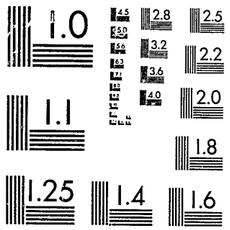

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NATIONAL SYMPOSIUM ON VICTIMOLOGY

Edited by
Grabosky

AUSTRALIAN INSTITUTE OF CRIMINOLOGY

NATIONAL SYMPOSIUM ON VICTIMOLOGY

State Government Convention Centre
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15-17th September 1981

Edited by
P.N. Grabosky
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NOTES ON AUTHORS

Mr K.S. Anderson
Deputy Chief Stipendiary Magistrate
Sydney N.S.W.

Professor R. Ball
Professor of Psychiatry
University of Melbourne
Parkville Victoria

Ms P.J. Barbour
Social Worker
Adelaide Children's Hospital
Adelaide S.A.

Mr G. Beltchev
Director, Eastern Region
Department for Community Welfare
Adelaide S.A.

Mr D. Biles
Assistant Director (Research)
Australian Institute of Criminology
Canberra A.C.T.

Ms K. Boyer
Women's Adviser
Premier's Department
Hobart Tasmania

Ms Y. Carnham
National Communications Officer
Womens Electoral Lobby
Canberra A.C.T.

Mr P. Cashman
Senior Research Officer
Law Foundation of New South Wales
Sydney N.S.W.

Dr R. Chambers
Psychiatric Centre
Newcastle N.S.W.

Mr W. Clifford
Director
Australian Institute of Criminology
Canberra A.C.T.

Dr E. Cunningham Dax
Formerly Co-ordinator
Community Health Service
Hobart Tasmania

Dr C. Deller
Clinical Co-ordinator
Sexual Assault Referral Centre
Sir Charles Gairdner Hospital
Nedlands W.A.

Dr S.J. Egger
Deputy Director
New South Wales Bureau of Crime Statistics
and Research, Department of the Attorney-
General and of Justice
Sydney N.S.W.

Ms H. Gamble
Lecturer
Faculty of Law
Australian National University
Canberra N.S.W.

Dr R. Goldney
Senior Lecturer
Department of Psychiatry
University of Adelaide
Adelaide S.A.

The Honourable K.T. Griffin, MLC
Attorney-General of South Australia
Adelaide S.A.

Mrs L. Henry
Children's Protection Service
Department for Community Welfare
Perth W.A.

Mr R. Holden
Editor
Sunday Mail
Adelaide S.A.

Mr S. Joynt
News Producer
Channel 7
Adelaide S.A.

Ms E. Lennon
Area Co-ordinator
Child Protection Services
Department of Youth and Community Services
Sydney N.S.W.

Ms M. Levis
Woman Against Rape
Hobart Tasmania

Dr B. McLellan
Co-ordinator of Counselling Services
Lifeline
Townsville Queensland

Mr B. Martin
Principal Assistant Crown Prosecutor
Attorney-General's Department
Adelaide S.A.

Ms L. Miller
Marrickville Legal Service
Marrickville N.S.W.

Inspector J. Murray
Headquarters, South Australian Police
Adelaide S.A.

Ms L. Norris
Research Officer
Australian Freedom From Hunger Campaign
Canberra A.C.T.

Mr M.K. Rook
Research Officer
Department of Community Welfare Services
Melbourne Victoria

Mr P. A. Sallmann
Lecturer
Department of Legal Studies
La Trobe University
Bundoora Victoria

Ms P. Stratmann
Womens Advisory Unit
Department of the Premier and Cabinet
Adelaide S.A.

Dr T. Vinson
Chairman
Corrective Services Commission
Sydney N.S.W.

Mr J. Willis
Senior Lecturer
Department of Legal Studies
La Trobe University
Bundoora Victoria

Dr G.D. Woods, Q.C.,
Public Defender and Director, Criminal Law Review Division, Department of the Attorney-General and Justice
Sydney N.S.W.

Mr P. Wynne
Research Officer
New South Wales Department of Corrective Services
Sydney N.S.W.

CHAIRPERSONS

Mr T. Anderson
Australian Journalists Association
Adelaide S.A.

Mr C.R. Bevan
Assistant Director (Training)
Australian Institute of Criminology
Canberra A.C.T.

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Adelaide S.A.

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Reader-in-Charge
Department of Criminology
University of Melbourne
Parkville Victoria

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South Australian Health Commission
Adelaide S.A.

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Senior Judge
Children's Court of South Australia
Adelaide S.A.

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Crown Solicitor
Council Member
The Law Society of South Australia
Adelaide S.A.

Dr J. Scutt
Research Criminologist
Australian Institute of Criminology
Canberra A.C.T.

Her Honour Judge I.E. Stevens
Local and District Criminal Court
Adelaide S.A.

Mr R.W. Whitrod
Executive Officer
Victims of Crime Service
Adelaide S.A.

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INTRODUCTION

Criminal behaviour and the treatment of offenders are perennial issues of public concern, and have traditionally constituted the core of criminological inquiry. Intellectual and governmental concern for victims of crime, however, are of more recent vintage.

In 1968 Queensland became the first Australian State to introduce a criminal injuries compensation programme. Throughout the 1970s women's activists drew increasing attention to victims of sexual assault and domestic violence. In 1975, the Australian Bureau of Statistics conducted the first Australian national sample survey of crime victims.

In 1981, the University of Melbourne's Department of Criminology became the first educational institution in Australia to offer a course on victimology.

Recently, the South Australian Government undertook a general review of the needs of crime victims in that State.[1]

Soon after the South Australian Victims' Report was published, the Australian Institute of Criminology proposed to convene a National Symposium on Victimology. The Government of South Australia agreed to co-sponsor the Symposium, to be held in Adelaide.

Participants came from throughout Australia; papers presented to the ten panels held over the course of the three day Symposium are published in this volume.

The format of these proceedings reflects the organisation of the Symposium itself. The first three sessions concern the experience of the victim in the criminal process and how the inevitable stresses which attend that experience can be lessened through minor modification to laws of evidence and procedure, through social support, and through basic information.

Session IV provides an overview of the more recent major research on crime victims by criminologists, whilst Session V addresses the responsibility of the media to crime victims and to the general public.

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1. *Report of the Committee of Inquiry on Victims of Crime* (Adelaide: Government Printer, 1981).

Session VI prcvides, for the first time in Australia, psychiatric insight on crime victimization and victim rehabilitation.

Session VII addresses the issue of evaluating services to victims, an increasingly important issue as victim assistance programmes proliferate in an environment of shrinking resources.

Sessions VIII and IX confront issues of sexual assault and domestic violence, whose victims tend to be among the most vulnerable. Indeed, the problems faced by victims of these offences were recurring themes of the Symposium.

Session X deals with community-based victim service initiatives, and how non-governmental resources can be used to assist crime victims.

The concluding pages offer some suggestions for future research and action programmes during the remainder of the 1980s.

CAIN AND ABEL

W.Clifford

Attorney-General, distinguished speakers, honourable guests, ladies and gentlemen.

It is an honour and a great pleasure for me to welcome you all to this National Symposium on Victimology. I am sure you know that my presence here and the reason why I am privileged to speak first is to underline the national character of this gathering. It is fitting that our host should be the South Australian Government which has already distinguished itself by the initiatives it has taken in developing a greater understanding of the victim's plight in modern criminal justice. Its committee on victims chaired by Dr Peter Grabosky produced a report which will have its effect on the policy here for a long time to come. It is also appropriate that we should meet nationally in the State which saw the first voluntary body created for the help of victims of crime. This was at the instigation of Ray Whitrod who has pioneered voluntary initiatives in this field well beyond the boundaries of this State.

From these remarks you will have gathered that this is by no means the first seminar or symposium to deal with the needs of crime victims. They have been held in other centres and we have had a previous seminar at the Australian Institute of Criminology itself, in Canberra. Why then do we need a national effort of this kind? Why do we need the Australian Institute of Criminology to combine with a State Government to attract national attention to the needs of the victims of crime? It is simply because policies have to change in the name of justice: and the only way that can happen in a democracy, is for the public to be sufficiently informed and concerned. We believe this national symposium responds to a ground swell of feeling across the country about the importance of restoring the victim to a central position in our systems to ensure criminal justice. There is, however, a second reason.

Whilst this is not the first conference on victims it is, I believe, the first conference ever held in Australia on *victimology*. Victimology, as a subject, now has its own world organisation and it has extended beyond the obvious compassion for victims to a more profound study of the phenomenon of victimisation. It is not always as black and white as there being a villian and his pathetic prey. The roles may be reversed or symbiotic. Obviously there are crime situations in which our sympathy is more attracted by the offender than the victim - as, for example, when a really poor person steals in desperation from a large supermarket or from a large corporation indulging in its own types of crime. Sometimes it is not clear who is the victim of the system. There are some potential victims rich enough to spend large amounts of money on their own protection - or

clever victims who have learned to shift their losses onto the public via insurance or higher prices, so that indirect victims may have to be considered. Ultimately it may be the taxpayers who are the continuing victims of burgeoning but inefficient systems of criminal justice which despite the cost still leave them largely exposed. Even our venerable legal systems may create victims by technicalities of the law or by evidential requirements which leave many honest and respectable but legally naive people bruised and dissatisfied after contact with the system. So nationally today we are launching a new concern with a new field of knowledge - the science of victimology. We had hoped to have Professor Schneider of Munster University, who is an influential figure in the world organisation, come out to Australia to address you. We ran into financial problems as you well know: but he would still have come happily under his own steam if only a month ago another engagement had not made it impossible for him to do so.

And now before I introduce the Minister to deliver the keynote address I would like to crystallise our preoccupations of the next two days by a personal reminiscence. Whilst in New York I was an adjunct Professor of Law at the School of Law of New York University. One evening I left my apartment to deliver a lecture and took a taxi, giving the driver the Law School address in Washington Square. He changed gear at a traffic light, slipped his gum into his left cheek, and asked 'Are you a professor?' I told him I was and he asked 'Professor of what?' I said 'Criminology'. 'Jeez!' he said, 'You guys make me laugh. When barely two people were on earth Cain killed Abel - and you still think you can stop crime!'

Well maybe we are now wise enough to realise that we will never stop a phenomenon which is as relative as crime. But we have to get the problem of crime in any country down to tolerable levels. It is, therefore, sobering to reflect that after so many thousands of years, after landing on the moon, mining the seas and exploring Saturn, and despite all our centuries of applied human wisdom, we are still very much in the Biblical condition of being unable to stop Cain or to protect Abel. That is what this symposium is about.

KEYNOTE ADDRESS

The Honourable K.T. Griffin, MLC

I welcome the opportunity to address this very important National Symposium on Victimology. I would especially like to thank the Australian Institute of Criminology for sponsoring this Symposium, in conjunction with the State Government, and for the outstanding contributions which have been made by the Institute to the administration of justice and the study of victimology.

In the past, the victim was very much the forgotten person in the criminal justice system. Victimology as a distinct field of study has only really emerged in recent years, although its parent discipline, criminology, originated in the nineteenth century. But, over the last decade or so there has been growing community interest in the plight of victims and there is every indication that this is gathering momentum. In that period, initiatives to assist some victims seem to have been in the nature of 'band-aid' or ad hoc measures.

Against this background, the South Australian Government decided in May 1980, to establish a Committee of Inquiry on Victims of Crime. This Committee comprised men and women from agencies with some involvement with victims and their families - government and private agencies, with three 'community' representatives. It reported in January of this year and, having reviewed the needs of crime victims, recommended effective responses to these needs. The recommendations placed particular emphasis on the encouragement of private, voluntary efforts towards victim assistance. The Committee's report noted that although most South Australians do not appear to be paralysed by fear of crime, a number appear to be pre-occupied with the worry of criminal attack. For some, this results in a restriction on their freedom of movement, causing suffering as a result. In short, excessive and unnecessary fear can cause a fall in the quality of life.

Studies show that it is the elderly who are the most fearful of crime. This fear often tends to centre on the threat of sudden attack by a stranger. Paradoxically, the incidence of crime against our senior citizens is relatively low, and there is, in fact, a greater risk of violence from friends and family members than from strangers. There are three possible reasons why the elderly are more likely to be fearful of crime. First,many elderly have less extensive social support than younger people. Second, some elderly are less involved in the neighbourhoods they live in than are younger people. This is likely to increase the numbers of neighbours they consider as strangers, as well as weakening their support network. Third, it has been suggested that the elderly are more likely to discuss crime and that the mass media sensationalises crimes against the elderly more than crimes against younger persons.

What these studies do show is a need for more support and reassurance to our senior citizens whose fear of crime detracts from the quality of their lives.

A significant contribution could be made by reducing the social isolation (and there are many ways of doing that), and consequently the fear experienced by the elderly. A more responsible attitude by the mass media would also be welcomed. The *Victims of Crime Report* noted that vivid and graphic pronouncements by the media do contribute to the creation of unwarranted fear. The Committee felt that unjustified and misplaced fear can best be alleviated by well publicised objective information which seeks to reassure and to educate rather than to frighten. I am pleased to see that tomorrow the Symposium will be examining in greater detail the responsibility of the media to the crime victim.

Information which the Committee has collected suggests that the risk of becoming a victim of crime varies quite unevenly across the population. Differences in precautions taken, resources available and lifestyles, place some people at a much greater risk than others. However, information about the setting and circumstances in which crimes are committed can serve to reassure people who are less vulnerable to criminal victimisation, whilst also educating others to take necessary preventive measures. In this task, the role of government, police and voluntary groups such as those whose members are present this morning, is to encourage people to use some basic commonsense in protecting themselves and their property. But, it is a role which requires great sensitivity in order not to unduly alarm but rather to reduce, and if at all possible remove, unfounded fears. The police crime alert campaigns, for example, are doing this exceptionally well.

The *Victims of Crime Report* made a total of 67 recommendations covering a wide range of issues, including the need for further research, education of the public, co-ordination of victim assistance initiatives, services for crime victims, court procedure, and compensation. I do not intend, however, to deal with those recommendations in any detail this morning, or to relate the progress made towards implementing these recommendations. Suffice it to say that the State Government and other organisations have been studying these recommendations very closely, have already implemented some and are making steady progress with others.

Let me draw attention to several areas. The new Law Courts complex currently under construction in Victoria Square is a positive example of the new concern being shown for victims and witnesses. For example, special waiting rooms for distressed witnesses and victims will be provided so that the often harrowing experience of coming face to face with the accused before the trial will largely be avoided. The Government has also commissioned a detailed study of homicides and serious assaults in South Australia - a study which, we believe, may assist in a greater understanding of the problems.

Already much has been done to aid victims. South Australia has become a recognised leader in assisting crime victims, especially in the area of sexual assault. Changes in procedure now relieve most of these victims of having to testify at committal proceedings. The law of evidence has altered so as to make it much more difficult to discuss the victim's previous sexual history in the presence of a jury.

This is currently being reviewed to assess whether this provision needs to be further tightened. More sensitive police investigative procedures, including mixed patrols and a specialised Rape Enquiry Unit, have been established. The collection of forensic evidence has become less traumatic for rape victims especially with the services provided by the Sexual Assault Referral Centre at the Queen Elizabeth Hospital. The availability of immediate crisis intervention services has been enhanced with the establishment of the Crisis Care Section of the Department for Community Welfare and with the formation of two voluntary agencies, the Victims of Crime Service, and the Rape Crisis Centre. My colleague, the Minister of Health has also recently announced that public hospitals will not charge for outpatient services for sexual assault victims and victims of domestic violence where a charge would adversely affect the domestic situation.

I should say that the position would be even further improved for victims if the Government's proposals to abolish the right of an accused person to make an unsworn statement could be got past the Opposition and the Australian Democrat in the Legislative Council.

Whilst these achievements by South Australia, achievements that other States have largely followed, contribute significantly to easing the trauma of victims, it should be recognised that because victimology is a relatively recent development, many people are still feeling their way, and Governments are assessing the best ways by which they can and should be involved and the ways in which private individuals and groups should exercise responsibilities.

For some, monetary compensation paid to victims of crime has been seen to be the best way to relieve the trauma of victims. Initially, that is recompense by the wrong-doer,with virtually a guarantee of payment by government. The notion that the victim should receive monetary recompense from the wrong-doer can be traced to ancient Babylonian and Mosaic laws.

The English legal system, as it developed from the twelfth century, gave major attention to the concept of trespass to the person. However, as the power of the State increased, it exacted a greater proportion of the compensation paid by the criminal and gradually the injured person's right to compensation diminished until finally the amount payable by the wrong-doer became exclusively a fine payable to the State. The rights of victims to compensation were then taken up under the common law.

Problems arose with this common law remedy when the offenders were unknown or destitute. From these problems the practice developed that the State and, hence, the taxpayer should ultimately be responsible for guaranteeing payment of 'compensation' for personal injuries sustained by innocent victims of criminal acts. In practice, however, there has been little attempt by legislators to seek out a systematic philosophical basis for compensation schemes. The approach has generally been one of expediency, concentrating on a social welfare rationale of helping 'unfortunates' and arguing that

the State should provide assistance to victims of violence, much as it helps other victims of misfortune.

Government financed schemes in Australia have grown rapidly and in a somewhat ad hoc manner. New South Wales enacted the first Australian compensation scheme in 1967, followed by Queensland in 1968, South Australia in 1969, Western Australia in 1970, Victoria in 1972, and finally Tasmania and the Northern Territory in 1976.

The extent of the social problem which Government monetary compensation sought to alleviate was not at any time specified during the debate on the South Australian Bill, beyond the comment by the then Attorney-General, that 'crimes of violence are not decreasing in frequency or intensity in this country'. No attempt was made to offer even an approximate figure as to the number who would receive compensation, or as to the cost to the State. Thus the scheme was established with little foresight as to the size of the problem to which the legislation would have to respond, and with no analysis as to whether it would constitute the most cost-efficient use of tax-payers' funds in the area of support for victims of crime.

In South Australia, the 1969 Act was repealed in 1978 and replaced by the current statute, the *Criminal Injuries Compensation Act* 1977-1978. From 1969 to 1974 the maximum allowable compensation for physical injury and mental stress was $1,000. This limit was raised to $2,000 in 1974, and increased again to $10,000 in 1978.

Since the inception of Criminal Injuries Compensation in South Australia, both the number of recipients and the amount of public funds spent on the scheme have grown rapidly. In 1973-1974 only three claims were paid for a total of a little over $3,000. Last year, 1980-1981, the number of claims had increased to 157 with a total pay-out of approximately half a million dollars. It could be expected to be even higher in this year. In seven years the cost has escalated by some 140 times, and there is every likelihood that as more people become aware of the scheme, and awards increase, it will grow still further.

I would like to suggest that this Symposium would be an appropriate forum for reviewing the appropriateness of what in effect are ex-gratia payments to victims when ultimately an award cannot be recovered from the offender. Are there other ways of using some or all of this money to assist a wider range and greater number of victims to cope with the trauma of crime? That should not be taken as an indication of any prospective change - only a request to seriously consider the philosophy of this method of dealing with some victims in an area which has developed considerably since the 1960s. However, there are other aspects of the scheme which the Government is reviewing with a view to streamlining its administration and ensuring that resources are directed to those in greatest need.

I have been concerned at the cumbersome procedures which often are involved in compensation cases. Drawn-out compensation cases can aggravate a victim's problems. For example, there are many cases

where the Crown does not dispute the amount of compensation claimed by a victim of crime, but at present, all such cases are required to go to court. The Act will be amended in order to remove the necessity to go to court where negotiated settlements are achievable.

Another amendment will empower the trial judge to make an award immediately upon conviction of the offender, assuming an application for compensation has been lodged beforehand. Otherwise all criminal injuries compensation matters will be heard by the District Court. This should ensure greater consistency in awards, and speed up the proceedings.

Anomalies have arisen when a person has been awarded Worker's Compensation and has also been awarded compensation under the Criminal Injuries Compensation for the one injury. Even though the amount the worker receives under the *Criminal Injuries Compensation Act* may have been reduced because of worker's compensation benefits, the *Workers' Compensation Act* requires the worker to repay to the employer the amount of criminal injuries compensation awarded. Such a worker who is also a victim is thus disadvantaged. The Government will be acting to remedy this absurdity.

The issue of court costs is also a sensitive one. Criticism has justly been made that because the costs allowable under the regulations are so low it is often difficult to find lawyers willing to represent victims in compensation matters. I will be consulting with the Law Society with a view to introducing a new scale of costs which will more accurately reflect the real costs of bringing an application under the Act.

Such changes to the scheme should streamline procedures, ensuring maximum benefit for the taxpayer's dollar, and assisting in easing the trauma of victims.

But the Criminal Injuries Compensation Scheme must be viewed in the wider context of victim assistance. Just as the prevention of crime is a concern for the whole community so must the giving of assistance to victims of crime be a real obligation for the whole community.

Voluntary organisations, friends and relatives of victims have an important role in reassuring victims and in assisting them to adjust back to normal life. Victims of violent crime so often have a great need for someone simply to turn to in a moment of despair; and more often than not individuals can help much more than governments. Governments can provide assistance through a variety of agencies such as crisis care and the sexual assault referral clinic, but family, friends, neighbours with whom the victim has regular personal contact can provide so much more of the long-term support which victims often require.

Ultimately, the changes which are required to significantly reduce the suffering of crime victims, must occur in the hearts and minds of all Australians, concurrently with changes in the criminal justice system

and the substantive law. The solutions are not easy - they may vary from crime to crime and victim to victim. But governments, government employees, private organisations and individuals are all responsible for the development of more sensitivity in human relations, and the provision of appropriate means to alleviate stress among victims.

I am confident that this Symposium's deliberations on a wide range of topics, assisted by a variety of capable men and women, experienced in many aspects of victimology, will provide valuable material to develop expertise in this area.

I am please to be able to open this Symposium

Session I

CRIMINAL PROCEDURE, EVIDENCE, AND THE CRIME VICTIM

Most victims regard their participation in the criminal process as a bewildering and stressful experience. Transient participants in a chain of events which have long since become routine to judges and to officers of the court, victims are uncomfortable with the adversary process, and are often offended by cross examination designed to test the credibility of their testimony. Indeed, many are upset by what they regard as the patronising demeanour of police and prosecutors. Changes to the process which can serve to reduce the victim's discomfort without eroding the rights of the accused are the subject of the three contributions in this session.

Brian Martin's paper, 'Reconciling the Interests of the Victim with the Rights of the Accused' alludes initially to the difficulties experienced by the ill-informed victim/witness, and urges Crown prosecutors and others involved in victim assistance to devote more effort to informing and advising victim/witnesses at the outset of proceedings. Martin then raises the question of whether certain categories or victim/witnesses, particularly the aged, the infirm, or the very young, might be excused from having to appear during committal proceedings. He cites Section 106(6a) of the Justices Act (S.A.) which exempts victims of sexual assault from such a requirement, unless special circumstances require their appearance. Martin also cites Section 34(i) of the Evidence Act (S.A.) which inhibits the introduction of evidence concerning the previous sexual history of sexual assault victims.

Greg Woods, in his paper 'Interrogating the Victim/Witness: The Lawyer's Duty', reminds us that there are ample ethical and statutory barriers to irrelevant, insulting, and gratuitously offensive questioning of a victim/witness. Noting the firmly established principle that lawyers are not to go beyond their instructions in questioning a witness, Woods adds that Sections 56, 57 and 58 of the Evidence Act (N.S.W.) provide adequate protection. He then reviews the provisions of the newly enacted *Crimes (Sexual Assault) Amendment Act* 1981 (N.S.W.) which provide explicit protection to sexual assault victims. Woods concludes by suggesting that judicial application of the new legislation, combined with adherence to ethical standards by defence counsel, provide for a just balance of interests between victim and accused. During the subsequent discussion, he noted that prosecutors should be trained systematically to protect their witnesses from improper questioning.

Peter Sallmann's essay 'The Role of the Victim in Plea Negotiations' is a pathbreaking contribution on two counts. The practice of negotiation between Crown and defence on the possible withdrawal of

a charge or charges in a multiple count indictment in return for a guilty plea, is one which has heretofore received sorely inadequate attention by Australian scholars. Sallmann does us a great service simply by reminding us that such occurrences are not uncommon. By arguing that victims might systematically be involved in the process through regular consultation and information, he makes an important contribution to the interests of the victim. In some instances, a plea of guilty to a lesser charge may be in the victim's best interests; in others, it can be distinctly disadvantageous. Not only would such informed consultation reduce the victim's felt alienation from the criminal process, it could improve the quality of justice in general. It was observed in the course of subsequent discussion that victim/witnesses should routinely be advised of the ultimate outcome of proceedings in which they have been involved. The three contributions in this session suggest that the criminal process need not be a zero-sum game; modest reforms, easily implemented, can serve the interests of the victim, the public, and the accused as well.

RECONCILING THE INTERESTS OF THE VICTIM WITH THE RIGHTS OF THE ACCUSED - CRIMINAL LAWS OF EVIDENCE AND PROCEDURE

B. Martin

This discussion is to be concentrated upon the interests of the victim and the rights of an accused at a preliminary hearing and within the confines of the criminal court. Much can and should be done to prepare a victim for court and to generally assist before and after the giving of evidence. Such preparation and assistance is invaluable in helping to alleviate the trauma experienced in court without affecting the rights of an accused in any way.

I draw attention to the Report of The Committee Of Enquiry On Victims Of Crime delivered in South Australia in January 1981, and in particular to paragraphs 62-70 and 303-314 (including recommendations 37-47).

Debates about the rights or wrongs of the laws of evidence often proceed without due regard for the fundamental right of the accused, namely, the presumption of innocence that remains unless and until the prosecution adduces evidence that proves guilt beyond reasonable doubt. Our communities, and rightly so, jealously guard that fundamental right.

A victim, as a member of the community, has a theoretical interest in protecting such rights, but when stepping into the witness box, the interests are purely personal. There are, therefore, fundamental differences that defy reconciliation.

Many victims are distressed by the necessity of giving evidence twice. When an accused person consents, the procedure exists in South Australia, and I assume in most if not all States, for the sworn statement of a victim to be tendered without that person attending the preliminary hearing. In South Australia recognition has been given to the particular stress experienced by victims of sexual assault. Section 106 (6a) of the Justices Act (S.A.) effectively provides that the victim, if not called by the prosecution, shall not be required to attend court unless the magistrate finds that 'special reasons' exist. That section is clearly a step in the right direction as far as the interests of those particular victims are concerned.

Consideration should be given to the following questions:

(1) Should there be a complete ban on the calling of a victim at all preliminary hearings?

(2) Should a power such as that contained in Section 106 (6a) be extended to all committal proceedings or at least to other cases of a special nature?

A decision on these questions will be influenced by a consideration of the purpose for holding a preliminary hearing. The differing views that exist on this topic are typified by those expressed by the judges of the High Court in *Barton and Another* v. *R* (1980, 55 ALJR 31). The Court was concerned with the presentation of an accused for trial without a preliminary hearing being held, but the general observations are applicable to our discussion.

Gibbs J. (as he then was) and Mason and Aickin JJ. were of the view that '...it is no part of the function of the inquiry to ensure that the tactical objectives of either party are served'. They made plain, however, the general importance to the accused of the preliminary hearing in the following passage:

> Lord Devlin in The Criminal Prosecution in England was able to describe committal proceedings as 'an ESSENTIAL safeguard against wanton or misconceived prosecutions' (p.92) (emphasis added). This comment reflects the nature of committal proceedings and the protection which they give to the accused, viz. the need for the Crown witnesses to give their evidence on oath, the opportunity to cross-examine, to present a case and the possibility that the magistrate will not commit. Mr Shand submits that the same purpose can be achieved by the supply of particulars and the delivery of copies of proofs of evidence. This is the course which is followed when the Crown decides to call at the trial a witness whose depositions were not before the magistrate. But it is one thing to supplement the evidence given before a magistrate by furnishing a copy of a proof; it is another thing to deprive the accused of the benefit of any committal proceedings at all. In such a case that accused is denied (1) knowledge of what the Crown witnesses say on oath; (2) the opportunity of cross-examining them; (3) the opportunity of calling evidence in rebuttal; and (4) the possibility that the magistrate will hold that there is no prima facie case or that the evidence is insufficient to put him on trial or that there is no strong or probable presumption of guilt.

Stephen J. referred to the loss of the opportunity to cross-examine as 'likely to be the most serious detriment' to the accused. He pointed out that the seriousness of that loss 'will depend upon the nature of the offence charged and of the Crown's evidence'.

Murphy J., while agreeing generally with Wilson J., pointed out that delays were caused in some matters, because of committal proceedings,

to the detriment of the accused and said:

> 'Committal procedures apply only to indictable offences which are a small proportion of all criminal cases. In recent years, there has been a marked trend in Australia to turn indictable offences into summary ones, and in the creation of new offences, to make them summary rather than indictable. This trend is undoubtedly influenced by the fact that procedure by way of indictment (apart from ex officio indictments) involves committal proceedings. The trend to replace indictable offences by summary ones seriously erodes the institution of trial by jury, which is the most important safeguard for the liberties of the people. It would be much better to abandon committal proceedings and to protect an accused by discovery (particulars and notice of evidence and a simpler screening process) than to allow trial by jury to be undermined further.'

Wilson J. adopted the reasons of Gibbs and Mason JJ. on other conclusions but stated:

> 'However, I am unable to agree with their Honours that a trial held without antecedent committal proceedings, unless justified on strong and powerful grounds, must necessarily be considered unfair.'

His Honour later said:

> 'The committal proceedings is a procedure designed to facilitate the administration of criminal justice. It serves this purpose in two ways; in the first place, it marshals the evidence that is tendered on behalf of the informant in deposition form, a form which enables it to be perpetuated and be available for use at the trial in the event of the witness being dead or otherwise unavailable; in the second place, it requires the magistrate to be satisfied that the evidence establishes a prima facie case before the accused person is committed to stand trial: *R.* v. *Epping and Harlow Justices; Ex parte Massaro* (1973) 1 Q.B. 433.
>
> Although it will ordinarily do so, a committal proceeding is not designed to aid an accused person in the preparation of his defence: *Moss* v. *Brown* (1979) 1 N.S.W.L.R. 114. This is borne out by the established fact that the prosecution has a discretion as to evidence it will tender in the committal proceedings. It is not obliged to produce all the evidence upon which the Crown may rely at the trial: cf. *Ex parte Massaro.*'

There are cases where the evidence of a victim is so unsatisfactory that a magistrate will decline to commit for trial. In others, there

will be a real risk of unfair prejudice to an accused if a victim is not required to give oral evidence at the preliminary hearing. It seems to me that there is room for an extension of the Section 106 (6a) principle to cater for other situations but care must be taken not to cause unfair prejudice to an accused. I have in mind that plight of the aged, infirm and very young victims.

In the trial court there will very rarely be cases where the prosecution is able to proceed without tendering anything from the victim,for example,a full confession to the police. Advocates for an accused will be quick to point out the inherent dangers in many cases,for example, where an accused alleges a police fabrication of such a confession.

It must be accepted that victims will almost inevitably be required to give oral evidence at a trial. Mistakes in identification are made and false accusations do occur. I am not entering the hotly debated issue as to the number of false accusations. Statistics on such a topic must be viewed with extreme caution. Attention must be focused on the issue of what can FAIRLY be done within the trial itself to alleviate the trauma experienced.

Initial matters can allay some fears. I see no reason why a victim should be required to disclose a residential or work address unless such disclosure is relevant to the issues at the trial. Similarly, in the absence of special reasons to the contrary as found by a trial judge, upon application a victim's name and address should be suppressed from publication. If a victim feels intimidated by or reticent in front of spectators, a judge should be more readily disposed to clear the court than is generally the case at present.

There have been suggestions that there is a need for victims generally, or at least those in certain types of cases, to be separately represented. Some victims would undoubtedly feel reassured by the presence of their own counsel and an accused's rights will not thereby be affected. There are however practical difficulties that would ensue during the course of the trial, and additional personal or community expense would be involved. In many cases the necessary reassurance could be achieved in conference with counsel for the Crown and by the presence in court of a 'friend'. From a practical point of view, separate counsel could offer no more protection than that provided by the judge and Crown counsel.

The crucial area is the scope and nature of cross-examination. Defence counsel must be permitted to properly test the reliability of a victim's evidence within the confines of the real issues at the trial.

Powers have always existed at Common Law, or by Statute, enabling the trial judge to protect all witnesses against unfair cross-examination. The difficulties arise in the interpretation and application of those powers in a given case. Mr Justice Wells in *R* v. *Gun; Ex parte Stephenson* (1977, 17 SASR 165), when discussing cross-examination of complainants in cases of alleged sexual assault, pointed out the

emotional trauma experienced by many such victims and said (page 179):

> 'It behoved courts, therefore, to be careful to ensure, so far as they had the power to do so, and bearing in mind the interests both of the accused and of the community, that the prosecutrix was upset no more than could reasonably be avoided.
>
> A perusal of depositions and, it must be acknowledged, of the transcripts of actual jury trials, has revealed cases where the court insufficiently addressed itself to the test of relevance, and to its responsibility to exercise the powers, and to discharge the duties, conferred and imposed by ss.23-25 (inclusive) of the Evidence Act.
>
> But those courts were no doubt prompted in what they did or did not do by the realisation that a charge of rape is a serious one, and by a reluctance to prohibit an accused's counsel from exploring ways open to him of testing the prosecution's case or of advancing the defence case.
>
> It would appear that lately Parliament conceived the notion that, although the courts possessed powers and discretions to protect prosecutrices against unwarranted or unnecessary harassment, something stronger was needed. Section 34i was the result.'

The Section 34i referred to was introduced into the South Australian Evidence Act in December 1976. That section provides that, without the leave of the trial judge, evidence shall not be adduced of the sexual experiences of the alleged victim prior to the date of the alleged offence nor of that person's sexual morality. The judge shall not grant leave except where satisfied that the evidence is directly relevant to an allegation that has, or is to be, made by the prosecution or the defence and, further, unless satisfied that the introduction of the evidence 'is, in all the circumstances of the case, justified.'

Section 34i is obviously a step in the right direction. Time prevents a discussion of the efficacy of this section but, in general terms, considerable difficulties have been experienced.

Any extension of the principle contained in Section 34i, either generally or within the confines of cases involving sexual assaults, faces the dire risk of unfairly detracting from the rights of an accused. It becomes a question of policy and fair balance. I again draw attention to the particular needs of the aged, infirm and very young victims.

The Legislature cannot allow for the infinite variety of circumstances that arise in criminal trials. A judge, possessed of knowledge of the real issues at stake in a trial, is in the best position to strike

a fair balance, but that necessary knowledge is not always easily obtained.

I venture to suggest that there are many cases where, because a judge accepts defence counsel's assurance of relevance, prolix cross-examination of doubtful validity is permitted. In appropriate situations, counsel should be required to disclose the instructions that he maintains establish the relevance of the questioning. Such disclosure, where necessary, would be in the absence of the witness and/or jury.

The above suggestion would help to prevent undue harrassment of a victim. Tactically speaking, it may take away an advantage possessed by an accused in some trials. I do not believe that such a tactical advantage is a 'right' of an accused in the true sense of that word.

The giving of evidence will, for many victims, inevitably be a traumatic experience. The basic framework exists in the laws of evidence and procedure for the maintenance of a fair balance. I have endeavoured to touch on a few areas worthy of attention. An accused is presumed to be innocent and therefore improvements within the trial arena can only be minor in comparison with other measures prior to and subsquent upon the giving of evidence.

THE ROLE OF THE VICTIM IN PLEA NEGOTIATIONS

P.A. Sallmann

The overwhelming majority of persons appearing before Australian courts charged with criminal offences plead guilty.[1] Very many of these guilty pleas are the direct or indirect result of some form of plea negotiation between the prosecution and the defence.[2] Sometimes the court itself, through the judge or the magistrate, is involved.[3] The issue of plea negotiation, or plea bargaining, as it is more commonly called, is now beginning to receive an airing in Australia.[4] It has been the subject of considerable interest and discussion in countries like the United States, Britain and Canada for many years.[5]

There is now a formidable body of plea bargaining literature dealing with the common law world.[6] In this literature such issues as the ethics, justice and appropriateness of the various plea negotiation practices have been discussed; so have the advantages and disadvantages for the prosecution, the defence, the system and the community as a whole. Much of the debate has centred on the question of how plea bargaining should be conducted and controlled. The role of the victim in plea bargaining has received scant attention. It is the purpose of this paper to consider some aspects of the position of victims in relation to the negotiation or 'settlement' of criminal cases and to suggest that there should be greater involvement of victims in the process.

This paper is intended to raise the issues for discussion in a general Australian context but because the writer is most familiar with Victorian practice and experience the material is presented in a Victorian framework. Plea negotiation practices in an increasingly diverse Federal system such as that of Australia may vary from one State to another and within States. As Grosman, writing about Canada, has noted:

> The inducements and reductions available in one prosecutorial jurisdiction may not resemble those available in another. An urban jurisdiction with the burden of a heavy case load may engage in expediting procedures unheard of in a neighbouring prosecutorial office that is not subject to the same administrative strains. Differing policies of pre-trial negotiation may depend on the demands of the locality.[7]

Accepting that there will be some variations between jurisdictions and within jurisdictions in the formal and informal rules and practices governing plea negotiations, the issues raised in this paper should have wide general interest and relevance.

Plea Negotiation

At the outset the phrase 'plea negotiation' possibly needs some explanation.[8] There are basically two types of plea negotiation. One is called charge bargaining. The other is generally called sentence bargaining or 'judicial involvement' bargaining. The former practice involves the Crown offering to withdraw a charge or charges in a multiple count indictment in exchange for a guilty plea to the remaining charge/charges or an agreement involving a plea to a charge in exchange for the withdrawal of a charge/charges of greater seriousness. The latter practice is predicated upon the operation of the sentencing discount principle.[9] This is the idea that if an accused person pleads guilty to a criminal charge he deserves to receive a lesser sentence than that he would receive if he were to be convicted after a not guilty plea and a trial. The existence of the discount, or at least the possibility of its operation in a particular case, provides an incentive for defence counsel to seek a meeting with the trial judge in chambers to find out what the judge has in mind as a possible sentence, whether that sentence is likely to be affected by the plea and whether the judge is prepared to give any indications of his views.

In many instances the two types of bargaining are part of the one process. For example, the accused may be charged with murder. The Crown, sensing that it may not have a fool-proof case, offers the accused a plea to manslaughter.[10] The accused, worried about the risk of conviction of murder, agrees to consider the proposal. To assist in deliberations the defence counsel asks to see the judge in chambers.[11] A meeting takes place involving the judge, crown counsel and defence counsel. The judge is told that negotiations are under-way between the parties on a charge bargaining basis. He then indicates that he does not think that it is a serious manslaughter. After the meeting the accused agrees to accept the manslaughter plea and is sentenced to four years imprisonment.

Judicial involvement plea bargaining occurs in Australia but appears to be rare. A number of recent Australian appellate court decisions have rejected the practice of discussions about sentencing which occur in judges' chambers.[12] Charge bargaining is a day to day occurrence in Australian courts, both higher courts and lower courts. The agenda for discussion in this paper is charge bargaining. Many of the issues and arguments also apply in the case of judicial involvement bargaining but because of its rarity it is not as important as charge negotiation.

'Trouble' Cases as Guidelines

Some recent Victorian higher court cases provide a useful introduction to a discussion of some of the problems. In one case two brothers were charged with a large number of counts of armed robbery. They were also charged with shooting a police officer who had tried to apprehend them as they departed from the scene of one of the robberies. The

brothers indicated very early on in the legal process that they would be pleading guilty to all the charges of armed robbery. They claimed, however, that the shooting of the police officer was accidental.

During the pre-trial period the defence lawyer approached the Crown prosecutor in the case and told him that his clients were prepared to plead guilty to an offence amounting to the illegal use and possession of a pistol but not to the intentional shooting offence. The prosecutor had doubts about whether a conviction could be sustained on the major offence and indicated a tentative willingness to accept the defence proposal.

The prosecutor then consulted the police informants in the case, one of whom was the victim of the shooting. The victim was adamant that the prosecutor should not accept a plea to a lesser offence. He maintained this stance in the face of quite strong advice from some superior officers that a plea to the lesser offence would be the best result in the circumstances, particularly having regard to the fact that the guilty pleas to a substantial number of counts of armed robbery would lead to a very long prison sentence. The prosecutor decided not to accept the plea offered by the defence and to proceed to trial on the intentional shooting charge.

In a second case a police officer was also involved but this time as the accused. This police officer lived in an area of a Melbourne suburb which had been affected by a rash of car thefts. He awoke in the early hours of the morning to the sound of noises in the street outside his home. He looked through the bedroom window to see a group of youths apparently tampering with a neighbour's car. He took a pistol and went out into the street to attempt to arrest the members of the group. What happened next is not entirely clear. The police officer said that he fired a warning shot in the air. One of the youths was shot dead. The police officer was charged with murder.

The barrister acting for the accused police officer contacted the Crown prosecutor and asked him whether he would withdraw the murder charge if the defence were prepared to offer a plea to manslaughter. The prosecutor felt sympathetically inclined towards this offer because although he thought that the behaviour of the police officer was stupid and highly irresponsible he did not think that the murder charge was necessarily appropriate and that it would be difficult to get a conviction for murder.

The prosecutor sought instructions and consulted with the informants in the case. He was told that the family of the deceased was distraught and utterly outraged by what had happened and were intent upon seeing a conviction and sentence for murder. On the basis of this information the prosecutor decided to proceed with the murder charge and not to entertain the offer of a plea to manslaughter made by the accused.

A third case concerned an incident in a Victorian country town. Late one afternoon a group of young people booked into a motel in the town. Their behaviour was apparently quite noisy and rowdy. A guest in a

nearby room complained to the motel manager who went and asked the members of the group if they would keep the noise down. The noise continued, there were further discussions involving the group and the manager and, ultimately, the manager asked them to leave. The demand to leave was resisted, scuffles broke out, the manager produced a pistol and one male member of the group was shot in the back and killed as he fled from the motel.

The manager of the motel was charged with murder and committed for trial at the next sitting of the Supreme Court in the town. As in the second case the defence lawyer, some days before the trial was due to begin, approached the prosecutor and said to him that he did not think that it was a standard kind of murder case and that the accused would consider a plea to manslaughter. Again the prosecutor consulted with police officers in the case. On this occasion members of the family of the deceased were told that consideration was being given by the Crown to the idea of accepting a manslaughter plea. Their reaction was to threaten to complain to their local member of Parliament and to the Attorney-General if such a course were followed. The Crown proceeded with the murder charge.

Some preliminary points of clarification need to be made. In cases two and three the actual victim was deceased but it is not stretching a point too much for the purposes of the present discussion to argue that the family members stand in the place of the victim in homicide cases.[13] In other respects the two homicide cases cannot be described as normative. There is no necessary reason why homicide cases should be used to establish a set of principles or guidelines about victim consultation in the plea negotiation process. In fact it may be argued that homicide cases are so exceptional that they should be treated as a separate category altogether.

Another point which is important to make is that the first two cases concern police officers, the first as a victim and the second as the accused. Any case which involves a police officer in either capacity is exceptional in a plea negotiation context because of its level of public interest and visibility, and hence its political, or potentially political nature. One would not expect atypical cases of this nature, cases involving police officers, to be used to generate working rules as to the involvement or non-involvement of victims in plea bargaining. The reality of the situation in the Victorian higher courts, however, is that these three cases provide quite accurate indications of the working principles which do operate in the area.

The cases do illustrate a general working rule because the practice is not to 'settle' if the 'settlement' is going to cause trouble, particularly trouble of a public and political nature. In this sense the cases mentioned are classic examples. The principle is that if there is likely to be trouble do not negotiate or, at least, negotiate extremely carefully. Victims are involved and consulted as a matter of expediency.

What this means for the vast mass of victims in the more ordinary, less controversial, run-of-the-mill cases is that plea negotiations can be conducted between the prosecution and the defence without any necessity for victim consultation or involvement.

Experienced prosecutors develop a good sense of which cases are possible 'trouble' cases as far as victim participation is concerned. In pre-trial discussion and from other sources of information a prosecutor will be able to assess the climate of feelings and to see the lie of the land before deciding whether it would be safe and politic to proceed to engage in plea negotiations with defence counsel.

Many victims have a very strong sense of the need to be involved in their case but lack the knowledge and the confidence to express their point of view forcefully and constructively. Victims in this position, if not consulted formally or informally, about a plea negotiation arrangement are going to be left very high and dry if such a deal is carried off. Many are likely to feel antagonistic towards the legal system and alienated from it.

The process of consultation in the Victorian higher courts works very much on the basis of expediency. In the great majority of cases, victims are not consulted in relation to plea negotiations. Later in this paper the role of the victim will be examined in more formal terms but for the moment it is sufficient to say that if the victim is to be regarded in any substantial sense as a party to criminal proceedings, other than in the capacity of a witness and/or instigator of police activity, then the conduct of plea negotiations at the higher level in the Victorian system certainly does not recognise that involvement.

There is another type of case in which the victim plays a different role in plea negotiations. Three examples of these cases will now be offered. All three are rape cases but that is coincidental. They do not have to be rape cases for the purposes of the point to be illustrated.

In the first case a young woman, the mother of small children, was particularly brutally raped. She had been followed into a shop by her assailant and then by car as she drove home. Her attacker forced her car to the side of the road, forced her into his car and drove her away and repeatedly raped and assaulted her. She discovered some time later that she was pregnant. There was a distinct possibility that her assailant was responsible for the pregnancy.

The victim of this crime was severely emotionally and psychologically damaged. She undertook a course of treatment with a psychiatrist. The psychiatrist told the prosecutor in the case that it would be extremely detrimental to the progress of his patient to have to give evidence in the criminal court. This situation posed the prosecutor with an acute dilemma. He was faced with the prosecution of a very clear-cut and violent rape but also with a victim/witness who could only give evidence at very great personal cost to herself.

The prosecutor considered his position very carefully and decided to offer the defence a plea to rape with mitigating circumstances in exchange for the withdrawal of the more serious rape charge. At the time the former carried a maximum prison term of 10 years and the latter 20 years. This offer was accepted by the accused.

In the second case a husband was charged with the rape of his wife. The police and the prosecutors were quite convinced that the wife's complaint was a genuine one. There was also evidence of violence having been inflicted upon the wife by the husband. In addition to the strength of evidence in the case there was strong political pressure being applied to the prosecuting authorities by women's groups to proceed to conviction with rape and other sex offence charges.[14]

After the committal hearing and before the trial it was revealed to the prosecution that the husband and wife had been reconciled and that the wife no longer wished the rape prosecution to go ahead. The evidence of a genuine reconciliation was strong and unchallenged. After consultation with the husband's lawyer the prosecutor decided not to go ahead with the rape charge.

The third case involved a married woman who alleged that she had been raped. The accused denied that he had had intercourse with the woman. Medical examination revealed semen in the woman's vagina. There was evidence that she had not had intercourse with her husband for a fortnight before the alleged rape. The accused instructed his lawyer that the woman was having an affair with another man.

Counsel for the accused contacted the prosecutor and told him of his instructions. The prosecutor spoke to the woman who agreed that she was having an affair but insisted that she had been raped by the accused. She then applied strong pressure to the prosecutor to desist from prosecution so that the fact of the affair would not be revealed to her husband during the trial. The prosecutor offered the accused a plea to indecent assault. This plea was accepted by the accused.

These three cases have in common with the first three cases the fact that they present somewhat unusual features. The crimes are not unusual but in their totality they posed problems for the prosecution which are not characteristic of most cases. They are also similar to the first group of cases in that the victims, or victims' representatives were vitally involved in the decisions which were made about the disposition of the cases. Another thing they have in common is that they all involved a process of some negotiation between the Crown and the defence. Even in the rape-in-marriage case representations had been made by the defence lawyers certainly aimed at a total withdrawal of charges but suggesting as a compromise position a plea to a lesser offence.

However, the two sets of cases part company in at least two important ways. In the first set the victims played a vital <u>reactive</u> role in influencing the prosecutors not to 'settle' the cases. In the second set the victims performed <u>proactively</u> in persuading the prosecutors

to 'settle' by agreeing, in two cases, to a compromise, and, in one, to a total withdrawal. Second, in the first set of cases victim interests were consulted by the prosecutor because of anticipated extra-legal problems in the form of possible embarrassment which would result from an objection being made about the prosecutor's proposed course of action. In the second lot of cases the prosecutor reacted for mixed reasons. Clearly, one of the reasons was that in each case there was going to be a reluctant victim/witness and, therefore, the chances of a successful conviction would be considerably lessened. Another reason was that the prosecutors felt sympathetic towards the plight of the victims and genuinely took their wishes into account in deciding what approach to take to the cases.

The important point to be drawn from the cases as far as the victim role in plea negotiations is concerned is that in one group of cases the prosecutors were essentially acting in their own personal and bureaucratic self-interest in consulting the victims and their representatives and in the other group were, in part, acting in the interests of the victims <u>only</u> because the victims forced their view to be considered. In neither group of cases did the prosecutors actively seek to consult the victims for the express purpose of finding out about the attitude of the victim nor even to simply inform the victim of the fact that negotiations were underway or had concluded.

This means that victims in Victorian higher court cases are usually seen by prosecutors as instigators of police action and as key witnesses in court proceedings but not as parties of sufficient status in the process to be entitled to be consulted about what is happening, let alone as having any sort of influential contribution to make to plea negotiation agreements. This is not to say that victims are not sometimes, perhaps even quite often, directly or indirectly, consulted on an ad hoc basis by prosecutors about plea negotiation. It does mean that there is no policy on the matter and that conceptually and practically the victim is not seen as having any key role to play. A victim will be consulted if his views are known and are perceived by the prosecutor as presenting a serious obstacle to the settlement of a criminal case or if the prosecutor infers from the circumstances of the case that the victim may well object to plea negotiation and may cause trouble and embarrassment if presented with a fait accompli.

<u>Prosecutorial Discretion</u>

In deciding what charges to bring to court the prosecutor has a wide and largely unfettered discretion. The power to engage in charge bargaining is part of this general prosecutorial discretion. In its Report on the Sentencing of Federal Offenders the Australian Law Reform Commission has commented on prosecutorial discretion thus:

> ...the process of prosecution in Australia at both the State and Federal level is probably the most secretive, least understood and most poorly documented aspect of the administration of criminal justice. It is also one of the most sensitive aspects of criminal justice.[15]

These sentiments are apt to describe the prosecutor's role in plea negotiations, especially when regarded from the standpoint of the victim. In the Victorian system there is a mechanism of accountability for plea negotiations in higher court cases. If a full-time Prosecutor for the Queen wishes to withdraw a charge or offer an accused person a plea to a lesser charge he must consult with the Solicitor-General. If a prosecutor from the Bar is briefed in a higher court case and wishes to negotiate with the defence he is under instructions to discuss the matter with a full-time prosecutor.[16] These consultations are quite informal and unstructured. They do not take place pursuant to any rule of law or procedure. Victims are not involved. Victim interests may be considered but there is no way of ensuring that this is so or knowing whether it is so.

In the lower courts, prosecutions are handled by the police. Although there are no figures readily available, it is common knowledge that as a matter of day to day reality, charge bargaining or plea negotiation is a technique used to resolve a very high proportion of criminal cases. The police in Victoria have endeavoured to address the problem of the use of discretion in this area by a 1979 amendment to their Standing Orders. Standing Order 254A(3) reads as follows:

> In all cases where an information is withdrawn, the prosecutor shall endorse the reasons on the brief. An information for a serious offence should not be withdrawn without the approval of an officer. Where a conviction has been obtained on a principal information, an alternative information may be withdrawn unless forfeiture, compensation, disqualification, or other similar matters are involved.[17]

In the case of 'serious' offences this Standing Order presumably seeks to accomplish on a more formal basis, that which the consultation process at the higher court level is aimed at. In the case of non-serious offences it is simply a post-hoc check on what police prosecutors have done and why. As in relation to the consultation process in the higher court matters, however, there is nothing in the Standing Order which states or implies that the victim has any stake or standing in the plea negotiation process. Even if there were a statement in the Standing Order about the need for, or desirability of victim consultation, there would be problems. The Victoria Police Chief Commissioner's Standing Orders are issued for the guidance of members of the Department. They are frequently ignored both out of ignorance and for convenience sake.[18] In addition, the fact that something like 90 per cent of criminal cases are dealt with by police prosecutors in over two hundred magistrates' courts in Victoria makes the likelihood of non-observance of any such provision very high indeed.[19]

It is the practice of some police prosecutors to interview victims in all cases where plea negotiations are underway or are being mooted. One police prosecutor stated to the writer that he always consulted victims in such cases and that the reason he did so was for public

relations purposes.[20] Every victim, he reasoned, is a potential juror, and to leave a victim feeling left out and alienated from the legal process as a result of not being kept in the picture about plea bargaining was to increase the pool of anti-police potential jurors. It is common for modern inquiries and reports dealing with police and court procedures to recommend that prosecution be taken out of the hands of the police.[21] In the present context it is interesting to note that the dual function of law enforcement and prosecution appears to make some police prosecutors more sympathetically conscious of the position of the victim than the professional prosecutors in the higher courts.

Authoritative information is not to hand but it seems clear that the number of police prosecutors who regularly consult victims in Victorian courts is a very small minority of the total number. This means that with the exception of some isolated instances, victims of criminal offences in Victoria are not consulted about plea negotiations on any regular, structured or principled basis. Again, with the exception of some police prosecutors, the only category of cases in which consultations take place is the 'trouble' group of cases described above. Still to be considered are some of the reasons for the victim being excluded from plea negotiations or knowledge of them, some implications of the exclusion, and what, if anything, should be done about it.

The Victim, The Adversary System and the Prosecutor

It was not until the 19th Century that systems of public prosecution of criminal offences were established on a large scale.[22] The common law of England provided that crimes were committed against a particular person or his family and the injured party, not the State.[23] Hence private individuals brought criminal prosecutions and themselves had conduct of the prosecution case. The development of public prosecutorial systems in England was a slow and painful process.[24] Opposition to such schemes, like opposition to the notion of the modern police force, was strong. The case for the use of public prosecutors was well put by Robert Peel:

> If we were legislating *de novo*, without reference to previous customs and formed habits, I for one should not hesitate to relieve private individuals from the charge of prosecution - I would have a public prosecutor acting in each case, on principle, and not on the heated and vindictive feelings of the individual sufferer - such feelings are rarely the fit measure of the propriety of prosecution. They are apt on the one side to overrate the wrong committed; on the other, still more apt to subside after the first impulse of revenge, and coupled with the just fear of trouble and expense, to lead to disgraceful compromises in which the interests of justice are altogether overlooked.[25]

Peel's arguments were, of course, ultimately to win the day and although there is still the right of private criminal prosecution[26] nearly all criminal cases are handled by public prosecution agencies, usually permanent Crown prosecutors in indictable cases and police prosecutors in summary cases.

The effect of this change in the criminal process on the victim has been dramatic. In many instances the victim reports the crime and instigates police action but as far as court procedures are concerned the status of the victim has been reduced to that of witness. As Dubow and Becker have commented:

> 'With the establishment of the prosecutor the conditions for the general alienation of the victim from the legal process further increase - as the importance of the prosecution increases, the role of victim is transformed from principal actor to a resource that may be used at the prosecutor's discretion. The principal form of power left to the victim is the negative one of not reporting the crime or not co-operating in its prosecution'.

Specifically on plea negotiations the same writers note that:

> Decisions as to when to dismiss, when to plea bargain, or when to go to trial and seek harsh penalties are made according to criteria that only occasionally involve the victim.[28]

The fact that the modern political state has revolutionised the concept of crime so that crime is now conceptualised and dealt with as a public rather than a private wrong no doubt provides a much greater degree of protection to individuals and to the community as a whole; and does so more efficiently than a system of privately controlled criminal justice. It follows logically that given such a state controlled system, including the modern police apparatus, agents of the State should conduct prosecutions. One of the major questions about the development of State controlled criminal justice systems is that of the role of the victim, especially in the trial and pretrial phases. A strong case can be made, and has been made in the growth of the field known as victimology, for the proposition that the victim has been an unduly neglected component of modern criminal justice systems.[29] This is true of the criminal trial process itself and of the pre-trial stages concerning plea negotiation. Victims are seldom mentioned in the same breath as negotiated pleas. In fact, because of the semi-private nature of the conduct of plea bargaining victims are less involved in, and aware of, what is going on than they are in cases where the issues are settled in a trial. Not only are victims as a matter of practice not involved but, as becomes apparent from the literature on plea bargaining, they are not perceived as having a role in the conceptual scheme of things either. Blumberg's treatment of

the subject is indicative of this approach:

> The system (of justice by negotiation) is a response to social and organisational pressures, and it meets the real needs of everyone in the system. These may include the urgent need of the warden to keep the jail population flowing; the judge to clear his calendar; the district attorney to maximise his 'batting average'; the lawyer to enhance his stock-in-trade as an influential agent who is all things to all men; the police to expedite their cases and utilise the pressures of bargaining to get information for their activities; and certainly for the accused to benefit from a lesser plea and a more lenient disposition which would not otherwise be available.[30]

There is no mention of the victim in this scheme of things. The clear implication is that victims are not sufficiently important components to be seriously considered in discussions about plea negotiations. The end result of the evolution of the process of the State taking over the conduct of criminal prosecutions has been an overreaction to the dominant role of victims in early systems of criminal justice. Now the victim has less involvement in the system than is justifiable. The argument is not that there should be a return to the pre-public prosecution days but rather that more recognition should be given to the role of the victim in the system, and in the case in point, in plea bargaining. In the modern criminal justice system the prosecutor enters the case as an advocate but his client is the State not the victim. This is no doubt appropriate given our current approach to criminal jurisprudence but it should not mean that victim interests are ignored, or pursued only at the convenience of the prosecution.

In arguing for formalised pre-trial conferences in criminal cases, at which plea negotiation would be an agenda item, Norval Morris has said the following:

> If the criminal process is the taking over by the State of the vengeful instincts of the injured person - buttressed by the recognition that the harm to the victim is also harm to the State - then it would seem, at first blush, that the victim at least has a right to be informed of, and where appropriate involved in, the processes that have led to whatever is the State settlement of the harm that has been done to him. In that respect one would hardly need to make an affirmative argument; it is a matter of courtesy and respect to the dignity of the individual victim.[31]

Morris goes on to argue the case for bringing victims and offenders together in some instances. He claims that there may be important psychological benefits to be gained for some victims and some offenders from such meetings.[32] This may well be so but the point in this paper is not so much victim/offender reconciliation but simply victim involvement in the process and knowledge of what is going on. There is no suggestion that a victim should have a power of veto over any arrangement entered into between the Crown and the defence.[33] The suggestion is simply one of involvement through consultation. The policy basis for such a move is not that consultation would assist the prosecutor to make a 'correct' decision, although this should be the case, but rather that the victim deserves this level of recognition from the system.

Of course not all victims would wish to be informed of what moves are taking place.[34] There would be no necessity for victims to be involved but the opportunity should exist. In the case of the so-called victimless crimes the problem can be easily overcome because presumably in those sorts of cases the prosecutor stands more directly and easily in the shoes of the 'victim' that is the State.

Apart from the idea that as a matter of principle the victim should have the 'right' of involvement in plea negotiations there are other more tangible factors to be considered.

Impact on the Victim of Exclusion from Plea Negotiations

Many victim survey studies, including some Australian ones, have consistently revealed that large numbers of crime victims do not report their victimisation.[35] The most common reasons given for failure to report are that the police would not want to be bothered with the problem and that even if it were reported and the police could be bothered they could not do anything effective about it anyway.[36] These stated reasons clearly reflect a general lack of confidence in the criminal justice system as a totality and in its separate institutions. There is evidence from victims and non-victims that the courts are not highly regarded for their work in the criminal law area.[37] The fact that victims are generally kept in the dark about the conduct of plea negotiations cannot help to improve this situation. The appeal courts, particularly the English courts, which have had many occasions on which to pronounce upon the subject of plea bargaining have always been at great pains to consider its impact on the accused but rarely, if ever, is the position of the victim given an airing.[38]

The State has taken over the business of crime prosecution but to some extent the prosecutor must still represent the interests of the victim.[39] One reason for a State run penal system is to protect the offender from unofficial retaliation from the victim or the victim's family and friends.[40] The quid pro quo it would seem is that the victim has confidence that the courts will 'do justice' in terms of adjudication

and penalty. As Wardlaw puts it:

> The punishment meted out by the courts is presumed to be 'psychological reparation' to the victim, which satisfies his desire for revenge.[41]

Many victims will be dissatisfied, for good or bad reasons, with the sentences handed out by courts after convictions at the conclusion of publicly contested trials. How much greater is the scope for legitimate dissatisfaction when charges are withdrawn or a plea is accepted to a lesser offence after a private process of consultation, often over the telephone or behind closed doors, between the prosecutor and the defence lawyer? From the victims point of view insult may well be added to injury when such a discussion involves the judge in the case, especially when it is accepted that the accused is entitled to be represented at such gatherings if he wishes.[42]

A second problem which may arise as a result of the exclusion of victims from charge bargaining discussions is that an unjustified stigma may become attached to the victim.[43] The classic example of the victim being stigmatised as a result of the criminal law process is the case of a rape charge in which there is a solid body of evidence as to factual guilt but perhaps for technical reasons, or other reasons difficult to account for, the case results in an acquittal of the accused. Many people in the community will interpret such a result by drawing adverse inferences against the sexual morality and general credibility of the complainant.[44] Courts and prosecutors, assuming that the preparation, presentation and running of the case have been adequate, have no control over this situation.

It is possible, however, to control plea bargaining, or at least to ensure that the victim's interests are catered for. Another rape example serves to make the point here. Until very recently the Victorian law of rape provided for an offence of rape with mitigating circumstances as a statutory alternative to rape.[45] The maximum penalty was half that for rape itself.[46] In many cases where rape was the charge on which the accused was to be presented the prosecutor would have plea discussions with the defence counsel, the upshot of of which was that the Crown would accept a plea to rape with mitigating circumstances.[47] There was no requirement for consultation with the victim, and unless it was the sort of case which fell into one of the 'trouble' case categories outlined above, in the normal course of events consultation would not occur. The phrase 'mitigating circumstances' is enormously broad, vague and ambiguous.[48] Clearly, there is a strong potential for the victim of 'rape with mitigating circumstances' to be stigmatised quite unjustifiably by people in the community who have no knowledge or understanding of the plea negotiation system and who have rather strict moral and social outlooks. The victim may attract all sorts of pejorative labels as a result of an aspect of the legal process over which she had no control. True, the prosecutor may argue that had the plea to the lesser offence not been accepted the risk of a total acquittal (and greater potential

stigma) was present. Depending upon the situation this may have been so but the point does not defeat an argument that it is a worthwhile thing to involve the victim in the process and to consult the victim about possible strategies. As well as risking alienation of victims from the criminal justice system then, failure to consult victims about plea negotiation raises the possibility of actually doing harm to victims.

One problem in this area may be presented by the fact that a prosecutor agrees to 'settle' a case because he perceives a weakness in his case. It may be that the weakness he perceives is the victim as witness. He may feel that the victim is unreliable and is likely to be discredited in cross-examination. The perceived unreliability may consist of the fact that the prosecutor does not believe the victim's story or he may feel that the victim is telling the truth but that he is erratic and when confronted with plausible hypotheses inconsistent with his own account, will go to water. If this is the situation, a serious consultation on the matter between the prosecutor and the victim may well be a delicate affair. Not the least of the difficulties arising out of a scheme of regular and detailed prosecutor/victim discussions is the potential for allegations to be made that the prosecutor is engaged in 'coaching' or 'prepping' the witness. Prosecutors quite understandably do not wish to place themselves in the position where they are open to such allegations.

Here again though it would seem that many of the cases will raise issues of diplomacy rather than present difficulties sufficient to discredit the suggestion of victims being involved in some way in plea negotiation discussions. Prosecutors would simply have to tread carefully.

The final issue which merits mention as one of the possible impacts and implications of plea negotiation for the victim is the question of compensation. It is possible that as a result of charges being withdrawn in exchange for a guilty plea to other charges or more severe charges being withdrawn in exchange for a guilty plea to lesser charges that to some extent a victim's prospects of receiving compensation are compromised.

Some recognition of this possibility is shown in the second part of the Victoria Police Standing Order on the withdrawal of information cited above. The relevant portion reads as follows:

> Where a conviction has been obtained on a principal information an alternative information may be withdrawn unless forfeiture, compensation, or other similar matters are involved.

On the compensation question clearly what this part of the Standing Order envisages is the possibility that the withdrawal of a charge may prejudice an application by someone, often a direct victim, for crime compensation. Although not typical of Australian crime compensation

schemes generally, for the purposes of the point to be made here the Victorian system can be used as an example. The Victorian scheme is essentially a bifurcated one. The Crimes Act contains provisions for compensation in relation to property damage and property offences generally.[50] The Criminal Injuries Compensation Act sets up a Tribunal to deal with applications for compensation for personal injuries suffered as a result of criminal actions.[51]

Two examples, one covered by the Crimes Act provision and one by the Criminal Injuries Compensation Act will serve to illustrate a potential difficulty posed by plea bargaining unaccompanied by victim consultation.

Section 546(1) of the Victorian Crimes Act provides that the court before which a person is convicted of an offence may award compensation for damage done to property by the offender 'through or by means of the offence'. The most logical interpretation of the section is that for compensation to be obtained a conviction must have been recorded for an offence which directly or indirectly caused the damage. Supposing that an estranged husband returns to the matrimonial home intent on talking to his wife. He finds the doors and windows locked and is refused entry. He breaks down the door, including the architraves, has a long and heated argument with his wife which culminates in a serious bodily attack upon her. The husband is originally charged with a number of counts of various sorts of assault and also malicious damage to property. A plea bargain arrangement is reached whereby the accused agrees to plead guilty to two of the counts of assault in exchange for the withdrawal of the remaining counts and the charge of malicious damage.

As a result of this plea negotiation agreement it would seem highly likely that the wife is precluded from claiming property compensation under Section 546(1). There has been no conviction for a property damage offence.

The second example is more complex. The Victorian Criminal Injuries Compensation Act does not require a conviction of an offender before allowing an award of compensation to a victim for personal injury suffered as a result of a crime. The requirement is simply that the Tribunal must be satisfied, on a balance of probabilities, that the injury was caused by the criminal act or omission of some other person.[52] There is another important section in the Act which prescribes that in a case where a person has been convicted for an offence which forms the basis of an application for a crime compensation award that conviction 'shall - be taken as conclusive evidence that the offence has been committed.'[53]

Take the case of a person who is the victim of a serious criminal assault. Suppose that the offender is arrested and charged with unlawful and malicious wounding with intent to do grievous bodily harm. He is convicted. The victim makes an application for compensation to the Tribunal. The conviction stands as conclusive proof of the offence. The evidence from the trial is admissible to indicate the facts of the case and the seriousness of the injuries.[54] Within the financial limits of the ceiling imposed by the legislation the victim

should stand a good chance of receiving a high award.

Suppose that in the same fact situation no offender has been detected. The victim of the attack is still free to apply to the Tribunal for an award. The lack of an arrested offender is no bar to the claim. Hospital, medical, employment and other records and evidence can be presented to the Tribunal and the claim can be assessed on its merits. There is no obvious reason why the result in the second case should be any different from that in the first.[55]

Suppose, however, again with the same fact situation, that the offender is charged with the very serious offence of wounding with intent to do grievous bodily harm (it carries a maximum of 15 years imprisonment under Victorian law). For some reason a plea bargain is struck and the accused agrees to plead guilty to assault occasioning actual bodily harm (this carries a maximum term of imprisonment of five years). The more serious charge is withdrawn. The official court record stands for the proposition that an offence of moderate seriousness rather than extreme seriousness has been committed. An application is made for compensation. Certainly the victim is free to submit exactly the same sorts of evidence which were available in the other instances. (There will not, of course, be a trial transcript or report for the Tribunal to rely on.) The important point may well be though that as a result of the negotiated plea the Tribunal may well be operating on the premise that the assault was not nearly as serious an assault as a conviction on the more serious charge would have indicated. It is just possible that as a result the victim bears a heavier onus of establishing the claim than would otherwise have been the case.

Of course this is not an area in which it could be expected that victims would have any knowledge. Nor is it a matter in relation to which a consultation between prosecutor and victim could be expected to be particularly productive. It is, however, an area in which victims may be directly affected. It is within the general province of prosecutorial discretion and hence something which prosecutors should be mindful of when they enter into plea discussions.

The problems of alienation, stigma and compensation have been highlighted for discussion. Doubtless there are other aspects of the plea negotiation process which may have actual or potential adverse implications for the victim. The scope of the present paper does not permit those possibilities to be entertained. It remains to ask a few question about what, if anything, should be done in the area.

What Can Be Done?

The Survey of Judicial Officers (judges and magistrates) conducted by the Australian Law Reform Commission for its Reference on the Sentencing of Federal Offenders[56] revealed that 55.9 per cent of respondents stated that negotiations frequently or sometimes took place between the defence and the prosecution.[57] Less than one third (31.1%) of respondents said that they did not know whether such negotiations took place.[58] Respondents were also asked whether they approved or

disapproved of the practice. Over half (51.7%) either approved or strongly approved of negotiations between the prosecution and the defence.[59] Less than a quarter (23.9%) of judicial officers stated that they were neutral or not sure about the desirability of the practice.[60] Charge bargaining negotiations are, therefore, recognised by the judiciary and the magistracy as being a common feature of the criminal law process. They also receive quite a high level of support from judicial officers. Traditionally, however, judges and magistrates have taken very little interest in these matters and have, in fact, taken what could be described as a 'hands-off' policy towards them. This is because the framing, presenting and withdrawing of charges is regarded as simply part of prosecutorial discretion.[61]

Because this is the case and because of the very low level of visibility of prosecutorial decision making, generally little is known about the volume and nature of charge bargaining practices. It is clear that there is a great deal of charge bargaining in Australian criminal justice systems. It is also clear that, with the exception of some particular prosecution offices which pursue policies of consultation, victims are not involved. Victims should have the facility to be more involved if they wish to be. Many victims would not wish to be involved and possibly would not even wish to be informed ex post facto of what has happened. But the system should offer more to victims in this area than it does at the moment. The crucial question is how this should be done.

This paper is intended as a discussion paper. In the absence of a detailed empirical investigation of the problem it would be foolish to make any categorical statements about the appropriate mechanism for doing more to accommodate victim interests in the plea negotiation process. The issue has been raised in a number of overseas jurisdictions and suggestions which have been made in those contexts are worthy of brief mention here.

Norval Morris, writing about the United States, recommends that there be a pre-trial hearing called by a judicial officer in every case in which a true bill has been found.[62] One of the purposes of this pre-trial hearing would be 'to explore what might be feasible by way of a settlement of all issues in dispute, acceptable to the state and the accused alike, including questions of compensation of victims, and everything that is now properly relevant to plea bargaining.'[63]

Morris further suggests the involvement of the victim in these proceedings:

> The victim should have the opportunity of being present at the pre-trial hearing. This does not mean that he should have a veto power over any proposed settlement of the issues, but he certainly represents an important interest of the criminal justice system and should be allowed to be heard on the suitability of any pre-trial settlement.[64]

In part Morris favours this scheme in order to bring about a meeting between the victim and the accused. This, he says, will not be appropriate in all cases but in some it may have beneficial psychological effects on the accused and the victim. This writer would emphasise the lower level issue of victim involvement per se rather than the aspirations which Morris has for the pre-trial conference. It would be a big improvement simply to involve the victim in the process on a consultative basis.

Grosman puts forward a very similar proposal for Canada. He observes that:

> Conciliation and compromise of guilty pleas should no longer be subject to the whim of professional courtesies or the inequalities of reciprocal relationships. Pre-trial conciliation leading to the reduction or withdrawal of charges should be made subject to judicial confirmation. Close control by the judiciary, or another supervising body, over delegated authority and discretionary decisions is crucial to the rights and the dignity of individuals subjected to the administrative processes of criminal justice.[65]

Grosman acknowledges that judicial scrutiny is no panacea but holds out the hope that:

> In the future judicial supervision and prosecutorial discretion will be exercised within legislative, judicial, or administrative guidelines. These will prescribe in broad terms the consecutive and the alternative processes by which pre-trial negotiations are to be determined. The duty will be cast clearly upon the judiciary to supervise the 'law in action' and observe the manner in which it functions.[66]

Grosman does not refer to victims. There is no reason that victim interests could not be taken into account when pre-trial procedures, along the lines suggested by Grosman, are formulated. These could well follow the Morris proposal of involvement of victims in plea negotiation discussions. The precise details of the nature of this involvement would need to be carefully worked out.

Blumberg advocates a different system. He favours 'some independent body, not enmeshed in the organisational framework of court systems, to oversee and review guilty pleas. It would be wholly independent of the closed community of the criminal court.'[67]

According to Blumberg this body would decide whether certain minimum standards had been adhered to in relation to the guilty plea. One of the standards relates to the scrutiny of plea transactions but like Grosman, Blumberg does not mention the victim. Again, however, there is no reason why a set of standards, such as that proposed by Blumberg, should not include one about victim consultation in the plea negotiation process.

The proposals of Morris, Grosman and Blumberg are quite formal proposals. They are made to apply to North American criminal justice systems which may exhibit very different characteristics and problems from those in Australia. The Australian legal system and its courts are not noted for their espousal of high principle and its enforcement through formally imposed controls. It may be that Australian policy makers would react very negatively towards the idea of pre-trial procedures in criminal cases, particularly if such procedures involved the need to recognise plea bargaining and to do something constructive about it. A low level suggestion would simply be for those in charge of prosecution offices to issue appropriately worded administrative directions to their prosecutors emphasising the need to consider the interests of victims in charge bargaining arrangements. This would be the least that could be expected.

The object of the exercise in writing this paper has simply been to raise the issue of victims in relation to plea negotiation, to ask the question as to whether they are getting a fair deal and to float some suggestions about possible strategies for improvement.

It is important that the matter be considered because as Grosman aptly puts it:

> '...as long as reciprocal relationships and compromise provide more benefits to defence and prosecution than those provided by the trial process, criminal cases will continue to be adjusted outside the courtroom.'

The question remains; what will be the role of the victim in this process?

FOOTNOTES

1. See Willis, J. and Sallman, P. 'Criminal Statistics in Victorian Higher Courts', (1977) 51 *Law Institute Journal* (Vic.) 498 (Part I), 570 (Part II); and generally see the Quarterly Reports of the Office of Crime Statistics, South Australia. For figures about Magistrates' Courts see Guilty, Your Worship: A Study of Victoria's Magistrates' Courts, Occasional Monograph No.1, Legal Studies Department, La Trobe University.

2. There is no hard evidence readily available as to the number of guilty pleas which are the product of a charge bargaining arrangement between the prosecution and the defence. A fertile area for inquiry, however, in this regard is the phenomenon of very late indications of plea. For the years 1972-1979, inclusive, in the Victorian County Court an average of 26 per cent of persons presented for trial apparently did not decide on their plea until they were at 'the door of the court' or during the trial itself. This is strong evidence of the possibility of charge bargaining at work.

3. This is the process known as 'judicial involvement' plea bargaining. For a recent appellate court level treatment of this subject see *R.* v. *Marshall*, judgment of the Victorian Court of Criminal Appeal (18th December 1980, as yet unreported).

4. Plea bargaining is discussed in the Report of the Australian Law Reform Commission on the Sentencing of Federal Offenders, Report No. 15, A.G.P.S. Canberra, 1980, pp. 72-84.

5. For Britain see Baldwin, J. and McConville, M. *Negotiated Justice*, Martin Robertson, London, 1977. For the United States see Miller, H.S., McDonald, W.F. and Cramer, J. A. *Plea Bargaining in the United States*, U.S. Govt. Printer, Washington, D.C., 1978. For Canada see Law Reform Commission of Canada, Working Paper No.5 Criminal Procedure: Control of the Process.

6. See Marcus, M. and Wheaton, R.J. *Plea Bargaining: A Selected Bibliography*. Dept. of Justice,U.S. Govt. Printer 1976.

7. Grosman, B.A. *The Prosecutor*, University of Toronto Press, 1969 (Reprinted 1978) p.42.

8. As indicated in the text above, plea negotiation is more commonly referred to by the term plea bargaining. In this paper the terms are used quite interchangeably.

9. For a discussion of the sentencing discount principle see Sallmann, P. 'The Guilty Plea as an Element in Sentencing', (1980) 54 *Law Institute Journal* 105 (Part I), 185 (Part II).

10. In Victoria this is not an uncommon plea negotiation situation. The stakes are high because in Victoria a conviction for murder carries a mandatory natural life sentence whereas a conviction for manslaughter carries a maximum of 15 years imprisonment. In practice the sentences are rarely ever near the maximum. In quite recent years good behaviour bonds have been applied to manslaughter convictions.

11. The discussions normally take place in the privacy of chambers (see *R.* v. *Tait and Bartley* (1979) 24 A.L.R. 473) but on occasions occur in open court (see *R.* v. *Marshall*, Vic. Court of Criminal Appeal 18.12.80 unreported).

12. See, for example, *Bruce* v. *R.* unreported proceedings in the High Court of Australia, 21 May 1976.

13. Dependent family members of deceased persons are usually classified as victims for the purposes of personal injury crime compensation schemes. (See, for example, the *Victorian Criminal Injuries Compensation Act*,1972).

14. The last decade has, of course, been one of frenetic activity in the area of rape law reform throughout Australia. Much of the legislation is the result of successful political agitation by the various groups within the modern women's liberation movement. These same groups have been very energetic in monitoring the impact of the new laws and the conduct of rape cases before and during trial.

15. A.L.R.C. Report No. 15 p.61.

16. Information provided by one of Victoria's Prosecutors for the Queen.

17. Victoria Police Chief Commissioner's Standing Orders, S.O. No.254 (A)(3). (This is not a public document.)

18. See generally Report of the Board of Inquiry into Allegations Against Members of the Victoria Police Force, Vic. Govt. Printer, 1978.

19. Apart from the fact that there are so many police prosecution offices and magistrates' courts scattered over a wide geographic area police prosecutors carry the same wide discretionary powers as other prosecutors. The combination of these factors leads to a likelihood of a high level of non-observance.

20. This was a police officer/lawyer prosecutor attached to a major Melbourne police station and court system.

21. See the Report of the United Kingdom Royal Commission on Criminal Procedure, Cmnd. 8092, H.M.S.O. London 1981, Chapters 6-9.

22. See U.K. Royal Commission on Criminal Procedure, The Law and Procedure Volume, Cmnd. 8092-1, p.49.

23. See Grosman, B. *The Prosecutor*, Chapter 2.

24. For exhaustive documentation of this process see Radzinowicz, L. 'A History of English Criminal Law', Vol.3, *The Reform of the Police*, Stevens, 1956, Chapter 10.

25. From a Speech of the Right Hon. Robert Peel, House of Commons Debates, Thursday March 9, 1826.

26. This right is preserved unencumbered in Victoria for summary cases. In order for a private citizen to prosecute for an indictable offence application must be made through the Supreme Court. The citizen may not appear in person to prosecute.

27. Dubow, F.L. and Becker, T. 'Patterns of Victim Advocacy', in McDonald, W.F. (ed.) *Criminal Justice and the Victim*, Sage, 1976, p. 149.

28. Dubow and Becker, p.150.

29. See generally Drapkin, I. and Viano, E. Victimology, Lexington, 1974.

30. Blumberg, A.S. *Criminal Justice*, Quadrangle Books, 1974 ed. p.179.

31. Morris, N. *The Future of Imprisonment*, Uni. of Chicago Press, 1974, p.56.

32. On this point a study by Smale, G.J.A. and Spickenheuer, H.L.P. 'Feelings of Guilt and Need for Retaliation in Victims of Serious Crimes Against Property and Person,' *Victimology*, 1979 Vol.4, No.1, pp. 75-85 revealed that of a sample of 100 victims of crime in Amsterdam only 20 per cent indicated a willingness to 'meet the offender'.

33. See Heinz, A.M. and Kerstetter, W.A. 'Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining', 1979 *Law and Society Review*, Vol. 13, No.2, p.350 which is a report on an experimental programme of pre-trial conferences involving victims in Dade County, Florida. The role of the victims is discussed.

34. Still less, of course, would many victims wish to be actually involved. But this does not mean that an initiative should not come from the system itself.

35. See, for example, Wilson, P.R. and Brown, J.W. *Crime And The Community*, Uni. of Queensland Press, 1973, chapter 5 and Statistical Report No.12 Unreported Crime, N.S.W. Bureau of Crime Statistics and Research, 1974.

36. N.S.W. Bureau Report No. 12, p.13.

37. See Statistical Report No.13, Who Are The Victims?, N.S.W. Bureau of Crime Statistics and Research, 1974, p.11.

38. For recent pertinent examples of the concern of the English Court of Criminal Appeal for the interests of the accused in this context, at least at the level of rhetoric, see the following cases: *Inns* (1974) 60 Cr. App. R. 231; *Plimmer* (1975) 61 Cr. App. R.264; *Cain* [1976] Cr. L. Rev. 464; *Grice* (1978) 66 Cr. App. R. 167; *Bird* (1978) 67 Cr.App. R. 203; *Atkinson* (1978) 67 Cr. App. R. 200; *Ryan* (1978) 67 Cr. App. R. 177; *Llewellyn* (1978) 67 Cr. App. R. 149; *Winterflood* (1978) 68 Cr. App. R. 291 and *Coward* (1980) 70 Cr. App. R. 70.

39. The issue of to what degree this should be so is clearly worth discussion, but to argue that it should not be so would seem to be nonsense.

40. See Chapter 2 of Walker, N. *Punishment, Danger and Stigma*, Blackwells, Oxford, 1980.

41. Wardlaw, G. 'The Human Rights of Victims in the Criminal Justice System', (1979) 12 *A.N.Z.J.* Crim. 145 at 145.

42. See Guideline 3 of the so-called Turner Rules in *R.* v. *Turner* (1970) 54 Cr. App. R. 352. Although Australian cases have rejected the Turner approach, as noted above, the practice has occurred in Australia and as part of that practice the presence of the defence counsel is a sine quo non.

43. See Walker, N. Chapter 7 'Stigmatising' in *Punishment, Danger and Stigma*, Blackwells 1980. The emphasis in the Chapter is on the problem of offender stigma but Walker quotes some illuminating and graphic instances of victims being stigmatised by remarks made by judges in open court.

44. As a matter of practical reality not only is there the possibility of stigma but in some cases, particularly group rape cases where the accused are known to the victim, an aquittal can often result in considerable harrassment of the victim by the sometimes jubilant and vindictive'acquittees'.

45. Section 44 (2) Crimes Act (Vic.) now repealed by *Crimes (Sexual Offences) Act*, 1980.

46. Prior to the proclamation of the *Crimes (Sexual Offences) Act*, 1980 rape carried a maximum term of imprisonment of 20 years Rape with mitigating circumstances carried 10 years. Under the new Act rape carries 10 years and rape with aggravating circumstances is punishable by up to 20 years imprisonment. (See Sections 45(1) and 45(3)).

47. Section 44(4) of the repealed law specifically envisages such a plea negotiation arrangement.

48. In the new Section 46 'aggravating circumstances' are specified in the Statute itself.

49. Chief Commissioner's Standing Order No.254 (A)(3).

50. See Crimes Act (Vic.) Sections 94, 96 and 546.

51. Section 4, *Criminal Injuries Compensation Act*, 1972 (Vic.)

52. Section 14 (2)(a) *Criminal Injuries Compensation Act*, 1972. An exception to this is a very recent amendment to Section 14 of the Act. Section 14 previously precluded members of an offender's household from successfully applying for compensation. This was a much criticised provision. Section 2 of the *Criminal Injuries Compensation (Amendment) Act* 1980 changes this and provides that members of the household can be compensated if the offender has been convicted, has pleaded guilty, has admitted the infliction of the injury or has been found insane at the time of the commission of the alleged offence. This section may well have implications for charge bargaining.

53. Section 11(2).

54. Section 11(1) deals with the manner in which the Tribunal is to hear and determine applications. The Section concludes in this way 'and shall be free to act without regard to or to observe legal rules relating to evidence or procudure.'

55. It is possible that in a case where there has been no trial and conviction the Tribunal may take a more favourable view of the circumstances from the victim's standpoint than he would do as a result of accepting the essential findings of a magistrate or jury.

56. A.L.R.C. Report No.15.

57. Report p. 382.

58. Report p.382.

59. Report p.384.

60. Report p.384.

61. The Victorian Court of Criminal Appeal in *R.* v. *Marshall* (see n.3 above)explicitly confirms this postion when it says 'the decision as to the charges upon which a person is presented rests with the Crown and does not involve the Court (see Crimes Act, s.353 and *R.* v. *Parker* [1977] V.R. 22) we shall say nothing about such discussions'. (Transcript of Judgement p.15).

62. Morris, N. *The Future of Imprisonment*, p.54.

63. Morris, p.54.

64. Morris, p.55.

65. Grosman, *The Prosecutor*, p.102.

66. Grosman, p. 130.

67. Blumberg,*Criminal Justice*, p.182.

68. Grosman, p. 96.

INTERROGATING THE VICTIM WITNESS

THE LAWYER'S DUTY

G.D. Woods, Q.C.

The lawyer's duty in questioning the victim witness in a criminal trial is essentially to frame his questions so as to produce responses advantageous to the interests of his own client.

At the same time, he must do so in such a fashion as not to be unnecessarily insulting or offensive to the witness. This is the basic rule, or combination of rules.

Generally, the principal consideration affecting the conduct of criminal trials in Australia is that such events represent a confrontation between two antagonistic points of view, where one party alleges such and such, and the other party alleges the contrary. Given the consequences of serious criminal trials, such confrontations inevitably require defence counsel to take great pains to protect his client.

However we are concerned today to emphasise not so much the duty of the lawyer to his or her own client, which is well enough known, but his duty to protect the interests of the witness to whom the counsel will put questions.

Although it is true that the criminal trial in Australia is usually conducted in the style of an 18th century cock-pit, with both parties flying towards each other, spurs honed, nonetheless, the nature of the proceeding requires a degree of respect for those persons who have the misfortune to come forward as witnesses.

As is clear from various items of litigation relating to one Peter Clyne, it is a rule, firmly established, that a lawyer should not put questions to a witness which the lawyer is not instructed to put (*Clyne*, (1966), 104 CLR 186).

Thus when the lawyer is appearing for a defendant in a sexual assault case he is professionally bound not to put any allegation or suggestion to the witness which has not be alleged to him by the client. For example, if in a rape case the client says that he did have sexual contact with the witness, it is grossly wrong and improper for the lawyer to put to the witness that no such sexual contact in fact occurred.

This may seem to be merely a limitation in name only, since lawyers may well be capable of colluding with their clients so as to avoid the effect of any such rule.

However, in fact this rule is a major limitation and restriction upon impropriety in cross-examination. Most lawyers do obey the rule that they should not go beyond their instructions in questioning victim witnesses.

The effect of this rule is to prevent the grosser abuses of court-room process which might be possible, were lawyers entitled to put to victim witnesses any questions which they might pluck from the air as likely to produce an implication or an answer damaging to the witness. This is a very sensible rule and one which operates in practice as a protection of the witness.

The next issue concerns what might be called, the traditional statutory restriction upon improper questioning.

Under the New South Wales *Evidence Act* (1898) (and its equivalent in all other jurisdictions) there are rules against improper questioning of witnesses set out in Sections 56, 57 and 58:

> 56. When any question put to a witness in cross-examination is not relevant to the cause or proceeding, except so far as the truth of the matter suggested by the question affects the credit of the witness by injuring his character, the court shall have a discretion to disallow the question, if in its opinion the matter is so remote in time, or of such a nature that an admission of its truth would not materially affect the credibility of the witness.
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> 57. The court may forbid any question or inquiry which it regards as indecent or scandalous, although the question or inquiry may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known, in order to determine whether or not the facts in issue existed.
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> 58. The court may forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court to be needlessly offensive in form.

These provisions represent a brake on offensive and improper questioning. However, they can only be as successful as the judges and magistrates who administer them allow them to be. Until recent times, it is now recognised, Sections 56, 57 and 58 of the Evidence Act - and their equivalents - have not been applied with sufficient vigour to the kinds of cross-examination of sexual assault complainants which commonly have come before the courts.

For example, Mr Justice Reynolds recently said in the New South Wales Court of Criminal Appeal in *R.* v. *Zorad* (1979) 2 N.S.W.L.R. 764:

> '...In charges of rape in this country, it is the practice to allow cross-examination of a prosecutrix as to whether she has had connection with any other men, or any particular man named to her. This practice is, of course, based upon statements in a number of texts, and has the support of some judicial decisions, but it may be questioned whether that principle is soundly based. It is, of course, based on the proposition that it affects her credibility. It may be that human experience in the late 20th Century does not suggest a relationship between sexual activity, perjoratively referred to as lack of chastity, and truthfulness. In my view, this question requires to be given consideration at the appropriate level.'

Those comments by Mr Justice Reynolds in the case of *Zorad* represent a recognition in New South Wales of the failure of the judges, in recent years, effectively to implement the spirit of what is expressed in Sections 56, 57 and 58 of the *Evidence Act* (1898).

The passage of the New South Wales *Crimes (Sexual Assault) Amendment Act* (1981) represents a clear indication by the legislature that the type of indecent, scandalous and offensive questioning of sexual assault complainants which has been traditional in Australian Courts will no longer be tolerated.

This legislation is the strongest yet enacted by any Australian Parliament against improper cross-examination of sexual assault victims. It is not my task here to go into this material in great detail, but I will quote from a recent commentary I wrote upon Sections 409b and 409c of the New South Wales Act:

> '...These provisions are designed to overcome the problem that the defence in a rape trial is commonly conducted, not merely by legitimately contesting genuinely relevant allegations, but by blackening the character and reputation of the complainant in respect of sexual behaviour unconnected with the alleged crime. Those who have participated in or observed rape trials will be familiar with the sight of an accused person basing his defence upon an unsworn statement from the dock consisting of allegations that the female involved was known as a 'slut', that he knew for a fact she had regularly consented to intercourse with his friends Tom, Dick and Harry (and many others perhaps too

numerous to recite) and that on the occasion in question she had in fact consented to sexual intercourse with him.

Sections 409b and 409c are intended to make it clear that such a method of 'defending' allegations of sexual assault is no longer to be regarded as acceptable, whether in terms of the statement from the dock, evidence-in-chief or cross-examination. Subject to limited exceptions the fact that a person has had consenting sexual intercourse with X is to be regarded as irrelevant to the question of whether the same person consented to sexual intercourse with Y. Correspondingly, the mere fact that a person has had consenting sexual intercourse in the past with X should not be regarded, in relation to the trial of a charge of sexual assault by Y upon that person, as justifying cross-examination intended to imply untruthfulness.

The general aim behind Sections 409b and 409c is to confine evidence or statements concerning what may be loosely termed 'prior sexual behaviour' to material which is, consistent with contemporary customs and standards of behaviour and fairness, genuinely relevant.

The fundamental principle behind the provisions of Sections 409b and 409c is that those who seek sexual contact with others should generally look to the immediate circumstances for some positive indication of consent. Consent should not be assumed on the basis of sexual reputation, or on the basis of sexual behaviour with other persons. Indeed consent should not be assumed at all, without the risk of incurring criminal liability.

It was recognised in drafting these provisions that the task of reform in this area of law is extremely complex and difficult. Much thought went into the scheme eventually determined upon. In particular, the comments of the Victorian Law Reform Commission on this subject have been carefully considered, but largely rejected. With great respect to His Honour the Commissioner, the view has been taken that many of the examples he cites of situations where cross-examination as to prior sexual behaviour ought to be allowed, do not in fact justify this conclusion.

Most importantly, his suggestion that there ought to remain with the court a residual discretion to allow questions or evidence with respect to prior sexual behaviour has been quite deliberately rejected in favour of a blanket prohibition coupled with specifically excepted cases where such questioning or evidence may be allowed.

In my view, the principal characteristic of the recent New South Wales Act is the provision of an absolute, rather than a discretionary, prohibition of certain types of evidence relating to sexual history. In effect, this material is deemed in law to be irrelevant.

Yet despite the words of statutes, one must say from a historical viewpoint that genuine protection for the victim/witness is more a consequence of community attitudes than of the specific statutory terminology.

Prior to the abolition of the death penalty in various jurisdictions, one observed the phenomenon of reluctance on the part of those in authority to impose the death penalty. That is, the statutory reform was preceded by attitudinal change.

The judgement of Mr Justice Reynolds in *R.* v. *Zorad* in New South Wales represents, in my view, an equivalent phenomenon. By 1979, so much pressure was being exerted from groups concerned about the improper questioning of victim/witnesses in sexual cases that some of the New South Wales judges were quite rightly bending their decisions and attitudes towards what might be regarded as a community consensus on this issue.

If the supposed common law characteristic of flexibility in decision making is to have any significance, this should be regarded as a proper change in attitude.

We now have a situation where, not only in New South Wales, there appears to be greater concern about the protection of victim/witnesses than there previously was.

Generally, I cannot see any better formulation, in statutory form, than prohibitions upon questioning which is irrelevant, indecent, scandalous, insulting, annoying or needlessly offensive.

Ultimately, however, the protection of the victim/witness will depend not upon the lawyer asking the question but upon the magistrate or judge who allows or disallows them.

As one who is committed to a view of the law which may be expressed as 'Legal Realism', I cannot omit to say that the protection of victim/witnesses in future will better be served, in whatever jurisdiction, by community insistence upon the proper discharge of the responsibilities of courts, than by legislation alone. Legislation is of course necessary, but it cannot and will not be effective in the absence of community consensus with respect to the necessity of upholding proper standards as to the process of interrogation in the courtroom, especially of the witness who is also the putative victim.

Session II

LEGAL REPRESENTATION FOR CRIME VICTIMS

In light of the difficulties experienced by crime victims in the legal process, it is not surprising that some attention has been accorded the question of whether victims should have independent legal representation. Of course,claimants in criminal injuries compensation matters and victims of domestic violence involved in family law litigation are generally represented by their own counsel. Whether the victim/witness in criminal proceedings should be independently represented is another question.

In her paper 'Legal Representation for Child Victims', Leonie Miller addresses the needs of two different types of child-client: the child who is abused by its parents, and the child regarded as 'uncontrollable'. Miller argues that the legal process tends to be inappropriate to both situations.

She contends that government policies to maintain the integrity of the family at all costs serve often to maintain an untenable situation. Institutionalisation of 'status offenders', on the other hand, she regards as patronising and tending to inhibit the development of the child's autonomy. Miller's paper concludes with a set of guidelines for the delivery of legal services to children.

Kevin Anderson, in his paper 'Community Justice Centres', addresses legal needs of a different nature. Community Justice Centres were established in New South Wales to provide mediation services for disputes between persons in continuing relationships. As such, they provide a forum for the resolution of conflicts which might otherwise escalate into violence. In some respects, this approach could be regarded as a criminological analogue of preventive medicine. It is worthy of note that the mediation services provided by Community Justice Centres involve trained lay mediators and not legal practitioners.

In her paper 'The Victim on Trial', Kim Boyer continues the theme of the victim uncared for and alienated by the criminal justice system. With particular emphasis on problems faced by victims of sexual assault, she notes that social support and information are basic needs of victims. Legal representation should really be regarded as a less than ideal means to these ends. A simply caring, supportive attitude by police, medical, and prosecutorial personnel,will obviate the need for a formal counsel for the victim.

LEGAL REPRESENTATION FOR CHILD VICTIMS

L. Miller

At the outset it is important to state that the views in this paper are my own and reflect largely the experience I have had in representing children at Marrickville Legal Centre and having had close association with young people in refuges offering alternatives to closed institutions.

I must confess that I approach the subject of representing child victims with mixed thoughts. Hopefully, presenting these thoughts in this paper will result in discussion that will help resolve my dilemma at least.

Not the least of my reservations is the whole adult mentality of regarding children as victims. Put simply, the position of a victim is that of the powerless, in this case the child, having to cope with the powerful, usually adults. Some children are voluntarily in this situation, while others are 'victims' involuntarily. This is getting into the realms of psychology and adult/children politics. Such matters have confounded lawyers before myself and I can well appreciate why many other lawyers see them as better left alone. It makes the task of lawyering easier and probably more efficient in the traditional case by case lawyer approach.

I have not yet let such matters alone. From my experience at Marrickville Children's Legal Centre, one thing I have learnt very strongly, is to resist the temptation to take on the role of adult rescuer for the child victim. Such an approach undermines the child's power albeit with the best of intentions. I would like to raise two views of representing children with this preamble in mind:

(1) I consider the child as a 'victim' only in very limited circumstances - sexual/psychological/ physical abuse and

(2) in other areas like the status/welfare matters (in New South Wales,uncontrollable, neglected children) children are often more the scape-goats of an adult constructed legal system than its victims.

Physically/Psychologically Abused Children

For a start it is very rare for an abused child to approach a lawyer for his/her own legal support. Usually the children are so young that they are unable to do so, even to articulate their point of view. The problem of taking instructions and the role the lawyer plays with very young children, is an extremely difficult one and of course a

role wide open to the rescuer position, as earlier averted to.

So far Marrickville Legal Centre has been approached by the distraught parents of abused children rather than the child. Since I represent children, this has raised a conflict I have found difficult to resolve happily. This is particularly so when I talk to a six year old who wants to go home to her brothers and mother, if not the abusing father, and the parents insist there is no problem between them, it is all the child's fault. This is not uncommon and I have withdrawn from the case because I cannot properly represent such parents' interests.

While none of the parties on the surface point the finger of blame at the parents, nevertheless the situation invariably becomes a triangle of rescuer, persecutor, victims at its extreme. That sort of scenario obviously puts the parents in an incredibly guilty frame of mind. Ironically they then start to experience themselves equally, as victims of the system and even of their own child. The whole area is an extremely complicated and sensitive one. Courts and lawyers are probably the least appropriate method of dealing with such cases. I think the makers of the system are perfectly capable of devising alternatives to the court system. I would hope a symposium such as this would discuss ideas of alternatives at length. I will offer some suggestions as to alternatives later.

Sexually Abused Children

Children I have been involved with in this regard run up against formidable obstacles; getting adults to believe them; when they do, to take action for them; the legal barriers of evidence and standard of proof; the primary policy of welfare departments to maintain nuclear family units.

A case I have been directly involved with both as a non-lawyer and as a lawyer has been the source of considerable publicity recently in Adelaide regarding the mother. I have known two of the daughters for over six years and first knew them when they left their home seeking refuge from incest and other abuse. They were 13 and 14 years of age. The two of them were the first girls to stay in the Adelaide Children's Shelter which I was involved in setting up.

Their case tragically illustrates the above obstacles for children. At first it was very hard to get the girls to talk about the abuse they had suffered. After long and intensive caring they did and were believed. Attempts were made to get welfare to act on their evidence. Welfare chose to warn the father that such an enquiry was underway. He immediately destroyed all photographic evidence he had of his own behaviour with the girls. That was in line with the policy of welfare, to maintain family unity at all costs. The policy remains the same, despite the fact that the bulk of young people with whom they have to deal over a long time, come from families that are irretrievable.

When the police finally became involved, the girls then had to convince them they were telling the truth. This is quite apart from the police attitude that street-wise girls ask for what they get. These girls did not even get past first base.

If they had and the matter had gone before the courts, there are then the problems of the legal system. It is based very firmly on the need to protect adults against juvenile fantasies of adult exploitation, especially if alleged adult sexual abuse is at issue. Without going into a lot of detail, some of the legal obstacles such as the need for corroboration (backing up) and the lack of weight given to improperly corroborated evidence are not small ones. For example, a child of 10 may or may not understand the nature of an oath. If not, that child cannot give sworn evidence. Further, the child's evidence alone is not sufficient. It must be corroborated. Another child giving unsworn evidence cannot corroborate unsworn evidence. Sworn evidence can be accepted. But that is not given as much weight as sworn evidence corroborating sworn evidence. If there is no additional forensic evidence, the jury would be left with only evidence of graded importance, and the case has to be proved beyond reasonable doubt. No wonder such cases are rarely established, and no wonder a child is left finding the support of the adult system wanting.

For the mother in the above case a call has been made to update the law of provocation. Equally I would call for an enquiry into the law of corroboration as it applies to child victims of sexual offences and into the procedures for dealing with such victims.

Status Complaints

The *Child Welfare Act* (1939) in New South Wales at present creates two distinct status complaints, S72 defines a neglected child who among other things can be 'exposed to moral danger', 'be tattooed', 'be falling into bad association' and S79 defines a child as being 'uncontrollable'.

Complaints against the child can be laid by the parent, (as is usually the case in uncontrollables) the police, or a district officer. The complaint has only to be established on the balance of probabilities and any evidence can be admitted that helps the court establish or determine the matter.

While S72 is also used in abused children cases, it is largely used as is S79 for adolescents 12-16 and mainly adolescent girls. These are the young people I deal with mostly. In 1978-79 in New South Wales there were 565 juveniles or uncontrollables alone and a total of over 11,000 welfare matters brought before the Children's Courts. In that same year there were 453 Court Orders committing juveniles to training schools and 20 to adult prisons.[1] So the problem in New South Wales is an immense one.

Children,especially girls, on welfare complaints run a far higher risk of institutionalisation in training schools than children on criminal offences (for example in 1978 20 per cent appearing before the court on welfare matters were institutionalised compared to 12 per cent of those on criminal matters).[1] New South Wales has the unfortunate claim to the highest rate of institutionalisation of juveniles in Australia. It is heartening to note that States like South Australia have made a strong move away from closed institutions, to funding community based schemes like its Intensive Neighbourhood Care Scheme.

From the point of view of these children I represent, they experience welfare complaints and court appearances as a process in which they are 'guilty' and are to be 'punished'. More personally they feel hurt and rejected by the whole process.

The courts try their best to explain that it is for their own welfare and in their best interests. The result in fact is that laws framed to protect children, end up persecuting them and intruding on their right of choice and individual liberty. Adult value judgements of young people's sexual and social behaviour prevail over the right of choice of the juvenile.

A stark example of this self-deception on the part of the adult system is the reaction earlier this year of the New South Wales Government to the problems of juveniles on the streets of Kings Cross. Cries of child prostitution from offended local residents hit the headlines.

The Government reacted by setting up a special police squad to clean up 'the Cross'. That meant juveniles were picked up on welfare complaints and locked up in overcrowded remand centres only to be let out on the streets a few weeks later to start the whole cycle again.

The real problem at 'the Cross', as of other areas of Sydney, is that many young people,for whom living at home becomes intolerable leave, and are faced with an unsupportive society. There are few jobs for them, no viable benefits to help them or cheap long term accommodation to house them. They are more the victims of an unbalanced economic political system than of their own life choices. However, the system has constructed devices to remove them and the deep-seated problem they represent from the public eye through welfare laws. The end result is that these young people are left to bear the brunt of disfunctional families and social systems. They are the scapegoats, not the victims.

If the adults who perpetuate this system, the law makers and the law appliers, did not go to such pains to reassure the public, themselves, and the young people they act upon that their motives are benign, one could be excused for seeing the whole system as a cynical example of a line of least resistance.

I have found that no matter how skilful a lawyer I may be/become, my role is extremely limited if there are no options available for the child to put to the court. I can have complaints withdrawn through lack of sufficient evidence; challenge hearsay and opinion in district officers' reports; argue for dispositions other than committals; appear on actual committals. In the end, legal skills are only useful if they get the young person to a better position in real life terms and not just legal terms.

This brings me to my frustration as a lawyer participating in such a process as this. I find it distressing in court to see mothers and daughters in conflict and have yet to witness the court settling that conflict humanely no matter how well meaning the magistrate, court officer, lawyer may be. It seems to me that laying a complaint against the child, remanding that child in State homes and having the child brought to court, is a totally inappropriate way to settle these matters.

I am aware that new laws in New South Wales propose major changes in dealing with welfare matters. It still intends however, to bring the child before a court, albeit an especially constructed court with a strong social work base to it. A new label 'in need of care' will be introduced to replace the objectionable terms of 'neglect' and 'uncontrollable.' The basic point to recognise is that children find courts intimidating and take a passive position in them.

Recommendations

I would suggest that the highly welcomed informal panel system proposed for offenders, should be equally appropriate for children on welfare matters.

The court's role should be largely supervisory, providing a back up legal sanction and a body for review when necessary. Whatever system is designed, the guiding principle should be whatever is as encouraging of the child's trust and active participation as possible.

On the question of having status matter in Statute Law, I can see the need for a legal basis of welfare intervention in abuse matters. The Community Welfare Bill in New South Wales has withdrawn the power of the department to lay in 'need of care' complaints against 16-18 year olds. Also there will be introduced in New South Wales, temporary care orders of three months that can be obtained by the child needing State assistance. For the bulk of other cases as outlined above, I would suggest that legal intervention be on the application of a child to an informal panel system. This would be on the basis that the child wants help, rather than having help thrust upon him/her.

A final area to consider with regard to children and the law is the actual provision of legal aid for them and how it works for the child's interests. Secondly, it is important to clarify the nature of the lawyer-child/client relationship.

Legal Aid for Children

As I understand the situation, New South Wales is in a unique position in Australia in that it offers a court-based duty solicitor scheme providing representation for any juvenile appearing before a New South Wales Children's Court. Hence it is rare for a child not to have some form of representation before New South Wales Children's Courts. Legal Aid is also available for appeals if the case has merits. The scheme is run by private practitioners who are paid per day of roster.

If a young person is pleading not guilty he/she can select his/her own lawyer who is paid by the Legal Services Commission, regardless of the means of the child or his/her family. If the plea is guilty there is no such choice unless the child is prepared to pay for his/her own lawyer. Otherwise the duty solicitor automatically appears for the child.

This scheme is obviously a great advance in that children have what amounts to a right to a legal representative in New South Wales. However, it does have serious deficiencies in practice particularly for those children with whom this paper concerns itself.

There has been much debate in New South Wales over the past few years as to how best to represent children.[2]

Not the least of the areas of concern has been the accessibility of lawyers to children and the time available to take proper instructions to develop the child's trust.

Marrickville Children's Legal Centre where I work is attempting to work an alternative model to the above scheme. It is community service based, and designed, amongst other things, to encourage a child to view his/her lawyer with trust and to feel able to approach his/her representative whenever needed. Most importantly it seeks NOT to take a narrow legal view of representation but to work with other people best able to provide for the child's long term needs. This of course is especially so when children are in the scapegoat victim situation. It is critical that these children are cared for by people who know and understand them and their backgrounds.

Without dwelling too much on the subject of how legal representation should be provided for young people, as important as this is suffice to say that the New South Wales Legal Services Commission has approved the concept of community-based children's legal centres based on principles behind Marrickville Children's Legal Centre. The next step is to find the dollars to put the principles into practice!

Lawyer/Child Client Relationship

I strongly disagree with a recent decision in the Family Court in Tasmania approving of a lawyer acting against the instructions of the child. Brian Lucas has written a more helpful article on the subject of Advocacy in Children's Courts. However much it is irresistable

to think of ourselves in gleaming armour, charging off to court to save our client from the dragon adults threatening them, ultimately our job is to present the views of the child to the court even if we might personally disagree with those views. (For example a 13 year old girl on an uncontrollable has asked me to get her committed to get away from her family).

Of course the difficulty is actually to get the child to tell you what he/she thinks or understands of what has happened to him/her. All the more a problem when the child is very young or very emotionally disturbed by these events. I have found so far, that I need at first to work with the people the child trusts before I can get satisfactory instructions, (youth workers, friends, brothers/sisters) and that takes a long time - for example two thirds of actual court appearances over a period of a few months. Disconcertingly for the lawyer, the child has often 'tested' one with a few versions of the story. To put it crudely, you have to prove you will 'stick up' for the child first before really gaining his/her confidence. Once in that position of trust it is essential to maintain that by being available to listen and to act when and as asked after discussion with the child, as to alternatives. With older children, that discussion should be honest, wide ranging and well explained, with the notion clearly in mind that the child can make decisions for his/her own life. Once made by the child, the lawyer's role is to support those decisions to the best of his/her legal ability.

FOOTNOTES

1. *Court Statistics* 1978, Report 10 Series 2, Section 6 JUVENILES (N.S.W. Bureau of Crime Statistics and Research).

2. See 1975 Legal Services Bulletin p.330.
   1979 Legal Services Bulletin pp.195-197.
   Legal Services for Children - Article by Garth Symonds published in Research and Delivery of Legal Services Peter Cashman (ed.) published by Law Foundation of N.S.W. 1981.

3. *Wotherspoon and Cooper* (1981) Australian Family Law Case (CCH) 91-029.

4. B. Lucas, Advocacy in Children's Courts (1980) Criminal Law Journal Vol. 53.

COMMUNITY JUSTICE CENTRES: ALTERNATIVES TO PROSECUTION

K. Anderson

Introduction

The New South Wales Government in August 1979, approved, as a pilot project of the Department of the Attorney-General and of Justice, the establishment of three community justice centres, to be located in the Bankstown, Redfern and Wollongong areas.

The Attorney-General appointed a Co-ordinating Committee with responsibility for implementation of the pilot scheme. During 1980 the committee was active in promoting the project, public discussion, selection of directors for the centres, selection and training of mediators, securing premises and fitting them out and assisting in the drafting of legislation.

The *Community Justice Centres (Pilot Project) Act* 1980, was enacted late in 1980. The Act has a 'sunset' provision which ensures that it will remain in force no later than December 1983.

The three centres have been operating in accordance with the legislation since January 1981.

The project is experimental. After March 1982, when the centres will have operated for 15 months, an evaluation of the project will be considered by the Government. Relevant research is being carried out by staff members of the Law Foundation of New South Wales, an independently funded statutory body. The research includes an extensive programme for collecting and interpreting both quantitative and qualitative information about the operation of the pilot centres.

Aim

The centres are designed to deal with disputes, such as those between members of a family or neighbours, where there is a continuing relationship between the people in conflict.

The aim of the centres is not to make authoritative decisions for the disputing parties, but to help them to reach their own mutually acceptable resolution of the dispute; this process is called mediation.

Theory

It is important to distinguish mediation from other common forms of dispute resolution. In negotiation the parties try to persuade one another; they are the decision makers: no third party is involved.

In arbitration the parties consent to the intervention of a third party whose judgement they agree to accept beforehand. In adjudication, a third party has authority to intervene in a dispute, to render a decision and to enforce compliance.

In mediation,a third party intervenes in the dispute, by consent of both parties, to aid the principals in reaching agreement.

Why does the project address itself to disputes between people in 'on-going' relationships? The underlying theory has been summarised (Nader and Todd, *'The Disputing Process'* 1978, New York, Columbia University Press) thus:

(1) Relationship between disputants determines procedural form of attempts at settlement and hence determines the outcome of the dispute.

(2) Disputants in multiplex or continuing relationships will rely on negotiation or mediation in settlement attempts which will lead to compromise outcomes.

(3) Disputants in simplex relationships will rely on adjudication or arbitration in settlement attempts which will lead to win-or-lose decisions.

Need

The proposal for community justice centres springs from a recognition that the conventional justice system (adjudication) is not equipped to provide a lasting resolution of disputes between people in continuing relationships.

A court is required to give a judgement only with regard to the particular issue before it. That may be only a single incident in a continuing conflict. The procedural rules are designed to exclude from consideration any concerns not immediately relevant to the isolated issue being litigated. The parties very often in the course of a hearing will be struggling to discuss the whole conflict. Their efforts are frustrated by the court. This is for a good conventional justice system reason - relevance.

Adjudication typically is concerned with questions of right and wrong, winner and loser, guilt and innocence.

The conventional justice system rarely even claims to be dealing with the underlying continuing tensions and conflict.

Magistrates recognise from experience the inappropriateness of conventional legal procedures in these disputes. They invariably address the parties to this effect:

> 'Why don't you go outside the Court and try to settle this matter?'

Of course, by 'settle' the magistrate usually means 'get it out of my list', but what real prospect is there of settlement? The parties have come to court at arms-length. They receive little or no help towards settlement. It is likely that only the narrow issue being litigated will be addressed. It is highly unlikely that a lasting resolution of the continuing conflict will be achieved.

The courts shrink from hearing 'backyard' and 'domestic' disputes. This involves a recognition within the courts of the inadequacy of conventional procedures in these disputes. Delay in these cases is likely to be greater than in cases more amenable to adjudication. The court has very restricted options as to disposition of cases. For instance, in criminal proceedings for, say, assault, there are few sentence options. Most of them are outcomes which entail the stigma of conviction of a party who may be otherwise of impeccable character and reputation. It may be that both parties to an incident were legally culpable but one became the defendant because the other was the one who called the police. It is highly likely that at least one, and probably both parties will leave court dissatisfied, smarting from a sense of injustice, of not having been allowed a full say, embittered, burdened with costs, determined to retaliate in some way.

A frequent experience is that what first came to court as a minor matter, returns as a serious charge - even homicide.

Staff

Each centre has three full-time employees: a director (appointed March, 1980), a co-ordinator and a typist/receptionist (both appointed at the end of 1980).

Mediation services are provided by lay mediators who have successfully completed a special-purpose training course designed and taught by the New South Wales Department of Technical and Further Education (TAFE).

Premises And Catchment

All three centres are located in comfortable first or second storey office accommodation, readily accessible by public transport. Difficulties in securing space in Redfern proper led to the Redfern Centre being located close to Central Railway Station, at the northern

extremity of the Redfern district, so that it is often called the Surry Hills Community Justice Centre. That centre has tended to serve the inner-city and all adjacent suburbs, as well as the South Sydney-Redfern-Newtown-Marrickville area originally envisaged. No particular catchment areas have been designated for the centres. Disputes from the North Shore, for instance, have been handled at Redfern, whilst disputes from comparatively distant areas such as Mt Druitt have gone to the Bankstown centre.

The bulk of the cases at each centre, however, comes from the area adjacent to it, where the centres have built up working relationships with agencies and have concentrated promotional effort.

The three pilot areas were chosen as providing an opportunity for testing mediation in three relatively different environments.

Redfern-Surry Hills-Marrickville - is adjacent to the inner city. Characteristics of the area include high density housing, low income, high rate of unemployment, high proportion of welfare beneficiaries, high proportion of unskilled or semi-skilled manual workers and a high crime rate. One-third of the people of South Sydney and 45 per cent of the people of Marrickville were born overseas. South Sydney also has a relatively high Aboriginal population.

Bankstown - is a large municipality in the western suburbs, with some 160,000 residents. It is an area of low to medium socio-economic status, not particularly well served by community or welfare services. Three-quarters of the dwellings are owned or are being purchased by their occupants; a significant minority are Housing Commission tenants. The proportion of persons born overseas is slightly higher than the New South Wales overall figure of 19 per cent (1976).

Wollongong - is an industrial city of 200,000 population just south of Sydney. About 30 per cent of the population were born outside Australia. The city occupies a narrow coastal strip. About one-third of the workforce is employed in the manufacture of metal products and machinery. In average income per head it is a middle-ranking local government area.

Mediators

Each centre aimed to recruit a group of mediators who were diverse as to age, sex, educational background and ethnicity. The selection process for the first training course differed at each centre however.

At Wollongong, the director recruited a significant number of people from institutions such as the police force, court house, Department of Consumer Affairs and local government. Other people were selected solely on their personal attributes.

At Redfern and Bankstown about 200 people who had responded to advertisements were interviewed at each centre. The mechanics of selection differed at the two centres, but the criteria for selection

were basically the same: tolerance, verbal expression, warmth, flexibility, objectivity, confidence and assertiveness. There were no academic requirements.

Some particulars of those selected at Redfern will illustrate the composition of the first group of trainess in mediation at that centre. At least 18 of 45 selected had an ethnic background and was fluent in at least one language other than English. There were Spanish, Chinese, Yugoslav, Italian, Greek, Turkish, Lebanese, Vietnamese, Portugese, Egyptian and Russian trainees. Ages ranged from 20 to 64. Occupations included boiler attendant, clerk, interpreter, psychologist, housewife, policeman, company director, solicitor. There were about as many men as women.

Mediation Training

The first training course for mediators was conducted by TAFE during the second half of 1980 at Technical Colleges near the three centres. The syllabus was prepared by Clive Graham, Head of TAFE's Division of Social Sciences and member of the Co-ordinating Committee, in consultation with the directors and the committee. Clive Graham had examined mediator training in the United States of America early in 1980. The course consisted of a three hour session weekly for 18 weeks.

Role-playing was extensively used in teaching. Dispute scenarios were acted out by students and mediated by students.

As taught by TAFE, mediation involves these stages:

(i) Introduction - explaining the nature and purpose of mediation, and laying down ground rules.

(ii) The presenting party tells his or her side of the story without interruption from the other party.

(iii) The other party does likewise.

(iv) Transition I - the two parties relate directly to each other.

(v) Caucus - an optional conference between each party and the mediators in the absence of the other party.

(vi) Transition II - the parties again communicate directly with each other; hopefully by this stage they are moving towards agreement.

(vii) Further discussion directed towards an agreement, involving both mediators and parties.

(viii) Agreement written down and signed by both parties and the mediators.

Further courses have been conducted in mediation training during 1981. There was a smaller intake of students. Community justice centre premises were used for training sessions in two areas, and a Technical College at the third. Experienced, practising mediators from the first course have been used to assist in training of mediators in the second course.

Upon successful completion of the course, the student is issued with a Certificate of Attainment by TAFE, but may not mediate a dispute in a community justice centre until accredited as a mediator by a community justice centre director.

Payment of Mediators

Mediators are paid on a sessional basis at a rate of $7.50 per hour, with a minimum payment of two hours.

The length of mediation sessions in the first six months has been:

Up to two hours	-	35 per cent
Two to three hours	-	31 per cent
Three to four hours	-	22 per cent
Four plus hours	-	12 per cent

Usually (in 88 per cent of cases) one mediation session is sufficient, but in 10 per cent of cases there were two sessions and in two per cent of cases there were three sessions.

Legislation

The *Community Justice Centres (Pilot Project) Act*, 1980, was passed on 26 November 1980.

It is described as an Act to provide for the establishment of community justice centres to provide mediation services in connection with certain disputes.

Mediation is defined as including:

(a) The undertaking of any activity for the purpose of promoting the discussion and settlement of a dispute by two or more parties to the dispute;

(b) the bringing together of the parties to any such dispute for this purpose; and

(c) the follow-up of any matter the subject of any such discussion or settlement.

A coordinating committee is provided for in the Act. Its functions include:

(a) Coordination of the project.

(b) Determination of policy.

(c) Reporting and making recommendations to the Minister.

(d) Facilitation of evaluation of the project.

(e) Making recommendations to the Minister on the desirability of maintaining, modifying or extending the operation of community justice centres after the pilot period.

(f) To do such acts as necessary or expedient for the functioning, establishment and operation of community justice centres.

Committee members are in the main nominated by the government departments or organisations specified in the Act. The members are drawn from the magistracy, police force, NCOSS, Law Society, Ethnic Affairs Commission, Department of Youth and Community Services, TAFE, Department of Attorney-General and of Justice; in addition two members are appointed for special interest or experience. The directors, community justice centres and the director, Magistrates Courts Administration are also members.

The Act prohibits the use of the words community justice centre or the letter C.J.C. other than in respect of a community justice centre established under the Act, except with the committee's consent.

Conduct of Mediation Sessions

The Act provides:

(a) That mediation sessions shall be conducted with as little formality and technicality, and with as much expedition, as possible.

(b) That the rules of evidence do not apply; and

(c) Mediation sessions shall be conducted in the absence of the public, but that the director may permit persons other than parties to be present or participate.

Attendance at and participation in mediation sessions are voluntary. A party may withdraw from a mediation session at any time.

Notwithstanding any rule of law or equity, any agreement reached at or drawn up pursuant to a mediation session is not enforceable in any court or tribunal.

Except as expressly provided in the Act, nothing in the Act affects any rights or remedies that a party to a dispute has apart from the Act.

An agent may not represent a party unless:

(a) It appears to the director that an agent should be permitted to facilitate mediation, and that the agent has sufficient knowledge of the issue in dispute to enable him to represent the party effectively; and

(b) The director approves.

Any approval may be subject to conditions to ensure that the other party is not substantially disadvantaged by the agent appearing.

Evaluation. The Minister shall cause or arrange for evaluation at such times and in respect of such periods as he thinks fit, of community justice centres and their operation and activities.

Exoneration from liability. Section 27(2) of the Act states:

27(2) A member of the police force, or any other officer or person, is not liable to be proceeded against in respect of -

(a) the failure to charge a person with a crime or offence, or to initiate or proceed with proceedings for a crime or offence, or for any similar failure; or

(b) the arrest of a person followed by such a failure,

if he satisfies the court that the failure was reasonable -

(c) by reason of the references of the dispute to which the alleged crime or offence relates for mediation under this Act; and

(d) in all the circumstances of the case.

Privilege. The like privilege with respect to defamation exists with respect to mediation sessions as exists with respect to judicial proceedings.

Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body.

No document prepared for the purpose of, or in the course of, or pursuant to, a mediation session, or any copy thereof, is admissible in evidence in any proceedings before any court tribunal or body.

Such evidence and documents are admissible by consent of the parties to the mediation session, and also in proceedings in connection with which a disclosure of confidential information has been made where thought necessary to prevent or minimise the danger of injury to any person or damage to property.

Misprision of felony. Certain community justice centres persons and parties to a mediation session are not liable for misprision in respect of information obtained in connection with the administration or execution of the Act.

Secrecy. Mediators must take an oath or make an affirmation of secrecy.

Disclosure of information may be made:

(a) by consent of the person from whom the information was obtained;

(b) in connection with administration or execution of the Act;

(c) where there are reasonable grounds to believe that disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;

(d) where disclosure is reasonably required in referral to other agencies, for the purpose of dispute resolution or assisting the parties in any other manner;

(e) for research and evaluation;

(f) under a statutory requirement.

Sunset. The Act expires on 1 December 1982, or such later day (not later than 1 December 1983) as proclaimed.

Community Justice Centres in Operation

Number of cases. During the six months to 30 June 1981,583 cases were completed by the three centres.

A case has been defined as any matter prima facie suitable for mediation in which the presenting party (Party A) initially decides to use the services of a community justice centre.

A much greater number of matters has come to the notice of the centres. At Bankstown, for instance, 900 or so matters came to the attention of the centre during the six month period. Detailed records of these matters are being kept by all centres for at least part of the pilot period. It is understood that they will be examined as part of the evaluation.

Referral sources cover a wide range. Self referrals, where a party came to the centre on his or her own initiative, are more than a quarter of all cases. About one-fifth of cases came from chamber magistrates. About one-tenth of cases were referred by police. There were more referrals from police at Wollongong (15 per cent) than at the other centres, reflecting the use of police as mediators at that centre and a greater emphasis on police awareness of the project.

TABLE I - REFERRAL SOURCE

	Number	Per cent
Self	161	27.6
Police	56	9.6
Magistrates' Court	30	5.2
Chamber Magistrates/CPS	124	21.3
Legal Aid Agency	43	7.4
Legal Centre	12	2.1
Private Solicitor	34	5.8
Members of Parliament	15	2.6
Local Government	27	4.6
Health Commission	10	1.7
Youth and Community Services	15	2.6
Other State Agencies	30	5.2
Federal Agency	5	0.9
Voluntary/Private Agency	21	3.6
	583	100.0

Relationship of disputants. A basic criterion is the existence of an on-going relationship. In three-quarters of all cases the disputants were neighbours. Most of the other cases involved some family relationship. The predominance of neighbour disputes may reflect the emphasis given by the media in announcing and discussing the project. A greater effort is being made in the centres to publicise their availability in domestic and other disputes.

TABLE II - RELATIONSHIP OF DISPUTANTS

	Number	Per cent
Neighbours	435	74.6
Married, De Facto	13	2.2
Separated Couple	50	8.6
Family, In-Laws	36	6.2
Friends	24	4.1
Customer/Merchant	8	1.4
Landlord/Tenant	12	2.1
Fellow Workers	2	0.3
Other	3	0.5
	583	100.0

Nature of dispute. There are three main categories - neighbour, family. and other disputes. The most common neighbour disputes were those relating to a specific nuisance (for example noise, children's behaviour, trees, drains, car parking) and nuisances of various kinds, harrassment, bickering and abuse. Family disputes were mainly concerned with custody of or access to children, and the existence of or termination of a relationship. Other disputes were mainly concerned with inter-personal civil claims.

TABLE III - NATURE OF DISPUTE

	Number	Per Cent
Neighbourhood Disputes		
Dividing Fence	50	8.6
Specific Nuisance	163	28.0
Harassment, etc	167	28.7
Assault	55	9.5
Family Disputes		
Custody, Access,etc	23	4.0
Relationship	29	5.0
Arguments, Abuse	17	2.9
Assault	13	2.2
Property	5	0.9
Other Disputes		
Goods and Services,Tenancy,etc	12	2.1
Interpersonal Debt, etc	35	6.0
Assault, etc	6	1.0
Harassment, Bickering, etc	6	1.0
Other, not stated	2	
	583	100.0

The Bankstown Centre has listed some of the types of disputes it has handled:

> Children's behaviour; abuse and harassment; defamation; neighbours; nuisance phone calls; fruit nuisance; noise; smoke nuisance; incite to racial discord; fence disputes; dog nuisance; leaf nuisance; tree damage to drains; savage dogs; foul language; parking disputes; neighbour trying to seduce wife; disposal of canine excreta; faulty workmanship; disputed property ownership; serious affront; government authority complaining about ethnic community; delay by solicitor in completing property transfer; barking dogs; dangerous behaviour; debts; tree nuisance; cultural discord; rubbish nuisance; assault; apprehended violence; drainage problems; swimming pool nuisance; visitor's behaviour; fowl nuisance; goat nuisance; harrassment by landlady; ownership of dog; stone throwing; body corporate disputes; malicious damage; rental bond money and rent dispute, workers and supervisor.

At Bankstown, family disputes have included:

> Separation agreement between de jure and de facto couples involving custody, access, distribution of property, debt settlement, maintenance agreements;
>
> Future conduct and relationships between couples involving both separation and reconciliation;
>
> Harassment and abuse of former partner;
>
> Disputes over responsibility for care of aged parents, foster children's desire to have contact with siblings, debt repayments within family, wife's family harassing de facto husband, grandparents' access to grandchildren.

Legal proceedings. Current or recent legal proceedings were involved in only about one-fifth of the cases.

Other agencies had been involved in the dispute prior to a community justice centre in about 44 per cent of cases. Half of those cases involved police and about one-quarter involved local government. Chamber magistrates, legal aid agencies and State government agencies were also commonly mentioned as having been involved.

Case outcomes. A mediation session was arranged in 184 of the 583 cases completed in the first six months of operation of the centres; that is, in about one-third of the cases.

Of the 184 cases sent to mediation, 158 showed an apparently positive outcome; that is, 86 per cent. In a further 124 cases (21 per cent of the total) an apparently positive outcome resulted without any mediation being arranged or occurring. Fifteen per cent of cases were 'resolved without mediation,' that is, the parties resolved their differences in the early stages of contact with a centre. In a further six per cent of cases the outcome was categorised as 'problem diminished'; typically in those cases party A reported that after the centre contacted party B the situation noticeably improved (for example Bs incinerator was no longer lit whenever As washing was hung out) and party A did not wish to proceed further at that stage.

A number of disputes sent to mediation resulted in a 'truce'; that is, without coming to a specific agreement the parties expressed confidence, that now that goodwill or communication had been established they would be able to resolve the matter privately.

Those results which might be regarded as successful include mediated agreements, truces, resolutions without mediation and problem diminished. A successful outcome was achieved in 48 per cent of all cases.

TABLE IV - OUTCOME

	Number	Per cent
No mediation session arranged		
Unsuitable	11	1.9
No contact with B	51	8.7
B refuses	158	27.1
A later withdraws	52	8.9
B later withdraws	3	0.5
Problem diminished	37	6.3
Resolved without mediation	87	14.9
Mediation session arranged		
A absent	2	0.3
B absent	5	0.9
Failed to agree	19	3.3
Written agreement	137	23.5
Unwritten agreement	12	2.1
Truce	9	1.5
	583	100.0

Mediation - Use of language other than English. In about one-third (60/177)of the cases in which mediation sessions were held, a language other than English was used. The languages most commonly used were Greek, Italian and Serbo-Croat. In 22 of the 60 cases, a professional interpreter was employed. In 23 cases a bilingual mediator interpreted.

Time taken to complete cases. Of the 177 cases mediated, four were completed on the same day as they came to the centre. Typically, these were cases where both parties were present at court and were referred directly to the centre on the same day.

TABLE VI - TIME TAKEN TO COMPLETE CASES

	Per cent
Completed same day	2.3
Completed within 7 days	22.1
Completed within 14 days	53.7
Completed within 21 days	69.0
Completed within 28 days	79.7
Completed within 2 months	99.5

(One case took 85 days to complete).

The mean period which elapsed from initial contact to concluded mediation was 18 days.

Clients. The 583 cases involved a total of 741 clients classified as party A and 330 party B. (The number for party B does not include cases where no contact was made with party B).

A - parties were 50.1 per cent male
49.9 per cent female

B - parties were 54.2 per cent male
45.8 per cent female

The mean age of parties A was 46 and of parties B was 41.

Country of Birth. The numbers of overseas-born persons using the centres, whether as party A or party B, were remarkably high, as shown by comparison with figures for the State and for relevant local government areas.

Overseas-born residents of New South Wales (1976) 19 per cent.
Overseas-born residents of Bankstown local government area (1976) 21 per cent.
Overseas-born residents of Marrickville local government area (1976) 43 per cent.
Overseas-born residents Wollongong local government area (1976) 29 per cent.
Overseas-born party A Bankstown 47.6 per cent.
Overseas-born party A Redfern 58.3 per cent.
Overseas-born party A Wollongong 43.5 per cent.
Overseas-born party B Bankstown 38.1 per cent.
Overseas-born party B Redfern 59.5 per cent.
Overseas-born party B Wollongong 47.0 per cent.

Overall, at the three centres, only 50.3 per cent of parties A and 51.5 per cent of parties B were born in Australia.

Follow-up of successful outcomes. Follow-up interviews are being conducted with parties not less than four months after conclusion of action in the community justice centre. The interviews are designed to ascertain, among other things, whether the agreement has been kept, and if so, to what degree; whether the relationship between the parties has improved, is about the same, or has worsened; whether the community justice centre is regarded as having achieved anything, and to what degree; whether the community justice centre would be used again.

Results of the interviews are not yet available. One early indication however, is that parties B are generally more enthusiastic with the process than parties A, some of whom may have expected the community justice centre to be authoritative, judgemental or punitive.

Cost. The Department of the Attorney-General and of Justice has calculated the direct costs of running the pilot centres during the calendar year 1981 as about $233,000.

This indicates a cost of $200 per case handled during the first six months of operation ($116,500/583) or a cost of $658 per case mediated ($116,500/177).

The numbers of cases handled have been steadily increasing over the months as the centres have become better known. However, even if the number of cases handled in the second six months is double that of the first six months, the cost per case handled would be $133.

Whether figures like these are acceptable is a moot point. Each client and case receives a great deal of care and attention. The resolution of complex personal and community issues not readily capable of resolution by any other mechanism may be cheap at these prices. The resolution of a dispute in the early stages, which may have escalated, may in the long term save considerable cost in money and other terms.

A major cost is the salaries of the three directors. A great deal of their effort is directed to publicising the project, talking to community groups, training mediators, developing training courses, conducting in-service courses for mediators, keeping detailed statistics for evaluation, etc., duties which are largely attributable to the pilot nature of the project.

If more centres were to be opened, it may be necessary to have a director for a group of centres only, rather than a director for each centre, thereby reducing the salary component.

Nearly all mediations in the first six months were by panels of two mediators working as a team in each case. Apart from having technical advantages, this has assisted in the training of mediators. If most cases were mediated by a single mediator, mediation costs would be reduced. Budget allocations recently announced may compel such constraints in any case.

One should not overlook, of course, the comparative costs of the conventional justice system and the small benefit derived (even detriment suffered) by persons in continuing relationships who have recourse to it. For the issue of a summons for assault, justice administration costs include:

Clerk of Court conferring with informant, considering issue of summons, drafting information;

Clerical work in typing information and summons, forwarding to police for service, listing for hearing

Police serving summons, often entailing multiple visits, transport costs, preparation of affidavit, forwarding return of service;

Magistrate, clerk and court orderly, on adjournment(s) and hearing;

Accommodation, cleaning, electricity, postage.

There may be also considerable costs to the parties in the conventional justice system.

Conclusion

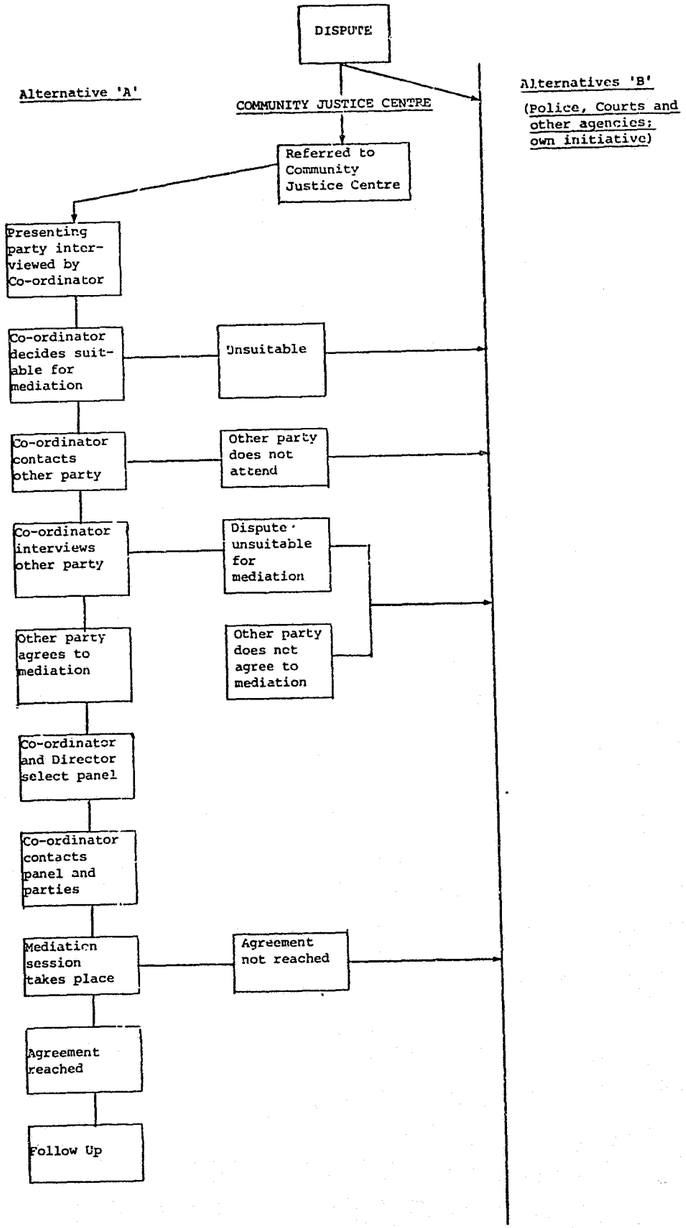
Community justice centres appear to be attaining their primary objective, the establishment of a non-coercive lay mediation service for the resolution of disputes between parties in on-going relationships, as an alternative to existing conventional means of dispute resolution.

Additionally, the centres are being used for resolution of disputes which may never have gone to the conventional systems, such as the courts, but which if left unresolved, would have resulted in friction and tension in families and communities. The centres have provided a ready service and speedy resolution of disputes.

The centres have gone to considerable pains to ensure that they are equipped to provide an effective service for persons not born in Australia, and have been well patronised by that section of the community.

The centres have in the first six months achieved a high degree of visibility and credibility among members of the public and social and legal agencies and institutions.

The project is being conducted in accordance with the legislation authorising it, is genuinely experimental in nature and since its inception has been observed closely by an independent research team which will report to the Attorney-General after March 1982.



THE VICTIM ON TRIAL

K. Boyer

My paper relates particularly to the experiences within the legal system of women who have been victims of rape or sexual assault. My views are those of the non-legal person working within government policy development on issues and services effecting women. They are my individual views, not those of the Tasmanian Government.

What we are in fact discussing, when we raise the issue of whether or not victims of crime should have legal representation, is the effectiveness of the legal system in its intended role of promoting justice, protecting the innocent and dealing properly and fairly with offenders. The significant impetus has been seen to be the fight for reform of unjust or inadequate laws, with the assumption that the legal system would be flexible to such change. The fact that we are all attending a national symposium on victimology is probably in one sense a proof that such a view was naive and neglected all the historical and social prejudices of the legal system. What we need to examine is why the system itself has been seen to be inadequate by those concerned for the victims of crime and why it may not be affording them the legal protection to which they have a right. When legal rights have been considered in the past, the victim has probably ended up with less consideration of her/his rights than any other group coming in contact with the criminal justice system. Yet it is clear to any sympathetic observer of the criminal justice system that those people with little or no experience and knowledge of the way it operates are often fearful and immensely apprehensive of its operations. If they are victims of a crime, the re-telling of the attack or crime in a court room situation frequently adds to the crisis of experience of the actual event. The victim is a key individual in any prosecution case; yet the system can alienate her/him and treat such a victim as a cog in the machinery of justice, rather than as an apprehensive, concerned individual human being.

Nowhere has this been more evident and more widely discussed, than in the case of victims of rape or sexual assault. Although there is conflicting data on the percentage of rapes and sexual assaults which are never reported to police, it is clear that many women choose to avoid the legal system after they have been raped and/or assaulted.

It is perceived by them as unsympathetic and/or totally inappropriate to their crisis situation as victims. Tess of the D'Urbervilles, Thomas Hardy's great heroine of the 1890s, who was raped, bore a child as the result of the rape and was hounded by her rapist, declared what many women still feel, 'Once a victim always a victim, that's the law'.

The plight of victims of rape and sexual assault has been recognised by most State Governments and Authorities during the past five years There have been changes both significant and minor in the law itself and in the police, medical and court procedures designed to minimise the trauma suffered by sexual assault victims within the legal process. While such changes are clearly to be welcomed, it should not be assumed that the legal processes in such a case have ceased to be a significant 'trial' for the women involved.

If a woman reports an offence of rape or sexual assault to the police, she sets in motion a chain of events involving police interrogation, medical examination and court appearances. In this process she ultimately becomes an individual on trial, on trial to establish her own veracity and sexual integrity. As Liza Newby noted in her paper to the National Conference on Rape Law Reform last year: 'The treatment received by rape victims in the hands of the criminal justice system has been documented as substantially adding to the trauma induced by the assault itself and is seen as effectively discouraging many others who have been so assaulted from coming forward to the police.'[1]

The National Conference on Rape Law Reform, various reports on rape law reform and the important personal account gained from women working in rape crisis centres, women's refuges, health centres, sexual assault clinics and in government agencies, have brought to light case histories of rape and sexual assault victims throughout Australia who have clearly seen themselves as 'on trial', within an unsympathetic system where little or no support was available from those people whom the victims perceived as 'running' the system. Other victims have different, positive stories; although the trial experience is still an ordeal, the fear and trepidation has been considerably lessened by sympathetic support from police, health agencies (both hospital and community based) and by the prosecution legal personnel.

These victims have felt more comfortable with the processes and procedures of the criminal justice system because of this support and because these processes have been properly and thoughtfully explained to them.

The crimes of rape and sexual assault do differ from other crimes in several ways, particularly because, in them, the rules of criminal law become embroiled with stereotyped views of male and female sexual behaviour. However, there are clearly important points that can be made about the way in which the legal system is responding to the needs of rape victims which can apply generally to all victims of crime. In particular, the question of legal representation of victims can be viewed not in isolation but against the intricate tapestry of the criminal justice system, police and medical procedures and community attitudes.

Perhaps one of the key issues we need to confront is the problem of the 'adversary' approach of the legal system. Those of us who have worked to try to ensure a better deal for victims of sexual assault are frequently accused of working to deny the rights of the accused. This

is not so and the perception that the issue of legal rights is a see-sawing gains and losses game between the victim and the accused is one of the clear shortcomings of the system itself.

All criminal hearings involve a conflict of interest between the State and the person accused. In developing procedural rules intended to strike a proper balance between the needs of the community to prosecute criminal offences and the rights of an accused person to affirm her or his innocence, the rights and needs of the victims involved must be considered. The legal representation of victims initially appears to be an attractive concept in this regard. However, on closer analysis, the provision of such representation can also be seen as perpetuating the existing conflict situation within the courtroom without necessarily providing the support, assistance and information the victim needs.

As I commented before, those positive responses toward the system from victims of rape and sexual assault, related to a <u>total</u> caring response on behalf of the legal and administrative process. These victims were supported and adequately informed about procedures throughout the process, from reporting of the crime to the end of the trial.

One may cynically surmise that such an experience was a matter of luck, of striking the right people at the right stage. Otherwise, with an optimistic view, it could be a hopeful sign that the lengthy hours of discussion and debate about rape victims may be slowly sensitizing the <u>system itself</u>.

My concern about legal representation is thus, that, despite its initial attractiveness, there is a risk that it may become an end in itself, rather than a part of a total approach by the system to providing rights and care to the victims of crime.

It is inappropriate to suggest that legal practitioners alone can provide a <u>total</u> approach to the needs of the victim. Moreover, it is unlikely that legal representation of victims would be seen as relevant beyond court room appearances and preparation for such appearances. Victims of sexual assault have quite clearly indicated that their needs exist throughout the entire process.

Certainly, victims of crime should have access to legal advice and assistance as <u>part</u> of the response of the system to their needs. What would be valuable to explore is the potential value of legislation to outline, as well as the rights of accused persons, rights of victims and witnesses.[2] Such a legislative approach could ensure access of victims to all necessary services, including legal services and should clearly indicate procedures to be adopted at all parts of the criminal justice process.

However, a crucial dilemma remains: can the legal system and the institutions through which it operates be expected to provide the impetus for self-sentization in their treatment of victims of crime?

Would the provision of another legal tier in the system provide such an impetus, or is there a risk of it becoming another cog in the machinery to be tackled by the victim?

My approach is clearly one of support for a multi-level response to the needs of victims. I believe that the significant positive changes which have already occurred for women victims of sexual assault and rape have stemmed not from within the legal system itself, but from the community, from the women's movement and from individuals working in legal, health, counselling, police and policy areas.

If there is to be further necessary action and change, so that the victim no longer perceives herself/himself on trial, I would submit that it will continue to come from this multi-level, multi-professional and community-based concern; and that consideration of legal representation should be viewed in this context.

FOOTNOTES

1. L. Newby, 'Rape Victims in Court - The Western Australian Example', in *Rape Law Reform*, J.A. Scutt (ed.) Australian Institute of Criminology, 1980.

2. J.A. Scutt, 'Criminal Investigation and Rights of Victims of Crime', *University of Western Australian Law Review*, Vol.14, Dec. 1979.

Session III

EDUCATING ACTUAL AND POTENTIAL CRIME VICTIMS

The victim's need for information, already a recurring theme of the symposium, becomes the explicit focus of this session.

Peter Cashman's paper, whilst confined to victims of sexual assault in New South Wales, provides a paradigm for victim information initiatives throughout Australia. It makes the important point that information about the prosecution of sexual assault cases can often be most effectively communicated to the victim by those medical and counselling personnel with whom she/he comes in contact. Cashman observes that in New South Wales, an excessive degree of competition exists between those departments and groups purporting to be the authoritative source of information for sexual assault victims. Much of the information available is contradictory, and some is patently erroneous. Appended to the paper are a description of the ongoing New South Wales Sexual Assault Publication Project, and a detailed outline of the resource manual prepared for victim service personnel.

John Murray, in his paper, addresses the role of the police in advising crime victims. He reminds us that timely information on crime prevention can reduce the incidence of crime, and suggests the importance of police crime-prevention programmes.

After the criminal event, it becomes the responsibility of the police to convey basic information to the victim efficiently and sympathetically. He discusses the brochures which have been produced jointly in South Australia by the police and the Legal Services Commission and notes police training initiatives which encourage South Australian officers to approach victims in a supportive and understanding manner. Murray concludes by emphasising the importance of police liaison with other victim support groups. Co-operation in the interest of the victim, not competition in the interests of one's own organisation, is the most efficient means of assisting crime victims.

Lee Henry, in her paper, emphasises the complementarity of general public information and direct advice to victims. Given the deleterious effects of prevailing social attitudes toward sexual assault, the importance of public information is self-evident. Henry reviews the rights of and options available to sexual assault victims, distinguishing between assaults inflicted by a family member, and those occurring outside of the family context. She then discusses methods of and strategies for communicating essential information to persons under stress. The importance of providing support and advice to the victim's family is also noted.

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SEXUAL ASSAULT IN NEW SOUTH WALES

P. Cashman

Introduction

Although this paper raises a number of general issues concerning the education of actual and potential victims of crime, it is concerned primarily with victims of the specific offence(s) of sexual assault in New South Wales. The focal point of the discussion is even narrower in that the paper is primarily about information concerning formal legal and police procedures.

I have restricted the ambit of the paper for a number of reasons. First, I am a lawyer and therefore I do not propose to deal with matters which are outside my sphere of professional competence and experience; secondly, because there is an obvious need for victims (and the public generally) to be much better informed about legal and police procedures generally and the options available and decisions to be made by them in particular circumstances; and, thirdly, in view of the current 'Sexual Assault Publication Project' in New South Wales which may serve as a model for other States.

The paper has five main objectives:

(1) to describe briefly the formal, legal and police procedures which victims of sexual assault will have to navigate in the course of proceedings arising out of a sexual offence;

(2) to discuss the nature of the legal information which should be given to -

   (a) victims,
   (b) the 'intermediaries' with whom victims are likely to come into contact, and
   (c) the public generally;

(3) to outline some of the methods by which such information should be conveyed;

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(4) to highlight some differences of perspective concerning -

(a) the information to be given to victims, and
(b) the role of counsellors, health professionals, the police, lawyers, and the victims themselves; and

(5) To argue for a greater recognition of -

(a) the limitations of the methods by which the law and the legal process attempt to grapple with the plight of victims of sexual offences, and
(b) the need for reform in certain areas.

Formal Legal and Police Procedures

Between the time of commission of the offence and the ultimate disposition of the case the victim will have to navigate a bewildering maze of police, medical, social and legal procedures. This process will be time-consuming, confusing and frequently traumatic. The experience may have as much (or more) psychological and physiological impact as the offence itself.

At each stage of the process the victim will be required to make certain decisions and to exercise certain choices open to her. These decisions will usually have serious consequences, not only for herself and for the offender, but for the administration of criminal justice generally.

It is imperative that the victim have available to her sufficient information to enable her to make informed decisions, with full knowledge of the consequences for herself (and the offender). In my experience victims are usually ignorant of aspects of the legal and police (and medical) procedures which are often taken for granted by those with whom victims come into contact after having made a decision to report the offence to the police, a HELP Centre, or the Rape Crisis Centre. Moreover, it is apparent that some of the persons contacted by victims are themselves often -

(a) insufficiently aware of the legal questions involved in sexual assault cases, and
(b) unfamiliar with the police and court procedures.

This raises an extremely important question about the extent to which victims rely on, or are unduly influenced by, the attitudes and opinions of (as distinct from the 'factual' information supplied by) the other participants in the process (social workers, counsellors, police officers, health professionals, members of the legal profession etc.).

Although this issue is outside the ambit of the present paper, it is submitted that there is a need to concentrate on the 'education' of those persons with whom victims are likely to come into contact in view of the important role which they play and also because they are a more readily definable audience.

However, one important preliminary question concerns the feasibility of imparting sufficient information about legal and police procedures in order to enable intermediaries (and the victims themselves) to make a realistic assessment of the relatively complex legal, evidentiary and procedural issues involved in a sexual assault case.

The chart*in Appendix A outlines, in a <u>simplified</u> form, some of the stages involved in sexual assault proceedings and some of the decisions to be made at various stages by each of the key participants, including the victim.

Depending on the facts and circumstances of each case the victim will be required to make decisions concerning, inter alia:

(a) the reporting of the offence;

(b) attendance at a HELP Centre and/or other agency (e.g. Rape Crisis Centre);

(c) the provision of assistance to the police;

(d) the institution of proceedings by herself against the offender;

(e) the giving of evidence at the committal proceeding and at the trial where proceedings are instituted by the police;

(f) possible proceedings against her by the police if she 'withdraws' the complaint;

(g) an application for criminal injuries compensation, either by way of court order, pursuant to the provisions of the *Crimes Act*, and/or through the Attorney-General's Department pursuant to the provisions of either the *Criminal Injuries Compensation Act*, or the ex-gratia scheme administered by the Department;

* (Note: the chart does not deal with applications for criminal injuries compensation or with the procedures for the summary hearing of certain offences).

(h) a possible appeal against the amount of compensation ordered; and

(i) 'injunction' proceedings where there is a possibility or likelihood of further assault.

The legal questions involved in each of these issues are by no means straightforward. There is a real risk that those persons whom the victim consults (including lawyers themselves) may provide her with only partial information or mis-information. Apart from the question of legal information, there is also the risk that the attitudes or opinions of the person(s) contacted will have an adverse effect on the victim.

Areas where Legal Information is Required

Each of the abovementioned legal and police procedures is obviously an area in which information should be available to -

(a) the victims,
(b) the intermediaries, and
(c) the public

In this section of the paper I propose to briefly outline the specific issues covered in a (draft) chapter on the law which has been prepared for inclusion in a comprehensive resource manual 'for counsellors, nurses, doctors and police and concerned citizens who are vitally involved in offering support to sexual assault victims' (see the outline of the 'Sexual Assault Publication Project' in Appendix B).

The three areas where counsellors working in HELP Centres frequently seek legal advice concern:

(a) the procedures for making application for criminal injuries compensation;

(b) what to do when the police threaten to, or in fact do, commence proceedings against the victim herself when she 'withdraws' the complaint; and

(c) (not surprisingly) the recent changes in the sustantive law and procedure introduced in New South Wales by the *Crimes (Sexual Assault) Amendment Act*, 1981 (which came into force in July, 1981).

The chapter to be included in the resource manual covers the following topics.

1. Reporting the Rape to the Police

(i) The relevance/significance of early complaint.

(ii) Attendance at a HELP Centre and the police station.

(iii) The conduct of the police interview and the purpose of the interview.

(iv) The forensic examination.

(v) The presence/involvement of friends, family members or counsellors.

(vi) The nature of the information required by the police and the purpose of such information.

(vii) The victim's 'statement'.

(viii) Attending the scene of the incident.

(ix) Identifying the offender.

2. The Decision to Prosecute

(i) The evidentiary requirements.

(ii) The defendant's 'statement'.

(iii) The rights of the defendant.

(iv) Basis of the police decision to prosecute or not to prosecute.

(v) What happens when the victim reconsiders and decides not to continue.

(vi) The possibility of the victim herself being prosecuted and the elements which the police have to prove in proceedings against her.

3. Various Forms of Sexual Assault and the Legal Differences

(i) Categories of sexual assault defined by the legislation.

(ii) Other possible offences.

(iii) 'Attempt' offences.

4. The Initial Hearing

(i) Police bail and release on bail by Court Order.

(ii) The purpose of the initial hearing and the role of the victim.

(iii) Orders which may be made by the court if the victim is in fear of a further attack and the defendant is released from custody.

(iv) The likely period of delay.

5. The Committal Hearing

(i) The purpose of the committal hearing.

(ii) What the prosecution has to prove.

(iii) The role of the victim in giving evidence.

(iv) Procedures where there are multiple defendants.

(v) Support and assistance for the victim.

(vi) Making application to have the proceedings closed to the public.

(vii) Relationships between the police, the prosecutor and the victim.

(viii) The decision of the defendant as to plea.

(ix) The role of the magistrate in committing the defendant for trial or sentence.

(x) The possibility of an 'ex officio' indictment.

6. The Trial

(i) The sequence of events.

(ii) Empanelling the jury.

(iii) The functions of judge and jury.

(iv) What the prosecutor has to prove.

(v) Examination and cross-examination of the victim and the issue of corroboration.

(vi) Mistaken belief in consent and other defences open to the defendant.

(vii) The options for the defendant in giving evidence or making an unsworn statement.

(viii) The prior sexual experience and general 'reputation' of the victim.

(ix) The jury's decision.

(x) The imposition of a penalty when the offence is proved, with particular reference to the maximum penalties allowed under law and the 'average' penalty for 'similar' offence.

7. Appeals

(i) The options for the defendant.

(ii) The options for the Crown.

(iii) The options for the victim.

(iv) The role of the victim in appeal proceedings.

(v) The options for the Appeal Court.

(vi) What happens when a new trial is ordered.

8. Compensation for Injuries

(i) Civil action for damages.

(ii) Compensation ordered by the court.

(iii) The statutory scheme for compensating victims.

(iv) The 'ex gratia' scheme for compensation.

9. Additional Items

(i) Possible legal action where the victim is in fear of future attacks.

(ii) Sources from which the victim may obtain legal advice and assistance.

(iii) Further sources of information.

(iv) A glossary of legal terms.

Methods By Which Legal Information Should Be Conveyed

There are, of course, a number of different methods by which information on legal procedures could be conveyed to victims, intermediaries, and the public at large. However, a considerable amount of existing 'community legal education' material is directed at offenders rather than victims.

The primary documentary sources of information of relevance to victims of sexual offences in New South Wales comprise:

(a) the pamphlet (now out of date) produced by the Rape Crisis Centre;

(b) the Legal Resources Book (N.S.W.);

(c) the (forthcoming) Sexual Assault Project Publications (see Appendix B); and

(d) the pamphlets produced by the Attorney-General's Department on criminal injuries compensation and the new *Crimes (Sexual Assault) Amendment Act*, 1981.

A 'Legal Resources Book' for lawyers is also currently being prepared and this will contain information to assist lawyers in advising victims either directly or through the existing network of counsellors etc.

That there is a need to educate lawyers about the law in this area may perhaps strike some as strange, but there is in fact, a lamentable degree of ignorance amongst (some) members of the profession and this problem is exacerbated by the recently introduced law reforms.

A related educational issue was considered by the recent *Task Force On Domestic Violence* in New South Wales in the context of domestic violence. The Task Force concluded 'that all lawyers should be educated to deal with the legal needs of battered women'. The same may be said in connection with sexually assaulted women.

The Task Force recommended:

(a) that law students should be given an understanding of other, non-legal, services available to women who are assaulted;

(b) that law courses should include some sessions on interviewing skills and methods for increasing general sensitivity to clients' needs;

(c) that there should be continuing legal education for practising lawyers; and

(d) that there should be educational materials supplied to, and training provided for, chamber magistrates and magistrates generally.

In addition, the Task Force made a number of wide-ranging recommendations concerning:

(1) the training programme for police officers;

(2) the publication of a pamphlet outlining the law and the rights and options of women who have been victims, which would be readily available at all police stations;

(3) the inclusion of compulsory units relating to domestic violence in all courses conducted by institutions responsible for the education of doctors, nurses, social workers and other health workers;

(4) educational programmes for doctors;

(5) the introduction of regional workshops to develop co-operation at the local level between agencies dealing with domestic violence;

(6) the use of the facilities and the resources of community health services for the education and training of people in the community working in the area of domestic violence;

(7) the involvement of interpreters and migrant workers in education programmes and training workshops;

(8) the publication of multi-lingual pamphlets and posters and information for migrant women on their legal rights and services available to them;

(9) the distribution of detailed information by the Health Commission and the use of the media;

(10) the training of community health staff;

(11) the dissemination of information about the rights of the victim to field staff from the Department of Youth and Community Services;

(12) the display of information about the rights of victims, and the assistance available to them, in all district offices and in offices of the Department of Social Security;

(13) the conduct of seminars in local communities;

(14) the development of special training programmes for persons working with victims;

(15) the establishment of a statewide, 24 hour telephone service capable of providing advice, counselling and referral for women in distress; and

(16) the development of strategies aimed at prevention through community education and school programmes.

Each of the abovementioned recommendations could be adopted with reference to the problem of sexual assault generally.

At present, information on the law and the legal system in New South Wales is provided in schools through the H.E.L.P.(High School Education Law Project) project conducted by the New South Wales Law Foundation and for social workers and other welfare workers through the Foundation's C.L.E.W. project (Community Legal Education for Welfare). The Foundation has financially supported the Legal Resources Book, The Legal Resources Book for Lawyers and the Sexual Assault Publication Project.

Some Differences of Perspective On The Information To Be Given To Victims

In the initial stage of preparing the chapter on legal and police procedures for the sexual assault publication project, a preliminary draft was prepared by three law students under the guidance and supervision of Terry Buddin from the Law School at the University of New South Wales and myself.

In the course of revising and amending this material we decided to circulate the first draft to persons with particular expertise in areas relevant to the project, with an invitation to comment on the material and make suggestions, corrections, etc. Accordingly, the material was distributed to -

(a) members of the police force;
(b) a prosecutor with experience of conducting prosecutions in sexual assualt cases;

(c) a barrister with experience in defending persons charged with sexual offences;
(d) persons involved in administering the criminal injuries compensation scheme;
(e) counsellors working in the HELP centres at several public hospitals;
(f) the office of the Clerk of the Peace and Solicitor for Public Prosecutions;
(g) the Women's Co-ordination Unit of the N.S.W Premier's Department; and
(h) persons working in the N.S.W. Health Commission.

Each of the abovementioned individuals/bodies commented in some considerable detail on the draft material and a number of comments were incorporated into the material, or used as a basis for amending the material, in the course of revising the manuscript for publication.

Unfortunately for the authors, but perhaps fortunately for the victims, the law was changed before the material was published and thus the chapter is at present being further revised. However, the process of circulating the draft material was of considerable value, not only because it led to improvements in the material, but also because the responses of a number of the parties provided some illuminating insights into the differences of perspective amongst such parties concerning both the information to be given to victims and the roles of the parties themselves.

The Views of Some Members of the Police Force:

The Role of the Counsellors/Social Workers - In general we all feel that both submissions (that is, the Handbook for Rape Victims and the Manual for Health and Welfare Personnel) are a load of garbage to put it mildly. Both seem to dismiss the role of the police and concentrate on the role of the social worker and health personnel regarding the care of the victim both at the medical examination and at later court appearances.

The social worker or indeed any of the health personnel should not be explaining the legal position to the victim, that MUST be left up to the police in charge of the case because that is where their expertise lies.

The Presence of Someone at the Medical Examination - The witness at the examination should be a policewoman NOT a friend or the counsellor, as the witness will have to attend court.

The Rape Crisis Centre - Delete'any reference to the Rape Crisis Centre'

On Women's Health Centres - Delete'reference to Leichhardt Women's Community Health Centre, Liverpool Women's Health Centre and Bankstown Women's Health Centre'.

Add -'If any further medical advice is needed it would be best to attend the hospital where you were examined as your history regarding the offence is at that hospital and can be referred to by the doctor examining you.'

The Presence of Someone at the Police Interview - Delete'reference to friend, social worker, relative at the interview. The fewer people present the less embarassing for the victim. If another person is present they must NOT interfere in the interview.'

Whether the Victim should receive a copy of her statement to the police - A copy of the statement is NOT given to the victim at the time in case it is lost or falls into the wrong hands prior to the court hearing.

Decision to Prosecute - Delete 'Their personal attitudes may well affect their decision.'

Preparing for Court - Delete 'reference to social worker' and replace with 'inform the detective in charge and he will arrange for a policewoman to attend court with you.'

Legal Advice for the Victim - Alter to 'it may be difficult to understand what is involved in the law of rape, especially what happens in court. This will be explained to you by the detectives and the policewoman involved in your case.

The police prosecutor and the Crown prosecutor act on your behalf in the case so there is no need for you to engage any legal representative. However, if you feel that you would like to consult a legal representative, speak to the detectives and they will advise you.'

(Regarding the Rules of Evidence) ...

Is all this really necessary for the victim to read. The basic requirements will be outlined by the detectives and the policewoman involved in the case.

(Regarding the question of consent) ...

Examples of consent could assist women who have not been raped to make up stories and elaborate their story if they do make a complaint to cover themselves for why they are late home etc.

Could give alleged victims better ingredients for the story they have made up concerning the alleged rape.

(On the question of criminal injuries compensation) ...

Again speak to the detectives involved in the case and they will advise you accordingly.

General Comments - In general, the police expressed the view that both the Victims Handbook and The Resources Manual for Health and Welfare Personnel were much too detailed. They suggested that only a brief outline of the procedures involved was necessary with additional legal information to be supplied to victims by police officers in particular cases.

On the question of contact between the Victim and the Prosecutor prior to the Hearing - Delete 'you will usually not have met either of these people before you go into court'. Replace with 'both the police prosecutor and the Crown Prosecutor will speak to you prior to your giving evidence'.

2. The Views of One of the Persons Involved in the Setting Up of the HELP Centres for Victims of Sexual Assault

On Contact between the Victim and the Prosecutor - The Crown Prosecutors have given us many different messages about the desirability of their seeing the victim beforehand. It could be suggested here that if the victim wishes, the social worker could contact the prosecutor and request a brief meeting.

The Role of the Counsellor - The counsellor or social worker can play a very important support role for the victim and the victim's family throughout the whole legal process.

Firstly, the counsellor can ensure that the victim has information throughout - this will include information on procedures, information about the dates of court appearances, information about her rights for example, protection and compensation.

Secondly, the counsellor can accompany the victim to the court hearings. If acting in the role of a support person in court, the counsellor should make herself known to the police prosecutor or the instructing officer in the district or supreme court. The counsellor should be careful to stay with the victim; if for example, the counsellor sits in the court before the victim is called as a witness and then talks to the victim later she may be accused of interfering with her evidence or assisting her to confabulate.

3. The Views of the Defence Barrister

The Question of Evidence - As a general comment, I am a little dubious about those sections of the booklet which contain information about the kind of evidence which will be required to substantiate a charge of rape. They strike fear into me as an invitation to fabricate evidence against an otherwise innocent person. Rape is, whilst grossly under-reported, an easy allegation for a woman to make if she has a motive to do so. It seems to be highly dangerous to go into details which, whilst well intentioned, might well be regarded as instructions on how to obtain a conviction.

On the Issue of Sentencing - As a general comment, I would suggest that each of these documents contain some reference to the fact that the maximum sentence to be imposed on persons convicted of rape is penal servitude for life and make some general reference to the sorts of penalties imposed, in fact, as far as that can be determined from the statistics available.

The victim's plight is serious indeed, but their actions in pursuing their legal remedies should be made in a climate in which they are aware of the consequences which flow from conviction for this crime.

(Note: Since the coming into force of the *Crimes (Sexual Assault) Amendment Act*, the penalty for 'rape' is no longer life imprisonment.

4. The Views of a Person Involved with the Prosecution of Offences

On the 'advice' in the (draft) material that if the victim reconsiders and does not wish to continue she should go to the police and tell them that she wishes to withdraw her statement:

> In my view, it is highly dangerous to tell the victim that.
>
> It seems to me that this statement shows a marked disregard for the valuable time of our police officers. Furthermore, there is no doubt that should such a retraction take place, then, in certain circumstances, the victim could be liable to a charge.

5. The Views of Some Persons Working with the Rape Crisis Centre

It is apparent that there are some differences of viewpoint between some of the persons working with the Rape Crisis Centre and some of the persons working in the HELP Centres. Differences of perspective in relation to matters such as the role of the HELP Centres and on the question of whether or not the word 'rape' should continue to be used following the introduction of new terminology pursuant to the provisions of the *Crimes (Sexual Assault) Amendment Act*, 1981, are perhaps not surprising. Other differences of viewpoint will be apparent from some of the following extracts taken from the pamphlet produced by the Rape Crisis Centre for rape victims

Police and Hospitals - The following information on police and hospitals is a brief outline of what SHOULD happen if you report your rape to them. It is the experience of the Sydney Rape Crisis Centre and of many women seeking assistance from the police and hospitals, that they are not believed and are frequently turned away without necessary legal and vital medical attention.

On Attending the Casualty Department of a Hospital - You need only say that you wish to speak to someone from the HELP Centre for victims of sexual assault. At this stage, avoid telling parts of your story or what has happened to you, as the first person you talk to about the rape can be called as a witness if you go to court.

On Offences Against Children - Experience has shown that it is difficult to get the police to act when a child has been assaulted, especially when the offender is a relative or close family friend and the victim a female

On the Frequency of Sexual Assault - In the experience of the Sydney Rape Crisis Centre, very few Australian women have escaped sexual abuse of some kind and the offenders are usually close male relatives or family friends (male).

The Importance of Reporting the Offence Early - Report as soon as possible. Case Law states that failure to report within 24 hours carries a presumption of consent, unless it can be explained (even though reporting within 24 hours is not necessarily taken as evidence of non-consent!).

The Possibility of Pregnancy - Many women become pregnant as a result of rape attack and not every woman who becomes pregnant will wish to end the pregnancy.

On the Release of Defendants on Bail after the Committal Hearing - They are usually released on bail.

On Criminal Injuries Compensation - Compensation will involve another court appearance and this time the woman is required to have her own legal representation.

On the Elements of the Offence of Rape - To successfully prosecute a rapist, it must be proven beyond reasonable doubt that;

(a) Intercourse did take place. (This leaves out everything except vaginal penetration by a penis).

(b) That the woman in no way consented in words or actions. This second point is left at some stages to the police, the magistrate or the jury to decide ... at their discretion!

On the Evidence of the Defendant - Very few rapists go so far as taking an oath.

On Possible Proceedings Against the Victim if She wishes to 'Withdraw' the Complaint - If the police are serious about charging you, they generally try to make you sign a second statement saying that you lied. If you will not sign such a statement, or for some reason they cannot make you sign it, then the police will use verbals. Verbals can be described as fictional conversations, invented by the police (usually detectives) with the intention of

saddling an accused person with a confession. The detective recites his creation in court, in front of a magistrate or jury, is corroborated by one or two other detectives and a shaky case is transformed into an apparently strong one. Guilt is not the issue. The detective wants the charge to stick and is quite prepared to lie to make sure it does.

On the Situations when a Re-trial is Ordered following a Successful Appeal - If appeal is accepted and rests on points of law, two things may happen; a re-trial can be ordered. You must proceed with the re-trial, otherwise the charges will be dropped and you may be charged with false complaint.

On Appeals Generally - Most rapists appeal a guilty verdict.

Some General Observations - It will be apparent that the comments quoted above reflect differing and sometimes widely divergent, views about (a) the role of the various persons coming into contact with rape victims, (b) the nature of the information to be given to victims and 'intermediaries', (c) what in fact happens in practice, and (d) what the law is.

It is beyond the scope of this paper to attempt to reconcile these differing viewpoints. However, I have the following general observations to make.

First, there appears to be a significant difference of opinion about whether victims (and health and welfare personnel) should be given simple information or a detailed guide to legal and police procedures.

Secondly, it is apparent that each of the various groups of participants see their role as being paramount or at least more important than some of the other participants.

Thirdly, the view of the police that they should be the primary or sole source of legal advice to victims is untenable. Several points need to be made in relation to this issue. It is arguable that the police function should be confined to the preparation and presentation of evidence and should not, to quote the words of Mr Justice Lusher, 'extend into the administration of justice in the courts'. (Report of the Commission to Inquire into New South Wales Police Administration, April 1981 at p.255).

As Mr Justice Lusher goes on to observe (in the context of his discussion about the role of unqualified police prosecutors in courts):

> On the question of advising, the complexities of the law and its interpretation are sufficient to tax and perplex those who have spent a lifetime in its pursuit it is not only unreasonable but unfair to expect unqualified police to embark upon its intricacies.

As the Lusher Report recommended that the police themselves should be given the assistance of qualified legal advice it is questionable, to say the least, that they should themselves play a major role in advising victims of crime about the law. Moreover, as Lusher himself points out, the provisions of the *Legal Practitioners Act* in New South Wales make it an offence for any person, not being a barrister or solicitor, to hold him/herself out or advertise or in anyway represent him/herself as competent or qualified to act in or in connection with the carrying out of the functions of a legal adviser or practitioner.

In the words of Mr Justice Lusher:

> '... it is incongruous and inconsistent that whereas the policy behind the *Legal Practitioners Act* is to protect persons from the unqualified, the State law enforcement body itself relies upon unqualified police to advise it and its members on law in matters of law enforcement and which necessarily are criminal or at least affect citizen rights and liberties.'

If there is some objection to unqualified members of the police force advising other members of the police force on legal matters, then stronger objection can be made to the proposition that the police should play an active role in advising victims on legal matters.

Of course it could be argued that no one other than a qualified lawyer should play any role in providing victims with legal advice. In considering this issue it is necessary to distinguish 'advice' from 'information'. It is submitted that all of the persons with whom victims are likely to come into contact (including police, counsellors etc.) should have a detailed understanding of the legal procedures involved in sexual assault cases and should be in possession of appropriate, and detailed, resource material to refer to themselves, or, preferably, to refer victims to.

However, there are real risks involved if victims are influenced into making decisions with important legal consequences for themselves on the basis of 'advice' from persons without appropriate legal training and experience. Of course, there is also the risk that many lawyers themselves will not be in a position to adequately advise victims and in this respect the abovementioned recommendations of the Task Force on Domestic Violence ought to be implemented.

It hardly needs to be stated that mis-information is often more harmful than lack of information.

Although I have the utmost admiration for the work of the Rape Crisis Centres, in my view their publication for rape victims and some of the allegedly 'legal advice' which they have given to women, is not beyond reproach.

So as not to concentrate unduly on only one of the 'intermediaries', I should add that, in my experience, both the police and some of the counsellors working through the HELP centres, have not always been able to provide the required legal information to victims. However, there does appear to be a recognition by counsellors of their limited expertise and a willingness to seek authoritative advice from appropriate persons. I have not had sufficient contact with the other 'intermediaries' to make an informed assessment of the ways in which they obtain specialist advice when it is either necessary or desirable.

The Limitations of the Law

One important issue, which is frequently overlooked both in discussions about educating victims and in the material which is produced for their benefit, concerns the limitations of the law. I sometimes wonder whether or not it might be preferable to give victims and the community generally, information on what the legal system cannot do for them, rather than information on 'remedies' which are allegedly available.

Although it is beyond the scope of this article to consider this issue in any detail, brief reference can be made to some of the problem areas.

Some of these problem areas are not confined to sexual assault situations but relate to assault generally and domestic violence in particular. These include:

(1) The reluctance of the police to intervene in domestic violence situations.

(2) The lack of a power of arrest for breach of an injunction under the *Family Law Act* (unless the breach in itself constitutes a breach of another statute which confers a power of arrest).

(3) The limited options for injunctive relief for those in de-facto relationships or for those who do not have any relationship with the offender.

(4) The virtual unavailability of legal aid for the purpose of instituting a private prosecution.

(5) The delays in the hearing of assault, sexual assault, or apprehended violence cases.

(6) The multiplicity of criminal injury compensation schemes in New South Wales and the low limit on the maximum amount of compensation payable.

Victims, and the public generally, should be aware that the law is a relatively crude and frequently slow, expensive and cumbersome method of dealing with social problems. The problem of sexual assault is a social problem with a multitude of manifestations which are not readily susceptible to legislative or judicial solution.

In this respect it is of some interest to note that the recent survey carried out for the Task Force on Domestic Violence found that victims used legal remedies relatively infrequently. Moreover, 'all were found unsatisfactory by the women who had used these alternatives'. (See Appendix C).

Some Unresolved Issues

Without wishing to end this paper on a note of uncertainty, I think that some of the difficult questions concerning the education of victims of sexual offences need to be articulated, if not resolved.

The following questions may serve as a focus for discussion.

(1) How should some of the abovementioned differences of perspective be reconciled in the information which is provided to victims?

(2) To what extent should the information given to victims be confined to 'objective' factual or legal information or be extended to encompass certain value statements?

(3) To what extent should the focus of educational materials and programmes be preventive rather than remedial?

(4) To what extent, if at all, are victims influenced in their decision-making by the information which they receive and/or the persons with whom they come into contact after the commission of an offence?

(5) What are the most effective ways of communicating information about the law and legal procedures and to whom should this information be directed?

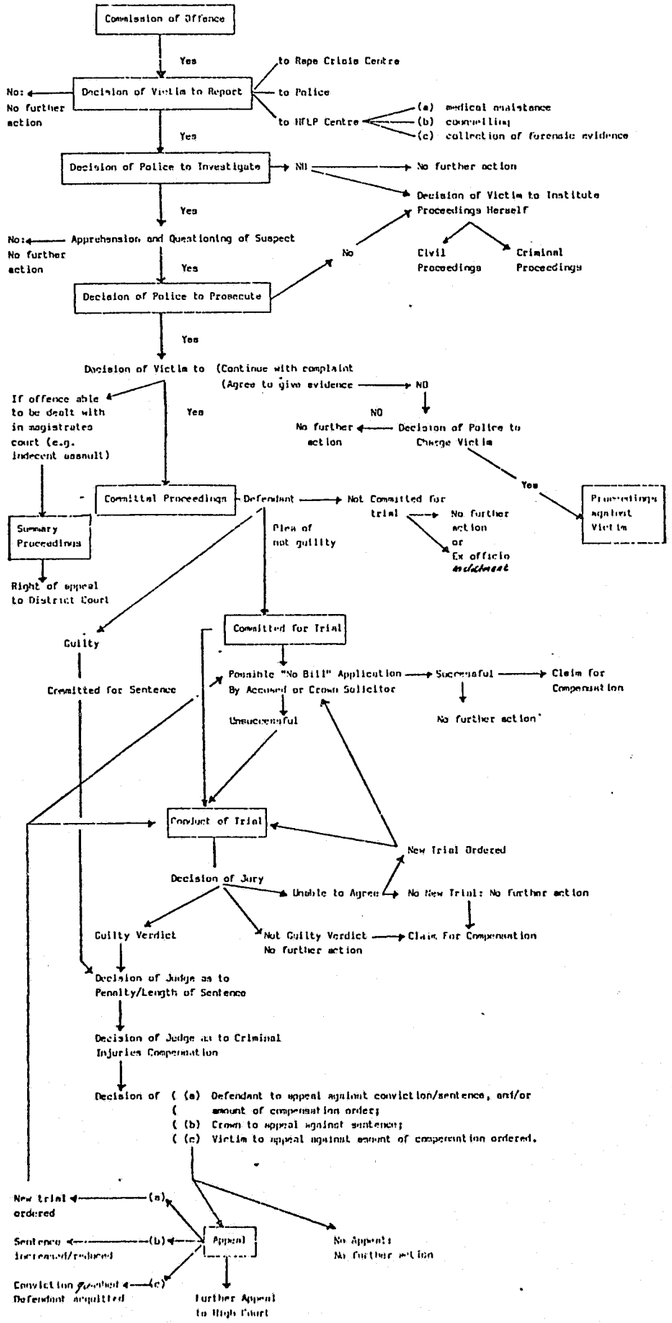
(6) Whose responsibility is it to educate victims and/or potential victims and to what extent is the government satisfactorily discharging its responsibilities in this regard?

(7) How effective are the existing victim support services in providing the sorts of information and support which the victims perceive they need?

APPENDIX A

AN OUTLINE OF LEGAL AND POLICE PROCEDURES

(Simplified Version)



APPENDIX B

SEXUAL ASSAULT PUBLICATION PROJECT

Aim: To produce a set of texts to educate (a) professionals providing services for sexual assault victims; (b) victims and (c) the community on matters related to sexual assault.

THE PROJECT

1. Caring for Victims of Sexual Assault - A Resource Manual - A manual for the personnel associated with HELP Centres and for police. The manual will be a comprehensive resource manual for counsellors, nurses, doctors and police and concerned citizens who are vitally involved in offering support to sexual assault victims. It will provide practical, tested and relevant information for those people who work with victims. It is also intended to be a resource manual for those people responsible for training new staff or wishing to set up a new service.

   Approx. 200 pages
   1,000 copies

2. Sexual Assault - A Victim's Guide to Legal and Police Procedures - A hand book to be given to victims who decide to take legal action. The handbook is designed to assist the victim:

   (a) To understand the legal consequences of laying a complaint of sexual assault.

   (b) To negotiate the ensuing process effectively and less stressfully.

   Approx. 20 pages
   1,000 copies

3. Sexual Assault - Confronting Rape in Australia - A community education booklet. This publication will be a concise and interesting booklet on sexual assault designed to educate the public on historical, sociological, and psychological factors related to rape and sexual assault. It will make the community aware of the many myths surrounding rape, destroying them and supplanting them with objective information. It will give information about the law and legal processes in New South Wales, services available to assist victims and their families and friends, hints on self protection.

Approx. 20 pages
10,000 copies

RATIONALE AND DETAILS OF THE PROJECT

The Resource Manual - In examining services for victims of sexual assault the Task Force considered the under-graduate education and in-service training of service providers. It reached the conclusion that the training of personnel to deal with the human crisis situation associated with sexual assault was inadequate. A primary objective of the Working Party set up to establish the new procedures and services was to educate the people who would be associated with these.

The areas in which training was needed were:

1. Medical and psychological factors related to sexual assault victims.
2. Medico/legal requirements.
3. The law and its processes.
4. Effective co-ordination of health and legal services.

The Working Party indicated some structured courses for doctors and social workers. A number of seminars and workshops have been held in both the city and the country. The social workers organised a self-education programme based on reading and regular meetings. A great deal of knowledge and experience has been acquired by a number of people over the last three years, but there is no mechanism which ensures this information is available to all people who are called upon to care for victims of sexual assault.

At present each centre in the metropolitan area has developed its own set of staff training and reference materials. New staff are inducted into the service by an experienced counsellor. The Health Commission, in conjunction with the Police Department has conducted a series of two-day seminars in a number of country centres. While these have been valuable they are in essence introductory courses. The Police Department concentrates its training on the legal issues, as yet police

education does not address itself substantially to crisis intervention techniques or for explaining the role of the counsellor and the doctor and their perspective. There are a number of publications and articles from the United States on serving rape victims. While these contain a good deal of relevant information it is necessary to sift through the material, extracting elements from several sources. The material on the law and legal processes has no relevance to New South Wales. There is a desperate need for concise accurate material on New South Wales legal and police issues directed to counsellors and doctors. There is also a great need for material which explains the effective co-ordination of the skills of health and police personnel to maximise the quality of service to the victim. Locally relevant material on counselling and medical matters would also be most useful.

The need for a resource manual is even greater in country centres. There is now one fully operational country service and several others being established. Country services will be staffed by selected volunteers from the community. A good basic text for training programmes is much needed. When established these centres will not have the advantage of a pool of experienced people readily available to give advice, information and support. The number of sexual assaults at any one country centre will be much lower than in the city, so personnel will not have the same opportunity to develop their expertise. In these circumstances a manual which will consolidate learning and provide an immediate source of reference is vital. It is proposed that the manual be contained in a spring-back folder. Such a format facilitates ease of use, the addition of local material, and up-dating of information.

The Victim's Handbook - While changes to the *Crimes Act* in relation to sexual assault will mitigate some of the trauma which victims commonly experience in a rape trial, going through the legal process will, never-the-less, still be an ordeal. For most victims it will be the only time they come into contact with the criminal justice system, so part of the strain is related to not knowing or understanding what is happening. No matter how supportive a counsellor is, or how sympathetic the investigating detective is, the victim feels swept up in a process over which she has no control. Such feelings only increase the sense of powerlessness engendered in her by the assault and will inhibit her recovery. Every endeavour should be made to build up the victim's feelings that she is in control of her life and that she can make and is making her own decisions. A booklet which explains in simple language the legal and police process to which she can refer whenever she is confused would help her self-confidence and make the legal process less unpleasant.

The Community Education Booklet - Every major text on rape addresses itself to the question of what can be done to help the victim and stop the assaults happening. The standard solutions are changes to legislation, changes to police procedures, establishing crisis units in hospitals and changing community attitudes by education programmes. In New South Wales the Government has established HELP Centres in hospitals, passed the *Sexual Assault Bill* and changed police procedures. The Women's Movement has done a great deal to develop a greater

community awareness about issues related to rape and discussion about rape is no longer the taboo subject it once was.

However, many people still hold attitudes about rape which are based on myths. Because of these attitudes it is still common for victims to feel shame and guilt about what has happened to them and frequently families and friends blame them for what has happened. We need to create a climate for victims which is non-judgemental; no woman wants to be or asks to be raped!

There is still considerable ignorance of the ways in which our society covertly encourages sexual assault. Until there is greater awareness of these processes, we cannot expect a concerted community effort to stop this behaviour.

There are a number of excellent books on the subject such as Paul Wilson's *The Other Side of Rape* and Susan Brownmiller's *Against Our Will* but these are not likely to be widely read; we believe a small simply written booklet on myths of rape, historical attitudes towards rape, profiles of victims and psychological factors which support rape occurring would be widely read. It would also include an explanation of laws and legal processes, information about services for victims and families, discussion on self-defence, and common-sense measures for protection. The booklet would be read by individuals but would also provide a basis for adult discussion groups and for high school students.

APPENDIX C

SUMMARY OF SELECTED FINDINGS FROM SURVEY ON DOMESTIC VIOLENCE

In a recent study conducted by the New South Wales Bureau of Crime Statistics and Research for the Task Force on Domestic Violence it was found, inter alia, that:

(a) The first places victims contacted for help after the attack were, in rank order according to the percentage of victims in the sample who made contact with the body in question:

- The police (27.0 per cent)
- A doctor (22.4 per cent)
- A social worker/counsellor (7.7 per cent)
- A chamber magistrate (6.5 per cent)
- A minister (5.5 per cent)
- A women's refuge (5.5 per cent)
- A private solicitor (4.3 per cent)
- A hospital (3.4 per cent) etc.

(b) The overall usage pattern of the agencies revealed a high level of involvement of the police and the medical profession, with a lesser degree of victim involvement with chamber magistrates, the legal profession and social workers/counsellors etc.

(c) In excess of 40 per cent of victims who had contacted any particular agency or body (with the exception of a women's refuge) stated that in their opinion the service provided was 'not useful'. Over 70 per cent (71.3 per cent) of women who had used a women's refuge found the refuge 'useful'.

(d) Legal 'remedies' were used relatively infrequently and were generally regarded as being unsatisfactory.

(See the *Report of the New South Wales Task Force on Domestic Violence*, July 1981, available from the Women's Co-ordination Unit, 8/151 Macquarie Street, Sydney.)

CONTENT OF MANUAL

INTRODUCTION

A brief account of the activities of the early seventies which led up to the establishment of the HELP Centres and reform of Sexual Offences Legislation.

(a) The resurgence of the Women's Movement.

(b) The Opening of Rape Crisis Centres.

(c) The Women's Electoral Lobby Draft Bill on Sexual Assault Legislation.

WHY THE LAW FOUNDATION

The new procedures for assisting victims of sexual assault in New South Wales require the co-operation of three government departments and hospitals which are autonomous bodies. All these agencies take a narrow view of their responsibilities, and no one agency would see that they should be responsible for this project. Joint funding would be necessary from the Health Commission, the Police Department and Department of Youth and Community Services. Such funding would be difficult, but not nearly as difficult, however, as producing the material within such a structure. This process would be cumbersome, terribly time-consuming and could well result in emasculation of content. There seems little chance of these books being published unless committed individuals supported by a philanthropic organisation assume the responsibility.

These publications are directly related to effective and just implementation of the law and prevention of criminal behaviour. It would seem appropriate therefore to ask the Law Foundation to sponsor this project.

PROJECT GROUP

The project is initiated by three people who have been intimately associated with the establishment of the HELP Centres for the care of victims of sexual assault:

1. Ms Barbara Wertheim, B.A., Dip. Phys. Ed.

   Special Project Officer Women's Co-ordination Unit. Member of Working Party on Care of Victims of Sexual Assault.

2. Ms Pam Rutledge, B.A., Dip. Social Work, Dip. Social Administration.

   Assistant Director, Policy and Planning Division, Health Commission of New South Wales. Chairperson, Working Party on Care of Victims of Sexual Assault.

3. Ms Ewa Klimkiewicz, B.Sc., (Hons.), M.S.W.

   Senior Co-ordinator of the HELP Centre at King George V Hospital.

CHAPTER I

B. Wertheim
B.A., Dip. Phys. Ed.

SOCIAL CONTEXT:

1. The Historical Setting:

   (a) A brief overview of the history of laws in relation to rape and incest.

   (b) Traditional beliefs and attitudes towards rape and incest including common myths about rape.

2. The Dimensions of the Problem.

3. The Social Setting:

   (a) Sex roles in society.

   (b) Socialisation processes.

   (c) Media influence.

   (d) Economic factors.

   (e) Attitudes towards aggression, dominance and violence.

4. The Psychological Setting:

   (a) The victim.

   (b) The rapist.

   (c) Masculinity and feminity.

   (d) Sexuality.

CHAPTER II

P. Cashman, LLB. Dip. Crim.(Melb.), LLM (Lond.), Barrister and Solicitor Victoria, Barrister NSW

T. Buddin, LLB. (Syd.), B.CL. (Oxon), LLM. (Illinois), Barrister NSW

THE LAW:

1. Preface.
2. Introduction.
3. Reporting the Sexual Assault to the Police.
4. The Decision to Prosecute.
5. Various Forms of Sexual Assault and Legal Differences.
6. The Initial Hearing.
7. The Committal Hearing.

   7.1 The Victim's Role at the Committal Hearing.

8. The Trial

   8.1 What Happens in Court.
   8.2 The Functions of Judge and Jury.
   8.3 The Law of Sexual Assault: What the Prosecution has to prove.
   8.4 Evidence, Corroboration and Cross-examination.
   8.5 Sentencing.

9. Appeals.

Appendix A: Fear of Further Attacks : Possible Legal Action.

Appendix B: Obtaining Legal Advice.

Appendix C: Compensation for Injuries.

   C.1 Civil action for damages.
   C.2 The Statutory scheme for compensation.
   C.3 The 'Ex-Gratia' scheme for compensation.

Further Sources of Information.

CHAPTER III

E. Klimkiewicz,
B. Sc. (Hons.),
M.S.W.

COUNSELLING OF ADULTS:

In order that the victim of sexual assault be counselled in a manner which is consistent with allowing her to regain control of her life, it is necessary first to state:

The Rights of the Victim:

1. Immediate medical attention if she requires it.
2. Access to counselling services.
3. Be given as much credibility as a victim of any other crime.
4. To be treated with respect and dignity by all legal, medical, and counselling staff involved with her.
5. Make her own decisions about what she wants to do regarding her medical, legal, and social situation.
6. To have all medical and legal information necessary for her to make informed decisions.
7. Privacy and confidentiality which includes members of her family if she does not wish them to be involved.
8. Have with her any person she wishes.
9. Not to press charges.
10. Have the best possible collection of evidence for court if she does wish to press charges.

The Rape Trauma Syndrome - The Rape Trauma Syndrome is the acute phase and the long-term re-organisation process that occurs as a result of forcible sexual assault and attempted sexual assault.

It is important to remember that sexual assault is a violent aggressive act towards the victim which is often life threatening; it is not primarily a sexual act.

The syndrome is usually a two-stage reaction:

1. The Acute Phase

The victim experiences a great deal of disorganisation in her life.

(a) *Physical Reactions* - Effects of soreness and bruising in various parts of her body. Muscle tension, headaches, sleep disturbances, changes in eating habits, stomach pains, nausea, disturbances of her urino-genital organs, vaginal discharge and generalised pain.

(b) *Emotional Reactions* - Fear, humiliation, embarrassment, guilt, anger, and revenge. The overwhelming response reactions are usually as a result of the victim (him or herself) holding the same myths about sexual assault as the majority of the rest of the population and having these either covertly or overtly reinforced by the people he/she comes in contact with after the assault.

2. Long-term Re-organisation

All victims of sexual assault experience a re-organisation of life-style after the assault. How well they cope after the experience depends on factors such as their own sense of inner security, self-confidence, the support they get from their family and friends.

Mainly the areas of life affected are such things as:

A need to move from home if the assault took place at home; a need to see members of her support social network more frequently than normal. Frequently there are still strong sleep disturbances in the form of vivid dreams and nightmares.

A series of phobias are likely to be exhibited. A fear of being alone at home if the assault took place in the home; a fear of the outdoors if the attack was in the open; a fear of being alone.

Management of the Rape Trauma Syndrome:

1. Crisis Intervention - or Crisis Counselling

Assumptions:

(a) Rape is a crisis in that the victim's life is disrupted.

(b) The victim is regarded as a usually coping person before the assault.

(c) The aim is to help the victim return to a normal level of functioning as soon as possible. Previous problems are not given priority.

The counsellor must observe all aspects of the victim's rights.

The priority is to deal with questions:

(i) The woman's physical safety and comfort.

(ii) Her emotional needs to talk of whatever she wants to talk about - the event; her family; her experiences immediately after the rape; her feelings about herself and about the rape.

(iii) Information giving - the counsellor must explain that the victim has the right to make choices about pressing criminal charges against her assailant. If she makes this decision, she needs to have a forensic examination and make a detailed statement to the police.

The counsellor must explain the purpose of the forensic examination and prepare the victim for the likely length and purpose of a detailed statement. She needs to explain to the victim the two-tier court system and the length of time it may take for the case to be processed through the system.

(iv) The victim needs to know about follow-up medical and counselling procedures and why they are necessary. This involves some initial explanation of VD and an outline sketch of Rape Trauma Syndrome.

(v) Some moves should be made to prepare the victim for follow-up.

2. Follow-up

It is important that the active part in follow-up is played by the counsellor. The victim's emotional reactions may prevent her from initiating contact. The counsellor should contact the victim within forty-eight hours of the original interview and set up a meeting time and place if the victim wants this.

Follow-up Counselling - Immediate

This will usually consist of helping the victim come to terms with the immediate disruptions and trauma in her family life.

Practical

It will involve issues of how her social networks and the law enforcement agencies have responded to her needs. She may need help in communicating with her place of employment. The counsellor will usually mediate between the different helping professionals involved to ease any confusion if possible.

Emotions

At the time of the initial crisis intervention, the victim is usually experiencing shock and will not have remembered various aspects of the emotional counselling; the elements of anger, fear, guilt, etc. are not likely to have been resolved. A major part of this area of counselling is to help the victim work through her feelings about herself and the attack, taking into account the societal myths about rape which the counsellor can help her examine.

Long-term Follow-up

The counsellor must at each stage prepare the victim of sexual assault for the possibility, but not inevitability of further complications. If it appears that there are several deep-rooted and complex emotional and psychological problems, the victim must be offered the opportunity of therapy with other more specialised professionals, such as psychologists and psychiatrists.

CHAPTER IV

Dr Antheunis Boogert,
MBBS, MRACOG.

EXAMINATION OF RAPE VICTIM - ADULT:

1. Introduction - Including rights of rape victim.

2. History -

   (a) Establish rapport.
   (b) Brief details of assault.

3. Medical Examinations -

   (a) Injuries requiring medical attention.
   (b) Evidence of assault documented.

4. Pelvic Examination -

   (a) Document injury and establish recent sexual activity.
   (b) Forensic specimens.
   (c) Bacteriological specimens.

5. Venereal Disease -

   (a) Prevention.
   (b) Treatment.

6. Pregnancy -

   (a) Prevention.
   (b) Termination.

7. Medical follow-up.

CHAPTER V

*A. Ford, et al**

COUNSELLING OF CHILDREN AND FAMILIES:

Introduction

When a child is sexually abused, the meaning of this event for the child depends on:

(a) Who abuses the child (the key variable).

(b) The psychosexual age of the child.

(c) The quality of the parent-child relationship.

When a child is sexually abused by a stranger, it is a disturbing and possibly frightening event from the outside world. Both parents and child feel attacked, and they join together in their feelings of anger and hurt.

When a child is sexually abused by another member of his/her nuclear or extended family, or close family friend then the meaning of the event is much more complex. In order to understand its meaning a careful assessment is needed of the whole family and from this an assessment can be made as to how 'at risk' the child is. Here the child and family cannot join together in feeling outrage at an external attacker, but rather the disclosure of the event or series of events has effects on all relationships within the family.

Definition of Sexual Abuse

1. Highlighting the range of abuse from fondling genitals, touching breasts to penetration, but emphasising that the meaning of abuse has to be understood from the child's and family's perspectives.

2. There is no absolute definition - need to be aware that it is defined by cultural norms.

3. Therefore workers need to be aware of their own values not only in defining sexual abuse but also how their values affect their work with these children and their families.

Management of Stranger Assault

1. Initial Presentation:

   Counsellor's role - to allow the child and parents to talk about their feelings of shock, hurt, anger and distress.

2. Frequently, the trauma is greater for the parents than the child and it is how the parents in time resolve their own feelings that largely affects how the child resolves the crisis for himself/herself.

3. Often the family wish to embark on some short-term counselling to help with these upset and outraged feelings.

4. The other important consideration in stranger assault is the psychosexual age of the child; a pre-school child versus a primary school aged child versus a young adolescent.

5. During the counselling process, although not legally required, it is advisable to notify Youth and Community Services through the relevant Child Protection Unit. They, with the notifying agency, can ensure that appropriate resources can be moboilised for the family. Also, notification will ensure that there will be on-going review of the child's and family's adjustments.

Management of Sexual Abuse by a Family Member

1. This is a much more complex presentation and can be more disturbing for workers because there is no common outside person the counsellor and family can safely 'blame' as in stranger assault. Also, the child is much more 'at risk' and questions about the child's protection need to be considered.

2. Initial Presentation:

   Commonly the Police or Youth and Community Services are alerted and, because the usual presentation is of a parent or parent-figure having abused the child, it is the child and the non-abusing parent who are brought for medical and counselling help. The child feels confused, upset and frightened while the non-abusing parent carries feelings of anger and guilt.

3. The principle function of the counselling during this time is to help contain the anxiety and distress of the family members.

4. Notification to Youth and Community Services via the Local Child Protection Unit is most important not only to ensure that appropriate resources are mobilised but also to plan for the family's on-going assessment and support, along with assessing the needs of the child.

5. In an effort to understand how, say, a parent could sexually abuse his/her child, it is important to assess the marital relationship and the family background of each parent. Frequently they have grown up in abusive environments themselves and the dysfunction and operating in the parent-child relationship is a similar pattern to that in which the parents grew up. Commonly, the actively abusing parent has moved across the generational boundary and sees the child as an object to meet his/her needs. The non-abusing parent consciously or unconsciously colludes with the other parent. Thus, the abuse is part of the family system which has meaning for and is sustained by the whole family until the crisis comes.

6. Long-term follow-up of these families is vital whether or not the child remains with the family.

*Adrian Ford, B. Soc. Stud., Sydney University.

Mrs Berinda Larney, B. Soc. Sci. Social Work, B.Soc. Sci. Hon. Medical Social Work, B.Soc. Sci. Hon. Psychiatric Social Work.

Mrs Zita Mullaly, B.Soc. Stud. Hon., Sydney University.

Dr Ferry Grunseit, M.B.B.S., F.R.A.C.P.

CHAPTER VI

F.Grunseit,
MBBS, FRACP.

MEDICAL AND FORENSIC RESPONSIBILITY - CHILDREN:

Paediatric - That is the sexually abused child.

General

Doctor's attitude important - specially in incest cases.

History and examination - differences to history and examination of adults.

Difficulties

Important for the doctor to work with a counsellor. Team approach essential.

Knowledge required and experience regarding:

Needs of the sexually abused child and family.
Possibility of psychosomatic symptoms being related to sexual abuse.

Procedure

Protocol mandatory - special aspects for children.

Setting

A private area is required for counselling, history and examination.

History Important to decide extent of examination needed, and needs of the child and family.

Examination

For court proceedings there is a need for corroborative physical evidence, specially for a young child's statement.

No examination should be performed without the written consent of the parents or guardian of a minor. The consent to release information to the police is separately given and witnessed.

Establishing Rapport

General Examination

Small children/infants.

Genital examination - older children/adolescents.

Specimens to be obtained - depend on whether genital contact has taken place.

(a) Forensic
(b) Specimens to exclude sexually transmitted disease.

Treatment

Emergency
Prophylactic - S.T.D. and pregnancy.

Follow-up

Medical and counselling (coordinated).

CHAPTER VII

POLICE PROCEDURES

This chapter will be written by John Avery, who has been approached and has agreed to write it. He is, however, at present on annual leave and was not able to write similar guidelines to these which are being produced to indicate the contents of other chapters.

It is anticipated that the chapter will contain paragraphs about the following:

1. Procedural information for local police sergeants to follow when the victim of sexual assault presents at any police station. Including such points as -

   Taking the victim to a private room; calling the women police and the detectives.

   The role of the policewoman.

2. Guidelines as to the sort of information it will be necessary to obtain from the victim briefly before transporting her/him to the nearest HELP Centre.

3. Procedures regarding informing the HELP Centre of the police's intention of the imminent arrival of a victim.

4. Liaison between doctor, social worker, and police at the Centre.

5. Statement taking - either retraction or full statement in the case of charges being laid.

6. Victim's rights as to copy of statement.

7. Procedures before lower court hearing.

8. Procedures regarding supreme court hearings.

CHAPTER VIII

P. Rutledge, B.A.,
Dip. Social Work

ESTABLISHMENT OF A COUNTRY SERVICE

In non-metropolitan areas, where resources are often scare and community attitudes are quite different to those in city and suburban centres, the establishment of services for victims of sexual assault requires a different approach.

The section of the manual on the development of country services will include the following:

- Organisation and role of an inter-agency Steering Committee.
- Establishment of the need for the service.
- Identification of an appropriate location for the service.
- Selection of counsellors and doctors.
- Training programmes - counsellors, doctors, and police.
- Financing the service - payment of counsellors and doctors equipment, and recoupment of victims costs.
- Development of legal advisory and support services.
- Procedural guidelines for role of police, counsellors, and doctors.
- Community education.
- Publicity.
- On-going staff development and support.

THE ROLE OF THE POLICE IN INFORMING CRIME VICTIMS

J. Murray

Introduction

Today, more than ever, organisations are looking closely at their statement of objectives, and comparing it to what they are actually doing. This has arisen primarily through budgetary constraints. The police department is no exception.

Insofar as victims of crime are concerned, that a role has been assumed by us for some considerable time is no longer justified simply on those grounds, but instead must be considered in its relationship to the overall charter of the organisation. We find that police resources are insufficient to cater for all of the needs of victims, and look to a joint approach from other organisations and community bodies.

Quite obviously police must assume a great deal of responsibility in providing information to victims, and have done so throughout their history. Prior to modern police forces, the victim was forced to seek his/her own remedies without organised assistance. With the emergence of modern police forces was the tendency for individuals to rely more on professional bodies, and for themselves to withdraw from the area of social responsibility. It is now a commonly held view that citizens have surrendered to the State the right to defend themselves (Wardlaw:145). The State through the police, courts, and the penal system has undertaken the responsibility of protection, but it is assumed too, that despite specific roles being ascribed, that the general public is not excluded, for if it is to be successful the system must incorporate community involvement.

The Potential Victim

The role of informing, or put another way, educating or making victims aware, takes place not only after a person becomes a victim but must be undertaken before the event and directed at potential victims. Preventing a crime from being committed must assume primacy in police objectives, for if successful it removes the trauma and inconvenience suffered by the victim. Accordingly, sufficient emphasis should be given by police towards pro-active initiatives, and crime prevention programmes which seek to educate people in what measures can be taken to reduce their vulnerability.

A call to the public at large to join in police-initiated crime prevention programmes is not shirking responsibility. It follows the premise that the community has this responsibility and the fact that

police resources are insufficient to do the job. 'Target reduction' makes sense and police have a responsibility to make people aware, for example:

- that a certain percentage of crimes against the person occur during certain hours, in the vicinity of certain areas, etc.

- that homes are generally entered by opportunists who would avoid those houses which are secure;

and so on. This provides information on how, when, and where crimes are being committed, which, coupled with police information on what measures can be taken to avoid them, allows a course of action to be taken by the individual. It also permits worthwhile contribution to public dialogue on these issues (Report of the Committee of Inquiry on Victims of Crime (South Australia):12). The paradox, of course, is that the more publicity supplied about crime, the greater the tendency for fear. Crime prevention programmes have to be handled with due sensitivity. Police would be unwise, for example, to embark on a crime prevention programme for crimes such as rape and child abuse without joining with, or at least referring to, disciplines concerned directly with these issues.

The South Australian *Report of the Committee of Inquiry on Victims of Crime* carried 17 recommendations relating to the gathering and dissemination of information on victims. It recognised that few studies in this country had been carried out and that the public's understanding was 'lamentably low'. Steps are now being taken to remedy this, and the most pleasing feature is that it involves a multidisciplinary approach. A committee has been established to consider the implementation of the recommendations contained in the Victims' Report.

In the interim, police in South Australia met with representatives of the Legal Services Commission and Ray Whitrod's Victims of Crime Service (VOCS) and designed two victims pamphlets. One carries pre-event information on how to avoid becoming a victim and the other outlines the courses open to the actual victim, and the services available. Police have agreed to hand out these pamphlets at the scenes of crime.

The Victim's Perspective

It has been suggested that a victim gets victimised twice - once by the criminal, and again by the criminal justice system (Blackmore:24). Unfortunately, in the final analysis, this is the impression that a

victim can be left with. The victim, more than just occasionally, feels that:

- a satisfactory resolution consistent with justice and their needs has not been met;

- insufficient attention has been given after the event;

- protection against intimidation/reprisal are meagre or ineffective;

- advice about, and guidance through, the court procedure is absent or insufficient;

- exhibit property held by police has caused unnecessary inconvenience and cost; and that

- compensation is not enough, and in any event is too slow in being handed out.

I intend to comment on those which affect police, but it is important to point out that not all complaints are justified and can amount to a misconception in some instances.

We must be sensitive to findings such as those in the *Domestic Violence Phone-In Report* (1980) conducted in Adelaide where, of the 72 victims of domestic violence who reported having approached the police, 45 of them found them to be unhelpful. The point I am making is that people have in many occasions an unreal expectation of police, and inability is sometimes confused with inaction. On the topic of domestic violence, it often arises from a misunderstanding of the powers of police particularly in relation to the *Family Law Act*. But the fact that the victim *perceives* them as failings, is sufficient in itself to warrant attention, and points to a need for greater information to the victim.

At The Scene Of The Crime

Lack of compassion is an accusation not often levelled at police when attending the scene of a crime. In fact I think it is our continual first hand appreciation of grief stricken victims which prompts the stereotype of cynicism and hard headedness towards *offender* rehabilitation projects, of which we are often accused.

Sympathy and understanding is a great start but something more is needed. In the past, I believe, insufficient emphasis has been given to the importance of the 'response police patrol'. It has never been regarded as a specialist unit, but instead, a launching pad towards some other aspect of a career. That emphasis is changing in South Australia and the status of the patrol is being raised. New graduates will not be enlisted into the patrols (as they have in the past) until they have

acquired some experience in other areas and will only be eligible on the satisfactory completion of a pre-entry course. What this will avoid is the relatively immature and inexperienced officers being assigned to crisis situations until they are properly equipped. It is only then that meaningful information can be supplied to victims.

Quite clearly, the police, as the first body with whom a victim is likely to come into contact, has the major responsibility towards the victim. Our Psychology Unit conducts a one week workshop for all recruits which encompasses victim treatment, and the type of information which should be conveyed to victims. Psychiatrist and victimologist, Dr Martin Symonds of New York's Karen Horney Institute says there are three messages that families and police should convey to victims of personal violence,which can be characterised by such remarks as:

. I am sorry for your troubles.

. I am glad you are all right.

. You did the right thing.

(Blackmore:29)

Mr Kelly, the senior police psychologist of the South Australian Police, agrees, and directs the recruits' attention to these areas, but adds:

. We do not think any less of you.

. We are here to help.

Rather simplistic in themselves, they nonetheless convey to the victim sympathy, empathy, assurance and a sense that the worst is over. These arise from a recognition that when emotional trauma is strong, the sooner a person comes out of it, the less damage will be done.

Information from that time should be practical and meaningful so that the victim appreciates the process which is to follow, his/her obligations and his/her rights at law. It is a police role to make this information available but we realise too that when police leave the scene, victims are sometimes unable to comprehend. Assistance from volunteer groups such as V.O.C.S. or from government bodies such as Crisis Care is welcomed as they are able to and willing to remain and re-attend for as long as it takes to settle the victim and to provide appropriate information.

Satisfactory Resolution

Whether or not the resolution of the case is to the victim's satisfaction depends to a large extent on how much he/she knows about the system and the amount of information fed back about the particular case. Often there is little basic understanding of the system and sometimes there is no feed back at all on the case.

The South Australian *Report of the Committee of Inquiry on Victims of Crime* pointed to the general lack of understanding of the public of the criminal justice system and recommended programmes to heighten this awareness. The sentiments expressed to the Committee included the views that:

. bail is granted indiscriminately;

. sentences imposed are too lenient;

. prisons are comfortable 'homes away from home'; and

. parole is granted quickly and automatically.

(Report of the Committee of Inquiry on Victims of Crime (South Australia):21).

Based on misconception, mis-information or selective reporting by the media, these impressions are hard to change. To be truthful we must acknowledge that attempts at promoting more objective facts about the system have been generally meagre and fragmentary. The Legal Services Commission has been committed to a more sustained programme of supplying information to the public, but has been limited by financial constraints.

Generally victims of serious crimes are not only advised of the outcome but are visited regularly by investigating police throughout the investigation. In fact strong ties can develop. In well known homicide cases, relatives of homicide victims have publicly acclaimed police for their sensitivity and service. Unfortunately the same cannot always be said for those offences lower in the seriousness scale. A break and enter victim, for example (who would be one of about 16,000 each year in this State) may not hear another word after the matter has been reported to the police. Since about 90 per cent of those arrested for all offences plead guilty, the police are not required to attend court and are consequently unaware themselves of the outcome. Given the size of the task and the present resources, it is not possible for the police to give automatic notification of the outcome of the case in every instance. We, as a Department feel that victims of personal violence be advised, to allay as much as possible, fears of reprisal.

Fear of Reprisal

Whether reprisal is a real risk, or quite remote, victims often fear it, and generally suffer in silence. When police apprehend that there is a real danger of this occurring, steps are taken to oppose bail. If the offender is allowed to go at large, continuous around the clock protection cannot be given but police have a duty to take whatever steps are necessary to prevent retaliation. Unfortunately in some cases, this means organising alternative accommodation for the victim. Sometimes this is the only successful way to avoid such things as cruel, threatening, abusive and anonymous telephone calls since they are very hard to detect.

The Courtroom Experience

The most traumatic event to the victim, after the crime itself, is likely to be the courtroom experience. It involves reliving the experience in an unusual, uninviting environment, amongst strangers and (most oppressive of all) - in front of the offender himself. Police have traditionally taken the role of advising, comforting and guiding the victim/witness when necessary. This we acknowledge has not been done in every case and is really dependent on the individual compassion of the officer involved. Information about the court process is vital to a prospective witness. Experienced detectives realise how critical it is for a witness to be at his/her best so that vital evidence will not be withheld, and cast a watchful eye on the witness before the trial, and where necessary comfort and console. Motivation is not purely on practical grounds; they also do so on humanitarian grounds in the knowledge that some victims regard the courtroom experience as being more traumatic than the crime itself.

The V.O.C.S. Court Companion Scheme, a volunteer service for witness assistance, has our complete backing since it goes a long way towards relieving the discomfort a witness feels. We refer appropriate cases to this group, not to shift responsibility, but realising the benefits of an independent specialist group. We have undertaken to give each new group of volunteers a basic introductory course which includes:

- location of various courts;
- basic court procedures;
- role of the officers of the court;
- contact persons in various courts; and the
- do's and don'ts of a court companion.

Exhibits

The practice of seizing and retaining property until the end of a trial has been an inflexible practice of the police. On reading about victim's concerns, the inconvenience and depreciation in value of exhibit property is quite apparent both here and overseas. Absolute seizure is not the only option open to police. Alternatives do exist and where:

- the exhibit has not been used in the commission of an offence;
- it is not an integral part of the proof of the charge;

- there is no known likelihood of dispute about ownership or identification; or where
- its continued retention by the owner would not be unlawful (for example drugs, firearms);

it should in almost every instance be returned to the owner. If eventually required in the trial it could be produced by the owner, or secondary evidence could be led.

We have adopted this policy in South Australia and regular victims of crime, such as retailers, welcome it with open arms.

Conclusion

Meaningful information and attention to victims must be preceded by an understanding of what they actually require. The study of such needs and the monitoring of the effectiveness of authority or community services attempting to meet them, should be ongoing. We have gone some way in this State towards these ends with the *Committee of Inquiry on Victims of Crime*, but unfortunately one of the highlights of that study was the paucity of the information available to or about victims of crime. Symposiums of this calibre are positive steps towards doing something about it.

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90215 -

THE RIGHTS AND OPTIONS AVAILABLE TO SEXUAL ASSAULT VICTIMS

L. Henry

In this paper 'Sexual Assault' refers to any sexual contact by one person with another, where there is lack of consent or where consent is obtained through the use of force or intimidation or where the person is considered too young or incapable of giving informed consent. This includes rape, incest, fondling, masturbation and oral genital contact. Throughout this paper I will refer to the victim in the feminine although the rights and options are the same for male victims.

Social attitudes have been very destructive in the treatment that victims of sexual assault have received from society. Not only do victims suffer the physical and emotional reactions associated with the assault but also from society's reactions which tend to disbelieve or blame the victim.

These social attitudes are often based on myths and misinformation concerning sexual assault. For example in reference to rape one often hears 'she asked for it, she accepted the ride didn't she?' or 'no one man can rape one woman'. Social attitudes based on these myths have a number of influences, for instance:

(a) The reporting of sexual assault. Victims often refuse to report the assault because of the social stigma and trauma they face.

(b) The treatment of victims by judges, juries and attorneys.

(c) Writing of sexual assault laws and legislation.

(d) The processing and investigation of sexual assault complaints; and

(e) The physical and psychological care administered by medical personnel to sexual assault victims.

In the past ten years increasing attention has been focused on the treatment sexual assault victims have been receiving. This attention has resulted in increasing society's awareness about sexual assault and this in turn has influenced medical and legal treatment received by victims, development of services for victims such as sexual assault centres and has bought about some law reform.

As society's awareness continues to increase so do the rights and options available to sexual assault victims.

When one examines the rights of victims one has to first define what are rights. The United Nations states that,'Human rights are based on mankind's increasing demand for a life in which the inherent dignity of each human being will receive respect and protection.[1]

There is no actual list of sexual assault victims rights. The following list includes legal rights as well as moral rights, moral rights being things which are believed to be fair and desirable in the treatment sexual assault victims receive in our society. The victim's rights can be grouped into three broad categories: general, care and treatment,and legal process rights.

General Rights Of Victims Are:

- To be treated with dignity, worth and without discrimination.
- To choose whom to tell about the assault.
- To be protected from further sexual assault.
- To privacy.
- To be fully informed of their rights.
- To be given full information about the options available to them as victims of sexual assault.
- To choose their own course of action in dealing with the assault and have time to make that choice.
- To have support no matter how they choose to deal with the assault.
- To have information translated into their own language.

Care And Treatment Rights Of Victims Are:

- To choose if they have a medical examination.
- To choose who does the medical examination, for example G.P. or hospital.
- To have their medical needs involving injuries, venereal disease, pregnancy and evidence collection taken care of in a competent manner.
- To be informed about what will happen during the medical examination and why.

- To choose what medical treatment they want and be informed of the medical consequences of their choice.
- To full information about their physical condition.
- To have explained that no confidentiality exists between the doctor and patient if the doctor is required to give evidence in court.
- To have a supportive person of their choice present during the medical examination.
- To have all medical records about the assault kept completely confidential, except if subpoenaed for court.
- To choose if they have emotional follow-up.
- For parents and victims to be informed of possible emotional reactions and how to handle these.

Legal Process Rights Of Victims Are:

- To choose if they want the assault reported to the police.
- For their complaint to be investigated.
- To request a female detective for the the police interview.
- To request a supportive person of their choice to be present during the police interview.
- To have evidence collected, prepared and presented in court correctly.
- To information about any charges made by the police as a result of one's complaint.
- To contact the police or the prosecutor to find out what is going on with the case.
- To information about the court proceedings.
- To take civil action against the assailant if necessary.
- To criminal injuries compensation.
- Not to be publicly identified during court proceedings.

Victims may forego some of these rights in order to obtain other rights. For instance a victim may forego privacy in order for her complaint to be investigated.

Children's rights and options are often over-ridden by adults who make decisions for them. The child, where possible, should be involved in making decisions and given information as to why a decision has been made the way it has. For example, this situation may occur in the medical treatment of minors where the child's right to choose who they tell about the assault is over-ridden by the need for parental permission for an examination. Or where an adult feels a child is vulnerable to further sexual assault and my involve the police or a protective agency. There may also be situations where parental rights and children's rights are in direct conflict.

Victim's Options

The victims choice of action following sexual assault will be influenced by her perception of society's views of sexual assault, by her own attitudes about sexual assault and sexual assault victims, by whether or not the victim knows her assailant, by physical injury, and by the age of the victim.

In order to discuss the options available to victims, I have broken the discussion into two sections:

1. Extrafamilial Sexual Assault: This outlines options available to people sexually assaulted by someone outside their family; and

2. Intrafamilial Sexual Assault: Where the victim is assaulted by a family member, be that a nuclear or extended family member.

TABLE 1

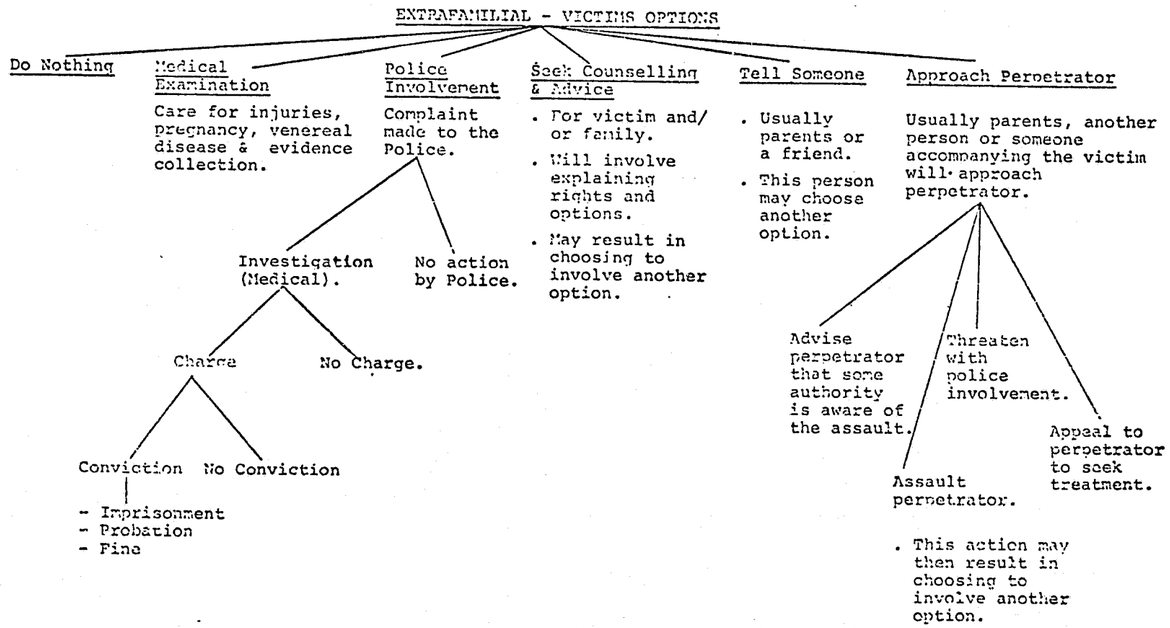
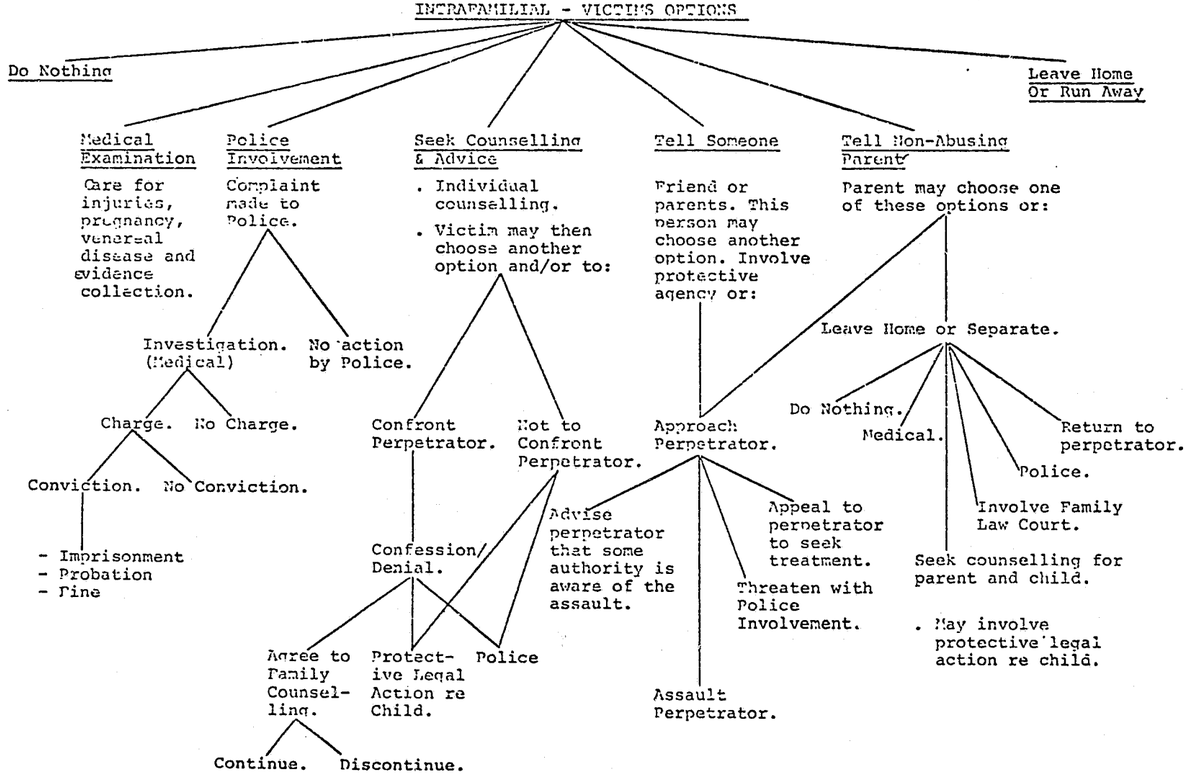

EXTRAFAMILIAL - VICTIMS OPTIONS
Do Nothing
Medical Examination
Care for injuries, pregnancy, venereal disease & evidence collection.
Police Involvement
Complaint made to the Police.
Investigation (Medical).
No action by Police.
Charge
No Charge.
Conviction
No Conviction
- Imprisonment
- Probation
- Fine
Seek Counselling & Advice
. For victim and/ or family.
. Will involve explaining rights and options.
. May result in choosing to involve another option.
Tell Someone
. Usually parents or a friend.
. This person may choose another option.
Approach Perpetrator
Usually parents, another person or someone accompanying the victim will approach perpetrator.
Advise perpetrator that some authority is aware of the assault.
Threaten with police involvement.
Appeal to perpetrator to seek treatment.
Assault perpetrator.
. This action may then result in choosing to involve another option.

TABLE 2

INTRAFAMILIAL - VICTIM'S OPTIONS



Discussion of Options Available to Victims of Sexual Assault

Table 1 shows the options available to extrafamilial sexual assault victims. The victim can choose:

Do Nothing - This means the victim does not tell anyone or seek any form of assistance following the assault. If the victim chooses this option her physical, social and emotional needs are never taken care of, the perpetrator is never caught and may assault another person. The victim also may be vulnerable to further sexual assault.

Medical Examination - It is the victim's choice where she has a medical examination, this may be a hospital, general practitioner or sexual assault centre. In recent years most States have developed sexual assault centres with trained empathetic doctors. The victim should receive care and treatment for any injuries, pregnancy, venereal disease and if she wishes, to have evidence of the sexual assault collected.

Police Involvement - This option involves the victim making a complaint to the police. This complaint cannot be withdrawn. The victim will be required to give a detailed statement no matter what her age. This may involve being questioned by a number of detectives on a number of occasions and identifying the assailant. The victim will be required to have a medical examination for evidence collection. If the assailant is charged the victim may have to give evidence in one or more court appearances, again there is no age limit on this.

This process can take six to nine months and there is no guarantee of the outcome. The assailant may be punished and the victim and society are then considered safe from further sexual assault by him, or he may be set free. This option is often considered to be more emotionally traumatic than the actual sexual assault.

Seek Counselling and Advice - It is the victim's choice from whom she seeks counselling assistance. This may be from a private agency or individual, a sexual assault centre or the Department for Community Welfare. Counselling may involve only the victim or may include the victim's family. In choosing this option the victim will receive support and assistance in the resolution of emotional and psychological reactions. She should also be given information about her rights and options and this may result in her choosing to involve another option, for example, the police or medical examination.

Tell Someone - If the victim chooses to tell someone about the sexual assault she will usually tell her parents or a friend; hopefully she will gain support and comfort. This person may agree with the victim's choice in dealing with the sexual assault or may choose to involve another option, such as the police.

Approach Perpetrator - The victim rarely approaches the perpetrator alone. This is usually done by parents or friends. This person may threaten the perpetrator that some authority such as the Department for Community Welfare is aware of the assault,threaten to involve the police, assault the perpetrator or appeal to the perpetrator to seek treatment. This option gives the victim and/or the victim's family the satisfaction of knowing the perpetrator does not get off totally free. Following this action the person or persons who approached the perpetrator may choose to involve another option.

Table 2 shows the options available to victims of intrafamilial sexual assault.

The options available to victims are similar to those available to victims of extrafamilial sexual assault. Greater family disruption however can be expected,because the perpetrator is a family member and this involves issues such as trust and the amount of economic and emotional interdependency between the perpetrator and other family members. The issue of divided loyalty between family members is also raised: to be loyal and support the victim or to be loyal and support the perpetrator.

With intrafamilial sexual assault there is a greater risk that the victim will continue to be assaulted if she chooses to do nothing about the assault. There may be a greater reluctance to involve the police because of the family disruption and the victim having to give evidence against a family member. Counselling may involve working only with the victim or involve assisting the victim to bring about a confrontation with the perpetrator with the aim of counselling for the whole family. The goal of counselling is that feelings are resolved, family relationships are normalised and the abuse ceases.

If the victim is under 18 years of age, there is a greater chance that a protective agency such as the Department for Community Welfare will be involved with intrafamilial sexual assault. This involvement may be initiated by the counselling service, by another person who knows of the sexual assault, or as a result of the child running away from home. The protective agency has a statutory responsibility to protect the child from further sexual assault. This may involve counselling and/or taking protective legal action, which may result in the child being placed in a foster or group home or returned to the parents under legal custody of the protective agency.

Victims of intrafamilial sexual assault have two other options in dealing with the assault. The first is they might leave home or if too young, run away from home. The second is that if the perpetrator is a parent the victim may choose to tell the non-abusing parent. This means that further choice in dealing with the sexual assault involves this parent. This parent may choose to deal with the sexual assault by leaving home or separating from the perpetrator. This may be all that occurs or the parent may then choose to involve another option.

In America a joint police/counselling option exists for victims of intrafamilial sexual assault. This is being examined in Western Australia and will hopefully be an option which will be developed in the future. This option involves integration of the justice system and treatment. With this approach the perpetrator is punished for his actions, the whole family receives treatment with people assuming responsibility for their actions, the abuse ceases and the family more often remains intact.

How to Provide Victims With Information

The giving of information about the rights and options available to sexual assault victims occurs in two ways:

The first involves discussion with the victim and possibly the victim's family. It is important to remember that the victim is in 'crisis', often tired and in shock. She will often be overwhelmed with the process that follows once she seeks some assistance as a number of agencies and systems may come into operation. It is important then that:

1. Information be given to the victim slowly and be repeated. Victims may need to have things explained three or four times.

2. Discussion must go at the victim's pace.

3. Information must be discussed using language the victim understands.

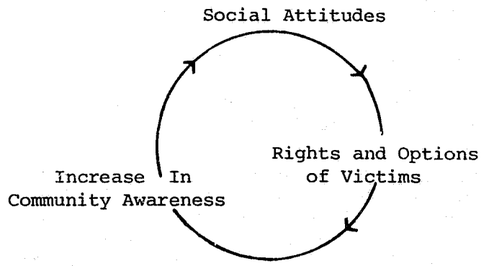
4. Information may need to be written down as victims often forget information given to them. For example the Sexual Assault Centre in Perth gives each victim an information sheet before they leave the Centre. This explains what has happened during the medical examination, and medical, emotional and legal follow up services available.

The second way information can be provided is through public education. This may involve lectures, printed literature and use of the media. Public education is the only way to dispel myths and change destructive attitudes about sexual assault and this is essential for an effective community response to victims. It can set the stage for law reform. It can sensitise potential jury members to the true issues concerning sexual assault and thus create a more favourable environment for sexual assault prosecutions. It can sensitise families and friends to the needs of sexual assault victims, provide information on prevention and improve the various systems' responses to sexual assault by providing

information on victims' rights and options following sexual assault. This increased community awareness influences how the victim is treated and how potential victims perceive they will be treated and the decisions they make following an assault.

In Conclusion

Social attitudes about sexual assault have influenced the treatment victims have received and the rights and options available to them. With increasing attention on sexual assault, society's awareness has increased which has in turn improved the treatment victims have received and increased the rights and options available to them. This can be seen as a spiraling effect. Community awareness increases, social attitudes change and the victim's rights and options increase and so on.



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Session IV

CRIMINOLOGICAL RESEARCH AND THE CRIME VICTIM

Crime victims became a focus of Australian criminological inquiry in the early 1970s. Following upon smaller surveys conducted by Paul Wilson in Queensland and Tony Vinson in New South Wales, the Australian Bureau of Statistics surveyed some 18,000 citizens in 1975 to determine their experience as victims of crime. University and government-based scholars began to explore the background circumstances of reported offences, as recorded in police files. Together, these two research strategies have begun to reveal a great deal about the social circumstances which relate to a person's becoming a crime victim. The session chairman, Stanley Johnston of Melbourne University, sounded the call for a greater understating of 'Victimity' and its relative incidence throughout Australian society.

David Biles, in summarising the results of his research based on the 1975 Australian Bureau of Statistics survey, described what one might refer to as 'the paradox of misplaced insecurity.' Those who are most fearful of crime are least at risk, while those who express the least fear are in fact most often victimised.

The typical crime victim, according to Biles, is a young, unemployed, single male, who lives in a large city and changes his place of abode more often than average. As such, victims bear a striking resemblance to their offenders. In subsequent discussion, it was suggested that the methodology of future victim surveys might be refined to permit a more accurate assessment of the incidence of sexual assault and domestic violence.

Sandra Egger's paper addresses a subset of victim-offender relationships which diverge from Biles' generalisations. Women who kill tend to kill men - the men with whom they had been living. Moreover, the majority of these homicides are what Wolfgang would term victim-precipitated. The victims themselves appear to have contributed to their own misfortune through prolonged violent abuse of their spouses. Many of the women had suffered for many years in the violent relationship, contending that welfare services and law enforcement agencies offered inadequate remedies.

Helen Gamble's paper addresses a different perspective - State intervention to protect children from their parents. It is the strongly held belief of child psychiatrists that young children require continuity of care, and that the removal of a child from the custody of abusive parents, much less the invocation of the criminal sanction against those parents, may be less in the child's interests than some milder alternative. In light of this consideration, Gamble reviews legislation

pending in New South Wales, and contends that it would confer overly broad powers of intrusion upon the State.

Gamble then makes the distinction between children under 14 years of age and those 14 years and over, contending that the older children should have a greater say in determining their living arrangements. Gamble's argument is not unlike those one raised in Session I on behalf of adult victims in the criminal process. Rather than being patronised and kept in the dark, victims should be invited to make an informed contribution to those decisions which affect their livelihood.

WHO FACES THE GREATEST RISK OF BECOMING A CRIME VICTIM?

D. Biles

Commonsense and general experience tells us that we are not all equally likely to suffer trauma and misfortune. We all know that some people are more likely than others to suffer heart attacks, be involved in traffic accidents or even become the victims of crime. But commonsense and general experience are sometimes unreliable and in the area of crime victimisation we can now call upon scientific evidence to give us precise probabilities, and this evidence sometimes contains surprises. For example, we now know that people who are most fearful of crime are generally those people who are least likely to become victims.

The evidence on who faces the greatest risk of becoming a crime victim that I will summarise for you is taken from a series of ten papers on this subject prepared by my colleague,John Braithwaite, and me at the Australian Institute of Criminology. All of the basic information we used came from a very large national survey conducted by the Australian Bureau of Statistics in 1975. A total of over 18,500 people were interviewed in all parts of Australia, except the Northern Territory, in order to obtain a more accurate picture of the nature and extent of crime in Australia than is available from other sources such as police records. This victimisation survey showed in fact that only approximately 40 per cent of all of the crimes that are committed are reported to the police by victims or otherwise become known to the police. Thus it seems that about 60 per cent of all crime in Australia is included in the 'dark figure'. No-one officially knows about it and therefore it cannot be investigated and there is no possibility of prosecution or punishment of the offenders in these cases.

Why there should be so much unreported crime was the subject of one of our papers in which we analysed the reasons for non-reporting given by the victims. These reasons are extremely interesting and revealing, but without going into all of the details it is relevant to note that the reasons for non-reporting are frequently quite different for men and women. Male victims of assault, for example, are more likely to say that they did not report the matter to the police because it was too trivial or that they would handle the situation themselves. Female assault victims, on the other hand, are most likely to say that they did not report the incident because they thought it was a private and not a criminal matter or that they were too confused or upset to notify the police. Women are also much more likely than men to say that they did not wish to harm or punish the offender.

These differences are all the more interesting when one adds that for virtually every category of crime men are many times more likely to be victims than women. Apart from rape and other specifically heterosexual offences men are more likely than women to be the victims of all types of theft, breaking and entering, fraud and forgery and robbery with violence. As far as assault is concerned men are more than four times more likely to become victims than women. Bearing in mind these facts it is perhaps surprising that it is women rather than men who express considerably more fear of becoming the victims of assault.

Another factor which clearly distinguishes between those who are more or less likely to become victims of crime is the matter of age. The survey data clearly show that young persons under the age of 19 years and older people of 60 years and over are very significantly less likely to become the victims of all types of crime than are the age groups in between. Notwithstanding this, it is people of 60 years and over who characteristically express the greatest fear of becoming the victims of crime. Within the broad age range of 20 years to 60 years the risk patterns seem to vary according to different types of crime. We are more likely to be the victims of breaking and entering in the age range 30 to 39 years, but fraud and forgery is more likely to occur in the age range 25 to 29. As far as assault is concerned the high risk age is between 20 and 24 years and this is the age group which is most likely to be victimised by motor vehicle theft and robbery with violence.

When one looks at the social class or occupational status of crime victims one finds that it is not necessarily the middle-class and wealthy who are disproportionately victimised but it is the low income people and particularly those who are unemployed who are very highly likely to become victims. This finding certainly caused us some surprise but we have found similar results from American studies and the explanation probably is that poor and unemployed people are more likely to spend more of their lives in public places such as streets and parks rather than in the private security of their own homes or work places.

Another finding which also caused us some surprise was the relationship between marital status and the probability of becoming a victim. We found that for virtually every category of crime persons who were separated or divorced are very much more likely to be victimised than are those who have never been married, are now married or are widowed. For example, persons separated or divorced were from three to four times more likely to be the victims of breaking and entering than any other group and they are more than twice as likely to be the victims of theft than any other group. Neither I nor my colleagues were able to find any satisfactory explanation for this remarkable finding.

A further factor which clearly differentiates between crime victims and others is that of residential mobility. The evidence is quite clear that people who move their place of residence frequently are

very much more likely to be crime victims than those who are more settled in their lifestyles. Perhaps this is nothing more than a reflection of age and occupational status, but it may well be associated with the fact that long-term residents in suburban neighbourhoods are likely to gain a sense of security from the very fact that they are known to their neighbours and local shopkeepers. It is believed that informal mutually protective arrangements develop in those neighbourhoods where there is little turnover in the population.

The statistical evidence that we analysed as thoroughly as we could showed little or no relationship between the probability of becoming a crime victim and the country of birth of the individual nor the level of education which he or she had attained. There was, however, a very slight tendency for people who classify themselves as having no religion to be more likely to be crime victims than others. It has been suggested to us that perhaps this is some degree of scientific evidence supporting the power of prayer!

Another factor that differentiates between those who are and are not likely to become victims is area of residence. Victimisation rates for all of the major Australian cities are considerably higher than the equivalent rates for country areas, and there are also some differences between the cities themselves. Perhaps unexpected, Perth was found to have slightly higher rates than the other metropolitan areas for most crime categories. You will no doubt be interested to know that Adelaide was shown to have lower than average rates for robbery, motor vehicle theft and assault, but had rates above the national average for rape and breaking and entering.

To summarise thus far, it would seem that the typical crime victim, or the person who is more likely than average to become a crime victim, is male, relatively young, probably in his 20s, probably of very low income or even unemployed, probably separated or divorced and highly likely to have changed his place of residence two or three times within the past five years. He is also less likely than average to be a member of a church. He is also more likely to live in a major city rather than in a rural area. This summary description of a typical crime victim is remarkably similar to the summary description that we might derive from other sources of the typical criminal. From all we have learned in criminology it is clear that the offenders are generally young males who are relatively poor or unemployed, often separated or divorced, change their place of residence frequently, not often practising churchgoers and are likely to be city dwellers. It seems therefore that those individuals in our society who seek a life of excitement and variety are the very individuals who are more likely to be both criminals and the victims of crime. To the extent that our own lifestyles are different, we are less likely to become either victims or the subject of arrest and prosecution.

As I mentioned earlier, there is little or no relationship between the objective facts indicating the probability of one becoming a crime victim and the level of fear which individuals express with regard to crime. Typically, it is the elderly and the female segment of our

community who are especially fearful of crime and yet their real risks of becoming victims are extremely low. To some extent this is understandable as women and old people are obviously less able to defend themselves against physical attack than are men, especially young men, but I think that it is important that we keep these facts in perspective and do not let our fear of crime unrealistically and unnecessarily dominate our everyday lives. A reasonable degree of caution is of course necessary for all of us to reduce the risk of crime victimisation but extreme fear may well be worse than the danger we are trying to avoid.

The situation in relation to fear of crime and the real risks is exactly parallel to the evidence in relation to old people and the driving of cars. In the United States recently I was talking to a road traffic expert and he explained to me that in that country people over 60 became very fearful about driving on freeways and tended to restrict their driving to secondary roads. He pointed out to me that the risk of traffic accidents is from 10 to 20 times greater on secondary roads than it is on the freeways and therefore rationality would suggest that if elderly people were going to restrict their use of motor vehicles they should avoid the secondary roads and always drive on the freeways.

Another observation that I would like to make from my study leave in the United States relates to the perceived level of crime. Numerous conversations with people in all walks of life made it clear to me that the vast majority of Americans believe that crime is increasing at an alarming rate, and furthermore they seem to also believe that this is due to the leniency of the judges. In both of these beliefs they are wrong. In the United States national victimisation surveys have been conducted every year since 1975 and the results of these surveys show that over the past six years there has been a slight but measurable tendency for crime to decrease rather than increase. The percentage of all households touched by crime has fallen from 32 to 30 over this period.

In Australia we do not have such accurate information as we have only had one national victimisation survey, but the less reliable statistics of offences reported or becoming known to the police suggest that crime in Australia certainly increased markedly in the 1960s but that since about 1972 crime rates seem to have levelled off on a plateau. Certainly it cannot be claimed that crime is still increasing at a rapid rate in Australia.

As far as the relationship between the level of crime and severity of punishment is concerned, research that I have been conducting recently clearly indicates that in those States or countries where penalties are harsh and imprisonment is widely used there is no corresponding reduction in the level of crime. In fact, where imprisonment rates are high crime rates are generally also high and vice versa, so there seems to be little to be gained by sentencing more and more offenders to prison.

It may well be that many people in our community who are particularly fearful of becoming crime victims should take heed of the actual risks that they are facing and, without being reckless, endeavour to control that fear by seeing the risks in perspective. I would certainly hope that the work of organisations such as the Victims of Crime Service is helping people to achieve that goal.

VICTIMS OF WOMEN HOMICIDE OFFENDERS IN NEW SOUTH WALES

S.J. Egger

The statement that murder is essentially a family affair has been made many times and documented in many studies, both in Australia and overseas. The classic studies of Wolfgang in Philadelphia between 1948 and 1953 found that approximately a quarter of homicide victims were killed by a family member. In New South Wales the proportion is even higher. At no time since 1880 has the percentage of victims killed by a family member been less that 46 per cent (McKenzie, 1961; Rodd, 1979; Allen, 1980). There have been two detailed studies of homicide victims in New South Wales. Both McKenzie and Rodd examined New South Wales police homicide files to establish the relationship between the victim and the offender. All completed cases of murder, voluntary manslaughter and infanticide were included in the studies. Newborn deaths were eliminated from consideration. McKenzie studied the period between 1935 and 1957 and found that 50 per cent of all homicide victims were killed by kin. In agreement, Rodd found that 46 per cent of victims were killed by kin in the period from 1958 to 1967.

Women in general commit far fewer murders than men. In the sample studied by Rodd, only 15 per cent of the homicides were committed by women. The choice of victim is also quite different for men and women. McKenzie found that 96 per cent of the victims of women were members of the same family. Rodd found that 85 per cent of the victims of women were members of the same family. See Table 1.

This may be constrasted with the same percentage for men - only 39 percent. In Rodd's study all but two of the juveniles killed by women were the woman's children. In contrast, no kin ties existed with 17 of the juvenile victims of male offenders. To summarise, the victims of the women were their husbands, followed by their children and occasionally other family members. The victims of the men were their friends, neighbours, workmates, sexual partners and sexual rivals.

However the most common single category of victims for both men and women in Rodd's study was that of spouse. Wife killing were the most numerous although they represented a smaller percentage of male killings than of female killings (23 per cent of the total were wife killings; 40 per cent of the total were husband killings). Two overseas studies confirmed these findings, one in Hungary (Rasko 1976) and one in the U.S.A. (Tolman 1971). Both studies found that approximately 40 per cent of the victims of women homicide offenders were husbands (both legal and de facto) and 20 per cent were their children.

TABLE 1

RELATIONSHIP BETWEEN KILLER AND VICTIM

Victim's Relation to Killer	Sex of Killer					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Legal Spouse	91		29			
De Facto Spouse	43		12			
Total Spouse	134	22.9	41	39.4	175	25.4
Adult Kin	54	9.2	12	11.5	66	9.6
Juvenile Kin	41	7.0	35	33.7	76	11.0
Total Family	229	39.1	89	84.6	316	46.0
Sexual Rival	12	21.0	0	-	12	1.7
Other Sexual Relationship	29	5.0	4	3.8	33	4.8
Residential Relationship	56	9.6	4	3.8	60	8.7
Occupational Relationship	33	5.7	0	-	33	4.8
Acquaintance/Friend	115	19.7	6	5.8	121	17.6
Customer	13	2.2	1	1.0	14	2.0
None	97	16.6	1	1.0	98	14.2
Total	584	100	104	100	688	100

In New South Wales there is suggestive evidence that there has been a trend over time, away from killing their children, towards killing their husbands. A woman was most likely to kill her children in the period between 1880 and 1957. (Allen 1980, McKenzie 1961). In the period between 1958 and 1967 women were more likely to kill their husbands (Rodd 1979). Bacon and Lansdowne (1980) argue that such shifts in homicide patterns are indicative of major social changes in the family in this period. Some of these changes may include the increasing availability of birth control and abortion, changes in the ideologies and practice of marriage and motherhood, and the increasing privatisation and isolation of family life.

Further confirmation of this trend should be provided by a study in progress at the Bureau of Crime Statistics and Research. Data is being collected from police homicide files from 1968 until the present day. This study will complete a profile of the characteristics of homicide extending over a century in New South Wales. However the analysis of this data is not yet complete and much of the evidence examined in the present paper is derived from an M.A. thesis by Tess Rodd (Rodd 1979) and unpublished research by Wendy Bacon and Robyn Lansdowne. I wish to thank the latter authors for permission to use some of the data from their careful and pioneering study. No responsibility is implied for my conclusions.

Victim Participation

The first major question of interest concerns the role of the victim in the homicide. The most striking feature of spouse murders committed by women is the extent of victim precipitation. Wolfgang defined victim precipitation as being where the:

> 'role of the victim is characterised by his having been the first in the homicide drama to use physical force directed against the subsequent slayer'.

Victim precipitation was found to be much greater by Wolfgang in homicides committed by women than by men. In agreement, Rodd (1979) found that the victims of female killings were more often the initiator of the aggression. Indeed, 7 of the 41 spouse killings by women were in self defence.

TABLE 2

THE INITIATOR OF AGGRESSION

Aggressor	Male Homicides		Female Homicides	
	No.	%	No.	%
Killer	121	90.3	29	70.7
Victim	12	9.0	11	26.8
Suicide Pact	1	0.7	1	2.5
Total	134	100	41	100

Source: Rodd (1979)

Although the killer in both cases was more often the initiator of the aggression than the victim for both men and women, victims of female killings initiated the aggression more often than victims of male killings (26.8 per cent and 9.0 per cent respectively). However, Wolfgang's concept of victim precipitation is restricted to the immediate interaction leading up to the homicide. This may lead to a serious underestimate of the way in which the victim may have contributed towards the homicide over a much longer period of time. A long history of brutal domestic violence may be dismissed as not being a precipitating or provoking factor if the woman initiated the immediate interaction leading up to the homicide. A comparison of the previous table showing which party initiated the aggression leading up to the homicide, with the following table which illustrates the history of assault within the relationship, indicates a large discrepancy.

TABLE 3

HISTORY OF ASSAULT IN THE RELATIONSHIP AS A FUNCTION

OF MARITAL STATUS AND SEX OF KILLER

	Male Killers						Female Killers					
	Lawful		De Facto		Total		Lawful		De Facto		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Assault	31	34.1	19	44.2	50	37.3	15	51.7	4	33.3	19	46.3
No Assault	60	65.9	24	55.8	84	62.7	14	48.3	8	66.7	22	53.7
Total	91	100	43	100	134	100	29	100	12	100	41	100

Source: Rodd (1979)

In Rodd's study, evidence on the history of assault came from witnesses' reports, statements of offenders and police records of previous assault charges and this in itself may still be an underestimate of the extent of domestic violence. Table 3 indicates that 37 per cent of the men who killed their wives had previously assaulted them. Previous assault was greater in de facto unions than in lawful marriages. Forty-six per cent of the victims of husband killings had previously assaulted their wives. Thus, although only 27 per cent of the male victims actually precipitated the homicide according to Wolfgang's classification (Table 2), 46 per cent had previously assaulted them (Table 3). The question of how many of the women killed their husbands in order to

protect themselves against future assault or murder, or to escape from an impossible, violent situation, cannot be answered using Wolfgang's analysis of victim precipitation. Indeed the law itself, in particular the defences of self-defence and provocation, is incapable of taking into account the violence experienced by many of these women and its relation to the motive for the killing.

The recent study conducted by Bacon and Landsdowne used a more detailed and analytic approach to this problem. Their aim was to examine a group of cases in sufficient detail to reconstruct the context leading up to the offence, placing particular emphasis on the meaning of the act to the woman herself. Information was obtained from detailed interviews with the women and was supplemented with information from the trial transcripts and the defence solicitor's files. The 36 women in the study were charged with homicide offences (defined as charges of murder, manslaughter, attempted conspiracy to murder and infanticide). The sample was derived by approaching all women convicted of homicide offences, imprisoned or detained in mental hospitals, between July 1979 and March 1980. Twenty five of the 27 women agreed to participate. A further four women who had been released after serving sentences, and another seven tried during the period, also participated.

Of the 36 women, 24 were charged with killing or attempting to kill members of their own family. Of the 24 women, 17 were charged with killing their husbands or boyfriends. Some of the findings from 16 of these cases will be discussed here.

In 12 of the 16 cases the motive as described by the woman herself, was not gain or jealousy or another lover, but the need to protect herself against physical harm either from an immediate attack or from a life of suffering from which there appeared no other escape. In 14 of the 16 cases the woman had been physically abused by the victim.

In most of these cases the woman had been subjected to repeated violence, resulting in severe injuries for the entire duration of the relationship. In three cases the relationship had been violent for over 20 years and in two cases there was sexual abuse as well.

However, retribution was not the motive for the killing in most cases. In 13 of the 16 cases the woman was the victim of yet another assault or some other provocation in the 24 hours preceding the killing, or was in immediate danger of such an attack. In five of these cases it was the immediate or threatened attack which was so serious, that the woman believed her life was in immediate danger unless she killed first.

In the remaining cases it was not the assault that drove the woman to homicide but the desperation created by the knowledge that the pattern of violence was going to continue indefinitely. These women had all sought other avenues such as leaving, the police, the law, medical help etc. without success. The homicide was committed as the only remaining avenue of escape. Some of these features are clearly illustrated in the following case.

Mrs A. was brutally beaten many times by her husband. The violence had begun soon after they were married and continued for 20 years. Most attacks occurred after Mr A. had been drinking at his club.

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

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

Mrs A. had been assaulted once again in the 24 hours preceding the homicide. It was by no means the most serious assault but finally confirmed a pattern which had extended over 20 years and from which there appeared no escape.

Bacon and Lansdowne's study quite clearly demonstrates that victim precipitation is a major factor in homicides committed by women. Both Wolfgang's concept of victim precipitation and the criminal law in New South Wales are much more restricted to the immediate interaction leading up to the homicide. They are thus incapable of taking into account the true extent of the way in which the victim may have contributed towards the homicide over a much longer period of time.

The Relationship Between Domestic Violence and Spouse Murder

The second major question of interest concerns the relationship between spouse murder and other forms of domestic violence. To what extent is spouse homicide a part of the continuum of domestic violence, differing only in degree? Or as Don Kates argued in a paper presented in Perth earlier this year, is it true that homicide results not from the actions of 'normal stable citizens, but from the irresponsible actions of a relatively tiny number of sociopathic, highly unstable or otherwise aberrant individuals'. Furthermore, Kates asserted that homicide offenders were atypical in that most had several violent felonies on

their criminal records. The analysis of murders committed by women presented by Rodd (1979) and Bacon and Lansdowne (1980) fails to support Kates' assertion. Previous criminal records were only found in nine of the total number of 93 women killers studied by Rodd. In Bacon and Lansdowne's study, none of the 16 women had ever been convicted previously of an offence against the person. Only three had any record at all (one for receiving stolen goods, one for malicious injury to property and one for summary offences such as public drunkenness).

It is clear that these women cannot be described as sociopathic, highly unstable, or otherwise aberrant individuals, but rather as victims of domestic violence not very different from that experienced by many women in the Australian community. Rodd (1979) argued that 'Spouse murders with a history of assault could be said to be the "tip of the iceberg" of domestic violence. It is often simply a matter of chance whether or not an assault becomes a homicide'. It is also often a matter of chance as to who becomes the victim of the domestic homicide and who becomes the offender.

In a recent study of domestic violence conducted by the Bureau of Crime Statistics and Research, many women described experiences similar to those reported earlier in this paper. This study was commissioned by the Premier's Task Force on Domestic Violence and examined the experiences of 451 women who responded to a questionnaire on domestic violence published in a Sunday newspaper in New South Wales. The questionnaire covered three areas - a brief description of the violence, an investigation into the available services and their adequacy, and a small amount of demographic information. The majority of women were no longer in the violent relationship (71 per cent) and approximately half were in the workforce. The occupational status of both the men and the women ranged from the professional through to the unskilled, with the majority in semi-skilled occupations.

The Violence

The most often reported frequencies of violence were weekly or several times a year and most often reported durations of violent relationships were between one and five years or eleven years or more. (See Table 4).

The majority of women had waited years before seeking help. One of the most often asked questions concerning domestic violence is why such relationships continue to last for relatively long periods? The letters accompanying the questionnaire provided some illustrations of the powerful social, economic and psychological influences which serve to maintain a woman in a violent relationship. Both physical and psychological solutions were reasons mentioned by many women as the reason for being unable to escape. Concern for the husband and/or the children was a major consideration for some women. Fear of physical reprisals against themselves or the children was another frequently mentioned factor. (See Table 5).

TABLE 4

FREQUENCY OF ATTACKS

	In Relationship No.	%	Out of Relationship No.	%	Total No.	%
Weekly	35	28.5	124	38.9	159	35.6
Monthly	27	22.0	71	22.3	98	21.9
Several times a year	51	41.5	105	32.9	161	36.0
Once a year or less	10	8.1	19	6.0	29	6.5
Total	123	100	319	100	447*	100
* Four cases were unknown						

TABLE 5

DURATION OF ATTACKS

	No.	%
Under three months	41	9.2
Three months - Eleven months	53	11.8
One year - Five years	159	35.5
Six years - Ten years	72	16.1
Eleven years +	123	27.5
Total	448*	100
* Three cases were unknown		

Source: New South Wales Bureau of Crime Statistics and Research Survey of Domestic Violence.

Extracts from letters :

'The pressing question is.... Why didn't I leave in the first or second instance?

Primarily because I was afraid. My husband threatened, bullied and finally vowed to kill my children, my parents and my brother. I was called in to speak to his psychiatrist who confidentially and probably against all ethics, warned me to take these threats seriously; to make plans to leave and to have protection when I did.'

'I lived with this man for nine years and was beaten on many occasions. When I decided to seek help he told me that if I did he would beat me to death; knowing he was capable of this I was too frightened to do anything about it. There must be many women in this situation and knowing there is now a refuge centre is a great help.'

Economic and emotional insecurity was also described in many letters. For many women, the choice was between continuing in a violent relationship, or dire poverty for themselves and their children.

'Almost 20 years ago I suffered considerable stress through a difficult marriage and couldn't leave my husband because of nowhere to go, so I had to bear terrible sexual abuse and couldn't leave home because of two boys to care for aged nine and 11 years.

I stayed in my awful situation because I had in those days no other choice.

My family could not help me, due to their own difficult circumstances. (We are only average working class people).

My father had passed away and my mother was struggling on the pension and so could only help me morally but not financially.

I had no money put aside to help me get out of my situation.'

TABLE 6

TYPE OF VIOLENCE

	Frequently		Occasionally		Never		Not Stated		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Violence to Head	201	44.5	175	38.7	32	9.3	43	9.5	451	100
Violence to Body	223	51.7	145	32.1	17	3.8	56	12.4	451	100
Weapon or Other Object	52	11.5	99	22.1	123	27.2	177	39.2	451	100
Verbal/Mental Abuse	364	80.8	35	7.7	24	5.3	28	6.2	451	100
Bruising/Bleeding	192	42.7	161	35.6	29	6.4	69	15.3	451	100
Sexual Assault	102	22.8	94	20.8	104	23.0	151	33.4	451	100

The most common type of violence was mental/verbal abuse, followed by violence to the body, violence to the head, bruising or bleeding, sexual assault and assult with a weapon. Approximately one-third of the sample had been assaulted with a weapon at least once. A large number of women had been subject to sexual assault (43.6 per cent). In addition, several women specifically mentioned the sexual abuse of their children.

> 'My husband repeatedly raped and sexually assaulted my 12 year old daughter back in 1976 through to 1978. She ended up trying to commit suicide. Every 'Help' organisation (including the police) said nothing could be done about this - we would just have to live with it. No-one wanted to know us or to help us! One social worker said, because it was not a drug problem, they were not interested (drugs were fashionable at the time). So where does a mother go to get help for her daughter?'

> 'This man not only attacked me brutally over a period of 19 years, but also would frequently and violently and mentally abuse our daughter for a period of 13 years. He raped her when she was 10 years old and sexually abused her until she was 15 years old.'

Medical attention was required at some time by the majority of the women. Although most attacks occurred whilst the couples were living together, a significant number of women (30.1 per cent) had been attacked at times when they were not living together. It is clear that protection from physical violence even after the termination of the relationship cannot be guaranteed. The long-term effects of the violence were also described in many of the letters. Although the physical trauma is widely condemned, it is often the long-term anxiety and fear which is the most destructive for the women. Many women described the fear of not knowing when an attack would occur. Months may have passed since the last beating and yet the violence could once again erupt at any moment. Fear and anxiety were described as lasting for many years after the termination of the relationship.

Although no information was requested concerning the relationship between violence and alcohol consumption, a relatively large number of women spontaneously raised the role of alcohol in the attacks (20.4 per cent). Intoxication has often been regarded as a cause of violence but there is little empirical evidence in favour of this proposition. It is more likely that alcohol is a trigger of violence rather than a cause - it may facilitate the expression of violence but does not cause it.

In agreement with Rodd's study of homicide most attacks occurred at night when a couple are most likely to be alone and isolated in the house and the only source of help is the police.

The Services

TABLE 7

THE FIRST PLACE CONTACTED FOR HELP

	No.	%
Police	112	27.0
Doctor	93	22.4
Social Worker/Counsellor	32	7.7
Chamber Magistrate	27	6.5
Minister	23	5.5
Women's Refuge	23	5.5
Private Solicitor	18	4.3
Hospital	14	3.4
Lifeline	10	2.4
Legal Aid	8	1.9
Other	42	10.1
No-one	13	3.1
Total	415*	100

* 36 cases were unknown.

The first place contacted for help in the majority of cases was the police (27.0 per cent) followed by the doctor (22.4 per cent). The remaining agencies were all contacted first in only a minority of cases.

The overall usage patterns of the agencies also revealed a high level of involvement of the police and the medical profession. Sixty-three per cent of the women had contacted the doctor at least once and 61.7 per cent had contacted the police. The remaining source of assistance were in order of frequence of use, chamber magistrate, the private solicitor, the social worker/counsellor, legal aid, the hospital, the minister, the women's refuge and lifeline.

TABLE 8

AGENCY USE - AT ANY TIME HELP WAS SOUGHT FROM THESE AGENCIES

	Yes		No		Total	
	No.	%	No.	%	No.	%
Doctor	278	63.0	163	37.0	441	100
Police	272	61.7	169	38.3	441	100
Chamber Magistrate	206	46.7	235	53.3	441	100
Private Solicitor	200	45.5	240	54.5	440	100
Social Worker/ Counsellor	170	38.5	271	61.5	441	100
Legal Aid	140	31.8	301	68.3	441	100
Hospital	111	21.2	330	74.8	441	100
Minister	96	21.8	345	78.2	441	100
Women's Refuge	94	21.6	341	78.4	435	100
Lifeline	85	19.3	355	80.7	440	100

Evaluation of the Services

Rating of the usefulness of the services by the women who had used each service revealed that women's refuges provided the greatest amount of consumer satisfaction. Seventy-three per cent of the women who had contacted refuges rated them as useful. Many of the women commented that the refuges were the only places providing the essential emergency accommodation as well as strong psychological support. The attitude of the refuge workers was also praised as assisting the women to regain their self-esteem.

The next most useful service was the social worker/counsellor (48.1 per cent).

TABLE 9

EVALUATION OF THE ADEQUACY OF THE AGENCIES BY THOSE WOMEN WHO HAD USED EACH SERVICE - THESE FREQUENCIES AND PERCENTAGES REFER ONLY TO THE WOMEN WHO HAD USED EACH OF THE AGENCIES

Agency	Useful		Not Useful		Nothing tried was Useful		Total	
	No.	%	No.	%	No.	%	No.	%
Police	71	27.0	138	52.5	54	20.6	263	100
Doctor	99	37.1	125	46.8	43	16.1	267	100
Chamber Magistrate	59	29.8	109	55.1	30	15.2	198	100
Private Solicitor	81	42.0	82	42.5	30	15.5	193	100
Social Worker/ Counsellor	77	48.1	64	40.0	19	11.9	160	100
Legal Aid	36	27.1	85	63.9	12	9.0	133	100
Hospital	28	26.9	64	61.5	12	11.5	104	100
Minister	25	26.6	60	63.8	9	9.6	94	100
Women's Refuge	67	71.3	21	22.3	6	6.4	94	100
Lifeline	23	28.4	42	51.9	16	19.8	81	100

Twenty-seven per cent of the women who had called the police rated their assistance as useful. The criticism made of the police assistance was often directed towards their reluctance to intervene - failure to arrest, claims of powerlessness, failure to treat the matter seriously, blaming the victim, sympathising with the attacker. The need for increased education of the police was mentioned by several women. Other women recommended the setting up of specialist domestic crisis teams either within the police force or accompanying them. Another problem raised by some women regarding police intervention was the fear that it could lead to further violence.

It is apparent that the services offered by the women's refuge to the victims of domestic violence are by far the most successful.

The comprehensive nature of the help was stressed by many - physical care and protection, economic and emotional support and assistance in the development of long term plans. Furthermore, the two most used agencies of assistance fared very badly in terms of consumer satisfaction. Both the medical profession and the police were generally characterised as being powerless and reluctant to intervene. In both cases greater awareness of the problem was called for as well as an increase in the back-up services available.

The Legal Remedies

Family law injunctions were used by 34.6 per cent of the sample, and assault charges by 32.8 per cent of the sample. Family law injunctions improved the situation in only a minority of cases. Although no specific reasons were offered by most women for their dissatisfaction, the problems of enforcement and the time delays involved were raised by a few women. The assault charges were withdrawn by the victim in 50 per cent of the cases. Many of the women mentioned the fear of reprisal and others raised the potential financial hardship caused by the possible loss of financial support. The long delays in the courts were also criticised, although many recommended that court action could be fruitful and should be backed up with other services (for example counselling, medical and social work services at the court).

To summarise, the legal remedies for domestic violence were also regarded as being primarily unsatisfactory by the majority of women.

A number of conclusions may be drawn from this analysis of domestic violence. Firstly it is clear that the domestic violence experienced by the majority of women who kill their husbands is not unusual and is in fact part of a widespread social problem from which there are few avenues of escape for many women.

Secondly the criminal justice system today is generally regarded as inadequate in its handling of domestic violence. For some it provides no real recognition of the problem and does not respond

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with the appropriate protection for the victims of domestic violence. In addition, the law is also inadequate for those women whose final desperate response is to kill their attacker.

Finally, the existing services available to the battered women fail to offer any real assistance in most cases. Some of the suggestions made by the women in the Bureau study included more women's refuges, increased awareness and training for the medical profession and the police, crisis intervention services and more publicity generally as to the problem of the battered woman and the avenues of help.

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CHILDREN AS VICTIMS OF CRIME

H. Gamble

The Topic Defined

The title of this paper raises several questions of definition which must be disposed of before the substance can be examined. First there is the question of the definition of a child. Because it is my belief that anyone over the age of 14 should no longer be regarded as a person who is unable to make decisions for himself, I intend to concentrate discussion of the topic on those younger than 14. A brief explanation of my reasons for holding this view will be given before departing from the topic. Secondly, I intend to exclude from the discussion those cases in which children are the objects of crimes committed by someone other than the person who has the care of the child. I exclude these cases because I believe that they should be dealt with in the same way as cases in which all members of the community can become victims of crime, adults and children. The approach to these cases probably should be uniform and determined by reference to policy grounds generally appropriate to the enforcement of the criminal law. They are therefore outside the scope of this paper. Finally, there is the question of what we should regard as crime within the family. Is it every breach of the criminal law, committed within the closed circle of the family, which should attract public attention or is it only those crimes which cause harm, or serious harm to the child, which should cause concern? It is this question, particularly as it relates to very young children, which is central to the theme, Children as Victims of Crime. But to ask this question is to enter on the wider debate of when should the State intrude into the family circle to protect the child, so the sub-title of this paper must become State Intervention to Protect Children from their Parents.

This question has been the subject of wide debate throughout the world in recent years, but the people whose views have perhaps generated most interest in the past few years are the authors of the two books, Beyond the Best Interests of the Child and Before the Best Interests of the Child, Goldstein, Freud and Solnit.[1] Because of the significance of the contribution made by these books a large part of this paper must be devoted to a consideration of them. The other person who has perhaps made as significant a contribution to the debate is Michael Wald, Professor of Law at Stanford University. His views will also be assessed.[2] Before turning to these works I will set out my reasons for choosing 14 as the age at which a person should be regarded as free to exercise his independence.

Definition of Child

Since Greek and Roman times, and from the earliest time at which written records were kept in English law, the ages of childhood have been divided into three: 0-7 years (infancy), 7-14 years (*doli capax* or inability to distinguish right from wrong) and 14-21 (the age of discretion).[3] These age divisions, often regarded today as relating solely to the criminal responsibility of children, had much greater significance for lawyers of the past. In particular, the age of 14 was appointed as the age at which a child was thought to have been prepared to take over his father's business and to leave his custody.[4] Some traces of these age divisions still exist in the law today. In most States of Australia the age at which a child is considered to be able to distinguish between right and wrong for the purposes of the criminal law is still 14. *The Family Law Act* directs the Family Court to seek the opinions of a child over the age of 14 before making an order in relation to custody or guardianship.[5] The acceptance of the age of 14 as the age at which a child can exercise choice is not uniform throughout the law, however. *The Child Welfare Acts* of each State extend the jurisdiction of the children's courts beyond the age of 14, selecting ages between 16 and 18 as the ages at which a child might leave home without intervention from welfare workers or police. However, the age which the children's courts in most jurisdictions seem to have settled on as the age at which a person can assert independence from family seems to be 16,[6] a choice probably more related to the age at which a girl can consent to sexual relations than to the maturity which we would prefer a child to have before expressing its independence.[7]

For reasons which will appear later,the view I would like to put to you is that 14 is the age which we should choose as the appropriate one to differentiate between children and at least young adults for the purposes of State intervention.

The Views of Goldstein, Freud and Solnit

The following can only be the most potted summary of the views these authors put in their two books, but it may suffice for my purposes.

The major premise of Goldstein, Freud and Solnit's argument is that above all else a child requires continuity of care, whether from his natural parents or substitute adoptive or foster parents. As any interference by the State breaks this continuity, it is prima facie bad and should be avoided. Thus, the authors espouse a policy of minimum State intervention and state that 'so long as a child is a member of a functioning family, his paramount interest lies in the preservation of his family'. It is therefore only when 'the family ceases to benefit the child and becomes a threat to his well-being, to his safety, and occasionally to his life, that State intervention is justified.'[8]

For Goldstein, Freud and Solnit, acceptance of this principle of minimum intervention means that laws which permit State intervention into family life should be precise, so that both the parents and the child are given fair warning of when the State may act.[9] As even the initiation of an investigation into complaints made in respect of the family may be intrusive, the State should not be permitted to begin inquiries until it has made an assessment of whether it has the resources to provide better care for the child or, in the authors' words, 'a less detrimental alternative to the care the child is receiving at home.'[10] In pursuance of these principles the authors give the following definitions of situations of neglect and abuse in which they would permit the State to act.

> (a) Serious bodily injury inflicted by parents upon their child, an attempt to inflict such injury, or the repeated failure of parents to prevent their child from suffering such injury.

This definition, the authors believe, establishes a minimum standard of care below which no parent may fall. Because the State is allowed to act in respect of serious injury only the authors believe that even an untrained observer will be able to identify the need for intervention and thus the parents will be given fair warning of the possibility of intervention. They exclude emotional neglect as a ground for intervention because of the imprecision of the definition and because 'there can be no comparable certainty that the attitudes or the action or inaction of the parents cause these damaging symptoms in the same way that we can be certain of the origins of physical injury'.[11]

The second ground of interest for our purposes is:

> (b) Conviction, or acquittal by reason of insanity, of a sexual offence against one's child.

The authors regard non-violent sexual relations between parents and children as a delicate matter upon which there is no 'societal consensus' as to whether State intervention is desirable. While they recognise that such relations may seriously prejudice the child's future development, they suggest that 'the harm done by inquiring may be more than that caused by not intruding'. Thus, they believe it is better to leave the 'justification for separating the child and the offending parent' to the criminal law. The authority to intervene therefore 'arises only after the parent-child relationship has been severed by the criminal law'.[12]

Wald's Comments on the Goldstein, Freud and Solnit Position

While Professor Wald agrees in general with the approach taken in 'Before the Best Interests of the Child', he offers some fairly strong criticism of some of the authors' conclusions.

He shares the authors' concern in regard to the capacity of the law to supervise the care of children, and adds to their scepticism by pointing out that courts rarely review the consequences of their decisions, but finds himself unable to agree with them that all State intervention causes harm.[13] His view is that although many services available to children are inadequate at present, and therefore inherently harmful, many are constructive and he suggests that if more money and expertise were put into existing services, better and more positive results could be achieved. Operating effectively, these services could help to achieve the authors' aim of fostering the parent-child relationship so that the family could become a viable and autonomous unit.[14]

Thus, Wald believes that Goldstein, Freud and Solnit state their case too extravagantly and do not make allowances for the positive aspects of State intervention. He would therefore broaden the grounds suggested for intervention to encompass such things as emotional neglect and sexual intercourse between parent and child to allow the State to intervene in a constructive way; not necessarily to remove the child from home, but to permit welfare agencies to work with the family to achieve a viable unit. His position is thus one of minimal rather than minimum intervention, closely circumscribed by more precise statutory provisions, but he would allow room for grounds of intervention such as 'substantial likelihood' that the child will imminently suffer harm, that the child is suffering 'serious emotional damage' or that he or she has been sexually abused.[15]

Compliance With These Views in Australia

Most, if not all, Australian jurisdictions are reviewing their child welfare legislation at present. I have chosen the statutes of two States to make my comment because they adopt different views on the style which should be used in drafting the legislation which permits the State to intervene to protect children. I understand that South Australia has no current plans to amend the *Children's Protection and Young Offenders Act* 1979 while New South Wales is in the process of considering its *Community Welfare Bill*, 1981 in Parliament.

The South Australian Act declares, in sections 12 and 14, that a child may be found to be in need of care if:

> (a) a guardian has maltreated or neglected the child to the extent that the child has suffered, or is likely to suffer, physical or mental injury, or to the extent that his physical, mental or emotional development is in jeopardy;

> (b) the guardians of the child are unable or unwilling to exercise adequate supervision and control over the child.....

In New South Wales, Clause 44(4) of the 1981 Bill defines a child as being in need of care if:

> (a) adequate provision is not being, or is likely not to be, made for his proper care;
>
> (b) he is being, or is likely to be, abused;
>
> (c) he is being, or is likely to be, harmed as consequence of the conduct of any person with whom he is residing or the conditions in which he is residing;
>
> (d) he is not under competent and proper guardianship; or
>
> (e) there is a substantial breakdown in the relationship between the child and the person having the care of the child.

Neither of these provisions meets the requirements laid down by Goldstein, Freud and Solnit or Wald. The South Australian provision comes closest to satisfying Wald's less stringent requirements, but fails to meet them because of the absence of the qualification that the injury must be serious. The New South Wales provision does not seek to provide precision in its definitions, preferring the vague language which is so stringently criticised by all of the authors.

Comment

A lawyer can only agree with the strict requirements laid down by Goldstein, Freud and Solnit for State intervention into the family circle and disapprove provisions such as those found in the New South Wales Bill which would give sweeping and almost unreviewable powers to welfare agencies. If the very serious step of intervening in family autonomy is to be taken, it must be accompanied by the safeguard of a precise statement as to when the State can act and a generous facility for review of the exercise of administrative discretion.

Yet, even the most hardheaded lawyer cannot blind himself to the scope which such strict legislation would give for avoidable harm to be caused to the child where the welfare agencies find themselves unable to act quickly. The essence of the debate lies in the difference of

opinion over the State's ability to help. Goldstein, Freud and Solnit, a lawyer and two child psychiatrists, believe that on most occasions State intervention causes at least as much harm as it does good. Professor Wald has more faith in the level of services available and therefore would allow wider discretion to be exercised by the welfare agencies. All agree, however, that the best place for a child is with his family and that great care should be taken before the parent-child relationship is disrupted.

My problem with the works of these authors concerns a matter which seems to have been left unsaid by all of them. In concentrating on the balance of interests between family and State they appear to have ignored the one constant factor, the child. And this is where I must distinguish between the two categories of children involved. First the child over 14.

The Child Over 14

As I have pointed out above, in many areas the law makes a distinction between children over and under the age of 14. In particular, the law grants the child over the age of 14, the right to express an opinion on his custody and guardianship. For the first time in Australian law, the *Family Law Act* gives a child an independent right to take proceedings against his parents for maintenance. Combined in the child over the age of 14 these rights, to choose a custodian and to sue for maintenance, provide the potential for a totally new regime in the abuse and neglect areas of child welfare. It is now possible for a child over the age of 14 who is dissatisfied with the care he is receiving at home, to seek alternative accommodation at his parents' expense.[16] Such a statement of the child's position may seem exaggerated and disturbing at first glance. Its importance lies, not in the possibility that such actions may be pursued on a large scale, (for that would be fanciful) but in the enlightenment that the existence of such actions may bring.

Whether these causes of action appear in the *Family Law Act* intentionally or by oversight, their creation does force us to regard the child's position in a new light. In both child welfare and divorce legislation, the child has been viewed as a person who must be protected. He is not regarded as a party to the litigation, but rather as a person who must be spared the full impact of the dispute, an object to be saved from the mess the parents have created. In relation to the older child this picture may or may not be true. It seems that now we must take a fresh look at the child's role in these cases, for once we give the child the right to take positive action to protect himself we must anticipate that he may assert that right. If that is so, the first question we must ask when contemplating intervention on behalf of the child is, what does the child want; and if this question is to be asked, then we have to cast the child in a role which is identical to that played by any victim of crime. In some ways it is a most powerful role, because the victim has the right to offer or to withhold much of the evidence which will allow a prosecution to be mounted against the offender.

Thus, in relation to the child over the age of 14, it is perhaps time that we rethought the basis on which we seek to intervene. Perhaps it should not be to save the child. Perhaps State intervention should only occur at the request of the child and with his co-operation. The ramificiations of this I will leave with you.

The Child Under 14

The *Family Law Act* does not forbid the reception of evidence from a child who is under 14, nor does it deprive him of an action for maintenance, but the possibility of such actions arising is remote. Thus, the suggestions made in relation to the child who is over 14 do not seem to meet the needs of the younger child. This is not to say that the views of the younger child should be disregarded. On many occasions, even very young children can express sincere and reasonable opinions on their preferences as to custodians and places of residence and we have the professionals who are able to discern the difference between mere whim and sincerity. On most occasions, however, we will be placed in the position where, perhaps despite expressions of attachment and affection for the parents, we feel that the child must be removed from the parents for its own safety. It is to these cases that the regimes proposed by Goldstein, Freud and Solnit and Wald should be applied. And in these cases I am inclined towards the more generous view which Wald has of the competence of our welfare services.

Conclusion

The one thing that I believe has been left out of account in the debate on State intervention on behalf of children is the child. The current debate is centred on the question of when the State is justified in intervening to protect the child. We are all agreed that the best place for the child is with his family. We are probably also in agreement that our efforts should be directed towards rehabilitating and supporting the weak family. But when the family breaks down we are inclined to assume that the State must step in and take charge of the situation. The view I have attempted to put is that before the State assumes control of and responsibility for the child, perhaps we should consider the child's view of his situation and be guided by his assessment and his wishes. It is only when the child is too young, or perhaps too confused to express a preference in regard to his future care, that we should turn to the question of State intervention.

My conclusion is then, that the position of the child who is the victim of a crime committed against it within the family, may not be so very different from that of any victim. Perhaps more emphasis should be placed upon the child's attitude to the crime and the offender before we seek to rescue him. In turn, this may lead to a consideration of the offending parent's ability and willingness to make reparation before the question or removal from home arises. If this view were adopted there may be more room for work within the family before its members are dispersed.

FOOTNOTES

1. Both books, the first edition of Before the Best Interests and the second edition of Beyond the Best Interests, were published by the Free Press, New York in 1979.

   Professor Wald's views appear in the following articles:

   State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards (1975) 27 *Stanford Law Review* 985.

   State Intervention on Behalf of 'Neglected' Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights (1976) 28 *Stanford Law Review* 623.

   Thinking About Public Policy Toward Abuse and Neglect of Children: A Review of Before the Best Interests of the Child (1979-1980) 78 *Michigan Law Review* 645.

3. Blackstone's Commentaries on the Laws of England (5th ed., 1773) 464-465.

4. James, The Age of Majority (1960) 4 *American Journal of Legal History* 22.

5. Family Law Act 1975 (Cth.), s.64(1)(b) provides: 'where the child has attained the age of 14 years, the court shall *not* make an order ... contrary to the wishes of the child unless the court is satisfied that, by reason of special circumstances, it is necessary to do so.' This provision is really only a statutory acceptance of the practice which was being followed in the courts prior to the passing of the Family Law Act.

6. For a recent example of the exercise of this jurisdiction and a comment on it see the casenote of *Stanton* to appear in the October 1981 issue of the Criminal Law Journal.

7. And the age of consent is not uniform throughout the States, the *Victorian Crimes Act 1958* containing a provision which makes it a crime for a man over 21 to have sexual relations with a girl who is a virgin and who is under 18. See s.50.

8. Before the Best Interests of the Child, 4-10.

9. *Ibid.*, 16-17.

10. *Ibid.*, 24-25.

11. *Ibid.*, 72-77.

12. *Ibid.*, 64-65.

13. Review of Before the Best Interests of the Child (1979-1980), 662.

14. *Ibid.*, 663-674.

15. Article in 27 Stanford Law Review, *ibid*, 1039-1040. In his review article (1979-1980), *ibid*, 683, Professor Wald points out the inconsistency in the Goldstein, Freud and Solnit approach to cases of sexual abuse in which they would opt out of the field in favour of the processes of the criminal law thus leaving the child to full exposure to a totally inappropriate form of State intervention.

16. Phillipa Weeks and the author joined in an article on this topic in 1979. It is to appear in the Australian Law Journal in 1981.

Session V

THE MEDIA AND THE CRIME VICTIM

To assert that the print and electronic media have a profound effect on Australian society is to traffic in platitude. To assess the strength and dimensions of that effect is a challenge which has only begun to attract the energies of social researchers. That the media are instrumental in shaping the consciousness and ultimately the behaviour of citizens is apparent to every advertising executive.

As media owners continue to profit handsomely from the coverage of crime and its victims, critics have begun to suggest that media managers must bear some responsibility to the victim themselves.

In their paper 'The Media as a Cause of Crime and Fear', Wynn and Vinson review some of the accumulating overseas evidence which suggests that media portrayals of violence, both fictional and in the context of news programmes, actually inspire imitiation. They go on to suggest that media coverage of crime creates a level of fear in the community which is, to a great degree, unjustified. Such an assertion is reinforced by the victimisation research reviewed in Biles' paper above, which suggests that those most fearful of crime face the lowest actual risk of victimisation.

Another issue of relevance which the authors have addressed elsewhere concerns media coverage of sentencing and imprisonment. One hears a fairly frequent comment from members of the public that prisons are motel-like homes away from home and that the experience of incarceration is akin to a holiday.

How these impressions are formed is a worthy research topic in its own right; the fact remains that men are murdered, raped and beaten in prison; they poison themselves, swallow foreign objects, maim themsleves and commit suicide in prison; often they go mad in prison. As correctional authorities are understandably reluctant to publicise these unpleasantries, angry citizens, who themselves have no direct or indirect knowledge of penal realities, continue to advocate more and stiffer punishment. Thus the media, by overstating the severity of crime, and by understanding the severity of punishment, may actually produce a counter-deterrent effect.

Roger Holden, Editor of the Adelaide *Sunday Mail*, concedes in his paper that sex and violence do sell newspapers, but only because they reflect the values and interests of the public. He claims that newspapers anticipate and thereby reflect the judgments of their readers with regard to what is newsworthy. Holden reaffirms the public's right to know, and the responsibility of the press to examine the law and its institutions, even when this might prove

inconvenient for governments. He criticises police public-relations sections as unwarranted instruments of news management, but without apparent awareness of the role which news management plays in crime control.

Holden reserves a few harsh words for television journalists, whom he accuses of gratuitous portrayals of violence. In conclusion, he concedes that media editors are only just becoming aware of the potentially deleterious consequences of certain types of media portrayals of crime, and calls upon members of the public to use the media, to criticise it, and to offer constructive advice and commentary.

Stuart Joynt, News Editor of ADS-7 in Adelaide, also argues that television reflects the values and preferences of its viewers, but contended that its graphic portrayals of gruesome circumstances actually produce positive social benefits. Heightened public interest in crime, he argues,may actually assist police in identifying and apprehending an offender. Moreover, he notes that vivid television coverage of the Vietnam War hastened the war's end, and portrayals of urban riots led to ameliorative government policies. Reminding us that Australian television stations already adhere to a rigid code of ethics, he concludes by remarking that violence was an unpleasant fact of life long before the advent of the electronic media.

Issues raised in subsequent discussion included the potentially prejudicial impact of excessive pre-trial publicity, and the desirability of some basic training in criminology for journalists. It was also noted that media coverage of rape victims tends to depict them as passive and vulnerable, even in instances where the victim may have boldly and successfully fended off an attacker. The possible counter-deterrent effect of such media stereotyping is worthy of some consideration.

THE MEDIA AS A CAUSE OF CRIME AND FEAR

P.W. Wynn & T. Vinson

For many years now social scientists have studied the impact that the media have on our lives. Strenuous debate has taken place considering the effects of television on the attitudes and behaviour of its audience. As a result, the development of new research methodologies appears to have prospered, although useful findings have been far less abundant. As well, the influence of the press on the beliefs and actions of its readers has come under increasing scrutiny from social researchers. Many people have devoted their entire working lives to the study of this complex topic, generating a vast theoretical and empirical literature.

It is not our intention, however, to exhaustively cover this material today. Instead, we would like to briefly summarise for you some of the present findings and consider the direction in which current research is moving.

Mass Media as a Cause of Crime

First, we will consider the question of whether the media may incite or encourage individuals to commit crimes.

Clearly, advertisers believe there is a connection between the promotion of their products on television and market response to those products. While the connection between the portrayal of crime on television and behavioural responses to such presentations may be more tenuous, there have been some striking case histories suggesting a powerful connection. In May 1971, the film 'The Doomsday Flight' was screened on Australian television. The plot for this film concerned an elaborate attempt at extortion involving a hidden bomb aboard a commercial aeroplane. Soon after the screening, Qantas paid $500,000 to an extortioner whose contingency plans mirrored the televised drama. When the film had been screened five years earlier in the United States, bomb threats to airlines during the next four weeks increased by 800 per cent over the previous month.

Unfortunately, in spite of such striking individual instances of a relationship between television viewing and behaviour, researchers have had far less success in drawing general conclusions. Yet they have persisted in their investigation of such general connections because of the encouraging associations noted in some studies and, more recently, because of the findings of research into related deviant behaviour. For example, Phillips (1974) has studied as a possible manifestation of the effects of imitation and modelling on social behaviour. This investigation has provided evidence to suggest that suicide rates in the United States rise briefly after a suicide story is published in the press. Furthermore, this rate increases with

the amount of publicity given to the story. In a more recent study Phillips (1979) has reported research indicating a positive relationship between the press reporting of suicides and increased motor fatalities. He has noted that three days after a publicised suicide, road fatalities increased by 31 per cent. He also noted that the age of the drivers in these fatalities were significantly correlated with the age of the person described in the press reports.

Much of the research so far completed appears to be related to the effects of televised *violence* on behaviour. In the United States, between 1969 and 1971, an amount of money, almost unprecedented by social science standards, was spent researching this topic. These studies culminated in a special report to the Surgeon General. The majority of the investigations were performed with older children and adolescents and were correlational in design.

A fairly consistent finding emerged from these investigations: children and adolescents who viewed or preferred violent television programmes tended to be rated higher on various behavioural and attitudinal measures of aggression (Dominick and Greenberg, 1972; McIntyre and Teevan, 1972; McLeod, Atkin and Chaffee, 1972; Robinson and Bachman, 1972).

However, since these projects were predominantly correlational in design, they suffer the flaw of much social science research - they do not demonstrate causality. Whether watching television leads to aggressive attitudes and behaviour or that being aggressive in nature leads one to view more violent shows, is pure conjecture.

Two more recently reported studies have attempted to overcome some of the problems inherent in straight correlational design. In one project Lefkowitz, Eron, Walder and Huesmann (1972, 1977) used a 'cross lagged panel' technique to assess the relationship between the viewing of violent television programmes and aggressive behaviour. They reported that eight year old boys who were 'heavy' viewers of violent television shows were more likely to be rated as aggressive by their peers. Ten years later the same boys were re-interviewed. Lefkowitz et al. have noted that unlike the younger group there was no relationship between preference for television violence at age eighteen and aggression at this age. However, when the cross lagged correlations across the ten year span were examined,they reported a significant relationship between preference for violent television programmes at age eight and peer ratings of aggression at age eighteen. In other words, those who were raised on a diet of violent television programmes were more likely as young adults to be considered 'aggressive' by their associates.

Consideration of a number of alternative interpretations of these findings has led Lefkowitz et al. to conclude that 'while the effect may not be as strong as the cross lagged correlations indicate, the single most plausible causal hypothesis is that a preference for watching violent television in the third grade contributes to the development of aggressive habits' (1977: 119). Needless to say, a

vigorous debate over the methodology used in this project has taken place since the study was first reported (Becker, 1972; Howitt, 1972; Kaplan, 1972; Kay, 1972; Kenny, 1972,1975; Neale, 1972). One possible interpretation of the findings that cannot be eliminated is that a third variable (for example, severe emotional frustration) may influence preference for both violent programmes and aggressive behaviour.

Another study taking a so called'causal correlational approach' has been performed by William Belson, in London. Belson (1978) has carefully rated 1,565 adolescent boys aged between twelve and seventeen years on a vast set of characteristics and background factors. He compared the behaviour of boys who viewed a large number of violent television shows with a matched group who viewed fewer violent programmes. He then carefully tested a series of hypotheses, in both their forward and reverse forms, relating the viewing of violence with aggressive behaviour.

Although concluding that exposure to television violence increases aggressive behaviour, this relationship appears tenuous when 'less serious' violent behaviour is considered. There was a tendency for subjects who committed less serious acts to also watch more violent programmes. Belson's suggestion that boys committing less serious violent acts may simply prefer to watch more aggressive shows, cannot be ruled out by his findings. Further queries concerning Belson's results have been raised by Murray and Kippax (1979).

Overall, the type of study discussed so far has provided less than satisfactory conclusions. All that really can be said is that there does appear to be a relationship between viewing violence on television and violent behaviour. The exact nature of this relationship has yet to be elucidated. Future attempts to clarify the connection between what young people view and the way they behave will depend on the growth of adequate theory. One promising theoretical perspective which is being revived in slightly altered form, derives from the classic work of Robert Merton (1938). This author has proposed that the stress experienced by some disadvantaged people is due to the frustration they feel because they lack the means to attain socially approved goals. For example, 'everyone' is told that they should acquire a splendid home and car but some people lack the resources of money, education, contacts and even attitudes like perseverance, to achieve these goals by legitimate means.

Halloran (1977) has argued that the continued promotion of expensive material goods in television advertisements may unrealistically increase viewers' expectations, ultimately leading to frustration and later violent behaviour. Thus, television may *obliquely* cause violence, a thesis which is all the more plausible when one considers the proportion of their daily lives which many people devote to television viewing. Future research which empirically tests this line of argument and which considers the role of television advertising in increasing viewer frustration, could prove particularly fruitful.

Another theoretical perspective which holds promise is the imitation and modelling approach previously cited in connection with Phillips' investigation of suicide. Phillips (1979) has persuasively argued that reconsideration of the role of imitation in various sociological theories, may help clarify previous theoretically inexplicable social behaviour. He has largely looked at press coverage of the situations reported. Future research comparing the impact of television coverage as opposed to the press reporting of specific issues, could prove enlightening. In the light of Phillips' work, could it be that the newspaper reporting of some situations has a greater impact on later conduct of some groups than television coverage?

Mass Media and Fear of Crime

A community's fear of crime is in some ways more important than the objective risk of becoming a crime victim. This subjective aspect of law-breaking was given due recognition in the American Presidential Report, *Challenge of Crime in a Free Society* (1967). The report stated that 'The existence of crime, the talk about crime, the reports of crime, and the fear of crime have eroded the basic quality of life of many Americans.'

If the percentage of people indicating a belief in an increase in the crime rate is a pointer to this fear of crime then the quality of life of many Sydney residents has been similarly eroded. The New South Wales Bureau of Crime Statistics and Research has compared the results of a Sydney survey which it conducted in 1974 with similar research conducted in America in 1967. Fifty-five per cent of adults living in American metropolitan centres considered the crime rate to be increasing. The corresponding figure for Sydney residents was 42 per cent.

The reason most commonly cited by Sydney people for their belief that the crime rate was increasing was 'media publicity given to crime'. This connection between what people hear, view or read via the mass media and their anxiety about crime (and other social ills) has been the subject of considerable research.

Feshbach has suggested that television news programmes and documentaries provide a child with 'a clearly labelled mirror of the real world' (1972: 321). But what impact does the viewing of televised news material have on children? Cairns, Hunter and Herring (1980) have recently studied this question, comparing two groups of children receiving different news 'diets'. These researchers have interviewed children from two parts of Scotland where television reception is only possible from Northern Ireland and from another area of Scotland where Northern Ireland television news cannot be received. They reported that children from areas where Northern Ireland television news could not be picked up were less likely to mention the words 'bomb' and 'explosion' in a type of ambiguous picture/description assignment. The investigators interpreted this finding as evidence of the way television news affects the world view of children as young as five years of age.

Similarly, Gerbner and Gross (1976) have argued that heavy television viewing tends to alter adult viewers' perceptions of the world. These researchers working in America, have reported that 'heavy' television viewers (at least four hours per day) were more likely to believe that a high percentage of the world population live in their country, than 'light' viewers (less than two hours per day). Similarly, heavy viewers believed that more people had professional or managerial jobs than light viewers. These findings were sustained even when educational level and newspaper reading were controlled.

Furthermore, Gerbner and Gross (1976) have reported that heavy viewers are more likely to be less trusting of others and to over-estimate their own chances of being involved in some type of violence. These researchers have concluded that televised violence leads viewers into perceiving the world as more dangerous than it really is. They echo the sentiments of the Presidential Report with the comment that the impact of television 'should be measured not just in terms of immediate change in behaviour, but also by the extent to which it cultivates certain views of life' (1976: 45).

In a recent Australian study, Hawkins and Pingree (1980) have tested a number of Gerbner's hypotheses, interviewing a large sample of primary and high school children. They reported that adolescents who were heavier viewers were more likely to incorporate television content biases into their perceptions of the world. They reported that heavier viewers were more likely to see the world as 'mean' and 'violent'. However, this effect was not apparent for primary school children, suggesting that certain cognitive skills are necessary to incorporate televised material into beliefs concerning social reality.

Recently, the work of Gerbner and Gross has been subjected to considerable criticism. Doob and McDonald (1979) have argued that when actual incidence of crime in the respondents' neighbourhood is controlled, there is no overall relationship between television viewing and fear of crime. Furthermore, Hirsch (1980) has provided a very detailed criticism of the selective analysis of data by Gerbner and Gross.

Nevertheless, there is a substantial literature suggesting that viewers' perceptions of the real world are continuously moulded by television. The weight of evidence is too convincing to be ignored.

Considerable research has examined the impact of the press on individuals' perceptions of crime. Jan van Dijk, a Dutch criminologist, has written a particularly impressive analysis of current research considering public attitudes towards crime and the influence of newspapers in formulating this opinion. He has delineated an important theoretical distinction between feelings concerning the risk of personal victimisation and perception of the general crime rate as a social issue. Van Dijk (1979) has argued, with supporting survey evidence, that there is very little relationship between personal fear of crime and more politically motivated general concern for rising crime.

In a discussion of relevant research, van Dijk has concluded that concern about crime as a social issue is greatest among older men and women with little education. Yet victimisation rates suggest that this group is by no means the most at risk section of the population. He has presented a review of evidence suggesting that fear of crime is based on more accurate perception of victimisation rates for individuals from different social class backgrounds and age groups. Nevertheless, he has still reported unexpectedly high levels of fear of crime in middle-aged and elderly people. As well, Wilson (1971) in some Australian research has found that concern about crime is class related and increases in the lower social strata.

In the previously cited 1974 study by the New South Wales Bureau of Crime Statistics and Research, it was found that Sydney people of low social status and older age groups were more likely to justify the view that crime is increasing by referring to media publicity given to crime. More than twice as many of the respondents who were over sixty years of age mentioned media publicity, compared with the young adults (18 to 20 years) in the survey. The difference between social status groups was less marked but the professional managerial group less frequently referred to media publicity.

Van Dijk in an attempt to account for variations in levels of fear of crime for various population groups, has turned his attention to the news media. He has argued that press reporting of criminal activities has the greatest impact upon people of any media input. In a Dutch study which examined personal conversations about crime, he reported that 66 per cent of people who had talked about crime on a set day, came to know about the crime through reading a newspaper. He also reported that people in this study who claimed never to read any newspapers were significantly less pessimistic about their own chances of being the victims of an offence.

He has further argued that there is mounting research evidence indicating that the press coverage of crime is distorted. For example, in a pioneering study, Davis has reported 'no consistent relationship between the amount of crime news in newspapers and the local crime rates' (1973: 133). Research by Lenke (1974) has indicated that 45 per cent of crime reports in Western European newspapers deal with crimes of violence - completely out of proportion to their actual occurrence. As well Coenen and van Dijk (1976) have reported that more violent types of crimes are more likely to be presented on the front page of newspapers and to have larger headlines.

Fishman (1978) has argued that the press and television may further distort the presentation of criminal activity by creating 'crime waves'. He believes that these may be more accurately described as 'media waves'. He argues that journalists attempt to give some coherence to their news production by attempting to find 'themes' on which to base a number of their reports (for example, crimes against the elderly). He further proposes that journalists look to each other for confirmation of the accuracy of their news judgments. If per chance more than one news organisation focuses on the same news theme, the news producers will know that they truly have found newsworthy items. This can

further lead to the continuation and evolution of the themes throughout other news organisations. A 'wave' of stories around the one topic may hence flood the media.

Lenke (1974) has argued that dramatic articles about horrifying crimes have a 'terrorising effect' on the public. Another Dutch writer Hoefnagels (1969) has referred to the presentation of such stories in terms of a 'telelens' effect - holding the picture of the perpetrator of the crime at sufficient distance and out of focus to emphasise the demonic rather than the human qualities of the person involved. In the Australian context these larger than life figures tend to be distorted in their presentation to accord with a comparatively small number of basic legendary 'crime news' stories for example, the 'Pyjama Girl' case, the 'Human Glove', the 'Shark-arm' case and the 'Mutilator' Windschuttle (1981) suggests that 'the media define a social problem, distort and, in some cases, manufacture evidence to prove their case, whip up public hysteria, pressure the government to take the only course it knows - more police and judicial action' (1981: 176). Similarly, Schneider (1979) believes that the mass media does not necessarily 'mirror' public opinion but instead 'moulds' it through the reporting of crime in a sensational manner.

But what impact do these distortions have on individuals' fear of crime? Schneider has argued that 'the mass media's reportings are probably the most influential source of information for the non-expert citizen about the development of crime and criminal statistics' (1979: 137). Yet van Dijk in reviewing a limited set of studies has highlighted the contradictory results that most correlational research on this topic have produced. He has argued, however, that these studies do not take account of the selective use of the news media by differing sectors of the general population.

Coenen and van Dijk (1978) in another Dutch study have reported that women, the less educated and older people, read about the same number of crime news items as other groups. The investigators found, however, that they tend to read less often, articles of 'high information' content - for example, articles on finance, politics or economics. Hence they argue their general news diet tends to contain relatively more crime story content. They have further hypothesised that one result of the poorly educated individual's consistent diet of crime reporting in the press, may be an increased demand for authorities to step up repressive measures to control crime.

Van Dijk's contention gains qualified support from the results of some local studies. The New South Wales Bureau of Crime Statistics Study (1974) found that respondents of lower occupational status were more likely than those of higher status to favour a 'crack down' on crime. The same group favoured more severe penalties for car stealing but were indistinguishable from higher status people in their recommended penalties for seven other categories of crime. Results for women on these same items did not differ significantly from those of the men. There were also no age differences in the respondents' replies.

However, the strength of van Dijk's analysis is the distinction he has drawn between an *individual* appraisal of the risk of becoming a crime victim, and a *communal* phenomenon - the generalised fear of crime. The importance of the latter is that it could have a major political influence on the way a society punishes lawbreakers (for example, the extent to which prisons are used).

The degree of concordance between these variables is yet to be studied in the Australian context. Maybe the two measures are quite distinct. After all, political and media discussion of crime and punishment in New South Wales would leave one with the impression that individual citizens are very apprehensive about their personal safety. Yet a very large sample of Sydney adults in a recent Australian Bureau of Statistics survey were far less punitive in their attitude to law-breakers than might have been inferred from the political climate. The only way to effectively resolve this issue would be to carry out further research designed specifically to test the relationship between individual fear of crime and concern about crime as a social issue.

Final Comment

The study of the effect of media presentation of crime and violence on human behaviour, is fraught with the most severe methodological difficulties. While these technical problems are being unravelled, the media's arousal of fear of crime has a profound effect on public morale. Political and social progress in dealing effectively and decently with crime and lawbreakers requires intelligent public discussion of the media's role in generating fear of crime. Future social research could play an important part in fostering such discussion.

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THE DECISION-MAKERS

R. Holden

A giant among editors was a man called C.P. Scott. He ran the Manchester Guardian from 1872 to 1929 and in the manner of those of his time held some pretty lofty views about the importance of his calling.

'Upon this earth,' Scott once wrote, 'there can be no greater responsibility than that involved in the control of a great newspaper. All a man's days and all his powers, all the conscience that is in him and all the application he can give, are surely not too much to discharge so great a task.'

Adlai Stevenson, as you are aware, was a politician, and like those of his calling tended to be a little less impressed by those who controlled newspapers. 'An editor,' he said, 'is one who separates the wheat from the chaff ... and prints the chaff.'

I am the editor of a newspaper too. The Sunday Mail in Adelaide, and naturally I tend to lean a little more towards C.P. Scott's way of thinking.

Essentially, the Sunday Mail is a popular tabloid newspaper that sets out to inform, entertain, and provide supportive family reading. We have a clear policy of trying to avoid any material that may offend any of our readers, and by remaining true to our typographical origins, do not see ourselves as sensationalist, although those who equate such things with large headlines and popular style would probably argue otherwise.

Crime, sex, and violence, as any editor will be told dozens of times during his working life, sell newspapers. Indeed, I noticed in the report of the Inquiry on Victims of Crime that led to this seminar that: 'unwarranted fear of crime may be produced by scaremongering pronouncements by persons acting less in the public interest than in their own. The news media, print and electronic, have a vested interest in attracting public attention. It is an unhappy fact that frightening messages are deemed more newsworthy than reassuring ones.'

Indeed! It seems I am going to need to change all my news values. Certainly crime, sex and violence, either singly or nicely entwined, sell newspapers. But so does sport, racing, Colquhoun on the front page of the Advertiser, so do the comics inside the Sunday Mail. The Truro murders here in South Australia sold a great number of newspapers. But nowhere near as many as man's first landing on the moon. Britain's ripper case provided a great deal of interest here too, but the Royal

Wedding was the mother and father of them all when it came to making those presses roll overtime. In fact, I am not so sure that newspapers today would not be a great deal healthier financially if they concentrated more on the fairytales we all learned at our mothers' knees!

Simply put, news sells newspapers. News that reflects the weaknesses, the strengths, the aspirations of the society in which we live. And a good newspaper is one, as Arthur Miller suggests, that shows 'a nation talking to itself.' Newspapers that either undervalue or ignore crime, therefore it would seem, show a nation deceiving itself.

Shallow, generalised attacks on the integrity, function and aims of newspapers tend to imply that the journalists and editors involved in their production, act without responsibility, or recklessly burst into print without care or consideration for the consequences of their action.

Journalistic cynicism would often appear to support this notion. But the truth is that newspapers, in my experience, are more often than not staffed by very caring people. When things go wrong, it is more likely to be the result of inadequate briefing or understanding rather than the actions of those who 'have vested interests in attracting public attention,' a point I shall be expanding upon later.

To borrow another definition, if I may, 'it is not the law but rather, unwritten principles that make up the responsibilities of the news media. There is inherent in the purpose of a free press which is to keep the public informed, an obligation to truth or factual reporting, and a commitment to the maintenance of a free society.'

In democracies, it is generally agreed that the public has a right to know, a widely proclaimed objective of most governments, bureaucracies and institutions, who, nonetheless sometimes go to extraordinary lengths to ensure that we do not. It is in this particular minefield that journalists work ... men and women not necessarily always driven by idealism that dictates that the 'public must know' but sometimes willing victims of their own finely honed sense of curiosity that some people believe drives them right to the invasion borders of privacy, decency and commonsense.

In Pursuit Of The Victims

In its terms of reference, I note that the South Australian Committee of Inquiry into Victims of Crime narrowed its definition of 'victim' down to those people directly involved, and to those emotionally or financially dependent upon them. Newspapers rightly or wrongly dedicated to the overall public good could never allow themselves to paint with so narrow a brush. A spate of robberies, a series of assaults, some particularly vicious rapes ... all represent a fairly broad affront to society as a whole, promoting the journalist to move in enthusiastically (and perhaps at times with seeming insensitivity) to find out: were precautions adequate? Was there sufficient police protection? How could it happen in a suburb like that? Will it happen

again? Often the answers to these questions lie with the victim - or with those emotionally or financially dependent upon the victim - creating problems and tensions in itself. Bear in mind that more often than not, the 'good story' the story that an editor will choose for page one for example is not necessarily chosen because of its gruesome nature or salacious narrative, but more likely because of its implications. A gaol break at Yatala, for example makes an interesting story. But when people 'break into Yatala' as they did last year, cut their way into a cell with oxy gear in the middle of the night *and no one notices* as they free one of the prisoners, then I say we have a page one story.

Last year, an Adelaide newspaper came in for criticism after interviewing the parents of several of the Truro victims once the trial and appeal had been heard, and running the results of those interviews on page one. It is interesting to note that the criticism came not from the parents as far as I can tell, but from the general public who felt that these people had suffered enough at the hands of the great publicity machine.

From any editor's point of view, I believe that legitimate journalistic practice was followed (after all, it gave the parents the right to express views on the judicial outcome should they have felt the need, it gave them right to redress any imbalanced public impression of their daughters created by an unsworn statement from the dock). But a great number of people appear to have been offended by the practice, and it is my feeling that the news media will be paying considerable attention to their involvement in this area in the future. After all, newspapers and television and radio stations that continue to ignore trends in community standards soon find themselves losing readers and listeners.

Any assessment of the ethics of crime reporting, no matter how brief, must necessarily take into consideration trends and changes that are taking place not only in the relationships between journalist and victims, journalist and witnesses, but those relationships that exist between journalist and the agencies of protection if I might so label the police, the courts, the judiciary, the forces and the government departments and officials whose task it is to watch over the defence of law and order.

I do not intend to delve too deeply into the subject of courts and sentencing other than to make some very general observations. Fairly rigid standards normally apply when it comes to reporting court cases, and news media tend to comply in a manner that indicates fairly clear respect for the judicial system and the rights of the accused.

Major crime stories that attract large headlines generally attract commensurate headline coverage during the trial period and at sentencing. Certainly, few people reading newspapers or hearing the cases on television or radio are left in any doubt that the legal processes are under way or that justice in some form is being exacted.

It is interesting, and somewhat refreshing to note, that Australian newspapers appear to be adopting a less deferential or timid approach to judgements and sentencing in the immediate period after trial and appeal.

In my experience, British newspapers have been more forward in the manner in which they are ready to reflect upon the excesses or inadequacy of some sentences as provided, under the law, and in the manner in which they are prepared to open their columns to public opinion when it seems some of those laws are not adequately catering for all or some of the wishes of society.

I am open to question, of course, but in my 10 years working in London, I cannot recall any great reaction from judges who might have felt that their own integrity, rather than the integrity of the law within which they had to work, was under question.

Most of you no doubt are probably familiar with a recent court case here in Adelaide in which the media generally went well beyond normal accepted practice because of widespread public anxiety over what many viewed as an excessive gaol sentence. I am told that the Attorney-General's office came under some pressure from within the legal fraternity to prosecute some of the news media because the case was still subject to appeal.

I am one of those who contributed to the public debate, and did so with knowledge of the dangers involved, not only in the legal sense, but in a situation where a society was laying bare one of its basic judicial principles. By and large, I consider the action by the media as a very healthy one.

In the main, the news media response was courageous, compassionate, and probably not as hysterical as some people tried to suggest. To rephrase Arthur Miller's words slightly, I believe it was 'society talking to itself about its laws as it should be doing constantly'.

I might add, that if the exercise had its high moments, sadly there was one incident that did tend to detract a great deal from the issue at stake.

Despite a court order suppressing the name of the woman defendant in the case - and therefore protecting those financially and emotionally dependent upon her - an Adelaide television station revealed the identity of one of the daughters by showing her face clearly in a very lengthy interview. Why the station executives should have allowed this to happen is of course, for them to answer.

But it does seem a shame to me that while the rest of the press in Adelaide was prepared to speak out on a principle, the aims and name of journalism in this State was put at risk.

Living Together

It is unfortunate that one of the main strengths of the multi-media system - the inherent competitive spirit that ensures no group can become particularly blasé or indifferent in the search for truth and understanding - is fast becoming one of its greatest weaknesses, and producing some of the gravest threats to responsible journalism in this country.

Personally, I cannot pretend that I admire these days, the trend among some television news services to project bodies, and to provide lingering camera shots of blood-soaked rooms in the constant search for more action or more 'with it' news. None-the-less, I would be the first to admit there are some perfectly legitimate reasons why it is necessary from time to time.

What I am doing here is not launching into an attack on the standards of television news reporting, but using a point to illustrate how much more competitive, how much more urgent, the sale of news is becoming, whether it be carried by radio, television or newspapers.

The advantages of a highly competitive system, of course, are well known and appreciated ... but there are some very real dangers for us in all this too.

Communications are becoming faster, more sophisticated, urging on that competitive spirit to the point where proper assessment and considered judgement could be put at risk by the Gods of expediency and first-past-the-post reporting.

As you can appreciate, when that great newspaperman Hugh Cudlip wrote 'publish and be damned,' 30 years ago, he was not advocating a policy of 'to hell with the consequences.'

What is needed more than ever today is a system of constant contact between those who head the agencies of protection and those who make the high-speed media decisions, a regular liaison so that the problems of the one can be more fully appreciated by the other.

It is a matter of considerable concern to me that in this State of South Australia, rather than moving in this direction, steps have already been taken by the police to restrict contact to a minimum at the working level, ironically in the name of greater co-operation.

I refer to the establishment about two years ago of a so-called media liaison unit, a type of public relations outfit so popular with modern businesses these days, which operates ostensibly for the streamlining of information, and accommodating the demands of the working journalist at times when police are heavily involved in the field.

On the face of it an excellent idea, and certainly I have no reason to doubt that the officers involved with it have worked in anything but an earnest and conscientous manner. But let us be frank about this. A public relations office set up in the manner of this one has really only one purpose: to control, restrict or manipulate the flow of information. What we have here is a clear case of policemen trained as policemen commanding and controlling information to the public, policemen conditioned if you like by the traditions and loyalties of the *force*, often ignorant of the demands and requirements of the news media, and not necessarily motivated by, or even caring for, the public's right to know.

I do not question the need for a media liaison unit. But it would seem to me that a better method of safeguarding the public interest would be for the unit to be controlled ... if not staffed ... by senior journalists who are sensitive to the problems of the police force but whose background has prepared them for the job, and whose code of ethics remains as a sustaining and stabilising influence as they walk the daily tightrope between conflicting interests.

A principal role of such a constructed unit, of course, would be to organise regular contact between senior officers, senior officials in other so-called agencies of protection and news media decision makers.

To highlight why I feel greater thought will be needed in this area as we consider the development of high-speed communication and its effect on the ethics of reporting, be it crime or otherwise, let us look at two extreme examples of international problems that have already in some way transported themselves to Australia.

First is *TERRORISM*. At an international seminar in Florence a couple of years ago Brian Jenkins, an American State Department Research Officer on international terrorism, made the point: 'To have maximum effect, an act of terrorism must be seen. The news media provides an essential link between the central figures.' 'This', Jenkins says, 'has led many people to believe that if the link was severed (that is, if terrorist activity was not reported) the effects of terrorism would be reduced.'

An intriguing point and one, I hasten to add, that Jenkins follows up by saying -'that to suggest the media is responsible for terrorism is like blaming commercial aviation for hijacking'.

But let us be realistic here. Shouldn't we all be giving some serious thought to the media role in crisis, such as these, some serious thought to the fact that some forms of high-speed reporting may run counter to the principles of public good that we all espouse so grandly?

Let us not forget the Iranian Embassy siege in London when perhaps only by sheer luck, the terrorists were not watching it all in glorious, living colour as the men of the SAS worked their way in through the back windows before the television cameras of the world.

Let us also look at *STREET VIOLENCE* ... and perhaps the lessons from Britain as rioting spread through her cities in June and July. You can argue, if you like, where it all began ... whether it was in the depressed dismal streets of Brixton and Toxteth, or whether it was 10 years before in the sectarian enclaves of Ulster. But one thing seems fairly clear ... that violence did in fact produce imitative violence, nurtured by daily newspaper reports and a diet of rocks and petrol bombs hurled in glorious, living instant colour.

British Prime Minister Mrs Thatcher said at the time: 'it is difficult to draw the line between the reporting of events and the publicity on which thugs and terrorists thrive. It is difficult to ensure the media does not give the very martyrdom which these people seek.'

Difficult it is indeed! Never mind the causes, perhaps if we do not report it, the problem goes away. Perhaps if we report it differently, the problem will go away.

We in the media are not necessarily experts in behavioural patterns. Perhaps we know too little about mass psychology, and perhaps it is right that we are becoming less certain about some things.

If we are experts about anything at all, I suppose, it is how to produce a newspaper, or prepare a television or radio broadcast. Invariably we rely upon advice for our judgement. Your advice, your criticism.

The function of the press, surely is not to hurt or destroy that which is good, nor is it to interfere with that which is necessary.

Sure, we can get things wrong. If there is any message that I can suggest taking away to consider it is this: the press is there to be used. Use it. Criticise it. Hand out advice. With competition the way it is, these days, we need every help we can get to ensure that we do not hurt, we do not destroy unwittingly, nor do we interfere with that which is necessary.

When it comes to crime there are enough victims already without those of us who report the events adding more innocent names to the list.

PORTRAYALS OF VIOLENCE IN THE ELECTRONIC MEDIA

S. Joynt

The answer to any question about violence on television is yes and no.

There is an emphasis on sex, violence and crime in all spheres of the T.V. business from the Mickey Mouse cartoon through to news, as there is in all forms of the media.

But I think it is fair to say that the media mirrors community attitudes ... it does not specifically go out of its way to set the guidelines of life itself.

Statistically, it is a fact of life that most Australians now get their basic news information and entertainment from television.

In the commercial world which attracts most of the viewing audience, the local result are shows like Prisoner, Restless Years, Cop Shop and Skyways.

Many of you may laugh at these shows but 60 per cent of Adelaide viewers are addicts and they deal with what you gentlemen (and women) deal with every day; the problems of everyday life with its own emphasis on sex, violence and crime.

This raises two questions. Why is the public so fascinated by programmes portraying violence? And why is television the scape-goat?

I believe television accepts undue blame for the violence in our world. In fact you gentlemen would know better than I, but the Australian Institute of Criminology suggest in fact that on a percentage basis, violent crime is dropping. For a country with two-million guns and fewer than 200 gun related murders a year, I do not think the problem is one that justifies the constant badgering of Australian Television standards.

I believe that to uncover the major causes of violence, researchers should turn their attention to economic, developmental and cultural factors as well as to further television studies.

I would like to suggest investigations into the connection between violence and unemployment, racial prejudice, poor housing and lack of medical care, the ease of obtaining alcohol, the high mobility of today's younger generation ,the prevalence of broken homes, the role of age, the still partially subservient role of women, the lack of

public school courses in child rearing and a possibly declining faith in the just nature of our political and judicial system.

We have learned that cartoon violence is both harmful and harmless, that portrayal of violence in news programmes causes great distress, but that it is most easy to cope with.

Here we have the vice versa of does T.V. news cause crime by inspiring imitation, do we sensationalise violence in the chase for ratings, does daily dosage of violence de-sensitise the population at large, do we invade the privacy of victims?

We had a perfect example here in Adelaide only eleven days ago. A young housewife was knifed to death ostensibly with robbery as the only cause.

Every T.V. news service in Adelaide showed graphic shots of the uncovered body, which led to an angry public outcry - mainly with people upset at the effect on the victim's family and of children watching the news in a family situation.

Yes, it was gruesome, and yes, we expected some public outrage.

But in co-operation with the police force, we took a deliberate course of action to provoke some public reaction in the hope it might lead to the murderer.

The Criminal Investigstion Bureau took an unprecedented 200 phone calls after the evening services and the information from these calls led to an arrest within 12 hours. Here was an obvious case of acting in the public interest where the end justified the means.

The same people who complained I might add, did not ring or write when Ronald Reagan and his entourage were shot at ... or when the Pope was gunned down.

The general mentality of T.V. watchers is that if it does not affect them personally it is all right. I can not agree that T.V.news de-sensitises community attitudes.

The Vietnam war came to a halt because the American public rebelled against the nightly news blast of death and destruction in full living colour.

We did not have colour in Australia at the time so we can only imagine the effect on 14 million Australians of 'Apocalypse Now' every night of the week.

To those of us opposed to killing and a senseless war being fought with one hand tied behind our backs, the end of Vietnam was a plus for television.

Conversely, the recent English riots are a case where it could be argued that news cover spawned more violence. That is certainly true, but the continued rioting led to a full scale Government inquiry into the root cause of the problem.

Once again, the end result here was television raising an unpleasant question and prompting, hopefully,an eventual cure to a problem which was not T.V.'s invention in the first place.

Television encourages protest such as the Springboks visit to New Zealand, but once again the public at large should not blame T.V. for raising the questions. If a problem exists, surely it should be aired? If there are wrongs, shouldn't they be righted?

We are told that westerns can cause the most serious kind of juvenile behaviour - but we also know that so long as the rules of a western or crime or war film are complied with - that is the good guy always wins - violence is acceptable and understood by children.

Now I will argue against myself. I have to be honest, my two favourite shows on T.V. are The Sweeney - which was once banned from production in England because of its emphasis on violence, and The Professionals.

It is only coincidence that they are both on my Channel (7), but I suppose the outcome of each programme is still like a Tom and Jerry cartoon - the good guy nearly always wins and there are always a bundle of lessons in life to be drawn from each show.

I also think it is important for men and women in your position to appreciate that Australia's television codes are the toughest in the world.

It is important to understand the restraints which apply to television broadcasters in this country so that we can put the whole matter into perspective.

Since the advent of T.V. in Australia in 1956 there have been censorship classifications, restricted time zones and guidelines and regulations relating to violence.

America and Canada do not have censorship codes and they do not classify television programmes to advise parents exhibition, AO for Adults Only etc. Britain, at least, has children's programme times but again there are no censorship classifications.

We have violence free television, accounting for a total of 57 hours in a normal week, and 94½ hours a week in school holidays, this violence free zone occurs at times when children are likely to be viewing television un-supervised by adults.

Programmes outside the news arena must not contain matter which is contrary to law, blasphemous, indecent or obscene. They must not be

likely to encourage crime, injure community well-being or morality, or be undesirable in the public interest.

The guidelines state that it is doubtful whether programmes based on the following themes are suitable for transmission before 8:30pm:

> Sexual violence - for example, rape, gang bangs, castration, psychopathic violence; kidnapping of children; gang or mob violence as a means to an end - bikies, skin heads, etc.; bombing or booby trapping - details of manufacture of devices must be avoided; terrorisation - including violent extortion threats and standover methods; cruelty to children or animals (physical or psychological); torture (physical or psychological); sadism; self-inflicted violence - for example, wrist slashing, gory suicides, self induced abortion.

The following treatments should be avoided:

(a) Close-up, held, or prolonged shots of bloody victims or victims squirming in agony.

(b) Relished or gratuitous violence.

(c) Sound effects - which distort or magnify impact of violence - for example, breaking of bones, whimpers of fear, screams of terror.

Adherence to these codes and standards is the responsibility of broadcasters.

Teachers and the educational system also have a responsibility. We know that our children spend a considerable amount of time with television during their crucial developmental period of life, and that in adult life, they will look to television as a primary source of news and entertainment.

It is clearly a responsibility of teachers to prepare children for life in general, but sadly, with only a few notable exceptions, teachers are not helping their charges cope with the television medium.

Parents too have responsibilities. They should know and understand the rules which apply to television programming, because these are their safeguards.

They should observe the warnings which are clearly shown with each programme imported, using their own judgement as to whether their child should watch.

They should teach their child to distinguish between the fantasy and reality which appears on their television screens.

For some time now FACTS has been urging parents to accept their responsibilities by controlling programme selection. Member stations, from time to time, televise an announcement urging parents to take a positive role in supervising their children's viewing habits.

Some people argue that parents either cannot or will not exercise this responsibility, but do these same parents allow a child to come and go as he pleases at any hour of the day and night, not knowing where the child is, or with whom?

Would they for instance, give a ten year old a push-bike and allow him to ride on the roadway without ensuring first that he could handle the bike, and, more importantly, the traffic? Would they allow the child to read books which were unsuitable? To drink alcohol? To be wilfully destructive to other people's property? Society and common sense dictate that these are clearly the responsibilities of parents.

Finally, may I leave you with some thoughts about television and violent behaviour.

I am sure that Emperor Nero was not an avid viewer of ringside wrestling, or the Saturday football game, when he encouraged Rome's popular sporting activities at the Coliseum. I doubt that Adolph Hitler and his colleagues were in any way inspired by John Wayne's movies when they unleashed the holocaust of World War II.

Nor, I am certain, was Al Capone regularly tuned into 'Hawaii Five-O' 'Callan' or 'Cop Shop'.

Television did not influence the bahaviour of Australian youths of the 1920's who were part of the razor gangs and pushes. Television did not de-sensitise the hordes who used to eagerly gather to watch the spectacle of public hangings and floggings.

In closing - What's new.

The answer is yes and no.

Session VI

THE MENTAL HEALTH NEEDS OF CRIME VICTIMS

Among the more sorely neglected issues in Australian victimology is the mental health of crime victims. In an earlier paper, Biles, Braithwaite and Braithwaite cited results of the 1975 ABS victim survey which revealed that crime victims reported a significantly higher incidence of adverse mental health symptoms than did non-victims.[1]

The mental health of crime victims deserves attention, not simply for the sake of knowledge, but for purposes of appropriate therapeutic response to the victim. Without fuller knowledge of victims' mental health needs, well meaning people might respond with gestures or programmes which do more harm than good.

Professor Ball's paper briefly discusses the phenomemon of human aggression in general, then suggests that there are certain factors which predispose some persons to become victims. His discussion of subliminal odours and imperfectly developed inhibitory mechanisms complements other symposium contributions by Biles and Deller which focus on the social and demographic characteristics of victims.

Ball observes wide variation in victims' abilities to cope with misfortune. Citing as an example the heroic physical and psychological recovery of pilots injured in combat, he reviews the adaptive tasks of crime victims and suggests some of the factors which can facilitate their psychological recovery. He affirms a need for supportive, emphathetic, non judgmental response from those who deal with victims.

In light of these needs, Ball suggests that monetary compensation to victims can be counter-productive, actually producing delay in the victim's recovery.

Dr Ross Chambers, explicitly addressing the needs of sexual assault victims, notes the effect of stress on victims' promblem-solving capacities. He suggests that on occasion, the victim's need to work through the experience, often inhibits police investigation. Chambers reaffirms the victim's need for support and understanding and notes that lack of this understanding on the part of some victims' family members, combined with pervasive myths about rape in the community, make the victim's recovery more difficult.

Dr Robert Goldney, in addressing the problems of victims in general and survivors of homicide victims in particular, reviews basic issues of bereavement, and suggests that the experience is made more difficult when the death is unexpected and apparently senseless. Goldney cites clinical examples of survivors' tendencies to attribute all of their

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difficulties, even those arising years after the fact, to a homicide. Whilst he notes that bereavement counselling appears helpful, he cautions that indiscriminate imposition of grief work on all victims may prove counter-productive. Compensation programmes, he suggests, may also serve to inhibit recovery.

During the discussion which followed, participants called for more basic data on the pathology and recovery of crime victims. Among the issues deserving of attention are long term assessment, the identification of successful coping strategies, and the therapy employed in effective treatment programmes. The degree to which the victim's involvement in the criminal process serves to compound or to relieve mental health problems was also identified as an important question to be addressed.

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(1) D. Biles, J. Braithwaite and V. Braithwaite, 'The Mental Health of Victims of Crime' *International Journal of Offender Therapy and Comparative Criminology* Vol.23 No.2 (1979) pp.129-134.

VICTIMS AND THEIR PSYCHIATRIC NEEDS

R. Ball

This paper will be devoted to civil victims of civil physical violence of a direct kind, and will not attend to attacks which may be regarded as forms of indirect violence, that is coercion, fraud, political control and so forth. Also as another person will consider sexual assault, this will not receive consideration.

Whilst there is much comment about the extent and intensity of violence at present, with some evidence that an increase currently appears to operate, it is difficult in fact to document violence in the not too distant past. Nevertheless, examining the historical record over centuries, suggests that a relatively steady decline in violent behaviour has occurred since the middle ages and that the size of units of population within which violent propensities have had to be curtailed has progressively increased. In past times, legal and illegal violence was savage and frequent. One has only to read Bryant's and other reports of Britain early last century and the Australian record. Krupinski and Emmerson (1977) suggests that Australia last century was a far more violent place than it is now, despite the recent figures. One can of course argue about the accuracy of the record and the frequency of reports made to the police, but that is a two edged sword. That is, one can assert that except in time of war, when violence is sanctioned and directed, human beings are not very violent to each other. In reference to direct, apparently motivated person to person violence, of damaging and at times potentially homicidal intent, homicide is cause of death for only 0.1 per 1,000 in western culture. (Russell and Russell 1970).

One can further assert,that whilst random violence of apparently sudden nature does appear to have increased, nevertheless the basic situation remains essentially unchanged. It is unchanged in that most violent behaviour can be seen to develop over some period of time and occurs between people who have some kind of relationship with each other. Here we are very rarely talking about minutes, but more commonly hours, days, or months, or even much longer.

McLean and others (Rosenfeld 1976), postulating the concept of the triune brain, (popularised by Koestler in the 'Ghost in the Machine' 1967) proposed that one of the problems for man was the extremely rapid development of the cerebal cortex and related areas, with inadequate communication between the higher and lower centres; a corresponding failure of inhibitary mechanisms, especially related to the expression of rage and violent behaviour existed. This development was said to have occurred about half a million years ago. Associated with that problem were two others - the lack of natural dangerous weapons such as killing teeth and claws, meant that man also failed to develop

appropriate submission gestures, which most naturally dangerous animals have and use as means to abort dangerous behaviour from an aggressor of the same species. Furthermore, not having powerful natural weapons, man invented multitudes of killing tools and skills to make up for his deficiencies and learned to combine in complex groups for purposes of hunting or war. (Group psychology is a matter of great interest to the student of military psychiatry, but is not our brief today). Eibl Eibesfeldt (1979) feels that the evidence indicates that man throughout his history has demonstrated inter and intra species aggressive and homicidal propensities, which cannot solely be due to social factors but must have a biological basis.

There is also considerable doubt about the claimed lack of inhibitory mechanisms. In many ways it seems that man had learned to inhibit direct violence within the social or national group. The violence with which we are concerned usually occurs between individuals rather than groups. It often involves the use of natural or simple handy weapons and it is often related to consumption of alcohol or other disinhibiting drugs. Simple evidence for that assertion lies in the timing and often the geographical setting for violent behaviour.

In the main violent behaviour can appear as the end result of an escalating interaction between two or more people, in which for the aggressor, a chain reaction occurs. This reaction is compound of many things, but with mounting irritation, arousal, anger, verbal and non verbal signalling and threats, there is a parallel step-like process, whereby progressive disinhibition occurs. Initially this process can go into regression, but sooner or later a point of no return is reached. Beyond that point, if there is no sudden change of situation, such as withdrawal or submission of the victim or intervention of another person, violence becomes highly probable if not certain. The use of intoxicants by either or both parties, may speed up the process.

Clearly many factors contribute to the situation. These include the perceived here and now situation, the developmental experiences of the parties concerned, and a variety of influences not too hard to understand in many instances. In addition however, there are patterns of behaviour and communication of a non verbal nature, which might have been learned, but more likely are innate. I refer here to behaviour which can be regarded as aggressive or conciliatory or submissive. Members of law enforcement agencies, or members of the healing professions, commonly note situations where it becomes obvious, that some of their members by their very presence, trigger or exacerbate trouble and others have a calming influence. This can become very obvious in busy casualty departments, with difficult, at times intoxicated patients. Some general principles seem to apply, which include a tolerant non-threatening attitude, without a need for expression of authority or toughness, even though one may have an abundance of both. Such people can tolerate insults, threats, oaths and so on, as they do not take them personally. Direct eye contact is avoided other than for a few seconds at a time, for more than momentary eye contact can often be taken as a challenge, becoming the

prelude to combat for humans as well as for animals. Posture often proves a vital trigger. One expert patterned his behaviour with angry, hostile, patients, after the humble submissive posture assumed by wolves bested in battle - keeping eyes downcast, fists unclenched, and shoulders stooped. Sitting on a lower level often helps and offering food can be very valuable; letting a person know that his behaviour is very frightening, as well as making the communication honest, can provoke an inhibition response in some cases. Of course the reason why anger and violence escalates, may relate to failure of such responses on the part of the victim, or not so much failure as responsive triggering of aggressive and challenging behaviour. Eibl Eibesfeldt (1979) maintains that man has in fact very effective inhibiting behaviours, which occur in almost all cultures to some degree or other. These include weeping, lamenting, lowering the head,and avoiding much eye contact, pouting, smiling in a friendly fashion, as well as a number of other expressive movements indicating readiness for social rather than violent contact; they have as yet had limited attention but so far comparative studies of cultures shows that the same elements are found in all of them.

Other influences may provide additional complications and of which all concerned may be ignorant. There is no need to dwell on the effects of fatigue, physical illness, including epilepsy, prolonged anxiety, premenstrual changes, physiological intoxication, or psychiatric illness on crime, especially violent crime. These have all been more than adequately explored elsewhere. It is however worth mentioning pheromones, for this relates to both aggressors and victims. Pheromones are smells which human beings emanate; these smells are mostly subliminal, that is there is usually no conscious awareness of their excretion or perception and they probably affect behaviour by generating activity in the limbic and related areas of the brain. Such forms of communication between human beings may help precipitate or prevent initial and then persisting pair bonding such as falling in love as opposed to transient sensual gratification. Some pheromones may also relate specifically to aggression, such as androstenol, a preparation which in the United Kingdom is commercially available as boar mate - used to stimulate sexual mating behaviour in pigs, but also known to relate to aggression and violent behaviour. It is known that humans excrete such material in their urine, also in breath, and skin emanations. This chemical is slightly noticeable to the sense of smell, (when in high concentration), by persons with a low output. That is - an analagous situation to garlic exists - one who has had garlic for a time cannot smell garlic - persons who have moderate to high outputs of androstenol seem not able consciously to register its perception from external sources, including other people. Some experimental evidence exists that high output of this chemical correlates with high levels of expressed anger and violence and that subliminal perception of androstenol may trigger aggressive or other provocative inappropriate responses, (sprayed onto chairs, football jerseys). Furthermore, reduction of perceived androstenol by use of powerful deodorants such as nil odor - on pillows and clothing, in a blind trial - noticeably decreased the level of intensity of expressed violence. It also decreased the potency of those males (staff of a Borstal Unit) spraying the nil odor - an

unexpected and unpredicted result. These findings relate to work in the United Kingdom and preliminary work here, which is,we hope,to be supported by carefully controlled trials.

Such work will,we hope, add to the considerable body of existing data suggesting that victims often contribute overtly and covertly, in ways of which they may be both aware and unaware, towards the violence experience. Some victims however are apparently the truly innocent victims of what seems to be accidental or random violence, or at least the incidental victims accidentally chosen as recipients for expressed violence, generated possibly by other persons or situations, but displaced unto the available target. Even so, one wonders how that victim is chosen instead of another one.

Turning now to the specific responses and needs of victims, one can consider the varied needs of any persons associated with crisis situations. These can include physical disasters such as illness, accidental injury or violent assault and of course catastrophies of an emotional nature. The factors include psychosocial influences in interaction with physical or other pathology. Background and personal characteristics including age, intelligence, cognitive and emotional development, philosophical or religious beliefs and previous coping experiences, help to provide meaning for the catastrophy affecting the individual. They also affect the psychological and intellectual resources available to meet such a crisis. Other vital related factors including the type and location of symptoms or injuries, whether painful, disfiguring, disabling or in a body region vested with special importance, help to define the exact nature of the tasks victims face and hence their adaptive responses. An injury to the face or breast, may have greater psychological impact on a person than damage to some other area. Coping ability at least in the short term can be directly affected by problems such as brain damage, extreme exhaustion and weakness. Features of the general and social environment can exacerbate the stress, or conserve sources of help and support. The physical environment of a hospital casualty department or intensive care unit, can further upset patients already trying to deal with a distressing situation. The general human environment includes the relationships of patients and their families to staff and other patients. The social supports in the wider community such as friends, clergy and social agencies and most important socio-cultural norms and expectations, may help or hinder recovery or rehabilitation. The latter is exemplified by the rape victim's situation.

Most acute injuries involve six differing categories of coping abilities.

(a) Denying or minimising the seriousness of a crisis; this may be directed at the trauma itself, or the skill may focus on the significance of the event. The relevant ability is being able to isolate or dissociate ones emotions when dealing with a severe and potentially or actually very distressing situation.

(b) Seeking relevant information and using intellectual resources effectively.

(c) Obtaining reassurance and emotional support from concerned family friends, medical staff, legal advisors etc.

(d) Learning specific injury related procedures.

(e) Setting concrete - maybe limited goals, such as attending a special event or walking again.

(f) Rehearsing alternative outcomes, including discussion about them with family, friends, physicians etc.

Victims also have two major groups of adaptive tasks.

1. Injury related matters such as:

(i) Dealing with pain and incapacity;

(ii) Dealing with hospital and related environment and special treatment procedures; (the rape victim).

(iii) Developing adequate relationships with various professional staff.

2. General needs which include:

(iv) Maintaining a reasonable emotional balance;

(v) Retaining a satisfactory self image;

(vi) Preserving relationships with family and friends;

(vii) Preparing for an uncertain future.

Each of these categories of coping abilities or tasks could repay extensive discussion in its own right, but the general drift I hope is clear. Also it should appear clear that there is an interaction between the intra-psychic adjustments required of the individual to come to terms with the experience, to interact with the social environment, and there are tasks which depend upon the appropriateness and normalising (or otherwise) responses of family, friends, and others. Failures of these varied needs may have very complex origins.

Some additional rather fundamental needs require our attention. Earlier we have examined the situation in reference to levels and direction of violence in society and such a state of affairs leads to certain attitudes and expectations. The citizens psychosocial set, differs markedly from that of a soldier in wartime. The consequences of severe injury to the well motivated warrior may differ greatly from the effects of being a victim, even with much less severe injuries. I refer here to such examples as, a spitfire pilot - shot out of his plane with parachute destroyed, falling through an oak tree and suffering multiple injuries including fractured skull, one collar bone, multiple fractures of both arms and legs, including a compound femur, fractured pelvis and some cracked vertebrae plus lots of broken ribs. He was hurdling within eighteen months and flying operationally again within two and a half years. Similarly, Von Stauffenberg, minus one eye, one arm, and most of his remaining hand, from battle injuries in Tunisia, was still able to take the leading and vital part in the bomb attack on Hitler on July 20 1944. There are plenty more examples.

Nevertheless, in ordinary life, with relatively sudden perhaps unexpected violence and actual or potential injury or disability, differing situations apply. Such events may assault what Masserman (1959) regards as central and vital human beliefs and needs, which he calls 'UR' Defenses. These can be summarised as follows:

1. An implicit belief in various forms of personal invulnerability and immortality.

2. A distrustful but persistent yearning for intra-species loyalty and mutual service.

3. An arrogant pre-emption of authority over transcendent forces and powers, to serve man's needs on earth and elsewhere.

Victims are likely to have some of their UR beliefs disrupted, perhaps permanently. To the degree that they are unprepared and where the speed of the assault is overwhelming, no opportunity for preparation and readjustment of expectations is possible. Where such problems are magnified, the recovery of normal stability can be delayed and it is possible that for some, faith in mankind may never be recovered.

Victims of violence may demonstrate severe disturbance in the period immediately or shortly after the event. There may be elements suggestive of the mechanism of denial and feelings of numbness are frequent initial responses. Anxiety, fear and even panic may be expressed, with anger, resentment and irritability, whilst depression, despair and emotional and physical withdrawal may occur. Victims also may have a sense of helplessness and feel unable to cope. They attempt to understand and to make some meaning of what has happened. They turn to others for help and are vulnerable and susceptible to the helpers attitudes. Marked disorganisation of personal functioning may occasionally occur.

Apart from appropriate physical medical care, victims need to ventilate feelings, seek an understanding, find support from others, and learn to deal with the problems precipitated by the attack.

A supportive, empathic and non judgemental attitude, with the skills to deal with the problems arising as outlined in the victim and his family, together with the ability to comprehend and cope with the responses of the helping person's own reactions, is essential. This helps to maximise recovery and to diminish pathological decompensation.

At the same time we must not lose perspective, for as Gunn (1973) and others, have pointed out - it is possible for an innocent bystander to be attacked by a deranged or mistaken aggressor, but this is exceedingly unlikely and must be very rare. Nearly always, violence is directed at a particular person or a particular group. Usually there is a great deal of contact between two persons before a fight breaks out and during the interaction the behaviour of one influences the other. We have already discusssed this. Considering violent behaviour between criminals and police and the escalation of trivial incidents into fearsome battles, detailed studies indicate that some are particularly likely to be assaulted and others not. Earlier discussion has suggested possible reasons for that.

Considering the needs of victims leads to many questions. For the perpetrators of crime and violence, a great deal of work has taken place to understand the influence of biological forces and social factors on the overt expression of rage and actual physical violence in different countries. Only lately has increasing attention been paid to the victims of crime and assault. We need much more study to learn more about how victims place themselves into the time, place and situation where violence occurs, and why the situation is still further exacerbated rather than aborted or attenuated by the persons concerned. Whilst we have some data, we need much more. One may hope that further studies will allow discovery of patterns of development which may predispose to becoming victims and in some instances, to the repetition or persistance of the violence, as in domestic battles.

Discovering the relevant patterns of behaviour and their aetiology or pathogensis, may allow therapeutic and preventative intervention. Thorough analysis of some situations however, such as in a morbid jealousy assault, may require advice that the only safeguard to

prevent possible very serious consequences, lies in the physical separation of the parties. Thorough and long term study of the victims of assault will help confirm or reject the possibility of serious psychiatric effects.

One possibility worthy of consideration is, that where the victim can be compensated,a malign pattern of some form of post traumatic syndrome may emerge similar to that epidemic which clutters up the courts dealing with industrial and motor vehicle or other compensable accidents. In trying to help the victims we may be in danger of creating an anti-therapeutic monster. I refer to the possibility that victims may receive punitive satisfaction and material rewards from the persistence of symptoms. The offender and society occasionally may be punished with the material reward, providing a tax on society rather than the individual aggressor. I am in favour of victims not being disadvantaged by having been assaulted, and there may be a case for some compensation for pain and suffering, but the unwanted consequences are potentially great.

In conclusion, I am reminded of Sir Thomas Browne who in Religio Medici said:

> 'Men that look no further than their outsides, think health and appurtenance unto life and quarrel with their constitution for being sick; but I that have examined the parts of man, and know upon what tender filaments that fabric hangs, do wonder that we are not always so; and considering the thousand doors that lead to death, do thank my God that we can die but once. It is in the power of every hand to destroy us and we are beholden unto every one we meet that doth not kill us. There is therefore but one comfort left that though it be in the power of the weakest arm to take away life, it is not in the strongest to take away death.'

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MENTAL HEALTH NEEDS OF SEXUAL ASSAULT VICTIMS

R. Chambers

Elaine Hilberman in an Editorial in the American Journal of Psychiatry describes rape as 'the ultimate violation of the self'. She states, 'rape is an act of violence and humiliation in which the victim experiences overwhelming fear for her very existence as well as a profound sense of powerlessness and helplessness which few other events in one's life can parallel'.

Another writer states, 'sexual assault is a total attack against the whole person affecting the victim's physical, psychological and social identity. Hardly any other crime can be committed against a woman with comparable traumatic impact'. (Weis & Borges).

Virginia Sadock in a recent textbook of psychiatry states, 'the problem of rape is most appropriately discussed under the heading of aggression. Rape is an act of violence and humiliation that happens to be expressed through sexual means'.

Studies by Groth *et al* of 133 offenders and 92 victims found that the rapes were used to express power and anger.

There were no rapes in which sex was the dominant issue, that is sexuality was always in the service of non-sexual needs.

It is funadamental to a consideration of the mental health needs of sexual assault victims, that we free ourselves from the long-standing and persistent mythology linking rape and normal sexual activity and recognise the victim and help her to recognise herself as a victim of violence.

Contrary to the mythology, rape may involve virtually any woman.

In the series quoted by Anne Burgess and Linda Holmstrom from their studies at the Boston City Hospital, social classes were wide and ethnic groups included fairly equal numbers.

The group included single, married, divorced, separated and widowed women as well as those living with men by consensual agreement. A variety of occupations included schoolteachers, business manager, researcher, assembly line worker, secretary, housekeeper, cocktail waitress and health worker. There were victims with no children, women pregnant up to the eighth month, post partum mothers and women with anywhere from one to ten children. The women ranged in physical attractiveness from very plain to pretty and were dressed in styles ranging from high fashion to hippy clothes. (Burgess & Holmstrom)

In spite of this generally accepted information, certain notions persist in some quarters, for example:

1. Rape equals sex and sex equals fun.

2. No healthy and unwilling woman can be raped by one man.

3. A man is attracted sexually by cues from the woman, therefore a woman who has been raped has given sexual cues.

4. Rape equals sex and therefore one more sexual experience should not matter especially in someone sexually experienced.

5. Bad things do not happen to nice people, especially nice women.

6. There is a consciously controlled behaviour 'correct' for the rape situation which the victim may or may not choose to apply. This arises from a misunderstanding of the nature of human behaviour under stress. This behaviour has become important in the study of a number of other areas, for example disaster victims, concentration camp victims, etc. It is the response of this individual to this situation at this time and coping behaviour of the rape victim is not markedly unlike that of people in these other situations.

It should be noted that coping behaviour is a basic behaviour peculiar to that particular individual in highly stressful situations and not governed only by means under conscious control. For example, people simply pass out or dissociate or indeed may simply blot out the whole period and not be able to recall it at all.

It should be noted too that the victim's assessment of this behaviour as good or bad seems to have little to do with the actual behaviour itself, and that whether the behaviour was adaptive or maladaptive only becomes clear in retrospect, for example, if she struggles and fights, and this brings people to her aid, this is seen to be adaptive. If however, and this is the more likely consequence, such struggling produces greater violence and the victim is injured the more, then of course such behaviour is seen as maladaptive and the victim is advised that this was not the right thing to do.

It seems important also at this stage to note the effect of stress

on the individual's problem solving capacities, for example -

> 'An important contribution of our Harvard group has been our emphasis on a characteristic erosion of an individual's usual cognitive and other problem-solving capacities, which is a common side effect of involvement in a stress situation. The magnitude of this change is related to the intensity of emotional arousal and dysphoria. The regularly occurring phenomena include disorders of attention, scanning, information collection, access to relevant memories that associate significant meaning to perceptions, judgement, planning, the capacity to implement plans, and the capacity to evaluate feedback. In other words, the individual's usual orderly process of externally oriented instrumental ego functioning is upset; this happens precisely when it is important for him to be operating at his maximum effectiveness so that he can grapple with his problems'. (Caplan)

Rape is a seriously stressful, disruptive experience and the effects of this are manifest in individual ways in the immediate and later post rape period. The victim may experience feelings of shock, disbelief, numbness.

The primary feeling described is fear of physical violence and death. Emotional reactions expressed in the initial stages include feelings of humiliation and embarrassment, anger, the need for revenge and also self-blame.

Styles of reaction are also individual, see below:

1. Expressive, in which feelings of fear and anxiety are shown through smiling, sobbing, restlessness, etc.

2. Controlled, where feelings are masked or hidden and an outward calm prevails.

The victim of rape, of course, is rather unique in that even when the assault is over she has special problems to come.

To start with she has to cope with physical trauma of varying degrees of severity and the emotional impact of such trauma, and with the fear of disease and pregnancy.

Next come the problems associated with -

(i) reporting, that is seeking help from police and helping personnel;

(ii) with telling or not telling family, spouse, etc.

(3) with the often difficult and dreary road back to health.

It is at this point that the community can contribute for good or for ill and there is a material difference in the recovery or morbidity occurring as a result of the positive or negative reception at this stage.

We, all of us, police, doctors, members of the various helping professions are part of the general community and as such we are likely to be bearers of the various myths regarding rape. Moreover the victim herself is from this community and is painfully aware of these attitudes.

The problem from the victim's point of view is that such distortions inhibit reporting and help-seeking and interfere with the provision of appropriate support.

1. Reporting

(a) Police - Reporting the assault to the police seems to have been, at least until recently, a source of considerable difficulty, for example, a Philadelphia study where less than 37 per cent of victims reported directly to the police themselves (Weis & Borges). There seems to be a feeling that the onus will be on the victim to prove that what she says is correct and that unless she can make out a good case then she will be regarded as not telling the truth and being somewhat of a public nuisance (compared with other personal crises, for example, natural disasters). Moreover, she is called upon to do this when she is least likely to be able to fend well for herself. Indeed, it seems clear that some of the defence mechanisms used by some of the victims at this time may be quite disadvantageous to them. For example, there is a mechanism well known in people subject to pressures which are destructive nd quite beyond their control and this involves the victim working out ways in which she/he could have avoided the catastrophic problem. This has been seen, for example, in concentration camp victims and victims of other disasters. The victims, in effect, rather than face the possibility that this terrible situation was in fact quite beyond their control, blame themselves for it occurring. The rationale being that if only one can review one's actions, discover what moves or decisions were faulty and correct these then it remains in one's power to avoid this terrible problem in the future. In the case of the rape victim, she is likely to say therefore 'if only I hadn't done so and so or if only I had done so and so, or it was my fault, I did so and so.'

These ruminations at the immediate post rape stage may be in fact important to her and can be worked through with her at a later stage. It can be clearly seen however that in the immediate post rape reporting period such statements can be disadvantageous to her in interviewing police and indeed her family and friends.

It can be seen also that ' ... the fact that individuals under stress usually show spontaneous increase in their affiliative needs, accompanied by a rise in suggestibility and compliance' (Caplan) may work for her good or ill at this time also.

It seems clear that the necessity for the policeman on the one hand to have a clear account of the events leading up to the rape and during the rape may be in marked contrast to the victim's capacity to supply this clear picture. It some cases, the patient's characteristic coping style itself militates against this. For example, the coping style of the victim may simply be to switch off or indeed to suppress time altogether or she may have depended upon cognitive styles, for example, repeating things to herself and detaching herself as much as possible from the reality around her.

It can easily be seen that the contact of the victim at this stage and the policeman with his community based preconceptions about sexual assault, together with the necessity he has of writing an accurate report, can be difficult for both, but more disadvantageous to the victim.

A glimpse of this problem can be seen from the figures which showed that when rape was reported solely to male police officers some 15 per cent were said to be bogus reports. When reporting was to female officers, this level fell to 2 per cent which was the same rate as for bogus reports of other crimes in that area.

On the more positive side, good results seem to arise from changes in procedures and for discussions and courses run by suitable people for police officers.

The present practice in New South Wales is that upon a report of rape, the victim is taken as soon as possible to a sexual assault crisis centre at one of the large general hospitals in Sydney and is usually interviewed by a female police officer.

Though somewhat out of my field, it seems clear that the changes being made in the legal approach and classification of these offences will have a very beneficial effect as far as the victims are concerned and is likely I believe to make it easier both to report rape and take appropriate action.

There are of course other reasons why victims may find it difficult to report. Threats from the attacker may be and may seem very real under the conditions under which they are delivered. Moreover, the victim has very clear evidence at this stage that whatever society's intentions may be about protecting her from such attacks they have certainly not worked on this occasion. In the case where for one reason or another the attacker remains at large, this of course is multiplied. Where gang rape has occurred and some only of the network have been picked up, the same applies and where the attacker and victim are part of a close knit family or ethnic group then the very presence of the attacker and his friends may remain a threat to her.

In some family or close network groups there is conflict about the situation being destructive towards other people, particularly wives, etc.

(b) Hospital - On arrival at the emergency room or referral centre, the victim of course is still in a state usually of shock and numbness. It is important for helping personnel to see her as a unique individual with an urgent need for acceptance; to be believed; for safety and support; for order and for measures to help her restore control over her own life.

The qualities of empathy, genuineness and non-possessive warmth in a helper who has worked through his/her own feelings re rape are paramount at this stage. As part of, and not separate from this approach, it is important to explain the various procedures to the client and to discuss with her as she requires, options as regards taking or not taking legal action, etc. The timing of this may vary according to the state and needs of the client. It is important, however, that medical procedures be explained to the client and that medical personnel involved in the gynaecological and other examinations are trained in this type of crisis work. It is clear that a gynaecological examination performed under these circumstances by an uninformed and/or unsympathetic male doctor whom the client has never seen before, may well be viewed as yet another painful and denigrating instrusion. It is customary in a number of such centres, for a female worker to be allocated to the client on presentation and for this worker to remain with the client throughout the procedures and indeed throughout her stay at the centre. No doubt, others will be able to enlarge on this but this move is seen as of paramount importance.

Crisis intervention appears to be a most effective approach to helping resolve the stress.

Focussing on present issues as identified by the client, facilitating her expression of feelings, supporting her own coping and defence mechanisms and helping her to maximise her personal and social network strengths, seem to be the most useful approaches and have as their aim the restoration of personal autonomy.

It is important to remember however, that not all clients are able to respond satisfactorily to this.

Such clients may show depression, psychotic behaviour, psychosomatic disorders, suicidal and acting out behaviour associated with alcoholism, drug use and sexual activity, and require referral for more specialised help.

2. Family

It is important at an early stage to ask the client her wishes about contact with relatives, friends, etc. and to respect these wishes.

Caplan and others have shown that the family and community of all victims of stressful situations are important in minimising morbidity and assisting the victim in regaining mastery over stress.

It seems clear however that the event itself may have a disturbing effect on relationships and presents, even for supportive families, problems in knowing how to handle the crisis.

In the Burgess and Holmstrom study, the most common result was disruption of the relationship present at the time of the event and it seems important to remember that the spouse, family, etc. are part of our community and will most likely bear community myths regarding rape.

Because of this and consequent pressure from their own needs they may not be able to offer the support required.

It is believed to be useful to convey information that will help to counteract ignorance and error concerning rape as well as discussing with the family, spouse, etc. the probable course and cause of the client's symptoms, (including a period of so-called pseudo-adjustment) and giving a reasoned and non-dogmatic estimate of probable outcome.

Some writers, for example Silverman, feel that teaching the family the concept of 'containment' may be useful and some people feel that this is the family's best contribution.

By 'containment' is meant 'providing an accepting and safe holding environment into which the victim can release her troubled thoughts and feelings without fear of condemnation or critical response'. (Silverman)

Clearly this may make several demands on the family and/or spouse and this should be recognised and appropriate support provided.

Caplan emphasising strongly the powerful influence of a supportive social network states:

> 'In effect, a supportive social network complements and supplements those specific aspects of the individual's functioning which are weakened by the effect of the stressful experience'.

3. The Road Back

For the victim of a serious sexual assault, the road back to autonomy and health begins rather than ends after her initial contact with the crisis centre.

Factors influencing the complex process of recovery are many and include prior life stress, style of attack, relationship of victim and offender, number of assailants, language used by the assailant, the amount of violence or sexual acts demanded and post rape factors of institutional response to the victim, social network response and subsequent victimisation. (Burgess & Holmstrom)

After the acute reaction to the initial impact passes off, the victim begins the long-term process of reorganising her life.

Not all clients experience the same symptoms or the same sequence of symptoms, but common among these are:

1. Increased Motor Activity - this involved especially changing of residence. The move appeared to be in order to ensure safety and to reassure themselves about the non-return of the aggressor. In the Burgess and Holmstrom series, 44 of the 92 victims changed residences within a relatively short period of time after the rape. There is often a strong need to get away and some women took trips to other States or other countries.

2. Changing one's telephone number was common, perhaps for an understandable reason. Often the old number was changed to an unlisted number.

3. Another kind of response was to turn for support to family members not normally seen daily and to a number of women this meant taking trips to another city or another State. In most cases the victim was able to discuss her crisis with the family, but in a number, she simply returned home to feel close and secure.

4. Dreams and nightmares are common and upsetting and if progress is satisfactory may change in nature from one in which the victim is reliving the original trauma and feeling unable to do anything about it, to dreams in which she finally achieves mastery and is able to deal with the situation and the attacker.

5. The term traumatrophobia was coined by Rado to define the phobic reaction to a traumatic situation and was described originally by him in war victims. The phobia develops as a defensive reaction to the circumstances of the rape and the most common phobic reactions tend to be fear of indoors, fear of outdoors, fear of being alone, fear of crowds, fear of people coming behind the victim and sexual fears.

6. It should be noted that very many women experience a crisis in their sexual life as a result of the rape and normal sexual style is disrupted.

It is important to note (Sutherland and Scherl) that some clients after the initial stage of acute shock, etc. pass into a second stage of 'pseudo-adjustment' in which there is much denial and the client appears to have made reasonable adjustment. Contact was often lost at this stage, as the victim did not wish to be reminded of the event.

This was followed by a third stage, often unrecognised, in which there was depression and a need to talk and in some victims there were also obsessional recurring memories of the event and in others, for example in some adolescent victims, psychosomatic symptoms appeared and persisted.

The problem therefore from the helping agency's point of view is how to maintain contact for long enough to be helpful, without either being intrusive or minimising or interfering with the client's own efforts to maintain the control and management of her life or without interfering in any way with her own particular adaptive strategies if these are working for her. Nor does one want the client to feel that she is a 'patient' as this may revive for her feelings of helplessness, lack of control, etc.

It can be seen therefore, how necessary well informed, empathic family and community based support can be for such clients and the importance of this continuing.

Caplan's views re widowhood and social supports are well known and some of the same principles would apply to victims of sexual assault.

'Our Harvard research on widowhood has taught us that there is value in the support system's continuing long-term surveillance and providing intermittent on-demand intervention to fit into the natural rhythm of the long drawn-out process of grief work. This is best given by a non-professional mutual help organisation of other bereaved persons, who have the motivation to persevere in this way because they identify personally with the people they are helping and because they themselves receive reinforcement of their mastery of their own loss each time they offer help to a fellow sufferer.' (Gerald Caplan)

A sobering but not surprising finding is that not all victims achieve readjustment.

Furthermore, time taken to achieve readjustment may in itself mean, that one is functioning poorly for a number of years, and these may be years important in reaching personal and social goals.

It will be clear that we have been talking about those victims who report the assault either to police, crisis centre, or both.

It is generally acknowledged, however, that rape is a very under-reported event (the so-called silent rape victim) and that being able to report implies at least some minimal personal and social power still remaining and being unable implies the converse.

It is imperative that all involved in counselling or clinical work of any type, be alerted to the possibilities of the silent rape victim.

Nor should one be waiting for so-called psychological symptoms only. The follow-up of adolescent rape victims shows some to have persistent psychosomatic symptoms and Masters and Johnson (Human Sexual Inadequacy) describe three women, who between them had 21 years of markedly crippling dyspareunla following gang rape and the resulting laceration of the supporting ligaments of the uterus (broad ligament).

The problem for such clients is that their difficulty and pain with intercourse may be thought to arise from psychological reactions to sexual intercourse following the rape.

Conclusion

It is clear that there are some life events one could well do without and rape is one of these.

The greatest mental health need for the victim of sexual assault is that the event not occur.

Since past history gives little foundation for future optimism in this regard, we need to know that for the woman/man concerned, rape is a serious life stress of disrupting intensity and with potential for severe and sometimes permanent damage.

These effects can be aggravated or reduced by the nature of community beliefs about rape and by the quality of our response to the victim's needs.

For the socially invisible and otherwise powerless, who probably constitute the greater part of the silent rape victims, such correct knowledge and empathic humane response may yet enable them to break their lonely silence.

Rape seems to be about de-humanising and denigrating the person. Perhaps if we as individuals and as a community take it seriously enough, we may yet also help ourselves.

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SURVIVOR-VICTIMS AND THEIR PROBLEMS

R.D. Goldney

Introduction

The term 'survivor-victim' was introduced by Shneidman (1963) to the suicide literature to illustrate the plight of those persons left behind following suicide. It is a useful term, worthy of consideration in the present context, as it implies that difficulties may be experienced not only by the person who physically was the victim, but also by significant others in that person's life.

The problems of survivor-victims can be considered in either a very narrow sense, such as is being done in some detail by other speakers with particular expertise in certain areas, or it can be more of an overview. This paper follows the latter approach, and will draw on a review of the literature as well as several clinical examples to illustrate the problems. Then the topic of suicide will be introduced, as it can be argued that this fairly lies within this area of concern, and finally observations will be made of what appear to be general themes and difficulties in this subject.

Although the emphasis of this symposium has been on the victims of crime in its conventionally accepted meaning, it should be noted that some would prefer the subject to encompass a broader range of survivor-victims. Thus, for example, there is a literature on the effects, both physical and psychological, on survivors of torture and concentration camps, and these studies certainly have relevance to Australia, as there are many migrants who are the survivors of such experiences in World War II. There is also a small literature suggesting that the children of these persons may be predisposed to more psychological disturbance, as the suffering parents were not able to establish adequate relationships with their children (Eitinger 1980), and the problem may thus be greater than is generally recognised. It is not possible to put aside the suffering of these subjects as simply an aberration of World War II which could not be repeated, as, unfortunately, there is now a growing literature of the effects of torture and deprivation which has occurred more recently in countries such as Chile, Argentina and Greece. Such abuses were most recently documented at a seminar in Copenhagen in 1979, and have subsequently been published in the Danish Medical Bulletin (1980). There is little doubt that similar experiences will be reported from some refugees who are currently arriving in Australia from other parts of the world.

Whilst making mention of this particular area of survivor-victims in order to emphasise its importance and relevance to us in Australia, time precludes a detailed examination of those issues, and the major part of this paper will be confined to the survivor-victims of civil crimes.

The Problems

In pursuing the literature on this subject, it is evident that there is very little hard data, and that the majority of that which is available is anecdotal. Examples of this include a study of widows of 10 police officers who were killed while on duty (Danto, 1975) and a report of 9 subjects each of whom was closely related to a homicide victim (Burgess, 1975).

Although it could be argued that murder is uncommon in our community, it is pertinent to note these reactions, as it is in such cases that feelings are most likely to be aroused. There are many similarities in these two reports and the reactions of the survivor-victim can be summarised as follows.

There are two broad phrases; an acute phase and then a phase of reorganisation. In the acute phase, it was often noted that although death is usually difficult to accept, it is more difficult to accept when it is unexpected and senseless. There is a sense of overpowering helplessness and despair and fantasies of how the deceased actually suffered are often prominent. Some described that although they could accept the death, the manner of death and fantasied suffering caused much distress. Subjects often had feelings of how they could have influenced events to have caused the deceased to have not been in the death situation. On a more practical level in the acute phase there were difficulties in how to notify relatives and friends of such an occurrence; whether or not to view the body; and how to cope with funeral arrangements.

In the reorganisation phase dreams and nightmares of the deceased were often prominent, and phobic avoidance of places or objects associated with the deceased was also frequently described. There were role changes where a wife, for example, had to assume the role of both parent and provider. Finally, there were prolonged legal issues which were often seen as perpetuating bitter feelings and associated with these was the need to place blame, not only on individuals, but on society, for allowing such senseless violence.

It is of note that the subjects of both these studies were atypical, in that the offenders in all cases were not related to the victim, whereas in the overwhelming majority of cases of homicide, or indeed any violent crime, family members or close friends are involved. These differences may well influence a survivor's perception of blame, as if the offender is unknown, it may be more difficult to make assumptions of provocation by the victim and therefore easier to apportion all blame to the assailant or indeed to society as a whole. Thus, these examples may not adequately represent the possibly more mixed feelings that the survivor-victims of other murders may have.

Because murder is an uncommon phenomenon, psychiatrists who do not work specifically in the forensic area will have little experience with its sequelae. However, the following vignettes illustrate some of the points raised.

Vignette One

Mrs A. was a 30 year old widow who presented to hospital having taken an overdose of sleeping tablets. Two years previously her husband had been assaulted by a work-mate outside a hotel. He had fallen, hit his head and died later in hospital. She said his assailant had received a suspended sentence for manslaughter. It had been Mrs A's second marriage, and although she described it in glowing terms, there had been several separations and her late husband had had treatment for alcoholism. She had a past history of depression.

Mrs A. has found it difficult to work through her grief and maintains a bitter attitude towards any helping agencies. Notwithstanding the difficulties evident throughout her life, she still tends to attribute all her problems to the unexpected death of her husband.

Vignette Two

Mrs B. was referred for assessment after she had become extremely agitated and angry during the proceedings of a compensation trial. She had been involved in an accident in a country town in which a car, driven by a friend, had failed to give way and collided with her. Her husband and father had been killed, and she had been seriously injured, being unconscious for 10 days following the accident. She thus had not been able to attend her family's funeral, and had not grieved their loss. She had become aggressive and homicidal in the court room when the driver of the other car had given evidence suggesting that Mrs B. may have been partly responsible for the accident.

Mrs B. had harboured murderous feelings towards the driver of the other car, and felt that her life was finished. These feelings had been present since her recovery in hospital, had been perpetuated by the fact that no charges had been laid against the driver of the other car and were brought to a head by the other driver's evidence in Mrs B's compensation case.

Mrs B. described herself as a perfectionist, and noted that she had been a demanding wife. There was also evidence from her local medical practitioner that she had been extremely critical and demanding of medical services in the past. However, Mrs B. would not acknowledge any difficulties before the accident, an accident which she perceived very much as murder.

Two years after initial contact and between regular visits, she announced that she had remarried. However, this proved to be disastrous and lasted only three months, as continual comparisons were made with her dead husband. She now remains a bitter, isolated woman, clinging to her belief that the accident and other driver are the sole cause of her difficulties.

Many of the points noted by Danto (1975) and Burgess (1975) and illustrated by these vignettes, have also been documented in the comprehensive 'Report of the Committee of Inquiry on Victims of Crime' (1981) which has recently been presented to the South Australian Attorney-General for consideration. In particular, is the feeling by the victims that the perpetrators of the acts have not been punished enough,a fact brought home to the committee when it was evident that victims frequently under-estimated the sentences which courts had passed. Indeed, if I had been aware of that observation I might well have challenged the patients referred to in the vignettes above as to exactly what had transpired in their legal proceedings.

Victims or survivors of crime not only have to deal with their own fantasies and difficulties in coming to terms with their trauma, but also with society's views and it is apparent that these views are not always helpful. Some of the more general societal reactions to the victims of violent crimes have been outlined by Symonds (1975). He noted three response patterns: first, there are assumptions about the victim provoking or stimulating an attack; second, the victim is isolated following an attack; the third, society tends to be indifferent to the plight of victims.

These points are amply borne out by one's experience. Not only is there a psychological literature suggesting that some who are murdered may unconsciously wish to be killed (Solomon and Aron, 1979), but reports in the daily press at times can be interpreted to imply that such victims may play a role in their own predicament. Thus with the recent Truro murders in Adelaide there was the implication that it was only young girls who accepted rides from strange men who would become victims. The innuendo surrounding the Azaria Chamberlain case at Ayers Rock is another example of society's need to make sense out of apparently inexplicable circumstances.

The isolation and exclusion by society and its indifference to the plight of the victim, which Symonds (1975) notes as separate issues, seem to me to be essentially the same phenomenon. Society finds it difficult, if not impossible, to comprehend and accept what happens on occasions and rather than be taxed psychologically in sharing such experiences and coming to terms with the fact that those experiences could happen to themselves, it is less anxiety provoking to preclude them from consciousness.

A psychiatrist is frequently confronted by the recounting of extremely traumatic experiences in psychotherapy and contrary to the popular impression of psychiatrists suggesting to 'let it all hang out' and talk about it to all and sundry, one's advice to patients sometimes has to be to confine such accounts to the therapy session, as in the everyday situation such descriptions will drive other people away. It should not be forgotten that there is an optimal level of disclosure of traumatic events, above which individuals and society as a whole, will react with denial and rejection. These are reasonable mechanisms of defense and should be respected, or else it may be that seminars such as this could, in fact, be counterproductive.

Notwithstanding this caveat, it appears that until recently the plight of many survivors of crime was to some extent ignored. Although traditional medical, social and psychiatric services have always been available to such persons, most would agree with the comment of Jackson (1979), in a paper devoted to an examination of mental health services for the dependents of homicide victims, that 'the availability of services in general is influenced by one's socioeconomic level, power and political clout'. Thus, ipso facto, the majority of victims will be disadvantaged, as they tend to fall in the lower levels of these three attributes.

It has not been until the last two decades that a concerted effort has been made to assist the victims of crime. Although New Zealand introduced a compensation scheme in 1963 and President Ford gave presidential recognition of concern for the victims of crime in 1973 (Whitrod, 1980), it has been left to voluntary organisations to stimulate interest in the more emotional aspects of the subject. Whitrod (1980) has noted that an organisation known as 'The Weissner Ring' was set up in 1977 in West Germany and this group is dedicated to the welfare of crime victims. It is of interest that it uses earlier victims to counsel new ones, as they believe that such volunteers are more empathic than professionals. Mr Whitrod was also the prime instigator in the establishment of a similar organisation which was set up in Adelaide in 1979. This is known as the Victims-of-Crime Service and its initial operation appears to have been successful both in stimulating community interest and in attracting persons in distress (Whitrod, 1980).

In reviewing the literature and considering my own limited experience in this area, as well as speaking with Mr Whitrod about his work with the Victims-of-Crime Service, it would appear that many of the reactions described are best conceptualised as part of a mourning or

bereavement process. This is obvious for survivor-victims of those who have been murdered, but it is perhaps less obvious for others. This can be best understood by considering that it is not simply the total loss of objects which can cause the mourning process. Those who have been physically assaulted have had their bodily integrity invaded and even those who have experienced theft, for example, have had their personal space invaded and sensed a threat to their wellbeing. Such threats and losses may result in symptoms of the grief and mourning process, and it is thus pertinent to note the generally described phases of this process in order to more fully understand the mental mechanism and experiences of survivor-victims.

Grief and Mourning

Initially there is an acute feeling of sadness, helplessness and apathy, and the subject may feel quite overwhelmed by the loss or perceived loss. There are also often physical concomitants, such as loss of appetite, insomnia and restlesssness and there may be profound depression with suicidal ideation. Frequently a stage of denial follows, in which the person tends to cling to the hope that a mistake has been made and that nothing has in fact occurred. This stage is usually brief and is followed by an acknowledgement of the loss. In this phase much of the grief work is done by looking realistically at the deceased individual, not only at the good points, but at the difficulties in relationships that the survivor may have had with the deceased. It is in this phase that psychiatrists frequently see patients who are unable to acknowledge their ambivalent or mixed feelings to others. These persons are unable to tolerate their hurting or murderous feelings towards those who have died and if such feelings emerge into consciousness they frequently feel guilty about them and thus perpetuate their grief and depression. These feelings are usually adequately dealt with and attachment to lost persons or ideals is gradually weakened and new relationships can be formed. Thus the subject is able to resume normal functioning, with a realistic outlook both towards the past and lost relationships and the future with new attachments.

Although these phases have been virtually institutionalised in standard texts, it has become apparent that this scheme of resolving grief may not be as uniform as is portrayed and some persons may cope quite adequately despite using large amounts of denial. This ties in with my earlier comments about society's need for denial on occasions and emphasises the point that there is an optimal level of involvement and understanding which individuals both require and can tolerate and that the indiscriminate imposition of grief work on all victims may produce its own problems.

To the best of my knowledge there have been no controlled studies investigating the outcome of survivor-victims of crime when intervention has occurred, but only anecdotal accounts. Furthermore, some of these accounts have been reports of new services, set up with enthusiasm and, one suspects, a certain uncritical zeal, perhaps based on personal experience and whether the initial impetus could be maintained is doubtful. However, there have been several intervention studies

following disasters and one of these in particular bears examination. The Granville Train Disaster in Sydney on 18 January 1977 resulted in 83 people being killed and Professor Beverley Raphael set up a counselling service for the bereaved. In a follow-up study 15 to 18 months after the disaster, there was a tendency for those who had bereavement counselling to do better than those who had no such intervention (Singh and Raphael, 1981). It is of interest that there were also trends for the bereaved spouses to have done better than bereaved parents, for widowers to have done better than widows, for those with a supportive network to have done better than those without one and for those who saw the body to have done better than those who did not. However, the fact that only one measure of outcome distinguished the intervention and non-intervention groups and that some subjects appeared to be coping well despite having 'clearly not gone through the stages of grief' suggests that this study could not be used uncritically in support of setting up programmes for survivor-victims. Indeed, its importance may lie more in the delineation of certain subjects, such as bereaved parents, as being particularly susceptible to difficulties in grieving. The point was also made that some people appeared better able to use counselling from disaster workers such as policemen, who were seen to be actually involved with the disaster, rather than outside health workers (Singh and Raphael, 1981) and this observation highlights the dilemma of whether to set up agencies specifically to cope with these problems, or to increase the therapeutic skills of those who will inevitably be involved in these situations.

Suicide

As noted earlier, it can be argued that the area of suicidal behaviour and particularly suicide, can be considered a valid part of the overall problem of survivor-victims. Suicide is a particularly emotive subject and the isolation and indifference which Symonds (1975) noted that society accorded the survivors of criminal events, are equally evident when one examines close relatives and friends of those who have suicided.

People tend to commit suicide because of actual and perceived difficulties in interpersonal relations with others and this is amply illustrated by a consideration of the psychodynamics of suicidial behaviour. Although many factors are involved, the issue of interpersonal aggression has been noted for many years. Thus Stekel (1910) noted that 'no one kills himself who has never wanted to kill another, or at least wished the death of another' and the more recent reports of suicide being 'retroflexed murder' (Hendin, 1967) or 'murder in the 180th degree' (Maddison and Mackey, 1966) describe similar motives. Furthermore, it has also been suggested that 'only he whose death is wished by someone else kills himself' (Federn, quoted by Stengel,1960). These psychodynamic postulates are not always evident in every suicide, but it is fair to say that invariably guilt is evoked in others and the question of what they may have done to prevent the suicide is always asked.

This problem has certainly been recognised for a number of years and Shneidman (1973) has gone so far as to say that 'the largest public health problem is neither the prevention of suicide nor the management of suicide attempts but the alleviation of the effects of stress in the survivor-victims of suicidal deaths, whose lives are forever changed'. While not all would agree with Shneidman's order of priorities, the problem is certainly there and is illustrated by the following vignettes.

Vignette Three

Mrs C. was a 50 year old married woman who presented to a general hospital complaining of depression. She presented an idealised view of her life and that of her family until the suicide of her son, one year before presentation. At length she blamed the drug sub-culture, doctors and the Government for her son's death. During therapy it became apparent that she had a history of depressive episodes over many years and had been treated at a different hospital. Furthermore, she had had frequent violent arguments with her son and had asked him to leave home shortly before his suicide. He, far from being the initially perfect son, had had a history of sociopathic behaviour including drug dependence. During therapy, Mrs C. was able to verbalise her feelings of guilt about her contribution to her son's suicide and to view her son's life in less idealised terms.

Vignette Four

Miss D. was a 15 year old schoolgirl referred for truanting and poor school performance. Two years previously, an older sister had died in a suicide pact with her boyfriend. In a family interview, it became apparent that although Miss D. appeared to have come to terms with her sister's death, her parents had not. They still felt extremely guilty about their perceived contribution to their older daughter's death and in trying to avoid a similar occurrence with their second daughter, they had reacted in a repressive manner, stifling Miss D's spontaneity and initiative and placing unrealistic expectations on her to replace her older sister. Therapy focussed on Miss D's parents and with the resolution of their guilt and grief, Miss D's difficulties resolved.

It is easy, with the benefit of hindsight, to suggest that intervention following these suicides may have prevented further psychological problems. However, at present, although there have been suggestions for the establishment of organisations to intervene following suicide (Welu, 1975), we do not have firm data to demonstrate the effectiveness of such intervention. Indeed, perhaps this might well be a study which could be initiated in Adelaide, as, in South Australia alone there are about 150 suicides each year. There is inevitably involvement with the coroner's office and it would be possible to formalise this in order to examine the effect of intervention. There would, of course, be difficulties in the establishment of such a programme and there would be resistance from some of the survivor-victims, which naturally would have to be respected. Such a service should also not be set up in such a way to imply that the coroner's staff were not dealing adequately with the problem, as I have knowledge that they do indeed approach bereaved relatives with tact and concern. Rather it would be something extra, done in a carefully controlled manner in order to see if extra intervention was of value.

Conclusion

In concluding this paper, it is evident that we really have very little objective data on which to base our opinions. There is certainly a growing literature on the ill effects experienced by survivor-victims and the need for agencies to help these sufferers. However, the natural history of what happens to these people is basically unknown.

It is perhaps pertinent that in a study of the child victims of sex offenders, Gibbens and Prince (1963) noted that 'in general, people are far too ready to believe that 'shocks' and short-lived traumatic events have permanent consequences. In real life what usually does harm is a stress which lasts for weeks, months or years'.

Whilst not wishing to minimise the trauma and suffering which survivor-victims endure, I must note that it has been my experience, necessarily operating from the position of a clinical psychiatrist, that these subjects tend to idealise their previous relationships and displace or project many or all of their difficulties onto the traumatic event. Indeed, in this sense their presentation is not unlike some patients we see during the industrial workers compensation process, where an industrial accident has become the pivotal point in a person's life. In reflecting on the above vignettes, although it may be coincidence, it is of interest that the subjects in vignettes one and two who did poorly in therapy were involved in litigation. This raises the possibility that the compensation litigation process itself may perpetuate difficulties. In this regard, it is pertinent to this seminar on victims that Lloyd and Stagoll (1979) coined the term 'accident victim syndrome' to describe the difficulties encountered by those involved in workers compensation litigation. Although it is not appropriate to pursue this in detail, it is evident that issues of compensation influence not only patients' symptoms, but their relationship with the helping professions and these influences are by no means uniformly helpful.

It is not the purpose of this paper to play devil's advocate in this sensitive area, but simply to point out the complexity of the issues involved. For the present, what is required is a sensitive management of the difficulties which may arise in survivor-victims, coupled with ongoing assessment, both of the natural history of such difficulties and of intervention programmes which may be set up.

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Session VII

EVALUATING SERVICES TO CRIME VICTIMS

As various victim support schemes proliferate and develop, one is tempted to ask, 'how well are they working?' Is it conceivable that some victim assistance initiatives, no matter how well intentioned, may actually *inhibit* the victim's resumption of a normal life? The possibility is a real one; the reader need only recall the potentially counter-therapeutic effects of some criminal injuries compensation programmes alluded to above.

Few people would seriously argue that victim assistance programmes are failing to meet an important range of previously neglected needs. But given the limited resources available, the time for evaluative thinking has arrived.

Elizabeth Lennon addresses the issue of evaluation from the perspective of one who works in a very recently developed programme for sexually abused children in New South Wales. After reviewing the background to the programme's inception, she confronts some of the elemental yard-sticks which programme administrators would do well to develop. In many instances, she contends, prosecution of the offender may be against the interests of the victim. Some child victims may be less traumatised by a sexual assault than by inappropriate reactions of family members. How to diagnose a pathogenic family and to determine the most appropriate form of family therapy are important issues to be addressed. Alternatives to the costly and non productive incarceration of the offender are also worthy of development.

In his paper 'Design and Evaluation of Victim Service Programmes', Charlie Rook recommends that the ultimate consumer of victim services, the victims themselves, should participate in the design process. Through an explicit articulation or an implicit statement of needs, victims are in a unique position to assist in the setting of priorities.

Rook describes the emergence of victim assistance programmes in Victoria. The decentralised development of small voluntary groups, assisted by the Victorian Government under the Family and Community Service Programme, will provide a setting for evaluative comparisons in due course. Ongoing data collection will enable victim assistance organisations to measure their effort, their effectiveness, and their efficiency.

George Beltchev begins his discussion by referring to the difficulties inherent in the evaluation of welfare services. Small voluntary organisations, usually operating under severe resource constraints, often do not command the time and technical knowledge required for rigorous evaluations. Moreover, many workers in the human service area view evaluation as threatening - given its potential use in justifying programme reductions. Beltchev provides a blueprint for service evaluation, and in concluding, reminds us that the ultimate purpose of evaluation is to improve the lot of the client. To identify the most efficient and effective way of minimising the suffering experienced by crime victims is the task which lies ahead.

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AN OVERVIEW OF SERVICES TO SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES IN NEW SOUTH WALES

E. Lennon

In approaching this topic I would have liked to present data from a range of different but relevant services. Unfortunately, in New South Wales, the scope of programmes that I can describe is very limited as we are just beginning to acknowledge that children are often victims of sexual assault and that the community has a responsibility to develop intervention services for the child and his or her family.

In this paper, I would like to cover three main areas:

1. The historical context of services to sexually abused children.
2. Services as they exist now.
3. What we have learned in the past few months and where we hope to develop in the future.

1. The Historical Context - In looking at the historical context of services to child victims of sexual assault it is important to consider two developing strands: the growth of Help Centres for adult victims of sexual assault, and the development of community awareness, legislation and services to children who have been physically abused.

In November 1977 the Premier of New South Wales adopted a proposal by the Women's Co-ordination Unit of his Department that a Task Force be established to examine the treatment and care of victims of sexual offences in New South Wales. The Task Force reported that rape and other sexual offences should be regarded as a psychological and medical emergency where the care of the victim should be of paramount importance, even if physical injury is not obvious. They recommended among other things that specialist units called Help Centres be established in six major hospitals in Sydney, one in Newcastle and one in Wollongong. Of the Units in Sydney two were based in paediatric hospitals, but the main thrust of the programme at this time was towards the care of adult victims.

The services provided were:

- Immediate medical treatment
- Collection of medico/legal evidence of sexual offences.
- Immediate psychological counselling and arranging long term counselling.

At the same time a working party consisting of health, welfare and police personnel drew up guidelines for the procedures that had to be taken when a victim presented.

The importance of the range of services and the development of inter-departmental guidelines was that there was a firmly established precedent for a style and quality of service that was based on inter-departmental co-operation and the victim's immediate need for care being the paramount consideration.

At the same time as the groundwork for Help Centres was being laid, legislation making it mandatory for doctors to report cases of child abuse was enacted.

In response to this legislation 'Montrose', a special unit of the Department of Youth and Community Services was set up in 1977 to provide a service to abused children and their families. Since 1977 this service has diversified and has developed close links with other departments and non-government agencies that can provide services to children at risk of abuse and their families. As we have become less isolated and more experienced, so our awareness as a community of the variety of life situations that can be detrimental to a child's physical and emotional wellbeing has developed.

The experiences of the Help Centres and the growing professional and community awareness that sexual assault and exploitation of children is also child abuse, has led to some significant events in the developments of services in the past year.

2. The Services - It is hard to remember in retrospect what came first - the services or the media coverage. However, early in 1981 there were rumblings of a publicity campaign to be funded by the Health Commission with the aim of reaching families where incest is a problem. At the same time, a group of workers who had been involved in the Children's Help Centres came together with the representatives from a range of agencies and disciplines, to make recommendations that would improve the care offered by services and facilities for child victims of sexual abuse and their families.

This Committee, the Australian College of Paediatrics Committee on the Care of the Child Victim of Sexual Abuse, produced an extensive report, Moreover, their meetings provided an opportunity for health, welfare, legal and police representatives to confront the issues of case

management and protection of the child victims.

The publicity campaign, and the preparation of this report made us aware that workers in the community as well as hospitals needed professional education in this area, and some procedural guidelines to shape their intervention.

Beginning in March this year there have been a series of three day workshops organised jointly by health, welfare and police, involving personnel from a variety of disciplines and agencies. The aim of these workshops has been to prepare workers for working with children and their families through an exploration of their own attitudes to sexuality, an understanding of other agencies roles and some information on treatment strategies. The requests for these workshops are constant and perhaps indicate both the anxiety of workers in the area and the growing admission that the problem exists.

In response to the need for coordination and co-operation between departments, policy and procedural guidelines for child victims of sexual assault under 16 years have recently been developed.

In summary, therefore, the services as they exist at present in New South Wales are comprised of:

- A number of 'help' centres at Paediatric Hospitals.
- A number of professionals at Community Health Centres, District Offices of YACS, and in private organisations who are developing special skills in the area.
- The Police Child Mistreatment Unit, and
- 'Montrose' which provides some specialist and after hours crisis services to the child and family. Through the Central Register of Children at Risk in New South Wales, 'Montrose' is now playing a role in co-ordinating the response of various agencies, both government and non-government, to children who have been sexually abused.

3. (a) What We Have Learned - After many cries for help from experts we realise that we must deal with this problem ourselves. In New South Wales there are no experts with definitive answers about the best way to handle the sexually abused child and his family. We realise that the greatest obstacle to providing a quality service is our own fear of inadequacy and being overwhelmed, as well as our own incomplete understanding of sexuality.

Experience has shown us that this whole area of the sexual assault of children is a unique problem. We have learned that there are differences between sexual abuse from within the family and abuse where the perpetrator is a stranger. In both situations, however, the child and the whole family experience a major crisis. Only rarely are the family members able to provide, at the time of disclosure, the kind of support the child needs. Feelings of anger, loss, retribution, guilt and blame are free floating and it is very difficult for the worker to respond to all these demands, while keeping in mind the immediate needs of the child victim. To orchestrate this family crisis is a crisis for the worker.

Since we have begun providing services to the child victim and his family, the issue that has caused us the greatest concern is the way in which the 'system' makes the victim a victim many times over.

Our society views with horror sexual offences against children and requires retribution through the criminal justice system. In practical terms, this means for the child, a forensic examination describing the sexual assault in detail and on separate occasions to police, hospital and welfare personnel, and possibly the added trauma of court appearances. These court appearances may involve giving a statement before strangers, and being cross examined on an extremely traumatic event in the child's life.

The psychological effects of this whole experience are that the child often feels disbelieved, dirty, sinful, and in some cases of incest, responsible for the desintegration of the family, the loss of the breadwinner and the punishment by gaol of a person who is loved or of significance to the child.

3. (b) The Future - The major area we must tackle in the immediate future is clarifying our relationship as child and family focuses workers with the criminal justice system. This involves looking at ways in which the sensitivities and dignity of the victim can be protected, while still fulfilling the evidentiary requirements of the investigation and court proceedings. Central to this whole issue is a reassessment of the goals of the criminal justice system for these offences.

We believe that those who have sexually abused a child should take full responsibility for their actions. We also believe, however, that society's interests are best served, if statutory intervention requires provision for rehabilitation as well as retribution.

Nothing is gained by the offender being incarcerated for a period and then released unchanged in his or her attitude to children's rights and adults responsibilities, particularly in cases of incest, where the offender often returns to his/her family.

At this point we see future services in New South Wales, as needing to address two types of programmes:

1. Services that offer a range of options for the child and family, such as individual counselling, play therapy, family therapy, a group programme for both child victims and family members, and self help groups.

2. Programmes orientated towards offenders and involving a close liaison with the criminal justice system.

One model for this type of programme is the Santa Clara County Child Sexual Abuse Treatment programme run by the Giarettos in San Jose, California, which has as its focus incestuous families. A major component of this programme is that when an offender is brought before the court the judge can make involvement in the programme part of the offender's sentence. The Giarettos have as their long term aim the the reconstitution of the family along more functional lines but see the criminal justice system as being able to play a constructive role, both in allowing the offender to take responsibility for his/her actions and providing a mandate for the intervention of rehabilitative services.

As our services develop we are also realising that once more, we have fallen into the trap of remedial intervention rather than prevention. Community education, aimed at both children and adults, that looks at sexuality, what is fair and what is not in relationships, and services to those in need, must also be a future priority if we are serious about not accepting the sexual abuse of children as a fact of life.

In conclusion we are aware that when a child is sexually abused it can be the beginning of a whole process of victimisation. It is not enough for our community to throw up its hands in horror and project all its anxiety, anger, guilt and outrage onto 'getting the offender', because this approach rarely solves the underlying issues.

Instead we must accept that we know something about the problem, something about the obstacles we need to overcome and something about the solution. The challenge for us now is to constructively bridge the gap between legal and welfare considerations and together develop a range of services that will offer the child victim, his family and offenders more than panic and righteous indignation.

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DESIGN AND EVALUATION OF VICTIM SERVICE PROGRAMMES

M.K. Rook

I am pleased to be able to participate in this important Symposium which is, very appropriately, being held in South Australia. Initiatives taken in South Australia - both in the development of victim services and in the area of victimology generally - have certainly been noted with more than just academic interest in Victoria. Our own equivalent of the Victims of Crime Services, namely the Victims of Crime Assistance League, has, indeed, drawn on the South Australian experience in establishing its own goals and directions. In this respect, the VOCAL Committee has particularly benefited from the expertise of our Chairman this afternoon whose concern and commitment to this area are well known.

Recognising South Australia's pioneering role in the victim service area, however, makes me feel a little like the proverbial 'Bringer of Coals to Newcastle'. Victim services in Victoria are still too much in their infancy to use them as a model when discussing how such services might be designed and evaluated. Given these novice days where we are still finding our feet, perhaps a more general coverage of some of the principles involved will assist in our understanding of these matters.

The Emergence Of Concern For Victims

The needs of victims of crime have been sorely neglected over the past couple of decades. The reforming zeal of this time has been directed more towards improving the offender's lot - and it quite rightly needed improving. But, such reforms were, unfortunately, at the expense of little,if any, concern, for the offender's victims and their suffering. Even the topic of the first paper at this Symposium talks about the 'interests' of the victim and the 'rights' of the accused.

At the same time, it is imperative that our newfound appreciation of the needs of victims will not see any vindictive about-turn in the reforms we have achieved for offenders. The essence of our concern for victims, as for offenders, is humanity and justice with all its connotations of fairness and the dignity of man.

Many of the papers now being written which have some relevance to victimology, refer to the history of services to victims - its brevity makes it an easy enough history to read. I do not intend to go over that well trodden ground again here, but merely to pose the question as to why services to victims of crime are such a recent phenomenon. It may well be that the factors which have contributed to growing community concern for the plight of the victim, may also have some

implications for the nature of the services which are developed - their design.

Most simplistically, the paucity of services to crime victims has reflected a lack of awareness - both at a professional and community level - that victims might have special needs. Victims have certainly not been a 'vocal' pressure group in bringing their needs to public attention; and one can understand the desire of many victims to dismiss the whole unhappy experience from their minds and shrink back into anonymity. Neither is there any natural association or organisation of victims as there is with offenders. This lack of association has further limited the likelihood of organised campaigning for reform and the possibility of victims finding support from each other.

Significantly, the impetus for establishing victim assistance programmes has typically come from prominent community leaders, gathering local community support. In other service provision areas, there has been a similar trend towards involvement of local people in seeking to build a more personalised, caring community.

The challenge for victim services and indeed for other services stemming from this community involvement is to harness and direct the concern in a positive way to be most helpful to those in need of support.

Design of Services

Having recognised that victims of crime have needs which are not presently being met and accepting that the needs of victims should be met, certain practical matters have to be considered before any service can become operational.

Such considerations can best be summarised by the following questions:

> What type of service; to whom; by whom;
> when, where and how?

Type of Service

A number of services are already available to victims of crime. The criminal justice system is there to protect the rights of the victim as well as the rights of the offender.

Monetary compensation can be obtained by victims through insurance, both of property and person. The Crimes Compensation Tribunal can also provide some monetary compensation. However, in Victoria this is restricted to a maximum of a meagre $7,500.

But the area we are most interested in is the victim support services to assist in the psychological recovery of victims. Here some progress has been made in specific areas such as the Rape Crisis Centre, Womens Refuges and bank staff involved in hold ups. However, support

services for the majority of victims of assault and burglary are generally not available.

* Identifying the needs of the victims

  A common goal of victim support services would be to assist in reducing the trauma experienced by victims, thereby helping them resume a normal life as soon as possible. In order to achieve this goal, information is required on the factors which contribute to or prolong the suffering of the victim and which may impede a return to normal life. In other words, the psychological needs of victims need to be identified and a more specific set of objectives formulated on the basis of them.

  Undoubtedly, one of the best ways to identify victim's needs is to ask the victims themselves.

  In the first year of VOCAL, a workshop was organised to get clearer directions from victims who had been detrimentally affected by crime, on their needs and ways in which the Association could be of most help. The workshop was attended by 18 victims - representing victims of crimes of burglary, assault, armed robbery, attempted homicide and sexual assault. Families, friends and interested people were also in attendance.

  Preliminary findings indicate that in an immediate sense, victims would have liked more support from 'unofficial' sources. Among the more common reactions to the crimes committed against them were - feeling of anxiety about the possibility of further victimisation; depression; loss of security; feeling partially responsible for their victimisation; dissatisfaction with police and legal processes.

  On a preliminary analysis of the workshop, the following areas requiring attention have been identified -

  * The need to develop community education and awareness programmes on the plight of the victim;

  * The need to monitor police and court procedures, legislation and administrative processes and to advocate change where these processes are seen to contribute to the suffering of victims;

  * The need for a personal support service to victims on a regional basis using volunteers;

  * The need to ensure that victims of crime have access to relevant welfare services and competent legal advice.

> The list of objectives adopted by the VOCAL Committee have been designed to meet these needs and cover direct services to particular victims, advocacy on behalf of victims and promotion of the league.

The Committee of Inquiry on Victims of Crime conducted here in South Australia, felt there was a need for an even more extensive examination of the legal, social, financial and emotional needs of victims of different types of crimes. The Committee also advocated long term follow up studies of victims of serious crime, to determine the most effective combination of assistance and support schemes.

It seems unlikely that voluntary organisations would have the resources to undertake such comprehensive investigations on their own. The nature of such study would probably indicate that specialist skills would be required in carrying it out. The information generated would probably have particular relevance to the provision of Government programmes.

* Who provides the service?

Advice from victims makes it quite clear that they regard personal, unofficial sources of comfort and help as most beneficial in the immediate aftermath of their victimisation. A report on the work of the Victims of Crimes Service (Ray Whitrod,1 August 1980) for example, says -

> 'VOCS does provide advice from people wise in the ways of the criminal justice system, or who have been through a similar traumatic experience, purely because they care about people and wish to undertake the repsonsibilities of a friend to someone in need. Experience to date suggests that many victims of a criminal offence do not regard themselves as in need of 'counselling' but they are grateful for advice from persons in the above two categories.'

Similarly, the First Annual Report of the National Association of Victim Support Schemes in England (1980) comments on the importance of using members of the community rather than officials from statutory agencies, to reach out to victims in providing understanding and help 'since it is an expression of community concern'. Especially, since the report claims, many victims perceive an apparent lack of concern by relatives, friends and the broader community, making them feel further ostracised and isolated.

The use of unpaid volunteers, in addition to the advantages outlined above, enables a much more wide ranging and comprehensive service to be provided than would ever have been possible purely on the basis of Government funds. On the other hand, even the most basic of services is likely to require some funds for such matters as communication, publicity, accommodation, power and so on.

Reliance on public generosity is one means of attempting to cover operating expenses, but the effort of fund raising may detract from the more central purposes of the victim service - as indeed the first Victim Support Scheme in England discovered 'it was thought that it would be easy to raise money for such a worthwhile and acceptable cause. In reality, it proved even more difficult than raising money to help offenders ... '

In Victoria, special provision is made for Government funding of such personalised community services, through the Family and Community Service Programme which operates in all 18 regions across the State. Whilst certain Victim Service Programmes have been funded, the FACS programme has not focused special attention on victim services to date. It is, however, planned to place greater emphasis on community correctional programmes at a regional level, providing specific funds for a range of correctional services undertaken by community groups - including support services to victims of crime. It is anticipated that further funds will be made available by the Government for work in this area through the FACS programme in the coming year.

The FACS programme epitomises the Victorian Government's approach to community welfare service provision - recognising the vital role played by the voluntary sector and the importance of localised services which are geared to the specific needs of the immediate community. These principles are well suited to the needs of crime victims for personal support and advice. Through support offered by local volunteers, the victim is less likely to feel stigmatised and, inasmuch as the volunteer helper is part of the local community, appropriate contact and referrals can be made with other community services and resources.

Apart from assisting in the funding of such services, Government departments such as Department of Community Welfare Services in Victoria may assist in such areas as the provision of advice and specialist assistance on design and development of programmes, research, publicity, training of volunteers, etc.

* When and How

Having identified the potential users of the service, consideration should be given to the means of making contact with service users. In England, for example police advise the local Victim Support Service of crime victims in the area. Contact is then made by a trained volunteer with offers of help. Where considered more appropriate, the victim is advised in writing of the availability of help. Another possibility is for the police to advise victims of the availability of the service and leave it up to them whether or not to initiate contact. Wide publicity given to the service may further increase the likelihood that victims will make contact of their own initiative. Until such time as the victim support schemes currently being developed here in Australia can be further localised and refined in operation, a mixture of the different approaches would probably be appropriate. In Victoria, it is likely that different approaches will emerge in different regions, which will thus provide an opportunity for comparing and contrasting the effectiveness of each. Expansion of services to victims would perhaps, in the long term, allow for closer liaison between local services and the police and for contact to be routinely made with all victims who come to police attention.

* Why Evaluate

The interest of government in maintaining consistent standards for social services and in ensuring that best use is made of limited public monies, raises the need for some oversight to be maintained over the operation of voluntary services. Undoubtedly those involved in providing services in a voluntary capacity will also appreciate getting some feedback on whether their efforts are actually achieving anything and how they may improve the service that is being provided. Proper consideration to and provision for monitoring and evaluation in the design stages of the service, will not only satisfy the requirement for public accountability but will also enable the service providers to make improvements on the basis of factual information.

The South Australia Report of the Committe of Inquiry on Victims of Crime (January 1981 p.144) considered

the need for evaluation of victim support services to be particularly important, commenting -

> 'Victim service organisations should also strive to provide the most efficient and effective services possible. To this end, they should undertake regular and rigorous self scrutiny and evaluation. In addition appropriate personnel in these organisations should be accorded opportunities to enhance management and administrative skills'.

The report went on to recommend -

20. Victim assistance organisation should undertake approved evaluation as a condition of public funding or subsidy.

21. Victim assistance organisations which do not receive government subsidies should be encouraged and assisted to undertake appropriate evaluation.

Incorporating Data Collection and Evaluation Procedures in Design

Evaluation of a programme or service usually involves three components (Ref. Developing Evaluation Guidelines, New South Wales Department of Youth and Community Services, April 1981).

* Effort, that is, amount of activity/use of sources to achieve programme goals.

* Effectiveness, that is, extent of achievement of desired effect.

* Efficiency, that is, relationship between effort and effectiveness.

To enable any such assessments to be made, provision should be included in service design for data collection on such matters as the numbers of clients serviced, the cost per unit of service, time spent in providing service, outcome of service, service penetration, level of public awareness, etc.

In identifying the aspects of the service on which ongoing information should be recorded, consideration should be given to the likely usefulness of the information and its relationship to the service's stated goals, for example, it may be helpful to know how the client heard about the service, in deciding whether extension of a publicity campaign is warranted. It is important to collect such data on an ongoing basis as it is usually not available retrospectively.

A clear delineation of the goals of the service is essential in determining its effectiveness in achieving the desired outcome. A statement of objectives in terms which are readily measurable, makes the task of assessing effectiveness considerably easier. The South Australian Victims of Crime Service, for example, set itself three short term objectives: to make VOCS known to the public, to attract 100 members, and to give some immediate support to the parents of the Truro victims.

A comparison of results with objectives, gives an indication of the effectiveness of the service. It is also worthwhile to consider how the achievements of one service compare with those employing alternative approaches. This, of course, relates back to my earlier comments of regionalised programmes in Victoria which, it is anticipated, will provide a built in opportunity to compare and contast different service models.

Finally, if evaluations are to be of any value themselves, their results and conclusions must be heeded and applied in further design and planning.

Relationship Between Design And Evaluation

Proper service design requires information to identify the need for the service, the service users and the best way to reach them. With such information available, the setting of goals which are worthwhile and feasible becomes possible. The same types of information when extended and applied to the service in operation can be used as a basis for identifying its effectiveness, and, in turn, assessments of service effectiveness can be used in the design of new services. At the heart of each aspect of the cycle is the requirement for proper information as a basis for planning.

At this stage I begin to run into the danger of over-lapping with Mr Beltchev's paper, so I shall leave it to him to further develop this matter.

CONTINUED

3 OF 4

SERVICE PROVIDERS & CATEGORY OF VICTIM / TYPE	COMMUNITY/VOLUNTARY	LOCAL GOVERNMENT	STATE GOVERNMENT	COMMONWEALTH GOVERNMENT	PRIVATE ENTERPRISE
Primary Victims Primary Victims (i.e. those against whom the offence was perpetrated)	Vocal CAB * (Information) Family (Support) Legal Aid Offices (1) (Legal advice) Counselling Services (general) Rape Crisis Centre (Support, advice, counselling) Lifeline (information) Women's Refuges & Referral Services (2) (support, advice, counselling) Emergency Accommodation Services (2)	Counselling Services (4)	Crimes Compensation Tribunal Health Services (medical, paramedical, & social-workers) 3rd Party Insurance Legal Aid Commission Law Courts (civil suits/compensation) DCWS (2,3) (funding Counselling, advice) Health Commission (4) Police (support, advice)	Social Security (sickness Benefits, invalid pensions) Health Dept. (2)	Health Insurance Property Insurance Employers Unions (sick leave provisions) Workers Compensation Doctors Psychiatrists
Secondary Victims (i.e. those who experience some trauma as a result of crime - includes families of primary victim & offender & others closely related	VACRO (3) (support, advice to Prisoners' families) Sale Prisoners' Aid Group (support prisoners' families) Women's Refuges & Referral Service (support services to children of battered wives) Emergency Accommodation Services (8)		DCWS (2,3) (funding, counselling, advice) Police (support, advice)	Office of Child Care	Life Assurance Offices
Tertiary victims (i.e. those who experience some impact of crime but are not directly affected - e.g. paying higher Telecom charges to cover cost of vandalism	A.C.P.C.) sensitization to cost, information AIC) advocacy role Criminology) Departments) Vocal		Police (information on costs, sensitization to issues)		

(1) Usually with Commonwealth and/or State funding
(2) Receive funding from DCWS and Commonwealth Departments of Health and Office of Child Care
(3) Receives funding from DCWS
(4) Can involve subsidy from Health Commission for employment of W.O. - special focus on the Aged.

ASSESSING THE EFFECTIVENESS AND EFFICIENCY OF SERVICES TO CRIME VICTIMS

G. Beltchev

Evaluation of human services is an activity which in recent years has gained a great deal of importance. This has been so because of the increase in demand by the community for accountability in human service programmes. As well, in the last decade, human service programmes have undergone a change, moving away from institutional caring to a flexible, more varied network of services with a higher level of community involvement. These two developments have emphasised efficiency in the use of resources, as there is now increasing competition for these resources and have focused on the rights of receivers of services to be given appropriate and effective help.

Consequently new programmes now, almost as a matter of course, have built into them an evaluation and monitoring component. Existing services are increasingly subject to review. A specificity of objectives is being built into programmes to enable measurement of their effects.

Evaluation as an integral part of programme development is however a relatively new development in Australia. In other countries, evaluation has developed into somewhat of an industry. As a result one danger has been highlighted, namely, viewing evaluation as having an intrinsic, rather than an applied value. Evaluation performed as an end in itself is useless at best and misleading at worst.

The focus of human service programmes must be on the receiver of that service. Evaluation then, must analyse what is being done and how well - as it effects the receiver. This information can then be used to make decisions about the continuation of the programme or changes to its operation. This process is not an audit exercise, nor is it an endeavour to gain or develop new knowledge (that is the task of research). Evaluation done effectively must ultimately benefit receivers of services.

The human services and particularly welfare services are difficult to evaluate because of their very nature. Frequently the value of a service is only measured by opinions. Conclusions of this kind are of limited value because it is difficult to extrapolate from such subjective information. The behaviourist approach to evaluation produces objective data which can be used to measure changes. To have such an approach produce valid data, requires a high degree of technical knowledge and evaluation time, neither of which are available to small organisations. It also has the problem of being able to include variables external to the programme which have an effect on its operation.

Services developed specifically to help victims of crime have certain characteristics which make evaluation an even more delicate issue than in established human service programmes. This is largely a product of the early stages in development of victimology in this State. For example, the largest service specifically for crime victims is the Women's Shelter, only begun in 1975. It is the largest, because 4,000 women and children used this service in South Australia last year. The majority of this group are victims of domestic violence.

This service has the primary aim of giving women and their children physical and emotional security at times of extreme stress. However, it is continually concerned with attracting continued funding from the government on which it is almost totally dependent. A further aim is to act as a lobby group to raise community awareness, stimulate legislative change and attract more resources. Most services to victims of crime have these three aims; of assisting the victim, maintaining resources and lobbying for change. All three are valid.

Evaluation of such services from an external source is a difficult exercise because of the many agenda which the organisation has and can be very threatening, particularly if it is related to funding. As evaluation becomes an integral and normal event in the human services, this threat will diminish. However, when an organisation has an 'activist' role, evaluation will continue to be a threat.

Services to victims of crime are not intrinsically defensive about evaluation. Those which already have a legislative or institutional base, for example, Children's Protection Programmes (which are Government run in South Australia) and the Rape Crisis Centre, do not experience any major threat to the need for their existence and credibility. Other services such as the Victims of Crime Service, which are financially independent, welcome evaluation, as their concern is not about funding for their existence, but to ensure they are being useful.

An important characteristic of services to victims of crime which do not have a legislative base is the high degree of mutual support, self-help and volunteerism. Although this does not prevent evaluation, it does place some limits on the level of expectation that can be placed for evaluation by an external group. Also the commitment and interest from the service deliverers is low. Their focus is quite correctly, on making things happen. This tends to decrease the energy from within, to evaluate in a formal way.

Evaluation of services to victims of crime is therefore an area with particular sensitivities which must be acknowledged before any demands for evaluation are made on them. The difficulties and complexities which have been raised do not negate evaluation as a necessary process. What does emerge is the need to give as careful thought to planning and implementing an evaluation, as is given to the development of the service itself.

The evaluation of programmes to be useful needs to be systematically introduced and requires a management plan which prepares people who will be involved, establishes time limits, and states responsibilities of people who will be involved. The management plan must clearly identify the specific purpose(s) of the evaluation. This is significant, as it determines the amount and kind of information. For example, an evaluation carried out as a condition of funding to present a case for continuing funds, will have a different content from an internal evaluation carried out by an organisation to check how clients feel about the service.

The management plan also determines and considers the amount of time and resources which should be allocated to evaluation. It is a matter of judgement, not formula, as to what extent evaluation should draw upon resources. Obviously as little as possible to achieve the results. This issue is particularly important for small groups which have limited resources. Evaluation can easily be seen as an academic exercise with no real value unless there is an emphasis on relevance and practicality.

Finally the management plan must have a flexibility which enables factors to be taken into account that may not arise from information collected. As definitions are made specific to assist in measuring outcomes, some vital and external variables may not emerge. For example, wide fluctuations in client numbers can only be explained by looking outside the programme.

On this basis then, the following sequence can be introduced:

1. Definition of the objectives of the programme.

2. Identification of the indicators which will show the extent to which the objectives have been met.

3. Establish what information will be collected and how.

4. Collection of the information.

5. The processing and analysing of the information.

6. Discussion of outcomes and drawing of conclusions and recommendations.

7. Feedback and decision making.

This process carried out within the parameters set out by the management plan will provide the necessary hard data, for example, number of clients, their characteristics, when they came etc. It will also provide some simple qualitative information; for example, what was the presenting

problem, what was the response by the service, what action was recommended etc. This information can then be analysed and translated into a form which produces the predetermined measurement indicators. Finally the qualitative work of interpreting the information and comparing it to the goals can occur. All this culminates in making decisions about change in the service. As has been stated previously, if the evaluation does not serve the interests of the client in the final analysis, it misses the point and has wasted time and energy. Evaluation carried out effectively will foster objective assessment of what a service is achieving for its clients. That potential is sufficient rationale for every programme to be subject to positive evaluation.

Session VIII

VICTIMS OF SEXUAL ASSAULT

Of all issues in victimology, perhaps the greatest advances have been made in the area of sexual assault. Not surprising, for as recently as a decade ago, sexual assault victims were among the most neglected participants in the criminal justice system. Indeed, so great was their neglect, that many victims chose not to report their assault altogether. Despite recent progress made by some States in the area of police investigation, medical treatment, and the laws of evidence and procedure, much remains to be accomplished.

Each of the three contributors to this Session calls our attention back to the fundamental bases of sexual assault. Lesley Norris, in her discussion of child sexual assault, reminds us that children face their greatest risk from family members. Returning to a theme raised earlier, she suggests that sexual acting out by a child or adolescent may not be spontaneous, but rather produced or invited by an offending adult. In the opinion of many symposium participants, the most appropriate response to such provocative behaviour is negative, not positive, reinforcement. Norris attributes a considerable proportion of sexual assault to the patriarchal values which pervade Australian society. She contended in the discussion which followed that one approach to the reduction of child sexual assault lies in developing alternatives to the nuclear family. Other discussants called for more investment in basic family education.

Dr Deller's paper, 'Rape Victims, Do They Ask For It?' summarises the characteristics of 259 victims treated at the Perth Sexual Assault Referral Centre during a recent two year period. Her findings, consistent with those reported above by Biles, suggest that the risk of becoming a victim is greater for younger women than for older, and much greater for women who are separated or divorced than for those living in a stable heterosexual relationship. Noting that overt sexuality is encouraged by commercial advertising, Deller contends that women should be able to seek male attention without being at risk.

Marjorie Levis, on the other hand, argues that women in public places who wish to avoid the attention of males should be free to do so. Street harassment, argues Levis, constitutes a significant intrusion upon a woman's freedom. She attributes the problem to those factors which socialise men to be offenders and women to be victims. Levis goes on to give a brief summary of rape law in ancient history. She leaves us with an interesting paradox - consumption of alcohol by an offender often reduces his culpability in the eyes of the law.

Consumption of alcohol by a victim often increases her culpability.

General discussion focussed on the issue of prevention. Whilst it was agreed that commonsense precautions could be heeded without significantly limiting one's personal freedom, it was noted that equal economic opportunities for women would enhance both their freedom and their ability to take appropriate preventive measures.

CHILD VICTIMS OF SEXUAL ASSAULT

L. Norris

For the purpose of clarification, child sex abuse includes all of the following:

> incest, child molestation, rape, genital fondling, forced masturbation, oral, anal, or vaginal penetration by penis, fingers, tongue or any other object.

The convening of this National Symposium and some emphasis on children as victims, suggests that the subject is one of deep concern to the public at large. Indeed the recent national reporting of several cases of child sex abuse, as well as the New South Wales Government's current campaign aimed at making people aware of the problem and the somewhat limited facilities for assistance which are available, must indicate that we are, at last, awakening from a long sleep. But unfortunately, during our long sleep children have been abused, neglected, tortured and made to suffer crimes so abominable that when one contemplates establishing services for dealing with them and then looks at apparent governmental reluctance to fund such services - we have grave cause for alarm.

The public generally continues to be surprised at the failure of relationships between adult and child, particularly between parent and child. However, they are never surprised at the failure of other human relationships. Should a marriage fail, divorce or separation is accepted by most. But should a breakdown between parent and child occur, it is met with surprise, shock and sometimes outright hostility.

Society has to find a way to accept that intolerable situations and relationships for children must not continue and that other forms of intervention are necessary - indeed possible.

In most countries today, children are hidden in their homes until they are of an age when they may start school. By the time this stage is reached, so much damage may have been done to the child that it is often too late. What does society do to ensure that children do have access to services and basic human rights? Little or nothing, because the child is seen as the property of the parent or supervising adult. Any intervention from outsiders is seen as an infringement of the rights of the family. I will not go into detail about the nuclear family, there is so much written about and proof of its failure, suffice it to say that many thousands of dead, permanently damaged and sad little children stand as mute testament to its failure.

Child abuse and neglect have occurred in every civilisation. What we now might consider abusive might quite possibly at some stage have been acceptable. It is only comparatively recently that the child has been seen as an individual with any rights.

In 2000BC the sale of children was legal, in 400BC the law forbade the rearing of deformed children, in 315AD the Romans condoned the sexual molestation of young male children.

When confronting child sex abuse there are many who still refer to primitive and not so primitive societies where incest is an acceptable part of family and village life. They will argue that our response to incest is an over-reaction. What they fail to confront is the totally unequal balance of power which exists in any relationship between adult and child. This is always present and must then play an enormous part in any interpersonal activity.

Not many would dispute the idea that evidence supports the fact; most victims are female children.

Recent figures suggest that 70 per cent of female children will have sexual contact with an adult before the age of 13. Ninety per cent will have that contact with a male member of the family or close family friend.

As a feminist, these figures suggest to me that female children are often considered 'bounty' within a family. Those of us involved in Women's Refuges are now almost constantly working with sexually abused children.

One of the things we find most obstructive are the myths surrounding child sex abuse. Some common myths are as follows:

1. Children are in most danger from strangers.

2. Danger areas are parks, sporting ovals etc.

3. The attacker is usually a dirty old man smelling of sherry.

The evidence presents a totally different picture. In the case of myth 1 - children are in most danger from strangers, most are raped by fathers, uncles, brothers, grandfathers and family friends; usually their father. Myth 2 - the danger areas are usually the victim's home, or the offender's home. My experience has been that the rape has occurred in the child victim's bedroom quite often. Myth 3 - is a very dangerous one and has been around for far too long. It is this one that has been responsible for far too many rapists being acquitted. They are not usually dirty old men in raincoats smelling of sherry; they can be doctors, lawyers, clergymen, businessmen, labourers,

electricians, poets or politicans.

Even when it is accepted that the aggressor is a family member, other myths are brought into play.

1. Children fantasise to satisfy their early sexual instincts.

2. Little girls are often sexually promiscuous.

3. That fathers who sexually molest their daughters are sexually dissatisfied with their wives.

In relation to these myths we have to ask ourselves what are the criteria of assessing sexual promiscuity in a three months old baby girl, or the nine year old girl deaf and mute since birth who used exaggerated body movement to communicate with people.

What is often regarded as promiscuous behaviour in a female child is often in fact the child's acting out in response to the sexual situation she has been forced into.

Very often for these children it is a behaviour pattern learnt in early childhood and one which is difficult to unlearn.

We must consider as well the engineering the child has been forced into to either avoid the act or avoid detection. This often involves years of lies and deceit which could later label the child as untrustworthy.

It must also be realised that the mother's sexuality is in no way involved. It is the male sexuality and its response to power and the perceived female role. With regard to the mother's often cited complicity, it must be remembered that sexual attacks on children are generally accompanied by threats of violence, the removal from the home, as well as the reinforcement of the guilt about 'how upset mummy would be if she knew'.

In relation to mother's complicity one thing does concern me. There are a small number of cases where, in fact, mother has been aware of what has been happening to the child. There seems to be a recent tendency to whitewash and even 'canonise' the mother.

In cases where there is mother's knowledge, this total absolution from blame then places the mother in a position of not having to deal with her own guilt feelings when, in fact, she might wish to. It does, as well, make it difficult for the mother to deal with the child's anger at what is seen as a lack of protection on the mother's part, I must clarify this by restating that the perceived female role, plus the economic dependence of the family on the male breadwinner makes this a very difficult situation for the mother if she is aware.

As a result of these myths a very large percentage of cases go unreported. If charges are pressed the chances are that the offender will be allowed bail and return to the family home. Extended delays before the trial are often used to further pressure the child and/or mother to withdraw charges.

The sentences imposed on offenders tend usually to be above five years with a three year non-parole period. Very often the child victim is still of an age where it needs to remain in the parental home when the offender is released from gaol. While I am not implying that long gaol sentences serve any purpose, they do seem to be the only alternative for the child. Current methods of intervention are thus far inadequate and frequently lead to the institutionalisation of the victim. The child might be put into care of foster parents or a children's home where it is not unheard of for various forms of abuse to continue.

It has been my experience that arrangements for the child very seldom reflect the wishes of that child.

One hears so much about the guilt the child will feel if the offending adult is removed; I have found that the child usually wants nothing more than the removal of that person. Subsequent guilt is easier to deal with than the fear of the situation recurring.

This paper thus far has dealt mainly with the abuse of female children. My observations show that male children are more likely to be abused by kicking, punching, hitting and suchlike until adolescence, when the female will then become victim to that type of violence. However, the female child is more likely to suffer sexual abuse during childhood than the male child.

My experience with male children who have been sexually abused shows that there are often quite bizarre circumstances surrounding the abuse such as dressing in female clothes etc. The abuse is usually committed by a male person, usually much older than the victim, who has a diagnosed history of mental disorder. The abuse has usually been relatively non-violent and strangely enough there has often been some sort of reward offered, such as money or gifts. In each case, the offender has not been the natural father and the actual penetration has seldom been the penis. I have found, as well, that there has not generally been a long period of involvement.

My experience with female children, however, has been quite different. In all cases the situation has been a heterosexual one, the majority of offenders having been fathers both natural and stepfathers, there has generally been coercion and threats of violence and a long history of involvement. Seldom has the offender had a history of diagnosed emotional disorder.

In the past year we have had 11 cases reported to us; of these 11, nine were female. Of the 11 only three cases were pursued through the justice system. We were only able to follow up one case as the other

two cases left the town without apparently making arrangements for follow up work with the child. The one case we were able to follow up showed the child's continued distress and the total failure of the relevant authorities to offer support. I must admit that in this case, the only support and comfort the child found of any value was that given by one of the police officers involved in the prosecution. This particular police officer, I believe does a great deal of work with youth groups and is generally liked by the young people in the community.

I have worked mostly with children from a small town of 22,000, a town considered by most standards quite ordinary. I came into contact with most of these children through my work in a Women's Refuge; these have been my experiences.

I do not profess to have any readily available solutions. However, what has become apparent is the quite unfair advantage that males have over females in the nuclear family situation; the economic dependence of females upon males, the isolation of women and children caused by an employment structure which removes men from their homes for most of their lives and locks women into it for most of theirs. The male ethos which encourages violence and aggression and discourages kindness and sensitivity.

These are just some of the causes; I have dealt at some length with the symptoms. The only solution appears to me to be a total revolution in the way that people live their lives daily and act towards each other.

When apportioning the blame we must look at the patriarchial political system, the patriarchial legal system, the patriarchial health and welfare systems and finally, at the greatest of all the patriarchies, the church.

For these are the systems which staunchly defend the family as the corner stone of society. The family which inhibits the growth of women and children by keeping them hidden in their homes, while social status and power remain largely in male control. It is the family which is most influential in all human relationships.

Within family life can often lie ignorance, neglect, violence and despair and the child is vulnerable to the family.

Unfortunately child sex abuse is one of the least researched, least talked about, most controversial and most distressing areas of family violence. We must all of us continue to write, publish and talk about it, in the hope that we might move some members of society to rethink their lifestyles and adopt more appropriate and humane ways of relating to each other. Hopefully, by doing this, one day the child will be released to live with dignity and safety in a society which considers her or him to be an asset and in a personal unit which is based on mutual love and respect, caring and kindness. However, it is my view that this is unlikely to happen while all political and

economic power is in the hands of a male dominated capitalist and socialist elite. The current and historical global situation testifies to this.

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RAPE VICTIMS - DO THEY ASK FOR IT?

C.R. Deller

I chose this title for my paper, as I find that whenever the subject of rape is discussed, whether it be in a professional setting or socially, this same question is asked in one form or another.

Since most rape victims are female, to avoid the cumbersome use of he or she continually I shall refer to rape victims as females from now on in this paper. The use of the word victim in the question about rape suggests that the woman should be treated with sympathy, and given care and counselling support. Yet then, to suggest that she invites this fate, immediately puts some of the responsibility for the dreadful act back onto the woman. Thus society tends to minimise the man's responsibility by making the woman share it. The implication is that if the woman had behaved differently, the man would not have lost control. However, I query this - is rape the action of a man who has lost control, or the act of a man who enjoys being in control? Rape is violence, when the man uses his penis as a weapon to degrade or injure the woman, and also to show and enjoy his mastery of the situation - a very different case from 'loss of control'.

Also, what is the IT that rape victims are supposed to ask for? Society, especially the media, thrusts the message at all women that overt sexuality is desirable - it sells anything from cars to bread rolls. So if she wishes to be accepted, a woman must dress attractively, and that usually means sexily. Yet if a woman does dress in a style that attracts male attention, she is then said to be asking for IT. What is this big IT that is never detailed? It may be that a woman on her own is feeling lonely, so she would like companionship, a caring relationship and yes, maybe she would enjoy sex as well. But is rape a pleasurable sexual experience? In the eyes of the many victims I have seen, the answer is unequivocably NO. Rape is violence, a terrifying experience when for a certain length of time, maybe only minutes, but sometimes hours on end, the woman is literally afraid for her life. She feels out of control, as if she counts for nothing, and could be wiped out without a second thought by her attacker. After escaping from the assault, most women do not suffer nightmares about sex - rather their fears seem more general, a fear of being injured, of dying, of being imprisoned and unable to escape. They feel vulnerable to further attack, unable to relax in male company even in public, and unable to trust anyone again. Rape is an experience that no woman would ever ask for.

Before I go further, and tell you some of the facts we have gathered about rape victims at the Sexual Assault Referral Centre, Perth, (S.A.R.C.) let me insert a very large proviso. The facts and ideas that I put forward today are based on the work that I do, but I can

only tell you about the women I see, that is, the women who choose to seek help from a metropolitan hospital-based centre for victims of sexual assault.

Rape is generally agreed to be a most under-reported crime. Surveys suggest that only one in three to one in ten rapes are reported to the police, or hospital, or rape crisis centre. So the women I see at S.A.R.C. may well be a biased sample. However, there is no easy way to find out details of unreported rape. The figures I quote from are those collected from rape victims seen at our centre from October 1978-September 1980, a two year period.

These figures have been put onto computer, and so are more easily accessible for study.

TABLE I

Age/Marital Status Of 259 Rape Victims To S.A.R.C.
October 1978 - September 1980

Status	15 Years	15-19 Years	20-24 Years	25-29 Years	30-39 Years	40-49 Years	50+	Total
Single	*(19)	97	39	11	4	1	0	152
Married/ De facto		2	5	7	9	2	2	27
Separated Divorced		0	10	13	17	7	3	50
Widow		0	0	0	3	1	7	11
Total		99	54	31	33	11	12	240

* The number of young women seen at S.A.R.C. complaining of rape who are 14 years and younger are a very small group. S.A.R.C. does not see the majority of child sexual assault victims in Perth so this group will not be considered further. Thus the core group for further study on age - specific risk is 240 women complaining of rape, age 15 years and over, seen at S.A.R.C. from October 1978 - September 1980.

Using the above figures, together with data supplied by the Australian Bureau of Statistics[1] for the female population of the Perth Metropolitan area, I have calculated the risk factor for rape. This is expressed as the risk of being raped per 100,000 women per year, and is calculated by age and marital status in the following tables.

TABLE II

Age Specific Risk Of Rape - Single Women

Age	Population Metropolitan Perth	Number seen S.A.R.C. (24 months)	Risk of Rape/ 100,000/year
Under 15 years	107,221	17	Not calculated
15-19 years	36,382	97	133.3
20-24 years	14,705	39	132.6
25-29 years	4,717	11	116.6
30-39 years	3,185	4	62.8
40-49 years	1,568	1	31.9
50+ years	5,756	0	-

1. Australian Bureau of Statistics - 1976 Census of Population and Housing.

TABLE III

Age Specific Risk of Rape - Married/De facto

Age	Population Metropolitan Perth	Number seen S.A.R.C. (24 months)	Risk of rape/ 100,000/year
15-19 years	2,420	2	41.3
20-24 years	19,343	5	12.9
25-29 years	27,387	7	12.8
30-39 years	44,793	9	10.0
40-49 years	36,816	2	2.7
50+ years	52,856	2	1.9

TABLE IV

Age Specific Risk of Rape - Separated/Divorced

Age	Population Metropolitan Perth	Number seen S.A.R.C. (24 months)	Risk of rape/ 100,000/year
15-19 years	0	0	-
20-24 years	1,639	10	305.1
25-29 years	2,874	13	226.2
30-39 years	4,571	17	185.9
40-49 years	3,885	7	90.1
50+ years	5,439	3	27.6

TABLE V

Age Specific Risk of Rape - Widows

Age	Population Metropolitan Perth	Number seen S.A.R.C. (24 months)	Risk of rape/ 100,000/year
15-19 years	6	0	-
20-24 years	45	0	-
25-29 years	116	0	-
30-39 years	500	3	300.0
40-49 years	1,574	1	1.8
50+	29,259	7	12.8

TABLE VI

Risk of Rape - Marital Status/Age (per 100,000 per year)

Age	Single	Married/ De facto	Separated/ Divorced	Widow	Total
15-19 years	133.3	41.3	0	0	127.2
20-24 years	132.6	12.9	305.1	0	75.6
25-29 years	116.6	12.8	226.2	0	44.2
30-39 years	62.8	10.0	185.9	300.0	31.1
40-49 years	31.9	2.7	90.1	31.8	12.5
50+ years	0	1.9	27.6	12.0	6.4

As the preceding six tables show, the largest group of women seen at S.A.R.C., in terms of absolute figures, is the single girl aged 15-19 years. In fact, most of the women we see are single. However, when one correlates age, marital status and polulation figures, the groups at highest risk appear to be women aged 20-40 years who are separated or divorced, and widows aged 30-40 years. Then single girls, aged 15-30 years fall into the next risk category.

Women who have once been married, and who are often single parents, may well feel lonely and wanting for male company. It would be facile to say 'so they do ask for IT'. Having been involved with many such women, it does seem that they are a particularly vulnerable group. Single women, without a regular man about the house are also at significant risk. It never ceases to amaze me how intruder-rapists invariably break into the only house in the street where a woman is living alone, or with small children. This seems like premeditated rape, rather than a spontaneous loss of sexual control under tempting circumstances. What are victims doing immediately prior to rape?

TABLE VII

Victim Situations Prior to Rape
(259 cases in 24 months)

At Home (alone)	-	82 (45)	Bush	-	8
At Hotel/Club/Party	-	65	Parkland	-	4
Street	-	38	Car Park	-	4
Driving	-	14	Others	-	20
Hitch Hiking	-	10	Unknown	-	14

In the figures I am quoting now, there will always be unknown circumstances, as it is a policy at our centre never to ask direct questions for the purposes of filling in an information sheet. It may seem odd that such relevant circumstances are not recorded - but a percentage of our work is with people who have been raped months or years ago, and their problems may relate more to who the rapist was, rather than the exact circumstances leading up to the assault. Thus this information would not be recorded.

It is obvious from Table VII, that in the majority of cases, the victim is involved in normal social activities. Naturally, this is often in mixed company, and women without regular male companions are more likely to be looking for new friendships. It would appear in these circumstances, that the victim has a higher chance of an encounter with a deviant man whose social control and normal sexual skills are deficient.

Where does rape occur? From Table VIII it seems that homes are the most usual site for a rape to occur.

TABLE VIII

Location of Rape (259 cases in 24 months)

Home	-	118	Beach	-	12
Own home	-	73	Bush	-	12
Assailant's home	-	33	Street	-	12
Friend's home	-	12	Car Park	-	7
Car	-	47	Other	-	14
Parkland	-	21	Unknown	-	16

When does rape occur? It seems that the risk of rape is highest in the hours of darkness.

TABLE IX

Time of Day - Rape
(259 cases in 24 months)

6.00am	-	12 noon	-	6)	28
12 noon	-	6.00pm	-	22)	
6.00pm	-	12 midnight	-	70)	169
12 mid-night	-	6.00am	-	99)	
Day			-	11	
Night			-	49	

Of those victims who recalled the time of their rape by the hour of the day, 169 were raped during the evening or at night, and only 28 were raped during the day - a sixfold difference. A similar though lesser disproportion is shown by those victims who only said they were raped 'in the day' or 'at night'.

The last fact I have looked at is the ethnic origin of the rape victim seen at S.A.R.C.

TABLE X

Ethnic Origin - Rape Victims
(259 cases in 24 months)

Australian	- white	- 142	Asian	- 4
Australian	- Aboriginal	- 24	Other	- 4
United Kingdom	-	- 21	Unknown	- 48
Other European		- 18		

I realise this table has a large number in the unknown category, but as I said previously, it is the policy of S.A.R.C. not to ask direct questions simply in order to fill out our information sheet. Ethnic origin may present great problems during rape counselling with victims and their families who are from certain cultures, for example Greek, Italian or Burmese. For some victims, however, their background does not pose specifically ethnic problems, and their origins do not become obvious. We do not see a large number of Australian Aboriginal women at S.A.R.C., and this may well reflect the Aboriginal's lack of comfort with officialdom, and with the aura of a large metropolitan teaching hospital.

In conclusions, I have presented to you certain facts and made certain calculations of the risk of rape. These facts and figures are based on a study of 259 women who came to the Sexual Assault Referral Centre, Perth, from October, 1978 - September, 1980. These are women who chose to seek help from a hospital based centre, and as such, they may well be a biased sample. Women who are already vulnerable to stress, who are single parents, who are known to social welfare agencies, who are alone, without many social supports, or who feel the need for police protection - all these women may well find their way to S.A.R.C. On the other hand, women who have financial and personal resources, who are not under stress in other ways, or who have their own method of obtaining personal protection or revenge may well prefer to seek other avenues of help. So it is hard to draw firm conclusions.

However, our figures suggest that while the rape of older women may give sensational press, as does the assault of children, if fact, the absolute risk of rape does decrease markedly when a woman is over 40 years old. Considerable protection against rape also seems to come from living in a stable heterosexual relationship.

Nevertheless, one cannot ignore the fact that rape can occur at any time, in any place to any woman. When it does occur, for that woman it is a terrifying and traumatic experience - one that she may eventually integrate into her life, but certainly a nightmare she will

never forget. It is the ultimate violation of self that does not kill and no woman ever asks for it.

Acknowledgements

My thanks got to Mr T. Hamilton for all his help in collating the figures quoted and to Mrs Scott and Mrs Liley for secretarial assistance. I could not have quoted these figures unless all Staff at S.A.R.C. collected the data, and last but no means least, I thank my husband for his help and support.

WALK A MILE IN MY SHOES [1]

M. Levis

It is rare to find a woman who has not been subjected to sexual assault of some sort. Until we come to analyse our lives, we often do not recognise the sexual assault for what it is or that sexual assault, in one form or another, is common.

Undoubtedly most of us have been the target of the minor sex offender, 'the man in the street'. 'Man in the street' is a term particularly beloved by politicians and the media - it is male. We have no equivalent term for women. 'Women in the street' means something very different. It has no wider symbolic significance, it refers to an individual woman and more often than not means prostitute.

In our cities, we are confined by regulations dealing with everything from dogs, bicycles, buskers, skateboards, to traffic, but there are no regulations which guarantee women free passage through our cities and towns.

Cheryl Benard and Edit Schaffler two Austrian researchers[2] interviewed 60 men who spoke to them in the street. They did choose a range of age groups and found older men less aggressive than younger men. By the way ladies, a new technique for dealing with street harassment is to produce a questionnaire and ask the harasser if he will take part in a survey - very off putting apparently, but time consuming.

The two researchers found that the men had great difficulty in articulating their intentions - most were at a loss to explain their behaviour. They said that it alleviated boredom, it made them feel youthful and 'it doesn't hurt anyone' was the defensive stock reply. That women dislike street harassment was a new idea to most - not because they thought women welcomed their attentions - they had not even thought about it!

A minority of the men believed that women enjoyed receiving their attention. One 45 year old construction worker deliberately chose older and less attractive women because he was sure his interest would 'highlight' their drab existences. I do not know about you, but I can do without such highlights. Only 15 per cent of the group set out to anger and humiliate their victims - this group also employed graphic commentary and threats. Twenty per cent of the group indicated that they only indulged in sexual harassment when in the company of other men. Interestingly, the researchers found that street harassment declined in the hours of darkness. Harassment would, one assumes, be more effective at night, but Benard and Schaffler suggested that it declines because it would be too effective and could bring the man up

against the law - and these men did consider themselves law abiding citizens.

Any previous attempts (and there have been very few) to explain street harassment have denied its universality and have particularised it by blaming for instance mediterranean cultures, extremes of female fashion, sexual liberalism or Arab society full of repressed males. Benard and Schaffler believe that, 'street harassment is independent of continent, race, generation and degree of sexual frustration'.

Street harassment takes place in the 'public' world - not in small communities where people know one another. Women do not like street harassment. It is particularly off-putting to young women who find it threatening and unpleasant. Many women will detour blocks to avoid building sites or places where men congregate.

The Women's Movement has at times conducted its own forays into street harassment and have discovered that men do not like it either.

In the film 'Wives' the three actresses, in a scene shot live, harassed men in the street. One gentleman was so threatened he preferred to run in front of a tram (without dire consequences, fortunately) than to face the harassment of the three women.

Women's groups have indicated that the reactions of men to street chat range from shocked disbelief to fear. Putting them in our shoes received a shocked reaction - they could not wait to kick them off.[3]

Obviously these tactics are going to give some men an idea of what it is like to be us - but it will not solve the problem. It is all part of the larger problem that one half of our society has its integrity violated - our right to move freely, to equal participation in public life.

The graffiti says - 'Rape - at the end of every wolf whistle' - women know that street harassment is not harmless. It allows men who would never commit a violent crime against a strange woman, to engage in minor transgressions against another's freedom of movement. These men in the street are accomplices in the larger forms, of violence against women.

Let us now turn to the more serious forms of sexual assault - those that are likely to be reported to the police and reach the courts.

This conference is using the term 'sexual assault' in preference to the term 'rape'. It is obvious that there are benefits for victims to use the term 'sexual assault'. Hopefully the crime will be seen more clearly as an act of violence against the bodily integrity of another. In time the community may proscribe acts of sexual violence, which are at the moment all too often seen as subjects for dirty jokes, fumbles on the backseat.[4]

Redefining rape into the broader 'sexual assault' is not going to change anything until society comes to terms with the part it plays in socialising men to be aggressors and women to be victims.

The emotive inaccuracies and myths attached to rape will not disappear simply by using the term sexual assault. In order to understand the myths and inaccuracies, it is necessary to look at historical attitudes to women and to the sexual crimes committed against them.

From earliest times when social order was based on retaliatory force, women were unequal. To avoid her situation of natural prey, it was necessary for a woman to seek a protector. Those who assumed the historic burden of her protection - husband, brother, father, clan - put on her a greater burden. They reduced her to the status of chattel. In Tasmania the chattel status of married women remains - that is rape is the carnal knowledge of a woman, *not his wife*, without her consent. The historic price of woman's protection by man against man was her subservience to a moral code invented for man's convenience - chastity and monogamy. A crime committed against her body became a crime against the male estate.

Brownmiller[5] suggests that rape entered the law through the back door - as a property crime of man against man. She describes how in ancient Babylonian and Mosaic Law a bride price was set - 50 pieces of silver - paid by the virgin's father. The theft of the commodity 'virginity' was seen as the embezzlement of his daughter's fair price. In Hammurabi Code, women had no independent status. They were either betrothed virgins or lawful wedded wives. The attitude to the rights of fathers over their female dependents, is reflected in the Code which decreed that a man who 'knew' his daughter (that is, incest), was merely to be banished from the walls of the city. If a man raped a betrothed virgin, his punishment was death and she was held to be guiltless. However, if a married woman was raped she was held equally culpable - both participants were bound and thrown into the river.

The ancient Hebrews, being rather short of rivers, made the punishment of raped married women and rapists, death by stoning. Reprieve from death by stoning had to wait for Jesus who said, 'He that is without sin amongst you, let him cast the first stone at her'. Unfortunately no similar message reached the Koran.

The Ten Commandments did not mention rape, though Moses received one commandment about adultery and one about not coveting your neighbour's wife, along with his other property - field, house, ox and ass. On the rape of virgins, certain geographical distinctions were put - if a virgin was raped within the city walls, she was held equally culpable - she could have called for help. If she was raped in the fields, she was held to be guiltless and the rapist was forced to pay her father 50 silver pieces and marry the woman. If she was a betrothed virgin, the rapist was stoned to death because he had committed the double offence of depriving the father of the full bridge price and bringing disrepute to the honour of the house.

But the good old double standard was raised high when it came to the rape of virgins of another race. In fights between tribes, rape was common and where tribes needed to increase their numbers, they raped women from other tribes and made them their legal wives.

Concepts of rape and punishment in early English law are a maze of contradictory approaches reflecting a gradual humanisation of the law, but the confusion was not resolved as to whether the crime was a crime against a woman's body or a crime against the man's estate. While early English rape law concentrated on rapes of virgins - and only high born virgins at that - by the 13th Century rape of married women, dames or damsels was punishable by death - if the rapist was found guilty - and thereby hangs the greatest dichotomy. Argument continued and still continues about the 'good fame' of the victim.

Historical attitudes to virgins and non-virgins must be related at some length because our society continues to suffer the hangover of history in legal and other agencies to virgins, who generally receive much more sympathetic treatment than non-virgins.

There are many myths attached to rape and those who favour its replacement with degrees of sexual assault hope that these will, in time disappear. But will they? Until attitudes towards women change, sexual assault will merely be a rose by another name - the smell's the same - only this one stinks. The victim is still going to face all the traditional prejudices - she is going to be judged by the system on - the way she dresses, where she was (on a dark street, in a pub, in an unlocked house, naked in her own bed), her age - it appears that 18 year old men do not rape 35 year old women, her sexual experiences.

On top of all that, she is likely to face disbelief when she complains. Use of the term sexual assault may encourage more women to report the assault. At the moment it is estimated that for every rape reported 10 to 15 go unreported. Rape victims have always been reluctant to report the crime and seek legal justice - because of the shame of public exposure, because of the complex double standard that make a woman feel culpable, even responsible, for any act of sexual aggression committed against her, because of the possible retribution from the assailant and because women have been presented with sufficient evidence to come to the realistic conclusion that their accounts are received with harsh cynicism. Despite this, it is still a widely held belief that women consistently make false accusations of rape. The lie of the false complaint is deeply embedded into community consciousness.

The great lie of the false complaint is that it has clouded the attitude of the community to the victim of sexual assault. False reporting of rape is no greater than false reporting of any other crime.[6] Of course people lie - but it does not appear that women lie more than men. Every day we read in the papers about men lying - big lies. Lately it seems to be something to do with donkeys, horses and kangaroos.

With the use of the term sexual assault, it is doubtful if the traditional picture of the rapist will disappear. The picture is of a monstrous figure, leaping from the bushes - black or of a different race, and of lower socio-economic status - and if he is not one of the above - definitely drunk.

This is a deliberately distorted picture that denies the normalcy of the assailant. It suggests an uncontrollable sexual urge, yet a large percentage of sexual attacks are premediated.[7] There is no evidence to suggest that one race rapes more than another. Nor is the sexual attack confined to one class. Convicted men are more likely to be from the lower socio-economic group - not because of the propensity of that group to rape, but because of the nature of our judicial system. The traditional picture suggests that sexual attacks occur out of doors by a stranger. Nearly 50 per cent of attacks take place in the home of the victim and 70 per cent of all sexual attacks are committed by men known to the victim.

If the assailant does not fit the 'proper' criteria, he is likely to be seen as drunk. That is, 'ordinary' men attack women in exceptional cases only, when under the influence of alcohol. Drunken drivers are held responsible for the consequences of their intoxication, drunken rapists are not - or at least drunkenness renders it more comfortable for society in describing how the act occurred.[8]

To support this I quote from a newspaper[9] - this attitude to sexual assault and alcohol is common:

> Suspended Sentence for Assault - A man received a three year suspended jail sentence yesterday for an indecent assault on a ten year old girl.
>
> The defendant had pleaded guilty in a previous court to the assault. The magistrate told the man that his behaviour had been despicable and abhorrent, 'You are guilty of a serious offence, one the girl will remember all her life and no doubt she was completely terrified'.
>
> He said it was apparent from reports presented to the court that alcohol had played a part in the offence.
>
> The magistrate suspended the prison sentence on condition that the defendant commit no offence of a similar nature.
>
> The defendant was also put under probation supervision for 18 months with one of the conditions being that he does not use alcohol to excess.

There is a completely different attitude to victims who have been drinking. Women in pubs are there, apparently because they have the ulterior motive of trying to get a man - plain thirst never drives us into pubs. Nor is alcoholic intoxication an excuse for a woman who accepts a lift home, or goes on to a party - she is 'asking for it' even 'wanting it'.

Researchers have spent time in looking at the racial characteristics, the personality and other features of men who sexually assault in an attempt to prove the gross abnormality of the traditional view. Such research has shown him to be normal. Indeed the studies show the rapist to be remarkably similar to the average male - 'the man in the street'. If it is the normal male who commits sexual crimes, we must now ask ourselves, what is wrong with the normal life?

New wave feminists in the past 10 years have attempted to understand our conditioning. Many women now understand conditioning in the terms of how it affects our personal lives, in when we marry, in which jobs we choose, which sports and recreation activities we undertake, whether we can carry out the garbage bin and change a light globe and how our conditioning encouraged us to be passive, vulnerable, the natural victim.

No equivalent examination in personal and political terms by men of their own conditioning has yet taken place. The 'normal' characteristics of masculinity are classed as being virile, aggressive, masterful, strong and dominant. Women are waiting for men to analyse their conditioning as we have done. When the analysis is complete and understood, the myths will be seen for what they are - camouflage and lies and sexual assault will be seen as the product of conditioning, not of unchangeable human nature.

As long as sexism exists, while masculinity means aggression, while men refuse to accept their responsibility in coming to terms with their conditioning, it is immaterial whether we talk about rape or sexual assault. The threat of sexual assault will still be with us. It will inhibit our actions and limit our freedom. It will affect the way we dress, the routes we walk.

NOTES

1. Brown, Rita-Mae, 'A Plain Brown Wrapper' *Something About 'Walk a Mile In My Shoes'* in (Diana Press, 1976) p.43.

2. Benard C. & Schaffler E., 'The Man In The Street' in *Rowohlt And The Man In The Street: Why He Harasses*, MS Magazine, May (1981).

3. *Op. cit.*

4. Scutt, Jocelynne A. (ed.), *Rape Law Reform*, 'Who Chooses The Direction?' in *Legal Services Bulletin*, February 1981.

5. Brownmiller, S., *Against Our Will: Men Woman and Rape*, Seeker and Worburg, (1978).

6. Norby, Virginia B., 'Reforming The Rape Laws - The Michigan Experience,' in *Rape Law Reform* (ed.) Jocelynne A. Scutt, A.K. (1980).

7. See Menachim Amir - *Patterns Of Forcible Rape*, University of Chicago Press, (1974).

8. See Jocelynne A. Scutt - 'The Alcoholic Imperative: A Sexist Rationalisation of Rape and Domestic Violence', - Women and Labor Conference, University of Melbourne, May (1980).

9. *The Examiner*, Tuesday 3 August 1981.

Session IX

VICTIMS OF DOMESTIC VIOLENCE

Victimologists, policy makers, and members of the Australian public are only just beginning to develop an awareness of the magnitude of domestic violence in Australian society. The circumstances which underlie the historically low visibility of domestic violence are varied. A person who suffers at the hands of a spouse or lover is less likely to invoke governmental authority than is one who is victimised by a stranger. Of equal importance is the perception by many victims of the inadequacies of welfare and criminal justice systems. This latter factor in particular helps to explain why so many domestic violence victims have suffered in silence.

With the gradual erosion of gender based inequalities in Australia will come an improvement in the quality of welfare, police, and other criminal justice services to victims of domestic violence. The visible incidence of domestic violence can thus only be expected to increase in the 1980's. The papers in this section suggest a mix of criminal justice and welfare policies to address this heretofore neglected area.

John Willis, in his paper 'Exemplary Prosecution of Domestic Violence Offenders' argues that the inadequacy of protection accorded domestic violence victims by the criminal law is especially acute in the case of the separated wife.

Contending generally that police should be given more direction regarding their responsibilities to domestic violence victims, Willis suggests that selected offenders be prosecuted on indictment in higher criminal courts. Such visible denunciation of domestic violence has great educative potential, analogous to the consciousness-raising function served by the 1976 South Australian criminalisation of rape in marriage.

Nevertheless, as Penny Stratmann contends in her paper, there are inherent limitations in the degree to which the criminal law may effectively control domestic violence. Indeed, even the Family Law Act (Commonwealth) applies only to married couples. In situations where victims may be reluctant to prosecute, where there may be insufficient evidence to support a prosecution, or which are characterised by chronic harassment and low level violence short of physical injury, Stratmann recommends the use of restraining orders. Enforceable by State police in State courts of summary jurisdiction equipped with counselling and referral services, backed up by a welfare-based mobile crisis intervention unit such as that currently operating in South Australia, this machinery could serve as a fruitful alternative to prosecution for assault.

Yvonne Carnahan's paper, based on in depth interviews with a married couple, provides some insight on the relationship between inequality and conflict in the domestic setting. She sets an agenda for further research on the extent to which childhood disciplinary experience effects choice of marriage partners, and on the relationship between interspousal economic inequality and domestic violence. The ensuing discussion underscored the vulnerability of the housewife without independent means of support. It was also noted that police have ample powers to intervene in situations of domestic violence. Their failure to do so satisfactorily was attributed more to anti-female biases than to inadequate powers of arrest.

EXEMPLARY PROSECUTION OF 'DOMESTIC VIOLENCE' OFFENDERS

J. Willis

A Preliminary Tale

The following story was told to me by the police officer involved.

A few years ago in a working-class area in Melbourne. A wife finally left her husband taking with her the seven children of the marriage. She found a house elsewhere but did not reveal her new address to her husband. However, he managed to find the address and late one night he went to the house, bashed down the door with such violence that he brought down the surrounding architrave and plaster and then assaulted her.

The policeman who was called to the scene charged him with five offences, three summary and two indictable. The summary offences were:

(a) assault (*Summary Offences Act* s.24)

(b) wilful damage (*Summary Offences Act* S.9(c))

(c) being unlawfully on premises (*Vagrancy Act* s.7(1)(i)).

The two indictable offences were:

(a) malicious damage*(1)

(b) forcible entry upon land in a manner likely to cause a breach of the peace or reasonable apprehension of breach of the peace (*Crimes Act* s.207).

The indictable charges were not proceeded with since the senior police officer vetting the charges said that it was inappropriate for 'domestics' to go before the higher courts. At the hearing of the summary offences, the husband received a bond to be of good behaviour for twelve months.

Some six weeks later, late at night, the husband again broke down the door and with it the surrounding woodwork and plaster and assaulted his wife. He was charged with the same three summary offences of assault, wilful damage and being unlawfully on premises. On this occasion, the husband fearing that he could receive some severe penalty

penalty in view of his previous offences hired a lawyer who argued that the defendant was not guilty of being unlawfully on premises since he was trying to get access to his children. Although the defendant, when he had broken in, had made no effort to speak to his children, the magistrate dismissed the charge of 'being unlawfully on premises' and on the other two charges, the defendant once again received a bond to be of good behaviour for twelve months.

Some six or so weeks later, late at night, the husband again broke down the door, surrounding woodwork and plaster and assaulted his wife, was charged with assault and wilful damage and once more received a bond to be of good behaviour for twelve months.

After this third court hearing, the woman who had, according to the policeman, been an excellent witness, came over to the policeman, thanked him for his efforts and told him that she would not be calling on him again. She opened her handbag and showed him a long, sharp kitchen knife and said that next time she would kill her husband. She further added that she had already told her husband of her intention. During the next six months there was no more trouble and the policeman was then transferred elsewhere. However, he told me that he believed that the husband had not repeated his nocturnal assaults.

There are various aspects of this episode that deserve comment. The separated wife had been offered no protection from the criminal law and had in effect been left to self-help remedies with a high potential for homicide. The assaulting husband had had his assaultive behaviour condoned, if not almost legitimated, by the inaction of the courts. The police officer had learned from the response of his senior police officer and the approach of the court, that 'domestics' include violence between separated couples, that such violence, unless it results in serious injury, is not a fit matter for the higher courts and indeed that criminal prosecutions are not really an appropriate response to such violence.

Introduction

The law has always had great difficulty in dealing satisfactorily with what can be described as 'ongoing' relationships such as - disputes between neighbours, employer-employee relations and domestic conflict, where the parties to the dispute will normally be in close relationship to each other after the particualr dispute has been adjudicated upon. In these kinds of cases, the function of the law is often to lay down the basic rules or guidelines in the light of which the parties attempt to find a compromise position which will be more or less acceptable to all concerned. The introduction of sanctions and threats is often counter-productive, exacerbating the situation and making the achievement of a settlement considerably more difficult. In particular, the criminal law, which is primarily concerned with attributing fault and imposing punishment, often is and is seen to be, both inappropriate and counter-productive in such situations.

Domestic Assault

(a) The Community - The difficulties in determining the appropriate place of the criminal law are most pronounced in the area of domestic conflict. It is still probably true that the community, in general, considers that domestic conflict situations are or should be normally outside the criminal law.

In 1972, Mr R. J. McLellan, in discusssing in the Victorian parliament the proposed provision of the *Crimes Compensation Act* which would exclude from compensation victims whose assailants were living with them at the time of the offence, stated:

> 'For example I do not think it would be a good thing if the tribunal (sc. Crimes Compensation Tribunal) had to come to the conclusion that a father has been guilty of a criminal act against members of his family. This is best left as a family area rather than for society to intrude. It is uncomfortable enough when members of the police force are asked to attend a household to quieten things down. All honourable members are glad that only minor charges arise from domestic brawls.'[2]

Despite the increased awareness of the extent of domestic violence, it would seem that the attitudes expressed by Mr McLellan, are still typical of the general community. As Marie Coleman, the Director of the Office of Child Care stated in 1979 at a Conference on Violence in the Family:

> 'Overall, our society tends to have a profound (almost irrational) sense of the privacy of the family and its relationships.'[3]

This attitude in part springs from the belief that the use of the criminal law in domestic situations is generally ineffective and inappropriate and that the correct approach is to provide resources to get the relationship working, or, in cases where the relationship is unworkable, to assist the parties to terminate the relationship as smoothly as possible. On this view the role of the police in domestic conflicts is limited to managing the crisis situation and leaving the longer-term adjustments to other agencies.

(b) The Police - Community attitudes are inevitably reflected in police behaviour. The police see themselves and are generally perceived as the agents of criminal law enforcement. It is the police who are generally first called upon to intervene in domestic conflict situations. Their very presence, thus imports into the situation what can be termed 'a criminal element', which both the police and a large section of the

community see as inappropriate. It is, therefore, hardly surprising if the police find their position unsatisfactory and confusing. They are present by virtue of an authority conferred on them which they are supposed to minimise.

Their situation is exacerbated and their capacity to act further limited because they are often not sure whether they are entitled at law to be on the premises. The community's ambiguity about the use of the criminal law in domestic disputes is reflected in the failure of governments to give to the police clear powers of entry upon private premises in these situations. The police officer whose continued presence in a home is possibly dependent on the permission of the alleged offender is deprived from the outset of the authority and confidence which may well be necessary to manage the situation.

Police perceptions of their own role further limit their effectiveness in domestic situations. Such situations are not seen as capable of any lasting solution through police intervention - the police often expect to be back again. Indeed 'domestics' are often not perceived as real police work, but really a social welfare matter. Paradoxically though, domestics are dangerous. Unlike many police investigations (for example burglaries, robberies) the offender is still at the scene and often the situation is tense and likely to become more tense with the arrival of the police. The police are thus thrust into a potentially dangerous situation often unsure of what authority they have to be there and with very little direction as to what course of action they should adopt.

The ambiguities of the police position are reflected in police training and instruction. Although attendance at domestic disturbances constitutes a very large proportion of police work, there is little mention of 'domestic disturbances' in the Victorian Police Standing Orders. Similarly, little time is given in police training courses to domestic disturbances. It is something which is left to experience and the individual police officer's common sense. However, the basic thrust of what training there is seems to be that the function of the police is to quieten things down and avoid any action which could prolong or aggravate the situation. If the victim (generally the woman) wants criminal action taken, the general policy is for the police to provide her with the information form and get her to lay any charges. This policy removes the police from any formal connection with criminal action taken as a result of domestic violence and, in effect, requires the victim to perform the normal functions of the police.

The result can be that there is no criminal action taken by the police or anyone in domestic violence situations until one of the parties, having inflicted serious or fatal injuries, is charged with murder, attempted murder or malicious wounding.[4]

The unwillingness of the police to do anything more than quieten the situation is very understandable and is a more or less accurate reflection of the community's anxiety to have domestic problems and conflict dealt with as far as possible outside the frame of the criminal law.

The situation is nevertheless clearly unsatisfactory. There is growing awareness that domestic violence is widespread in the community and that what approaches are currently being employed to deal with the problem are unsatisfactory and insufficient. It is also clear that in the foreseeable future the police will generally be the first agency called upon to intervene. Against this background, the police have a right to be given some direction from community and government as to what role they should play and what approaches they should adopt.

What Relationships Are 'Domestic'

A starting point in defining appropriate roles for the police and the criminal law is the definition of domestic conflict. In this context, the basic elements of an adult domestic relationship are sexual intimacy and cohabitation, as exemplified by a married or de facto couple living together. However, the notion of 'domestic relationship' has been extended to include persons who once lived together in a sexual relationship but are now living apart from each other and persons who have had 'a short or long term intimate relationship but did not cohabit except casually'.[5]

The result of so extending the meaning of 'domestic relationship' is to make sexual intimacy either past or present the major element in determining whether a relationship is 'domestic'. Cohabitation or living in the same house, which one would have thought was the essential element of 'domesticity' thus becomes a secondary and minor element.

As a matter of experience, separations do not necessarily mean that a relationship is at an end; the parties may well start living together again. Similarly, even when relationships are apparently finished, custody and access arrangements for children can be a further complicating factor in maintaining contact between the parties and can be a source of friction and sometimes an element in a reconciliation. Likewise, in relationships between lovers who are not cohabiting and have not done so, breaks in the relationships are not uncommonly part of the process of working out and/or testing the strength of the relationship. From a number of viewpoints, the classification of many such relationships as 'domestic' makes a lot of sense.

However, in the context of violence and assault, such a broad definition of 'domestic relationship' with its concomitant unwillingness to use criminal sanctions is far less justifiable. The fact that a person is living separately is a strong prima facie indication that for whatever reasons, that person has chosen at that time to stay apart from a domestic living situation. As an adult, a person is surely entitled to have that choice respected and protected by the community. Any individual, whether lover, ex-lover, husband or former de facto, who intrudes, is violating that other person's privacy and freedom to choose her place of living. If the police and the courts choose to treat such intrusions as domestic conflicts and therefore matters not appropriate for the imposition of criminal sanctions, they are in effect stating that sexual intimacy or a sexual relationship, even if finished, confers on the parties something analogous to an

inalienable right to trespass and immunity from punishment for assault.

Such approaches are clearly very much out of step with developments in the law of rape. The old rule of law that a husband could not rape his wife has been widely criticised as out of touch with modern thinking[6] and has been modified in various statutes in Australia.[7] While there is still considerable disagreement as to whether a husband should be liable to conviction for rape of his wife if they are still living together, there seems general agreement that where husband and wife are living separately and apart, even if no proceedings for divorce have been commenced, or injunction been sought, a husband should be able to be prosecuted and convicted for rape of his wife. The *Victorian Crimes (Sexual Offences) Act* 1980, for example, under the sub-heading 'Abrogation of Obsolete Rules of Law' states:

> s.62(2) Where a married person is living separately and apart from his spouse the existence of the marriage shall not constitute, or raise any presumption of, consent by one to an act of sexual penetration with the other or to an indecent assault (with or without aggravating circumstances) by the other.

The clear legislative policy of this and similar enactments is to provide separated wives with protection against sexual assault from their husbands.

Moreover, the law, at least in this century, has not given immunity to husbands who assaulted their wives without having sexual intercourse with them. It is surely paradoxical and indeed perverse if, at a time when the law is expanding a wife's protection against sexual assault, the policies and approaches of bodies entrusted with the enforcement of the law operate to tolerate if not confer de facto immunity on a husband who physically attacks his separated wife without having intercourse with her.

The Frequency of Assault on Separated Wives, Former De Factos and Lovers

Writing in 1978 of violence inflicted on women by their mates, whether legally married or not, Anne Deveson one of the Commissioners of the Royal Commission on Human Relaionships stated:

> 'Research is limited. We have little idea of the extent of the problem except that is is vast'.[8]

In a number of the Australian surveys of what is called 'domestic assault' or 'domestic violence', it is noted that a significant proportion of the violence or assault is inflicted on women who are living apart from their attacker at the time of the assault. In the 1975 Report of the New South Wales Bureau of Crime Statistics and

Research entitled 'Domestic Assaults', of the sample of 184 cases documented over the survey period -

> almost three out of ten (28 per cent) of the couples were living apart at the time of the assault. In some cases, they had been separated for as long as four years'.[9]

More recently, the *Report of the New South Wales Task Force* on *Domestic Violence* stated:

> During our consultations it was continually brought home to the Task Force that the problems of a woman who has been assaulted by her male partner do not necessarily end on separation. In the Task Force Survey nearly one third of the women who responded had been attacked whilst they were not living with the man.[10]

This percentage of nearly one-third is almost identical with the 28 per cent of assaults in the New South Wales Bureau of Crime Statistics and Research Survey which occurred when offender and victim were living apart. It would seem clear that such assaultive behaviour is very common.[11]

There has been, to my knowledge, no research which has specifically examined the approach of police and courts to assaultive behaviour between separated couples. Generally speaking, it would seem that such assaults are treated as domestic matters. Unless someone has been fairly badly injured, the police see their function as settling things down and the courts are likewise inclined to attempt conciliation rather than impose criminal sanctions. In the case of separated married women being threatened and/or assaulted by their husbands, the generally recommended approach is to seek an injunction from the Family Court. There is quite widespread dissatisfaction with the effectiveness of these injunctions, and the Select Committee of the Federal Parliament, which recently reported on the Family Act has recommended that an applicant for an injunction against domestic violence should be entitled to ask the court for a power of arrest to be attached to an order applying in the event of its breach.[12] The New South Wales Task Force has gone further and recommended that a power of arrest to be vested in all State and Federal police should be a standard condition of all domestic violence injunctions whether granted ex parte or not.[13] There is growing belief that this kind of assaultive behaviour requires the use of the criminal law sanction.

As a matter of general policy, it seems to me that police should treat all assaults and violence which occur between separated couples as prima facie non-domestic. Such assaults should be seen as more akin to assaults upon a stranger, rather than extensions of domestic conflict. In many of these 'separated' situations, the right of entry on the premises and the power of arrest are not so problematical. There will, of course, often be complications especially where access to children

is involved or where the separation is recent and the woman is ambivalent about the status of relationship. Moreover, women who have been shocked and distressed by the invasion of their separate living space often share community perceptions that such invasions are really domestic in nature and that police involvement should be limited to settling things down for the time being. A general police attitude that such assaultive invasions are not domestic and will not be tolerated by the police or the community as extensions of domestic conflict can help strengthen the woman's resolve and peace of mind and thus assist the police in dealing firmly with the offender.

In focusing on the separated assault situation and suggesting that such assaults should be treated by the police as prima facie requiring the laying of criminal charges, I am not to be taken as suggesting or implying that all assault situations between partners who are living together should be outside the scope of the criminal sanction. There is growing belief that many such assault situations in fact do require the use of the criminal sanctions. Such assaults, however, do raise very delicate questions of tact, public policy and the belief and wishes of the parties to the conflict. The issue is more clearcut when the parties are not living together and it seems to me that the distinction between parties living together and those who are now living apart is a useful starting point in generating broad policy approaches in a complicated area of growing community concern.

The Use Of 'Examplary Prosecutions'

It is generally accepted that in our society the criminal law and the criminal justice system aim to reduce, if not eliminate, certain kinds of prohibited behaviour. The whole criminal justice process and in particular the trial, is seen as a public ritual denunciation of behaviour considered abhorrent to the values of the community. The criminal process and the punishment imposed on offenders are intended to deter the individual offenders and any potential offenders. As the Canadian Law Reform Commission stated:

> In its own way the criminal law reinforces lessons about our social values, instills respect for them and expresses disapproval for their violation. This - what some call 'general deterrence' - is the moral educative side of the criminal law.[14]

It must, however, be stressed that the part played by the criminal law in developing and enforcing community values is comparatively minor. Other agents such as parents, peers, teachers and the media undoubtedly play a far more significant role. Nevertheless, the criminal law does have a role to play and it should not be neglected.

It is indeed arguable that this role is more critical in areas where community attitudes are unclear or are seen to need reformulation. The enactment of legislation clearly setting out prohibited behaviour and the enforcement through the criminal courts of this legislation can serve to determine and then fix for the community what behaviour will not be tolerated. As has been said, when the community lacks a

consensus morality, the law tends to become the community's morality.

The educative potential of the criminal law seems to have been very much to the forefront of advisors to the South Australian Attorney-General, Mr Peter Duncan, M.P. when the rape-in-marriage legislation was enacted. Carol Treloar, who was Press Secretary to the Attorney-General at the time and was closely involved with the promotion of the legislation, has stated:

> 'We viewed our reforms of the South Australian rape laws and the process of actualising them, as playing a crucial role in community education, or in modern parlance "public consciousness-raising".'[15]

In relation to domestic assault and in particular to non-sexual assaults on separated wives and de factos by their former partners, it would seem that the criminal law could play an significant role in 'public consciousness - raising'.

Specifically, certain of these assaults even where no significant physical injury is caused, should be prosecuted on indictment before the higher courts. The use of the higher courts, the process of indictment and jury trial, constitute of themselves a public statement that these offences are considered by the community to be serious. There is far greater likelihood that such cases would be reported in the media and greater publicity thus given to the community's abhorrence of such behaviour. If, as one would hope, substantial penalties were imposed upon conviction in appropriate cases, this could provide guidance to magistrates in summary hearings dealing with similar cases, as well as to police in their approach to such cases.

In deciding what cases could or should be considered to warrant prosecution on indictment, law enforcement officials would obviously need to be circumspect and aware of the widespread community feeling that the criminal law is generally inappropriate in domestic conflict. It is for this reason that assaults on separated wives and de factos by their former partners, offer the best material for such exemplary prosecutions. Many such assaults involve breaking into the woman's house, often at night, in contravention of a Family Law injunction against such behaviour. Often, too, there has been a number of such assaults. In such cases, resort to the Family Law has proved ineffective and there are ample grounds for the use of the criminal law as the weapon of last resort. Moreover, such violations are and should be seen as very serious, thus justifying the use of senior courts. Courts and juries, presented with evidence of a series of violent entries into a woman's home late at night and subsequent unprovoked assaults in clear disregard of Family Court injunctions prohibiting such behaviour together with evidence of the woman's fear and panic would not, in my opinion, see such cases as trivial or necessarily deserving of much leniency.

There are, of course, ample indictable offences which could be charged in such cases. In Victoria, for example, common assault and assault occasioning actual bodily harm are indictable offences. There is also an indictable offence of 'entry upon land in a manner likely to cause a breach of the peace or reasonable apprehension of breach of the peace'.[16] Burglary is defined to include entering a building as a trespasser with intent to commit an offence involving either an assault on a person in the building or damage to the building or property in the building where that offence carries a maximum punishment of five years' jail or more.[17]

Paradoxically, such exemplary prosecutions could be all the more effective in limiting the definition of 'domestic assault', to violence between persons still living together because they would be seen initially as domestic. The media would thus be more likely to see newsworthy potential in such trials and hence give it greater coverage. Hopefully, the outcome of the trial and the sentence imposed would assist in emphasising that such assaults are not domestic and will not be tolerated.

FOOTNOTES

1. The offence of 'malicious damage to property' (s.248 *Crimes Act*) has been repealed and is covered by s.196-200 *Crimes Act*.

2. *Parliamentary Debates, Legislative Assembly* (Victoria) 30th November, 1972, 2798-2799.

3. Coleman, M. 'Children and Family Violence' in Scutt,J.A.(ed.) *Violence In The Family* Canberra 1980 p.4.

4. In a study of the frequency with which police in Kansas City, U.S.A., had responded to domestic disturbance calls in the two years preceding homicides, it was found that the police had responded to at least one such call at the addresses of approximately 90 per cent (94.5 per cent in 1970 and 84.1 per cent in 1971) of the homicide victims or suspects, and to five or more at the addresses of about 50 per cent (52 per cent in 1970 and 46.3 per cent in 1971). Breedlove R.K. et al 'Domestic Violence and the Police : Kansas City' in Police Foundation, *Domestic Violence and the Police - Studies In Detroit And Kansas City* 1977 p.23.

5. This extension of domestic relations occurs in Johnson, V., Ross, K. and Vinson, T. *Domestic Assaults* (Statistical Report 5, Series 2, Septemner 1975 of the New South Wales Bureau of Crime Statistics and Research.) p.10.

6. For recent judicial comment, see *R.* v *McMinn* (Court of Criminal Appeal, Melbourne, 26th August 1981, unreported); per Starke, A.C.J. 'There can be no doubt that for centuries the law in England (and Victoria) has been that a man cannot rape his wife. That this principle is out of tune with modern thinking has been recognised in Victoria by the *Crimes (Sexual Offences) Act* 1980 and there are similar Acts in other States.' (Transcript of judgment p.3); and per McGarvie, J. 'That principle (sc. that a husband cannot be guilty of rape on his wife) runs oddly counter to modern notions of marriage'. (Transcript of judgment p.2).

7. For example, *Crimes (Sexual Offences) Act* 1980 (Victoria) s.62(2);

   Criminal Code Amendment Act (No.3) 1976 (W.A.) s.2.
   Criminal Law Consolidation Act Amendment Act 1976 S.A. s.12.

8. Deveson, A. *Australians At Risk* N.S.W. 1978, p.100.

9. Johnson, V. Ross, K. and Vinson, T. *Domestic Assaults* Statistical Report 5. Series 2, of the N.S.W. Bureau of Crime Statistics and Research 1975 p.11.

10. *New South Wales Task Force on Domestic Violence* 1981 ch. 3.11.

11. Persons involved with Women's Refuges are well aware that the fact that an assaulted woman has left her partner does not mean that that partner ceases his assaultive behaviour. The addresses of many refuges are kept secret in an effort to protect women from further assault.

12. Joint Select Committee on the Family Law Act, *Report - Family Law In Australia* (Parliamentary Paper No.150/1980). Recommendation no.39, vol.1. p.115-117.

13. New South Wales Task Force, *op.cit.*, 3.5.

14. Law Reform Commission of Canada, *Our Criminal Law* Ottawa 1976, p.5-6.

15. Treloar, C. 'The Politics of Rape - A Politician's Perspective' in Scutt, J.A. (ed.) *Rape Law Reform* Canberra 1980 p.193.

16. s.207 *Crimes Act* (Victoria)

17. s.76 *Crimes Act* (Victoria)

WIVES, EMPLOYMENT AND DOMESTIC VIOLENCE

Y. Carnahan

This paper is a small section of a research project conducted in 1979 to try to determine whether or not there are distinctions between marital disputes involving women who are full-time housewives and women who are in paid employment.

The research is not claimed to be statistically sound. Only twenty interviews were conducted in an 'accidental' random survey, ten with women in full-time employment (one of those as a full-time student) and ten with women who were full-time housewives (one who was also paid to provide child care during the day). Two extra (separate) interviews were conducted with a husband and wife who experienced physical violence, particularly in the formative years of their marriage, and who agreed to be interviewed about it.

Nevertheless, the information arising from the interview, particularly those with Joan and Jack (the couple who had experienced physical violence) makes this research of interest.

To talk with Jack and Joan, it is difficult at times to believe that it is the same marriage that is being discussed. This is not to say that I doubt the honesty of either one, or even that they differ radically on details - it is their stated understanding of what is happening that is so different. Joan tended to excuse Jack as being in some ways like a little boy who did not know any better; Jack, on the other hand, indicated that he knew exactly what he was doing.

Both are 31, both Australian born, and they have been married ten years. Jack is in the Public Service and Joan has until recently been solely a housewife but is now employed casually a couple of days week at a department store. They have two children, aged five and seven.

I found these interviews especially interesting because so much of what Joan said was reminiscent of comments other women had made while being interviewed. Her life seemed to be typical of the Australian housewife - more affluent, perhaps, because of her husband's income (take-home pay of $300 p.w. in 1979) - but nevertheless her lifestyle and attitudes were remarkably similar to others I talked with who had stayed home as housewives.

She, like most others, said that she was happy to have stayed at home while the children were small.

Question - What were the advantages of staying home?

Joan : 'I think some of the pleasure that I saw my mother getting out of her children. You learn a lot from children. When they are little you see them picking up little habits, either bad or good and every little word they learn and everything about them generally growing up, you are always learning something and you can see what is coming out in them, how much you have taught them and what has been picked up from other people. I think it is quite fascinating'.

Joan, also like many others, nominated 'plain straight out boredom' as the disadvantage of staying home. This did not cause a great deal of conflict because, as Joan said, 'I just push it aside'. There were variations on this answer from others. Wives, for the most part, becoming depressed but absorbing it as being their problem alone, or in some cases serious conflict was avoided because of the husband's sympathy about a situation which both parties saw as unavoidable.

It seems that in Jack and Joan's case, most of their arguments stem from Jack's actions.

Jack : 'I would be pushing her to do something, like - I would want her to go to work or be helping me in the garden, those sorts of things, niggle her and that would cause an argument; or she would be running around like a blue-arsed fly, cleaning things or chasing the kids, 'cause she is one of those terribly houseproud girls - that is why I think I would be really stupid to push her into full-time work 'cause that is when an argument would start, say in the morning if she happens to get a full day's work at the department store and I would still expect my breakfast. So she would be trying to get my breakfast, cut my lunch, get the kids ready for school and she would say "why don't you bloody help me?" and I would use some excuse like I have got to pick up John in fifteen minutes, I had better go now (I know I am guilty) and that would start an argument'.

Joan is aware that, should she go full-time to work, there would be an increase in their arguments because of Jack's attitude.

Joan : 'If I went to work full-time, then I would need assistance because I would get quite tired working full-time and trying to keep the house full-time. But it takes a lot of convincing to get my husband to help me; he does not like housework and I do not blame him in the slightest'.

Included in that statement is the comment 'and I do not blame him in the slightest', the possible inference being that Joan does not like housework either. For both Joan and Jack, the attitude that the housework is a woman's domain has been a normative part of their lives. Both sense that it need not always be this way however.

Joan : 'Once I got him trained it would be all right'.

Jack : 'I am a survivor. I would not want to see our relationship go down the drain after all this time because I was too lazy to get off my arse and do the vacuum-cleaning, but it would not mean I would not fight the issue - a token fight'.

Joan refers to the transition period as 'training him' and Jack talks of putting up a 'token fight', but as he says elsewhere, he never feels threatened that she is trying to dominate him. He seems to realise more so than Joan that her arguments are legitimate, that she is fighting for fair play rather than for dominance. He says, 'I am sure you could come to a better understanding without all this crap', but nevertheless the crap continues.

Jack is an aware and rational person who is experiencing conflict between what he sees he ought to do and what he wants to do.

'I know that ethically, morally it is wrong, but subconsciously I want to dominate her'.

'There is this terrible conflict in me to act in the traditional dominating way but also to act with respect for the other person's individuality'.

However, it seems that he is incapable of making and acting upon a conscious decision to interact with his wife as partners in an equal relationship - Joan is obliged to fight for everything she is likely to achieve.

Jack : 'I am coming to accept her more as a person because she has fought back and she has <u>shown</u> she is a person'.

I feel that the relationship is developing more now as an equal partnership, with me tending to drag back all the time, but getting there'.

It is possible that the manner in which he was disciplined as a child has been a strong socialising factor in causing him to respond with fairness only when <u>forced</u> by a lack of alternative and similarly, to treat others with force when <u>he</u> wants response.

According to research,[1] children who are frequently hit are more likely to engage in violence as adults with their spouses than those who are not. 'Not only does the family expose individuals to violence and techniques of violence,' Gelles says, 'the family teaches approval for the use of violence.'

I would suggest that it also seems to render a person less capable of acting autonomously.

According to Jack, he was disciplined 'fairly heavily' as a child. 'I would get a clout around the ears if I did something wrong,' he said.

This violence was perpetuated in his early relationship with his wife, and now in the disciplining of his own children.

> Jack : 'I started out with all the good intentions to try and see if I could bring up the kids without physical discipline, but I fell into the normal syndrome where I get impatient with them; I want them to clean their room and I do not rationalise why their rooms are dirty, or if they are doing something else; I want it cleaned up now and they do not do it so I thump them one.'

Jack sees his responsibility to the children largely in a material sense - it is in this area that he seems to have made most provision for his family. However, although he feels guilt and is aware of the damage that could be caused, his sense of responsibility in terms of the children's psychological development loses out to his temper.

Although he may be punishing more forcefully than most, what he is doing is not abnormal. Almost all the people I asked are disciplining their children in the same manner that is physically. Conversely, almost all the women I asked felt that their discipline as children had had an effect on their adult lives in the sense that they were still being 'obedient' or that they were seeking approval as 'good girls' at the expense of their autonomy.

I did not ask Jack what effects his childhood discipline had had on him but it seems likely that he has learned, whether he realises it or not, that force is equated with power, both to be used and to be responded to by him.

Joan did not feel that her childhood had affected her as an adult (even though her father was a very dominating man) and because, when pushed too far she will finally stand up to Jack, she feels that she generally has control over the decisions affecting her life.

Nevertheless, she is being constantly manipulated into fulfilling Jack's wishes.

Question - Do you feel that you have changed much as a person since you have been going out to work?

> Joan : 'Well I have probably got more independent, which is not a good thing really. I like being independent but independence can bring conflict between you and your husband, if you want to do something and he is not in agreement.'

Question - Do you prefer the traditional roles?

> Joan : 'Not really, no. But with him being possessive it makes me feel I do not want to cause conflicts and I am probably a person who will give in before he will at times. Like, I will come home early rather than go out with the girls because I do not like him to get annoyed or cranky. He gets annoyed and cranky enough as it is.'

Joan may not be aware that she is being manipulated but Jack is:

> Jack : 'I would be pushing her to do something, like, I would want her to go to work or be helping me in the garden, those sorts of things; niggle her ... I am really re-thinking whether I should be pushing her into full-time employment...'

He gives two possible explanations for his need for dominance.

> Jack : 'I suspect it could come down to whether you are frustrated because you have not got any power in another area. A guy's home is his kingdom, or something like that'.

There seems to be an equation here between power and masculinity. With sexual stereotyping perpetuating an image that to be a man you must be tough - assertive, independent and in control, for instance - for a male who feels that he is none of these in most areas of his life and who has not escaped or rejected the conditioning, perceived failure is likely to be compensated through dominance (in varying degrees) of those socialised to accept submission as the norm, that is women and children. This is not to say that a man who is dominant at work will not therefore be dominant at home, but he may not feel the need to 'prove' his masculinity to the same degree.

Jack's second explanation was in relation to his expectations of marriage.

> Jack : 'I probably accepted that that is how marriages should be, (referring to his parent's marriage) that wives should be submissive, and I tried

to play that out. I was brought up with a mother who looked after me very well, breakfast in bed and shoes cleaned, so I married for security - and sexual gratification. I think I was brought up a very selfish kid.'

Joan had no expectations of marriage, other than that 'we would be very happy and have a couple of kids.' She feels that she is happy and that there is little she would have changed in her life other than perhaps travelling overseas prior to marriage. She would definitley have married the same man, she said.

Jack, too, is happy in his marriage and feels that he is very lucky to have struck a girl who had a strong personality and could fight back.

Jack : 'Probably I would not respect her if she did not fight back and that is where the role comes in - the husband who bashes his wife and she does not fight back, he does not respect her and probably it makes him bash her more. Equally, I know a relationship between a chap and a girl where the girl was, from my impression, looking for the husband to be a bit dominating and she did not respect him, he was a submissive sort of guy and never argued. If she argued he would just say 'all right, dear, whatever you want' and she would turn on the tantrums - I think she was looking for him to give her a thick ear and then they might have come to some balance. It works both ways, it is coming to some balance.'

Balance, although expressed in terms of violence and of overcoming dominance, seems to be synonymous to Jack with equality within a relationship, at least on a rational level.

Jack : 'I think that the best thing that has come out of the women's movement is that women are getting recognised as individuals rather than as sexual objects or as servants and even though I sometimes tend to use my wife as a servant, I known that deep down that is wrong and therefore I would not fight her objecting to me using her in this way.'

But this does not mean that a genuine equality will ever be achieved within Jack and Joan's marraige. They will probably follow the example of thousands of other Australian couples with Joan eventually going into full-time employment and receiving a token amount of help

in the house after a great deal of nagging, but still making major concessions so as to avoid as much conflict as possible and Jack continuing to believe that he ought to treat his wife as an equal individual but not doing so because - (a) it makes his life easier and (b) there is nothing that he is going to change unless forced by circumstances.

There could be seen to be a note of hope for the future because of Jack's comments - 'I think I would adjust. I am sure if I saw the chance of it breaking up I probably would have adjusted earlier; I dread the thought of her walking out on me, or something like that' - except that the future is represented by Jack and Joan's two little girls, and they have not only the role model of a traditional marriage relationship to follow as their example, but are already being taught submission by a sometimes violent and always dominant man.

Of the survey itself, it was found that, contrary to Nye's[2] findings, dual-income couples quarrelled with less frequency than one-income couples, although it can be agreed that the transition in becoming a dual-income couple is not always accomplished smoothly. Wives in paid employment generally continued to do most or all of the housework, resulting in some cases with arguments about lack of sufficient household help.

However, five of the employed wives felt that they would have more arguments if they were not going out to work, for reasons such as 'I would be feeling more insecure so would argue more', or 'I would have more time to think about problems.'

Those involved in domestic work who thought that they would have more arguments if they went into paid employment seemed to be thinking in terms of tiredness and irritability through carrying a double work load.

Skolnick and Skolnick[3] refer to these as normative conflicts - due in their view, partly to cultural lag and partly to defensive reactions. They suggest that the structural changes which are necessary to fully implement a satisfactory dual-career family relationship are not yet in effect, particularly in the areas of organisation of work, organisation of domestic role relationships and the conception of the built environment. By the latter they mean the tendency since the Industrial Revolution to remove the workplace away from the home and they suggest new complexes of living which brings work and family into more easy interplay - less distance to travel to work, shared domestic care facilities in housing developments and so on.

While on the subject of the future, it would seem feasible that concern about employment could result in consideration being given to changes in the structure of employment. Job sharing has been introduced at a time when there have been insufficient people in the area available for full-time employment (in teaching, in New Zealand) and equally could be when there are too many people available. Education for leisure would also need to receive greater emphasis so that both men

and women could spend part of their time in breadwinning responsibilities, and part in domestic responsibilities and part in finding fulfillment in creative, educational and leisure interests.

But so much for the future, what of the present?

Although it would seem from an examination of the figures at the two Canberra Refuges that more housewives than women in paid employment experience serious marital disputes (and have to seek asylum) this is a biased sample because of the lack of economic independence many of these women have. It may well be that such women feel obliged to tolerate or return to an unsatisfactory marital situation more than women with their own economic resources, however, this in turn could precipitate further violence. As Jack said:

> 'The husband bashes the wife and she becomes submissive, he does not respect her and that probably makes him bash her more. I think I was lucky that I struck a girl who had a strong personality and could fight back. In fact if I married a girl who was very submissive, a professional housewife type, I probably would not respect her.'

There seems to be a conflict in Jack which is possibly indicative of similar conflicts in other men - a need to react according to a socialised concept of masculinity and a desire to relate to a woman as an equal human being. It would be difficult to know how much of the expressed desire is genuine, but nevertheless there are clear indications of conflict in being able to cope with a supposedly 'masculine' role - reacting with violence in attempting to establish a traditional dominant role and needing help from his wife after having done so.

> Jack : ' I am one of these people (comes back to the guilt complex) who can not bear not to have a good relationship with my wife. That is what I would like - to be the violent one and then I would make up to her.'

Both partners in a marriage have a mutual dependency but it is hardly desirable that this dependency should be fraught with conflict that is destructive both physically and psychologically. What is desirable is the kind of conflict that attempts to achieve what Jack calls his concept of maturity - 'consideration for other people and an understanding of the wider implications of inter-personal relationships.' What is needed is 'power with' rather than 'power over' - a genuine equality between husband and wife and it is frequently the 'power with' which is being aimed for, or the 'power over' which is being resisted, in an analysis of most domestic disputes.

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ALTERNATIVES TO THE CRIMINAL PROCESS FOR THE DOMESTIC VIOLENCE VICTIM

P. Stratmann

A common cry in the area of domestic violence has been that cases of domestic assault should be treated by the criminal law and by police in the same way as cases of assault involving strangers. I want to go further than this and say, that such cases should be treated differently because of the domestic relationship that is involved. I say this because that relationship is a factor which makes the likelihood of a repeat offence involving the same parties more likely than in other cases. For this reason such cases require more sensitive handling and an awareness of the covert issues involved.

The criminal law does not allow for such sensitivity. I do concede that it has its place in this arena, firstly because it epitomises society's condemnation of violence and secondly, because there are cases where rigorous prosecution and punishment are the only appropriate responses. Thus it should always be an option for the victim to pursue criminal charges and any alternative civil remedies should not be seen in any sense to oust that ultimate response.

There are limits however to the degree of immediate protection which the criminal law can offer a victim and this is my concern.

There are at least three areas where the cirminal law will not be effective in this sense. Firstly, the unwilling victim.

If there has been a spectacular and reasonably public assault - then the criminal law will respond - injuries are evident, police will prosecute and may arrest and may oppose bail. But, the victim must be willing. Spouses cannot be compelled to give evidence against each other and without the victim's evidence the police may be hard pressed to make out a case beyond a reasonable doubt. Even if the parties are not married to each other and the victim is compellable, police would be unlikely to proceed, in the certain knowledge of having their major witness a hostile witness.

There may be a host of reasons why victims may be reluctant to see the offender charged : I will not go into them all in detail, suffice it to say - many victims would be overwhelmed to contemplate a criminal conviction and a gaol term as a result of their complaint - they are not at ease with such power - they have a very real fear of retaliation, especially when the offender is arrested, is likely to be out on bail within hours. Offenders are very good at suggesting it is the victim's complaint rather than their own actions which has brought them into trouble. Victims are very good at believing this too. Apart from that, it does not seem to help or change the actual situation. So, on one hand we have the overt assault on which police are prepared to act but

the victim may be unwilling. The victim remains at risk.

Second - lack of probative evidence. There may be an overt assault but, as so often is the case in domestic assaults, it happens without witnesses and injuries are explained away by an offender who denies all. Counter-allegations confuse the issue. The police are reluctant to proceed. The criminal standard of proof is too high to be of use in such a private domain. No charge, no arrest; the victim remains at risk.

The third area where the criminal law falls short is the area of chronic harassment and violence, where covert threats are reinforced by the pushing, shoving and menacing of a physically dominant and aggressive person. These incidents tend not to be of the spectacular kind that readily attracts police or other invervention. If the victim is adequately intimidated, the aggressor may not even have to resort to actual violence very often and when he does, he knows how to leave no marks. The victim lives in a pervasively oppressive atmosphere, helpless because she has no confidence in legal intervention. Indeed, there is an implicit understanding between parties that the victim is unable to complain. Often there is a risk that more harm than good may be achieved if the victim does complain, but the court or police do not respond seriously enough. In such cases the victim is not necessarily seeking that the offender be punished, rather she just wants it all to stop. I do not think we adequately assess the debilitating effect of living in fear and uncertainty, yet this is the area which current legal remedies most blatantly by-pass. It is even more disturbing to contemplate the number of children who are brought up in such an atmosphere. As the Chief Justice of South Australia said earlier this year in the case of *Parry* v *Crooks* : 'Personal happiness and well-being are likely to be gravely impaired if a person has to live in fear of violent harassment. It is of the utmost importance that the law provide a simple and effective deterrent against threatened violence'.

It is accepted wisdom that the level of violence simply escalates. Many of the victims of domestic violence have reported to official agencies the threats made to them, only to be told that nothing can be done until the threat has been carried out. I do not necessarily blame the recipients of these complaints - in many cases, maybe most, it is impossible to assess the credibility of such threats.

Apart from threats of violence which are ignored, there are outbreaks of violence which are regarded as minor and not significant enough to attract outside intervention. In this respect the aggressor has too long had the benefit of the doubt.

I submit that it is possible to give the law an edge which it does not now have, which will not unreasonably intrude into the civil liberties of the alleged offenders, but will give potential victims a greater degree of protection and therefore a greater sense of security.

The model I am taking is that of the restraining order, backed up with a power of arrest on breach of that order.

The Commonwealth Family Law Act which, because of the provisions of the Australian Constitution, applies only to parties married to each other, has provided the most progressive example of such a provision to date. The Family Court is vested with a wide discretion to make appropriate orders, such as orders not to molest or assault the other spouse, orders prohibiting a spouse from coming onto the premises or into the vicinity of premises occupied by the other spouse and orders requiring one partner to vacate the matrimonial home to enable the other to have exclusive occupation. Such orders can be directed also to the protection of children of the parties. They can be made at short notice in cases of urgency (by telephone in extreme cases) and ex-parte (that is before the other party has notice of the application) in cases of immediate threat.

The purpose of such restraining orders is to deter certain conduct. It is my experience in practice, that the powers exercised by the Family Court nipped many potentially violent disputes in the bud, by providing the victim with the power to complain and by removing that isolated helplessness that sometimes only invites aggression.

The major weakness of the legislation as it stands is the cumbersome nature of its enforcement provisions and the inability of State police to enforce breaches of injunctions. Police can only advise the victim to see her solicitor to make an application to the court to deal with the offender for contempt. Not only is this time consuming, it is also very expensive.

The Family Law Act provides that contempt may be punishable by committal to prison or fine or both; the giving of a suspended sentence or requiring the offender to enter into a bond by which he agrees to comply with the injunction are alternatives.

Because contempt is regarded as a quasi-criminal offence, the court is cautious in its approach, seeking a high level of proof and preferring any other remedy rather than imprisonment or financial deprivation which might rebound further on the victim.

This has resulted in a credibility gap as far as Family Court injunctions are concerned. One must heed the warning of an American commentator in relation to New York legislation which was along lines very similar to the Family Law Act's provisions:

> A woman in need of protection, who has put up with the time consuming, expensive and humiliating processes of civil court, receives only a meaningless piece of paper which is not enforced by police and courts. The order may make a woman feel more secure, but it does so falsely and only temporarily, because the man will be free to assault her again and will do so. Her futile effort has taught her not to seek help from a court

> system which not only does not protect her but which puts her in even more danger by supporting the man's belief that it is not wrong to assault one's wife or female friend.

The Joint Select Parliamentary Committee on the *Family Law Act* 1979 recommended that a power of arrest be attached to injunctions, but only in cases where actual bodily harm had already been suffered by the victim. This follows the example of the *UK Domestic Violence and Matrimonial Proceedings Act* 1976. Once again there is no protection for the victim of chronic harassment and low level violence.

There are circumstances where threats are sufficiently grave and sufficiently credible to warrant a firm response. A court should be trusted with the discretion to make orders on the basis of a threat alone if the circumstances warrant it, otherwise the cycle of threats and intimidation will not be effectively countered. One must remember after all, that an injunction usually only restrains someone from doing what is illegal in any event. In so far as it restrains a person from coming onto certain premises (which would not otherwise be an offence), it is giving fair warning of the penalty that will follow. The power of arrest is only a follow-up after there have already been formal proceedings in which a court has been satisfied that there is a risk of harm to the victim.

When one considers the many fairly trivial offences for which police already have the power to arrest a suspected offender, it is not a very radical step to enable police to arrest for breach of an injunction when the offender has already had notice of that possibility after a hearing of the facts.

Unfortunately, as I have said, the Family Law Act only applies to people who are legally married to each other. For those people who do not have this sanction, but whose domestic circumstances expose them to the same stresses and imbalances of power, there is no satisfactory remedy. It is up to the States to provide protection for such people, as the Commonwealth Government has no jurisdiction to extend the Family Law Act to them. In South Australia the only available remedy for such people is to take out a common law peace complaint in the Magistrates Court.

Theoretically, a victim could sue in the Supreme Court for an injunction to restrain the commission of a civil wrong. Assault can be the basis of a civil law claim for damages and in such circumstances, it is possible to seek an order to restrain the commission of such a wrong. However, the South Australian Supreme Court has recently, in the case of *Parry* v *Crooks*, rejected this remedy except in 'the most exceptional circumstances'. In any event, such proceedings tend to be very formal, lengthy and costly.

The peace complaint procedure is available to anyone, except perhaps (since the coming into force of the *Family Law Act* 1976) where the parties are married to one another. The virtue of the procedure is

that it requires little formality and, unless contested, does not really require the services of a solicitor.

The complaint may be lodged by the victim in person at the nearest magistrates court. A brief allegation of physical battery or threatened assault is stated on the complaint, which is prepared by the court clerk and served upon the alleged offender by the court. Failure to attend court, having been served with the summons, may render the offender liable to arrest.

If the complainant's case is substantiated, the court may order the offender to enter into a bond to keep the peace and be of good behaviour towards the complainant, usually for a period of 12 months, in default of which he is liable to forfeit his bond, which tends to range from about $300 to $750.

One of the major limitations of the peace complaint is that at common law, there is no power to restrain the offender specifically from certain actions, such as coming onto premises. Moreover, enforcement of the bond is ineffectual, because a further breach does not in itself provide the police with a power of arrest. Police can only arrest if there is evidence of what would be an offence in any event. It is up to the complainant to lodge a further complaint at the court, alleging that the bond has been breached and seeking that the bond be forfeited. In other words, the bond provides no guarantee of immediate protection. Although the peace complaint has deficiencies, which are compounded by the inability of magistrates to devote to such cases more than a minimal amount of time and no specialised attention, it seems to me that this procedure could well form the basis of a more comprehensive procedure. If specific conditions could be attached to the bond and if breach of the bond were made an offence in itself, for which police could arrest in appropriate circumstances, then it would approach the model of the Family Law Act injunction and would have the credible sanction of police enforcement, without going so far as to bring in the criminal law.

There would need to be provision for urgent and/or ex-parte hearings. If the magistrates courts could have the benefit of counselling and referral services as does the Family Court, then a more comprehensive resolution may be encouraged in cases of domestic violence as well as in many other matters with which such courts deal.

The emphasis must be on the immediacy of police response and on credible enforcement as a sanction, so that the scheme serves a deterrent function which will reflect that condemnation of violence which is epitomised in the criminal law. Accessibility is the other major factor. I include in this the geographical accessibility which the wide distribution of magistrates courts can provide and financial access-ibility, which is achieved by informal processes which can be instituted without the need for formal legal representation and complex documentation.

Finally, of course, police sensitivity and co-operation is essential. In this State the police have shown enthusiasm for such a broadening of their powers so that they can deal effectively with domestic assaults. Their powers are supplemented by the services of the Crisis Care Unit of the Department for Community Welfare, which operates a 24 hour mobile crisis intervention service.

Whilst the scheme I propose will not deal with all domestic disputes satisfactorily, it will render more effective police powers of intervention in the middle of the road cases which abound. In really severe cases the choice will continue to be police prosecution for criminal assault, or anonymous flight to a safe haven. The intractability of the most severe cases should not deter us from making adequate provision to deal with the pervasive fear of harassment which is the concommitant of domestic disputes.

Session X

THE ROLE OF THE COMMUNITY IN ASSISTING VICTIMS OF CRIME

As the needs of crime victims became increasingly recognised throughout the 1970s, the inadequacy of community response to those needs grew starkly apparent. Thousands of victims of domestic violence sought refuge in women's shelters, in large part because of the inadequacy or non existence of support from family, neighbours, and friends. Senior citizens, fearful of venturing forth in public, remained barricaded at home, increasingly isolated. As many of the contributions to this volume have suggested, the basic needs of crime victims, social support and information, do not require large bureaucracies or expensive programmes; they can be met most effectively by fellow citizens. The task of restoring community involvement in assistance to crime victims is the subject of the three contributions to this session.

Janie Barbour describes the Dial-A-Granny service, established in Adelaide in 1980. By pairing elderly citizens with young families, the programme reduces the isolation of the former, and the stresses experienced by the latter. The programme thus recreates the structure of mutual support which characterises cohesive communities. Dial-A-Granny is a potentially significant innovation in the prevention of child abuse.

Dr Cunningham Dax addresses the social isolation of multiproblem families, the 'submerged tenth' of the population which suffers nutritional and educational deficiencies, and appears disproportionately represented amongst perpetrators, and victims, of crime. Critical of *ad hoc* bandaid approaches to the multiproblem syndrome, Dax argues in favour of intensive co-ordinated family therapy, including assistance with family planning. An integrated approach may well be more efficient and effective - one speculates that it might fruitfully be combined with community-based voluntary assistance on the Dial-a-Granny model.

Betty McLellan discusses the role for the Church in assisting crime victims. Recognising that the traditional response of the Church to the victim was to glorify suffering and to counsel endurance, she observes that religious leaders are far more outspoken about victimless crimes and relatively unconcerned with victims and their problems. The core of her paper reviews one of the more recent alternatives - the Life Line telephone counselling service. Whilst it was not explicitly established for crime victims, Life Line receives a number of calls from victims of domestic violence and sexual assault.

Life Line services are not limited to a sympathetic listener and to advice over the telephone. Face to face counselling, and referral to other services are also available. Life Line thus constitutes an outstanding model for non-governmental assistance to victims.

'DIAL-A-GRANNY' COMMUNITY ASSISTANCE TO FAMILIES UNDER STRESS

P.J. Barbour

Introduction

Dial-A-Granny is a voluntary service which I established in 1980. It is a service which integrates elderly citizens into the lives of young isolated families for mutual support, life enrichment and crime prevention. It is a cost effective way of dovetailing the services to young and aged. It illustrates the approach that there is more potential in preventive intervention in the cycle of violence than in rehabilitation. The incidence of child abuse demonstrates the urgent need of such preventive programmes.

Prior to the establishment of Dial-A-Granny, such family support services were provided at taxpayers' expense. Dial-A-Granny is registered and insured and, as an inter-related enterprise, the providers become the consumers with a carefully selected people bank, in effect, a match making bureau, aimed at the development of community networks. It provides young families with support and guidance, the elderly with a purpose and feeling of belonging, and the children with care and attention.

Why It Was Set Up

It could be asked what price we have paid for our 'progress' in a highly mobile competitive society, bombarded with ideals of fitness and achievement, when we allowed a minimum of 800 children to die violent deaths last year. Absurdly, we think we can control events, in a life of constant and alienating battles against business. If we take a balanced look and desire a caring society, greater human involvement is necessary.

Today, the ubiquity of commercial advertising, violent television programmes, lack of employment, economic constraints, alienating housing policies, frustrations and unrealistic expectations lead to vulnerability and disappointment. There is an aimless drift into parenthood or confrontations with the law and a desensitization to the use of violence.

All spheres of life change with bewildering rapidity. Personal priorities are forgotten in a life governed by national crises. A narrowing commitment is evident in withdrawal and isolation behind brick walls with T.V., friends, tranquillisers, noisy music and drink when disappointments arise. In restless activity, we destroy our sense of community. Even in day to day trivialities, the trend is towards isolation as against involvement. For example, impersonal, streamlined

supermarkets have extinquished the corner shop chat. Things seem solveable when people need people. Yet in our society a cultural impasse has developed where people are being forced into smaller and smaller social units. It was to ameliorate one aspect of this isolation that the 'Dial-A-Granny' scheme was set up.

(a) Parents' Problems - In 100 years, population growth has fallen from 2.9 per cent to 1.2 per cent and accelerated changes have dramatically affected patterns of work and family life. The family as a unit of production and education is being questioned, fragmented and limited, its functions are relegated to institutions. Can the family meet the needs of its individuals? That is, can it socialise and stabilise and mould human minds? As a result of conflicting social pressures, couples delay having or choose not to have children. In fact, for the mother figure it is exhausting and unsatisfying to be janitor, lover, parent, teacher and counsellor without kinship support. In this way human relationship principles get lost; there is less self discipline with instant take-aways and time saving gadgetry allowing us to be incredibly mobile. The growing socio-economic cost of having children is reflected in both our resentment and their exclusion.

The expectations of marriage are high and in our support group we see many people frightened of losing control. Verbal aggression sets in motion a set of escalating events. We need to identify people prone to violence.

In seven years of casualty social work we have encountered many parents who feel unfulfilled or threatened, unrealistic and disappointed, depressed and resentful. They need more than material help. The damage could be irreversible.

The causes of violence are many: collective or individual, socially learned or pathological, cultural or class derived. Frustration, deprivation, isolation and loss can all result in violence. Patterns of reactions are deeply engrained in us and the line between socially accepted force and illegitimate violence is very thin.

Masses of literature are available on childrearing, but practical opportunities are few. Erickson and Maslow have demonstrated the hierachy of needs.[1] Families integrate or disintegrate, with mastery or failure. In 1979, 500 teenagers at the Queen Victoria Hospital here in Adelaide and 59,000 in Britain were prospective parents.

(b) The Needs Of The Elderly - In 100 years South Australia has seen an increase in over 65 years olds from 4.2 per cent to 9.1 per cent of the population. Two-thirds are females. The elderly are too often prematurely relegated to nursing homes, where they wait in vain for visitors. Geriatric ghettos have been established at an increasingly unpredictable expense. The 'wise old man' or 'silly old fool' is expected to unobtrusively fade away, but improved health prolongs life which we cannot then afford to support or allow to support itself. If response to Dial-A-Granny is any indication, there is a tremendous need. In every apartment, suburb and city, people are lonely. All

sorts of people require services once supplied by kin. In 1965 in Victoria, only 24 in approximately 1,000 families were living as three generations.

(c) The Needs Of Children - In 1762 half of Great Britain's children died before reaching two. Earlier, noble Romans practiced infanticide; subsequently, children were mutilated and turned out as beggars, abandoned by Nannies for money, and beaten for religious enlightenment. In 1960 some U.S. jurisdictions began to implement mandatory notification for child abuse.

Maturity is not when we are no longer told to eat our vegetables, it is when we have achieved a balance between our own needs and rights and those of others. Force is used by ambivalent parents who feel powerless, trapped and disillusioned by the romantic fallacy of a fluffy pink dressing gown and cuddly cooing baby. Because of this, they demand advanced performances. Children then become targets for unresolved conflict, leading to wilful, weird antisocial, brutal and irrational attacks, to make him 'stand up and fight like a man'. To understand abuse we need to know the meaning of the misdeeds of the abuser.

Preventing child abuse means protecting the potentially abused and thus breaking the cycle which leads the once abused child to abuse his own children. Rogers discovered that children become more anti-social if locked away for punishment.[2]

The abused provoke reactions to confirm their badness and create guilt in parents in order to get a cuddle. The parents' intolerance of feelings of inadequacy and their lack of ego strength in the face of self defeat, deny the consequences of violence by allowing inappropriate ventilation of frustrations on the child, who will retain the hostility into adulthood. Goldstein, Freud, and Solnit's guiding principles, to maintain the families and to minimise State intervention, require heroic efforts.[3]

(d) The Community's Response - In response to child abuse there exists a wide range of services, government and non-government, for victims and their families. They are not directive and judicial constraints have been placed on intervention. South Australia has mandatory notification to the Department of Community Welfare for specified classes of persons. But the period of rehabilitation and development diagnosis are not included in this definition.

Since long term follow-up,while necessary, is tedious and often resented, new creative programmes in coordination with orthodox approaches are overdue. We must extend support and prevent the transmission to the child of the sort of deprivation that takes lives and retards growth, taking into account the family's past, present and future fears. Surrogate mature people are essential. Self respecting people respect others.

We can do something about the quality of care in our community, rather than muddling along or turning a blind eye to crime, loneliness and poverty. Justice in human relationships calls for strength. 'She'll be right mate' offers an alternative too ghastly to imagine. Eighteen people were prosecuted for child abuse last year in South Australia. In three months in 1975, two children died, twelve were permanently injured and four were re-battered in 20 families studied at the Adelaide Children's Hospital.

HOW DIAL-A-GRANNY FUNCTIONS

From time to time we read of re-united families. Dial-A-Granny was designed to recreate an extended family support. Simple logical, neighbourhood community care allows helpers to be deployed where they are most needed. Most tasks involved have been attempted somewhere by volunteers. The requirements were commonsense that is, a practical approach to coping day by day and energy. This last, we felt was dictated by the attitudes of those involved.

Requests for interviews were received and arranged for families on weekends between 3.30pm and 6.00pm. We discussed needs, expectations motives, resources, dispositions, likes and dislikes and the existence or absence of a sense of humour and recorded them on a card index. It could take several weeks to adopt a suitable family but nobody was placed at risk. They either contacted the family or met at our office. Four hundred families have been matched since the first, in January 1980. We have a small hand-out to advertise the service which is registered, insured and non-profit. We received interstate calls and talke to groups interested in the programme. The media were helpful and enthusiastic.

The Elderly

The elderly participants were 53 to 70 years of age. Our target was retired couples, since warm tolerant people with time and experience to share were needed. The care-givers offered to extend the range of relationships and activities possible for the family-for example, a walk to explore the park while the young mother shopped for her family and for the grandparents, going to appointments for reassurance and freeing a parent to collect another child. Other tasks could include entertaining the little ones while mother made the dinner for the family; in other words,the sharing of simple activities and services.

Evaluation

Lack of well controlled scientific research makes our conclusions highly tentative, but the waiting list indicates an encouraging attitude towards aged people. It is the aim of the service to 'integrate' since the bond between grandparents and children is a vital connection and has enormous potential. But its value as a preventative to violence is difficult to measure.

All families were followed up immediately after matching and again in four to six months. Few complaints were received and responses to the programme were generally favourable. We cannot afford to publish our service, as demands are more than one woman can handle.

The Elderly

There is no litmus test for screening grandparents, but they must be healthy and able to chase a young child. Once put in touch with a family they listened with understanding and affection and were visited regularly and strong relationships were formed. They ferried children to playgrounds, admired paintings, developed indigestion from rock cakes and became very special to a child.

Lifting lives to a greater degree of self worth and happiness, needing less tablets and fewer G.P. visits,is important. Fewer visits from domiciliary care and the sharing of meals, increased confidence and fulfilment, the enjoyment in weekends they used to dread and the fact that there is more in life than waiting for people to pass the gate, the elderly can be happy to be exhausted at night, looking forward to each day,planning with young children for something to happen. They became participants and not merely spectators of life even down to seeming trivialities as having a reason to tidy the house. The contact allows children to understand the degenerative ramifications of ageing for example, and can provide a cushion in cases of divorce.

One elderly person unexpectedly died but the last days of her life were so much happier for Dial-A-Granny. Most aged people have something to give and to be gained from self help.

The Children

Children in a family under stress need security. We invited proxy grandparents into the homes to keep the family in balance rather than place the children out with disrupting care, making them feel unwanted and guilty. Some children do see commonsense and occasionally wisdom. Others are criticised and terrorised, bribed and threatened, stifling their emotions and self expression;particularly their feelings of trust and self worth.

In a culture which encourages cheap solutions there is a genuine lack of concern for the level of human suffering. Children quickly lose their sense of place and self. But many people recognise genuine compassion. During the programme praise was received from schools, where students showed marked improvement,and from police officers who now found fishing companions for bored lads who would have ended up in custodial care at a cost to the taxpayers of $41,000 per year.

Problems

Success partly depends on appropriate referrals - a challenge which is inherent in all human relationship services. However the idea received praise from a wide range of people in the community and positive feedbacks showed benefits derived with multiple spin offs for society.

1. The Physical Problems - Dial-A-Granny is a limited voluntary pilot project and was overwhelmed when demands increased at an exciting pace. Staffing of one woman to interview and act as the receptionist from 3.00pm to 6.00pm on Saturdays and Sundays proved a marathon. We interviewed six to eight families a day. Early Saturday was less busy as people attended sporting activities but popped in on their way home to create a 'peak rush period'. Sundays were essentially busy days.

We were fortunate to be housed in a fully equipped, comfortably small office in the southern region at the Unley Elderly Citizens Centre. The service is decentralised and many referrals came from young families in the north. Public transport proved troublesome, and I was only able to visit occasionally. The personal nature of the service was its strength and attraction with a minimum of red tape. I purchased a typewriter and replied to correspondence and continually evaluated applicants' circumstances on the card index.

Rent was free and the Unley Council paid for the registration. My own funds supported the major part of the working costs which were postage and telephone calls.

2. Personal Problems - Referrals were initially in response to media coverage. However some families declined to participate in follow-up interviews. A few aged commented they had done their share and would derive future pleasure from different activities.

We attempted to gauge the probability of difficulties by observing the inaction of inadequate, immature, evasive or offensive people. For the most part families understood the elderly wanting to be included into their activities. We were careful not to offend distant grandparents or to question too much or too little. Keeping these families together requires commitment and strengthening of the unit.

Some mistakenly believed it would involve money. Others abused the privilege of baby sitting, or embarrassed the grandparents with marital fights or arguments over discipline. A few over eager grandparents went overboard and bought expensive presents.

We turned away 1.5 per cent of the applicants who had misconceptions or unrealistic expectations, or were unsuitable for the service.

Especially designed self-contained facilities are for the affluent few, but to locate and motivate lonely people immobilised by self doubt, or young, linguistically isolated families, requires much outreach, patience and manpower.

However, none of these problems seemed insurmountable and we are learning together.

The Future

Life today inhibits relationships, denying opportunities for growth because of limited immediate family relationships. We have foregone diversity for prosperity, physically homogeneous communities. Because of this, intergeneration friendships are rare. I am not advocating communes or kibbutzim, nor a nostalgic return to inherited contractual obligations but simply to strength our sense of community.

We cannot just endeavour to eradicate social problems; we must also strive to prevent them. No relationships are smooth sailing and need fulfilment is of course frustrating, but we do not yet know how to non-destructively express anger and consequently carry around masses of guilt and anxiety. People put each other down, half a million Australians abuse alcohol, libraries are closed on Sundays and supermarkets do not even have creches while unemployed youth need to learn parenting.

Our ingenuity can devise a plan whereby parenting is taught but we need honestly to ask ourselves whether we are merely addressing symptoms as they arise with a staggering multiplicity of overlapping services.

Governments can perpetuate or eradicate child abuse - it is not inevitable. In an isolated nuclear family every mother needs the far sightedness of Noah, the patience of Job, the strength of Samson, the courage of David, and the wisdom of Solomon to transmit life, to provide, guide and inspire. This is obviously impossible but at least we do have willing mature au pairs to provide first aid for parents. The success of Dial-A-Granny programme is evidence.

Dial-A-Granny was enthusiastically planned to create happiness and expand the potential of elderly people. Like the big sister programme it builds life lines. It is preventive in nature and intent and this, we feel, is one of its most important qualities.

I would like to express my appreciation to the Unley Council and the hundreds of volunteer families and grandparents who make up our service in the community. Dial-A-Granny clearly has potential. The more laws the society has, the less civilised it is.

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CONFRONTING THE SOCIAL ISOLATION OF MULTIPROBLEM FAMILIES

E. Cunningham Dax

In facing this problem there may be something to be gained by using the term 'Socially Handicapped' rather than multiproblem families, thus bringing them in line with the physically and intellectually handicapped. It is to be noted that although they form the largest proportion, they have not gained the attention of those dealing with 'The Year Of The Disabled'.

Since the beginning of the century when Booth wrote about 'the submerged tenth', various writers have shown that a small proportion of the community use the largest part of the social services. Depending upon how they are defined and which services are selected it is generally agreed that from 5-10 per cent of the population use from 50-80 per cent of the services.

Clearly, if these families were sufficiently well identified, measures could be taken to discover the main causes of their handicaps and to deal with them.

I am not seeking to defend the community from having a part in their origin nor, on the other hand, am I prepared to concede that to label these families is going to add to their rejection and isolation, whilst I hope it is obvious that I am not discussing the poor. Having therefore made it clear that I am only interested in the scientific assessment of the situation and the possibility of presenting findings which may lead to action, I shall:

(1) Give a brief account of the characteristics common to most of these families;

(2) Discuss some of these findings from the point of view of crime and its victims;

(3) Suggest some remedies. However our work has not extended beyond demonstrating the characteristics of these families for others to deal with.

1. Characteristics Of The Problem Families - In general these families are large and their upbringing by middle class notions is haphazard and their accommodation overcrowded. They have learning difficulties and register at lower than average intellectual levels. Their homes are frequently broken, the fathers are often away, they are highly mobile and carry their debts with them. They find difficulty in laying out their finances, their diet is variable, they acquire few possessions other than television, so they are frequently but irregularly in a state of poverty and have hire-purchase commitments.

Domestic violence is common and associated with wife bashing, incest, child abuse, rape and assault. This spreads to their community relations; fights under the influence of alcohol, car crashes and hostile behaviour are common and they frequently attend the hospital casualty departments, usually after midnight.

They are casual labourers and they now find even greater difficulty than the rest of the community in obtaining employment. They dislike officialdom, resent authority and the police are their natural enemies.

From childhood onwards they are involved in crime, mostly stealing and in non-moving driving offences. They form a considerable proportion of the delinquents and recidivists and their members are largely represented in the correctional homes and prisons, whilst they take up a disproportionate amount of the time of the police and courts and the legal and probation services.

Their dependency upon the social services, their poor standard of living and their lack of social graces make them unpopular in the community and one quotation said, 'They are people who have exhausted the social credit of their neighbourhood'.

2. Crimes and Victims - In considering these families one must ask which comes first, the problem family or the social stresses.

Are a proportion of people incapable of social adaptation, with personality deficiencies, often congenital, which render them incapable of adjusting to social demands and standards thereby making them irresponsible members of the community? Are we then seeing a type of natural selection in which they are extruded from the community as social pariahs in a way that the paupers in the eighteenth century were labelled?

Alternatively have we altered the standards of living, facilitated mobility, increased social demands, stepped up educational requirements, developed artificial amusements and labour-saving devices, curtailed manual labour, expanded the choices and alternatives, but at the same time put more stress on social conformity and legislation? In other words, are those families, who might previously have managed on a simpler level, unable any longer to meet the changing social demands?

Is society a victim of the multi-problem families and their antisocial activities, or are the multiproblem families the victims of the demands of modern society? In fact, it is probably a circular mechanism, by which the harder we try to get them to fit into the social system, to obey the law, to be content with unemployment, to occupy themselves with time on their hands, the more bored, discontented and delinquent they are likely to become.

Rejection of these families increases their isolation; the sense of inferiority bred in them by the community, neighbours and authorities in its turn produces a corresponding reaction against the social order, frequently expressed in crime.

The differences are felt by the children at school, their manners, dress, behaviour and speech, their parents' appearance and perhaps the teachers' reactions all mark them as different and they are apt to be teased and scorned by the other children and in turn react aggressively as the only defence they know.

Thus, when the kids are made to feel outcasts, they will compensate and look for power, in the first place through their elder brothers and father, then through gangs, so acquiring a 'tough image'. This carries with it the threat of violence, unrestrained behaviour especially under alcohol and the worship of the powerful motor car. Inferiority binds the sufferers together in groups for mutual support so alleviating their anxiety and removing their guilt. Consequently their antisocial activities lack emotion or self blame. Although they may have a sense of excitement in damaging a school or club, or attacking another group, they have little regret for their actions, justifying them on the grounds of society isolating them. It is therefore a means of 'getting their own back' over an impersonal and antagonistic community or so it seems to them. Fundamentally their attacks are equally impersonal, they are not directed against individuals or their possessions, as such, but against what they represent and this is why they indulge in what seems to be senseless destruction. This behaviour is not confined to the multiproblem families alone, for it is found in the gangs from any social class, though they vary depending upon the neighbourhood, schools, clubs and family background.

Although the multiproblem family members may not be very close in their day to day activities, trouble unites them against their real or imaginary persecutors be they the police, the courts, school teachers, neighbours or the social services.

They have to fight for their existence and they know only one way of settling differences. They demand immediate action since characteristically they lack foresight. When the opportunity presents, they will get away with whatever they can, again impersonally, without thinking of the consequences and the effect upon others or their possessions.

They resent the police from an early age; police are the natural enemies of the socially handicapped. Policemen often tell the story of being called in to settle family feuds or disturbances, and being threatened or even attacked when they arrive there.

In turn, the police tend to look up well-known families in tracing crimes and if they fail to make an arrest on the one score as likely as not they may find another offence instead. It becomes something of a sport to the younger members to make 'mugs' of the police and the fight goes on despite their knowing they will rarely win. At least they express their feelings at being victimised.

Perhaps the greatest problems arise through alcohol and the motor car. There is a very large alcohol consumption in the problem families though it may be controlled in its pattern. For example, one family locked a teenage son up in his room with a television and a chamber pot three times weekly when they played darts one night, went to the cabaret on a second and got drunk on the third. Otherwise they had two to three bottles of beer nightly whilst watching television.

Under the influence of alcohol the young men are often belligerent, careless, bold and easily insulted and get into trouble through driving. Later an appreciable proportion of them become alcohol dependent.

Especially in the young, the motor car is a status symbol and car stealing was found to be about seventy times as high in our families as for those in general. To borrow a car, later to be abandoned, is often to them no more than a convenient method of taking their mates and some girls to the drive-in where they will meet the gang, see some lurid sex and violence films and enjoy some degree of sexual contact. Their usual excuse is that 'the mug' should not have left his car open.

3. Confronting Social Isolation - What can we learn from these findings? They show that in any community there are a large number of inferior-feeling, discontented, rejected, frustrated, under-achievers who are culturally retarded and this in its turn, results in their anti-social behaviour.

They are acutely aware of feeling the victims of a society in which they feel the neighbours, police, law, social services and the community in general are collectively organised against them. In a similar way they are against this society and their antagonism is blind and impersonal. Then they attack, steal, destroy or injure, it is not the individual so much as the system they hate. They rarely have the thought or understanding of the harm they are doing or its consequences or meaning.

I would suggest that in the first place much could be done by the instruction of all the staff working in the social services about the problems faced by these families.

Administratively the solution is very difficult. It would seem they need to be supervised by a single government department embracing all the kinds of handicaps, though it would completely fail without it received the utmost cooperation and understanding from the other services and a considerable amount of public support.

If there were a cost analysis made of the families and their drain on the welfare,health, employment, correctional and educational services it might convince the politicians of the need to take the matter as seriously as any other national crisis such as unemployment where the large overlap with these people needs investigation. Certainly the present disorganised 'band-aid' services are a waste of resources. For example it is no way unusual for one of these families to be under six or eight different social workers.

Again, the educational departments seem to make little effort to face the situation of the socially handicapped. Open planning for them is next to useless, all their lives they have obeyed shouted orders. Many have had neither books, play equipment, crayons or even pencils and are lost with the school teaching aids. The modern tendency to condemn the formal teaching of the 3 R's is blighting these children's future, the recognition of cultural retardation (though for some an unpopular concept) is essential and these under-achievers should never leave school without being good at something other than dismantling other people's cars!

The multiproblem family children have made their lives on the streets from an early age and as one of their defences have made their own 'gang slang' language. They have a poor vocabulary, use language badly, find difficulty in communicating and expressing themselves and have problems in understanding the middle class English expressions used in schools.

The whole question of the upbringing of the children is of the greatest importance, but it also needs the cooperation and re-education of the families if it is to be much improved.

Another essential requirement in limiting the isolation and rejection of these families is voluntarily to curtail their numbers. A reliable, long-acting contraceptive given by injection and without charge to these families is needed. In fact, such a drug called D.H.P.A., is available in some eighty countries, but not in Sweden, the U.S.A., Canada or Australia. Until this is done, the size of these families will never be controlled. However, its introduction must be with the greatest possible care; mistrust must be avoided, or the scheme will be undermined before it has more than started.

One is bound to ask whether a government which encourages large families by increasing their subsidies is likely to spend a comparable amount on limiting them.

I cannot go into the various experiments that have been made the world over to help these families; such information is to be found in Schlesingers bibliographies. Much of the planning has been piecemeal and limited by funds and there is no short-term remedy to these problems. In our own country considerably more support is needed for those excellent efforts which have already been made in this field. Our own work showed these families to be responsible for an enormous number of crimes but the total money and goods they stole would amount to no more than a fraction of that embezzled in a single large white collar crime. These handicapped families are limited by their own inadequacies which in turn have resulted in their rejection by society. They are the victims of a system which has never found, or even looked for, a solution and yet because they react impersonally against this rejecting community, the collective resources of the correctional services and the vast forces of the law are disproportionately massed against them.

This socially-dependent, inadequate population cannot be stamped out by the weight of the law, nor can they be removed by incarceration. Re-education, socialisation and absorption are the only remedies but to succeed society will be involved in a long and patient task and itself require some readjustment to give these families a role during their changing status.

Most enquiries and researches are into the negative aspect of the legal, social and medical services. In the case of these families we might gain more from a study of the attributes of those successful members who have overcome their handicaps and their background problems. Perhaps they should be amongst our main advisors.

THE CHURCH'S RESPONSE TO THE NEEDS OF CRIME VICTIMS: THE ROLE OF LIFE LINE

B. McLellan

My task today is to speak about the Church's response to the needs of crime victims in our society and in particular, I have chosen to focus on the work of Life Line as one agency of the Church involved, however accidentially, in this particular work. This is not to imply that Life Line is the only agency of the Church working in this area - other agencies, such as the Brotherhood of St Lawrence, The Salvation Army, and St Vincent de Paul are also involved to varying degrees - but it is my intention to focus on Life Line as one example of the Church's involvement.

Let me begin by reminding you of something you already know and that is, that our society's preoccupation with the needs of the criminal, rather than the needs of the victim, exists as a direct result of the influence of Christianity. The interest of the Christian Church has always been overwhelmingly in favour of the spiritual rehabilitation or redemption of the criminal. The victim, in fact, has not really been seen to have a problem, at least not a spiritual or moral problem and therefore not an important one. As a matter of fact, one almost gets the impression from reading sections of the Bible, that the victim is indeed fortunate to have been chosen to suffer in this way.

In this paper, I will be dividing my topic into two sections -

i. The Church's Traditional Attitude to the Victim Role, and

ii. The Church's More Recent Response to the Needs of Crime Victims.

(It is in the second section that we will look at Life Line's contribution.)

1. The Church's Traditional Attitude To The Victim Role - I think it is fair to say that the Church's attitude has always been in line with the Biblical attitude to the victim role and I want to illustrate what that attitude is by using three examples from Biblical literature.

(a) The Glorification of the Victim Role in both the Old and New Testaments. The whole 'Suffering Servant' motif expressed most notably in the prophecy of Isaiah is a glorification of the 'Victim Role'. In Chapter 53, Isaiah speaks about one who will suffer at the hands of others. The prophecy is about a victim. He uses words

(a) continued

like '....he was wounded ....he was bruised ....he was oppressed ....he was afflicted'. Then he goes on to say '....like a lamb that is led to the slaughter ....he opened not his mouth.' (vs. 5-7). He never complained. He let it all happen to him.

And as if that does not glorify the victim role enough, Isaiah proceeds to say 'Yet it was the will of the Lord to bruise him; he has put him to grief,' (v.10) hence the belief: when you are a victim it must be God's will, In fact, you should consider yourself fortunate, because as a victim, you are being singled out by God to have God's will enacted in and through you. You do not need any assistance, because you are, of all people, most blessed!

In the New Testament too, particularly in the accounts of the crucifixion of Jesus, but also in some of St Paul's accounts of his own suffering, the victim role is glorified. We are exhorted still to 'rejoice in our sufferings ....' (Rom. 5:3).

(b) Emphasis on Forgiveness. The second example I want to mention of the Church's attitude to victims is the strong emphasis in the new Testament on forgiveness. St Peter asked Jesus one day: 'How often shall my brother or sister sin against me and I forgive them? As many as seven times?' Jesus answered: 'Not seven times, but seventy times seven.' (Matt.18:21-22). In other words, he was saying to Peter: 'No matter how much someone hurts you, you should be prepared to forgive an infinite number of times.' St Paul also emphasised the importance of forgiveness with words like: 'Bless those who persecute you; bless and do not curse them' (Rom. 12:14).

(c) The Emphasis on Endurance. In addition to the glorification of the victim role, and the emphasis on forgiveness, there is one other Biblical emphasis I want to point to and that is: the emphasis on endurance. 'The one who endures to the end will be saved.'

(c) Continued

St Paul when he was writing to the Church in Rome said the following words which are often quoted in our Churches still today:

'...we rejoice in our sufferings knowing that suffering produces endurance and endurance produces character and character produces hope and hope does not disappoint us, because God's love has been poured into our hearts....' (Rom. 5: 3-5).

Now,of course, Paul was referring to the kind of suffering the early Christians found themselves having to endure because of their faith; that is fairly obvious, but these words have also been used very freely throughout history to encourage people to stay in a victim situation, the most common one being the woman who is a victim of domestic violence. She has been encouraged by well-meaning ministers and priests and counsellors to stay in that situation, to endure the suffering because 'suffering produces endurance and endurance produces character....' and so on.

Again in another letter St Paul wrote, this time to the Church in Corinth, he exhorts his readers to endure a bad marriage if at all possible and pray for the salvation of their spouse. (1 Cor. 7:12-14).

So there is this strong Biblical emphasis on the glorification of the role of victim which has had an obvious influence on the Church's attitude to victims of crime. The victim is seen, not as one who needs assistance, but as one who through forgiveness and endurance is able to build for oneself a stronger and more Christ-like character.

It is no wonder then, that the Church has been relatively inactive in the matter of providing assistance for victims of crime. For years, certain branches of the Church have been involved in the provision of half-way houses and other services aimed at the rehabilitation of criminals, but no conscious effort has been made at all to help the victims of those crimes.

Although the Church in Australia has never consciously decided to get into the area of providing assistance for victims of crime, the establishment of Life Line in 1963 was the beginning of what I see to be a very important service to such victims, and I want to direct your attention now to that which I have simply called -

2. The Church's More Recent Response To The Needs Of Crime Victims

The first Life Line Centre was established in 1963 by the Reverend Alan Walker at the Central Methodist Mission in Sydney. Today there are 31 Life Line Centres in cities throughout Australia and 194 centres in eleven countries throughout the world. The primary aim of Life Line is to offer a 24 hour-a-day telephone counselling service to the community.

The organisation aims at 'offering anyone in distress, anyone who is lonely, anyone in despair, immediate contact on the telephone with someone who cares.' (Larsen, R.E., *Preparing To Listen*, 1978, p.136). So it is obvious that this service was not set up intentionally for the narrow task of caring for crime victims, but let it be known that in fact many, many calls received by Life Line in any one year are from victims of crime.

As can be expected, victims of some kinds of crime never phone Life Line. They phone the police immediately. Others though, do prefer to phone Life Line. It seems that when the person committing the crime is not known personally to the victim, the victim usually has no hesitation in calling the police, but when the person committing the crime is known to the victim - a husband, a father, a mother, an acquaintance - the victim is more likely to have doubts about calling the police and will choose instead to call a service like Life Line. It follows then, that the kinds of victims we receive calls from are usually:

- Victims of Domestic Violence.
- Victims of Sexual Assault.
- Victims of Child Abuse (usually someone calling on behalf of victims of child abuse) and
- Victims of Incest (usually women who call Life Line ten, twenty, thirty years after the crime committed against them has ceased).

What kind of assistance does Life Line offer these people?

(a) We offer someone to listen - and let us not underestimate the importance of this. Life Line's primary role is that of offering a phone number to the community and the assurance that there will always be someone there to listen at any time of the day or night.

(b) We offer face-to-face counselling - by qualified psychotherapists to anyone who requests it.

(c) We offer immediate referral to other agencies - we see one of our roles as liaison between victims and other agencies such as Women's Shelters, Sexual Assault Counselling Services, Child Protection Teams and so on.

A simple way of saying what Life Line offers is this: We endeavour to offer the kind of assistance a person asks for when they ring. Rather than attempt to tell people what we think they need, we listen as carefully as possible to the words and feelings they express and offer them support and encouragement to make the decisions they see to be important for their lives. The following is a brief description of the kind of assistance victims of crime receive when they ring Life Line -

Domestic Violence - In calls involving domestic violence, sometimes a woman phones just wanting to talk about her situation in an attempt to figure out what to do about it, perhaps to begin making some long-term plans. In that case, the kind of help she receives from the telephone counsellor is simply a listening ear for as long as she needs to talk.

At other times, though, a woman phones, desperate to get away from her violent situation immediately, in which case we contact the Women's Shelter and arrangements are made immediately for her to go there. If needed, we will send two members of what we at Life Line Townsville refer to as our 'Call-Out-Team' to pick her and her children up and actually take them to the Shelter.

In Townsville we work very closely with the Women's Shelter. As a matter of fact, Life Line's phone number is the contact number fof the Townsville Women's Shelter.

Sexual Assault - Again, when victims of sexual assault phone Life Line, we endeavour to work closely with the Sexual Assault Counselling Service established in the Social Work Department at the Townsville General Hospital. Life Line's phone number, again, is the after-hours number advertised by the Sexual Assault Counselling Service. Most of the calls we receive in this area, therefore, are received during the evening or through the night. Again we try to understand what the caller is asking for and respond to their need as they see it. Sometimes the women who ring just want information, in which case we give that information if we have it. At other times, they are very distressed when they ring, in which case we offer to send someone out to them, to be with them. If they agree, we send two female members of our'Call-Out-Team' and these women stay with the sexual assault victim for as long as needed, accompanying her to the doctor, to the police station, supporting her in any way she needs it.

Child Abuse - Usually the calls we receive about child abuse are from a concerned neighbour or relative of a child suspected of being abused and these calls naturally bring with them all the difficulties involved in any contact from a 'third party'. Our usual policy on third party calls is not to become involved, but to urge the caller

to encourage the person with the perceived problem to phone us themselves. In the case of calls regarding suspected child abuse, however, we do respond and our response is simply to pass the information on to Townsville's Child Protection Team for them to investigate.

Incest - The calls we receive about incest can be one of three kinds of calls:

(a) A concerned relative or neighbour will phone to talk about what they interpret as 'signs' of possible incest. These reports are treated in the same way as other child abuse calls and that is, the information is passed to the Child Protection Team.

(b) A distressed mother will phone to talk about her fears or her actual knowledge that her husband or de facto husband is committing incest with her daughter/s. In these cases, we urge the mother to come in and talk with one of our counsellors in a face-to-face situation, so that she can receive help for herself in her distress and also receive help in figuring out what she wants to do about her situation.

(c) By far the most common incest call is from women who were victims of incest ten, twenty, thirty years ago and who as a result, have suffered emotional and psychological disturbance ever since. These women too, are encouraged to come in and talk with one of our counsellors in a face-to-face situation.

(By way of an aside, let me say as a counsellor who usually sees these distressed women that, from a psychological point of view, incest is a most horrendous crime and most of the victims of that crime need long-term assistance if ever they are to be free from the deep-rooted psychological damage done to them. As I see it, the crime of incest and the eradication of that crime is the issue to which all of us - the legal profession, the counselling profession, the Women's Movement and all other concerned groups - need to devote our time and energies in this decade.)

Let me sum up by saying, the Church is now beginning to respond to the needs of victims of crime. Certain sections of the Church - those sections which try always to be sensitive to the mood and needs of the community - have moved right away from the traditional attitude of glorifying the victim role. The community and in particular, victims themselves, are demanding that the Church do more than simply offer advice to endure the suffering and learn to forgive. They are demanding, and the Church is responding to the demand, that the position of victims be looked at realistically and that appropriate help be given, so that victims may have the same opportunity as others to find the happiness and wholeness and fulfilment that is their God-given right.

CONCLUSION

Three basic themes appeared again and again over the course of the symposium. The first, stated simply, is that the major needs of crime victims are for social support and information. The second is that the needs of victims can be met without detracting from the rights of the accused. The third is that our knowledge of victims and their misfortune, despite a significant growth in our awareness over the past decade, remains scanty and inadequate. The following paragraphs chart a simple course for Australian victimology for the the remainder of the 1980s.

The first goal must be the attainment of a greater understanding of victimity - those physiological, psychological, and social factors which combine to enhance the propensity of some individuals to suffer at the hands of others.

This understanding is desirable not merely for the sake of knowledge. Its relevance to the effective design of crime prevention programmes, and ultimately to the allocation of the hundreds of millions of dollars expended annually on criminal justice in Australia, is self evident. The better our understanding of victimity, including the dynamics of the victim-offender relationship, the closer we are to the heretofore elusive dual goals of reducing crime and enhancing personal freedom.

This research should involve two basic approaches. Victimisation surveys should be taken at regular intervals and their data made promptly available to researchers for analysis. The work of Biles and Braithwaite will serve as an excellent model for subsequent inquiry. In addition, further research should be undertaken based on official records. The research on homicide victims and offenders currently in progress at the New South Wales Bureau of Crime Statistics and Research constitutes a fine example of this kind of inquiry.

It remains of utmost importance to learn more about the victim of those offences which have thus far been characterised by low visibility - sexual assault, domestic violence, and child abuse. To this end, refinements of both victimisation surveys and police classification of offences would be desirable. Traditional classifications based on severity of injury and degree of premeditation should be supplemented by cross-classifications based on victim-offender relationship.

It is also important further to enhance our knowledge of the media and their treatment of criminal justice issues. The extent to which fictional portrayals or factual coverage of crime and its victims

actually produce additional crime is not merely of intellectual interest. Combined with a better knowledge of whether the media induce unwarranted fear in the community, such knowledge can assist in the development of more socially responsible editorial policies and programming guidelines, and could contribute to the ultimate safety and security of the Australian public.

Another potentially fruitful area of inquiry concerns the victim's perceptions and understanding of the criminal justice system. The unfortunate reality of many victims' alienation from the criminal justice system was noted by a number of contributors to the symposium. Where victim dissatisfaction arises from remedial shortcomings in the criminal process, such a 'consumer survey' can indicate an appropriate area for law reform. When, on the other hand, dissatisfaction arises from lack of awareness, information and educational resources can be mobilised as appropriate.

Responses of criminal justice officialdom to the victim are also worthy of attention. The degree to which victim - offender relationships and the demeanour of the victim affects the decision of police to arrest, of Crown officers to prosecute, and of judges to imprison offenders have only just begun to receive notice. Sallmann's contribution to the symposium was exemplary in this regard.

It has been argued by some that victims of domestic violence would be better served by a more rigorous application of powers of arrest and prosecution. This may well be the case, but the fact remains that there is no systematic evidence on the relative impact of arrest and alternative crisis intervention approaches to domestic violence anywhere in Australia. It is well within the competence of Australian police and community welfare departments to conduct carefully designed field experiments on such questions. The systematic knowledge which these experiments will yield should permit a more effective response to the victim of domestic assault.

It is now apparent that one of the glaring gaps in our knowledge of crime victims concerns their mental health. Psychiatric experts concede that there is an enormous need for basic research in this area. Simply to identify the range of individual responses to the experience of victimisation is important. To document the successful coping strategies of individual victims, and to identify the most effective techniques of therapeutic intervention, must remain high on the research agenda. The long-term follow up of victims is also worthy of attention.

In a period of resource constraint, when public expenditures have come under hard scrutiny, one is tempted to inquire about the rationales which underlie the allocation of criminal justice resources. An inordinate amount of money and human resources are devoted each year in Australia to the prosecution of behaviours which, although defined as criminal by Parliaments, involve neither the inflicting of physical injury to another person nor property loss or damage. This is not the occasion to open a discussion of which, if any,

victimless crimes are appropriate for decriminalisation. Suffice it to suggest that limited law enforcement, prosecutorial, judicial, and correctional resources might more humanely and productively be devoted to those behaviours which concern the direct infliction of harm. Victimologists would do well to address basic policy considerations such as these.

What might be termed the political-organisational context of victim assistance initiatives is also worthy of attention. It was noted during the symposium that a potential for conflict exists between various organisations which may have occasion to deal with crime victims. It is important to determine whether a particular initiative is genuinely in the interests of the victim, or whether its primary function is that of organisational aggrandisement or ideological barrow pushing. This is not to impugn the dedication and integrity of the vast majority of victim assistance workers. The most efficient services to victims, however, can be provided by organisations working in concert, not conflict.

Monetary compensation to crime victims, once regarded as a panacea, deserves critical attention. Delay and uncertainty have been identified as two of the more counter-therapeutic aspects of compensation programmes. Victims and governments alike would benefit from greater attention being devoted to the redesign of compensation programmes to permit the quickest recovery of the victim at the lowest cost to the taxpayers.

To extend this theme, it is appropriate to begin looking at monetary compensation in the context of an integrated victim assistance programme. A compensation programme which exists *in vacuo* will fail to address the victim's needs for social support and information. The design of victim assistance programmes could thus benefit from some holistic thinking.

The areas of criminal procedure and evidence are also deserving of attention. Rigorous assessment of those innovations which have been implemented in South Australia and New South Wales is worthy for two reasons: if found to be functioning adequately, they are worthy of emulation elsewhere. On the other hand, unanticipated difficulties may be amendable to remedial legislation.

One course has thus been charted for the next few years. It is by no means definitive, for such a newly developing area of inquiry and policy positively requires a variety of ideas. One hopes that the flowering of Australian victimology will soon lead to the reduction of a great deal of unnecessary suffering, and to the design of a more just and humane criminal justice system.

END