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Edited by Suzanne E. Hatty

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THE PURSUIT OF JUSTICE: THE LAW, THE POLICE AND THE COURTS

'A few weeks ago I finally got around to taking the restraining order on my husband down to the police station . . . To my surprise the police didn't keep a copy of the order even though I specifically brought them a copy. The policeman on the desk refused it, saying that I should have a copy with me at all times and that would be protection enough as any citizen is protected by law from assault. My original understanding was that the police were reluctant to involve themselves in a family 'private' dispute unless there was a restraining order and that a copy kept at the police station expedited police action should there be an assault. I hope I never have to find out.'

excerpt from the diary of
Maureen Thompson, 1983,
subsequently murdered by her
husband.

'I've just killed my husband, please come . . . . I don't care, he's hit me around so much I hit him, I think I killed him.'

These are the words of Beryl Birch reporting the death of her husband on 2 February 1984. They were uttered after she had hit him with a hammer; this act was the culmination of twenty-six years of physical and psychological abuse.

Rathus, a solicitor involved in the case from its inception, describes the public campaign mounted to defend Beryl Birch; she tells of the involvement of certain conservative elements and their effects upon the direction of this campaign. She demonstrates that collaboration between the various agents of misogyny, whether male or female, can occur under the guise of apparent benevolence.

The precedent established by the imposition of a six-year sentence upon Beryl Birch (and subsequently upon another woman also subjected to horrific abuse) renders the existing legal response to the plight of battered women totally unjust and inappropriate. Rathus believes that the law relating to self-defence, assuming this concept is more broadly defined, could be applied to women who kill under such circumstances. Indeed, it remains to be seen whether the legal system can adapt to the exigencies of these cases, and not, thereby, further contribute towards the victimisation of battered women.

The Criminalisation of Wife Battering

MacLeod examines the apparent co-operation between feminists and bureaucrats in the determination of the most appropriate response to wife battering. Despite overt indications of consensus regarding the criminalisation of the phenomenon, MacLeod expresses unease about this ideological partnership. Through a focus upon the relevant policies within four countries, she attempts to look beyond this alliance to the motives which may underlie it.

The criminalisation of wife battering is, according to MacLeod, reflected within four areas: increased emphasis upon the legal aspects of policing, particularly the importance of arrest; the priority accorded to police training stressing the inherent criminality of wife assault; the proposed or enacted legislative reform maximising the effectiveness of peace orders; and the creation of special crisis intervention schemes.

Difficulties associated with the reconciliation of feminist and bureaucratic approaches are apparently evident in several areas. Firstly, policy documents evince a preoccupation with the involvement of the police. Secondly, despite a strong commitment

to prevention, there is little documentary evidence of government support for such initiatives. Thirdly, the emphasis in policy upon the criminal justice aspects of wife battering occurs at the expense of the restitutive and reparative aspects, for example, accommodation, welfare, child care and transportation. Fourthly, there is little attempt in the policy documents to deal directly with the deficits in interagency or injurisdictional co-ordination which may seriously hamper women's progress toward resolution of their particular situation. Fifthly, the contribution of community and advocacy groups is frequently denied. Lastly, there is the assumption that battered women constitute a homeogeneous group, and the diverse needs of the different representatives within the group are thus artificially collapsed.

MacLeod locates the policy of criminalisation within the ideology of the welfare state, reinterpreted by the neoconservative political movement of the last decade as a concern for individualism. This is consistent with the elevation of the criminal justice system to the status of the preferred response to wife battering. MacLeod states: 'The criminal justice system is an adversarial system, a system which despite the current balancing emphasis on prevention, is rooted in punishment, elitism and dependency. It is a system based on the logic of detail, discrete events and narrowly defined acts. It is a system in which the victim's comprehensive problems frequently have no place'. It is also a system which focusses upon the offender.

She describes the current trend to criminalisation as the 'policy of chivalry': the rescue and subsequent abandonment of the vulnerable woman by powerful state agencies.

Moreover, MacLeod surmises the existence of a motivation toward expediency. She asserts: 'Wife battering may be providing governments with a convenient, safe and popular way to respond to demands for greater equality for women without seriously tampering with the institutions which perpetuate inequality'. (It is possible that the case of Beryl Birch is illustrative here.)

In the light of this, MacLeod questions the trend to the criminalisation of woman battering, especially as the law has often functioned as a form of social control. Furthermore, she claims that women's statements affirm the need for a range of options, from immediate physical protection to the provision of financial and psychological support. MacLeod asserts that the objectives and possible outcomes inherent within the processes of the criminal justice system may be antithetical to battered women's requirements. The criminal law is arguably too exclusive in its focus upon certain types of behaviour, and the civil law is undoubtedly too cumbersome and slow in its response to the vicissitudes of a particular case.

The investment of resources in a program of pervasive criminal justice involvement has, according to MacLeod, often obscured the necessity for maintaining the support of community services. This appears to betray the professed intent of the policy makers; a failure to provide adequately for alternative services is inconsistent with an apparent concern for the welfare of battered women.

MacLeod concludes: 'As advocates, policy-makers and victims of wife battering, we have a responsibility to hold governments to their statements of intent which stress multifaceted, preventive approaches to wife battering. Further and most importantly we must not . . . forget the voices of the victims'.

Legal Responses to Domestic Violence

Seddon in his paper, argues cogently for the maintenance of a legal repertoire consisting of a 'dual regime'; that is, both criminal and civil remedies for domestic violence*. The criminal prosecution is clearly necessary, he claims, because much behaviour integral to domestic violence is criminal in character. There is, therefore, the matter of the imposition of sanction upon the convicted offender. In addition, there is the important symbolic function attached to an indication to both individual and community that a criminal offence has occurred. The mobilisation of the criminal law may thus involve immediate and long-term consequences.

Seddon, in a complement to Long's paper provides details of the various legal responses adopted within Australia, particularly civil remedies such as injunctions (here he also overlaps with Waters' paper on the Family Court) and protection orders. He asserts that there are serious problems inherent in the use of injunctions, especially in the case of the Family Court. Seddon notes: 'Civil injunctions, whose purpose is to deal with such matters as preventing future trespass onto land or stopping a legal nuisance, are not designed to deal with criminal conduct'. However, civil remedies, according to Seddon, remain useful in the area of domestic violence due to the lesser standard of proof required and the extention of their jurisdiction to non-criminal behaviour, such as psychological harassment.

Nevertheless, despite the maintenance of a 'dual regime', it is a balance in the application of these two alternatives that counts. Hence, the attitudes and activities of the police are pivotal to this issue.

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* As there is a trend toward the incorporation of this term in the law (see the case of New South Wales), it will be utilised in this discussion.

Legislative Reform

New South Wales

Alterations to the legal response to domestic violence in New South Wales have been both significant and controversial. (See Stubbs' paper). Three pieces of legislation impact upon this area: the Crimes (Sexual Assault) Amendment Act, 1981, which removed the spousal immunity to rape prosecution; the Crimes (Homicide) Amendment Act, 1982, which revised the concept of provocation; and the Crimes (Domestic Violence) Amendment Act, 1983. The latter legislation, based on the recognition of the criminality of much violent behaviour towards female sexual partners, sought to improve the range of available civil options. In addition, spouses became compellable witnesses, police powers of entry were clarified and, indeed, strengthened with the introduction of radio/telephone warrants to enable entry to premises. Also, the apprehended domestic violence order was introduced to provide spouses with relief, through civil procedure, from a spouse's violent or abusive conduct. This order also extends to psychological harassment and threats of violence. A breach of an apprehended domestic violence order constitutes a criminal offence, carrying a maximum penalty of six months imprisonment.

* * *

Two papers presented to the conference specifically addressed the implementation of the recent New South Wales Crimes (Domestic Violence) Amendment Act, 1983. The first (Hatty and Sutton) reports upon the findings of interviews conducted with New South Wales police personnel, whilst the second (Stubbs) reports upon the findings generated by official police and court statistics.

In their paper, Hatty and Sutton focus upon the issue of police intervention in incidents of female partner assault. They provide a literature review of the area from the perspective of both the police and those seeking their assistance. Substantive matters covered include the victim's decision to summon the police, the police response, and the victim's views of police intervention.

Having identified serious deficiences associated with policing violence against women, Hatty and Sutton provide constructive suggestions for change. They assert that an understanding of the significance of the police role is central to the debate concerning police practice. In addition, the contribution of police attitudes would appear to be critical.

Consequently, Hatty and Sutton argue for the systematic collection of data upon existing police practices and procedures, and, also, upon psychological concomitants such as implicit theories of violence against a female partner. This knowledge base should be utilised, according to the authors, to develop unequivocal policy statements and to improve training packages.

After indicating the specific objectives directing their research project on police intervention in 'domestic violence' in New South Wales, Hatty and Sutton report upon the findings of one aspect of this research. The results presented relate to field-officer assessment of the recent Crimes (Domestic Violence) Amendment Act (1983) and existing police training in the area. Information was also sought on police attitudes and recommendations concerning police practice and response; for example, issues canvassed included police perceptions of the work and police suggestions regarding service delivery.

The results indicated that there was a pronounced level of dissatisfaction with the recent 'domestic violence' legislation. Moreover, the overwhelming majority of officers indicated the existence of serious difficulties with work in the area.

In addition, many officers stressed the necessity of effecting significant alterations to current training. They specified particular inadequacies inherent within this training: the content; the mode of delivery; the time allocated, and difficulties in subsequent participation in in-service training.

The authors conclude their paper by proposing a possible model for police work in the area of female partner assault. This encompasses an intensification of the police law-enforcement role combined with the provision of a civilian-staffed crisis service.

Stubbs begins her paper with an historical overview of the events culminating in the introduction of the N.S.W. Crimes (Domestic Violence) Amendment Act (1983). She describes, in detail, the character of this legislation; for example, she alludes to the compellability of spouses, the provision of radio/telephone warrants, and the attachment of penalties to a breach of an apprehended domestic violence order. All of the above constitute significant departures from previous legislation.

Stubbs also outlines other measures instituted in N.S.W. as a consequence of the Task Force Report (1981) and the subsequent formation of a domestic violence committee.

Finally, she provides data relating to the police utilisation of the Crimes (Domestic violence) Amendment Act (1983), and the passage of ensuing domestic violence matters through the courts of New South Wales.

South Australia

Long notes that nine major recommendations were canvassed in the Report and Recommendations on Law Reform published in November 1981, in South Australia. A recognition of the unique nature of assault of a female partner led to the incorporation of both criminal and civil remedies within these recommendations. Nevertheless, police were exorted to 'pursue a rigorous policy of prosecution in cases of domestic assault'.

Concurrently, amendments to the Justice's Act and the Police Offences Act were suggested to allow for the provision of a suitable civil remedy. This was to operate such that a police officer could obtain a restraining order in the case of the occurrence or likely recurrence of personal injury and property damage, or where serious threats had been issued (S.A. Justice Act Amendment Act 1982 S.4). The advantage of the availability of this civil measure, carrying the usual civil standard of proof (that is, the balance of probabilities), is its potential ability to respond to the demands of any particular situation and its applicability to de facto partners. In addition, the order is operative for an indefinite period.

A breach of an intervention order, however, constitutes a criminal offence. An offender must appear before a court of summary jurisdiction within twenty-four hours. There are no provisions for bail.

In noting the findings of Naffin's examination of the intervention order system, Long reiterates Naffin's assertion that these orders should be retained. However, significant problems observed with police intervention have led Naffin to recommend the establishment of a Domestic Violence Unit within the South Australian Police Department as a means of improving training and practice in the area. Naffin recommended that the police attempt to collect a more detailed statistical data base on domestic violence interventions. She also proferred suggestions concerned with the court process; these would impact upon all parties: the police, the victim and offender, and legal personnel.

* * *

Cornish reports upon changes to the policy of the South Australian Police Department regarding 'domestic violence'. He notes that, pursuant upon the recommendations of the Domestic Violence Committee (1981), a statement of vigilant law enforcement was incorporated into police Standing Orders. In addition, training was apparently revised.

The central topic of Cornish's paper is, however, Section 99 of the Justices Act (restraint orders). He claims that 'actual violence does not have to occur before action can be taken by police'. The relevant section of the Act is included in the paper for clarity.

Cornish also provides extensive detail regarding police policy on restraint orders. He cites official police statistics regarding the use of restraint orders over several years. (However, a serious difficulty in the interpretation of these statistics is the breadth of the definition of 'domestic violence'.)

These figures indicate the existence of alterations over time in the types of restraining orders issued. In addition, it is apparent that breaches of restraint orders have been more likely to occur within a three month period, although this effect is diluted for the mid 1983-84 period, and mid 1984-85 period. However, there is evidence of substantial delays in the serving of the orders (for 1983-84, over 40 per cent were issued between 1 and 4 weeks after the initial application), and the figures for 1984-85 do not instil confidence that this situation has been rectified.

Recent evidence provided by Cornish indicates that the majority of restraint orders are issued for apparent psychological abuse. However, it is unfortunate that the detail regarding the restraint orders issues for 'assault' is not more specific; a knowledge of whether these orders pertained to actual or threatened assault would permit an assessment of the efficacy of police policy regarding arrest.

Regarding the withdrawal of orders, it is interesting to note that almost a third of these withdrawals were effected on behalf of victims. Cornish concludes that this is 'naturally a matter of concern because I suspect many of the victims may be under duress'.

* * *

Jacobs, in her paper, reiterates the provisions of Section 99 of the Justices Act (South Australia). She then proceeds to present the results of an analysis, from the police perspective, of 'domestic violence'.

Jacobs' study of a particular set of incidents involving police intervention indicated that alcohol was implicated in over half the cases of assault. In addition, other factors associated with these incidents included unemployment and ethnicity. Most of the complainants were married to the individual 'subject' of the complaint. (However, the tabulated results suffer from a lack of specificity regarding the definitions of 'type of dispute'. Furthermore, a large proportion of findings could not be

accounted for within the specific categories nominated as contributing factors, indicating a significant loss of information).

Other results appear to indicate that injuries were incurred by attack with fists or feet and often required medical attention, and in some cases, treatment within a hospital. Generally, a total of 14.5 per cent of incidents necessitated recourse to doctor or hospital. As these were cases in which a restraint order was sought, it would appear that civil remedies had been inappropriately applied, that is, that criminal proceedings were perhaps warranted in these cases. In the light of the reportedly high rate of recidivism reported in the survey, the efficiency of existing police practices and procedures must be challenged.

However, an awareness of the deficiencies of the police response to 'domestic violence' has led Jacobs to formulate a proposal for a specialist Domestic Violence Unit within the South Australian Police Force. She concludes her paper by providing details of the structure, role and operational procedures of this proposed unit.

Victoria

The recent report of the Victorian Domestic Violence Committee, entitled Criminal Assault in the Home: Social and Legal Responses to Domestic Violence (1985) reiterates the principle that 'the rigorous application of the criminal law in instances of spouse assault is important.' After identifying the problems currently associated with the application of the criminal law in Victoria, particularly as this relates to police dispatch, police powers of entry, and discriminatory practices associated with arrest and prosecution of offenders for wife assault, the Committee recommends several changes to the law. These reforms encompass a number of options within each particular area. These options relate to issues such as the compellability of spouses and, in some cases, children; the utilisation of a (mandatory) 'cooling-off period'; the introduction of intervention orders applicable to a number of different situations which, if breached, would attract a criminal penalty. Furthermore, the Committee recommends that victims of domestic violence be eligible for compensation for injuries sustained during a criminal assault, that a husband be liable for prosecution for the rape of his wife, and that the defence of provocation be redefined so that it may apply to women who kill spouses following prolonged abuse. Also, it was proposed that, where there is a history of domestic violence, supervised access points be established for the exchange of children.

* * *

McCulloch claims that the Victorian police do not view assault offemale partner as a crime. Furthermore, she asserts that the current Standing Orders instruct police to refrain from involvement in such matters. This is reinforced by the categorisation, within police training manuals, of violence against a female partner as 'domestic disturbances'.

Indeed, many workers associated with Legal Services and refuges claim that the police often fail to attend, and even when they do arrive, they fail to take the appropriate legal action. Research upon police practice following intervention, and women's reports of their experiences of violence within relationships, produce conflicting results: police often do not detect offences and, hence, do not arrest, whilst women claim to suffer serious injuries as a consequence of assault.

McCulloch lists several beliefs held by the police; these encompass the following: firstly, that women do not want their partner arrested; and, secondly, that the woman will probably drop the charges. After pointing out that in no other area of the law is the victim of the crime expected to initiate proceedings, she states 'It is a brave woman who will maintain she will give evidence against a violent man while he is at large to repeat his bashings or indeed, in the same house as her'. Moreover, she notes that existing police powers of entry are sufficient to afford access to police.

Finally, McCulloch claims that the problems encountered by black women seeking legal protection from violence are even more severe than those of their white sisters.

* * *

In the process of delineating the array of roles potentially adopted by police in intervening in 'domestic violence', Comley refers, in some detail, to the Victorian Police Standing Orders and the provisions of sections 459 and 458(1) of the Crimes Act. He claims 'There is no specific power of arrest for criminal assault in the home in Victoria.' Victorian Police have thus asserted that their power of arrest is constrained by the existing legislation. However, it would appear that the Police Standing Orders imbue officers with generous amounts of discretion regarding the use of arrest in these situations.

Comley discusses an alternative legal remedy - the intervention order - an option which is favoured in the 1985 report of the Victorian Domestic Violence Committee (see earlier resume of the recommendations contained within the report Criminal Assault in the Home: Social and Legal Responses to Domestic Violence). Nevertheless, Comley notes that alterations to the legislative

framework will result in minimal impact unless they are accompanied by serious attempts to address the problem of police performance.

Western Australia

Long notes that the legislation specifically designed to address the issue of domestic violence in Western Australia is S.172 of the Justices Act, a descendant of its South Australian namesake.

However, other legislation determines that police powers of arrest are considerable. Arrest, without warrant, may occur in the case of a person committing a crime, a person reasonably suspected of doing so, or a person discovered in circumstances at night which might indicate that he had committed a crime (S.564, 566, 564, 567 of the West Australian Criminal Code).

Long's investigations indicate that whilst intervention orders are issued relatively freely, there are often delays in the serving of orders, with approximately 25 per cent remaining outstanding after a month.

Queensland

A civil remedy for domestic violence is provided by the Peace and Good Behaviour Act (1982) of Queensland (see Long's paper). However, the intervention orders issued under this Act involve specific application requirements. A Justice of the Peace must first be approached; this person is vested with the discretion to make inquiries or receive evidence, or, subsequently, to issue a warrant for apprehension or a summons to appear.

The Queensland court may order a range of punitive measures if an order is breached. These include imprisonment, weekend detention and community service orders.

Other Jurisdictions

Long provides an overview of recommendations submitted within the Report of the Tasmanian Review on Domestic Violence (1983), and the report entitled, Domestic Violence Between Adults in the Northern Territory (1983). Her paper briefly alludes to reforms suggested for the A.C.T.

The Family Court

In commenting upon the apparently high levels of community dissatisfaction with the protection against violent spouses offered by the Family Court, Waters claims that several factors, some conceptual and some structural, contribute toward this situation: the 'constitutional isolation' between the Court and

the Police; the utilisation of civil rather than criminal procedures; and the Court's philosophy of conciliation between disputants.

Waters describes the series of injunctions available under the Family Law Act, Section 114(1), for the supposed protection of a spouse. These include an injunction for the physical protection of the spouse or a child of the marriage; an injunction relating to the matrimonial premises or its immediate vicinity; an injunction restraining one spouse from gaining access to the other's work place or the child's work or educational site; and an injunction for the protection of the marital relationship.

A range of punishments may apply to the failure to obey these injunctions, for example, the Court may fine an offender, but not imprison him under Section 114(4). However, imprisonment may occur if an offender is prosecuted, under Section 35 or Section 108 of the Act, for contempt of court.

However, there are, according to Waters, a number of serious deficiencies in the administration of the Family Law Act in cases of violence against a spouse. Reticence on the part of police to invoke appropriate State legislation relating to domestic violence directs the abused spouse from the sphere of criminal to civil protection. Although there do not appear to be major difficulties in obtaining restraining orders from the Family Court, as a civil rather than criminal standard of proof is required, there are inordinate delays in the hearing of such applications. A woman may then be without legal protection against a violent spouse under the Family Law Act for up to one month, whereas State legislation would ensure, in principle, continued recourse to police intervention should violence result. Although the Family Court may issue ex parte orders where violence appears imminent, this is, in practice,avoided as it undermines the Court's philosophy of conciliation.

Waters reports that the effectiveness of the restraining orders varies: some men cease the violent behaviour; others maintain previous levels of aggression; whilst a proportion displace the violence, escalating the incidence of psychological harassment. Anecdotal evidence indicates that the Court's major workload in dealing with breaches of restraining orders occurs in the area of access and non-molestation orders. Furthermore, such breaches frequently transpire within the first two to three weeks of the order being issued. Waters claims that the police response to this non-compliance is typified by a reluctance to intervene. This is partially based on a technically-correct interpretation of the situation: the police must ascertain that a criminal offence has occurred in the breaching of the order before arrest is appropriate. However, Waters asserts that police action is frequently deflected by the existence of a Family Court order.

Although the power of arrest may be attached to the order, under the galvanisation of Section 114AA of the Act, it is rarely sought and, conversely, it is rarely granted by the Court.

Water's research indicates that the Court rarely punishes, through penal sanction, breaches of restraining orders. This may be partly attributable to the fact that the attrition rate for hearing contempt applications is significant.

The dominant philosophy of the Court in the resolution of marital disputes appears to hinge upon several premises: that conciliation, rather than litigation, is the most appropriate strategy; that the legal system is too restricted in focus to cope with these situations; that punishment for non-compliance will not necessarily act as a deterrent; that the application of criminal sanction to family matters is inadvisable. Judicial diversion of an enforcement application may occur in three ways: a warning or reprimand may be issued; the parties may be directed to counselling; or the Judge may vary the order.

Waters indicates that there are two central questions of policy which appear to be problematic in the administration of the Family Law Act: the ability of civil law to cope with domestic violence; and the role of conciliation in cases of violence against a female spouse. Waters enumerates the apparent advantages and disadvantages of the utilisation of civil law. On the one hand, advantages appear to encompass the following: a less rigorous standard of proof is required; individual restraining orders are more flexible; aversion to invoking the criminal law against a spouse may be satisfied; civil procedures may be more expedient and less traumatic; and the individual, rather than the State, assumes responsibility for the conduct of the case. Deficits associated with the use of civil law include: violence between intimates is treated differently to violence between strangers, minimising the criminality of the acts; a restraining order effectively condones an initial attack; the individual bears the financial and emotional costs of the conduct of the case; civil remedies fail to offer immediate physical protection for women; the utilisation of the criminal law may carry a greater deterrent effect; and police reluctance to intervene in domestic violence may be exacerbated by the existence of both civil and criminal solutions.

However, although there are no easy answers to these often conflicting demands, Waters advocates a policy of personal autonomy before state intervention. He believes that women must be free to call upon the assistance of the State and to determine the extent of intervention which they require. Concomitantly, the obligation of the State is to respond adequately to the exigencies of each case. He thus argues for the retention of civil law in cases of domestic violence, although he insists that it must be strengthened to ensure appropriate levels of protection and sanction.

In discussng the eminence accorded conciliation within the Family Court, Waters notes that psychologists, social workers and others 'have established themselves at the very centre of the legal process'. The area of family law is distinguished, according to Waters, by the uncharacteristic level of co-operation between legal and psychological personnel. Critics of the involvement of conciliation in family law claim that this approach confines violence within the private site of the family, and interprets violent behaviour in terms of individual pathology. Gender inequalities, reproduced within societal structures such as the family, may be obscured. Waters alludes to the necessity of challenging the ideological basis of conciliation and the manner in which it is interpreted. He believes the elevation of the interests of children, and the resolution of access and custody disputes, serves to divert attention from the violence within relationships: 'Domestic violence is usually considered to be an issue between the parties and is therefore subsumed below the interests of the children'. Indeed, the clear policy of the court that the non-custodial parent should be granted access to children, irrespective of a history of domestic violence, is antithetical to the rights of the female spouse. Although only three to four percent of divorcing couples litigate upon matters of custody, property or finance, this should not suggest that significant problems do not lie beneath this official facade. Indeed, the history of violence within the Family Court testifies to this.

Waters outlines the tentative proposals for reform suggested by the Australian Law Reform Commisson's reference on contempt. These include: the continued insistence that spousal assault is criminal and, consequently, a matter of concern to the police; the attachment of the power of arrest to injunctions for personal protection; the definition of a breach of an injunction as a criminal offence; the compellability of a female spouse in the prosecution of a breach of an injunction. Other proposals encompass the provision of a broader range of sanctions for the Family Court, including community service orders.

* * *

Moore begins the substantive argument of her paper by stating 'the structure of the Family Court not only in many instances mirrors the structure in violent families, but the experiences of many victims mirror those previously received in their family, and in many cases their losses are far greater within the court system than they had encountered before, especially in relation to material and other losses'. There is, thus, according to Moore, a consistency between the ideology and practices of the larger society and those of the Family Court. Perceptions of the family and the respective roles of men and women pervade the belief systems of those who practice within the court's terrain.

Moore describes the 'common pathway' through the Family Court, with its attendant variations and delays. She notes the dangers associated with the conciliation approach, but is sympathetic towards the difficulties and constraints often encountered by Court counsellors. Finally, she highlights the need for all those involved in the Family Court to engage in an examination of their attitudes and beliefs regarding the family, female and male roles, and violence.

Christie, in speaking of her experience as legal practitioner within the Family Court, notes that her formal education did not prepare her for the work, which is both emotionally draining and without prestige. In dealing with clients subjected to many different types of abuse, she is often initially unaware of the history of violence within the relationship. She contends that many lawyers find themselves in this position, and so become 'almost an accomplice to the violent spouse'.

Christie presents a description of the difficulties in proceeding to court with a victim of spousal violence, from first contact to case outcome. She includes several detailed case studies focussing particularly upon negotiations for child access and/or custody within the context of a violent marriage. Indeed, it is interesting to note that Christie's observations regarding child custody concur with Water's assertions. She states: 'Experience has taught me that there will be access, notwithstanding that the access parent has been violent to the custodial parent'.

THE CASE OF BERYL BIRCH

Zoe Rathus
Women's Legal Service and
Lillie and Associates, Solicitors
Toowong Queensland

The Sentence - Queensland Supreme Court - Mr Justice McPherson - 1st March, 1985

On 2nd February, 1984 Beryl Birch twice swung a hammer at the head of her husband, John Reginald Birch. He sustained severe head injuries and never regained consciousness. On 24th May, 1984 he died at a Brisbane hospital.

Immediately after the fatal act, Mrs Birch rang the emergency telephone number and said to the operator, 'I've just killed my husband, please come ... I don't care, he's hit me around so much I hit him. I think I killed him.'

When the police arrived at the residence Mrs Birch said that she hit her husband 'with the hammer he was going to hit me with ... I've been beaten up so many times. I know I shouldn't say this, but I couldn't bear him getting up and beating me again ... He told me he would (beat me up) when he got up and I couldn't take it any more'. He had been drinking that day.

Mrs Birch pleaded guilty to the charge of manslaughter. On 1st March, 1985 the matter was heard by Mr Justice McPherson of the Supreme Court of Queensland. Mrs Birch was represented by Mrs Margaret McMurdo from the Public Defender's Office. Mrs McMurdo put before the sentencing Judge a sordid and frightening history of domestic violence.

Mrs Birch married in England in 1951 and the couple emigrated to Australia in August, 1958. On their first night in Australia, in Melbourne, Mr Birch was taken on a pub crawl by his relatives and later that night he assaulted his wife for the first time establishing a pattern which would continue for twenty-six years.

By October, 1958 the couple were residing in Brisbane and soon after purchasing their first car, Mr Birch became very drunk one night and crashed the vehicle with Mrs Birch as his passenger. She suffered serious injuries and spent nearly twelve months in hospital recuperating. Since that accident, Mrs Birch has had a rely on crutches and an artificial hip has been inserted which has required replacement on a number of occasions.

Contrary to medical advice, Mrs Birch bore two children, Keith and Suzanne who are now in their early twenties. They witnessed some of their father's violence towards their mother and have been actively involved in the campaign to release their mother from custody.

The Judge was told of the husband's abuse tactics such as pushing his wife out of a moving car, grabbing her around the throat and shaking her. On one drunken occasion, Mr Birch poured water over his wife, cut off her night dress with gardening shears, pushed her to the loungeroom floor and turned on the ceiling fan after removing her crutches. He said he hoped that the cold air would kill her and she was left helpless, naked and degraded until a young friend of her son found her and rescued her from her humiliation.

During 1983 Mrs Birch took proceedings in the Family Court of Australia at Brisbane and was granted restraining orders and an order for exclusive occupation of the home. Despite reluctance and opposition her husband eventually left the home but he frequently returned and the police were called on two occasions to remove him. He continually pressured his wife trying to effect a reconciliation and the last straw came when there was a sewerage blockage and the entire garden was covered with six inches of sewerage. Mrs Birch's disabilities rendered it almost impossible for her to cope with such situations and eventually she agreed that he could return to the house but the couple were to remain separated. Once back in the house, however, a full reconciliation was effected. Mr Birch promised to change his ways and spoke of holidays together at the Barrier Reef.

On the day of the attack, Mr Birch had been drinking and an argument had developed over the record player. Mr Birch ripped a record cover in two pieces and Mrs Birch recognised the signs of impending assault. Mr Birch grabbed his wife by the hair and rammed her head into protruding objects in the kitchen, such as the handle of the fridge door. She was then put in a chair in the loungeroom and told 'Don't you move a fucking muscle. I'll hear that phone'. And after closing the back metal gate 'I'll hear that gate'. Mrs Birch had intended to visit her mother that evening.

Mr Birch then retired to the bedroom and at first Mrs Birch was too terrified to move. But her husband then started jeering at her and she got out of the chair and went into the bedroom and confronted him with the torn record cover. An argument ensued during which Mr Birch laughed and sneered at his wife. She realised that all his promises of change and holidays were lies and, as her Counsel said, 'It all just swept over her ... and she snapped'. She hit her husband with a nearby hammer such action ultimately causing his death.

A number of comparative sentences were cited concerning killings by women with violent male partners. The sentences ranged from eight years imprisonment with parole recommended after three years to probation orders. Other domestic killings such as child/parent situations were not relied upon and sentences involving Aboriginal accused were excluded by the Judge as inappropriate comparisons.

Beryl Birch was sentenced to six years imprisonment with a recommendation for parole after eighteen months. During his Judgment, Mr Justice McPherson said, 'fatalities of this kind are becoming a regrettably frequent occurrence in the community ... it is not possible to permit a kind of rough retributive justice (which is) carried out in private by individuals however justified it may seem in some instances'. The Judge saw legal proceedings as a preferable alternative to taking another person's life although he conceded that practical difficulties existed in using available legal channels.

Public Meetings and The Petition

The sentence was published in The Courier Mail on Saturday, 2nd March, 1985 and on Sunday, 3rd March Mrs Vilma Ward used the Sunday Mail to call a public meeting at her place at 1.00 p.m. Mrs Ward is a local identity and conservative do-gooder. As a result of her publicised call for a meeting, an impromptu meeting was organised by Women's House, The Women's Legal Service and other women's groups in Brisbane and we met at 11.00 a.m. at Women's House to discuss tactics for the later meeting. It was recognised that a vast ideological chasm would exist between Mrs Ward and ourselves. Our meeting decided that a group of us would attend Mrs Ward's meeting so we headed forthwith to Norman Park where the media were flocking around a delighted Mrs Ward. The overwhelming problem faced by this meeting was ignorance. No-one was well informed about Mrs Birch's case (other than her children who were present) and no-one knew much about the law relating to royal benevolence. Nonetheless, the meeting resolved to petition the Governor as follows:

1. That Mrs Birch be granted a pardon.

2. That she be immediately released from prison on the grounds of:

   (a) her ill-health;

   (b) she has already served her sentence.

The law relating to pardons is not clearly defined although it is rarely used to overturn judicial decisions on moral grounds. It is now my opinion that we should have also sought the exercise of

the Royal Prerogative of Mercy, which may have been a more appropriate remedy although I do not believe that the ultimate decision of the Governor would have been different.

Names and addresses of people at the meeting were collected and petitions were disseminated through the office of Ann Warner, a State Labour politician. Unfortunately at about this time, disorganisation became a problem and completed petitions were being returned to Mrs Ward, Mrs Warner, and Women's House.

The Appeal - Court of Criminal Appeal - 27th March, 1985

On 27th March, 1985 amid considerable publicity Mrs Birch's appeal against sentence was heard in the Queensland Court of Criminal Appeal. It was dismissed by majority of two to one.

The majority Judges emphasised that Mrs Birch had other avenues open to her to escape her husband's maltreatment and that she was not immediately defending herself against attack. Deterrents were seen as necessary to prevent 'private executions ... intolerable in a civilised society'. It could be said that the corollary to that statement is that Mr Birch's treatment of his wife was an accepted part of that 'civilised society' referred to by the Judge.

Mr Justice D.M. Campbell, dissenting, said that the sentence was not called for to act as a deterrent. He recommended a maximum sentence of two years imprisonment with a recommendation for parole after six months. If his views had been followed, Mrs Birch would have been eligible for parole on 1st September.

Aftermath of Unsuccessful Appeal

The media announced the results of the appeal to a disappointed public. Mrs Ward presented about 2000 petitions to the Governor without obtaining any receipt or acknowlegment and without inviting media participation. Women's House was left with hundreds of petitions and before a better publicised presentation could be organised, the media announced that the pardon had been rejected.

Unfortunately, Mrs Ward and the media had failed to tell Mrs Birch or her family of the decision and her children and elderly mother received the news by reading the morning newspapers.

Interestingly, the Queensland Minister for Justice, Mr Harper, had publicly announced that he would consider recommending a pardon if he were approached by members of Mrs Birch's family or her Solicitor. Her son, Keith Birch, wrote to Mr Harper asking what form he would like such an approach to take. Keith has never received a reply.

Mrs Ward then wrote to the Queen who indicated that she could not intervene.

Meanwhile, keeping on the pressure, The Courier Mail ran a series of articles on the life of Beryl Birch by Andrew Biggs who is both a reporter and a personal friend of the Birch family.

Parole Application - August, 1985

At this stage, the Beryl Birch Support Group, excluding Mrs Ward's element, called a couple of public meetings and started looking at other alternatives. Keith Birch was always invited to our meetings and media coverage was welcomed. We always referred our ideas through Keith and he received confirmation of planned strategies from his mother. Three of us visited Mrs Birch in prison on one occasion through a specially arranged visit, however, we generally avoided prison visits as a prisoner is only entitled to one personal visit per week and we did not wish to deprive Mrs Birch of her contact with her family.

We focused on the possibility of Mrs Birch's being granted parole earlier than the recommended eighteen months and we gathered letters from approximately one hundred supporters requesting the parole board to grant Mrs Birch an early release.

The newspapers published articles declaring that the parole board was the new hope and both Bill Hayden and Russ Hinze (Queensland's former Minister for everything and now Minister for less things) came out publicly in support of Mrs Birch.

Mrs Birch engaged a private solicitor, Jennifer Cheney, to assist with her parole application and after consultation with her, Keith reported back to the Support Group that his mother did not want further overt publicity before the parole board considered her application. Having decided to throw everything into a parole application, she believed that the conservative parole board would not be favourably influenced by publicity and, in fact, the board may well feel irritated and pressurised by such an approach. Her application was based mainly on her health problems and the incredible difficulties which imprisonment imposes on an incapacitated person.

Mrs Birch's application was supported by medical reports and letters from friends and neighbours who are willing to assist Mrs Birch upon her release but the first application for parole was refused. Parole board hearings cannot be attended by the prisoner or legal representatives and the board is not required to give reasons for its decision. Following this practice, no reasons have been given for Mrs Birch's refusal.

The Present

Mrs Birch has now lodged a second parole application which gives further details of her increasing health problems and the decline of her general physical and mental condition. It emphasises her inability to fit into prison routine. No decision has yet been made.

Ironically, Queensland has already seen another similar case. On 29th January, 1985 Patricia Ann Harvey killed her husband, Robert Ian Harvey, by stabbing him eighty-two times. There was a history of assault and degradation and the attack occurred just after Mr Harvey had explained to his wife how he had raped her daughter (from a previous marriage) while the daughter was drunk and unconscious.

The Crown accepted a plea of manslaughter and the matter was heard on 10th October, 1985 by Mr Justice Ryan of the Queensland Supreme Court. Mrs Harvey was sentenced to six years imprisonment with a recommended non-parole period of two years.

Concluding Comments

Women in the position of Mrs Birch now face a number of problems:

1. An increasing body of judicial precedent is developing establishing that such women should be gaoled for a significant period of time. Certainly, in Queensland, it would now be virtually impossible to expect a Court to impose a non-custodial sentence in such a case.

2. The Crown will nearly always offer such women a plea of manslaughter because elements of either provocation or lack of intent will almost invariably arise. It will always be tempting to accept such an offer.

3. The alternative to the plea of manslaughter is to face a charge of murder carrying with it mandatory life imprisonment in most States. The risky defence of self-defence can be raised but such women could expect little success.

Questions therefore arise as to whether there should be a special plea for the battered wife such as th plea of infanticide which exists in some states. Alternatively, should self-defence for the battered wife be entrenched in Statute?

It is my belief that the law of self-defence as it exists will often cover homicide by a battered wife and may have covered Mrs Birch. Self-defence in a case of murder is an act of self preservation to prevent death or the infliction of grievous

bodily harm. Usually self-defence should occur 'on the sudden' but what is really anticipated is a change of mood from a normal state to a state of absolute fear.

My argument is that women living in stiuations of severe domestic violence eventually reach the stage of living in constant absolute fear. They always know that at any time grievous bodily harm is likely to be inflicted upon them by their male tormentor if he is present. If he is absent, even in compliance with a Court order, there is still the fear of knowing that at any time he might return and that such return will ultimately lead to physical abuse. Courts need not look for a present and immediate attack from the man in such cases. If he was not actually attacking at the time, the woman always knows that he is just about to attack and her constant state of mind is that state of mind to which another person would shift if they suddenly found their life or physical safety threatened by another person.

POLICY AS CHIVALRY: THE CRIMINALISATION OF WIFE BATTERING

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Introduction

The 1980's have been a time of optimism for battered wives and their feminist advocates. Historical analyses of wife battering suggest that wife abuse knows few cultural or temporal bounds. Yet, at no time in recorded history have governments intervened as forcefully and passionately as today to help battered women. Government concern with wife battering is so widespread that it appears to transcend specific political ideologies. Even more surprisingly, government responses to wife battering seem to be in direct reply to the feminist demands to criminalise wife battering.

Yet despite the flurry of government interest in the plight of battered wives, disturbing reports nag at our euphoria. My own considerable optimism was shaken recently by a story in my local newspaper. The headline read: 'No proof that beatings by husband killed wife - court'. The story told of a man who admitted to beating his wife for the last ten years of their marriage, who also admitted to beating her severely two days before her death, and yet who was charged with assault rather than with murder because the criminal pathologist who examined the body attributed death to bleeding ulcers probably caused by the prolonged use of pain killers rather than directly to the beatings. The shock of the general public at the blatant illogic and lack of justice in this decision was strong. And yet when the sentence was passed, the judge did not give the man the maximum sentence possible under this charge, but did speak out forcefully against wife battering in society, and was praised by feminist demonstrators for making this public statement. The spokeswoman for the demonstrators was quoted as saying 'We weren't there to lynch him or worry about whether he got one year or one hundred years ... we're pleased the judge spoke directly to society, gave the word to men who beat their wives that this is a crime that will no longer be tolerated'. The children of the victim did not however share this happiness. They concluded 'It is not right for such an evil man to get off lightly. Causing do much suffering for so long cannot be ignored' (The Citizen, Ottawa, Canada, 17 September, 1985, p. 1).

This story is not atypical. It suggests a growing divide between the perceptions of the direct as well as the indirect victims of wife battering and the perceptions of the policy makers and some

of the advocates who promote change. While this chasm can perhaps be justified and explained away in terms of the natural divide between the understandable vindictiveness of the victim and the longer term, more balanced perspective of policy makers, this explanation does not ring entirely true. Perhaps, as Scutt wryly suggested, 'governments have been caught up in the fashionable notion that domestic violence requires action' (Scutt, 1983, p. 280). Perhaps this current fashion is not all it seems. Perhaps government policy is less a support of feminist concerns with long-term change than a modern manifestation of the ideals of chivalry - a superficial rescue of the victim from the throes of the crisis, without any long-term commitment to freeing the woman from her isolating dungeon and her susceptibility to future victimisation.

This paper is an attempt to put aside optimism temporarily and reassess our progress with a cynical eye. I will address, through an analysis of government policies and programs in Canada, the United States, Australia, Great Britain and to a lesser extent programs instituted in other countries, four interrelated questions.

1. What is the current government policy fashion?

2. Why are governments so interested in battered wives? Have governments actually embraced feminist goals or do the current policies reveal instead a chivalrous but less substantive commitment to the needs of battered women?

3. What are the potential or actual consequences for battered women and their advocates of current policy trends?

4. How can we support what is positive and creative in existing polices and thereby reignite and justify our optimism?

What is the Current Government Policy Fashion?

In my examination of policy pronouncements and program development, a number of suprisingly consistent trends emerged.

a. The criminalisation of wife battering - a crisis management approach

In almost all policy documents I analysed, the major emphasis was placed on the criminalisation of wife battering and even more specifically on treating wife battering 'like any other crime' (Women's Policy Co-ordination Unit, 1985, p. 198; this document provides but one example of an extremely common theme). This major policy thrust manifests itself most forcefully in recommendations for and the development of four types of

programs. The first and most dramatic is the promotion of tougher police arrest policies. Interest is high in arrest policies in all countries studied. Several states in the United States have such policies currently. In Canada, explicit guidelines or directives have been issued in almost all provinces and territories instructing police to lay charges in wife battering cases and a national charging policy has been issued by our national police force. Secondly, these policies are buttressed by attempts to 'upgrade' training programs for police to stress the criminal nature of wife assault and to encourage police to treat wife battering 'like any other crime'. Thirdly, legislative and procedural changes have been made or proposed to improve the effectiveness of peace orders. The emphasis in policies and programs in this area is on more uniform and decisive police enforcement of court orders. Fourthly, various crisis intervention models have been tried on an experimental basis, usually involving teams of specially trained police and social workers or volunteers, but interest in these crisis team models seem to be waning at present despite positive evaluations of existing programs, largely as a result of cost considerations, debate over appropriate police roles and concern that specialist police teams could undermine the commitment of police forces to provide crisis intervention training to all their officers. The criminalisation of wife battering has also contributed to very necessary legislative changes primarily concerning rules of evidence to allow wives to give evidence against their husbands in wife battering cases, but the present excitement surrounding criminalisation definitely focusses on the arrest process.

b. Police responsibility accepted as primary

Because the criminal justice emphasis is crisis oriented, it tends to focus on police policy almost exclusively. Only in United States documents did I find a fairly consistent mention of the role of judges, prosecutors, justices of the peace and other court workers, and a clear recognition of the important role they must play if changes in police policies are to be effective.

c. A strong philosophical commitment to prevention not supported by action

While there is a strong philosophical commitment to prevention and service co-ordination in policy documents, there is an erosion of this commitment as one moves from policy statements to action directives. Certainly on an international policy level, United Nations documents urge an holistic approach to wife battering policy. The very exciting resolution on wife battering adopted by the VII U.N. Congress on the Prevention of Crime and the Treatment of Offenders in Milan this September, stressed 'that the problem of domestic violence is a multifaceted one which should be examined from the perspective of crime prevention and criminal justice in the context of socio-economic circumstances' (U.N. Draft Report of Committee II, 1985, p. 4).

In addition, most national, provincial or state reports begin with a strong statement which recognises the overriding importance of prevention and the social, economic and legal dimensions of wife battering, but conclude that prevention and the broader issues relating to the role and status of women are largely beyond th scope of the report.

Actual prevention programs are almost entirely limited to public awareness, professional training and education programs. Admittedly these are significant strides, but to date these training programs tend to be optional parts of professional and public school curricula. Further, the true and lasting value of public awareness campaigns is not known, particularly in view of the contradictory messages the public can receive through news stories like the one I recounted at the beginning of this paper. There is no doubt that such programs should be continued, but target hardening and more universal application would make the commitment to the goal of prevention more convincing. Those programs which attempt to deal with specific battering situations tend to focus on the batterer, hence the proliferation of interest in counselling for batterers. The counselling needs of the women and children are often forgotten, put in a secondary position or merged with the batterer's programs*. In the United States now there is one transition house of which I am aware that it now systematically counselling the sons of battered wives in an attempt to prevent them from repeating the actions of their fathers. I know of no such programs that are directly sponsored by governments.

d. Practical problems are no-one's responsibility

Practical problems concerning housing, welfare, child care or transportation are simply not given the same specific emphasis in policy documents nor the same resource commitment as criminal justice oriented initiatives. To a large extent this is because many practical problems faced by the battered woman do not fall squarely within any agency's responsibility area. Of all these areas, housing recommendations tend to be the most specific. However, judging from feminist writings on these issues, there is very little indication that recommendations for either crisis or longer-term housing for battered women and their children have been acted upon in any significant way.

e. Practical interagency or interjuridictional co-ordination sidestepped

There is almost a complete lack of recommendations, policies and programs to promote either interagency or interjurisdictional co-

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* Editor's Note: See the conclusion of Allen's paper.

ordination. Most documents stress the need for co-ordination but then falter when the time comes to make specific recommendations for co-ordinating mechanisms. Interestingly, where such concrete proposals are made, they frequently are limited to co-ordinatng committees and clearinghouses to deal with information exchange and with policy co-ordination. These levels of co-ordination are essential. But what of co-ordination of services at a practical level for individual victims? I did not find a policy document which went beyond a passing reference or broad statement of intent concerning co-ordination at the action level. Victim groups for some time in North America have been lobbying for the government-sponsored creation of paid, individual victim advocates, whose jobs would be to co-ordinate services for individual victims, and thereby sift through the irrationalities of existing services, create personal networks and eventually effect change in existing services through the educative influence of direct contact. Victim advocates do currently provide this type of ongoing service on an informal and usually unpaid basis, but they are often frustrated in their attempts by resource and time constraints, and by the fact that their role is not officially sanctioned by the services with which they deal. Some women's groups have also sponsored conferences where they have attempted to facilitate networking at a local level by bringing together social workers, police, lawyers and health workers who actually work in the same location and by giving them problem-solving exercises dealing with real-life problems battered women face in their interaction with service deliverers. While these information methods of co-ordination are laudable, without some specific official commitment to this goal at regional and local levels, the momentum for co-ordinated assistance usually fades in the impasse between limited resources and too many victims.

A closely related characteristic of policy documents is that the overlap and confusion which exists in federal/provincial or state and community divisions of responsibility and practice are not dealt with directly. Granted, jurisdictional overlap is a thorny area fraught with political and cost obstacles. However without some real attempt to address these problems, governments have no hope of truly meeting the needs of battered women.

f. Little concrete support offered to community groups

Similarly, while the important role of the community and of advocacy groups is generally recognised, little concrete support is offered these groups, as the unstable funding bases of almost all transition houses demonstrates. Recommendations generally suggest further study of innovative funding mechanisms, or, responsibility is placed squarely on the community to reduce the workload to criminal justice and social service personnel and to cut costs of programs by relying on available private sector

resources as well as volunteers. Some feminist writers have contended that too much government support fosters dependency in community groups and guarantees a co-opting of government critics.

Too little support however can also sap the energy of the workers and effect a similar drain of the energy and power of our advocates.

g. Battered wives are portrayed as a homogeneous group

Finally, most policy documents tend to treat battered wives as an essentially homogeneous group, with some recognition of the special problems of native and ethnic battered wives. The recent discussion paper produced by the Women's Policy Co-ordination Unit of the Victorian Department of the Premier and Cabinet is one of the few documents I surveyed which also acknowledged the different problems experienced by mature and very young battered women.

To summarise these policy and program trends briefly then, policy which is supported by government action, currently stresses a particular type of criminalisation which emphasises the protection of the woman through effective crisis intervention, and places the major onus for protection on our modern-day knights - the police. Policies do little or nothing to lessen confusion and contradictions within and between criminal justice, social service and health systems. Policies rarely address interjurisdictional problems women may face. While the overall philosophy recognises the complexity of the problems battered women encounter, these complexities are frequently blurred in a homogeneous definition of battered wives and in the definition of longer-term problems of the battered wife and her children as outside the scope of current practical action. Does this not sound like a modern version of chivalry, that is, the brave knight responding to the cries of the damsel in distress, but after the rescue leaving her to her own devices while he pursues yet another challenge?

Why are Governments So Interested in Wife Battering? The Philosophical Basis of the Current Policy Trend

To understand the implications of these policy trends, some speculation on their roots may be enlightening. Current policy in the wife battering area is largely a reaction to earlier 'non-policies' of the 1970s which tended to ignore wife battering or to bury the rights and needs of the battering victim in an emphasis on mediation spurred by a belief in the sanctity of the family. Mediation and the idealisation of the family unit were expressions of welfare state ideology applied to family violence. Welfare state ideology has been characterised, at least since the

Second World War by massive state intervention in the family in the guise of promoting greater equality through the prevention of social and economic deprivation. Current critiques of this ideology contend that its overt goal was rarely achieved and instead the rights of the individual were often sacrificed for the good of the family. At the same time, individuals were isolated by complex, moralistic and fragmented programs from their potential helpers, from their own values in many cases and ironically often from other family members.

In the last decade, economic conditions have worsened in most countries in the world and the enormous expenditures characteristic of the welfare state have fallen into disfavour. Neoconservatism has been embraced as a solution to economic instability and has placed its blush on our political and social service institutions. Neoconservatism brings with it a concern for self-reliance, individual rights, responsibilities and self-help. Our neoconservative policy makers have examined welfare state programs and found them lacking. The social service metaphor fosters dependency not self-reliance and its science is too inexact, they proclaim. Instead, the criminal justice metaphor with its emphasis on individual responsibility and concrete facts has surfaced as the vehicle for the realisation of neoconservative principles. It has become the focus of policy development in the 1980s.

The criminalisation of a phenomenon traditionally has been a way for the state to expand its control. A criminal justice approach to a problem inevitably takes on the characteristics and underlying assumptions of the criminal justice system. The criminal justice system is an adversarial system, a system which despite the current balancing emphasis on prevention, is rooted in punishment, elitism and dependency. It is a system based on the logic of detail, discrete events and narrowly defined acts. It is a system in which the individual victim is not inherently a partner in the system and in which the victim's comprehensive problems frequently have no place. It is a system in which crimes are technically against the state and therefore the state becomes the real victim and gets the final sympathy, focus and congratulations for restoring society to order.

State control is also strengthened through another interesting feature of the current conservative orientation - the continued intervention in family life, characteristic of social welfare ideology. Ostensibly in the interest of cost saving, existing social welfare programs have been retained, albeit with some cost reductions to signal disapproval of the basic welfare orientation.

The unlikely marriage of neoconservatism (with its criminal justice emphasis) and the institutions put in place through the

welfare state have been rationalised through the powerful symbols of chivalry - symbols of victimised but honourable and long-suffering women, and of disinterested bravery by a brotherhood of gallant current-day knights in police-officers' clothing. This philosophical union, however, true to its bases, portrays assistance as charity, idealises and therefore simplifies the woman's plight, is rooted in the separation of men and women and the isolation of women and therefore has potentially devastating consequences for the victims of wife battering.

The policies of chivalry focus on rescuing the victim, but do little or nothing to prevent her subsequent victimisation or to address the roots of her oppression. Chivalrous policies, after the gallant rescue, tend to desert the battered woman to make her way herself, or with community advocates, through the maze of fragmented and isolating social welfare programs inherited from the era of the welfare state. Chivalrous policies place the onus on the battered woman to transform herself almost instantly from the helpless damsel in distress to a tough-minded forward thinking adversary in order to take her place in the male-oriented criminal justice system. Such policies ultimately give the glory to the brotherhood of modern-day knights - the criminal justice agents themselves for their bravery and decisive action in restoring society to a state of social solidarity. Such policies do little or nothing to rationalise the services available to battered women so that they might better meet her needs. Neither do they concretely respond to the structural inequities which help promote wife battering. Such policies, because they are deeply rooted in chivalrous symbols of social justice and order, and because on the surface they espouse the value of women and the importance of their problems, have the potential to mask the ultimate inequities they create, to divert attention from more basic inequities and to garner support from the very people they keep unequal.

Wife battering may be providing governments with a convenient, safe and popular way to respond to demands for greater equality for women without seriously tampering with the institutions which perpetuate inequality. The high visibility of wife battering policy may be providing a smokescreen for the lack of progress in establishing effective programs to guarantee women an equal place in our societies.

The state, legalistic response to wife battering, may be a way of containing the explosive fury of battered wives and their advocates within a chivalrous framework which takes strong and decisive action at the point of crisis, but ultimately isolates the victim and does little or nothing to address her problem as she sees it.

The Implications of Current Policy Trends for Battered Wives

Of course we can all agree that ultimately our goal is to achieve equality for women so that women will no longer be perceived as appropriate targets for violence, but am I being too extreme in my demands, and too far-fetched in my analysis? Don't we have to start somewhere? Is the criminal justice sytem not an excellent place to start, given its actual and symbolic power to express social disapproval of wife battering? I would persist in questioning this assumption. Traditionally, the law has been used to subordinate women, and while many of us can hope that the slight increases in influence women are having through their increased participation in the public sphere could in fact be having an effect on the laws of our lands, bitter experience has too often showed that apparent legal reform can mean a step backward for women once the power of precedents and inaction come into play. An excellent and familiar example of the false promise of legislative change is the South Australian marital rape legislation. As you all know, although marital rape was outlawed in 1976 in South Australia, followed by New South Wales in 1980, five years after the law was passed in South Australia, no husband had yet been convicted for wife rape unassociated with general physical violence.

The criminalisation of wife battering therefore is likely to increase state intervention in families, but to pursue the problem in a way defined by the legislator which can deny the woman's experience and concerns and place additional pressure on the woman to redefine her problem in a way that can be dealt with by the criminal justice system, to 'co-operate' with the system, and utlimately to accept the tendency of the criminal justice system to focus on the offender. On a practical basis, the criminal justice system simply does not provide one-stop shopping for the battered woman in her search for services, but tends to fragment not only her problems, but the available solutions. However, despite these warnings of the dangers of the criminal justice system, research done on wife battering has repeatedly shown that battered wives, above all else need and want protection. And there is emerging evidence that arrest can help prevent violence. The Minneapolis experiment conducted by the Police Foundation and the Minneapolis Police Department from March 1981 to August 1982 found that arrested offenders were about half as likely as non-arrested offenders to repeat their violence over a six-month follow-up period (Sherman and Berk, 1985, p. 44). A study done in London, Ontario in Canada resulted in similar findings (London Battered Women's Advocacy Clinic, 1985, p. 48). However, the police policies in these cities have some unique attributes which may contribute strongly to the success of arrest in these locations. In Minneapolis, when a man is arrested, he is generally held overnight or for as long as two or three days - a practice not common in many other United States

police forces. London Ontario is the site of a long-term successful domestic intervention crisis unit and a number of related support services. Until we have the results of a number of other studies on arrest in other locations, it will be difficult to determine whether it is arrest per se which diminishes violence or the combination of arrest with these other factors.

However, there is also some evidence that, as unpopular as it is to express this idea, while woman want protection, 'most victims do not want their assailant punished so much as they want the abuse to stop and they want their assailant helped' (Colin and Conway, 1984, p. 55). Recently a study was done in Canada which asked batterers' wives what they thought should be done to reduce wife battering in our society and what they thought was the most effective way to stop their men from being violent. Very few of the women mentioned legal remedies as more than a temporary solution. Fifty-five per cent felt the only real solution for existing violence was for the woman to leave her partner. More than half also felt that men should be encouraged or forced to seek help through counselling and should be taught from a young age to take more responsibility for their actions. Women asked for help to 'make it on their own' if they chose to leave a batterer, for more public awareness programs, for special programs to increase battered women's awareness regarding the prevalence of wife battering and options open to them, and stressed the need for individual support to enable them to understand and deal with the services they had to contact (Smith, 1984, pp. 125-132).

Battered women need emergency protection, but above all they want a permanent solution - prevention of the problem for themselves and their children. These expressions of need by battered wives indicate that they are not in tune with the traditional criminal justice mode. They want police intervention for protection. They may want arrest as a 'lesson' or deterrent, but they do not in general seem to want to follow through to the end of the process in many cases. Of course, it is well documented that women decide to drop their charges because of intimidation by their partner. But perhaps we should at least temporarily entertain the notion that the criminal justice system simply does not meet their needs. The criminal justice system is intimidating and its pronouncements final. Not only does the slow-moving criminal justice system with its delays make women vulnerable to repeated violence and intimidation by their spouses, most women who have been emotionally and physically battered do not want to endure the further intimdation built into the criminal justice system. Perhaps women need arrest without follow-through - a radical idea which is now being considered in North America. But what are the implications of this idea for long-term deterrence and for the integrity of the criminal justice system?

Women definitely need crisis protection and crisis financial aid, but they do not need forms of crisis services which will further complicate their lives and add to their problems. Canadian studies show that spouse abuse victims do not think first of criminal justice intervention. While this may be a sign of the need for consciousness raising, the assumption that battered wives do not know what is best for them is arrogant and unwarranted. Some of the problems battered wives experience with the criminal justice system are, of course being addressed through training programs, through conscious attempts to speed up the criminal justice process to reduce the danger to women which delays produce, through legislative change to evidentiary laws and through victim impact statements. While these reforms are certainly needed and more widespread reforms of this type would be beneficial to battered women, criminal justice reform alone will not address the woman's long-term problems. The structure and orientation of the criminal justice system makes it an unlikely candidate, regardless of reform, ever to deal effectively with the battered woman's problems. The violence experienced by battered women goes beyond physical violence and legal remedies. It invades and disrupts every facet of everyday life. It is beyond the scope of the criminal justice system to deal with housing problems, custody concerns, isolation, needed training, children's school problems, low-paying jobs and the woman's need for love and security. Perhaps we should balance the need to respond to wife assault as a crime and the policy fervour this has generated, with our concern for the victims and a genuine respect for their expressed needs.

Some Major Implications of the Current Policy Orientation for Community Workers

The most profound potential result of the current policy orientation for community workers is that, because governments have concurred with the most dramatic demand of feminist and other community workers to criminalise wife assault, these workers may give support to a system which does not further either feminist of victim goals. Certainly in North America, many of us who have worked in this area for years are so gratified to have made such a major advance that other problems perpetuated by the current policy orientation are, while not forgotten, certainly minimised or put on temporary hold for action.

The criminalisation of wife assault appears to make direct concessions to feminist advocates, but it has the potential to diffuse much of the energy which could have created ongoing demands for more fundamental change. In fact, the policies of some transition houses tend to support the emphasis on the individual and on discrete service approaches which a criminal justice approach to the problem encourages.

The most poignant example of this reinforcement of the ideology of autonomy is expressed by shelters which refuse to accept children. Certainly this refusal often has a practical base in that shelters have limited space, rarely have the resources to provide special facilities and programs for children and serve a variety of types of women, some of whom do not have children themselves and may resent the intrusion of children. But we must ask, what kind of support is this for the woman which forces her to separate from her children and deal with anxiety about their welfare at a time when she needs familiarity, the opportunity to function responsibly within a relatively normal environment, and the love and support her children can give her? What kind of real support is it to place the woman in an isolated milieu where she is encouraged to make plans for her future and the future of her children without the constraints and the motivation which the presence of her children can provide?

Current policy also can diffuse the energy of community workers by perpetuating the fragmentation and the frequently contradictory regulations of existing services. As Jo Sutton has commented, 'the strategy of continuing to allow an organisation at both the local and national level to have to negotiate with so many departments and therefore individual officials, is very effective in retarding the growth of refuges, not only terms of finding and opening a refuge, but also in its day to day operation and the lives of its occupants' (Sutton, date unknown, p. 58).

Finally, current policy is not providing community services with needed resources and yet there are indications that, through fiscal restraint rhetoric combined with the dearth of official services and our ever-growing recognition of the scope of the problems battered wives face, community services will be left to provide more and more needed services on either a volunteer or minimal pay basis.

Implications of Current Policy for the Police

No discussion of the implications of wife battering policy would be complete without at least a brief mention of the impact of policy on the police. Despite the negative portrayal of police in many writings on wife battering, some police have served as diligent advocates for battered wives and know well the myriad of problems battered wives face. In addition, the police themselves, because of their front-line role can also become indirect victims of a narrow policy focus.

The police are generally recognised as the only official link most women ever have to needed legal and social services. The current policy emphasis recognises this reality and places the major responsibility for crisis intervention and the continued protection of battered wives squarely in the laps of the police.

However, there are a number of 'catches' to this official recognition of the central role of police in wife battering cases, which are difficult to resolve.

Policy initiatives which specify formal action guidelines tend to limit police discretion in wife battering cases and also to burden police officers with even more paperwork. There are very good reasons for this, of course. Police are members of the wider society and, like the general public may be unaware of the realities of wife battering and react inappropriately without explicit guidelines. The paperwork may be a burden to police, but at the same time, we desperately need comprehensive statistics on wife battering and therefore the burden is justified.

While in the face of these 'logical', official arguments, police frustration factors may sound insignificant, the two factors mentioned are only two of a number of factors which have the potential to increase police frustration regarding wife-battering cases, and potentially limit police effectiveness, regardless of the adoption of widespread arrest policies, training programs and legislative change concerning the enforcement of court orders.

Current policy tends to isolate police as it isolates battered women and their advocates. Extensive training programs are being developed to help police deal with wife battering cases, but similar courses for other criminal justice professionals are rare and even where they exist are generally provided on a discretionary basis. As a result, police efforts to apply their training and arrest guidelines may be thwarted by inconsistent prosecutorial or judicial action.

Recent research in Canada also suggests that implementation of a more aggressive charging policy might have unanticipated consequences which could not only frustrate police but ultimately reduce the public perception of the seriousness of the crime. A preliminary post-policy implementation evaluation done in one city in Canada, indicates that since a more aggressive charging policy has been in place, there has been a 700 per cent increase in charging activity, but there has also been a decrease in conviction rates from .50 to .34, an increase in the number of charged parties found not guilty from 0 to 4 per cent, a decrease in the per cent found guilty from 57 per cent to 47 per cent, and an increased per cent of cases resulting in withdrawal from 29 per cent to 41 per cent. In addition there has been an increase in the per cent of cases where fines were levied (from 50 per cent to 61 per cent) and a dramatic increase in the per cent of Level I (common assault) charges over Level II charges (Muir and Le Claire, iii, iv). While the number of successful prosecutions overall has increased, and while it makes sense that there will be a greater proportion of cases lost because the cases are not being as tightly selected initially, will the higher proportion of cases lost and the lighter sentences levied overall increase police and victim frustration and decrease public perceptions of the seriousness of the crime?

Another source of frustration is revealed in police complaints that until they have adequate support services to which they can refer battered women, their actions, no matter how well-intentioned, fall flat. Police have repeatedly echoed the theme that 'legal intervention provides neither a complete nor an enduring solution to the problem of domestic violence' (Women's Policy Co-ordination Unit, 1985, p. 32).

Yet another of the many aggravations for police responding to wife battering cases is that police are generally expected to incorporate innovative techniques and approaches to wife battering within a police system which stresses law enforcement over the goal of helping people. Many police are therefore constrained in their attempts to respond sensitively and effectively to the battered wife's needs, by a lack of recognition by their superiors of the importance of this role and by the resulting imposition of competing priorities.

Policies which place too much emphasis on police responsibility without providing police with the moral, resource and service support they need will inevitably reduce police commitment to this cause and make them unwitting, indirect victims of an insufficiently comprehensive policy focus.

Conclusion

Despite the critical nature of my paper, I remain extremely optimistic about current and future government and community work to help battered wives. This paper has been an attempt not to detract from the many real strides we have made in wife battering policy, but rather to urge that we not allow our optimism to blind us to the fact that while policy statements recognise the need for comprehensive action to help battered wives, the policy which is currently coming to life in actual programs is heavily skewed towards a criminal justice 'solution'. No essentially one-dimensional approach, no matter how powerful and well-intented will effectively respond to a multifaceted problem like wife battering.

Granted, current policy-based action has definitely raised awareness that wife battering is a serious issue and has communicated official repugnance towards this form of violence at both international and national levels.

We must remember however that the criminalisation of wife battering is still an experiment only. As such there are many questions including the questions of mandatory arrest policies, prosecutorial 'no-drop' policies and court mandated counselling for batterers which are far from being resolved. I believe that we must see this experiment out, because of its strong symbolic value and because of the good it has accomplished to date. We cannot however afford to pursue the experiment uncritically or to

allow our governments to pursue criminal justice remedies without an equally strong emphasis on social service, educational, economic and health programs. As advocates, policy-makers and victims of wife battering, we have a responsibility to hold governments to their statements of intent which stress multifaceted, preventive approaches to wife battering. Further and most importantly, we must not become so enamoured with our success in effecting change that we forget the voices of the victims.

It is tempting to succumb to the romantic drama of chivalry and to accept the glory which is the knight's due. We might however, rediscover, if we truly listen to the cries of battered wives that it is not so much the shine of new legislative armour they need, nor the excitement and reassurance of a daring rescue, but the gift of a horse to forge their own path.

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LEGAL RESPONSES TO DOMESTIC VIOLENCE - WHAT IS APPROPRIATE?

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Introduction

The law's role in dealing with the problem of domestic violence is important for two reasons: it may be able to provide a measure of protection to the victims; and it serves a symbolic and educative role in that attitudes to domestic violence can and are shaped by the law's perceived response. This paper is concerned with both aspects.

As to the first - the law's protective role - it must be said that the law should not be regarded as the only measure available to protect victims. Other measures, ranging from fundamental changes in attitudes to practical measures such as providing victims with escape routes and the resources, both physical and psychological, for separate survival, are just as, or more, important than the law. The law is a relatively blunt instrument in dealing with the complex problems of domestic violence.

As to the second aspect of the law's role - its symbolic function - a debate has grown in Australia about whether measures other than a criminal response are appropriate or desirable. It is argued that domestic violence is criminal behaviour and that there is accordingly only one appropriate response - the full force of the criminal law. Anything short of that response, it is argued, effectively decriminalises domestic violence with consequent adverse effects on people's attitudes to perpetrators, victims and the behaviour which constitutes domestic violence. This debate will be canvassed in connection with the discussion of protection orders.

An important part of the legal response to domestic violence is what to do with the perpetrators. This is important in relation to both the protective and symbolic aspects of the law and will be discussed briefly at the end of this paper.

For the purposes of this paper 'domestic violence' is defined as violence (in its broadest sense which includes harassment) between adults who are or have been married or who are living or have lived in a de facto relationship. Violence to children is not considered here as it raises some additional and different problems.

The Various Legal Responses

The law can respond in various ways to domestic violence, ranging from the 'softest' option, a civil injunction, to the 'hardest' response, a criminal prosecution. In between are preventive measures such as injunctions under the Family Law Act, keep the peace orders obtainable in magistrates' courts and, in some States, special protection orders which are principally designed to deal with domestic violence. These will be examind, with emphasis on the criminal law and preventive measures.

Civil Remedies

A victim of violence may sue for damages for the torts of assault and/or battery. Such remedies are rarely used by the victims of domestic violence and are of little practical use or importance. A further possibility is that an injunction can, in theory, be obtained in such proceedings to prevent future assaults or batteries. A breach of the injunction is a contempt of court. However the courts have not in the past granted injunctions against conduct which is both tortious and criminal[1]. The reason for this is that it is argued that the criminal law should be used to control criminal conduct. Further, the existence of an injunction could prejudice a fair criminal trial, particularly if the accused has already been before a civil court for contempt proceedings arising out of a breach of the injunction[2]. Paradoxically, injunctions have been more readily granted to protect or preserve property or assets[3]. In recent years there has been a movement away from the view that civil injunctions should not be used to restrain criminal conduct both in decided cases[4] (particularly cases involving domestic violence) and in some text books[5].

As mentioned above, the remedy for breach of an injunction is that contempt of court proceedings have to be taken against the person who has broken the injunction. This is a time-consuming, expensive and slow procedure which must be initiated and followed through by the victim of the breach. It is not a police matter.

Family Court Injunctions

Married (and only married) people may make use of the Family Court to restrain violent or harassing behaviour. Under Section 114 of the Family Law Act 1975 (Cth) the Court is given wide powers to make orders for the protection of victims of violence or harassment, including orders for excluding the offending party from the matrimonial home, the applicant's place of work or other areas. Since an amendment to the Act in 1983[6], the court may attach a power of arrest to the injunction if it is specifically asked for by a party to the marriage.

Breach of an injunction may attract arrest (where a power of arrest has been attached) and contempt proceedings[7]. In addition there is a specific enforcement provision[8] which provides for a fine (up to $1000) or under which the court can require the person who has broken the injunction to enter into a recognisance (undertaking) to comply with the injunction. A refusal to enter into a recognisance attracts a possible gaol penalty (up to three months). A breach of the recognisance results in a forfeiture of sureties (money).

Non-compliance with Family Court[9] injunctions is common[10] Practitioners tend to use the contempt provision[11] rather than the provision for enforcement described above[12], when there is a breach of an injunction. Both procedures are slow and expensive. Whichever procedure is used, the generally accepted view is that on the whole 'the Family Court has been unable to enforce its injunctions successfully'[13].

There are several reasons why Family Court injunctions often do not work, (that is, they are broken with impunity). In summary they are:

- The enforcement mechanisms following a breach are cumbersome, time-consuming and expensive. Many victims of breaches simply give up.

- The power of arrest is rarely attached to orders, and, even if it is, it may be ineffective because the arrested person must be released quickly[14].

- Police are often reluctant to take action when a Family Court injunction is broken even when the power of arrest is attached. They consider it to be a matter to be dealt with by the Family Court.

- Lawyers are sometimes reluctant to initiate contempt proceedings or proceedings under Section 114(4), partly because they know that such proceedings will not be effective to put a stop to the violence or harassment. Hence a vicious circle is created.

- Judges and Magistrates are often uncomfortable in dealing with domestic violence and will tend to impose another injunction or hand out a stern warning rather than punish the wrongdoer[15].

The factors underlying these reasons for the frequent failure of Family Court injunctions are complex and cannot be dealt with more fully in this paper. But one important underlying cause should be emphasised. The philosophy of the Family Court is conciliation. In most cases of domestic violence this is simply

an inappropriate approach. Criminal behaviour and the Family Court do not mix. This is not to say that in some cases of domestic violence counselling and a warning will not work. But in the great majority of cases the perpetrator and the victim are locked into a predictable pattern of recurring violence. This cycle must be broken by harsher measures than are customarily handed out by the Family Court[16].

Protection Orders

In New South Wales, Western Australia, South Australia and Tasmania[17] laws have been passed which are aimed at providing better protection to the victims of domestic violence, although in Western Australia, South Australia and Tasmania the legislation can be used in other contexts as well, for example, neighbour disputes. In Queensland similar, though less comprehensive, legislation was passed in 1982[18]. All these measures permit magistrates to make orders prohibiting future violence or harassment. Breaches of orders are criminal offences attracting possible arrest without warrant. The legislation in New South Wales, South Australia and Western Australia permits a magistrate to impose an order prohibiting access to premises. In New South Wales further measures aimed specifically at domestic violence cases, have been enacted which give police wider powers of entry into premises; which make spouses compellable witnesses in criminal prosecutions; which allow for special bail conditions to protect victims; and which provide for periodic detention orders[19].

Keep the Peace Orders

These new measures outlined above are a development and refinement of the old keep the peace orders which magistrates have used to prevent conduct which is violent or otherwise amounts to a breach of the peace[20]. Under this procedure, the defendant is brought before the magistrate's court by means of a summons or a warrant for arrest issued by the magistrate after there has been a complaint made either by a private citizen or the police about the defendant's threatening behaviour. If the magistrate is satisfied that the defendant has acted violently or in breach of the peace and is likely to do so again, the defendant may then be required to enter into an undertaking to keep the peace or be of good behaviour. The penalty for breaking an undertaking is forfeiture of surety (money). But a breach must be followed by further court action before the forfeiture is imposed. In practice breaches are rarely acted on. Police cannot arrest someone who has broken an undertaking to be of good behaviour or to keep the peace (unless some other ground for arrest exists). The breach of the peace procedure is generally regarded as ineffective and cumbersome. In particular it has never provided adequate protection to the victims of domestic violence. It is the only procedure available (apart from the

criminal law) for unmarried victims of domestic violence in those States and Territories which have not yet passed laws specifically aimed at providing more effective protection to domestic violence victims. It is because of the inadequacy of this procedure that it was thought necessary to pass the new legislation.

The Criminal Law

Domestic violence usually involves criminal activity, ranging from assault to murder. Some forms of domestic violence do not necessarily amount to criminal offences, such as the various forms of harassment commonly employed. Although activities such as constantly telephoning, waiting outside a house or following someone can be as terrifying as actual physical violence, they do not amount to crimes and so cannot be prosecuted as such. A Canberra man terrified a women's refuge by telephoning constantly and then by smashing his head against a tree outside the refuge. This was not criminal behaviour.

There is no doubt when actual physical violence takes place. The perpetrator has committed a criminal offence or offences. It follows that he should be prosecuted and punished. It is notorious that this does not happen in many cases of domestic violence. Where there is no prosecution, the law's role in providing protection and its symbolic role are both found wanting. The failure to prosecute domestic violence offenders evokes a range of responses from people whose work brings them into contact with the victims or the perpetrators. At one end of the continuum is the response of extreme anger that criminal offenders should be allowed to get away with it, thereby encouraging the particular offender to feel that his bashing is condoned or excused by the legal system. This in turn demonstrates to victims and to the wider community that domestic violence is not 'really' criminal. Such feelings do nothing to remove the attitudes which foster the phenomenon of domestic violence. At the other end of the continuum is the view that the criminal law should not generally intrude into family life; that the invoking of the criminal law is too crude and too harsh a response to a difficult and complex problem.

The Debate About Non-criminal Responses to Domestic Violence

The view that domestic crimes must be treated in precisely the same way as other crimes leads to the further proposition that the law should not provide a non-criminal response to domestic violence. Thus Family Law Act injunctions, protection orders and keep the peace orders are, it is argued, all inappropriate responses. They tend to decriminalise the violent conduct with similar consequences as follow from a failure to prosecute, namely, that the perpetrator and the wider public are encouraged

to believe that domestic assaults do not really count as criminal conduct. Further, a person who seeks a protection order must show that she had already been the victim of violence in order to obtain the order. Why, it is asked, should she have to be bashed twice before the law steps in (that is, the perpetrator is dealt with for breaching the order)? Thus, it is argued that protection orders are less protective of victims than the criminal law (in allowing at least one bashing) and the law's symbolic and educative role is undermined by the existence of the various forms of protection order.

Despite these views, the undoubted trend in Australia and elsewhere is to introduce protection orders as an important measure for dealing with domestic violence. How is this to be explained?

Some Explanations for the 'Soft' Response

What is the explanation for the law's poor performance in responding to domestic violence? We have seen that civil injunctions are of little help, that Family Court injunctions do not work, that keep the peace orders are ineffective and that the criminal law is not vigourously enforced. Briefly, some of these shortcomings can be explained. Civil injunctions, whose purpose is to deal with such matters as preventing future trespasses to land or stopping a legal nuisance, are not designed to deal with criminal conduct. The reasons why Family Court injunctions have not worked satisfactorily have already been canvassed. Keep the peace orders are designed principally to give a warning (for example to demonstrators) without bringing down the full force of the criminal law. The method of enforcement for breaching undertakings given in connection with the keep the peace procedure is not appropriate to domestic violence cases.

The criminal law needs to be considered separately. It is, arguably, the most appropriate response. The reasons which have been advanced for its failure to respond adequately can be summarised.

1. In some cases the victim does not want a criminal prosecution to take place. This may be because:

   (a) she fears her partner's reaction;

   (b) she feels that a fine or imprisonment of her partner will adversely affect the family;

   (c) she genuinely does not want to invoke the full force of the criminal law, despite her partner's violence.

2. The police and/or the prosecution decide that a prosecution is not warranted or appropriate. This may be because:

   (a) they lack sufficient evidence to satisfy the criminal standard of proof ('beyond reasonable doubt') that an offence has taken place;

   (b) they do not take domestic violence seriously because of sexist or otherwise culturally determined attitudes to the problem;

   (c) they genuinely believe that the use of the criminal law in domestic violence cases is inappropriate and that conciliation should be pursued, despite the seriousness of the offence;

   (d) they believe that prosecutions in domestic violence cases are a waste of time because spouse victims often decide not to testify against their partners or because magistrates tend to be lenient in handing out punishments.

3. Magistrates, in cases where an offence has been proved, do not apply criminal sanctions vigorously in domestic prosecutions. This may be because:

   (a) they exhibit the same sexist or other attitudes mentioned above (2(b));

   (b) they hold the same belief about the inappropriateness of the criminal law as mentioned abobe (2(c));

   (c) they realise that to punish the offender is, in many cases, to punish the family too because of the economic consequences of a gaol sentence or fine.

There is no empirical evidence to show which of the above reasons predominates if, indeed, there is such a predominance. Such evidence would be difficult or impossible to find, involving, as it does at least in part, an uncovering of deeply-buried and subtle ideological and attitudinal factors*. It is therefore merely speculative to assert that one or other of the reasons listed above is <u>the</u> cause of leniency exhibited to domestic violence offenders. It is probably safe to assert, on the other hand, that the causes are both complex and various, depending, as they do, on a mix of ideological and practical considerations.

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* Editor's note: Indeed, the research undertaken by Hatty and Sutton specifically addresses police attitudes towards 'domestic violence'. (See their paper in this volume.)

Is There Any Justification for a Non-Criminal Response?

Having seen that the criminal law has traditionally not responded with its full vigour to domestic violence cases, it must be asked whether there is any justification for such a response. In particular, is an 'intermediate' or quasi-criminal response in the form of protection orders justified? A recent South Australian report on the operation of protection orders in domestic violence cases[21] argues that protection orders are a necessary part of the legal response. This conclusion was reached not because of any feeling that the law ought to deal gently with attackers but because the needs of the victims dictate a flexible regime. In other words, even in the absence of a sexist or patriarchal explanation for a 'soft' response, there are reasons for responding to some domestic violence cases with something less than the full vigour of criminal proceedings and punishment.

One of the questions specifically addressed in that Report was whether protection orders are appropriate. The Report found that there were divided opinions on this question. On the one hand some welfare and legal workers tended to favour a flexible response with the criminal law playing its part but not being the only legal measure available. On the other hand professional workers were of the view that protection orders provided a soft option and that they diminished the gravity of family violence. Victims themselves expressed a range of responses. 'While some women prefer counselling or mediation, others want a civil court order (a restraining order), while still others favour the strongest response provided by the criminal law'[22]. The Report concludes, on this debate, that it is necessary for the law to provide a range of responses to domestic violence.

> It appears that, for at least some women, any sort of legal intervention is regarded as extreme and inappropriate. For such women, a standard criminal procedure for every complaint of domestic violence would be unwelcome. If reporting domestic violence meant an automatic criminal charge, the incentive for remaining silent would be strong[23].

It is submitted that the victim's needs should be a paramount consideration in deciding what are the appropriate legal responses to domestic violence. But in addition to this consideration, there are other compelling reasons for a flexible legal regime. The Naffin Report points out that in many cases the requisite standard of proof for a criminal prosecution ('beyond reasonable doubt') may not be attainable whereas the civil standard of proof ('on the balance of probabilities') is all that is required to apply for a protection order. Consequently protection orders are much easier to obtain than criminal prosecutions[24].

A lawyer in a community legal centre has pointed out to this writer that, from the defendant's point of view, there is little difference between the full criminal response and legal proceedings for a protection order. If police are involved in protection order proceedings, the educative effect of the law is achieved, that is, the perpetrator sees the resources and force of the State being mobilised against him. If this point is valid, there is a contradiction about the symbolic role of protection orders: on the one hand they can be seen as effectively decriminalising domestic violence whilst on the other hand it can be argued that there is no symbolic difference between criminal and quasi-criminal proceedings, at least as perceived by the parties involved in the proceedings.

A further important reason for using protection orders is that conduct which is not criminal, such as harassment in its various forms, can only be dealt with by the protection order procedure[25]. Without such a procedure the victim of non-violent but nevertheless terrifying behaviour has no protection. The police cannot do anything about someone who telephones constantly or who waits outside in the street unless a protection order is obtained against the intimidating party.

The Police Role

The police play an absolutely central role in dealing with domestic violence. They are at the front line and they bear a heavy responsbility for the effectiveness of legal measures. Whether they are enforcing the criminal law, obtaining protection orders on behalf of victims (as they are empowered to do in New South Wales, South Australia and Western Australia) or enforcing breaches of protection orders, the legal response depends on them. Much of the criticism which has been levelled at the law's response has been aimed at the police. Some of the reasons why police do not respond vigourously have been outlined above. There is no doubt that a great deal of work has to be done in training police in this area.

Experience in New South Wales and South Australia has shown that, despite a major concentration on the problem of domestic violence at government level, the police are still not enforcing the law. In both States there is some evidence that breaches of protection orders are not being prosecuted[26] and in New South Wales police are not using the protection order procedures; they are leaving it to the victims to obtain protection orders. By contrast, in South Australia police routinely make use of the protection order procedure.

The defects in the way the law is enforced cannot be considered at length in this paper. Suffice it to say that the shortcomings of the police have always been a problem in this area, whatever

legal response is thought to be most appropriate. In other words the effectiveness of criminal prosecutions and protection orders depend on the police and neither will work properly if the police do not enforce the law. One of the points that is made by those who oppose protection orders is that they do not work. The answer to this is not to place all reliance on the criminal law in preference to protection orders because, equally, the criminal law will not work if the cause of the procedures not working is police reluctance to prosecute. Instead, the answer is to train police to enforce the law properly. This is a big task. Some indication that police can change their ways is provided by the NSW Domestic Violence Committee Report which shows that the police at Wagga Wagga do make use of the new protection order procedure (whereas their fellow officers in the rest of the State apparently do not).[27]

What To Do With Offenders

One of the issues which is seldom addressed in the debate about appropriate legal responses to domestic violence is what to do with the offender, whether he be guilty of assault, guilty of breaching a protection order, or both. It is sometimes assumed by critics of the law in this area that the only sensible course is to send offenders to goal. Yet is is an undeniable fact that this will not happen except in the most extreme cases. This is not necessarily explained by reference to judges and magistrates being 'soft' on domestic violence offenders. They are 'soft' on many types of offenders who have been found guilty of quite horrific conduct. It is widely accepted that gaol is a last resort in dealing with all crime. In the ACT this is a marked feature of the criminal justice system.

An important factor which sets domestic violence crimes apart from other crimes is the problem of economic dependency of the victim on the offender. As mentioned earlier in this paper, the punishing of the offender is made very much more difficult if the victim is directly affected by the punishment. Of course, there is no such dilemma when the victim has left. But it must be acknowledged that there are many victims who for one reason or another either do not want to or cannot leave. In such cases, so long as the victim is dependent on the offender, the problem of punishment is difficult.

Forms of punishment which do not impact on the family can be devised. Examples are community work orders[28] and weekend detention[29]. Also, as part of the sentencing process, the court should be given the power to impose conditions under which the offender must attend counselling or therapy programs. Such measures require considerable resources to make them work effectively, even if it is accepted that counselling and therapy programs can change people[30].

A preferable way of dealing with the problem of the impact of punishment on the family is to provide for better financial support for the families of convicted criminals who are sent to gaol. This is, after all, a universal problem and not peculiar to domestic violence cases. However, the Naffin Report clearly reveals that the fear of economic consequences is not the only reason why some victims are reluctant to invoke the full force of the criminal law. This is a problem which is peculiar to domestic violence cases. It is trite to say that the source of much of the agonising in this area is the closeness of victim and offender which both makes dealing with the offender more difficult and the plight of the victim more dangerous than in other criminal cases.

Another problem relating to punishment is the old problem of whether gaoling someone achieves very much. The understandable desire to punish severely domestic violence offenders glosses over this question. Nevertheless it is undeniable that the 'tariff' for domestic violence offenders is out of kilter. Should people who kill zoo animals really be punished more heavily than people who subject their wives to years of terror? Ideally, the domestic violence offender should be punished by the same methods as exist for other criminals, however crude those forms of punishment may be. The fact that in many cases the victim may not want this should, in theory, be ignored because the state is exacting punishment, not the victim. Nevertheless it is not fanciful to suggest that the apparent leniency extended to domestic violence offenders must be because the courts recognise the victims' wishes.

There are no easy answers to these dilemmas. It is probably unrealistic to assume for the moment that domestic violence offenders are suddenly going to be dealt with in a way which is consistent, rational and appropriate to their deeds.

Conclusion

This paper has concentrated on the question: should there be a non-criminal response (in the form of protection orders) to domestic violence? The argument that there should be only a criminal response is not accepted. It is argued that both responses are appropriate because the victims themselves have a need for a range of responses. A further justification for protection orders is that they are much easier to obtain than criminal prosecutions because of the lesser standard of proof required in applying for such orders. Thus the victim who may go unprotected in a purely criminal regime has a measure of protection in a dual regime. A final justification for protection orders is that apprehended violence and non-criminal conduct, such as harassment, cannot be dealt with except by the use of protection orders.

The existence of a non-criminal response carries with it the danger of decriminalising domestic violence. This is particularly so if, in a dual regime, the'softer' option is invariably used and the criminal option is never used. There is also a danger that the attitudes of police and magistrates to domestic violence may be shaped by the very existence of a 'soft' option, so that, for example, sentences for breaches of protection orders may be less severe than sentences for assaults. The unavoidable dilemma that exists here is that practical measures for protecting victims dictate a dual regime whereas the symbolic and educative impact of such measures may tend to perpetuate old attitudes that domestic violence is not really criminal behaviour.

The dangers outlined above can be mitigated if a dual regime is properly enforced by the police and the courts. Whether a person is guilty of an assault or breach of a protection order (or both), the same consequences should follow, namely, conviction and punishment. Thus the law's protective and symbolic roles can be carried out in a dual regime. Finally, this paper canvasses the dilemmas faced by the courts in punishing domestic violence offenders. These dilemmas are extremely difficult to resolve, given the understandable ambivalence of victims in many cases.

Footnotes

1. Attorney-General (ex rel Lumley) and Lumley v TS Gill and Son Pty Ltd [1927] VLR ss; Parry v Crooks (1980) 27 SASR 1.

2. Gouriet v The Post Office Engineering Union [1978] AC 435, 490.

3. Mareva Compania Naviera SA v International Bulkcarriers SA [1975] 2 Lloyd's Reports 509.

4. Egan v Egan [1975] Ch 218; Zimitat v Douglas [1979] Qd R 454; Daley v Martin (No. 1) [1982] Qd R23.

5. Clerk and Lindsell on Torts, 14th ed, Sweet and Maxwell, London, 1975 293-294; Spry's Principles of Equitable Remedies, 3rd ed, Law Book Co, Australia, 1984, 324-327.

6. Family Law Amendment Act 1983 (Cth) which inserted s 114AA.

7. s35.

8. s114(4).

9. Magistrates' courts frequently exercised Family Court jurisdiction in relation to injunctions. For convenience in this paper the expression 'Family Court' is used to cover both the Family Court and magistrates' courts exercising Family Court jurisdiction.

10. The Law Reform Commission, Contempt and Family Law, Research Paper No. 6A (forthcoming) Reference on Contempt of Courts, Tribunals and Commission, November 1985, Ch 9, (hereafter Contempt reference RP 6A) and see Contempt and Family Law, Discussion Paper (DP 24) (forthcoming), November 1985.

11. s35.

12. s114(4).

13. Contempt reference RP6A, Ch 9.

14. s114AA(3).

15. These reasons for the failure of Family Court injunctions are more fully dealt with in Contempt reference RP6A, Ch 9.

16. It should be noted that there are exceptions to the general reluctance of the Family Court to deal harshly with domestic violence offenders.

17. Crimes (Domestic Violence) Amendment Act 1982 (NSW); Periodic Detention of Prisoners (Domestic Violence) Act 1982 (NSW); Justices Amendment Act (No. 2) 1982 (WA); Justices Act Amendment Act (No. 2) 1982 (SA); Justices Amendment Act 1985 (Tas).

18. Peace and Good Behaviour Act 1982 (Qld).

19. It should be noted that, under the Family Law Act 1975 (Ch) s114AB, if a person is seeking a protection order under State legislation the Family Law Act injunction may not be used.

20. See, for example, Crimes Act 1900 (NSW in its application to the ACT) s547. There is a similar procedure under the Court of Petty Sessions Ordinance 1930 (ACT) Part X.

21. N. Naffin, Domestic Violence and the Law - A Study of s99 of the Justices Act (SA), Women's Adviser's Office, Department of the Premier and Cabinet, South Australia, June, 1985 (hereafter the 'Naffin Report').

22. Naffin Report, 41.

23. Id, 44.

24. Id, 45.

25. Id, 46.

26. See Naffin Report, 146-154; Report of the New South Wales Domestic Violence Committee, April 1983 to June 1985, Ch 3.

27. Report of the NSW Domestic Violence Committee, 21.

28. See, for example, Supervision (Community Service Orders) Ordinance 1985 (ACT).

29. See Periodic Detention of Prisoners (Domestic Violence) Act 1982 (NSW).

30. See D. Wehner, Spouse Abuse Intervention Project, Final Report, South Australian Health Commission, 1985.

POLICING VIOLENCE AGAINST WOMEN

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INTRODUCTION

This paper will review the literature on the deployment of police resources in the resolution of situations involving violence against women within relationships. The perspectives adopted by both the female victim and the intervening police officer, particularly as these affect the mobilisation process, will be critically assessed. There will be an exploration of the implications of these matters for the maximisation of the policing function. Specifically, the issue of police training will be addressed.

Before embarking on this, however, these matters will be placed in the context of the larger project; this is briefly described below.

THE PROJECT

Violence Against Women and the Criminal Justice System: Responses, Strageties and Solutions

The project is comprised of several interdependent components relating to police practices and procedures, particularly as these reflect the parameters of the Crimes (Domestic Violence) Amendment Act, 1983, the activities of legal personnel such as magistrates, and the involvement of professional and lay community support agencies such as refuges.

The first component is concerned with an analysis of present police policy, training content and methodology, and the implementation of such in the field, with a view to an examination of the efficacy and relevance of current police training in the area. This involves an evaluation of the intervention process, an examination of police and victim perceptions of such intervention, and an assessment of current police training. On a theoretical level, the project also aims to examine the viability of the various models employed in the differing Australian jurisdictions.

The other components of the project involve in-depth discussions with volunteer and professional employees of community agencies and the victims they shelter and support, and extensive interviewing of magistrates regarding practices and attitudes.

Staffing

In addition to the two principal researchers, others who have worked on the police component of the project include Constable Nino Gamosh, New South Wales Police (seconded to the National Police Research Unit), Michelle Bender, Trish Jones, Christine Mifsud and Marion Peters.

Research Grants

This project is currently supported by grants allocated by the following bodies:

- The Australian Research Grants Scheme
- A National Post-Doctoral Fellowship (Department of Science; duration of award three years)

Other resources provided for the project include:

- The secondment of a full-time police officer for a period of eleven months. (The duties of this officer are listed in Appendix 1.)

- The use of a police motor vehicle.

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- Inspector Brian Rope, Officer-in-Charge, Juvenile Services Bureau
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POLICING VIOLENCE AGAINST WOMEN: IMPLICATIONS FOR TRAINING

Victim Decision-making: Invoking the Police

It has been found that a decision to report an event to the police is related to conceptions of authority, the construction of private and public spheres, and the definition of certain activities as criminal (Blum-West, 1983)[1]. It is entirely likely that these factors contribute toward the decision to seek police intervention in a violent incident occurring between intimate partners.

Bowker (1984) reports that the involvement of police in this type of incident is associated, according to women's experience, with the use of alcohol and the manifestation of overtly masculine characteristics by the male partner, the utilisation of serious violence, and a less satisfying relationship. Berk, Berk, Newton and Loseke (1984) assert that the police are more likely to be summoned if there are injuries to either party, damage to property, or witnesses present. Berk, Berk, Newton, Loseke have found that victims and bystanders respond differently when confronted with the violent episode; for victims, this may be partially based upon prior experience. Berk et. al. emphasise that particular characteristics, whether possessed by the protagonist or inherent within the situation, may minimise or, perhaps, preclude the involvement of police. Thus, the nature of the relationship itself appears to be an important determinant; whilst victims are more likely to call the police if they are not married to the violent protagonist, bystanders are less likely to call the police if the couple cohabit.

The Police Response

Although the police response is typically reactive, it is nevertheless subject to a number of conceptual and pragmatic influences. These might include, respectively, the degree of criminality attributed to the activities, and the specific police policy associated with the activities. Often, it has been claimed, police exhibit a distinct reluctance to intervene in incidents in which the protagonists are either married or in a de facto relationship; Brown (1981, p. 219) has labelled this approach 'a conscious choice of priorities'. Consequently, notions of domestic privacy and male domination appear critical (Dobash and Dobash; 1979); indeed, these considerations are prominent components of many departmental policies regarding arrest (Martin, 1978; Thorman, 1980).

Nevertheless, the police response to situational exigencies is determined by both the priority accorded to the activities (Berk, Loseke, Berk, Rauma, 1980), and the information provided to the attending officers (Parnas, 1967). In connection with the latter, Oppenlander (1982) has found, in a study of the police response

in several American cities, that dispatch practices vary with the relationship between the protagonists; this has the effect of diminishing the categorisation of incidents of assault occurring between partners within a relationship.

A Consumerist Perspective: Victims' Views of Police Intervention

The research upon the victims' attitudes to the police response has revealed the existence of pronounced degree of dissatisfaction (Roy, 1977; Pagelow, 1981). Bowker (1982) has found that police were rated the least successful of all formal service agencies by a sample of women who were no longer in a violent relationship. Similarly, Pahl (1982) has established, in interviews with the residents of a refuge, that the police were perceived as the agency which extended least assistance whilst the women remained within the violent relationships. However, if victimisation occurred following termination of the relationship, the women reported a much higher level of satisfaction with the police response (op. cit.).

Other studies have indicated a more positive opinion of the police response: Kennedy and Homant (1983, 1984) have found that seventy per cent of female victims perceived the police to be 'at least a little helpful'; Brown (1984) has found that seventy-one per cent of women perceived the police to be 'concerned and helpful' (forty-seven per cent) or 'concerned, but not helpful' (twenty-two per cent). Roberts (1984), in a national survey of the beliefs of shelter staff, claims that 44.3 per cent of shelters evinced ambivalence toward the police response, whilst 12.7 per cent reported consistently negative experiences with police intervention in incidents of partner assault.

There are several specific criticisms levelled at police practice in these situations. These encompass the inappropriate utilisation of reconciliation techniques (Bowker, 1982; Pahl, 1982; Brown, 1984); an unwillingness to arrest the male partner, even when requested by the female partner (Bowker, 1982; Hatty and Knight, 1985); an inconsistency of response style amongst officers (Bowker, 1982; Roberts, 1984); a failure to provide information to women on their legal rights (Pahl, 1982); and an inadequate use of referrals to other agencies (Brown, 1984)[2]. Indeed, deficits in the police response to the violent abuse of a female partner have provided a catalyst for consumer activity (see, for example, the victims' recourse to the law, provoking the institutionalised recognition of rights: Bruno v Codd, Scott v Hart).

Berk, Berk and Newtown (1984) note that there have been few attempts to empirically assess the police response to violence occurring between partners. Berk and Loseke (1980-81), in a preliminary analysis of this issue, have found that situational characteristics are potent predictors of arrest; for example,

when both principals are present, the likelihood of arrest is significantly increased if the male is affected by alcohol or if the female alleges violence. The authors maintain that the exercise of police discretion in the matter of 'domestic disturbances' derives from the status of arrest as one option amongst an array of possibilities[3].

Through direct observation of police practice, rather than scrutiny of official police statistics, Worden and Pollitz (1984) have vindicated Berk and Loseke's (1980-81) assertions regarding the centrality of incident-specific features. Furthermore, they suggest that the model developed by Berk and Loseke to account for arrest in 'domestic disturbances' could be enhanced by the incorporation of more sensitive factorial indices. However, Worden and Pollitz contend that the role orientation of each officer, whether focussed upon 'crime-fighting' or 'social support', bears no significant statistical relationship to arrest practice; that is, adherence to either operational role is associated with infrequent arrest. (The issue of police role will be discussed more fully later.) Situational cues appear, then, to be crucial. This has been confirmed by Smith and Klein (1984).

Berk, Berk and Newton (1984), in the tradition of Berk and Loseke (1980-81) and Worden and Pollitz (1984), interpret police practice as a vehicle facilitating the management of incident dimensions. As such, Berk, Berk and Newton (op. cit.) have examined the utility associated with the diversity of alternatives available to the intervening police officer: arrest of the offender, removal of the offender, and miscellaneous actions such as crisis counselling. The authors, in an attempt to strengthen internal and external reliability, employed a different data set: interviews with assaulted women. The results indicated that, irrespective of the data source, situational vicissitudes appear to determine the police decision to arrest. Berk, Berk and Newton (op. cit.) emphasise that this outcome is consistent with acceptable and proper police practice. However, there is some evidence that irrelevant factors, for example, ethnicity, also appear to be implicated. Again, this may not be confined to intervention in incidents of this type; nevertheless, the identification of factors intrinsic to the police response to violent partner assault is important.

Police Intervention: Directions for Change

Underpinning the debate concerning police performance is the controversy concerning the legitimate interpretation of the police role; this has typically been conceptualised as a dichotomy comprised of either a law enforcement aspect or, alternatively, of a synthesis of law-enforcement and psychological support (cf. Vollmer, 1932; Radelet, 1973; Burns, 1976).

A contemporary analysis of police activity leads Kennedy (1983) to assert that it is possible to view the police function in terms of service provision. This is based upon descriptions of operational tasks undertaken by police, rather than an examination of the categorisation of these tasks; for example, there is an implicit acceptance of the predominantly non-criminal nature of much activity which precedes or accompanies police intervention. Similarly, Hunt, McCadden and Mordaunt (1983) have found, in a survey of the role perceptions amongst law-enforcement personnel, that whilst the peacekeeper role was emphasised at the expense of the crime-fighter stereotype, there was minimal evidence of role conflict (this does not appear to be consistent with previous research; see Sutton and Hatty, 1984). However, it is possible that conflict may, instead, be attached to the degree of criminality ascribed to particular activities (cf. Pahl, 1982; Brown, 1984).

The Significance of Attitudes

Although the contribution of police attitudes to the development of response repertoires has been recognised, relatively few studies have been completed upon this vital aspect of police functioning (Berk and Loseke, 1980-81).

Several isolated attempts to assess the nature and significance of these attitudes, as they affect intervention in female partner assault, are evident in the literature. Smith and Klein (1984, p. 480) comment: 'Research can no longer eschew the role of attitudes in shaping police behaviour'.

On the basis of anecdote and previous research evidence, Cannings (1984) enumerates the stereotypical beliefs which appear to direct police behaviour. These are typified by the following assumptions: women are subordinate within relationships; the nuclear family is a viable institution; female victims of violence are unlikely to persist with charges; 'domestics' are particularly dangerous for police; women do not desire to extricate themselves from violent relationships; intrafamilial violence occurs with greater frequency amongst some groups; and violence against women within relationships does not constitute criminal behaviour.

Walter (1981) has found that police perceptions of 'domestic disturbances'[5], generated in the context of many interactions, revolve around a particular constellation of beliefs. These are concerned with the ineffective preparation for intervention in situations devoid of explicit violence, the acceptability of intervening in violent situations, and the strong dislike of being summoned by outsiders or being summoned in cases in which marital infidelity is suspected. The role adopted by each individual officer, encompassing amongst others the alternatives of counsellor and referee, significantly determined response

style. However, a quarter of the police officers interviewed believed that the police possessed no legitimate role in 'domestic disturbances'; they characterised these calls as 'nuisances'. This effect was mitigated by the involvement of violence against a partner; these calls were perceived as 'assaults'. However, one finding which emerged very strongly in the interviews related to the assumed causal relationship between alcohol abuse and intrafamilial violence. This perception served to lessen officer commitment to the satisfactory resolution of these situations.

Training for Intervention

There have been many proponents of the necessity to substantially alter existing programs which train for intervention in incidents of female partner abuse (see, for example, Bard, 1975; Breslin, 1978; Fleming, 1979; Scutt, 1983). Bard (1980) asserts that there are two opposing positions usually adopted in the face of the dilemma regarding police preparation: firstly, to reduce the opportunity for police discretion in arresting alleged offenders; or secondly, to increase the degree of choice and, indeed, the array of options available, in these situations.

Following the lead established by Bard and colleagues, training programs continue to be imbued with the crisis-support mentality; this particular conceptualisation of 'domestic violence' intervention remains current in both an international and local context (Banks, 1984; Sutton and Hatty, 1984; Merza, 1985). Indeed, police officers are frequently counselled to be particularly vigilant regarding their own safety (Miller and Braswell, 1983; Hatty and Sutton, 1984), and yet these incidents are often viewed in terms of crisis intervention.

This approach to police intervention practices has been criticised on several grounds. Oppenlander (1982, p. 459) alludes to the 'trade-off between counseling and control', noting that mediation techniques are more likely to be employed when the principals cohabit. There is thus a relationship between the use of crisis intervention and the avoidance of arrest.

Moreover, some authors have suggested that crisis intervention in incidents of 'domestic violence' institutionalises diversion from the criminal justice system (Maidment, 1983). Similarly, Dobash and Dobash (1981) claim that the responses associated with this approach ensure the continuance of existing police attitudes concerning the non-criminality of violent behaviour occurring between partners. Adams and Spicer (1982) comment that the implementation of human relations skills in the policing of violence between individuals may serve to deflect genuine protest, and as such, may constitute a form of repressive social control. Loving (1980) and Loving and Quirk (1982) believe that the development of the crisis intervention approach derives its

impetus from a failure to distinguish between those incidents which involve physical abuse and those which do not. This has apparently resulted in the use of defusing techniques, for example, mediation and negotiation, when arrest would be more appropriate.

Although police training packages have often been structured around the provision of crisis intervention skills (cf. Jaffe and Thompson, 1978; Levens and Dutton, 1980; Mulvey and Reppucci, 1981), it is important to note that 'crisis intervention' may be interpreted differentially within the different training courses. Levens (1978) maintains that the construction of 'crisis intervention' is usually based upon the lay perception of conflict and not upon the principles of therapeutic practice.

However, there is evidence that the escalation and intensification of officer training has a significant impact upon arrest rates (Buzawa, 1982), attitudes towards the phenomenon (Buchanan and Hankins, 1983; Loeb, 1983), and the use of referrals ((Levens and Dutton, 1980). In addition, whilst there are indications that trained officers achieve a higher approval-rating following intervention (Buchanan and Hankins, 1983), it is perhaps important to recognise that the officers themselves frequently evince a desire for increased training (Buzawa, 1982; Sutton and Hatty, 1984).

Identifying Deficiencies

Difficulties in police service delivery to female victims of intrafamilial violence may derive from several sources. These include the relative dearth of knowledge, both quantitative and qualitative, on the phenomenon of violence against women within relationships. This deficiency has been, until recently, particularly pronounced in Australia. Secondly, as indicated above, there have been few systematic attempts to gather data on on the police response to this type of incident. Consequently, research upon the implicit theories constructed by police personnel to account for violence against women within relationships is urgently needed; it is especially important that the relationship between this attitudinal repertoire and police practice be delineated. Thirdly, ambiguities in the definition of the police role have continued to be reproduced within training packages (Sutton and Hatty, 1984); in addition, these variations in conceptualisation have been translated into differing practical responses (op. cit.). Fourthly, there has frequently been a fundamental contradiction between the vicissitudes of the legislation, and the content of police policy directives and training modules (op. cit.).

Attempts to modify the strategic behaviour of police in situations characterised by physical violence and/or verbal confrontation should focus upon the collection of a substantive

data base regarding issues such as the perceived efficacy of training, the definition of police role, individual value systems concerning violence against women within relationships, and police practice associated with responding to public calls for assistance. This knowledge should then be utilised to generate clear and unequivocal policy statements; furthermore, it should inform the development of appropriate training packages.

Policing Violence Against Women: Specific Research Objectives

The objectives of the police component of this project are as follows:

- To undertake a systematic examination of established police practices in New South Wales in relation to intervention in incidents of violence directed at a female partner.

- To provide a detailed analysis of police attitudes towards the phenomenon of violence against women within relationships, existing training, and work in the area.

- To evaluate the relevance and usefulness of police training with a focus upon the identification of training needs as these pertain to on-the-job experience.

- To develop, on the basis of the above data, a series of recommendations regarding the maximisation of such training and work effectiveness in New South Wales; these recommendations to be conveyed to the National Police Research Unit and the New South Wales Police Department.

Research Design

Several methodological approaches are being utilised in the implementation of the police component of this project. Measurement techniques include semi-structured interviews, modified participant observation, and analysis of official police statistics.

Semi-Structured Interview Schedule

This schedule was designed to collect data upon the following variables: socio-demographic characteristics (for example, length of service, rank, degree of training); attitudes to existing training modules, the effectiveness of the current legislation, and work in the area; implicit theories on violence against women within relationships (for example, nomination of contributing factors, an account of the female response to the violence, effects upon children); and perceived impact of intervention in these incidents upon the officer's psychological adjustment (for example,

preferred coping strategies, estimation of subsequent changes in behaviour or attitude).

This interview schedule is currently being administered to a random sample of general duties police personnel from the ten metropolitan police districts of Sydney. It is estimated that the sample size will be in excess of five hundred.

Modified Participant Observation

This observation technique involves the interview of police personnel immediately following intervention in incidents involving violence against a female partner or disputes involving family members or neighbours. Information regarding incident characteristics and police response is elicited through the administration of a structured interview schedule. Responses to the interview are taped.

Observation work is occurring concurrently with interviewing of general duties personnel in each district; it is conducted several nights a week on the 6.00 pm to 2.00 am shift.

Statistical Data Collection

In order to ascertain information regarding the number of 'domestic violence' (female partner assault) calls as a proportion of the total police workload, and the specific characteristics of these calls, statistics are being compiled within various police districts. The data will facilitate an examination of the factors associated with arrest and other police practices.

In addition, as an adjunct to the above initiatives, the principal researchers have instigated a scheme designed to provide ancillary support to the police law-enforcement function. The principal operational objective of the scheme is to provide psychological and practical assistance to individuals who seek police intervention, especially female victims of intrafamilial violence. The scheme is not an alternative to arrest where this is appropriate (cf. Jaffe, Finlay and Wolfe, 1984).

The Crisis Response Team is located within 35 Division (Campbelltown, Macquarie Fields and Camden Police Stations). Team members work several days a week and are available during the 3.00 pm to 11.00 pm and 6.00 pm to 2.00 am shifts to provide crisis support following police intervention. The scheme was piloted in May, 1985 at Campbelltown Police Station and has been fully operational since July, 1985. The projected duration of the scheme is six months. The criteria to be employed in evaluating the effectiveness of this service are as follows:

- An assessment of police response to the usefulness of the scheme for intervention in incidents of female partner assault.

- An assessment of the extent to which police are recalled to a locality previously attended by team members. (This includes an assessment of recidivism.)

- An assessment of client satisfaction with the scheme by subsequent interview.

- Degree of satisfaction with the scheme on the part of relevant community agencies.

- An assessment of the frequency of referral to other agencies by both police and team members.

Method

Semi Structured Interviews

- On agreeing to the interview, general duties police personnel are informed that their responses are anonymous (subjects are allocated a number on the questionnaire), and are assured that information volunteered is confidential. Police personnel are interviewed individually at each station and the average time taken to complete each interview varies between forty to fifty minutes.

Results

The data presented in this paper is derived from interviews with 173 police personnel from the following stations in H, I and J districts:

TABLE 1

Station	No
Liverpool	27
Blacktown	25
Mt Druitt	20
Campbelltown	23
Parramatta	30
Penrith	20
Green Valley	8
Fairfield	20
Total	173

The socio-demographic characteristics of the sample are set out as follows:

TABLE 2

Rank	No
Probationary Constable	26
Constable/Constable 1	69
Senior Constable	42
Sergeant Class 1, 2, 3	36
	173

TABLE 3

Sex	No
Male	161
Female	12
	173

TABLE 4

Age	No
19-24	51
25-29	35
30-39	51
40-49	27
50-59	9
	173

TABLE 5

Marital Status	No
Married/De facto	118
Single	42
Separated	3
Divorced	10
	173

TABLE 6

Number of years in police force	No
Under 1 year - 4	76
5- 9 years	22
10-14 years	25
15-19 years	20
20-24 years	13
25-29 years	12
30 or more	5
	173

TABLE 7

Training in 'Domestic Violence'	No
Yes	117
No	56
	173

The findings described in this paper relate to the following issues: legislation; police practice and response; and training. Other aspects of the data will be discussed in later papers. As data collection upon the police component is continuing, the treatment of the data contained in this paper is descriptive and qualitative.

(1) Attitudes towards the Legislation

Officers expressed the following opinions regarding the legislation:

TABLE 8

	No	%
Very effective	74	42.76
Effective	32	18.50
Somewhat effective	5	2.90
Ineffective	41	23.70
Don't know	21	12.14
	173	100.00

Officers nominated the following aspects of the legislation as particularly useful: powers of entry (31.2%); increased police powers (27.7%); and compellability of witness (12.7%). It appears that the legislative components which refer to police behaviour in these incidents are perceived as particularly useful. However, over five per cent of officers claimed to possess no knowledge of the legislation in question. Also, 22.5 per cent of officers claimed that telephone warrants serve no useful purpose, referring either to their ability to enter the premises without them, or the unavailability of a magistrate when a warrant is sought.

(2) Police Practice: Attitudes and Recommendations

When asked their attitudes towards involvement in 'domestic violence', officers indicated the following:

TABLE 9

	No	%
Don't like it	56	32.37
Part of the job	78	45.09
Don't mind it	11	6.36
A waste of time	10	5.78
Find work interesting	9	5.20
Important part of the job	6	3.47
Intervention is futile	3	1.73
	173	100.00

It is possible to conclude that over a third of officers exhibit a negative attitude toward involvement, whilst 45.09 per cent demonstrate an attitude of resignation.

The majority of officers believed that there were serious difficulties associated with police work in this area (no = 124; 71.7%). The types of problems experienced are listed as follows:

TABLE 10

	No	%
Officer safety: danger of work	47	27.17
Lack of police resources	32	18.50
Police expected to be counsellors	25	14.45
Clients resentment of police intervention	24	13.87
Too many young, inexperienced police	15	8.67
Difficulties associated with compellability of witness	14	8.09
Extent of intervention in non-criminal incidents	10	5.78
Law needs greater clarification	6	3.47
	173	100.00

Respondent's answers are typified by the following:

Officer safety : danger of work

Subject No 19 Parramatta — The biggest problem is serious injury or possibly death to the officer. Nearly ninety per cent of police are killed in domestic violence situations. Police attendance with back-up is the best thing ever done for domestics.

Lack of police resources

Subject No 16 Parramatta — The actual workload is enormous. The police are run off their feet! Day after day after day of no meal breaks. After shifts you might do another four hours overtime. There are outside pressures - like the Ombudsman or civil liberties. They hinder our job, in fact, and make us the meat in the sandwich.

Subject No 9 Parramatta — It's a huge crime area. There's a lack of police and equipment to cope with what's going on: high workload with so much happening.

Police expected to be counsellors

Subject No 21 Parramatta: Lack of communication with community service staff. We don't know who to go to re advice. We're there for matters of law, for example, a breach of the peace; where not there as advisors. We have no expertise. Young officers are advising older people on what to do with their lives.

Clients' resentment of police intervention

Subject No 8 Parramatta: We're the meat in the sandwich. Both parties don't want you there but you're compelled to be there. I personnally feel that if they both don't want me there (neighbour called), I shouldn't be there. Professionally, I'm compelled to be there. It's a personal dilemma for me.

Subject No 18 Parramatta: There's no specific problems or difficulties, but still resentment from the public - 'what are you doing out here - this is our business'. Not everybody, but does cause problems when trying to resolve. Some senior men - only a minority - are reluctant to take any sort of action other than the Chamber Magistrate on Monday morning.

Subject No 27 Parramatta: When neighbours telephone, the couple don't want you there. You feel like you're not welcome there at all.

Subject No 1 Parramatta: We've got authority to enter, take charge of the situation. What we say goes sixty per cent of the time. However, people don't like that. These people see it as an intrusion. I personally wouldn't like it if someone came to my house and told me how to run my life.

Too many young, inexperienced police

Subject No 3 Campbelltown: Young officers can't get through to couples. Older couples won't accept him or his advice. It's better to have older officers they believe are probably married and know what they're talking about. I tell them I'm married myself (10 years) and have had plenty of blues like them and do know what I'm talking about.

Difficulties associated with witness compellability

Subject No 2 Parramatta: Often you can't get wife/de facto to court. She's frightened of retaliation afterwards. Court is normally two weeks away and by then they're back together. Forget it rather than bat on with it. You feel like bashing your head against a brick wall, especially when some are bashed to the extent they are.

Extent of intervention in non-criminal incidents

Subject No 30 Parramatta: Having to go to the same recurring ones all the time - always the same old people, same old problems. It's just a waste of time.

Subject No 7 Blacktown: Ninety per cent of time police shouldn't be involved.

Subject No 11 Blacktown: Most domestic violence are arguments of a minor nature, which could be solved by somebody else. Charging doesn't solve the problem.

Subject No 3 Parramatta: You advise them to go to chamber Magistrate, but a lot is a waste of time. Just going around refereeing one fight for that night until it happens next time. You get fed up with it.

Law needs greater clarification

Although there were specific suggestions concerning the law, the following statement is worth reporting:

Subject No 5 Parramatta: Getting into the house. If neighbours complain and unless one party lets us in, we can't get in. We should be able to get in there.

Suggestions for alleviating some of the difficulties included the following: improved training (46.23%); specialist squads (22.43%); more police (11.34%) and female officers for 'domestic violence' (6.46%).

Officers commented:

Subject No 19 Mt Druitt: More training and awareness of what we can and can't do. Make 'on-the-job' training lecture more feasible e.g. replace officers who attend lectures. Need more officers to allow proper 'on-the-job' training.

Subject No 16 Parramatta — Only the back-up community service. Training - some sort of course that we could all do - psychology and sociology perhaps. This should be an ongoing thing; twice a year brush up on Act and perhaps a review of situations that come up. Experiences might be shared in a workshop perhaps.

Subject No 15 Parramatta — Spend more time at the actual domestic situation. It's necessary to increase the staff numbers. Often have to rush off to another job when situation isn't really adequately resolved. Use of female officers to communicate with wife whilst male communicates with male officer would be a good idea.

Subject No 24 Campbelltown — The system we have here is as good as any. There is a lack of manpower - insufficient crews. We might leave station with six or seven jobs in hand and by the time we get to the domestic the thing is all over. The procedure is okay though. There's a melting pot of approaches within the force. Some are better than others. Before we actually arrive at premises one of us automatically plays the bad guy/aggressor dominating and the other the good guy. The bad guy communicates with the male and the good guy with the female. We then swap roles, so that we have turns at both. Not there at the situation, but, at the next one, we swap. We all do it.

Subject No 8 Liverpool — Having female staff does help. One female and one male would be good. A domestic violence squad could spend more time on domestic violence. The ordinary general duty police haven't got time. Domestic violence is squeezed in between 'accidents' and 'shoplifters'.

Subject No 9 Parramatta — A male-female team would suit situation best. They could relate more easily to their own sex. Both being trained police officers should be able to draw a conclusion on a mutual level.

Subject No 1 Parramatta — Male and female officers should attend domestics. Females relate better to other females. If you're a male, you're obviously on his side. Perhaps you could swap over later, and the female could speak to the male and then the male officer to the female. More lecturing needed on the way to counsel, a modified psych course dealing with people.

Subject No 12 Liverpool — A special squad in domestic violence who are trained as mediators in relationships, similar to the child-protection unit. Regarding female officers, I haven't seen one yet that's any good. Most of them in here are like blokes anyway. In a violent situation they're useless and can't handle themselves let alone handle the situation.

Subject No 14 Campbelltown — Special squad, specifically trained in domestic violence, would be more effective than at present. Female officers may understand situation better, especially if they involve young female children.

Subject No 16 Campbelltown — Could train police to only handle domestic violence, that is, a separately trained squad. Take minor domestic disputes away from police to be handled by some agency especially trained in relationship breakdown.

Subject No 26 Campbelltown — More money, more training for specialist squad concentrating on the job skills and knowledge of the Act. A squad exists in head office for driving police vehicles - usually the average policeman doesn't like that aspect of police work but you find ones that really do - use the same analogy to domestic violence. Find out those who really like it and utilise them.

The officers made several other constructive suggestions for improved service delivery in this area, with reference to the involvement of both the police and community agencies. These findings are presented below.

TABLE 11

The Police	No	%
Clarify police powers of entry	52	30.06
Greater discretion for police	41	23.70
More police	35	20.23
Eradicate warrants	30	17.34
Increased penalties for offence	10	5.78
Follow-through on case by police	5	2.89
	173	100.00

TABLE 12

Others	No	%
More refuges	45	26.02
More facilities for counselling	38	21.96
A 24 hour crisis service	28	16.18
Agencies to co-operate more closely with police	26	15.03
Refuges to offer more services	21	12.14
Greater involvement of Community Justice	10	5.78
Agencies to be more mobile	5	2.89
	173	100.00

(3) Police Response: Liaison with Other Agencies

When questioned on the utilisation of referral following intervention in 'domestic violence' incidents, it was found that the majority of officers claimed to refer clients (no = 161; 93.1%). However, the following hierarchy of referral agencies was generated:

TABLE 13

	No	%
Chamber Magistrate	88	54.67
Youth and Community Services	18	11.18
Refuges	15	9.33
Community Justice Centre	14	8.69
Salvation Army	10	6.21
Marriage Counsellor	4	2.48
Crisis Centre (Blacktown)	3	1.86
Lifeline	2	1.24
Local Doctor	1	0.62
Health Clinic	1	0.62
Public Solicitor	1	0.62
Family Planning	1	0.62
Counsellor	1	0.62
Local Church	1	0.62
Family Law Court	1	0.62
	161	100.00

When asked to indicate the agency most frequently employed in referrals, the officers listed the following: Chamber Magistrate (68.32%); refuges (12.45%); Youth and Community Services (5.97%) and others (13.26%).

This confirms previous research upon the New South Wales Police (Sutton and Hatty, 1984). It is also consistent with international findings regarding the infrequent use of referrals (Loving, 1980; Levens and Dutton, 1980; Buzawa, 1982; Oppenlander, 1982); however, these results have usually been associated with minimal officer training.

(4) Attitudes Toward Training

The officers were asked to estimate the relevance and effectiveness of the training they had received. The results are as follows:

TABLE 14

	No	%
Very relevent	27	23.08
Relevant	49	41.88
Somewhat relevant	11	9.40
Not revelant	30	25.64
Don't know	-	-
	117	100.00

TABLE 15

	No	%
Very effective	12	10.26
Effective	50	42.74
Somewhat effective	8	6.83
Not effective	46	39.32
Don't know	1	0.85
	117	100.00

When asked to nominate the facets of training that they found particularly useful, the officers gave the following responses: information regarding the legislation (17.3%); officer survival training (8.7%); information on police powers (6.9%); and explanation of the phenomenon of 'domestic violence' (6.4%).

A selection of comments proferred by the officers are included as follows:

Subject No 24 Parramatta: Information on the power that we have to actually obtain on behalf of a woman. Previously, we'd charge and she wouldn't go ahead. Now we charge and she's a compellable witness. The Magistrate decides whether she gives evidence or not. It makes our job more effective in coping with the situation at the time. Also, information on bail conditions was useful.

Subject No 23 Parramatta: Details of the entry requirements. This concerns all police, and the fact that the victim is compellable to give evidence. We don't need signs of injury now in order to charge - black eye or bruises, etc. A lot of police don't know this aspect and it really needs to be reinforced more.

Subject No 1 Parramatta: Insight into the victims' position. This surprised me. The police come, counsel and do nothing. I didn't know that the attitude is that women want the men arrested.

However, when questioned regarding the aspects of training that detracted from its utility, they commented:

Subject No 28 Campbelltown: Can't see anything that I use that much. Phone warrant emphasis good. The lecturer went to a lot of trouble to tell us about this, but it's just unnecessary. We can get in if we need to.

Subject No 20 Parramatta: Training officer was hopeless. He just read it out; the manner in which the lecture was given was very poor. It was not just this lecturer, but others as well.

Nevertheless, the officers provided many suggestions for the improvement of training, for example:

Subject No 17 Parramatta: More training. So many different aspects of police work; one hour lecture no way near enough. Revision four times a year would be great. We could find out from police then if they have any problems with it.

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Subject No 27 Parramatta — More simulated cases, and then show police how they should and shouldn't handle a case. The training stresses that we should not take sides and an explosive situaton results. Police shouldn't be aggressive. Would like to see more psychology training.

Subject No 13 Liverpool — More of it. Everything seems to be rushed. Timing of the lectures seems to be inappropriate, as it clashes with work-load. In-service training should be covered in courses and not in the place of work where it clashes with other duties. Lectures should be aimed at 'how it affects you as a policeman in your everyday duties'.

Subject No 2 Campbelltown — Should be updated periodically. Formerly everyone got individual lecture notes but people never bothered to read them. Then they started doing group lectures and if called away, we missed them. I'd like to revert to old method.

Discussion

This section of the paper will reiterate the major findings outlined in the previous section, and will explore the implications of these findings for the maximisation of policing in the area of 'domestic violence'.

The majority of officers believed the legislation to be effective or very effective, although almost 24 per cent believed it to be ineffective. An overwhelming majority of officers claimed that there are serious problems with work in the area; in addition, over one-third stated that they do not like the work. The officers suggested that improvement to training modules was necessary; some also recommended the implementation of specialist 'domestic violence' squads. Furthermore, many officers wished to see increased and improved service delivery to victims and offenders, particularly in the area of psychological and material support.

Although training was seen to be relevant by the majority of officers, over a quarter judged it to be not relevant. More importantly, almost forty per cent of officers claimed that the training was not effective.

Sources of dissatisfaction with training in 'domestic violence' concerned the content of the training modules and the mode of their delivery, the time taken to present the information, and the difficulties of participating in subsequent in-service training. In recognition of the magnitude of work associated with non-criminal incidents (according to the officer's construction of events), there was a call for increased instruction on the psychological aspects of conflict within relationships. Many officers expressed feelings of inadequacy in the face of intervention in incidents which do not involve criminal acts. Also, there was a request for a more didactic approach to the presentation of the law relating to intervention in these situations; officers believed the training contained too many ambiguities regarding matters such as the nature of their powers, and the rights and obligations of the parties involved.

Furthermore, the officers sought the inclusion of a more realistic protrayal of the situations encountered, reminiscent perhaps of the training courses which actively involve the officers in rehearsals of various responses to differing types of incidents (cf. Buchanan and Hankins, 1983). This participatory mode of instruction could be combined, according to some officers, with the integral involvement of psychologists, or other professionals, who work closely with the phenomenon.

Officers also suggested that the time devoted to the instruction pertinent to 'domestic violence' should be greatly expanded, especially within courses undertaken at the Academy. In addition,

the frustration of failing to complete subsequent in-service courses could be mitigated by temporarily relieving the officers of other duties, or, alternatively, by establishing a mechanism whereby officers could recoup time lost through attendance to other matters during in-service training. Also, the provision of regular forums wherein officers could improve their knowledge base on 'domestic violence', whilst engaging in continuing dialogue with other officers, would assist them in the performance of their duties.

In view of the fact that over one-third of officers claimed to have undergone no training in this area, it is imperative that the above problems associated with officer-preparation be addressed.

Moreover, it would seem that the establishment of a crisis-intervention service, supportive of the police law-enforcement function, is essential. International evidence attests to the significant success, for both clients and police, of the involvement of this type of service (Jaffe, Finlay and Wolfe, 1984). Tentative findings based upon the operation of the Crisis Response Team at Campbelltown bear this out. Indeed, problems associated with the apparent police neglect of referrals could be minimised by significant alteration to existing training packages and the utilisation of a civilian-staffed crisis-intervention service which acts as an intermediary between clients and community agencies. Providing the officers are extensively trained in the legislative provisions regarding arrest, and do not regard the service as a substitute for law-enforcement where this is warranted, the establishment of this model should serve the interests of both women who are assaulted or threatened by a male partner and the police officers who intervene. This research project will assess, on the basis of the systematic evaluation of future findings, the viability of this model. This will, in turn, be compared with other options.

Finally, the development of this unique Australian data base on policing in 'domestic violence' will provide the background for appropriate policy formation in this area. As policy, until now, has largely been shaped by those generally removed from primary involvement with the work, this research carries the potential for significant improvement to the processes of policy formulation.

APPENDIX 1

Duties of Police Officer Seconded to the Project

Constable Nino Gamosh is involved in the following research activities whilst seconded to the project:

- Liaison with relevant police personnel regarding the organisation of data collection: interviews and observation work.
- Observation following police intervention.
- Involvement in the ancilliary support Scheme (35 division Campbelltown, Macquarie Fields, and Camden police stations).
- Assistance with project co-ordination, for example, the activities of research assistants.

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DOMESTIC VIOLENCE REFORMS IN NEW SOUTH WALES POLICY AND PRACTICE

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By way of introduction I would first like to outline the recent history of law reform with respect to domestic violence in New South Wales. I will then briefly mention other initiatives of the New South Wales government in this area, before presenting the preliminary findings of some research being undertaken at the New South Wales Bureau of Crime Statistics and Research into the operation of the Crimes (Domestic Violence) Amendment Act.

The New South Wales Task Force on Domestic Violence was established in March 1981. Amongst the terms of reference of that task force were the examination of the laws relevant in New South Wales to domestic assaults, the services provided in the areas of health, welfare, law and policing, the training of personnel working in relevant areas, and the policies and practices of both public and private housing sectors.

Domestic violence was defined for the purposes of the Task Force as that violence perpetrated by a man upon a woman with whom he lived or had lived, although it was acknowledged that wife abuse was not the only form of family violence.

A range of problems were identified with the legislation existing at the time, with the procedures associated with its implementation and particularly its enforcement. Whilst the existing provisions of the Crimes Act were adequate to deal with cases of domestic assault, there was substantial evidence to indicate that police were not using the available legislation (Report of the NSW Violence Committee, 1985; Scutt, 1978).

Police for their part raised concerns about uncertainty as to their rights of entry into private homes to investigate domestic violence. They also raised the issue of victim/complainants frequently withdrawing from legal proceedings, a factor which was said to discourage police from taking action in subsequent cases.

I would like to acknowledge the assistance of other members of the staff of the NSW Bureau of Crime Statistics and Research in the collection and analysis of data for this paper. Particular thanks to Isabel de Meur, Judy Putt, Dianne Tyrrell, Vicki Harris and Alex Goodwin.

Whilst the provisions for dealing with domestic assaults were said to be adequate within the existing legislation, the available protective order was not. The Task Force report addressed the inadequacy of the apprehended violence order under Section 547 of the Crimes Act, which provided for a general order to keep the peace, but no penalty on breach. The problems inherent in the use of the injunction provided in Section 114 of the Family Law Act, and the difficulty in acting on its breach were also canvassed in the report.

In addition, the report identified significant gaps in the provision of services to victims of domestic violence, and an absence for key personnel likely to provide services to victims.

The 187 recommendations of the Task Force report covered legal, police, welfare and housing issues, the particular problems of migrant and Aboriginal women, and the need for after-hours crisis services.

Government policy adopted as a result of the Task Force report emphasised legislative change, and police enforcement of the legislation, as the focus of a package of reforms which also addressed housing, community services, education and health. Whilst emergency housing, training of personnel in relevant areas and community education are amongst the recommendations of the Task Force which have to this point in time been acted upon, other proposals such as those of the provision of crisis care and police family crisis intervention units have not been taken up by the government.

In considering the legislative reform undertaken in New South Wales with respect to domestic violence three pieces of legislation need to be considered. The first of these is the Crimes (Sexual Assault) Amendment Act which came into force on the 14th July 1981. (Although this amendment actually preceeded the report of the Task Force, and therefore was not one of the issues addressed by the report, it did nonetheless represent an awareness on the part of policy makers of domestic violence.) Section 61A(4) of this Act abolished the spousal immunity for prosecution for rape (sexual assault as it became known with the enactment of the amendment).

In his commentary on the sexual assault reforms, Dr Greg Woods QC noted the importance of that reform in the following terms:

> 'the symbolic importance of the abolition (or bypassing) of spousal immunity for rape is great. Domestic sexual assault rarely occurs in the absence of ordinary assault. The provision (by feminist groups, governments and religious groups) of women's refuges, represents contemporary recognition that domestic violence is a serious and widespread social problem. It

> is hoped that the law will now play some role in educating both men and women that physical violence within the family is disapproved of by society generally ...' p 12

To this point in time there has been no successful prosecution in New South Wales of a spouse for sexual assault under that legislation.

The second legislative reform introduced in New South Wales which reflects a growing awareness of the issue of domestic violence was that of the Crimes (Homicide) Amendment Act. This was introduced in 1982, and whilst already under consideration by the Criminal Law Review Division of the Attorney General's Department at the time of the Domestic Violence Task Force, was given added impetus by that report.

The cases of Joy Thomas, Violet and Bruce Roberts, and Georgia Hill had brought to public attention not only the horror and brutality of domestic violence but also the inadequacies in the existing law for dealing with cases of homicide which occur in response to a history of such violence.

The deficiencies in the defences of provocation and self defence as they existed at the time are well canvassed by Lansdowne and Bacon (1982) in their report on women homicide offenders. Both defences relied on the concept of suddenness - provocation applying only where the accused acted 'suddenly in the heat of passion', whilst the need for self defence was presumed to apply in the face of sudden attack. That the measure of force used was not disproportionate to the attack, was also an issue for both defences. The focus upon the period immediately prior to the homicide failed to acknowledge the true historical context in which the act occurred, and thus under-estimated the degree of provocation which may have actually existed. Equally the requirement of proportionate force to be used in self defence failed to allow for the physical disadvantage facing a female in a struggle with a stronger, taller and probably heavier male attacker - use of weapons in many cases may be the only realistic manner in which a woman can defend herself against such an attack. A further problem with respect to homicide was that prior to the enactment of the reforms judges had no discretion in sentencing following a conviction for murder - the mandatory penalty was life imprisonment.

The reforms introduced, whilst addressing both the issues of sentencing and the defence of provocation did not however go so far as to reform the existing provisions regarding self defence. The new legislation gives Judges the discretion to impose a sentence less than that of life imprisonment upon a conviction for murder where mitigating circumstances exist. The new Section 23 which relates to provocation removes the emphasis from the

events immediately prior to the killing and instead acknowledges that any conduct of the deceased towards or affecting the accused may be the basis for provocation. In addition the onus of proof with respect to the defence of provocation was reversed. It is no longer required that the defence prove the provocation beyond reasonable doubt, but rather that the prosecution disprove the provocation.

At this point note should be taken of the proportion of homicides that do occur within the family. My colleague, Alison Wallace has completed a study of all reported homicides in New South Wales during the period 1968-1981. She found that 42.5% of the homicides occurred within the family, with a further 20.0% occurring between friends and acquaintances. Spouse killings accounted for 23.2% of all reported homicides, and 73.3% of spouse killings were committed by men. Further analysis revealed that many more homicides were actually related to marital conflict, with other family members, friends, lovers and acquaintances becoming involved by reason of the relationship to one or other of the marital disputants. Including such instances almost one in three homicides in New South Wales were related to marital conflict (Wallace, in press).

The third legislative reform was the Crimes (Domestic Violence) Amendment Act, the focus of government policy with respect to domestic violence subsequent to the Task Force report. The legislation was introduced on the 18th April 1983 and was further amended in December 1983.

The Premier, in his second reading speech to the Legislative Assembly introduced the legislation in the following terms:

> 'The Government believes these reforms in themselves will contribute to the reduction of violence in New South Wales by giving the lead to the community in recognising that domestic assault is assault, and by making the police and courts more effective in dealing with the problem ...' (Parliamentary Debates, 9th November 1982).

Further, the Report by the NSW Domestic Violence Committee (1985) stated that the legal and procedural reforms introduced at that time

> 'establish that an offence of assault committed within the confines of the family should be regarded as seriously as an assault between strangers in a public place. The reforms are thus located within the criminal law, encouraging criminal charges to be laid by police where offences have been committed and consequently carrying criminal sanctions when convictions result.' (p. 6)

The philosophical basis of the legislation then was that an assault, whether in the domestic sphere or otherwise, was a criminal assault and should be treated as such. Despite this factor, the substantive reform to the Crimes Act as Lansdowne (1985) points out did not concern the criminal assault provisions but rather addressed the strengthening of the available injunctive order, to be sought through civil proceedings.

The major provisions of that legislation are as follows:

(a) No change was made to the existing assault provisions of the Crimes Act. Domestic violence was defined as any of a range of existing offences from murder, serious assaults and sexual assault, to common assault (or the attempt to commit such an offence), where the offence occurred between those married or living in a de facto relationship. Unlike the legislation adopted in some other states the definition does not extend beyond that of spouse, de facto or de jure. With the subsequent December amendment the definition was extended to include those who had previously been married, or had lived together in a de facto relationship.

(b) Spouses became compellable to give evidence in proceedings relating to a domestic violence offence (Section 407AA). Limited exceptions were allowed such that the witness could apply to be excused from giving evidence. A Judge or Justice in considering such an application must be satisfied that the application was made freely and independently of threat or improper influence, and have regard also to the availability of other evidence, and also to the seriousness of the charge.

The Task Force in recommending that spouses become compellable witnesses recognised that this would be a controversial issue. However, it took the view that it was an unacceptable burden for the victim to bear to have to choose whether or not to testify against her spouse. It was considered that leaving the choice in the hands of the victim made her more open to threat or intimidation by the accused. In addition, the issue of police frustration at aborted prosecutions due to complainants choosing not to give evidence was also considered.

(c) Police powers of entry into premises to investigate domestic violence were clarified (Section 357F). Police were given the power to enter a dwelling to investigate whether a domestic violence offence had occurred, was occurring or was likely to occur.

The legislation provides that police can be invited into the premises by a resident, whether or not that person is an

adult. They can remain in the premises by reason of the invitation of a resident who is, or is likely to be, a victim of domestic violence, even if the occupier of the premises expressly refuses them entry. They must however leave the premises if not given authority to remain by an alleged victim and denied permission to remain by the occupier.

In addition, Section 3579G creates a mechanism by which police may be granted a radio/telephone warrant authorising them to enter premises where entry had been denied. The police officer must satisfy a magistrate that there are reasonable grounds for the suspicion or belief that a domestic violence offence has occurred, is occurring or is likely to occur. The magistrate is required to record in writing the details of the complaint and the grounds upon which the warrant was issued. A similar record must be made by police and a copy given to an adult resident of the premises. The warrant must be executed as soon as possible after granting, and force may be used to execute the warrant.

Whether entry is by radio/telephone warrant, or otherwise police may remain on the premises only as long as is necessary to investigate that particular offence and to take the necessary action (Section 357H).

Prior to the introduction of these reforms police had voiced their uncertainty as to their rights to enter private homes to investigate domestic violence where entry had been denied. It was considered important that police investigations of domestic violence not be hampered by uncertainties on the part of the police about the legality of their actions and that police be able to gain entry where required. The Task Force report acknowledged that extending police powers to enter private dwellings would engender concern about civil liberties and recommended therefore that the radio/telephone warrant system adopted provide a limited legal authority to police to enter premises, and that it be closely monitored.

(d) The introduction of an apprehended domestic violence order constituted the major legislative initiative of the reforms. Prior to the 1983 amendments the injunctive relief available to victims of domestic violence under New South Wales legislation, and the only provisions available to those in de facto relationships who continue to be excluded by the Family Law Act, was in the form of an apprehended violence order (Section 547). The order was made in general terms, that is to keep the peace. No procedure existed for bringing a person before the court for the breach of that order, except by instituting new proceedings for assault or

for another order (Lansdowne, 1985)[1]. The Task Force report also canvassed the problems with enforcement inherent in the Section 114 injunction provided under the Family Law Act.

The apprehended domestic violence order, introduced by way of Section 547AA of the amended Crimes Act, is instituted by way of complaint to be determined on the balance of probabilities. It may be sought by the victim, or by a police officer, verbally or in writing, where a victim apprehends the commission of a domestic violence offence upon them by their spouse. The December 1983 amendment extended this provision to include apprehension of conduct consisting of harassment or molestation, falling short of actual or threatened violence. Orders may be made for a period up to six months, and may place such restrictions or prohibitions on the behaviour of the defendant as appear necessary or desirable (Section 547AA[1]). The legislation specifically allows orders to be made which:

- prohibit or restrict approaches by the defendant to the aggrieved spouse;

- prohibit or restrict access by the defendant to any specified premises occupied by, workplace of, or places frequented by the aggrieved spouse, whether or not the defendant has a legal or equitable interest in the premises;

- prohibit or restrict specified behaviour by the defendant which might affect the aggrieved spouse of the defendant.

The court is to consider the accommodation needs of all parties, including the effect of such an order on any children, before making an order which prohibits or restricts access by a person to premises or a place in which the defendant resides.

In addition, where a person is before the courts charged with a domestic violence offence, the court shall enquire whether a complaint of apprehended domestic violence has also been made, or is to be made, and then may deal with that complaint forthwith.

Provision exists in Section 547AA(6) for an order to be made in the absence of the defendant, where it appears necessary and appropriate to the court to do so. However some debate exists

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1. Section 547 has not been repealed and continues to be used in cases which do not comply with the definition of domestic violence.

as to whether ex parte orders may be made without the accused having been summonsed to appear, or only in cases where the accused fails to answer the summons (Lansdowne, 1985).

Breach of the order constitutes a criminal offence, with a maximum penalty of six months' imprisonment. Police have the power to arrest on breach without a warrant. The subsequent amendments to the legislation empowered courts to impose a fine in breach of an order and also provided that where a person appealed against an order that the provisions of the Bail Act could be imposed upon the defendant whilst awaiting appeal. This was an important feature of the legislation since victims could otherwise be left without any protective order for considerable periods of time pending the hearing of the appeal given current delays in the higher courts.

The court may vary or revoke orders on the application of the complainant or the defendant, or in the case of the complainant being a police officer, on application by the aggrieved spouse.

The legislation also allows that where a complaint is made that a Justice may issue a warrant for the arrest of the defendant or a summons for the appearance of the defendant. This provision is of particular importance in New South Wales where significant delays exist in the serving of summons and in the listing of hearing of cases proceeding by way of summons - two to three weeks is frequently the period between the issuing of a summons and the matter being listed before the courts. There are significant advantages to be had by proceeding by way of warrant rather than summons (Domestic Violence Committee Report, 1985; Lansdowne, 1985). Not the least of these is that of getting the matter quickly before the courts where the victim can be offered some interim protection by way of the Bail Act until the matter is heard. Rapid response by police and courts also serves to highlight the seriousness of the offence. That the involvement of the police and the arrest and associated procedures may also serve to have some deterrent affect upon the accused's behaviour, is supported by the research of Sherman and Berk in the United States (1984).

A further procedural reform was adopted with respect to police use of the Bail Act in cases of domestic violence. Police are required to complete a special domestic violence bail form in cases following the arrest of a person for domestic violence. That form directs police attention to Section 32(2) of the Bail Act which authorises officers to have regard to the likelihood of further serious offences occurring whilst the accused is on bail. Police have been encouraged to impose appropriate conditions limiting the conduct of the accused whilst on bail.

The Police Commissioner has also issued instruction to all police to arrest where an offence has been committed, and has drawn to

police attention that they may seek an apprehended domestic violence order on behalf of a victim.

Having outlined the essential features of the legislation I would like briefly to mention some of the other measures adopted by New South Wales in addressing the issue of domestic violence.

A committee was established by the Premier to monitor and co-ordinate the implementation of government policy with respect to domestic violence. The Committee includes representatives of police, relevant government departments, refuges and community legal centres, and is chaired by Ms Helen L'Orange.

(a) Women's Refuges

There are currently 44 refuges operating in New South Wales - four of which are newly established as a result of funding received in the 1984/85 budget. A further refuge was announced in the budget for the 1985/86 financial year. Funding for women's refuges has now reached $8.6 million dollars. Under joint Commonwealth and State funding arrangements significant advances have occurred with respect to refuges in the following areas:

- improved wages for refuge workers;
- increased numbers of full time equivalent positions to establish a minimum of five workers per refuge including one child care worker;
- additional provision for relief, long service leave, workers' compensation and holidy payloading; and
- eleven additional refuge positions - eight for workers of non-English speaking background and three for Aboriginal workers.

(NSW Domestic Violence Committee Report, 1985)

Despite these gains however, the recent evaluation of New South Wales Women's Refuges (Noesjirwan, 1985) reports that an estimated 23,000 women and children were turned away from refuges in the last year due to overcrowding. The report also notes that the proportion of women seeking refuge who are victims of domestic violence has increased from 38% in 1980/81 to 50% in 1984/85. Clearly the need for emergency accommodation for victims of domestic violence continues to be a vital issue.

(b) Housing

Public sector housing is administered in New South Wales via

the Housing Commission. The Commission has, since 1981, developed procedures and policies concerning the need for housing as it relates to domestic violence. An Emergency Accommodation Unit assists in the provision of short term crisis accommodation by leasing vacant Government-owned properties to community organisations for use as half way houses or refuges. A Special Allocations Committee also exists to deal with the out of turn housing of victims of domestic violence.

Despite these initiatives however, the pressure on rental accommodation is such that the waiting time for housing via these procedures is increasing, with women in refuges reportedly waiting for up to 16 weeks for accommodation.

In addition a Women's Housing Program is being established to provide medium-term supported accommodation for women who have been victims of domestic violence, or otherwise require such accommodation.

(c) Education

Substantial effort was directed toward the training of police at all levels with sessions relating to domestic violence being developed for the training of recruits at the Police Academy, as well as in the on-the-job training conducted for officers. The Domestic Violence Committee has been involved in the development of such training and continues to participate in police training programs on a regular basis. The Police Department has also sent circulars to its officers drawing their attention to the new legislation, policies and procedures.

Two major community education campaigns have been conducted, one co-incident with the introduction of the legislation and presented in English. The second, conducted during 1985 was targeted towards those in non-English speaking communities, and was presented in nine major community languages. Both utilised the media, posters and pamphlets, and a telephone service to publicise the campaign and to offer information and support to victims. Training workshops were also offered throughout the State to English language and bi-lingual workers in a range of areas likely to service the needs of domestic violence victims. The film 'Homefront' was produced for use as a training aid.

A kit for teachers called 'Ideas for Teaching about Non-Violent Relationships' was produced by the Department of Education in conjunction with the Domestic Violence Committee, for use by teachers in personal development courses.

Other training includes a course by the University of New South Wales Continuing Education Program, the inclusion by Sydney Technical College of domestic violence as a topic within its welfare courses, and regular input into the training of staff of the Department of Youth and Community Services.

(d) Legal Aid

Legal aid in New South Wales is provided by the New South Wales Legal Services Commission, and may also be provided by the Australian Legal Aid Office where such aid has been granted with respect to Family Law matters or the recipient is in receipt of a Commonwealth pension (New South Wales Domestic Violence Committee Report, 1985). Prior to consultations between the Domestic Violence Committee and the New South Wales Legal Services Commission legal aid had not previously been available to complainants in domestic violence proceedings, except in exceptional circumstances. The services of the Commission had previously been reserved for defendants. This policy has now been reversed and legal aid may be available, subject to both a means and a merit test, to victims of domestic violence, including those seeking apprehended domestic violence orders.

The Bureau of Crime Statistics and Research has been monitoring and evaluating the operation of the Crimes (Domestic Violence) Amendment Act since its inception. Preliminary results of this research will be presented here as they relate to particular issues pertinent to the implementation of government policy with respect to domestic violence. These issues include:

(a) police use of the legislation -

- charges and bail decisions
- police as complainants for apprehended domestic violence orders
- policing of breaches of these orders
- radio/telephone warrants
- the relative number of police versus private actions

(b) courts -

- the number of matters listed before the courts that are withdrawn
- the compellability of spouses
- the nature of apprehended domestic violence orders made
- legal representation
- sentencing

The data to be presented are drawn from several sources.

Firstly, it is a requirement under the regulations that copies of certain proscribed forms used in relation to domestic violence are furnished to the Bureau of Crime Statitistics and Research. This includes the domestic violence bail forms completed by the police, the apprehended domestic violence orders handed down by courts, the radio/telephone warrants of entry granted to police by magistrates, and the forms stating reasons why a spouse has been excused from giving evidence in proceedings concerning a domestic violence offence.

The Bureau has also been conducting a study comparing court appearances for selected assaults, apprehended violence and apprehended domestic violence orders, as well as breaches of these orders, for all Local Courts in New South Wales for a sample period of three months in 1982 (pre-Legislation) and 1984 (post-Legislation). One aim of this study is to provide an estimate of the proportion of assault matters before the courts that emanate from domestic violence.

Additional data is also drawn from the routine statistical collection conducted by the Bureau of Crime Statistics and Research concerning appearances before Local Courts.

The rhetoric accompanying the reforms placed considerable emphasis upon making police and courts more effective in dealing with domestic violence. The first set of data presented relates to police use of the new legislation, whilst the second set relates to the courts.

(A) Police Action

(1) Police Bail Returns

A domestic violence bail form is completed by police each time a person is arrested and bailed for either a domestic violence offence, or where an arrest for an apprehended domestic violence complaint is authorised by warrant. The bail returns furnished by police provide the only readily available data on police action with respect to domestic violence. The official police statistics in New South Wales do not include a category for domestic violence, although I understand that such data will be collected in future.

The data presented in Table 1 show the number of bail returns received since the implementation of the legislation until 30 June 1985. Unfortunately no comparative data is available prior to that time. The time period over which data is available varies for each year since the legislation was in operation for only 37 weeks of 1983, and data is available only until

30 June 1985. The weekly averages serve as a rough guide only to the level of police activity. Unfortunately the police have not to this point in time collected any data concerning domestic violence calls which they attend but which do not result in an arrest.

Table 1: Police Bail Returns Received

	1983	1984	1985
	(37 weeks)	(52 weeks)	(26 weeks)
Total Received	485	470	300
Weekly Average	13.11	9.03	11.54

* 1983 - Legislation introduced on 18 April 1983, 1985 data available to 30 June 1985

As indicated by Table 1, the number of bail returns per week is low, particularly when considered in terms of the population of New South Wales, and the current over-crowding of refuges.

In addition to the emphasis in police training placed upon utilising the legislation, and laying charges in cases of assault, police were also encouraged to give careful consideration to the use of appropriate conditions of bail, to limit certain behaviours of the accused and if necessary to impose a short term separation between the victim and the accused immediatly following arrest. The Task Force report had considered the imposition of a mandatory 12-hour period before which bail could not be granted in cases of domestic violence. However, it was decided that the existing Bail Act should be used to refuse bail where necessary, or to impose appropriate conditions such as that the accused should not return home within 12 hours of release from custody. This focus in police training is important since placing conditions upon the accused's bail provides some protection to the victim prior to the matter being heard in court. It is all the more important too, since the philosophy underlying the Bail Act had been for as many people as possible to be released on unconditional bail.

Table 2 presents the bail determinations made by police in cases of domestic violence since April 1983.

Table 2: Police Bail Decisions

	1983 %	1984 %	1985 %
Unconditional	5.6	4.0	2.7
Conditional - Condition as to conduct by the accused	56.2	59.1	63.7
Conditional - Other conditions	20.7	18.3	15.3
Bail Refused	17.5	18.5	18.3
Total	100.0	100.0	100.0

The rates of conditional bail, and of bail refusal are consistently high, particularly when viewed in the light of a Bureau of Crime Statistics and Research study which found that police granted unconditional bail in 65.0% of all cases, and for the category of offences against the person, which includes all assaults, that the rate of bail refusal was 13.3% (Stubbs, 1984). The data in Table 2 indicate that police are giving due consideration to the issue of bail in domestic violence matters. This is further explored in Table 3 which looks at the use of the Bail Act to enforce a short term separation between the victim and the accused.

Table 3: Police Enforcement of Short Term Separation Between Victim and Accused by Bail Conditions

	1984	1985
Number of cases in which accused not to return home for 12 hours	200	150
Such cases as % of all conditional bails	55.2	65.1
% of all bail decisions	42.6	50.0

In greater than half of all conditional bails the accused was prohibited from returning home within the following 12 hours. It appears then from Tables 1, 2 and 3 that whilst the level of police charges for domestic violence is not high, police are using the provisions of the Bail Act to provide some measure of

protection to the victim in the period prior to the matter going before the court. It should be noted here that failure to comply with a bail undertaking is in itself an offence.

(2) Police as Complainants for Apprehended Domestic Violence Orders

The police may also act as complainants in seeking apprehended domestic violence orders on behalf of victims. Table 4 shows the numbers of cases in which orders granted by the courts were sought by police.

Table 4: Police as Complainants for Apprehended Domestic Violence Order*

	1983 (37 weeks)	1984 (52 weeks)	1985 (26 weeks)
Number of police initiated orders	13	22	13
Total number of orders	172	423	283
% initiated by police	7.6	5.2	4.6

* The time periods for which data are available in each year vary since the legislation was introduced on 18 April 1983, and 1985 data is to 30 June.

As Table 4 indicates, the vast majority of orders handed down by courts are sought by victims. This finding is significant not simply as an indicator of the level of police action with respect to domestic violence but also because of the ramifications this has for whether or not a victim has legal representation in court. Where police are the complainants for the order, legal representation is supplied by the police prosecutor. However, where the vicitim is the complainant, she will be required to organise her own legal representation or else appear unrepresented. Legal representation will be considered in more detail later in this paper.

(3) Policing of Breaches of Apprehended Domestic Violence Orders

Court appearance data for 1984 indicates that there were 26 cases before NSW courts for breaches of apprehended domestic violence orders. In 22 cases these were instituted by way of police charging the offenders and in 4 cases the matter had been instituted by summons. Seventeen of the 26 accused were found guilty of the offence.

Figure 1

ASSAULT APPEARANCES 1980–1984

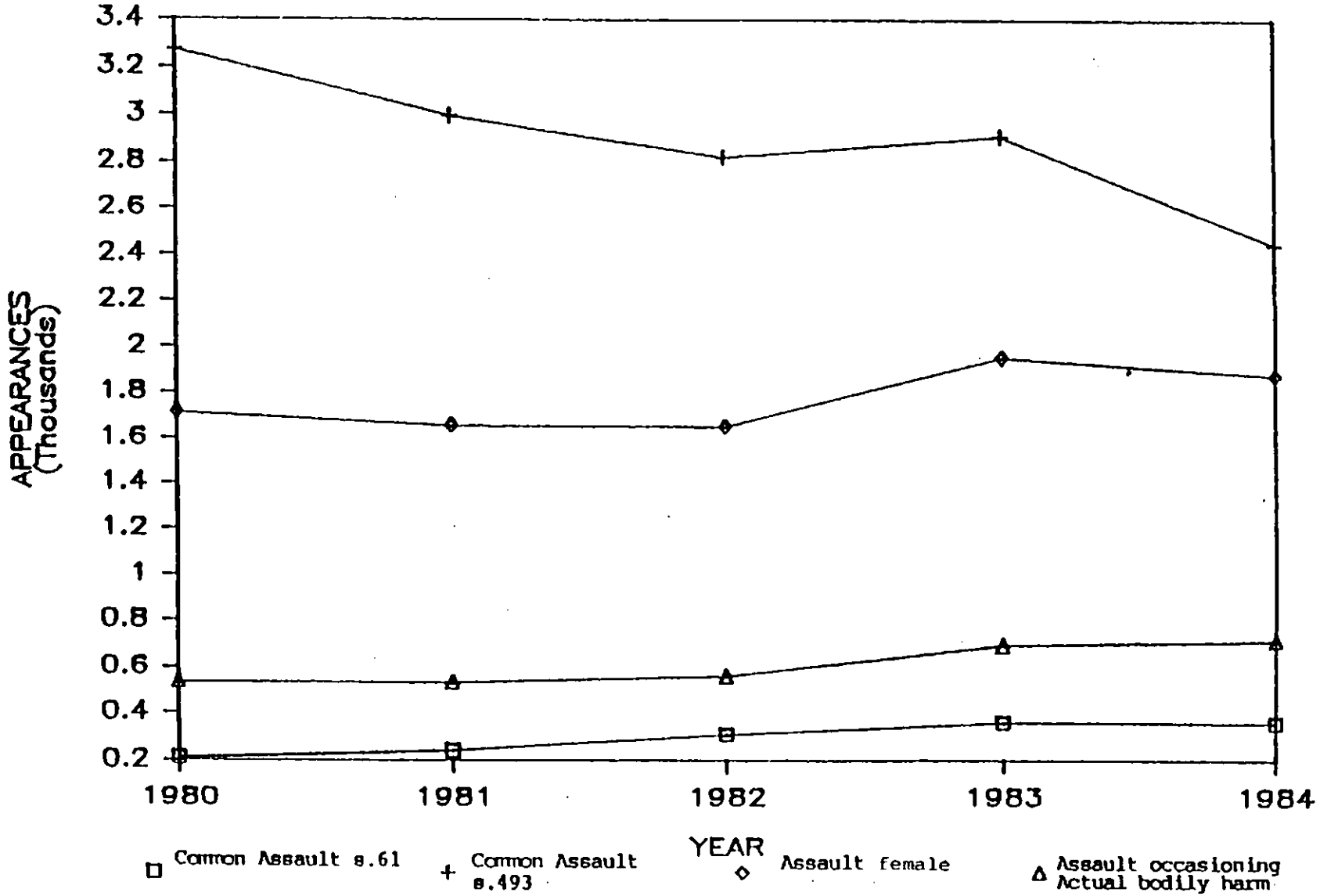


Figure 2

ASSAULT MATTERS 1980–1984

% INITIATED BY CHARGE

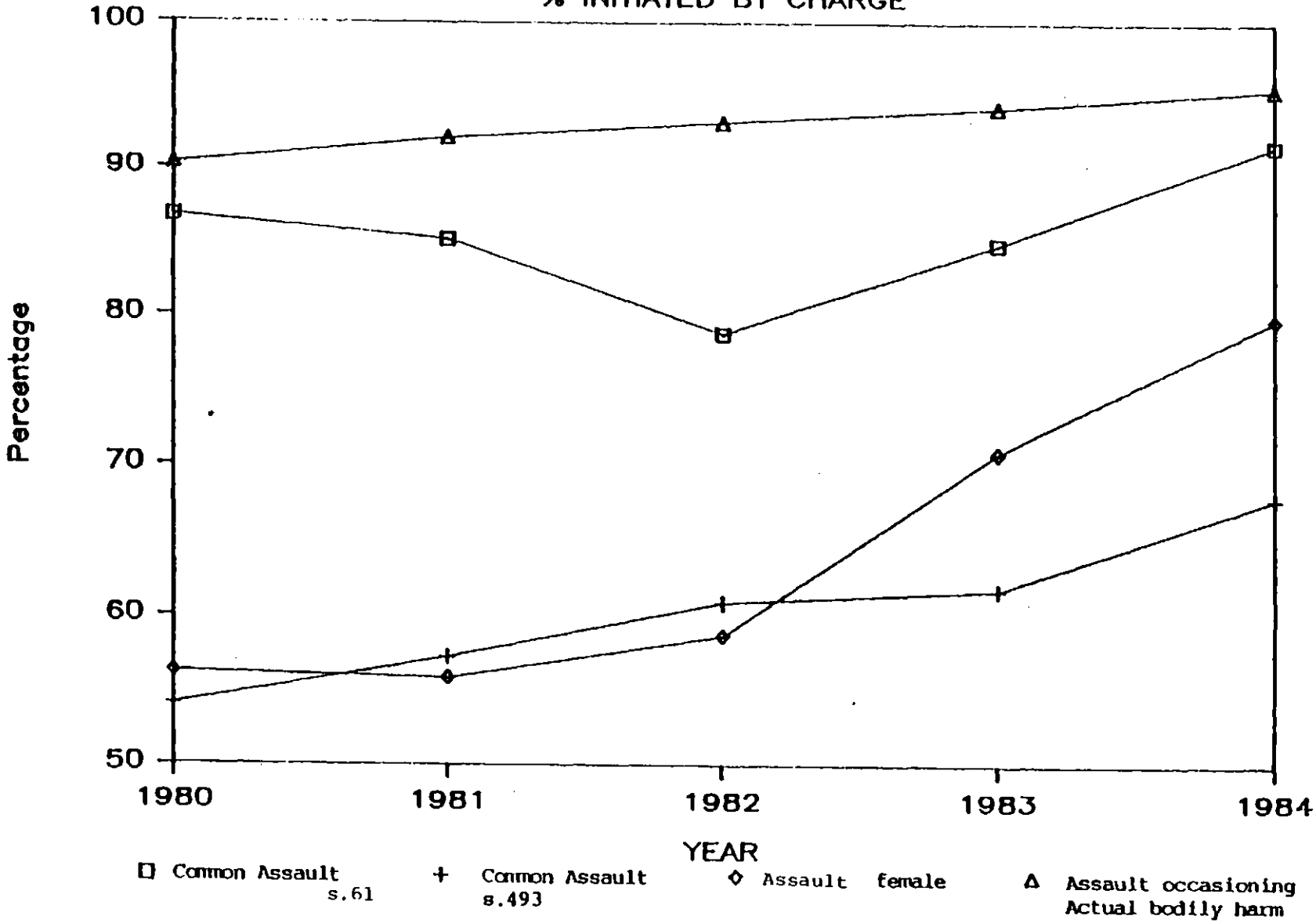
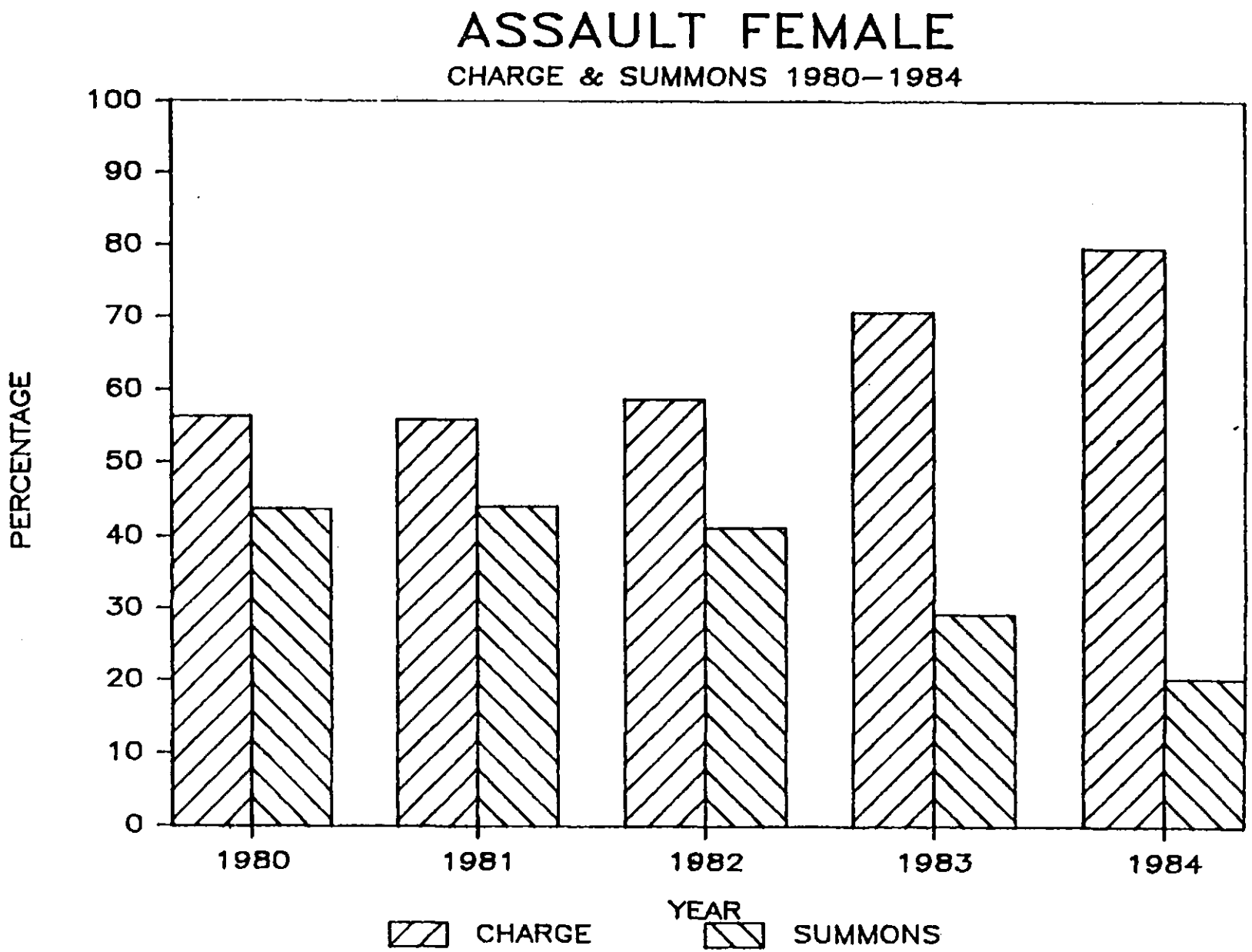


Figure 3


ASSAULT FEMALE
CHARGE & SUMMONS 1980–1984
PERCENTAGE
100
90
80
70
60
50
40
30
20
10
0
1980
1981
1982
1983
1984
YEAR
CHARGE
SUMMONS

(4) Police Use of Radio/Telephone Warrants

Whilst the extension of police powers of entry into private dwellings to investigate complaints of domestic violence was a controversial aspect of the legislative reforms the data indicates that these powers are rarely used. Six warrants were granted in each of 1983 and 1984, and two were granted in the first six months of 1985.

(5) The Relative Number of Police Versus Private Actions

The relative number of police versus private action is a further measure of the policing of domestic violence matters. Prior to the change in legislation common practice was for victims to be referred by the police to a chamber magistrate for the issue of a summons for domestic violence, rather than for the police themselves to take action. This practice not only placed the onus upon the victim to institute the action but also meant that the victim would not have the benefit of the police prosecutor to prosecute the case on her behalf. Instead she would be required to organise legal representation for herself or else appear unrepresented. The emphasis in the current legislation on police taking action would be expected to result in a change in the proportion of cases being initiated by police as compared with those initiated privately.

Figures 1, 2 and 3 address this issue. The data refer to appearances in New South Wales Local Courts over the period 1980-1984 for the four categories of assault which are most common in New South Wales courts. These are: assault occasioning actual bodily harm, common assault under Section 61 of the Crimes Act (maximum penalty two years), common assault under Section 493 of the Crimes Act (maximum penalty six months) and assault female. The majority of domestic violence assaults are charged under 'assault female'. The other assaults are included in the figures for purposes of comparison.

Figure 1 shows the number of appearances in court for the four categories of assault over the 1980-1984 period, and indicates little change except for the category of common assault which decreased markedly from 1983 to 1984. Figure 2 plots the percentage of cases initiated by charge for each of the assault categories. It is apparent that a marked increase in the proportion of cases initiated by police for the charge of assault female occured in 1983, which continued in 1984. In fact the proportion of police inititiated matters for assault female increased from 58.7% in 1982, to 70.7% in 1983 and by 1984 the figure had reached 79.6%. No similar change is depicted again in Figure 3, showing the change over time in the proportions of charge and summons cases for assault female cases.

Figure 4

ASSAULT CASES 1980–1984

PERCENTAGE WITHDRAWN

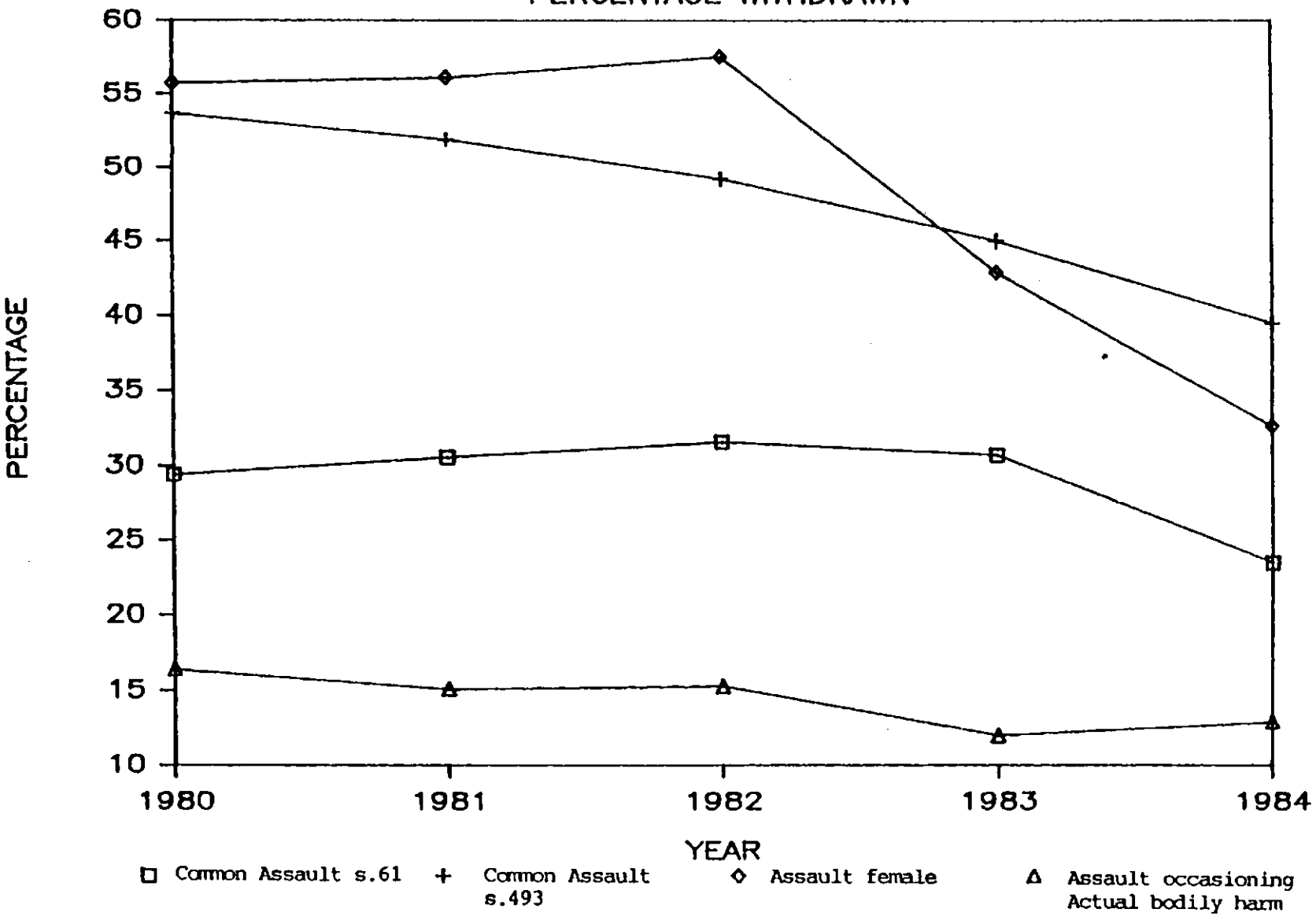
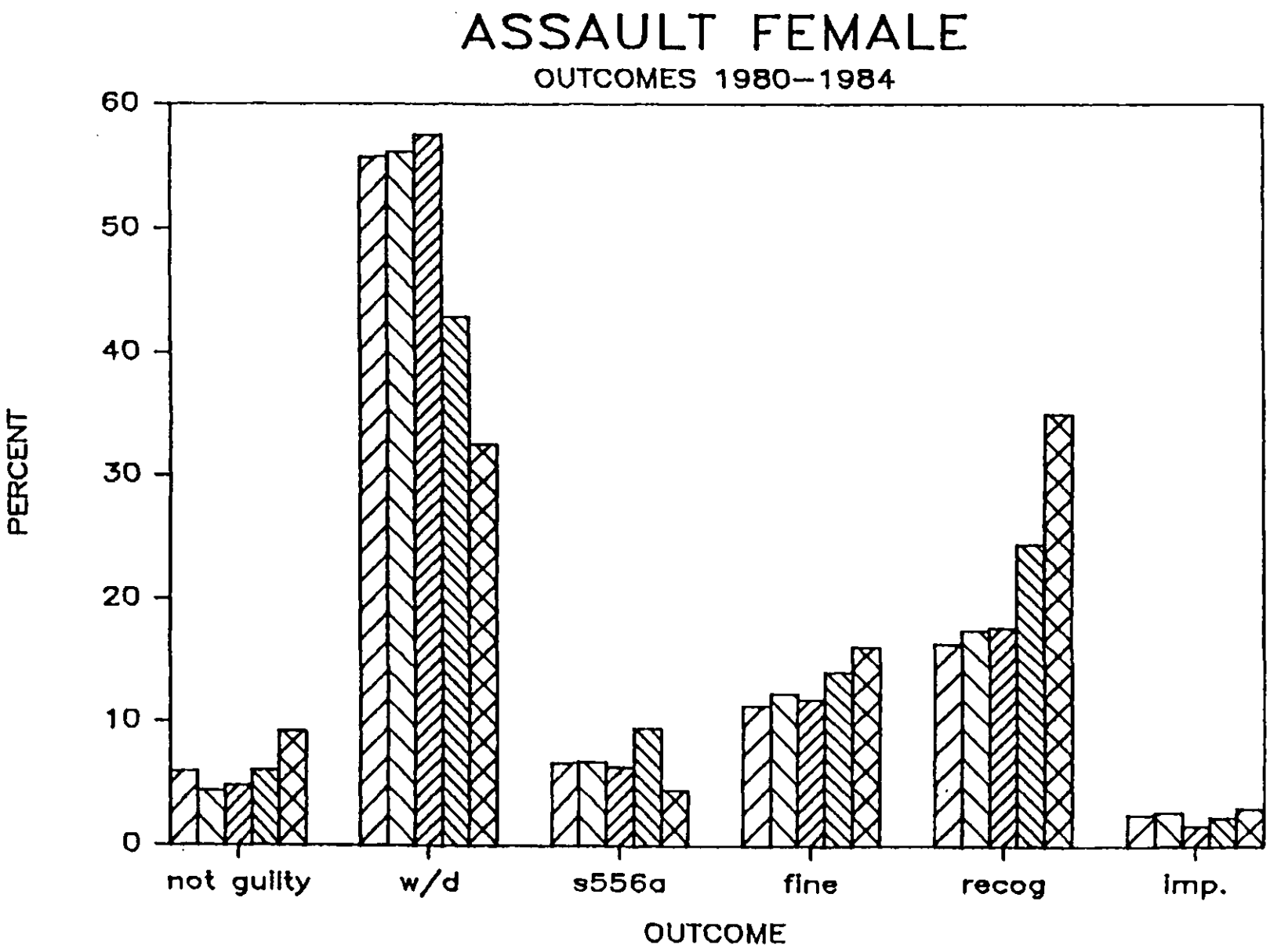


Figure 5


ASSAULT FEMALE
OUTCOMES 1980–1984
PERCENT
60
50
40
30
20
10
0
not guilty
w/d
s556a
fine
recog
imp.
OUTCOME

Despite the small numbers of bail returns evidenced by Table 1, the data present in Figures 2 and 3 are consistent with an increase of police charges for domestic violence since the introduction of the legislation.

(B) Courts

(1) The Number of Matters Listed Before the Courts Which are Withdrawn

One of the issues raised as being of concern to police, and as potentially discouraging them from acting in cases of domestic violence was that victims frequently withdraw the charges. The Domestic Violence Task Force Report (1981) acknowledged that there are many reasons why victims may withdraw, including threat of future violence and concern for the financial security of the family. The difficulty confronting a victim attempting to negotiate the criminal justice system without legal representation may be another factor. Compellability of a spouse to give evidence in proceedings for a domestic violence offence was introduced in the 1983 legislation.

Table 5 shows the percentage of cases withdrawn for each of the four categories of assault for 1980-1984. This data is also presented by way of Figure 4.

Table 5: Withdrawal of Assault Matters 1980-1984

	1980 %	1981 %	1982 %	1983 %	1984 %
Assault occasioning actual bodily harm	16.4	15.1	15.3	12.0	12.9
Common assault Section 61	29.4	30.6	31.6	30.7	23.5
Common assault Section 493	53.7	51.9	49.2	45.0	39.5
Assault Female	55.7	56.1	57.5	42.9	32.6

Whilst a decrease in the percentage of matters withdrawn occurred in each of the four categories of assault from 1982 to 1983, the level of change was small except in the case of assault female. As can be seen in Figure 4 a substantial reduction in the rate of withdrawal of cases of assault female cases occurred coincident with the introduction of the new legislation, and continued into 1984.

(2) Compellability of Spouses

The legislation provides that where a spouse is excused from giving evidence in a domestic violence matter that the reasons for excusing the person must be documented. Data is therefore available for the number of spouses excused from giving evidence, but not however for the number of spouses who have been compelled to give evidence. There were 19 cases of reasons being documented for excusing spouses from giving evidence during 1983, 35 cases in 1984 and 26 cases in the first six months of 1985. It is a matter of concern that in many instances the reasons cited did not fall within the criteria specified by the legislation. Reconciliation of the parties was the most often cited reason (60% in 1984), yet does not fall within the specified criteria.

(3) Apprehended Domestic Violence Orders

The number of apprehended domestic violence orders made by courts is presented in Table 6. Unfortunately no data is available regarding the number of cases in which orders sought were not granted.

Table 6: Apprehended Domestic Violence Orders

	1983	1984	1985
	(37 weeks)	(52 weeks)	(26 weeks)
Number of orders	172	423	283
Average number per week	4.6	8.1	10.9

The weekly average number of orders granted has continued to increase since the introduction of the legislation. Since more than 90% of these orders are initiated by the victims themselves, the data may be indicative of a growing community awareness of the availability of the orders. An analysis of the orders has shown that the increase is not attributable to orders being sought again at the expiration of the period for which they were made, but rather that orders are being made against an increased number of defendants.

The nature of the orders made is shown in Table 7. The orders most commonly imposed have consistently been 'not to assault, molest or interfere with the spouse and children' and 'not to approach premises, and not assault or threaten spouse', each of which account for about 1/3 of orders.

Table 7: Apprehended Domestic Violence Orders 1983, 1984 and 1985

	1983		1984		1985	
	No.	%	No.	%	No.	%
General						
Not to assault, molest, interfere with spouse/children	55	32.0	129	30.5	97	34.3
Not to assault, molest spouse, accept treatment supervision	3	1.7	1	0.2	1	0.4
Not approach or contact spouse, not apprach premises, not assault/ threaten spouse	52	30.2	142	33.6	87	30.7
Not approach or contact spouse, not approach premises/not approach spouse's workplace	10	5.8	35	8.3	30	10.6
Not approach or contact except through solicitor	3	1.7	3	0.7	2	0.7
Not approach/contact spouse/children, not visit premises	13	7.6	3	0.7	2	0.7
Vacate premises, not approach premises or victim	10	5.8	15	3.5	9	3.2
Access						
Not assault, not approach premises/spouse's workplace, except to exercise rights as to access	6	3.5	52	12.3	22	7.8
Vacate premises, not approach premises except to exercise rights as to access	1	0.5	0	0.0	2	0.7

Not assault, not approach premises except to exercise rights to access when intoxicated	1	0.6	6	1.4	4	1.4
Alcohol						
Not assault or molest spouse, not drink alcohol	3	1.7	10	2.4	2	0.7
Not assault, molest, not approach spouse's residence when intoxicated/not consume alcohol on the premises	8	4.7	20	4.7	8	2.8
Abstain from drinking	1	0.6	2	0.5	0	0.0
Other	6	3.5	4	0.9	17	6.0
Not specified	0	0.0	1	0.2	0	0.0
Total	172	100.0	423	100.0	283	100.0

A small but important number of orders precluded the offender from visiting the spouse's premises except for the purpose of exercising their rights of access to children of the relationship - 13.7% of the 1983 orders and 9.9% of the 1985 orders to 30th June had such conditions. The Task Force Report recognised that frequently violence occurred at the times of such access visits, and Lansdowne (1985) notes that unless the orders specify the days and times of such access visits that the breach of the order could be very difficult to enforce.

(4) Legal Representation

The legal representation of the victim in prosecuting cases of domestic violence is an important issue which has been touched on briefly earlier in this paper. Since legal aid schemes have traditionally been established to meet the needs of the defendant, the notion of prosecuting a case on behalf of a domestic violent victim not only was contrary to the policy of the Legal Services Commission prior to the introduction of the amendments, but was counter to the philosophy of the practitioners themselves. Despite the reversal of this policy the Report of Domestic Violence Committee (1985) indicates that some victims, even if they meet the means and merit criteria of legal aid, still find difficulty in obtaining a solicitor willing to prosecute on their behalf.

Table 8: Legal Representation of Victim, Selected Assaults 1982 and 1984*

	Assault Occasioning Actual Bodily Harm		Common Assault S61		Common Assault S493		Assault Female	
	1982	1984	1982	1984	1982	1984	1982	1984
Police Prosecutor	75.8	85.0	55.6	67.1	39.4	51.9	28.7	56.0
Other legal representation	14.5	12.1	30.6	12.7	34.3	25.3	29.3	17.8
No legal repesentation	3.2	1.4	5.6	11.4	8.3	6.1	14.0	8.4
No appearance	6.5	1.4	8.3	8.9	18.1	16.7	28.0	17.9
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N	124	140	36	79	564	557	508	545

* Data drawn from three month sample of appearances before all Local Courts in NSW.

Table 9: Legal Representation of Accused, Selected Assaults 1982 and 1984*

	Assault Occasioning Actual Bodily Harm		Common Assault S61		Common Assault S493		Assault Female	
	1982	1984	1982	1984	1982	1984	1982	1984
Legal representation	83.6	85.0	64.9	72.2	63.0	65.0	54.0	607
No legal representation	9.8	7.1	21.6	17.7	20.4	17.1	24.8	19.7
No appearance	6.6	7.9	13.5	10.1	16.6	17.8	21.2	19.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N	122	140	37	79	560	555	500	532

* Data drawn from three month sampoe of appearances before all Local Courts in NSW.

The data presented in Tables 8 and 9 come from a sample study of assault cases over a period of three months in all New South Wales Local Courts being conducted by the Bureau of Crime, Statistics and Research. Table 8 shows that whilst there has been an increase in the proportion of cases conducted by the police prosecutor across all categories of assault that the greatest increase has been in the assault female category, from 28.7% in 1982 to 56.0% in 1984. In addition, both the rates of no representation, and no appearance by the victim have decreased substantially in 1984 as compared with 1982, a change not evident to the same extent, if at all, for the other categories of assault. These findings are consistent with those presented earlier showing a greater rate of police involvement and a reduced rate of withdrawal in cases of assault female. Nonetheless almost one in five victims appear without representation and a similar proportion fail to appear at all. Table 9 shows a slight increase from 1982 to 1984 in the rate of legal representation of defendants in all categories.

Data concerning the legal representation of victims in seeking apprehended domestic violence orders is available only for the three month sample of matters in 1984. Only ten cases, 5.1% of the 197 orders sought in this period, were put by police prosecutors. A further 31.4% had legal representation from another source, 23.4% had no legal representation and 38.6% failed to appear (in two cases legal representation was unknown). It is impossible to determine whether a lack of available legal representation was a factor in the decision of 38.6% of victims not to appear.

(5) Sentencing

To complete this brief overview of the operation of the Crimes (Domestic Violence) Amendment Act, the sentences imposed in cases of assault female, and breach of an apprehended domestic violence order are presented.

Figure 5 depicts the determination of assault female matters by the local courts over the five years 1980-1984. As can be seen by that figure the most prominent changes which have occurred over that period are that of the reduced rate of withdrawals evident in 1983 and 1984, and the increase in the rate of recognisances (that is, bonds) handed out in these same years. Data concerning the sentencing of offenders for breaches of apprehended domestic violence orders are presented in Table 10.

Table 10: Breaches of Apprehenced Domestic Violence Order Court Outcomes

	No.	%
Not guilty	1	3.8
Withdrawn/dismissed	8	30.8
5556A recog/dismissal	2	7.7
Rising of the court	1	3.8
Fine	5	19.2
Recognisance	3	11.5
Imprisonment	6	2.1
TOTAL	26	100.0

It is interesting that in five of the eight cases in which the proceedings were withdrawn, the victim had no legal represention.

In summary, then the indications from the available data are these:

The number of police bail returns indicating cases in which police have arrested domestic violence offenders appears small. Unfortuntely there is no base line with which to compare this data. Where police do arrest however, the evidence suggests that they use the Bail Act to provide some interim protection to victims by placing conditions upon the behaviour of the accused.

The police have sought apprehended domesic violence orders on behalf of the victims in very few cases. The small proportion of police initiated orders in New South Wales is particularly striking when one considers that the great majority of protective orders in South Australia are sought by police on behalf of victims (Naffin, 1985).

Despite the apparently low number of police actions for domestic violence, the court data indicate that a greater proportion of assault female prosecutions have been initiated by police since the introduction in more cases relating to charges of assault female resulting in fewer victims appearing in court without legal representation. Co-incident with these changes, the rate of cases being withdrawn has been reduced substantially. More cases are proceeding to a determination before the courts than was previously the case, and the most common outcome is that of recognisance.

In addition, the use of apprehended domestic violence orders has increased perhaps indicating a greater community awareness of the

legislation. Unfortunately the effectiveness of these orders has not yet been evaluated.

Taken together these preliminary results do indicate some positive changes in police and court actions with respect to domestic violence since the introduction of the legislation.

That police are initiating the action in a greater proportion of the matters appearing in court, and that more of these matters are reaching a final court determination, are important not only for the protection which might as a result be offered to victims, but also from the perspective that police and court action legitimates the right of the victim to seek such help. Such action serves to reinforce the fact that domestic violence is not acceptable to the community.

The needs of victims of domestic violence cannot be addressed by legislation alone, and the provision of emergency accommodation and adequate financial assistance must be high on the agenda.

However those victims who seek assistance within the criminal justice system should be entitled to the greatest level of protecton which the law can provide. In New South Wales it appears that some small gains have been made in this direction.

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AUSTRALIAN DOMESTIC VIOLENCE LEGISLATION - PROPOSALS FOR CHANGE

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Over the past five years in Australia there has been evident a considerable impetus towards reform of state laws governing domestic violence. Reports and Discussion Papers researched and written in the states and territories have attempted to establish the incidence of domestic violence, to discuss the attendant social and legal issues and have proposed reforms which, in the cases of New South Wales, South Australia, Western Australia and Queensland have been enacted in legislation.

In this paper I shall attempt to present an overview of these changes, both those achieved and those proposed. Since I write somewhere in the midst of change, I shall include in the overview states and territories which have not yet legislated for changes in their laws relating to domestic violence, but which have indicated by the publication of reports that such changes are foreseeable. Thus, I shall first consider reforms to the law in South Australia, Western Australia, Queensland. I have specifically excluded New South Wales from consideration. Although this omission does detract from the comparative nature of the overview, the nature and usefulness of reforms in New South Wales are being reviewed elsewhere.

I shall then consider changes to existing laws which are currently under review in Tasmania, Victoria, the Northern Territory and the Australian Capital Territory. Subsequently, both these changes and proposals for change will be discussed in a more thematic and evaluative way.

South Australia

South Australia was the second of Australia's states after New South Wales to legislate reforms to its laws covering domestic violence. The Report and Recommendations on Law Reform was published in November, 1981 and made nine major recommendations, some substantive and others more administrative. This Report was of the view that 'the criminal sanction must remain as the epitome of society's response to violence' and therefore recommended that 'the police pursue a rigorous policy of prosecution in cases of domestic assault'. (S.A. Report, 1982, p. 43)

However, it also noted that a civil remedy, built on the old 'peace complaint' common law remedy, and providing both immediate protection and long-term security, would be both acceptable and useful, the Report recommended that the South Australia Justice's Act and the Police Offences Act be amended to allow for the establishment and operation of intervention orders of the kind which were, at this time, being legislated for in New South Wales.

These orders were to operate as follows. A member of the police force, or the domestic violence victim could obtain a restraining order from a magistrate where the defendant had actually caused personal injury or property damage and this was likely to recur, or where the defendant had made such a threat which he was likely to carry out (S.A. Justices Act amendment Act 1982 Section 4). The standard of proof demanded was that required in any civil matter, i.e., the balance of probabilities. However, the breach of the order was a criminal offence, and had to be proven beyond reasonable doubt.

This civil remedy was enacted in South Australia in 1982. Although it has been criticised as tending to diminish the essentially criminal nature of domestic violence, and characterise the offence as the breach of a civil order rather than the commission of a crime of violence, it has found wide acceptance among law reformers in Australia.

As a preventive measure, the intervention order has the potential for wide application. As enacted in South Australia, orders may be applied for by anyone who feels threatened by another person who is likely to cause injury, damage, or a breach of the peace unless restrained. This means that the legal relationship of the complainant to the respondent is not an issue, so that de facto partners and married persons have access to the same remedies.

The orders also have the advantage of being tailor-made for the situation, and specifically prohibit the behaviours the complainant feels threatened by. She may thereby derive protection from behaviours the criminal law does not prohibit, e.g., harassment.

An order thus made is operative immediately. However, if the order is made in the absence of the respondent, then they must be summonsed before the court to show cause why it should not be confirmed. If he does not appear, or cannot show such cause the order is then confirmed.

If the order is breached, the offender must be arrested, if necessary without a warrant, and must be brought before a court of summary jurisdiction within twenty-four hours. There are no provisions for bail in this case which has the potential effect

of keeping the defendant in custody for more than twenty-four hours at week-ends or public holidays. On his release, the respondent may be excluded from his home, irrespective of his legal interest in it - a situation which could continue indefinitely, since intervention orders in South Australia are operative for an indefinite period.

This then is the major civil remedy available to victims of domestic violence in South Australia since April, 1982. Its potential efficiency was strengthened by other policy announcements and ancillary reforms made since then. The South Australian Police Commissioner has committed members of his force to act on complainants' behalf in domestic violence cases, which in principle removed the difficulty of the victim having to take the initiative in putting her attacker within the processes of the law. Now, in South Australia, once an intervention order is served on an offender, he commits an offence if he breaches the order and it is then the responsibility of the police to prosecute.

Amendments to the South Australian Evidence Act have provided further support for a positive outcome in domestic violence cases when brought to court. The Evidence Act Amendment Act (No, 2) was passed in June, 1985 and simplifies the procedures and forms whereby a complainant applies for, varies, revokes and gives notice of intervention order. The simplifying of these processes is designed to improve the complainant's genuine access to the Courts and to encourage the use of judicial time for substantive rather than procedural matters. As well, spouses are compellable for the giving of evidence under this Act.

Further, the establishment of an Office of Crime Statistics will ensure that intervention orders, their rate of use and their utility, may be properly monitored. From 1st July, 1982 the Office has collected data indicating the nature of the parties, the terms of orders made, the orders breached and subsequent punishment.

Thus in South Australia, the primary means of redressing domestic violence was seen to be through the application of the criminal law. But the authors of the South Australian Report of November, 1981 observed that:

> It is not simply a matter of insisting that domestic assault should be treated the same as other assaults. The fact that the parties have some relationship is a significant difference, because the source of antagonism persists, and there is a greater risk of continuing danger to the victim. (S.A. Report, p. 15)

It is therefore the special nature of domestic violence and the need to find workable solutions that led the Committee to the consideration of civil law remedies.

> Like the criminal law, civil law must re-inforce the unacceptability of physical violence by responding promptly and with sufficiently credible sanctions for enforcement. Most of all, it must provide immediate protection, as well as a longer term sense of security.

It was these considerations which prompted the amendment of the South Australia Justices Act and the institution of intervention orders which are similar in intent and operation to those which had been legislated for in New South Wales (Section 547AA Crimes Act N.S.W.).

Western Australia

In Western Australia, the only legislation which has been specifically designed to deal with domestic violence is Section 172 of the Justices Act, which is based on Section 99 of the South Australian Justices Act.

However, as in South Australia, these intervention orders are designed to be a part only of a legal infrastructure within which domestic violence may be addressed. Police powers of arrest are set out in Sections 237, 564 and 566 of the West Australian Criminal Code and in Section 43 of the Police Act. Section 237 gives power of arrest where a breach of the peace has taken place. Sections 564 and 566 allow police to arrest people found committing or believed on reasonable grounds to have committed certain offences. Sections 564 and 567 permit police arrest of people committing offences at night and Section 43 of the Police Act empowers police to arrest people who are drunk and disorderly or behaving in a number of specified ways, and to arrest people who are justly suspected of having committed or being about to commit an offence.

The effect of these provisions is, generally, that police may arrest without warrant persons who they reasonably suspect of having committed a crime, persons found committing crimes, or persons found at night in circumstances affording reasonable grounds for suspecting a crime has been committed. In relation to many crimes and misdemeanours defined by the Criminal code a power to arrest without warrant exists, and some other statutes also confer powers of arrest. Powers of arrest then are quite wide.

Powers of Entry. Generally the common law position applies - that is, police officers are in no different position from any other person except where they have a particular statutory authority to justify entry to a house. A policeman may enter private property in order to make a lawful arrest, or pursuant to a warrant. However, there is no right of entry to premises for the purposes of investigation.

Police Immunity. As a result of the 1853 provisions preserved by Section 138 of the Police Act, the police are immune from civil liability for purported exercise of their powers unless there is proof of corruption or malice.

Bail. The existing law is that Justices, or in certain circumstances, authorised police officers, can admit a person to bail. The criteria which should be used in granting that bail are not set out in legislation. The Bail Act 1982 has not yet been proclaimed, but will very shortly be proclaimed (this is at October, 1985).

Under the Bail Act there is a statutory presumption of entitlement to bail, and the principles governing the grant or refusal of bail are clearly set out in the Act. The matters to be considered include: whether the defendant may fail to appear in court; whether he may commit an offence; whether he may endanger the safety, welfare or property of any person; or whether he may interfere with witnesses. In considering whether he may do any of those things the person granting bail is to have regard to, among others; the probable method of dealing with him if he is convicted; his character, previous convictions, antecedents, home environment; other matters specified and any others which the authorised person considers relevant. The Act also provides that conditions may be attached to the grant of bail, e.g., not interfering with witnesses, residence in a bail hostel, or treatment for alcohol or drug abuse.

It appears, then that the Bail Act provisions should, when it is proclaimed, cover most of the circumstances particularly relevant to domestic violence. However whether it actually does so yet remains to be seen. The Victorian Committee said that its Bail Act, which appears to be similar to Western Australia's unproclaimed Act, ought to cope with domestic violence situations but that in fact it is rare for bail to be refused in such a situation (Criminal Assault in the Home : Social and legal Responses to Domestic Violence, p. 108, para. 7.86).

Offences

The law of criminal liability generally is to be found in the Criminal Code of Western Australia, which is substantially the same as the Queensland Code. There are no specific provisions relating to domestic violence in that Code. However the offences most likely to be committed in a domestic violence situation are to be found in Part 5 of the Code headed 'offences against the person and relating to marriage and parental rights and duties and against the reputation of individuals'. The most common provisions used where domestic violence is in question are Section 321 which deals with a common assault punishable on summary conviction, 322 which deals with an assault on a person

who is a female, 317 which deals with assaults occasioning bodily harm, 297 which deals with doing grievous bodily harm to another, and 301 which deals with unlawful wounding.

Depending upon the classification of the offence, these may be dealt with either by a Court of Petty Sessions, or by the District Court (the latter involving a jury trial). Maximum penalties provided range from six months to seven years imprisonment.

Compellability of Spouses

By virtue of Section 8(1) of the Evidence Act 1906, the spouse of an accused person is not compellable for the prosecution 'except as in this Act it is otherwise provided'. Offences are then specified in the Act in relation to which the spouse of an accused is competent and compellable; these are offences of a sexual nature (rape, unlawful carnal knowledge, abduction and so on). It is not clear whether the wife is compellable if a husband is charged with an offence against her person, health, or liberty. Section 9(5) of the Evidence Act preserves the common law position in this respect, but there is doubt at common law as to whether a wife was compellable, or merely competent. Under Section 71 of the Justices Act, it seems that the spouse may be compellable on the complaint of a simple offence; however, this conflicts with the relevant provisions of the Evidence Act which has led to uncertainty and in practice Section 71 of the Justices Act has not been used in Western Australia.

The Law Reform Commission of Western Australia in 1977 recommended that the husband or wife of an accused should be compellable to give evidence on behalf of the prosecution with regard to serious sexual offences and offences involving person violence or harm (including attempts or offences in which an element is a threat or fear of personal violence). This report has not yet been implemented, and the Task Force on domestic violence has recommended that the Government defer action on the recommendation until the Task Force has reported.

Queensland

Like the South Australian and Western Australian Justices Acts, the Queensland Peace and Good Behaviour Act (1982) provides for the civil remedy for domestic violence offered by the substantive and procedural features of the intervention order. Further, it provides specifically that a person breaching the order will be liable for a maximum penalty of $1000 or one year's imprisonment. But the Court has the further power to punish the offence in a number of other ways if this is seen as appropriate.

The Court may order imprisonment, week-end detention, fines, probation orders and community service orders as penalties upon

conviction of a person for an offence, quite independent of any punishment which may have been imposed on him for commission of the offence causing a breach of the order. (Hon. S.S. Doumany, Minister for Justice and Attorney-General, Queensland Parliamentary Debates. Hansard 1982, No. 6, p. 840, 14th September, 1982.)

The Queensland Act also provides for arrest or service of a summons on a Sunday to facilitate interventions whilst detaining the respondent for a minimum period (Peace and Good Behaviour Act 1982, Section 13). The Bail Act was also amended to deny bail to people taken under an arrest warrant or who did not respond to the summons by appearing in Court as well as those who were in actual breach of an order under the Peace and Good Behaviour Act. Offenders in any of these categories can be detained for up to one year.

It must be noted that the procedure for obtaining an intervention order in Queensland differs from that which is operative in other states. In Queensland, a complainant must first make a written complaint or oath to a Justice of the Peace, who then may make enquiries or receive evidence and may issue a summons to appear or a warrant for apprehension. The Court may then make an order. This procedure is more cumbersome than is the case in other states, and it is arguable that victims may be deterred by the procedure from acting.

Thus, the provisions enacting intervention orders in Queensland are more specific than in Western Australia and South Australia, but these are designed to specify wider options for the judiciary, giving its members very broad powers to intervene effectively in situations of domestic violence.

Other States' Proposals for Reform

There are thus considerable similarities between the reforms in laws relating to domestic violence which have been enacted in South Australia, Western Australia and Queensland over the past few years. During this time, Committees in other states and the two territories have made recommendations for reform, and these will now be considered.

The Report of the Tasmanian Review on Domestic Violence (September, 1983) recommended that the Tasmanian Justices Act (1959) be amended in line with Section 99 of the South Australian Justices Act discussed above, but with more specific provisions. As well as the circumstances of causing or threatening to cause personal injury or property damage, the orders may also be used where the respondent has behaved in a provocative or offensive manner likely to lead to a breach of the peace, and unless restrained, is likely to behave in the same or a similar manner. (Tasmanian Report, p. 4)

As is the case in South Australia the report recommends arrest without warrant for breach of an order, disallowance of bail and prosecution by police in case of breach as well as exclusion from the house of the offender, regardless of property interest. Again, like South Australia but unlike New South Wales, the Tasmanian recommendation is that orders when made apply immediately, but must be ratified at a later date after the respondent has been given the opportunity to show cause. Compellability of spouses is advocated along the lines adopted in New South Wales and South Australia, i.e., that they may be made exempt but only after application to and consideration by the Court.

In relation to the criminal law, the Tasmanian report recommends the abolition of the husband's immunity from prosecution for marital rape and a change to the defence of provocation to include abuse occurring over a period of time. Further, it was recommended that domestic violence be treated in law in the same way as any other form of violence.

In separate reports, the Australian Capital Territory and the Northern Territory governments have been advised to adopt the intervention orders operative in South Australia. The Northern Territory Report does express reservation at the very sweeping ambit of the intervention orders adopted in South Australia and Western Australia (Domestic Violence Between Adults in the Northern Territory. A Review of Current Services and a Strategy for the Future, P.D. Abbs, October 1983, p. 22). It recommends that a specific offence of domestic violence be defined under the Criminal Code, that police powers of entry be amended along the lines of New South Wales, that restraining orders with a power of arrest attached be introduced, and the J.P.'s be empowered to issue temporary restraining orders where magistrates' courts sit infrequently (Report p. 103-4).

The Australian Capital Territory Report too recommends the adoption of intervention orders in the South Australian model, whilst confirming that:

> Such an order would in no way impinge on, or be in substitution for, the criminal process.

Criminal proceedings are to be initiated by police and it is suggested that spouses should be compellable as witnesses.

The Victorian Report, Criminal Assault in the Home also looks at both criminal and civil remedies for domestic violence, and places them firmly in a context of proposed social and educational reform. It, too, recommends the approach taken in all other states but New South Wales - the strengthening of the application of the Criminal law to domestic violence, and the introduction of intervention orders as a secondary, civil remedy.

Some of the reforms called for require legislative change, such as the proposed abolition of Section 95(5) of the Crimes Act 1958 which prevents proceedings being instituted against a person for theft or unlawful damage to property belonging to a husband or wife. It is recommended that victims of domestic violence be eligible for compensation under the Criminal Injuries Compensation Act 1983 and that the defence of provocation be amended to include acts of provocation over a period of time. One of the Report's recommendations, that a husband's immunity from a charge of rape be abolished, has already been implemented in the recent amendment to a section of the Crimes Act 1958.

In summary, then, most states and territories of Australia have gone, or are proposing to go, in the direction of South Australia with its emphasis on dual legal remedies for domestic violence - prosecution under the Criminal Law and/or the use of the civil remedy of the intervention order. It must be noted here that these developments are in sharp contrast to those which have occurred in New South Wales. Here, following the recommendations of the Task Force on Domestic Violence, the Crimes (Domestic Violence) Amendment Act 1982 was passed creating a separate criminal offence of domestic violence, with attendant amendments to cover associated matters such as police powers of entry. There are two major consequences of this. Firstly, in New South Wales domestic violence has become in itself a crime. No longer is prosecution initiated under the broad rubric of assault, nor is the offence one of the breaking of a magistrate's order. This has both a symbolic and practical effect. It enshrines in law the recognition of the criminal nature of domestic violence in a specific way, and it means that reforms to police powers have been made in that state with specific reference to the particular cirumstances of domestic violence, and not with reference to vaguely defined assaults or threats to persons or property.

Intervention Orders: Their Operation in South Australia and Western Australia

How then have intervention orders worked? And how effectively? The following is not a comprehensive or exhaustive account of the operation of intervention orders in Australia, but rather a comparison of how they have been seen to work, based on Ngaire Naffin's critique of the amended Justices Act (S.A.) Section 99, and on a personal communication from the Office of the Crown Solicitor in Western Australia.

In Domestic Violence and the Law: A Study of Section 99 of the Justices Act (S.A.) Ngaire Naffin sets out to assess the usefulness of intervention orders in the South Australian context. Her general conclusion is that they should be retained as civil remedies for victims of domestic violence.

However, further reforms are required to make them more effective and most of these are with respect to the role of the police. Naffin recommends the establishment of a Domestic Violence Unit within the South Australian Police Department with the aims of standardising the police approach to domestic violence, providing training and building up expertise. She advocates the appointment of a senior officer as a Domestic Violence Complaints Officer and the keeping of more specific statistics which include information the relationship between the parties, on and the number of assault charges laid.

Naffin then examined the actual process involved in the taking out of an intervention order and its enforcement, and made further recommendations. She advised the provision of a private room at police stations for complainants and the nominators of a police or court officer to facilitate the understanding of court procedures for complainants. Instead of a mandatory personal appearance in court, victims should be permitted to tender a written sworn statement.

Further recommendations were made with respect to service of orders directed towards speeding up procedures. With respect to breaches of orders, Naffin noted considerable evidence of problems with police attitude and failure to act. Her recommendations in this area were that policy guidelines be developed by the proposed Domestic Violence Unit, and that individual police should be clearly and specifically instructed on the kind of evidence needed for charge of a breach.

The problems with intervention orders in South Australia, then, seem to have been with respect to details of their use, particularly with the role of police. In Western Australia, it is the perception of the Assistant Crown Solicitor that while very few of the applications for orders are made by the police - around one per cent, they are more likely to act in response to domestic violence if an order has been made.

Western Australian statistics show that about half of all applications made relate to 'domestic' matters, the remainder being primarily disputes between neighbours. Very few applications are made by legal practitioners, legal aid is not generally available for the initial application, and so the overwhelming majority of applications in domestic violence cases must be made by the woman herself.

In the metropolitan area, assistance in making such applications to women is provided by staff of the Women's Information and Referral Exchange. Clerk of Courts will assist women to fill out forms and advise as to the procedure of the application, but will not, of course, provide any legal advice.

In the central courts at Perth, applications can be heard each week day at 8.30 a.m., and are thus disposed of before the majority of work of the Courts commences. This also has the advantage of readily allowing urgent applications to be made. In outer metropolitan areas, urgent applications are directed to Perth and the rest take their place in the Courts' ordinary list. The major difficulty in obtaining restraining orders is in the remoter areas of Western Australia, where a Magistrate may not visit for weeks at a time.

Twenty to twenty-five per cent of orders in domestic cases are served within a couple of days of the order being made with over fifty per cent being served within a week of the orders being made. Around seventy-five per cent have been served within four weeks of the making of the order and about fifteen to twenty per cent remained unserved at the time the most recent statistics were collected in March of this year. Of course some of those had only just been made and would in due course be served.

Experiences seem to vary from person to person; however the comment can be made that orders are fairly readily obtained. There are problems with orders being made which are not specific enough and problems with orders where the relationship between the order and any family court orders - for example for access, has not been clearly defined. However, although some women with apparently good cases have been unsuccessful in obtaining orders, the majority seem to be successful at the initial application, in obtaining at least some protection.

The major usefulness of the restraining order is seen as being something which requires the police to take action. Although of course the police are able to act on domestic violence where a criminal offence has been committed, these orders allow relatively low levels but continuous harassment to be dealt with, and also provide police with a demonstration of the women's 'seriousness', so that they are more likely to act than if an order did not exist. A minority of women have difficulties with service and orders are ineffective because the man deliberately evades service.

It does seem then, that the experience of intervention orders in South Australia and Western Australia indicates their acceptability and usefulness, particularly as a specific directive to the police to act, and that they can be made more effective by the fine tuning of police standing orders and training.

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THE SOUTH AUSTRALIA POLICE DEPARTMENT'S RESTRAINT ORDER SYSTEM: 'THREE YEARS LATER'

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Introduction

Prior to August 1982, spouse abuse was generally regarded by many people within the community including police as a 'private' or 'civil' matter. Historically, police advice given to spouses was a warning to the male partner about his behaviour, to the wife to get a peace complaint or see a solcitor or, in later years, to go to the Family Court to get an injunction. Indeed, it was fairly rare for an offender to be charged for breaching a statute or common law. Following overseas patterns, police considered domestic distubances to be of minor important in their overall function, a matter referred to by Dobash and Dobash[1].

Since August 1982, it is refreshing to note that the approach of South Austalian police towards domestic violence is altering. Such a change is probably due in part to the Police Department's stance on the matter, based on a policy promoting safety of the victim, which Goodman[2] had suggested was a necessary ingredient in combatting spouse abuse. The policy was written into Standing Orders, following proclamation of restraint order legislation (Section 99 Justices Act) based on the recommend-ations of the Domestic Violence Committee[3]. As well as police changes, training was reviewed so that officers were encouraged to be more perceptive of domestic violence issues. This does not mean that every member of the Force has the right attitude towards domestic violence. There are still a few problems and we occasionally get complaints; however our methods of identifying problem areas and taking remedial action are satisfactory. Examination of these problem areas and analysis of the restraint order system has, I believe, provided our Department with sufficient research material to define new ways of dealing with domestic violence and Ms Jacobs in her paper[4] will allude to them.

Restraint Orders

On 3 August 1982, Section 99 of the Justice Act was proclaimed. This section repealed the legislation dealing with ineffective Peace Complaints that Stratmann[5] and others had discussed, and brought in a law which was designed to prevent someone behaving

in a certain manner, for example, not to assault, molest or harass another person nor damage their property. One of the most important features of this legislation is that an act of actual violence doess not have to occur before action can be taken by police. If a court is satisfied on the balance of probabilities that a defendant has threatened to injure someone and unless restrained by an order, is likely to carry out that threat, then it can grant an interim order which after being served personally on the defendant, becomes effective forthwith. In other words a victim does not have to be assaulted before action can be taken. The legislation has also overcome complaints that police had insufficient powers to intervene in domestic disputes as referred to by Healy[6] in her study.

The Law

To simplify later explanation and discussion, Section 99 of the Justices Act is reproduced hereunder:

DIVISION VII - ORDERS TO KEEP THE PEACE

Section 99 Justices Act

99.(1) Where, upon a complaint made in accordance with sub-section (2), a court of summary jurisdiction is satisfied on the balance of probabilities -

(a) that -

(i) the defendant has caused personal injury, or damage to property;

and

(ii) that the defendant is, unless restrained, likely again to cause personal injury or damage to property;

(b) that -

(i) the defendant has threatened to cause personal injury or damage to property;

and

(ii) the defendant is, unless restrained, likely to carry out the threat;

or

(c) that -

(i) the defendant has behaved in a provocative or offensive manner;

(ii) the behaviour is such as is likely to lead to a breach of the peace;

and

(iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,

the court may make an order imposing such restraints upon the defendant as are necessary or desirable to prevent him from acting in the apprehended manner.

(2) A complaint under this section may be made-

(a) by a member of the police force;

or

(b) by a person against whom, or against whose property, the behaviour that forms the subject matter of the complaint was directed.

(3) An order under this section may be made in the absence of the defendant if the defendant was summoned to appear at the hearing of the complaint and failed to appear in obedience to the summons.

(4) An order under this section may be made in the absence of the defendant and notwithstanding that he was not summoned to appear at the hearing of the complaint, but in that case the court shall summon the defendant to appear before the court to show cause why the order should not be confirmed and the order shall not be effective after the conclusion of the hearing to which the defendant is summoned unless the defendant does not appear at that hearing in obedience to the summons or the court having considered the evidence of the defendant and any other evidence adduced by him confirms the order.

(5) A court of summary jurisdiction may make an order under this section restraining the defendant from entering premises, or limiting

his access to premises, whether or not the defendant has a legal or equitable interest in the premises, but before making such an order the court shall consider -

(a) the effect of making or declining to make the order on the accommodation of the persons affected by the proceedings;

and

(b) the effect of making or declining to make the order on any children of, or in the care of, the persons affected by the proceedings.

(6) Where a person, having been served personally with an order under this section, contravenes or fails to comply with the order, he shall be guilty of an offence and liable to be imprisoned for a term not exceeding six months.

(7) Where a member of the police force has reasonable cause to suspect that a person has committed an offence under subsection (6), he may, without warrant, arrest and detain that person.

(8) Where a suspected offender is arrested and detained under subsection (7), he shall be brought as soon as practicable (and in any event not later than twenty-four hours after the time of the arrest) before a court of summary jurisdiction to be dealt with for the offence.

(9) In calculating whether, for the purposes of subsection (8), twenty-four hours has elapsed since the time of an arrest, no period falling on a Saturday, Sunday or public holiday shall be taken into account.

(10) A party to proceedings in which an order has been made under this section may at any time apply to the court by which the order was made for variation or revocation of the order and the court may, after all parties have had an opportunity to be heard on the matter, vary or revoke the order.

(11) Where an order under this section is made by a court of summary jurisdiction, the clerk of the

> court shall forward a copy of the order to the Commissioner of Police and, where the complainant is not a member of the police force, the complainant.
>
> (12) Where an order under this section is varied or revoked by a court of summary jurisdiction, the clerk of the court shall notify the Commissioner of Police and, where the complainant is not a member of the police force, the complainant, of the variation of revocation.

Policy of S.A. Police Department On Restraint Orders

Indications on what the intention of police would be on restraint orders and domestic violence was given some publicity in 1982 by Mr J.B. Giles, the then Police Commissioner for South Australia[7] who wrote the following:

> You may be interested to learn that in South Australia, an amendment has been made to the Justices Act which will allow police to take more positive action in handling domestic disputes. To summarise the effect of the legislation, it will give police officers the power to arrest a person once he or she breaches the conditions of a restraining order. It is our intention that once a complaint of domestic violence is received, action will be taken forthwith by the police to obtain a restraining order on behalf of the aggrieved party in applicable circumstances.

Positive action, something which Scutt[8] had claimed had not been a feature of policing domestic violence in the past, was reflected in the Police Commissioner's policy circular[9]. That policy, which has continued under the present Commissioner, Mr D.A. Hunt, is quite specific. Action must be taken in all domestic violence cases, with domestic violence being defined as:

> ... actual or threatened violence (including all sex offences) generally between people living at the same address, (but not necessarily so) including married couples, de facto relationships, divorced/separated couples, ex de facto relationships, child/parent or child abuse.

As well as being promulgated in the Force to ensure a necessary and consistent law enforcement response[10], the circular was sent to the Women's Adviser to the Premier, the Crisis Care Unit of the Department for Community Welfare, and recently, to the Domestic Violence Service, so that other agencies involved with giving advice on restraint orders were familiar with the police

role. To explain how the Department uses the restraint order legislation is best done by quoting appropriate extracts from the policy circular.

POLICE ROLE

This Department has assumed the role of complainant State wide with respect to this legislation in those matters which comply with the criteria set out in this circular...

Police Complainants

Police will initiate appropriate complaints under section 99, Justices Act, where:

- police attend an incident involving domestic violence or their assistance is requested at a station or elsewhere; and

- there is sufficient evidence to action a complaint; and

- the aggrieved party is prepared to provide a statement (preferably signed) and attend at court to give evidence...

Evidence Required

Restraint orders can be initiated through a Court of Summary Jurisdiction when there is sufficient evidence on the balance of probabilities that a defendant has behaved or threatened as indicated in Section 99(1); (a), (b) or (c) AND the person is likely to continue or carry out such actions...

ARREST (See also paragraph 15)

It is to be noted that the legislation provides no power for arrest unless a breach of an order, previously served personally on the defendant, has occurred. Where police attend at an incident and there is not order in existence, it will, in appropriate cases, be necessary to seek an order. This may necessitate Crisis Care Unit intervention, to organise placement of the complainant in alternative accommodation while the order is being sought. This does not prevent members, in appropriate cases, arresting a person for a substantive offence, e.g. common assault, and also laying a complaint pursuant to Section 99(2)(a) for an order of restraint.

9. INITIAL ACTION

9.1 Members attending domestic violence taskings ... or receiving a report at a police station of an incident involving domestic violence will submit a P.D. 103, Domestic Violence Report/ Application for Restraint Order...

9.2 [Omitted]

9.3 [Omitted]

9.4 When a domestic violence report is prepared, and a restraint order is not being sought, the reason why will be included...

9.5 [Omitted]

9.6 ... applications for a restraint order will be expedited and they will generally be heard on the next Court day following police intervention/

9.7 In the metropolitan area and areas where there are daily courts, prosecutors will lay the complaints in the afternoon and it will be the responsbility of the senior member investigating the complaint to advise the complainant to be at the appropriate court at 2.15 p.m. on the next regular day of court sittings...

10. [Omitted]

11. RECORDING OF ORDERS

All orders made throughout the State, whether initiated through police complainants or initiated privately by aggrieved parties, will be recorded at the Restraint Order Unit at Central Records, Central Police Headquarters - as will details of any breaches, revocations and variations to such orders.

...

The status of orders will be that afforded to warrants and as such, their movement, service and recording shall be expedited upon receipt...

12-14 [Omitted]

15. BREACH OF ORDER

15.1 Initial Attendance

Where members ... are satisfied there is a breach of an order and that a copy of the order has been personally served on the defendant - then an arrest pursuant to sub-section (6) of Section 99 of the Justices Act may legally follow notwithstanding the defendant has not had opportunity to attend court and show cause why the order should not be confirmed...

15.2 Arrest Criteria

The decision to arrest should have particular regard to the immediate safety of all occupants of the house or parties to the dispute, together with the defendant's tendency towards violence...

15.3 [Omitted]

15.4 [Omitted]

15.5 Breach of Order - Other Offences Detected

When it is apparent that in breaching a restraint order, the offender has ommitted other offences (e.g. assault, wilful damage) he should be charged with or reported for those offences...

16-17 [Omitted]

18. THREATS OF VIOLENCE

Whenever a member of the Force becomes acquainted of a threat of physical violence being made by one party against another in the absence of the latter, and it is reasonable to assume such threat is seriously intended, the member should take all practical steps to ensure that the potential victim is made aware of the fact of the threat having been made.

19. COMPETENCE AND COMPELLABILITY

The law of competence and compellability of spouses has been changed (with effect from 1/8/83)... In general terms, a spouse is competent and compellable...

20. FAMILY LAW ACT (COMMONWEALTH)

Recent amendments to the Family Law Act have removed previous difficulties encountered when a married individual sought to utilise Section 99 of the Justices Act.

An application under Section 99 before a Court of Summary Jurisdiction concerning parties to a marriage is no longer classed as a matrimonial case. A spouse may now make an application for an order under Section 99, or a subsequent application to vary or revoke that order. In addition, a spouse may now apply for a restraint order pursuant to Section 99 despite the existence of a Family Court injunction.

21. BAIL

There will be NO bail given to any person arrested and detained for an alleged breach of an order, ...

Summary of Policy and Procedure in the Circular

The instructions are comprehensive and are designed to ensure that restraint orders for victims will be sought expeditiously by police, i.e., no later than the day following the incident. Orders should be served as soon as possible to give the victim the protection required so that if conditions are breached, the defendant is apprehended as soon as possible. If there is a breach of any other statute, then other charges can be laid. The point is stressed however, that unless a victim attends court and gives evidence whether it be for an alleged breach of either a restraint order or some other statute, there is difficulty in continuing with a prosecution. In respect to Family Court injunctions police can and have arrested people for breaching them, provided the arrest criteria is listed.

Failure by Police To Adhere to Policy

Regrettably, there have been occasions in the past where police have not responded positively to the Department's policy. Examples have included insensitive handling of victims, inappropriate responses to Women's Shelter representatives and failure to follow procedural guidelines. This in turn has resulted in a further policy being issued. This policy specifies that any allegations or complaints concerning police failing to meet their obligations in investigating or prosecuting cases involving domestic violence will be directed to the Internal Investigations Branch. Following investigation, results are now

forwarded to the independent Police Complaints Authority for assessment, something which had been advocated for a long time by Scutt[11] and more recently, Naffin[12].

Compellability of Victims to give Evidence

What many people fail to understand is that until 16 June 1983, the Evidence Act excused one spouse from giving evidence against the other.[13] In legal terms, a wife was not compellable to give evidence against a husband. If police took statements and commenced prosecution against a husband for assaulting his wife, then at the trial, if she refused to give evidence, she could not be made to give it. Generally, the case would founder and the defendant husband would go free. Since June 1983, this situation has been resolved and a wife, even though she may be reluctant to do so for many reasons including coercion by the offender, can be compelled to give evidence against a husband, or vice versa. This had overcome to a large extent, evidentiary difficulties reported by Healy[14] although there are certain exemptions which can be given at the discretion of a judge.

AN ANALYSIS OF THE RESTRAINT ORDER SYSTEM

Approximately 4500 people in South Australia found a need to obtain an order during the first three years of operation of the restraint order system. In general terms, approximately 60 per cent of orders related to 'marital/family' disputes. Of those 4500 orders nearly 25 per cent were withdrawn for various reasons. Of the remainder there were almost 780 apprehensions for breaches of them. The majority of all restraint orders were against male defendants. The tables in the pages following are extracted from various reports in the Department on restraint orders. It is stressed however, that the figures are fairly general and that the category of 'unknown' rates highly in one or two areas because of inadequate base data.

Type Of Restraint Orders Issued

The figures depicted in Table 1 identify how many orders of various classifications were issued in the 1982-1983, 1983-1984[15] and 1984-1985[16] financial years. It should be noted that firstly, the classification under 'type of order' is a fairly general description of the main condition used in the order, e.g. not to assault, communicate, approach and secondly, that most orders contain multiple conditions.

Table 1

Type of Restraint Orders Issued

Type of order issued	1982/83	1983/84	1984/85	Total
Assault/Threaten Assault	301	86	98	485
Contact/Communicate	234	188	307	729
Damage/Remove Property	11	5	13	29
Enter/Approach/Remain	119	164	123	406
Harass/Interfere/Molest	385	626	1128	2139
Keep the Peace	67	11	52	130
Provocative Manner	not specified	not specified	166	166
Cause Personal Injury	"	"	262	262
Other	11	167	0	178
TOTAL	1128	1247	2149	4524

Breaches of Orders

The number of offenders apprehended by arrest or summons is depicted in Table 2 for 1982-1983, Table 3 for 1983-1984 and Table 4, 1984-1985. The tables indicate the period in months when the order was breached following its issue, and differentiates between metropolitan and country, male and female, adult and juvenile. The method of defining what type of breaches occurred changed in 1984-1985 to give a broader analysis. In all, apprehensions for breaches totalled:

1982-1983	169
1983-1984	255
1984-1985	353
Total	777

Of the 777, there were 738 male offenders, being 95 per cent of the total.

Table 2

Breaches of Restraint Orders

Period: 1/7/82 - 30/6/83

Type of Breach	Months since issue of order			Metropolitan Adult		Metropolitan Juvenile		Country* Adult		Total
	<3	3-6	>6	M	F	M	F	M	F	
Assault	28	9	4	22			1	18		41
Threaten Assault	14	4	1	11	1	1		6		29
Enter Premises	47	16	7	42	5			23		70
Damage/ Remove Property	4	1		2		1		2		5
Harass, Molest	15	3	3	12	3		1	5		21
Contact/ Communicate	11			11						11
Other	1	1		1				1		2
Total	120	34	15	101	9	2	2	55		169

* Note: No breaches by juveniles in country.

Table 3

Breaches of Restraint Orders

Period: 1/7/83 - 30/6/84

Type of Breach	Months since issue of order			Metropolitan Adult		Metropolitan Juvenile		Country Adult		Total
	<3	3-6	>6	M	F	M	F	M	F	
Assault	23	15	38	39		1	1	30		76
Threaten Assault	13	8	19	26	5	1		8*		40
Enter Premises	45	20	31	62	7	1		26		96
Damage/ Remove Property	2		2	3		1				4
Contact/ Communicate	13	7	7	17	5	2	1	3		27
Approach	4	3	5	7				5		12
Total	100	53	102	154	17	6	6	72		255

* Note: 1 male in country was a juvenile.

Table 4

Breaches of Restraint Orders

Period: 1/7/84 - 30/6/85

Type of Breach	Months since issue of order			Metropolitan Adult		Metropolitan Juvenile		Country Adult		Total
	<3	3-6	>6	M	F	M	F	M	F	
Assault/ Threaten Assault	9	3	14	14				11	1	41
Enter/ Approach/ Remain	11	7	16	24	1	4		5		34
Damage/ Remove Property	1								1	1
Harass/ Inter-fere/ Molest	73	33	47	113	6	1	1	32		153
Keep the Peace	9	5	5	19						19
Contact Commun-icate	23	6	16	39	2	1		3**		45
Provoc-ative Manner	14	4	6	16				8		24
Cause Personal Injury	25	4	22	29				22*		51
Other										
Total	165	62	126	254	9	2	2	55		169

Note: ** 1 male was a juvenile
* 1 male was a juvenile

Relationship of Disputants

The relationship between disputants is depicted in Table 5. The table lists ten different categories and defines the percentage of the total numbers of orders issued.

Table 5

Relationship of Disputants

Relationship	1982-1983 %	1983-1984 %	1984-1985 %
Marital	24.3	20.1	27.8
Ex-Marital	9.8	13.9	3.9
De-Facto	9.1	11.6	9.9
Ex-defacto	12.1	6.1	1.9
Child/parent	3.8	4.4	3.4
Other family	2.5	5.6	9.3
Friend/ Acquaintance	15.6	11.0	11.9
Neighbour	10.2	8.6	2.0
Other	11.3	2.5	0.5
Unknown	11.2	16.0	22.6

Service Of Orders

The objective of using restraint orders is to provide a victim with some measure of protection as soon as possible after the incident which caused the order to be sought. Consequently, to be effective, an order must be served personally on an offender expeditiously. As stated in the policy, restraint orders are given top priority over all other enquiry work. Police are concerned that many offenders on whom they seek to serve orders are able to evade service.

In Table 6, the time delay in serving restraint orders is depicted for the first two financial years of operation of the system, expressed in percentage terms.

Table 6

Service of Restraint Orders

Period 1/7/82 - 30/6/83; 1/7/83 - 30/6/84

Year	Time Delay				
	24 hours	1-2 days	Up to 1 week	1-4 weeks	over 4 weeks
1982 - 1983	26.9	11.0	24.2	31.3	6.6
1983 - 1984	24.7	9.4	20.6	40.8	4.6

In the 1984-85 financial year the figures in Table 7 below indicate the numbers of orders served and the time delay in serving them.

Table 7

Service of Restraint Orders

1/7/84 - 30/6/85

Year	Time Delay					
	24 hours	1-2 days	Up to 1 week	1-4 weeks	over 4 weeks	Total
1984-85 Quarter						
1	98	19	127	147	110	501
2	107	19	88	134	161	509
3	108	17	80	224	180	609
4	87	15	62	178	188	530
Total	400	70	357	683	639	2149
	18.7%	3.3%	16.6%	31.8%	29.7%	

The fact that it is apparently taking longer than in previous years to serve a high proportion of orders is currently the subject of investigation by our Policy Audit Section.

Consequences of Analysis of Data

By monitoring the data compiled from the restraint order system, the Department has had a solid base upon which to evaluate and test policies, procedure and training needs. As a result, various 'bugs' in the system relating to form, design, classification of data and police practices have been identified so that planning for future developments can be undertaken with confidence from established facts. It does, of course, only relate to those matters reported to police.

Police Patrol Wordload Survey

No one can know the answer on how much domestic violence there is in the State. The restaint order figures are an indication of some of it. As part of a review of how patrols spent their time in the metropolitan area, a workload survey was conducted in January and February 1985 to establish the nature and frequency of requests for police patrol assistance in a four week period. In the metropolitan area, patrols attended at least 330 marital/ family related incidents in that time. Of those 330 incidents a second police patrol was called to assist the first on 64 occasions. Whilst figures are not readily available, it is a factual indicator of how many times police were called to premises to deal with domestic disputes.

Restraint Orders v Substantive Offences

There has been some concern expressed that use of restraint orders is inappropriate in domestic violence cases.

Certainly if a substantive offence is apparent, police should take specific action on those facts and not use the restraint order system as a seemingly easy alternative. Rather than a substitution for criminal proceedings, restraint orders should be seen as being supplementary. They act as a means of protection for those who are subjected to treatment which may not amount to a criminal offence, but are scared or feel threatened by the likelihood of future violence.

It is in these circumstances of threat and potential violence that the merits of the system become apparent in curtailing likely domestic assault as well as providing some means of protection for innocent parties.

Consequences if S.99 Justices Act Repealed

Using a premise that Section 99 was repealed, the following problems would become apparent:

1. No action could be taken against anyone:

   - who was likely to cause injury to a person or damage property
   - threatening injury to a person or damage to property
   - behaving in a provocative manner (dependent upon the circumstances).

2. A person would have to be a victim of a crime before the law offered any protection.

3. The police power to speedily remove an offender breaching an order would be lost.

4. The 'no bail' provisions would be lost and offenders would then become subject to normal bail requirements in the Bail Act.

The Latest Figures - July, August and September 1985

Enquiries at the Department's Restraint Order Unit reveal that, on average, there are approximately 180 restraint orders being issued per month.[17]

For recency, and also for comparative purposes, the July 1985 to September 1985 restraint order figures have been included in this paper. Additionally, the topic of withdrawal of orders is analysed.

Type Of Restraint Orders Issued

In Table 8 following, the type of restraint order issued is depicted along with a breakdown into metropolitan/country, adult/juvenile, male/female. Thee were 560 orders issued in the July to September 1985 period. There were no orders issued against juveniles in the country hence the category being left off the table.

Table 8

Types of Restraint Orders Issued

Period 1/7/85 to 30/9/85

Type of Order Issued	Total	Metropolitan				Country	
		Adult		Juvenile		Adult	
		M	F	M	F	M	F
Assault/ Threaten Assault	34	10	1	4		18	1
Contact/ Communicate	104	85	6			13	
Damage/ Remove Property	4	4					
Enter/ Approach/ Remain	33	24	5	1		3	
Harass/ Interfere/ Molest	279	209	26	1		38	5
Keep the Peace	16	14		2			
Other							
Provocative Manner	27	14	6			6	1
Cause Personal Injury	63	35	2			25	1
TOTAL	560	395	46	8		103	8

Breaches of Orders

In Table 9, the number of persons apprehended for breaching orders is shown, including the time period in which an order was

breached from the date of issue. From 1 July 1985 to 30 September 1985, ie, a three month period, there were 101 breaches (or 18 per cent) of 560 orders issued. This is a fairly consistent pattern of percentages compared with breaches in other years.

Table 9

Breaches of Restraint Orders

Period 1/7/85 to 30/9/85

Type of Breach	Months since issue of order			Metropolitan Adult		Metropolitan Juvenile		Country Adult		Total
	<3	3-6	>6	M	F	M	F	M	F	
Threaten Assault	1	1	1	1				2		3
Enter/ Approach Remain			6	5		1				6
Damage/ Remove Property	1			1						1
Contact/ Communicate	12	6	8	23	3					26
Keep the Peace	3		2	4				1		5
Harass/ Interfere/ Molest	23	12	16	40	4	2		5		51
Provocative Manner	1			1						1
Cause Personal Injury	3	3	2	5				3		8
Other										
Total	44	22	35	80	7	3		11		101

One aspect shown in Table 9 requires explanation and that relates to breaches within the specified periods, e.g. less than 3 months, 3-6 months and more than 6 months. Some breaches on Table 9 show they occurred after 6 months. These breaches would relate to orders issued prior to 1/7/85. Also, there were no juveniles apprehended for breaching orders in the country; the appropriate column has been deleted from the table.

Relationship of Disputants

The relationship of disputants in respect of the 560 orders issued is shown in Table 10. The numbers of people are listed and expressed in percentage terms as well.

Table 10

Relationship of Disputants

Period 1/7/85 to 30/9/85

Relationship of Parties	Living Together		Not Living Together		Total	
	No.	%	No.	%	No.	%
Marital	50	38.7	79	61.2	129	23.0
Ex-Marital	0	0.0	18	100.0	18	3.2
De-Facto	24	48.0	26	52.0	50	8.9
Ex De-Facto	0	0.0	10	100.0	10	1.8
Child/Parent	7	41.0	10	58.8	17	3.0
Other Family	0	0.0	30	100.0	30	5.4
Friend	2	2.2	85	97.8	87	15.5
Neighbour	0	0.0	43	100.0	43	7.7
Other Unknown	0	0.0	0	0.0	0	0.0
Unknown	0	0.0	176	100.0	176	31.4
Total	83		477			

Complaints Withdrawn

The subject of orders/complaints withdrawn was not addressed earlier in this paper. Details in Table 11 give a general indication of what type of complaint was withdrawn and by whom before reaching the court.

Table 11

Complaints Withdrawn

Period 1/7/85 to 31/9/85

Offence Type	Complaint Withdrawn Before Order by			
	Victim	Court	U/K	Total
Assault/Threaten Assault	8	6	3	17
Contact/Communicate	8	19	1	28
Damage/Remove Property	0	1	1	2
Enter/Approach/Remain	3	4	1	8
Harass/Interfere/ Molest	66	78	9	153
Keep the Peace	0	0	0	0
Provocative Manner	10	6	2	18
Cause Personal Injury	2	5	1	8
Other	0	0	0	0
Total	97	119	18	234

Orders Withdrawn

In Table 12, the number of orders withdrawn and by whom is illustrated.

Table 12

Orders Withdrawn

Period 1/7/85 to 31/9/85

Offence Type	Victim	Court	Police	U/K	Total
Assault/Threaten Assault	1	4	0	4	9
Contact/Communicate	15	12	0	10	37
Damage/Remove Property	1	0	0	1	2
Enter/Approach/Remain	7	7	0	4	18
Harass/Interfere/ Molest	93	75	0	24	192
Keep the Peace	4	3	0	2	9
Provocative Manner	18	10	0	3	31
Cause Personal Injury	17	11	0	6	34
Other	0	0	0	0	0
Total	156	122	0	54	332

The figures in Table 12 (orders withdrawn) bear further examination. Of the 560 orders issued in the three monthly period, 332 or 59 per cent were withdrawn i.e.:

- by victims 156 or 27.9%
- by courts 122 or 21.8%
- by police nil
- unknown 54 or 9.6%

However, it should be remembered that some of these withdrawals relate to orders issued in other periods, but in general terms, the rate of withdrawals is average compared to those in previous quarters in other years. Another aspect to consider is that victims do not actually withdraw orders themselves - they request the police to do it for them.

The fact that so many orders were withdrawn is naturally a matter of concern because I suspect many of the victims may be under duress. Additionally, there is a lot of police time and effort being used in taking complaints, seeking orders and serving them. I suspect if the recommendations in Ms Jacobs paper18 are implemented, there will be less withdrawals, the victims will be better catered for and the restraint order system will become more efficient.

CONCLUSION

The Police Department sees the use of restraint orders as a positive step towards tackling the problem of domestic violence and giving victims some measure of protection. The compellability of spouses and the acquisition of better powers under the Family Law Act has meant that police no longer use methods of intervention in domestic disputes which could be considered ineffective, something which had concerned Bell[19] in his research.

Obtaining a restraint order can best be described as a 'crime prevention strategy', that is, something which can be obtained by a person to prevent an offender committing a crime against her. This is different to any other statute where usually a crime has to be committed before the wheels of the criminal justice system begin to turn.

Restraint orders alone will not completely eliminate domestic violence from the community. Using restraint orders has influenced and enabled police to take action which, prior to 1982, would not normally have been taken. One would hope that some of the 4,500 people in South Australia who obtained orders through the endeavours of the Police Department got some measure of protection from them. There are obviously various kinds of human conflict for which restraint orders are totally inappropriate and where this is so, some options are resolution counselling or application of the criminal law. However, these too have their limitations; for example, will convictions and imprisonment of offenders for spouse abuse prevent future offences being committed?

In my opinion, the solution to domestic violence lies in changing society's values and attitudes, something which many people in the past have advocated including Jocelynne Scutt[20] and Rosemary Wighton[21]. To do this requires education, not just of police, social workers, magistrates and shelter workers to mention a few, but all members of the community. Until then, I believe the use of Section 99 restraint orders in South Australia will continue in some way to improve the quality of life for people suffering from the threats, abuse and violence of others.

Endnotes

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16. Compiled from data extracted from the records of the S.A. Police Department's Restraint Order Unit, for the 1/7/84 - 30/6/85 period.

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DOMESTIC VIOLENCE: THE SOUTH AUSTRALIAN POLICE PERSPECTIVE

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INTRODUCTION

In 1979, a domestic violence committee was established in South Australia by the Women's Advisor to the Premier, to look at problems surrounding domestic violence in this State. Persons from relevant agencies and Government Departments, including the South Australian Police Department, were represented on this committee.

In November 1981, the Domestic Violence Committee reported to the Government the need for effective legislation in the area of domestic violence. In June 1982, amendment was made to the Justices Act and a new Section 99 of the Justices Act - Order to Keep the Peace - was introduced. This change was principally aimed at providing legal recourse and sanctions against domestic violence offenders.

This legislative change meant that Restraint Orders could be taken out against the offender, at the request of the victim. However, before a Restraint Order could be initiated, certain criteria as defined by the legislation had to be met. These included:

On the balance of probabilities,

(a) that -

(i) the defendant has caused personal injury, or damage to property;

and

(ii) that the defendant is, unless restrained, likely again to cause personal injury or damage to property;

(b) that -

(i) the defendant has threatened to cause personal injury or damage to property;

and

(ii) the defendant is, unless restrained, likely to carry out that threat;

or

(c) that -

(i) the defendant has behaved in a provocative or offensive manner;

(ii) the behaviour is such as is likely to lead to a breach of the peace;

and

(iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner.

The main advantage of this legislation is that once the criteria have been met on the balance of probabilities (not the criminal burden of proof beyond reasonable doubt), there is the power to exclude the offender from the matrimonial home with the emphasis on removing the offender from the scene of the incident. The court is also able to specifically prescribe a range of behaviour and the provision of a remedy to those other than lawful spouses.

Police Department procedures were modified as a result of this legislative change. From experience gained by police over the first eighteen months of operation it became apparent that changes were required to the administrative procedures relating to applications for Restraint Orders.

A Domestic Violence Report (DVR)/Application for Restraint Order Form was introduced to the Department in February 1984, and is still in use. The purpose of this form is two fold. Firstly, it provides the source documentation for the application of a Restraint Order. Secondly, in any domestic situation attended by police where violence (or threat of violence) occurs and no Restraint Order is applied for, the form is completed in order to provide a source of information to the Department with respect to that situation. Until the introduction of this form, no in-depth statistics were collected about domestic violence. The information collected on this form relates mainly to the incident, the complainant (or victim), and the person complained about (or offender).

THE STUDY

Much of the domestic violence reflected in today's media refers to spouse abuse. Since the rise of the women's movement there has been a slow unveiling of the wall of silence which separated the private and the public spheres of life of the spouse.

Because of this increased awareness, wide ranging problems are becoming apparent in police handling of domestic violence disputes. Consequently Police Departments now need to consider the issue more closely.

In early 1984, it became apparent to the management of this Department that an examination and evaluation of the Restraint Order policies and police response to domestic violence was required. This resulted in a full comprehensive study of domestic violence from the police perspective.

The terms of reference for this study included:

- Examination of the broad perspectives of domestic violence in the community

- Collection of statistics on domestic violence

  examination of the problem areas
  examination of the prevalence of the situation
  examination of recidivism

- Observation of police responses to domestic violence situations, definition of problem areas

- Definition of what type of response is requred.

This study assessed these areas, and either highlighted or refuted the apparent anomalies pertinent to domestic violence. It gave a comprehensive statistical breakdown of the picture of domestic violence in South Australia during a defined survey period, and it assessed the attitudes and problems confronting police when dealing with domestic disputes. Improved operational procedures for police dealing with domestic violence situations were recommended, in conjunction with more effective training for all police personnel in aspects of domestic violence.

The study was divided into three parts. The first was an examination of some of the research conducted into domestic violence and related literature. The second presents the results of a police domestic survey which used information collected from the DRV/Application for Restraint Order form. Finally, the study examines the results of a police response survey of the police patrol officer's log for each tour of duty in two of Adelaide's metropolitan police divisions, Darlington Division (C2 Division) and Holden Hill Division (D2 Division).

Summary of Literature

Domestic violence is becoming more apparent in today's society. This is not due to an increase in the number of incidents of domestic violence, but because of an increased awareness of its existence.

Society's inability to accept domestic violence is readily seen by myths that shroud this act of unsociable behaviour. Even with the increasing awareness of the existence of domestic violence, there is still the over-riding disbelief that this can happen without a justifiable cause; hence the continuing prevalence of myths of domestic violence.

Sociologists, social theorists and psychologists have been trying to establish theories as to why domestic violence occurs. Many of the theories documented are restrictive and cannot be generalised to all situations. They can, however, contribute an explanation as to why some incidents occur. Lenore Walker's 'Three Stages of Spouse Abuse' is the most useable philosophy of spouse abuse as it is the most general and adaptable explanation.

Research into the effectiveness of police intervention into domestic violence incidents does not show law enforcement in a good light.

The main problems highlighted are that police officers are conditioned by the legacy of patriarchial control, and the principle of the maintenance of the family unit. Also, Police Departments generally have not yet developed policy for action which should be taken by its employees when dealing with domestic violence incidents.

Some police agencies recently have recognised the problems of dealing with domestic violence, which have resulted in changes in policy and the methodologies for effecting appropriate responses to those involved in domestic violence incidents. The results of such changes have proven positive in respect to police involvement and intervenion in domestic violence incidents.

From research conducted in Australia, certain aspects were highlighted as areas of concern. A major factor which contributes to domestic violence was alcohol; it was found in over 50 per cent of the incidents surveyed. Unemployment of both the abuser and the victim was also very apparent from the research.

Police Domestic Survey

The information in this survey was based specifically on information gained from the DVR/Application for Restraint Order form during a defined survey period from 16 February 1984, to 16 May 1984. All the forms completed by police officers throughout that state were collected and the information collated. Five aspects were covered when analysing the results, including the incident itself, the complainant, the person complained about, police response and a demographic breakdown of the incidents.

Summary of Police Domestic Survey

A total of 710 forms were received by the Department during the three month survey period. 56.3 per cent of these were applications for a Restraint Order and 43.7 per cent were reports of domestic violence only. The majority (90.7 per cent) of persons complained about were male, and 83.4 per cent of complainants were female.

The Incident

1. During the survey period, 688 complaints were received against 710 offenders.

2. The greater portion of domestic violence occurred on weekends. The majority of the incidents took place between early evening to just after midnight.

3. Alcohol was a contributing factor in almost half the disputes attended by police, and actual assault was apparent in about one quarter of the incidents (Table 1).

4. A high rate of recidivism was indicated in the instances when police had to re-attend at the same address during a one month period.

5. Crisis Care, a 24 hour emergency family/individual crisis counselling service, was only requested by police 30 times during the survey period. Crisis care will only attend when all disputants involved agree to their attendance, and police requests fo Crisis Care intervention is based on this.

The Complainant/The Person Complained About

6. The majority of complainants were female, between the ages of 21-40 years, whereas the persons complained about were generally male, also between the ages of 21-40 years (Tables 2 and 3).

7. Almost half of the complainants had the employment status of home duties. When a Restraint Order was applied for slightly more of the complainants had the status of home duties, and slightly more were employed when only a report of the incident was made (Table 4).

8. When a Restraint Order was taken out, 11 per cent of the complainants were intending to remain living with the other party, and 46 per cent were to remain living with the person complained about when only a DVR was submitted.

9. It was generally married persons who were reporting domestic violence, but married males and separated females took out the Restraint Orders.

10. Physical injuries were sustained by the complainant in less than one half of the incidents attended. However, the type of injury was on the whole more serious when a Restraint Order was applied for than if only a DVR was submitted (Table 6).

11. Over a third (34 per cent) of the persons complained about were unemployed. When compared to the State unemployment rate at that time, the figure is disproportionately high. The greater proportion of those complained about were employed, and of those, most had the occupation of a tradesman (Table 5).

12. There was a disproportionate number of complainants and persons complained about with Aboriginal appearance. Complainants born overseas accounted for 24 per cent of the total number, with just over half born in the United Kingdom and the Republic of Ireland. Almost 23 per cent of persons complained about were born overseas, with over one third born in the United Kingdom and the Republic of Ireland.

13. The majority of persons complained about who were married were married to the complainant, and almost one quarter of those complained about had a child/parent relationship with the complainant. It appeared that if the persons complained about were married to the complainant, a DVR was more likely than an application for a Restraint Order (Table 7).

Police Response/Demographic Breakdown

14. The time taken by police at the domestic violence situation when a Restraint Order was applied for was longer than when only a DVR was submitted. The majority of Restraint Orders were applied for at Police Stations, whereas DVRs were submitted by patrols in the vast majority of situations.

15. The extent of domestic violence reported to police in South Australia is widespread. In the Adelaide metropolitan area, domestic violence calls originated throughout all suburbs, with the areas of highest incidence being generally in both the northern suburbs and southern suburbs.

16. In the country areas, the northern urban regions appeared to have the highest incidence of domestic violence reported to police.

Police Response Survey

The Darlington and Holden Hill Divisions were selected for this part of the survey because of the relatively high incidence of domestic violence reported to the police in these areas.

The patrol officer's logs, completed by each patrol on every tour of duty in the two divisions, were surveyed for the same three month survey period as used for the police domestic survey. A patrol log is a diary of events or incidents that a patrol attends during their tour of duty. All the documented domestic violence incidents attended by patrols were examined to ascertain the type of domestic situation attended, how the patrol handled the incident and the resultant action taken. The domestic violence situations attended by patrols during the survey period were initially defined by those operators at the Police Communications Centre, who received the call. A Departmental code used to describe an incident, was given to each job to be attended.

These codes related to the following incidents:

Disturbance
Domestic Violence
Assault
Wilful Damage
Potential Violence
Drunk
Intruder on Premises

In conjunction with this part of the study, one evening was spent in each division to observe police handling of domestic incidents first hand.

Summary of Police Response Survey

The results from the two divisional surveys highlight the problems that patrols face when dealing with domestic situations. To summarise, there is a general lack of understanding, by patrol officers, of the instructions defined in a Departmental Policy

Circular. This is explained by the large number of calls made to police, complaining of domestic violence, that were either not acted upon at the time, or not documented by the submission of a DVR. This lack of understanding also applies to the patrol officers' supervisors.

Frustration, due to victims withdrawing their complaints or requesting no action, was another problem confronting police when attending domestic violence incidents, which when combined with the inherent attitude of patrol officers of not wanting to get involved leads to a very unsatisfactory response by police to those situations attended.

It should be remembered that the role of the Police Officer in domestic violence situations is interventionalist and not conciliatory. Police officers are not trained to be counsellors or conciliators in the very emotional domestic violence situations which they attend.

Finally, there was a tendency of patrol officers to refer complainants to police stations to make their report. The incidents of domestic violence generally occurred in peak workload periods for police, which does limit the affordable time given to those situations. This can lead to patrols referring complainants to a police station to make their reports.

Results of the Study

It can be seen from the results of the surveys that the extent of domestic violence reported to police is widespread and that there are problems with the current situation of police attending domestic violence incidents, even with S.99 of the Justices Act being in force.

At present, police officers with minimal training in the area of domestic violence/crisis intervention, are attending at incidents of domestic violence, and, as it has been shown, do not provide effective aid to the parties involved. This often results in recidivism and frequent complaints against police by disgruntled victims. The police themselves become frustrated in these situations because of the continuing instances where victims are withdrawing their complaints or requesting no action.

In order to overcome the highlighted problems confronting the police officer when dealing with incidents of domestic violence, comprehensive training of all officers in the issues and procedures relating to domestic violence is necessary. This solution however is not feasible. Because of the large numbers of police officers, it is not practical to train them all to a level of competence for dealing adequately with domestic violence situations.

However, the problems defined in the study, including the low request rate for the services of Crisis Care, the problem of recidivism, police training and education, can be dealt with by the development of a new procedural system and a specialised unit for dealing with domestic violence.

The proposed system should remove the virtually untrained patrol officer from dealing with domestic violence situations other than initial attendance, and replace them with specially trained personnel to deal with the situation. This would also overcome the limitations that arise when police request the assistance of Crisis Care, would provide a much better service to the disputants involved, and would reduce the likelihood of recidivism.

Two very similar systems were developed in New York, the Family Crisis Unit, and London, Ontario, Family Consultant Model.

The basic philosophy behind the New York City Police Department's Family Crisis Model is that unless law enforcement strikes a balance between the legal/criminal issues and crisis intervention techniques, police response may be counter-productive.

The Family Consultant Model, was developed from a combination of generalist/specialist approaches. The generalist approach extends to all police officers receiving training in crisis management, whereas the specialist approach is of a civilian branch of the force to handle crisis intervention as requested by an investigating officer.

The Departmental Report resulting from the study proposed the formation of a Police Domestic Violence Unit, improved training for police officers and other related matters.

Police Domestic Violence Unit

The formation of a Police Domestic Violence Unit will effectively remove the general patrol officers from a domestic violence situation, except for initial intervention. Thus incidents of recidivism will be reduced, police responses to incidents will be questioned less often, and the police officer will not have to deal with the added frustration of victim non-cooperation.

The general patrol officer will spend considerably less time at domestic violence incidents, and the resulting paper work, with the exception of apprehension for a substantive offence, will be significantly reduced.

The Police Domestic Violence Unit will provide a mechanism for professional assessment and referral to disputants in domestic violence situations.

It will be a method of referring those involved in domestic violence, to community based clinics for professional help and counselling.

The Unit will provide a very quick response at the time it is most effective for the disputants. At a time of crisis, a person's normal defence mechanisms are lessened, making them more responsive to receiving assistance. This will result in the disputants being more willing to accept assistance of Crisis Care at the time it is most needed.

A source of relevant and up-to-date information on domestic violence will be collected and collated by this Unit, thus providing this Department with a quick source of statistics.

The Unit will provide a proactive service in domestic violence by being able to respond to problem situations that become apparent through the monitoring of the information collected.

Proposed Structure

a. The Police Domestic Violence Unit (PDVU) should contain specially trained police officers, and trained civilian counsellors and conciliators.

b. The Police Domestic Violence Unit should be a designated unit of the South Australian Police Department.

c. The specially trained police officers should be proficient in the legal/criminal issues of domestic violence and crisis intervention, and should receive extensive training in the area of conciliation.

d. The civilian counsellors should be experts in the area of counselling and conciliation in domestic violence issues, and should receive extensive training in the relevant police procedures and practices.

e. In order to provide a quick and effective response at the time of greatest crisis, the Police Domestic Violence Unit should be established in the Adelaide metropolitan area, based upon areas of greatest workload.

f. The Police Domestic Violence Unit should provide a 24 hour service.

Proposed Operational Procedure

a. A general patrol shall initially respond to an incident of domestic violence. Upon arrival at the incident they shall assess the situation, and where considered appropriate call the PDVU.

b. All police officers should be trained in the aspects of domestic violence, in order to provide them with enough knowledge to make an appropriate assessment of an incident; and to provide them with the necessary interventionalist skills.

c. The patrol should call for the Police Domestic Violence Unit in situations where a Restraint Order is requested or where violence or threat of violence is apparent.

d. The patrol should immediately arrest when a substantive offence is apparent.

e. When requested, a team from the PDVU shall be dispatched to the incident. This team should comprise a police officer and a civilian from the Unit.

f. Upon attendance of the Police Domestic Violence Unit the patrol shall assume duties.

Proposed Role of the Unit

a. The role of the team from the PDVU shall be to take whatever further legal/criminal action is appropriate; provide immediate conciliation and guidance for the disputants; provide a professional assessment of the incident; collect appropriate statistics; provide a report for referrals for one or all disputants.

b. Members of the Police Domestic Violence Unit shall attend court with the victim and/or person complained about in order to provide the appropriate information for the proceedings.

c. The PDVU shall be proactive in nature, by monitoring the information collected on clients and incidents, and acting upon that information when the need becomes apparent.

Proposed Collection of Statistics

a. The Police Domestic Violence Unit should be responsible for information and statistical analysis on all domestic disputes attended by police.

b. The DVR/Application for Restraint Order form should be modified for use by police patrols in order to provide basic information on the incident for use by the Police Domestic Violence Unit.

c. The patrol shall collect basic information on the incident attended, on the modified form. More detailed information on the incident shall be collected by the PDVU upon their arrival at the scene.

Training/Education

In conjunction with the development of the Police Domestic Violence Unit, more effective general police training in the issues of domestic violence is required. The results of the study highlighted the lack of understanding and knowledge by police of the Departmental procedures on the handling of domestic violence situations.

Because the patrol officer will be the first to attend at a domestic violence situation, even with the introduction of a Police Domestic Violence Unit, training will be required to assist the patrol officer in making the initial assessment of the situation.

Improved police training in the issues and procedures surrounding domestic violence would be necessary at all levels, from the initial recruit training to Inspectors selection courses.

This training however, would be considerably less than that required if the Police Domestic Violence Unit were not established.

Because police officers are part of the general community, this training would also play a part in helping reduce the community's inherent ignorance surrounding domestic violence.

Proposed Training/Education

Improved training should be developed relating specifically to the training and education of operational police officers.

The upgrading of training of all operational police officers in the issues of domestic violence, will include all social, welfare, police and legal perspectives of domestic violence. Members of the Police Domestic Violence unit will act as consultants to the Training and Education Branch for this specific training.

Other Related Proposals

With the modifications to the DVR/Application for Restraint Order information on domestic violence incidents and the Restraint Order System will still be collected by this Department. In the light of continual requests from agencies outside the Police Department, it was proposed that a summary of the information on domestic violence, and the Restraint Order System, be documented in the Commissioner's Annual Report to Parliament.

It was found that police officers were not completely aware of the contents of the S.99 legislation. It is therefore pertinent to ask of the level of awareness of the general public to this legislation. A pamphlet has been issued by the Women's Advisor's Office, Department of the Premier and Cabinet. The contents of this pamphlet do not explain the scope and details of this legislation.

It was therefore proposed that this Department recommend to the Domestic Violence Council that a new pamphlet be developed which explains fully the scope, details and consequences of the S.99 legislation, for use by the general public and other relevant agencies.

A new improved pamphlet, on the issues of the S.99 legislation, will provide to the community the required knowledge on the Restraint Order system. It will also provide for police a ready reference on the procedures of this legislation. This increased awareness of the S.99 legislation can only help to improve police/community relations, especially when dealing with domestic violence incidents.

Two important anomalies were highlighted in this report. Firstly the disproportionate number of complainants and persons complained about were of Aboriginal appearance. More information is required to investigate this further. The second was the disproportionate number of employed persons complained about. Is there a link between unemployment and domestic violence?

Two further proposals were made relating specifically to these anomolies. The included further research be carried out looking specifically at the extent of Aboriginal involvement in domestic violence, and further research be carried out looking specifically at the problem of unemployment and involvement in domestic violence.

In the country areas of this state, the northern urban regions had the highest incidence of domestic violence reported to police. This report deals mainly with the Adelaide metropolitan area, and does not consider the country areas in detail. The following proposal recommends that an assessment of the domestic violence situation in the country/urban areas similar to this study, with the aim of examining the frequency and extent, and police response, to domestic violence in those areas.

The consequences of the final three proposals will be a greater knowledge of the extent of domestic violence among Aboriginals, the unemployed and in the country/urban areas. These are ovbiously workload generators for police. This Department will therefore be able to highlight these problems more specifically resulting in more effective methods of dealing with them. Undertaking this study will further enhance police/community relations, by looking at community problems from a police perspective.

Current Situation

To date, the proposals made in the Departmental report from the study for the formation of a Police Domestic Violence Unit have been accepted in principle by the Senior Executive of the S.A. Police Department. However, the Departmental report also defines further work that needs to be undertaken before such a Unit can be realised, and before a full submission to Government can be made. This work will cover the financial, manpower and equipment considerations; the geographic establishment requirements; and any legislative requirements needed for the effective operation of the unit.

Table 1: Type of Dispute by Contributing Factors

Type of Dispute	Contributing factors									
	Alcohol		Drugs		Other		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Marital Discord	88	51.2	3	1.8	53	31.0	27	15.8	171	24.9
Family Discord	22	41.5	4	7.6	21	38.6	6	11.3	55	7.7
Parent/Child Abuse	7	19.4	0	0.0	22	61.0	7	19.4	37	5.2
Actual Assault	102	51.8	5	2.5	55	27.9	35	17.8	197	28.6
Threat Assault	20	28.6	2	2.9	26	37.1	22	31.4	74	10.2
Sexual Offence	0	0.0	0	0.0	1	25.0	3	75.0	4	.6
Alcohol Related	56	94.9	0	0.0	3	5.1	0	0.0	62	8.6
Damage to Property	13	43.3	1	3.3	10	33.3	6	20.0	30	4.4
Other	12	31.6	0	0.0	16	15.8	10	26.3	40	5.5
Unknown	16	53.3	1	3.3	6	20.0	7	23.3	40	4.4
Total	336	48.8	16	2.3	213	31.0	123	17.9	688	100.0

Table 2: Age Breakdown of Complainant

Age	Male		Female		Total	
	No.	%	No.	%	No.	%
Less than 12	1	0.9	2	0.3	3	0.4
12-18	9	8.4	38	6.6	47	6.8
19-20	4	3.7	34	5.9	38	5.5
21-25	11	10.3	106	18.3	117	17.0
26-30	11	10.3	89	15.3	100	14.5
31-35	11	10.3	83	14.3	94	13.7
36-40	12	11.2	80	13.8	92	13.4
41-45	8	7.5	54	9.3	62	9.0
46-50	9	8.4	31	5.3	40	5.8
51-55	9	8.4	15	2.6	24	3.5
56-60	7	6.5	16	2.8	23	3.3
61-65	2	1.9	8	1.4	10	1.5
Over 65	4	3.7	8	1.4	12	1.7
Unknown	9	8.4	16	2.8	26*	3.8
Total	107	100.0	580	100.0	688	100.0

Table 3: Age Breakdown For Person Complained About

Age	Male		Female		Total	
	No.	%	No.	%	No.	%
Less than 12	0	0.0	0	0.0	0	0.0
12-18	40	6.2	7	11.3	47	6.6
19-20	28	4.3	1	1.6	29	4.1
21-25	100	15.4	10	16.1	110	15.5
26-30	86	13.3	4	6.5	90	12.7
31-35	78	12.0	10	16.1	88	12.4
36-40	90	13.9	3	4.8	93	13.1
41-45	57	8.8	8	12.9	65	9.2
46-50	26	4.0	2	3.2	28	3.9
51-55	23	3.6	0	0.0	23	3.2
56-60	20	3.1	2	3.2	22	3.1
61-65	8	1.2	0	0.0	8	1.1
Over 65	3	0.5	0	0.0	3	0.4
Unknown	89	13.7	15	24.2	104	14.7
Total	648	100.0	62	100.0	710	100.0

Table 4: Usual Occupation of Complainant

Usual Occupation	Number	% of Total Employed	% of Total
Professional/Technical	31	16.6	4.5
Administrative/Managerial	17	9.1	2.5
Clerical	22	11.8	3.2
Sales	21	11.1	3.1
Farm/Rural	5	2.7	0.7
Mining	0	0.0	0.0
Transport/Communication	10	5.3	1.5
Tradesmen	58	31.0	8.4
Services/Recreation/Sport	23	12.3	3.3
Total of Employed	187	100.0	27.2
Unemployed	60		8.7
Home Duties	312		45.3
Student	19		2.8
Pensioner	95		13.8
Unknown	15		2.2
Total	688		100.0

Table 5: Usual Occupation of Person Complained About

Usual Occupation	Number	% of Total Employed	% of Total
Professional/Technical	26	8.4	3.7
Administrative/Managerial	16	5.2	2.3
Clerical	11	3.6	1.5
Sales	16	5.2	2.3
Farm/Rural	13	4.2	1.8
Mining	5	1.6	0.7
Transport/Communication	31	10.0	4.4
Tradesmen	170	55.0	23.9
Services/Recreation/Sport	21	6.8	3.0
Total of Employed	309	100.0	43.5
Unemployed	241		33.9
Home Duties	18		2.5
Student	12		1.7
Pensioner	56		7.9
Unknown	74		10.4
Total	710		100.0

Table 6: Injuries to Victim by Weapon Used - Situation Where a Restraint Order is Taken Out

	Type of Injury							
Type of Weapon	Nil	Minor	Medical Attention	Hospital	Mental Stress	Unknown	Total No.	Total %
Nil	95	16	3	0	28	2	144	37.9
Knife	4	3	0	1	1	0	9	2.4
Firearm	2	0	0	0	1	1	4	1.1
Club	3	0	0	0	0	0	3	.8
Fist/Feet	33	58	32	7	22	1	153	40.3
Other	9	15	6	4	16	1	51	13.4
Unknown	6	0	2	0	7	1	16	4.2
Total	152	92	43	12	75	6	380	100.0
	40.0%	24.2%	11.3%	3.2%	19.7%	1.6%		

Table 7: Marital Status and Relationship to the Complainant
Sex by Relationship to the Complainant

Relationship to Complainant	Married		Single		De facto		Separated		Divorced		Widowed		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Marital	183	69.9	2	1.3	0	0.0	49	48.5	1	2.2	0	0.0	1	10.0	236	33.2
Ex-Marital	7	2.7	2	1.3	1	0.8	29	28.7	10	21.7	0	0.0	1	5.0	50	7.0
De facto	2	0.8	16	10.7	107	79.7	5	5.0	13	28.3	1	100.0	1	10.0	145	20.4
Child/Parent	10	3.8	37	24.8	1	0.8	2	2.0	4	8.7	0	0.0	0	0.0	54	7.6
Other Family	12	4.6	14	9.4	4	3.0	1	1.0	3	6.5	0	0.0	1	10.0	35	4.9
Friend	5	1.9	27	18.1	4	3.0	3	3.0	4	8.7	0	0.0	2	10.0	45	6.3
Neighbour	18	6.9	6	4.0	9	6.8	0	0.0	1	2.2	0	0.0	0	0.0	34	4.8
Other	23	8.8	37	24.8	6	4.5	10	9.9	8	17.4	0	0.0	6	30.0	90	12.7
Not Known	2	.8	8	5.4	2	1.5	2	2.0	2	4.4	0	0.0	5	25.0	21	3.0
Total	262	36.9	149	21.0	134	18.9	101	14.2	46	6.5	1	0.1	17	2.4	710	100.0
Sex of Person Complained about																
Male	241	37.2	133	20.5	125	19.3	90	13.9	43	6.6	1	0.0	15	2.3	648	91.3
Female	21	33.9	16	25.8	9	14.5	11	17.7	3	4.8	0	0.0	2	3.2	62	9.6

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POLICE RESPONSE TO DOMESTIC VIOLENCE, VICTORIA

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A Victorian police report said there were 39,000 calls involving domestic violence to D.24 in one year. This figure does not include suburban and country callers. Possibly only calls to road accidents would exceed this figure. Still, it is estimated that criminal assault in the home is the single most unreported crime.[1]

The law clearly states that an assault is a crime. 'An assault is an attempt to offer with force and violence, to do a corporal hurt to another, whether from malice or wanteness as by striking at (that person) or even by holding up one fist at that person in a threatening or insulting manner or with such other circumstances as denote at the time an intention coupled with a present ability of actual violence against the person as by pointing a weapon at (that person).' There is nothing in domestic assault which would take it outside the definition of the crime as described.[2]

Police not only have a right to intervene in 'domestics', they have a positive duty to protect life and limb. When they join the force, police take an oath to the effect that they will enforce the law.

However, the police do not regard an assault by a husband upon his wife as a crime. They regard the assailant not as a criminal, but as someone who 'has gone a little too far with the missus.'

An Inspector of Police at a conference on domestic violence in 1982, stated that the police's main aim should be to prevent a tragedy, rather than to prosecute the offender after the damage is done.[3]

The Association of Police Chief Officers, in Britain, told the Parliamentary Select Committee on domestic violence that 'while such problems take up considerable police time, in the majority of cases the role of the police is a negative one. We are, after all, dealing with persons bound in marriage ...'[4]

Police Standing Orders <u>reinforce</u> the view that domestic violence is not <u>real</u> crime. Present Standing Orders direct police <u>not</u> to get involved in domestic disputes. For example:-

Paragraphs 990(1) of the Police standing Orders states in part:-

> '... Members should be particularly careful not to interfere with or become involved in any civil dispute, especially divorce cases and concerning custody of children. They are not, at the request of individuals, to make enquiries unconnected with police duties or to interfere in the private business of others ... such influence is improper and dangerous'.[5]

The Victorian police manual states:-

> The term 'domestic crisis' may be translated to mean a dangerous family affair in the home. This definition would describe the majority of domestic crises handled by the Police Service. Although police may regret the social service component of their work, they accept that there is no other community resource capable of responding so effectively. It would appear for a variety of reasons, domestic crisis intervention is the role of the police.
>
> This contrasts with warnings elsewhere in the manual that intervention in domestic crisis holds great danger for police officers - that the risk of injury and death is higher for police than in other police work.[6]

Today, the most compelling features of police training courses in domestic disputes remains the firm belief that domestic violence must be dealt with differently than other types of violence. In the training booklet for the police, it is said:-

> The primary object of the 'service' is the prevention of crime, the detection, arrest and bringing to justice of offenders. Due to the increased complexity of today's society, more demands are being made on the police officers outside their primary function. Police are invariably requested to involve themselves in 'domestic disturbances'.

As for violent disputes, police are given a check-list. The final point on this list says, arrest if necessary. Thus, there is no immediate acknowledgement that if the parties are involved in disputes that may be termed as violent and thus presumably classifiable as criminal, arrest may be the natural outcome.

Taking into account the violence obviously suffered by women bringing actions against their husbands in Magistrate's Court (as an alternative to police action), it is all too clear that police do not initiate charges except the very worst cases.[7]

It is the experience of Legal Services and workers at women's refuges that police fail to attend domestic disputes; that where they do attend, they are often hours late; and often tell victims that they are powerless to intervene.[8]

One of the many complaints of police indifference came from a women who said that upon calling the police for help when being threatened with a loaded shotgun, she was told to take an asprin and go to bed![9]

One woman was assaulted by her husband in the foyer of the Russell Street Police Station while he was in breach of Family Court access orders and the police refused to take action. Policewomen brought a woman who was in deadly fear of her life in tears to her ex-husband in an attempt to 'reconcile her with her very violent ex-husband'. On top of this, they used the threat of taking her children from her to force her compliance (this all in defiance of a Family Court injunction).

Research relating to the use of discretion among police officers has revealed that officers are very unlikely to make an arrest when the offender has used violence against his wife. In other violent situations, officers typically arrest the attacker regardless of the characteristics surrounding the crime.[10]

During a two week survey done by police in Victoria in 1982, out of 601 domestic disputes attended, the official response to 91 per cent of the calls was that no offence was detected.[11]

If the police do make an arrest in a domestic violence situation, it is most likely to be because their own authority is challenged, not because of the assailant's action towards his wife.[12]

Non-provision of police services to criminal assaults within the home seriously jeopardises women's physical safety and well-being.

In one interview of women in women's refuges, 30 per cent of refuge residents had suffered either life-threatening attacks or been hospitalised for serious injuries such as being kicked, pushed into fires or through glass, thrown against walls or down stairs, being punched or having hair pulled out.[13]

The domestic violence phone-in in Victoria reported that broken bones, skulls and miscarriages were not infrequent events and

weapons are often used including knives, broken beer bottles and guns.[14]

Seventy-five per cent of murdered women are killed by a husband or lover.[15]

A woman is far more likely to be a victim of a serious assault within her home than anywhere else. In one study, it was found that only 15 per cent of assaults against women were committed by a person who was not a member of their family. In comparison, men were more likely to be assaulted by a stranger. Husband abuse accounts for only around 1 per cent of all family assaults.[16]

A high proportion of women in our jails are there because they killed their spouse in a final, desperate act of self defence, after years of physical and mental abuse. In one study, it was made clear that the police offered no real help as an alternative to these women's actions. In at least nine of the sixteen cases investigated, police were made aware of the violence suffered by the woman. One woman contacted the police earlier in the marriage after her head had been cut open. The police told her they could do nothing unless they were present at the time. That, and the fact that her husband was friendly with the local police, prevented her from taking further action. In several other cases, women were told, when they complained to the police, that it was only a domestic and to take court action or leave their husbands. The lack of response was tragically apparent in one case where the woman had contacted the police for protection against her husband's violence on the three nights previous to the one on which she eventually killed him. In one case, two small children sought help from the police when their mother was being bashed by their father. The police came but left saying no one was sufficiently injured to take action. The children received a particularly bad beating for attempting to obtain protection for their mother.[17]

Thousands of women each year are forced to flee their homes, often with young children because of the criminal acts of their partners. These women must go to refuges or seek private accommodation in a rental market which discriminates against single women. Many women are forced to go intersate, change their names and leave behind family and friends.

The non-arrest of assailants in criminal assault in the home incidents, makes it extremely difficult for women to claim crimes compensation for their injuries.

At present, the police use a number of rationales to justify their non-attendance and/or intervention in domestic assaults.

The first and most often quoted reason is that women do not want

to take action and even those who initially wish to, drop the charges.

It should be pointed out that the police do not usually allow the perpetrator of a crime and the victim, if any, to decide for themselves whether the criminal law is appropriate once the matter has been drawn to their attention.

The very definition of a crime makes it more than just a matter between individuals. It is a matter of concern for the whole community. When homosexuality was a crime, the police did not say that it was a matter for individuals and not their business to interfere. The police approached their law enforcement task with zeal, taking their initiative as far as using agent provocateurs to catch the 'criminals'. Prostitution is arguably a matter between individuals and still the police are not reluctant to intervene.

As for the argument that women drop the charges, it should be pointed out that in no other area of the law is the victim of the crime expected to initiate proceedings. If the police themselves initiated proceedings, the woman would then not be responsible for the prosecution but a police witness, compellable by law to give evidence. Even accepting the current police practice of insisting that the woman lay charges, not all women withdraw. In Scotland, 933 cases were examined and only 61 per cent of women dropped the charges.[18] By predicting that all women drop charges, women's complaints are excluded from the system.

My experience as a worker at a women's refuge and as a community lawyer, has made me aware that the police do not assist women to commence criminal proceedings even when the women are most insistent that that is what they wish to do.

Most women in domestic violence situations need support to be able to follow through with criminal proceedings. The police's initial response, when attending domestic asaults, that the matter is appropriate only for civil action, is enough to make most women decide that they cannot use the criminal law against their assailants. In a 1983 United States study where women were encouraged to lay criminal complaints, only 7.1 per cent of women refused to initiate criminal proceedings at the stage of police intervention and 60 per cent signed formal complaints at the police station later.[19]

Women who decline to give evidence in regard to their husbands assaultive behaviour do not always do so out of sympathy for their attackers. It is a brave woman who will maintain she will give evidence against a violent man while he is at large to repeat his bashing, or indeed, in the same house as he. One United states district attorney observed that half of the complainants who came to her office to drop charges were

accompanied by their assailants who had threatened them with further abuse unless they dropped the charges.[20]

There could be much more protection given to women between the time when men are arrested and the time cases come to trial.

The law provides that bail may be refused if the court is satisfied amongst other things, that there is an unacceptable risk that the accused on bail would commit other offences, interfere with witnesses or otherwise disrupt court processes.[21]

It would seem, as the police themselves admit that domestic violence is likely to be a re-occurring event, the police would have good grounds to oppose bail or demand special conditions. However, the police invariably grant bail at the police station.

The police argue that domestic violence is a social problem and not a matter for the criminal law. The use of drugs is arguably a social problem, inappropriately dealt with by the criminal law, yet the police do not display any reluctance to act.

The police further argue that their intervention in domestic assaults does not solve or reduce the problem. It is true that many women feel locked into domestic violence situations. Limited resources, unavailability of housing and emotional ties are strong barriers to women's escape. Nonetheless, in instances of acute violence, police intervention is crucial; a woman's life depends on it.

Recent research in the United States of America suggests that arrest, in itself, has a deterrent effect in domestic assaults and is more powerful than warning or mediation.[22]

It is not the role of the police to decide what is and is not a crime. The legislative has decreed assault a crime and the police are duty bound to enforce the law.

The police argue that they have not the power to enter premises in the case of suspected domestic assaults. However, the police in Victoria, have a legislative right to enter private premises without warrant where they have a reasonable belief that a serious indictable offence has taken place and a common law right to enter where they have a reasonable belief that a breach of the peace is occurring or is about to occur.[23]

Thus, in most cases, entry without warrant is not a problem. The reluctance of police to enter private premises is based on the view that women are dependents and men are owners of property. Our law does not contemplate that if a man and woman are living together in a house, both should have equal rights over who enters and what happens within the home.

Finally, the police profess a reluctance to arrest domestic violence assailants because it breaks up families. Every time the police arrest anybody for anything, it breaks up some social network or family unit. It is hard to imagine the police being reluctant to arrest a bank robber because it would upset their mother.

It is the police self-image as crime fighters, the masculine peer solidarity and shared stereotypes about women, which encourage police to avoid using arrest in domestic assault situations.

The Victorian police force is 90 per cent male. In a recent article in a Police Association Journal, the women in the force are implied to be a nuisance because they get married and then get pregnant. The article went on to blame the Equal Opportunity Act for depleting the strength of the force.

In research undertaken in Victoria to compare the views of police with other professionals in relation to domestic violence, it was found, amongst other things that: the police saw domestic violence as a less severe problem than did any of the other professionals; the police showed the least sympathy for the victim; the police held the most stereotyped view of women and the police were far more inclined to view factors such as alcohol and unemployment as causes whereas social workers and refuge workers were more inclined to see these as mere catalysts and see the causes as lying in the patriachal nature of the family and society.[25]

Studies in both the United States and Britain confirm that even when confronted with severe violence, police still produce stereotypes about women, that they are masochistic, 'asking for it' or deserving of their battering.[26]

It is clear that the police often identify with domestic violence assailants. One refuge worker helping a woman to pack her things told me of a policeman at the scene who turned to her and said, 'next you will be helping my wife'.

I recently had a conversation with a policeman regarding pressing charges against a domestic violence assailant. I pointed out to him that as the couple were living together at the time of the assault, the woman would not be entitled to crimes compensation unless charges were instituted. The policeman was outraged and said, 'what, now she wants money out of him as well!'.

In 1976, the New York City Police Department was sued for its policy in handling domestic disputes. One woman claimed that when a police officer responded to her call for help, he said to her assailant, 'well, maybe if I slap my wife around a couple of time, she might behave too'.

Women's refuges and Community Legal Centres have been made aware of numerous incidents of domestic assault where the assailant is a policeman.

Black women in Australia confront particular problems. The police force is racist. Therefore, black women are placed in even more untenable situations. In instances of acute violence, life threatening situations, black women might hesitate to involve police, fearing the response of the police, as they fear the attacks of their assailants.

At present, the police view a home as a man's castle and offer little assistance to the woman trapped and beaten in it. Whilst recognising that the criminal law is not the answer to domestic violence, strong law enforcement should demonstrate that violence is not to be tolerated or condoned by the community in any circumstances.

Endnotes

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THE POLICE ROLE IN DOMESTIC VIOLENCE: SOME IMPLICATIONS FOR TRAINING

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Introduction

According to a submission to the Commissioner for Equal Opportunity, by the St Kilda Legal Service Co-op Ltd. in May 1985, 'police attending domestic arguments discriminate against women and fail to provide protection' (Munday, 1985, 5). Police are alleged to be 'reluctant to intrude' (Scutt, 1985, 5) in domestic disputes and criticism has been directed at police worldwide 'for their lack of concern in the area of domestic violence' (Buchanan and Hawkins, 1983, 11). It has been stated that 'contrary to public belief, police have very limited powers to meet their responsibilities when attending disputes' (Baker, 1984, 34) but others contend that police powers are adequate; they are just not exercised (Alexander, 1985, 37; Martin, 1978, 232; Scutt, 1982, 117). For example, in a submission to the Report of the Legal Remedies Sub Committee of The Victorian Government's Domestic Violence Committee the A.L.P. Status of Women Policy Committee argued that 'police powers should be increased. Adequate legal provisions already exist whereby police can intervene in situations of domestic violence. Such powers should be fully exercised' (Alexander, 1985, 37).

It is the intention of this paper to investigate the police role in domestic violence intervention. Police referee domestics, refer disputants to others, restrain offenders, and remove victims to refuges and other places of safety; often with unclear rights and responsibilities. It is a 'murky grey area' with many problems for police. This paper will look at some of these problems.

Domestic Violence

While it is appreciated that men and children are also victims of domestic violence the theme of this paper will concentrate on violence against wives. The term 'domestic violence' will be used synonymously with that of 'wife beating'.

Historically wife beating has been 'culturally accepted', (Boreland, 1976, x) not only tolerated but approved, (Ellis, 1984, 60) 'acceptable and legal', (Patterson, 1979, 74) 'not treated in the same way as assault in the street' (Seddon, 1985, 7), and 'one of the most under-reported crimes' (Bell,

1984, 23). English common law, on which most of Australia's laws are based, 'gave husbands the right to chastise their wives', (Moore, 1979, 8). Women have historically almost been the property of men, (Stark, 1975, 382) with the law permitting women to be beaten by their husbands; wives being viewed as 'property, rather than equal partners'. (Allan, 1982, 5). An estimated 50,000 domestic dispute calls to Victoria police during 1983 (Barnes, 1984, 2) indicates that this historical view is still the norm in a large sector of society. Women, however, may no longer legally be beaten by husbands, or anyone else, and 'no lawful excuse exists in assault by reason only of the parties being married or cohabitatees' (Scutt, 1982, 114).

Unfortunately there is a worldwide lack of information regarding family disturbances and domestic violence. This lack of data 'has hampered efforts to define clearly the scope of the problem' (Buchanan and Hawkins, 1983, 12) however sufficient is known for domestic violence to be recognised as a major problem of policing in contemporary society. A recent 'phone in' on domestic violence run by the Victorian Government's Domestic Violence Committee revealed that a large number of assaults are being committed daily by husbands against their wives; that legal action by police is an unusual event; that naked fists and weapons such as 'broom handles, bottles - preferably smashed, knives, iron bars, pieces of wooden pailings are essential ingredients' (Lawrence, 1982, 3) in many wife bashings.

Reluctance

According to the Victoria Police submission to the Victorian Government Domestic Violence Committee (1984, 1) 'of all the public calls for police attention the "domestic" is the least favoured by members of the force'. Police are reluctant to intervene in domestic disputes (Gayford, 1978, 30; Marsden, 1978, 115; Wilson 1983, 90) with intervention in family disputes 'one of the more frequent and unwelcome tasks for the police.' (Bell, 1984, 23). While common, domestic calls represent one of the tasks police like least (McPeak, 1979, 37).

But why is it so? Why are police reluctant to become involved in domestic disputes? Why are they reluctant to intervene in cases of wife bashing when 'they could do so, since a man who assaults his wife is in fact not acting legally' (Wilson, 1983, 90) and 'intervention in family disturbances has always been a necessary function of the police' (Bard, 1975, 71).

There are numerous reasons given for police reluctance to intervene in domestics including the belief that attending domestics is not 'real' police work; that domestics are a personal problem to be solved within a marriage or with social worker assistance; that it is difficult to obtain convictions due to victim reluctance; that domestics are time consuming; that

domestic violence is not really a crime and that police powers of entry at domestics are inadequate. In addition 'one must not ignore the fact that police may actually fear getting involved because of their personal safety' (Maidment, 1978, 112). Statistics show that 'over 20 per cent of police deaths in the U.S.A. occur on domestic disturbance calls' (Freeman, 1978, 84) and as yet incomplete research by Victoria Police indicates that a large percentage of assaults against police occur at domestic calls while in the U.S.A. 'about 40 per cent of police injuries occured in the same way' (Bard, 1980, 106).

But attending to domestic violence is 'real' police work, even if the dispute only amounts to a breach of the peace; criminal violent is not a problem to be solved only by the participants; 'the criminal law does not require the consent of the victim in order that a prosecution may be launched' (Scutt, 1982, 113) all criminal investigation is time consuming; 'spouse assault is a crime' (Scutt, 1982, 112) and while 'family disputes and disturbance calls are particularly dangerous' (Goldstein, 1979, 4) to police the danger is also to the victim - for when police do not take legal action, or take inappropriate action, the victim may now be placed in a position of increased danger. There is, however, room for legal clarification of police powers of entry at domestic calls for, although police 'may enter private premises where one of the inhabitants requests police intervention' (Breslin, 1978, 299) and 'there are ample authorities to justify police attendance in domestic crisis intervention when breaches of the peace or serious indictable offences are involved', (Victoria Police, 1948, 8) there is no specific power in Victoria for police to enter private property for the purpose of investigating a complaint of domestic violence. Police who do enter without clear authority leave themselves liable to civil litigation for trespass and/or for criminal prosecution for wilful trespass under section 9(1)(d) of the Summary Offences Act 1966 No. 7405.

Options

Worldwide several methods of intervention are practised by police at family disturbances. Police may 'referee' a domestic; they may refer the parties elsewhere; or they may remove one or both of the parties; that is, the offender may be restrained in custody and removed from the scene or the victim transported to a refuge. 'The role for the police should therefore be to consider all possible solutions, including simple advice or mediation, and clearly also prosecution' (Maidment, 1978, 114).

Police as Referees

For the many who consider that the criminal law is an inappropriate mechanism to deal with domestic disputes the police

role is seen as one of mediation and conciliation or, in police terms, as referees. Sometimes the mere presence of police will re-focus the situation leaving it 'temporarily defused but unresolved' (Jaffe and Thompson, 1984, 12). Police are 'expected to immediately apply skills in arbitration, counselling, or mediation far beyond their ability' (Bell, 1984, 28) and when they fail they are seen as unsympathetic to the victim. There is no doubt that a satisfactory permanent resolution of domestic harmony often calls for counselling beyond the expertise and competence of most members of the police force (Victoria Police 1984b) however, the fact remains that 'the most common form of resolution entails mediation alone' (Jaffe and Thompson, 1984, 15).

We need to distinguish between domestic disturbances and criminal assault in the home. In cases of criminal assault police should consider the matter a crime and deal with it accordingly, however, in family disputes not involving violence or other criminal behaviour police have no choice - they are there to referee, to defuse and to depart. Police, by default, find themselves responsible 'for community problems of a social rather than a criminal nature' (Victoria Police 1984a, 3). The danger here of course is that 'where police make the pretence of counselling disputants without adequate knowledge in civil law, psychology, and sociology their intervention has tended to compound the problems rather than resolve them' (Bell, 1985, 27) for every family dispute 'is a crisis situation conducive to serious violent acts. People become emotional and out of control' (Banks, 1984, 56).

While mediation may be the most common form of domestic crisis intervention it is not always the most appropriate. It may be that no assault has occurred or the matter is otherwise not appropriate for legal action, or a greater degree of expertise is required than is available from the police, or there may be a desire of the wife to take action against an alleged offender in cases where police are unable, or unwilling, to take legal action. This may then be a time to consider another option - referral.

Referral

According to Buchanan and Hawkins (1983, 13) 'while the police are usually the first to be called to the scene of a domestic dispute, in many cases, the police department is not the proper agency to handle the citizens underlying problem' and it may then be appropriate for police to suggest a referral to another source; 'a diversion from the justice system to community agencies' (Jaffe and Thompson, 1984, 14). Bard (1978, 8.17) contends tha 'a referral is appropriate when the capabilities of the officers and those of the disputants, as problem solvers, are

clearly unequal to the task at hand' but the problem is twofold; firstly where or to whom do police refer the disputants, and secondly, how do police motivate people to follow through with referrals in the 'cold light of the next day'.

The Victoria Police constables' course notes on domestic crisis intervention suggest that parties could be referred to:- a marriage guidance counsellor; minister of religion; family solicitor or doctor; the Family Law Court regarding injunctions against marriage partners, counselling, or divorce proceedings; council social workers; or to a magistrates' court or private solicitor regarding civil action for assault. In N.S.W. police are advised to refer parties of domestic disputes to 'social welfare agencies rather than to a chamber magistrate' (Sutton and Hatty, 1985, 6) and to leave a domestic violence pamphlet with the disputants and another in the letter box however 'the use of referral agencies remains problematic' (Sutton and Hatty, 1985, 28).

While it has been held that 'there is an established network of helping agencies in every community ... in most cities a collaborative relationship between the police and social and community agencies does not exist; rather strained co-operation has been more the rule ... the relationship ... characterised by mutually negative stereotyping and distorted perceptions' (Bard 1978, 8.2-8.2). A functional relationship is imperative for referrals to succeed - the police are needed by welfare agencies as early case finders (and for after hours crisis intervention) and police need welfare agencies to follow up referred cases.

Police however must not 'lose track of the fact that wife-beating may be a criminal assault and not just the symptom of a troubled marriage' (Freeman, 1978, 87) and police must then be prepared to take the necessary legal action regardless of the relationship between the offender and victim.

Restraint by Legal Action

All to often in cases of domestics 'we are face to face with cases of brutal violence' (Freeman, 1978, 87) and while 'violence in the home cannot be eradicated by legislation' (Freeman, 1978, 73-4) police who do not take action by arrest, summons, or report, when an offence has occurred leave themselves open to legal action. For example, in 1978, the Police Discipline Board found a sergeant guilty of 'having neglected to properly and diligently carry out his duty as a policeman' (Sun 25/3/78) when he attended a domestic dispute and advised the complainant to see a solicitor following an allegation of a minor assault. This result is difficult to understand when Victoria Police Standing Orders contain this advice:-

> 1.60. In cases where an allegation is made of a minor assault, not witnessed by police, and not resulting in serious or visible harm to the aggrieved party, and where no breach of the peace is continuing on the arrival of police, or is likely to occur on their departure, and where the parties are known to each other, the person making the allegation should be advised to consult a solicitor of a Clerk of the Magistrates' Court with a view to initiating private proceedings for assault if he so desires.'

Action in domestic disputes is discouraged by police who often feel 'that it is pointless taking action as the complainant is not likely to support the action at a later time' (Victoria Police, 1984b) or even because of the fear 'than an arrest could make the violence worse' (Sherman and Berk, 1984, 270). Others believe however that swift legal action against violent persons at domestics 'may deter male offenders', (Sherman and Berk, 1984, 270) prevent more frequent and severe bashings, (N.S.W. 1983, 2) or ensure a family's safety. Some studies have 'found that arrest did have a deterrent effect - domestic assaults were less likely to be repeated then this strategy was used, even though 86 per cent of those arrested were released within one week' (Findings, 1984, 290). Unfortunately, wide and easy to obtain bail makes it unlikely that restrained offenders spend more than a few hours in custody in this state.

The criminal law is said to be either 'a blunt instrument' (Freeman, 1978, 81) or adequate (Martin, 1978, 232; Maidment, 1978, 111; Scutt, 1982, 111; McCulloch, 1985, 1) to deal with domestic violence - conflicting views indeed - and it is no wonder that 'an issue for officers in many of their interventions is whether to lay a charge' (Jaffe and Thompson, 1974, 15). In most jurisdictions arrest is discouraged; 'this has been, and is, an unacceptable practice', (Bell, 1984, 27) police should be prepared to use their existing powers and 'complete full investigations in all cases of spousal assault and to take measures for the protection of and assistance to victims' (Babin, 1984, 4).

Considering the evidence 'that arrest and initial incarceration may alone produce a deterrent effect' (Sherman and Berk, 1984, 20) it is not acceptable that police do not make any justifiable arrests and do not even 'file reports is disputes where arrests were not made' (Bell, 1984, 27).

The recent submission by the St Kilda Legal Service Co-op. Ltd. to the Commissioner for Equal Opportunity maintained 'that police have adequate powers to arrest and charge perpetrators of domestic assaults, they simply refuse to use them, and in doing so, discriminate against wives by systematically denying them protection' (McCulloch, 1985, 1). Marsden (1978, 105) also submits that police fail to use their powers of intervention in

family violence because of 'tacit male approval of, and even secret propensities for, violence.' Police may well be forced to overcome their reluctance to intervene and invoke criminal sanctions in 'family disputes', even though 'they do not regard arrest as the most desirable solution', (Bard, 1980, 112) but the restrictions of arrest, and the ease of obtaining bail, may well limit the times it could be used.

While there is a clear power of arrest provided in section 459 of the Crimes Act in respect to indictable offences and '... a member of the police force may at any time without warrant apprehend any person - (a) he believes on reasonable grounds has committed any indictable offence in Victoria ...', (6231, 459) the power of arrest contained in section 458 of the Crimes Act is a conditional power of arrest which provides that:- 'Any person, whether a member of the police force or not, may at any time without warrant apprehend and take before a Justice to be dealt with according to law or deliver to a member of the police force to be so taken, any person - (a) he finds committing an offence (whether an indictable offence or an offence punishable on summary grounds)...'

Section 458 (1) then goes on to say that this arrest can only be made by a person -

> Where he believes on reasonable grounds that the apprehension of the person is necessary for any or more of the following reasons:
>
> (i) to ensure the appearance of the offender before a court of competent jurisdiction;
>
> (ii) to preserve public order;
>
> (iii) to prevent the continuation or repetition of the offence or the commission of a further offence; or
>
> (iv) for the safety or welfare of members of the public or the offender ...' (6325, 458(1)).

The 'finds committing' provision of section 458 is very restrictive on police and police training notes (1984a, 18) detail the procedure where the victim can 'make the arrest and put her husband in the charge of police'. Police are advised to 'then process the husband as a normal offender, completing the usual forms' (Victoria Police, 1984a, 18) with police prosecuting the case at court. The option of the victim exercising a power of arrest at least provides for some arrest action, and removal of the offender from the scene in many cases where the police have no power and the offence may be repeated if they leave.

This procedure is little used even though police are being trained in its use. The problem of procedures not being used after training is not of course confined to police, it is common in any area where people are trained in one place and then go out to work in the field. The Victoria Police Force has set up a system of full-time District Training Officers and, while they will not overcome this problem completely, it is a step in the correct direction.

There is no specific power of arrest for criminal assault in the home in Victoria BUT - should the offender have been found committing an offence against any of the provisions of the Protection of Animals Act 1966 No. 7432, he may be apprehended by 'any person whomsoever' without warrant, and conveyed to a Justice or delivered 'to a member of the police force to be so taken and delivered' (7432 s.15(1)) and the proviso conditions of section 458 of the Crimes Act do not apply. It appears that if Dad kicks Mum, the children, and the cat, then the power of arrest in respect of the offence against the cat places less stringent requirements on the person making the arrest.

The Victoria Police has previously argued that 'nearly all existing (arrest) powers should be repealed and subsumed under a general statutory power in the form adopted in the Commonwealth Crimes Act', section 8A, which states that 'any constable (including State Police) may without warrant arrest any person, if the constable has reasonable grounds to believe that the person has committed an offence against any law of the Commonwealth or of a territory and that proceedings against the person by summons would not be effective'. A more effective power of arrest could, of course, be made available in Victoria if the word 'indictable', where twice occurring, was deleted from section 459 (a) of the Crimes Act 1958, No. 6231.

In addition to statutory restrictions on arrest Victoria Police Standing Orders at S.O. 4.11 state that 'to deprive a person of his liberty is a serious matter and the utmost discretion should be used. When appropriate, a member shall use summons procedure in preference to exercising a power of arrest'.

There is however another means of restraint rather than arrest and that is the intervention order - an order issued by a court restraining a person from specific behaviour. The recently released discussion paper 'Criminal Assault in the Home: Social and Legal Responses to Domestic Violence (Victoria 1985)' proposes that intervention orders be introduced similar to other Australian states. In effect the proposal would permit a member of the police force or, the victim (of the behaviour complained about) or a third party, with the consent of the victim and leave of the court to make application to a magistrates' court for an intervention order. Intervention orders are preventative, seeking

to prevent criminal offences and breaches of the peace and, while seen as appropriate, the Victoria Police Force contends that 'too much reliance ... is placed on the "intervention order" to provide an answer for the initial complaint' (Victoria Police, 1984b). 'There is a movement in Adelaide to do away with protection orders and to use a vigorously enforced criminal law' (Seddon, 1985, 9) and in discussing the UK Domestic Violence Act Elizabeth Wilson (1983, 200) believes that 'even with an injunction it was in any case difficult for the woman to persuade the police to enforce it'. Intervention orders, like criminal laws, are only effective when enforced, and, in N.S.W., 'despite alterations to (police) training procedures following the 1983 legislation, it appears ... that attitudes to involvement in this work have remained unchanged' (Sutton and Hatty, 1985, 14). A similar problem may well exist in Victoria however the recent appointment of the District Training Officers throughout Victoria should help.

Police reluctance to become involved in domestic disputes has been one of the reasons behind the establishment of women's refuges - for when the victim cannot stay, and the offender is not removed, the battered wife needs somewhere to go.

Refuges

While husbands today no longer have the right to lock up their wives 'to prevent their future escape' (Renvoize, 1968, 16) many women are prevented from leaving violent men and 'the reasons for staying are depressingly mundane. The majority of victims have no jobs, or work experience, education, skills, or money. The only thing many of them have is children, and while the husband/father may be abusive, it's his wages that put food on the table and social meaning in their lives' (Babin, 1974, 2). Yet another reason for staying is simply that there is nowhere to go. However, since the early 1970s, women's refuge movements throughout the world have established shelters for 'womem and their children fleeing from violent domestic situations'. (Johnson 1981, vii).

Victoria Police (1984a, 24) training notes advise that 'Women's Refuges or Half-Way Houses exist to provide emergency shelter for women with or without their children in times of family crisis' and provide some telephone numbers where help to obtain emergency accommodation may be available (1984a, 25). There is a tenuous relationship between police and refuges for some refuge staff and 'most battered women do not experience the police as protective' (D.V.A.G., 1985, 16). There is a deplorable lack of knowledge among police of the role and function of women's refuges and a lack of co-operation sometimes evident between the two; this is an area that needs to be addressed by both the police and the refuge workers. There is a need to get together.

Conclusion

Attendance at domestic disturbances and family disputes is a large part of police duty and domestic violence is 'the most common form of assault in Australia' (N.S.W., 1983, 2) however police have an historical reluctance to intervene beyond refereeing the dispute. There is an ambiguity concerning the police function, between their law enforcement and social welfare roles, an ambiguity that has not yet been, but must be, resolved for police do not make sufficient use of the criminal law in circumstances of violence against wives.

There are legislative, regulative, social, cultural and historical obstables to police action; particularly by way of arrest or other legal action. Police may well be forced to modify their procedures if they are not prepared to do so willingly. Some authorities contend that police have insufficient and limited powers to resolve domestic disputes while others maintain that police powers are adequate but not exercised. This writer believes that there is a need for increased research into domestic violence and a need for increased police training so as to reduce the large gap in the knowledge of police of their rights, powers and obligations at domestic disputes. The problems will not go away by themselves.

The Victoria police are constantly involved in training research and in up-dating their training program. This area, training in domestic crisis intervention, has been improved in recent years and is continually being upgraded. The restriction on arrest is a main problem in Victoria. Police are instructed to use summonses wherever possible, not only in cases of domestic violence, and there is a strong community reaction in Victoria against the use of arrest power or in giving the police additional arrest power.

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THE FAMILY COURT AND DOMESTIC VIOLENCE: MORE OF THE RACK AND LESS OF THE RUBRIC

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Violence committed by husbands against their wives is commonplace in the breakdown of many marriages, either as a cause of the breakdown or as an outcome of it. To deal with this problem, courts exercising jurisdiction under the Family Law Act are invested with significant powers designed to forestall further violence and to punish where it occurs.

Despite this array of legal powers, there is a widely-held view that the Family Court is completely ineffectual in protecting one spouse from the harassment and violence of the other. Injunctions issued by the Court are said 'not to be worth the paper they are written on' and its Judges are accused of turning a blind eye to all but the most blatant and outrageous of assaults. Many lawyers and welfare workers actively discourage women from seeking the Family Court's assistance. This appears not only to be the case in those States where there is alternative State domestic violence legislation but also in those where there is none. Women in the latter jurisdictions are effectively left without legal protection.

How is it that a Court which was specifically set up to deal with family disputes and whose Judges are supposedly chosen for their experience in these matters, should prove so inept at dealing with a problem which is commonplace in many Australian families?[1] Some would attribute the Court's attitude to the inherent sexism of its Judges and their continued adherence to the myths about domestic violence which prevail in the wider community. While this may be true of individual Judges, it fails to explain why the Court should, as a whole, be any worse or 'softer' in its approach to violence than other Courts. More likely explanations are to be found elsewhere. The most significant are the Court's 'constitutional isolation' from the police forces upon whom it must rely to apprehend offenders; the inappropriateness of civil procedures to deal with acts of an inherently criminal nature; and the dominant conciliation philosophy within the Court which holds that family disputes are best resolved through counselling of parties rather than by judicially imposed decisions.

While much has been written and said about the State domestic violence laws, little attention has been paid to the Family Court's role, probably because it has been seen as so ineffectual. The purpose of this article is to describe the present operation of the personal protection provisions of the Family Law Act and to examine the legal and policy questions which arise from it. Some recommendations for change will also be made.

This article draws heavily on a research paper written for the Australian Law Reform Commission by the author, Jenny Fitzgerald and Susan Wilson. The paper dealt with the enforcement of Family Court orders, including 'personal protection' injunctions. It was prepared as part of the Commission's reference on the law of contempt under the direction of Professor Michael Chesterman.

The Commission had to more or less start from scratch in its research. We undertook a modest empirical program which was a balance of quantitive and qualitative research. Where there were identifiable groups (such as Judges and Magistrates) whose ideas and experiences could be sampled in a statistically valid way, and where it was possible to formulate simple questions which lent themselves to pre-coded answers, we adopted a quantitive approach. A survey was administered to the Judges of the Family Courts of Australia and Western Australia and to all Magistrates throughout which collected basic information on the enforcement work-load of their courts and judicial views about the present law and reforms to it. The Commission also examined the Principal Registry's sentencing records and a small sample of current contempt and enforcement proceedings. Much of the research was exploratory in nature, however, and dealt with diffuse issues in relation to which people's reactions were likely to be varied and anecdotal. In this situation, qualitative methods seemed more appropriate and the Commission undertook an extensive interviewing program throughout Australia. Persons interviewed included victims of domestic violence, women's refuge workers, family law practitioners, State and Federal police, family therapists, Magistrates, social workers, representatives from women's information services and various single parent associations and Judges, Registrars and Counsellors of the Family Court.

PRESENT LAW AND PRACTICE

The Legal Structure

Section 111(1) of the Family Law Act invests courts exercising jurisdiction under the Act with power to make a range of injunctions. For the purposes of this paper, the relevant provisions of the Section are these:

The Court may make such order or grant such injunction as it thinks proper with respect to the matter to which the proceedings relate, including:

(a) an injunction for the personal protection of the party of the marriage or of a child of the marriage;

(b) an injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specified area, being an area in which the matrimonial home is or the premises in which the other party to the marriage resides are situated;

(c) an injunction restraining a party to the marriage from entering the place of work of the other party to the marriage or restraining a party to the marriage from entering the place of work or place of education of the child of the marriage; or,

(d) an injunction for the protection of the marital relationship.

Failure to obey an injunction can be punished under Section 114(4). The Court can fine the offender up to $1,000 or require him to enter into a recognisance, with or without a further requirement to post a surety to comply with the injunction. The court cannot impose a sanction of imprisonment under this Section, save in circumstances where the offending spouse refuses to enter into a recognisance and then only until he does enter it or the expiry of three months, whichever is the earlier.

A breach of an injunction may also amount to a contempt of court punishable under either Section 35 or Section 108 of the Act. Both these Sections invest the Family Court with the common law powers of contempt, which permit it to impose whatever punishment it considers appropriate to the disobedience. This can include a recognisance, a bond, fine, suspended sentence or actual imprisonment. There is no ceiling on the length of the term of imprisonment which the Judge can impose. The practical operation of these provisions will be traced chronologically from the woman's first call for outside assistance through to enforcing any injunction which she obtains.

The Call for Assistance

When a woman has separated from her husband and he harasses or abuses her, her first reaction will usually be to call the police for protection. More often than not, this action will produce unsatisfactory results for the woman. As is well known, police

can be extremely reluctant to become involved in domestic disputes. They will usually suggest to the woman that she obtain a restraining order and say that they can do nothing to assist until she has one. The police will be limited to warning the husband off or escort him from the property and then leave. The woman will usually have to wait out the night or weekend to contact her solicitor, in fear that her husband will come back and now with the certain knowledge that she cannot rely on the police for protection.

The advice which police give when first attending domestic violence disputes is often misleading. During the course of the incident the husband will often have committed a number of criminal offences, such as assault which would permit the police to arrest and charge him. The situation will be even clearer when the parties have separated and are living physically apart. In attending at the woman's house, the man may have committed trespass, break and enter or malicious injury to her property. Where a police officer reasonably believes that a person has committed an offence he or she may arrest that person without a warrant. Arrest has a particular practical importance in domestic violence matters as it enables the police to provide the woman with immediate protection by removing and detaining the offender. The attitude which the police take at this point determines the future course of a domestic violence matter. By refusing to take action, the police direct the woman away from the criminal law towards the civil law. From the beginning, the task of gaining protection for herself and her children is thrown back on the woman. She, rather than the State, will bear the responsibility and ultimate cost of bringing proceedings against her husband. So far as the man is concerned, the lack of action by the police means that he escapes punishment by the State for the violence and harassment which he has already committed. The civil proceedings will only be directed towards stopping him acting in this way again.

Obtaining a Restraining Injunction

In general, restraining orders are not difficult to obtain from the Family Court. Most Judges will not require proof of any physical violence between the parties and will readily make injunctions where there is evidence of the husband verbally abusing the wife, threatening her or frequently attending at her home. The Judge need only be satisfied of these matters on a civil standing, that is on the balance of probabilities, and not by the more stringent criminal standard, beyond reasonable doubt, which would have applied if criminal charges had been laid.

Perhaps surprisingly, many clients, practitioners and Judges reported that a large number of injunction applications never come on for hearing and the orders are made by consent between

the husband and the wife on the first date in Court. It would seem that because injunctions are so readily obtainable, many lawyers advise their male clients that it is cheaper and easier for them to consent at any early point. While they may be reluctant at first, many seem happier to consent when it is pointed out that the making of the injunction does not attract any immediate consequences for them. Injunctions are also often sought together with a number of other orders such as for maintenance and access. The husband's consent to the injunction can be his 'quid pro quo' for the wife's concession on one of the other orders.

The major complaint from women at this stage of the process was the length of time it took to obtain the order. Applications usually come before the Family Court between three and four weeks after they were filed. It will be in a duty list with up to forty other matters. The Judge will usually not be able to hear the application on that day and in any event would probably decline to do so until the husband had filed his own affidavit answering the allegations made in the wife's application and supporting affidavit. The matter will therefore usually be adjourned for a hearing some three or four months into the future. Obviously where the woman is living in almost daily fear of a recurrence of the incident which led her to making the application, this gap in providing her protection is plainly unsatisfactory if not potentially dangerous. During this time the woman is without the protection of a Court order. By contrast, if the husband had been arrested by the police when she first called them for assistance, he would either be kept in custody or released on conditional bail that he not harass, approach or molest the wife until the first return date. If he pleaded not guilty on that day, he would then have been bailed again on similar conditions until the hearing.

In urgent situations, the Family Court has power to make orders on a few hours notice and without the need for the respondent to be notified or present in Court (called 'ex parte' orders). Traditionally, all courts have been very cautious about using this power, believing that a defendant should generally be given the right to be heard before an order is made against him or her. The Family Court takes a particularly strong line against ex parte orders for the further reason that they are seen as being 'highly inflammatory' and undercut the chances of conciliation.

The Chief Judge of the Family Court has issued a practice direction whose main purpose is to narrowly constrict the use of ex parte orders[2]. Practitioners report that few ex parte orders are now sought and even fewer made. This policy appears to apply across the whole jurisdiction, including the making of personal protection injunctions. As one practitioner said, 'To get an ex parte injunction you have to show the Judge a few broken bones and a bit of blood.'.

The Effectiveness of Injunctions

The notion of an injunction is that it secures protection for the woman by requiring the husband to modify his previous behaviour towards her.

For some men, the very making of a restraining order seems sufficient to kerb their violence. Some men have a degree of fear of, or respect for, the law and its authority. A statement by a figure of authority - a Court of law - that their behaviour is unacceptable and should not continue can have a salutory effect. In some cases, merely by exposing behaviour hitherto hidden inside the family and the home, the restraining order can operate to prevent the recurrence of violence. An injunction can be useful in circumstances where the harassment as yet falls short of physical abuse.

> 'The most successful role of the Family Court injunction has been to nip potentially violent disputes in the bud, if this is possible, and to deter continuing overt conflict. To date there has been little it could achieve in terms of real protection in a dangerous situation.'[3]

For some men, an injunction serves only to close off certain avenues of conduct but not to dissuade them from keeping up the harassment of their wives. They will be very careful to comply with the strict terms of the order, such as not approaching the woman or attending at her home. The methods of harassment which they take up instead are not susceptible to proof or disproof in a strictly legal sense. For example, they will call the wife at all hours of the night but hang up when she answers the phone; damage her car or let its tyres down; or send her threatening notes with letters cut out of newspaper. This sort of mental or psychological harassment can be devastating to a woman. In some cases, its effects on her will be more permanent than a black eye or a broken rib.

Many men are far less devious or subtle and will openly defy the order. It is difficult to tell what is the exact level of disobedience as the Family court does not maintain any statistics on this question. Lawyers and community workers said that non-compliance was 'common place', 'disturbingly high' and 'rampant'. In our questionnaire, we asked Judges to indicate the frequency with which enforcement matters came before them in relation to the different types of orders. The following tabulates their responses:

	Frequently	Infrequently
Access	94.1%	5.9%
Non-molestation	91.2%	8.8%
Custody	58.8%	4.2%
Property	47.0%	53.0%
Maintenance	41.0%	59.0%
Procedural orders	23.5%	76.5%

Breaches of access and non-molestation orders, far and away, were the most common source of enforcement work within the Court.

One of the more surprising observations to emerge from our review of the Court files was the shortness of time between the making of the original order and the first act of disobedience. Orders were commonly breached within the first two or three weeks and many within a matter of hours of being made. Women commonly stated in their affidavits that where the order had been made in the morning, their husbands assaulted them that afternoon. The men were alleged to have made statements to the effect that 'now we're even' or 'you deserve this for what you've done to me'. Some cases have actually involved assaults on women in the precincts of the Court immediately after the hearing granting a restraining order. In one particularly notorious case, the man knocked his wife to the floor in the corridor outside the Court room and began strangling her. He was only stopped when his lawyer and the Court orderly hit him with a chair and a table.

Another surprising finding to emerge from review of the Court files was the large number of injunctions originally made by consent which were subsequently breached. This may not be surprising given that the large number of injunctions originally made by consent. However, a number of lawyers said that they often had more problems with consent injunctions than with those made in a defended hearing. One explanation given was that the parties tended to view consent orders as being more in the nature of private agreements than decisions bearing the authority of a Judge. Also, parties were said to consent to orders out of pragmatic or tactical considerations although they may not in fact really be in agreement with the order or have any intention of complying with it once they are out of Court.

Police Response to Non-compliance

When a restraining order is breached the woman will usually again turn to the police for their assistance. The woman, having

followed the police advice and obtained a restraining order, has every reason to believe that the police can now help her. However, they will usually maintain their earlier reluctance to become involved in a domestic dispute. When she shows them that her injunction was obtained from the Family Court Order, that reluctance will become a fixed determination to avoid taking any action at all. The police tell the woman that they have no power to enforce Family Court orders and cannot arrest the man even if he is clearly in breach of the order. Women are advised to contact their lawyers and to get them to bring enforcement proceedings in the Family Court. The situation facing the woman is summed up well in the following comment:

> Ironically, many women complained that when they called the police to the scene of domestic violence, the police would say that they could not do anything unless the woman obtained a Family Court injunction. Once the woman obtained an injunction and called the police to another incident she would be told the police cound not do anything because the woman had a Family Court injunction.[4]

The police view of the situation is in a strict sense correct. They do not have a general power to arrest a person whenever they wish. They must reasonably believe that the person has, or is, committing a criminal offence. Injunctions made by the Family Court are civil orders made in a civil jurisdiction. Breach of those orders does not constitute a criminal offence and so the police have no power to arrest. Again, this does not mean that the police could not arrest the husband if he has committed some criminal offence in the process of breaching the Family Court order, such as assault or trespass. However, the police are unwilling to look beyond the Family Court order, and it is difficult to avoid the conclusion that its very existence provides them with an excuse to take no action at all. In the result, the woman is left without immediate protection and the burden of taking action against the husband for his violence is once again thrown back on the individual woman.

In an attempt to strengthen the injunction remedy, Federal Parliament added Section 114AA into the Act. This Section provides that the Court can attach to an injunction a power of arrest. This power of arrest will not be attached automatically and has to be separately applied for. Where a police officer reasonably suspects that the injunction has been breached, he or she can call up the power of arrest and detain the husband until he can be brought before the Court on the next sitting day.

However, it seems clear that this amendment has had little or no impact. The impression gained from discussions with practitioners

and Judges is that the power of arrest is very rarely attached. The reason for the lack of use of the amendment is unclear. Practitioners say they do not even bother to ask for the power to be attached to injunctions because the Court will never grant it. Conversely, Judges wonder why practitioners do not apply for it more often.

It may be argued that the use for the power of arrest will increase over time, as practitioners become more aware of the existence of the power and Judges more comfortable about attaching it. However, if the English experience has any parallels in Australia, it is unlikely its use will increase greatly. In 1978 the power of arrest available in England and Wales under the Domestic Violence and Matrimonial Proceedings Act (U.K.) 1976 was attached to just under fifty per cent of injunctions made under the Act.[5]

Even if the power of arrest were more readily attached by the Family Court, there is evidence that it would rarely be used by the police. Although the Family Law Act states quite clearly that State and Northern Territory Police have the same powers of enforcement as the Federal Police, officers of these forces frequently claim that they cannot use an arrest power of a federal court.[6] It is unclear whether there exists a general misunderstanding on the part of State police or whether the confusion serves only as a convenient excuse not to take action in matters in which the police are in any case reluctant to become involved. The Federal Police have only a small contingent in each State and they are unable to step into the breach. The woman is caught in a policing 'catch-22'.

Enforcing the Order

Thus, the woman is not able to rely on the police to ensure her husband's compliance with the injunction. If she wishes to maintain the efficacy of the injunction and his future compliance with it, she must bring proceedings in the Family Court to have him punished for the breach. She can bring proceedings under either Section 114(4) or for contempt.[7]

While enforcement proceedings for non-molestation matters may form the second highest category of enforcement work in the Court, it is clear that at the other end of the process few penal sanctions are ever imposed. Only 145 sentences have been imposed in the Court's ten years of operation and only 72 of those have been for breaches of non-molestation orders. This would indicate either that Judges rarely impose these sorts of sentences on conviction or that few applications reach this point at all.

In its questionnaire the Commission asked Judges to indicate on a four point scale how many applications for contempt in the

various categories of orders went on for a hearing, including those for non-molestation. The results for the injunctions were as follows:

All or most	Some	Few	None
3 (8.8%)	20 (58.8%)	9 (26.5%)	1 (2.9%)

These figures indicate that there is a significant drift between the filing of enforcement proceedings for breach of a non-molestation injunction and hearing. We expected that this would be attributed to the usual explanation of a lack of resolve on the woman's part to continue with the proceedings. While many of those we spoke to said this accounted for a number of cases which never went to completion, there was an almost unanimous view that Judges and Magistrates were largely responsible. They were said to bring considerable pressure to bear on parties to discontinue proceedings and to attempt to resolve the difficulties through some alternative means, usually by conciliation and counselling. There appears to be an active judicial policy to 'shunt' applications for enforcement, including those in domestic violence matters.

There is a deeply held view amongst the judiciary that the exercise of judicial power is not only inappropriate but inimical to the resolution of many family law disputes. These views can be summarised as follows:

Conciliation as the best solution

The dominant philosophy of the Family Law Act is to encourage the conciliation of disputes rather than their litigation. Court proceedings are said to exacerbate the bitterness and trauma of the marital breakdown for the parties and their children and draw out the process of establishing their lives apart from each other.

Legal proceedings too narrow and inflexible

Contempt and enforcement proceedings require the Court to focus merely on the question of whether the alleged breach was committed and whether that breach was accidental or not. In the view of many Judges, it is impossible to view breaches of orders in isolation like this. The non-compliance will often be the product of another dispute between the parties or the general level of bitterness and tension between them. While not strictly excuses in law, many Judges take the view that the circumstances surrounding the dispute often make it unjust or unrealistic to punish for the breach.

Punishment will not ensure future compliance

Because of this view of the wider causes or context or non-compliance, Judges take the further view that future compliance is often not best achieved through the imposition of a sanction. The disobedience will only be brought to an end when the underlying dispute is resolved.

Sanctions inappropriate to family law

Finally, many Judges feel that the imposing of criminal sanctions does not fit with the caring and helping atmosphere of the Court. They feel it is inappropriate to send spouses to gaol, to fine them or to put them on a bond for conduct which arises out of the breakdown of a personal relationship. One Judge said to us, 'Every time I have to send someone to gaol, which is thankfully rare, I feel that somehow the Act and the court have failed. It is just not appropriate to govern and constrain conduct between members of a family with the devices which are so rough and insensitive as sanctions found in the criminal arena.'.

When 'shouting' an enforcement application a Judge may decide to adopt one or more of the following devices in a bid to secure compliance:

Warning or reprimand

The Judge will usually try to persuade the respondent to observe the order and warn of the consequences of disobedience, making reference to the Court's power to gaol an offender.

Counselling

The Judge may direct the parties to attend a counselling session in an attempt to resolve the emotional difficulties between them.

Varying the order

Many injunctive orders are made in quite general terms prohibiting the husband from harassing, molesting or assaulting the wife. The Judge may vary the terms of the order to more closely define what the husband can and cannot do.

The enforcement application itself is often withdrawn by the parties or dismissed by the Judge with their consent. However, a large number of applications seem to be stood over generally with liberty to either party to restore to the list on the giving of notice to the other. This means that applications simply lie on the Court file and it is not unusual to find two or three such applications on a single file.

Where the enforcement proceedings do proceed beyond this process of judicial diversion to a hearing and the husband is found to be in breach, the sanction imposed is by the ordinary standards of the criminal law very moderate. The Court sentencing files disclose that the usual sanction is a recognisance or bond. Suspended prison sentences are imposed from time to time and actual sentences are rare. The length of these sentences is usually comparatively short from 4-6 months at the most.

The approach of Judges to enforcement proceedings drew strong criticism from lawyers and clients with whom we spoke, particularly in relation to domestic violence cases. Many lawyers said that the notion of conciliating or settling a domestic violence case was simply unrealistic. A community legal centre lawyer said, 'How can you expect a woman who has been beaten up by her husband to talk things over with him and work out some agreement about him not hitting her in the future ... but this is what happens every day in the Family Court. Judges are adopting unrealistic attitudes about what is and what is not possible between people who have gone this far down the litigation road.'.

It is also said that Judges persisted in shunting enforcement applications where it had clearly not worked in the past and the husband had continued to breach the order. They said the problem often arose because successive applications were dealt with by different Judges. Each, coming fresh to the matter, tried the same tactic as the Judges who had dealt with it before him or her, but often without regard to whether they had been successful in securing compliance. One Canberra practitioner told us that 'the treadmill of litigation had been replaced by the treadmill of conciliation'.

It was also said that after the first shunting many men soon learn to exploit the judicial process of shunting or 'the conciliation game' as many lawyers call it.

> They know that if they get up in Court and make suitable noises of contrition and promise not to do it again, the Judge will let them off. Of course, most of them never had any intention of complying and they soon break the order again. This can go on time after time and it is very discouraging for the other party.

The applicant, on the other hand, feels embittered towards the court because he or she has had to bear the cost and stress of bringing proceedings, with no tangible outcome.

As one commentator has written:

> No one can be as frustrated as the victim who has suffered several threatening crises, spent over $1,000 in legal costs, and many trips to a solicitor over a period of weeks - to what end.[8]

Many women also felt their claims of abuse were trivialised by the Judge or they were disbelieved or were being blamed for the violence.

The predictability of the Court's attitude to enforcement proceedings has led many practitioners to advise their women clients not to institute these proceedings. One Adelaide lawyer said it was quite embarrassing to tell women who return with a breach restraining order that the action which she takes is unlikely to have much effect. But he said, 'You cannot with a clear conscience take money from her without explaining to her the futility of the action'. Interestingly, it seems only at the point of disobedience that lawyers inform their clients of the difficulty in enforcing an order. When they first seek the order, women are left with the impression that it will achieve what it is designed to do: protect them from their husbands. It is only when he disobeys the order that she learns from her lawyer that the injunction 'is not worth the paper it is written on'.

Conclusion

The Commission's research clearly bears out one point: although the Family Court is invested with a range of legal powers for dealing with domestic violence, they are certainly not effective to prevent it nor can they be relied upon to produce effective punishment where serious violence has undoubtedly occurred.

POLICY ISSUES

The present operation of the personal protection provisions of the Family Law Act give rise to two major questions of policy. Firstly, are civil proceedings by way of injunction the most appropriate mechanism for dealing with domestic violence? Secondly, what is the proper role, if any, of counselling and conciliation in the resolution of violent situations between spouses?

Criminal v. Civil

Our legal system is divided between the civil and criminal law. The placing of a law in either the criminal or the civil stream thus determines the fundamental character of that law. The criminal law is largely the concern of the State. Through it, the State proscribes certain conduct as being unlawful and imposes sanctions upon a person who commits such conduct. The State and its agents are involved with the administration of the criminal

law from beginning to end. The police arrest those who are alleged to commit a crime, Police or Crown prosecutors conduct the case against the accused, the Courts impose penal sanctions and the corrective institutions carry them out. The victim has no part in all this other than reporting the crime as a witness in the hearing. On the other hand, the civil law and courts are a system of arbitration provided by the State to resolve disputes between private individuals. The State has no role to play beyond providing the arbitrator.

The restraining order has its historical roots in the courts of equity and falls squarely within the civil stream. A growing number of commentators overseas and in Australia argue that the civil law is inappropriate to deal with domestic violence. The following reasons are given:

- Where violence between spouses is dealt with in the civil law, it retains the character of a private dispute between them. Violence between spouses should be treated in the same manner as violence between strangers. The focus should be upon the criminality of the act itself and not on whether or not the attacker and the victim are or have lived together in a relationship.

- The restraining order condones <u>at least</u> one beating. A woman, having been beaten, turns to the legal system for assistance. Her call for assistance is responded to with a warning, delivered to her husband through the restraining order, that he should not repeat the battering he has already given her. It forbids him to do what he is already forbidden by criminal law to do. In so doing, it effectively turns a blind eye to the first beating and promises to intervene only when a further beating has been reported. In this way, the restraining order reflects the community's tolerance of domestic violence. The State ignores the opportunity which it has, through its laws, to make a firm statement of intolerance of domestic violence.

- Where her remedy against violence lies in the civil courts, the woman bears the financial and emotional burden of bringing and conducting the proceedings for the order and any further proceedings to punish for the breach.

- The civil process lacks certain powers of the criminal process which are important to providing immediate protection for women. The most notable of these are the police power of arrest, police bail and the power of the court to impose bail pending the full hearing of the charge.

- Dealing with the violence by way of the criminal law will have a greater psychological impact on the husband. He will be finger-printed, photographed and consigned to the police cells for some time. He will have to appear in Court along with other people charged with a range of criminal offences. By contrast, the Family Court deliberately sets out to be less threatening. Its Judges and lawyers do not wear wigs and gowns and it is directed to proceed without 'undue formality'[9]. The anecdotal and other evidence collected by the Commission on the Family Court's operation clearly bears out many of the criticisms set out above.

- The very existence of civil remedies for domestic violence as an alternative to the criminal law provides the police with the opportunity to prevaricate and to avoid taking action.

However, equally civil procedures for domestic violence have some advantages over the criminal law. Those include:

- The standard of proof applied in the civil law is much less rigorous than that in criminal law. The plaintiff need only prove her case against the defendant on the balance of probabilities and not beyond reasonable doubt. This can be particularly important in a domestic violence matter. Often the only witnesses to the assault are the victim herself and the children, who are generally not called to give evidence. It is therefore often the woman's word against that of her husband. Many men are quite convincing and presentable in the witness box and many women are not. This can be for several reasons. Where the man has worked outside the home and the woman in it, his social confidence and self-assurance will usually be greater than hers. As with sexual assault cases, the prospect of going back over the violent incident in open court and before the attacker can be distressing and traumatic for the victim.

- A restraining order can be tailored to meet the circumstances of each case specifying that the husband not telephone the woman, approach within fifty metres of her house or ten metres of her, etc. The criminal law necessarily has to be drafted in very wide terms because it has to apply at once in a diverse range of circumstances. It can be more difficult to prove that certain conduct breaches a widely phrased criminal law than a more narrowly drawn civil order. For example, where a husband persistently attends at his wife's house or calls her, it is necessary for a criminal prosecution to further prove that that conduct further amounts to an assault or puts the wife in fear. However, if she obtains

a restraining order prohibiting the occurrence of that particular conduct, then it is sufficient if it occurs again for the husband to be punished.

- Many women may wish the intervention of the law but consider criminal charges against her husband too drastic. On the other hand, a wife may well be prepared to adopt the more moderate expedient of claiming a Family Court injunction or a restraining order under State or Territory legislation. The profound emotional implications of invoking the criminal law against one's spouse are thereby averted.

- Because civil procedures look to the future and do not impose punishment for past conduct, husbands will often readily agree to consent to orders. This can make the process of obtaining protection much cheaper, quicker and less emotionally draining for the woman. However, as outlined in the first part, there is a concern that men treat consent orders lightly. But this may be more a function of the Family Court's failure to reinforce those agreements by punishing for breach.

- Civil proceedings leave control in the wife's hands. She and her lawyers decide how the case is to run, what witnesses are to be called and ultimately, whether to discontinue the proceedings.

It is this last point around which the larger part of debate about criminal and civil laws for domestic violence revolves. Leaving the carriage of the proceedings against the attacker to the victim is said to be a disadvantage rather than an advantage by the proponents of the criminal model. There is a concern that if the proceedings are left to the individual woman, she may decide to withdraw them. It is said that the reason a woman does not go ahead is because she is overborne by her husband or because she is overtaken by her own feelings of guilt and remorse, which are part of the very dynamic of violence she is caught up in. Transferring the prosecution of the husband to the criminal stream and into the hands of the State prosecutors relieves the woman of the difficult burden of making these decisions. Those who support, or perhaps more accurately do not oppose, a woman's right to withdraw argue that her reasons can be more complex. She will often decide that the relationship is worth keeping and that the continuation of the proceedings will be too disruptive to it. Whether or not she is ultimately proved right, this assessment is said to be one that only she can make.

This debate in the end comes down to a view of the relationship between the State and the family. The proponents of criminal remedies take the view that violence between spouses is a matter

for the State and not the individual family members. The State should prosecute the attacker, largely regardless of the victim's wishes and irrespective of the effect it may have on the relationship between the attacker and the victim. Underlying calls for tougher action is often a view that a battered woman should not remain in a violent relationship and that as she is often not in a position to appreciate that a separation is in her interests, she should be given a push in that direction. This approach would radically shift the balance between State intervention in personal relationships and the automony of those relationships. It would underwrite a close supervisory and surveillance role for the State over personal relationships. As the French writer, Donzelot, says of this view:

> 'The family ceases to exist as an autonomous agency. The tutelary administration of families consists in reducing their horizon to supervised reproduction ...'[10]

or to put it in plainer words, ensuring the conformity of personal relationships to a particular model approved by the State. This view, however, goes beyond a mere redefinition of the family and relationships between men and women.

The existence of those relationships would no longer form any barrier to the reach of State power and the State would deal directly with each citizen.

It is well established that the family has and continues to be the main site of women's oppression and the restraint of the legal system in intervening to protect women from the violence of their partners is a particularly powerful example of this. However, with the destruction of the traditional structures of the family should not also go notions of the autonomy of personal relationships within our society. In my view, the State can only have a remedial role in dealing with those relationships, intervening where its assistance is requested or required by either party to that relationship.

In the first instance, the power to determine the continued existence and future course of a relationship must lie with the individuals within it. To take that from the individuals and mark it out as an area of State responsibility is to run the risk of creating an absolutist and 'paternal' State. This, in turn, brings the greater risk of that State not always remaining 'feminist' or 'non-patriarchial' in values and becoming an instrument of even greater social oppression.

This view may well be dismissed as reactionary, seeking to revive discredited notions of 'the liberal state' current since the nineteenth century and the tolerance of violence which it

peddled. However, the traditional theory of 'the liberal state' and the notion of an autonomy of personal relationships differ in one significant respect. The measure of State intervention in the liberal state of the nineteenth century was the seriousness of the violence and not the individual woman's wishes. Certain violence was not only tolerated but seen as being a man's right of lawful chastisement and a woman's plea for intervention to stop that violence went unheeded. When, however, violence committed by a husband against his wife reached a certain level, it crossed over into the public arena and the State was justified in prosecuting him. Hence, the infamous 'rule of thumb' - a man could lawfully beat his wife with a stick of the thickness of this thumb but when he used a thicker stick the violence became a crime. The liberal state, dominated by men, rather than the individual woman determined the boundaries of the family from outside.

The view I proposed takes as the measure of State intervention the woman's own decision. She, rather than the State, determines the boundaries of the private sphere of her relationships and when those boundaries are to be breached. She has power to call in the State to assist her with a violent partner, to decide what the level of that intervention should be and when it should end. However, once she puts the violence in the public arena and decides that it should remain there, it is encumbant upon the State to act against the violence with the full force of the law.

It is for these reasons that the retention of civil laws dealing with domestic violence is important because they, in theory, give the woman greater control than the criminal law. But equally, the present inadequacies of the civil law which impair its ability, once invoked by the woman, to protect her and deal publicly with the offender must be corrected. This will be dealt with in the last part.

The arguments and counter-arguments in this area become somewhat circular. The balance between autonomy of personal relationships and the remedial state may be said to perish on the rock of women's inequality and lack of power in those relationships. The very reason she is assaulted and remains within the relationship is because she is dominated and oppressed by her husband. Any notion of her exercising a free will to call upon the State for assistance is fictional. However, this is where the limits of the law are reached. Stronger laws about violence and their more rigorous application cannot correct these imbalances. That can only be done in the longer term by improving the independence of women from their husbands such as by increasing their opportunities to find employment outside the relationship, equalising their access to all sectors of the labour market freeing them from the responsibilities of full-time child care and so on. In the short term, measures are needed to give women

better access to legal advice, to refuges, to routes of escape and to financial stability if they decide to bring the relationship to an end.

This debate between civil and criminal laws of domestic violence may in many respects come to nought.

The individual woman may in practice exercise the same power of veto over proceedings whether they are criminal or civil. The experience in New South Wales is that women approach the prosecutors before the hearing and say, if called, that they will not adhere to their earlier statements and will give evidence which is helpful to the defence. Without the woman's evidence, the prosecution will collapse. There is also a tendency to underplay the salutory effect which even the uncompleted proceedings can have. The mere act of bringing the proceedings may be the first time the woman has taken a stand against her husband and exercised some power over him. Even though the proceedings may be withdrawn, both she and he will be left with the sense that there are legal processes outside their relationship by which the husband may be brought to publicly account for his violence.

The Proper Role of Conciliation in Domestic Violence Matters

Conciliation has, over the last decade, become a central theme of family law in this country. It has been built up as a complete, and preferable, alternative to the legal system in resolving disputes on the breakdown of marriage. Its proponents have proclaimed its virtues across the rooftops of the traditional legal system.

One of the more extravagant claims made for conciliation comes from a former Attorney-General, Bob Ellicott:

> At present twenty-five judges have been appointed for life. The trend in family law is away from the judicial and in about twenty or thirty years the number of judges in family law will probably have to reduce proportionately. Family law will have to come up through counselling facilities and judges will be at the end of the road. I do not wish to pass on to the future a number of judges who will be useless in the family area.[11]

This comment has proved to be very wide of the mark. The number of Family Court Judges has grown to forty-seven and the Court's lists are clogged with cases awaiting hearing.

However, the significant structural changes which the conciliation philosophy has brought about in family law are not

to be underestimated. Psychologists, social workers and others from the welfare sector have claimed family mediation as their own. Riding on the conciliation wave, they have established themselves at the very centre of the legal process. Unlike in other areas of law, their role is not limited merely to servicing the lawyers but they have an independent influence and power in the legal process. More surprisingly is the willingness of the judiciary and lawyers to make room for the rival activity of conciliation. Lawyers, on and off the bench, have traditionally been renowned for resisting efforts to break down their monopoly of the legal process. Perhaps in family law, it is the promise of 'less emotional and more compromising clients' which proves so attractive to them.

This development has gone beyond a sharing of power between two separate bodies of knowledge. The conciliators have said that their goal is to change the thinking and attitudes of lawyers and to break them out of the adversarial models in which they have been schooled and which are their tools of trade. Peter Mark, a director of court counselling in Canberra, has written:

> Solicitors are expected to be the 'watchdog' of their clients' rights. Their primary responsibility is to properly advise their clients regarding the law, to marshal and assemble evidence on their client's behalf and to protect their interests. Solicitors, as I understand it, are bound by their client's instructions and are committed to obtain 'the best result possible' even if this doesn't accord with their personal views.
>
> Solicitors are in a powerful position to shape their clients into conciliatory rather than adversary positions. A great deal of harm is done by applying to the Court prematurely.
>
> Except in extreme circumstances where the clients are chronic litigants or intractable, most are usually unsure how to handle conflict. Part of them wants to punish and vent their frustrations, the other would like to be conciliatory and try to bring the situation under control. If counsellors and solicitors can elicit and encourage conciliatory feelings in the clients then their motivation to be angry and vindictive may be lessened.[12]

The evidence collected by the Commission indicates that the conciliators have been highly successful in their objective of influencing the legal process. Judges seem to be happily and actively involved in reducing the prominence and importance of the judicial role in family law.

Great efforts have been put into constructing obstacles to parties bringing matters in the public arena of the Court. Formal pre-Court diversionary tactics have now been put in the Act itself requiring that there be counselling before a Judge can hear applications and new practice directions have also been promulgated requiring that this counselling take place before the first return date of applications. If counselling has not happened by then, Judges will order it take place before the matter progresses any further towards a hearing. With the shunting of contempt and other enforcement applications, diversionary tactics are projected deep into the adjudicative process itself. Diversion back to private ordering takes place at almost every point in the progress of a family dispute through the Family Court.

Speaking of the successful spread of conciliation, Mr Mark said:

> Increasingly solicitors are thinking carefully about their clients and accepting it as their duty to emphasise conciliation. There is also increased recognition that clients have more commitment to a solution arrived at themselves than one imposed by a Court. The small number of full contested matters attests to the intervention of solicitors, judges and counsellors in the early stages of many family disputes. In Canberra fewer than thirty contests involving children were decided by a Judge in a fully contested hearing.[13]

This shift in family law has gained almost universal and unquestioning acceptance. Even the most virulent critics of the Family Court such as FAULT say that there should be more conciliation and less litigation. Aside from the question of fault, there is no serious opposition to the continuing delegalisation of family law and the present debates are mainly about whether this is happening fast enough.

The pacific resolution of disputes, particularly in such an emotionally charged area as family law, is obviously an attractive proposition[14]. What is not realised is that a great deal of political baggage has been carried into the family law area on the conciliation bandwagon. Conciliation and counselling are not politically neutral, just as the legal system they replace also is not. Conciliation is built upon a whole ideology of the family. There are three key elements in this ideology. Firstly, disputes between family members are moved out of the public arena and back into the private arena of the family. Secondly, a behaviouralist or psychological view is adopted of the family and conduct within the family. This individualises each family's problems and the solutions to them. Thirdly, agreement is elevated about conflict. The normative behaviour is

restraint and compromise and conduct which will upset the stability of that situaton is pushed further down into the private world of the family.

This new ideology has become deeply entrenched in our legal system with little consideration being given to what it means to the way in which we put together, and take apart, personal relationships between men and women. It may be that it is seen to be the appropriate ideology but this is yet to be debated.

Privatising the family. One of the fundamental benefits of conciliation is that the parties are said to be in control of their own destiny. It is their decision about their own lives or those of their children. It is commonly said that conciliation forces people to take responsibility for their own lives. This is contrasted with the judicial process which imposes a decision on the parties. The idea that control over the outcome should be retained by the parties themselves is often found coupled with a number of other objectives. This includes a retreat from the intervention of legal professionals, demystifying the law, shifting the management of people's lives away from government agencies and returning power to the 'grass-roots'. These have all been popular causes of the left wing and so called radical lawyers for many years. They have reinforced the seductiveness of the notion of private ordering.

The resort to conciliation or private ordering in domestic violence matters should be of particular concern to feminists. Conciliation shifts the violence from the public arena to the private domain of the family. The State forgoes any direct interest in the violence, other than to provide a person to facilitate a private ordering between the attacker and the victim in their efforts to deal with the violence between themselves. The feminist perspective of domestic violence is that it is the very product of the imbalance of power within the family. To attempt then to resolve the problem of violence within that same family structure is to reproduce the existing power imbalance rather than to mitigate or challenge it.

Counsellors say that they are alive to the possibility of one spouse dominating another and that it is part of their role to correct that imbalance or at least to guard against it. It is difficult to see how the counsellor can maintain the integrity or 'neutrality' of his or her mediation role if he or she has to weigh in on the side of one spouse. Perhaps more disturbing for feminists is that the counsellors deal with the balances of power in terms of the individual presenting couple, a man may dominate his wife and equally a wife dominate her husband. They seem to ignore wider structural conflicts between the needs and interests of men and women which are identified by feminists. Domestic violence is seen as an individual incident between that man and that woman and not as an expression of patriarchial power.

Dominance of 'welfarism'. Conciliation is said to be a process and not an ideology. This was once a characteristic claimed for the law but it has long since debunked. It is surprising that the new generation of 'dispute resolvers' in the family should also claim it of themselves.

Most conciliators working in the Family Court have a psychology or social work background. They have brought with them to the court system a particular brand of ideology which one might describe as 'welfarism'. In terms of family law, it rejects the abstraction of legal issues from people's family problems. It holds that many presenting problems arise from underlying emotional or psychological forces in the family and that outside intervention should be directed towards dealing with those deeper forces.

This treatment ideology breaks down a particular social problem, such as domestic violence, to the individual family unit. Substituted for a single theory of the social problem are a range of strategies of treatment for individual families.

In the context of domestic violence, this ideology explains the violence in terms of the psychological predisposition of the man and woman. The husband is typically said to be a jealous, excessively dependent or overly possessive man. On the other hand, the woman is said to be depressed, frustrated, excessively dependent, insecure or suspicious.

This ideology looks not only to the individual psychological make-up of the spouses but to the interaction of their personalities. As individuals, the man may not be violent nor the woman willingly tolerate abuse, but once in the relationship, a dynamic is set such that violence recurs in a remarkably stable fashion. The welfarist approach also looks for explanations of violence to external pressures on the relationship and the man, such as unemployment.

This explanation of domestic violence has been strongly rejected by feminists. It is seen as implying some sort of guilt or blame on the woman's part and a degree of blamelessness on the man's. It is clear from the interviews conducted by the Commission that this is the view men and women take away from a counselling session. They said to us that they felt the violence 'had been trivialised' by the counsellor, that the counsellor said the violence had occurred because 'we were both up in the air and it would stop when things calmed down'; or that 'he wouldn't hit me if I didn't nag him about what he does on access'.

The second prop to the myth of the neutrality of conciliation is the disinterest of the mediator in the terms of any agreement he or she facilitates. Complete lack of bias is something reserved

only to machines and it is inevitable that anyone will bring some of his or her values to a mediation. The aim is to keep to a minimum the projection of those values into the partner's bi-lateral relationship and any agreement they reach. This may be reasonably possible where the third party has a limited mediating role but is much more difficult where the intervention is posited on a much more active role by the third party.

It is said that the conciliator can suggest ideas or mark out alternatives to the parties. Mark says:

> It is my belief that the role of the counsellor is to help control the interaction and clarify communication, acting as a catalyst for change. It can be likened to that of a traffic cop providing signposts, developing a sense of direction and reinforcing behaviour which assists in resolving difficulties.[15]

Parkinson, an English conciliator, has said:

> The conciliator's role is active and demanding; he or she needs to identify and clarify issues and assess priorities as well as being sensitive to clients' emotional stress. The conciliator may perceive possibilities which had not occurred to either party or their legal advisers, which may gradually emerge through joint discussion with both parties.[16]

These 'sign posts' or 'possibilities' uncovered by the conciliator obviously do not come out of a vacuum. It is inevitable that the range of options identified to a particular family by a counsellor will be heavily influenced, consciously or unconsciously, but his or her own ideology of the family. Again this must be a matter of some concern in domestic violence matters. The Commission was told of a number of instances where women had been advised by marriage guidance counsellors to remain within the violent relationship and to try to change it from within. This appears to be much less of a problem in the Family Court because the parties are usually separated and the Court, despite sections in the Family Law Act, does not see reconciliation as an objective of its intervention. However, women report that counsellors either do not advise of or strongly advise against legal proceedings to deal with violence.

Clearly, there is a danger that conciliation could 'provide a cover for value-laden tampering with family life'[17]. This could be a more insidious extension of state control of the family than rather more blatant mechanism of the legal process. This is precisely because conciliation is marketed as a neutral process into which both parties plug their own values and out of which

comes a decision which best suits them. One commentator has argued that 'informal justice' devices such as conciliation are in fact an extension in control: 'Informal institutions allow state control to escape the walls of those highly visible centres of coercion ... and permeate society ... But it is possible - and essential - to penetrate the comforting facade of informalism and reveal its political meaning.'[17].

Neutralise Domestic Violence

The object of conciliation is to find and build upon common ground between parties. In this it is said to be the antithesis of the legal system which fuels conflict. However, in elevating compromise above conflict, there is a concern that deviant behaviour such as domestic violence which threatens the goal of conciliation is pushed aside. This 'neutralising' or 'filtering' process is most clearly evident in cases where there are children. The interests of the children are firstly divided off from those of their parents. It is often said that a couple can divorce themselves as spouses but never as parents. Secondly, the interests of the children are elevated above those of the parties in the conciliation, as indeed is required by the Act. Thirdly, a conciliated agreement about the children is said, for obvious reasons, to be in their best interests. Fourthly in an endeavour to reach an agreement about the children, the parties are encouraged to set to one side any disputes between themselves in their capacities as husband and wife which might impede conciliation.

Domestic violence is usually considered to be an issue between the parties and is therefore subsumed below the interests of the children. Many women said to the Commission that when they told the counsellor about violence they were informed it had nothing to do with the children and that it would be counter-productive to pursue it. The women felt that the violence was being ignored. This process can undermine the position of women more so than men. The woman will usually have the full-time care of the children. Her interests will be said to coincide exactly with those of the children. On the other hand, the position of the violent man may well be strengthened by the dominance of the children's welfare. It is a well entrenched principle in the Court that children should have regular contact with the absent parent. Even where there is clear evidence of violence a man will still often have access to his children and to his wife.

This neutralisation process seems to have a much firmer grip amongst lawyers than the counsellors. Generally, in other jurisdictions every opportunity is to be taken to level accusations at the other side, to question their veracity and impune their motives. In family law, greater kudos are sought to

be earnt by appearing reasonable and conciliatory. Making inflammatory allegations against the other side can label a party as vindictive, litigious, unco-operative and insensitive to the interests of the children. In the rush to appear reasonable, practitioners will filter out allegations by their clients which may be well-founded but which are inflammatory. I know from my own legal practice that it is commonplace to tell a client that the making of a particular allegation is 'going to get her nowhere' or 'do more harm than good to her case'. While this is more so with allegations such as child sexual assault, it applies also to domestic violence. Perhaps this is best summed up by the comment of one solicitor who said, 'family law is all about playing happy families'.

The reach of welfarism. In fairness to the Family Court, the application of this 'welfarist' or conciliation approach to domestic violence is not unique to it. In their response to the Commission's questionnaire, Magistrates frequently made comments about the inappropriateness of legal sanctions to family disputes, including violence between spouses and of their reluctance to impose penalties. Many said that they thought the Magistrates' Courts should have access to counsellors and many courts appear to have worked out ad hoc arrangements with non-government counselling services.

'Welfarist' language is also increasingly being used by police. Over the last decade there has been debate inside and outside police forces about whether police officers should be trained to assume welfare and social work functions beyond the traditional policing role. They are the only twenty-four hour service in many communities and most serious family problems occur after working hours when the family is together. The Victoria Police training course manual states:

> Although many police may regret the social service component of their work, they accept that there is no other community service capable of responding as effectively. Domestic crisis intervention is then, for this and a number of other reasons ... the role of the police.[18]

It is evident that some police sheltered their reluctance to become involved in the violent situation behind language about the family and emotional context of the violence. There is a justifiable concern that the police are taking up the 'welfarist' or conciliation approach as a more palatable diversionary tactic. In evidence to the British House of Commons Select Committee on Violence in Marriage, the Association of Chief Police Officers of England, Wales and Northern Ireland said:

> Whilst such problems take up considerable police time during say, twelve months, in the majority of cases the role of the police is a negative one. We are, after all, dealing with persons 'bound in marriage' and it is important, for a host of reasons, to maintain the unity of the spouses ... action by the police could aggravate the position to such an extent as to create a worse situation than the one they were summoned to deal with. The 'lesser of two evils' principle is often a good guideline in these situations ... Every effort should be made to reunite the family.[19]

However, it is also clear, particularly in many American police forces, that the 'welfarist' approach had lead police to take a far more active and interventionist role in 'domestics' than they were previously prepared to. The emphasis is shifted away from the use of traditional police powers onto mediating the dispute and counselling the parties. In several American states, special family crisis units are established for this purpose. One commentator, in urging a broader role for the police in domestic disputes said:

> The role for the police should therefore be to consider all possible solutions, including simple advice or mediation, and clearly also prosecution depending on the gravity of the injuries. Barring that, their role must be one of referral to other available social services.[20]

The effect of this new approach to domestic violence by the police is to carry to the welfarist view of violence and the solutions to it to the immediate point of crisis*. For this reason, some may consider this new found interest by the police in domestic violence to be more insidious than their traditional inactivity. At least the latter had the effect of directing women away from the criminal into the civil law whereas the new approach is designed to divert them away from the legal processes altogether.

Feminists in defence of the legal system. Ideological and practical concerns along the lines discussed above have led a number of English feminists to take a very strong line against conciliation and to call for a return to a system of formal

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* Editor's note: This should not be regarded as a 'new' approach, but one which has its origins in the work of Bard in the early seventies (see the paper by Hatty and Sutton in this volume).

justice in family law, that is courts, lawyers and litigation. This has put them in the somewhat strange position of defending a system which has traditionally been seen as reinforcing male power. As Anne Bottomley has written:

> Ironically, many of us who have spent time exposing the problems of the legal system must now necessarily argue its benefits in the face of changes which threaten, on the one hand, a new pattern of professional domination and, on the other hand, an emphasis on private arrangements.[21]

She described the benefits of the formal legal system for women as follows:

> Formal justice can offer three crucial things. Firstly, it gives substantive rights, although these are frail and can be as easily taken away as given. Secondly, it offers procedural safeguards. Rules in relation to the collection and evaluation of evidence, for instance, and rights to appeal against decisions do go some way towards a notional equality in presenting cases before the law. Thirdly, formal justice involves lawyers who can again mitigate the power imbalance between the parties. Whether in bargaining or the presentation of cases in court, particularly in an adversarial court, what is being confirmed is that there are different interests. Informality, conciliation and an inquisitorial mode of justice, even with remnants of the adversarial mode, offer less protection for weaker or more vulnerable parties and particularly for those who do not conform to prevailing social values.[22]

The proper role of counselling. It is unclear that conciliation and counselling has been successful in the resolution of many family disputes. Court statistics indicate that only between three and four per cent of all divorcing couples litigate about custody or property and financial matters. But this is not to say that it is appropriate to the resolution of all disputes between a husband and wife, as the present policy within the Court dictates conciliation requires some equation of power between the parties taking part in it. Where the very cause or root of the problem is an imbalance of power between the parties then conciliation cannot be expected to be successful. In my view, counselling should be repudiated as the major vehicle of outside intervention in the relationship when a battered woman seeks help against her attacker.

The counselling and therapy skills applied in conciliation by the Court counsellors may have some role in dealing with the violent

man's conduct as part of the Court's sentencing process, that is after the restraining order is made or conviction entered. The State, through the legal process, makes a clear statement that the violence is unacceptable but in sentencing the man recognition is given to his psychological problems which have given rise to the violence and which, once resolved, may bring the violence to an end. The violent men's program in South Australia run by David Werner reports that seventy per cent of men who complete the sessions maintain their non-violence[23].*

REFORM

The Law Reform Commission examined a number of proposals for reform of the Family Court powers which conformed with the different theoretical positions which have been described. In its discussion paper, the Commission tentatively came out against the 'criminal law-only' model and the 'conciliation model', although probably for more pragmatic reasons than political considerations.

The major practical fault of conciliating domestic violence matters is that it does not offer any immediate protection to the woman against continuation of the violence or harassment. Even the most ardent proponent of conciliation and counselling would agree that it takes time to change behaviour which is so deeply-seated as violence. During that time, the husband will continue to commit the violence against his wife although perhaps on a lessening scale. The primary purpose of outside intervention should be to provide immediate protection to the woman.

The replacement of the Family Court's injunctive powers with a federal crime of spousal assault was also seen as being unworkable. Three major practical difficulties were identified:

- Criminal law is mainly a state and not a federal responsibility. As a result, most of the apparatus and resources required to run a criminal justice system are in the hands of the states such as the police, prosecutors, criminal courts, gaols and parole service. The Commonwealth would either have to acquire these itself to deal with its new crime of spousal assault or rely on the states. The former would be too expensive and the latter would be unsuccessful and unsatisfactory gauging by the present attitude of state police to Family Court orders.

- Difficulties in deciding in which Court the crime should be prosecuted. Family Court Judges are not at ease with

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* Editor's Note: See Hatty's paper in this volume for an analysis of men's programs.

criminal law. The emphasis upon the Court's role as a 'helping Court' makes it unwilling to exercise coercive powers or to impose penal sanctions. The Court's attitude to the limited criminal jurisdiction which it already possesses - Contempt of Court - bears this out. In this atmosphere, it is likely that diversionary tactics would be developed by the Judges to soften the force of any criminal offences placed within their jurisdiction. Magistrates Courts, on the other hand, are accustomed to dealing with criminal matters and they may be the more appropriate forum for the new federal crime. However, domestic violence will often arise in the midst of Famuly Court litigation on other matters in the Family Court and it would be inconvenient and more costly for the woman to have to go off to another court to deal with that matter alone. This already occurs in those jurisdictions where there are state domestic violence laws and may not be such a great problem.

- How a federal crime of spousal assault would relate to state domestic violence laws. By Section 109 of the Federal Constitution where Commonwealth and State laws occupy the same field, the Commonwealth law overrides the State law and for all practical purposes the State law ceases to exist. The Commonwealth Parliament can provide in its laws for the continued operation of nominated State laws[24]. The choice is left to the individual woman to decide which law to proceed under but she cannot proceed under both. The operation of federal law also only extends as far as the Commonwealth's constitutional power and so federal criminal laws of domestic violence could only cover married people. Those living in de facto or other relationships would still have to resort to the State laws. The result could potentially be a confusing array of differing criminal laws dealing with domestic violence. Rather than provide women with better protection, a federal crime of assault may only multiply the potential for the 'duck shoving' violence by the police and courts.

The Commission also considered an alternative proposal that where an assault which should be punished under the criminal law has already occurred, neither the Family Court nor a magistrate court exercising jurisdiction under the Family Law Act should have jurisdiction to grant injunctive relief at all. In effect, the Family Court would withdraw from the field altogether. Instead, the State police would be persuaded by all possible means that it is their duty to prosecute the matter as a criminal offence in the State courts. However, the chief drawback of this proposal would be that, in those States and Territories which do not have legislation dealing with apprehended violence, a wife who had

been assaulted would have to chose between invoking the full machinery of the criminal law and refraining completely from any legal action.

In the end, it was decided that the only workable federal laws on domestic violence had to be based on the restraining order. Many of the manifest deficiencies of the present provisions in the Family Law Act could be overcome by adding on powers and procedures drawn from the criminal law. In effect, this would create a new procedure which fell between the civil and criminal law and which resembled the State domestic violence legislation in New South Wales and Victoria. The tentative proposals for reform can be summarised as follows:

- Spousal assault should be considered a criminal matter. It should be impressed on the police that it is their duty to arrest and charge violent husbands and that any civil law remedies of the woman are not a relevant consideration in their decision to act. So far as may be feasible, spouses seeking an injunction based on an alleged assault should be notified of the existence of a right to prosecute the assault privately or with the help of the police, and of the availability of legal aid.

- Injunctions for personal protection should automatically have a power of arrest attached to them.

- Breach of an injunction restraining assault, harassment or entering specified premises should be itself a criminal offence. The creation of this new offence would not preclude the woman electing to proceed under the state criminal law if any conduct of the husband also amounted to a separate criminal offence or instituting contempt proceedings in the Family Court.

- In sentencing for contempt of injunctive orders, the Judge should be specifically directed to consider the harm done to the woman and the penalties which would have applied in criminal proceedings for breach or under State law had to be instituted instead. In line with legislation already operating in New South Wales, and being considered by the Commission in its Reference on Domestic Violence in the Australian Capital Territory, a spouse should be compellable as a witness in any prosecution brought by the police for breach of an injunction against harassment or violence. A spouse should only be exempted if the court is prepared to grant exemption on the ground that the harm caused by the giving of the evidence outweighs the desirability of obtaining it. Legal aid should be available for private prosecutions for breaches of injunctions, and its availability should be publicised.

A number of other general commendations made by the Commission should also improve the Court's personal protection jurisdiction. Most notably:

- In order to speed the consideration of enforcement applications, a 'special enforcement list' giving these matters priority over other matters in the Court. This would considerably shorten the time between the bringing of the enforcement proceedings and the imposition of a penalty if the husband is convicted.

- A wider range of sanctions should be available to the Family Court. In particular, it should have the option to impose such sentences as community service orders, attendance centre orders and weekend detention. This result could be achieved by implementation of the Crimes Amendment Act 1982 (Cth), coupled with an amendment establishing beyond doubt that this Act applies to civil contempt proceedings (by whatever name called) in the Family Court. A similar amendment of the Commonwealth Prisoners Act 1967 (Cth) would make parole available for persons sentenced to prison for civil contempt of the Family Court. Judges may feel more comfortable with imposing these non-custodial or periodic sentences as they are less disruptive to the convicted spouse's life while still conveying the criminality of his conduct. In domestic violence matters, they would have the practical effect of leaving the violent husband with his job but taking from him his free time at night or weekends during which time he harasses his wife.

CONCLUSION

The present personal protection provisions of the Family Law Act are manifestly ineffective in protecting wives from the violence and harassment of their husbands. A searching appraisal of the policy basis of the present system is required. In particular, there is an urgent need to debate the consequences for women of the dominance of the conciliation philosophy within the Family Court. The major focus of feminist debate has been on gaining a greater place for women outside the family. However, until the questions surrounding the structure of the family are resolved those other advances run the risk of floundering.

Endnotes

1. Section 22 of Family Law Act, 1975 (Cth).

2. Practice Direction No. 1 of 1983.

3. C. O'Donnell and J. Craney (eds) (1982), Family Violence in Australia, Longman Cheshire, Melbourne, 54.

4. P. Stratman, 'Domestic Violence: Legal Responses', C. O'Donnell and J. Craney op. cit.

5. Ibid., 126.

6. Section 114AA(7).

7. Section 114AAB.

8. P. Stratman, 'Domestic Violence: Legal Responses', C. O'Donnell and J. Craney op. cit.

9. Section 97(3).

10. Quoted in R. Dingwall, J. Eekelaar and T. Murray, The Protection of Children, 217.

11. Constitutional Convention Debates (1977).

12. Family Court papers, 1983, 2.

13. Ibid., 4.

14. One of the biggest problems in coming to grips with the virtues which are touted for conciliation is that there is no single definition of what conciliation is. It seems to mean all things to all manner of people. Kiel and Kingshott have identified at least three levels of 'conciliation' or alternative dispute resolution. The first is 'mediation'. The mediator has the mainly passive role of opening up lines of communication between parties and the objective is usually only to reach a fairly narrow pragmatic agreement.

    Conciliation/counselling involves a more active intervention by the third party in a bid to change the underlying psychological attitudes and feelings of the parties which stand in the way of an agreement. This level can include long term family or psychiatric counselling where efforts are made over a number of months or years to change behaviour. The third level is arbitration where the

third party guides the parties to an agreement which falls within the bounds of what a court would decide. This last level can come close to the family judicial process with the arbitrator imposing his or her own decision. Legal Services Bulletin, Vol. 10, Feb. 1985.

15. Op. cit., 6.

16. Parkinson (1983) quoted by A. Bottomley in J. Brophy and C. Smart (eds) Women in Law, Routledge and Kegan Paul, London, 174.

17. Davis quoted in Roberts (1983), 'Mediation in Family Dispute', Modern Law Review, 46(5), September.

18. Cited in E. Wilson (1983), What is to be Done About Violence Against Women, Penguin, Middlesex.

19. Quoted Scutt, 'Police Response', C. O'Donnell and J. Craney, op. cit.

20. Bard, M. (1974), 'The Study and Modificiation of Intra-Familar Violence', S. Steinmetz and M. Straus (eds), Violence in the Family, Dodd, Mead, New York.

21. Bottomley, 'What's Happening to Family Law' in Women in Law, op. cit., 184.

22. Ibid., 184.

23. Contempt and Family Law Research Paper 6A, ALRC, 1985, Chapter 8, 32.

24. This has been done under Section 114AB in relation to the domestic violence legislation of Victoria, New South Wales, South Australia, Western Australia and Queensland, Family Law Regulations Regulation 19. Presumably the recent Tasmanian laws will be added.

FAMILY VIOLENCE - PERPETUATION AND AFTERMATH IN THE FAMILY COURT: AN INTRODUCTION

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My awareness of and beliefs about violence within families were both reinforced and strengthened, and my understanding of the dynamics operating within such families grew noticeably as a result of attending a two-day workshop presented by the Domestic Violence Support Group in Adelaide in 1983.

While this experience helped me to clarify my thoughts about the elements constituting abuse, the dynamics, the aetiology (some predetermining factors within societal structures), it increased my concern about the plight of those who had been subjected to violence within the family when confronted by the Family Court experience.

(I would like to point out at this time that I disapprove of the term 'domestic' violence because of the associated meanings attached to the word 'domestic', giving it a sense of being menial, or of lesser significance. I propose that the proper terminology is family violence because this is what it is. In using the word 'family' which in itself has some sort of mystical sacredness, and is the object of a great deal of emotional support, the impact of the reality should be less easily ignored.)

The structure of the Family Court not only in many instances mirrors the structure in violent families, but the experiences of many victims mirror those they had previously received in their family, and in many cases their losses are far greater within the court system than they had encountered before, especially in relation to material and other actual losses. As well as the substantial material and financial losses, they often lose their children, and are judged negatively by a collection of experts - lawyers, counsellors and judges, thereby reinforcing their self-doubt, and substantiating their abuser's powers over them.

Therefore I needed to examine what was happening, and why. There were many questions - about access orders to violent parents and spouses, about the failure to deal adequately with breaches of injunctions, about perceptions, attitudes and preconceptions about client behaviours, about sex role expectations, parent role expectations, about continuing games of violence, about the imbalance in power and the repercussions of this in a system which presupposes a basic equality in the protagonists, and

conversely about the acceptance in other ways of a basic inequality or difference, about the paramount rights of children being subverted to the concept of justice for the adult parties in the conflict, and about the general sex role stereotyping which occurs throughout all aspects of the Family Court system, where people are forced to go because of family relationship breakdowns, and other problems associated with this.

I wish now to diverge for a moment as there are many issues which cannot be fully understood unless one has some background into the situation in Australia, and also an acceptance that the type of situations being dealt with in the Family Court are not isolated, nor confined to the Australian experience. It is important to feel as well as to know about family violence. I make no apologies for the length of this diversion. Any tedium anyone experiences because they have read it all before or any discomfort at the situations described are minor compared with what the victims of family violence must endure.

> 'The experiences of women in Australia are closely tied to family life. More so than with men, the lives of women are defined by their family relationships and those relationships and the conventions and prescriptions they give rise to, need to be explored if we wish to try to understand the position of women in this country.'[1]

> 'Historically the legal system ... sets women and children up for exploitation: they are bound to live in a unit supported by law and society as being rightly unequal in powers of the members. If they remain, they are subjected to the rule of the head. If they remove or the head departs, they become "abnormal" in the eyes of society, the law and the body politic ... Within the family unit women and children are subject to the rights of individual men, with obligations to those men. Outside the family unit, women and children become displaced persons, subject to the rights of the state, that is, to collective man. The law represents the interests of individual man and collective man; women's interests are not represented.'[2]

> 'As early as the nineteenth century women were "shut up" in madhouses (as well as in royal towers) by their husbands. By the seventeenth century, special wards were reserved for prostitutes, pregnant women, poor women and young girls in France's first mental asylum, the Salpetriere. By the end of the nineteenth and throughout the twentieth century, the portraits of madness, executed by both psychiatrists and novelists were primarily of women. Today more women are seeking psychiatric help and being hospitalised than at any

other time in history ... While women live longer than ever before ... there is less and less use, and literally no place, for them in the only place they "belong" - within the family. Many newly useless women are emerging more publicly into insanity ... The mental asylum closely approximates the female rather than the male experience within the family. This is probably one of the reasons why Irving Goffman in Asylums considered psychiatric hospitals more destructive of self than criminal incarceration. Like most people, he is primarily thinking of the debilitating effect - on men - of being treated like women (as helpless, dependent, sexless, unreasonable - as "crazy") ... The patriarchal nature of psychiatric hospitals has been documented.'[3]

'The impositions of moral assumptions and expectations, and their translation into "natural" laws is a forceful way of maintaining the female image. Thus the "maternal instinct" is natural, and it is "natural" for women to assume a caring role.'[4]

'The law ... does not simply reflect "public opinion" ... it is part of the production of consensus around such issues as the importance of law and order, the sanctity of private property and the sacred nature of the family.'[5]

'One of the guiding illusions of this world is that the family is a private place, a haven of protected, positive emotion safe from the stresses of public labour, commercialism and power.'[6]

'... normal mothers are essentially altruistic ... what this means is that mothers who consider their own needs are bad mothers ... Normal mothers are married ... While books don't say that normal mothers are depressed, they do say that depression both before and after childbirth is normal ... Altruism and maternalism ... certainly do not come naturally ... most women are dissatisfied with full-time housewifery and motherhood and report an intense conflict between feeling that they ought to stay at home and knowing that they don't like it.'[7]

'Violence in the streets - straight thuggery and mugging - is treated as a serious crime. The normal sentences are ten to fifteen years for grievous bodily harm. The victims get full co-operation from the police. Newspapers give front page cover. Mugging is universally deplored. If the same act is committed behind the front door it is ignored...'.[8]

'Violence inside the home, within the family, is not new, and because it is not easy to see it for what it is people have had lots of practice in ignoring it. They will turn a blind eye or cross the road. They will even, as one woman told Women's Aid, turn up the TV to block out the shouting and sobbing next door so that they can no longer hear it. Nobody usually wants to know about brutality within the family. There is a primitive mechanism in us all that makes us feel that misery is infectious ...'.[9]

'As husbands can terrorise their wives and families they usually end up in possession of whatever they want to claim - children, home and income. Without protection, which we've seen the law does not give, custody of the children and accommodation provide a dilemma for the wife. Often possession of the children depends on possession of the home, and having the home, on having the children.'[10]

'Sometimes mothers and children are separated because the mother is forced to leave home without them. If, before she comes to us, she's never told any one about her husband's brutalities, her husband can gain everybody's sympathy. After all, he's given up his work to care for the children when his wife had picked up and left them, hadn't he?'[11]

'Between 1969 and 1972 I suffered twenty seven brutal attacks including ten which required me to be admitted to hospital for two days or more. Once I lost the baby I was expecting. The police came on all of these occasions, did nothing except to tell me to take him to court. I was reluctant to do this, knowing that he would attack me seriously, and maybe the result would be fatal. However, in the end I could stand it no more. After attempting to strangle me with our telephone wire he was charged by me, and was bound over to keep the peace and fined 25 pounds. I had to pay the money out of my housekeeping money. Before this case got to court he came home drunk, tried to persuade me to drop the case, when I refused he got into a rage and beat me so much that he split my head open. He was given a suspended prison sentence when within a month he was in court again for grievous bodily harm. Two weeks after the latest court case my husband ripped my coat, kicked my pet terrier in the face and nearly broke my finger in an attempt to get my wedding ring, which he eventually bent and threw out the window. These incidents took place on our eighth wedding anniversary. I left the following day. My husband tried to see me at my parent's home. He was let in twice and forced his way in another night. I

was alone at home with my eighteen year old sister and the children. The police removed him and after he received another eight summonses he fled to Ireland. He was back in this country (she means England) after one month, coming round frequently to our flat, which by this time I was occupying. After hitting me, trying to prevent me taking the children out and breaking down a door which fell onto my daughter's bed and narrowly missing her head he moved into the flat which I immediately left.'[12]

And in the United States of America...

'She began to look ahead and think "maybe it will be okay. Maybe I can make things different from the bad marriages I've seen". She felt she had "higher ideals" of marriage and resolved that she and Mickey would try harder. She had confidence in herself as a housekeeper. She would be thrifty, tidy (clean and proud as her Kentucky grandmother had taught her) and if she and Mickey had children they would be loved and protected and raised in a loving home. All her life she had heard such sayings as "life is what you make it" and "love conquers all". Francine believed them and would make them come true.'[13]

'At the beginning of December four months after he had chased her with a knife, Mickey was arrested again. He had been goading Francine since early in the evening. As he drank beer after beer his fury worked up until he was "crazy mad". He hit Francine and knocked her to the floor. When she lay there he prodded her with his foot until she got up, then he knocked her down again. Francine had been sobbing, now she screamed. Twisting on the floor she caught a glimpse of Christy, ashen-faced on the stairs. Mickey yelled to Christy to get back to her room and Christy disappeared. Francine got up and tried to get to the telephone. Mickey held her off and yanked the cord from the wall. Then he lunged and caught her. Francine fought and pleaded. Mickey's eyes were wild. He was gritting his teeth. "I'm gonna keep it up" he said "until you're sorry you were born". Francine twisted loose. Dodging around the table she reached the front door and escaped into the dark. Barefoot, wearing only a nightgown, she ran across the yard praying that Flossie's door would be unlocked. It was. Francine locked it behind her.'[14]

'As the months of torture went on, Francine became aware of strange physical symptoms. She felt nausea. Sometimes she could eat nothing, at other times she was ravenously hungry and ate until she was sick. She felt starved for

> air, suffocated, unable to take a breath deep enough to satisfy her. Her pulse raced and she was dizzy even lying down. It occurred to her that she might have cancer. "I'd imagine I was going to die an awful death and think Oh God, then the kids will have no-one but Mickey".
>
> There were psychological changes too. Francine, who had always loved being with people, became afraid of them. She, who had once thought herself pretty, felt ugly, unattractive, stupid. She avoided speaking to neighbours on the street. In the supermarkets if she saw someone she knew she looked the other way. She thought everyone in Dansville must despise her for living a degrading life. Vague fears came over her. It frightened her to go out of the house or to drive a car. She felt inadequate, helpless in every way ... These fears engendered a greater fear that she would break down, go insane, and be sent to a mental institution ... she had to fight suicidal impulses.'[15]

And some Australian experience? Please see some case studies attached.

While violence is perceived as an accceptable alternative to solve a problem there will be violence. In our society violence is glorified - men at war, men in sport, men in business. But violence against another individual is only possible if the perpetrator believes that the victim is in some way of less value than he is. Therefore the patriarchal system not only allows brutality of 'uncivilised' natives, it also allows violence against women and children. Violence is unintelligent. It is merely the use of brute force to coerce a less powerful person into the control of the more powerful person. Yet it is not irrational or unintelligent in that it systematically and consistently has been used to reinforce over and over again that women have a limited value in society, with a limited role, and that the patriarchal system is natural and the proper order of things. Violence is destructive and wasteful. Energy expended in this way is lost for constructive creative and nurturing actions. Dealing with the aftermath of violence also reduces the energy available for growth and creativity. Denial of female needs for nurturance and of female sexuality enabled men to make use of women's bodies for their pleasure and for their anger. By socialising women into a role whereby they were there solely to nurture children and adult males and to pleasure adult males sexually, there was no need for the man to think about pleasuring and nurturing the women. His job was something else. That was her job. Her job was to satisfy him and obey him. If she didn't, he could get rid of her, replace her, punish her. By denying her equality, he denied her adulthood, and by denying her adult needs, he denied her human rights. If she was not a human adult -

an equal - (and yet one could see that she was not a child) then she could be treated inhumanely. Women are treated as children, but denied childhood status in that they are deemed responsible for their own 'misadventures'.

Yet women are supposed to be compliant and even enjoy their lot. Women have been criticised for being martyrs yet they have been conditioned to 'enjoy' misery, to sacrifice their needs for the needs of others and to not complain or make things difficult for their family or the community. If they complain they are assaulted by their husbands, and their 'aggressive' behaviour is condemned by society as being inappropriate, or an indication that they are not truly female, they can be certified. They are denigrated by writers and by artists. They are denounced by religion, they can be treated as not deserving help or sympathy; and as not being motherly (e.g. nurturing and passive) and thereby lose their children. Their anger will be used as a basis for rationalisations about depriving them of their property rights. And the same holds true if they are depressed, 'nonassertive' and apparently downtrodden. It's like the old saying if you answer back you get hit, and if you don't you get hit. Being 'just right' as a woman is almost an impossibility so long as the rules which determine what is just right are made by men, and changed for the sake of expediency by men according to their needs at any given time and circumstance.

These systematic and expedient judgements of women continue on in the welfare systems. Bureaucracies may argue that policies are made as the basis for a consistent service delivery. That is questionable especially when the basic philosophy behind the policies and regulations is at variance with the attitudinal base of those with power within the organisation and those with power in society at large.

The Family Court has been described as mirroring the structure of a family by Carolyn Quadrio in a paper presented at the Sixth Australian Family Therapy Conference held in Melbourne this year[16]. She described various family interaction patterns or systems and compared them with the structures and systems in the Family Court. It is easy to see that the patriarchal legal system of which the Family Court is part, is potentially at variance with the 'welfare' arm of the court, and that the results for the client could be confusion and destruction. I use the word potentially advisedly because within the welfare systems patriarchal values are alive and well, and quite often what happens is that the possible balancing effect of counsellor involvement to redress the inadequacies inherent in the adversary legal system does not occur because counsellors and counselling agencies also have beliefs and attitudes which are congruent with the patriarchal view of society. This is especially so with regard to perceived roles and rights of men and women, and to perceptions of acceptable sex stereotyped behaviours. This is the

basis of many of the inadequacies and injustices of the Family Court. Lawyers, counsellors and judges are all agents for the perpetuation of this problem if they are unaware, or if they choose an antifeminist approach.

Counsellors, lawyers and judges within the Family Court have problems when they are asked to counsel, investigate, make recommendations, advise or hand down judgements on guardianship, custody and access matters when violence has occurred in the family. Sometimes the fact of violence does not even get mentioned either to lawyers in affadavits or to counsellors. Sometimes it is put aside as irrelevant. In the abstract describing this session, the question was asked about the ability of the court to separate out issues related to family violence from issues related to guardianship, custody and access. It should be quite clear that these issues cannot and should not be seen as unconnected. The dynamics of family violence are inherent in the structures of the family and in the attitudes about family roles, family structure and family violence. Parenting skills reflect parental belief systems which in turn are part of the wider belief system concerning familial and societal structures, and have tendencies towards developing particular family structures and systems. Parenting skills must be viewed against the historical perspective (both of the individual family and generally). As well one must consider the potential for providing an environment which will encourage particular attitudes and behaviours, and consider whether they are potentially acceptable or unacceptable. Theoretically the custodial parent should provide an environment in which acceptable social values and attitudes are engendered. It is very difficult to believe that this will happen if violence occurs within the family, and if the violent member is seen by the children as the winner and the victim as the loser or if the children see that society and its institutions offer no protection against violence, and do not condemn the violent person for his actions.

The common pathway for families going through the court is generally as follows:

1. One of the parents hires a solicitor to apply to the Family Court for orders relating to the children.

2. The application is lodged at the court along with supporting affadavits.

3. There is a preliminary hearing before a judge or a registrar. An order is made for a conference with a counsellor.

4. The counsellor conducts the conference. Agreement may be reached, either interim, part or full.

5. If no agreement is reached the case usually goes back to court for orders for another conference or a report.

6. The report is completed and distributed.

7. The trial is conducted.

8. Judgement is delivered with orders relating to guardianship, custody or access.

Of course there are many variations of this simplified pathway. The length of time taken to move from 1. to 8. can vary. Most take over a year; some take several years. Such delays are an undesirable factor generally, but even more so in families where violence exists.

At every step along this pathway potential problems can occur in relation to families where violence has occurred. The problems faced by a solicitor are outlined in Myf Christie's paper.

The counsellor's primary role is to conciliate, counsel and report. Despite earlier predictions that ultimately counselling may become the primary and dominant function of the Family Court, thereby diminishing the roles of the judges and by implication, the lawyers, the recent restructuring within the Family Court indicates a trend towards more control by the legal arm of the court. This has implications for the role of the counsellor. Questions have been raised as to the appropriateness of the legal system in dealing with aspects of human relationships. Although it has been said that society is not yet ready for the idea of a panel of professional people with relevant training in human relationships to replace the legally trained judge in family disputes, it may well be that the time is now at hand when such considerations be seriously examined. In the meantime, we have a legally controlled system with its adversary-based approach, which is propagating the idea that the Family Court is preferably a conciliatory court rather than an adversary court.

The counsellor is controlled by the constraints of the legal extent. Often seduced by the power of the legal system, they sometimes prostitute themselves to the vicarious thrill of battle, and see themselves as potential winners or losers in their dealings with family members and the legal arm of the court system. Even if they maintain a co-operative outlook, they are often cast in the role of being on the side of one parent or the other by the lawyers. Their status as professionals is constantly challenged in court during cross-examination, by the registrars and judges in overriding or ignoring information and recommendations made on behalf of individual families. As well they are often attacked by one or the other of the spouses. One then should not be surprised that the counsellor may see that the attainment of agreement between the parties is highly desirable!

The danger in this, especially with violent families, is that the counsellor may collude with the power and coerce a demoralised victim into an 'agreement'. This is more likely to occur if the counsellor has no knowledge of the violent history, or no understanding of the dynamics operating in violent families. The counsellor can therefore perpetuate the victimising process.

The favoured conciliation focus of the court has great danger for the victims of family violence. Conciliation in the Family Court is a process whereby the two people in conflict are counselled with the aim of helping them to come to a resolution of their conflict, and the counsellors conduct such conciliation conferences concerning guardianship, custody and access matters. That is, they are attempting to gain agreement about what is to happen to the children, and one would hope that this agreement would be in line with the stated philosophy behind the Family Court functions, in that it would be in the children's best interests. A basic problem is that such conferences involve face to face debate and discussion between the victim and her assailant. Given the gross power imbalance in such relationships, it is obvious that the counsellor would not only need to have knowledge of such family dynamics, but also a great deal of skill in counteracting such power imbalances, in conceptualising the agreement as being one freely entered into, or one which is arrived at under pressure, and whether or not it is an agreement which is in the best interests of the children. Given the pressure to reach agreement which is felt by the counsellor and the parties (notably the victim), the dangers are obvious.

The court not surprisingly has a dichotomous view of families who have experienced the breakdown of the marital relationship. It classes families as being reasonable or unreasonable according to the difficulty they pose to the court system. Reasonable families:

1. Reach agreement by themselves and are seen as causing no trouble at all; or

2. Reach agreement per the process of conciliation and are seen as causing little trouble for the court.

Unreasonable families don't reach agreement. They are seen as appropriate material for the adversary process.

Where do violent families fit into this? If agreement is reached has it been (and it often is) at the expense of the victim and the children. If it is dispatched to the adversary system the victim again is disadvantaged because of power structures in the family, and the way these structures intereact with the power structures within the court system. Nothing parallels the destruction of individual integrity which occurs when one is subjected to violence in a family any more accurately than the

treatment given to some 'victims' when they are persistently, brutally and ruthlessly cross-examined by their husband's lawyer whose sole aim is to destroy their credibility. Sometimes this frightening experience can endure for days.

Counsellors themselves become more directly part of the adversary system when they prepare reports for interim hearings or trials. When violence has occurred in families, preparation of such reports should and sometimes does involve a great deal of investigation into the family history and the prognosis for effective parenting of the children. While Hambly says that the law should not impose stereotyped views of the roles of men and women in marriage, and that its principals should clearly state that it should reinforce the equal status of men and women in marriage, the counsellors, along with the lawyers and judges often assess women and men's behaviours differentially according to expected sex role stereotypes[17]. If the counsellor attempts to express views counter to the myths about marital or parental roles, they are often discounted because of the threat they pose to the beliefs and values of clients and of other court personnel (registrars and judges) and more directly in so far as the Family Court is concerned, to the structure and operations of the Family Court itself.

While some judges and lawyers have responsibly self-educated themselves with regard to human relationship dynamics and information on child development, they are lay people in this regard, not professionals. Lawyers often tend to see marital conflict as an isolated factor associated with separation, a temporary aberration of people in crisis, and that their role is to move them towards more rational thought processes. Therefore, there is a tendency to play down marital conflict. When violent families are also cast into this mould the dangers can prove to be fatal. I would like to pause here to quote the Honourable Mr Justice E. Butler who in the Salamander Seminar presented in Sydney in 1979 said:

> 'generally, the affadavits filed in a court situation continue to disclose the sort of apparent surface situations (my underlining) between parties that are generally of little relevance and consequence to the judge in coming to a valid conclusion. I say this in relation to ex parte applications or defended applications for injunctions or custody disputes generally and so the same old tirade comes out of abuse, beatings, drunkenness, all the other things that are generally done. But in fact there is often little on the fact of the affadavits to show the judge what really is going on. It is generally left to the counselling services to disclose to the court.'[18]

While he later suggests that lawyers should be 'sociologically examined' to assess their suitability and competence in this human relationship field, it would seem also vital that judges also need to be similarly examined. It is considered that because many families who come to the Family Court have been violent, that lawyers, counsellors and judges should be thoroughly conversant with the violent family syndrome. Serious consideration should be given to conciliation processes to ensure that they do not perpetuate the victimisation process. Family reports must attend to the reality of family violence and address themselves to the potential for perpetuating such problems for the separated family and in subsequent generations. Judges must be aware of the need to be seen as upholding the rights of the victim to be protected from a continuation of the family violence after separation. If this means stopping contact through access, or punishing the aggressor, they should not falter. Lawyers being the first contact that many victims have with the Family Court system must carefully examine whether or not they continue to omit detailing family violence in early affadavits, because they don't want to inflame the situation. They should know that violent men need no set excuse to attack their wives, whatever is done can be used as an excuse. Sometimes lawyers don't include this information because they think that the judge wouldn't believe it. Counsellors have also expressed disbelief or discounted the importance or relevance of such information.

It is no longer acceptable to continue to ignore the presence of family violence, and to maintain a comfortable distance by clinging to the belief that the family home is where people go to for safety from the hostile and dangerous external world.

Cases Studies of Family Court Cases Where Violence has been a Factor

CASE 1

Year 1
When wife applied for access. Husband claimed that wife deserted and disrupted family, and was unsuitable parent because she kept unacceptable company, and he considered that his daughters aged 14, 12 and 10 would be at risk. Wife said that as a result of husband's threats and condemnation of her she had not pursued custody - had no money, no permanent accommodation and was condemned and ostracised by the community. Wife did not ask for or get any property settlement. Wife's application for access was thwarted by the husband's determined efforts at influencing the children against their mother, or making them fearful of stepping out of line. She withdrew her application.

Two years later
Second daughter runs way from father. Allegations that father was physically abusing her. The child had weals over both sides of her face, head, back of neck and shoulders.

Wife revealed that daughter on a previous occasion had bruises over 'stomach, cheek and shoulders, and cuts on her forehead necessitating medical treatment'. She had also allegedly been raped but the perpetrator remains unknown. The wife applied for custody of this child. Only now in affadavit did she indicate that her husband had beaten her systematically throughout the marriage at least once a week. This had led to a suicide attempt. The psychiatrist advised her that she should face up to things and stop running away from them. When she did leave, her husband threatened to kill her. He had made similar threats in the past. After she left he had continued to harass her made phone calls at all hours, followed her, raped her and otherwise assaulted her despite injunctions. Once she had brought her husband to Court for contempt for breaking the injunction. He received a three month suspended sentence. Later when he again broke the injunction she tried the local magistrate's court. The magistrate said that the husband was to be arrested and sentenced to six months gaol if there was any further interference. The wife did not attempt to pursue attempts to gain custody of the other younger daughter, again because of the hostility of husband and his influence over the other two daughters. Therefore no action was taken at this time.

Three years later
(That is, five years from wife's original application). Husband has disappeared, and is wanted by police for questioning related to a very serious crime. The one remaining daughter also seems to be hidden. Wife applies for and is given custody.

CASE 2

Year 1

Wife applied for custody and injunctions. In her affadavit she claims that her husband had a history of violence, sometimes associated with drunkenness, but also when sober. He had subjected children to verbal abuse and threatened them. He took money for their food, spent it on alcohol. Sometimes this occurred forcibly. He threatened to kill his wife. He assaulted her, forcibly dragged her into car, attacked friends who intervened. He raped her. He also had been charged with abduction and carnal knowlege of a young girl; received a suspended sentence. He also had committed offences related to breaking and entering and assaults. Wife was in hiding with three children, a girl eight, another girl seven, and a boy four.

She was granted interim custody. The husband applied for access. The judge ordered that there be counselling. During joint counselling the husband imtimidated and threatened the wife. She allowed him access that day under duress. The husband took the children on access and returned them early because there had been a dispute between the children and their father. He drank during this access period and had been questioning the children and placing them under a great deal of pressure.

Subsequently the judge ordered supervised access and a report. There were a series of such periods, which were not considered as successful; access was not recommended. Subsequently another order for supervised access was made. The husband had appeared to have learned what was expected of him by this time. He presented as more reasonable. As a result, access was granted, near the wife's home, but supervised. Access was to be arranged between the parties. Subsequently the wife reported that the husband had turned up in the town where she lived, made threats to kill her and harassed her.

All of this took place over a period of two years. After that time the wife suffered a breakdown, which her doctor said was clearly related to stress. She was having difficulties in managing everyday tasks. Fortunately she received a lot of help from friends and neighbours. Her children were 100 per cent behind her. Her doctor stated that any contact with the husband or matters pertaining to him would exacerbate her problem. The counsellor recommended that at the very least access be temporarily stopped, if not permanently. There has been no further action.

CASE 3

Year 1

Wife applied for custody and injunctions. In her affadavit she said that the husband had physically (including sexually) assaulted her during the marriage. Some abuse had been in the presence of the children, girls aged seven, six and twelve months, and a boy aged four. The wife also said that the husband was receiving psychiatric treatment, and had been diagnosed as paranoid schizophrenic. He had also attempted suicide. She was granted custody and injunctions.

The husband then applied for custody and access. He admitted that he had psychiatric treatment, but that it was due to depression as a result of the separation. Husband said that wife had undergone intermittent psychiatric treatment throughout marriage, and had made a number of suicide attempts. He also said that she had deviant sexual tastes.

The wife had quickly moved into a de facto relationship; she later married her partner. She said that the children were well and happy in their new family. She resisted strongly any moves for access on the part of the husband. The counsellor's report said the husband presented well, and the wife was antagonistic. Recommended supervised access. The judge ordered supervised access. The wife did not co-operate. She refused to attend.

The matter went back to Court. The judge again ordered supervised access. This time it occurred. The counsellor supervising reported that it was satisfactory; the children wanted to see their father again. The wife refused to allow interview of children without her or their stepfather being present. The wife then said she would leave the state, and in preparation, she changed the children's names. She was prevented from leaving. Another supervised access was ordered. The separate representative who was appointed when the wife failed to attend the first supervised access period together with the counsellor urged the court to direct a psychological assessment of the children. The report indicated that all of the children were disturbed, and these disturbances included areas of cognition and emotional development. The report also indicated that the wife was also probably psychiatrically disturbed. All of the above took place over a period of three years.

Eighteen months later

The husband applied for custody saying that the wife had approached him to tell him that she had been separated for over twelve months and that she had left the children with their stepfather. The children had been recently placed in foster homes. It was alleged that they had been subjected to sexual abuse for some time, including prostitution. The husband had also remarried in the interim, and there was a child of his new

marriage. Although there was some concern about how the husband would manage with the introduction of what were now four quite disturbed children, he was granted custody of them, under the now more watchful eye of the state welfare department.

CASE 4

Wife had filed for divorce under Matrimonial Causes Act on the grounds of cruelty and adultery. These were dismissed. The husband got custody of the child after claiming that the wife was an unsuitable parent (she left without the child).

Five years later
Wife applied for access in Family court. For years she had been experiencing continual problems in getting reasonable access. She said that the husband had remarried but that the marriage was unstable, the husband continuing to have a drinking problem. In her statement the wife said that the history of her involvement with this man had been one of frequent and brutally violent attacks during their marriage. He had caused her to miscarry two times; he had blackened her eyes; he had forced her arm through a window which necessitated twelve stitches; he had attempted to shoot her; attempted to strangle her; had twice attempted to run over her with a car. The wife was in a stable homosexual relationship of some three years standing.

The husband denied the alleged violence, and denied that the children were in any physical or moral danger. The counsellors report supported the wife's access. Access was arranged on a monthly basis. The husband threatened to move interstate.

Six months later
Renewed court action was precipitated by the wife having been contacted by the husband's present wife. The husband had been arrested for sexually abusing some of his present wife's children. Assisted by the court counsellor the two women came to an agreement after the stepmother was granted leave to intervene in the case. They were granted joint guardianship, with the custody being awarded to the mother. They agreed that access should take place between the children of the two families and that the child would continue to have contact with her stepmother of whom she was fond, and she had permanently separated from the father. The father to this time has not had access to the child.

CASE 5

Year 1
Wife applied for guardianship, custody, and injunction. There were two children aged eight and six. She claimed that the husband was under psychiatric treatment and that police had been

involved in the separation. The husband's recent hospital admission had come about after a second suicide attempt by slashing his wrists in front of the children. She also said that the husband had tried to strangle her, threatened to kill her, dragged her through various rooms of the house, tied her to the bed, raped her, removed her from the bed still tied up and locked her in a tool shed outside. She was released when a neighbour intervened. These particular events occurred during one particular rampage.

The husband said that he had memory lapses. He said that the children liked him more than they did their mother; in fact they were terrified of her because she beat them. He asked the Court to order counselling; he particularly wanted to discuss reconciliation. The wife would not agree to a joint interview. She was opposed to access.

The counsellor recommended against further joint counselling. Despite this another counselling session was ordered. The counsellor again was obliged to see the parties separately, and later again urged that there be no more joint counselling because it would not achieve anything. Instead it was considered that a full report be prepared.

When the case came back to Court, a period of supervised access was ordered. This is yet to occur. What do you predict for the future of this case if

(a) supervised access is not satisfactory?
(b) supervised access is satisfactory?

CASE 6

Year 1

The wife applied for access to the two children, a girl aged fourteen and a girl aged six. During the court-ordered supervised access, the older girl continually abused her mother, calling her 'immoral', for example in relation to the separation and subsequent remarriage. The counsellor while noticing that the younger child seemed to get on well with the mother, that access would be untenable because of the intense hostility felt by her older sister and her father if she went ahead and saw her mother. At the time there was no information presented about the reasons for the separation.

Year 3

The wife again applied for access. Another report was ordered including supervised access. The counsellor reported that the husband was bitterly resentful of the wife having left him. The older child seemed timid and upset, and the younger child much the same. The counsellor believed that it would be in the children's best interests to have contact with their mother who

was seen as a warm friendly and loving person in contrast with their strict father who over controlled and isolated the children.

Another report was ordered, with more supervised access. This time the older daughter was resistant. She presented as having rigid attitudes against her mother which she sometimes contradicted by her behaviour. The younger child was again more amenable, but was clearly cautious about doing anything contrary to the wishes of her father and sister.

The counsellor subsequently spoke with the mother. The mother was asked about the marital history and the separation. The wife said that the marriage had been violent. The separation occurred, she said as a result of her husband's sexual misconduct involving one of his work colleagues. The parents of the young girl involved had come to her for help. She had pleaded with them not to go to the police, and said that she would speak with the husband. She did this to protect his reputation and to protect the family especially the children. Subsequently her feelings towards her husband changed and he became even more abusive. She decided to leave. The husband threatened her and would not allow her to have the children. With no one to protect her she fled, went home to family, suffered ill health, and then when she recovered sufficiently she returned to this country to see the children. She did not think she had any chance of getting custody of them, because she had deserted them. Her husband in the meantime had told the children negative things about their mother. They did not want to have anything to do with their 'prostitute' mother. The counsellor asked that the children have representation. The wife was still getting no access to the children.

Year 4

Supervised access was ordered again with regard to the younger child. The older child was now living with her mother. This had come about as the child now growing up had been approached by members of the community who gave her more information about her family's history and she realised that she had misjudged her mother. In fact she was very fond of her (her mother has never disclosed the offence committed by her father). The supervised access period with the younger child was unsuccessful. She now became extremely unco-operative, and in fact presented the same behaviour as her older sister had some years before.

During the next eighteen months there were other periods of supervised access. All were unsuccessful. The counsellor concluded that it may be in everyone's interest to leave the child alone, and allow her to make her own moves as the older girl had done. At the point of the trial, the wife withdrew her application for custody of the younger child, on the condition that the husband agree to access between the two children. The

latest information received informally is that the access is still not satisfactory and the husband is still placing a great deal of pressure on the younger daughter not to see her mother and older sister.

CASE 7

Year 1

Wife applied for custody of three of her children. There were other older children who were considered to be old enough to determine their own choices. The children concerned with the custody application were aged thirteen (girl), seven (boy), and five (girl). At the same time she applied for an injunction against her husband, to prevent him from assaulting and harassing her. In her affadavit she outlined recent events including another move, this time interstate. She had gone hoping things might improve as in the past violence had occurred and this had apparently worsened after her husband had suffered head injuries in an 'accidental' fall. Things did not improve, so she returned to the state the family had previously lived in. She left by herself, found some accommodation and then went back to collect the two girls. The husband had indicated she could take them, but not the boy. She found the house filthy. The children had obviously not been properly cared for, but the husband threatened to kill her so she left. She at least managed to take the youngest child with her.

Orders were made that reports be submitted by Court counsellors in the two states. The report concerning the husband and the two children with him indicated the little boy's school progress was unsatisfactory both socially and academically. His appearance also indicated gross neglect. The daughter had also missed school allegedly because of a miscarriage. She said that she had experienced sexual relations from the age of seven. She accused her mother's boyfriend of being the father of the child she had lost. She stoutly defended her father, and abused her mother. One of the older brothers faced charges in the past related to assault within the family, and was now again having problems. He was unemployed and there was some suspicion that he was involved in criminal activities. The other older brother was apparently still attending school satisfactorily, but he was intending to move out and live with his girlfriend.

The report concerning the wife, including a report from the school was satisfactory. The wife told the counsellor that the husband had physically abused the children, and had threatened the older daughter with a metal bar causing her to run away and hide for some days, had suggested that they had sexual relations threatening to kill her if she did not comply. The wife told the counsellor on one of the many occasions of violence against her her husband had assaulted her in an attempt to force her to hand

over housekeeping money. She had fled, phoned the police, and too afraid to return, had waited in hiding until the arrival of the police. Meanwhile the husband told the police that the wife had attacked him, gone beserk and wrecked the house. The police took the wife with them to a psychiatric ward of a public hospital.

The psychiatrist said she was depressed, sullen and angry. He noted her facial bruising and cuts. His diagnosis was that she was suffering some 'adjustment disorder' and could possibly be suffering from a paranoid illness, maybe schizophrenia, possibly alcohol related. The husband had told him that the wife had lately changed, and had begun to smoke, drink coffee and alcohol which she had never done before. She was sent to psychiatric hospital where she was admitted under certification and was kept there for six weeks.

One year later

Because the husband had disappeared from his address the case sat. Eventually the husband was located in yet another state, with the youngest boy by himself. The two older boys were not living with their father. One was in gaol; the other was living with a girlfriend. The court requested another report from a counsellor in the state where the husband was now residing. The report indicated that the child again was not properly attending school, that they had moved many times. The child when interviewed not surprisingly showed an 'unusual' disinterest in the matter of where he was to live.

An urgent trial was ordered. As well a report was to be submitted regarding the interaction between each of the parents and the three children. By this time the older daughter was living an itinerant lifestyle and was thought to be living off the proceeds of prostitution.

During the supervised access period with the mother the bulk of the session was concerned with a lengthy argument between the mother and older daughter while the two younger children played together. The mother and daughter, once finished with their argument, smiled and caressed each other warmly. The supervised access period with the father comprised the unceasing efforts of the father to interrogate the younger daughter, and he used the other two children to attempt to coerce her to return to him. The session was concluded by the counsellor removing the child from the interrogation as she was extremely distressed. After the sessions the counsellor interviewed the parents. The husband and wife said that they were in agreement that the husband have custody of the boy, and the wife keep the little girl, but the husband insisted that the wife's living circumstances be checked to see if there was any moral risk or any other problems pertaining to that child.

Six months later

The wife came in to see a counsellor familiar to her. She told the counsellor that her solicitor had advised her to agree to the splitting of the children, because if she went ahead she ran the risk of losing both children. As well, the night before her appearance at Court for the counselling session her husband had arrived on her doorstep accompanied by some heavies, and threatened her. It was not surprising that she agreed to what he wanted. She still continued to express concern about the children not in her care.

She did not know where the little boy was as her husband had disappeared again.

The final contact the counsellor had with the wife was when she came in in distress, asking for help. The night before two men allegedly agents of her husband had broken into the house in which she was living. When challenged by the other person living there, a male, they assaulted him, beating him with metal knuckle dusters. They were afraid to go to the police. The wife wanted to move because of even more severe retribution. The wife was asking for assistance to get priority public housing provided. An explanatory letter was sent outlining the threat to the wife in her present environment, indicating that the wife had consistently been seen as a good parent by professional and other persons outside the family.

One of the additional problems facing this woman was her limited use of English. Her husband's skill in this area far outreached hers. Her apparently confused statements were the result of poor comprehension of the language, her rights and the law, and her totally reasonable fear (not paranoid) of her husband. She also told the counsellor that her husband had allegedly killed his first wife. It was not known whether he was charged or wanted for this offence in his country of origin.

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FAMILY VIOLENCE - PERPETUATION AND AFTERMATH IN THE FAMILY COURT: A LAWYER'S PERSPECTIVE

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I practise entirely in an area of law generically titled 'Family Law'. My practice involves dealing with people whose relationships (either marital or de facto) have broken down, negotiating or litigating the repercussions of that breakdown, the guardianship and/or custody of or access to the children of the relationship, and the settlement of financial matters between the parties.

I see my clients at various stages of the breakdown - some seek advice as to the leaving, some at the time of leaving and others at various stages after the separation.

I came to practise in the area without any training whatsoever to equip me for the emotional trauma. There was no subject at law school designed to help me deal with the emotions of other people or my own emotions. My frequent experience in the early days was a sense of frustration and inadequacy. I realised that my clients did not simply have a 'legal' problem, and that by making applications for custody, access or property I was in no way solving their problems.

My reaction to 'Family Law' is not unusual. We are the lowest paid and the least considered lawyers in practice. We joke amongst ourselves at the oft-held opinion of other legal practitioners that we are not 'real lawyers'. Many practitioners come to the area and leave - burnt out - tired and frustrated. Many firms delegate the 'family matters' to the younger practitioner who cannot wait until they have gained sufficient status to, in turn, pass on the work down the line.

But some of us stay in there - and we smile at the jokes - we support each other and we learn. We learn by intuition. We acquire the skills. We pick the brains of anyone we find who has expertise in dealing with people in trauma.

Family law clients are demanding. They are emotional and in many cases incapable of making decisions. They instruct from a position of anger, pain, fear, spite, and the lawyer's dilemma is: do we play the role of lawyer and simply follow and act upon those instructions or do we 'counsel' and try and make our client aware of their motives? Do we rush in and possibly increase the anger and pain or do we advise our client to wait, to take time

to think, to wait until the pain is passing and risk being accused of delaying, being in there for the money so making the matter 'spin out'? We often live our life between the 'Devil and the Deep Blue ...'.

I have presented the above preliminary remarks to attempt to give some indication of the difficulties faced by the lawyer. Now I will attempt to present some of the additional problems faced when we are dealing with the client who is or has been the victim of a violent spouse.

In 1978 I commenced work in a practice where at least 80 per cent of my clients were victims. The violence ran the whole gamut - from economic ('I don't know if the house is in joint names'; 'I don't know how much he earns'; 'I couldn't manage on the money he gave me', etc.) through the verbal ('He says I won't get custody because I am not a fit mother'; 'He says the house is dirty'; 'He always called me ...') to the physical. I sat stunned while they related their stories of punches, kicks, guns and knives - even chain saws. They related nights and days of seemingly endless beatings and more incomprehensible to me, these days and nights had grown into years before the woman came to my office.

I had one question - not for my clients - but for myself. Why? Why had these women stayed? Why had they put up with that life? Why had they left now and as sometimes happened why did they go back? I admit that on the first few occasions that they went back I wondered if it had been as bad as they had said, and even now, years down the track when I can understand the returning and I know the reason why, I am often confronted by the lawyer for the husband with remarks 'See, your client wasn't telling the truth ... she would not have gone back if it was as bad as you said'.

When I worked with women from shelters I knew of the violence. These women had support from the shelter workers. They came to me with the reassurance that I would listen and that I understood, and they had also come from a secure place where they had been believed and where they already had been able to talk of their experiences with both the workers and the other women.

Now I work in a practice where the majority of my clients have not been to a shelter, have not spoken to anyone about the 'hidden' problem in their relationship, and my experience is that that unless I am able to 'pick it out' it will remain hidden - but it will affect every aspect of the negotiations or proceedings.

My present practice is more typical of practices within the 'Family Law area', and it is my contention that in too many cases the violence in the relationship is not brought out between

the client and the lawyer, with the danger that the lawyer unwittingly becomes almost an accomplice to the violent spouse.

I have set out below some of the problems I perceive in a situation where a client is a victim of violence where the lawyer, if not aware and in some cases even if aware, is through the very operation of the court system placed in a position where he or she can simply prolong the victim's reaction to the violence. For the purposes of this paper I will refer mainly to proceedings under the Family Law Act, but point out that in most cases concerning violence in a de facto relationship the victim fares no better (with some exceptions which I will note). Much of the information and perceptions come from my own experience and the experience of my fellow practitioners. No one has yet written the 'handbook' for lawyers - we await it. I have below set out various stages of instruction and proceedings and the effect, as I see it, of violence.

First Contact

There is really no 'typical' victim. She does not come into the office wearing a sign that says 'I am a victim of domestic violence'. She is not necessarily (in fact rarely) bruised about the face and arms. She does not present as 'downtrodden', 'depressed' etc. She may be nervous, but then 90 per cent of our clients are nervous no matter how hard we try - coming to a lawyer can be an awesome experience. It is often the first contact any of our clients have had with 'the law'. She may be quietly spoken - polite - she may cry. Many cry at the first interview. They are sad, hurt, bewildered.

If the lawyer is direct and says 'Did he hit you', the answer may be:

(a) No (is she covering, afraid to say or tell the truth?)
(b) Not often, only when drunk, sometimes when I made him angry - or as I have heard 'Oh yes, but it didn't really hurt'.
(c) Yes - and then tells (is she telling the truth?)

What does the lawyer do with the answers?

If the answer is No - the negative response can be the result of the unexpected direct question - should we be direct? When and where in the initial interview should we ask the question? The negative response can be a cover up - if we suspect should we push? Do we push her further into the lie - and then put her at risk of not being believed if she raises it later in proceedings? If a lawyer is simply taking the approach - I follow instructions - the lie will live on.

If the answer is Yes - but with excuses. This is probably the easiest to deal with, but also has pitfalls. The admission of violence is out in the open. It is relatively easy to then simply get the facts (and we are skilled at getting the facts) and assess for ourselves and with our clients the real extent of the violence.

If the answer is Yes - and she tells it how it is. What do you do with the information?

There is Violence

The fact of violence in the relationship complicates the proceedings, a reason why many practitioners prefer to ignore it and are at a loss if confronted with it.

The first complication - should steps be taken to protect the client? What steps? An injunction - will protective proceedings raise the ire of the violent spouse and put the client in a dangerous situation? An injunction is only in reality a piece of paper - can the Courts, the Police - anyone back up that piece of paper to offer real protection? Is the situation so dangerous that the lawyer knows that the only real way the client can survive is to disobey court orders - to hide - to run. What do we do then? Ethically we are officers of the Court. We should not countenance disobedience of Court orders. We most certainly should not advise breach. You will not find many family lawyers prepared to admit that they have advised breaching court orders but you will find clients who are instructing lawyers who do breach.

If an injunction is taken out, then how do you deal with the next step - custody and/or access to the children of the relationship? Experience has taught me that there will be access, notwithstanding that the access parent has been violent to the custodial parent.

What about non-physical violence? What if the client wants 'to get it over with', 'let him have the house', 'I'll accept the offer he has made, it will keep him off my back'? In some cases it may well be to the advantage of your client to settle a property matter by taking an amount less than her entitlement to get it over with. It avoids constant harassment. It gives her peace of mind. But how much is that worth? Will she feel any different next month, next year?

How important is violence? How do I tell a client that the Court is not interested in hearing about beatings when considering a property settlement, or that a practice direction requires non-contentious affidavits in custody matters? How contentious is violence? Obviously if the violence is severe it must be pleaded. The fact that she had been beaten must be presented to the

Court which is considering the custody/access dispute between the parties, but how severe is severe?

Do you run the risk of filing the non-contentious affidavit in the hope that the matter will settle - that custody/access will not proceed to trial? If it does then the violence when raised may be treated as 'an afterthought' and not given sufficient weight. If you plead the violence do you'create' the prolonged litigation as he pleads that he isn't that type of person, and the issue ceases to be the best interests of the child and answering affidavits dwell upon whether he hit her once, hard, was provoked or even, as I have seen in one affidavit in answer to my pleading, 'I only hit her when she deserved it' (which is frightening when one realises that a lawyer settled that affidavit).

And the further problem is that often the other side is presenting as a charming plausible man. Experience has shown me that they are not brutes (exceptions do appear). Just as the woman wears no sign to tell us she is a victim the man does not have 'wife beater' tattooed on his forehead. I am aware of lawyers who have become doubtful as to their own clients credibility when confronted in court or at conference with the other side.

I have found that the simplest case is the one where there has been horrific physical violence and continues to be a dangerous man who threatens. I know what to do with that one, but all those cases in between that and the equally simple - well we just didn't get along - he was a nice bloke ... but we have decided to separate and we have agreed.

In the latter case, there are two reasonable people, a little uptight because the relationship has failed to sort it out. In the former, well I know what to do - I may not always be successful -but at least I know how and what to plead.

Lawyer/Client Relationship

In my experience women who have been victims of physical/verbal and even economic violence are far too willing to become dependent upon the lawyer. We are often seen as the saviour. We are going to fix it all up. There is a very fine line between helping the client over those initial stages of separation and taking over the client's life, in fact almost taking over the dominating role of the spouse she has left. A woman often has no idea of how to obtain housing, obtain financial support - i.e. pensions etc., has no idea if by some chance she is left in the house of how to pay mortgages, pay accounts. I have even had one client who did not know what bus to catch from her home to town, who had never been shopping on her own (she was Greek and

had come to Australia with her husband). There is skill required in being able to help the client deal with those problems, showing them, initially doing it for them, then with them and gradually easing off to enable them to do it themselves, without creating the dependency, and without leaving them with the feeling that they have no alternative but to turn back. A family lawyer is confronted with this, and it is not 'legal' work - i.e. if you are in private practice, how much if anything do you charge a client for assisting them to develop life skills, and if you do not charge what will your partners say to the use of your time? It is easier to 'fob' off this aspect by reverting to the role of legal adviser only, but in a number of cases there is no-one else to do it. I do it now, and I suppose it is easier for me as an employed lawyer. I did it in private practice and was poor. The extracurricular activities of a family lawyer are what leads to 'burn out'. I got out of private practice so that I could really practice what I see as family law - my former partner - easily one of the best - well, the last rumour I heard about her was that she was a clown in a circus in Paris.

It is so much easier to 'take over', to make the decisions, to tell the client what she is going to do - i.e. to advise, to take the role of decision maker, to go ahead, impliedly telling her that you and not she knows what is in her interest. To ignore all of the other problems she may be having - tell her to fix up the bills - never mind finding out whether she knows how. If she asks tell her that it isn't your job. It is also equally easy to 'take charge' i.e. 'give me the account I'll fix it - I'll write a letter' leaving her equally lost and dependent.

As an example of what can happen to a woman whose first and possibly only contact outside the relationship is with a lawyer and then with the Family Court I present the following, unfortunately not unusual, scenario.

The woman comes to the office for the appointment. The lawyer is busy. She can see that, there are files everywhere. (I always apologise for the mess and tell them if they think that's bad they should see my house.) Nothing is said. She immediately thinks she is taking up the time of a very busy person. She may even be told that she has an hour or half an hour until the next appointment. She doesn't really know how to present what she sees as her problem. She may downplay some things. She may get a response that borders on disinterest (lawyers do get tired). She talks. After a period of time she is then told 'this is your problem' 'what you have to do is ...'. If the lawyer is not prepared to spend time negotiating or if he or she decides that 'instructions' are more important than any other consideration, she will be told that certain proceedings will be issued because that's what she needs. She will be told to come back to sign some documents.

She has talked about the violence, perhaps directly, or she may have presented the problems about her lack of knowledge of family finances, or have presented herself as a less than adequate parent etc. because by now she actually believes that to be the truth. She returns to the office. She may be greeted by the secretary (the lawyer does not bother about signing documents), given documents, told to read them. They may not say exactly what she expected. She may then see the lawyer if available, who gives the impression that she is imposing on time again and being difficult. She raises some matters which she thinks should be in documents, such as, the extent or the number of times that violence occurred. She may be told that this is not relevant, or be told that 'the Court documents have to be in this form etc.'. She may not even get to see the lawyer. She may have to raise the matter with the secretary, who disappears and returns with the message 'not relevant etc.'. She accepts. She signs.

She may receive a letter advising her of the Court date from the lawyer or she may receive a letter from the Court Counselling Section telling her that she and her husband are to be at the Section at a time and date. She may be advised by the lawyer that this will happen - she may not - she does not want to confront the husband. She may feel that she has to go. She may be told that it will prejudice her case if she doesn't. She goes. She and her husband and other people she does not know see a movie on the court premises. This exhorts her to settle, to be reasonable. She and her husband see a counsellor. Her husband is the spokesperson. He always has been. She lets him.

The counsellor may tell her that the husband's proposal seems reasonable. She knows she must be reasonable. She also knows that what the husband is saying is a pack of lies, but she is not sure that this is the time and place to tell him this. She agrees, or she almost agrees, and a short note is prepared for the Court.

The day of the Court appearance arrives. She is told to meet the lawyer in the vicinity of the Court room. She arrives. There are a lot of people in the corridors around the courtroom, a lot of activity. She is looking for the husband, to avoid him. She can't find the lawyer. The lawyer may arrive, or someone from the 'firm' unknown to her may tell her that he or she is representing her that day. She may be asked whether she will agree to a certain proposal. She is not sure. She is told that the matter will settle if she agrees. She may if she is able put a counter proposal. This may be conveyed to the other lawyer. She will see the lawyers talking. As well as negotiating they may share some private gossip or joke. She sees them laughing. She is not sure what about. She may stand her ground - 'I won't agree to that access'. She will be pressed for an explanation. She already knows from experience to date that a lot of what she believes important is irrelevant, so she may make up an excuse - 'the

children don't want to see him'. She will be told in no uncertain terms that the Court won't have a bar of that, and she is just wasting the Court's time and her money.

She may agree. An order is made. Counselling chalks up a 'settlement' the Court chalks up a 'settlement'. The lawyers pride themselves that they have 'sorted that one out without too much effort' and she leaves to try and live with a 'agreement' that will not work and she knows it.

She may however notwithstanding the pressure in the corridor stand her ground and she will appear with the lawyer before the Registrar. No order will be made because there is no agreement, and 'Case Management' takes over and she will be directed back to Counselling.

Or she may agree, and within a few months contacts the lawyer again because it isn't working. She may eventually convince the lawyer and the Court that what the husband says is not necessarily reasonable and something may be sorted out that actually works, or it may have to be litigated, or it may never work. Her case may be one of the few (and they are in comparison with the users of the Court few) that will be in and out of Court over the next few years. She will either become a determined fighter, and will find a lawyer who believes, cares and will fight for her, or she becomes, for the sake of survival, a manipulator. She has to play his game, and she becomes a nuisance, and if she is lucky someone somewhere will say 'hang on - let's go back to the beginning and see what is really happening here'.

The husband may continue to bring actions in the Court. She agrees to weekend access. He wants an extra day. She agrees to half the holidays, he wants Christmas day, Easter and every birthday. She takes less than her entitlement in the settlement. She is still in his house, or she wants to go away with the children. He injuncts her from leaving the state. He accuses her of not giving the children sufficient clothes, of being late for access, or he brings them back when he wants to. She gives and gives for peace - because the Court will not call halt.

VII

CLOSING ADDRESS

Pat Giles
Parliament House
Canberra

As I've been involved in this same sort of exercise myself on a number of occasions over the last ten or fifteen years, I can well understand that you reach the end of a week like this pretty exhausted and even more cynical than you were when you started. If that's not the case then I am delighted. There are just two or three brief points that I would like to make for you to take away with you and perhaps to give you some heart along the way. Many of you live and work under an enormous amount of stress and must sometimes wonder whether it is getting any of us anywhere.

At the 1984 conference of the Labor Party, there were two very important resolutions adopted unanimously. They created no furore but were of enormous importance to women.

One was in the section on the economy and said that the Government should be aware of the influence on women of every budgetary and other decision that it makes. This allowed women to be heard at the tax summit. Possibly this would not have happened otherwise. The other one was a resolution that went into the legal and constitutional section of the platform, a commitment from the government to hold a conference on domestic violence. The fact that it has been held, fulfills this promise, and is of enormous significance for those of us who are involved in putting together the next round of resolutions to the national conference in 1986.

The conference itself was of course never intended to be an end in itself. What you people have been talking about, the resolutions that you have developed, and your discussion papers will go back with me this afternoon to a meeting that we are having today and tomorrow of the Status of Women Platform Committee and will also go to the other platform committees of the Party. They will be studied very carefully by the Department of Attorney-General and they will be given the consideration, the seriousness and the high importance that they deserve.

Another crumb of comfort for you: at the 1975 U.N. International Women's Year Conference in Mexico there was not one word about domestic violence in the official proceedings. In 1985 I do not think there was one delegation which did not make reference to domestic violence, the importance of it, the fact that it was not going to be eliminated without enormous changes to laws, to implementation of those laws, and to community attitudes. Three paragraphs of the final document 'Forward Looking Strategies to the Year 2,000' make specific reference to violence against

women*. One calls for special attention to be given in criminological training to the particular situation of women as victims of violent crime, including crimes that violate women's bodies. Another calls for Governments to undertake effective measures including mobilising community resources to identify, prevent and eliminate all violence, including family violence against women and children, and to provide shelter and support and re-orientation services for abused women and children.

The other one referred quite specifically to abused women. Gender-specific violence is increasing it says, and goes on to talk about how the nations of the world should deal with the phenomenon. Now, never forget that this document from Nairobi was agreed upon by a consensus of 160 nations. We do not move forward at a great rate at that level, but every small step is extremely valuable and to many women of the world the fact that their Governments have agreed to the Forward Looking Strategies is of enormous importance. We had to acknowledge the fact, as we have had to do this week, that we still live in a patriarchy, but there is now a shift away from the approach to women as albeit deserving recipients of welfare, towards a recognition of women's right, among other rights, to protection from violence of every sort. The education of communities for peace and the resolution of conflict, and the recognition of the fact that there is just as much relevance for this education for peace and the resolution of conflict within the home as anywhere else, was strongly supported.

More important perhaps than all of these is the recognition internationally of the need for the empowerment of women, the enabling of women to take control of their own lives and of their own fertility and the absolutely crucial need for the participation of women in all decision-making that has relevance to them - and I cannot think of any decision-making which does not have relevance to women.

I would like to tell you of an incident at Nairobi. There was one Western delegation which wanted to propose a resolution on domestic violence. (The resolutions stand outside of the main document which I have quoted to you, and they have been sent to the General Assembly which has yet to decide their fate.) This particular resolution came from a country which wanted to emphasise the use of 'women-centred' language, to get away from U.N. language which is inevitably quite stilted and formal and sometimes rather turgid. What was actually meant by 'women-centred' language we were not certain until we saw something like this: 'it doesn't matter whether you're being beaten to a pulp by a complete stranger or a loved one, it hurts just as much'. This

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Editor's Note: These paragraphs are reproduced in this section of the proceedings.

got as far as the Australian delegation where Helen L'Orange (Adviser to the New South Wales Premier) took one horrified look and decided that a little surgery was called for. In addition to the odd phraseology, there were a number of points missing, but by the time Helen had finished and handed it back, the movers were perfectly satisfied and we had a comprehensive, sensible, and directly-worded resolution. If it ever sees the light of day, the originators will get all the credit, but we know that its quality reflects Australian skill and experience.

Finally, I am reminded of the fact that, over the years of the second wave of the feminist movement as we have been socialising together, the first thing we have needed to do was to re-arrange the furniture. You have come to this conference and found that, metaphorically, some scene-shifting was required. I am glad that you have been successful, and I hope that you go away feeling that your input, your suggestions about the way that it should be re-arranged, and your experience of these matters will be taken into account.

My sincere congratulations not only to the organisers of the conference and the speakers, but to all you people who have made it such an outstanding event, the first national conference in Australia on domestic violence but, I am sure, not the last.

Selected paragraphs from the

Forward Looking Strategies of Implementation for the Advancement of Women and Concrete Measures to Overcome Obstacles to the Achievement of the Goals and Objectives of the United Nations Decade for Women for the Period 1986 to the Year 2000: Equality, Development, Peace.

Office of the Status of Women
Department of the Prime Minister
Canberra

October 1985

In order to promote equality of women and men, Governments should ensure, for both women and men, equality before the law, the provision of facilities for equality of educational opportunities and training, health services, equality in conditions and opportunities of employment, including remuneration, and adequate social security. Governments should recognise and undertake measures to implement the right of men and women to employment on equal conditions, regardless of marital status, and their equal access to the whole range of economic activities.

* * *

Governments should effectively secure participation of women in the decision-making processes at a national, state and local level through legislative and administrative measures. It is desirable that governmental departments establish a special office in each of them headed preferably by a woman, to periodically monitor and accelerate the process of equitable representation of women. Special activities should be undertaken to increase the recruitment, nomination and promotion of women, especially to decision-making and policy-making positions, by publicising posts more widely, increasing upward mobility and so on, until equitable representation of women is achieved. Reports should be compiled periodically on the numbers of women in public service and on their levels of responsibility in their areas of work.

* * *

The sharp contrasts between legislative changes and effective implementation of these changes is a major obstacle to the full participation of women in society. De facto and indirect discrimination, particularly by reference to marital or family status, often persist despite legislative action. The law as a recourse does not automatically benefit all women equally, owing to the socio-economic inequalities determing women's knowledge of and access to the law, as well as their ability to exercise their full legal right without fear of recrimination or intimidation. The lack or inadequacy of the dissemination of information on women's rights and the available recourse to justice has hampered, in many instances, the achievement of expected results.

* * *

Flexible working hours for all are strongly recommended as a measure for encouraging the sharing of parental and domestic responsibilities by women and men provided that such measures are not used against the interests of employees. Re-entry programs, complete with training and stipends, should be provided for women who have been out of the labour force for some time. Tax structures should be revised so that the tax liability on the combined earnings of married couples does not constitute a disincentive to women's employment.

* * *

Timely and reliable statistics on the situation of women have an important role to play in the elimination of stereotypes and the movement towards full equality. Governments should help collect statistics and make periodic assessment in identifying stereotypes and inequalities, in providing concrete evidence concerning many of the harmful consequences of unequal laws and practices and in measuring progress in the elimination of inequities.

* * *

In view of the critical role of this sector in eliminating stereotyped images of women and providing women with easier access to information, the participation of women at all levels of communications policy and decision-making and in program design, implementation and monitoring should be given high priority. The media's portrayal of stereotyped images of women and also that of the advertising industry can have a profoundly adverse effect on attitudes towards and among women. Women should be made an integral part of the decision-making concerning the choice and development of alternative forms of communication and should have an equal say in the determination of the content of all public information efforts. The cultural media, involving ritual drama, dialogue, oral literature and music, should be integrated in all development efforts to enhance communication. Women's own cultural projects aimed at changing the traditional images of women and men should be promoted and women should have equal access to financial support. In the field of communication, there is ample scope for international co-operation regarding information related to the sharing of experience by women and to projecting activities concerning the role of women in development and peace in order to enhance the awareness of both accomplishments and the tasks that remain to be fulfilled.

* * *

Governments should undertake effective measures, including mobilising community resources, to identify, prevent and eliminate all violence, including family violence, against women and children and to provide shelter, support and re-orientation services for abused women and children. These measures should notably be aimed at making women conscious that maltreatment is not an incurable phenomenon, but is a blow to their physical and moral integrity, against which they have the right (and the duty) to fight; whether they are themselves the victims or the witnesses. Beyond these urgent protective measures for maltreated women and children, as well as repressive measures for the authors of this maltreatment, it would be proper to set in motion long-term supportive machineries of aid and guidance for maltreated women and children, as well as the people - often men - who maltreat them.

Special attention should be given in criminology training to the particular situation of women as victims of violent crimes, including crimes that violate women's bodies and result in serious physical and psychological damage. Legislation should be passed and laws enforced in every country to end the degradation of women through sex-related crimes. Guidance should be given to law enforcement and other authorities on the need to deal sensibly snd sensitively with the victims of such crimes.

* * *

Governments should integrate women in the formulation of policies, programs and projects for the provision of basic shelter and infrastructure. To this end, enrolment of women in architectural, engineering and related fields should be encouraged, and qualified women graduates in these fields should be assigned to professional and policy-making and decision-making positions. The shelter and infrastructural needs of women should be assessed and specifically incorporated in housing, community development, and slum and squatter projects.

* * *

Governmets are urged to give priority to the development of social infrastructure, such as adequate care and education for the children of working parents, whether such work is carried out at home, in the fields or in factories, to reduce the 'double burden' of working women in both urban and rural areas. Likewise they are urged to offer incentives to employers to provide adequate child care services which meet the requirements of parents regarding opening hours. Employers should allow either parent to work flexible hours in order to share the

responsibilities of child care. Simultaneously, Governments and non-government organisations should mobilise the mass media and other means of communication to ensure public consensus on the need for men and society as a whole to share with women the responsibilities of producing and rearing children, who represent the human-resource capabilities of the future.

* * *

The remunerated and, in particular, the unremunerated contributions of women to all aspects and sectors of development should be recognised, and appropriate efforts should be made to measure and reflect these contributions in national accounts and economic statistics and in the GNP. Concrete steps should be taken to quantify the unremunerated contribution of women to agriculture, food production, reproduction and household activities.

* * *

The full and effective participation of women in the decision-making and implementation process related to science and technology, including planning and setting priorities for research and development, and the choice, acquisition, adaptation, innovation and application of science and technology for development should be enhanced. Governments should reassess their technological capabilities and monitor current processes of change so as to anticipate and ameliorate any adverse impact on women, particularly adverse effect upon the quality of jobs.

* * *

Changes in social and economic structures should be promoted which would make possible the full equality of women and their free access to all types of development as active agents and beneficiaries, without discrimination of any kind, and to all types of education, training and employment. Special attention should be paid to implementing this right to the maximum extent possible for young women.

* * *

Women and men have an equal right and the same vital interest in contributing to international peace and co-operation. Women should participate fully in all efforts to strengthen and maintain international peace and security and to promote international co-operation, diplomacy, the process of detente, disarmament in the nuclear field in particular, and respect for the principle of the Charter of the United Nations, including respect for the sovereign rights of States, guarantees of fundamental freedom and human rights, such as recognition of the dignity of the individual and self-determination, and freedom of thought, conscience, expression, association, assembly, communication and movement without distinction as to race, sex, political and religious belief, language or ethnic origin. The commitment to remove the obstacles to women's participation in the promotion of peace should be strengthened.

VIII

CONCLUDING OVERVIEW: THE CONFERENCE AGENDA

CONCLUDING OVERVIEW OF NATIONAL CONFERENCE ON DOMESTIC VIOLENCE

Duncan Chappell
Simon Fraser University
Burnaby British Columbia Canada

Some Personal Thoughts:

For the past week I have been one of a small group of men fortunate to participate in this first National Conference on Domestic Violence. This participation has been for me, and I suspect for each of the men here, a difficult and often deeply disturbing and emotional experience. Ultimately, it has also been a richly rewarding personal learning experience.

I have listened with a sense of shame to the harrowing accounts given by those who have survived violence inflicted upon them by men. I have heard, and understood, the anger, frustration and bitterness that these appalling actions have provoked. One response to what I have heard, in company with the other men, has been the preparation of a statement, which has been distributed to all of you, in which we collectively express our feelings about what we hope we can do to help bring to an end this violence. We have established a network which will exist after this meeting to pursue this goal*.

Remembrance Day:

It is perhaps significant that this national Conference began on November 11, Remembrance Day. It is a day on which we remember and pay respect to those who have been killed in the various wars that this country has fought. In the context of our patriarchal society war is, of course, primarily conducted by males. The names which appear on war memorials are almost exclusively male. The heroic deeds commemorated are also those of males as any visit to the Australian War Museum will quickly confirm.

War is the most extreme form of violence for which men are responsible. And the way in which we portray and remember this violence on November 11 is as distorted and biased in this patriarchal setting as the way we view violence which men inflict on women and children in the family. The scarred survivors, and the non-survivors, of war are all too frequently women and children caught up in men's gladiatorial combat whether it be in Lebanon, El Salvador, the Persian Gulf or other spots on the globe in which bloody conflict is currently being brought to us on our television screens.

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* This statement is reproduced in Appendix 1.

November 11 should perhaps in future be a day on which we recognise all of the victims of male violence including those killed or surviving violence in the family. But we should also be aware that violence in the family is part of a far broader culture of violence which is deeply rooted in our society and that of many other nations.

Conflict: Practitioners versus Academics

A number of participants at this Conference used war terminology and analogies when describing conflict between men and women. Some criticised this usage but it was significant that conflict did spill out in other ways during this meeting, especially in the dialogue between women working in refuges and those working in other roles less directly involved with survivors. The most extreme statement of this conflict was presented in a newspaper advertisement entitled titled 'New South Wales Women's Refuge Movement Criticise National Domestic Violence Conference'. Media reports of the first day of the Conference proceedings picked up on this criticism which described the Australian Institute of Criminology's sponsorship of the meeting as a 'clear example of the attempt by academics and professionals to take over a grass-roots movement'.

Barbara Younger in her paper 'Domestice Violence: Ideology and Practice' provided what I thought were compelling responses to this criticism. A refuge worker herself, Ms Younger said her paper was a

> reaction against a certain way of speaking that seemed to divide the people likely to attend this Conference into two groups. On the one hand, there would be people with a theoretical interest in the subject of domestic violence, and on the other hand there would be people with an interest from practical, face-to-face experience in the area. There seemed to be an assumption that those with the theoretical interest are not involved in any practice in connection with domestic violence that might raise issues about appropriate practice. Those involved in dealing with domestic violence at a practical level were not seen as having any interest in, or stake in, any practical theory or theoretical issue.

Barbara Younger went on to present a feminist approach to domestic violence and she posed what I thought were a set of very important questions for all of us.

> When a woman living with fear and abuse at home approaches you, or when you are thinking about domestic violence (my questions are addressed to all of you not just the so-called service providers), how

> do you see yourself in the interaction? If you are a woman, do you identify with her as another member of an oppressed group, or do you see herself and her life as somehow different? If you think she is in her situation because she is somehow different from you you are showing that you think the problem of domestic violence lies with individuals, that individual women are somehow to blame, if the problem is patriarchy it is a problem for all women. If you are a man, are you aware of yourself as a member of an oppressor group, dealing with one of those you have power over as a group?

In analysing and seeking to comprehend the discussion and debate that has occurred at the Conference during the past five days I have found myself returning again and again to Barbara Younger's paper for 'orientation'. Ms Younger was not, of course, the only speaker to address the perceived conflict between workers and theorists. For example, Dr Helen Long, from the Victorian Women's Policy Coordination Unit, warned against labelling people involved in the process of seeking change in legislative dictates at the state and federal level relating to domestic violence. Dr Long said there was a tendency to view legislative change as a monolithic process occurring behind closed doors through which some people had access while others did not. People were labelled as survivors, refuge workers, bureaucrats or academics. These were not helpful labels - it was difficult to identify oneself as any one of these. Thus she saw herself as a bureaucrat, a former academic, and also as a person who had friends who had been battered in family settings. Dr Long claimed that labelling of this type closed off communication and stifled the opportunities of change through the legal process. Input was needed from all groups and, in making contributions for change, you had to weigh the value of what each person or group had to offer.

Dr Long, and other speakers, made a special plea for the recognition of the need for rigorous research and evaluation in the area of domestic violence. It was a plea which was to be heard again and again during the Conference. Academics had an important contribution to make, it was asserted, without which the type and efficacy of reform would be seriously weakened, just as refuge workers had a contribution to make.

The Conference Objectives: Expecting Too Much?

I suspect that the tensions between practitioners and theorists will continue after this meeting. But a feeling of some consensus did begin to emerge as all of us went through a cathartic experience in the sessions, in the hallways and other gathering places during the week. A set of recommendations will flow from this Conference, as was intended when the meeting was

first mooted by the Australian Labor Party at its biennial National Conference in July 1984. The federal Attorney-General and Deputy Prime Minister, Mr Lionel Bowen, in opening the meeting on Monday, confirmed the importance attached by the government to this gathering. Mr Bowen also referred to the international attention given domestic violence at the recent meeting of more than 100 nations in Milan for the Seventh United Nations Congress on Crime and the Treatment of Offenders.

At Milan Australia was a co-sponsor of a resolution which stressed that 'the problem of domestic violence is a multi-faceted one which should be examined from the perspective of crime-prevention and criminal justice in the context of socio-economic circumstances'.

This rather forbidding form of diplomatic (and academic?) language conceals the very large measure of support given to the resolution, although not all were impressed at Milan by the forms of intervention proposed to deal with family violence. I attended the Milan Congress, and remember that during the course of debate on domestic violence a representative of the Vatican warned against intrusions into family life to deal with private matters between spouses. As we have heard at this Conference on several occasions, attitudes of this type espoused by the Catholic Church have done little to assist women in the past, and have prevented change.

While international and national attention to domestic violence is now well established we were cautioned by a number of Conference participants about expecting too much, especially from legal change. This caution was perhaps most eloquently and effectively made by a Canadian compatriot, Linda MacLeod, in her paper titled 'Policy as Chivalry: the Criminalisation of Wife Battering'.

I shall return in a moment to Ms MacLeod's paper, but caution based on historical analysis was also voiced by Dr Alicia Lee and Dr Judith Allen in their papers. Dr Lee, you will recall, made a strong case for the view that women are in all important respects similar to other oppressed social groups - 'social out-groups' she termed them. In closing her paper Dr Lee said that women

> are the perennial, the universal, the last and still the most <u>out</u> of out-groups ... Governments therefore which espouse ideals of equality and fairness must accept the implications of these premises for all groups. We cannot assume that they will.

Dr Lee went on to remind the Conference that Cato the elder had said that a woman was 'a wild animal' as well as warning that 'suffer women once to arrive at an equality with you and they will from that moment become your masters'. She also reminded

the gathering that Mr Des Frawley, National Party member for Caboolture in the Queensland parliament, had said recently that 'I do not mind having women in politics as long as there are more men than women. Once women get the upper hand we will be in trouble.' Dr Lee noted that the statement was made only three years ago and that 'the forces against us are ancient, deep, and powerful'.

Judith Allen's analysis of attempts by Australian women to stop wife battering since 1880 afforded ample evidence of the truth of Dr Lee's statement. The struggle for change, as Dr Judith Allen demonstrated, has been intensely political and

> while this may initially seem too obvious to state much work on domestic violence proceeds as if only one side of this contest, the feminist side, is political. If the history shows nothing else, it reveals the wily and adaptive politics of twentieth century masculinity enshrined in state agencies, in social policy, in the relevant professions, and in the conjugal unit itself. It is time it was named and rendered as such.

Linda MacLeod's analysis of policies being adopted or proposed in a number of nations including Canada, the United States, the United Kingdom and Australia, to criminalise wife battering and effect other changes seemed to also be warning, albeit in less direct language, that women should become aware of the 'wily and adaptive politics of twentieth century masculinity'. Linda MacLeod's paper mixed optimism with caution. Her optimism was captured in her opening remarks

> At no time in recorded history have governments intervened as forcefully and passionately as today to help battered women. Government concern with wife battering is so widespread that it appears to transcend specific political ideologies. Even more surprisingly responses to wife battering seen to be in direct reply to feminist demands to criminalise wife battering'.

'Yet', she went on, 'despite the flurry of government interest in the plight of battered wives, disturbing reports nag at our euphoria'. Linda MacLeod then proceeded to say why this was so by undertaking a fascinating analysis of current trends in policy pronouncements and program development of governments in relation to wife battering. I'm not going to repeat this analysis but I found it to be a very helpful way in which, in the little time remaining, to try and look at <u>some</u> of the policies and programs we've heard about here at this Conference.

Criminalisation of Wife Battering - A Crisis Management Approach

In almost all of the policy documents examined by Linda MacLeod in her paper, as well as in much of the discussion that we have heard here in the past week, a major emphasis has been placed on the criminalisation of wife-battering - the treating of wife battering like 'any other crime'. This emphasis has extended to other allied areas of the criminal law such as sexual assault where there has been a strong move to criminalise marital rape. This particular aspect of family violence was tellingly portrayed in Dr David Finkelhor's paper dealing with marital rape in the context of United States society.

The policy thrust directed towards criminalisation of wife battering, said Linda MacLeod, had been manifested most forcefully in recommendations made for the development of four types of programs:

1. Tougher arrest policies;

2. Upgrading of police training;

3. Changes to legal and related procedures;

4. Crisis intervention.

1. Arrest

In a most compelling address, given this morning to the Conference, Dr Lawrence Sherman, the former director of the Washington DC based Police Foundation, raised pointedly the question concerning what we know of the effectiveness of any of these recommended programs. Dr Sherman spent some time describing a carefully crafted empirical study conducted by the Police Foundation of the utility of arresting those who were responsible for wife battering as a measure to curb this particular form of violence. The results of the study appeared to be promising, but even so, exhibiting the caution of a well established researcher and methodologist, Dr Sherman stressed the need for the replication of that research, not only in the United States, but also in countries like Australia, before putting arrest policies into full effect, or trying alternative policies.

Despite this cautionary statement the movement towards tough arrest policies is, of course, already occurring in both the United States and Australia. In a number of papers presented at the Conference we were told of the methods by which various police forces were either seeking or implementing new arrest procedures. We were also told about the difficulties of implementating such procedures. For example, the research conducted by Dr Suzanne Hatty and Dr Jeanna Sutton, sponsored in part by the National Police Research Unit, had begun to

examine the attitudes of police towards domestic violence and especially towards new legislative and allied policies implemented in NSW since 1983. The preliminary findings from their research suggested that police, and particularly those with many years of service in law enforcement, were not sympathetic to these changes and were not necessarily implementing them fully despite the best endeavours of those responsible for their formulation, and also for the training of officers.

Police from a number of forces in Australia were represented at the Conference. Some of these police officers offered a number of explanations why police were reluctant to arrest which included mention of inadequate legal powers as well as a misunderstanding on the part of feminists of the true nature of police work. These explanations, and their related attitudes, and especially those in Victoria, were severely criticised by several speakers from the floor as well as in a paper presented by Ms Jude McCulloch from the St Kilda Legal Service. They are attitudes which point to the real dilemmas that confront those seeking the implementation of new police approaches to handling domestic violence whether or not they are proven to be effective by objective research.

2. Training:

Similar difficulties arise in regard to the second program thrust mentioned by Ms Linda MacLeod, namely that of upgrading police training programs. This type of upgrading was reported upon at the Conference by New South Wales and South Australia. But speakers from both jurisdictions said that their training efforts had not been very successful and that the logistics and cost of providing adequate instruction to all members of their police forces was such that they were looking for alternative models to deal with domestic violence from the law enforcement perspective. It was also interesting that in an exchange from the floor of the Conference a former federal police officer, now married to a state policeman, pointed to the fact that it was of far greater importance, in her view, in implementing change in this area, to adopt new police recruiting and allied policies which would enable those most familiar with wife battering, women, to become police officers and to participate in the enforcement of alternative laws in this area. The number of women currently in Australian police forces remained small - in Victoria about 10 per cent - and until some form of parity was reached between the sexes it seemed to be unlikely that real change would occur.

3. Legal and Related Procedures:

The third program thrust referred to by Linda MacLeod was in the broad area of procedural and legislative change designed to improve the effectiveness of restraining and similar types of

order. The question whether or not such orders do in fact reduce violence was raised by Dr Sherman, and by other speakers at the Conference from New South Wales and South Australia. Chief Inspector Philip Cornish from South Australia presented information about the operation of that state's restraining order law which did appear to give some encouragement to their use although research which could show reductions in violent behaviour by wife batterers had not yet been conducted, and indeed, would probably be very difficult to conduct.

Ms Julie Stubbs from the New South Wales Bureau of Crime Statistics and Research described the experience of that jurisdiction with an equivalent type of restraining order, and also with changes to the arrest procedures mentioned earlier. The findings once more appeared to show some positive effects flowing from restraining orders although their overall impact on the level of wife battering in New South Wales society was still not clear.

Peter Waters of the Kingswood Legal Service in New South Wales, in a lucid analysis of the failure of restraint orders to deal with domestic violence in the Family Court of Australia setting, also afforded an insight into the ideological and allied difficulties that faced any group or jurisdiction which sought to effect changes in the handling of such violence. The fact that Family Court restraining orders appeared to have little effect on the incidence of domestic violence, said Peter Waters, was not only a function of a reluctance on the part of state police to take up their clearly prescribed federal jurisdiction but also reflected that Court's view that rather than using criminal justice remedies it was preferable to adopt conciliatory procedures when dealing with family conflicts.

4. Crisis Intervention:

The final program thrust referred to by Linda MacLeod was that of crisis intervention models involving specially trained police working in conjunction with community and social workers. Ms Vicky Jacobs from the South Australia Police Department described how the South Australian police were moving towards this model. It was a model which would utilise the services of a specialist squad in the South Australia Police Department, initially established in the metropolitan area of Adelaide. It was intended that the squad would respond to situations where domestic disputes occurred and violence was apprehended at the earliest possible moment.

The merits of this particular approach, at least in South Australia have yet to be determined since the new unit has not yet begun its work. But it was pointed out that some of the deficiencies of such an approach included that it may well stop or severely limit the training of other police officers in

the complexities of domestic crisis intervention; it would be very costly to have a specialist unit of this type; and the members of a unit of this type were likely (as is the case with refuge workers) to be rapidly burnt out and to lose their initial enthusiasm and high level of motivation.

Having reviewed these various 'crisis management programs' in her paper Linda MacLeod made the following telling point

> Because the criminal justice emphasis is crisis oriented it tends to focus on police policy almost exclusively. Only in United States documents did I find a fairly consistent mention of the role of judges, prosecutors, justices of the peace, and other court workers and a clear recognition of the important role they must play if changes in police policies are to be effective.

I suspect that we may have fallen into a similar position in this country. The police have borne the brunt of our criticism here at this Conference. They are also members of the criminal justice agency which is being asked to effect the most radical and far reaching change. But it is lawyers, and particularly those who sit as judges and magistrates, who almost certainly are as much in need of change, especially in their attitudes towards domestic violence. It cannot pass without comment that there is not a single magistrate or judge in attendance at this Conference!

The socialisation process about domestic violence for lawyers begins at an early point in their career at law school. As Myf Christie said in her paper presented at the Conference

> I came to practice in the area (family law) without any training whatsoever to equip me for the emotional trauma. There was not a subject at law school to help me deal with the emotions of other people or my emotions - my frequent experience in the early days was a sense of frustration and inadequacy. I realised that my clients although they were coming to me did not have simply a 'legal problem' - but by making application for custody, access or property I was in no way solving their problems. My reaction to 'family law' is not unusual - we are the lowest paid and the least considered lawyers in practice. We joke amongst ourselves at the oft held opinion of other legal practitioners that we are not 'real lawyers'. Many practitioners come to the area and leave - burnt out, tired and frustrated. Many firms delegate the 'family matters' to the younger practitioners who cannot wait until they have gained sufficient status to in turn pass on the work down the line.

Given these forms of training, and their associated attitudes, it is scarcely surprising that the courts, which are run almost exclusively by male judicial officers, reflect similar viewpoints. In my opinion one can only change this situation by 'radical reform'. We must make the appointment of judicial officers a far more open process than it is at present. We must all ensure that judicial officers are representative of the society in which they live, and that they have every chance to become aware of how society operates rather than remain cloistered from it. Our judicial officers should represent the demographic nature of our society both in its gender and multi-cultural perspectives. Law school training also needs to be changed radically to reflect the conditions of contemporary society and particularly those which affect women. Though an increasing number of women are now entering law school, it does not seem that their presence has produced the required changes to curricula which reflect the non-patriarchal society. Change may also be provoked through the activities of groups like the Criminal Law Society which was mentioned in the short address given by one of its founders, Attorney Kevin Borick from Adelaide.

Other Policies: Portraying Battered Wives as a Homogeneous Group

Ms Linda MacLeod dealt with a range of other blemishes and problems in the policy arena but I can comment here only on one further issue. It is that of treating battered wives as essentially a homogeneous group with some recognition of the problems of Aboriginals and ethnic wives. Linda MacLeod noted that the recent discussion paper produced by the Victorian Women's Policy Coordination Unit was one of the few documents she surveyed anywhere that acknowledged the different problems encountered by the very young, or mature battered women.

At this Conference we had a very moving and powerful presentation of the Aboriginal perspective of domestic violence. The oppressive actions of the dominant white society on the first Australians following colonisation almost two centuries ago is a shameful part of our history. It is a history which continues. Racism is far from dead in our society, especially in the remoter parts of the country where so many Aboriginal communities struggle to survive against repressive white action.

The presentation by Ms Ridgeway traced the historical role of Aboriginal women within traditional society. Her presentation also pointed to the major force Aboriginal women represent behind the fight for survival.

> Despite the perpetration of violence on Aboriginal women by non-Aboriginals, women survived -establishing for themselves a role within non-Aboriginal society. Aboriginal men were not so fortunate - they lost their

> families, role as hunters and ceremonial rites. They were reduced to mere shadows of their ancestors'.

Ms Ridgeway went on to stress that the analysis of policies for domestic violence within the Aboriginal community required a different approach to that of other groups within our multi-cultural society.

> Whilst the evidence of domestic violence within the Aboriginal community appears, on the surface, to resemble those within the non-Aboriginal community, one cannot consider the formulation of policies and establishment of services to meet the need of the Aboriginal community without taking into account issues affecting the functioning of Aboriginal men and women within the community.
>
> Domestic violence does exist at all levels within the community and is present in all forms. Being an issue which traditionally did not exist we can only assume it is another destructive element perpetrated on us by the non-Aboriginal community.

Implications:

To conclude, what are some of the policy implications for the future of the points made in these brief remarks. Linda MacLeod drew a number which I think we should all consider. First, she again warned that we should be wary of relying on the criminal justice system and the criminal law to produce the long term goal of ultimate equality for women. 'Traditionally the law has been used' she said 'to subordinate women...Bitter experience has shown that apparent legal reform can mean a step backward for women once the power of precedents and inaction come into play'. We were also warned about the power of legal precedent by Zoe Rathus in her analysis of the sentencing in Queensland of women convicted of killing their husbands and especially in her analysis of the case of Beryl Birch.

Secondly, the criminalisation of wife battering may also result in increased state intervention in families of a type which may lead to a focus upon the offender rather than the survivor. In Canada we've seen something of this trend already with the desire to prosecute becoming paramount and so powerful that women have been imprisoned for contempt of court when refusing to cooperate as complainants in sexual assault cases.

Thirdly, we may need to recognise the perhaps 'unpopular view' with some that while women want protection, most victims do not want their assailants punished so much as they want the abuse to stop. They want their assailant helped. Legal remedies are seen by most women, according to survey research conducted in Canada,

as a temporary solution. The real solution that women seek for violence inflicted upon them is to provide a means for them to escape. Adequate housing, pensions, and the other social networks that are required are their primary objective which is that of obtaining 'help to make it on their own'. It is even suggested, by Dr Sherman among others, that simple arrest of a wife batterer without any subsequent criminal justice follow-up may be all that most women desire.

Despite all of this Linda MacLeod does remain optimistic about the possibilities for change. So too I sense, does this Conference. We have formulated many compelling recommendations for government. The onus for action is now upon them. We have also generated a great deal of energy and good will during the past few days as human beings dedicated to ending inequality and violence.

All of this has been made possible by the Australian Institute of Criminology which has, in the face of considerable difficulties, brought us together here in Canberra. On your behalf I would like to express my thanks to Ms Jane Mugford who has remained so calm, helpful and positive throughout the week; to Dr Suzanne Hatty her collaborator in the organisational tasks; to Professor Richard Harding, the Director of the Australian Institute of Criminology, who has taken forward the mandate given originally by the government to conduct this meeting; and to the other members of the Australian Institute of Criminology team who have worked so hard to make this gathering a success.

IX

FUTURE DIRECTIONS: RESOLUTIONS AND RECOMMENDATIONS

'The reality is that an enormous number of cohabiting women are at risk in the normal course of everyday life. Their plight is hidden by material dependency, the pressures of compulsory heterosexuality and the privacy of marriage and family life.

A culture with woman-centred values would not tolerate such risks without instituting preventive measures. For a start, marriage would be identified and regulated as a dangerous trade, just like coal mining or working in a nuclear plant. The extent to which marriage is a health hazard to women would be advertised as is currently the case for cigarettes. The economic basis for all sexual arrangements would be removed; no woman, in the face of the wealth of satisfying alternatives, would find selling sexual and domestic services a compelling livelihood. Nor would devotion of a woman's life to the advancing of one man appear a romantic or attractive pastime.

Reproduction would be neither a socio-economic liability nor a destiny. Where motherhood was chosen as full-time work, it would be waged accordingly and construed as socially valuable. The full range of child care situations would prevail.

If, under these circumstances of great risk, women chose marriage, it would be reorganised and regulated in the following ways. It would have clearly regulated working hours, wages and economic values attached to the work. A fixed proportion of every husband's wages would go, by law, into superannuation and a hefty wife's compensaton fund in the event of injury. There would be annual holidays, appropriate leave loadings and, most important, the notion of leisure for wives would be entrenched at law. There would be sick pay and comprehensive 24-hour free health services. The organisation of housing and housework would be organised more collectively to maximise women's contact with other wives - an important union issue. There would be safe houses established for the event of violence. There would be committees of women to investigate all complaints and again, there would be a 24-hour free medical service to specifically examine for evidence in the case of complaints. All complaints would be policed and there would be social shame and stigma attached to the batterer. For men proven to be violent, the range of penalties would go quite beyond criminal law.

For a start, violent men should be disenfranchised and lose citizenship rights. (Interestingly, this was an achievement of the women of Queensland in 1905. A law was passed which disenfranchised wife batterers. It was restored by the Labor Government during the War.) Men should lose citizenship; they should be unable to work in professions; they should not be able to be members of trade unions, sporting associations, recreational clubs, or religious organisations if they are proven and known batterers, since these people are anti-social, and difficult.

For these men, custody of all children of a marriage should be denied; they should be ineligible to cohabit with women as a civil right, and if they wish to make a case for this in the future, it would have to be adjudicated. They should immediately be placed on probation in their current job and should be sacked upon reconviction or any further complaint. Compensation towards their victims must come out of their salary. Finally, they should forfeit any entitlement to credit cards, loans and tax rebates on domestic arrangements.

Now this is all utopian, of course, and the fact that we laugh tells us, I would suggest, how masculinist our world is. But measures like this, if policed, would at least minimise men's calculated willingness to batter women.'

Judith Allen, in an address
to the conference.

'I think we must not put down utopias. They have a very important political place. They come before people know what the political action should be, what the analysis of the social situation is, but they are there as experimental areas of thought, whereby we can think or fantasise a future which will not, of course, be the future of the utopia. We may be at a point within the feminist movement where we can only utopianise concepts of the future as yet, but I don't think that's an invalid part of the struggle.'

Juliet Mitchell, in Reid and Gunew (eds),
Not the Whole Story, 1984, p. 109.

GENERAL STATEMENT:

1. There is a need for a common definition of domestic violence.

2. Every woman has the right to leave a violent relationship without burden or guilt.

3. Every woman right has the right of access to a refuge in times of personal crisis.

4. There is a difficulty in getting the issue of domestic violence recognised as a community problem of the same importance as the drug issue.

5. This Conference deplores the low priority given to the resolution of criminal violence in the home by the Queensland Police Department evidenced by the non-attendance of any member of that Department at the National Conference on Domestic Violence held in Canberra in Canberra 1985.

6. All the following recommendations should be considered and implemented from a cross-cultural perspective thus catering for the specific needs of immigrant women, women from non-English speaking backgrounds, refugee women and Aboriginal women.

7. The Conference recognises and accepts that the major cause of domestic violence is the imbalance of power between men and women and this understanding must be incorporated in policies.

POLICY:

1. Free, immediate counselling/group/community services should be available for children who have experienced domestic violence and/or incest.

2. There should occur immediate deinstitutionalisation of children in protective custody with safe, alternative, supportive, small group accommodation provided.

3. All governments should be reminded of their responsibilities as signatories to the United Nations Charter of rights for children.

4. Domestic violence is a federal issue and should be recognised as such, therefore:

   (a) the government should fund a national children's summit;

(b) the government should adopt a national policy of opposition to domestic violence and

(c) an immediate, national response to the problem of domestic violence is required.

5. Policy on domestic violence should be incorporated into all national and state political party platforms.

6. There should be a national policy of opposition to domestic violence.

7. Politicians should stop marginalising the issue by saying that only a small percentage of the population is affected by domestic violence.

8. The Queensland and Tasmanian and Northern Territory governments should immediately establish domestic violence task forces on similar lines to those established by other states and territories in recognition that the states mentioned are not immune from the problem of widespread domestic violence. To that end the findings of the New South Wales report into domestic violence should be made available to the governments in question.

9. This Conference commends the South Australian initiatives described by Ms Vicky Jacobs of the Special Projects Section of the South Australia Police and the proposed police domestic violence unit as an appropriate response to the domestic violence in that state and worthy of consideration by all state, federal and territory governments.

10. There should commence immediately a national, community education program essentially involving the media and politicians.

11. A guaranteed minimum income at an adequate level should be provided to all Australians as economic dependency entraps many women and children in domestic violence situations.

11. It is essential that affirmative action for women be promoted similar to the situation obtaining in trade unions.

12. The government should facilitate greater access for women to key resources such as money, jobs and housing.

13. The government should facilitate increased funding for women in the areas of childcare pensions and jobs.

14. Hand in hand with changes in legislation there must be as much emphasis and resources applied to community education on domestic violence which must include the education of minority ethnic groups.

15. The Prime Minister and state Premiers should be informed of the incidence and cost of domestic violence and of the need for immediate action;

    (a) as an issue of ongoing policy for heads of federal and state departments of health, welfare, education, law and housing and

    (b) to achieve the required training for senior officers and service providers of the above mentioned departments.

16. Each mainstream organisation and government department should formulate a policy on domestic violence and that policy, which must incorporate staff training and retraining, should be implemented forthwith.

17. Each state task force or standing committee on domestic violence should be responsible for the training content of the training given to mainstream organisations and government departments.

18. State governments should develop training and retraining programs for pre-service and in-service professionals who deal with victims of domestic violence.

19. The Office of the Status of Women should convene a joint standing committee, with appropriate representation by minority groups, comprised of officers from all relevant federal, state and territory government departments including:

    Department of Attorney-General
    Department of Health
    Department of Housing
    Department of Social Security
    Department of Aboriginal Affairs
    Department of Immigration & Ethnic Affairs
    Police Department
    Department of Community Services

    and any state committees currently involved in domestic violence issues, to meet regularly to:

    (a) review current legislative protection and service provision to women and children who suffer violence in their homes

(b) monitor and assess the allocation of funds to community service programs including the distribution of funds to women's shelters throughout the Commonwealth

(c) liaise between states and relevant departments as to the efficacy of operative procedures and the implementation of approved programs

(d) research new initiatives and evaluate service delivery to women and children exposed to violence in their homes

(e) facilitate national coordination of research and statistics.

20. Whenever policies relating to domestic violence are developed, groups (including the refuge movement) responsible for their implementation should be extensively consulted throughout the policy formulation process. This consultation must not be a token exercise, it should be paid for especially in respect of lowly-paid or voluntary workers.

21. Men's services should not be developed at the expense of women's and the overall proportion of the national budget devoted to combatting domestic violence should be dramatically increased even at the expense of other areas of expenditure, for example the defence budget.

22. Departments and organisations working in some capacity in the area of domestic violence should recognise the need to take cognisance of feminist based policies.

23. In view of the current economic climate, the federal government should encourage state governments to ascertain the costs of violence in the family.

FUNDING:

1. This Conference recommends that money be diverted from projects which further state and global violence to the provision of equitable funding for all women's services which are required as a direct result of men's violence. These services include rape crisis centres, migrant and Aboriginal women's refuges, follow-up workers, drug and alcohol abusers' refuges, 24-hour childcare, attendant carers to provide supports to disabled women in refuges, access/hand-over centres, women's health centres, women's legal centres, refuges for psychologically stressed women and incest and child abuse support services.

2. Refuges must be realistically funded. Within this funding an adequate provision for our future adults and their very real emotional and physical needs should be met. This funding must address the need for *wages for sufficient children's workers. It is not generally recognised and is not reflected in present childcare funding that children constitute the largest part of refuge populations.

3. The needs of sexually assaulted and raped children should be a special priority and funded accordingly in refuge funds. Funds should be provided to allow training in this area and to allow on-going support after children have left the refuge.

4. Centres to cater for psychiatrically affected women and children should be established as the need is determined, and such centres should be appropriately staffed by professional and other qualified persons and be run on a non-institutionalised basis.

5. This Conference urges that all state, territory and federal governments immediately commit themselves to the provision in the next budget of such resources as are genuinely required to combat the domestic violence plague.

6. The victims of domestic violence who do not require refuge accommodation should have access to an outreach family crisis support service.

7. Funding for services which deal with criminal assault in the home should always include a component for training and skill development and relief staff for time out, aimed at alieviating the stress levels of workers and improving the quality of the service provided.

8. The submissions for funding non-English speaking, Aboriginal and special needs women's refuges should be assessed, acted on and funded immediately.

RESEARCH:

1. The Federal Government should facilitate the dissemination of information concerning the number of women and children affected by domestic violence.

2. To that end Federal funds for continuing research into the most appropriate means of response to domestic violence should continue to be made available and enlarged upon, and that the finding of any such research should form the basis of what must ultimately be a co-ordinated national response.

3. Where domestic violence is an element of the breakdown of marriages the incidence should be noted as part of national statistics.

4. That research into alterntive services for women from non-Christian backgrounds should be initiated.

5. Each state should conduct research into the efficacy of court ordered counselling with an emphasis on proven interventions and evaluation.

HOUSING:

1. Women the subject of domestic violence should be enabled to stay in the family home. Ministers for housing should consider spot purchasing the home on behalf of the woman at the stage of property settlement, enabling her to continue purchasing the home in her own name.

2. At the first National Women's Housing Conference a resolution was passed that State and Federal housing ministers each appoint a women's housing advisor to meet prior to each State/Commonwealth Housing Ministers' Conference to discuss women's housing issues and put recommendations on women's issues to the ministers' meeting. It is understood that women's housing advisor's have been appointed by New South Wales, South Australia, Western Australia, Tasmania, the Northern Territory, and the Federal Government. This Conference recommends that the issue of the need for more housing and better programs to assist women and their children leaving violent relationships be taken up at the next meeting of the Women's Housing Advisors and further, be included on the agenda of the next Commonwealth and State Housing Ministers' Conference. The Conference also requests this Ministers' meeting to develop in each state policies on access to housing for women leaving violent relationships and that the Federal and State Governments consider developing a medium term, supported accommodation program to assist women and their children leaving refuges who need further support and services before settling into their long-term housing, similar to what is currently being developed in New South Wales.

EDUCATION:

Believing:-

(1) that the problem of domestic violence will not be solved until it is seen as a structural, rather than an individual problem, namely as a manifestation of the subordination of women in a patriarchal society; and

(2) that educational institutions can and should integrate this understanding into all relevant programs at all levels, as a matter of urgency; and

(3) that educational institutions currently reinforce structures of gender domination and should urgently address those aspects of their administrative structures and curricula which reinforce such gender (and race and class) based inequalities,

We strongly support

1. those initiatives in educational institutions such as EEO programs, women's studies and other courses, and ancillary services such as childcare, which enable women and girls, and all subordinated groups, to become more economically, politically and socially self-determining, and

2. those courses which enable male and female staff and students, to acquire skills in self-understanding, communication, and the non-violent resolution of conflict.

WE THEREFORE RECOMMEND

1. The compulsory inclusion and eventual integration of Women's Studies courses in the professional training of all members of the helping professions including medical and legal practitioners, teachers and educational administrators, social workers, welfare workers, police officers, psychologists, health workers, judicial officers, counsellors, nurses, and politicians.

2. That all pre-service teacher education courses include a study of domestic violence within the context of a study of

   (i) the construction of masculinity and feminity and its relation to violence

   (ii) contemporary marriage and family structures

   (iii) the role of the school in reinforcing structures of domination, and for ways of responding sensitively to children involved in situations of domestic violence and/or child abuse.

3. That state and territory education departments and authorities organise in-service courses for teachers on domestic violence issues using a similar approach.

4. That parent organisations be encouraged to organise similar courses for parents.

5. That pre-service and in-service courses for teachers include training in communication skills and in non-violent resolution of conflict.

6. That all educational institutions as part of their equal employment opportunity programs investigate for gender bias the criteria of merit used in selection and promotion of staff.

7. That all educational institutions establish procedures for monitoring gender bias in courses using such criteria as:

   (i) Is this course inclusive of and relevant to the experience of women and girls?

   (ii) Does this course include the work of women writers and researchers?

   (iii) How will girls and women respond to the teaching style used in the course?

8. That free childcare provision at post-secondary educational institutions be upgraded as a matter of urgency, and be seen as essential for enabling women to acquire economically viable skills.

9. That schools and post secondary institutions develop, as a matter of urgency, sex-segregated courses in maths, science and technology which are non-threatening for girls and women. If classes are non sex-segregated girls and women must be guaranteed equal access to teachers' time and complete absence of gender harrassment.

10. That state and teritory Education Departments and authorities incorporate in the core curriculum of primary and secondary schools for both female and male students:

    (i) an historical and contemporary study of marriage and other family structures.

    (ii) study of the constructuion of masculinity and feminity and its relation to violence.

    (iii) an historical study of the sexual division of labour.

(iv) the role of the media in perpetrating images of male domination and male violence.

(v) theoretical and practical studies in home management and child rearing.

(vi) the importance of economic independence for both girls and boys.

(vii) studies in self understanding, communication and in the non-violent resolution of conflict.

(viii) co-operative games and activities.

11. That schools from years one to twelve make a primary objective for all students, female and male, that they be enabled to take control of their own lives both in school and in their home, and that this be facilitated by:-

(i) encouraging through discussion and debate student evaluation of their schooling experience, including curricula and extra-curricula options, teachers' attitudes, classroom relationships, interaction with wider community etc.

(ii) development of student councils which are representative and participatory and which effectively represent student opinion to the School Council.

(iii) encouraging girls, and other subordinated groups, to develop support networks for themselves within each classroom to enable them to take positive action against gender or other harrassment and gender or other bias in teaching methods and content of courses.

12. That grievance procedures similar to those developed for reporting and dealing with cases of sexual harrassment, (as defined under the Sexual Discrimination Act) should be established in all schools. These procedures should cover not only sexual harrassment, as defined under the Act, (e.g. Teacher/Student harrassment) but also

(i) Sexual harassment of students by peers

(ii) Gender-based discrimination, such as

- unfair access to teacher attention and encouragement, especially in the cases of students taking non-traditional courses;

- unfair access to curricular options, sporting equipment, classroom space and equipment, e.g. computer terminals and science laboratories.

13. That in cases of sexual abuse by a teacher

    (i) where the teacher is charged with sexual abuse of children they be suspended until the court case is heard, and

    (ii) if convicted the teacher be immediately dismissed from the teaching service, and not be eligible for re-employment by any educational institution.

14. All officers and students in the health, education, welfare, legal, and law enforcement systems be required to undergo regular non-sexist training courses, including courses dealing with criminal assault in the home and other violent crimes against women and children.

15. That thoroughly conducted community education programs be carried out in all states and territories in Australia based on the model of the New South Wales program and on a regular, recurrent basis.

16. That there be input to the training of teachers, social welfare workers, nurses, and all involved in service delivery to children, from those aware, through direct experience, of issues in domestic violence.

17. That survivors of all forms of male violence be employed in the re-education of the community and be paid the equivalent professional consultant fees.

18. That Commonwealth and State/Territory Ministers for Education

    (i) have jointly undertaken a review of curriculum materials used in Australian schools with a view to eliminating those which condone and promote violence, sexism, and racism.

    (ii) jointly at their next meeting (Australian Education Commission) make a statement to the nation which expresses their commitment to the education of all Australian children in a way and in an environment which promotes tolerance and harmony and which serves to eliminate violence and discrimination in all forms.

    (iii) jointly commit themselves to the in-service training of all teachers and administrators on the illegality of

physical punishment in the school systems and on the discipline methods available to teachers which exclude physical punishment.

(iv) take action to ensure and make public that persons employed in their services who are charged with criminal assault on their spouses and/or children will be suspended from their employment and dismissed on conviction.

Community Education in Ethnic Communities

19. That thoroughly conducted community education programs be carried out in all states in Australia based on the model of the New South Wales program and on a regular, recurrent basis.

20. That material on domestic violence be made available in community languages, and that special attention be paid to translation and distribution.

National Conference on Child Abuse

21. That the Australian Institute of Criminology involve in the final planning of the Conference on Child Abuse a broad range of people involved in Education, and that the role of education and its relation to child abuse be dealt with at the conference, and that children, especially young children, should also be involved in this process.

POLICE

Recruitment

It is recommended that:

1. More women be recruited into all police forces.

2. People who have relevant qualifications and/or practical experience in the areas of domestic violence be recruited.

Training

It is recommended that:

1. All Australian police training courses at recruit, in-service, non-commissioned and commissioned officer level have specific courses on domestic violence-related issues, and that instruction be provided using a multi-disciplinary approach. Community groups and service providers should be consulted when training and policy on domestic violence is formulated.

2. Training on domestic violence include an analysis of police attitudes towards women.

3. Police prosecutors receive special training on domestic violence issues.

4. All police be specifically educated in the use of both civil and criminal responses to domestic violence with emphasis on the latter.

5. Police be trained to use restraint or protection orders in appropriate cases but, when criminal offences are disclosed, the criminal law be used.

6. In all police training programs on domestic violence there be a cross-cultural perspective included.

7. New police officers work only with specially selected senior police members (similar to the ambulance officer system where new officers work only with designated members who receive a token allowance in pay). This system would partly overcome the attitude where new recruits are being told that what they learnt in the academy is not relevant to the way things are done in practice by reactionary union members. This system should be assisted by training programs for the specially selected senior police officers.

Complaints

It is recommended that where there are complaints against police on all matters, an independent ombudsman or authority investigate them.

Policy

1. Strict departmental policies be prescribed to define that domestic violence of any nature whatsoever be classified as criminal and treated accordingly by the imposition of criminal law in priority over civil law.

2. Policies define law enforcement by police and prohibit mediation by them in domestic violence cases.

3. Myths about domestic violence be explained in policy documents and reinforced during training.

4. Existing powers be utilized to remove violent men from the home at the time of the assault or alleged assault.

5. There be uniform policies on domestic violence in every state and territory of the Commonwealth.

6. Police attend to domestic violence calls as a matter of top priority in the operational situation and use positive action to remedy the problem.

7. Police interview victims of domestic violence separately from the perpetrator and in the company of another woman; in those cases where victims attend at police stations, police should interview them privately and in the company of another woman wherever possible.

8. The New South Wales Police Force change its existing policy on Section 547AA orders in that they apply for an order as soon as practicable after a domestic violence dispute (whether they arrest or not for a substantive offence) and that such application be made by a prosecutor to a magistrate at the first available court.

9. Paragraphs 1.59 and 1.60 of the Victoria Police standing orders and any analogous orders or directions in other states or territories be changed so that all police are instructed to actively intervene in domestic violence situations.

Specialist Units

It is recommended that the use of Specialist Police Domestic Violence Units be evaluated.

Liaison

It is recommended that:

1. Local police divisions and/or stations appoint specific officers of senior rank to liaise with staff of women's refuges or shelters.

2. Better communication links be established between police and the community they serve so that each obtains a clearer perception of expectations, problems and roles.

Research

It is recommended that police conduct follow-up independent research on individuals who obtain restraining or sole occupancy orders to investigate the efficacy of this form of intervention.

Specific to States

It is recommended that :

1. The New South Wales Commissioner of Police instruct prosecutors to appear on behalf of women taking private proceedings on domestic violence restraint orders.

2. The West Australian and South Australian Police Departments incorporate ongoing training for all police officers on the causes of and appropriate responses to domestic violence with particular emphasis on continuation training for police officers in isolated and remote areas.

LEGAL

Restraining Orders

State

It is recommended that

1. No maximum time limit be included in legislation relating to 'bonds'. For example in New South Wales the time limit imposed is 6 months.

2. Each state maintain a unit of records of all orders made under respective state domestic violence legislation.

3. Since state restraint orders actively decriminalise assault of women, such orders be abolished.

Federal

It is recommended that

1. There be state and national banks of restraining orders made under the Family Law Act.

2. A breach of a Family Court injunction regarding personal protection of women and/or children should be an offence in itself. The Commonwealth Crimes Act would then apply regarding arrest.

State and Federal

It is recommended that

1. Restraining orders have power of arrest automatically attached.

2. Restraining orders be enforceable on a realistic level.

3. The use of restraining/protective orders for non-criminal behaviour be advocated.

4. The appropriate procedures be undertaken to ensure that when a restraining or protective order is breached and an assault is involved, the offender be charged automatically and primarily with assault and secondly with the breach.

Property Rights and Maintenance

Whereas it is known that criminal assault occurs within a third of marriages and cohabitations, and that the economic dependency of the woman and her children typically impedes the dissolution of such arrangements and since existing solutions place the onus of responsibility on the dependent woman to end the cohabitation and leave the home when it is the violent man who is the problem and more justly deserves such privation, the existing solutions are both discriminatory and tacit condonations of masculine criminal assault, in their failure to address the specificity of women's circumstances. We therefore demand that the following provisions be made via whatever legal, institutional and cultural innovations may be necessary to facilitate them:

1. That the ownership of the home, the car and real property be transferred wholly to the woman, and whatever continued payments are required be extracted by law from the man's earnings unless or until such time as he is declared bankrupt, in which case, the maintenance of the woman and her children if they choose to stay in the marital home, becomes the duty of the community, that is the taxpayers.

2. That in the case of demonstrated or suspected domestic violence, the main offender and not the victim, be removed from the family home and given shelter elsewhere, thus enabling the rest of the family unit of mother and children, to remain in tact.

3. That maintenance actions must be brought in the name of the children.

4. That maintenance payments must be calculated in accordance with the true cost of keeping a child (based on the CPI) and that the non-custodial parent be ordered to pay 50 per cent of that cost, adjusted every six months, and that default in maintenance be made up by the state who should then be responsible for recovering the payment from the defaulter.

Access

It is recommended that:

1. Access/changeover and supervised centres be made available with the full support and knowledge of family court counsellors, family court judges, lawyers, social workers, and other relevant personnel.

2. There be no access to children in cases of domestic violence or child sexual assault.

3. Upon the emergence of a reasonable prima facie case of criminal assault, marital rape, or any form of sexual abuse of cohabiting children, the man be removed and allowed no access whatever to the household.

Family Court and Counselling

This Conference recommends that the Commonwealth:

(a) amend the Family Law Act and any other legislation over which it has legislative authority and

(b) negotiate with the states to obtain their amending or enacting appropriate legislation

to give effect to the following policy:

1. In a dispute about the custody, guardianship or welfare of, or access to a child, where a prima facie case of domestic violence to or abuse of a child or a parent, guardian or caretaker of a child, or of a spouse, de factor spouse, or partner, or former spouse, defacto spouse or partner, is established -

   (i) any presumption that access to a child is in the interests of that child shall be suspended

   (ii) the court shall, unless a party seeking an order satisfies the court that the risk to the child of so doing outweighs the need to protect the child, suspend any order for custody or access until a hearing of the allegations

   (iii) in order to do justice to the child and all parties, a hearing of such allegations shall be heard as soon as practicable and shall be expedited.

   (iv) domestic violence includes but is not limited to an assault, or a history of assault, or a history of assault as defined in criminal legislation

(v) abuse includes but is not limited to emotional, sexual and physical abuse as defined in child welfare legislation.

2. Consent orders affecting the welfare of children should not be made without referral by the court for a counselling report as to the propriety of those agreements, and without arrangements being made through the court for separation and grief counselling for the parties.

3. Women should be included in panels which determine the alloction of resources in family courts.

4. Bilingual/bicultural counsellors should be employed in the Family Court (interpreters are inadequate in these circumstances).

5. The Family Court should immediately implement compulsory training for Family Court counsellors and registrars regarding causes and effects of spouse abuse and child abuse and appropriate interventions.

6. Counselling sections should be geographically removed from courts.

7. Counsellors should have some autonomy over their caseload.

8. Some cases should be certified 'not fit for counselling' and court then to act as Supreme Court.

9. The Family Court is obviously not working and needs to be restructured or abolished.

10. The Family Court should adhere to its stated philosophy that the paramount aim is the best interests of the children.

11. More money should be allocated for hearing disputes in the Family Court.

12. If we separate conciliation and arbitration, there must be strong safeguards to prevent conciliation becoming 'second class justice'.

13. The concept of conciliation in Family Court proceedings should be reconsidered, and seen as inappropriate because the parties (usually a man and a woman) to the proceedings are not in an equal bargaining or negotiating position. Agreements reached in the course of proceedings may well be coercive rather than true agreements.

14. Since the conciliation process is embedded in the Family Law Court process, adequate counselling personnel and physical facilities should be made available. One hour to assess a marital situation is ridiculous.

Legal Aid

It is recommended that:

1. Sympathetic special exemption consideration be given to domestic violence victims who are outside the legal aid guidelines, for the granting of legal aid.

2. Legal aid be quickly and automatically available for women who fall within legal aid guidelines for eligibility to legal aid.

3. Legal Aid meet the cost of interpreters used by solicitors for migrant women.

Separate Representation

1. Separate representation of children should be required by legislation at Federal and State level in any case where violence or assault is alleged.

2. Legal Aid should fund separate representation for children when required.

3. The Commonwealth should resource a system of training for those who represent children in legal proceedings.

BAIL AND SENTENCING

Believing in the need for an alternative form of sentencing in domestic assault cases which may take the onus of prosecution on complaint from the victim and place that responsibility on a statutory authority and believing that the following recommendation takes some of the burden from the victim and may stop the offender taking retaliatory action against the woman, without precluding her from complaining to police directly, it is recommended that:

1. A submission be placed before federal and states' Attorney's General recommending that Restraining Orders and/or Recognizances, including any bail recognizances include a clause requiring offenders to submit to the supervision of a probation officer. Further, probation officers should be required to closely monitor the offender's behaviour and in the case of any further complaint from the victim the probation oficer should be obliged to initiate the issue of

a warrant for the arrest of the offender, and the warrant should be issued by the court following immediate contact from the officer following the complaint.

2. Bail be removed as an option for men who have been charged with assault or breach of a restraint order.

Juries

The legal profession must acknowledge that the basic premise upon which the jury system is based works against women.

Research

It is recommended that:

1. Research into long term effects of apprehended domestic violence orders be carried out.

2. Federal and state laws be urgently reviewed in view of their effects on each other.

3. There should be an independent evaluation of the civil and legal responses to domestic violence that are enacted in each state and territory.

4. That the state and territorial and federal Attorneys-General forthwith establish committees of inquiry to initiate reform of the legal profession and the legal system so that the application of the law will be responsibe to the needs of modern society. A majority of members of these committees shall not be lawyers and judges.

5. These committees of inquiry be directed to give proper consideration to all matters raised by this Conference which touch upon the legal profession, including the judiciary, and upon the legal system.

Lawyers and Court Systems

Believing that there is an urgent need to equalising the number of men and women in the legal systems, and in the general need for the legal profession to acknowledge that the assault of women and children in the home is a crime, it is recommended that:

1. Court delays be minimised in cases of domestic violence by priority being given to these cases given the potential for violence to occur again.

2. Members of the legal profession should enforce the laws and criminal codes as they pertain to dometic violence.

3. A network of feminist lawyers be established.

Legal Training

It is recommended that

1. Prosecutors of criminal assaults occurring within the home must have compulsory training in the causes and realities of domestic violence which training should include the dynamics of male/female power and relationships.

2. All states implement mandatory training for judges and magistrates in courts of summary jurisdictions and in the Family Court regarding causes and effects of spouse abuse, child abuse and appropriate interventions.

3. This Conference recommend that re-education of the entire legal institution in respect to all aspects of all male violence in the home.

4. The government amend legislation related to regulations of the legal system to ensure/enforce education in social issues at judicial training institutes, such education to include grass roots input.

5. There be established forthwith a judicial training institute along similar lines to the United Kingdom institute, to acquaint judges with the realities of everyday life. Magistrates and all other court personnel should be required to undergo similar training.

MISCELLANEOUS

General observations:

1. The Conference should support the view that state and federal anti-discrimination legislation should apply to the provision of police services with respect to domestic violence. (Successful action on this ground has been brought recently in the U.S.A.)

2. Resources into alternative dispute resolution procedures for family law should be allocated . Courts and lawyers to deal with property not relationships.

3. The viability of each state referring the power over de factor relationships to the Commonwealth should be investigated.

4. All states should make the reporting of child abuse mandatory, even in the area of Family Court Counsellors. Each state should also investigte the advisability and viability of mandatory reporting of spouse abuse.

5. There needs to be much more availability of information in the community about the court, legal system and lawyers.

ABORIGINAL PERSPECTIVES

It is recommended that

1. This Conference request that the Commonwealth and all state and territory governments specifically address the information and resource needs of women and children subjected to domestic violence who are geographically, culturally and educationally isolated.

2. Commonwealth, states and territories give recognition to the fact that in isolated areas Aboriginal women are particularly disadvantaged and uninformed, as well as especially vulnerable to domestic violence.

3. The Commonwealth, states and territories take immediate action to provide continuing training of staff of agencies in isolated areas who have contact with Aboriginal and all women to ensure that they are fully educated and informed in:

   (a) the causes of domestic violence

   (b) the appropriate responses to domestic violence

   (c) the resources available on the subject on domestic violence

   (d) the legal avenues available

   (e) legal representation and advice.

4. Aboriginal staff in government agencies in isolated areas be appointed after consultation with and recommendations by a board or committee of Aboriginal people who are representative of the community in which that Aboriginal person is expected to work.

5. Funds for emergency relief be provided to all states by the Commonwealth on the basis that the funds shall be made available to all indigent people, and shall not be withheld from women resident in and dependent upon refuge accommodation to assist them in obtaining independent accommodation.

6. In order to meet the information and resource needs of all isolated women and especially Aboriginal women, who are exposed to domestic violence, Commonwealth, state and territorial government fund community based, multi-

functional and multi-skilled resource and support services specifically for and staffed as far as possible by Aboriginal people, as a matter of utmost priority.

7. The government recognise that a factor in domestic violence perpetrated by Aboriginal men is the lack of power and dignity afforded to Aboriginal people by white Australian society and funds be made available for the establishment of community-controlled support services for Aboriginal men.

8. The Commonwealth Departments of Community Services and Housing and Construction negotiate with relevant state and territorial authorities to establish Aboriginal-controlled women's shelters where the need for such services as identified by the Aboriginal community.

9. Where there are existing services for women who are victims of domestic violence, Aboriginal women be employed so that the existing services are able to provide culturally appropriate services for their Aboriginal clients. The Aboriginal workers must be selected by a panel consisting predominantly of Aboriginal women who are members of the governing committee of the service.

10. Where there are existing Rape Crisis Centres, Aboriginal women workers be employed to facilitate culturally appropriate services for their Aboriginal clients.

11. In the development of any policies and programs which aim to cater for the needs of Aboriginal clients, Aboriginal people be consulted by Commonwealth, state and local government authorities.

12. This Conference on Domestic Violence endorse the recommendations as read by Tomasisha Passmore at the afternoon sesssion on Wednesday 13th November 1985 and that this Conference call upon state, territorial and federal governments to implement an Aboriginal program in the interests of Aboriginal women and children.

MIGRANTS

It is recommended that:

1. The submissions for funding immigrant women's refuges be examined immediately.

2. The material on domestic violence be made available in community languages with special attention to translation and distribution.

3. All the recommendations made by this Conference be examined in light of the needs of women with non-English speaking background.

4. Legal information services be provided for women from non-English speaking backgrounds.

DISABLED WOMEN

It is recommended that refuges be made totally accessible to disabled women and that their special needs be recognised and appropriately funded.

CHILDREN

It is recommended that

1. The government recognises that two-thirds of refuge residents are pre-school children and equitable funding be supplied for these residents.

2. Child care be made available 24 hours a day to all women.

3. Children's refuges be set up for women in refuges who cannot cope with their children and foster care is inappropriate.

4. Incest be also recognised as a criminal assault in the home and an incest program be set up immediately in conjunction with the present refuge system.

5. New South Wales Department of Youth and Community Services recognise child care in refuges is not baby sitting. It is at its best a caring and supportive service. It offers children from domestic violence a space to heal, some understanding of their fear, realistic assistance with their problems and a place to laugh and play.

6. At worst it is a baby-sitting service and this is due to disgraceful and unrealistic funding.

VIOLENT MEN

It is recommended that

1. Services and funding be made available to men who are violent towards their partners. These services are envisaged as:

   (a) Training for counsellors to work with men

   (b) Direct service provision to violent men.

MEDIA

It is recommended that the media recognise the plight of women who are forced to flee from intolerable domestic violence, with the loss of home, friends, belongings, while he, the aggressor, goes unscathed. It is also recommended that the stigma of society's wrath fall on the perpetrator of domestic violence, not on the unwilling victim.

ADVERTISING

It is recommended that the advertising industry be brought to recognise that sexist advertising is a major contributing factor to domestic violence.

APPENDIX 1

STATEMENT FROM A GROUP OF MEN AT THE NATIONAL CONFERENCE ON DOMESTIC VIOLENCE

1. We acknowledge the hurt and pain inflicted on women by men and we feel distressed, saddened and angry at the content of the experiences shared during this conference.

   We condemn the rape and physical and emotional abuse of women and we believe that men must take responsibility for the violence they perpetrate.

2. We recognise the need for men to learn to feel okay in other ways than by demonstrating power of ownership over women.

   We recognise the need for men to take responsibility for seeking support, closeness and understanding from other men rather than solely relying on women to provide these.

3. We recognise the need for us as men to face and confront our own uses of power in relationships with women and how this is a part of the patriarchal structure.

4. We are here because we desire to work with other conference members to achieve practical solutions to the problem of men's violence towards women.

   We also desire to energetically pursue ways of working with other men towards eliminating violence towards women.

   We have established a network to share and exchange information and ideas.

   The undersigned are part of this network:

Jack Callaghan, 9 Anglo Road, Greenwich, NSW.
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Rob Hall, 263 East Terrace, Adelaide, SA.
Alan Jenkins, 263 East Terrace, Adelaide, SA.
David Kinnear, Domestic Violence Service, 263 East Terrace, Adelaide, SA.
Ian Macdonald, Queensland Marriage Guidance Centre, 159 St Paul's Terrace, Brisbane, QLD.
Robert May, 10 Adey Road, Blackwood, SA.
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Doug Sutton, 115 Red Hill Road, Wagga, NSW.
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