had been robbery. In the other, she said that the man had molested her daughter, perhaps a subconscious attempt through identification with her daughter to reveal what had occurred. She found herself unable to explain openly what had happened - her distrust of authority reinforced by her years in child welfare institutions made her disinclined

to attempt what she felt would be a tortuous, futile attempt make herself believed.

K: They asked me why, and I couldn't tell them it couldn't come out. And I was thinking of something else to say. Because I knew if I said it, oh yeah, what happened? I just didn't want to go through it. So I had to think of something to say. So that was the first thing (the attack on her daughter) that came to my mind.
I: Have you ever regretted not telling anyone?
K: Why should I? They wouldn't believe me anyway
I: You don't think it would have made any difference?
K: No, not to me. .. I just never wanted to say anything. I couldn't tell them in court what was happening to me, because I couldn't think. Everyone would be there asking me questions and what have you. I just .. you know, coppers would be there, and they would have to go through it .. and I was trying to figure out a reason why I didn't want to .. go through it. But you find most chicks have been raped won't say anything about it

Karen's belief that she would not have been believed and would have had to undergo virulent cross examination had she said the man had raped her was quite realistic. Only the year before she had attended the trial of some men who had raped a woman she knew. She had watched this woman - 'a nice girl' being pulled apart in the court. This confirmed her view that she - 'not a nice girl' - would have no chance. She did, however, ask for a woman lawyer and woman psychiatrist - no doubt part of her did really want to fight for her freedom and life. Neither was provided by the lawyers defending her from the Public Solicitor's office. We interviewed the young male public solicitor who had handled her case. He said that he had attempted to have himself replaced by a female lawyer but was told that one could not be provided by the Public Solicitor. This lawyer continued to act throughout the case but said that he had the uneasy feeling that his instructions were unsatisfactory.

Karen's perceptions of the likely disbelief and hostility she would face had she reported the second rape or tole her lawyers about it were obviously affected by her experiences with so-called helping institutions and authority in the past, together with her emotional problems stemming from the earlier rape when she was a child. Nevertheless, they were not unrealistic. Women who are raped, even "nice" girls like Karen's friend, often find they are not believed and that the police and the legal system will take any effective steps to either punish the man who raped them ensure their further protection and the protection of other women from rape.

Not many women take the law into their own hands, but the wonder is not that some like Karen do, but that more do not.

In another two cases women were raped in the few months before the homiciide. The rape was not directly linked to the homicide or attack in these cases, but was a significant event in the accelerating collapse of the raped woman's world in the period preceding the homicide. Both of these women were raped when they were physically and psychologically vulnerable and the rape contributed to their mounting distress and anxiety, caused initially by other factors. For each, as for Karen, a major part of the distress caused by the rape was the woman's feeling that she in fact received or was likely to receive little official protection from a repetition of such conduct, or support in coming to terms with the rape and prosecuting the offender.

Unlike Karen,these two women did report their rapes. We have already discussed in some detail Patricia's case. In her case the police said that they could take no action and she was left feeling that no protection at all would be offered her. She felt that she had to ensure her own protection and the punishment of the man who had raped her, who she saw as but one man in a hostile male world, and acquired the gun with which she later injured her girlfriend with this aim in mind.

Margaret's case was slightly different. In her case police action was taken but the homicide offence with which Margaret was charged arose when she reacted violently against an authority figure to whom she had looked for support in the impending court case who appeared to blame her for the rape and somewhat impatiently regarded her as silly and wrong to have instituted the police action.

In the earliest part of this chapter on family conflict we described Margaret's initial breakdown after her parents' separation. This was the first in a series of psychological crises in her life. She has attempted suicide many times. At times, she continually dreams of dying and being stabbed. Like Patricia she also hears voices.

> Sometimes it's just me father's voice or it could be mum's voice. Telling me to do things I don't want to do and it kind of like overpowers me. Yeah, it tells me to kill myself and hurt other people and all that. It's really freaky.

On one occasion, she attacked her own child which was subsequentl removed from her custody. Later she assaulted the child welfare officer who she saw as responsible for taking the child. While she was on remand for this charge she was raped by two police officers in the cells of a surbuban police station.

> They were gonna take me up to the lunchroom, up to the cells and they took me into the little room opposite and I was screaming and he kneed me in the stomach and I got up and then he said to me 'take your clothes off' and I said 'no' and he kneed me in the stomach again and he said 'take off your clothes' and I got frightened then, so I took off my clothes.
>
> Both of them were there?
> No, just one was there then. He said to me, I'm gonna screw you, and I said 'no you're not' and he said 'yes I am' and he was a very heavy man, so he just pinned his weight against me, it was a real freaky experience and I vaguely remember the second guy coming in.

There was apparently no doubt that sexual intercourse had occurred. The only question was whether Margaret had given her consent - not a simple matter of whether or not she herself took off her clothes given her situation as a young vulnerable girl, in custody and confronted by two large policemen.

Margaret reported the rape and the two policemen were charged. A the victim of the rape she was to be the main or sole witness aga them. A rape trial is an ordeal for any woman, as Karen had realised only too well. In this case a young woman, with a psych atric history and still in a disturbed state was responsible for two policemen being charged. As the case drew closer, Margaret became increasingly anxious. She was admitted to hospital where she was given E.C.T. - and was later discharged because she could pay the bill (hers was the case described earlier under psychiatr institutions),an action which another psychiatrist was later to describe as 'very bad and very provocative for the accused.' Whi the E.C.T. was still having an effect, she was prescribed valium -

a treatment which the same psychiatrist believed was incorrect and lessened her control over her actions. In his opinion this incorrect treatment was at least partly responsible for the on-coming homicidal attack. (The government psychiatrist did not agree.)

After her discharge from the hospital, she started taking over-doses of pills. On the day she committed the homicide offence for which she was charged she had been to see a drug counsellor and then made arrangements to visit GROW, a self-help psychiatric organistaion. She then decided to visit her probation officer to discuss with her the anxiety she felt about the impending rape case.

> I went to see her and I told her I was frightened about the rape case and she said it's nothing to worry about and I said what if they try to prove that it's not rape because he didn't tear my clothes off, and she said well it wasn't rape if he didn't tear your clothes off and I got upset then and she said, you must have really given in to him, and I said I didn't and she said but its gonna look that way in the court room, and then I just got angry and I walked out and then she gave evidence that when I tried to hurt her that I told her that it wasn't rape.

What is quoted here is obviously Margaret's memory of the conversation. Clearly the question of whether her clothes were torn off, did not in itself resolve the question of 'consent'. Whatever the words used, the message that Margaret received from the probation officer was that her complaint was not justified - perhaps even that the episode had been her own fault. When what she had been looking for was support what she felt she received was suspicion and rejection.

> She just said to me that it wasn't rape and I got upset and she really upset me, so I went up the street, bought the knife, took some more pills, Cerapax, and cut my finger open then and got four stitches. Don't know when I cut my finger open, there was blood splattered all over the car and then I cut all the car tyres and I walked across the street to the office, and blood was just pouring out of my finger and I don't remember the blood pouring out of my finger. Just lately I remember saying to the receptionist could I see (probation officer), and she must have rung her up and told her I had blood all over me 'cause she come racing down and as she came down the stairs I grabbed her and went to stab her in the stomach, but I was too pilled and I

> didn't hurt her, all I did was to cut her finger, she cut her finger when she grabbed the knife off me.

Margaret was taken to hospital, where her finger was bandaged and her stomach pumped, she was then taken to a police station and questioned until the early hours of the morning . A record of interview was made in which Margaret said she had intended to kill the probation officer. She signed this record of interview although initially, she did not want to.

> I didn't admit doing it and when it was typed I read it through and he said sign this and I said no its not correct, and he said sign this and I said its not correct and he said sign it and I got really scared so I signed my name on the copy then. Just you know like really hassling me. I always get that of coppers at (police station where she was charged.)

Even at the time she was raped Margaret was a disturbed woman. Indeed this vulnerability was probably a major reason why the police felt free to molest her. Her case does illustrate, howeve the distress of a woman who has been raped and then faces the trial of the rapist, and her great need for emotional support at this time. As we have set out, Margaret realised her own need for help and had made attempts to obtain it. Can it not be said that society had failed her at least as much as she had failed herself?

CHAPTER V: WOMEN WHO KILL NON-FAMILY MEMBERS

FOOTNOTES

1. "Women who kill their husbands: The battered wife on trial" in Carol O'Donnell and Jan Cranney (Eds) Family Violence in Australia Longman Cheshire(1982)

2. A. Storr "Introduction" John M. Eekelaar and Sanford M. Katz (Eds) Family Violence - an International and Interdisciplinary Study Butterworths (1978) p. 3

3. Peter Marris Loss and Change Routledge and Kegan Paul (1974)

4. T. Gurr and M.M. Cox Obsession The Marlborough Publishing Co. Ltd. (1960) pp 15 & 27. We have not been able to read the transcript of the New Zealand case and so are dependent on the somewhat journalistic account in Obsession.

5. Moses Laufer Adolescent Disturbance and Breakdown Penguin Books (1975) pp 17

6. G. Konopka, The Adolescent Girl in Conflict Prentice Hall (1966) pp.13 - 14

7. For Example. Max Williams. Dingo! My Life on the Run Fontana - Collins (1980) and W. Munday Fifty Eight Years.

8. See for example Sydney Morning Herald 30 March 1945 "Inmates not illtreated Girls Home Inquiry"

9. See for example the film Home (held by the Filmmakers' Cinema, St. Peters Lane, Darlinghurst, Sydney)

CHAPTER VI : LEGAL REPRESENTATION

The consumer perspective and why it is important

Most criminal research focuses on either the activity which is alleged to be the basis of a criminal charge (in our cases, the killing or attack) or on some aspect of the criminal process - sentencing, bail, legal representation and so on, but not both. In this sense our work which seeks to present a longitudinal account from the events leading to the offence to court disposition, is unusual. Whatever the emphasis of the research, however, it is rare to find researchers actually talking to the people who are charged. As the objects of study, 'offenders' are kept very much at arms' length.

Earlier in this report, we mentioned how rare it is for the consumer perspective to be included in homicide studies. In this respect, homicide studies reflect in an extreme way more general research patterns. Studies of the criminal process, and legal representation in particular, which include interviews with those who are charged are less rare but still unusual.[1] Where researchers of legal representation do include interviews with the accused, they usually restrict themselves to questions dealing with the manner in which the case was handled in court, and attitudes towards lawyers. We have found no research, other than our own, in which the subject was actually asked for her account of the facts, an account which we could then compare with the instructions she gave and the account presented at the trial. Such a question would seem to have at least potential significance for an evaluation of the adequacy of legal representation.

Clearly, we would never have embarked on this research project if we had not thought there was value in talking to those who stand at the receiving end of the criminal process. The material that has emerged during the project has, if anything, further convinced us of its importance. As a study of legal representation we recognize that this study has some serious drawbacks which we will shortly discuss. If nothing else, however, we hope that the issues raised by this section of this report will convince those who profess to have an interest in high quality legal representati

of the significance of research which includes a consumer perspective.

Whatever other skills and decisions go to make up legal work, at its very core is the interaction between lawyer and client. This interaction is a two-way process. At a verbal level, it in the asking of questions, the giving of answers, explanations and discussions. At a non-verbal level, all sorts of messages, feel and attitudes are conveyed back and forth between lawyer and cli Whether there is 'good' or even 'adequate' communication between lawyer and client is obviously a subjective question. The fact that a lawyer believes that a client finds it easy to talk to hi or her, does not necessarily mean that the client feels that w at all. Much of the time, lawyers cannot know how their clients feel about them or how difficult or easy they find it to talk to them, unless someone asks them - and that is where research whic takes into account a consumer perspective can play a part.[2.] It can give lawyers information about how people at the other end of the representation process feel about what is going on. When they agree to represent a client, lawyers transfer to themse the main responsibility for presenting the case. Lawyers also have more social resources at their disposal than their clients. This information may suggest to lawyers ways in which they can alter their own practice, and press for changes in the legal profession and criminal justice system to reduce what clients perceive as barriers to communication and the best possible presentation of their case in court.

In our view, research into the consumer perspective should not stop at consumer views of the legal representation itself. It is crucial for lawyers not only to know what clients think of them but also to appreciate the defendant's perspective on other parts of the criminal justice system : the police, the law and the cour The educational and social background of most lawyers is very different from that of most people who are likely to stand trial for a criminal offence. Lawyers are conversant with the system and working within it every day, but, because of their background and the rules governing admission, only rarely have lawyers had a direct experience of being in the position of an accused. They may know what a cell or a dock looks like but they do not really know what it is like to be locked up in one.

Unless it is explicitly pointed out, a lawyer may simply not realize how alienating and confusing a trial can be to a defendant. Similarly, they may fail to appreciate the significance of factors such as medication and the shock of finding oneself in prison, factors which can affect the contribution a woman can make to her own trial, her ability to give instructions and her capacity to make decisions on the advice she is given.

Unless confronted by the defendant's experience, lawyers may continue to operate on assumptions that may well be wrong (for example, that a woman or child who does not cry is not upset) and thus be unable to challenge the effect of such assumptions in the minds of police witnesses, the judge and the jury.

Both communication and the necessity of understanding the defendant's experience of the system as a whole are especially significant when the charge is homicide. In a murder trial, the difference between a murder and manslaughter conviction may turn on very fine questions of intent and mental disturbance, or the woman's degree of fear or loss of self control. A lawyer defending a person charged with murder must be able to draw out from the defendant precisely what she was thinking and feeling at the time of the homicide. If, for example, the defence is self-defence, a solicitor will have to gain sufficiently detailed instructions to first of all provide a basis for the decision to use that defence and secondly to allow the barrister to convey to a jury, many of whom will be men, the intensity of the fear and anxiety that lead to the killing. Unless a barrister has the capacity and the material available to place him or herself in the position of the defendant, how can he or she hope to enable the jury to see the killing from the accused's point of view.

In some homicides, the background to the killing may stretch back over many years, and may include distressing and painful details of violent attacks, sexual matters or mental collapse. Some women charged with killing their husbands, for instance, may have never really described the misery and horror of their lives with their husbands to anyone before. Some adolescents may feel that no one, let alone a male lawyer, could be interested in hearing anything but the bare details of their childhood experiences. Unless a lawyer

indicates clearly otherwise, they may think that all that is rec is the same brief chronological history that has been elicited f them in each new charge room or institution.

The final reason why it is important to gain consumer perspectiv of legal representation is, of course, that legal representation is a service - a service on which, when the charge is a homicide one, very high stakes and penalties partly depend. Consumer satisfaction from that point of view should be an end in itself. In as many cases as possible, it is surely desirable that the consumer should feel at the end of the case, that everything tha could have been done to achieve the best possible result from he point of view, was done.

Our Study

We used two sets of questions in relation to legal representatio and the trial in the interviews with the women. The first set w part of the questionnaire we described in the section on Administration in Chapter I and which appears as Appendix E to thi report. As we said there, that questionnaire as a whole proved far too bulky and formidable to use directly in the interviews, l was a useful aid in clarifying our own thoughts. We did find, however, that some direct aid for use in the interview was neces in relation to questions about the legal process. Accordingly, prepared a shorter and more manageable checklist for use direc in the interviews. This checklist appears as Appendix F to this report.

The questions we asked the women covered their experiences in the rest of the criminal justice process, as well as their legal representation itself. The information we sought was both objective (was the representation public or private ? how many times did you see your barrister before the trial ? were you on bail before the trial ?) and subjective (how did you feel about your lawyers ? and how did you feel your lawyers felt about you ? The objective answers provided a context for the more subjective impressions. For example, it is far easier to understand the difficulty of a woman who says she felt unable to speak to her barrister during the trial when one knows that she was sitting in dock, separated from her lawyers by six to ten feet, and a low wal

We were also able to interview some of the lawyers who had handled these cases. In a few cases, this enabled us to compare the perceptions of the lawyers with those of the women. These discussions with lawyers also provided us with insights into why certain tactical decisions were made by the defence in these cases.

We have discussed in Chapter I why we did not interview more lawyers. The main reason was insufficient time. Only one lawyer who was approached refused to speak to us. This particular barrister defended two of the only three women in this study to be convicted of the murder as opposed to manslaughter of a husband or boyfriend. Initially, this lawyer asked that we put our questions in writing. Although we did that, he still declined our request to speak to him. The co-operation we received from the lawyers we approached can be compared to the difficulties confronted by Baldwin and McConville in their study of guilty pleas in English courts. In that study, the English bar would not co-operate on the grounds of confidentiality. When they were told the consent of clients could be obtained, they refused to believe it. [3]

The checklist for the interviews with the women was fairly comprehensive. While it does give an indication of the sort of information we were looking for, in many cases, unfortunately, we fell short of obtaining this. The biggest single difficulty we confronted was that most of the interviews were conducted more than two years after the trial, and, in two cases, fifteen and eighteen years afterwards respectively.

It also emerged that quite a few women were heavily medicated during the trial. We discuss the issue of medication later in this chapter. It is sufficient to say here that the medication definitely affected both their comprehension at the time as well as their later memory of what had occurred. As one woman said, "I can't remember their names (of her lawyers) because I was so doped up."

Despite these difficulties, while many of the women were understandably hazy when it came to remembering details, most of them did retain some strong general impressions which provided valuable insights into how it felt for these particular women to be on trial.

Another problem with interviewing the women after the trial is that we were not able to assess the effect of the verdict or sentence on the woman's attitude towards her lawyers. The only to systematically allow for this effect would be to carry out a much larger study of criminal defendants in which this factor cc be controlled, or to interview defendants at different stages of the court process.

It is interesting to note, however, that some of the women who had got "life", the harshest possible sentence, were themselves aware that this result may have clouded their view of their lawyers' performance. One woman, when asked what she thought of her solicitor, exclaimed with a laugh -

> He was up the putty - I got life.

Another was careful to point out in answer to a similar question

> Well I don't really know. He didn't do us much good, but you can't really blame them. You can't expect, if there is that much evidence, you can't blame them. They can only do what they have got to do.

These drawbacks in our research obviously point to the conclusion that a thorough going study of legal representation would ideally be carried out in stages during the criminal process or at least carried out as soon as possible after acquittal or conviction.

Public or Private Lawyers ?

In New South Wales, representation by the Public Solicitor is available to all those accused of homicide both at their committa proceedings and at their trial. Representation is also available before the Court of Criminal Appeal but only if the Public Solici on advice from a barrister, generally the senior Public Defender, regards the appeal as having legal merit.

Usually the Public Solicitor briefs counsel from among the Public Defenders (salaried barristers instructed by the Public Solicitor to do criminal work on a full-time basis) for homicide trials. In some cases, counsel will also appear at the committal

proceedings although more usually the particular solicitor who is working on the case will act alone at the committal. In some cases, the Public Solicitor assigns a brief to a private legal firm. This occurs especially where the accused is charged in the country where there is no office of the Public Solicitor or when there is potential conflict between the cases of two or more accused. In some, but not all of these cases, the accused will have had some contact with these private lawyers at her early court appearances.

Nineteen (54%) of the thirty-five women in this study were represented by the Public Solicitor. A further four had their cases assigned by the Public Solicitor to private solicitors. Three of these four women came from country areas. At their early appearances in court, a local solicitor had appeared for them in court and in each case continued to act. In the other case, the case was assigned out because there were two co-accused, both of whom required legal aid. In this latter case, the accused woman had no control over the solicitor or barrister chosen. Another two women were represented by the Defence Forces Legal Aid Scheme and by the Aboriginal Legal Service respectively.

In total then, more than two-thirds (71%) of the women were covered by publicly funded legal aid schemes. This figure is at least as high as one would have expected. As we have pointed out in Chapter II, nearly all of the women in this study came from working class backgrounds. Very few of them were employed at the time they were charged. Without legal aid, many of them would have been unable to afford to pay for representation at their trial, let alone at a committal as well.

Ten women were represented by private lawyers. (Four of these women came from the same family and were represented by the same lawyer.) Six of the ten women who were privately represented were among the nine women in our study who were under twenty at the time when they were arrested. It is likely in these cases that their parents played a role both in the decision to use private lawyers and in their payment. Parents of a child in such a predicament are understandably often very distressed and perhaps feel guilty as well. One young girl's mother, for instance, mortgaged her house so that she could hire one of Sydney's most prestigious firms of lawyers

and a Queens Counsel for her daughter. In our interview this young woman commented

> I knew I could get legal aid but Mum sort of insisted that she wanted to pay the money because she thought at least that way, say even if I did get life, she would at least have tried, you know and got someone good.

At least four of the other women who used private lawyers also π considerable economic sacrifice in order to do so. One woman sold her house so that she could pay a large legal bill. Another two women were released from gaol, knowing that they still had legal debts to pay, a financial burden which was added to all the other problems which most prisoners face on release.

Choice

Conservative legal ideology would have it that a party to litigation should be represented by lawyers of his or her own choice. In reality, however, those who rely on salaried legal aid services have no control at all over the selection of their representatives. To choose, one must have the ability to pay. Moreover, even those who do have the money to pay a lawyer of their own choice, do not necessarily have information at their disposal with which they can effectively exercise that choice.

A consumer perspective on legal representation needs to be examined in terms of this objective lack of choice. A woman who feels that she had no choice or is even unaware that anyone els had a choice, may feel that there is little point in commenting on her lawyers one way or the other. Indeed this lack of control may explain why quite a few of the women had no strong feelings about their lawyers at all. The women said either that their laywers were "alright" or, without being very enthusiastic, they could not see anything actually "wrong" with them.

More than half the women in this study had absolutely no control over the choice of their lawyers. This included all of the women who were represented by the Public Solicitor and at least one of those whose case was assigned by the Public Solicitor to private lawyers. Many of these women did not know who their barrister was until shortly (in one case, one day) before their trial. Most of these women did not appear to have considered any

alternative to the Public Solicitor, and indeed, even if they had, they would not have had the money to hire anyone else. In many cases, they did not know how their lawyers had been arranged - they simply knew that they had been on "legal aid".

At least eight of the women who had no control over the selection of their lawyers said that at least initially they would have positively preferred another lawyer for their trial. In five of these cases lack of ready money stood in the way of them exercising the choice they would like to have made. Some of these women, for example, were compelled by lack of funds to shift from a preferred lawyer to a Public Solicitor. One told us:

> Well, I had (private lawyer) in the beginning but he was too expensive, so I had to drop him. He said he would have done the trial for nothing as a friend but that he was trying to make a name for himself, as he hadn't been in practice very long at the time. My dad couldn't afford it, nor could I. So I dropped him, but (private lawyer) said he would get me this legal aid guy if he could. So he put me on to somebody and I had them. But I really would have liked to keep him. It would have been really good.

The other woman described anxious moments while she waited for the private lawyers who had represented her at the commital to visit her in prison. Ultimately, she decided not very enthusiastically to use the Public Solicitor because the private lawyers she initially preferred seemed unduly avaricious.

> So they didn't turn up next Thursday, so, freak, freak, because its now three weeks to the trial, and they are coming every Thursday and not arriving ... I was in real big trouble now because I didn't know whether I had a barrister or not. I got in touch with somebody who told me I would be getting a legal aid barrister and solicitor. I freaked out a bit because I didn't have much confidence in them ... So I rang my mother in a mad hurry... She raced into (private solicitor's) office and said "what's going on, why haven't you been down to see (woman)? The case is three weeks' off." And they just said "Oh we just naturally thought she had picked legal aid". I dont know what made them think I had legal aid. They never even contacted me to see if I had legal aid, or was anyone representing me... (private solicitor) said to Mum "well if you definitely want John (private barrister) I will ring him". So he rang him. He said "O.K." (private solicitor) said to

> Mum, I want you to go down to the police station and get (woman's) cheque book out of her handbag and give me a blank cheque. I will take it to Silverwater and have her sign it. I will bring it back and you cash it. Then I will send it to John and he will go out and see her."... Its not three weeks now, its going on two now, so we still had to go through all this business about the money, and I thought, well what lousy looking cows. At this stage, when my life is at stake, they wouldn't even trust me. They knew what money I had in the bank... I said to Mum "well they can go to buggery". I said "I dont want any more to do with them."... About the next day the Public Solicitor came out and starting taking particulars ... and I felt really down.

This woman's case illustrates some of the problems faced by people who spend their time on remand in custody, unable to make their own arrangements and dependant on others to communic with them. Infact, this woman was pleasantly surprised by the Public Solicitor during the couple of weeks they were preparing her case. When later, however, she was found guilty of murder, and sentenced to life imprisonment she was left wondering if the private barrister "John" might not have been better.

> I had him (John) in the lower court.... and he was really good... and he was good with the witnesses too, you know, cross examining... Of course, when I got sentenced I was really upset then, because I thought I have done the wrong thing, I should have had John. Whether he would have got me off, or not, I dont know.

The other women who would have preferred not to have used the Public Solicitor generally did not have any particular private lawyer in mind. Some just felt that a private lawyer would be better than the "legal aid". After all, as one woman said, "legal aid, you know, they get paid anyway." At least one woman who began with this view was later thoroughly satisfied with her Public Solicitor and Defender.

Some women had particular requirements that the Public Solicitor could not or did not satisfy. The clearest case was that of a woman who asked for a female lawyer. She was told that there were none available in the Indictable section of the Public Solicitor's office and was accordingly represented by a male solicitor and barrister. No offer was made to assign her case out

to a private woman lawyer although there were strong reasons for believing that she would have felt more at ease with a woman lawyer. We discuss this case again in the section of this chapter on women lawyers.

Another woman, an elderly woman from the country, had her case assigned out to a firm of solicitors which she had used once before. She knew one particular man in this firm and was upset when the case was taken by his son, whom she believed had only been out of law school for two years.

All but one of these eight women remained dissatisfied with their legal representation. They were among the women in the study who were found guilty of murder and sentenced to life imprisonment. (one woman, later, with different representation, had her conviction and sentence reduced on appeal). It is obviously impossible to know to what extent the result in the case reinforced or was the source of these womens' dissatisfaction. Common sense suggests that it would have some effect. It is equally impossible to know whether the quality of their representation had anything to do with the result.

The penalties suffered by these women were very great. Quite apart from the human cost to them and their families, the sheer economic cost of keeping these women in prison would amount to tens of thousands of dollars a year. Their dissatisfaction and the preferences they were unable to exercise raise the issue of whether legal aid should be more easily granted to private lawyers of the accused's choice, at least in serious criminal matters.

Of course, even if an accused person could freely obtain legal aid for the lawyer of his or her choice, finding out who is likely to be a good lawyer is no easy task. Lawyers are not allowed to advertise their specialities in New South Wales and so a woman and her family and friends may simply not know where to start in the search for a good solicitor and barrister who handle criminal work. Unless the woman and her family and friends have contacts in the legal world or prior experience with a particular lawyer in a serious criminal trial, they may not know how competent and committed the lawyer is until the trial itself, by which time it is generally too late to change.

Only two out of the thirty five women in the study could be said to have made a choice between lawyers on the basis of quality rather than cost. Both of these women were most enthusiastic about the representation they received. They were also the two women who were released from gaol still burdened by legal debts.

The only woman who switched from one private lawyer to another was not surprisingly the only tertiary educated woman in the study.

> My sister got the local solicitor and he thought it was an interesting case and he knew Mr. Z and he got Mr. Z. Now Mr. Z may be a very competent barrister but I was totally dissatisfied with the way in which I was represented, because I was treated in a patronising way. He patted me on the head, "dont get upset dear", and treating you like you are not really competent to make decisions and ignoring what you are saying. They had no idea what was going on. They were talking points of law. This is going to be an interesting precedent. I thought "this is my life, this is my freedom" I was totally dissatisfied.

This woman had access to friends with legal contacts. She set out to find the best possible lawyers for her case, choosing a woman solicitor and barrister. Both of these lawyers brought a feminist legal perspective to bear on her situation. After she had been found not guilty on the grounds of insanity of an attack on her five year old son, committed when she was in the throes of a mental breakdown, her lawyers put considerable energy into achieving her release on licence at the earliest possible mome

The other woman decided to stay with the private lawyers who had represented her at her committal when she realised the Public Solicitor would not put as much time into the case as her private lawyers already had. She describes the conferences she had had with her private lawyers and her reasons for not moving to the Public Solicitor.

> The barrister came down for the committal. The solicitor got in touch with him and he came down for that, and then I had been up and seen him a couple of times in Canberra and I had rung him a few times and then he came down... He was down about three days before the committal and then we sort of you know, went over and over, you know I would get an appointment and go in about mid-day

and leave at about 6.0 o'clock at night, you know. It sort of dragged right out. And then they asked me if I wanted to get a Public Solicitor, and, so I thought, oh well, I will see what happens, you know. So they put me in touch with this guy in Sydney, and I got a telegram from him, and he wanted me to be up here on a certain day and he said, you know, we will be able to get it all done in one day. And, I thought, oh well, if thats what he is like, well forget it... I just wouldn't have anything to do with it. Because you cant do that in a day, no way... Because it took us weeks and weeks, you know with a solicitor, to get it all together and he thinks he is going to do it all in a day. So I said, no way. So I rang him up and said, you know, I have changed my mind. I am going to keep my own solicitor.

I: Did you have enough money to pay, or did you get help from friends?

W: Oh, I borrowed, so while I am working here, I am sort of trying to get it down as much as I can. Just to try and get some debts paid back.

I = Interviewer
W = Woman .

The work that woman referred to was work at the Parramatta Linen Service, where she earned $15.00 per week.

The ability to choose is itself no guarantee of quality. Generally, the public solicitors and defenders are chosen for their competence and are more experienced than most private lawyers in criminal work. Both of these two women, however, went on trial, believing that no effort had been spared in the preparation of their defence. There had been time for them to form a personal relationship with their lawyers who, they were firmly convinced, were "on their side". It is unlikely, as the second woman realised, that a public solicitor or defender, could have spent that amount of time on one case. In the case of the first woman, who was found not guilty on the grounds of insanity and detained at the Governor's Pleasure, it is unlikely that public lawyers would have had the time or resources to continue to work on her case, as intensively, if at all, once the trial was over. Her private lawyers made continued and urgent representations that she should be released from detention after the trial. Without these representations she would almost certainly have spent longer in prison.

These cases not only raise questions as to whether public funding should be more freely available for representation by private lawyers. They also raise questions as to whether, if public schemes are to be preferred on policy or financial grounds to private ones, greater resources and more staff with more time should be made available.

We have not been able to make any detailed comparison between the New South Wales position for criminal trials and that in other states, but there are some immediately striking comparisons In South Australia, the woman in the recent axe murder case was represented by two salaried legal aid lawyers from the South Australian Legal Services Commission. After her conviction for murder at her first trial in July 1981, the Legal Services Commission did not confine its attention to the traditional legal channels of appeal. Executive officers of the Commission spoke on radio about the broader implications of the case, as did the Director, herself, of the Commission, at a public meeting called to address those issues. She urged at that meeting that the law of provocation should be changed to better accommodate the cases of women killing violent husbands.

We have been able in connection with some further research, that is still in train, to review a number of files of homicide cases in Victoria. The Public Solicitor in that state appears to take a far more active role in pre-trial investigation for the defence case than our examination of New South Wales files suggests is usual here. In one case, for example, where a woman had killed a violent husband, the Public Solicitor commissioned private enquiry agents to obtain information about the deceased. This information revealed he had been a former professional boxer which then became an important part of the defence case.

The Accused Woman in Court

> Well it was weird, it was really ... it felt really funny, because I'd never been in a court room, you know, and it felt all .. the happenings were all strange, and especially when you're trying to pay attention to what's being said, you know, and they started talking about ... exhibits, and As and Bs and all this sort of thing, and then they started talking about .. and then they get into the medical terms of things. And then they start referring back to ... so and so versus so and so. And all this sort of ... oh, it's really ...

> really funny. Really weird to try and follow. And then when I ... when they get witnesses in this box, and they ... start to cross examine then, and they'll say one thing and then they'll say another thing and objections overruled, and oh ... I thought God! It was real strange. And then they really made ... well I don't know, but I just really ... sort of made me feel, ... oh ... I was a real cold hearted person, not like a human being, a real ... especially when they start reading out the charge of the murders themselves, and how the deceased died and oh ... I thought, really cruel. They sort of make you feel as though they've got no feelings or consciences, you know, about it. Oh, I felt terrible. And you have to sit there. The thing is that you have to sit there and take it. I mean, there's not a thing you can do about it. You can't say, "Now look, I do feel", you know, how I feel about it. You can't ... you can't say a thing in your defence. That's the thing that really upset me ... many times I felt like saying "Look you know ... may be I did do that crime, if I did do it, this is how I sort of feel about it, you know, and how I would feel if I was ... the mother and wife, and all this sort of thing" Oh it was terrible for me.
>
> The trial was just a three ring circus and I was the mascot.

We have already suggested that how a defendant feels about her lawyers must at least partly depend on her attitudes towards the whole trial process and even towards the entire criminal justice system. Many of the women in our study felt completely alienated from what was happening in the court room. Some felt like terrified victims, others as if they might as well not have been there at all.

In theory, the adversary system places prosecution and defence on an equal basis. The trial proceeds, without prejudice and without emotion, towards a conclusion where "the facts" will have been established and the accused dealt with "according to law". Whatever the formal and legal meaning attached to it, however, a criminal trial is a dramatic and emotionally charged event. With the exception of the accused, some civilian witnesses, and some of the public spectators, its participants are present in courts on a routine basis, acting out a process in which ascribed roles, formal language, informal messages and hidden meanings, are part of every day reality. Of the principal players in the trial only the defendant is not thoroughly familiar with the rules.

For the most part, the accused in a trial is placed in a role of passivity. It is so easy sitting in a criminal trial to assume that the person sitting quietly in the dock, the object of the curious or horrified gaze of others in the court, is as calm as she outwardly appears. Those who have never sat in a dock themselves, or talked to someone who has, may in ignorance reach all sorts of wrong conclusions from the apparent composure of an accused person. Diana Trilling, for example, in her book on the recent celebrated trial of Jean Harris, continually observes how unmoved the accused woman appeared to be during her trial. On the basis of that seeming calm, Trilling reaches speculative conclusions about Harris's character.[4] Similarly, journalists covering the inquest into the death of Azaria Chamberlain, continually observed that Lindy Chamberlain, the mother of Azaria, showed no emotion. They reported, for example, that she "doodled" while horrifying details about the death of the baby were revealed in court.

The truth is that the accused person at the receiving end of such scrutiny may appear calm simply out of shock - paralysed and only too aware of her position as the object of others'gaze. As one young woman in our study observed:

> I just sat there in complete and utter shock. It is really hard because of the things they bring up and all. Its really sort of tense, because you have got all the jurors looking at you for expressions on your face and then you have got the judge right in front of you and then you have got reporters all just staring at you like you are a piece of I dont know what... They sort of said when I was sentenced I showed no emotion .. I dont know what I was supposed to do; maybe crack up or something, but I think I was just that shocked that nothing came out... There wasn't any tears or anything... I mean I had been sentenced for twelve months before it actually hit me you know, what had happened, where I was sort of thing - I was sort of walking around in a complete daze. Nothing sort of hit me.

Passivity may be the result of fear, as well as shock and tension. Pat Carlen, in her book Magistrates' Justice records that defendan in the lower courts in England were often terrified by their experiences in the court. She argues that this fear is created

by an "unfamiliar, ritualistic (i.e. out of every day) setting" in which:

> It is situationally impossible for most defendants to participate in the information game in which they are both subject and object.[5]

One probation officer she interviewed observed,

> They are terrified. That is why they cant listen to what is said to them - its just words. Most people are desperately frightened when they are in a court. I think the mind is just crippled for a few minutes. They just can't.[6]

If this response is true of Magistrates Courts, how much more true it must be for many accused persons in the awesome atmosphere of a murder trial which may go on for days or even weeks. One woman graphically described her terror as she stood trial, she felt like a trapped animal:

> It is like getting thrown into the lion's den with no defence at all. They have all the defence, they have the learned people, they have been through these things many times. They know what they are dealing with... Thats what its like, being thrown into a lion's den, they are all growling, snarling and pouncing, there is nothing you can do and they are coming from all directions and they know they have got a bit of a nitwit that is not sure of the procedures, thats obvious from the moment they look at you, I suppose.

Some women seem to cope by simply withdrawing, a retreat into themselves aided by the heavy tranquilising medication given to many women in the study while they were on remand and during the trial. Several told us that they felt as if they had almost not been in the trial at all, or as if the whole experience was a dream[7]. In one woman's words:

> I can't remember much about court either, you know, going to court. It just seems like it wasn't happening to me.

The court proceedings seem unreal and remote from reality to others as well. We interviewed the friend of one of the women in the study who had attended the woman's trial for murder.

She described it thus:

> It was just one of the most horrible, alienating experiences I have ever been through, and I was just sitting up there watching it. And I was watching (her friend on trial) the whole time, and she just .... she would be able to watch things that were going on around her for a while, and then you would just kind of see her look back and block it all out. I think she probably wasn't aware of what was going on most of the time. She was also doped up to her eyeballs before she went into the courtroom.

Indeed for the woman on trial, the proceedings inside the courtroom may be remembered as little more than a confusing interlude amongst what is more vividly remembered - cells, vans, the waiting. Those who can casually walk out of the courtroom, or like lawyers, can return to their offices when the day is over, may not appreciate this. One woman described the morning's routine for women who go to trial from the Mulawa Womens Detention Centre, Silverwater.

> I: What was the van like?
> W: Shocking, there was nothing to hold on to.
> I: Are there seats, or do you stand?
> W: There is one just like a little bench that you sit down on, there is nothing to hold on to. When the prison van goes around the corner you wind up on the floor. There is nothing to hold on to. In the little paddy wagon it is alright. In the big prison van it has just got a division and its just all steel and it has just got a little white seat.
> I: And you cant see?
> W: You cant see anything.
> I: Do they get you up early and take you in?
> W: Yeh, they get you up at 6.0 o'clock in the morning and take you around to reception and you go at 7.0 o'clock.
> I: Do you get breakfast?
> W: Sometimes, you get breakfast, it all depends.

After this early start and uncomfortable ride, the woman facing trial for her life would then wait, possibly on an empty stomach, in a cell, until the court begins at 10.0 o'clock. With this procedure every morning, it is not surprising that one woman said her initial reaction at the end of her trial, although she had been convicted of murder and so received a life sentence, was relief at no longer being forced to travel to and from the gaol every day by police van.

> No more of these bloody vans and the thought of not getting thrown in that van again helped me to settle down and stay. That is just how bad those vans are. They are shocking. They are really shocking.

The same woman said about waiting in a cell before a court mention of her appeal:

> It was another trip in that van and locked in that cell. You sit there then and you go in for two minutes and then sit in a cell again until 4.0 o'clock or 3.0 o'clock, or whenever they decide to come and you have to sit on the toilet half the time to get the bones of your backside off those boards. Oh you can't stand it any longer.

One cannot help wondering whether after the exhaustion of such experiences, an accused person will really be able to perform at her best when her moment comes, let alone look her best in the face of stares and instruct her lawyers during the trial.

Even more serious questions are raised by the description given by another woman of what happened to her in the cells beneath Darlinghurst Court.

> I: What happened in Darlinghurst Cells?
> W: I got strip searched by one of the lady police officers.
> I: What do you mean by strip searched?
> W: Take all your clothes off, my shoes and all things like that...
> I: What happened during the break (in the court proceedings)?
> W: I tried to hang myself. Then the coppers punched me in the eye. Remember when I had the black eye? The copper punched me in the eye when I tried to hang myself. I tried to hang myself during the trial... I was put in a great big cell, because the little cell was full with other people in it and I took off my shirt and I tried to hang myself. I tied it round the top and all of a sudden the copper came in and he pulled me down off the top and he punched me in the eye and he said "that will teach you to wake up, you stupid bitch", so he took all me clothes off, made me have a blanket from lunch time until when the court recessed again, they let me get dressed. About two minutes before the court went back they let me get dressed. And I had a black eye and I showed Dr. T. He can prove that I

> had a black eye, because I showed it to him... I get harrassed by the police all the time. They just harrass me.

The trial of this woman indirectly concerned her allegation that she had been raped in police cells by a police officer at the time of a court appearance on another charge. The attempted suicide described above occurred in a court recess in her trial for an attack on a parole officer. She had attacke the parole officer when the parole officer seemed to her, the woman, to be blaming her for instituting the rape proceedings.

Evidence was given at this trial for the attack on the parole officer, that the woman had been seriously disturbed at the time of the attack and was still urgently in need of psychiatric treatment. Despite her psychiatric condition and her earlier negative experiences with the police, she was left during the court recesses in the immediate control of police officers, who would almost certainly have known that two of their brother policemen were shortly to face trial for her rape. One wonders whether she should have been left in so vulnerable a position and whether, if she was in the suicidal state she describes, she could have been in any real sense a participant in her own trial.

We have described the fear and paralysis an accused may feel and how she may try to cope by withdrawing herself emotionally from proceedings she cannot understand, and which seem totally beyond her control. Those women who did try to take a more active role were frequently frustrated and angry about their experiences in the trial. One woman observed that even when a defendant wants to venture from the position of passive victim, the rules prevent her from participating until her allotted moment. Theoretically of course she is participating through her lawyer the entire time according to the formal rules of the trial.

> ...You can't even speak up to defend yourself. You cant, because even if you open your mouth, they just say shut up, or sit down or whatever. You can't even speak. They say you will get your turn to speak. So you have to sit there and listen to them saying these things about (you) that are not true and there is nothing you can - you have just got to sit there and take it.

Some of the women expressed their frustration and alienation in the view that the whole case had been rigged against them. They saw the trial as a means of disposing of them, rather than as a way of seriously coming to grips with the truth of what had happened. One woman expressed this view by saying that police, press, judges and lawyers, get together in a "huddle" to decide the case. Another young girl was equally angry:

> W: To think that they didn't even take into consideration how I felt at the time.
> I: Who do you mean by "they"?
> W: When I say "they" I mean a lot of people, I mean the law side... more or less justice if you call it that. The public. The more or less combination of the whole lot... The whole thing is just rigged. Right from the word go I was condemned. I dont even know why I bothered appearing in court.

Several women observed that the judge seemed to have "made up his mind" about the case, almost from the moment he walked into the court.

> W: The judge was very one-sided.
> I: How did he seem one-sided?
> W: The way he looked, the way he talked. The way he acted. Various things he said. From what I could make out, he had me convicted for life... You could just tell by the answers and things he was saying to the jury, you know. Trying to make them be severe on us. From the time I walked in and he looked at me and (co accused) I said "I am going to get life". I just knew it. As soon as I looked at him - I knew. He was just really biased. He had his mind made up - had as soon as we walked into the courtroom.

Not all the women in this study were as alienated by the court process as we have quoted in this section of the chapter. Those women who felt least alienated and intimidated, tended to be those who felt that their lawyers had put a great deal of effort into their cases. (more will be said of their views about their lawyers, later in this chapter). Common sense suggests that people will feel less isolated and forgotten if they feel they have an ally who is doing battle for them.

It may be difficult for a lawyer representing an accused, who has little chance of success, to project this confidence. The lawyer may also not want to raise the client's expectations falsely,

or may find it difficult to come face to face with the pain and fear of the person who is about to be sentenced to life imprison It may be preferable, however, to bring such problems out into t open. Often a client will know he or she has little chance of success but would appreciate the emotional reassurance that the lawyer cares and will do everything that he or she can in admittedly depressing circumstances.

In any case, in the absence of verbal messages, an accused perso may place her own interpretation on glances and silences. There is then the risk that in her demeanour and statement or evidence in court the accused will convey a hopelessness or resentment which sways the jury against her. Two women told us of non-verbal impressions they had received from their lawyers or the court room atmosphere before the trial was over.

> My solicitor ... just looked at me half way through the trial. He just looked at me as if to say that's that. The judge had already made up his mind.

> .....I come back here on ..... Tuesday I think it was, Tuesday night, really convinced there is a big possibility of it being dropped, because that was the way it seemed. And when I went in on the Wednesday in the morning, I could feel the atmosphere in the Court. I could feel it. And my barrister never come near me that morning. Never come near me. And I knew. And when the jury came in..... you could feel it ...and I thought, oh, I'm gone, I'll go. I'll get life, you know. It was .... the feeling was so funny. And the whole courtroom was so tense... and you could even pick it up from the jury..... oh, it was a terrible feeling. And I knew then.....when (her barrister) never came near me to see me in the cell, I knew, you know. I thought, oh, hullo.

> I : That morning ? She didn't come down ?
> W : No. And I thought oh, they must know that I am going to be found guilty.... gee it was terrible..... because all day I knew. Even when they were doing their summing up.

Neither of these lawyers visited their clients in the cells after the verdict or later in prison. Perhaps, thiswas due to awkwardness. In one case a woman had not only not been visited in the cells by her lawyer after she received a life sentence - she was never told by her lawyers personally the result of the appeal they argued for her. She put in the appeal from the

prison and can remember no one visiting her in the long months of waiting. One day she was simply told by prison officials that the appeal was "dismissed". She took this to mean that the appeal had been withdrawn without it being heard by the Court and felt understandably cheated. She did not know until we interviewed her five years later that the appeal had, in fact, been heard by the Court and dismissed by them.

The approach of the lawyers in these cases can be contrasted to another case where the young male solicitor in the case visited his client in the cells after she had been convicted of murder. He broke down in tears, saying : "Don't worry about it. - there is an appeal already lodged." It is obviously difficult to generalise about the effect such a breakdown could have on a person who has just received a life sentence. In that particular case, the person convicted, a motherly, middleaged woman, reached through the bars to comfort her solicitor, in the process, perhaps, feeling better herself. In any case, such a reaction by one's lawyer is probably no worse than the loneliness and despair of no response at all.

Many of the women had never been charged in Court before. For these women it would have been their first experience of being present at a serious criminal trial, let alone actually being on trial themselves. Considering their inexperience, and the acute anxiety and alienation they felt, it is scarcely surprising that they understood so little of the proceedings. As one woman put it, everyone seemed to understand the 'mumbo jumbo' except her and her co-accused. It would be incorrect to imagine that this bewilderment was a response only to the finer points of law - legal arguments about the admissability of evidence and so on. In some cases, the women failed to understand even the most fundamental steps in the procedure.

> I was so silly, I didn't even realize that the jury went out ... they went off and we went to the cells and I thought they were going to talk about something, some part of the thing. I didn't even realize that the jury was out, and when they came back and they said "How do you find her?" and they said "Guilty", I nearly flopped and then I thought they are talking about that one behind me.

Such basic points of procedure may have become so much part of every day knowledge of some lawyers that they fail to realize that the procedure is not necessarily a matter of common sense. Admittedly, some of these women were in such a state of shock that it would have been difficult for them to remember whether or not anyone explained anything to them. As one woman exclaime

> I had no damned idea what was going on even when I went to court ... and girls* would ask me when I came home, and true, I just couldn't tell them. It didn't register with me.
>
> (* = fellow inmates. Our emphasis).

A couple of the women who offered guilty pleas to the manslaughter of their husbands on the eve or during their trial were particularly confused. When offers of pleas are made to the defence in such situations, there may be little time for defence lawyers to fully discuss the implications with their clients, especially if they are in custody. One of these women who, half way through her trial, followed her lawyers' advice, when they said : "Say manslaughter", was amazed that the jury could go out and come back so quickly with a verdict without her having "a say". It would seem that she did not understand that once she pleaded guilty, she would be convicted of manslaughter. She was even more dismayed when, having been told, as she underst it any way, that she would get a bond if she was found guilty of manslaughter, she received a sentence of imprisonment. As a result of these and other factors, she felt she had been treate most unfairly in her trial.

All of this suggests that lawyers should assume their clients understand very little. There should be sufficient time before and during a trial for lawyers to explain Court tactics and procedures to their clients, as well as to take full instructions and to discuss the implications of legal advice.

The lawyer must take the initiative in this interchange. Many clients, especially ones as inexperienced and shocked as the women in our study, feel too intimidated to ask their lawyer questions, let alone discuss the pros and cons of their lawyer's advice with

It may also be true that some lawyers find a passive client an easy client, and come to regard any legal point as something that only lawyers can understand. Such lawyers may be hiding their own inadequacies behind a shield of authority and expertise. One lawyer to whom we spoke admitted that it was sometimes easy to tell a client that she must simply accept her lawyers' advice rather than explain why certain decisions are made.

> ..... you have to translate the law into language an ordinary person can understand.... it isn't much satisfaction telling the client that, despite what commonsense logic says, the law doesn't see it that way. It's cold comfort.

In this case, the woman who was charged with the murder of her husband was accused of having arranged for her husband to be severely beaten. The defence to this charge was that she did not intend him to suffer any serious injury. The woman had been beaten herself and terrorised over many years by her husband, and she never really understood why evidence of his domestic violence was not produced in Court. Her lawyer told us that it was possible he had never attempted to explain to her the fact that her defence of lack of intent and the defence of provocation cannot be argued together in our Courts, and that evidence of the violence could well encourage the jury to think that she had indeed a motive to want her husband dead or severely injured. The result was that this woman, who was otherwise very enthusiastic about her legal representation, remained confused about this aspect of her defence long after the trial had ended.

Attitudes towards Lawyers

A few of the women in the study made extremely negative comments about their lawyers. One woman, for instance, said that she might just as well have spoken for herself; another said that there were only two words to describe her lawyers and she would not use either of them. A third was just as disgusted :

> He was a flop. A big useless looking coot, he was. He knew as much as I did, and that was nothing.

At the other end of the scale, there was a small group of women who were very satisfied with the efforts of their lawyers. Most of the women fell between these two extremes. Some were not very positive about their lawyers but did not make any negative comments as such, and others seemed uncertain. That a woman does not verbalise feelings of dissatisfaction does not mean she does not, or did not have them. Nor, if such feelings do exist, will they necessarily be expressed as criticism. We have learned from our interviews that dissatisfaction may be expressed tentatively at first as a rider to a statement of overall approval, or apologetically. This point can be most strongly made by quoting what one woman said, not of her lawyers, but of the police who conducted a record of interview with her.

> They spoke very nicely to me and made me a cup of coffee, but they were very nice men. I mean you can't, I wouldn't say anything about them, you couldn't you know, because they were very nicely spoken men.....they didn't frighten me into anything.

Yet a little further on, in describing the record of interview, she had this to say :

> I was just mumbling away. I didn't know what I was really talking about.... I was just saying really anything that came into my mind. See, it is my idea of it, they should give people a chance to get over these things - to sort of get over the shock of what they have done. They should give them at least four or five hours you know, to sort of, think these things over you know. It is not right to question you in circumstances like that, you know, so hurriedly.

Other women were similarly hesitant in their criticisms of their lawyers.

> ....They (lawyers) were good for me although I reckon there was a lot more they could have said or done for me, but they weren't that bad. I think they were better than (co-accused's) solicitors.
>
> I don't know. She (barrister) just didn't seem confident in herself..... She didn't seem experienced enough for such trials or maybe it was just the way I saw it too, but .... she didn't do much anyway, I reckon.... Maybe it was just me, I don't know. Maybe she was good, I don't know, but that's the way I felt.

In exploring attitudes towards professionals of any kind, one must take account of the ideology of professionalism. Not only does this instil the idea that a lawyer, doctor or other "expert" has an area of particular knowledge and training, but also the notion that his or her opinions and decisions are not open to criticism by those who are not "experts". To really explore a consumer's perspective on legal representation thoroughly, one would need to examine attitudes towards a particular lawyer in the context of views of lawyers and other professionals generally. If the general feeling of an accused person towards his or her lawyer is one of powerlessness, it will be difficult to voice feelings of dissatisfaction or even ask questions, either at the time or later. Women tend to be particularly susceptible to these feelings, not only in relationships with professionals, but in their dealings with all authority figures. Not only do they tend to be less experienced in the world outside their homes (and this is particularl true of some of the women in this study), but they are conditioned to act submissively, especially towards men. All but three of the women were represented by male lawyers. Added to this is the possibility or indeed probability that the women perceive us, the interviewers, as middle class professionals, and that this social distance makes them hesitant to express tentative criticisms or views they may, in fact, hold.

The most enthusiastic praise from the women in the study was for those lawyers who the women felt provided them with emotional as well as legal support. This is not surprising, given the frightening and highly emotional impact of standing trial for the majority of these women, and their lack of legal knowledge ar confidence. In this respect, our finding parallels those of the children's court study studied by the NSW Bureau of Crime Statistics and Research.

> Almost all of these children could remember a good solicitor, and the recurring themes defining a good solicitor were - one who "tried", one who "understood", one who "came back" on the child's next appearance even though he/she didn't have to.8

Such positive responses can give us some indication of what the needs and expectations are of legal clients. Three of the women in our study who were most satisfied with their lawyers compared their relationship with them to what they, the women, could have had with a family member.

> .... well, I could be his mother. I can't explain how but that man made up for my entire family not being there... whenever I felt a bit down, I would just look at B, he didn't smile, just looked, and I did not miss my family - not one bit, B. just made up for it.... if anyone ever suggested to me that they needed any help, ever, I would say, don't go past B.
>
> T. and W. treated me like a sister. They understood.
>
> I. Did you feel you could talk to them (your lawyers) ?
> W. Yes, I felt quite at home with them, you know they made me feel that way. They spoke to me nicely, you know. They were very, it was just like talking to your own brother, sort of thing. You could confide in them, tell them everything you know, and they sort of sorted things out really good.

Perhaps what these women appreciated most was not only the feeling that their lawyer was with them emotionally, but that their case in some way was special and not just another in the daily grind. In these cases, the lawyers involved their clients in the preparation of the case so that the women felt that their representation was a team effort. One woman described her relati with her lawyers as follows :

...It sort of wouldn't matter what time I rang him (barrister) up. In fact, he rang the neighbours down there one night, oh, it was about six o'clock, and he wanted me to ring him then, and he was still in his office. So I rang him up, and all these new details he had, and he had to let me know all these things. So it was really good, you know, he spent ... as much time as possible on my case which was really good of him... I was constantly back and forth at the solicitors, and I seen the barrister the night before the trial started and I had a talk to him then, and him and the solicitor got right down to the paper work that night, and virtually right into the early hours of the morning, and I seen them the next morning and we all trotted off to Court together....I got on so well with them. It sort of wasn't like ... you know, barrister or solicitor or client sort of thing. It was more just sort of you know all friends. And it went on on that basis.

I. Do you think that helped you through the trial ?
W. I think it did, yeah. Yeah, for sure. Because I could talk to him about whatever I wanted to talk about. Whereas with some of them you can't, but he was very easy to talk to.

Unfortunately, we were not able to interview all the lawyers who represented the women in the study to see whether their perceptions of their relationship with their clients were in accord with those of the women themselves. From the few interviews we did conduct, it emerges that one lawyer who believed there were no problems in communicating with his client was, at least from her point of view, under a misapprehension. On the other hand, two of the solicitors who told us they felt there might have been difficulties were described by their clients as being "easy to talk to". It may be that those lawyers sensitive to possible difficulties of communication between themselves and an accused person who is normally from an entirely different personal and socio-economic background to her lawyer make that extra effort in communication which is in turn appreciated by the women themselves. We asked one other young lawyer whether he saw any problems in female lawyers acting for our clients in cases involving domestic violence. He answered :

> A man may just not be aware of how a woman feels, and that is very important from the point of view of (intent). At least, on the face of it, it is very difficult for a wealthy, middle class man to get into the shoes of a battling working class woman.

Given his awareness of this difficulty, it may not be coincidental that this lawyer was praised most enthusiastically by his former client in this study.

The woman who had problems communicating with her lawyer felt that he did not care about her. She described herself as being dumbfounded, shocked and almost too medicated at her trial to know what was going on. Her solicitor, on the other hand, described her as being "cool, calm and collected" (an appearance of composure that was probably the result of shock and medicati rather than true calm), and felt there had been no problems of communication. When asked by us whether he could see any diffic generally with male lawyers communicating with their women client he said that he thought that most women would prefer male lawyers (a fact which may or may not be true) and that there were no problems of communication in such an arrangement. One wonders how far this lawyer's perceptions of women clients are influenced by stereotyped notions of femininity. It was this same man who declared elsewhere in our interview that he did not put women on juries because he had learned from his wife and her close friend that women always are guided by their feelings and not by their heads. He said that until recently he had believed that it would be "impossible" for a woman to represent a male client in a criminal trial. Could it be that he also believed a woman who is not crying is by definition "cool, calm and collected"?

This lawyer did recognize the need for clients to have emotional support but felt that this was a job for a social worker. Non legal people could undoubtedly play a much greater role in the criminal process than they currently do. Whatever other emotiona support can be used to assist clients , however, cannot mal up for what the client perceives to be a lack of involvement in tl lawyer-client relationship itself. As we have already argued, problems in communication between lawyer and client can directly affect the quality of the lawyer's instructions (i.e. background

information from the client) and so the presentation of the defence case. Emotional communication cannot be hived off from the rest of the lawyer - client relationship of which it forms a vital part.

Lawyers, as a result of their class, education, social experiences, and, in some cases, sexual conditioning, may have difficulty in relating at an emotional level with their clients. This may be particularly the case for barristers, whose world is even more removed from every day reality than that of solicitors. One young public solicitor to whom we spoke clearly felt that sometimes he was the mediator between client and barrister.

> There is a limit to what one can do to try and rectify the situation between barristers and clients. You wonder if it is your job to try and console the client. I used to bite the lip and other times I would have a row with the barrister in front of the client - once or twice.

In general, this solicitor found that private counsel, to whom cases had been assigned were haughtier than the public defenders who were dealing with criminal matters every day.

> The private profession live in a world that is such a long way from the world of the client. The public defenders have a frequency of contact which gives them a better idea.

It could well be that the arrogance and lack of caring which people complain about in lawyers is sometimes a mask for insecurity. Even if that is true, lawyers as a group and as individuals cannot avoid the responsibility for overcoming any difficulties of communication with their clients.

As we have already suggested, an important step towards communication where there is a gap between two people, both in experiences, social resources and power, is to recognise that a problem may exist. The young lawyer we interviewed before who was sensitive to possible difficulties in domestic violence cases told us that he felt the gap lessened as he became more acquainted with the people he was working for, but added wryly :

> The trouble is you cut your teeth on real people.

Some Problems in Communication

If lawyers are to consciously set about removing any barriers to communication between themselves and their clients, they need to be aware of some of the material factors that can hinder communication.

a) "Insufficient Time"

It apears that in quite a few cases, whether or not a woman felt she could communicate with her lawyers was related to the number of times she had seen them before the trial. The first meeting with a lawyer (solicitor) is usually taken up with the fairly formal task of obtaining basic instructions - it is only over a longer period that other important informat may emerge, some trust can develop and the client can recei the feed-back she needs to feel that she has some involvement in her own defence.

There was a great deal of variation in the number of times solicitors had seen their client before trial and the stage in the proceedings at which the barrister who was to argue the case in court became involved. One woman said for example, th she had seen her solicitor on three occasions before her trial but only actually met her barrister at court itself. Another woman saw her solicitor and barrister for three whole days before the committal and would seem to have been in regular contact with them by telephone. Yet another only met her barrister the day before the trial was on. When asked "Did he explain much to you of what was going on", this woman told the interviewer;

> No, there was no time to explain anything, I mean he only came to see me the day before it was on; he saw me for about half an hour or so and he said there will be this and this but I thought he was going to tell the court the real reason of what it was all about but he never said anything.

Although a solicitor plays the most important part of preparin a case and can also stay in contact with the client during her case, most people will want to feel they can communicate with the barrister who is after all the one who appears to be doing the "representing" in the court itself. Lawyers should not assume that clients understand the relationship of barrister to solicitor and the role each plays in "representation".

Unless it is explained, some defendants assume that the person who they thought was their lawyer is actually only a relatively powerless assistant to the alien figure who has suddenly arrived on the scene and appears to have taken over their case.

As we have suggested earlier in this chapter, a murder trial is a traumatic and highly emotional experience for an accused person. The stakes are higher in a murder trial than in virtually any other case. If one lawyer does not have the time to develop a relationship of trust with the client, then another lawyer who does have the time should be handling the case. This may mean in the case of the Public Solicitor, that more staff are required.

b) Mental State and Medication

At the time they went to trial some of the women were still severely shocked and depressed. Most of them would never previously have imagined themselves as a prisoner, let alone a "Killer". They undoubtedly needed all the emotional support they could get and in some cases more professional, medical or psychiatric help as well. Unfortunately, the Mulawa Womens Detention Centre is short on both. Most of the women in the study spent their time at Mulawa (until their trial or until they were bailed) heavily medicated. They received little or no counselling. Evidence was given at the New South Wales Royal Commission into Prisons that medication was being used almost universally at Mulawa, apparently as a method of control as well as the main form of psychiatric help.[9]

As a result of this heavy and almost indiscriminate use of tranquillising medication the women who were still in custody at the time of their trial were often heavily 'doped' during the proceedings. One woman told us she could not even stand up when she was instructed to do so in the court. When we asked another, "Do you think you were able to tell them (the lawyers) what happended?" she replied:

> I think I told them that if I hadn't been so doped up I think I would have been able to talk in court a bit more.

Another woman told us:

> ... at that stage as I said, I was more or less doped up. I don't remember much of my court case which I don't think is right. I don't think people should be on the medication when they go on trial especially murder trials. Or even if it is cut down to manslaughter they should just go the way they are.

These women themselves realisedthat the medication affected their ability to communicate.

A striking feature of the cases was that where the woman was out on bail before her trial, she,generally speaking, had much better communication with her lawyers, and the case presented for her in court bore a closer resemblance to her real experience than in the other cases. Part of the reason for this is undoubtedly that it is physically easier for a woman on bail to see her lawyers than it is for a woman in custody. It is inconvenient for lawyers to travel the long distance from the city (where most lawyers work) to Silverwat to see women detained at Mulawa and they must arrange their visits around the gaol timetable rather the client's and thei own. As a result most lawyers perhaps unconsciously limit t number of visits to a bare minimum, whereas more conferences may well have been productive had the client been able to vis her lawyers freely in their offices.

Another aspect of the better communication where the client was on bail, however, was that the client could thus escape the numbing influence of the gaol environment and the pervasi use of medication and could seek private psychiatric help if required. One woman who had attacked her child was bailed ou to a private psychiatric clinic. She had therapy sessions on a daily basis until she was able to articulate what had happe at the time of the attack. With the support of her lawyer sh was able to give evidence at her trial to the jury of the disintegration of her life and mounting sense of crisis leadi up to the attack itself. She herself felt that if she had stayed in custody she would never have been able to give this compelling and crucial evidence. As a result of this evidenc her lawyers could argue at the trial that she had recovered and were able to enlist the active support of the trial judge in effecting her release in as short a time as possible from detention at the Governor's Pleasure after she was acquitted on the ground of insanity at the time of the attack.

In extreme cases, the women were so shocked and withdrawn tha serious questions must be asked about their fitness to stand

trial. One woman who had suffered a major nervous breakdown shortly before killing her husband told us that she didn't recover sufficientl to know where she was until several months after her trial - where she had pleaded guilty to manslaughter.

> I was still really off at the time of the trial. The barrister did it all though others - didn't talk to me about it. ... I didn't even know I was going to court. I couldn't plead myself. I couldn't even have told them what happened because I couldn't have cared less.

The law recognises that accused persons may be so mentally disturbed as to be unfit to stand trial. The problem of whether a client is fit to stand trial or "fit to plead" as it is called is a difficult one for a lawyer, however. A client who is "unfit to plead" is detained until he or she is fit to stand trial - a detention without trial which may last for substantial periods of time. As we have mentioned earlier in this report there is a woman still detained in state mental hospitals who has been detained as unfit to plead for almost forty years. In one case in our group of cases psychiatrists argued at the trial to determine whether a woman who had killed her baby son under the influence of delusions was fit to plead that she was not because she had no memory of the killing. The irony was that this amnesia was caused by the shock treatment the woman had received after she was charged to "cure" her of the delusions.

Further, a defendant him or herself may be only too anxious to have the charge resolved. It is possible in some cases that recovery will not be completed until that happened. In some cases, however, one must wonder whether the woman might not have benefited if the trial had been delayed for a short time to allow her to receive appropriate treatment and support, ideally while out on bail. At the very least, psychiatric services and medical treatment inside Mulawa should be improved so that women prisoners on remand can have a better chance of taking an active role in their own trial.

c) <u>The Physical Structure of the Courtroom</u>

The physical structure of the courtroom adds to the problems a woman will have in speaking to her lawyers during the trial. Persons in custody on trial are normally required to sit in the "dock" during the trial, a box set behind and above the table where the lawyers sit. If the person in the dock wishes to speak to her

lawyer a definite physical movement is necessary to attract the lawyer's attention - a movement which will often attract all eye to the accused and which she may simply be too terrified to make.

> I: When you were sitting in the trial, did you ever feel yourself wanting to ask the barrister or solicitor questions?
>
> W: Yes
>
> I: Did you feel able to?
>
> W: No, because I was too frightened that I'd get contempt of court or something.

A woman who has been on bail before the trial will usually sit several feet behind her lawyers. It is obviously easier to speak to one's lawyers from this position than from the dock but an accused person may be too embarrassed to interrupt the proceeding and may not try again if she feels or is made to feel by her law that she has acted unnecessarily on one occasion. A client may n to be reassured that her communications with her solicitor during the trial are welcome and important. Even where the client's suggestions or comments are not acted upon at the time they could be discussed between lawyer and client later, so that the client is not intimidated for the remainder of the trial into withholdin what may be a vital comment or piece of information.

Attitudes towards the Public Solicitor

We have discussed the attitudes of the women in the study to thei lawyers and some reasons for any lack of communication in genera Given the central place in New South Wales of the Public Solici and Defender scheme in the legal representation of persons on serious criminal charges, and the fact that just over half the women in the study were represented by public solicitors and defenders it is important to separately examine the views of these women for whom the Public Solicitor acted.

As we have mentioned in our discussion of the choice of legal representation the Public Solicitor's office sometimes must carr the burden of acting for clients who would have preferred to have private lawyers if only they could have afforded it. This initial dissatisfaction seems to be linked to several general notions abou the nature of public legal services - that they are part of

'government' and therefore less likely to be independent of police and prosecution influences; that public servants who are paid will not put in as much effort because their salary is guaranteed; and that in a consumer society quality is always highly priced and the Public Solicitor must therefore be second-rate.

As far as we are aware there is no evidence to support any of these assumptions. There are limitations attached to the Public Solicitor's office which we shall mention shortly but to the extent that these may impinge on the quality of the work done there are different but equally restricting constraints on private practice, principally the concern of the lawyer for payment. We have already cited the case of the woman who changed to the Public Solicitor in part because of her disgust at her private lawyer's central concern with advance payment.

Despite the initial reservations of some women, the attitudes of women who were represented by the Public Solicitor towards their lawyers after the court case was completed cover the full-range of attitudes, ranging from two cases where the women were hostile and critical to at least two where the clients were very enthusiastic about the service. Indeed two of the women who had the highest praise for their lawyers were two women who would have originally preferred to use a private lawyer but because of lack of money used the Public Solicitor instead. One of the women had first discovered to her disappointment that her relatives had arranged public legal aid for her only when a solicitor from the Public Solicitor actually arrived to visit her. At first her reaction was disappointment that her relatives had not been sufficiently concerned about her to pay for a lawyer to defend her. She walked angrily out of her first interview with her lawyer before he had finished taking instructions, with the following remark:

> That's it. I've given my bloody statement to them, what more do you want?

This comment certainly suggests that she saw the Public Solicitor as closely associated with the police to whom she had already given her story in the record of interview. She confirmed this impression in her interview with us where she said that she had initially thought she had little chance with legal aid because "that's more or less for the Crown, you know." Later she was to speak of the

same lawyer and the barrister he instructed in glowing terms:

> They done everything they could for me ... Mr. B. was my barrister which he is a very good barrister and ... he was a marvellous little solicitor too, you know, Mr. P., he did everything. ... I felt quite at home with them. They made me feel that way ... it was just like talking to your own brother sort of thing. ... you could confide in them, tell them everything and they sort of sorted things out really good.

Just as amongst private lawyers, there are obvious differences between the time, energy, style and no doubt skill which the different public solicitors put into their cases. It was noticeal in the case just mentioned, one of the only two where self-defence was argued on behalf of a woman accused of killing her husband or boyfriend, that the solicitor had gone out of his way to look fo witnesses who could prove that the victim had been violent. He had also kept his client fully aware of the preparation of her cas visiting her several times on remand, and clearly explained the proceedings to her.

Another public solicitor when asked by us whether he had attempted to find witnesses who were present when a woman charged with killi her husband had been threatened by him the day before she shot him told us that he would have regarded such a search as a waste of ti and a 'fishing expedition'. His view was that it was sufficient to cross-examine Crown witnesses who, if they had anything to say which was useful to the defence, would say it on the stand. The woman who was represented by this public solicitor was disappoir her representation and in particular mentioned the fact that witne had not been called to give evidence of her husband's violence and threats to her.

The Public Solicitor's office is a government bureaucracy and so suffers from the usual problems of lack of money and resources. One public solicitor also claimed that the rigidity of hours and Public Service Regulations discouraged all but the most dedicated from working out of regular office hours rather than at night and during the weekends when the legwork of looking for witnesses must often be done.

Staff turn-over and promotions can also result in changes of solicitor mid-case which do nothing to encourage the confidence of the client and disrupt the preparation of the case. One woman, who was represented by the Public Solicitor, said in describing the succession of solicitors she saw between her initial trial and her retrial:

> I had so many changes that - you see I had four solicitors - I had Mr. X first - after that I had another one that go promoted, then I had another one again that got promoted - then I had (A). When I met (A) I said, "How do you do? How long are you staying?"

In fairness to the Public Solicitor's office it should be added that this woman came to regard "A", as she put it, "like a son".

Women Lawyers - The Solution?

The legal representation of the women in this study was overwhelmingly male - only one woman was represented by a woman solicitor two women were represented by female barristers (in one of these cases the solicitor was a woman as well), and one woman was represented by a woman as a junior counsel and a man as a senior counsel.

These figures reflect the underrepresentation of women in the practice of law generally, and more particularly criminal law. At present there are only three female solicitors in the Indictable section of the Public Solicitors office. The first female solicitor in the Indictable section was appointed in 1980; before that date the presentation of a substantial proportion of all serious criminal matters in this state was an exclusively male domain. There is only one female Public Defender, appointed as recently as 1981.

The underrepresentation of women in the legal profession is reflected even more extremely in the judiciary - there is still no woman on the Supreme Court Bench and only one female judge in the District Court. Until the Jury Act was changed in 1977 it was rare for women to be called up for jury service and rarer still for them to sit on the jury. Until very recently it was standard practice for lawyers, Crown or defence counsel, to challenge any women called

for jury service on the assumption that women made bad jurors.

As a result of all these factors, most of the women in our study when they went on trial entered a male arena - indeed in some cases, the woman would have been the only women (aside from an occasional shorthand writer) or, possibly, female witnesses, to participate in the trial.

As we have said we did not interview all the lawyers who represented the women in this study. The remarks of two of them could not help but make us wonder, however, how long it will be before women are equally represented in criminal practice, especially when one takes into account that the lawyers we did interview may well have tailored their responses to what they thought we as feminists wanted to hear. One man said that until recently he had thought it was impossible for a woman to represen a male client at a criminal trial (although he said that he had somewhat revised that opinion since a woman joined the Indictable section of the Public Solicitor's office). He felt moreover that a male lawyer is probably preferred by most women (this may or ma not be true) and is probably more easily able to communicate with her. Another young solicitor who was aware of the potential probl of a male lawyer representing a woman who has killed as a result c years of violent abuse said nevertheless that perhaps it was bette for women to be represented by men as everyone else in the court scene was male.

It would be simplisitic to suggest that the answer to problems v the legal representation of women is that they should all be represented by women lawyers. A male lawyer who is sensitive to the problems of a battered woman, has explored literature on domestic violence and examined the criminal law in relation to tha material would obviously be vastly superior to a woman lawyer who believed that all women who are bashed are weak and to be blamed f their suffering. The other side of the coin is that because of th own conditioning women are usually more easily able than men to understand the reactions of another woman under stress and to offe emotional support. The woman who had attacked her child who did transfer to two women lawyers, both of whom were influenced by feminist ideas, felt that she could communicate with them and they

could convey support to her in the course of the trial. Her situation was presented in the court in the context of the stress she was under as a recently separated woman with two children.

> I don't think I could have managed if it hadn't been for them. They made me feel as though they understood why it happened. They weren't making judgements about me. They had a positive attitude towards me which was terribly important because when you have had a total breakdown and you have also done something horrendous so your self image is just nothing - the only way you get together again is by having people around you who really believe you are going to get better and believe you are a nice person.

In the case of at least one woman in the study the absence of any women in the Indictable section of the Public Solicitor's office (1980) had grave repercussions. This young woman told us that she had been raped by the man she was charged with killing. She had been raped as a child and had experienced enormous difficulties with repressed anger and nightmares as a consequence of that rape. In her record of interview, she made no reference to the rape, suggesting instead that the man had molested her child. When visited by the Public Solicitor she asked for a woman lawyer. A welfare officer from the gaol rang the Public Solicitor's office and said that "she (the woman) had been raped several times and could not communicate with men" and therefore also requested that a woman lawyer and female psychiatrist be assigned to the case.

The male solicitor initially assigned was told that since no woman was available he should continue to act. It is significant that he later told us that not only did he find it an extremely sad and difficult case but that it was one in which he sensed his instructions were not as complete as they might have been. The woman herself said about her need for female assistance:

> I asked for a female lawyer and a female psychiatrist . I knew I wouldn't approach a male. But that didn't work out. So I just kept it to myself. But it was really hard keeping it to myself.

This young woman, who had worked as a prostitute in her adolescence, believed that she would have been demolished in cross-examination (she had earlier attended a pack rape trial and watched an

acquaintance who she described as a 'nice' girl being crucified in the box). She also found it extremely painful and traumatic to recall the details of the rape. It may be that even if her account had been presented in court, the jury would not have belie her and she would have been found guilty of murder in any event. Such a argument is, however, completely beside the point. Perhap with sensitive female support, both therapeutic and legal, she might have been able to give evidence. The result could have bee no worse. As it was, in effect, she offered no defence at all. The judge in sentencing her actually suggested that she should perhaps never be released. Can it really be said that in the cas of this young woman all that could have been done in her defence was done?

It is obvious that any client who wishes to be represented by a woman should have that choice. Educational structure, career opportunities, and other social policies need to be changed so that women are no longer discriminated against and participate equally in all aspects of legal practice.

It is not just the composition of the legal profession which must change, however. The prevalence of sexist notions in the communit including those which affect popular views about women who commit crimes, means that legal education must include an attempt to make lawyers attuned to the potential effects of sexism in the court. This is necessary so that lawyers, both men and women, will not on be able to communicate with female clients and prepare their cases adequately but also so that they can counteract the sexist assumptions and ignorance of juries and the judiciary.

Research in the United States of America has demonstrated that the male judicary carry in their heads sexist notions which affect the decisions which they make in court. An article, which reviewed such research, concluded:

> Though sexism per se is rarely mentioned as a potential source of bias by members of the judiciary, recognition of the very nature of the society in which judges have been socialised suggests that it would hardly be otherwise. ... When we examine the structure and organisation of the judiciary and the pathways to that profession, we see that judges have been given few opportunities to examine the nature and consequences of sex-based discrimination in the law, their own gender-based stereotypes, myths and biases.

We have argued elsewhere[11] that the history of the violent abuse of the women in our study who killed their husbands was not presented adequately in court. We would contend that one of the various reasons why this was so is that the women were represented by male lawyers who did not themselves understand the fear of women who are trapped in violent marriages. One illustration of this was given by two lawyers who were asked whether they had ever considered whether their clients could plead self-defence to the killing of their husbands. Both of these women had killed their husbands believing that their own lives were in danger and that there was no escape from the situation. (In one case the Court of Criminal Appeal later reduced the conviction of murder to manslaughter partly on the grounds of excessive self-defence). The lawyers both suggested that the defence of self-defence could never have applied because there was no actual attack from the husband at the time of the homicide. Their replies not only reveal an ignorance of the law but an understanding of it which is influenced by male preconceptions about situations involving self-defence.

In many of these cases the reasons why the women could not leave their husbands were presented inadequately. In at least one such case, the judge in his sentencing commented in such a way which suggested that he was not aware of the powerlessness of some women in violent marriages and was naive about the availability of legal solutions.

> Given your domestic troubles, which as I find, were present but are not to be accepted in their entirety, the law itself is not without remedy and was not without remedy to you. There are friends; there are relations; there are community and church and other avenues of advice; there are policemen; there are chamber magistrates; there are solicitors; there are means of protection in the community.

That woman lived in an isolated country house, some distance from the nearest small town; she had been forced to cut off contact with her family because of her husband's violence and had told no one else about it because she was too ashamed. She had no money of her own and could not save any from the meagre amount given to her by her husband for housekeeping, and she could not drive (her husband refused to teach her). She had contacted the police once,

early in the marriage, but did not bother to try again after the told her that they could not interfere in "domestics". As well, her husband was a good friend of the local policeman. She had tried leaving once, again early in the marriage, but had to go back to look after her children. She had at one stage asked for help from a local minister, who found a room for her for the nigh but could do little else. And this recital of the tangible obstances to her leaving or seeking outside help does not include the fear that destroyed her health and presence of mind, nor her husband's extreme possessiveness that meant she had no life apart from her marriage and could not even envisage one.

Whether because the women's (male) lawyers themselves did not understand her situation or because of the judge's own preconception the judge in sentencing that woman to ten years imprisonment (reduced to five on appeal) was acting on quite unrealistic and possibly unchallenged assumptions about what her life had been at the time when she committed the homicide. It is interesting that the woman herself recognised the judge's bias. In her interview with us she said of the judge:

> I think he must have been a woman basher himself, or a woman-hater - ... I don't think he liked the look of me at all.

An increased awareness of sexism at all levels of the legal profession and an increasing number of experienced women in the profession would hopefully lead to a more adequate presentation of the cases of women who are charged with homicide. It could also contribute in a more general way to improved communication between lawyers and their clients. As one British lawyer has written,

> Sexism not only holds back the entry into an advance of women within the legal profession, it leads to offensive and patronising behaviour, helps to structure office organisation around female subservience, and indirectly, promotes undue aloofness, pedantry and aloofness. In the past, the real or imagined ability of women to react to issues more concretely and spontaneously than do men, has been seen as a disadvantage from which would-be women lawyers needed to be rescued; not it may be projected as a virtue that male lawyers should seek to acquire. ... We (male lawyers) must also re-examine our own conduct and our own styles of work and investigate the extent to which we can learn from the women's movement how to make our activity more useful to the client and the community.[12]

In a seminar organised by the Law Foundation of New South Wales on Research into Legal Services, Garth Symonds, a Sydney barrister argued that lawyers working in a children's legal service should have a knowledge of child and adolescent behaviour and attitudes, should respect children's perceptions and listen to them, and should have sufficient time to represent their clients to the best of their ability.[13] He also suggested that the class background and sex of the lawyers should be appropriate to the particular class and sex of the child represented.

We endorse these recommendations and would argue that the same sensitivity and awareness, and class and sex correspondence should attach to lawyers acting for women. Indeed, one would have thought that all clients, child, adult, black, white, male, female, English-speaking or migrant, were entitled to no less.

CHAPTER VI: LEGAL REPRESENTATION

FOOTNOTES

1. See for example, Dell, S. Silent in Court London, Bell, 1971; Baldwin, J., and McConville, M. Negotiated Justice: Pressures on Defendants to Plead Guilty London, Martin Robertson 1977; Carlen, P., Magistrates Justice London, Martin Robertson 1976; Tomasic, R., Law, Lawyers and the Community Law Foundation of N.S.W. 1976

2. What we envisage here is research which surveys particular populations and makes a general report from which individu lawyers and associations of lawyers, policy makers etc., can draw their own conclusions. Research could also be done which aimed to ascertain how consumers felt about individual lawyers. Similarly, a particular service, for example the Public Solicitor and Defender scheme could be evaluated in the same way as is being currently attempted in N.S.W. with the new Community Justice Centres. Some lawyers would no doubt find the very concept of such projects intrusive and threatening. It is worth noting, however, that such surveys of consumers are regularly attempted in some tertiary teaching institutions to ascertain the effective of particular teachers and courses.

3. Baldwin, J. and McConville, M., note 1 above, at p8.

4. Diana Trilling, Mrs. Harris The Death of the Scarsdale Diet Doctor, Harcourt Brace Jovanovich Publishers 1981.

5. Pat Carlen, Magistrates'Justice, Martin Robertson 1976.

6. Note 5 above, pg.84.

7. Similar feelings were experienced by the defendants interviewed in the Baldwin and McConville study, note 7 above. They observed "Many (defendants) felt that they were mere spectators in court with decisions being taken about their future as if in their absence". (pg. 87)

8. Ros Wood, "Consumer Research in Legal Services: Problems and Potentials" in Peter Cashman (ed), Research and the Delivery of Legal Services Law Foundation of New South Wales 1981 at page 220.

9. See the submission from Women Behind Bars and the report at pg. 573. (Report of the Royal Commission into New South Wales Prisons by His Honour Mr. Justice Nagle , March 1978 Vol. 2).

10. Norma Juliet Wikler, "Equal Treatment for Men and Women in the Courts" Judicature Nov. 1980 Vol. 64 No. 5 Pg. 207-8.

11. Wendy Bacon & Robyn Lansdowne, "Women Who Kill Husbands: The Battered Wife on Trial" in Carol O'Donnell and Jan Cranney (eds.), Family Violence in Australia, Longman Cheshire 1982.

12. Sachs, A. and Wilson, J.M., Sexism and the Law: A Study of Male Beliefs and Judicial Bias, London, Martin Robertson 1978 pg. 186.

13. Garth Symonds, "Legal Services for Children". In P. Cashman (ed.), Research and the Delivery of Legal Services. Note 8 above, pg. 9.

CHAPTER VII : DEFENCE OF WOMEN HOMICIDE OFFENDERS

In this chapter we examine the defences available to a woman charged with the murder of a violent man, and the defences in fact utilised in cases where a woman killed her husband or boyfriend. The discussion reveals that this area of the defences is one where there is often quite a gap between the real life characteristics of the killing and the way it can be, or is, presented in Court.

Introduction

Generally speaking, in New South Wales there are three[1] main defences to such a charge: that the woman acted in self defence, that she was provoked, or that she was not fully responsible at the time of the act by reason of an abnormality of mind (diminished responsibility). These are not broad generalised concepts. They are well defined and limited defences with specific components, each of which must be made out for the defence to succeed. The importance of these defences is that a conviction for murder carries a mandatory life sentence - in practice between 14-16 years for life sentence prisoners generally, though this may be somewhat less for women. If self defence is completely made out it is a complete defence and the woman will be acquitted. If the defence is made out except that the degree of force used by the woman was in the jury's view not reasonable, then she will be convicted, but of manslaughter only. Manslaughter is a lesser degree of homicide and the judge can impose any sentence he sees fit from a bond to life imprisonment. We speak loosely of the defence being "made out". Strictly the onus of proof in relation to self defence is on the Crown, not on the defence. Once there is material in the case to raise the issue it is for the Crown to rebut it beyond a reasonable doubt, not for the defence to prove it.

Provocation (s23 N.S.W. Crimes Act) and diminished responsibility (s23A N.S.W. Crimes Act) are limited not complete defences to a charge of murder. In each case the onus of proof is, at present at least,[2] on the defence, on the balance of probabilities.

If either defence is made out then the woman will be convicted of manslaughter, not acquitted outright. A woman may of course also be found guilty of manslaughter rather than murder if the jury had a reasonable doubt as to whether she had the requisite intention for murder - the intent to kill or to inflict really serious bodily harm (grievous bodily harm), or reckless indifference as to human life.

A person is only entitled to use force in self defence where that force is both necessary, in the sense that "the mischief sought to be prevented could not be prevented by less violent means"[3] and proportionate to the injury or mischief it is intended to prevent.[4] The central concepts in self defence are that of necessity and reasonableness - the accused must have had not only an honest belief that an attack was imminent, but also reasonable grounds for that belief, and she is not permitted to use the degree of force which she believes is necessary if a reasonable man would have considered it disproportionate to the attack.

There is a similar stress in the law of provocation on reasonableness and proportion, somewhat at odds with the principl thrust of that defence which is that the woman or man has been so provoked as to lose the power of self control. The accused's conduct is measured against objective standards - it is not enough that she has lost her power of self control if an ordinary person (in New South Wales) or in other states a reasonable man would not have. As with self defence the accused's response must not be disproportionate to the provocation offered[5] though it is a little difficult to see how a person who has by definition lost the power of self control can precisely measure the proportion of her response.

Another central concept to both defences is that of suddenness. Provocation is only available where the accused acts, in the words of Section 23 of the N.S.W. Crimes Act, "suddenly, in the heat of passion"[6] as provocation will not extenuate a killing committed after the accused has had an opportunity to regain her self control. Similarly the traditional view is

that the necessity for self defence only arises where the attack is sudden, as, it is assumed, in all other situations the intended or likely victim has an opportunity to escape or take other measures to protect herself.

New South Wales and Queensland are the only states in Australia to have a defence of diminished responsibility. The defence is tortuously worded[7] but its basic elements are an abnormality of mind that substantially impaired the man or woman's responsibility at the time of the killing. The defence was introduced in 1974 in New South Wales because of dissatisfaction with the defence of insanity, a complete defence but which results in detention for an unknown period at the Governor's Pleasure. It is our contention, however, that the availability of this defence of diminished responsibility means that far too often a woman's conduct in killing a brutal husband is characterised, even if only for the limited and very understandable purpose of avoiding a life sentence, as the product of an impaired mind rather than the life saving act it may well have been.

Choice of Defence

Of the seventeen cases examined fourteen of the women had been physically assaulted in the past by the husbands they subsequently killed. In most of these cases the women had been subjected to repeated and severe violence, resulting in severe injuries, over virtually the entire duration of the marriage, in three cases for 20 years or more.

In thirteen of the total seventeen cases violence from her husband or boyfriend or fear of an attack by him was the direct and immediate reason why the woman killed him. In each of these thirteen cases the woman was the victim of an assault, generally yet another assault in a long history, or some other provocation in the 24 hours preceding the killing or was, she believed, at the time she killed her husband in imminent danger from him. Given this background of violence one might have expected that self defence or provocation would be argued frequently in the cases. Self defence was argued

by the woman's lawyer at the trial in only two cases however, and raised by the Court on appeal in another. It was mentioned tangentially in two other cases but not heavily relied upon. Provocation was argued at the trial in four cases and raised by the trial judge in another.

Thus, in only six distinct cases, half of the total number where the woman killed in response to an assault, did the defenc place emphasis on the victim's conduct as distinct from the woman's mental abilities as justifying or extenuating the homicide. In two cases the defence argued only that the accused woman did not have the necessary intention for murder, preferrin to undermine the Crown's case rather than introduce evidence about the deceased's conduct which could fall short of a defence of provocation or self defence and so merely supply ample evidence that the accused woman had every reason to want to kill her husband.

Most significantly in three cases the only defence raised at the trial was that of diminished responsibility notwithstanding that these were all situations where the woman had been the victim of repeated brutal assaults over some period of time. In another two cases diminished responsibility was raised together with another defence (in one of these the defence initia relied solely on diminished responsibility and only added provocation at the suggestion of the trial judge) and in one case the woman was found not guilty by reason of insanity.

In summary, of the twelve substantive defences raised by the women's lawyers as opposed to the Court in these thirteen cases where the woman killed in response to an assault, self defence was raised twice, provocation four times, and defences of mental impairment six times.

Several points can be made about this pattern of choice of defence. Firstly, although in all the cases where provocation was argued the alleged provocation consisted of a physical

assault or an explicit or implied threat to kill it was provocation the defence relied upon, not self defence. The situations in which the women found themselves was simply not seen by their lawyers, in some cases probably on a correct interpretation of the current law, as situations justifying the use of force by way of self defence. The lawyers and the law were prepared to concede that the women lost their power of self control and that an ordinary person would have done so in the circumstances but not that their acts were the reasonable and necessary response to a situation of danger.[8] This conflicts with the pattern of cases that has been discussed earlier in this report revealing that most of the homicides were acts of self preservation in that the woman saw no other way to save herself from her husband in either the short or long term.

The second point is that in the remaining half of the cases the women were not even seen as ordinary people who snapped, let alone as rational beings who responded to a situation of danger, but as abnormal (diminished responsibility - five cases) or insane (one case).

There are clear practical reasons why a defence lawyer would want to rely on diminished responsibility. If the Government Psychiatrist who interviews everyone on a murder charge is of the view that the woman was suffering from an abnormality of mind in the relevant sense at the time of the killing then it is very likely that the Crown will offer or agree to a plea of guilty to manslaughter in discharge of the indictment for murder. Thus the woman avoids the danger of a life sentence that attends a trial for murder and her lawyer can put all relevant matters, including her battering by her husband, to the judge on the question of sentence.

We also do not deny that in many cases there may be a factual basis for the defence of diminished responsibility. Recent research in the U.S.A. suggests that there is a close correlation between psychiatric illness and battering. We have referred already in this report to the study which showed that 60 of the 120 women who had been referred for psychiatric evaluation in one rural area of the U.S.A. were found by the

psychiatrist to be victims of repeated assault by their husbands It is very likely that a woman who has been battered for many years will suffer severe emotional and psychological damage from this treatment.

One can not but suspect, however, that, especially in those cases where diminished responsibility was the only defence raised the readiness of psychiatrists and lawyers to see the woman as sick indicates a sexist and limited perception of female behaviour. In much classic psychiatry, which both mirrors and perpetuates everyday views about women, it is not acceptable for women to be angry or aggressive and a woman who displays signs of being such is by definition sick.[10] In addition, women are commonly seen not as rational and responsible beings but as irrational and unable to cope. It follows that when a woman kills her husband the decision must be that of a sick mind rather than that of a rational or ordinary person in the circumstances.

Many lawyers would argue that it is irrelevant what defence is used to obtain a conviction for manslaughter rather than murder and indeed would say that if diminished responsibility is available and is more likely than another defence to result in a manslaughter conviction then it should be utilized, irrespective of the implications of the characterisation of the woman as abnormal. There is some force in these arguments but they ignore the broader social consequences of the use of such a defence in perpetuating insulting and oppressive views about women and in keeping domestic violence obscured from the public gaze by the emphasis on the woman as sick rather than the man as violent.

Reasons Why Self Defence and Provocation are Under Utilised

1. Focus on the precipitating attack in isolation.

A major limitation of self defence and provocation as they are currently applied in the criminal law is that they focus on the attack from the victim which immediately precedes the woman's lethal response. That attack in isolation must be sufficient

to justify the action in self defence or to have caused the loss of self control. In the case of a continuing relationship, however, where the woman has been assaulted in the past and has every reason to expect that she will be assaulted in the future it is artificial to see the particular assault which precedes the killing in isolation. This may have been the worst the woman has ever suffered but on the other hand it may well be simply the final straw, or the assault that makes her realise that there is no escape unless she retaliates.[11]

The woman's apprehension of danger, whether there was an objective need to act in self defence, and the question of whether an ordinary woman in her situation would have lost her power of self control can not be properly appreciated unless the prior history between the parties is put before the jury. Some lawyers have appreciated this and attempted to put the precipitating attack and the woman's response in its proper context, but the legal view of what is relevant provocation or relevant to showing that the woman acted in self defence still falls short of the woman's own appreciation of why she acted as she did. In one case, the woman had few witnesses to the violence she had suffered but suggested her lawyer contact her sister and brother-in-law who could give evidence that they saw her being beaten by her husband fourteen years ago. The lawyer said that this was too long ago - the woman herself felt that that was all the better as it showed the violence had been going on for a long time.

2. The Requirement of Suddenness

As mentioned earlier both self defence and provocation require that the act of self defence or retaliation follow quickly upon the assault. In the cases we have examined this requirement, an artificial one as far as women in violent marriages is concerned, has been the most compelling factor in persuading lawyers not to rely on self defence or provocation.

In half of the thirteen cases where the woman killed her husband because of his violence or threats he was asleep, or she could well have believed so, when she killed him and in most of these cases there had been some interval of time, possibly a few hours, between the last violence inflicted

upon the woman by her husband and her response. In these cases the woman did not fight back at the time the husband attacked her but waited until he was asleep and so not in a position to overpower her. The women were simply too afraid to hit back at the time when past experience told them that they would only incur greater violence.

Most women suffer a disability against men in protecting themselves by the use of their bodies alone simply because they have not been encouraged from early childhood and throughout school as are men to develop confidence, skill and strength in physical activities. Added to this crucially important inhibitin psychological factor women also suffer a physical disadvantage as against a male attacker who is heavier, taller and stronger, as well as more used to punching and kicking. For example, one woman in this group of thirteen cases weighed 7 stone and her husband 15. When he started punching and kicking there was little she could do.

When one considers that as well as these factors, which apply to women generally, a battered wife has been cowed and intimidated by possibly years of fear of her husband's violence it is not surprising that such a high proportion can only fight back in anger when not paralysed by the terror of an actual attack.

This woman's perspective must be incorporated into the law of provocation by a recognition that the provocation offered by a recent attack does not cease to operate merely because of the effluxion of time, particularly in the context of a continuing relationship of repeated violence where the woman may be too paralysed to fight back at the time.

Similarly, it is false to assert as did most of the lawyers we spoke to, that if a woman kills her husband some time after he has attacked her, or alternatively before he has done so in the belief that unless she acts first he will ultimately kill her, then the situation is unequivocally not one of self defence. In two of the cases where a woman killed a sleeping

husband she did so because of his threats to kill her rather than in response to any recent violence believing that if she did not strike first he would either that night or ultimately kill her. We spoke to the lawyers in each case who would not accept that the killing may have been in self defence. They could not agree that the defence may arise on the basis of threats alone, rather than actual immediate violence, and both felt that the fact that the man was asleep when killed also ruled out the defence. Interestingly, in one of these cases, where after an argument with her husband culminating in his threats to kill her a woman found an axe under his bed which she feared he was planning to use on her, the Court of Criminal Appeal took a broader view, raising of its own motion (excessive) self defence as a proper basis for a substituted conviction for manslaughter. That woman's trial lawyer told us he still could not see the basis for a self defence argument.

The conventional wisdom, based on an unarticulated model of single assaults between male strangers, is that unless the attack is actual or imminent the intended victim can escape. In such a situation once the attacker is incapacitated, for example by sleep, the danger is presumed to be over. But this is simply not the correct model for violent marriages, where the fact that the husband is temporarily incapacitated affords temporary respite only and where there may be no real way the woman can escape. As discussed earlier all these women had tried other methods to end the violence - the police, leaving, asking their husbands to leave - to no avail. They remained trapped in a vicious pattern of violence that no one else wanted to know about, too ashamed sometimes to even leave the house, socially, physically and in several cases geographically isolated.

3. <u>The Requirement of Proportion</u>

We noted earlier that both self defence and provocation require that the woman's response be proportionate to the attack or the danger she suffered.

Clearly a major element in determining proportion is the

comparative force used by the parties and in particular whether the woman responding used a weapon although her attacker did not. In the two cases where self defence was argued fully at trial the woman was found guilty of manslaughter and not acquitted outright. A jury does not indicate on what basis it reaches its verdict but it seems probable that the jury members convicted of manslaughter because in their view it was excessive for the women to have used in one case a knife and in the other a loaded rifle, which accidentally discharged, to defend themselves against attack by an unarmed man. In the knife case the woman stabbed her drunken husband as he kicked in the front door. She had locked the door in a vain effort to protect herself from the beating she could tell was coming. That man had beaten his wife severely in the past, breaking her ribs three times by punching and jumping on her. In the other case the woman's boyfriend had returned to her isolated country property, where she lived alone with her young son, very early one morning after they had separated. He did not leave when she asked and appeared to be about to assault her. Panicky because of her earlier experience of assault at the hands of her former husband, the woman got her rifle which in a struggle discharged, killing the man. She was put on trial for manslaughter only - the Crown did not argue that she fired the gun intentionally, merely that the threatened assault did not justify her presenting a loaded gun in her own defence.

Of the total seventeen cases, weapons were used in all but two and in those two the actual killing was committed by a male co-accused. Guns were used in seven cases, knives in six, an axe in one and a hammer in another (where the woman also used a knife) and poison in one. Although several of the women had been threatened with weapons in the past by their husbands in only three cases did the last or threatened attack from the husband involve the use of a weapon.

The use of lethal weapons such as guns and knives by these women like the delay in retaliating must be seen in the context of their inability to fight back in any other way as detailed earlier. This has been recognised in several recent American

cases where feminist lawyers conducting the defence have put the woman's use of a weapon in this its proper context.[12] Most of these cases have not involved continuing relationships, being rather attacks by relative strangers, but similar issues arise.

There is a further irony in the cases of husbands and wives. Although as mentioned above the most recent attack on the woman by her husband may not have involved the use of a weapon several of the husbands had used weapons in the past to threaten and terrorise their wives and in some cases it was purely fortuitous that the woman was not killed on these occasions. For example, one man had chased his wife around their flat with a knife and another had actually shot his wife at close range with a shotgun as she bent to pick up the food he had thrown on the floor. She was not killed because the cartridge was, apparently unbeknownst to her husband, a blank.

The use of a weapon is also relevant in those cases where the women did not intend to kill their husbands, nor cause them grievous bodily harm. In some of these cases the women merely wanted to make their husbands afraid for once, just as they themselves had been made afraid by them, in others the women were trying to protect themselves. For the same reasons as discussed earlier they felt unable to do this without an equaliser - a rifle, a knife or a male assistant. In the ensuing scuffle this weapon proved fatal. Not only was this not what the woman intended, but her use of a weapon unless seen in the context of her perceived and very real inability to stand up for herself in any other way may make a jury reluctant to believe that in fact the death was unintentional.

4. Objective Standards for the Woman's Action

As mentioned earlier, both self defence and provocation require that the "reasonable" in the former case and "ordinary" in the latter woman would have acted as the accused herself did.

These requirements, particularly in relation to provocation, has been the subject of extensive criticism.[13] It has been

said that the objective requirements run counter to the spirit of the criminal law, which is generally concerned with the actual "subjective" state of mind of the person charged not what the "objective" ordinary or reasonable person would have intended.

A more fundamental objection is that the tests do not make sense. Psychologists and psychiatrists argue that there is no such thing as an "ordinary" person so it is nonsense to expect a jury to evaluate the accused's conduct against such a standard.

For the most part we agree with these criticisms. Further, the tests have a particularly onerous application in the cases of women who kill in a domestic violence situation. The jury is charged with the duty of considering whether the "ordinary" or "reasonable" person would have acted as the accused did and in determining this point jury members will inevitably have recourse to their own experiences, and to preconceptions. Where these are likely to be inaccurate and sexist, as preconceptions about domestic violence still are, it is crucial for the defence to make positive and extensive efforts to present the woman's perspective and to overcome the myths and ignorance that shroud everyday perceptions of domestic violence.

In the analogous cases in the U.S.A. mentioned earlier, defence lawyers are beginning to take the necessary aggressive stance to select and then "train" the jury in such a way that they will be able to evaluate the accused's actions from the woman's perspective. In these cases the lawyers have not challenged the objective requirements as such but have stressed that the woman's action must be seen as that of a reasonable woman in her circumstances. The trial in North Carolina of Joan Little, a black woman, for the murder of a white jailer who had raped her while she was locked in a cell, involved explosive issues of race and rape. In that case, the defence lawyers used sophisticated questioning of potential jurors before they were sworn in. The questioning was designed to reveal those jurors in respect of whom the accused should exercise her right of challenge and so eliminate from the jury and to instill in the

remaining jurors a sensitivity to the defence presentation of a case as one of legitimate response to rape.[15]

In another landmark case State v. Wanrow (88 Wn. 2d, 221, 559 P.2d 548 (1977)) the accused was a 5' 4" woman with a cast on her leg and using a crutch who shot a 6' 2" intoxicated man who was threatening her children. She was convicted of murder and her lawyers appealed arguing that the trial judge's direction to the jury on self defence was inadequate in that it did not fully include the female perspective. The direction was couched in terms of male reactions and used the male gender. The Supreme Court of Washington overturned the conviction, the Court holding that:

> The respondent was entitled to have the jury consider her actions in the light of her own perceptions of the situation, including those perceptions which were the product of our nation's "long and unfortunate history of sex discrimination".[16]

5. Retaliation Without Intent to Kill

As indicated earlier one significant type of case that occurred in our group was where the woman was provoked, in the everyday sense of the word, by her husband's conduct but did not intend to kill him or even cause him serious bodily harm. In a moment of rage and indignation, in one case the first time the woman had felt anger instead of numbing fear, she retaliated after an assault not wanting to kill, only for once to make her husband as afraid as he made her and to show she couldn't be pushed around any longer.

Paradoxically however, these women are in legal limbo. There is simply no way within the existing framework of defences to accurately present their motivation and actions. Provocation is available only as a defence to murder where the accused intended to kill or cause grievous bodily harm. If the accused did not have this intent she is not guilty of murder in any event, and will be convicted of manslaughter only as she would be if provocation was established.

In terms of final conviction the absence of any appropriate defence may matter little. But in terms of the accurate presentation of the real life situation it matters a great deal. The defence must choose between an argument that the woman did not have the intent to kill or cause grievous bodily harm, and the inconsistent line of defence that she did but she should be convicted of manslaughter only because she was provoked. There is no defence that gives equivalent weight to the man's violence and the woman's lack of intent to kill. Either of the available approaches involves a distortion of reality which can leave the woman feeling confused and cheated and the Courts and the criminal law unenlightened about the real motivation of the women they presume to judge.

If the defence adopts the first line of defence it will be important to minimise the violence the woman has suffered as this could well suggest she had every reason to want to kill. In one case we studied the woman and others who were sympathetic to the case never understood why her lawyers, who had adopted this course, did not bring out her husband's brutality to her.

If the second approach is adopted then the defence can and indeed must stress the husband's violence (within the limits discussed earlier) but at the cost of the perhaps more serious distortion of portraying the woman as intending to kill when in reality she did not. This line of defence caused considerabl distress to one woman we interviewed who was convicted of manslaughter on the basis of provocation but was adamant that she intended to frighten her husband only.

In this sort of situation, the lawyers seem more likely to choose the provocation rather than the lack of intent approach. It may be, for example, easier to get the Crown to accept a plea of guilty to manslaughter on the basis of provocation rather than on the basis of lack of intent. A woman hysterical from the shock of what she has done, and possibly her husband's violence immediately before, and stricken with guilt and remorse at his death may tell the police immediately after the killing that she intended it when on a calmer examination of her motives

later, in a less hostile and punitive environment than a police station, she realises that in fact she did not. This "confession" at the time is compelling police evidence, however, and coupled with the use of a weapon may cause most lawyers to either not believe themselves that the woman did not intend to kill or at best to assess the Court as unlikely to believe it.

Only if these "confessions" are put in their proper context and if the use of a weapon is seen as a product of the woman's inability to defend herself against a violent man in any other way can it seem credible that the woman did not intend to kill.

The fact that provocation is available only to extenuate the most serious and most culpable violence, where the person using the force intended the victim to die or be really seriously injured, but not in relation to violence without lethal intent could seem paradoxical. In fact, the defence probably developed more as a response to the fixed penalty for murder, until recently death and now life imprisonment than as a concession to violence generally and lethal violence in particular. Where the charge is less than murder and so does not carry a fixed penalty the Courts have held as a matter of public policy that they are not prepared to further reduce the charge because the attacker was provoked. Any provocation can be considered in mitigation of sentence.[17]

Reform

Some of these issues have been aired in the public discussion following the release of Mrs. Violet and Mr. Bruce Roberts in October 1980 in New South Wales and the axe murder case in South Australia, first tried in July 1981 then again in December 1981. After some delay the New South Wales Government has now agreed on the need for some change to the law of homicide to better accommodate cases of domestic homicide, particularly those involving battered women. As we have noted elsewhere in footnotes to this report the New South Wales Cabinet announced on 10 February 1982 that the law of murder would be reformed. The reform has two arms - the life sentence will be

made no longer mandatory, so that the trial judge may impose a lesser determinate sentence where warranted, and two changes will be made to the defence of provocation. The onus of proof will be transferred to the Crown and the statement of the Court of Criminal Appeal in R. v Georgia Marie Hill C.C.A. unreported 18 June 1981 that the entire history of the relationship should be considered in evaluating whether the killer was provoked is to be imported into the statute.

These changes are commendable. It is somewhat disappointing however, that they do not go further. There is by now considerable authoritative opinion that the objective test in provocation should be abolished yet the Government was not prepared to grasp this nettle. Furthermore, it is anomalous that the aspect of provocation to receive the most critical comment as a result of the recent cases, the artificiality of the requirement of suddenness in the cases of women killing violent husbands, is not one of those parts of the defence that is to be reformed.

CHAPTER VII: DEFENCE OF WOMEN HOMICIDE OFFENDERS

FOOTNOTES

1. Only one woman who killed her husband in our group of cases was found not guilty by reason of insanity. Our impression is that this defence was never as frequently utilised in the cases of women who killed violent husbands as in the cases of women who killed children. Certainly in the United Kingdom the defence of insanity has gone out of favour for all categories of homicide since the introduction of the defence of diminished responsibility in 1957 because the only possible result of a finding of not guilty by reason of insanity is detention at Her Majesty's (here the Governor's) pleasure, whereas with diminished responsibility the defence can aim for sentence of definite length. The same trend may become apparent in New South Wales over a longer timespan - diminished responsibility was not introduced into New South Wales until 1974.

2. The onus of proof is on the defence in provocation largely by virtue of historical accident. At the time s23 of the N.S.W. Crimes Act was drafted the onus of proof was at common law for provocation, as well as self defence, on the defence. Accordingly, the drafters of the statute adopted this state of the law. Subsequently the common law developed such that the burden of proof for provocation at common law, as for self defence, is now on the prosecution. New South Wales is thus in an anomalous position. On 10 February, 1982 the New South Wales Cabinet approved changes to the law of homicide, including moving the burden of proof in provocation to the Crown. The burden of proof in diminished responsibility is on the defence in the United Kingdom as well as in New South Wales (which just adopted the U.K. wording) but the Butler Committee on Mentally Abnormal Offenders recommended that the burden of proof be shifted to the Crown if the defence is to remain (Report of the Committee on Mentally Abnormal Offenders London H.M.S.O. October 1975 at para. 19.18)

3. Report of the Criminal Code Bill Commission of 1879 (U.K.) quoted by Smith J. in R. v. McKay (1957) V.R.560.

4. Note 3 above.

5. After Johnson v. R. High Court of Australia (1976) 11 A.L.R. 23 the proportion of the fatal act to the provocation offered is not a separate element of the defence, but "part of the material on which the jury should consider whether the provocation offered the accused was such as would have caused an ordinary man, placed in all the circumstances in which the accused stood, to have lost his self-control to the point of doing an act of the kind and degree of that by which the accused killed the deceased." (per Barwick C.J.)

6. The section is as follows:

(1) Where, on the trial of a person for murder, it appears that the act causing the death was induced by the use of grossly insulting language, or gestures, on the part of the deceased, the jury may consider the provocation offered, as in the case of provocation by a flow.

(2) Where, on any such trial, it appears that the act or omission causing death does not amount to murder, but does amount to manslaughter, the jury may acquit the accused of murder, and find him guilty of manslaughter, and he shall be liable to punishment accordingly:

Provided always that in no case shall the crime be reduced from murder to manslaughter, by reason of provocation, unless the jury find:

(a) That such provocation was not intentionally caused by any word or act on the part of the accused;
(b) That it was reasonably calculated to deprive an ordinary person of the power of self-control and did in fact deprive the accused of such power, and,
(c) That the act causing death was done suddenly, in the heat of passion caused by such provocation, without intent to take life.

7. Section 23A is as follows:
(1) Where, on the trial of a person for murder, it appears that at the time of the acts or omissions causing the death charged the person was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for the acts or omissions, he shall not be convicted of murder.

(2) It shall be upon the person accused to prove that he is by virtue of subsection (1) not liable to be convicted of murder.

(3) A person who but for subsection (1) would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that a person is by virtue of subsection (1) not liable to be convicted of murder in respect of a death charged shall not affect the question whether any other person is liable to be convicted of murder in respect of that death.

(5) Where, on the trial of a person for murder, the person contends -

(a) that he is entitled to be acquitted on the ground that he was mentally ill at the time of the acts or omissions causing the death charged; or

(b) that he is by virtue of subsection (1) not liable to be convicted of murder,

evidence may be offered by the Crown tending to prove the otherof those contentions, and the Court may give directions as to the stage of the proceedings at which that evidence may be offered.

8. The recent decision of the Court of Criminal Appeal R. v Georgia Marie Hill unreported 18 June 1981 has enshrined this approach. In that case the appellant had shot her de facto husband who had assaulted her in the past, fearing that he was about to do so again. At her trial she argued that she acted in self defence. The jury (which due to the challenges of the Crown Prosecutor consisted of 11 men and 1 woman) did not accept this defence and she was convicted of murder. At her appeal the Court of Criminal Appeal substituted a conviction for manslaughter, but on the basis of provocation, not self defence. This may have been tactical, as the Court could hardly reverse a jury decision on self defence but its undoubted effect will be to make lawyers even more reluctant to run a self defence as opposed to provocation defence.

9. Elaine Hilberman and Kit Munson, "Sixty Battered Women" Victimology Vol.2 1977-78 Nos. 3-4 pp 460-470.

10. For a general discussion of this topic see Elinore King, "How the Psychiatric Profession View Women" in Dorothy E. Smith and Sara J. David (Eds.) Women Look at Psychiatry Press Gang Publishers Vancouver 1975 especially at page 23.

11. R. v Georgia Marie Hill, see note 8 above, was a landmark case in that the Court recognised that a past history of assaults is relevant to the question of whether the woman was provoked into killing her husband by his most recent assault or threatened assault. Street C.J. reasoned that past assaults could render more fragile the woman's power of self control in relation to the instant assault (page 5). As we discuss in the final section of this chapter entitled Reform the New South Wales Cabinet has recently decided to import this decision into the legislation.

12. For a discussion of these cases see Elizabeth M. Schneider and Susan B. Jordan, "Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault" Vol.4 No.3 Women's Rights Law Reporter Spring 1978 p.149;

"Women's Self-Defence Under Washington Law" (1978-79) 54 Washington L. Rev. 221; Elizabeth M. Schneider, "Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defence" 15 Harvard Civil Rights - Civil Liberties Law Review 623.

13. The most recent criticism is contained in Report No. 12 of the Law Reform Commissioner of Victoria Provocation and Diminished Responsibility as Defences to Murder Melbourne 1982 which recommends abolition of the objective test in provocation.

14. The answer of some psychiatrists and psychologists who addressed a public seminar held in 1979 after the Victorian Law Reform Commissioner had published a working paper on provocation was to introduce a defence of diminished responsibility. See the papers by Dr. Neville Parker and Dr. David Sime, "Provocation and Homicide" and Ronald Conway, "Provocation as a Defence in Cases of Homicide" given at that Seminar held on 26 September, 1979 at the State College of Victoria at Coburg. The Law Reform Commissioner in his twelfth report, note 13 above, has in fact recommended that diminished responsibility be introduced in Victoria.

15. See John B. McConahay, Courtney J. Mullin and Jeffrey Frederick, "The Uses of Social Science in Trials With Political and Racial Overtones: The Trial of Joan Little" 41 Law and Contemporary Problems 205.

16. Cited p.156 of the Schneider and Jordan Article, note 12 above.

17. R. v Falla Supreme Court of Victoria (1964) V.R. 78; Helmhout v R. Federal Court of Australia (1980) 1 A Crim R. 464 and the ruling of the trial judge reported in (1979) 1 A Crim.R. 103.

"A"

Telephone: 692 2653

The University of Sydney

N.S.W. 2006

DEPARTMENT OF SOCIAL WORK

Professor of Social Work
Stuart J. REES

General Office:
692 1122
ext. 2650

8th August, 1979.

Dear

During 1979, the Feminist Legal Action Group is doing a research project on the situation of women who have been charged and convicted of murder or manslaughter. Two researchers have been employed to carry out this work and we hope to complete this project by December.

The Feminist Legal Action Group is a group of women lawyers, law students and others who are trying to improve the position of women in our legal system.

This project has several aims. Our basic aim is to bring about a better understanding of women in your position. In particular, we are looking at:

- whether our laws and the ways they are used in the courts are suitable for the defence of women who have been charged with murder or manslaughter.
- how women who face charges feel about the legal respresentation they get? Can they talk to their lawyers easily? Can their lawyers communicate with them and are they able to understand the situation of women who commit crimes? Do women who have been convicted feel there are things which should have been brought up at their trial which were not mentioned during the court case?

When we have finished our study, we will be making suggestions to the Government as to what changes need to be made.

The first and most important part of this project is to interview women who have been charged and convicted with murder or manslaughter. We only want to do this however, if you decide you want to be part of this project. For this reason, we want to know if you agree to be interviewed.

Because there will be a lot to say, we would like to tape-record the interviews. Once again, we will only use a tape-recorder if we have your written permission. Only three people the two researchers and their supervisor will be allowed to listen to the tapes.

/2...

After we have done the interviews, we hope to talk to the lawyers who represented you and to look at the files on your case. Their dealings with you are confidential. For this reason, we will also need your written permission to talk to them.

When we have finished all the interviews and the research, we will write a report. We hope that this report will be published. Any publication will not be sensational but will aim instead at helping people to understand the position of women who are charged with murder or manslaughter. Nothing will be published from which someone could recognise your case without you giving your permission. By this we mean that you will be given an opportunity to read any part of the report that identifies you before it is published. Only after you have had this opportunity, will we ask for you permission to publish.

If you are sure now that you would like to talk to us, the lawyer bringing you this letter will help you write out the forms of permission that we need. Once we know you want to be interviewed, one of us will come out and see you.

If you want time to think about this, the lawyer or we will contact you again in a week or so.

We hope that you will decide that this project is a worthwhile one which will help not only women in N.S.W. but women in other places and in the future.

Yours sincerely,

Robyn Lansdowne and
Roslyn Omodei.

Telephone: 692 2653

"B"

The University of Sydney

N.S.W. 2006

DEPARTMENT OF SOCIAL WORK

Professor of Social Work
Stuart J. REES

General Office:
692 1122
ext. 2650

6/2/80

Dear Mrs ,

Robyn Lansdowne and I are working on a project which concerns women who have been charged with murder or manslaughter. We hope this project, which will eventually lead to the publication of a book, will help bring about a better understanding of women who are in this position and will also help bring about changes in what happens to them after they are charged.

We would appreciate the opportunity to talk to you and need your consent in order to do that. We have already interviewed 21 women at Mulawa Womens Detention Centre and some others who have been released..

Although we do hope to publish the results of our study, your case would not be identified by name in any way,. If you do wish to be interviewed, I will be out to see you soon,

Yours sincerely,

Wendy Larcch

"C"

The University of Sydney

N.S.W. 2006

DEPARTMENT OF SOCIAL WORK

Professor of Social Work
Stuart J. REES

General Office:
692 1122
ext. 2650

5th November, 1979.

Dear

During 1979, the Feminist Legal Action Group is doing a research project on the situation of women who have been charged and or convicted of murder or manslaughter. We have been employed to carry out this work and we hope to complete this project by February.

The Feminist Legal Action Group is a group of women lawyers, law students and others who are trying to improve the position of women in our legal system.

This project has several aims. Our basic aim is to bring about a better understanding of women who are charged with homicide. In particular, we are looking at:

- whether our laws and the ways they are used in the courts are suitable for the defence of women who have been charged with murder or manslaughter.

- how women who face charges feel about the legal representation they get? Can they talk to their lawyers easily? Can their lawyers communicate with them and are they able to understand the situation of women who commit crimes? Do women who have been convicted feel there are things which should have been brought up at their trial which were not mentioned during the court case?

- the background to the crime. How women come to find themselves in a situation where something like this can happen.

- the effects of the trial and imprisonment on women and their families.

/2...

When we have finished our study, we will be making suggestions to the Government about what changes need to be made. We also hope to publish a book which will help people to understand better the situation of women who are charged with homicide.

The most important part of this project is to interview women who have been charged with murder or manslaughter or with attempted murder. So far we have interviewed 16 women who are in Mulawa Womens Detention Centre and three women who have been released. The Department of Probation and Parole have agreed to send a letter like this one to all women who are now on parole or license.

We only want to interview you if you want to be part of this project. For this reason we want to know if you agree to be interviewed. Because there will be a lot to say, we would like to taperecord the interview. Once again, we will only use a taperecorder if we have your written permission. Only the three people who are working on the project will be allowed to listen to the tapes.

Although we do have a guideline which we follow in each interview, we are particularly interested to hear what you think is important for us to know. Naturally, we only want to talk about those things which you feel comfortable talking about.

As well as doing the interviews, we are reading the transcript of each case. We are also where possible, going through the legal file and interviewing the lawyers who worked on each case.

We have included here forms which would give us permission to do these things on your case. We would greatly appreciate it if you could fill in these forms as soon as possible because we don't have much time to do this research. It may be that you would prefer not to be interviewed but on the other hand would not mind if we read the transcript of your case. If so, just give us permission to read the transcript. We have included a stamped envelope addressed to us here at the University. If you would like to speak to us before becoming involved, you can ring the telephone number at the top of the letter. Leave a message and your number and we will ring you back.

We hope that you will agree with us that this project is a worthwhile one. If you do agree to be interviewed we will contact you again at the address or telephone number you give us soon to make arrangements to see you.

Yours sincerely,

Wendy Bacon,
Robyn Lansdowne,
Ros Omodei.

"D"

FORM OF CONSENT

I,

a) hereby consent to being interviewed by

in relation to a research project being conducted on behalf of

"Feminist Legal Action Group".

b) I further consent to the interview being recorded on tape,

and I understand that the taped information is to be used only

the purposes of the research.

c) I further consent to the transcript of my case being made

availalbe to a researcher on the project being conducted on beh

of the "Feminist Legal Action Group."

DATED this day of , 1979

.....

Witnessed: .....

TO: The Public Solicitor*,
Caga Building,
Bent Street,
SYDNEY, N.S.W. 2000.

I, , give permission to Robyn Lansdowne and Wendy Bacon to have access to all files, papers and court papers, including transcripts, relating to my case or cases, and to discuss the case or cases with the solicitor or solicitors who handled it.

I understand that they intend to use this material in connection with a research project on female homicide offenders in N.S.W. being conducted by the Feminist Legal Action Group. I give them permission to photostat material for the purposes of their research.

DATED:

SIGNED:

WITNESSED:

* If public solicitor was not your solicitor, cross out and write in name and address of private solicitor.

"E"

RESEARCH ON WOMEN HOMICIDE OFFENDERS JULY TO DEC. 19

Interview

Name of person interviewed :

Interviewed by:

Dates:

At:

INTRODUCTION & RECENT EXPERIENCES IN GAOL

Reexplain interview, confidentiality etc.

1. Name ?

2. How long have you been at Mulawa (Tomago or elsewhere if appropriate) ?

3. Have you got a definite release date?

4. If yes, when?
   If no , what is your situation then? (e.g. life sentence, Governor's pleasure)

5. Did you or have you worked at P.L.S. ? or Do you work inside the gaol?

6. Have you applied to go into a work release cottage? or for home detention?

7. Do you get day leave?
   If yes, how often and under what conditions ?
   when did you get your first day leave ?

   If not, have you applied and been refused ?

   If refused, were you told why?

8. Have you spent all your sentence at Mulawa?
   If not, where else and for how long?

9. Visits and Letters Do you get visits? If so, from whom? Friends or family? Has this changed over time?

10. Do you get letters? send letters?

11. Are you married?

12. Do you have any children ? names ? ages?v who is looking after them now? Where do they live now?

Do they visit you? Are there any difficulties in them visiti you ? (e.g. distance, cost, not allowed) Do you write to them? Do any of them visit you? Are there any difficulties in them visiting you? Do you write to them? Do they write to you?

13. Where were you living before your arrest?

14. Do you find that these letters and visits and enough: to kee you close to your children and family?

PAROLE AND LICENSE

1. Do you have a non-parole period?

2. Has that expired yet?

3. Have you applied for parole or a license ?
   If not, have you been told when you can start applying?
   Will you apply then?
   If yes, how many times ?

   Hav you or would you refuse parole or a license if it was offered?

4. When you applied what steps did you take?
   (e.g. did you fill in a form etc.)
   Didyou receive assistance from anyone e.g. a member of your family, a lawyer?

5. When you applied what reasons did you give the Parole Board (or Life Sentance Committee) why you should be released?
   What arrangements did you tell them you had made for work or accomodation if you were released?

6. What was the result of your application(s)?

7. Have you been seen by a parole officer (or a member of the Life Sentence Committee) while you have been in custody?
   If so, how often and in what circumstances? How long for?
   (when you were applying for parole or license, before then since then?)

   Have you asked to see a parole officer unsuccessfully?

8. To your knowledge, has anyone from the Probation and Parole Service talked with any members of your family or a friend?

9. If parole or license was refused, when and how did you find out? Were you given any reasons? (seeover)

Do you believe these were the reasons?
If not, or if you weren't given any reasons, what do you think we:
the reasons?

10. When you applied for parole or license , did you ask if you c
appear before the Parole Board?
Did anyone contact the Department or Probation and Parole or
a member of the Parole Board for you?

11. Do you intend to apply again for parole or license?
Will you give a different case next time?

12. How do you get on with your parole officer? (If badly, have y
tried to change? What happened?

ARREST AND EARLY EXPERIENCE IN GAOL

(4) Arrest

1. When were you arrested?

2. Do you know how the police were notified?

3. Which police arrested you? Which policestation were you taken to?

4. Did the police question you? For how long?
   In what circumstances?

5. Did you tell the police what had happened or make a confession?

   Did you tell them anything about what had happened?

   If not, why not? If yes, why?

6. Did the police say in court that you had told them things that you hadn't told them? Did they say you had said these things in conversation with them or in a record of interview?

7. If you did tell the police anything about what had happened, did they make a record of what you said ? (notes or record of interview)

8. Did you sign a record of interview (a confession) ?
   If not, why not? If yes why?

9. Did you want to give the police information about what had happened ? If , you didn't want to and yet you did why?

10. <u>If</u> you talked to the police at all, did you know
- that you didn't have to talk to the police?
- that what you said could be used in court against you?
- that you didn't have to sign a record of interview?

How did you know? Did the police tell you any of these thir

11. W as there anyone with you while the police were questioning you ? (lawyer, family, friend)
Did you ask the police if someone could be with you?
<u>If so</u>, what happened

12. Had you ever been in a police station before? In what circumstances?
Had of close friend or relative of yours ever been in a police station before? In what circumstances?

13. Did you , or toyour knowledge your lawyer or a friend or relative, attempt to make a deal with the police ? Or did the police attempt to make a deal with you or anyone else ?
<u>If so</u>, what happened?

14 How did the police treat you?

15. Do you think the police treated you fairly?

16.How did you feel about them?

17. What happened when you were arrested to - your children?
your husband/family
your job?

18. Did anyone cl ose to you know about your arrest?
Were you able to ring someone from the police station? Did you want to?

19. How did other people (family, friends) react to what had happened and your arrest? Did they change as time passed?

(2) Early Experience in gaol

1. When were you first taken to gaol?

2. What gaol were you taken to?

3. In what part of the gaol did you sleep - dormitory? remand? hospital? single cell ? security?

In what sort of conditi

4. Did you receive any medical treatment during your first weeks in gaol? Did you ask for any?

5. Were you on medication?

Did you ask for medication?

6. Were you sent to see a psychologist or a psychiatrist ? Did you want to? Did you ask to?

Can you remember what you talked about when you saw the psychiatrist ? Can you remember any of what he/she said?

Did it help you? For how long did you see him (her) and how often?

7. Had you been in gaol before ?
Had a close friend or relative been in gaol? If so, had you visited them?

8. How did you feel about the gaol when you first arrived?

9. Did you know any other prisoners in the gaol?

10 Did you talk to anyone - e.g. fellow prisoners, prison office:
- about why you had been arrested?

11. Did you talk to any other prisoners in the gaol much at all?

12. Did anyone visit you when you were first in gaol?

13. Did you know what you had been charged with when you were firs
in gaol? Did you know when you would be going to court ?
<u>If not</u>, did you try to find out ? Who did you ask , write to?
did you have any difficulty in finding out?

14. Can you remember much about that time?

15. How did you feel about being in gaol?

LEGAL REPRESENTATION AND TRIAL

(1) Before Commital

1.Do you remember when you first appeared in court after you had been arrested?
Do you know how many days that was after you had been arrested?

2.Which court did you first appear in?

3.Did you spend any nights in the police cells before you went to court?

4.When you first appeared in court did you get bail?

5.If not, where were you taken after you first appeared in court?

6.Did you get bail later? Can you remember when? If so, how much and under what conditions?

7.Can you remember what you were first charged with and whether this stayed the same?

8.What were you convicted of? What sentence did you get?

9.Can you remember how many times you went to the lower court while on remand?

10.Had you or a close friend or relative ever been in a court before? In what circumstances? Do you have any previous convictions?(What and when).

(2) Legal Representation - general

1. Did you have a lawyer when you first appeared in court?
   Did you want one? Why?
   Had you asked for one or tried to arrange for one to be there?
   If so, what happened?

   If you were represented, do you know who arranged for him (her) to appear? Did you or your family pay him or was he on legal aid?

2. When did you first see a lawyer? Had you tried to see one before that (e.g. in police station) . If so, what happened?

3. Did you want a lawyer? If so, why? If not, why not? Did you talk with anyone about getting a lawyer? Did anyone tell you you needed a lawyer? If so, who?

4. Had you ever been to see a lawyer before? If so, what about

5. Did you choose any of the lawyers who represented you at any stage? If so, how?
If not, do you know how they were chosen?

Had you heard anything about the lawyers who acted for you?

(3) Committal Proceedings

1. Were you represented at the committal proceedings (lower court hearing) in your case? Was it the same lawyer mentioned above?

2. Did you or a member of your family or someone else arrange for the lawyer to appear?

3. Did you or someone else pay him or her? How much?

4. Can you remember if a lawyer(s) visited you while you were on remand? Who was it? Was it the same one each time?

5. Did you write to or try and contact a lawyer while you were on remand? Did you receive a reply? (replies)

6. Do you remember if you or anyone else for you gave evidence at the committal proceedings (lower court hearing)?

(4) Plea

1. Did you eventually plead guilty or not guilty?

Did you plead guilty to one or some charge(s) and not guilty to (an)other(s) ?

Did your plea change ? (e.g. did you at first plead not guilty then change this to guilty , possibly to a different charge?)

2. Did you originally intend to plead as you did eventually, whether or not your actual plea changed? If not, why did you not plead as you first intended?

3. Did anyone (or more than one person) e.g. a friend, a relative, a lawyer, a policeman, a fellow inmate, a prison official give you any advice as to whether you should plead guilty or not guilty? If yes, what was the advice?

4. Guilty plea - why did you plead guilty?

Not guilty plea - why did you plead not guilty?

(5) First trial

(same questions for second trial if relevant)

1. How well do you remember what happened at your trial?

2. Were you on medication? If yes, do you know what medication?
who prescribed it?
did you request medication?
did you carry the medication?
yourself? If not who handed it to you?

3. Do you remember the name of the barrister(lawyer) who spoke for you at the trial?

4. When did you first meet him?

5. Did you or a member of your family arrange for him to appear?

6. Did you pay him? If so, how much? Was it on legal aid?

If on legal aid, did you know about legal a before? How and when did you find out?
Do you think it made any difference in your case or makes any difference generally whethe or not you have a private lawyer or a legal a lawyer?

If not on legal aid, did you know that you cou have got a lawyer on legal aid?
Do you think it made any difference in your c or makes any difference generally whether or not you have a private lawyer or a legal aid lawyer?

7. Did you discuss your case with the lawyer who spoke for you before the first day of the trial? (barrister)
If no, did you discuss your case with him on the first morning of the trial?
DId you have enough time to tell him everything?

8. Did he or any other lawyer discuss your case wtih you while the trial was going on?

9. Was there anythin which particularly struck you about the member of the jury in your trial?

9. Did you or your lawyer challenge any members of the jury?

10. Can you remember whether there were any women on the jury?

11. How long did the trial go for?

12. Did you have the same lawyer for the whole trial?

13. Did you have any difficulty in contacting witnesses? If so, what?

14. Were all the witnesses you wanted called? If not, do you know why not?
Did anyone refuse to give evidence?

15. Did you give evidence under oath? Why?
Did you make a statement from the dock? Why?
Did you want to speak?
Did your alwyer advise you one way or the other?
Were you allowed to say what you wanted to say? If not, who stopped you?

16. Did the judge ask you if you had anything to say? If so, when? (before conviction? on conviction? before sentence? after sentence?) D d you think that he would? DId you want to say anythin?

17. Did you think that the real story about what had happened that led to your arrest came out at the trial?

18. Were there anythings which you felt should have been brought

up which were not brought up? If yes, what were those things?

Did you tell your lawyers about those things?

Did you ask your lawyer(s) why those things were not brought up? If yes, did you ask your barrister or your solicitor and can you remember what he (or she) said?

19. Did you feel you could explain the circumstances of what had ahppended to the lawyer who spoke in court? to your solicitor?

20. Was there anythingthat you thought might be relevant which yo did not feel able to talk to him about? If yes, why not?

21. Did you understand what was happening in the trial? (e.g. d you know what your defence was?) If no, , what things couldn't yo understand?

22. Could you follow what was going on in the court room?

23. Did you want to speak to your barrister or solicitor during the proceedings? Were you able to? If not, why not?

24. Did your lawyers explain to you what was going on in the court toom (i.e. at any time ...during or after the proceedings)

25 Did you want to ask your llawyers questions about what was happening?

26. Did you feel able to ask your barrister questions about what was happening in the courtroom ? your solicitor?

27. What did you feel about your barrister? your solicitor?

28. What do you think your barrister felt about you ? your solicitor

29. Were you satisfied with your legal representation? If not, why not?

Do you think the result of the case might have been different if you had had a different lawyer ? If so, how?

30. Do you have any feelings about the judge in your case? Was he fair ? Would the result have been any different if you had had a different judge?

31. Do you have any siggestions for reform or change in how trials are run? or in how lawyers act ?

(6) Sentencing (for all except those who received a mandatory life sentence)

1. In giving you your sentence what do you think the judge took into account?

2. Did you or anyone else give evidence for you at the sentencing?

If yes do you think the judge believed the evidence that was given?

3. Was the version of the facts which the judge acted upon the right one? If not, what was wrong about it?

4.Was there a presentence report by a probation officer (parole) or a report by a psychiatrist ? If yes, did you or your lawyer read it?

Do you think the judge would have given the judge a truthful account of you and your circumstances?

5. Do you think the judge knew enough about you when he sentneced you?

6. Do you think the judge who sentenced you knew what prison is like?

7. Do you think the judge took into account the effect on imprisonment on your family (children) ?

8. Did the judge make any recommendations about you getting medical or psychiatric treatment? If yes, has this been followed up? What treatment have you received ? Did you ask for that? Was it helpful? Do you want (more) psychiatric treatment? Do you or did you think that you needed it? If treatment not helpful, do you think a different sort of treatment might have been helpful? Have you got any ideas about what sort?

If no recommendation by the judge , did you or do you want psychiatric treatment ? Have you asked for it? Did you get it? Was it helpful ? (If not helpful, ,.... (same question as abov

9. (Going back to the sentence itself)
Do you think that the sentence you got was fair ? If not , why not

6) APPEAL

(1) General

1. Did you want to appeal? If yes, why? (e.g. sentence too heavy, wrongly convicted, not satisfied with lawyer, other's advice)
If no, why not? (e.g. not worth it, believed time served pending appeal would not count towards sentence, others advice)

2. Did you know people can sometimes appeal after they have been convicted?

3. After you were convicted did your lawyer talk to you about appealing? Did you ask your barrister or solicitor is you could appeal? If yes, who, and what did he say?

4. Did your barrister talk to you after your trial was over? Your solicitor?

5. Did you contact or talk to any other lawyer about appealing? If so, who and what did he or she say?

6. Did you talk to anyone else about appealing? (e,g. relative, friend, fellow prisoner, prison officer) or did anyone suggest to you that you could or should appeal? If so, who and what did they say?

7. If you wanted to appeal but didn't talk to any lawyer about it, why didn't you?

8. What sort of things did you / do you think people can appeal about? What did you think you could appeal about (whether or not you wanted to.)

9. (a) Did you in fact - appeal? If yes, and you didn't want why did you?

- seek leave to appeal which was refus

- appeal but withdraw before hearing o appeal? If so, why?

(b) Did you appeal against your conviction or only against your sentence?

(c) Do you know what points you appealed on?

(d) Did you think you would win? If you won your appeal, what did you think would happen? Did your barrister tell you whether you were likely to win or not? Did he tell yo what would happen if you did?

10. If you didn't appeal but wanted to, why didn't you? Were you given any reason why you couldn't appeal? If so, what, and by whom?

(2) If Appealed

1. What happened - did you hear about the result of your appeal What was it? Who told you? Did you have any difficulty ir finding out about the result? When did you find out?

2. Is the time you were in gaol pending your appeal being count as part of your sentence? If not, did you lawyer tell you that this might happen if you appealed?

3. Did a lawyer represent you at your appeal? If so, who?

Was it the same lawyer as acted for you at your trial? Did you or someone else pay him or was it on legal aid? If you paid, can you say how much?

4. Did you attend your appeal hearing? Did you want to ?

5. Did the lawyer who represented you at your appeal visit you at the gaol before your appeal hearing to discuss the appeal with you?

6. Did any other lawyer visit you to discuss the appeal?

7. How did you feel about the lawyer(s) who acted for you on your appeal?

8. What did you think about the result?(e.g. would you have liked a retrial?)

(7) RETRIAL

WHERE RELEVANT SEE BACK TO THE SAME QUESTIONS AS ARE UNDER THE HEADING TRIAL

(8) Press Reporting

1. Do you know if your case was reported in the papers?
   i) during your committal?
   ii) during your trial?
   iii) since your conviction?

   If it was, in what papers ? (e.g. local, metropolitan daily SMH e

2. How do you know? Did you see the reports at the time? Have you see them since?

   If has seen them, did you find them yourself in the paper or did someone show them to you? If the latter, who was it?

   If you haven't seen the reports, did you want to ?

3. Did you think your case would be reported?

4. Have the reports had any effect on you or your family ? If so, what

5 Committal and trial reporting (where woman has seen the reports)

Do you think the press reporting of your committal and/or tial had any effect on
   i) the jury at the trial?
   ii) your sentence (where the judge had discretion.
   iii) the jury at your retrial (if any) ?

6. Subsequent reporting

   Have press reports since your conviction had any effect on your life in prison / on your license or parole? (e.g. loss of privel.. ges , access to programs and facilities, effect on chances of parole.)

7. Do you think the papers reorted your case accurately? fairly?

   If not, what was inaccurate or unfair?

8. How did you feel about the press reporting?

PERSONAL SITUATION BEFORE OFFENCE

1. Where were you living immediately before you were arrested?

2. Who with - Husband / children/ friends/ family ?

3. Had you recently moved there or had you been there for some time? Did you move around a lot?

4. Were you married? how long had you been married?

did you have children? how manY? ages?

how were you getting along?

5. Were you working? If no, were you looking for work or did you want work?
If yes, what sort of work? How long had you been working there?

6 ..Was anyone else in your household working?

7. Did you know many people in the neighbourhood?

8. Did you see family and friends much?

9. Did you get about much or were you mostly at home?
(esp. if was not working)

10. What seems to you to be the most important thengs about this time?

11. <u>If</u> you had any problems , had you seen anyone about it?

(e.g. lawyer, counsellor, psychiatrist, A.A., police welfare agencies, doctors etc.)

<u>If yes</u>, what happened when you saw
Did they help? Had you seen them mo
than once? Often?
<u>If no</u>, if you had seen someone, do
think they could have helped ?

(could also ask here if appropriate about medical help / psychiatrist / counsellor since being in gaol)

PERSONAL AND FAMILY BACKGROUND

(1) Childhood

1. Where were you born? and when ? (date of birth) age?

2. Did you always live there as a child or did you move around?

3. Did you have brothers and sisters? (names? older? younger?)

4. Did your father and/or mother work?
   Did they change jobs frequently?
   What sort of work did they normally do?

5. Who did you live with when you were growing up? (parents, other relatives etc.)

6. Were you ever in a childrens' hom e, psychiatric hospital or any other sort of institu tion when you were a child? If so, when and for how long? What was it like? Do you know why?

7. Were your parents living together while you were growing up?

8. How did you get on with your father/mother?
   If you didn't live with your parents , how did you get on with the people you lived with while you were growing up?

9. What do you remember most about your childhood?

10. When did you move away from home?

PERSONAL AND FAMILY BACKGROUND (CONT..)

(2) Education

1. Where did you go to school?

2. When did you leave school? and at what stage? why?

3. Have you had any training since then?

4. Have you had any training inside gaol? Would you like
Have you asked for any? If so, what happened?

(3) Employment

1. What did you do after you left school?

2. If worked , did you stay there?
If you didn't work, did you get a job at a later stage?

3. If a range of jobs, what sort of work did you normally ---?

what sort of work did you prefer to do

4. Did you work after you were married? (if relevant)

5. Were you working when you were arrested?

(tie in Work release or P.L.S. here if relevant.)

PERCEPTIONS OF THE WHOLE SYSTEM

1. Do you think that it was fair that you were convicted? If not, how and why not?

2. Do you think that you got a fair sentence? if not, why not? and, how long do you think that you should have got (if anytime)?

3. Do you think that a woman offender who was in the situation you were in is treated fairly by the law? .... by the courts? .... by the press? ..If not, why not?

4. Do you think it affects a woman's case whether or not she has money? ... comes from a rich background?

5. Do you think your case might have turned out differently if you had more money? less money? come from a rich backgound?

6. Do you think that there should be a compulsory life sentence for murder (or do you think the judge should be able to set the sentence he thinks is right for that person)?

7 How has the whole experience (arrest, trial, sentence and imprisonment) affected you? ..... your family? Has it had any affect on your health? your relations with your family? Have your attitudes changed? How do you feel about living in the outside world?

8. Do you think that the fact that the law says it is a serious offence to kill stops people from killing?
Do you think that the possibility of going to gaol for a very long time stops people from killing?

9. What do you think about the whole system? Is it fair? Does it need change? If so, what?

'F'

LEGAL REPRESENTATION & TRIAL

Interview Checklist

1. First appearance in court after arrest/ any nights in police cells?

2. Bail

3. Lawyers (preliminary hearings)
   - when first got
   - how arranged
   - who was it (legal aid?)

4. Early experiences in gaol

5. Committal - remember much?
   - lawyer
   - evidence for defence

6. Trial
   a. Plea - not guilty or guilty
   - advice from anyone?

/2...

b. Remember much?

- medication

- how feeling, scared

- names of barrister and solicitor

- length of trial

- where was it held

- where did you stay during trial (cells/gaol)

- what was that like

- did you have to travel by van

c. Did the real story come out?

- what was left out

- any untruths in prosecution evidence

- your defence

(i) what was it

(ii) witnesses - were ther people who could have given evidence for you who weren't called?

(iii) statement from the dock /evidence

Did you want to speak?

Who prepared statement/evidence?

Did it get across the real story?

- did you want to speak up during the trial - did you think you would be able to?

/3...

d. Instructions to lawyers

- when did you first meet barrister (visits on remand, how many, how long did you try and contact lawyer yourself)

- did you have enough time to take

- were you in a fit state to talk (medication?)

- did you feel you could explain to him the circumstances of what had happened

- what do you think lawyers felt about you/the case

- what did you think of them

- what did you think of the way they handled the case

- were they legal aid do you think this made a difference

- would you have got a different result with different lawyers

e. Trial itself

- did you understand what was going on

- did lawyers explain to you

- had you been in court before (previous convictions)

- did you want to ask questions of lawyers/judge or speak up

- where were you sitting

- was it as you expected

f. Jury

- did you notice anything particular about the jury

- did you challenge any jurors

- were there any women on the jury

g. Judge

- did you notice anything about him

- did he seem fair

- would you have got a different result with a different judge

/4...

h. <u>After trial</u>

- how long was jury out, where did you wait

- how did you feel when you got sentence (see sentencing questions)

- did barrister come and see you after the trial

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"G"

Telephone: 692 2653

The University of Sydney
N.S.W. 2006
DEPARTMENT OF SOCIAL WORK

Professor of Social Work
Stuart J. REES

General Office:
692 1122
ext. 2650

5th November, 1979.

Dear,

Thank you very much for allowing me to interview you a first time for the research project on women homicide offenders. I have found all the interviews very rewarding and hope that you found the interview enjoyable or valuable in some way too.

As I mentioned to you I would like to interview you again in two or three weeks after the other researcher and I have had time to read over the transcripts of the first interview and the papers on your case. In the meantime we thought you might like to have a note of the sorts of things we are interested in so that you can think them over before the next interview.

As I said in the first interview naturally anything that you don't want to talk about we don't discuss any further. The topics we are interested in are:

The crime itself, how it happened and what led up to it,

Your personal and domestic situation at the time,

The circumstances of your arrest and early experiences in gaol,

Your lawyers and trial, and appeal and retrial if any,

The press reporting of your case,

Your life in gaol since, any plans to apply for parole or licence, your hopes for the future,

Your personal background, your early life and family,

The law of homicide and any areas in the law or to do with the police, courts or lawyers that should be changed.

/2...

Some of these we may have already talked about at your first interview but I would very much like to hear anything else you have remembered the next time I see you.

Some of these topics we probably didn't talk about, because we didn't have time. I would like to discuss these with you at our next interview as well. In particular we would like to know what you think needs to be changed in the law or the way the police, the courts and lawyers operate, and how it should be changed. We have included a set of questions with this letter to give you an idea of the sorts of things you may think need reform. Any extra ideas for change that you have are very welcome too.

We have left space on the sheet of questions for you to write down your ideas, if you want to, and have included a blank piece of paper in case you don't have enough room. If you prefer, however, we can just talk about the questions at our next interview.

Thank you again, for being part of our project. Without you we will not be able to write the report we want to, that we hope will improve the situation of others in your position in the future.

Yours sincerely,

Robyn Lansdowne.

General Questions

Here are the general questions we wanted to ask. We would be interested in your ideas on any of these. We don't mind if you write what you think or if you tell us at the interview .

Conviction and Sentence

Do you think it was right or fair that you were convicted ? Do you think that you got a fair sentence?

From what you know of the situation of other women convicted of killing someone , was it fair that they were convicted? Are the: sentences fair ?

Do you think it affects a woman's case whether or not she has mc or comes from a rich background?

Do you think that there should be a compulsory (automatic) life sentence for murder, or do you think the judge should be able to set the sentence he thinks is right for that person?

If you are on a life sentence, what is the worst thing about bei on a life sentence?

Imprisonment

What do you think is the worst thing about being in prison?

Do you think you have gained anything from being in prison ?

Do you think it will be hard to adjust to being outside again? What will be the best thing about being outside? ... the hardest thing?

Do you think the parole or license system needs change?

Police, the Courts and Lawyers

Is there anything about what police do that you think should be changed ? (for example, methods of questioning, records of inter evidence in court, the way they treat women) . How could it be changed?

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Were you happy with your barrister (the one who spoke for you in court) and your solicitor (his or her assistant) ? Do you think they dideverything they could for you?

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Is there any special way the whole experience (arrest, trial, sentence and imprisonment) has affected you ? for example, your health, your relations with your family , your attitudes .